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B'tselem – The Israeli Information Center for Human Rights in the Occupied Territories

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## LIMITATIONS ON THE RIGHT TO DEMONSTRATE AND PROTEST IN THE TERRITORIES

Information Sheet: January 1992

**B'Tselem** - The Israeli Information Center for Human Rights in the Occupied Territories, was founded in February 1989 by a group of lawyers, literary figures, academics, journalists, and Members of Parliament. **B'Tselem** documents human rights abuses in the territories, and brings them to the attention of policy makers and the general public. **B'Tselem's** data are based on independent fieldwork and research, official Israeli sources, the media, and data from Palestinian sources, most notably the human rights organizations PHRIC and al-Haq.

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רחוב התעשייה 8, ת.ד. 53132, ירושלים 91531, טלפון 6735599 (02), פקס 6749111 (02)  
8 Hata'asiya St. (4th Floor), P.O.Box 53132, Jerusalem 91531, Tel. (02) 6735599, Fax (02) 6749111  
mail@btselem.org <http://www.btselem.org>

Researched and written by Yizhar Be'er

Thanks to Roni Talmor, Sharon Roubach and Bassem 'Eid for their help in preparing this report.

English edition by Jessica Bonn

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## INTRODUCTION

The right to demonstrate is a cornerstone of freedom of expression and is enshrined as a basic human right. Article 19 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." And Article 20 adds: "Everyone has the right to freedom of peaceful assembly and association." Jordanian law, too, recognizes the right to demonstrate. Section 164(1) of the Jordanian Penal Code states that public assembly shall be forbidden only if it constitutes a crime or could disturb public peace and security.

International law allows the military government in an occupied area to set limits on freedom of expression in general, and on the right to demonstrate and congregate, in particular. However, several High Court decisions stipulated that the principle of freedom of expression is defensible in an occupied area as well, and that the authority seeking to limit it must demonstrate that special reasons exist which justify a deviation from this principle.<sup>1</sup> President of the Supreme Court, Justice Meir Shamgar, in the *Barzilai* case in the High Court of Justice, established the essential meaning of the rule of law: "It must take concrete expression, on a day-to-day basis, through the existence of normative, obligatory arrangements, applied to everyone, and through the fulfillment of basic freedoms, with an adherence to principles of equality and creation of a general atmosphere of trust and security."<sup>2</sup>

Nevertheless, the Israeli military government, utilizing the laws in effect in the West Bank and Gaza Strip, imposes severe restrictions on freedom of expression including the right to demonstrate, both on Palestinians living in the territories and on Israelis known to oppose the government's settlement policy. In contrast, the military government is frequently liberal to a fault in this realm toward Israelis residing in the territories, in a manner which underscores the discrimination practiced against parts of the population.

Israel's main legal recourse in limiting the right to demonstrate is the Order Prohibiting Activities of Incitement and Hostile Propaganda (West Bank Region) (No. 101), 1967, which states (Sec.3): "No procession or assembly may be held without a permit from a military commander." (A similar order was issued in the Gaza Strip.) The IDF (Israel Defense Forces) possesses additional powers to limit the right to demonstrate or otherwise express a protest legitimately. Thus the IDF can declare a certain area a "closed military zone."<sup>3</sup> The security legislation in effect in the territories states that the commission of an act which harms or is liable to harm public safety or public order is an offense punishable by up to five years in prison. Even a demonstration which does not require a permit but which is considered liable to harm the public order may be regarded as an offense. Utilizing the extensive series of orders and regulations at its disposal, the army places stringent restrictions on holding demonstrations and on the right to express political stands non-violently. Although security legislation does not bar the holding of protest vigils, in practice the IDF imposes limitations on these as well.

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<sup>1</sup> H CJ 619/78, *al-Tali'a et al. v. Minister of Defense*, and H CJ 236/82, *Foreign Press Association v. Government of Israel*.

<sup>2</sup> H CJ 428/86, *Barzilai v. Government of Israel*.

<sup>3</sup> According to Regulation 125 of the Emergency (Defense) Regulations of 1945, and Section 90 of the Order Concerning Defense Regulations (Judea and Samaria) (No. 378), 1970.

## PALESTINIAN DEMONSTRATIONS IN THE TERRITORIES

### *A. The Legal Situation*

In theory, any Palestinian in the territories may request from the district military commander a permit to hold a "procession" or an "assembly" in accordance with the Order Prohibiting Activities of Incitement and Hostile Propaganda (No. 101). Formal authority to approve such processions and assemblies is vested in the regional commander. The IDF says that until recently no Palestinians applied to the army for a permit to hold an assembly or procession.<sup>4</sup> Former Defense Minister Yitzhak Rabin was quoted as saying that if Palestinians were to submit requests to organize non-violent activities, he would consider them seriously. He added, however, that he did not believe the Palestinians would do so.<sup>5</sup>

According to the IDF, the security regulations prohibit assemblies or processions for which one or more of the following is true: (a) they express support for a hostile organization; (b) they are inflammatory; or (c) they violate the law or security legislation. The IDF adds that "in determining our position regarding a request to hold a meeting or assembly, all those involved weigh the expected risk to the public safety, the public order and the security of the region as a result of the event."<sup>6</sup> As for the dispersal of processions or assemblies which are nonviolent but are held without a permit, "this is up to the commanders in the field and depends on the degree of expected risk, whether during the demonstration or after it has dispersed."<sup>7</sup>

It should be noted that democratic liberal regimes also impose certain restrictions on the right to demonstrate when that right clashes with other interests which merit protection, such as when a demonstration interferes with traffic or with the repose of local residents. Similarly, in no legal system does the right to demonstrate grant the right to trespass. To protect other interests and rights, the democracies have developed preventive and punitive mechanisms which obligate the organizers of a demonstration to obtain a police permit in advance of the event, and enable the authorities to punish anyone who carries out a prohibited action.

Inside Israel the law requires that a police permit be obtained only to hold certain types of demonstrations: "processions" with 50 or more participants "who walk together or gather in order to walk together" outdoors, or "assemblies" of 50 or more people, who congregate in order to hear a speech or lecture on a political issue, or to discuss such an issue. Assemblies held in closed halls need no advance permit from the police, nor do outdoor processions of fewer than 50 people.<sup>8</sup> In the territories, Order 101 defines a "procession" as consisting of "ten or more people who walk together or gather in order to walk together from one place to another, for a political purpose or for a purpose which may be construed as political, whether they actually move and whether these people organize themselves in the form of a crowd or not."

According to the legal infrastructure in the territories, any person who organizes a procession or an assembly without a permit, calls for or incites such an event, or encourages it or takes part in it in any form, is liable to a ten-year prison term. These sweeping provisions give the military

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<sup>4</sup> Letter to **B'Tselem** from the IDF's Information Section, January 2, 1992.

<sup>5</sup> Lily Galili, **Ha'aretz**, May 10, 1988.

<sup>6</sup> *Ibid.*

<sup>7</sup> Letter to **B'Tselem** from Lieutenant Colonel Rami Kedar, head of the Information Branch in the IDF Spokesperson's Office.

<sup>8</sup> Police Ordinance (New Version).

government tools which, theoretically, allow it to arrest people in their living room for holding a discussion "which may be construed as political" (and in the territories, as distinct from Israel, an "assembly" in a closed hall also requires a permit).

In Israel, assemblies without speakers which are held outdoors do not require a police permit, no matter how many people attend, as long as they are defined as "protest vigils." Thus, a group called "Women in Black," comprising dozens of women opposed to the continued Israeli presence in the territories, has held a protest vigil every week for two years in Jerusalem's French Square without needing a police permit. The same applies to members of the "Kach" and "Moledet" parties, who frequently hold counter-demonstrations across from the Women in Black.<sup>9</sup>

### *B. The Use of Military Orders to Close an Area for the Purpose of Preventing Palestinian Demonstrations*

The IDF also imposes severe restrictions in the territories on non-violent political protests which do not fall under the definition of "procession" or "assembly" as set forth in Order 101. One of the most widely employed means resorted to by the army to foil such activity is to issue an order closing the area in question. (This was also done on one occasion during the Intifada in East Jerusalem. In 1989 the then-head of Central Command, Major General Yitzhak Mordechai, issued an order declaring the National Palace Hotel and the surrounding area a closed military zone, in order to prevent Faisal al-Husseini and his colleagues from holding a press conference about the tax revolt in Beit Sahour.)

On February 6, 1990, the Association for Civil Rights in Israel (ACRI) petitioned the High Court of Justice on behalf of an Israeli and a Palestinian from a group called "Runners for Peace," whom the IDF, due to security considerations, had prohibited from running through the streets of Bethlehem while wearing shirts bearing peace slogans. The IDF declared the area in question a closed military zone. The state's representative admitted in court that even though, under Order 101, the runners' activity (they numbered fewer than nine) was not a "procession," still, "their activity could be prohibited as it harms, or is liable to harm, the security of the region or the public order." He added: "In view of the character of the activity, including its political character, it cannot be ruled out that extremist elements, Israeli or Palestinian, who are opposed to this call for coexistence, will attack the petitioners or enter into a confrontation with them which is liable to inflame and agitate the region."<sup>10</sup>

The petitioners cited a Supreme Court ruling that the principle of legality or the rule of law, according to which a public authority possesses only the powers granted it by law, applies also in territories subject to military rule.<sup>11</sup> This principle, the petitioners argued, is unrelated to the existence or not of a state of emergency. Even in an emergency period, the authorities are obligated to uphold the law, and "the voice of the law does not fall silent even in the din of surrounding hostilities, and back in its earliest days this court laid down hard and fast rules about the strict upholding of the law even during an emergency."<sup>12</sup>

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<sup>9</sup> On the right to demonstrate and the restrictions on that right in Israel, see also the pamphlet "The Right to Demonstrate," by David Kretzmer, Association for Civil Rights in Israel, 1984, as well as instruction of the Attorney General's Office of April 1, 1984.

<sup>10</sup> H CJ 593/90, *Hillel Bardin et al. v. Commander of IDF Forces et al.*

<sup>11</sup> *Ibid.* See also H CJ 493/69/81, *Abu Ittah et al. v. Commander of Judea and Samaria Region*, Piskei Din XXXVII (197)2, p. 229.

<sup>12</sup> Quoted from H CJ 320/80, *Kawasmeh et al. v. Minister of Justice et al.*

The demand for an equitable balance between security considerations and freedom of expression came up again in other petitions, and in HCJ 236/82, *Foreign Press Association et al. v. Minister of Defense*, the Supreme Court handed down a landmark judgment. The declaration of an area as closed is based on Regulation 125 of the Emergency (Defense) Regulations of 1945 and on Section 90 of the Order Concerning Defense Regulations (Judea and Samaria) (No. 378), 1970. Neither Article 125 nor Section 90 defines the spheres of authority for closing areas or stipulates which considerations may be used by the IDF in declaring an area a closed military zone. In the "Runners for Peace" case, the petitioners argued that the norms empowering the authorities to close off certain areas were based on public international law, Israeli administrative law, local law, and security legislation. International law requires that the needs of the civilian population in the occupied territory, as well as the occupier's legitimate interests, be safeguarded. Israeli administrative law obligates the authorities to maintain orderly and fair modes of administration and to operate fairly and reasonably while doing their utmost to safeguard civil rights. "The authority to close an area was not intended to sidestep other legal requirements," the petitioners in "Runners for Peace" argued. The Supreme Court eventually accepted a compromise, after the IDF informed the petitioners that it would no longer object to their running in the Bethlehem area if they coordinated the time and the route with the army.

### *C. Peace Demonstrations after the Madrid Peace Conference*

During the past year, and particularly since the Madrid peace conference at the end of October 1991, the military government has shown a degree of relative openness, permitting the Palestinians to hold dozens of public assemblies and public political discussion forums. In some cases Palestinians held open events of a political character which met the definition of "assembly" or "procession" but were not dispersed by the IDF even though they took place without the required permit. The defense establishment says that since the Madrid conference there has been a trickle of requests to hold political meetings in closed places from owners of halls, clubs and schools. The IDF noted that it was inclined to grant such requests because they indicate a positive trend.<sup>13</sup> In East Jerusalem, which is under Israeli law, dozens of public political meetings were held at the al-Hakawati theater and elsewhere, during the period between the end of the Gulf War and the Madrid Peace Conference. However, due to restrictions on freedom of movement and the need for residents of the territories to obtain special permits to enter Israel, the majority of those who attended the gatherings were East Jerusalem residents. Until the Madrid conference, the security authorities generally prohibited meetings of this kind in the West Bank and Gaza Strip. But during the conference and immediately afterward, public assemblies and mass demonstrations took place in the territories involving thousands of young people who carried olive branches with which they decorated military vehicles or which they threw toward soldiers as a good-will gesture. Thousands of Gaza residents, many of them children, marched in a non-violent demonstration carrying olive branches and placards in Hebrew stating: "Let us make peace," and "Yes to peace." They sang peace songs and "some of them went up to soldiers, gave them olive branches and shook hands with them."<sup>14</sup>

The IDF's attitude toward these Madrid-inspired demonstrations was inconsistent. In some cases the army did nothing, while in other cases troops dispersed demonstrators, sometimes using

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<sup>13</sup> As stated by Lieutenant Colonel Moshe Rosenberg, Legal Advisor for the West Bank, to a **B'Tselem** team in a meeting held on January 5, 1992.

<sup>14</sup> David Regev and Ronnie Shaked, **Yediot Aharonot**, October 30, 1991.

teargas<sup>15</sup>, firing in the air and even arresting and starting legal proceedings against suspected participants. 'Adel Abu Na'ameh, from Jericho, was one of those arrested on suspicion of participating in an illegal demonstration.<sup>16</sup> On November 10, 1991 three Palestinians - Iyyad Qanadilo, 'Amar Khalif and Lutfi Ramadan - went on trial in the Nablus military court for taking part in an illegal procession held after the Madrid conference, as part of the peace demonstrations. Their lawyer, Na'el al-Hawah, told the court that not only was the demonstration non-violent, but the defendants even shook hands with Israeli soldiers.

The three, all of whom were on trial for the first time in a military court, declared that they supported a peace agreement, and partition of the country between the two peoples. The judge, Major Yosef Levy, accepted the argument that they had taken part in a non-violent peace demonstration, but convicted them of participating in an unlawful demonstration and sentenced them to short prison terms and a fine.<sup>17</sup>

Other cases show that IDF units were not always instructed precisely how to react to peace demonstrators. On the morning of November 4, 1991, a large demonstration took place in Nablus in which the participants carried PLO flags and olive branches and chanted slogans in support of the peace talks and the Palestinian delegation. An IDF patrol which arrived on the scene ordered the participants to disperse immediately, which they did. A short time later they renewed the demonstration in another part of the city, but this time a different IDF unit did not interfere with the rally, which went on for two hours, following which the participants dispersed quietly.<sup>18</sup>

Following a few days of uncertainty about the authorities' stand, the Chief of Staff, Lieutenant General Ehud Barak, stated that the IDF would not permit the Palestinians to hold demonstrations of solidarity with the peace process. Barak explained: "Demonstrations that start with olive branches quickly turn into riots, and we prefer to see the street quiet. The IDF will not permit unauthorized demonstrations."<sup>19</sup>

Nevertheless, following the Madrid conference, political meetings backing or opposing the peace process were held in closed halls in the West Bank and Gaza Strip, with the IDF generally not intervening.<sup>20</sup>

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<sup>15</sup> Oded Lipshitz, **Al Hamishmar**, November 25, 1991.

<sup>16</sup> See: Testimony of 'Adel Abu Na'ameh to **B'Tselem**, p. 14.

<sup>17</sup> File No. 8648/91, Nablus Military Court.

<sup>18</sup> Yossi Torfstein, **Ha'aretz**, November 5, 1991.

<sup>19</sup> Press reports noted that Barak's directive sparked a dispute in the Defense Ministry, and stunned security and military personnel. "The instruction to halt the demonstrations creates a situation in which the IDF on the one hand, and Hamas on the other hand, are trying to prevent the residents of the territories from identifying with the peace process." Avi Benayahu, **Al Hamishmar**, November 8, 1991.

<sup>20</sup> Yossi Torfstein and Eitan Rabin, **Ha'aretz**, November 3, 1991.

## DEMONSTRATIONS BY ISRAELIS OPPOSED TO THE SETTLEMENTS AND OTHER GOVERNMENT POLICY IN THE TERRITORIES

Israelis who oppose the government's policy and the settlements in the territories, who desire to hold demonstrations and protest activity, are also subject to severe government restrictions. These restrictions are also placed on types of events which are not forbidden by the Order Prohibiting Activities of Incitement and Hostile Propaganda, such as quiet protest vigils.

In 1985, ACRI petitioned the High Court on behalf of Charlie Biton and Sa'adiah Martziano, who headed "Struggle '85," a non-profit organization of neighborhood activists. The members of the organization sought to conduct a protest vigil along the route designated for the Prime Minister's visit to the West Bank, but the IDF refused to let them hold the event. In a statement to the High Court, then OC Central Command Amnon Shahak said that "the basic political rights, including the right to express a political opinion, to disseminate it, to protest against a contrary opinion and against the acts of the government, and in this context, to demonstrate, again, are not automatically granted to the population which is subject to the government of the controlling army. They are certainly not granted to the population of the controlling government which seeks to enter the administered area with the single goal of protesting and holding a political demonstration"<sup>21</sup> Major-General Shahak further claimed that on the advice of the Defense Minister, he had issued a guideline to forbid all political demonstrations by any party, and that this policy be applied equally to all.

A short time later, it became clear to the petitioners and the IDF that the "Tehiyah" party was intending to conduct its next conference in the West Bank. In response, the State revoked its all-inclusive ban on demonstrations in the territories, and published an amendment canceling the orders which forbade political gatherings in the territories. The State announced that from then on, all requests to hold such gatherings would be assessed according to security considerations, and public peace and order.<sup>22</sup>

Yet even after this announcement, the IDF continued to implement a double standard. During the Intifada, the IDF consistently prevented Israeli protests against the government's policy in the territories. On March 4, 1989, the IDF prevented peace meetings between the Peace Now movement and Palestinians from various villages in the West Bank from taking place. The IDF kept approximately 2,000 of the movement's activists from entering the communities of Ramallah, Far'ah, and Beit Omar. Eitan Haber, media advisor to the then-Defense Minister, argued that the formal pretext for preventing the meetings was the movement's refusal to apply for a formal permit for the event<sup>23</sup> On October 7, 1989, the IDF prevented hundreds of Peace Now activists from attending a meeting with Palestinians in Tulkarm, by declaring the area a closed military zone.

In September 1991, the IDF, apparently under pressure from the settlers, revoked a permit previously given to Peace Now to conduct a protest outing in Hebron against expansion of the settlements. In explaining its cancellation of the permit, the IDF cited a Palestinian leaflet which called upon the residents of Hebron to attack the settlers. Peace Now, via the Association for Civil Rights in Israel, petitioned to the High Court against cancellation of the planned march. In the petition, the plaintiffs claimed that a similar event had been conducted previously by members of

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<sup>21</sup> OC Central Command Amnon Shahak, in a statement to the High Court of Justice in H CJ 108/85, "*Struggle '85" et al. v. Minister of Defense et al.*

<sup>22</sup> Announcement by the defendants, April 9, 1986, H CJ 108/85, "*Struggle '85" et al. v. Minister of Defence et al.*

<sup>23</sup> Lili Galili, **Ha'aretz**, March 5, 1989.



the "Heirut" movement from France, and that the settlers intended to hold an additional public event not long after, that would include a mass pilgrimage to the Cave of the Forefathers (Machpelah Cave), with the participation of rabbis and political leaders from all over the country.<sup>24</sup>

The petition claimed that "more than once, have the petitioners' activities encountered opposition by the military commanders and the defense establishment. This opposition has been expressed both in negative responses to requests for permission to demonstrate, and in the closing of the territories to movement activists upon their arrival to conduct protest activity which did not require prior permission. At the same time that it heaped difficulties upon the petitioners' operations in the territories, the defense establishment allowed political activity and demonstrations in the area on the part of persons holding opinions contrary to those of the petitioners."

In their political analysis of the legal framework of freedom of expression in the territories, the petitioners stated that the wording of Order 101 required obtaining a permit from the military commander only for activity defined as a "gathering," or "procession," but not for activities such as "outings," "ceremonies," or "protests," even if they included a direct or indirect political statement. For such events, stated the petition, there is no need to acquire prior permission, and to forbid that a given protest take place, constitutes a deviation from the IDF's authority.

It was further claimed that the authority to close the area with a military order was not designed to bypass other legal requirements. "This means that if the order used to prevent the outing was illegal, whether due to lack of authority or illegal discrimination or infringement upon the freedom of expression, the fact that proper authority was employed to close the area does not validate the order to prevent the activity. The authority to close the area exists only when there are grave security considerations, and when it is clear that closing the area is necessary in order to overcome the security dangers."<sup>25</sup> The petitioners quoted the Supreme Court on this matter, in a statement that "in a state of law there is no security, political, ideological or other consideration that can justify an infringement of the law by the authorities. And in a state of law there is no ruling power authorized to deny a person of his legal rights, unless it has been empowered to do so by an explicitly stated law."<sup>26</sup>

Peace Now's petition was cancelled after a government representative announced that the IDF had not authorized the event initiated by the settlers, that it would prevent anyone from conducting outings and protests in the city of Hebron, and that anon-discriminatory policy would be applied to all parties.

On May 3, 1990, settlers held a Torah dedication ceremony at Joseph's tomb in Nablus, in a widely-attended event which included many religious and political figures. In order to enable the ceremony to take place, the army declared curfew on 120,000 residents of Nablus and the refugee camps in the area. Peace Now asked to conduct a protest vigil in the area, but the IDF refused to approve the request and the movement petitioned the High Court. Peace Now claimed, via the Association for Civil Rights in Israel, that the case in question constituted a severe violation of freedom of expression and of the right to demonstrate, especially since it was a question of a protest vigil against a political event on a topic of public debate, and that the ban on the protest was illegal discrimination.

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<sup>24</sup> H CJ 4170/91, *Amiram Goldblum et al. v. OC Central Command et al.* Peace Now's letter to Brigadier General Ya'akov Or, the military commander of the West Bank, September 31, 1991 .

<sup>25</sup> *Ibid.*, H CJ 4170/91.

<sup>26</sup> H CJ 320/80, *Kawasme et al. v. Minister of Defence*, Piskei Din XXXV (113)3, p. 127.

The sides finally reached a compromise which enabled twenty Peace Now activists to hold a protest vigil without speeches, near Joseph's tomb, and the number of participants in the Torah dedication ceremony was limited to one hundred. In the High Court hearing, Justices Dov Levin and Shaul Alon rejected the IDF claims that argued for closing the area off to Peace Now demonstrators since they could also protest in another area, and emphasized the principle of simultaneous response: "It cannot be that the former operate in Nablus, while the latter demonstrate in Eilat."<sup>27</sup>

In May 1989, twenty-seven Israelis were arrested for five days, after entering Qalqiliya in order to protest the authorities intention to demolish a local resident's house. The IDF claimed that the Israelis broke the law by entering a closed military zone. Their advocate, Avigdor Feldman, claimed in court that the case concerned a group of people who had come to employ a right which, in a democratic state, is granted to every citizen. It posed no danger to the public, and was not violent. Those arrested, part of the "Twenty-first Year" movement, spent a longer period in detention than the total number of nights spent by settlers in prison up to that time. (In the year and a half before this event, settlers were responsible for the shooting deaths of 19 Arabs).

The arrest of members of the group was made possible by the arbitrary power of the military commander to close the territories by military order. The closure was selective since settlers' cars were permitted to pass freely through the area. The affair concluded with the release of the group without trial, after their attorney proved that the order which closed the area had not been signed by the regional commander, as required by the regulations.

On December 14, 1991, the IDF blocked the route to Ramallah to hundreds of Israeli demonstrators affiliated with the Israeli left, who had come to protest the curfew in that town. The Israelis requested permission to hold a "protest in memory of Intifada victims" in Ramallah in the place where the settler Tzvi Klein was shot to death. The IDF thwarted the protest by the usual means: declaring the area a closed military zone, despite the group's protest that the army had allowed the settlers to conduct a protest at the same site approximately one week earlier.<sup>28</sup>

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<sup>27</sup> **Ha'aretz**, May 4, 1990.

<sup>28</sup> **Davar**, December 15, 1991.

## SETTLERS' DEMONSTRATIONS IN THE TERRITORIES

The laws in effect in the territories also apply to Israelis living in or present in the area.<sup>29</sup> In contrast to the strict policy usually applied to Palestinians, however, the Israeli authorities display a very tolerant attitude towards demonstrations by Jewish settlers, though they are conducted neither with permission, nor in coordination with the military commander. Assemblies and processions of Jewish settlers bearing a political character require a permit from the military commander. Such events take place in the territories in several forms: general political events intended to reinforce the status of Jewish settlement in the territories, demonstrations in response to a violent act by Palestinians, and processions in and around Arab villages, but in the guise of an outing in the country.

The first type of demonstration has existed since 1967, and come into more frequent use since 1973. The first settlement in Hebron began as a political demonstration of a small group led by Rabbi Moshe Levinger. The group settled in the Park Hotel in the heart of Hebron. The years 1974 and 1975 constituted the peak period for Gush Emunim demonstrations in the West Bank (the large demonstration in Sebastia, in 1974, eventually led to the formation of dozens of settlements in the area).

In recent months as well, the settlers have been making frequent use of demonstrations in an attempt to achieve political goals, and to strengthen Jewish settlement in the territories. On January 17, 1992, 250 settlers attempted to found five new settlements, as part of a decision by the Judea and Samaria Regional Council, in response to a shooting at an Israeli bus near 'Ein Sinia the previous day, resulting in the injury of seven Israelis. The settlers set up caravans at Tel Romiyyada in Hebron, "Yad Yair" near Dolev, near Nebi Samuel, near Jenin, and near Dir al-Balah.<sup>30</sup> 30 Settlers who erected these five sites explained to journalists that the operation was intended to put pressure on the government to withdraw from the peace process, and not as a spontaneous, emotional reaction to the shooting.<sup>31</sup> In response to the settlers' operation, the IDF announced that it would remove every settlement erected without permission in the future, and it has done so, sometimes using force. Some of the opponents of the removal were detained for interrogation, but were released the same day.

The IDF has more than once responded to pressure by the settlers, and has agreed to leave a small group of settlers at sites of attack against Israeli civilians. The IDF itself sometimes orders the erection of an army stronghold on land confiscated by a military order, with the intention of turning it into a civilian settlement in the future.<sup>32</sup>

With the accelerating growth of the settlements, Palestinian attacks on settlements increased, and settlers responded with violent counter-demonstrations. Demonstrations of settlers within Palestinian cities and villages, and along major traffic routes in the territories, have occurred irregularly since the inception of Jewish settlement in the territories. Some of these demonstrations have ended in violence. Every Purim the settlers conduct festival processions in the center of Hebron, clearly of a political nature, and sometimes leading to violent incidents. On March 21, 1989, dozens of settlers in costume held a Purim festival (the "Adloyada") along the major streets of the city, sang and danced in the city squares before hundreds of Palestinians, carried a skeleton wearing a kafiyah suspended on a noose, and burned Palestinian flags. The IDF intervened only at

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<sup>29</sup> Letter of response by IDF Spokesperson's Office, Information Branch to B'Tselem, **January 2, 1992.**

<sup>30</sup> Yossi Torfstein, Nadav Shragai, and Eitan Rabin, **Ha'aretz**, January 18, 1992.

<sup>31</sup> Michal Sela, **Davar**, January 18, 1992.

<sup>32</sup> Such a stronghold was established at "Yad Yair" near Dolev.

the entrance to the Cave of the Forefathers (Machpelah Cave), in order to protect Palestinians who had come there to pray and were being attacked by the settlers.<sup>33</sup>

From December 1991 to January 1992, settlers demonstrated in dozens of places in the West Bank, demanding that the IDF crush the Intifada and undertake a policy of massive deportations. On December 28, 1991, cars transporting approximately 700 settlers from the Benjamin Region entered the al-Barid neighborhood located north of Jerusalem, burned tires on the road, blocked it with barrels, and held a demonstration, accompanied by singing and dancing. A near-violent atmosphere was created between the settlers and the soldiers at the site, but an IDF officer calmed things down and permitted the settlers to remain there, on condition that they extinguish the burning tires on the road.<sup>34</sup> During December 1991, the Judea and Samaria Regional Council (representing 142 Jewish settlements in the territories) stood behind the settlers' protests, and announced that a series of "vigorous protest activities" could be expected in the near future, in the form of demonstrations near and within Palestinian villages known to possess firearms.<sup>35</sup>

Subsequent to the shooting death of Ofra resident Tzvi Klein in the outskirts of al-Bireh, in the beginning of December 1991, the settlers placed a "commemorative vigil" for several days and nights in the heart of the town, distributed warning leaflets to the Palestinian population, and conducted individual punitive campaigns including destruction of Palestinian property, especially parked cars and house windows. The army did not fulfill its mandate of protecting the public welfare. Security forces did not prevent the settlers from conducting a continuous protest at the site, from distributing leaflets, or from conducting punitive activities, at a time when all the Palestinian residents of the area were under curfew.

On January 5, 1992, hundreds of armed settlers blocked major intersections and many roads in the West Bank and Gaza Strip, in what they termed a protest against the security situation. Residents from the settlements of Psagot and Beit El parked their cars across the road, and left a narrow opening only for Israeli and security force cars to pass. They prevented Palestinian residents from getting to work in Jerusalem, and also ignored a policeman's request to clear the road. After approximately two hours, they left of their own will.<sup>36</sup>

Similar incidents occurred in additional places in the territories, and the IDF did not act decisively to remove the demonstrators. A leaflet distributed in Beit El on January 3, 1992, called upon residents to gather on a fixed day for mass demonstrations at the entrance of the settlement. "Our goal is to block the route from Atarot to Giv'at Ze'ev near al-Jib. Our presence, and our blocking the way for Palestinians coming from al-Jib, Giv'at Ze'ev, is part of an entire network of simultaneous road blocking efforts in greater Judea, Samaria, Binyamin, Gush Katif, organized by the settlements' forum. The roadblocks in greater Judea and Samaria will begin at 5:30. A presence of two hours in the field is necessary."<sup>37</sup>

Such activities, frequent in past months, raise a concern that the army is increasingly using a double standard for the two population groups living in the territories. Former Defense Minister Yitzhak Rabin said in the Knesset, at the height of the Intifada, that "there are different instructions in the IDF for responding to Jewish and Arab acts. There is an instruction to arrest and to use tear gas

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<sup>33</sup> Uri Nir, **Ha'arets**, March 22, 1989.

<sup>34</sup> Yoram Binur, **Hadashot**, December 29, 1991.

<sup>35</sup> Nadav Shragai, **Ha'arets**, December 25, 1991.

<sup>36</sup> Yoram Binur and Suleiman al-Shafi, **Hadashot**, January 6, 1992.

<sup>37</sup> Leaflet to settlers, distributed in Beit El on January 3, 1992.

against rioting Jews, but there is no order to employ rubber bullets against them."<sup>38</sup> However, despite the settlers' many demonstrations in recent months, and despite their move to violent attacks against Palestinians, not one instance is known in which the IDF used tear gas against Jewish rioters (except in one instance, when tear gas was used against Jewish peace activists and Palestinians in a demonstration around the walls of the Old City of Jerusalem on December 31, 1989).

An additional type of demonstration by settlers is those characterized by marches, processions, hikes, or violent excursions between or inside Palestinian villages. This type of activity is perceived by the Palestinian residents as clear provocation, and often leads to a violent response. As a result, incidents occur in which the settlers use weapons provided by the army for self-defense to shoot and destroy property. Hikes and marches of this type were not forbidden by the security forces even at the peak of the Intifada, even though they clearly bore the character of political demonstrations aimed at proving Israel's ownership and sovereignty. Sometimes, marches of apolitical character are coordinated with the army, and soldiers guard the demonstration route.

Other marches and processions are carried out without coordinating with the IDF. One such event was conducted inside the Palestinian village of Kifel Hareth, in the Tulkarm District, on May 29, 1989. Ibtisam 'Abd al-Rahman, age 16, was killed in this incident, apparently by the gunfire of a group of settlers from Yitzhar and Ma'aleh Levonah, who were "strolling" in the village. At the beginning of the trial conducted at the Tel Aviv District Court, involving four members of the group, a plea-bargain was signed which cancelled the charges of manslaughter and aggravated assault. Only the much lighter charges were left: shooting in a residential area, and damage to animals (in this case there was difficulty proving guilt for the murder since the body was not located, and the eye-witness revoked her testimony).

Occasionally, the army prevents settlers from conducting processions or political gatherings. Every year, on Independence Day, the settlers conduct a large outing in the middle of the West Bank, together with supporters who live within the Green Line, and political figures from the right. These marches are of an unequivocally political nature, and include flag-waving, chanting of slogans, and speech-making. In April 1991, after the settlement of Revavah was established in the middle of the night, the OC Central Command decided to forbid Gush Emunim's Independence Day outing in the West Bank, scheduled to pass by the new settlements. After an intensive pressure campaign, the Major General permitted the settlers to conduct a hike which "had no manifestations of a demonstration" on an alternative path which bypassed Karnei Shomron.

In response to this change, Yehuda Hazani, a leader of Gush Emunim, announced that "even if the Chief of Staff brings the entire IDF to Samaria, he will not be able to stop us. As far as we are concerned, this Chief of Staff's career is over."<sup>39</sup> This statement reflects the degree of the settler's dismay for the lone attempt to limit their demonstration activity in the territories. Despite the IDF's stipulation that the outing be held such that it "had no manifestations of a demonstration," the participants waved banners, distributed leaflets, and wore shirts bearing slogans such as, "'Moledet.' Transfer: Thinking one step ahead," and "There will never be peace and coexistence with these murderers, so-called Palestinians. They must leave our land to rejoin their ally Saddam Hussein."<sup>40</sup> Despite this, the IDF did not prevent the outing from taking place, and even guarded the participants.

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<sup>38</sup> Dan Margalit, **Ha'aretz**, May 31, 1989.

<sup>39</sup> Yizhar Be'er, **Ha'aretz**, April 19, 1991

<sup>40</sup> Eye witnessed by Yizhar Be'er, who was present at the site. See also **Ha'aretz**, April 19, 1991.

During the month of January 1992, the settlers implemented a new type of demonstration: to constantly shadow Defense Minister Moshe Arens and interfere with his movement. On January 19, 1992, hundreds of settlers prevented the helicopter in which the Minister was supposed to be arriving, from landing in the Kiryat Arba soccer field. The helicopter attempted to land three times, but the residents of the settlement circled around it, in order to interfere with the landing. After the landing was finally executed, the settlers realized that the Defense Minister was not in it, and that he was actually in a military government building in Hebron.

The IDF declared the area a closed military zone, and removed approximately 70 settlers who were attempting to prevent the Minister from returning to his car. After the vehicle left for the center of Hebron, a convoy of cars set out after him, carrying settlers shouting deprecating slogans and bearing protest signs. Further down the road, the settlers erected a roadblock for the Defense Minister's car, and later the same day, three carloads of settlers again shadowed the Minister's car, carrying signs protesting his policies.<sup>41</sup>

**B'Tselem** views these activities on the part of the settlers as examples of legitimate forms of protest, and opposes army's use of an order to close the area against the demonstrators. It bears noting, however, that the IDF's decision to close the area to the settlers is an unusual one, and highlights the lack of response on the part of the security authorities, who for the most part enable the settlers to demonstrate without interference, even when the demonstrations are illegal and violent.

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<sup>41</sup> Nadav Shragai and Eitan Rabin, **Ha'aretz**, January 20, 1992.

## SUMMARY

Political rights of Palestinians in the territories in general, and the right to demonstrate in particular, are severely limited in comparison to the accepted norms in Israel, and among the Jewish settlers in the territories. Since the end of the 1970s, open political activity of Palestinians in the territories has been forbidden, with the exception of the activities of the Village League, which was permitted to conduct public political gatherings and events with the backing of the military government. Political gatherings in the territories are totally forbidden to Palestinians, while they are generally permitted for Jewish residents of the territories and Israelis who do not live in the territories, but who are identified with the settlers' position. Other Israelis seeking to demonstrate and protest against government policy and the settlements face limitations which require them, in many cases, to turn to the High Court of Justice, and only as a result of the Court's intervention are they able to hold non-violent protests.

Only occasionally, and inconsistently, does the IDF allow Palestinians from the territories to conduct assemblies and even more rarely, processions, but these cases do not reflect a set policy. For certain periods, the IDF did not prevent conferences of mayors, trade unions, and academics in the territories, while in other periods, it prevented similar conferences by orders which closed an entire area, or even closed universities or other institutions. Palestinians, until two months ago, were prevented entirely from requesting permits to hold assemblies and processions.

According to international law, the military government may indeed deny freedom of expression in an occupied area, including banning demonstrations, but according to the Israeli Supreme Court, it also has an obligation to ensure order and public life, and to assure "the existence of a government which protects civil rights and sees to the general welfare of the population."<sup>42</sup>

In addition, the Supreme Court recently recognized that freedom of expression is a defensible principle also in occupied territory, ruling that the authority seeking to limit this right must demonstrate that extraordinary reasons exist which justify a deviation from this principle.<sup>43</sup> The Supreme Court also accepted the principle that there must be an appropriate balance between two important public interests: freedom of expression on the one hand, and proper conducting of the government's tasks on the other.<sup>44</sup>

Israel's control in the territories for almost 25 years, and the large-scale building for the Israeli civilian population, illustrate that Israel is acting from the viewpoint of a long-term occupation. Based on this approach, which takes expression in other spheres as well, the authorities must maintain a better balance between the security needs and freedom of expression, and demonstrate greater openness in approving non-violent demonstrations in the territories. It appears to us that the authorities tend to shy away from this responsibility to keep a balance, with their tendency to limit demonstrations systematically, particularly in the Palestinian sector, but also in the case of Israelis who wish to demonstrate against government policy and the settlements. Thus, the military government does not rest at implementing Order 101 Prohibiting Activities of Incitement and Hostile Propaganda, requiring a license for holding "gatherings" and "processions." Rather, it also

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<sup>42</sup> HCJ 202/82 *Tabib et al. v. Minister of Defence et al.*

<sup>43</sup> HCJ 4170/91, *Amiram Goldblum and Peace Now v. OC Central Command.*

<sup>44</sup> HCJ 236/82, *Foreign Journalists Association in Israel et al. v. Government of Israel.* The Association demanded that its members be allowed to cover the removal of Yamit residents after the IDF closed the area off to them.

prevents activities that do not require permission, such as "protest vigils," "ceremonies," and "outings," by declaring a closed military area.

In contrast, the government allows public and regular political activity by the settlers, in various forms, which sometimes even includes violent activity against Palestinians, as occurred, for example, in December 1991 and January 1992 in Ramallah, al-Bireh, and Har Hevron. This policy reflects a clear discriminatory approach towards two sectors of the population, and creates an unacceptable hierarchy in which the settlers have almost unlimited freedom of action in this realm. Israelis who demonstrate against the government policy and the settlements in many cases need to turn to the High Court of Justice in order to acquire similar rights. In the case of Palestinians, the right to demonstrate is denied almost without exception.

In our opinion, the limitations placed on the right to demonstrate and protest in the territories reflect unequal application of the law, and prove that political considerations influence the policy of enforcement. This underscores the politicization which has seeped into the military establishment, and creates a troubling situation in which what is permissible to one party is almost completely forbidden to the other.

In the wake of the developments in the territories since the beginning of the peace process, including the "olive branch demonstrations" by Palestinians, the authorities were given an opportunity to establish new norms for non-violent political expression in the area, and to thereby encourage a positive atmosphere in the territories. It appears, however, that this time around, the authorities have missed their chance.

**Testimony of 'Adel Ibrahim Mustafa Abu Na'ameh, I.D. 986541563, Jericho resident, manager of the "Ansar" press office in Jericho, as given to B'Tselem.**

On November 2, 1991, a peace procession in support of the Palestinian delegation to the Madrid negotiations took place in the al-Kidawi neighborhood in Jericho. The participants called for peace in the area, and waved olive branches, and signs on which were written, inter alia: "Yes to peace," and "Yes to two states on the land of Palestine." A photographer named Walid Halil, and I arrived at the place in order to cover [the event] in the press. The participants marched in the streets of the neighborhood and at the end of the procession, congregated in an open space in the area. After I "warmed up" and got in a good mood, I went up on the roof of one of the houses in the area and began to speak to those present. In my speech, I praised the meeting between the parties to the conflict, which was likely to put an end to the Arab-Israeli conflict. I also said in my speech that the Intifada had turned to a new path - a path of peace. I congratulated the members of the Palestinian delegation to the peace talks, and in the end I prophesied that an independent Palestinian state would be created alongside Israel, with East Jerusalem as its capital. The video photographer who was with me filmed me saying these things. Afterwards, the procession dispersed quietly.

The next night, soldiers and GSS personnel arrived at the photographer's house, conducted a search in his house, confiscated the video-cassette with the clips from the procession, and arrested the photographer. After five days of detention and after he paid NIS 500 bail, the photographer was freed. The day after his arrest, at 9:00 p.m., soldiers arrived at my house and summoned me to the office of a GSS employee at the Civil Administration Offices. The next day, I appeared before the GSS employee, and he presented me with a number of charges, including: inciting to disturb the



public order, photographing without permission, membership and activity in the Democratic Front, and organizing an illegal procession. I denied everything, except that I participated in a peace demonstration. After the meeting, I was released, but forbidden to leave the city.

On December 19, 1991, I went to the Civil Administration Offices to replace my green identity card, which I have possessed for ten months. The GSS employee was passing by and noticed me, and he summoned me to his office the following day. When I arrived the next day, he handed me over to a police interrogator whose name I can't recall, who opened a file and began assigning me various charges, including inciting a demonstration, and use of a loudspeaker. He claimed that the video-tape would serve as evidence against me, and I told him that the video contained none of the things which he described. I told him again what really happened, and he recorded my testimony. Afterwards, he informed me that I was under arrest until someone would come to free me on bail. I called one of my friends to sign the bail note. Before I was released, the interrogator told me that I would be tried in the Ramallah military court.

Note: 'Adel Abu Na'ameh's investigations file is number 563/91 in the Jericho police station.

**Statements made by Colonel Moshe Rosenberg, Legal Advisor for the West Bank, to the B'Tselem staff, in a meeting on January 5, 1992.**

To the best of my knowledge, until recently, only Jewish individuals and groups requested permits to hold assemblies or processions. Internal events held within Jewish settlements do not require permission from us, and we do not interfere with them. Events which are held outside of the Jewish settlements, along roads, for example, require prior permission. Until recently, no Palestinians applied for permits according to Order 101, but in recent months, there has been a trickle of applications, after we made clear that political gatherings require permission. The applications we receive are usually from hosts of large closed conferences, such as school principals or club owners. To the best of my knowledge, we approved every closed conference, unless there were special security considerations. These days, the atmosphere is positive, and we even have an interest in encouraging such requests. Therefore, there is a tendency towards liberalization in anything pertaining to granting permission for conferences in closed places. Of course, conferences are also held without permission, and there is a directive not to turn a blind eye, and to make sure that conferences are not held without a permit. Naturally, regarding processions, the topic is more problematic than for assemblies in closed places, since they are less controllable and are likely to develop in a negative direction. I do not know of any requests received from Palestinians for permission to hold a procession.

## ***INTIFADA FATALITIES***

From the beginning of the Intifada through the end of December 1991, 810 Palestinian residents of the occupied territories have been killed by Israeli security forces. Of these:

- \* **Shooting deaths** (including plastic and "rubber" bullets)- **783**
- \* **Non-shooting deaths** (beatings, burns and other) -**27**
- \* **Children: 172**, including
  - Aged 12 and younger- **47**
  - Aged 13 to 16- **125**

At least **86** additional people, including more than **30** infants, died a short time after exposure to tear gas. From a medical standpoint it is difficult to pinpoint exposure to tear gas as a direct and sole cause of death.

An additional **42** Palestinians have been killed, apparently by Israeli civilians, and **13** were killed by "collaborators."

During this period, **14** members of the Israeli security forces, and **18** Israeli civilians, including **3** infants, and **2** female tourists were killed in the occupied territories by Palestinian residents.

According to the Associated Press, **478** Palestinians suspected of collaborating with the Israeli authorities have been killed in the occupied territories since the beginning of the Intifada.

During the same period, **33** Israeli civilians, **4** female tourists, and **10** members of the security forces were killed **within the Green Line** by Palestinian residents of the occupied territories. At least **17** Palestinians from the territories were killed by Israeli citizens, and **1** was killed by a policeman's gunfire.

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This information sheet was given to the IDF Spokesperson for response. The IDF chose not to respond beyond what was stated in a letter from Rami Kedar, Head of the Information Branch, IDF Spokesperson's Office, to **B'Tselem**, cited in footnote 5 above.