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B'TSELEM

VIOLATIONS

OF HUMAN RIGHTS

IN THE OCCUPIED

TERRITORIES

1990/1991



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B'TSELEM

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, was founded in February 1989, by a group of 63 lawyers, doctors, academics, journalists, public figures, and Knesset members. **B'Tselem** was founded out of a commitment to preserve the security and the humanitarian nature of the State of Israel. This commitment is the center's *raison d'etre* and underlies all of its programs and activities.

B'Tselem gathers and publishes reliable, detailed, and up-to-date information on human rights issues in the occupied territories, follows policy changes, encourages involvement of the Israeli public in the struggle for human rights, and provides assistance whenever possible. **B'Tselem's** data are based on independent fieldwork and investigations, official Israeli sources, and data provided by Palestinian sources.

B'Tselem seeks to educate the Israeli public about international human rights standards and norms, to foster public debate within Israel on the nature and scope of human rights violations in the occupied territories and their impact on Israeli society and democracy, and to confront the phenomena of denial and repression in Israel.

The work of **B'Tselem**, in conjunction with other human rights organizations, has led to several investigations by the Military Police/CID and the Israeli National Police, and to court trials, as well as contributing to policy changes. Since its founding three years ago, **B'Tselem** has received international recognition for its work. In 1989, **B'Tselem** (with the Palestinian human rights organization al-Haq) won the prestigious Carter-Menil Human Rights Award, and its studies are often quoted in the Israeli, Palestinian and international press.

B'Tselem consistently conveys its findings to the relevant authorities (IDF, Israeli National Police, Defence Ministry, State Comptroller's Office), both to apprise them of the information collected and to allow them to respond. In general, authorities treat **B'Tselem** fairly and in a serious manner. Often, however, various officials reject or even denounce information published by **B'Tselem**, instead of addressing the issue at hand.

The **B'Tselem** staff comprises ten workers (some part-time). They are assisted by many volunteers, who dedicate many hours of their time to help with various tasks – typing, translation, statistical analysis, writing, photography, legal advice, and more.

B'Tselem is funded by grants from public and private sources in Israel and abroad.

Publications

Information sheets

B'Tselem distributes information sheets which present figures and analyses of fatalities in the territories, and discuss various human rights issues. Information sheets published during the past two years include: "Violence Against Minors in Police Detention;" "Limitations on Building of Residences in the West Bank;" "Closure of Schools and Other Setbacks to the Education System in the Occupied Territories"; "House Demolition as a Means of Punishment for Suspected Security Offenders"; "Human Rights in the Occupied Territories During the War in the Persian Gulf"; and "Renewal of Deportation of Women and Children From the Occupied Territories on Account of 'Illegal Residency'".

Comprehensive reports

B'Tselem publishes comprehensive research projects on human rights violations, including data, analysis of trends, expert opinions and comparative studies. A range of professionals, including doctors, lawyers, economists, and assessors work with **B'Tselem** staff in preparing the reports. The reports published include: **The System of Taxation in the West Bank and the Gaza Strip; The Use of Firearms by the Security Forces in the Occupied Territories; Collective Punishment in the West Bank and the Gaza Strip; and The Interrogation of Palestinians During the Intifada: Ill-treatment, "Moderate Physical Pressure" or Torture?**

Bi-annual report

This comprehensive report tracks changes and trends in human rights violations in the territories, summarizes the data of the period covered, and presents detailed research regarding events in the territories.

Additional Activities

Fieldwork

In order to verify the data received, **B'Tselem** has initiated hundreds of investigations in the territories, and regularly conducts trips there, with the participation of the center's researchers, doctors, lawyers and journalists.

Parliamentary advocacy committee

B'Tselem works closely with a group of some twenty Knesset Members from the Labor, Shinui, Ratz, and Mapam parties, to bring human rights issues, based on information provided by **B'Tselem**, to the Knesset floor. Issues raised by this group in the Knesset plenum and in various Knesset committees include the deportation of residents from the territories; settler activity; rules for opening fire; school closings; violence against minors in police detention; and interrogation of security suspects. The parliamentary advocacy committee also assists the center's staff by intervening with the authorities when the need arises.

Processing complaints

Although **B'Tselem** does not focus on aiding individuals, it intervenes by processing personal complaints when these reflect general phenomena.

Work with the human rights community

In addition to contacts with international human rights organizations, **B'Tselem** maintains a close working relationship with other human rights organizations in Israel and the occupied territories, including the Association for Civil Rights in Israel, Rabbis for Human Rights, Hotline: Center for the Defense of the Individual, Women's Organization for Political Prisoners, The Committee to Defend Imprisoned Minors, the Workers' Hotline, Defence Children International (DCI), al-Haq, the Palestinian Human Rights Information Center, and others.



IDF look-out post in al-Bireh. (Photograph by Yoram Lehmann)

INTRODUCTION

In the four years since the Intifada erupted, until October 31, 1991, 1,413 people lost their lives, most of them Palestinians killed by security forces, and the remainder Palestinians killed by Palestinians, Israelis killed by Palestinians, and Palestinians killed by Israeli civilians. Many thousands were wounded, tens of thousands were arrested and imprisoned, hundreds of homes were demolished or sealed, dozens of people were deported, the inhabitants of the territories were placed under curfew for protracted periods, and pupils were kept from their studies for weeks and months.

The past two years of the Intifada saw a considerable decline in the number of casualties inflicted by security forces. This is attributable on the one hand to a change in the character of the uprising - fewer mass demonstrations, more clashes between the IDF and organized factions operating in the field - and on the other hand, to greater scrupulousness by the security forces in following the rules of engagement.

The decrease in the overall number of casualties, however, is overshadowed by another figure: in just two months, May and October 1990, 45 residents of the territories were killed by the security forces. Eighteen people were killed in the May 1990 disturbances that followed the slaying of seven Gaza Strip workers in Rishon L'Tsion by Ami Popper, and 27 were killed in October, in the Temple Mount incident and subsequent unrest.¹

The struggle against human rights violations achieved several successes during the past two years. Public pressure, led by human rights organizations, figures from the legal community, public personalities, and the press, brought about a renewal of studies in elementary and high schools, which had been closed for a lengthy period, and the reopening of most institutions of higher learning in the territories. For the first time, senior army officers were tried for crimes they had committed in the territories and for giving illegal orders and, as noted, the rules of engagement [open-fire regulations] were more stringently adhered to.

Despite these partial gains, human rights continued to be violated extensively: the security forces demolished and sealed dozens of homes belonging to suspects' families; after nearly two years in which no deportation orders were issued, the defense establishment effectively resorted once more to deportation as a punitive measure; the IDF

continues to impose collective restrictions on large populations for crimes committed by individuals; curfews continue to be imposed, often without security-based justification; and harassment of residents is a daily phenomenon on account of labyrinthine bureaucratic procedures as well as direct harassment such as forcing residents to take part in "cleanup operations" (e.g., cleaning streets).

We cannot ignore the human rights violations perpetrated by Palestinians in the territories. During the past two years, 307 Palestinian residents of the territories were murdered by other Palestinians on suspicion of collaboration with the authorities. **B'Tselem** condemns these murders as a severe infringement of the most basic human right of all: the right to life.

Another phenomenon which has characterized the past two years is the increasing penetration of the Intifada's violent manifestations into Israel proper, and the increase of instances of individual terrorism against civilians inside Israel.

The Gulf War period was a very significant time as far as violations of human rights are concerned. The entire population of the territories was placed under an extremely long curfew (three weeks) and the limitation on freedom of movement kept residents of the territories under effective house arrest. All educational institutions in the territories were paralyzed during this period, and economic life ceased completely.

Human rights violations in the territories are generally committed in the name of security. "Security needs" are a pretext for imposing lengthy curfews, "security risks" are a basis for arrest without trial and for deportation, and "security considerations" are cited to justify the demolition of homes of suspects' families.

Undoubtedly, the situation in the territories necessitates various measures to meet security requirements, but such requirements frequently serve as a cover under which human rights are violated and freedoms suppressed in a manner neither justifiable nor necessitated by sheer security needs, and disproportionate in terms of the specific danger cited.

The past two years saw a further decline in the Israeli public's awareness of events in the territories. The situation in the territories was shunted – or repressed – to a marginal place in terms of public interest. This is strikingly illustrated in the Israeli media's manner of reporting on the territories. The types of stories that led off the news in the electronic media or made headlines in the written press in the past, are today noted laconically or relegated to inside pages of the newspapers.

B'Tselem exists not only because the public has a right to know, but also, and perhaps principally, because it believes the public has a duty to know. It is incumbent upon the Israeli public to know what is being done in its name and on its behalf in the territories, to be aware of the severe infringement of human rights there, and to be conscious of its own responsibility.

The following report is based on **B'Tselem's** investigations during the past two years. Some findings were published previously and have been updated for this report, and others appear here for the first time. As an Israeli organization, **B'Tselem** believes its primary obligation is to address human rights violations perpetrated by agencies of the Israeli administration. Therefore, this report is concerned with human rights infringements committed directly or indirectly by the Government of Israel in the territories under its rule. Information about attacks on Israelis or on other Palestinians by residents of the territories, about attacks by Israeli civilians on residents of the territories, and about human rights violations committed within Israel proper, is presented as background to the situation in the territories, to stress the cost incurred by these phenomena in human life, or in the context of the government's handling of these attacks.

Various limitations prevent us from surveying the entire gamut of human rights violations in the territories. This report addresses the most severe and widespread of these violations – those resulting in death, physical injury, and deprivation of freedoms. The report hardly addresses abridgements of economic, social, and cultural rights. In addition, a number of severe violations of human rights in the territories are not discussed in the report, either because not enough information was available or because the investigation has not yet been completed.

Thus, for example, this report does not address infringement of rights of residents of the territories who work inside Israel, confiscation of land and water sources from their owners, and limitations on the freedom to organize. These subjects will be surveyed in upcoming **B'Tselem** reports.

The preliminary response of the IDF Spokesperson appears at the end of the report. The response was based on a draft of the report given to the IDF Spokesperson in July 1991. After receiving it, **B'Tselem** rechecked the points which the Spokesperson claimed to be inaccurate. Following the reexamination, corrections were made, such as the presentation regarding prevention of meetings between detainees and their lawyers (section 5 of the response). In addition, in most of the cases, the reexamination confirmed what was stated in the report. The claim that **B'Tselem** does not check its findings from previous years

(section 4 of the response) is incorrect. As stated in the report, the findings in the chapter on military courts are based on a followup conducted in May 1990 and September 1991. In addition, the claim that **B'Tselem** took quotes out of context, in an inaccurate manner (section 3 of the response) holds no water, and we maintain that the quotes from the discussion referred to in this section are exact and complete.

When the Hebrew version of the report was released, **B'Tselem** received an additional response from the IDF Spokesperson. Copies of the response are available upon request at the **B'Tselem** office.

Sources of the information in this report include **B'Tselem's** investigations, court rulings, official publications and statements, publications of human rights groups, and reports in the Israeli press.

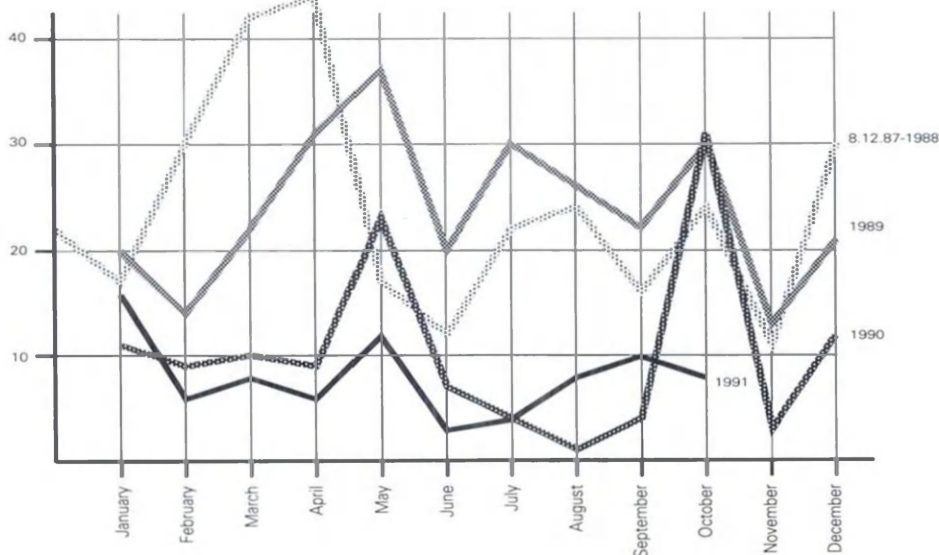
FATALITIES

B'Tselem's data include the names of all Palestinians killed in the occupied territories – by shooting or non-shooting assaults – for which there is a reasonable basis to assume responsibility on the part of the Israeli security forces. In those cases in which there is a discrepancy between reports of the IDF and the Israel National Police, and those of Palestinian sources, **B'Tselem's** fieldworkers conduct an investigation, and **B'Tselem** requests clarifications from the IDF and Police spokespersons.

The data have been updated for the publication of this report. We have conducted studies and new facts have been unearthed. As a result, there are slight differences between the data presented here and the data published in **B'Tselem's** monthly information sheets.

1. Palestinians Killed by Israeli Security Forces

Between December 9, 1987, the first day of the Intifada, and October 31, 1991, **802** Palestinians have been killed by Israeli security forces in the occupied territories.



1.1 Distribution by Months

Month	First Year 9 December 1987 – 8 December 1988			Second Year 9 December 1988 – 8 December 1989			Third Year 9 December 1989 – 8 December 1990			Fourth Year 9 December 1990 – 8 December 1991		
	Gaza Strip	West Bank	Total	Gaza Strip	West Bank	Total	Gaza Strip	West Bank	Total	Gaza Strip	West Bank	Total
December from 9.12	14	8	22	8	18	26	4	8	12	7	3	10
January	13	4	17	6	14	20	2	9	11	7	9	16
February	4	26	30	6	8	14	6	3	9	0	6	6
March	5	37	42	12	10	22	2	8	10	3	5	8
April	18	26	44	11	20	31	6	3	9	2	4	6
May	4	13	17	18	19	37	16	8	24	3	9	12
June	4	8	12	11	9	20	0	7	7	0	3	3
July	4	18	22	12	18	30	1	3	4	0	4	4
August	10	14	24	13	13	26	0	1	1	3	5	8
September	8	8	16	7	15	22	1	3	4	1	9	10
October	3	21	24	10	20	30	3	28	31	2	6	8
November	4	6	10	1	12	13	2	1	3			
December until 8.12	1	3	4	3	6	9	0	2	2			
Total	92	192	284	118	182	300	43	84	127	28	63	91

Fatalities from the beginning of the Intifada:

West Bank: 521

Gaza Strip: 281

Total: 802

1.2 Age of Those Killed

Age	First Year		Second Year		Third Year		Fourth Year		Total	
	Number	%	Number	%	Number	%	Number	%	Number	%
Up to 12	8	2.8	29	9.7	5	3.9	5	5.5	47	5.9
13-16	39	13.7	45	15.0	21	16.5	20	22.0	125	15.6
17-24	160	56.3	180	60.0	65	51.1	47	51.6	452	56.4
25-34	54	19.0	31	10.3	22	17.4	15	16.5	122	15.2
35-44	10	3.5	6	2.0	3	2.4	3	3.3	22	2.7
45 and over	13	4.7	9	3.0	11	8.7	1	1.1	34	4.2
Total	284	100	300	100	127	100	91	100	802	100

1.3 Cause of Death

Cause	First Year	Second Year	Third Year	Fourth Year	Total
Beatings	12	2	1	-	15
Died in Prison (non-shooting)	3	3	2	-	8
Other (Electrocution, head injury from a brick, thrown from a moving vehicle)	2	1	-	1	4
Total non-shooting	17	6	3	1	27
Shooting	267	294	124	90	775
Total	284	300	127	91	802

1.4 Summary

In total, from the beginning of the Intifada until October 31, 1991, **802** Palestinians were killed in the occupied territories by Israeli security forces, **521** in the West Bank and **281** in the Gaza Strip. **284** were killed in the first year, until December 8, 1988, **300** were killed in the second year, until December 8, 1989, **126** were killed in the third year, until December 8, 1990, and **91** in the fourth year, until October 31, 1991.

By live fire (including plastic and "rubber" bullets) – **775: 267** in the first year, **294** in the second year, **123** in the third year, and **90** in the fourth year.

By assaults other than live fire (beatings and other) – **27: 17** in the first year, **6** in the second year, **3** in the third year, and **1** in the fourth year.

47 of those killed were children age 12 and under, and **125** between the ages of 13 -16.

1.5 Data Analysis

In the past two years there was a significant decline in the number of Palestinians killed in the territories by security forces, to less than half of the number killed in each of the first two years.

From January to April 1990 the **average** number killed per month was **10**.

From June to September and in November the monthly average fell to **below 10** (between 1-7).

In December 1989, May 1990 (following the slaying in Rishon L'Tsion) and October 1990 (following the Temple Mount events) the number of people killed was especially high (14, 23 and 31 respectively).

In the fourth year of the Intifada (until October 31, 1991) there was an **average of 8** fatalities per month.

The largest number of fatalities was in January 1991 – **16**.

The smallest number of fatalities was in June 1991 – **3**.

Distribution by district

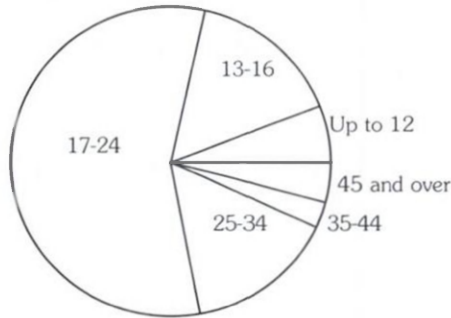
The number of Palestinian fatalities in the Gaza Strip during the past two years was half of the number killed in the West Bank, similar to the average of the two previous years.

Within the West Bank, the number killed was especially high in the

Nablus District (147 in four years, approximately 28% of all those killed in the West Bank). In the third year, the number of Palestinian fatalities in Jerusalem rose drastically to 21, in contrast to one fatality in each of the two previous years, and none in the fourth year. This is mainly due to the Temple Mount incident of October 1990.

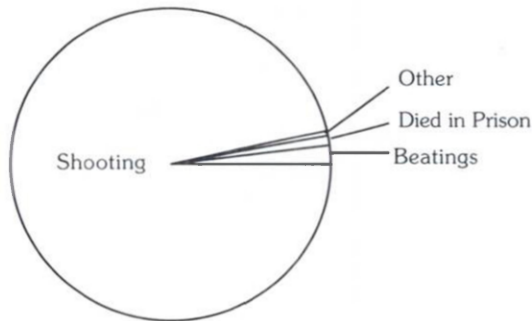
The age of the victims

Most of the Palestinians killed during the four years (between 50 and 60 percent) were between the ages of 17-24. The percentage of children (up to age 16) among those killed rose gradually, from approximately 16.5% in the first two years to 25% in the second. In the third year the percentage of children killed declined to approximately 20%, but rose again in the fourth year to 27.5%.



Cause of death

Over 96% of those killed were shot (with live fire, and plastic and rubber bullets). In the last two years, there has been a notable decline in the number of those killed by beating, from 12 in the first year to 2 in the second year, 1 in the third, and none in the fourth.



2. Israeli Fatalities

In the territories

From the beginning of the Intifada until October 31, 1991, **31** Israelis were killed in the territories: **14** security force members and **17** civilians, **3** of them children. In addition, **2** tourists were killed in the territories.

In the first year, until December 8, 1988, **7** Israelis were killed by Palestinians in the territories: **2** security force members and **5** civilians.

During the second year, until December 8, 1989, **12** Israelis were killed: **8** security force members and **4** civilians.

During the third year, until December 8, 1990, **4** Israelis were killed: **2** security force members and **2** civilians.

During the fourth year, until October 31, 1991, **8** Israelis were killed: **2** security force members and **6** civilians. In addition, **2** tourists were killed.

Of those killed, **14** were shot, **8** were stabbed, **4** were killed from a blow in the head by a rock or cinder block, **6** were killed by Molotov cocktails, and **1** from an explosive device.

Within the Green Line

Between the beginning of the Intifada and October 31, 1991, **47** people were killed within Israel proper by Palestinians: **10** security force members, **33** Israeli civilians, and **4** tourists.

During the first year, until December 8, 1988, **3** Israelis, all civilians, were killed within the Green Line by Palestinians.

During the second year, until December 8, 1989, **22** people were killed: **4** security forces members, **15** civilians, and **3** tourists.

During the third year, until December 8, 1990, **7** people were killed: **2** security forces members, **4** civilians, and **1** tourist.

During the fourth year, until October 31, 1991, **15** were killed, **4** of them security force members, and **11** civilians.

Two of those killed were shot; **22** were stabbed; **16** were killed in the attack on Bus 405; **2** were killed from the detonation of an explosive object; **1** was beaten with an iron rod, and **4** were run over.

3. Palestinians Killed by Other Palestinians

According to the data of the Associated Press news agency, accepted as a reliable source, **462** Palestinians suspected of collaboration with the Israeli authorities have been killed between the beginning of the Intifada and October 31, 1991.²

During the first year, until December 8, 1988, **21** were killed.

During the second year, until December 8, 1989, **134** were killed.

During the third year, until December 8, 1990, **162** were killed.

During the fourth year, until October 31, 1991, **145** were killed.

Between the beginning of the Intifada and October 31, 1991, **11** residents of the territories were killed by "collaborators' " gunfire.

During the first year, until December 8, 1988, **1** was killed.

During the second year, until December 8, 1989, **4** were killed.

During the third year, until December 8, 1990, **3** were killed.

During the fourth year, until October 31, 1991, **3** were killed.

4. Palestinians Killed by Israeli Civilians

In the territories

Between the beginning of the Intifada and October 31, 1991, **42** Palestinians were killed in the territories by Israeli civilians.³

During the first year until December 8, 1988, **14** were killed.

During the second year until December 8, 1989, **11** were killed.

During the third year until December 8, 1990, **10** were killed.

During the fourth year until October 31, 1991, **6** were killed.

Within the Green Line

Since the beginning of the Intifada at least **18** Palestinians have been killed within the Green Line by Israeli civilians.⁴ **Three** of them were killed in the first year, **2** in the second, **10** in the third, and **3** in the fourth.

Three were burned in a hut as they slept, **3** were killed as a result of stonethrowing, **11** were shot, and **1** was beaten by a mob that suspected him of stabbing two female soldiers. The deceased had no connection to the stabbing.



INJURIES

The exact number of wounded is unknown to us, and to the best of our knowledge is not known to anyone. It is very difficult to document injury victims. The very definition of "injury" is problematic. UNRWA (United Nations Relief and Work Agency), for example, documents as "injured" anyone who has received treatment in an UNRWA clinic, whether it was a person who needed bandaging and first aid or a person transferred to the hospital in critical condition. IDF reports, on the other hand, are incomplete, because in most cases, soldiers in the field do not know how many people were injured in a given incident. As far as we know, the IDF relies on reports of hospitalization or hospital treatment, although many residents of the territories prefer not to stay in hospitals in order to avoid interrogation.

Because of these objective difficulties, **B'Tselem** does not document data pertaining to injuries and therefore we will present both the data of UNRWA and data from the IDF Spokesperson. Together these will give some indication of the numbers. In any case, there is no doubt that tens of thousands of Palestinians have been injured during the past four years.

According to the figures of UNRWA, from the beginning of the Intifada until the end of October 1991, approximately 65,000 Palestinians were injured in the territories. Of that number, over 21,000 were injured by firearms.

According to figures given by security officials, between the outbreak of the Intifada and the end of October 1991, approximately 14,500 Palestinians were injured in the territories, some 8,750 in the West Bank and 5,750 in the Gaza Strip.⁵



A young woman injured by tear gas in Hawara, near Nablus.
(Photograph by Alex Levac)

OBSTRUCTIONS TO THE NEUTRALITY OF MEDICAL SERVICES

Inflicting injury on medical staff, ambulances, and hospitals constitutes a grave infringement of universal, humanitarian rules that grant special protection to the injured, sick and handicapped, and to facilities that supply medical services. Articles 35-37 of the First Geneva Convention (1949), Articles 16-21 of the Fourth Geneva Convention (1949), and Articles 8-21 of the First Geneva Protocol (1977) determine unequivocally that the sick and injured, together with medical personnel, have the right to special protection, and under no circumstances should harm be inflicted upon hospitals or vehicles intended for the transport of medical aid.

These rules reflect universal standards agreed upon by all civilized nations. Nevertheless, they are often infringed upon.

Most of the chapters of this report cover human rights abuses that are systematic and ongoing. This chapter presents individual examples of infringement of the neutrality of the medical services in the territories which, while not representing routine phenomena, nevertheless are indicative of the security authorities' negligence regarding such infringements and of their failure to implement sufficiently careful preventive measures.

As far as **B'Tselem** is aware, only in isolated cases were soldiers interrogated about incidents of the sort described here. In one incident, an army officer was brought to a disciplinary trial for firing tear gas into an UNRWA clinic in Gaza, at a time when dozens of infants were inside. He was sentenced to 10-days imprisonment, which was later reduced to a 21-day suspended sentence. In an additional incident, an officer went to trial in military court for shooting at an ambulance (the ambulance driver was wounded and later died of his wounds). He received a two-month suspended prison sentence.

Article 18 of the Fourth Geneva Convention determines the neutrality of medical facilities:

Civilian hospitals organized to provide care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.

A. Forcible Entry into Medical Institutions

The neutrality of both private and government hospitals, and of UNRWA clinics, has been repeatedly infringed by the security forces in the territories. Generally, the security forces enter medical institutions either to confiscate lists of injured patients and to conduct searches or to arrest hospitalized suspects.

In al-Ittihad Hospital in Nablus, soldiers removed injury victim Bassam Ashur from the operating room on June 20, 1990, and arrested him.⁶

Several days following this event on June 26, 1990, soldiers returned to the operating room in the al-Ittihad Hospital seeking to arrest Ayman Mustafa Kulab, a 14-year-old resident of Nablus, who was brought to the hospital after he had been injured in his arm from a live bullet.

The doctor on duty tried to explain to the civil administration officer who accompanied the soldiers that the injured person, who had already been anesthetized and prepared for surgery, could not be removed, but the officer insisted. During the negotiation, some of the soldiers remained in the operating room with their guns.

Hospital personnel contacted **B'Tselem** by phone, and following the intervention of MK Dedi Zucker, the soldiers left the operating room and enabled the doctors to conclude the surgery. Immediately following the operation, the soldiers reappeared, accompanied by a doctor, and took the injured person to Tel Hashomer Hospital.

According to UNRWA figures, in 1990 security forces broke into UNRWA clinics and hospitals in the territories on 159 occasions, 31 of them in the West Bank and 128 in the Gaza Strip. The following table enumerates the type of actions taken in the break-ins:⁷

Type of Action	West Bank	Gaza Strip
Search	16	83
Entry only; warning against stone throwing; preventing patient entry	10	21
Arrest; interrogation; confiscation of I.D. cards	5	9
Confiscation or damage to property	1	5
Firing tear gas	-	15
Other	1	3

B. Infringement on Freedom of Movement

While the territories were under an extended curfew during the Gulf War, the movement of physicians was restricted. Patients in need of urgent medical care were required to receive special travel permits from the Civil Administration. Simon Ohana, a reserve soldier who served during the war at the Civil Administration post in Hawara, related to **Ha'aretz** correspondent Yizhar Be'er:

One night at 3 a.m. a young man arrived with a woman who was about to give birth. I took note of her condition, and without hesitation, I took a form for travel permission during the curfew, signed it Simon Ohana, and sent them to the hospital.

The couple was detained at the first roadblock for clarification as to who signed their permission form. According to the job definition, I was sent to maintain security at the compound, and I didn't have the authority to issue travel permits, but you can't help but rebel against the bureaucratic delays and opacity. Sometimes, during the curfew, a local comes and requests permission to go to the hospital, but the soldier in charge sends him back because he doesn't look sick enough to him. What have we come to – that a soldier determines the medical diagnosis of the residents? Maybe he has cancer, syphilis, AIDS. And they don't ask to go to Hadassah. All they really ask for is to go to al-Ittihad in Nablus, so why give them a hard time? Why, for example, do they allow the mukhtar to move about freely, while the doctor is not permitted to do so? I saw here how a doctor, who had been moving about during the curfew, was held against the wall with his arms raised for an hour and a half, until they decided what to do with him.⁸

Following a petition submitted to the High Court by the Association of Israeli and Palestinian Physicians for Human Rights, the Supreme Court instructed security authorities to publish a permanent instruction detailing the procedures for movement of physicians and patients during curfew.⁹

The Spokesperson for the Office of the Coordinator of Activities in the Territories told **B'Tselem** that the procedures had been published in the collection of permanent instructions for the Judea and Samaria Civil Administration (and likewise for the Gaza Strip) in June 1991. **B'Tselem's** request for a copy of the procedures was denied since the material is classified.

On May 15, 1991, Muyassar 'Athamneh, a resident of the village of

Ya'bad, Jenin District, was forced to give birth on the back seat of the taxi which was transporting her to the hospital, after IDF soldiers delayed it and prevented it from continuing on its way.

Members of the 'Athmaneh family related to **B'Tselem** that Muyassar had set out for the hospital in Jenin, at approximately 11:00 p.m., with her husband, brother-in-law, sister-in-law, and village midwife, after the midwife determined that the baby was a breech, and that the mother was suffering from high blood pressure. When they were within approximately five minutes of the hospital, soldiers shined a searchlight into the car, and called over a loudspeaker for to the taxi driver to stop. The midwife and 'Athmaneh's sister-in-law descended from the taxi, explained to the soldiers that there was a woman in labor in the taxi, and that she was in serious condition and needed to be taken to the hospital. The soldiers refused to allow the vehicle to pass, and after an argument which lasted for nearly an hour, Muyassar 'Athmaneh was forced to give birth, as mentioned, in the back seat of the taxi.

B'Tselem complained about the incident to the Ministry of Defence. On September 27, 1991, four months after the complaint was submitted, Mr. Haim Yisraeli, Head of the Defence Minister's office, stated to **B'Tselem**, that "the entire incident is currently under investigation by authorized military authorities and under the direction of the Legal Counsel of the Central Command."¹⁰

C. Attacks on Ambulances

According to UNRWA data, in 1990 there were 43 incidents of attacks by security forces on ambulances in Gaza. Among them: holding up transportation of the sick, beating the injured or the personnel, stopping and searching ambulances, damage done to the vehicles.

Article 21 of the Fourth Geneva Convention provides for the neutrality of ambulances:

Convoys of vehicles . . . conveying wounded and sick civilians, the infirm and maternity cases . . . shall be respected and protected in the same manner as the hospitals provided for in Article 18.

During the clashes on the Temple Mount on October 8, 1990, a medical orderly was shot and injured while treating casualties. A nurse was injured by three live bullets while she was inside an ambulance.¹¹

On August 5, 1991, the military court of the Central Command convicted an officer of the paratroopers of illegal use of weapons, and

imposed on him a two-month suspended jail sentence. The officer, Lieutenant Haim Shaul, shot at an ambulance that was transporting wounded people from Nablus on June 18, 1989. The ambulance driver, 'Awni Sawalheh, was injured from the shooting, and he died of his wounds on July 6, 1989.

On several occasions, tear gas was fired into hospitals:

On June 12, 1990, dozens of children were injured by tear gas being fired into an UNRWA clinic in Gaza City. Following the incident, an officer was sentenced to 10 days imprisonment in a disciplinary trial, but his sentence was reduced to a 21 days' suspended sentence.¹²

During the clashes on the Temple Mount on October 8, 1990, police fired tear gas grenades into the maternity ward of Maqassed Hospital. The hospital staff were forced to evacuate the mothers and infants from their rooms.¹³

On November 17, 1990, police chasing students fired into Saint Joseph's Eye Hospital in Jerusalem.¹⁴



A Jerusalem ambulance whose windshield was perforated by a live bullet during the evacuation of the wounded during the Temple Mount events on October 8, 1990.

HOUSE DEMOLITION AND SEALING

A. Introduction

House demolition, and its less severe version, the sealing of the house's apertures, are methods of punishment based upon Regulation 119 of the Defence (Emergency) Regulations, 1945, employed against suspected security offenders. This regulation grants the military commander of the relevant area the authority to employ this sanction in varying levels of severity: partial sealing, total sealing, partial demolition, or total demolition. According to an Israeli High Court of Justice (HCJ) ruling, the severity of the sanction employed must be proportionate to the gravity of the deeds attributed to the suspect.

As far as we know, this method of punishment is unique to Israel and is not employed in any other place in the world, even though it is based on regulations enacted by the British Mandatory authorities.

The procedure of destroying a suspect's home is administrative, carried out without trial and with no requirement to prove the defendant's guilt before a judicial body. In the majority of cases, the sanction is carried out prior to conviction. In other words, this is a punishment imposed primarily on individuals who are only suspected offenders. The demolition or sealing of a house usually is employed in addition to sentences handed down by the court against the accused and is not included within the framework of punishments meted out by the court. On more than one occasion, rented houses have been demolished despite the fact that the houses' actual owners had no connection to the actions which led to the punishment.

This drastic punitive measure is even used, at times, against the families of individuals wanted by the security forces, but who have not yet been apprehended, as well as on families of individuals who have already been killed.¹⁵

This is therefore one of the most severe punishments employed against the residents of the occupied territories. Supreme Court Justice Aharon Barak pointed out in High Court ruling 361/82 that this is a severe and drastic action that must be employed only after extensive consideration and an in-depth investigation, and only in very special circumstances:

The severity of house demolitions is threefold: Firstly, it deprives the house's residents of living quarters; secondly, it negates the possibility of restoring the situation to its former state; thirdly, it sometimes may damage neighboring homes.

This statement notwithstanding, the High Court has to this day rejected all but two petitions against the demolition of homes.

During the Intifada, changes have occurred in the use of house demolition to punish security suspects. There has been a marked decline over the past two years in the number of demolitions and sealings. This is a result of both harsh criticism in Israel and the world, and of a July 1989 High Court ruling which stipulated that house owners must be allowed to appeal the demolition before it is carried out. According to security sources, this renders the punishment less effective.¹⁶

B. The Process

House demolitions or sealings are usually initiated by one of the security authorities (IDF or General Security Services [GSS]) possessing some kind of evidence that appears to link a certain individual to security offenses. This evidence is usually based on testimonies given by various individuals regarding the actions of the suspect, or on a confession made by the suspect in the course of his interrogation. As mentioned above, the vast majority of demolitions are carried out before the suspect is brought to trial and convicted.

The security force (IDF or GSS) that initiated the sanction also recommends the form of punishment. The recommendation is passed on, together with the evidence, to the legal advisor in the suspect's area of residence.

The legal advisor examines the evidence and if he finds the accusations to be well-supported, he approves the sanction in principle. If the intention is to demolish the house, the technical feasibility of the punishment is verified. If demolition is deemed impossible (for example, if the house is an apartment in a shared building), the house is sealed rather than demolished.

In the case of a house sealing, after the order is approved in principle by the legal advisor, it may be carried out immediately. In the case of demolition, the family must be allowed to appeal the decision.

First, the home owner is informed of the intention to demolish his house. He may then appeal the decision within 48 hours to the military commander of his area of residence (either the West Bank or the Gaza



Demolition of a house in the village of Burqin. (Photograph by Moshe Shai)

Strip). If the commander rejects the appeal, the home owner is given an additional 48 hours to appeal to the High Court of Justice. It is significant to note that of the dozens of appeals submitted to the High Court, only two have ever been accepted (see below, p.40).

In the course of this process, negotiations are carried out between the family's lawyer and the military, and sometimes a compromise is reached in which the severe sanction is replaced by a less severe one: sealing instead of demolition, partial sealing instead of complete sealing, etc.¹⁷

Once all channels for appeal have been exhausted and the demolition order has received final approval, the home owner is notified, usually a few days before the demolition is carried out. On the day of the demolition, the area around the house is usually placed under curfew, the family is given a short time to remove its belongings (approximately one hour), and the house is demolished by a bulldozer or by dynamite. More than once, neighboring houses have been damaged, usually when demolition was carried out by an explosive.

The family is prohibited from rebuilding the house, or from breaking the sealed entrances, since the sealing or demolition order is also a land expropriation order. After the demolition or sealing, the family usually receives a tent from UNRWA or from the Red Cross, and erects the tent on the ruins of the demolished house (despite the aforementioned fact that this is prohibited since the land has been confiscated). The families receive some aid or compensation from Palestinian institutions and organizations, which enables them to rent an alternative residence for a number of months.

In most cases, the prohibition for rebuilding the house is not applied to tents, but in at least one case, the security authorities twice destroyed tents erected on the rubble of a destroyed house. On November 1, 1990, the house of 'Omar Sa'id Abu Sirhan's family was destroyed. Sirhan had murdered three Israelis in Jerusalem's Bak'a neighborhood. Following the demolition, his family twice erected a tent near the ruins, but in both cases, the security forces demolished the tents. The IDF Spokesperson told **B'Tselem** that demolition of the tents was valid under the prohibition to build a house on the grounds of a house that had been confiscated and demolished.¹⁸

House demolitions *

Month	West Bank	Gaza Strip	Month	West Bank	Gaza Strip
December '87	1	0	December '89	2	13
January '88	0	0	January '90	4	16
February '88	2	0	February '90	4	7
March '88	13	1	March '90	2	1
April '88	16	3	April '90	0	0
May '88	2	2	May '90	4	0
June '88	10	5	June '90	3	6
July '88	6	7	July '90	1	2
August '88	13	2	August '90	1	1
September '88	0	0	September '90	7	8
October '88	17	7	October '90	1	0
November '88	17	6	November '90	2	5
Total	97	33	Total	31	59
December '88	4	4	December '90	4	-
January '89	15	9	January '91	1	-
February '89	4	2	February '91	3	3
March '89	14	18	March '91	-	2
April '89	0	0	April '91	2	5
May '89	21	2	May '91	4	1
June '89	14	15	June '91	5	-
July '89	3	10	July '91	4	4
August '89	2	6	August '91	3	2
September '89	0	7	September '91	1	1
October '89	2	2	October '91	2	-
November '89	0	2	Total	29	18
Total	79	77	Total from the beginning of the Intifada	236	187

* The data include full demolitions only.

House sealings*

Month	West Bank Gaza Strip		Month	West Bank Gaza Strip	
December '87	0	0	December '89	0	2
January '88	0	0	January '90	***13	2
February '88	0	0	February '90	***14	0
March '88	0	0	March '90	4	1
April '88	0	1	April '90	0	0
May '88	5	1	May '90	12	0
June '88	8	1	June '90	6	1
July '88	6	3	July '90	3	2
August '88	2	0	August '90	10	4
September '88	0	0	September '90	3	10
October '88	6	6	October '90	***3	3
November '88	8	4	November '90	4	3
Total	35	16	Total	72	28
December '88	1	1	December '90	14	-
January '89	6	8	January '91	1	-
February '89	11	3	February '91	7	-
March '89	3	2	March '91	2	****1
April '89	0	0	April '91	3	1
May '89	11	0	May '91	5	-
June '89	10	4	June '91	1	-
July '89	2	2	July '91	3	-
August '89	4	1	August '91	1	1
September '89	2	2	September '91	-	-
October '89	1	3	October '91	3	1
November '89	**2	3			
Total	53	29	Total	40	4

* The data include full sealings only.

** Three additional houses that were sealed were demolished at a later date.

*** An additional house that was sealed was demolished at a later date.

**** Two additional houses that were sealed were demolished at a later date.

Total from the beginning of the Intifada	200	77
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C. Two Sample Cases

In order to illustrate the significance of house demolition as a means of punishment, we will present two cases.

The Qarabsa family's house in the 'Ein-'Arik refugee camp, near Ramallah, was built in 1965, and contained 17 rooms, occupied by 25 people (excluding the son, Muhammad, 18, arrested on suspicion of committing the offenses that led to the demolition).

The house owner, Hashem al-'Abd Qarabsa, 60 years old, is married to two women and the father of 14 children. Two of his daughters are married and live outside of the family home. The following family members live in the house: Hashem, the father, and his two wives; his son Khayri, 22, with his wife and his daughter, 7 months old; his son al-'Abd, 21, and his wife; his son Roukhi, 32, with his wife and his seven children, the oldest of whom is 12 years old and the youngest 18 months; and eight children of school age.

According to High Court ruling 2665/90, Muhammad Hashem Qarabsa was arrested on February 27, 1990. In the course of his interrogation he confessed to the following offenses: membership in a faction whose aim was to kill Palestinian collaborators; preparing 14 Molotov cocktails and throwing them at Israeli vehicles and government buildings; participating in three murders of individuals suspected of collaborating with the Israeli authorities (the three were stabbed in all parts of their bodies, and one was decapitated); and twice attempting to murder a suspected collaborator.

On May 14, 1990, Qarabsa was formally charged with the above offenses.

On June 3, 1990, the suspect's father was notified of the intention to demolish his house.

On June 5, 1990, the father appealed the demolition order.

On June 11, 1990, the father was notified that his appeal had been rejected.

On June 17, 1990, the father appealed to the High Court of Justice through Attorney 'Awisat, and requested that the demolition order be rescinded on two grounds:

- a. The house comprised a number of separate residential units in which five families of the father's extended family lived. Muhammad, the son under arrest, lived in one of the five units, in which there were two rooms. The father argued that demolishing the other four units, and causing injury to the

תקנות ההגנה (שיטת חרוס), 1945

צו החרמה והריסה

כתוקף סמכותי לפי תקנה 119 לתקנות ההגנה (שעת חרוס), 1945 ולפי העיף 56 לצו בדבר דרכי ענישה (יהודה ושומרון) (מס' 332), התשכ"ט 1969 והואיל ושוכנעתי כי תושב המבנה אשר תיאורו ניתן להלן ביצע עבירה על הוראות תקנות אלה, הכרוכה כאליומות או בהפרדה ובין הואיל וצרכים צבאיים מחייבים זאת, אני מורה בזה על החרמה לעובת צה"ל של המבנה ושליוואו אצל שבו התגורר:

פונדר נאג'י רשיד עבדאללה ת"ו: 998019772

ועל החרמת זכויותיו של בעל המבנה בהלקח הקרקע שאליה צמוד המבנה הנ"ל ועל אישמת המבנה הנ"ל.

תיאור המבנה: בית דו קומתי, הומצא בחברון. בקומת הקרקע ישנם כרתף, לול ומחסן. בקומה העליונה ישנם ילדיהם חדרים, מטבח, שירותים, טלפון ומעלית.

נימוקי הצו: פונדר נאג'י רשיד עבדאללה הנ"ל כחאריך 14.4.51 ניסה לקדם 2 ילדיו, *ג'מאל וקאדיר* ללימודים בבית הספר *בית המדרש* התאבות. *נימאל סכין נאג'י אלן נאג'י ימאל ונאג'י עבדאללה*

הוראת נוספות: על אף האסור לעיל, הרי שעם חתימתו של צו זה תכוצע אטימה בלבד. האטימה תכוצע לגבי כל המבנה. ניהנת בזה לדירתי המבנה, חוד 48 שעות מהועד מסירת צו זה לדירתי. הנכות להגיש השנה ככתב ברוע לג' הרושמי דריסת המבנה. את ההשנה יש להגיש לדיושיל לפני תחילת.

אזהרה: חל איסור לפתוח האטימה. ואם אגובה 12014/14/51 עקב צה"ל באופן האמורה ללא היתר.

התסו"א _____

1991 _____

יעקב אור
מפקד
לשירות יהודה ושומרון
תא"ל
צכאי
1991-01-29

ג'מאל נאג'י עבדאללה
בני נאג'י נאג'י
בן קיעין
סיג קחמי
קצ'ני מוסל' חביני
מח"ס ימאל

IDF confiscation and demolition order for the house of Munzer Naji Rashid Abdallah.

extended family, numbering 26 people, was unjustified.

b. Muhammad Qarabsa's trial had not yet begun, and he therefore had not yet been convicted of the charges.

On September 13, 1990, the High Court of Justice rejected the appeal. In ruling, Justice M. Ben-Yair wrote:

An examination of the detailed statement given by the prisoner to his interrogators reveals that the offenses attributed to him are outstandingly grave. They prompted the defendant to employ the preemptive measures in accordance with Regulation 119 of the Defence (Emergency) Regulations, and there is no place for our intervention in the defendant's judgement.

Employment of the aforesaid preemptive measures is not necessitated by the charges brought against the prisoner, but by the extremely serious offenses which he enumerated in his statement. Therefore, the fact that the suspect's trial has not yet begun does not justify our intervention in the defendant's decision. With respect to the claim that the demolition should be carried out only on the prisoner's residential unit, there is no disagreement that this unit constitutes an inseparable part of the petitioner's home, and therefore we will not accept the argument that only the one unit should be demolished.

On October 30, 1990, at 12:00 noon, the IDF declared a curfew in 'Ein-'Arik. At 4:30 p.m. approximately 40 soldiers arrived at the Qarabsa home. An officer named "Captain Musleh" informed the owner of the house that his home was about to be demolished, and ordered him to remove the house's contents. The Qarabsa family, aided by their neighbors, evacuated the house and removed its contents in approximately one hour. The soldiers then tried to demolish the house with a bulldozer, but because of the difficult terrain, it was unable to maneuver. The house was finally blown up with explosives, causing considerable damage to the neighboring homes. In one house, the tin roof caved in, damaging furniture. In two other houses, holes were made in the walls, and in two additional houses cracks appeared in the walls.

On April 14, 1991, Munzer 'Abdallah, a Hebron resident, was killed by IDF gunfire. According to the IDF Spokesperson, 'Abdallah had attempted to run over two soldiers. One of the soldiers was injured, and the second opened fire on the driver and killed him. The IDF claims that a letter was found in Munzer 'Abdallah's car testifying that this was a case of intentional murder. Despite this, there were two versions of Palestinians who claim to have been present during the incident. According to one of the versions, the accident was incidental, and not

planned. The second version is that the soldiers taunted Munzer 'Abdallah and he then steered towards them.

Two days after the incident, the IDF sealed the house of 'Abdallah's family, and issued a demolition order. 'Abdallah, as mentioned, had been killed.

The Association for Civil Rights in Israel appealed the demolition order. Attorney Joshua Schoffman, who submitted the appeal, cast doubt on the IDF version regarding the man's intentions to kill soldiers. Attorney Schoffman further argued that it was unjustified to punish 'Abdallah's widow and six children, who were entirely innocent. Furthermore, even if Munzer 'Abdallah had indeed attempted a murder, he had already been punished by capital punishment. ACRI announced that if the objection would not be sustained, they would petition to the High Court of Justice.

The IDF's decision was the subject of harsh criticism in Israel and in the world media, and on May 12, 1991, the IDF announced that it had decided to cancel the demolition order, and would only seal one room in the family's house.

D. Petitions to the High Court of Justice Against House Demolitions and Sealings

Over the years, the High Court of Justice has reviewed dozens of petitions against house demolitions and sealings in the occupied territories. Approximately thirty such petitions have been submitted annually to the High Court since the beginning of the Intifada. According to **B'Tselem's** data, to date, the High Court has rejected all petitions except two.¹⁹

In July 1989, following a petition submitted by the Association for Civil Rights in Israel regarding the right to petition before a house is demolished, the High Court imposed a restriction on the use of house demolitions as a punitive measure (HCJ 358/88). The President of the Supreme Court, Justice Meir Shamgar, ruled that structures in the territories cannot be demolished without allowing the injured parties to petition the demolition order to the High Court. Immediate demolition is to be carried out only in cases of military-operational necessity:

When a military unit is carrying out an operational activity, in the framework of which it is necessary to remove an obstacle or to overcome resistance, or to respond immediately to an attack on military forces or civilians at the time, or in similar circumstances.

This High Court decision was taken despite the position of the defense establishment, and is attributed to a trend in the courts to subject the military government's use of its extensive powers to judicial scrutiny.

In the ruling, Judge Shamgar emphasized the special importance of granting the right of appeal in a matter whose consequences are irreversible, stating:

If an action is required on a site, it is permissible to be contented with a reversible action, such as evacuation or sealing, and to suspend the matter of demolition pending judicial ruling.

On September 25, 1990, the High Court decided to cancel a temporary injunction preventing the demolition of buildings in the al-Bureij refugee camp in the Gaza Strip. In the said case, the IDF decided to demolish the buildings not according to Regulation 119 of the Defence (Emergency) Regulations, but as an operational necessity in order to widen the road where Israeli reserve soldier Amnon Pomerantz was killed. The Court ruled that, in principle, in this type of demolition as well, the family must be granted the right to state its case and appeal to the High Court of Justice. But in the case of al-Bureij, the Court accepted the position of the military that the demolition was an action that had to be carried out immediately, in order to save human lives.²⁰

The extent of judicial scrutiny of the military commander's judgement

The High Court of Justice does not examine the effectiveness or wisdom of the judgement exercised by the military commander who issued the order; rather, it only examines the legality of this judgement. In other words, the court asks: Did the commander act in a reasonable manner, and did he base his decision on a sound, factual foundation?

One could argue, therefore, that judicial supervision by the High Court of Justice of the discretion of a military commander who issued a house demolition order is extremely limited, and that until now the High Court has tended "not to place itself in the commander's shoes" in examining the reasonableness of the decision.

In the beginning of 1989, Attorney Shlomo Lecker submitted a petition to the High Court on behalf of a Qalqilya resident whose house had been demolished. The man, 'Atiyah Khalil Mustafa, charged that the security forces had destroyed his house, based on a claim that his two step-brothers, suspected of stonethrowing, lived in his home. In fact, the petitioner argued, the youths lived in their father's house. The father's house is a modest one, while the house that was destroyed was large and luxurious, containing three apartments.

In the petition to the High Court (HCJ 539/89), Attorney Lecker pointed out a series of flaws in the actions of the military commander who issued the demolition order, and claimed that the commander acted negligently and not in good faith throughout. Lecker argued, *inter alia*, that no serious investigation had been conducted in order to ascertain where the youths had actually lived. The petitioners submitted a series of affidavits to substantiate their version of the disputed facts, as well as the results of polygraph tests which confirmed that the petitioners were being truthful. However, the State Attorney's office chose not to recheck the facts brought to light by the petitioners' claims, and based its position on confidential material submitted to the court.

In the ruling, the judges accepted the State's version in its entirety and did not even address the evidence presented by the petitioners. The judges rejected the petition, stating: "We are satisfied that on the basis of all the material presented, no mistake was made in the demolition of the house."²¹

A similar incident occurred not long ago when a demolition order was issued for the house of Ahmad Nimr, a Beituniyya resident, due to a suspicion against his nephew. The IDF claimed that the suspect lived in his uncle's house, and not his father's house in the Qalandiya refugee camp.

The uncle petitioned the High Court and this time, in a rare step, Justices Alon, Netanyahu, and Or sustained the appeal and issued an order prohibiting the demolition after the petitioner's version that the suspect did not live in his house was adopted. At the beginning of September 1991, the IDF issued a demolition order for the suspect's father's house in Qalandiya.

The validity of Regulation 119

The question of the validity of Regulation 119 of the Defence (Emergency) Regulations, 1945, has arisen in many court rulings. There are those who maintain that the Mandatory Regulations were abolished by the Jordanians, and that as a consequence, Regulation 119 was not in effect when the IDF entered the West Bank in 1967.

The position of the Supreme Court on this issue is that Regulation 119 has been in effect continuously since 1945, as a result of Jordanian legislation which remained in effect since the beginning of the British Mandate (HCJ 434/79), and subsequently, from a proclamation on the administrative and judiciary laws published when Israel occupied the West Bank in 1967. With respect to the Gaza Strip, the High Court

ruled (HCJ 358/88) that "in the Gaza Strip no significant change in local legislation has been enacted since the Mandatory period. Therefore, no charge has ever been brought disputing the continuing authority of the Defence (Emergency) Regulations in the aforementioned region."

International law

An additional argument maintains that house demolition and sealing are in contradiction to the Hague Regulations and the Geneva Conventions.

This charge is based on the prohibition of collective punishment imposed by these conventions (Article 50 of the Hague Regulations and Article 33 of the Fourth Geneva Convention) and also in accordance with the Geneva Convention (Article 53) prohibiting "destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons . . . except where such destruction is rendered absolutely necessary by military operations."

According to the High Court's position (HCJ 434/79, 897/86), these conventions are not relevant since Regulation 119 is part of the local law, which, in accordance with the conventions themselves (Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention), takes precedence over the other articles.

It should be noted that MK Amnon Rubinstein, together with the Association for Civil Rights in Israel, recently prepared a bill that would incorporate the Fourth Geneva Convention into Israeli law. If this bill is approved, there will no longer be any basis for the viewpoint that Regulation 119 takes precedence over the Geneva Convention.

Collective punishment

In its response to the charge that house demolition is a collective punishment, prohibited according to international law, the High Court ruled (HCJ 698/85) that:

The petitioners' charge that house demolition is collective punishment is groundless. According to their view, only the offenders and terrorists themselves should be punished, and in demolishing their houses, other family members are being punished as well since they will remain without a roof over their heads. If we were to accept such an interpretation, the aforementioned regulation would be devoid of content, leaving only the possibility of punishing a terrorist who was the sole occupant of his home.

Punishment imposed on a group of people for offenses they did not



Family of Khalil a-Sha'er of Khan Yunis. Their house was demolished on November 7, 1990. (Photograph by Yoram Lehmann)

commit clearly constitutes collective punishment. The Court did not devote any attention to the fact that the demolition of a house is, by its very nature, a measure that punishes the family of the suspected offender, and not the offender himself. In the majority of cases, it is not the suspect, but rather another member of the family who owns the house. Accordingly, the demolition does not damage the suspect's right of possession, but rather that of his father, another relative, or the lessor of the house. The demolition also does not usually damage the suspect's place of residence, since he is usually being detained by the security forces and is not residing at home.

The deterrent argument

The primary argument given to justify the use of demolition and sealing as a sanction is that it is a measure designed to deter the commission of similar offenses in the future.

[Such a deterrent] must affect not only the terrorist himself, but also those surrounding him . . . he must know that his malicious actions will not only harm him, but are also likely to cause his family great suffering. In this respect, the sanction of house demolitions and sealings are no different than the imprisonment of a head of a family who is a father of young children who will remain without a guardian and provider.

In a series of petitions submitted during 1990, Attorney Leah Tsemel requested that the Court issue a temporary injunction allowing her to request that the State Attorney's Office disclose statistics regarding the number of suspected collaborators attacked, the date of attack, and the number of houses that were damaged as a result. Tsemel requested these statistics in order to prove her argument that although security forces used the sanction of house demolition and sealing frequently during the course of the Intifada, the number of rebellious actions in all their manifestations did not decrease. Consequently, in Tsemel's opinion, this sanction is not effective and is therefore unreasonable.

The High Court justices have, so far, consistently refused Tsemel's request and have preferred the yet unproven viewpoint of the security forces that the demolition and sealing of houses is an effective deterrent measure. In High Court rulings 982/89 and 984/89 Justice Goldberg stated:

Even if the opinion exists according to which the aforementioned measures are not at all effective, the defendant's viewpoint stands in opposition; i.e. these measures are extremely effective and had they not been employed, the situation in the area would

have deteriorated even further. The issue before us, therefore, is one of contradictory viewpoints and different assessments, and whether one or another is correct cannot be proved in a court of law. In such a situation, we may not challenge the viewpoint of the defendant who is responsible for the security and public order, as we cannot say of this viewpoint that it exceeds the bounds of reason.

Brigadier General (Res.) Aryeh Shalev, in his book on the Intifada, examined the influence of house demolitions in the occupied territories on the extent of violent incidents.²² Shalev examined, *inter alia*, the question of whether the demolition of many houses in a particular month led to a reduction in the throwing of Molotov cocktails in the following month. According to Shalev:

The number of Molotov cocktails thrown did not decline in a month after a large number of houses were demolished. Thus, for example, following the demolition of 23 homes in April, 1988, the number of Molotov cocktails thrown rose to 163 in May.

Shalev further established that:

It may be said that over time, on the one hand, the deterrent effect of house demolition was reduced, primarily since the PLO began granting monetary compensation to the families of those affected, and, on the other hand, that it had the effect of increasing the opposition to Israeli rule.

Similarly, one of the heads of the military legal system was recently cited in the media as stating: "It cannot be said that we have crushed the Intifada, or that we have brought about a decrease in the level of violence, despite the fact that we have destroyed hundreds of houses and deported dozens of residents from the territories."²³

B'Tselem maintains that even if the defense establishment could prove a correlation between the number of house demolitions and a decline in the level of violence, this would not be sufficient to justify such a severe infringement of human rights. In summary, we must say with regret that in rejecting all appeals against demolitions and sealings (except two) that have been presented to date, the High Court of Justice is granting legitimacy to the continuing abuse of human rights, and to the use of a punishment that is unrivaled in its severity, and has been described by the former President of the Supreme Court, Justice Agranat, as "inhuman."²⁴

CURFEW

A. Introduction

In law in general, and in public international law in particular, there is a basic principle by which the responsibility for criminal acts, including offenses under laws issued by governmental authorities in territory occupied by military forces, is individual. That is, an individual, or group of individuals, is not to be punished for the acts of another. This principle is expressed in Article 50 of the Hague Regulations Concerning the Laws and Customs of War on Land, 1907 (hereinafter: the Hague Regulations), and in Article 33 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: the Geneva Convention).

Not every restriction imposed on a population group in occupied territory is considered "punishment," since the military government has governmental powers, and even responsibilities, which necessarily entail, to a certain extent, the denial of individual rights. Therefore, when examining concrete instances of the employment of restrictive administrative measures with regard to population groups, it is important to address the question of the purpose of the collective restriction, and whether or not the restriction was a legitimate exercise of governmental authority. Another question that must be asked concerns the extent of the restriction, or the proportionality between the severity of the restriction and the purpose for which it was imposed. Finally, the possibility of holding fair proceedings before implementing the restrictive measure should be examined, in order to assess the culpability of those who will be affected by the restriction.

The declaration of a curfew is one of the most severe collective restrictions imposed on the residents of territories. The authority to impose curfew is laid down in Article 89 of the Order Concerning Security Regulations (No. 378) 1970, and in Regulation 124 of the Defence (Emergency) Regulations. There is no time limit on the permitted duration of curfew, nor has a procedure been determined by which it may be appealed prior to its imposition.

A High Court ruling stipulates that use of curfew as a punitive measure is illegal. Indeed, the military authorities rarely announce that a curfew is being imposed as punishment. Usually, the official justification for a

curfew is a security need – prevention or deterrence. In examining each case individually, however, according to the above criteria, it becomes clear that the frequent and widespread use of curfews exceeds the legitimate operational needs of the government authorities, and as such frequently becomes a form of collective punishment against the population in question.

The IDF Spokesperson defines curfew as follows:

Curfew is one of the measures used by the IDF to impose order in the territories. It is a quiet and non-violent measure aimed at protecting the inhabitants from themselves, and in order not to allow agitators to exploit a sensitive situation (as in the example of the days after the murder of the laborers in Rishon L'Tsion) for their own purposes. The aim of a curfew imposed immediately following an event is to calm emotions and to prevent unnecessary agitation that would lead to disturbances of the peace and attacks by extremist elements.²⁵

Despite the security establishment's claim that there is no collective punishment in the territories, we were recently informed that Defence Minister Moshe Arens approved a series of new procedures in the territories, according to which:

the IDF was forbidden to impose curfew as a collective punishment [and that] the Defence Minister himself is the authority for approving curfew for an entire city or for an indefinitely long period.

In general, the procedures stipulate that there is a prohibition on imposing curfew in the West Bank or in Gaza except for a period that is predetermined, and as short as possible.²⁶

There is no doubt that the explicit instructions forbidding the use of curfew for collective punishment emerge from a reality in which curfew is used precisely for this purpose.

Over the past two years, there has been a significant decline in the number of curfew days. According to partial data in **B'Tselem's** possession, the decline has been approximately fifty percent.



Curfew in Nablus. (Photograph by Alex Levac)

B. General Curfew and Closure

In recent years, curfews have been used for a variety of reasons: to establish order and to calm the atmosphere following riots; to search for persons suspected of hostile activity or of organizing disturbances; to carry out arrests or to locate weapons and materials for sabotage; to prevent disturbances during the demolition of houses belonging to individuals suspected of perpetrating attacks; and in the wake of unusual events such as the assassination of Abu Jihad in Tunis in April 1988, the murder of seven day-laborers from the territories in Rishon L'Tsion in May 1990, the events on the Temple Mount in October 1990, and during the Gulf War in the beginning of 1991. Likewise, curfews are imposed prior to dates of national or religious significance to Palestinians, such as Land Day or the 'Id al-Fitr holiday. Curfews have also been declared not infrequently for the sake of collecting taxes.

In addition to curfew, which prevents residents from leaving their homes, a less severe restriction of the freedom of movement is occasionally imposed: closure. When closure is imposed on a given area, residents are allowed to move about freely within the area, but they are not allowed to leave this area. The authorities usually declare a complete closure of the territories – forbidding exit to Israel proper as well as movement between the West Bank and the Gaza Strip – for Israeli national and religious holidays, especially on Independence Day and Yom Kippur. In the latter part of 1990, complete closure was used frequently in the wake of assaults on Israelis by attackers wielding non-live weapons.

Closures do not apply to Jewish residents of the territories.

1. Frequent use of curfews

In the early years of the Israeli military government in the territories, curfews did not last longer than 24 hours. Since the start of the Intifada, however, there have been several cases in which curfews were declared for protracted periods. In the eyes of the security establishment, curfew is considered a simple and convenient means of "imposing order." According to data published by the Jerusalem Media and Communications Center (JMCC), Tulkarm refugee camp experienced the largest number of curfew days: 444 from 1988-1991. (See table at the end of this chapter).

All of the refugee camps in the Gaza Strip (a population of over 300,000) were under curfew for 2 weeks in January 1988, during which time there were complaints of food shortages. The town of Qabatiya (approx. pop. 17,000) was under curfew for more than 40

days following the murder of a suspected collaborator in February 1988. At the end of July 1988, the town was once again placed under curfew, this time for 28 days. In March 1990, the village of Beit-Furiq was placed under curfew for two weeks, and in April 1990, a curfew was imposed on the town of 'Anabta for 13 days.

In certain places considered especially "problematic," the data available to **B'Tselem** indicate that curfews have been imposed again and again, in a selective fashion, for periods of greater or lesser duration. The town of Qabatiya, for instance, already mentioned, was put under curfew on four separate occasions in 1989, for periods ranging from two days to two weeks, totalling 28 days of curfew. In 1990, five separate curfews were imposed on Qabatiya, for periods ranging from 2 days to a week, for a total of 19 days of curfew.

In 1991, curfew was declared ten times on Qabatiya, for periods of between two days and one month, for a total of 94 days (53 of which were in the first three months of this year).

At the beginning of the Gulf War in January 1991, all of the Palestinian cities, refugee camps, and villages in the West Bank and Gaza Strip were placed under curfew. The curfew continued for three consecutive weeks, and was subsequently lifted gradually. As far as **B'Tselem** is aware, this was the longest continuous curfew imposed on the territories since 1967.

2. Preventive curfews

The purpose of a preventive curfew, as defined by the IDF Spokesperson, is to allow tempers to cool, and not to punish.²⁷

Following the murder of the Gazan day-laborers in Rishon L'Tsion in May 1990, a curfew, defined by the heads of the security establishment as "preventive," was declared over the whole of the Gaza Strip and in most parts of the West Bank. In most places, the curfew was lifted after a week.

B'Tselem kept track of the breaks for food restocking allowed during the curfew, in the three following areas: the Gaza Strip, the Hebron District, and the Nablus District. The data gathered indicate that the breaks were not regular, and in many places only one break was granted during the entire week, for two hours.

In the Hebron District, the curfew was lifted relatively frequently. In other places, a two-hour break was granted only on the fifth day of the curfew (the Jabaliya, Shati, al-Bureij and Maghazi refugee camps in the Gaza Strip, the city of Nablus and the 'Ein Beit al-Ma refugee camp in the Nablus region) or on the sixth day (Nusseirat) or on the seventh day (Rafah). No break was allowed at all in Khan Yunis. Individual curfews

had been declared in three refugee camps in the Nablus District (Balata, Old 'Askar and New 'Askar) prior to the murder, on May 18, 1990, and they were maintained for some 10 days, being lifted only once, for two hours, on the seventh day.

It is difficult to understand just how such an extended curfew, with almost no opportunity for resupplying, is consistent with the IDF claim that it was imposed not as a form of punishment but in order to calm the atmosphere.

Far-reaching use of "preventive curfew" was made on May 3, 1990, when the yeshiva at Joseph's Tomb held a Torah Scroll dedication ceremony. In order to provide security for the ceremony, in which some 130 settlers and public figures participated, the IDF declared a curfew on the city of Nablus and the outlying area, putting a population of some 120,000 people under curfew on the day of the ceremony.

Undoubtedly, there was no imperative security need which required that such an extreme restriction be placed on the movement of tens of thousands of people. The IDF's decision to allow the ceremony to be held, at the price of a basic freedom of such a large population, demonstrates the ease with which curfews are used, even for purposes that are not security-related.

3. Curfew for tax collecting

During the Intifada, a new use has been made of curfews and closures in the context of collecting taxes and other fees for public services.

The imposition of a curfew or closure for the purpose of tax collection – even when in response to a civil revolt in the form of collective refusal to pay taxes – cannot be considered a legal use of the limited authority for collective punishment laid down by Regulation 50 of the Hague Convention. In such circumstances, it is impossible to claim that there is any danger to security.

In the months of August and September, 1989, the town of Beit Sahur, whose residents had refused to pay their taxes, was placed under an 11 day curfew, followed by a 40 day closure.²⁸ A tax-collection operation was conducted during a curfew in March 1990, in the village of Beit Furiq.²⁹

Closures have been imposed on Saturdays in the Gaza Strip for the purpose of gathering taxes, outstanding traffic fines, and payments of water and electric bills.

The protracted curfew imposed during the Gulf War was used for extensive tax collection. In Jenin and Tulkarm, for example, residents were required to pay advances on their taxes for 1991. In Nablus, tax collection campaigns were conducted at night under the curfew.

AFFIDAVIT TRANSCRIPT

I, the undersigned, 'Aziza Najib Hussein Hanani, having been warned that I must tell the truth and that I will be punished according to the law if I do not do so, hereby do declare in writing:

1. I am a resident of Beit Furiq village in the Nablus District.

2. My house has two separate rooms, 4 meters apart. There is an open area between the rooms. West of the rooms at a distance of about 5 meters is the bathroom. Between the street and the two rooms, at a distance of about two meters from them, there is a wall 1.5 meters high. About 50 meters from my house there is a military outpost located on the roof of a house.

3. On March 18, 1990, I gave birth to a son, at home, in the 8th month of my pregnancy. The curfew, which had been declared on March 10th, was still in force.

4. On March 17, the army sprayed tear gas in the area around my house and it penetrated into my house and caused me and the members of my family to cry, cough and sneeze. We heard the tear gas grenade hit the outside wall of the room in which we were sitting. This happened at approximately 9:00 - 10:00 p.m.

5. On March 18, at about 2:00 p.m., another tear gas grenade was thrown at the house.

6. Every time someone in the family went out to the bathroom, the soldiers on the nearby outpost called a warning to them over a loudspeaker not to go out of the house. My children, who range in age from 1 1/2 to 14, did not return to the house since they had to go to the bathroom which was outside. For this reason the soldiers shot tear gas at the house. The gas grenades hit the wall of the house facing toward the wall.

7. On March 18, at about 9:00 p.m., I gave birth. About an hour later a tear gas grenade was thrown at the house. The gas penetrated into the house and all of us, including the newborn baby, inhaled the gas.

8. On March 19, these events occurred once again: a tear gas grenade was thrown at the house and penetrated inside.

9. The next day, March 20, at about 9:00 a.m., the baby died. We buried him in the yard of the house because we were afraid to go out and tell the soldiers that the baby had died.

C. The Effects of Curfew

Curfew constitutes a basic infringement of the freedom of movement of those affected who are prevented from leaving their homes. On occasion, curfews are accompanied by the exceptional steps of disconnecting telephone lines or water and electricity supplies.

1. Shortages of food, water and medicine

One of the more painful problems resulting from the frequent imposition of curfews on the territories is the difficulty of getting in supplies of food, water and medicine. The IDF generally lifts curfews on occasion for periods of a few hours, in order to allow the population to restock its supplies of food, water and medicine, but the frequency of breaks in the curfew varies from place to place (see above, p. 51). The residents of the territories have learned to keep enough food in their homes to last for a few days of curfew, but they are, naturally, unable to store large quantities of fresh fruit, vegetables and dairy products, all of which are particularly important components of the daily nutrition for children, pregnant women, and the sick.

It is important to note that consumption of food and water naturally rises during a curfew, as people do not go to work or school and thus eat and drink at home. Likewise the flocks, which are usually let out to pasture, are kept, on curfew days, on the grounds of the house, and consume large quantities of the household water supply. In several villages there is no running water and the residents get their water supply from trucks which come daily; during a curfew, the trucks are not allowed into the villages.

Underlying all this is a sense of uncertainty. As long as a curfew is lifted after a day or two, people manage to "get by." But when a curfew continues for five, six or more days, there is concern that the food supply will not last, and it is difficult to ration the food without knowing how long it will have to last.

For example, a curfew was declared in the village of 'Awarta, in the Nablus District, following a stonethrowing incident coupled with a blocking of the road leading into the village, which occurred in the wake of the Rishon L'Tsion murders on May 20, 1990. The curfew was in effect for 15 days, until June 5, 1990, and lifted only once, for two hours, on the seventh day. Local residents told a visiting **B'Tselem** team that when the curfew was lifted for restocking food, they discovered that many basic necessities had spoiled or rotted, with the exception of canned foods, the nutritional value of which is not high.

The residents of 'Awarta also suffered from water shortages and from sanitation problems during the curfew. There is no running water or sewer system in the village. Some of the residents have wells in their yards, and others bring water in containers, from a spring east of the village, approximately one kilometer from the center. According to the testimony of villagers, they were not allowed to leave their homes to bring water from the spring during the curfew. Similarly, some of the villagers encountered problems when their sewage pits filled up and they were unable to empty them.

Between February 25 and March 24, 1991, the village of 'Awarta was again placed under curfew. During this entire period, the curfew was lifted five times only, for two hours each time.

Curfews also create difficulties in receiving urgent, and even routine medical care, as well as in getting medical supplies to the sick, a problem which especially affects the elderly. Residents of 'Awarta related to the **B'Tselem** team that after a curfew was lifted in June 1990, they discovered that an elderly woman had died, her daughters and neighbors having been unable to reach her in order to take care of her.

2. Economic damage

Curfews cause economic damage to those residents who work as merchants or in independent professions within the territories, particularly to those who make their living from local agriculture, and are unable to leave their homes in order to work their fields, thus rendering them likely to lose an entire season's crop.

The frequent imposition of curfews also prevents the establishment of a solid industrial base, since factories that must supply merchandise to customers by specific dates are unable to function during lengthy periods of curfew.

In the abovementioned instance of 'Awarta, the curfew of May 1990 coincided with the wheat harvest (there are some 3,000 dunams of wheat in the village, according to the testimony given by residents). Because they were unable to harvest their crop at the appointed time, it dried out in the sun, and when it was finally gathered following the lifting of the curfew, approximately one third of the crop blew away in the wind and was lost. As a further result, the summer planting was delayed, causing a lower yield and a drop in quality.

In the curfew imposed during the Gulf War, economic life in the territories was completely paralyzed. A report written by economist Samir Huleileh estimates damages incurred to residents of the territories as a result of the curfew at over 130 million dollars.³⁰



A street blocked off by the IDF in the Qalandiya Refugee Camp.
(Photograph by Yoram Lehmann)

3. Suspension of studies and setbacks in the legal process

Schools do not function during curfew. In the village of 'Awarata, schools were closed during the curfew in March 1991. This was after two months in which they were closed because of the Gulf War. In addition, curfews adversely affect the legal proceedings in the military courts in the territories. Hearings are held on curfew days, though, and while lawyers generally receive permits to arrive at court, defense witnesses and defendants' family members generally do not.

D. Night Curfews

In addition to the imposition of total curfews, the military authorities also place different areas under night curfews of varying duration.

'Abud, a village in the Ramallah District, is situated along the access road of several Arab villages and Jewish settlements. On May 21, 1990, the day after the murder of the day-laborers in Rishon L'Tsion, a general curfew was imposed on 'Abud. The curfew was lifted after 4 days, but night curfews were declared on the ensuing 31 nights. The curfew was announced every night, usually at approximately 8:00 p.m., but occasionally at 6:00 p.m., and was lifted the following morning at about 6:00 a.m. Sometimes, the soldiers would announce the curfew's duration at its onset, and sometimes the end was announced only when the curfew was actually lifted in the morning.

Beginning September 16, 1991, a night curfew was declared in the Jenin refugee camp on 15 consecutive nights.

Night curfews effectively put all village residents under house arrest. During the curfew, residents are not allowed to leave their homes in the evening hours, to hold regular social gatherings, or to visit friends and family. People who work outside the village, particularly those working night shifts, such as in bakeries, have difficulties leaving for work and returning home.

Permanent night curfews have been imposed in the Gaza Strip, the city of Jenin, and in the Dehaishe refugee camp in the West Bank. The curfew in the Gaza Strip has been imposed by a permanent instruction from May 1988 until the present (excepting the period of February 17, 1989 to May 12, 1989). Residents of the Gaza Strip are forbidden to leave their homes from 8:00 p.m. to 4:00 a.m. Jenin was under night curfew from August 1989, until May 1990. Every day at roughly 4:30 p.m. the curfew would be announced by army forces from

loudspeakers mounted on IDF vehicles which would pass through the city streets. The next morning, at roughly 4:30 a.m., it would be lifted in the same manner. Starting in mid-September 1989 the routine night curfew in the Dehaishe refugee camp was also announced every day at 5:00 p.m. in a similar manner, and lifted at 5:00 the following morning. The Dehaishe curfew was also lifted in May 1990.

The night curfews in Dehaishe and Jenin were lifted as a result of a petition to the High Court of Justice submitted by the Association for Civil Rights in Israel.³¹ The petitioners contended that the imposition of a curfew every night over such an extended period, and affecting such a large population – without any apparent connection to specific security incidents – constitute an arbitrary, extremely unreasonable measure, in excess of governmental powers as outlined by international law.

The legal power to impose a curfew is laid down in Article 89 of the Order Concerning Security Regulations (No. 378), 1970 and in Regulation 124 of the Defence (Emergency) Regulations, 1945. The petitioners argued that this power ought to be limited to a given area for a given period of time and be employed for defined security needs, taking into consideration the severity of the anticipated threat to security. Absolutely preferring alleged security considerations while ignoring the basic needs of the civilian population and frustrating the possibility of maintaining normal day-to-day life, is an unreasonable policy that exceeds the limits of the power vested in the military government under Article 43 of the Hague Regulations, 1907. In these circumstances, the excessive use of curfew as an alleged preventive measure became collective punishment of the population. The imposition of curfew on hundreds of thousands of residents ought to be an extraordinary state of affairs and not a matter of routine, and the duty of the authorities is, at the very least, to lift the curfew from time to time so as to examine whether the policy justifies such severe impact on the lives of the residents.

In May 1990, the night curfews on Jenin and Dehaishe were lifted as noted, as a result of the petition. With respect to the night curfew on the Gaza Strip, the IDF argued in response to the petition that the curfew served essential security needs, facilitating the military forces in combatting the "strike forces" that act mainly under the cover of darkness, and that the court should refrain from intervening in security considerations such as these. Based on this argument, the court dismissed the petition in August 1990 on the grounds that it had failed to find any defect in the security considerations of operational military needs. The court recommended that the regional military commander examine

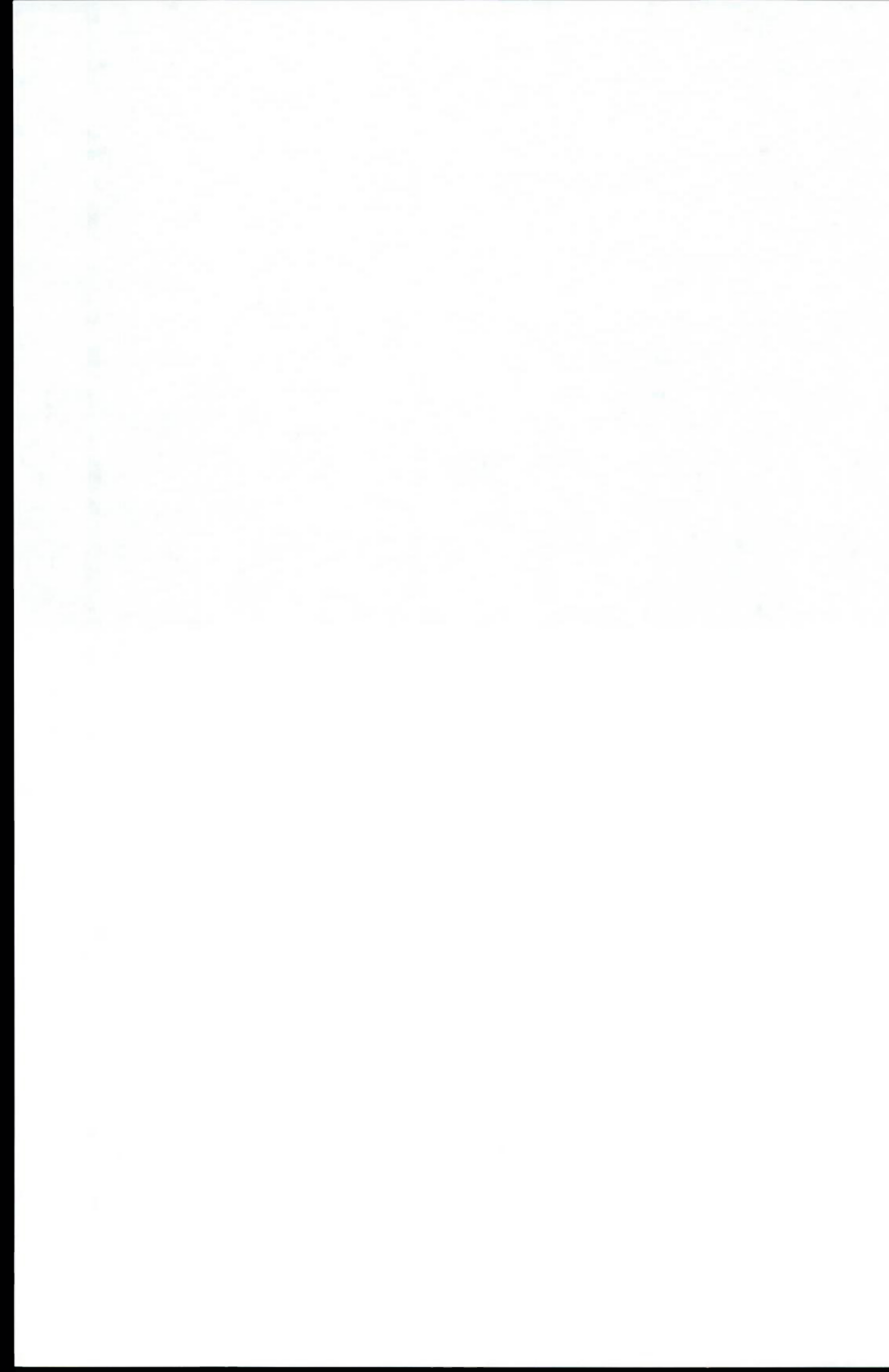
	1988		1989		1990		1991	
	Community	No. of Days	Community	No. of Days	Community	No. of Days	Community	No. of Days
West Bank								
Refugee Camps	Tulkarm	124	Tulkarm	158	Tulkarm	84	Nur Shams	82
	Balata	123	Nur Shams	110	'Ascar	69	Tulkarm	78
	Al-ama'ri	114	Balata	99	Deheishe	58	Jenin	77
	Jelazun	94	'Ascar	94	'Ein Bait al-Ma	57	Deheishe	71
	'Ein Bait al-Ma	68	Jenin	54	Balata	56	Balata	63
Villages and Cities	Qalqiliya	111	Denabeh	70	Qabaiya	56	Qabatiya	94
	'Anabta	75	Nablus	60	Nablus	49	'Anabta	90
	Denabeh	67	Beit Wazan	43	'Anabta	40	'Awarta	68
	'Azun	63	Tulkarm	42	Hebron	39	Jenin	64
	Nablus	58	Jneid	40	Jenin	37	'Azun	62
Gaza Strip								
Refugee Camps	Shati	149	Rafah	109	Jabaliya	66	Jabaliya	43
	Jabaliya	134	Shati	86	Rafah	64	Khan Yunis	42
	Bureij	117	Jabaliya	85	Shati	56	Shati	38
	Nusseirat	107	Nusseirat	84	Nusseirat	53	Nusseirat	34
	Khan Yunis	85	Bureij	80	Khan Yunis	47		
Villages and Cities	Jabaliya	25	Beit Hanun	43	Rafah	59	Khan Yunis	43
	Dir al-Balah	23	Rafah	37	Khan Yunis	32	Beit Lehiya	37
	Khan Yunis	23	Jabaliya	34	Gaza City	31	Dir al-Balah	30
	Beit Hanun	22	Khan Yunis	33	Beit Hanun	28	Gaza City	30
	Rafah	20	'Absan	29	Dir al-Balah	19		

Source: 1988-1990 data – The Jerusalem Media and Communication Center (JMCC) *No Exit, Israel's Curfew Policy in the Occupied Palestinian Territories*, p. 112; 1991 data – Partial lists of JMCC and B'Tselem.

from time to time the need for the curfew and lift it, if possible, for the sake of the welfare of the population.

To date, over one year after the High Court of Justice hearing, the night curfew in the Gaza Strip continues. In contrast, the number of night curfews in the West Bank has declined markedly. In 1991 a night curfew was declared in the West Bank only in a few instances.

DETENTION, TRIALS AND INCARCERATION



DETENTION¹²

A. Introduction

While the principle that holds the right to liberty to be one of the most basic of human rights is preserved inside Israel, detentions are a matter of course in the territories. Since the beginning of the Intifada, there have been approximately 90,000 arrests of residents of the territories, 17,261 of them between December 1990 and October 1991.

The problem is rooted in the ease with which it is possible to decide to detain an individual. In any reasonable legal system, an acceptable justification for detention is based on the cumulative severity of an offense ascribed to an individual, and a degree of certainty that that individual has indeed committed the offense. Section 78 of the Order Concerning Defence Regulations (Judea and Samaria) (No. 378), 1970, stipulates that any soldier, policeman, or member of the General Security Services (GSS or Shin Bet) may "detain, without a detention order, any individual who has disobeyed the instructions of this Order, or who may be suspected of having violated this Order." The Order lists a wide variety of security offenses, including such ambiguous offenses as "acts liable to disturb the peace" and "the failure to prevent another individual from committing an offense."

Detentions are carried out in one of three ways:

1. Following disturbances of public order.
2. During detention operations initiated by GSS instructions.
3. Following the discovery of the name of an individual on the wanted list during a spot check at a road block.³³

B. Length of Detention Prior to Judicial Review

Once an individual has been arrested, he may be detained for 96 hours on the basis of the decision of any soldier. An officer is authorized to extend the detention for two additional periods of seven days each, and for up to 18 days in total. It is only following this period that the detainee must be brought before a judge to extend detention.

In many cases, nothing is done, and the detainee is released during the 18 days before his detention is extended. Many Palestinians who had undergone arrest related that their interrogation began only after their detention had been extended by a judge.³⁴

In other cases, the prisoner was released toward the 18th day, without being brought before a judge. It is characteristic of such detentions that the detainee is neither informed of the pretext for his detention nor is he interrogated. It may be assumed that such detentions are the result of error, arbitrariness, or attempted harassment; in the absence of due process, they are unsurprising.

For the sake of comparison: Within Israel, a **police officer** has the right to arrest an individual for up to 48 hours, after which his detention may be extended only with the approval of a **judge**. His detention may be extended beyond thirty days only if the **Attorney General** has filed a petition to prolong detention. Such approval is granted only in exceptional circumstances, and only for particularly serious offenses.

The demand to shorten the period of detention prior to judicial review also appeared in the recommendation of the State Commission of Inquiry for Examination of the General Security Services Modi Operandi (the Landau Commission) which recommended, among other things, shortening the maximum period of detention prior to judicial review to eight days. While all of the recommendations of the Landau Commission were adopted by government resolution, for some reason this particular recommendation has not been implemented.³⁵

C. Prevention of Meeting with an Attorney

According to the Order Concerning Defence Regulations (Section 78c (B)), a detainee must be permitted to meet with an attorney, if he or the attorney requests such a meeting.

The Order permits preventing a detainee from meeting with his attorney for 15 days from the day of arrest if the person in charge of interrogation has so ordered, in writing, because he believes that either the security of the region or the success of the interrogation so requires. A more senior official – a police officer of the rank of Chief Superintendent or higher – has the right to extend this order for an additional 15 days.

A certified military judge (a judge in a military court, who has had a legal education and who bears the rank of Captain or higher) is authorized to forbid such a meeting, for the same reasons, for yet another 30 days and the president of a military court, or the president on duty, is authorized to extend the order for an additional 30 days, providing that the regional commanding officer of the IDF has claimed, in writing, that special considerations for the security of the region so require. It is thus possible to prevent a detainee from meeting with his attorney for a total of 90 days (three months).

Attorneys representing detainees from the territories have reported to **B'Tselem** their being informed verbally of an order preventing their meeting with clients upon arriving for a meeting with a detainee, without being given a copy of the order.

According to existing protocol, interrogators issue orders with relative ease, forbidding meetings with attorneys for 15 or 30 days, often without proof that the meeting is indeed liable to harm security in the region.

According to the IDF Spokesperson:

In recent years there has been no case in which a judge has been called upon to prevent a meeting between a prisoner and his lawyer – i.e., there has been no prohibition imposed on such a meeting – for a period exceeding 30 days.³⁶

Attorneys representing detainees from the territories claim that in a great number of cases confessions are extracted from detainees during the period when they are forbidden to meet with a lawyer, and that many of the detainees do not realize the implications of their confession. It is not uncommon for an interrogator to "suggest" to a detainee that he confess to an offense, "promising" him that he will receive a lighter punishment if he confesses. The detainee does not

know that such a questionable "plea-bargain" does not, of course, obligate the court.

In 1990, the Association for Civil Rights in Israel filed a series of petitions with the High Court of Justice concerning cases in which a detainee was prevented from meeting with his attorney. In all but two of the cases, either the meeting was immediately made possible or the detainee was released after the petition had been filed. It would therefore seem that the pretext for preventing the meeting reflected the interrogator's desire to put pressure on the detainee, and in fact had nothing to do with special security considerations in the region. For example, Gaza Attorney Muhammad Hashem Abu Sh'aban was arrested on November 18, 1990 and was not allowed to meet with an attorney. Attorney Dan Yakir of the Association for Civil Rights then petitioned the High Court of Justice on November 20, 1990. The following day the authorities permitted Attorney Abu Sh'aban to meet with his attorney.

Following the petitions of the Association for Civil Rights, the Ministry of Justice announced that it intended to issue new protocols which would obligate the Israeli National Police, the Israel Prison Service, and the GSS to permit detainees to meet with an attorney unless there was an order forbidding the meeting. As far as **B'Tselem** is aware, these protocols have not yet been issued.

D. Detention Pending the Completion of Proceedings

We have no clear data on the procedures for extending detention, detention until the completion of judicial process, and requests for release on bail. Hearings for extending detention are usually very brief, and frequently take place within the walls of the detention facility without the detainee being represented by an attorney, and in violation of the rule that court hearings be open to the public.³⁷

A military judge is authorized to order an individual to be detained for six months until a formal indictment has been filed, and for an unlimited time after the indictment has been filed. Due to the length of the average trial, and in light of detention facility conditions, detention is no longer what it was meant to be, and has become a means of punishment. Interrogators often use a detainee's desire to be released to pressure him into admitting guilt and agreeing to a plea-bargain.

In Israel, it is possible to detain an individual until the completion of the judicial process only for certain offenses, which are identified in a closed

list appended to Amendment 15 of the Criminal Proceedings Law. In the territories it is possible to detain an individual until the completion of judicial proceedings regardless of the offense.

In Israel, only a judge of the High Court has the authority to extend an individual's detention for more than a year, and this authority is rarely used. In the territories, however, detention until the completion of judicial proceedings lasting over a year is extremely common.

In response to a parliamentary interpellation posed by Knesset Member Professor David Libai, the Minister of Defence, at the beginning of 1991, provided data on the number of Palestinians being detained in IDF or Prison Service detention facilities until the completion of judicial proceedings:³⁸

On the West Bank -

Over half a year - 933 detainees

Over a year - 440 detainees

Over a year and a half - 275 detainees

In the Gaza Strip -

Over half a year - 221 detainees

Over a year - 221 detainees

Over a year and a half - 120 detainees

According to the above data, at the beginning of the year, over 2,200 Palestinian residents of the territories waited in detention facilities for more than half a year for their trials to begin. Some 400 of them have been detained **for more than a year and a half**.

The Minister of Defence, in response to the above mentioned interpellation, ascribed these figures to overburdened military courts; to "the practice of 'denying the charges' being a premeditated policy"; and to "the difficulty of implementing an alternative solution to release on bail." However, the Minister emphasized that "there is great awareness and sensitivity within the military judicial system of the need to expedite the process."

The IDF Spokesperson told **B'Tselem** that it does not have similar data for 1991. The total number detained pending the conclusion of proceedings, to mid-November 1991, was 2,317.

On July 25, 1990, four residents of the territories, members of one family, were arrested in the village of Irtas, Bethlehem District. They claimed, as they told their interrogators, and as 13 members of the family who were not arrested stated in a detailed deposition to Attorney Shlomo Lecker, that the four of them had been working in one of their fields with other relatives when they saw armed individuals

dressed in civilian clothes chasing some youths nearby. Some time later these civilians returned, approached the family, and arrested four of them, at the same time beating many of those present, some of them women.

The hearing on extending detention until completion of judicial proceedings was held in the Dhahriyya facility on August 7, 1990, before Judge Major (Res.) Yosef Alon. The detainees' counsel, Attorney Shlomo Lecker, pointed out that the detainees' versions of the circumstances of their arrest were identical. He also pointed out that the field arrest forms completed by the soldiers who had arrested the four had been tampered with, and that changes in the description of the arrest were added later, in handwriting different from that used to describe the details of the arrest. For example, the field report of the arrest of Munir Daoud 'Ayish read: "I identified the above-named throwing stones, it was definitely the above-named, (who was) caught. He threw (stones) at the soldiers." (See form on following page.) The final words were added in different handwriting than that in which the report had been written. In Israel, suspicion of this type of falsification would be sufficient to get a detainee released and have the charges against him dropped. However, in this particular instance, the case was not dropped, and the judge denied the defense attorney's request that the detainees be released on bail. In his decision, Judge Alon wrote:

In the material from the interrogation relating to the four defendants, there is testimony by a soldier who identified the four when they were throwing stones at IDF forces that were patrolling Irtas on July 25, 1990 . . .

At this stage I will not consider the evidence itself, but rather its apparent essence, and as such, the above-mentioned testimony identifying the defendants is sufficient apparent evidence . . .

I am deciding, therefore, to detain the four accused until the completion of judicial proceedings against them, due to the severity of the offense ascribed to them . . .

In effect, the "apparent essence" of the evidence, on the basis of which whether or not to detain the four accused men until completion of the judicial process is to be determined, does not depend on whether this evidence was presented in a valid - let alone honest, and legal - manner.

Attorney Lecker, who was not willing to accept this decision (which was liable to result in long months of detention until the trial), turned to the Chief Military Prosecutor in Hebron and again pointed out that the field arrest forms had been tampered with. In an exceptional move, the latter turned to the president of the court in Hebron, who ordered that

the detainees be released on bail. The detainees refused the prosecution's offer of a plea-bargain, which would have meant agreeing to a suspended prison sentence, and to turning the bail money into a fine, and continued to claim their complete innocence. To date, they have not been sentenced.

Attorney Lecker also turned to the Military Advocate General and demanded that an investigating officer be appointed to look into the entire event. Not until one year after his inquiry did the Central Command's Advocate inform Attorney Lecker that an examining officer had been appointed, but the results of the examination were not known.

מס' עותק: 223/2

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טופס מעצר שטח ע"י חייל / מסקר

ייעוד: למלא הטופס בזמן הארוע בסינה ערדית לכל חוסרע ממהלך הפרת הפרת. ובאופן קריא.

תאריך: 25/7/90 שעת מעצר: 20:00 סקס טו ונסס רעור: ארס

ב. פרטי הנכה הנעצר: נבדק וגם פרטי הנכה (המורה - הרות) 1

שם פרטי	שם אב	שם אבא	שם משפחה	מס ת.ז.	מס דרכון
ארס	ארס קובא	ארס ז"ל	ארס ז"ל	ארס ז"ל	ארס ז"ל

1. פרטי הארוע והמסר: (נסן) 2. כרטיס ונסס פרטו ונרדק ולא אמירות נסמיות

3. פרטי הארוע והמסר: (נסן) 2. כרטיס ונסס פרטו ונרדק ולא אמירות נסמיות

7. פרטי החייל שניהל הנעצר בזמן הארוע: (נסן) 2. כרטיס ונסס פרטו ונרדק ולא אמירות נסמיות

8. פרטי החייל שניהל הנעצר בזמן הארוע: (נסן) 2. כרטיס ונסס פרטו ונרדק ולא אמירות נסמיות

9. פרטי החייל שניהל הנעצר בזמן הארוע: (נסן) 2. כרטיס ונסס פרטו ונרדק ולא אמירות נסמיות

10. פרטי החייל שניהל הנעצר בזמן הארוע: (נסן) 2. כרטיס ונסס פרטו ונרדק ולא אמירות נסמיות

11. פרטי החייל שניהל הנעצר בזמן הארוע: (נסן) 2. כרטיס ונסס פרטו ונרדק ולא אמירות נסמיות

12. פרטי החייל שניהל הנעצר בזמן הארוע: (נסן) 2. כרטיס ונסס פרטו ונרדק ולא אמירות נסמיות

מס' עותק: 223/2

Field arrest form for the use of soldiers and commanders.



Arrest in Nablus. (Photograph by Alex Levac)

E. Informing the Family of Detention

According to the Order Concerning Defence Regulations, the authorities are obligated to inform a detainee's family of the fact and location of his detention. Toward the end of 1989, following a petition filed by the Association for Civil Rights in Israel with the High Court, new protocols were issued in the IDF that were meant to regulate the matter of informing families. According to the new protocols, each detainee brought to a detention facility must be given a postcard so that he may inform his family of his detention. At the same time, every few days, the IDF control center is to give an updated list of the names of detainees, by district, to the Civil Administration offices in each district.

An inquiry made by the State Comptroller's Office in the Bethlehem and Hebron districts revealed that the district offices of the Civil Administration had updated lists of those being detained in the adjacent holding facilities, and of those detainees who had been transferred from holding to detention facilities. The State Comptroller's Report noted that lists of those who have been transferred from one detention facility to another should also be posted on the district bulletin boards. The report also noted that according to testimonies of commanders of the detention facilities, the lists are sent to the district offices by mail, usually arriving two or three days later. "Under these circumstances," the report stated, "a situation is liable to arise wherein the district offices do not have updated information on the new location of a detainee."³⁹

A followup by **B'Tselem** during the past two years revealed that in many cases the lists were not updated. In several cases, lists of detainees being held at the holding facility were dated four days or more prior to the date of the examination. If one figures that detainees are supposed to be kept in holding facilities for no more than 96 hours, these lists were not updated.

The followup also revealed that the lists on the announcement boards in the district did not include a report on transfer of detainees from one prison facility to another. In other words, the defect pointed out by the State Comptroller's Report has not been corrected.

The practice of having detainees send postcards to their families operates more or less regularly at the permanent detention facilities, but is not, to the best of our knowledge, employed at holding facilities.

F. Detention of Minors - Parental Bail

An order issued by the IDF stipulates that a parent whose child (to age 12) is suspected of involvement in disturbance of the peace must pay bail for a period of one year, since the law prohibits arresting children under 12 years of age.

The order, issued in May 1988, places the burden of supervising children (minors) on the parents. If there is prima facie evidence that the child is involved in offences, the parents are required to pay NIS 500-1,500 bail money, which is returned to them after one year. If the child is involved in an additional crime, the parent is considered to have violated his commitment of supervision, and the bail money is converted into a fine - that is to say, it is not returned. The parent is entitled to appeal.

An examination by **B'Tselem** revealed that the IDF usually does not inform the parents of their rights. In most cases, the parents are unaware of their right to appeal, and to get back the sum, in its real value, at the end of the year.

A petition submitted to the High Court attacked the legality of the order, and claimed that it contradicted the principles of international law, especially the prohibition on collective punishment.⁴⁰ The petitioners claimed that the order actually punishes the parents for their children's deeds. On January 21, 1991, the High Court rejected the petition, stipulating that the order did not punish the parent for the child's deeds, but rather for neglecting his obligation to supervise him, and that the order preferred to cast the supervision requirement on parents instead of employing the stricter measure of lowering the age of criminal responsibility.

G. Interrogations

The number of allegations by persons who have been questioned in the interrogation facilities regarding the use of force during interrogations has risen significantly since the beginning of the Intifada. A study undertaken by **B'Tselem** on this issue reveals that torture is systematically and routinely used during interrogations. According to the study, based on interviews with 41 Palestinians who were tortured during questioning in the interrogation wings of six prisons, the most common methods of torture used are: beating on all parts of the body, including the sexual organs; forcing detainees to remain standing for

hours while their arms and legs are bound; closing detainees in a cell termed the "closet" (a dark cell of one square meter, with one small slit for penetration of air and light); sleep deprivation; limitation of access to the toilet, forcing detainees to perform their bodily functions in their pants; humiliation of detainees, as well as threats to harm them or their families.^{40a}

Following publication of the **B'Tselem** report, the IDF established a commission headed by Major General (Res.) Rafael Vardi, to investigate **B'Tselem's** claims, and according to the IDF Spokesperson, out of "a sincere intention to eradicate such phenomena, if it is indeed proven that they exist."

In July 1991, Maj. Gen. Vardi submitted his recommendations to the Chief of Staff, who approved them on principle. Most of the recommendations were kept classified. Maj. Gen. Vardi's main recommendation (of those published), was to transfer the interrogation of security offense suspects from the IDF's realm to the bodies responsible for interrogations – the police and the GSS.

In addition, Maj. Gen. Vardi recommended that eight of the sixteen complaints that had been examined regarding ill-treatment of detainees under interrogation be transferred to the Military Police/CID. At the same time that the commission headed by Maj. Gen. Vardi was conducting its work, the Ministry of Justice, the Israeli National Police, and the GSS established an additional commission to investigate **B'Tselem's** claims of torture in GSS facilities. It was also announced that the GSS had appointed an internal comptroller. To date, the results of this investigation have not been published.

In June 1991, the Public Committee Against Torture in Israel submitted a petition to the High Court of Justice, demanding that the booklet of instructions for GSS interrogators, included in the classified part of the Landau Commission report, be published.⁴¹ In a statement issued on November 10, 1991, the head of the GSS claimed that the activities of terrorist elements could not be efficiently frustrated by interrogation if the security forces were not permitted to employ the allowances recommended by the Landau Commission. The head of the GSS rejected the petitioners' claim that according to the Landau Commission Report, use of violent methods was allowed during interrogation, and claimed that the prohibition on publicizing the interrogation methods was imperative for the proper functioning of the GSS. To date, trial proceedings have not yet been completed.

Not long ago, two GSS interrogators were sentenced to six months' imprisonment. They were convicted of causing the death by negligence of Khaled Sheikh 'Ali, a Gaza resident, who died on December 7, 1989,

after being beaten during interrogation. The two interrogators petitioned to the High Court of Justice, and asked that their punishment be changed to public service, but the judges rejected their appeal.

Another **B'Tselem** study examined the interrogation of minors in the police detention facilities at the Russian Compound. For the most part, interrogators are from the police Minorities' Division. Only in a few cases, when severe security offenses are suspected, are minors interrogated by GSS personnel.

Many of the interrogations are carried out at night and continue for several hours. There are no limitations stipulated by law on the number of hours that an individual may be interrogated continuously, and there is no time limitation regarding the interrogation of minors. There are also no internal police regulations with respect to this issue.

Interrogations are usually conducted in the detainees' native tongue, Arabic, but the confession detainees are required to sign is written in Hebrew. In most cases, the detainees undergoing interrogation cannot read Hebrew, and therefore do not know what they are signing.

Beatings are a very frequent phenomenon. Almost every male and female minor whom we interviewed testified that he or she had been beaten, usually severely: slaps, fists, kicks, hair pulling, beatings with clubs and iron bars, and slamming against the wall or onto the ground. In many cases, these beatings begin during the ride in the police vehicle to the jail.

Threats and intimidations are also common. Most frequent are threats to harm close family members and threats to demolish the home of the minor's family, or to deport family members from the country.

B'Tselem filed detailed complaints with the Police Inspector General, enumerating the central issues raised in the report, and presented a number of affidavits taken by lawyers on **B'Tselem's** behalf. The complaints referred to eight cases of violence by policemen against youths.

In reply, Superintendent Elinoar Mazuz, public complaints officer in the Inspector General's Office, stated on June 17, 1990, that five of the cases had been investigated by agents of the National Unit of the Police. In three of these cases the investigation had not yet been concluded, and in two, the conclusions had been passed on to the District Attorney's Office which had not yet reached a decision. In three other cases an investigation was opened as a result of **B'Tselem's** complaints.

On January 9, 1991, Superintendent Mazuz wrote to **B'Tselem** that the investigation had been completed in three additional cases. In two

of them, the conclusions were transferred to the district attorney, and the third case was closed. Of eight complaints submitted in June 1990, there are five files in the district attorney's office, and no decisions have yet been made regarding any of them. Two additional files are still under investigation, and one has been closed.



Detainees in Ketziot Prison. (Photograph by Alex Levac)

ADMINISTRATIVE DETENTION

A. What is Administrative Detention?

Administrative detention is imposed on an individual outside the framework of judicial process, and without any offense necessarily being ascribed to the detainee. It is imposed as a preventive measure, when the authorities believe that an individual is liable to pose a threat to security or to disturb the public order at some time in the future. In such a case, a member of the Administration (inside Israel – The Minister of Defence; in the territories - a military commander) has the authority to detain an individual without bringing him before a court, where he would be informed of the charges, and given the opportunity to defend himself.

The military commander has the authority to issue an order for the administrative detention of an individual if he has reasonable cause to assume that the security of a region or of the public requires it. The military commander may extend the detention of an individual if he believes that continued detention is justified.

According to the guidelines set forth by the Attorney General, administrative detention is not to be used where less severe measures are sufficient. The guidelines also state that expression of an opinion is not sufficient pretext for detention.

Administrative detention is permitted by international law on condition that the right to appeal is granted, and that the detention order is periodically reviewed, preferably every six months.⁴²

B. Legislation in Israel and in the Territories

1945 – The government of the British Mandate in Palestine ratified the Defence (Emergency) Regulations. According to Regulation 111, any military commander had the authority to arrest any individual and hold him in administrative detention for an unlimited period of time. According to this regulation, an administrative detainee had the right to appeal his detention before an advisory committee authorized to

present its recommendations to the military commander; however, the recommendations of this committee were not in any way binding.

The use of administrative detention during the British Mandate was sharply criticized by the Jewish population. In February 1946, the Association of Hebrew Attorneys adopted a resolution stating that "the powers granted the authorities by the Defence Regulations . . . deprive the residents of Palestine of their basic rights . . . undermine the foundations of law and order and constitute a grave danger to an individual's life and liberty, and establish a reign of arbitrariness unbridled by judicial control."

1948 – With the establishment of the State of Israel, the Mandatory Regulations were adopted and entered into Israeli law as part of the legislation that was in effect on the eve of the State's establishment, on May 14, 1948. In the guidelines, which were not grounded in law, the authority to issue an administrative detention order was limited to the three Regional Commanders, the Naval Commander, and the Chief of Staff; only the Chief of Staff had the authority to order an administrative detention of over a month. In addition, a justice of the Supreme Court was placed at the head of the Advisory Committee, in an effort to invest the committee's recommendations with greater authority.

1967 – After occupying the territories in the Six Day War, Israel issued an order stating that the law which had governed the territories prior to the IDF's occupation would remain in force. The question of whether the Mandatory Defence Regulations were valid in the territories when the IDF entered them is under dispute. Israel's stance, approved by the Supreme Court, is that the Defence Regulations had been part of the local law. In any case, the Order Concerning Defence Regulations, 1967, issued a short time after the IDF entered the territories, re-established regulations similar to the Mandatory Regulations, with alterations intended to ensure that the Order met the requirements of the Geneva Convention.

1979 – During the first 30 years of Israel's existence, the Mandatory Regulations remained in force, despite the protests of both left and right-wing opposition. Only in 1979, on the initiative of then-Minister of Justice Shmuel Tamir, was the law in Israel amended, and the legislation concerning administrative detention replaced. The new law, The Law Regarding Authority for Detention (in an Emergency) 1979, limited the authority to issue an administrative detention order – previously resting with every military commander – to the Minister of Defence alone. The maximum detention period was limited to six months. It became mandatory to bring a detainee before the president

of a district court at least once every three months, and detainees were granted the right to appeal the district court president's decision to the Supreme Court.

1980 – In the West Bank and Gaza Strip the Order was altered so that the principles of The Law Regarding Authority for Detention (in an Emergency) would apply to the territories, with a few changes: The authority to issue an order for administrative detention, which belonged solely to the Minister of Defence inside Israel, was extended, in the territories, to the commander of the area (the Regional Commanders [OC's]). In the territories, a detainee would be brought before a judge within 96 hours (within 48 hours, inside Israel), before a military judge (instead of the president of a district court), and could appeal before the president of a military court.

March 1988 – Three months after the start of the Intifada, the IDF suspended the Order of 1980, issuing in its stead a new Order expanding the authority to order the administrative detention of residents of the territories, and limiting the rights of the detainee. In effect, the Order of March 1988 returned the situation to what it had been prior to 1980. Once again, every military commander was empowered to issue an order for administrative detention; the obligation to bring the detainee before a judge within 96 hours of his detention was rescinded; automatic judicial review of the detention order once every three months was cancelled; and the detainee was allowed to appeal before an advisory committee that only had the power to make recommendations.

A short time later – and apparently following incisive public criticism – the appeals committee was replaced by a certified judge who had the authority to ratify or nullify an administrative order.

August 1989 – An amendment to the Order was issued which extended the maximum period of detention from six to twelve months, but which left in place the obligation for judicial review once every six months.

C. Administrative Detention During the Intifada

Between the beginning of December 1987 and the end of October 1991, over **15,000** residents of the territories were taken into administrative detention. Between December 1990 and the end of October 1991, **1,590** residents of the territories were detained in administrative detention, and on October 22, 1991, there were approximately **457** administrative detainees.⁴³

The overwhelming majority of administrative detainees are held in the Ketziot Prison, in the Negev, under harsh conditions.⁴⁴

There are three principal problems with the use of administrative detention during the Intifada:

1. Administrative detention, whose purpose and legal definition is preventive detention, is used in fact as a punitive measure, without trial.
2. This measure, although widely used, is meant, by its very definition, to be limited in scope, in the number of individuals against which it is employed, and in the duration of detention.
3. Almost without exception, the evidence that forms the basis for issuing an order for administrative detention is classified, a fact which forces the detainee to do what was once called "arguing with a Sphinx," or with "a faceless accuser."⁴⁵

It would appear that there is judicial review of administrative detention orders once every six months, in accordance with both Israeli and international law. In practice, the amount of time devoted to discussion of each detention is, on average, ten minutes. This fact turns judicial review into a mere formality, since it is difficult to conceive that the justification for depriving an individual of his liberty is reviewed with any seriousness in such an amount of time.

The President of the Supreme Court, Justice Meir Shamgar emphasized the importance of judicial review and of its swift implementation in this context:

Administrative detention without effective judicial review is liable to cause an error in fact or in consideration that will result in the deprivation of an individual's liberty, without reasonable grounds. Therefore, we are obliged to do all that we can to excise such phenomena at the root. The principle method of effective review, in the current legal situation . . . is that appeals be heard **as soon as possible**. It must be ensured that the appeal be heard **within two to three weeks at the most** from the time

the first appeal is filed concerning detention or a decision on extending detention, according to the circumstances. [Emphasis in the original].⁴⁶

According to Attorney Tamar Peleg-Sryck of the Association for Civil Rights in Israel, there is no set time within which a detainee receives judicial review. In a few cases, the review takes place within a month. However, there are cases in which the detention period ends without the detainee's case ever having been brought for judicial review. According to Attorney Peleg-Sryck, this depends on the detainee's access to an attorney, the attorney's access to Ketziot (which is limited for attorneys from the Gaza Strip, particularly on curfew days), and on the attorney's relations with IDF authorities.

It should be noted that administrative detainees from the West Bank are often held for a few weeks at detention facilities in the West Bank (Far'ah and Dhahriyyah) before being transferred to Ketziot; during this time the process of judicial review does not take place.

1. Punishment without trial

Administrative detention, as defined by law, is meant to prevent the actions of an individual whom the authorities believe is liable to endanger security or the public order in the future. Administrative detention is not meant to replace the judicial process.

The President of the Supreme Court defined administrative detention in a High Court of Justice Ruling as follows:

An administrative detainee has not been convicted of an offense and in any case is not serving a sentence. He is imprisoned according to the decision of a military administrative authority as **an exceptional emergency measure**, for absolute security considerations . . . the detention is intended to prevent and thwart security risks which would result from acts the detainee is liable to commit, and which may not be reasonably prevented by regular legal steps (criminal process) or by administrative steps of less severe consequence [our emphasis].⁴⁷

In fact, in many cases there is reasonable cause to assume that an administrative detention order was issued against an individual not for fear of his future actions, but because there is insufficient evidence to bring him to trial. Sometimes the evidence is insufficient for trial, but sufficient for an administrative step. For example, hearsay evidence is not acceptable in a criminal proceeding, but is sufficient for administrative detention.

On November 13, 1990, the OC Central Command, Yitzhak

Mordechai, issued six-month administrative detention orders against two senior Palestinian journalists, Radwan Abu 'Ayyash, the Chairman of the Palestinian Journalists' Association, and Ziyad Abu Ziyad, editor of the Hebrew-language weekly **Gesher** ("Bridge"). Defense sources reported that the two were "among the leaders of the Intifada in the territories."⁴⁸

This claim was not substantiated. Quite the contrary: In a message Abu Ziyad sent from prison via MK Dedi Zucker, he refuted the charges against him, saying, among other things:

Again I emphasize before all my Israeli acquaintances, before all those who read the newspaper that I edit, and before the officers who have heard my lectures to the IDF: There is no basis to the charges against me that I incited violence and acts of violence against Israelis. My mental composition, as a human being, does not tolerate violence. I oppose such acts and take umbrage against all and any acts of violence.⁴⁹

In response to a petition submitted to the High Court of Justice by MK Elyakim Haetzni demanding that the Attorney General bring Radwan Abu Ayyash and Dr. Sari Nusseibah to trial, the Attorney General announced that there was no intention of bringing them to trial "**since the two were in administrative detention, and they have already served their punishment.**"⁵⁰

It appears that the periods of detention to which administrative detainees are sentenced are largely arbitrary. In many cases, an individual's administrative detention is shortened following an appeal, in consideration of various circumstances. For instance, not infrequently, the period an individual was detained for questioning is taken into consideration and subtracted from the period of administrative detention. Assuming that administrative detention is meant to prevent the actions of an individual during a defined period of time, it is not clear how such an individual could be released before the end of this period without posing a threat to security.

The purpose of administrative detention as a preventive measure, and not a punishment, is meant to be reflected at least in part in the prison conditions of administrative detainees. According to the Geneva Convention, administrative detainees are to be held in conditions that will cause them as little harm as possible.

In the Fourth Geneva Convention, Articles 79-135 are devoted to the rights of administrative detainees. The Convention requires, *inter alia*, that detainees be held apart from other prisoners (Article 84); that they have access to a canteen (Article 87) and proper medical services (Article 91); and that they choose, in free elections, a committee to

represent them (Article 102). The arresting power is to encourage "intellectual, educational and recreational pursuits, sports and games amongst internees" (Article 94); detainees are to be allowed to send and receive mail (Articles 107-108); and, according to Article 116, "every internee shall be allowed to receive visitors, especially close relatives, at regular intervals and as frequently as possible."

The rights of administrative detainees were stipulated in Israeli law in the Emergency Authorization Law (Detentions) of 1981. Among other things, the right of the detainee to medical care, a daily walk, to personal effects and cigarettes, to receive visitors, and to send and receive letters, was grounded in this law.

Despite this, most administrative detainees are held in extremely difficult conditions in the Ketziot Prison in the Negev (See Chapter 9).

2. Unlimited use of administrative detention

There is no limit on the number of orders that may be issued against one individual. **B'Tselem** knows of a few cases of administrative detainees who have served three or four consecutive sentences or more, as well as of residents of the territories who have been arrested for administrative detention again and again during the last several years. Consecutive administrative detention sentences devoid this measure of its special purpose, and turn it into serious punishment.

Mahmud Muhammad 'Abdallah Abu Mathqur, born in 1950, and a resident of the Shabura Refugee Camp in Rafah, has never been tried. He was first taken into administrative detention on August 3, 1985. From then until March 1991, he spent 57 months in administrative detention, and some 12 months outside of prison. Except for a period of three weeks during December 1988, he was held at Ketziot continuously by consecutive administrative detention orders since the beginning of January 1988. The most recent order against him was issued on October 27, 1990 for the duration of one year - that is, until October 26, 1991. In March 1991 he developed cancer and was released.

Sami 'Atiyah Samhadna, born in 1962 and a resident of Rafah, first received an administrative detention order in September 1985. Since that time, he has spent over five years in administrative detention. Samhadna was last released in April 1990. Two months later he was arrested again for one year, during which time his detention was extended for an additional year. In August 1991, Samhadna, represented by Attorney Dan Yakir from the Association for Civil Rights in Israel, appealed to the High Court of Justice. One of the charges was that the decision to arrest Samhadna for more than five and a half years

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צו בדבר מעצרים מינהליים (הוראת שעה) (יהודה והשומרון)
(מס' 1229), התשמ"ח - 1988

צו מעצר

בתוקף סמכותי לפי סעיף 1 לצו בדבר מעצרים מינהליים (הוראת שעה) (יהודה והשומרון) (מס' 1229), התשמ"ח - 1988, לאחר שעיינתי בחומר שהובא בפניי, ומכיוון שיש לי יסוד סביר להניח, כי הדבר הכרחי מטעמים החלטיים של בטחון האזור ובטחון הציבור, הנני מצווה על מעצרו של:

מוניר זוהיר מוניב חנאזי
שם

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שנת לידה

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העודת זהות

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מען

בנין היותו פעיל פת"ח בכיר בשכס.

ומורה כי יוחזק במעצר במתקן כליאה באזור/קציעות

מיום 25 בספטמבר 1991 עד יום 24 בפברואר 1992.

יז' נתשרי התשנ"ב

25 בספטמבר 1991

חי אדיב,
המפקד
באזור יהודה והשומרון

אלוף-משנה
הצבאי
והשומרון

(134/01)

IDF administrative arrest warrant for Munir Zoheir Munib Hijazi.

exceeds the bounds of reasonableness. To date, no ruling has been made on the petition.

According to Colonel Ahaz Ben-Ari, former Legal Advisor for Judea and Samaria, there is no limit to the number of consecutive orders that may be issued against one individual; it is possible to hold an individual in administrative detention "as long as there is real danger from his activities." Colonel Ben-Ari added that the IDF's internal guidelines require the permission of the Legal Advisor of the region for each administrative detention order issued for a fourth consecutive period or more.⁵¹

B'Tselem has learned of a recent directive forbidding the issuing administrative detentions orders for a period of one year. Indeed, attorneys report a steep decline in the number of detention orders for periods exceeding six months.

3. Classified evidence

According to Colonel Ahaz Ben-Ari, before an order is issued, a jurist reviews all the evidence in the GSS interrogation file to make sure that it is not one-sided and that it is substantiated by other sources. The weakness in this review process is that the jurist does not hear the detainee's version. The detainee can only present his version during the appeals process, weeks or months after his arrest, and without knowing what the evidence against him is.

According to Colonel Ben-Ari, only a summary of the evidence culled by the GSS against the candidate for administrative detention is placed before the military commander who will sign the order for detention.⁵²

Within the prison compound at Ketziot, two judges are meant to preside over appeals of administrative detention orders four days a week. In fact, there are many problems which often cause appeals to be held in the presence of only one judge. In almost all of the cases, the evidence is defined as classified information, and the detainee is required to defend himself without knowing what information has been presented against him. The discussion of the classified information takes place before the judge alone. The accused and his attorney are not allowed to be present for this principal – and usually the only – part of the appeal. The prosecutor, on the other hand, is present at all stages of the trial.

Thus, the judge receives for his perusal a file containing the summary of the classified evidence against the detainee – material based on information provided by the GSS. There are no witnesses whom the judge may question to corroborate the information presented to him.

The classified evidence is presented at the appeal by a member of the GSS – frequently not the one who investigated the file, and who therefore has no specific information as to the claims against the administrative detainee. The judge has the authority to postpone his decision and to request clarifications regarding the evidence material from the GSS. **B'Tselem** knows of only a few cases in which a judge availed himself of this authority.

Unclassified evidence is not passed on to the detainee's attorney in advance – only when the appeal comes up for discussion. Thus, the attorney is denied the possibility of preparing for the hearing, except on the basis of the scant evidence he or she is allowed to see. According to Attorney Tamar Peleg-Sryck, who represents many of the administrative detainees:

The information given to the detainee and his counsel is often extremely limited. Sometimes the name of the detainee's city of residence appears, and usually, the month in which the detainee is supposed to have committed the acts ascribed him, or the month in which the information was received. Thus, counsel cannot know when and where the demonstration in which her client was supposed to have participated took place, what so-called "nationalistic" slogans were proclaimed there, how many people participated, what the detainee did there, and so forth. Counsel's request to order the GSS member to reveal additional information is almost always denied by the judge.

It must be understood: Such injustice is irreparable. The Supreme Court has stipulated that making evidence available to a detainee or his attorney would cancel out almost every possibility of using administrative detention.⁵³

MILITARY COURTS IN THE TERRITORIES

A. The Legal Basis of the Judicial System in the West Bank and Gaza Strip

The military courts in the West Bank operate on the terms of the Order Concerning Defence Regulations, (hereinafter, "the Order") issued in 1967, and a new order which replaced the earlier one in 1970.⁵⁴ That same year, an order was issued with an identical title and text (un-numbered) for the operation of military courts in Gaza.

The Regional Commander (OC) upon recommendation of the Military Advocate General, appoints officers serving compulsory military service and reserve officers, as military judges and prosecutors.

The courts sit either in panels of three judges, all IDF officers, at least one of whom has had legal training, or as a court with a solitary judge, who is a legal officer. A solitary judge is authorized, according to the Order, to sentence the guilty party to imprisonment for a period not exceeding ten years, or a fine not exceeding that stipulated in the Order Concerning the Increase of Fines Set in Security Legislation, 1980. The sentencing of a three-judge bench is valid only after it is approved by the Regional Commander.

According to the directives of the Israeli National Police, which were issued with the approval of the Attorney General and the Military Advocate General, any person who is accused of a crime committed in the territories, under either military or criminal law, may be prosecuted before a military court. In practice, only Palestinian residents of the territories, and on occasion citizens of foreign countries, are brought before military courts. Israeli citizens and residents, and Jewish residents of the territories, are tried by courts inside Israel.

The proceedings in the courts in the territories are open and public. In accordance with the Order, the courts must appoint a translator for anyone who does not speak Hebrew, and the judge is required to record a protocol of the proceedings. The prosecution is conducted by whoever is appointed by the Regional Commander as military prosecutor, and the accused is permitted to employ defense counsel. If the accusation constitutes a serious crime, the accused must be

represented and the court must appoint counsel if necessary. In practice, the court usually appoints counsel only if the prosecution seeks more than ten years' imprisonment.

At the suggestion of the High Court, an appeals court was established in 1989 in Ramallah.⁵⁵

During the Intifada, an effort was made to add court rooms, judges, and prosecutors, in order to deal with the overload in the courts. There are five courts operating in the military judicial system in the territories (Ramallah, Hebron, Jenin, Nablus, and Gaza), in which there is a total of 14 courtrooms.⁵⁶ Recently, an announcement was made of the intention to open two additional courts, one in Tulkarm and one in Bethlehem.⁵⁷

B. Defects in the Functioning of the Military Judicial System in the Territories

Between the beginning of the Intifada and the end of October 1991, there were approximately **90,000** arrests of residents in the territories, **65,000** of which have come to trial in military court (in 1990, 13,585 trials were completed; in 1991, until the end of September, 13,236 trials were completed).⁵⁸ The military legal system in the territories was thus required to deal with tens of thousands of arrests, remands, judicial proceedings, and appeals.

The **B'Tselem** report published in November 1989, which examined the military legal system in the West Bank, pointed out the system's many difficulties in dealing with the quantity of arrests and trials, which have increased significantly since the start of the Intifada. The report, relying to a great extent upon observations carried out by **B'Tselem** lawyers in the military courts (mostly in the Ramallah court), identified, among other matters, two negative trends in the military court system in the territories:

The first is the distortion of justice which is caused by inefficiency, confusion and neglect. This phenomenon is a degradation and an insult not only to the accused and their advocates, but also to the judges, the prosecutors, and the soldiers who work within the judicial system. The filth and neglect, the noise and confusion in the courts, the insult to the feelings of the families of the accused – these are only the external aspects of this phenomenon of inefficiency and apathy.

The more serious aspects of this phenomenon are the

negligence of the prosecution in presenting witnesses, non-presentation before the judges of accused detainees who have been incarcerated, and, as a result, repeated postponements of trials. The severe circumstances in which most of the proceedings are delayed by approximately one month for non-presentation of accused detainees, or for non-appearance of prosecution witnesses, infringes the basic human right not to be punished by extended imprisonment until guilt is established by the appropriate legal process. Under the present circumstances, punishment precedes conviction, and the court appears only as a factor which sets the date for the conclusion of the period of imprisonment, and not the arbiter of guilt or innocence.

An additional trend, no less severe, is the existence of IDF procedures which violate the law. The basic rights of the inhabitants of the territories, which are protected in the orders of the military commander, are also not upheld. This is not a matter of occasional infringement, but rather of deeply ingrained, illegal procedures.⁵⁹

Additional conclusions which were included in this report: Non-adherence to the principle of public hearings for extension of pre-trial detentions; dependency of the legal staff; limitation of attorneys' appearing in court to request release on bail.

• • •

A followup on military courts in the territories during the past two years revealed that some improvements in the courts' functioning have taken place.

Reduction in caseload

The caseload on individual courts has been reduced following the opening of additional courthouses, and the appointment of additional judges and prosecutors in the courts.

Standardization of proceedings for release of suspects on bail

Most proceedings take place in the presence of advocates, within a number of days. Nevertheless, advocates with whom we spoke complained that the bail hearings often take place a week or more after the request has been submitted.⁶⁰ The number of cases in which requests for release on bail are granted is still extremely low.

Increase in the number of appearances in court

The incidence of appearances in court of witnesses and accused has risen. According to statistics of the IDF Spokesperson's Office, 76.6% of the accused and 51% of prosecution witnesses summoned by the courts in 1990 actually appeared. In 1991 (until September 30), 76.3% of the accused and 55% of prosecution witnesses summoned appeared. While these percentages represent a rise relative to the situation at the end of 1989, they are still extremely low.

• • •

Improvements notwithstanding, the dismal situation in the military legal system has not changed, as described by Military Judge (res.) Aryeh Koks in an interview with **Hadashot** newspaper:

It is clear that this court is not a natural, regular court, but rather some sort of solution that the military authorities have found to enforce the rule of the occupation. The work done there is not purely legal: in fact, the entire state of affairs in the Gaza military court seems like something from another world. Hundreds of family members outside, dozens of prisoners inside, most of them very young, and the impression is that they have lost faith in the system and they are not even trying to defend themselves. They admit to everything. Their lawyers, who in many cases are pathetic figures, also accept the situation, and actually do the work of mediators for punishment. I found complete symbiosis between the prosecution, the judges, and the lawyers, with the accused on the sidelines, and everything conducted in a stoic peace. We found accused, we also found crimes to suit them, and what we have to do now is find them an even more suitable punishment.^{60a}

Extension of [pre-trial] detention

In many instances, extensions of pre-trial detention are still ordered in the absence of representation for the arrested person. In response to a petition to the High Court of Justice (HCJ 2400/90), Captain Michael Karkovsky, an officer at the military court in Ramallah, stated, *inter alia*:

(7) The procedure employed at the Ramallah Military Court is that when the court is aware that a suspect or accused is represented, and the identity of the representative or counsel is known, the court will order the appearance of the representative for the accused.

(8) During proceedings on imprisonment, judges are requested

to inquire whether the suspect or accused party is being represented, and by whom. If the suspect or accused party is not represented during proceedings, it is incumbent upon the judge to explain to him the right for a re-examination of his imprisonment in the presence of his advocate.

The suspect often does not know that his family has hired a lawyer, and the police often fail to report to the court that a certain lawyer informed them that he or she is representing the suspect. The lawyer is thus prevented from being present during the extension of the suspect's detention, and from protecting his rights.⁶¹

In Gaza, detentions are extended inside prison facilities, in the absence of the prisoners' representatives. Attorneys with whom we spoke had difficulty remembering instances when they had been present at the extension of their clients' imprisonment.

Dependency of the legal staff

Judges and prosecutors are subordinate to the same military commander and dependent upon a single person for their advancement (prosecutors are appointed as judges upon completion of their service). Professional army judges guide and brief military reserve judges.

Reserve Judge Aryeh Koks, in the interview referred to earlier, claims that there is no separation of powers in the military courts in the territories:

In a regular civil court, and even in a military court, the separation of powers is fastidiously preserved. There is counsel and there is a system of judges, and there is absolutely no connection between these two systems. The military courts, in contrast, derive their life blood from the Military Advocates Unit. The prosecutor and the courts are subordinate to the same unit, and the principle of separation of powers is not preserved. This is an external, but glaring indication of the fact that a trial there is not a regular one.

In the military courts, for example, the relations between the judge and the prosecutor are close, and sometimes only a thin wall divides the prosecutor's room from the judge's room. They are really one on top of the other. Since the separation of powers is a basic principle of every legal system, its absence constitutes one of the essential reasons that the legal element in the territories is impure.



Suspected of "disturbing the peace," Nablus military court.
(Photograph by Alex Levac)

Plea bargaining and the high rate of confession

B'Tselem has been informed that the military prosecution strives to prevent plea bargaining, and according to an internal procedure, the Legal Advisor's approval is needed for every plea bargain. However, there is a persisting tendency among a substantial portion of the accused to plead guilty and reach a plea bargain, in order to end the prolonged period of detention pending conclusion of proceedings.

In-court observations conducted by **B'Tselem** reveal that in most cases, there is no discussion of evidence, and convictions are based on confessions of the accused. According to the IDF Spokesperson, "the portion of those who plead guilty in military courts does not exceed fifty percent of the total number accused" (See Appendix).

In the opinion of most of the figures connected with work in the military courts, the rate of confessions in trials for **security** offenses in the military courts in the territories approaches 80% or more. Reserve Judge Aryeh Koks said in the interview previously referred to that:

In contrast to the civil court system, the ability of a military judge in the territories to check if he is conducting a fair trial, and whether the accused committed all the crimes enacted, is nil, since usually, there is a total and wholesale confession of all the crimes. The judge is thus deprived of the ability to check whether the person standing before him committed the crimes, all of them, part of them, or whether he is innocent. In other words, the judge cannot actually ascertain the truth and conduct a fair trial.

In this area of crimes there is another link, no less primary and complicated than those which follow. The interrogators reach a large portion of these crimes through tattling. People there confess to everything, and from confession to confession they implicate others.

It is very dangerous and uncertain to etch out a person's fate on the basis of tattling. And on the grounds of these tales, charges are brought. It is a chain reaction: tattling, bringing charges, confession, punishment. And since we're mentioning punishment, the level of punishment is also not what we call pure law. When a Jew kills an Arab he can get off on one year in prison. When an Arab throws a stone and causes no damage, he receives a similar punishment. This is not a fair trial.

Expedited trials

In the past two years the use of expedited trials has expanded greatly, in an attempt to solve the problem of overload in the courts, and to decrease the number of detainees who have been waiting a long time for trial. Our observations of the courts reveal that a substantial number of the accused who are tried according to this expedited procedure do not have time to find their own advocate, and sometimes do not even manage to notify their families that they have been arrested. The prosecutors, as well, do not always have the time to review the evidence before trial, and the trial is conducted for the most part by the judge, who interrogates the accused during the proceedings.⁶² During the days on which **B'Tselem** conducted in-court observations, there was no listing at the sites of the accused scheduled for trial that day.

According to Attorney Walid Zahalqa, expedited trials cause an increase in the number of plea bargains.⁶³

During the Gulf War, hundreds of Palestinian residents accused of violating the curfew were judged in an expedited process. Most confessed and were fined sums up to NIS 1,500. Those who did not confess received prison sentences of up to three months.

Location of the courts

According to Israeli law (Article 6 (a) of the Criminal Proceedings Law [Consolidated Version], 1982), "The accused shall be tried in a court in the territorial jurisdiction of which the crime was fully or partly committed, or where the accused is domiciled." This norm was also applied in military courts until the beginning of 1990, although it is not grounded in military law. In that year, however, the practice was altered, and accused began to undergo trial in courts located near the prison facilities in which they were held.

Since the closing of Ofer Prison (near Ramallah) in the summer of 1991, most West Bank residents are tried in the Jenin court, even if they live in Hebron. This practice makes it difficult for families of the accused to attend the trial and forces them to undertake a long journey in order to be present at their loved one's trial. Families naturally hire local lawyers for their children, in most cases, and lawyers are also forced to waste much time travelling.⁶⁴

Physical conditions

A number of improvements in the physical conditions of the courts have been implemented.⁶⁵ The courts are cleaner, and air conditioners have been installed in some of the courtrooms.

However, there are still defects. In Ramallah, many dozens of people were until recently forced to wait outside the courthouse, with no roof over their heads, for many hours (only in July 1991 was an awning erected outside the Ramallah courthouse for those waiting there); the Gaza courthouse has not erected an awning to date.

In most of the courthouses, there is no photocopy machine for lawyers to copy legal material necessary for defending their clients. In courts which do possess photocopy machines, lawyers confront various hurdles when they come to use them.⁶⁶

In most of the courthouses there are no lavatories for lawyers. In the Ramallah, Jenin, and Nablus courthouses, public telephones were installed, but they have not been operative for several months, despite **B'Tselem's** having brought this matter to the attention of the court officers.

C. Trends in Punishment

The policy of punishment for "Intifada crimes" has undergone several changes, especially during 1990. At the beginning of the year we learned of a trend to reduce the prison sentences of stonethrowers, with a correlative increase in fines imposed upon them. The change was explained by the fact that "the policy of imposition of prison sentences against stonethrowers is not effective, as the prison is a 'school' for violent activity."⁶⁷

B'Tselem spoke with lawyers who confirmed that a change in punishment policies had occurred. According to the lawyers, the "accepted" punishment for stonethrowing was changed from at least five months in prison and a fine of NIS 500 to 3-4 months in prison and a fine of NIS 1,500-2,500. In a few cases, military prosecutors mentioned such a "new policy" during trials.⁶⁸

At the beginning of September 1990, Defence Minister Moshe Arens strengthened this trend by ordering the release of all youths between the ages of 14-16 who were found guilty of stonethrowing. The prosecutors in the military courts received general instructions to accept as sufficient the period of time spent in prison [before trial] by stonethrowers, as long as they had not caused damage to life or property, and to request that a steep fine be imposed upon them (NIS 1,000-1,500).

At the beginning of December 1990, Arens revoked this policy and ordered the military prosecutors to demand long prison terms for those who threw stones at vehicles carrying passengers.⁶⁹ According to advocates who work in the military courts in the territories, a number of signed plea-bargains were voided following this order, and the prosecutors demanded a more severe sentence.

DETENTION FACILITIES

Between December 1987 and October 1991 there have been some **90,000** arrests of residents of the occupied territories for periods varying in length.⁷⁰ Most were imprisoned in military detention facilities, and a minority were imprisoned in Israel Prison Service and police facilities. Among those imprisoned were over **2,000** women, and an unknown number of minors.⁷¹

In this chapter we will review the various types of detention facilities, and detail the conditions of detention in the military facilities, in which most prisoners are held.

The IDF Spokesperson informed **B'Tselem** that as of mid-November 1991, 8,553 residents of the territories were being held in military detention facilities. According to figures supplied by the Prison Service, some 3,900 additional residents of the territories were held in Prison Service facilities (some of these were convicted of crimes which are either unrelated to, or were committed before the Intifada).

The detention facilities in which Palestinian residents of the territories are held are divided into several types.

A. Prisons Under the Jurisdiction of the Prison Service

The Prison Service operates 21 prisons, 6 of which are in the territories. Most of the prisoners are residents of the territories who have been sentenced to prison terms and are now serving their sentences in these prisons. In addition, several administrative detainees are held there who, on account of health or other reasons, cannot be kept at Ketziot.

As of October 15, 1991, approximately 3,900 prisoners from the territories, 40 of them women, were held in Prison Service facilities:⁶¹

Approximately 1,650 sentenced prisoners, and approximately 850 detainees, were residents of the West Bank.

Approximately 900 sentenced prisoners, and approximately 500 detainees, were residents of the Gaza Strip.⁷²

Prison conditions in Prison Service facilities are better than those in the military facilities. Most of the prisoners sleep on beds, are allowed to

keep radios in their cells, and receive regular visits. Yet there is also severe overcrowding in most of these prisons. (In Gaza Prison, for example, the average living area for each of the approximately 750 prisoners is 1.8 square meters.)⁷³

B. Facilities Under the Jurisdiction of the Israeli National Police

Detention facilities such as the Russian Compound in Jerusalem, or jails near police stations in the territories, are meant to house prisoners for a short time, until they are transferred to jail.

In practice, because of overcrowding in Prison Service jails, detainees are sometimes held there long after charges are brought, and sometimes even after they are tried and sentenced to imprisonment. **B'Tselem** investigated the detention conditions of minors in the Russian Compound detention facility in Jerusalem. The results of the investigation were grave.

There are four cells in the youth wing of the Russian Compound, two large and two small. In the entire youth wing there are 34 beds. At the time of a visit by representatives of Defence Children International on March 21, 1990, there were 83 minors held in the youth wing, some detained and some sentenced, two of them Jews who had been placed in one of the small cells. The other 81 detainees were held in the remaining three cells. In one of the larger cells, containing 12 beds, there were 39 youths. As a result of this state of affairs, the detainees were forced to sleep on mattresses placed on the floor, or two to a bed.

The air is very stuffy and it is difficult to breathe despite the ventilation arrangements. There is a small enclosure in the corner of the cell for the shower and toilet, set off from the rest of the cell by a blanket. It is impossible to keep the cell clean in such conditions (despite the efforts made). A minor is unable to preform his bodily functions in private, despite the blanket.⁷⁴

Youths detained during the winter months complained that they suffered severely from the cold.

At the beginning of May 1991, an envoy from the Jerusalem municipality examined the detention conditions in the Russian Compound. From the envoy's summary report,⁷⁵ it emerges that the defects pointed out in **B'Tselem's** 1990 report were not remedied, and that the recommendations presented in the report were not addressed, and in any case not adopted.⁷⁶

C. Interrogation Facilities

Many residents of the territories who have been arrested over the past three years have been interrogated in interrogation facilities adjacent to facilities of the other authorities (those of the IDF, the Police and the Prison Service). Although responsibility for the interrogation facilities nominally rests with the commander of the "mother facility," to the best of our knowledge the authority and supervisory capabilities of these commanders is limited.

Detainees interrogated in interrogation facilities are held for periods between 15 and 30 days without seeing a lawyer, during which time they are interrogated by GSS personnel and military interrogators.⁷⁷

D. Detention Facilities Under IDF Jurisdiction

The military prison system comprises a number of facilities designated for short stays, where detainees are meant to remain until proceedings against them are concluded. There are also a few facilities for long-term detention in which convicted prisoners and administrative detainees are meant to be held.

According to data given to us by the IDF Spokesperson, in the middle of November 1991, 8,553 residents of the territories were being held in military prison facilities, 4,598 of them West Bank residents, and 3,955 Gaza residents.⁷⁸

Most of the military facilities were hastily constructed after the outbreak of the Intifada in order to relieve the severe overcrowding in the standard facilities, and are consequently temporary structures. Most of the detainees are forced to live in tents under conditions of severe overcrowding,⁷⁹ sanitary conditions are very poor, and there is no real protection from rain and cold in the winter, or from the sun in the summer. There are no adequate facilities for meetings with lawyers and with visitors.

In the beginning of April 1991, the food rations of prisoners and detainees in military prison facilities were cut notably. Defence Minister Moshe Arens, in response to a parliamentary interpellation submitted by MK Haim Oron, announced the cut, and claimed that the measure was taken "in order to save, and according to IDF policy." Following considerable protests, the IDF restored some of the deleted items to the menu, but the amount of food received by prisoners remains insufficient.

According to the IDF Spokesperson, the IDF detention system is subject to "periodic review by a committee composed of a representative of the military judicial system, a representative of the medical corps, and a representative of the military police. The findings of this committee are transferred directly to the Chief of Staff, and its recommendations are examined in detail in an attempt to correct every charge properly and immediately." (See Appendix).

Far'ah

Located in the West Bank, north of Nablus. There are several tents at the site, with 22-27 detainees in each. There are two permanent wings, one "regular" and the second an interrogation wing, under IDF jurisdiction. According to IDF data (of November 14, 1991), 408 detainees are imprisoned in the facility (118 who have been sentenced, 219 detainees awaiting trial, 69 being detained until the end of proceedings, and 2 administrative detainees).

The detainees complain of cruel interrogations, family visits of substandard length – twenty minutes instead of one half hour – and a lack of writing paper, books, and the chance to engage in sports.

Dhahriyyah

Located in the West Bank, south of Hebron. Designated for holding prisoners for short periods, between 6-8 weeks. According to IDF figures (of November 14, 1991), 320 persons are being held there (23 who have been sentenced, 138 detainees awaiting trial, 153 in detention pending conclusion of proceedings, and 6 administrative detainees).

In April 1989, the Association for Civil Rights in Israel submitted a petition to the High Court regarding conditions of imprisonment in Dhahriyyah. Following the petition, conditions in the facility were improved considerably, but even with the improvements, they remain particularly harsh.

According to a report from an on-site visit by representatives of the Association for Civil Rights in Israel on September 26, 1990, approximately one half of the prisoners are held in small stone cells in which the few ventilation openings are small, and in which there is no running water. Prisoners remain in their cells most of the time. They eat in them, sleep in them, and perform their necessary functions in a chemical toilet in the corner of the cell. Prisoners are taken for a "walk" in the courtyard for approximately one hour, on an average of once every two days. The remaining prisoners are held in tents, in more reasonable conditions.

Family visits are held once every two weeks. Meetings with lawyers are held regularly, but there is always pressure to finish quickly. In the Dhahriyyah Prison Facility there is an interrogation wing in which 27 prisoners were being held on the day when representatives of the Association for Civil Rights in Israel visited.

Beach Camp (Ansar 2)

Located in Gaza City. Designated for short periods, usually for detainees waiting to be brought before a judge, 18 days after the arrest. According to IDF data of November 14, 1991, 411 persons are imprisoned there, all in tents (31 who have been sentenced, 305 awaiting trial, 74 detained pending the conclusion of proceedings, and 1 administrative detainee).

There is a GSS interrogation wing at the site.

Families may visit prisoners beginning from two weeks following the date of arrest.

The prisoners complain mainly of severe crowding and flies in summer.

Megiddo

Located within Israeli territory, in northern Samaria. Designated essentially for those suspected of disturbing the peace. According to IDF data of November 14, 1991, there are 1,435 residents of the territories imprisoned there (224 who have been sentenced, and 1,211 detained pending the conclusion of proceedings).

Approximately 250 of the prisoners are held in stone cells in an old building. The remainder are held in an encampment divided into five sections. Each section contains a kitchen, showers and toilets. Most of the tents are very crowded. According to the State Comptroller's Report the crowding in the tents exceeds the maximum permitted.⁸⁰ The report also asserts that hygienic conditions in the kitchen are unsatisfactory.

In the past, meetings with lawyers were limited to three lawyers per day, and due to this limitation, meeting dates were often scheduled three to four weeks in advance. The State Comptroller's Report, which touched on this subject, stated that the waiting time for meetings must be shortened. Today this limitation does not exist, but according to lawyers who visit the prisons, there are still frequent delays in arranging visits.

Family visits, which were held once every two weeks in the past (until February 1989), are currently held once a month. (In prisons in the



Ketziot Prison. (Photograph by Yosef Barak)

territories, as well as facilities of the Prison Services, family visits are held once every two weeks.) The visitors have access to the tents, toilets, and water taps.

Ketziot (Ansar 3)

Located within Israeli territory, in the Negev, not far from the Egyptian border. Ketziot detention camp is the largest detention facility in both Israel and the territories. According to IDF data of November 14, 1991, 5,979 prisoners from the Gaza Strip and West Bank are held there (4,721 who have been sentenced, 810 detained pending the conclusion of proceedings against them, and 448 in administrative detention).

In November 1988 the High Court of Justice ruled in a petition submitted by administrative detainees in Ketziot against the conditions of detention, and against their imprisonment within Israeli territory which was in violation, they claimed, of the Fourth Geneva Convention. The High Court rejected the petition, but recommended various improvements in the conditions of detention. According to the High Court recommendation, a committee was formed, headed by a military judge, to monitor the conditions of detention.

Most of the prisoners in Ketziot are held in tents, approximately 26 prisoners per tent. The entire camp is divided into six blocks (including "Prison 7," set apart from the other blocks), and each block is divided into sections. Between the sections and around the blocks are high fences, and between the fences there are paths, patrolled by guards and military police personnel. Most of the blocks are paved with asphalt (Block No. 1, which was unpaved, was closed at the end of 1990, and today prisoners are not held there).

In 1990, new facilities were erected in Ketziot, designated for prisoners sentenced to long terms, and for administrative detainees defined "dangerous" or "leaders." The new facilities are like cages, with high walls, and regular and accordion-style barbed wire stretched across the top. Above the structure is a "roof" made of screening. Three tents are situated between the walls, each surrounded by a chainlink fence.

The conditions for meetings with lawyers are very difficult. In September 1989, a facility for meetings between prisoners and their lawyers was erected in Ketziot - a hut, in the middle of which are two chain wire fences to separate between the lawyers and their clients. This facility, which did not provide reasonable meeting conditions, evoked a wave of protest. These protests are apparently what led to the erection of new pre-fab rooms, one in each block, designated for

meetings between lawyers and prisoners. In each room there is enough space for a meeting between five lawyers and five prisoners. There are dividers between the lawyer's seats, and between the lawyers and the prisoners there are dividers whose upper half is made of clear plastic, in which holes have been punched to allow for hearing. Despite this, communication through these holes, when other lawyers are speaking with their clients at the same time, is difficult. On summer days, it is extremely hot in these facilities, as there is no air-conditioning.

Because of administrative obstacles, lawyers succeed in meeting with only part of the prisoners whom they represent, despite the fact that they submit requests with their clients' names well in advance. The average meeting time with each client is 5-10 minutes, after which the lawyer must wait approximately one half hour until the following group of prisoners is brought.

Since the opening of the prison in March 1988, until recently, family visits were not held in Ketziot, due to its location in an area defined as a military zone, and because of its distance from the territories. The IDF required families to arrive to the visits in organized army transports, after approaching the Civil Administration and acquiring a visiting permit. Residents of the territories refused to accept this condition, and demanded that they be able to visit their detained family members unconditionally, just as they visit Megiddo Prison, also located within Israel.

Following protracted negotiations, an arrangement acceptable to all the parties was reached. Implemented at the end of October 1991, the arrangement grants the Red Cross a role in the logistical planning of the visits.

As a result of the overcrowding and lack of change of clothing, hot water, and soap, skin diseases, such as scabies, abound. Similarly, defects in the water drainage and sewage system have resulted in hygiene problems.

There is a doctor on duty 24 hours a day in each block, and four medics. In addition, there is a portable dental clinic for emergency treatment, and two ambulances on call.

Security sources claim that every prisoner who arrives at Ketziot is checked by a doctor who assesses his fitness for detention in the camp, but these sources refuse to specify the criteria for fitness for detention in general, and whether there are special criteria for fitness for detention in Ketziot, in the severe climatic conditions of the Negev. Some of the prisoners defined as fit for detention in Ketziot suffered from chronic ailments or from some sort of disability. Despite requests on behalf of various figures, among them Knesset members, no sick

rooms have yet been installed for prisoners needing supervision and follow-up after hospitalization, and for those suffering chronic illnesses.⁸¹ Nevertheless, there has been an improvement in the realm of the release of administrative detainees on account of medical problems, in-hospital examinations by specialists, supply of medicines, and family hospital visits.

There is no library in Ketziot for prisoners' use. Human rights organizations may send books, according to a list of permitted topics, such as literature, poetry, science, study books, and various religious texts.^{81a} Family members are forbidden to send books.

Distribution of letters to prisoners is irregular. Letters are delayed and some of them never arrive at their destination. Newspapers arrive a few days late, especially **Ha'aretz** and the **Jerusalem Post**. **Al-Quds** arrives more regularly.

Holding facilities

In addition to the prison facilities, the IDF uses military government facilities in the towns and cities of the West Bank and Gaza Strip, in which detainees are concentrated immediately after their arrest until they are transferred to permanent prison facilities. Detainees are meant to be held in these holding facilities for up to 96 hours from the moment of their arrest, but in practice, there are detainees who are held in these facilities for as long as one week and sometimes even two.⁸² The IDF Spokesperson told **B'Tselem** that on November 8, 1991, 130 detainees were being kept in holding facilities.

According to an affidavit submitted to the High Court of Justice (HCJ 4762/90) by the IDF Commander of Judea and Samaria, most of the prisoners are tried in an expedited process during their stay in the holding facility.

In responding to this report, the IDF Spokesperson stated that "the practice of transmitting an arrest announcement has been in effect in the facilities in the past and is still operative today, and lawyers' visits also take place there." Actually, the practice of conducting lawyers' visits in holding facilities began only in March 1991, following a petition to the High Court submitted by the Association for Civil Rights in Israel. The new procedure allows for three two-hour long visits per week.

The State Comptroller's Office, which in its 40th report examined the conditions in the holding facilities, stated that "the conditions for detainees in the holding facility are far from satisfactory." The report enumerated its findings regarding one of the holding facilities, that in the Hebron area. Among the findings: overcrowding far exceeds the

regulations; detainees are not permitted to shower during their stay in the facility, even though many of them are held there for approximately 14 days; minors are held together with adults, in violation of the regulations; there are no family visits; detainees are not permitted to have a daily walk in the open, and they are not allowed to receive books and newspapers.

The State Comptroller's report states, *inter alia*:

In the opinion of the report, in light of the findings . . . which indicate that the conditions under which detainees are kept in the holding facilities are far worse than those in the other detention facilities, and also in light of the apparent lack of clarity surrounding the binding legal framework regarding prison conditions for detainees in these facilities, it is advisable that the need to set a proper framework by way of an appropriate order, be assessed.

DEPORTATIONS

Deportation of Palestinian residents from the West Bank and the Gaza Strip is a method of punishment perceived by both the Palestinians and the authorities as the most severe punishment.⁸³

Deportation is authorized by Article 112 of the Defence (Emergency) Regulations, 1945, which reads as follows:

The High Commissioner shall have power to make an order under his hand requiring any person to leave and remain out of Palestine. . . . A person with respect to whom such an order is published shall so long as the order is in force remain out of Palestine.

The Regulation is still in force on the West Bank because of similar orders enacted by the Jordanian authorities. The situation is the same in the Gaza Strip, where the law has not changed since the British Mandate period.

Article 49 of the Fourth Geneva Convention of 1949 states:

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

The official Israeli interpretation, confirmed by the Supreme Court, maintains that this section of the Geneva Convention does not apply to the present circumstances in the territories, and applies only to mass deportations. In a High Court of Justice ruling that confirmed the deportation of 'Abd al-'Afu, Court President Meir Shamgar invoked Article 49 of the Geneva Convention and ruled, *inter alia*, that:

In the eyes of the composers of the Geneva Convention, mass deportations were for annihilation, mass population transfers for political or ethnic reasons, or for transfer for forced labor. That was the "legislative intent" and the topical context.⁸⁴

In the same ruling, Justice Gabriel Bach, in a minority opinion, argued that the article applied not only to mass deportations. He stated, *inter alia*:

The language of Article 49 of the Fourth Geneva Convention is clear and unambiguous. The combination of the words "forced transfer . . . of individuals or masses, and their deportation" with the phrase "regardless of their motives" leaves no room for

doubt that the article applies not only to deportation of masses but to that of individuals as well, and that the prohibition was intended to be total, sweeping and unmitigated – "regardless of their motives."

Justice Haim Cohen also believed that deportation was contrary to international law. In the High Court of Justice ruling that confirmed the deportation of the mayors of Hebron and Halhul, Muhammad Milhem and Fahed Qawasmeh, Justice Cohen, in a minority opinion, stated that deportation is "contrary to customary international law, which forbids the deportation of any person from his country of birth. No order by the Regional Commander can overcome customary international law."⁸⁵

Deportation decisions are administrative. The candidate for deportation and his attorney are not permitted to see the file or evidence that led to the deportation order. Candidates for deportation may appeal the deportation order to an advisory committee, composed of a military judge and army officers, appointed by the military commander who signed the deportation order. The committee discusses the appeal behind closed doors, is authorized to see the evidence file, and has the power to make recommendations to the military commander. The commander is not obligated to accept the recommendations.

After this process, deportation candidates have the option of petitioning the High Court of Justice. To date, the High Court has rejected all but one of the petitions submitted to it on this subject, and has approved all the deportations. Only in one instance was a deportation order rescinded: that issued in 1979 against the Mayor of Nablus, Bassem Shak'ah.

Between the beginning of the Intifada in December 1987, and November 1991, 66 residents were deported from the territories: 32 in the first year, 26 in the second year, and 8 in the fourth year (in the third year of the Intifada there were no deportations). Thirty of the deportees were residents of the Gaza Strip and 36 were from the West Bank. The reasons given for deportation are usually incitement, political subversion, participation in illegal organizations and the like. Deportation has not been used as a punishment for terrorist activities.

Between August 1988 and December 1990 no new deportation orders were issued. This was due to the opinion of the security establishment that deportations which await a lengthy appeals trial before the High Court of Justice do not contribute to calming the situation and are not effective. One of the heads of the military legal system expressed doubt as to the effectiveness of deportation orders, saying:

It cannot be said that we have crushed the Intifada, or that we

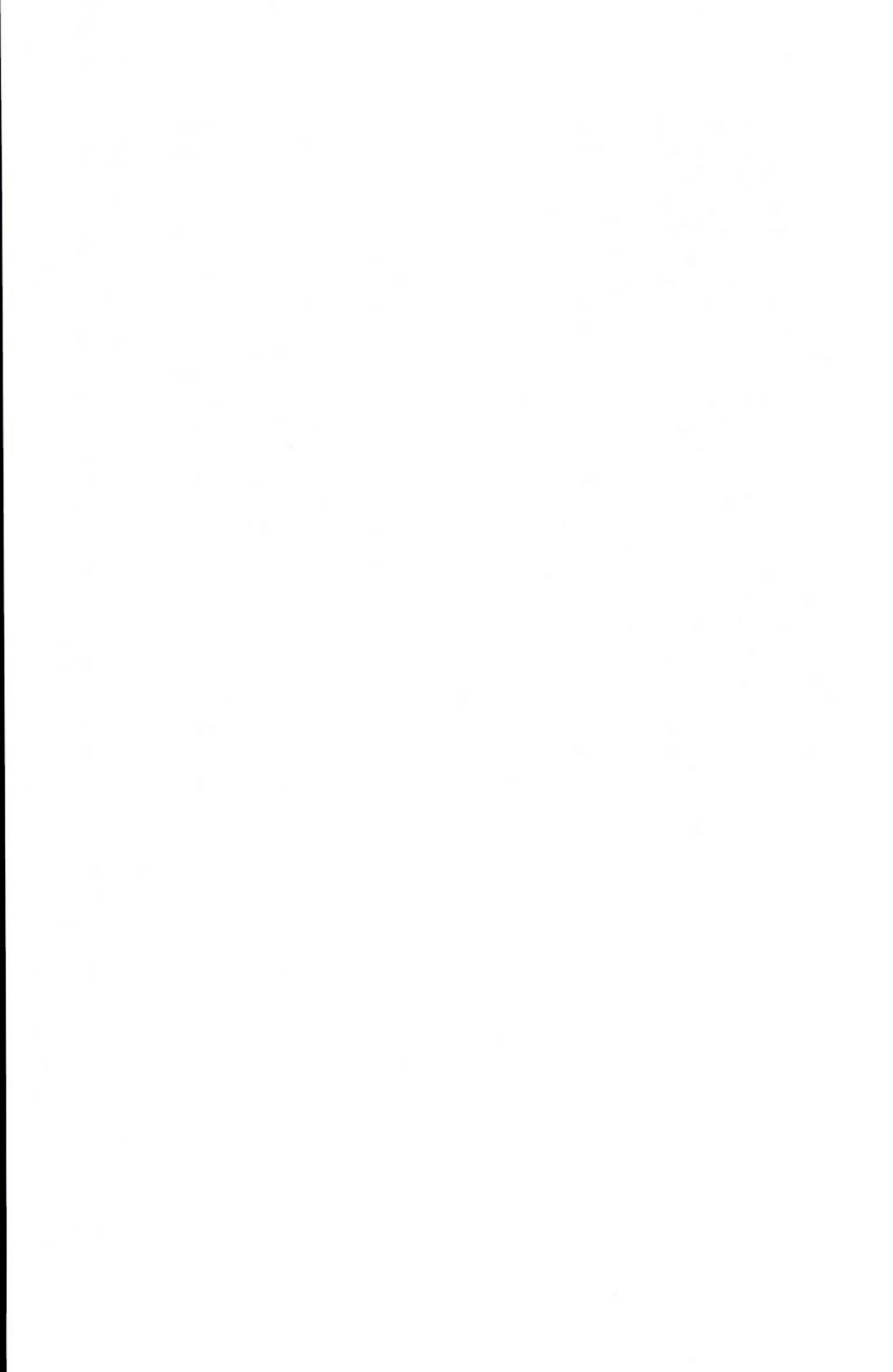
have brought about a reduction in the level of violence, despite the fact that we have destroyed hundreds of houses and deported dozens of residents from the territories.⁸⁶

Toward the end of 1990 a turnaround occurred in the approach of the security establishment, and a decision was made to resume issuing deportation orders to Palestinians, despite the fact that there was no way to expedite the deportation process. On December 15, 1990, after three Jews were stabbed to death in Jaffa, deportation orders were issued to four Hamas activists in the Gaza Strip: Mustafa Yusuf 'Abdallah Lidawi, age 26, a high school teacher from the Jabaliya refugee camp; Fadel Khaled Zaher Z'abut, age 34, from Gaza City, a teacher at the Islamic College; 'Imad Khaled al-'Alami, age 34, an engineer from Gaza City; and Mustafa Ahmad Qanra', age 45, a money-changer and mosque preacher from the Jabaliya refugee camp.

An advisory committee appointed by the OC Central Command, headed by Brigadier General Uri Shoham, President of the Military Court of Appeals, rejected the appeals of the four deportation candidates. The four appealed to the High Court of Justice, but on January 7, 1991, after the Court had refused to grant their request to be shown what was defined as "secret evidence," they withdrew their petition. The following day they were deported to Lebanon.

On March 24, 1991, deportation orders were issued for four additional residents of the Gaza Strip: Jemal Yasin Abu-Habal, age 33, Mu'in Muhammad Musalem, age 31, Hashem Muhammad 'Ali Dahlan, age 31, all from the Jabaliya refugee camp, and Jamal 'Abd-Rabo Muhammad Abu Jidan, age 33, from Beit Lahiya.

Their appeal to the advisory committee was also rejected. They petitioned the High Court and on May 18, 1991, after their petitions had been rejected, they were deported to Lebanon.



DETERIORATION OF THE EDUCATION SYSTEM

Article 50 of the Fourth Geneva Convention (1949) states:

The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The education system in the territories is operated by the Civil Administration. Staff education officers directly run the government education system, while in the private and UNRWA-run schools, these officers have pedagogical supervisory powers and are responsible for granting licenses and permits, as required by the education regulations.

Teaching in the West Bank is based on the Jordanian curriculum and on textbooks imported from Jordan. High school matriculation exams (tawjihi) are Jordanian. In the Gaza Strip, the infrastructure and the matriculation exams are based on the Egyptian education system.

Three education systems operate in the West Bank and Gaza Strip:

Government schools

These include elementary, preparatory (junior high), and high schools. Since 1967, the Israeli Civil Administration, through education staff officers, has been responsible for the government school system. During the 1989/90 school year, approximately 320,000 pupils attended the government schools: 235,000 in the West Bank and 85,000 in the Gaza Strip.⁸⁷

UNRWA schools

These include elementary and preparatory schools in which pupils study through the ninth grade. These schools were established by UNRWA beginning in the early 1950s to serve the refugee population.

UNRWA has also set up a limited number of vocational training schools. In 1987, a center for the development of educational materials was established in Jerusalem.

During the 1989/90 school year, approximately 130,000 children attended the UNRWA schools: 40,000 in the West Bank and 90,000 in the Gaza Strip. Pupils in the UNRWA schools do not pay any fees.

Private schools

These institutions, ranging from kindergartens and elementary schools, through high schools, are operated by local or international agencies, most of which have a religious orientation. The pupils in these schools pay full tuition and usually come from a relatively high socio-economic background.

Approximately 35,000 pupils attended these schools in the 1989/90 school year: 28,000 in the West Bank and 7,000 in the Gaza Strip.

The education structure, teaching methods, curriculum, and exams in the West Bank are based on Jordanian law, and those in the Gaza Strip, on Egyptian law. Although Israel has retained the general framework of the education system, some significant changes have occurred since 1967 as a result of the involvement of the education administration in the territories. The administration has banned the use of certain books, controlled the appointment and advancement of teachers, and prevented the formation of professional organizations.

The schools in East Jerusalem have been under the supervision of the Israeli Ministry of Education since 1967. The curriculum is Jordanian with modifications introduced by the Ministry of Education. High school diplomas are Jordanian.

A. Closure of Educational Institutions

Since December 1987 the educational system in the territories has been subjected to measures including closure of educational institutions for long periods of time, forced entry into and takeover of school buildings for army use, occasionally leading to destruction of school property and buildings, and the arrest of pupils on school grounds.

The most serious abuse of the educational system is the closure of schools. Closure occurs as the result of one of three kinds of actions:

1. **Declaration of a strike by Palestinians** – These strikes paralyzed the education system in the territories several days each month. Beginning in May 1991, however, Intifada pamphlets began calling for school strikes only on the ninth of each month in which there was a strike commemorating the beginning of the Intifada, and for no strikes on the remaining strike days.⁸⁸

2. **Imposition of Curfew** – An act which automatically causes schools to close, even if not specifically aimed at schools.

3. **Closure of educational institutions by the security forces** – This measure is either directed at specific school institutions – usually in cases of demonstrations or confrontations with security forces within the

school or in the surrounding area – or at an entire school system (especially in the West Bank).

The closure of educational institutions – government, private and UNRWA-operated – is carried out in accordance with Article 91 of the Order Concerning Defence Regulations (No. 378) 1970, which permits the military commander to open or close businesses, educational institutions, or any other places used by all or part of the community.

Closure orders are issued in a number of different ways. They may be given in the form of orders signed by the Civil Administration or the IDF. They may be announced over the radio, television or in the newspapers, or over the telephone without any written confirmations.

Closing injunctions often apply only to classes of a specific age-group. In certain places kindergartens were allowed to remain open, while other classes were not. In many schools it was impossible to conduct classes even after schools were re-opened due to the damage caused during army use.

In many schools, teachers organized to give unofficial lessons outside of school premises. But on August 18, 1988, the military commander published an order forbidding a long list of organized activities. Organized activity was defined very broadly and included, among other things, community organizing for in-home classes.⁸⁹

On the matter of school closings, IDF Spokesperson Lieutenant Colonel Arik Gordin claimed in response to **B'Tselem's** September 1990 report, that it is actually the leadership elements of the uprising who are undermining the proper functioning of the study routine by declaring strike days, turning schools into centers of the struggle, using students as an instrument to serve the ends of the uprising, etc. The IDF response stated, *inter alia*, that:

The closing of all the schools in Judea and Samaria Region occurred only after many other measures, including talks with teachers, parents and mukhtars, and the closing of individual schools for brief periods, failed. In addition, it bears stressing that even after the schools were reopened, many hours of study were lost due to orders issued by the uprising leadership regarding studies and strike days. The leaflets of the [uprising] leadership obligated pupils to participate in declared strike-days or mourning days and not to attend school.

Even when the leadership's pamphlets advocated the opening of the educational institutions, they imposed limitations on the study routine and compelled the pupils to combine their studies with the routine of the uprising. Thus, leaflets forced studies to conclude at 12 noon, and not until the end of March 1990 were studies extended until 1 p.m.

B. Collective School Closings

The West Bank

The IDF ordered the closure of schools in the West Bank over prolonged periods during the school years 1987/88, 1988/89 and 1989/90. Of 210 scheduled days of study per school year, classes were actually held as follows:⁹⁰

1987/88: 131 days in the high schools, 147 in elementary schools;

1988/89: 20 days in the high schools, 35 in elementary schools;

1989/90: approximately 140 school days in the entire school system.

The 1990/91 school year opened 4 days late, on September 5 instead of on the first of the month. Only elementary schools opened on that day. Preparatory schools (grades 7-9) opened on September 12th, and high schools on September 20th.

This policy of a gradual opening of the system spanning many days, beginning with the elementary schools, followed by the preparatory and ending with high schools, was repeated each time the IDF shut down the West Bank education system during the 1990/91 school year.

In the aftermath of the Temple Mount incident, the entire education system in the West Bank was ordered closed on October 9, 1990. Grades 1-4 were re-opened on October 16, grades 5-6 on October 18, preparatory schools on the 20th, and high schools on October 21.

In anticipation of Palestinian Independence Day, all educational institutions in the West Bank were ordered closed on the 14th and 15th of November 1990. Elementary schools were reopened on November 17, and preparatory and high schools on the 19th.

According to the above data, in the first three months of the 1990/91 school year, West Bank high school pupils – including those preparing for matriculation exams – had already lost, as a result of collective school closings, 31 of the scheduled 78 days of classes for this period.

The IDF Spokesperson attributes this situation to the "prevailing atmosphere prior to the Gulf War, [and] events which understandably had a direct implication for the possibility of maintaining a properly functioning educational system during this period."⁹¹

During the Gulf War, at the beginning of 1991, all schools in the West Bank were closed for 34 days. On February 19, 1991, studies were renewed in the first through fourth grades in the cities, and in the

first through sixth grades in villages (with the exception of areas in which the curfew was not lifted). On February 25, 1991, studies were renewed in the twelfth grade as well. On March 4, 1991, studies were renewed in middle schools, and on March 17, in high schools.

According to the 1991 data of the UNRWA Educational Division, between September 1990 and March 1991, 51.3% of the school days were lost. Of these, 73.4% were missed due to closure orders from the authorities, 13.3% on account of strikes, 10.1% due to curfew, and the rest due to individual closings or school strikes.

It appears that during the period following the Gulf War, a significant change occurred in the security establishment's policy regarding school closings in the territories. Since March 1990, there have been no general school closings by the government. Furthermore, for the first time since the beginning of the Intifada, the government permitted the school year in the West Bank to be lengthened by one month, from May 31, 1991 to July 1, 1991, due to the loss of school days. In the Gaza Strip, the school year ended on June 20, 1991.

The 1991/92 school year opened gradually, but within twelve days all schools were opened.

During the 1989/90 school year in the Tulkarm refugee camp, schools were open for a total of 41 study days, due to the many curfews and closure orders. Among the various closures was a three-month closure declared by the government on the camp schools while the camp administration erected fences around them, in accordance with a request by the security establishment. In a meeting with the then-Coordinator of activities in the territories, Mr. Shmuel Goren, **B'Tselem** representatives specifically raised the problem of studies in the camp, and requested that the school year be extended. His answer: "We checked and we are unable to do it. Our education experts say that they [the teachers] will make do. It can be accomplished by modifications in the curriculum." ⁹²

School activity in the Tulkarm refugee camp also suffered greatly in 1990/91, but in this year schools were permitted to extend the studies even beyond the period generally permitted in the West Bank – until August 15, 1991. In September 1991, the directors of the camps were required to raise the height of the fences surrounding the schools by two more meters. At first they were told to close the schools while the work was being done, but after a conversation with the Governor of Tulkarm, the schools were permitted to operate while the fences were being extended.

Nevertheless, the schools in the Tulkarm refugee camp were closed for 11 days in September, and 2 days in October, on account of curfew.



Students at the al-Mamuniya School for Girls., East Jerusalem.
(Photograph by Yoram Lehmann)

The Gaza Strip

The military commanders in the Gaza Strip have usually avoided closing down the entire educational system. Nevertheless, many schools have been shut down for various periods, usually following clashes with the security forces in the area. Numerous curfew days in the Gaza Strip have also contributed to loss of school days. UNRWA personnel in the Gaza Strip have estimated that during the first 4 months of the 1988/89 school year, an average of 29% of UNRWA schools were closed on any given day.

The 1990/91 school year in the Gaza Strip opened on September 4, 1990. On this day, elementary schools were opened. Preparatory schools opened on the 20th and high schools opened only on October 22, over seven weeks late. The entire school system was closed for two days, on November 14-15. Studies were resumed in the entire system on November 17.

During the Gulf War, the education system was closed, and when the war ended, schools were gradually reopened, parallel to the openings in the West Bank.

According to data of the UNRWA Educational Division, between September 1990 and March 1991, 48.2% of the school days in the Gaza Strip were lost. Of these, 67.2% were lost due to closure orders issued by the authorities, 14.3% as a result of strikes, 14.4% due to curfew, and the remainder due to individual closings or strikes.

In the Gaza Strip as well, no general curfews have been declared, and no system-wide closure orders have been issued since March 1991. Nevertheless, the school year was extended by 10 days only, until June 10, 1991.

The 1991/92 school year opened gradually, between September 1 and September 12.

C. Closure of Institutions of Higher Learning

Between February 1988 and May 1990, all the institutions of higher learning in the territories were closed by military injunctions.

In mid-May 1990, Yitzhak Shamir, in his capacity as Minister of Defence, ordered the beginning of a process of opening the institutions of higher learning in the territories. Notification of the intent to reopen gradually the institutions of higher learning was sent to the heads of

these institutions by Shmuel Goren, the Coordinator of Activities in the territories, on May 14, 1990.

By July 21, 1990, all sixteen colleges in the West Bank had been opened. However, the process of gradually opening the universities is proceeding very slowly. Two campuses of the al-Quds University were opened – al-Bireh in June and Abu-Dis in July 1990 – and Bethlehem University was opened on October 2, 1990. On April 29, 1991, the Civil Administration announced to the heads of the Islamic University in Hebron that they could open the University.

In August 1991, the Islamic University in Gaza and a-Najah University in Nablus were granted permission to reopen their gates. The Islamic University opened on October 15, 1991 and a-Najah on October 26, 1991. In contrast, the closure order for Beir Zeit University was renewed for three additional months on August 31, 1991. Beir Zeit University has been continuously closed for almost four years. Collective closure orders (for school closings) also include the universities and colleges.

LIMITATIONS ON FREEDOM OF EXPRESSION AND FREEDOM OF INFORMATION

The freedom of expression and the public's right to obtain information are basic human rights, and among the foundations of every democratic government. Article 19 of the Universal Declaration of Human Rights, which was adopted by the United Nations in 1948, stipulates that:

Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The denial of freedom of expression and information in the territories takes the form of censorship on newspapers, books, and artistic works, various limitations on newspaper coverage, and physical harm inflicted upon journalists.

A. Censorship of the Press

The vast majority of the press circulated in the territories is published in East Jerusalem, and is therefore subject to Israeli law. At present, four dailies are published in East Jerusalem (al-Quds, a-Nahar, a-Sha'b. and al-Fajr), along with two political weeklies (al-Bayader a-Siyassi, and a-Tali'a) and several other weeklies and monthlies.

The military censor operates under Part VIII of the Defence (Emergency) Regulations, 1945, which gives the censor the right to prohibit the publication of any matter, "the publishing of which, in his opinion, would be, or be likely to be or become, prejudicial to the defence of Palestine or to the public safety or to public order" (Article 87).

Aside from the military censor, the District Commissioner of the Interior Ministry is also entitled to grant or deny a newspaper permit as well as close any newspaper, without having to give reason, under the Press Ordinance of 1933 and a corresponding article in the Emergency Regulations.

The sweeping powers of military censorship, regarding the scope of its application (as delineated in the vague phrase "prejudicial to public safety or to public order"), and regarding its powers of punishment, are rarely invoked in the case of the Hebrew press.

Every evening, newspapers must submit to the military censor two copies of "all material pertaining to the security of the state, public safety and public order in Israel or in the Judea, Samaria, and Gaza regions" slated to appear in the next day's edition of the paper.⁹³ The censor is authorized to approve the reports/articles/caricatures, to ban them completely or in part, or to hold them for further consideration. According to the Emergency Regulations (Article 98), newspapers are forbidden to publish material which has been banned by the censor, or to state in any manner that part of the report was altered or banned by the censor. The opinion of the censor is binding, and the censor is not obliged to substantiate his or her decisions.

In practice, most of the papers in Israel are freed from the obligation of submitting material to the military censor because of a voluntary agreement between the Editors' Committee of the Hebrew press and the electronic media on the one hand, and the military censor and the IDF on the other. This is known as the "Editors' Committee agreement;" the East Jerusalem press and foreign journalists are not parties to it. The agreement significantly limits the powers of the censor, which are then only applied with regard to classified security information.

So while Israeli papers only have to submit material on specific subjects to the censor, the East Jerusalem newspapers must present material on a much wider range of subjects for inspection. Indeed, under the terms of the Emergency Regulations, there is little material that falls outside the realm of the military censor's powers.

The discrimination against East Jerusalem papers, and particularly, the terms of the "Editors' Committee agreement," have received sharp criticism from jurists and journalists alike. Jurist Dr. Ze'ev Segal of Tel Aviv University, for example, believes that the "Editors' Committee agreement" is "not in keeping with Israel's democratic principles," because it limits the public's right to freedom of information, and discriminates against those who are not a party to it.⁹⁴

In September 1989, the Defence and Foreign Affairs Committee of the Knesset appointed a commission, headed by MK Yossi Sarid, to examine the censorship of the press. Members of the commission included MK Shlomo Hillel, MK Shevah Weiss, MK Uzi Landau and MK Yehoshua Sagi. The commission's recommendations were presented at the end of May 1990.

The recommendations, if adopted, would greatly improve the newspapers' position vis-a-vis censorship, and by law, this improvement would also apply to the East Jerusalem papers.

The Minister of Defence declared that he would adopt some of the recommendations⁹⁵ but the Editors' Committee voiced reservations⁹⁶ and in practice, the recommendations will be implemented only partially, if at all.

The conclusions which have special significance for the East Jerusalem press are that:

1. The arrangement would apply to all the media in Israel, and not just to media which are represented in the Editors' Committee.
2. Decisions of the censorship board would be open to appeal before a judge or a person of appropriate legal standing, rather than the IDF Chief of Staff as has been the practice so far. Thus the final decision would pass from military hands to the hands of a civilian source with legal authority.
3. All papers would be allowed to quote freely any material that had been already published in other papers in the country, unless the censor was of the opinion that the publication of the material would almost certainly be detrimental to state security.
4. The Interior Minister or the censor would not be able to order the closure of a paper which is not a party to the agreement, without giving time for legal recourse.
5. The list of topics subject to censorship would be significantly reduced to those that are clearly security-related, and the punishments for those violating censorship would be made more severe.

In a High Court of Justice ruling on press censorship,⁹⁷ the High Court stipulated that the military censor is authorized to prevent the publication of material only if there exists "near certainty" that security interests will be harmed, according to the test of near certainty set by Justice Shimon Agranat in a decision on the closure of the **Kol Ha'Am** newspaper.⁹⁸

A **B'Tselem** study on the subject showed that at least where the East Jerusalem press is concerned, the military censor is very far from adopting the limited approach recommended by the High Court of Justice.⁹⁹ In the course of researching the study, **B'Tselem** staff examined all the material submitted to the censor from two Palestinian papers in East Jerusalem over given periods, chosen at random. Following are the names of the papers and the periods for which they were reviewed.

• **A-Sha'b**, a daily. Material examined was submitted to the censor during the second week in January 1990 (January 7-13, 1990, inclusive).

• **Al-Bayader a-Siyassi**, a weekly. Material examined was from the four editions that appeared in January 1990 (on January 7, 13, 20 and 27).

A-Sha'b submitted a total of 357 items (reports, articles, pictures, etc.) to the censor during the stated period. Of these, 242 items were approved in their entirety (67.8%), 29 items were partly banned (8.1%), and 86 items were banned in their entirety (24.1%).

Al-Bayader a-Siyassi submitted 264 items to the censor in January, of which 151 (57.2%) were approved for publication, 43 (16.3%) were partly banned, and 70 (26.5%) were banned in their entirety.

The censor therefore banned, either in part or in whole, 36.7%, or more than a third of the items submitted by the two publications together.

In September 1991, the **B'Tselem** staff again examined the material submitted by the two papers to the censor:

• **A-Sha'b**, September 1-7, 1991.

• **Al-Bayader a-Siyassi**, material from the four editions which appeared during this month (on September 6, 13, 20, and 27).

During the period studied in September 1991, **a-Sha'b** submitted 151 items to the censor. Of these 120 were approved for publication in their entirety (79.5%), 15 items were rejected in part (9.9%), and 16 items were rejected entirely (10.6%).

Al-Bayader a-Siyassi submitted 37 items to the censor in September 1991, of which 18 were approved for publication (48.7%), 6 were approved in part (16.2%), and 13 were rejected in their entirety (35.1%). In the two papers together, the censor rejected (partially or entirely), 26.6% of the material submitted. The following data refer to the two papers together, and compare the two periods.

In dozens of cases, the censor banned reports which had been translated, word for word, from the Hebrew press – items whose content was purely political, including statements made by ministers and other Israeli figures; articles dealing with the reports of human rights organizations; and reports which were approved for publication in other East Jerusalem papers. There is still a wide discrepancy between the behavior of the military censor inside the Green Line, and methods of operation in East Jerusalem.

In April 1991, the censor rejected an article by Radi Jara'i, editor of **al-Fajr**, entitled: "Choosing between War and Peace," which called for

Israeli-Palestinian negotiations.¹⁰⁰

In September 1991, an article submitted to the censor by the paper **a-Tali'a**, regarding a pamphlet on torture from the series "Know Your Rights," produced by the human rights organization **al-Haq**, was rejected. Similar items, published in other East Jerusalem newspapers, were not rejected.

Censorship according to content of items

Main subject of items	January 1990			September 1991			Change in Rate of Rejection (%)
	Total Submitted	Number Rejected	Rate of Rejection (%)	Total Submitted	Number Rejected	Rate of Rejection (%)	
Intifada – incidents	334	150	44.9	122	38	31.1	-13.8
Intifada – political references*	57	37	64.9	16	8	50.0	-14.9
PLO	27	14	51.9	3	1	33.3	-18.6
Israel-Arab relations and the political process	73	13	17.8	15	1	6.7	-11.1
Israel – internal issues	26	7	11.3	11	0	0.0	-11.3
Territories - not related to the Intifada	38	4	10.5	14	1	7.1	-3.4
Foreign issues	24	3	2.5	6	0	0.0	-2.5
Other	6	–	0.0	1	1	100.0	+100.0
Total	621	228	36.7	188	50	26.6	-10.1

* General references to the Intifada and its ramifications – without specifically mentioning the incidents.

Censorship according to type of item

	January 1990			September 1991			Change in Rate of Rejection (%)
	Total Submitted	Number Rejected*	Rate of Rejection (%)	Total Submitted	Number Rejected*	Rate of Rejection (%)	
News	337	127	37.7	150	33	22.0	-15.7
Articles	136	49	36.0	20	10	50.0	+14.0
Pictures	47	32	68.1	8	6	75.0	+6.9
Death announcements	30	3	10.0	10	1	10.0	=
Caricatures	4	-	0.0	-	-	-	-
Others (interviews, announcements, puzzles)	27	17	63.0	-	-	-	-
Total	621	228	36.7	188	50	26.6	-10.1

* Full or partial censorship.

On September 2, 1991, **a-Sha'b** submitted an article regarding a "martyr." The censor rejected the expression and wrote under it "fatality." The following day, on September 3, 1991, **a-Sha'b** again submitted an article on a "martyr" and this time it was approved (See following page).

A comparison of the data reveals two prominent trends:

- a. A drastic decrease in the amount of material submitted to the censor. According to newspaper workers, this stems from a greater mutual understanding between the censor and newspaper editors, but also from "self censorship" of editors, who have learned to recognize the general tendency of the censor.
- b. A decline in the amount of material banned by approximately one third. This can be attributed to the change in the censor's approach, perhaps due to the influence of the Sarid Commission recommendations.

This notwithstanding, the censor continues to forbid articles that have been translated, word for word, from the Israeli press.

+ قتل +

الاستشهاديات شباب من
مدينة نابلس

+ قتل +

شاهينس - الخديب «الشعب»
الخاص «استشهادي» في حوال
الساعة السابعة والثلاثين، من
21:11 الماضية الشاب رائد سميح
قرارة «36 سنة» اثر اصابته بعبارة
تاري في الظهر ~~خلال مواجهات مع~~
~~الجهيش شهدتها منطقة راس~~
العين بنابلس.

بسم الله الرحمن الرحيم

«ولا تحسبن الذين قتلوا في سبيل الله أمواتا بل احياء عند ربهم
يرزقون».

صلى الله العظيم

+ قتل +

نعني **شهيدي**

نابلس - آل قرارة واقرباؤهم وانسابؤهم في الوطن والخارج ينعون
بقلوب مومنة بلغضاء الله وقدره ابذهم واين نابلس البار ~~بشهادته~~

+ قتل + رائد سميح قرارة

الذي استشهد الليلة الماضية عن عمر يناهز السادسة وعشرون عاما
فجسها في طاعة الله وخدمة وطنه وقد شجع جثمانه الطاهر الى مثواه
الاخير في المقبرة الغربية تخمد الله ~~بشهادته~~ بواسع رحمته واسكنه
فسيح جناته مع الشهداء والابرار والشهداء وحسن اولئك رفيقا.

انا لله وانا اليه راجعون

تلهم التعازي للرجال في منزل والد ~~الشهيدي~~ الكائن في راس
العين مقابل الحاووز وللتساء في نفس المنطقة.

« الشعب »
رقابسة
التاريخ
الرقم

B. Limitations on Media Coverage of the Territories

In more than a few cases, members of the security forces have prevented, or tried to prevent Israeli, Palestinian and foreign journalists from reaching certain locations in the territories, from photographing events, or from reporting them.

The most widely employed means of preventing media coverage of events in the territories was to declare an area a "closed military zone." In the past two years, military orders declaring closed areas have been in much more frequent use.

In many instances, soldiers have used blank forms filled out on the spot, prohibiting entry into a closed military area. Journalists and others whom the IDF desired to keep out were thus selectively prevented from entering the area, while Jewish and Arab residents entered the zones without interference.

In some of these cases, members of the security forces have used excessive force; they have beaten journalists and photographers and caused damage to equipment. In other cases, no violence was used but equipment was confiscated.

At the beginning of the Gulf War, the West Bank and Gaza Strip were closed to journalists, and reopened only three months later.

Many Palestinian journalists have been put under administrative detention during the course of the Intifada. In most cases, security forces have claimed that the detainees were not arrested in connection with their work as journalists. These detainees were not put on trial or convicted, and therefore, **B'Tselem** views them as journalists whose work has been stopped. **B'Tselem** has a list of more than twenty Palestinian journalists who have been held in administrative detention, for periods of five months to a year, over the past two years.

Journalists who are released from administrative detention, like the majority of administrative detainees who are freed, receive green identity cards which prevent them from leaving the territories to enter Israeli territory, and from moving between the West Bank and the Gaza Strip. They are in this way also denied access to news bureaus, all of which are located in East Jerusalem.

In the first two months of 1991, the security authorities closed seven press offices in the territories, six in the West Bank, and one in the Gaza Strip. In all of the cases the offices were closed by an administrative order from the military commander of the area. Four of the owners of

the offices were also put in administrative detention. On February 27, 1991, Zehava Gal'on, then-director of **B'Tselem**, expressed her concern to the Minister of Defence, regarding the restriction of freedom of expression in the territories, as evidenced in these measures.

The letter stated, *inter alia*:

It is clear to us that a person does not acquire immunity to legal measures if he breaks the law, simply because he is a journalist. And yet the Israeli authorities essentially operate through administrative channels, and not legal ones, regarding press offices and journalists. This raises the suspicion that a policy of limiting the freedom of expression of Palestinian residents in the territories, whose motives are in fact not security-related, is being undertaken.

We call upon you to reconsider the steps taken by the security authorities on this matter. In our opinion, freedom of the press should not be limited, and journalists should not be arrested unless there is clear, legally tenable proof, that they constitute a security risk.¹⁰¹

On August 7, 1991, the head of the Defence Minister's Office, Mr. Haim Yisraeli, responded that:

The reasons for the Defence Ministry's policy are purely security-related, and his intention is to ensure order and security in the territories, as required by international law.

In his response, Yisraeli presented two examples of press offices which were closed for being connected, according to him, with terrorist organizations.¹⁰²

The main charge raised by Gal'on in her letter remained unanswered: press offices are closed by administrative orders, and not by judicial process. The stated reasons, such as the use of the offices to serve the needs of terror organizations, remain within the realm of unsubstantiated charges, the basis of which "cannot be revealed," and the owners of the offices, in the absence of detailed charges and legal process, cannot defend themselves.

Taher Shreitah, a journalist residing in Gaza, works for foreign press organizations, including the BBC, Reuters, and others. He was arrested on January 28, 1991. In the court hearing on extending his detention, on February 18, 1991, he was accused by the Military Prosecutor, Lieutenant Oded Savorai, of abetting an enemy organization by translating leaflets of the Hamas movement into English and giving them to the Reuters news agency. Shreitah was also accused of

possessing a facsimile machine without a license, in contradiction to an order by the Egyptian Military Governor of 1948. According to Shreitah, during his entire 11-day interrogation he was kept in a miniscule lockup, some of the time in chains, and he was denied food for four days.¹⁰³

Shreitah's arrest and the reasons for his detention received wide coverage in the Western press. On March 7, 1991, one and a half months after his arrest, Shreitah was released on an NIS 10,000 bail, and on August 14, 1991, charges were brought against him in the Gaza Military Court. To date, the court has not convened regarding his matter.

Abuse of journalists by security force personnel

On February 6, 1990, Taher Shreitah, Gaza correspondent for Reuters News Agency and CBS in the Gaza Strip, was beaten by soldiers, and his camera was broken while he was photographing soldiers chasing a 12-year-old stonethrower.

On March 22, 1990, Havakuk Levinson, a Reuters photographer, was attacked by IDF soldiers while trying to photograph an incident involving soldiers near Ramallah. Two journalists who chanced upon the site and tried to extract him, were pushed away amid cries of "We must kill the journalists before we kill the Arabs." In June 1990, charges were pressed against the eight soldiers who attacked Levinson. Seven of them were convicted in the trial, and the eighth was acquitted for lack of evidence.

On April 20, 1990, Gaza journalists Qasem al-Qafarnah, a correspondent for WTN Network, and Saher Abu al-Ghun, NBC correspondent, as well as al-Ghun's two aides, Ahmad Baghdadi and 'Ala Tahrawi, were attacked in the Nusseirat refugee camp. They were beaten and dragged along the road, before being arrested for interrogation. The three were released after their cameras, film, and telephone paging devices had been confiscated.

On June 7, 1990, Musa a-Sha'er, a WTN network photographer, was arrested while shooting a confrontation between the IDF and Bethlehem residents. He was released after a few hours.

On July 7, 1990, Karen Lagerquist, a French News Agency (Agence France-Presse) photographer, was attacked and beaten by a policeman wearing civilian clothes, when she refused to give him her film after photographing him chasing a youth in East Jerusalem.

On December 3, 1990, Stuart Young, a British journalist, was attacked in the Old City of Jerusalem, by a border policeman, who caused him

grave injuries. The policeman was brought to trial and convicted on May 9, 1991, of causing grave injury, and soliciting a witness's perjury, and was sentenced to nine months in prison and 18 months suspended sentence, to be activated if a crime is committed within three years.

On April 12, 1991, Shlomo Franko, a photographer for ABC, was attacked while attempting to photograph the release of a Palestinian prisoner in Gaza.

Closure of newspapers and press offices

The newspaper **Sawt al-Haq w'al-Hurriyah**, published in Umm al-Fahem by the Islamic Movement in Israel and distributed in the territories, was ordered closed by the Minister of the Interior on July 8, 1990, for three months, on the grounds that it was a source of incitement.

The Gaza newspaper office of Muhammad al-Mashwaki was ordered closed by the OC Southern Command on August 14, 1990.

The office of Gaza journalist Saher Abu al-Ghun, who works for, among others, the French News Agency and NBC Network, was closed by the authorities for using a facsimile machine (forbidden in the Gaza Strip).

The **al-Muassasah al-'Ilmiyyah** press office was closed for a year, beginning on February 4 of this year. Its director, Hussein al-Jamal Nasr was arrested.

The **Khittin** press office in Jenin, which works with the newspaper **a-Sha'b** was closed for two years beginning on February 2, 1991. The director, Naif Sawittat, was arrested.

The **a-Shuruq** press office in Qalqiliyah, which works with **a-Sha'b**, was closed for two years, beginning February 19, 1991. The director, Rafiq Yunis Mara'bah, was arrested.

The **al-Quds** press office in Nablus, which works with **a-Sha'b**, was closed for two years on February 16, 1991. The director, Muhammad 'Amira, was arrested.

The **al-'Anbaa** press office in Bethlehem was closed for two years on February 20, 1991.

The **al-Iman** press office in Hebron was closed for two years in February 1991. The director, Hamed al-Adhumi, was arrested.

The **al-Amal** press office in Hebron, directed by 'Abd al-Rahman Abu Arfeh, was closed for two years.

C. Censorship of Books

The banning of books for distribution and reading in the territories is carried out according to Civil Administration orders, and under the terms of the Defence (Emergency) Regulations of 1945. According to articles 87-88 of the regulations, the military censor is authorized to ban books:

. . . if they contain, in the opinion of the censor, contents which could be prejudicial to state security, public safety, and public order, in the State of Israel and/or in areas of the civil administration.

Titles of banned books are struck off the import lists of book traders. From time to time, orders are issued which include lists of books that have been banned.

According to the IDF Spokesperson, approximately 20,000 books in Arabic are imported to Israel every year. The list of books forbidden for distribution or reading in the territories is composed of a collection of orders issued over the years since the Israeli occupation of the territories in 1967. **B'Tselem** has gathered the names of some 700 books which have been banned over the years by the censor. Among them, for example, is Ezer Weizman's "The War for Peace" and journalist Danny Rubinstein's "Gush Emunim, the True Face of Zionism." The IDF Spokesperson claimed, in response to a query from **B'Tselem**, that some of the books were banned "because of things added by the translator including harmful and incitive material, and not because of the contents of the book itself." In certain cases, just the foreword has been banned, and not the entire work.¹⁰⁴ Thus, for example, distribution of the introduction to Menachem Begin's "The Revolt" is forbidden.

By the end of 1989, according to information given to **B'Tselem** by the Defence Ministry, 585 books were included in the list of books banned from distribution in the territories, including 350 which had been banned already in 1985, and 235 which were banned from 1986 onwards.

In the course of 1990, the circulation of 21 additional books was prohibited in the territories. No book banning orders were issued in 1991.

D. Restrictions on Palestinian Art in the Territories

During the Intifada, measures to limit and reduce the possibilities for artistic expression in the territories have been rapidly stepped up. These measures were first implemented many years before the outbreak of the Intifada.

Palestinian artists who reside in the territories are severely limited in all areas of their creativity, ranging from the subject matter which they are permitted to portray and places in which they are allowed to exhibit their work, to, in some cases, restrictions upon the artists' freedom of movement, by detention or prevention of travel abroad.

Restrictions on organizing

The Palestinian Artists' Union was established in 1974. Its members submitted a request for a license or permit to operate as a union. The request was rejected. In 1978 a second request was submitted, which has not been answered to this day. Consequently, the Union has since been operating without a license.

Restrictions on artistic freedom

Article 6 of the "Order Prohibiting Activities of Incitement and Hostile Propaganda (West Bank region) (No. 101) – 1967," and of the parallel order (No. 37) which applies to the Gaza Strip, states under the heading "political material":

No publication, notice, leaflet, picture, pamphlet, or other document which contains material of political significance shall be printed or published in the area, unless a license has been previously obtained from the military commander of the place in which the printing or publication is planned to take place.

The application of the phrase "political significance" in the section is extremely broad, and it is understood that every artistic creation which touches upon the Palestinian issue, even indirectly, must be submitted for authorization by the military commander.¹⁰⁵

The need to present works of art for inspection by a military commander, and the fear of what steps may be taken against artists whose work does not meet approval, naturally places a burden upon the artistic freedom of Palestinian artists.

In East Jerusalem as well, where Israeli law applies, Palestinian

exhibitions are not always sympathetically received by law enforcers. In the words of Suleiman Mansur, Chairman of the Palestinian Artists' Union:

Sometimes the police and GSS personnel arrive before exhibitions are opened in order to examine the works, and more than once they have ordered artists or management to remove some of the works which they define as "incitive." Nevertheless, in East Jerusalem no works of art whatsoever have been confiscated.¹⁰⁶

Restrictions on exhibiting works of art

The only art gallery that was functioning in the territories, "Gallery 78" in Ramallah, was closed in 1981 by order of the security authorities.

Until the beginning of the 1980s Palestinian artists frequently displayed exhibitions in town halls. When the mayors were replaced by army officers this practice ceased. As a result, the university campuses have become the main (virtually only) exhibition sites for Palestinian artists.

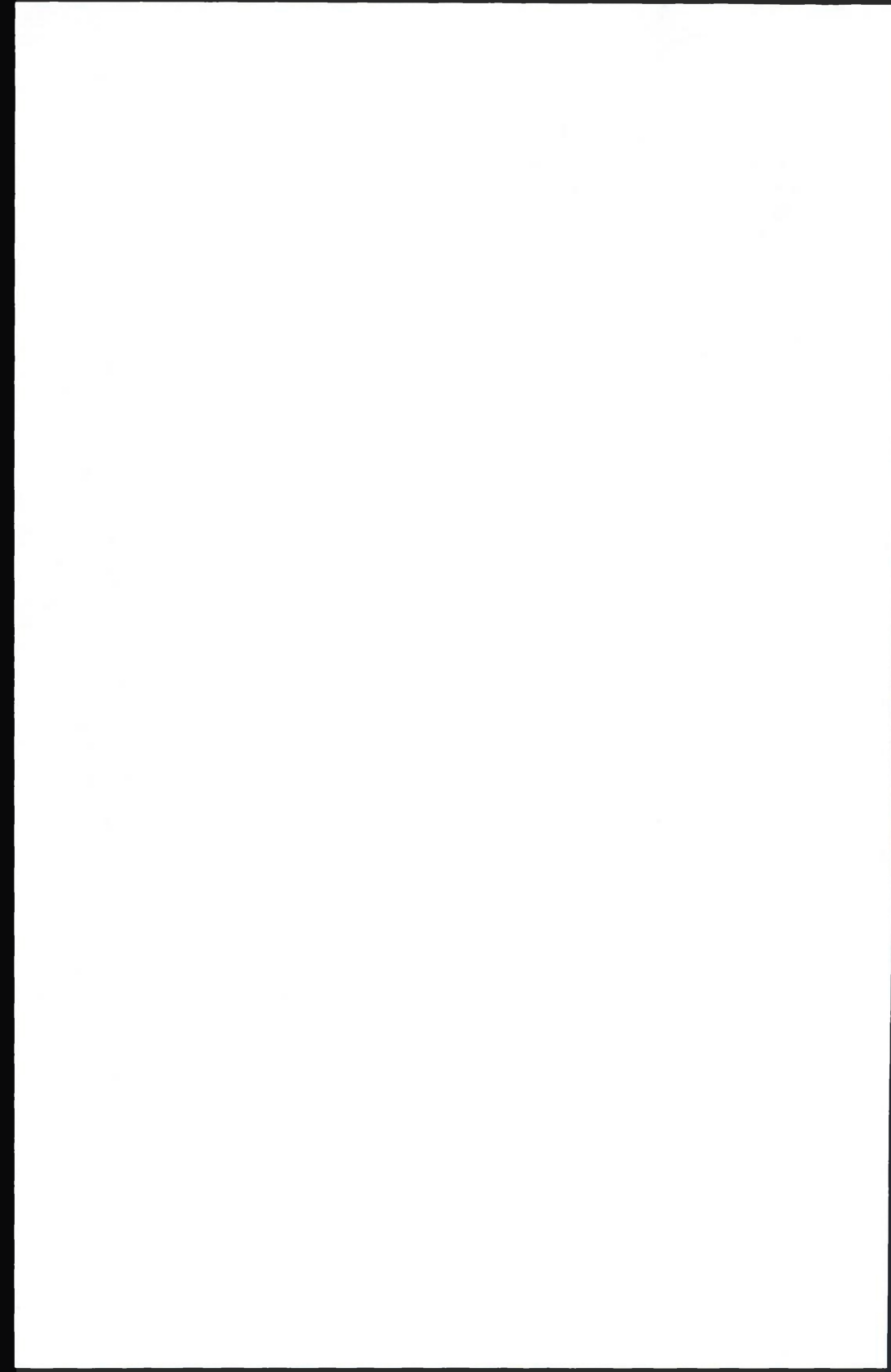
At the beginning of 1988 the military governors ordered the closure of all universities in the occupied territories (two of them were reopened in mid-1990). Although some of the universities in the territories have recently been reopened, art exhibitions still have not been held there, and they are concentrated, instead, primarily in the "al-Hakawati" and "al-Qasbah" theaters, the latter of which was founded this year, and, on rare occasions, in galleries inside Israel, and schools which have large halls, such as the Ramallah Friends School. Even so, the number of exhibitions has decreased significantly as compared to the period before the Intifada.

Sami al-Bartawi, who is in charge of programs at "al-Hakawati," told **B'Tselem** that since 1989, the theater has not been closed, and that the government had not interfered in the content of the plays or the exhibits displayed there.

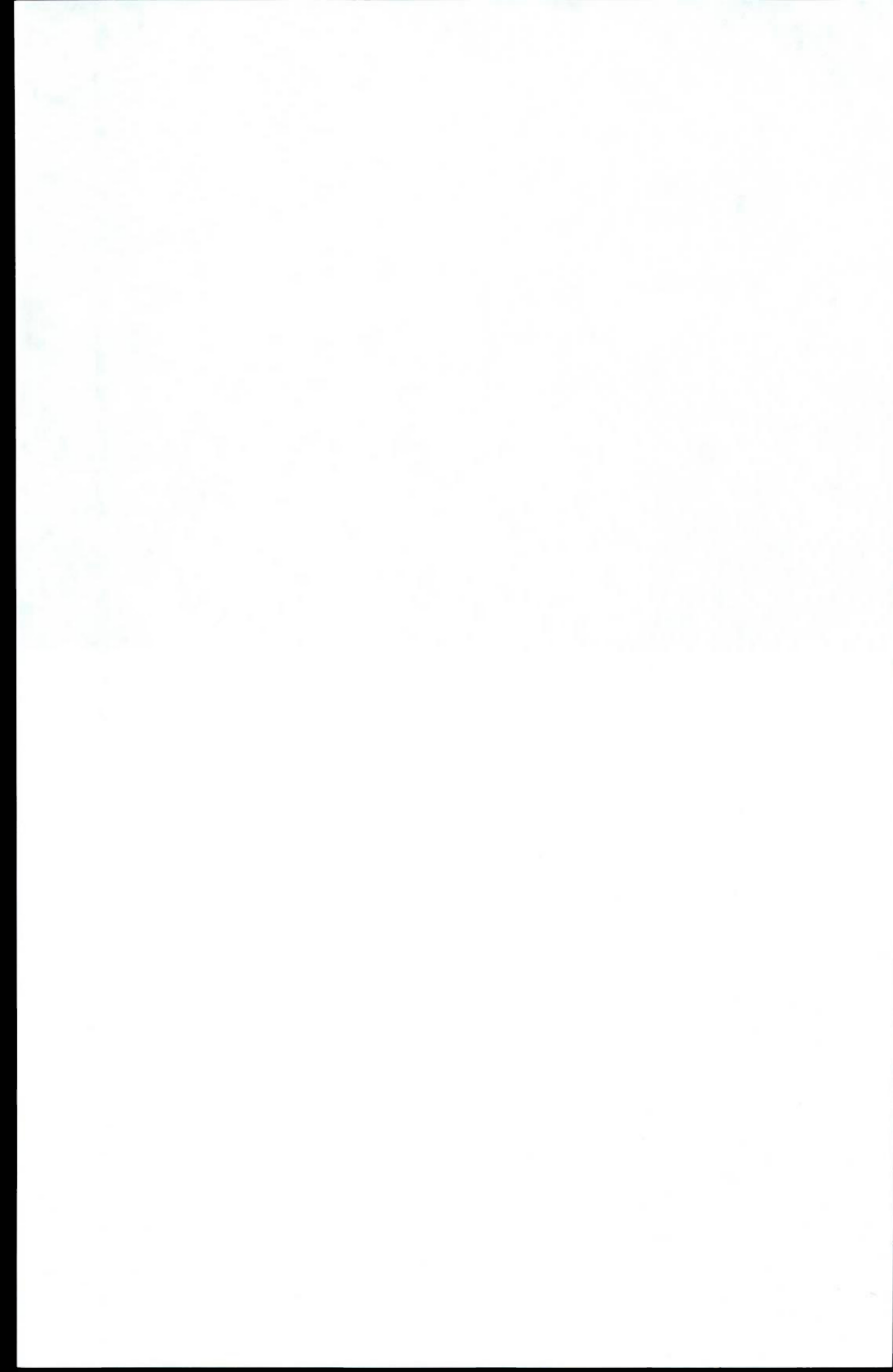
Despite this, theatergoers and staff have been harassed a number of times by border police personnel. On April 28, 1991, while the theater was hosting an activity by the Union of Palestinian Women's Committees for the first of May, border police personnel came and demanded that the place be closed. They did not possess a closing order, and when Attorney Jonathan Kuttab confronted them with this fact, they withdrew their request. However, they conducted body searches on a number of young people who had come to participate in the event.

On June 24, 1991, at 5:00 p.m., border police personnel entered the

theater while a program marking International Day of the Child was taking place. Border police personnel removed Mr. Bartawi and an additional person from the theater, took their identity cards, and charged them with distributing pamphlets. The two were released upon the intervention of Attorney Jonathan Kuttab.



**DISCRIMINATORY
LAW ENFORCEMENT**



UNEQUAL TREATMENT OF JEWS AND ARABS

The Universal Declaration on Human Rights (Article 7) states the principle of equality before the law as follows:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Clashes between Palestinian residents and Jews in the territories occur daily. Palestinians erect road blocks made of stones to disrupt traffic, and throw stones and Molotov cocktails at Israeli cars travelling on roads in the West Bank and Gaza. Israeli settlers go out on "revenge actions" in Arab villages and towns. They break windows, shoot at water heaters, damage motor vehicles, and uproot trees.

Since the beginning of the Intifada, there have been many such clashes which have ended in property damage, human injury, and even death.

A review of the actions taken by the authorities following these incidents discloses a picture of blatant discrimination between Jews and Arabs. This discrimination is especially pronounced in fatal incidents.

When a Palestinian inflicts injury on a Jew, a thorough investigation is carried out. When the guilty party is brought to trial he is severely punished. In all of the instances in which Israeli citizens were killed by Palestinians, the convicted parties received life sentences, and their family's homes were demolished. In contrast, when a Jew inflicts injury on a Palestinian, the police do not rush to investigate, the investigations continue for a long time, most of them conclude without bringing anyone to trial, and when charges are brought, the trial proceeds very slowly.

In 14 of the instances of killings of Palestinians by Israeli civilians, the file was closed without charges being brought, and in only three of these has the trial been concluded. In these three cases the suspects were convicted. Yisrael Ze'ev was convicted of manslaughter and sentenced to three years' imprisonment. Rabbi Moshe Levinger was convicted of causing death by negligence, and was sentenced to five months' imprisonment in a plea-bargain. The third, Pinhas Wallerstein, was convicted in a plea-bargain of causing death by negligence, and was sentenced to four months' service, a twelve-month suspended sentence to be activated if a crime is committed within two months, and a fine of NIS 8,000.



Settlers in Hebron. (Photograph by Yaron Kaminski)

Data

A. Sentences pronounced on Palestinians convicted of killing Israeli citizens in the territories

Since the outbreak of the Intifada, **17** Israeli civilians have been killed in the territories by Palestinians: **5** of them in the first year, until December 8, 1988, **4** in the second year, **2** in the third year, and **6** in the fourth year (until October 31, 1991).

1. **Ziva Goldovsky**, 17 years old, was killed on August 15, 1988, near Ramallah. Khaled Isma'il a-Shini, resident of al-Bireh, was found guilty of murder in the Ramallah Military Court on September 7, 1989, and sentenced to life imprisonment.

2-5. **Rachel Weiss**, 27 years old, was killed on October 30, 1988, in Jericho, with her three children, **Natanel**, age three and a half, **Rafael**, age two and a half, and **Efraim**, age 10 (also killed in this attack was soldier **David Delorosa**, who died later from his wounds). Mahmud Abu Radhish, Ahmad Taqruri, and Jum'ah Uham, Jericho residents, were convicted of murder in the Ramallah military court on December 20, 1989, and all three were sentenced to life imprisonment. The houses of their families were destroyed by security forces on November 1, 1988.

6. **Ya'akov Parag**, 32 years old, was killed on December 13, 1988, in a field of the Har Bracha settlement, in the Nablus District (after Parag was murdered, his murderer took his weapon, killed an IDF soldier, and wounded another). Hamdan al-Najar, a Bruqin resident, was killed by security forces immediately following the murder. Security forces destroyed his family's house on December 14, 1988.

7. **Shim'on Edri**, 42 years old, was killed in January 1989, at Yakir Junction, near Ariel.

8. **Fredrich Stephen Rosenfeld**, 48 years old, was killed on June 18, 1989, 5 km. from the Cross-Samaria Highway. Fahim Ramadan, Mustafa 'Othman al-Haj, and Bilal Ibrahim Samarah, Bruqin residents, were convicted in the Nablus military court on June 16, 1991 of causing death. The first two were sentenced to life imprisonment, and the third to twenty years' imprisonment. Security forces destroyed their families' houses on June 20, 1989.

9. **Gideon Zaken**, 34 years old, died from his wounds on August 31, 1989 in Ramallah, after he was severely burned by a Molotov cocktail.

10-11. **Lior Tubul** and **Ronen Karamani**, both age 17, were killed on August 5, 1990, near Beit Hanina.

12. **Elhanan Atali**, age 26, was killed on February 27, 1991, on his way to the "Ateret Cohanim" Yeshiva in East Jerusalem. The murder suspects, Yusef Mussa Hales and Mazen Mustafa 'Alawi, were arrested in August 1991 and are being detained pending the end of proceedings.

13. **Ya'ir Mendelson**, 30 years old, was killed on March 26, 1991, near the village of 'Ein Qinya in the Ramallah District.

14. **Avi Ushar**, age 40, was killed on June 29, 1991, on Moshav Beka'ot in the Jordan Valley.

15. **Jamil Kuftan Hasson**, age 32, was killed on October 15, 1991, in the village of Zebuba in the Jenin District.

16-17. **Yitzhak Rofe**, age 40, and **Rachel Daruk**, age 35, were killed on October 28, 1991, near the Tapuach Junction.

B. Punishment of Israelis suspected of killing Palestinian residents of the territories¹⁰⁷

Since the outbreak of the Intifada, suspicion has been raised against Israeli civilians in **42** cases of Palestinians killed in the territories. In the first year, until December 8, 1988, **15** Palestinians were killed under such circumstances, in the second year - **11**, in the third year - **10**, and in the fourth year (until October 31, 1991) - **6**.

1. **Ghanem Hamed**, 17 years old, was killed on January 11, 1988, in the village of Beitin, Ramallah District. Pinhas Wallerstein, Head of the Benyamin Regional Council, was arrested as a suspect. His trial began on September 3, 1988, in the Jerusalem District Court, with Judge Hedaya presiding. The charge: manslaughter. The charge was changed to "causing death by negligence," and on August 19, 1991, he was sentenced to four months' service, twelve months' suspended sentence to be activated if a crime is committed within two months, and a fine of NIS 8,000.

2. **'Abd al-Baset Jum'ah**, 27 years old, was killed on February 7, 1988, in the village of Qadum, Nablus District. Yosef Parver and Shimon Kam, Kedumim residents, were apprehended. The file was closed by the Central District Attorney on grounds that "there is no criminal guilt."

3. **Kamel Darwish**, 23 years old, was killed on February 21, 1988, in Dir 'Ammar, Ramallah District. The case was closed for lack of evidence. In a response to a parliamentary interpellation submitted by MK Dedi Zucker, the Defence Minister, on June 11, 1991, said that Darwish was killed in an event in which 2 Israeli postal workers and two military escorts were involved. The investigation was unable to

determine who shot the bullet that caused Darwish's death, and in any case, according to the Minister, "Both the soldiers and postal workers were placed in a situation in which their lives were truly threatened."

4. **Rauda Najib Hassan**, 13 years old, was killed on February 28, 1988, in Baq'a a-Sharqiya, Ramallah District. A resident of Hermesh was suspected of the crime. The investigation file was transferred by the police to the Central Command Attorney's Office, which closed it "due to the impossibility of attributing the cause of death to civilian or military causes."

5-6. **Ra'ed Abu Muhammad Urda**, 17 years old, and **Ahmed Abu Hussein Barghuti**, 12 years old, were killed on February 27, 1988, in the village of 'Abud, Ramallah District. Nehemiah Schneider was charged with manslaughter. His trial is being heard in the Jerusalem District Court by Judge D. Cohen.

7. **Dr. Muhammad Hamida**, 41 years old, was killed on March 7, 1988, in the village of Mazra'a a-Sharqiya in the Ramallah District. Ya'akov Wasserman was suspected of the crime. The file was closed by the Jerusalem District Attorney, due to lack of evidence.

8. **Naja Hassan Hazraj**, 18 years old, was killed on March 8, 1988, by a bullet shot from an Israeli bus in the village of Turmus 'Aya, Ramallah District. No investigation was opened. In response to a parliamentary interpellation by MK Dedi Zucker, the Minister of Police said, on July 12, 1989, that: "The police have no knowledge of such a case."

9-10. **Mussa Saleh Mussa**, 20 years old, and **Hatem Ahmed al-Jaber**, 19 years old, were killed on April 6, 1988, in the village of Beita, Nablus District. The police have investigated and the file has been transferred to the Military Prosecutor. The investigation file, 636/89, opened by the Nablus police, is now being heard by a military court. The suspect: Romem Aldubi.

11. **'Abdallah 'Awad**, 28 years old, was killed on May 4, 1988, in the village of Turmus 'Aya, Ramallah District. Yisrael Ze'ev, resident of Shiloh, was found guilty on December 4, 1988, and sentenced to 3 years' imprisonment, 2 years' suspended sentence, and NIS 30,000 in compensation payments. On December 14, 1989, his appeal was rejected by the Supreme Court. Ze'ev was released in May, 1990, after serving two thirds of his prison term.

12. **Mustafa Halayka**, 20 years old, was killed on June 3, 1988, in the village of Sa'ir, Hebron District. In response to a parliamentary interpellation by MK Dedi Zucker, the Minister of Police said, on July 12, 1989, that: "The file was closed by the police as 'assailant unknown.' "

13. **Sa'id Muhammad al-Hayak**, 18 years old, was killed on June

12, 1988, in Jericho. Moti Sharon was suspected of the crime. The file was closed by the prosecutor for lack of evidence.

14. **Qa'id Adib Saleh**, 42 years old, was killed on September 30, 1988, in Hebron. Rabbi Moshe Levinger, a Hebron resident, was convicted (in a plea bargain) of causing death through negligence, and was sentenced, on May 1, 1990, to 5 months' imprisonment and seven months' suspended sentence. He served his term in the Eyal Prison and was released on August 14, 1990.

15. **Ahmad Hussein Bisharat**, age 21, was killed on November 7, 1988, on Moshav Masuah. A resident of Masuah was suspected of the crime. The State Attorney's Office announced that the police were unable to locate the file.

16. **'Adli Maher**, 14 years old, was killed on March 23, 1989, in the village of 'Osrin, Nablus District. A resident of Masuah, Ovadia Salome, was suspected of the crime. The file was investigated, transferred to the prosecutor, returned to the police with a request to complete the file, and then returned to the prosecutor, where it now awaits resolution.

17. **'Awad Fareh 'Amdu**, 24 years old, was killed on April 1, 1989, in Hebron. Gershon Bar Kochva, a resident of Hebron, was suspected of the crime. Investigation file 664/89 opened by the Hebron Police was closed by the Jerusalem District Attorney on December 17, 1989, due to lack of evidence.

18. **Nader D'aneh**, 16 years old, was killed on April 28, 1989, in Hebron. Haim Ben Lulu, resident of Kiryat Arba, was suspected of the crime. Investigation file 858/89, opened by the Hebron Police, has been in the Jerusalem District Attorney's Office since November 6, 1989, for review and resolution.

19. **'Omar Yusuf Abu-Jaber**, 42 years old, was killed on May 17, 1989, in Jenin. Menashe Yisrael was charged with manslaughter. His trial is being held in the Haifa District Court.

20. **Ibtisam 'Abd al-Rahman Buziya**, a 16 year old girl, was killed on May 29, 1989, in the village of Kifel Haress, Tulkarm District. Four suspects were indicted in this case: Gad Ben Zimra and Yehoshua Shapira, residents of Ma'aleh Levonah, and Yoel Alfred and Rafi Salomon of Yitzhar. The charges: manslaughter, assault and injury in aggravated circumstances, shooting in a residential area, arson, and damage to livestock. Their trial is being held in the Tel Aviv District Court. Following a plea-bargain with the prosecutor, the charges of manslaughter and assault in aggravated circumstances were dropped.

21. **'Aziz Hamis Yusuf 'Arar**, 20 years old, was killed on June 23,



Village of al-Janiyah, on the day after an attack by settlers.
(Photograph by Bassem 'Eid)

1989, in Qarawat Bani-Zeid, Ramallah District. Meir Berg, a resident of Pesagot, was suspected of the crime. The file was closed by the Jerusalem District Attorney on May 1, 1990, due to lack of evidence.

22. **Fayek Subhi Sweidan**, 19 years old, was killed on July 30, 1989, near Beit Hanun in the Gaza Strip. David Shtibi, a resident of Rafah Yam, was suspected of the crime. The file was closed by the Southern District Attorney due to lack of evidence.

23. **Nidal Miseq**, 20 years old, was killed on August 10, 1989, in Hebron. On September 10, 1989, the spokesperson for the Judea District Police told **B'Tselem** that no investigation was under way. In response to a parliamentary interpellation by MK Dedi Zucker, the Minister of Police said that the police had no record of this incident.

24. **Sami Mahmoud 'Atweh al-Sabah**, 18 years old, was killed on August 21, 1989, in the village of Tequ'a in the Bethlehem District. A suspect, resident of the Teko'a settlement, was arrested and released on bail. His weapon was taken for examination. In response to a parliamentary interpellation submitted by MK Dedi Zucker on July 16, 1990, the Minister of Police said that investigation file 2942/89, opened by the Bethlehem Police, was closed as "assailant unknown" on November 12, 1989. The police will resume investigation when new details or facts are brought to its attention.

25. **Mustafa Abu Safiye**, 17 years old, was killed on October 12, 1989, in Beit Sira, Ramallah District. The spokesperson for the Judea District Police told **B'Tselem** on October 31, 1989 that no investigation had been initiated and nobody was arrested. The legal advisor for the Judea and Samaria District told **B'Tselem** that the file had been closed because "the investigation did not reveal a suspect for the crime."

26. **'Issa Muhammad 'Ali Sabih**, 29 years old, was killed on October 24, 1989, on the Bethlehem/Jerusalem Road. The investigation file was closed as "assailant unknown."

27. **Barakat 'Adel Fakhuri**, 16 years old, was killed on December 10, 1989, near the Ibn Rushd school in Hebron. An autopsy was performed on December 18, 1989. Investigation file 3200/89, opened by the Hebron Police, is still under investigation.

28. **Na'im Sa'id Naufal**, 17 years old, was killed on December 10, 1989, in the Zeitun neighborhood in Gaza. Michael Moch was held suspect. The file was closed by the Southern District Attorney due to lack of evidence.

29. **Muhammad Jamil al-Kamel**, 13 years old, was wounded on August 7, 1989, in Bethlehem, and died of his wounds on December 22, 1989. Investigation file 2854/89, opened by the Bethlehem

Police, was closed as "assailant unknown."

30. **Mustafa Klab**, 49 years old, was killed on February 6, 1990, in Nablus. Yigal Sasson was charged with manslaughter. His trial is being held at the Tel Aviv District Court:

31. **Samih a-Sheikh**, 14 years old, was killed on May 13, 1990, in Qalqilyah, by the driver of an Israeli vehicle. No arrest was made.

32. **Naji Ibrahim Mussa Abu Saqallah**, 23 years old, was killed in May, 1990, near the Rafah garbage dump. A resident of Netivot was suspected of the crime.

33. **'Aziza Salem Jaber**, a 25 year old woman, was killed on August 6, 1990, near Kiryat Arba. Charges were pressed against two residents of Kiryat Arba, Nahshon Wallace (charged with murder and attempted murder) and Meir Kuzriel (charged with illegal possession of firearms). Their trials are being held at the Jerusalem District Court.

34. **Salim al-Khalidi**, 25 years old, was wounded on October 8, 1990, in East Jerusalem (the day of the Temple Mount incident) and died on October 25, 1990. The police recommended not to press charges against anyone.

35-36. **Muhammad al-Khatib**, 65 years old, and **Maryam Suleiman Bashir**, 60 years old, were killed on November 6, 1990, in Lubban a-Sharqiya, Nablus District. Ben Zion Gopshtein, David Axelrod and David Cohen, all "Kach" activists, and residents of the Tapuah settlement, were arrested on suspicion of homicide and released on bail. The bodies were transferred to Abu Kabir for autopsy. Benjamin Kahane, son of Meir Kahane, also a resident of Tapuah, and Ben Tsion Gopshtein, were summoned for interrogation. To date, no one has been indicted.

37. **Hamdallah Radi Khalil 'Alawna**, age 27, was killed on January 13, 1991, in 'Azmut in the Nablus District. On June 20, 1991, Pinhas Asayag, a resident of Elon Moreh, was arrested as a suspect. He confessed to the murder and reconstructed it. On September 12, 1991, the judges of the Tel Aviv District Court decided to cancel the legal proceedings and to close the criminal file, basing their decision on a medical opinion. Asayag was sent for psychiatric hospitalization.

38. **Salameh Musleh Jalal**, age 14, was killed on February 18, 1991, in Beit Sahur, in the Bethlehem District. A suspect, Boaz Moskovitz, resident of Teko'a, was arrested, confessed to the shooting, and was released.

39. **Jamil Duweikat**, age 50, disappeared on March 13, 1991, from the village of Beita, Nablus District, and his body was found on April 14, 1991, near Elon Moreh. Pinhas Asayag, a resident of Elon Moreh,

confessed to the murder and reconstructed it (see no. 37).

40. **'Omar Harb al-Sabr**, age 14, was killed on April 15, 1991, on the Bireh-Ramallah road. Yisrael Ben Ami, a suspect, was arrested and released on his own recognizance.

41. **Mahmud Muhammad al-Nawj'eh**, age 55, was killed on June 7, 1991, between Yatta and the Susya settlement in the Hebron District. Baruch Yalin, a resident of Susya, was arrested as a suspect. He was released on bail after 14 days' imprisonment.

42. **Iyyad Muhammad Zedafiyah**, age 16, was killed on June 16, 1991, in Nablus. No suspects have been arrested.

FAMILY SEPARATION AND REUNIFICATION

A. Background – Who are the People Whose Residence in the Territories is Defined as Illegal?

After the Six Day War, many Palestinian families found themselves split apart, with one part of the family residing within and the other outside the territories occupied during the war. Except for a very few cases, anyone who was outside of the territories on the day of the occupation, for whatever reason, was not permitted to return. In September 1967, a curfew was declared in the territories and a census was conducted. Those counted in this census were registered as residents, and all persons from the age of 16 and up were given identity cards. Younger children were recorded on their parents' identity cards. Only those persons who had identity cards or were registered on those of their parents were recognized as residents.

Many residents of the territories were thus ousted from their homes: people who had fled from the horrors of the war; people who were working or studying abroad; and many others who were abroad for a variety of reasons. In addition, there were residents who had been included in the census, but who later lost their right of residence. These were mainly individuals who went abroad to work or study, and stayed for a period longer than the various military orders permitted.

Over the past year, the number of people in this category has grown, following the return to the territories of many Palestinians who had been working in Kuwait. To these were added over the course of the years men and women from Arab countries who married residents of the territories.

In order to return to their homes, all such individuals must submit a request for family reunification. Such a request must also be submitted by residents of the territories who marry individuals not recognized as residents. There are many cases of the latter sort, since most of the residents have relatives outside the territories – many of whom were born in the territories – and in-family marriage is a widespread custom.

According to data from the Ministry of Defence, during 1989, 24% of the requests for reunification of West Bank families and 63% of the requests of families from the Gaza Strip were approved. In the first seven months of 1990, 41% of the requests from the West Bank and 71% of the requests from the Gaza Strip were approved.¹⁰⁸

The Civil Administration maintains, in an argument confirmed by the High Court of Justice, that reunification of families in the territories is a privilege and not a natural right.¹⁰⁹ Many family members whose requests are denied enter the territories on visitors' permits valid for a limited period, and when their permits expire, their stay becomes illegal and they can be deported.

The Israeli authorities have never claimed that there are security reasons for preventing family reunification, or alternatively, for causing hardships to women who are married to residents of the territories but are not themselves residents. The explanation usually given for Israeli policy in this matter is that there is a fear of the increase of the population in the territories.¹¹⁰

Therefore, in the West Bank and Gaza Strip, many thousands of Palestinians live "illegally." There are no official figures according to which the exact number can be determined. According to the estimates of Arab institutes in East Jerusalem, the number approaches approximately 120,000 persons, mostly women and children. These individuals have no identity cards and are deprived of rights.

Shortly before the beginning of the Intifada, the military government issued a new, particularly harsh order, according to which children would be registered as residents only if both parents were registered as residents, or if the mother was a resident of the area, but they would not be registered if their mother was not a resident. Previously, children whose fathers were residents of the territories (and whose mothers were not) were registered on their fathers' identity cards.¹¹¹ Many of the children born over the last four years have thus been added to the population of "illegal" residents.

B. Deportation of Illegal Residents

Between May and December, 1989, more than 200 people, most of them wives and children of residents of the territories, were deported from the territories for "illegal residency." These deportations, which separated wives from their husbands and children from their parents, were usually carried out in the middle of the night. A unit of soldiers would enter a village, gather all males between the ages of 16 and 60

in a single location, and order those who were to be deported to get ready immediately to leave their homes. According to data gathered by **B'Tselem**, 46% of those deported were women, 50% children, and 4% men. Approximately one tenth of the women deported were pregnant at the time of deportation, and many of the deported children were very small infants.

A long article on these deportations appeared on the front page of the **Washington Post** on January 30, 1990. In response to this article, a U.S. State Department spokeswoman said that she hoped Israel would demonstrate greater "sensitivity and flexibility" in granting residence permits to Palestinians in the territories. On January 31, 1990, a spokesman for the Israeli Ministry of Defence said that Defence Minister Yitzhak Rabin had decided, "for humanitarian reasons," to suspend "deportations of foreign persons" from the area until further clarifications were made.

On June 5, 1990, the High Court of Justice heard a petition submitted by the Association for Civil Rights in Israel and the National Council for the Child on behalf of 15 fathers and children from the West Bank whose family members had been deported to Jordan. In the petition, the military authorities were asked to explain why they would not approve the petitioners' requests for family reunification and give the applicants residence status in the territories, or alternatively, visitors' permits. The High Court of Justice rejected the petition following an announcement by the State Attorney's Office of a change in policy (HCJ 1979/90).

The State Attorney's Office announced that there was nothing preventing the petitioners from requesting permits to remain in the area as visitors, and that the policy would be to extend the permits from time to time and not to continue deporting other family members. The petitioners argued that this was unsatisfactory since as long as they were not given permanent status in the area, their future would be insecure and difficulties would arise that would prevent them from leading a normal life. The High Court of Justice, for the time being, chose to reject this argument of the petitioners as well, maintaining that first, "the success of the new policy and the ensuing developments, if there are any, must be tested in practice."

In denying the petition which was submitted to them, the justices of the High Court stated that the new policy must be put to the test of reality. At the same time, the justices emphasized that "the status of the petitioners one way or another cannot be left open indefinitely."

Today, more than one year after the ruling, it seems that the new policy has not succeeded in practice, and the status of the families is as

unclear as ever: a large number of women and children reside in the territories without permission. These families do not know what the future will bring, and live in constant fear of deportation.

No data have been given by the authorities on the exact number of women and children who were permitted to return. Field investigations indicate that most of the deportees of 1989 were permitted to return, but their status was not settled in the spirit of the High Court of Justice decision. The Court ruling stated that the Attorney General had announced that "visitors' permits can be [issued for periods of] one day to three months, and there is a tendency to extend their period of validity." An investigation of many families indicated that most of the women and children who returned were given visitors' permits for a period of only one month.¹¹²

In the High Court of Justice decision it was further stated that "it is to be hoped that the matter of fees will also be reconsidered in order to satisfy the needs of the petitioners." The fees have not changed: the cost of a visitor's permit is NIS 291. The cost of extending a permit (termed for unknown reasons "toll for bridge crossing") is NIS 162. The Palestinian families with whom we spoke complained to us that a month's permit can only be renewed twice (for a period from one to six months), and afterwards, those requesting permits are required to leave the territories for a period of three months. For this reason, and because of the fee, families prefer not to approach the authorities after their permit expires, and the women remain in the territories with their children, without permits and with no status.

According to Defence Minister Moshe Arens, all of the requests for extending visitors' permits submitted since the High Court hearing have been approved.¹¹³

Since August 1991, several dozen women married to residents of the West Bank have received notification from the Civil Administration to leave the territories with their children. An investigation by **B'Tselem** and the **Association for Civil Rights in Israel** revealed that these were not isolated incidents, but rather part of a policy of deporting everyone who resides "illegally" in the territories. The security authorities defend this trend, which stands in contradiction to the State's commitment to the High Court, by claiming that the arrangement with the court does not apply to women who married and began residing in the area after the hearing in June 1990.

"Hotline: Center for the Defence of the Individual," submitted a petition to the High Court of Justice on behalf of dozens of families who received instructions to leave the territories. The **Association for Civil Rights in Israel** renewed its petition from June 1990. To date, the petitions have not been heard in court.



The Allenby Bridge. (Photograph by Yoram Lehmann)

C. A Person's Right to Reside in the Same State with His/Her Spouse¹¹⁴

A person's right to found a family, and the right of married couples and their children to live together, is a fundamental right in every society. The Universal Declaration of Human Rights (1948) defines the family as 'the natural and fundamental group unit of society,' and states that the family is "entitled to protection by society and the State."¹¹⁵ This viewpoint is similarly well illustrated in Jewish tradition. In the book of Genesis it is written that "For this reason a man leaves his father and mother and clings to his wife, and the two become one flesh." (Genesis 2:24)

The conventions which deal with territory under belligerent occupation also emphasize the sacredness of family and the supreme importance of safeguarding its unity. Article 46 of the Hague Convention of 1907 states that "Family honour and rights . . . must be respected." According to Article 27 of the Fourth Geneva Convention (1949), residents of occupied territories "are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs."

The practical implication of deporting a woman and her children is the separation of children from their father. According to international law, a child may not be separated from his parents against his will.¹¹⁶

The right of a couple to live as a family, even when one spouse is not a naturalized citizen, is fulfilled in both theory and practice in most nations of the world, including countries with a strict immigration policy. The non-naturalized spouse is awarded citizenship or permanent residence status, either automatically, or upon fulfilling a number of procedural conditions. This is the situation in the United States, in most Western European countries, and in Israel as well. The Law of Return, which grants every Jew the right to immigrate to Israel, also applies to non-Jews who are the spouse, child, or grandchild of a Jew.¹¹⁷

D. Sample Cases

1. *The Qitani Family*

'Aidah Sami Yasin was born in a refugee camp in Lebanon. She has no citizenship. In the early 1980s, she married Dr. 'Abd al-Rahim Rasmi Qitani from the village of Nazlat 'Issa, Tulkarm District. She last received a visitor's permit in 1988, and since then she and the couple's three children (who are not registered on her husband's identity card) have been living in the area, without a permit.

On November 22, 1990, Dr. Qitani was summoned to the Civil Administration, where an officer known as Captain Morris told him that he must see to it that his wife leave the West Bank within one day, since she did not possess a visitor's permit. Dr. Qitani was told that if his wife did not leave, she would be forcibly deported, and their home would be damaged.

Dr. Qitani panicked and immediately sent his wife and three children to Jordan. As mentioned, the mother and three children are not citizens of any country, and as refugees, they could be deported from Jordan. At the same time, Dr. Qitani turned to Attorney Joshua Schoffman of the **Association for Civil Rights in Israel**. Attorney Schoffman reported the case to the Judea and Samaria Legal Advisor, and noted that this was in violation of the authorities' commitment as determined by the High Court of Justice. An order was given to the Civil Administration office in Tulkarm to cancel the deportation, but Dr. Qitani's wife and children were already in Jordan.

During the ensuing week, Dr. Qitani spent three days in the offices of the Civil Administration in Tulkarm in an attempt to obtain a visitor's permit for his wife and children. Finally, he was given an entry permit for his wife and by his account, he was told that the permit was also valid for his three children. But when his wife and children reached the bridge on December 12, 1990, and requested entry, they were prevented from entering the West Bank, and Dr. Qitani was told that he needed separate entry permits for each one of his children.

On December 17, 1990, as a result of **B'Tselem's** intervention, Dr. Qitani was given an entry permit for his wife and children, and they returned home. The permit approved for them was valid until January 17, 1991. The family did not apply for a renewal.

In the beginning of August 1991, Dr. Qitani was again summoned to the Civil Administration offices in a-Til, where he was again told that his wife must leave the area within 24 hours.

The following day, August 6, 1991, his wife and children went to Jordan. Immediately after Dr. Qitani had accompanied them to the

bridge, he returned to the Civil Administration in a-Til, and requested a new entry permit for his wife. He was told that he would have to wait six months. Dr. Qitani explained that his wife had no citizenship and could be deported from Jordan as well; he was told to return after one month.

On August 21, 1991, following an appeal by **B'Tselem** and the **Association for Civil Rights in Israel**, Dr. Qitani received a visitors' permit for his wife and children.

2. The Salim Family

Testimony of Ibrahim Muhammad Salim Salim, resident of Nur Shams Refugee Camp near Tulkarm.

I was born in 1959. I have been married since 1983 to Rana Mahmud 'Abd al-Rahim Abu Hadijah, and we have four children. On June 4, 1991, my wife entered the country on a 90-day visitor's permit, which she had in her possession.

On August 5, 1991, the mukhtar of the refugee camp approached me and told me that I had been summoned by Captain Rayeq at the Civil Administration.

On August 7, 1991, I approached Captain Rayeq of the Administration. He asked me why my wife was residing illegally in the country. I argued that my wife had received a family reunification permit from Captain Rayeq's predecessor, and the matter was now in its final stages at the Civil Administration in Beit-El. Captain Rayeq stated that my wife would have to leave the country immediately.

At that point, my wife entered the room with our baby son, and, presenting Captain Rayeq with the permit, she begged him to renew it. He granted her request and signed the back of the permit, extending it for six months.

I left the Administration building and when we were 200 meters away from it, they called us from the building to return to Captain Rayeq. He said that he had just received a phone call, and that my wife must leave the country within one week. He took the permit and erased the new signature.

Since 1983, I have submitted four requests for family reunification (the last was in 1990) and all of my requests have been rejected.

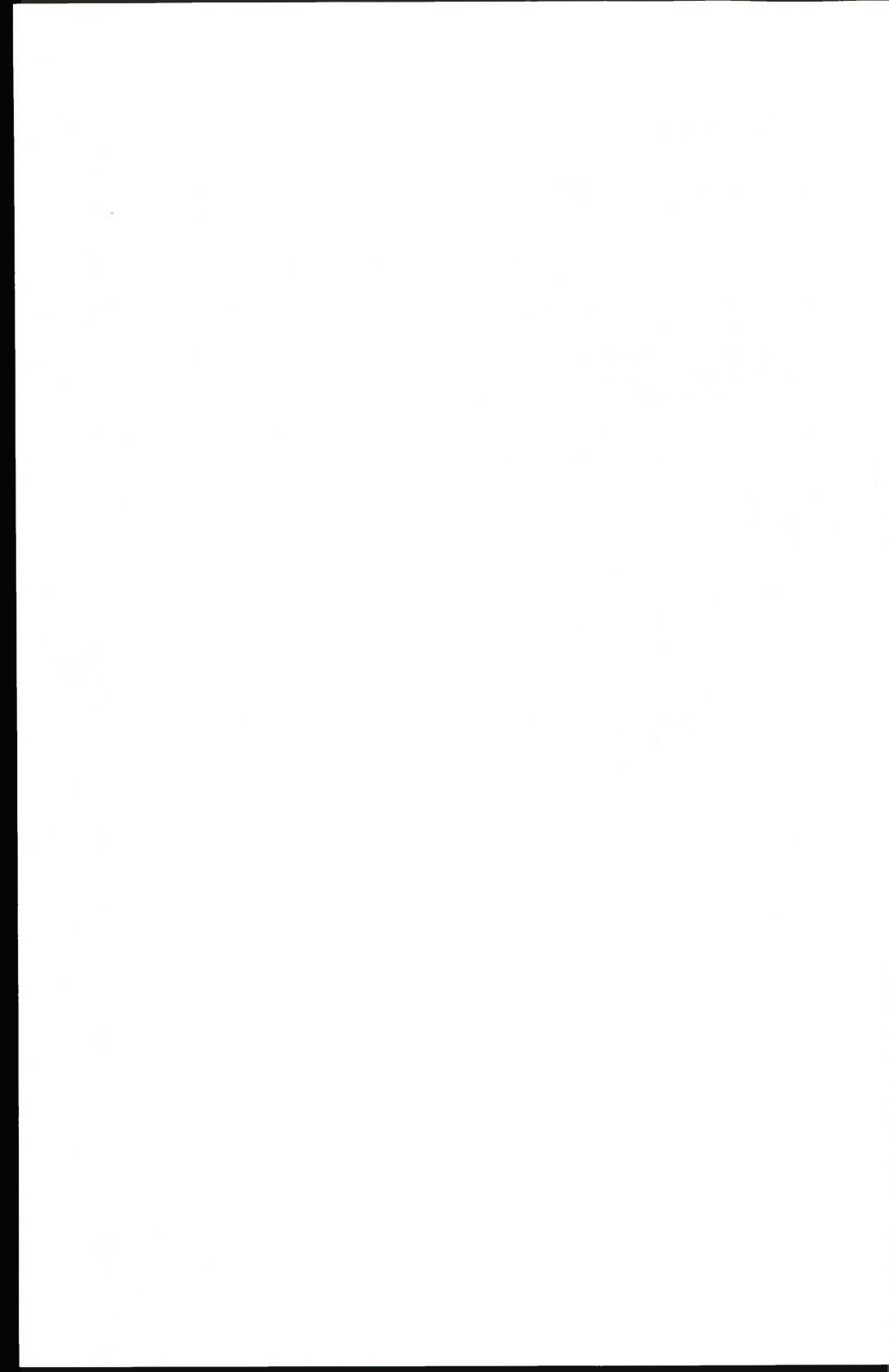
On September 3, 1991, following an appeal by **B'Tselem** and the **Association for Civil Rights in Israel**, Rana Salim's visitor's permit was extended for six months.

E. Summary

One and a half years following the High Court of Justice hearing, it appears that the new policy does not succeed in practice, and the status of the families remains as unclear as before: a large number of women and children in the territories are denied legal status - they do not have identity cards, their children are not registered on their parents' identity cards, and they possess no rights or guarantees. These families live in constant fear of being harmed or even deported. Many of them have in the past submitted requests for family reunification and their requests have repeatedly been rejected. Now, since they have no valid permits, they are afraid to submit additional requests.

Those women who uphold the condition of possessing permits, exit with their children to Jordan each time that the permit expires, and do not know when, if at all, they will be permitted to return. The children are separated from their fathers, and because of the frequent wandering, are unable to integrate into school. Other families, who cannot afford the high cost of repeated permit renewals, have not renewed their permits, and live in constant terror of being caught and forcefully deported.

Thousands of families in the territories, and not only women who have been deported and permitted to return, live in this situation of uncertainty and "illegality." There thus exists an almost unknown additional "grey area" in the military rule in the territories, which is fertile ground, both in theory and in practice, for severe violations of one of the fundamental rights of humanity: to found a family and live together as a family unit.



DISCRIMINATION IN PLANNING AND SUPERVISION OF BUILDING¹¹⁸

According to estimates by Palestinian engineers, there are approximately 13,000 homes in the West Bank today, housing approximately 80,000 people, which have been built without permission. The data show that the authorities demolish homes built without permission in great numbers, while at the same time the number of building licenses awarded to Palestinian residents of the territories is decreasing. The number of licenses issued is much lower than that required by the needs of the growing population. This situation is especially grave in rural areas in the West Bank, and has become even more severe since the beginning of the Intifada.

Palestinian residents are prohibited from building on over two-thirds of the lands in the West Bank. The rural population growth creates an annual need for 2,300 to 2,900 additional houses. Yet the number of building licenses issued by the system fell from approximately two thousand per year in 1979/80, to approximately 1,600 in 1985/86 and some 400 in 1988/9.

In contrast, the number of houses demolished by the authorities for lack of a license has risen from a few dozen each year through the mid-1980s, to approximately 305 in 1988, 431 in 1989 and 361 between January 1990 and September 1991.¹¹⁹

It is the task of the Planning and Building Authorities to prepare plans which will enable proper building; to provide applicants with guidelines for legal building; to review building plans submitted in light of both the legal requirements and population needs; and to verify that construction proceeds according to law.

Yet **B'Tselem** investigations of the authorities' activities in the West Bank rural sector reveal that the process of receiving a building license is drawn-out and inconvenient, and over two-thirds of the requests are rejected.

The technical considerations of the Central Planning Bureau and the bodies under its jurisdiction are shrouded in secrecy. Basic and essential information for planning is not given to applicants. This mysterious secrecy was also encountered when the IDF authorities responded to **B'Tselem's** inquiries with uncharacteristic apologies and mumbling instead of information.

The planning and building authorities in the West Bank exploit the wide authority conferred on them by military orders which eliminated, *inter alia*, local resident representation on bodies appointed for construction planning, and cancelled the appeals process - arrangements which existed under Jordanian law.

In contrast, Israeli settlements have been allotted state lands for use by settlers, planning schemes have been prepared and approved, local councils have been authorized as building committees, and ways have been found to address the common phenomenon of illegal construction, without resorting to demolition. In other words, there is clear, blatant discrimination between the two populations.

Since these settlements are in the same territory, are under the jurisdiction of the same planning authority, and are subject to the same laws and orders, it is fitting to compare the status of planning and construction in each category. The comparison reveals essential differences.

Land use: Very large tracts of land which had been or became state lands, or were areas which the army acquired for "its needs" (as in Kiryat Arba), have been transferred to Israeli settlers for their almost exclusive use.

Preparation of planning schemes: Out of over 400 Palestinian villages in the West Bank, only a few dozen villages have an authorized planning scheme. In most cases, planning schemes were prepared hastily without consulting with the residents or taking their needs into account.

In contrast, planning schemes were inventoried and authorized for the majority of Israeli settlements, rural and urban alike. Thus, an individual who wants to build in a settlement does not have to deal with most of the problems set before his Palestinian neighbor. The settler's path to obtaining a building license is incomparably clearer, more ordered, quicker, and less expensive.

Local building committee: Order No. 418, issued in 1971 by the Military Governor, has dissolved local building committees in West Bank rural areas. (In West Bank cities, there are local committees on which the residents are represented.) In contrast, local and regional councils in the settlements were authorized - also by orders - to act as local planning and building committees. Anyone requesting to build in a settlement therefore approaches fellow residents who are well acquainted with the settlement, and are interested in its prosperity. He is not forced to go to unknown places, and to do business with unfamiliar outsiders for whom his good and the good of his village are not a priority.

Sanctions against unauthorized building: State Comptroller's Reports sharply criticized unauthorized building in settlements in the territories. Despite this criticism, no unauthorized houses built in the settlements have been destroyed. Following are a number of examples:

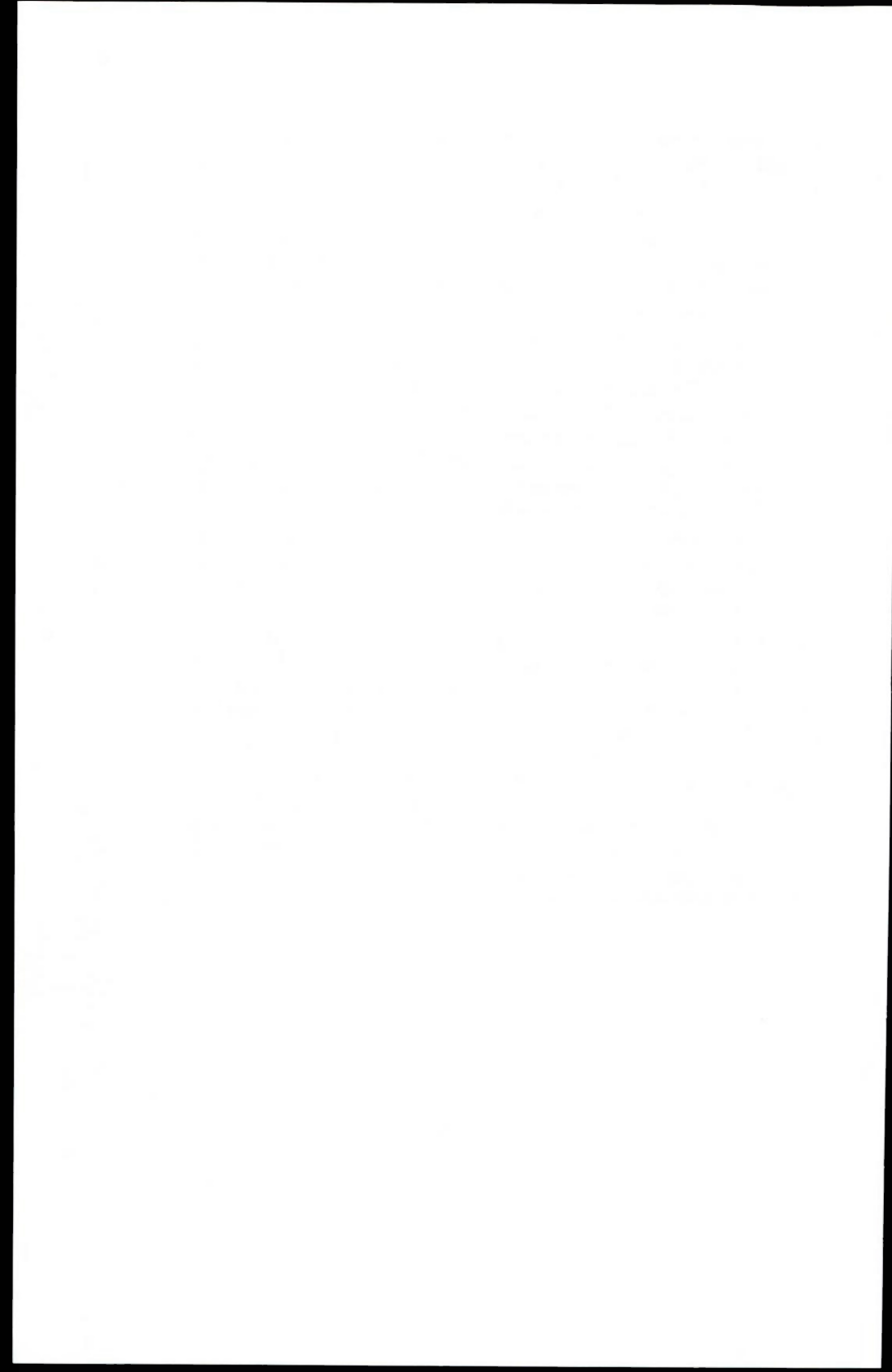
Jordan Valley Regional Council: "According to the documents, building additions were constructed within areas under the council's jurisdiction, without obtaining permission from the building committee."¹²⁰

Mateh Binyamin, Samaria, and Etzion Regional Councils: "Construction [in all settlements but one] has taken place without proper licenses from the planning and building council."¹²¹

Alfei Menashe Local Council: "Until the conclusion of the review at the end of November 1983, the plans were not legally valid according to the law of Judea and Samaria, also effective for Jewish settlements. Construction and development projects were thus carried out without permission."¹²²

Kiryat Arba, Emanuel, and Ma'aleh Adumim: In each of these areas, the Ministry of Housing was directly involved in the construction and sales promotions of hundreds of homes built without permission.¹²³

What singles out the above occurrences and differentiates them from parallel cases in Palestinian villages (in addition to the involvement of official actors in building violations) is that the various authorities were resourceful enough to find solutions which precluded the need to destroy houses. In Kiryat Arba, for example, the engineer of the local council, acting under authority granted him by the military commander, issued demolition orders for structures built without permission. Following this, his authority was revoked. In subsequent years, in Kiryat Arba, Ma'aleh Adumim, and most other settlements, planning schemes were approved which took into consideration and retroactively approved hundreds of thousands of apartments built without permission. The need to destroy homes was automatically obviated.



TAX COLLECTION¹²⁴

A. Introduction

Since the beginning of the Intifada, the system of taxation has been used as an additional means of increasing Israeli control. The Israeli government established the Civil Administration alongside the Military Government in order to underscore the separation between military rule, based on power, deterrence, and punishment, and civilian administration, which could be grounded in a certain level of consent and cooperation. Tax collection is a saliently civilian element of government.

The Israeli Supreme Court has ruled that the power to collect taxes is entrusted to the Military Commander, to be used for the benefit and welfare of the local population and to finance the expenses involved in the administration and maintenance of the area.

The data show that tax collection in the territories has increased greatly since the start of the uprising.¹²⁵ This state of affairs is undoubtedly due to the use made by the authorities of enforcement measures such as detentions,¹²⁶ collection operations, or the levying of high assessments for purposes unrelated to tax collection.

The tax collection operations and the order enabling the authorities to make the provision of services to residents conditional on payment of taxes, are intended to bring pressure to bear on the inhabitants and to suppress the tax revolt which is one of the expressions of the uprising. Shmuel Goren, then-Coordinator of Government Activities in the Territories, addressed the issue explicitly when he referred to activities designed "to create ties between the individual and the government . . . It was for this purpose that we conducted the tax operations, introduced the forms in which everyone must prove that he is not in arrears to the authorities . . . changed vehicle license plates . . ."¹²⁷

There is no doubt that the use of such collection measures is contrary to the principles of Israeli law. As Mordechai Bareket, head of the Customs and Tariffs Branch, observed approximately two years ago, "If I were to try to introduce inside the Green Line some of the measures I used in the territories to increase tax collection, I would be strung up in [Jerusalem's] Zion Square."¹²⁸

The resort to far-reaching collection measures in the territories was also criticized in a benchmark court decision handed down by Beersheba District Court Judge Eliezer Rivlin. "The State of Israel," he wrote, "is responsible for compensating a resident of the territories for enforcement activity to collect tax which was executed without legal authority." The decision was handed down in March 1990 in the case of a suit filed by a Hebron resident, Ahmad Mahmud Nasser, whose store and warehouses were sealed by tax investigators in 1984 because he refused to register with the tax authorities.

In ruling, Judge Rivlin stated that in sealing the plaintiff's store and warehouses, the tax investigators exceeded their authority and stated that: "Our premise should be that the lawmaker in Judea and Samaria abided by the spirit of Israeli legislation as regards tax enforcement and did not intend to place such extreme enforcement measures in the hands of the authorities."

B. Legal Perspective

With the establishment of the Military Government in the West Bank and Gaza Strip in 1967, all the powers of the previous government passed into its hands. This action conforms to the principles of international law, its purpose being to ensure the proper administration of the daily life of the inhabitants in a territory held by an occupying force. International law (Articles 42-55 of the Hague Regulations, 1907) and especially the rules of war pertaining to taxation provide only general guidelines. The rest is left to the discretion of the ruling authorities.

Rulings by the Israeli Supreme Court have held that the Israeli occupation of the territories has lasted longer than any occupation contemplated by the framers of the principles of international law. Therefore, the IDF regional commander may amend local laws in order to adapt them to the fundamental changes in living conditions that must inevitably occur during such a prolonged occupation, provided that the amendments are for the benefit and welfare of the local population. In addition, the Supreme Court permitted and justified the introduction of value added tax (VAT), citing the need to equalize the economic system in the territories with that in Israel.

The main taxes imposed in the West Bank and Gaza Strip are income tax, education tax (West Bank only), land tax in rural areas (West Bank only), land tax in urban areas (West Bank only), customs, excise added tax (corresponds to VAT), travel tax (applies under Israeli law to

persons exiting from Israeli ports), and stamp duty. Levies imposed include a levy on imported services and assets (under Israeli law), and a levy on vehicles. Fees are imposed for, among other things: business licensing, health insurance, passage over the Jordan River bridges and via the Rafah terminal, and various licenses (e.g., driving license).

The Jordanian income tax law of 1964 applies in the West Bank, while in the Gaza Strip the 1947 income tax ordinance is in effect. In the course of the occupation, Israel has introduced many changes into the tax laws in both regions. Most of these have taken the form of orders and regulations pertaining to interest rates, debt indexing, and tax collection. In practice, however, they have rarely been implemented. Effectively, the military administration has allowed residents of the territories to continue following local practice, refraining from imposing unacceptable fiscal norms on a population which it, as an occupier, had no mandate to educate in fiscal matters.

In 1976, when VAT was introduced in Israel, the same law was extended to the territories by means of regulations and an order known as "excise added tax" (EAT), because it attached the new tax to the already existing Jordanian excise tax. In 1981, the authorities, as part of their efforts to enforce the law more rigorously, required businesses in the territories to keep books and to file tax returns. That year, eight residents of the territories, four each from the West Bank and Gaza Strip, petitioned the High Court of Justice on this matter. In what became known as the Abu 'Itta case, the court handed down a lengthy reasoned decision in which then-Deputy President of the Supreme Court, Meir Shamgar, rejected the petitioners' challenge to the legality of the excise added tax. The court ruled that under international law, new taxes could be imposed in occupied territories if these were necessary to maintain normal life and public order there. Most of the amendments to the tax laws were not implemented until the Intifada began.

Since most of the taxpayers in the territories do not keep books, both income tax and EAT are assessed for them by "best judgment." This is a procedure based on negotiation between the taxpayer and the tax officer, but it leaves the assessment in the hands of the latter. Since it is impossible to establish the facts, the assessment becomes a matter of bargaining between the taxpayer and the authorities. The very nature of the process works to aggrandize the authorities' power. Anyone perusing the accumulating material cannot but come away with the impression that the bargaining process is used to put pressure on taxpayers for purposes unrelated to tax collection.

C. The Situation Since the Beginning of the Intifada

The collective resignation of local employees of the Civil Administration at the outset of the Intifada brought about the collapse of the tax collection system. In order to resurrect the system, Israelis, most of them without previous training or experience, who use violent collection methods accompanied by pressure and threats, were recruited to fill the void. These officials negotiate with residents whose income has decreased significantly, who never kept books and certainly do not intend to start doing so now, and many of whom have been engaged in a tax revolt since the start of the uprising or are reluctant to pay taxes for fear of retribution by the "strike forces." They are expected to enforce legislative orders never before implemented, as well as new orders. Two of these new orders are particularly noteworthy:

Order No. 1262, Concerning Tax Collection (Ancillary Powers), issued on December 17, 1988, makes the granting of licenses and the provision of services conditional upon payment of taxes. (The contents and manner of application of the order are discussed below.)

Order No. 1249, Concerning a Special Levy on Vehicles according to value, model, etc., was issued on August 17, 1988. Nicknamed the "Intifada Law" in the territories, the order's Sec. 10(a) empowers any authorized policeman or soldier to impound a vehicle if he suspects the owner of not having paid the levy.

1. Payment of taxes as a condition for receiving services

Order No. 1262 of December 1988 (Ancillary Powers) (Order of the Hour) states:

Any person authorized to provide a license or service under a provision of the law or security legislation listed in the Appendix may make provision of the service or the license, including its renewal, contingent on submission of evidence that the applicant has performed all actions imposed on him under any tax law and has paid the tax that he owes at that time.

This order applies to 23 spheres, encompassing virtually every facet of daily life in the territories.

Thus was engendered a bureaucratic process which is cumbersome and protracted even when it functions properly: getting the form filled out

requires standing in line at various government offices. If any irregularity crops up, as happens repeatedly, the entire process is halted. Then, in the best case, the applicant simply does not receive the service; the less fortunate find themselves facing a series of additional consequences such as restrictions on their movement or source of livelihood.

The extensive administrative powers that Order No. 1262 confers on the tax authorities would not withstand review under the principles of Israeli law. The law in Israel stipulates certain obligations and procedures which an individual seeking service or a license must carry out. For example, someone who wants a driver's license has to pass proficiency tests and pay the set fee, following which the administrative authorities are obliged to grant the license.

Order No. 1262 violates this system of rights and obligations by imposing on inhabitants a "supreme duty" to pay taxes; a person who fails to do so is deprived of his rights even if he has fulfilled all the relevant requirements. These extreme administrative powers come on top of the enforcement and collection mechanisms that already exist in the tax laws. This one-sided situation leads to the unfair denial of services and licenses and vests the authorities with sweeping powers of collection.

Under these circumstances, where there is no dialogue between the resident and the authorities, paid "go-betweens" are widely resorted to. It is doubtful whether this bureaucratic process is consistent with international law, since it cannot be justified in terms of the population's security and welfare, nor can it serve to equalize economic conditions in the territories with those in Israel where, indeed, such measures are not in force and would probably be considered illegal.

2. Illegal actions under Order No. 1262

In some cases the authorities go even beyond the extensive powers accrued to them under Order No. 1262 and make the issuing of licenses and other official documents conditional on payment of taxes even when this is not required by law. **B'Tselem** has in its files numerous complaints of this sort – for example, that the authorities made the issuing of documents contingent on payment of tax arrears by a third party (for example, delaying granting of permission to go abroad from a person whose father owed taxes), or made the issuing of certificates dependent on payment of back taxes.

Khaldun Ahmad 'Abd al-Karim 'Ammar, a student from Jericho, applied to have his driver's license renewed.

Mr. 'Ammar's license expired on April 15, 1991. He prepared a "travel log" [a form designed for collecting stamps of approval for a given request as the individual travels between the many and various administration offices involved] and received stamps at the Jericho police, the magistrates court, the municipality, the VAT office, and the property tax office. To receive the last stamp, Mr. 'Ammar went to the income tax office, where he was received by a clerk named Avi. Avi asked him what his occupation was. 'Ammar replied that he was a student. The clerk requested documents attesting to this, and 'Ammar presented his student card. The clerk charged that this document was not sufficient, and demanded additional documents: a grade report from each year of study in elementary and high school. Even after 'Ammar went through the trouble to gather the required documents, the clerk refused to sign.

B'Tselem turned to the Deputy Coordinator of Activities in the Territories, and requested that he investigate this incident, and another incident in which the same clerk had refused to renew a license for a Jericho resident. In response, **B'Tselem** was told that "the head of the Civil Administration in Judea and Samaria was going to instruct the Jericho District to grant the applicant the necessary approvals for renewing the driver's permit."

Confiscation of ID cards in order to force people to pay taxes, or for tax arrears owed by a third party, has become routine in the territories since the start of the Intifada, even though it is illegal according to the relevant orders themselves. The Order Concerning Defence Regulations expressly sets forth the circumstances under which a person's identity card may be taken from him; it is clearly forbidden for the purpose of enforcing tax payment.

Following a petition to the High Court of Justice by the Association for Civil Rights in Israel, the IDF presented an order stating the conditions for confiscating identity cards.¹²⁹ The order was issued on May 25, 1989 by the OC Central Command. Nevertheless, confiscation of identity cards until back taxes are paid continues, in violation of both the court's ruling and the army's own order.

Shortly after the court petition was submitted, the authorities began confiscating driver's licenses for non-payment of taxes. This measure has also become a matter of routine and is used extensively.

Needless to say, such measures have never been resorted to inside Israel.



המנהל האזרחי | ירושלים | מחלקת התעבורה

הגשת בקשה לאישור נסיעה
תקדימית על לוחית הרישוי המיוחדת

שם פרטי: אריאל | שם משפחה: גולן | מס' זהות: 948907035

מס' רישוי: 9716422 | סוג רישוי: א | סוג כלי: מוטו

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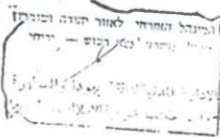
רשיון בלדי אריאל
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- 7. לייצא מוצרי חקלאות
- 8. אחר (פרט)



הצהרת הבקשן על אחריות הנכונות
תקדימית על לוחית הרישוי המיוחדת

אני מצהיר בזאת כי כל הפרטים שסופרו לעיל נכונים ומלאים.
אשר: הגשתי את כל התאמת המידע הנדרש.
אשר: אני יודע כי אם הפרטים אינם נכונים או הפריח' אינם אחז' זכויות רישוי, לרבות רישוי הרכב, או לא
אשר: אני אלה אלה לא אהיה אחראי על כל הנזק שישלם לידי אחרים או לרשות המוסמכת בשל הפרת
החוקים והתקנות.



הגשתי את הבקשה לפי סעיף 22א
אשר: אני יודע כי אם הפרטים אינם נכונים או הפריח' אינם אחז' זכויות רישוי, לרבות רישוי הרכב, או לא

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Civil Administration driver's license application.

3. Special operations

All measures described above – confiscation of identity cards and driver's licenses, excessive tax assessments, seizure of equipment and vehicles, attachments of property – are implemented in concentrated form during special operations and at roadblocks. These actions intertwine, forming a web around the resident of the territories.

Confrontations and friction between tax officials and residents are heightened during tax-collection raids in towns and villages. These raids are carried out during curfew, when people may easily be located, and generally last a full day or several days. By now, they have acquired a set pattern: Israeli collection officials, escorted, as mentioned, by IDF soldiers, raid a particular locale in order to collect income tax or EAT. In practice, the officials levy high assessments in the absence of a tax return, make large-scale attachments against non-payers, and detain assessees for interrogation.

The State Comptroller's Report for 1990 stated that the soldiers accompanying the collection officials deviated in practice from their powers:

Various military personnel whose job is to assist district income tax clerks with tax collection, operate within the framework of the Civil Administration. The assistance is meant to be in the area of organizing collection operations and protecting clerks. Military personnel do not belong to the [tax] Staff Officer's Unit team, and according to the area Military Advisor's instructions, they do not possess the authority to employ collection measures. The documents reveal that there were cases in which military personnel set a tariff for assessees, and issued payment orders. The Civil Administration informed the State Comptroller's Office that it held conferences and work meetings with military personnel to clarify the limitations which applied to them in their job context. It appears from the documents that despite information-disseminating activities, there were additional incidents in which military personnel deviated from their powers. The State Comptroller notes that the Civil Administration must define and more strongly emphasize the powers of these military personnel, and to forbid them from intervening in professional considerations which are not within their realm of authority.¹³⁰

A tax-collection operation unprecedented in scope was carried out in the town of Beit Sahur, near Bethlehem, in September-October 1989. During the operation, which was meant to "teach [the inhabitants] a lesson" and break a local tax revolt, the town was declared a closed military area. No one entered or left other than tax collectors and

soldiers. Telephone lines were cut off and curfew was imposed from 6 p.m. until 8 a.m. daily.

More than 60 Beit Sahur merchants were arrested during the 40-day operation. Many residents who were not arrested were visited by collection squads that attached their property and frequently behaved in the coarsest manner. An estimated 3 million shekels' (at the time \$1.5 million) worth of property was attached.

Another tax-collection operation took place in March 1990 in the village of Beit Furiq in the Nablus District. On March 6 the village was placed under curfew. According to the testimonies in the possession of **B'Tselem**, on the fifth day of the curfew, at approximately 1 p.m., soldiers using loudspeakers told store owners to go to their stores, open them, and wait for tax officials to arrive. Seeing that not everyone obeyed the order, the soldiers assembled all the store owners in the schoolyard. Tax officials and soldiers then called out each owner's name individually and forced him to open his store. Tax officials evaluated levies in each store, according to their assessments and according to the goods therein, for sums ranging from NIS 1,500 - 10,000.

At the time of the curfew during the Gulf War, wide tax collection operations were conducted in the territories. According to residents, tax collection teams actually arrived during the night.

D. Tax Reform

At the end of 1990, Defence Minister Moshe Arens appointed a commission, headed by Professor Ezra Sadan, for studying the economy in the territories. The commission submitted a list of recommendations, and in the beginning of July 1991, it was reported that Defence Minister Arens had approved, in accordance with the commission's recommendations, implementation of a tax reform. The Spokesperson for the Office of the Coordinator of Activities in the Territories told us that the reform is to take effect on January 1, 1992. Its main features:

- * Cancelling the 55% tax bracket.
- * Setting a minimum tax-deductible income (i.e. a tax ceiling).
- * Decreasing the number of tax brackets from 11 to 5.
- * Changing the tax brackets.

In September 1991 the first stage of the reform was carried out: updating the tax brackets by twenty percent.

An examination by **B'Tselem** revealed that these steps will indeed lead to a certain easing of taxes imposed on residents of the territories, but discrimination between them and the citizens of Israel will continue. Thus, while citizens in Israel do not pay tax below an income of NIS 2,480, the tax ceiling for residents of the territories is NIS 600.

The Office of the Coordinator of Activities in the Territories has informed us that according to the new tax brackets, the average family in the territories, comprising seven individuals, is exempt from tax on income up to NIS 600 per month, which is an average consumer index price for commodities for families in the territories. It should be understood that within Israel, the consumer index does not serve as a basis for the tax system.

Income Tax for a wage-earner with two children, whose spouse does not earn income

Monthly Income	Tax within Israel*	Tax in the Territories Sept. 91	Tax in the Territories Jan. 91
400	-176	2.5	0
500	-176	7.2	0
600	-176	12.6	5
700	-176	19.2	13
800	-176	28.0	21
1,000	-176	53.0	33
1,500	-176	196.4	122
1,970	-152	443.0	255
4,000	+655	2,174.0	1,117

* The table takes into account an allowance for children, derived from income tax, paid in Israel through the National Insurance.

RESPONSE OF THE IDF SPOKESPERSON TO THE REPORT

The following response, relating to the draft of the report, was given to **B'Tselem** in August 1991 by Captain Avital Margalit of the IDF Spokesperson's Information Branch.

The "B'Tselem" Report

Like its other reports published in the past, the annual report being published now by "B'Tselem" is defective, being both biased and unprofessional. The report, aside from being one-sided, relies for the most part on inaccurate, outdated, and incomplete information.

In order to set the above in concrete terms, we have referred below to some of the report's chapters, and emphasize that the lack of reference to the other parts is not an indication that we have validated their content.

1. Chapter on Fatalities: The data that appear in this part are for the most part inaccurate. For example, while the report states that from the beginning of the uprising to December 8, 1990, 711 residents were killed, according to IDF data, the number killed during this period (from the beginning of the uprising until the end of December 1990) was 629.

The figure that appears in the report for the number of area residents killed by uprising activists (317 fatalities) is incorrect, since in the period referred to by the report, 346 people were killed.

2. Chapter on House Demolition and Sealing: As mentioned in the past, in the response to the last report published by "B'Tselem," the authority for demolishing and sealing houses in the areas is based on power granted by mandatory law, which has been in effect in the territories since before the IDF took control of them. The IDF, in exercising this power, is guided by principles of international law, and by its obligation to protect the public security and order in the areas.

As has already been said many times, use of the method of house sealing and demolition has been approved on numerous occasions by

the High Court of Justice, regarding a large number of petitions submitted on the subject, in the framework of which most of the charges raised again by "B'Tselem" were scrutinized over and over. We can take, as an example, the claim regarding the ineffectiveness of demolition as a deterrent, which, indeed, it has been determined, has no factual basis.

In summary, let us say that the measure of house sealing and demolition is a deterrent-punitive measure, which is legal, according to both the law in effect in the areas, and principles of international law implemented by IDF forces for carrying out operations assigned to it according to the principles of this law, without ignoring its severity and ramifications.

3. Chapter on Administrative Detention: In employing this measure as well, IDF authorities operate in order to fulfill their task and obligation in the field, in accordance with international law, and according to the law in effect in the areas. It bears noting that the remarks attributed in this context to the former Judea and Samaria Legal Advisor were mentioned in part, inaccurately quoted, taken out of context, and do not properly reflect what he said to "B'Tselem" representatives.

4. Chapter on Military Courts in the Territories: Like its predecessors, and like those following it in the report, this chapter is not different in its professional superficiality and its distortions. The second paragraph of this chapter addresses, for the most part, "the findings of B'Tselem's report," published in November 1989, without thoroughly checking whether these "findings" require renewed examination considering how much time has passed, and what is worse, without addressing the IDF response to that report, given [to B'Tselem] long ago.

In addition, it should be stated that there is absolutely no truth to the charge appearing in this part of the report that there is a "practice" of conducting requests for extension of detention in the absence of the detainee's lawyer. In reference to this, we must state that in select cases (such as in the first case appearing in this context in the report), the detainee chooses not to inform the court of the fact that he is being represented; furthermore, in a significant number of cases, the detainee chooses to make known his desire to be represented, or, that he is already represented, only during the hearing on extension of detention, and all this without the attorney having submitted his power of attorney as required. Understandably, it is not possible in these cases to expect the court offices to summon a lawyer to a hearing when it is not

known whether, indeed, the detainee is being represented, and if so, by whom. It is reasonable that in circumstances in which the detainee gives notification of his being represented only on the day of the trial, there is no way of avoiding the extension of detention for a period of a few days, while informing the detainee's lawyer, who is then entitled to demand a new hearing regarding the detention. This solution creates a proper balance between the public interest on the one hand, and the detainee's personal interests on the other.

The items appearing in the report regarding "plea-bargains" are also inaccurate and incorrect. The rate of confessions of guilt in the military courts does not exceed 50% of all those accused, and it is entirely untrue that judges pressure those who confessed to conclude their trial with a plea-bargain.

The description appearing in the report regarding the conducting of expedited trials is also distorted and misleading. An expedited trial is supposed to be completed within approximately one week, and there is no basis for the claim that the accused do not have time to appoint a lawyer. In addition, according to the procedure and instructions issued by the military appeals court on this matter, the rights of detainees are protected in this procedure as well.

In addition to what was stated above, it bears noting that the section of the report referring to the physical conditions in the courthouse do not take into account the many improvements undertaken in the last two years. During this period, the military courts in general and the Ramallah military court in particular, have been vastly improved. A year and a half ago, an awning was erected there. Families of the accused are no longer forced to stand long hours outside the courthouse, and their stay does not exceed 30 minutes to one hour; the lawyers' room is sufficiently spacious and not "stuffy and not ventilated," as claimed, and recently a public telephone was installed in this room, and a photocopy machine has also been brought for use by the lawyers.

It should be stated that despite the complicated circumstances and objective difficulties, the military courts carry out their important work in the best way possible. Hundreds of thousands of trials take place and the rights of the accused are scrupulously protected.

5. Chapter on Prison Facilities: There is absolutely no truth to the claim that there are prisoners held in the prison facilities for periods of 90 days without seeing a lawyer. Despite the fact that the army does indeed have the authority to prevent meetings between detainees and their lawyers for periods of up to 90 days, in recent years there have been no incidents in which a judge has been requested to prevent a

detainee from meeting with his lawyer – i.e., such a meeting has not been prevented for a period exceeding 30 days.

As for the claim regarding the use of force during interrogations, this entire subject is being examined by a commission headed by Major General (res.) Vardi – a commission founded at the IDF's initiative, out of a sincere intention to eradicate such phenomena, if indeed it is proven that they do exist.

The claims raised in the report relating to holding facilities are also untrue. In absolute contradiction to what is claimed, both in the past and present, the procedures for informing [families] of detention and conducting meetings with lawyers are carried out in these facilities.

In the general context of prison facilities under IDF jurisdiction, the security administration is undertaking substantial efforts to improve conditions to the greatest extent possible, and for this purpose, is investing significant resources every year. Concern for protecting and respecting prison conditions stems from the IDF prison system's subjection to periodic inspection of a commission composed of a representative of the military judicial system, a representative of the medical corps, and a representative of the military police. The findings of this commission are communicated directly to the Chief of Staff, and his recommendations are scrupulously examined in an attempt to correct immediately all that is found wanting. For example, one could point out improvements implemented in the "Ofer" facility. Since July 1990, the tents in the camp have been placed on a concrete platform. And in fact, an awning costing NIS 170,000, designated for family visits, has recently been erected in the camp. There is also no limit whatsoever on the frequency of lawyers' visits in the Dhahriyya prison facility – there, too, an awning was erected for family visits, and today, there is no limitation on these visits - again, unlike what is stated in the report.

6. Chapter on Deterioration of the Education System: This chapter is also based largely on a previous report published by "BTselem," and for the most part, it does not examine the reliability of the "findings" a second time. We must emphasize that beginning in August 1990, the areas were influenced by the state of affairs which preceded the Gulf War – events that understandably had a direct impact on the ability to conduct properly an education system during this period.

7. Chapter on Family Separation and Reunification: There was a considerable number of errors and distortions in this portion of the report as well.

There is no truth to the claim that laws were changed following the outbreak of the uprising, according to which the registering in the population registry in the areas was limited to children born to parents who were residents. The opposite is true – that the same amendment granted the right to register in the population registry to a child even if he was born outside the area, and only his mother was a resident of the area, if he was under five years of age.

Therefore, there is no truth to the charge appearing in the report that "except in a very few cases, any one who was outside of the territories on the day of the occupation, for whatever reason, was not permitted to return." In a precedental and liberal policy, the IDF authorities permitted the actual reunion of hundreds of families in the areas, after the conclusion of the Six Day War. One might add that the attempt made later in the report to compare between the case of unification of families separated by the war, and the case of foreign residents who became family members of area residents following the formation of marital ties, with knowledge of the rules regarding permission to reside in the area, is erroneous and fallacious.

Every resident of the area whose exit from his area of residence is permitted receives permission valid for three consecutive years. At the end of this period, he is authorized to request an extension for his permit up to three times – each time for a period of one year. This means that in principle, a resident of the area is authorized to reside for up to six consecutive years outside his area of residence, without fear of losing his residency, if he possesses valid extensions. Even after this period, the individual is not considered as having lost his status as a resident of the area, his request to return to his place of residence is thoroughly examined, and if it is found that he has not transferred the center of his life to another location, his exit permit is extended, and when he returns he is considered a resident for all intents and purposes.

8. Chapter on Discrimination in Planning and Supervision of Building: In this chapter of the report as well, all the claims relating to the Civil Administration on the topic must be rejected. To this day, the preparation of approximately one hundred such plans has been completed, and the preparation of permit plans for villages continues. It should be stated that these plans are at the Civil Administration's initiative. In planning, the layout of the communities in relation to one another, size, location, and physical relation to one another are all considered – as a function of the size of the present and projected population, their distance from one another, topographical and land-form data, and the limitations on land use. In addition, within the framework of the planning schemes that have already been prepared,

village building areas are determined in a way that they will answer the needs of the population beyond the requirements of today and a number of years ahead.

Regarding the claim appearing in the report, that the approving of plans in Israeli settlements retroactively validated the building already completed, it should be stated that the exact same phenomenon occurred in the Arab villages in the area, for which planning schemes were approved, as mentioned above, and illegal building which took place in them was retroactively and automatically approved when the planning scheme was approved.

We should add, on this matter, that the fact that "basic and essential information for planning is not given to applicants," is untrue, as there is nothing preventing anyone from receiving specific information relating to individual building permits.

There is also no basis to the "finding" appearing in the report that security legislation denied local residents "representation on bodies appointed for building planning." Local residents serve on local committees for building planning, on subcommittees for licensing of the Higher Planning Commission, on the Village Planning Commission, and on secondary commissions for local planning of the Higher Planning Commission, which serves as a regional commission for planning and building for the local sector in Judea and Samaria.

9. Chapter on Tax Collection: Under the heading "[the] tax revolt as an expression of the uprising," "B'Tselem" gives legitimacy to tax evasion, which is evasion, plain and simple. To this phenomenon they attribute events which occurred in the distant past (such as the closing of the store of Muhammad Nasser – who owed taxes – mentioned in the report, carried out by tax clerks in 1984). In light of this, it is doubtful whether there is any point in addressing the "findings" raised in this context, since, as mentioned, a detailed response was already given by the IDF around the time the report was published in 1990.

In summary, it appears that "B'Tselem" has again squandered the opportunity to examine and assess the human rights situation in the territories in a sincere and objective manner, and has preferred to continue in a misguided path of perversions and distortions, in the one-sided approach it set for itself. We can only regret this.

NOTES

Introduction

1. Following the Temple Mount incident in October 1990, **B'Tselem** published a preliminary report which raised difficult questions regarding the police's behavior in the event. The report of the Zamir Commission – the investigative commission appointed by the government – determined that the police acted appropriately. Following this, an investigative judge was appointed (Ezra Qama, a Jerusalem magistrates court judge), according to the Law for Investigating Cause of Death, to investigate the cause of death of those killed on the Temple Mount.

Upon conclusion of the investigation, the judge decided not to recommend that those involved be brought to trial. Policemen's testimonies presented to the Judge reveal that in more than one case there was use of live fire in a situation in which the shooter's life was not in danger. In addition, it was revealed that there was automatic shooting, and shooting of rubber bullets at short range, in a manner which injures or endangers life. The picture which emerged before the investigating judge confirms the conclusions of **B'Tselem's** preliminary research to a great extent.

Chapter 1

2. The **Associated Press** data include only those cases of murder in which it is clear, in the agency's opinion, that the victim was suspected of collaboration or immoral transgressions. These data do not include murder cases of Palestinians by Palestinians which, in the opinion of the **Associated Press**, were perpetrated for a different reason, such as family conflicts.
3. See Chapter 13 of this report.
4. **B'Tselem's** data regarding Palestinians killed in Israel proper is only partial.

Chapter 2

5. **Ha'aretz**. December 9, 1990, as well as letter of Captain Avital Margalit, Information Branch, IDF Spokesperson, November 5, 1991.

Chapter 3

6. **Ha'aretz**, June 21, 1990.
7. Some of these break-ins included more than one type of activity. For this reason, there is no correlation between the totals in the table and the overall number of break-ins.
8. **Ha'aretz**, March 24, 1990.
9. HCJ 477/91.
10. Letter of Haim Yisraeli, Q/15326, September 27, 1991.
11. See **B'Tselem**. "Special Report, October 1990, Loss of Control; The Temple Mount Events - Preliminary Investigation," pp.14, 33-4.
12. **Ha'aretz**, June 13, 1990 and June 21, 1990.
13. See **B'Tselem**, "Special Report, October 1990, Loss of Control; The Temple Mount Events - Preliminary Investigation," pp.14, 33-4.
14. **Jerusalem Post**, November 18, 1990. The Police Spokesperson denied the report, but one of the hospital employees confirmed it.

Chapter 4

15. For example, on January 22, 1990, the house of Yusuf Nardawi's family, in the village of Hableh (Qalqilyah District) was sealed. Nardawi was wanted by security forces at the time of the sealing, and was killed in April while preparing an explosive device. On February 26, 1990, the house of Ayman Muhsen a-Roza's family was sealed. A-Roza was the leader of the 'Red Eagle' faction in Nablus, and was killed by soldiers' gunfire on November 9, 1989.
16. See Emanuel Rosen, "Fewer House Demolitions," **Ma'ariv**, September 5, 1991.
17. We asked the IDF Spokesperson for data regarding cases in which a severe sanction had been reduced to a less severe one, but were told that they were unable to send us the information because it would entail checking a large number of files.
18. Letter of Captain Avital Margalit, Information Branch, IDF Spokesperson, August 29, 1991.
19. On May 6, 1990, the High Court reviewed a petition submitted by Attorney Leah Tsemel against the demolition of the house of Gaza resident 'Abd a-Rahim 'Abid, accused of membership in a "strike force." In the decision (HCJ 802/89), the court ruled that the military commander (Commanding Officer or OC) erred regarding

the accuracy of a significant portion of the facts upon which the order was based. The judges instructed the Commanding Officer to reexamine the demolition order. To date, the house has not been demolished.

In June 1991, the High Court accepted a petition against the demolition of a house, after the petitioner had proved that the suspect had not lived in his house (see p. 42)

20. Legal analysts have argued that this case constitutes a troubling regression from the aforementioned trend of subjecting the military authorities to judicial supervision, and indicates a reluctance on the part of the Supreme Court to intervene in security considerations. See Moshe Negbi, "Shamgar Picked a Good Time to be Abroad," **Hadashot**, September 28, 1990; Ze'ev Segal, "Fear of Security Considerations," **Ha'aretz**, September 30, 1990.
21. See Moshe Reinfeld, "The High Court Rests Assured," **Ha'aretz**, October 21, 1990.
22. Aryeh Shalev, **The Intifada - The Reasons, Characteristics and Implications**, Jaffe Center for Strategic Studies, Tel Aviv University, 1990, pp. 127-129.
23. **Hadashot**, December 5, 1990.
24. In an interview with the Jerusalem weekly, **Kol Ha'ir**, on November 2, 1990:

The text read:

Q: In your opinion, is the demolition of houses an effective way to ensure order in the territories?

A: I think that this is not important. What is important is that it is inhuman.

Q: In recent years the Supreme Court has approved dozens of house demolitions in the territories. Has the Court, in your opinion, made a mistake?

A: I suggest that you draw conclusions from what I have already said.

Chapter 5

25. IDF Spokesperson, letter to **B'Tselem**, November 18, 1990.
26. **Al Hamishmar**, July 17, 1991.
27. See p. 48.
28. For the collection operation in Beit Sahur, see **B'Tselem, The System of Taxation in the West Bank and the Gaza Strip as**

an Instrument for the Enforcement of Authority during the Uprising, Jerusalem, February 1990, pp. 31-37.

29. See *ibid.*, p. 98 in the abovementioned document.
30. See **B'Tselem**, "Information Sheet January-February, 1991, Human Rights During the War in the Persian Gulf," pp. 7-9.
31. HCJ 1113/90.

Chapter 6

32. This section is based in part on material written by Attorney Dan Simon for the 1989 **B'Tselem Annual Report**.
33. These are called "bingo detentions," because soldiers triumphantly shout "bingo!" upon locating a person whose name is on the list. In the past there was no protocol for removing individuals' names from the list after the original pretext for their arrest was no longer valid. Individuals who had already been released from detention were erroneously arrested again and again and detained, sometimes for several days, until it became clear that they were no longer wanted.

Following the joint intervention of the Association for Civil Rights in Israel, **B'Tselem**, and Hotline: Center for the Defense of the Individual, the lists were updated, and it appears that, since the beginning of 1990, wanted lists are being continuously updated and that "mistaken" arrests have stopped almost completely.
34. See **B'Tselem, The Interrogation of Palestinians During the Intifada: Ill-treatment, "Moderate Physical Pressure," or Torture?**, March 1991, p. 51.
35. Following the petition of Attorney Joshua Schoffman of the Association for Civil Rights in Israel, the then-Military Advocate General, Brigadier General Amnon Strashnov, responded on July 21, 1989 that, due to the situation in the territories, a government forum had decided to delay implementation of the recommendation for a year. (Ref. L.N. - 0466, July 21, 1989.)

On April 15, 1991, the head of the Military Advocate General's Office informed the Association for Civil Rights in Israel that the Ministers' Commission on Security had decided to suspend implementation of the recommendation for an additional year.
36. Response of the IDF Spokesperson to the draft of this report, August 1991.
37. See Chapter 8 of this report.

38. Response of Defence Minister Moshe Arens to parliamentary interpellation no. 2707, January 18, 1991.
39. State Comptroller's Office, **Report No. 40**, 1989/90, p. 849.
40. HCJ 591/88
- 40a. See **B'Tselem, Interrogation of Palestinians During the Intifada: Ill-treatment, "Moderate Physical Pressure," or Torture?**, March 1991.
41. HCJ 2581/91

Chapter 7

42. Article 78 of the Fourth Geneva Convention.
43. **Ha'aretz**, December 21, 1990, and letter of Captain Avital Margalit, Information Branch, IDF Spokesperson, November 10, 1991.
44. See Chapter 9 of this report.
45. Judge M. Landau in HCJ 2/79, al-As'ad v. Minister of the Interior, Piskei Din, Vol. 34 (1) 505, p. 515.
46. HCJ 253/88, Sajadia et al v. Minister of Defence. Piskei Din, Vol. 42, part three. p. 801 and on.
47. Ibid.
48. **Hadashot**, November 14, 1990.
49. **Ha'aretz**, November 27, 1990.
50. **Ha'aretz**, June 7, 1991
51. In a conversation with **B'Tselem** representatives, May 6, 1990.
52. The High Court of Justice ruled in Administrative Detention Appeal 1,2/88 (Piskei Din, Vol. 42, 840, 843) that a military commander may rely on the summary that his advisors have written, and need not read all the sources of the information himself.
53. Tamar Peleg-Sryck, "In the Maze of Administrative Detention," **Ha'aretz**, December 18, 1990.

Chapter 8

54. Order Concerning Defence Regulations (Judea and Samaria Region) (No. 378), 1970.
55. On the various opinions on the significance of the establishment of the court of appeals, see Baruch Bracha, **Ha'aretz**, January 30, 1989; Darwish Nasser, **Al Hamishmar**, April 6, 1989; and a

summarizing commentary by Oz Frankel. **Jerusalem Post**, April 7, 1989.

56. **Al Hamishmar**, August 2, 1991.
57. **Ha'aretz**, September 3, 1991
58. Data to December 1990 are from **Ha'aretz**, December 21, 1990. Data regarding December 1990 to October 1991 were given to the editor of this report by Captain Avital Margalit in a phone conversation on November 25, 1991.
59. **B'Tselem. The Military Judicial System in the West Bank**, November 1990, pp. 40-41.
60. Request by advocates Walid 'Asliyya and 'Adnan Abu Leila at the military court in Jenin (Motion 106/90) in the matter of four Jenin residents, submitted on December 9, 1990, and not heard until the end of 1990, apparently because the place of incarceration of three of the prisoners had not yet been located.
- 60a. **Hadashot**, October 11, 1991.
61. Following are two examples:

The period of pre-trial imprisonment of Mahmud Isma'il al-Baba was extended in Ramallah on September 30, 1990, without the police or the court having notified Advocate Tsemel of the proceedings.

On October 30, 1990 Lieutenant Colonel Yehoshua HaLevy, President of the Military Court in Nablus, presided over proceedings on extending the detention of 'Omar Sa'id 'Abd al-Karim Qadira, who had been arrested on suspicion of hostile terrorist activity (Court File 8979/90). The proceedings were held in the detention facility at Far'ah, without the prisoner's counsel being present. Following is a description of the hearing for his request, as it appears in the trial transcript:

 1. The suspect: "I have a lawyer, Walid 'Asliyya from Umm al-Fahem."
 2. The prosecutor: "A charge sheet is attached."

The judge decided to extend Qadira's period of imprisonment until the end of proceedings, and in an additional ruling ordered that Attorney 'Asliyya be notified of this.
62. For example, the interrogation of the accused in Case No. 1435/90 on April 19, 1990 at the military court in Hebron, in which the defending counsel asked one question and the judge, six questions.

63. On April 19, 1990, plea bargaining arrangements were reached in five out of six of the cases which were judged that day at the Hebron court.
64. In a complaint to the Legal Advisor of Judea and Samaria regarding a case of this type, Attorney Andre Rosenthal wrote, *inter alia* on June 27, 1990: "It is inappropriate [for the courts] to operate in violation of Article 6 (a) of the Criminal Proceedings Law, although it does not apply in the territories. The Supreme Court has ruled on more than one occasion that when a gap exists in the military legislation, Israeli law may be consulted in order to fill it."
In response, Captain Avino'am Sharon, Assistant to the Legal Advisor, wrote on July 16, 1990: "After investigating, we found that the file was transferred to Jenin **at the court's behest**, and therefore we could not intervene in the matter. We recommend that you consult with the president of the court in the region . . . so that he may examine the reasons for the transfer and consider the possibility of returning it to Ramallah." (Our emphasis).
65. In response to a parliamentary interpellation submitted by MK Lova Eliav in the wake of the **B'Tselem** report, the Defence Minister stated on June 22, 1990 that "the physical conditions in the Ramallah courthouse have been improved beyond recognition in the past year."
66. Attorney Shlomo Lecker complained to Brigadier General Uri Shoham, president of the Military Appeals Court, that there are no photocopy machines in the Nablus, Jenin, Hebron and Gaza courthouses, and that attorneys are forced to turn to the private sector where charges are exorbitant. According to Attorney Lecker, court officers, as an act of grace, sometimes permit lawyers to make copies in the courthouse office.
67. **Yediot Ahronot**, March 19, 1990.
68. During the observation of the Ramallah court by **B'Tselem** staff on April 19, 1990, the military prosecutor mentioned the "new policy" three times. On the third occasion, during proceedings on case 5631/90, the judge reproached him for this.
69. See Yizhar Be'er, "The Above-Mentioned Has Been Identified as a Stonethrower," **Ha'aretz**, December 19, 1990.

Chapter 9

70. **Ha'aretz**. December 21, 1990, September 3, 1991.
71. The IDF Spokesperson's Office told us that they do not possess these figures.
72. Prison Service Spokesperson.
73. Prison Service, **Annual Report, 1990/91**.
74. See DCI - Defence Children International, Israel, **Report on a Visit to the Russian Compound Prison**, Jerusalem, March 21, 1990.
75. Summary of visit and discussion with the Prison Commander, during the visit of Jerusalem Municipal Council members to the Russian Compound jail facilities. Report by Anat Hoffman, May 13, 1991.
76. **B'Tselem**, "Information Sheet, June-July 1990: Violence Against Minors in Police Detention."
77. See Chapter Six, this report.
78. Letter from Captain Avital Margalit, Information Branch, IDF Spokesperson, November 10, 1991.
79. The average living space for one detainee is approximately 2 square meters or, sometimes, less. (By way of comparison, the average in U.S. prisons is 5.7 square meters per prisoner).
80. State Comptroller's Office, **Report No. 40**, 1989/90, p. 837.
81. Defence Minister Moshe Arens, in a response to a parliamentary interpellation submitted by MK Haim Oron on September 16, 1990, said that "the subject of constructing proper sick rooms in Ketziot has long been [designated as] the work of a staff whose purpose it is to bring about the construction of sick rooms which will provide the practical and medical requirements of the facility."
- 81a. Letter from the Military Advocate General's Office to Attorney Tamar Pelleg-Syrck of the Association for Civil Rights in Israel, February 9, 1990.
82. State Comptroller's Office, **Report No. 40**, 1989/90, pp. 847-850.

Chapter 10

83. Mustafa Qan'a, a resident of Jabaliyah who was deported in January 1991, described the deportation as "execution." See **Ha'aretz**. January 8, 1991.

84. HCJ 785/87.
85. HCJ 698/80.
86. **Hadashot**, December 5, 1990.

Chapter 11

87. Numerical data from **Israel Statistical Abstracts**. 1989, p.750.
88. See, for example, **Ha'aretz**, May 2, 1991. Conversations with education professionals revealed that studies in the Gaza Strip are indeed being conducted on strike days, with few interruptions, while on the West Bank interruptions are more debilitating.
89. During September 1988, incursions were carried out in places where pupils were studying in the framework of alternative lessons. These lessons were strictly forbidden. The distribution of written educational materials for correspondence courses was also banned.
90. See **B'Tselem**. "Information Sheet: Update September-October, 1990. Closure of Schools and Other Setbacks to the Education System in the Occupied Territories," pp. 9-12.
91. Response of the IDF Spokesperson to the draft of this report, August 1991.
92. The meeting was held on June 8, 1990.

Chapter 12

93. Letter sent by the supervisor of the Jerusalem censorship office, Lieutenant Colonel Avraham Gur-Ari, to the editor of **a-Tali'a**, on January 27, 1987.
94. "The Military Censorship: Its Authority, Judicial Review Over its Activities, and a Proposal for an Alternative Arrangement." **Law Review**. Vol. 16, 1990, Tel Aviv University, Faculty of Law, p. 311.
95. **Ha'aretz**, July 13, 1990.
96. **Davar**. June 21, 1990.
97. HCJ 680/80.
98. HCJ 73/53.
99. **B'Tselem**. "Information Sheet: February-March, 1990, Censorship of the Palestinian Press in East Jerusalem."
100. A Hebrew translation of the article appeared in **Davar** on April 15, 1991.

101. **B'Tselem**. Ref. 1106, of February 27, 1991.
102. Letter from Haim Yisraeli, Head of the Defence Minister's Office, August 7, 1991.
1. On August 14, 1990, the press office of Muhammad Salem Suleiman al-Mashwaki was closed, since it was funded by PLO activists abroad, and constituted a communications link between PLO activists in the Gaza Strip and activists abroad. The office also served as a base for PLO activities, and for passing messages regarding the organization's various activities.
 2. On February 4, 1991, the press office of Hassin Muhammad Sa'id al-Jemal, in the Gaza Strip, was closed, since he served as a central activist in George Habash's "Democratic Front." His office served as a reporting base for terrorist organizations within the area and outside it, and as a base for enemy activity.
103. In a conversation with **B'Tselem** on November 6, 1991.
104. Lieutenant Liat Menahmi, Section Information Officer, IDF Spokesperson, October 3, 1989.
105. The Palestinian painter Fathi Ghibn says that his works "have a nationalist flavor and express the Palestinian heritage, but they do not call to violence; rather they reflect general humanist principles." Despite this, Ghibn's works have been confiscated a number of times, before and during the Intifada.
106. In an interview with **B'Tselem**, January 1990.

Chapter 13

107. Data in this chapter is based on correspondence with the Ministry of Justice, the Israeli National Police and the Civil Administration.

Chapter 14

108. According to the data which we obtained from the Office of the Coordinator of Activities in the Territories, of the 1,053 requests for family reunification submitted in the West Bank in 1989, 250 were approved, and of the 305 submitted in the Gaza Strip, 192 were approved. In 1990, through the end of July, 139 of the 334 requests submitted in the West Bank were approved, and of the 261 requests from the Gaza Strip, 187 were approved. According to data published by the Red Cross (which have not been confirmed), between 1967-1987, approximately 140,000 requests for family reunification were submitted; of these only some 19,000 were approved.

109. HCJ 106/86.
110. See, for example, Colonel Ahaz Ben-Ari, in an interview in the **Hadashot** supplement, April 9, 1990.
111. Article 11a, appended to the Order Concerning Identity Cards and Population Registry (Judea and Samaria) in accordance with Order No. 1208 of September 13, 1987.
112. Anyone requesting a permit must sign a promissory note for NIS 5,000 to ensure exit or renewal of a permit by the date stipulated.
113. In response to a parliamentary interpellation by MK Avraham Poraz, Defence Minister Arens announced on May 13, 1991, that from the date of the HCJ announcement, to March 31, 1991, in the Judea and Samaria region, "572 requests for extension of visitors' permits by women married to area residents, and their children, have been submitted and approved, and in the Gaza Strip, 812 requests have been submitted and approved" (emphasis in the original).
114. This section is based, to a large extent, on ACRI's petition to the High Court of Justice (HCJ 1979/90).
115. Article 16(3). Similar wording appears in Article 23 (1) of the 1966 International Convention on Civil and Political Rights.
116. The Convention on Childrens' Rights (approved unanimously in the UN General Assembly), November 1989, Article 9.
117. Joshua Schoffman, "Family Reunification - A Heartless Policy," in **Zchuyot HaEzrah**, the Association for Civil Rights in Israel, May 1987.
118. See also: **B'Tselem**, "Information Sheet: Update August 1990, Limitations on Building of Residences on the West Bank."

Chapter 15

119. Civil Administration data.
120. State Comptroller's Office, **Report No. 32**. 1980/81, p. 713.
121. State Comptroller's Office, **Report No. 30**. 1979/80, pp. 802-803.
122. State Comptroller's Office, **Report No. 34**. 1982/3, p. 107.
123. State Comptroller's Office, **Report No. 36**. 1984/5, pp. 1257-1258. **Report No. 37**. 1985/86, p. 200; **Report No. 38**. 1987/88, pp. 915-917, respectively.

Chapter 16

124. See also: **B'Tselem, The System of Taxation in the West Bank and the Gaza Strip as an Instrument for the Enforcement of Authority During the Uprising**, February 1990.
125. In reply to a parliamentary interpellation submitted by MK Haim Oron, the Defence Minister stated on November 2, 1990 that in the 1989 tax year, NIS 246.3 million in taxes were collected in Judea and Samaria, and NIS 111.3 million in the Gaza area. In the first half of 1990 tax year, taxes totalling NIS 182 million and NIS 77.6 million were collected in Judea and Samaria and the Gaza area, respectively.

According to data we received from the Spokesperson for the Coordinator of Activities in the Territories, the Civil Administration's earnings from **income tax** in the territories totalled in NIS 134 million, between April 1990 and January 1991, and NIS 84 million between April 1991 and September 1991. For data on tax-collection in previous years, see **B'Tselem, System of Taxation**, Appendix I.
126. While in Israel an individual may be detained for 48 hours for questioning on tax matters with any extension requiring a court order, in the territories a person may be detained under an order for up to 18 days without resort to a judge. Individuals often prefer to remain in detention or serve a prison sentence rather than pay, since payment of taxes can bring about destruction of property by various local committees.
127. **Ha'aretz**, November 6, 1990.
128. **Ha'aretz**, October 31, 1989.
129. HCJ 278/89.
130. State Comptroller's Office, **Report No. 41**, 1990, pp. 858-859.

B'Tselem Publications

Monthly Information Sheets

Information Sheet: Update May 1989 – Data, Confiscation of ID Cards, Death Cases

Information Sheet: Update June 1989 – Plastic Bullets, Curfew, Settlers, House Demolitions

Information Sheet: Update July 1989 – Death Cases, Settlers, Deportations

Information Sheet: Update August 1989 – Detention Facilities

Information Sheet: Update September 1989 – Death Cases, Administrative Detention

Information Sheet: Update October 1989 – Banned Books and Authors

Information Sheet: Update November 1989 – Soldiers' Trials and Restrictions on Foreign Travel

Information Sheet: Update January 1990 – Cases of Death and Injury of Children

Information Sheet: Update February-March 1990 – Censorship of the Palestinian Press in East Jerusalem

Information Sheet: Update April 1990 – IDF Posts on Private Homes, Purimshpiel in 'Abud, Followup Investigation: The Death of Rafaida Abu Laban

Information Sheet: Update May 1990 – The Military Judicial System in the West Bank, Followup Report

Information Sheet: Update June-July 1990 – Violence Against Minors in Police Detention

Information Sheet: Update August 1990 – Limitations on Building of Residences on the West Bank

Information Sheet: Update September-October 1990 – Closure of Schools and Other Setbacks to the Education System in the Occupied Territories

Special Report, October 1990 – Loss of Control: The Temple Mount Events – Preliminary Investigation

Information Sheet: Update November 1990 – House Sealing and Demolition as a Means of Punishment

Information Sheet: Update January-February 1991 – Human Rights in the Occupied Territories During the War in the Persian Gulf

Information Sheet: Update June 1991 – The Death of a Youth: Mahmud 'Alayan; Maltreatment by an Income Tax Clerk; Pressure on Families of Wanted Persons

Information Sheet: Update September-October 1991 – Renewal of Deportation of Women and Children from the West Bank on Account of "Illegal Residency"

Comprehensive Studies

Demolition and Sealing of Houses in the West Bank and the Gaza Strip as a Punitive Measure During the Intifada, September 1989

The Military Judicial System in the West Bank, November 1989

Annual Report 1989 – Violations of Human Rights in the Occupied Territories, December 1989

The System of Taxation in the West Bank and Gaza Strip as an Instrument for the Enforcement of Authority During the Uprising, February 1990

The Use of Firearms by the Security Forces in the Occupied Territories, July 1990

Collective Punishment in the West Bank and the Gaza Strip November 1990

The Interrogation of Palestinians During the Intifada: Ill-Treatment, "Moderate Physical Pressure?" or Torture. March 1991

