

Jerusalem, March 1994

**LAW ENFORCEMENT VIS-A-VIS  
ISRAELI CIVILIANS IN THE  
OCCUPIED TERRITORIES**

**בִּצְלֵם**

**B'TSELEM**

**The Israeli Information Center for Human Rights  
in the Occupied Territories**



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**בִּצְלֵם**  
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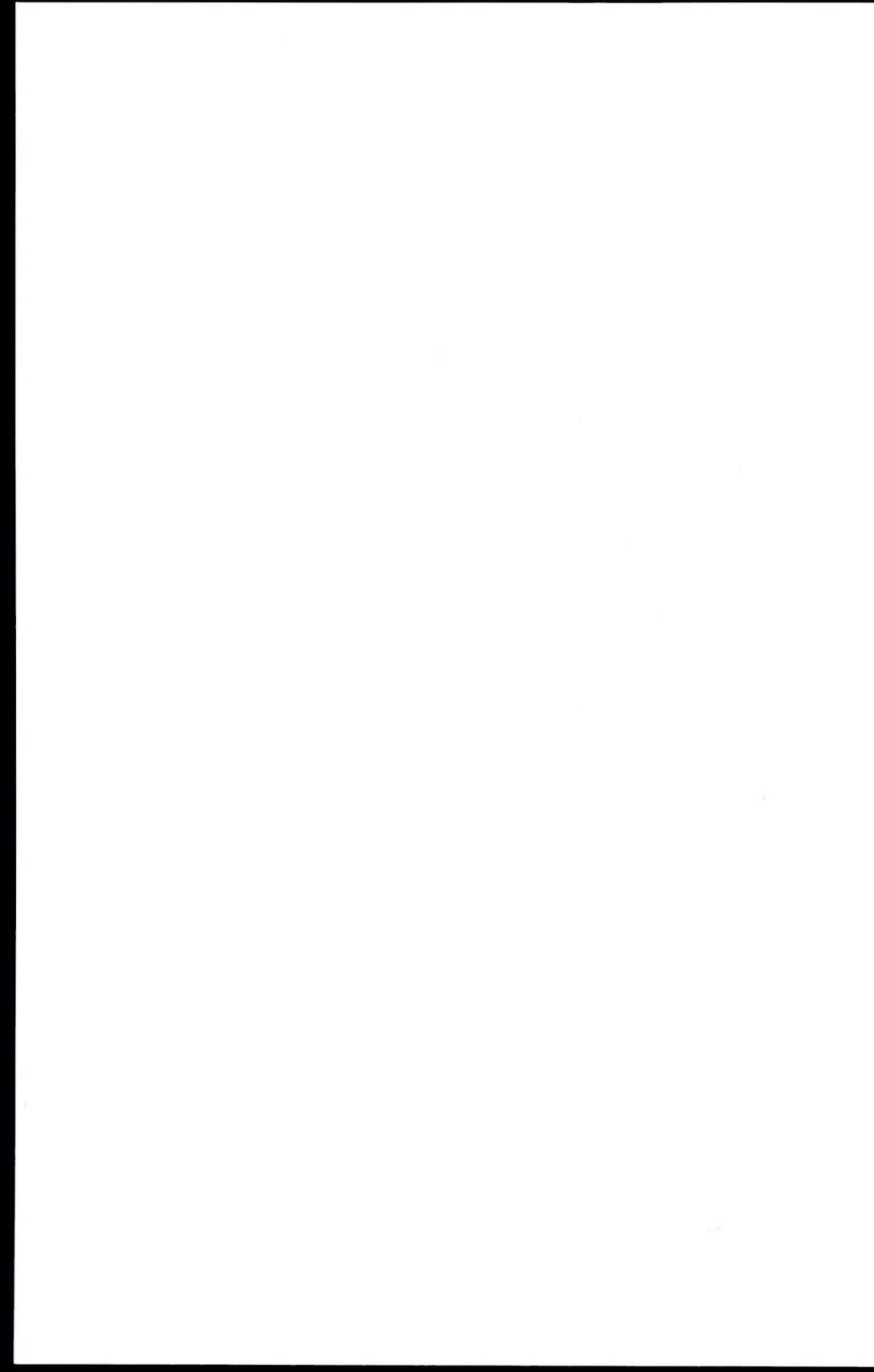
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On the night of October 9, 1992, settlers went on a rampage in the village of 'Abud. They milled about the narrow streets, shooting in the air, throwing stones, smashing windows, and wrecking cars. Through it all, they sang vociferously. A day earlier, as the village marked the second anniversary of the Temple Mount massacre, youngsters threw stones at settlers' cars; no one was hurt and no damage was done.

'Isma'il 'Abd al-Majid, a village resident, told **B'Tselem**: "The settlers used the neon lamp at the entrance to my house for target practice. They stood there for about a quarter-of-an-hour, trying to hit the lamp. Finally, one of them succeeded, and they all shouted 'Goal!' and clapped. Soldiers were in the village throughout the riots but did nothing to stop the settlers. There's no one to talk to at the police. If I submit a complaint, the police won't take it seriously, they won't make a real effort to find the guilty. As the proverb says, 'If the judge is your enemy, to whom will you turn?'"



## Introduction

Violent clashes between Palestinians and Israelis in the Territories are commonplace. They have intensified since the beginning of the Intifada, often resulting in property damage, human injury, or death.

A cardinal task of government is to enforce the law and to protect the life, property, and rights of those for whose security it is responsible. For Israel, this duty applies not only to Israeli citizens residing within the state or the Territories under Israeli control, but equally to the Palestinians in territories under Israel's control.

When Palestinians attack Israelis, the authorities invoke all means at their disposal, including some that are incompatible with international law and involve gross violations of human rights, to arrest the suspects and bring them to trial, and defendants convicted by the military courts can expect harsh sentences. **B'Tselem** has examined the authorities' handling of violence by Palestinians against Israeli civilians in earlier reports.<sup>1</sup>

The present report considers how the authorities have dealt with offenses by Israeli civilians against Palestinians in the Territories during the Intifada. Nearly all the offenses in question were perpetrated by Israeli settlers, the others by civilians living in Israel.

On November 22, 1993, Police Minister Moshe Shahal briefed the Knesset's Law, Constitution, and Justice Committee on violence perpetrated by Israeli civilians against Palestinians in the Territories since the beginning of the Intifada, and provided the following data:<sup>2</sup>

1988 – 106 files opened

1989 – 200 files opened

1990 – 189 files opened

1991 – 134 files opened

1992 – 184 files opened

1993 – 312 files opened (as of November 22, 1993)

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1. See, for example, the following **B'Tselem** reports: **Violations of Human Rights in the Occupied Territories 1992/93: The Closure of the West Bank and Gaza Strip – Human Rights Violations Against Residents of the Occupied Territories** (April, 1993); **House Demolition During Operations Against Wanted Persons** (May, 1993); **Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December, 1992** (June, 1993).

2. Protocol No. 118 (uncorrected version), Constitution, Law, and Justice Committee, November 22, 1993, p. 7.

These figures present an incomplete picture of the reality in the Territories. Many Palestinians do not report incidents to the police because of their profound distrust of the Israeli authorities, an attitude confirmed by the hostility and contempt they often encounter when they do turn to the police. The figures clearly indicate, however, a significant increase during 1993 in the number of violent incidents perpetrated by Israelis against Palestinians. Our own data confirm this increase in violence; 14 Palestinians were killed by Israeli civilians in 1993, as compared with one the previous year.<sup>3</sup>

Israelis are subject to Israeli law even in the Territories. This report examines how the Israel Defense Forces (IDF), the Israel Police Department, and the judicial system – the State Attorney's Office and the courts – deal with violence by Israelis against Palestinians in the Territories.

The IDF, as the acting sovereign authority in the Territories, bears overall responsibility for imposing law and order there.<sup>4</sup> The IDF has both the obligation and the authority to prevent violent or other illegal acts by Israeli civilians against Palestinians, and to arrest anyone involved in such offenses.

The section of the report dealing with the IDF is based on statements by soldiers and on dozens of eyewitness testimonies given by Palestinians to **B'Tselem** and other human rights organizations.

The Israel Police Department is responsible for the investigation of cases in which Israeli civilians are suspected of having committed offenses against Palestinians in the Territories. Upon receiving a complaint, the police are obligated to locate, interrogate, and arrest suspects, if warranted, and prepare the evidence for the State Attorney's Office to bring suspects to trial. Even if no formal complaint is made, but the police know about an event from an external source (e.g., parliamentary queries, the media, or non-governmental organizations), they are obligated to conduct an investigation.

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3. **B'Tselem** includes in this category cases that occurred in the context of the ongoing confrontation between Palestinians and Israeli civilians, in which there is a reasonable suspicion that Israeli civilians were responsible. Cases in which the circumstances of death are unclear (such as road accidents) are not included. Also not included are cases in which it is not known whether the shooting was by the security forces, Palestinian collaborators, or Israeli civilians. The actual number of Palestinians killed by Israelis, therefore, may be higher. It should be noted that there was also an increase in the number of Israeli civilians killed by Palestinians in the Territories: from 11 in 1992 to 29 in 1993.

4. According to the first section of Proclamation No. 1: Concerning the Assumption of Power by the IDF, "The Israel Defense Forces have today entered this area and assumed responsibility for security and maintenance of public order."

If the investigation uncovers no suspects, or insufficient evidence is obtained, or the material does not warrant a criminal charge, the file is closed, and no legal action is taken. However, if there is *prima facie* evidence implicating a suspect, the file is transferred to the State Attorney's Office for determination whether to close the file or file formal charges. Indictments against Israeli civilians are submitted to a Magistrate's Court or District Court (depending on the gravity of the offense), and the defendants are tried according to Israeli criminal law.<sup>5</sup>

In compiling this report, **B'Tselem** examined a sample of 206 attacks on Palestinians that resulted in property damage, bodily injury, or death, where at least a reasonable suspicion existed that the perpetrators were Israeli civilians. We wanted to know how many cases were closed, the frequency with which suspects were identified and/or arrested, how many trials were held, how many trials resulted in convictions, and what punishments were imposed. The sample does not cover 1993, since cases from that year are undoubtedly still pending.

The 206 cases examined involved:

- a. 48 Palestinian deaths.
- b. 78 cases of bodily injury to Palestinians.<sup>6</sup>
- c. 80 cases of damage to Palestinian property.<sup>7</sup>

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5. See below, p. 15 ff.

6. Not all cases of bodily injury are listed. **B'Tselem** monitored the developments in cases reported in the press; information on the other cases was furnished by **HaMoked**: Center for the Defense of the Individual.

7. Not all cases of property damage are listed. **B'Tselem** monitored the developments in those cases reported in the press; information on the other cases was furnished by **HaMoked**: Center for the Defense of the Individual.



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## **Background**

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# I. The Legal Aspect

"... In Judea, Samaria, and Gaza there are two legal systems and two types of people: there are Israeli citizens with full rights, and there are non-citizens, non-Israelis with non-rights."

– MK Amnon Rubinstein<sup>1</sup>

A number of legal systems apply in the West Bank and Gaza Strip. The Palestinians in the Territories are subject to two penal codes:

- a. The pre-1967 local law – Jordanian in the West Bank, Egyptian in the Gaza Strip – remained in force, subject to Israeli security legislation.<sup>2</sup>
- b. The security legislation promulgated by the IDF under its authority as an occupying army according to international law, and especially the Security Provisions Order, promulgated in 1967 and superseded by an order issued in 1970.<sup>3</sup>

Accordingly, two types of courts exist:

- a. Local courts, which are empowered to make decisions solely on the basis of the local law; and
- b. Military courts, created under the Security Provisions Order, which are empowered to decide in each criminal matter in accordance with both systems of law.

The Military Judge Advocate in the Territories is empowered to transfer a criminal case from a local court to a military court. During the Intifada, there was a significant rise in the number of nonsecurity offenses handled by military courts.

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1. Knesset Protocol, January 2, 1984, p. 923.

2. Local law, according to a judgment of the Supreme Court, includes the Defense Regulations dealing with security dating from the British Mandate period. Israel invokes the Regulations regularly, especially with regard to the administrative punishments of house demolition and deportation, neither of which is contained in the IDF's security legislation. To remove all doubt regarding the applicability of the Defense (Emergency) Regulations of 1945 under local law, they were applied in the Territories through a military order, and may, therefore, be considered part of Israeli security legislation.

3. Security Provisions Order (Judea & Samaria Region) No. 378, 1970.

Israeli citizens who are in the Territories, whether as residents or for other purposes, are technically subject to both of these legal systems, as well as to Israeli penal law, under emergency regulations introduced by the Minister of Defense in 1967.<sup>4</sup> Problems resulting from the applicability of more than one legal system where no coordination exists between them may, therefore, arise for actions that constitute an offense under more than one system of law. Officially, no one system is given preference; the decision as to which system will apply in a particular case rests – in theory – with the regional military army commander, the police, and the State Attorney's Office. In practice, Israeli civilians are tried in Israel under Israeli penal law. As Col. Ahaz Ben-Ari, head of the International Law Branch in the Office of the Military Advocate General, wrote in response to a query by **B'Tselem**:

A military court does have the authority to try Israeli civilians. At the same time, since that authority lies concurrently with the courts in Israel, the Attorney General decided that [such civilians] should be tried in the courts in Israel, unless the offense committed in the Territories has no equivalent in Israeli law.<sup>5</sup>

The policy of applying Israeli penal law to every Israeli citizen and to non-citizen Jews has raised a legal dualism that distinguishes between populations according to their ethnic identity. While Palestinians are subject to local or military law and are tried in local or, more often, military courts, Israelis who commit criminal offenses in the Territories are subject to Israeli law and are tried in courts inside Israel. The Israeli legal system assures them of judicial rights and guarantees to which Palestinians in the Territories are not entitled. Similarly, the maximum punishments to which Israelis are subject are generally less severe.<sup>6</sup>

**A Palestinian** may be arrested by any soldier or policeman. The seriousness of the offense and the probability that the person arrested committed it are inconsequential. But a policeman may arrest **an Israeli** without a warrant only if at least one of eight conditions set

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4. Emergency Regulations (Offenses in the Administered Territories – Jurisdiction and Legal Aid), No. 52, 1967.

5. In a letter dated July 11, 1991. The application of Israeli penal law to offenses committed by Israeli civilians in the Territories should be seen as part of a general trend by the Israeli government since 1967 to impose the entire Israeli judicial system on the settlers, thereby creating one status for Israeli citizens in Israel and the Territories. See Amnon Rubinstein, **The Constitutional Law of the State of Israel**, Jerusalem, Vol. I, 1991, pp. 104-107 (Hebrew).

6. According to Prof. Rubinstein, this situation also impairs the widely accepted principle of territoriality, which asserts that "people living in a particular area will be subject to the same system of laws." Ibid, p. 105.

forth in the law apply, and the severity of the offense and probable culpability of the suspect are considered.<sup>7</sup>

A **Palestinian** may be held in custody for eight days before being brought before a judge to extend the period of detention; adults may be detained for eighteen days if suspected of committing one of a list of offenses, among them intentionally causing death and sheltering a person suspected of causing death. An adult **Israeli** may be held in custody for forty-eight hours before being brought before a judge. A minor above the age of fourteen must be brought before a judge within twenty-four hours, and the limit for a minor below the age of fourteen is twelve hours.

A **Palestinian** in custody may be prevented, on grounds of regional security or the good of the investigation, from meeting with his lawyer for fifteen days after his arrest, and this period may be extended for another fifteen days. Detainees are routinely not allowed to meet with a lawyer for fifteen days. An Israeli detainee may be forbidden to meet with a lawyer on the same grounds of regional security for seven days after his arrest, and the detention period may be extended for an additional eight days, though this possibility is rarely invoked against Israeli civilians.

The severity of punishment also frequently differs, since maximum punishments vary in the two sets of laws. As a result, an Israeli and a Palestinian who commit the same crime can expect different punishments as a result of their ethnic identity.

A **Palestinian** convicted of manslaughter is subject to a maximum sentence of life imprisonment; an **Israeli** convicted of the same crime faces a maximum sentence of twenty years in prison.

A **Palestinian** convicted of maliciously damaging property is subject to a sentence of up to five years in prison; the maximum punishment for an Israeli convicted of the same offense is three years.

In addition, the two systems differ widely as regards the early release of prisoners. The Israeli Penal Code allows for the release of prisoners who have served two-thirds of their sentence.<sup>8</sup> But the security legislation contains no provision for early release due to good behavior.<sup>9</sup>

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7. On the legal sources underlying this comparison between the two systems of justice, and for further elaboration, see Appendix 1, p. 131.

8. See Penal Code, 1977, sec. 304.

9. Sec. 3 of the Order Concerning Methods of Punishment (Judea & Samaria) (No. 322), 1969, states: "In calculating the period of incarceration and the reduction of imprisonment for anyone sentenced to prison by a military court, only the provisions of security legislation, and not the legal provisions which set rules for mitigating punishment for good behavior in prison, shall apply."

Legally sanctioned discrimination between Israelis and Palestinians also exists with respect to compensation for victims of nationalist-political violence. An Israeli civilian who suffers injury to person or property at the hands of a Palestinian for nationalist reasons is entitled to compensation from the state. In the reverse situation, a Palestinian who suffers injury at the hands of an Israeli for the same reason receives no compensation from the state.<sup>10</sup>

## Summary

1. Unequal law enforcement against Israeli civilians and Palestinians in the Territories exists because different legal systems are applied to the two populations, even though they reside in the same territory.
2. Israel's policy of applying Israeli criminal law to Israeli civilians for offenses committed in the Territories has created a legal situation that distinguishes between populations according to ethnic identity. As a result, Israelis and Jews have a preferential status in comparison to that of Palestinians.
3. This state of affairs, in which ethnic identity determines the legal system and the court in which a defendant faces trial, violates the principle of equality before the law, a situation aggravated by the disparity between the two systems. The existing covert discrimination would be more obvious if one legal system contained different rights and punishments based on the defendant's identity.<sup>11</sup>
4. The Knesset, as well as the government, is responsible for this discrimination since it legislatively extends the validity of the Defense (Emergency) Regulations, under which Israeli civilians in the Territories are subject to Israeli criminal law. In addition, the Knesset bears legal and moral responsibility for the inequality in the compensation paid to Israeli and Palestinian victims of nationalist violence.

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10. See sec. 1 of the Compensation to Victims of Hostile Acts Law, 1970, and sec. 35 of the Property Tax and Compensation Fund Law, 1961. In October, 1992, MK Haim Oron introduced two bills in the Knesset that would ensure parity in compensation paid to victims of nationalist-political violence, irrespective of ethnic background.

11. See Eyal Benvenisti, **Legal Dualism: The Absorption of the Occupied Territories into Israel**, West Bank Data Base Project, Jerusalem Post, 1989.

## 2. Violence by Israeli Civilians against Palestinians in the Territories

### A. Background

Following the 1967 Six-Day War, Jewish settlements were established in the West Bank and the Gaza Strip. According to the Central Bureau of Statistics, 104,800 Jews resided in the Occupied Territories at the end of 1992, of whom 100,500 lived in the West Bank and 4,300 in the Gaza Strip.<sup>1</sup>

Over the years, and especially since the beginning of the Intifada, settlers and Palestinians have often clashed. Most attacks by Palestinians on Israelis were perpetrated with stones, knives, and firebombs. In recent years, Palestinians have also resorted to firearms with growing frequency. The vast majority of attacks on Palestinian life and property by Israeli civilians have involved the use of firearms.<sup>2</sup>

Most of the settlers in the Territories with weapons received them from the army. In response to a query from **B'Tselem**, the head of the IDF Spokesperson's Information Branch, Lt. Col. Rami Kedar, listed the criteria for distributing firearms to Israeli settlers in the Territories:

1. Firearms in the Jewish settlements in the Judea-Samaria Region and in the Gaza District are distributed to civilians in two ways:
  - a. Weapons, housed in the settlement's storerooms, are distributed to guards when they go on duty, and require their signature. They receive the weapon from the settlement's security coordinator.
  - b. Personal weapons are distributed by the IDF to civilians on the basis of an authorization certificate issued by a senior IDF officer. This manner of distribution is made in accordance with the "Israeli Firearm" Law of 1949, and in General Staff Order No. 2.0107. The certificate is subject to annual renewal.

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1. **Statistical Abstract of Israel**, 1993, No. 44, p. 47. These are the last figures available from the Central Bureau of Statistics. According to the YESHA Council, 136,415 Jews were living in the Territories at the end of 1993, while Peace Now published a figure of 108,500 as of the end of September, 1993. See "How Many Live There", *Ma'ariv*, December 31, 1993.

2. See **B'Tselem, Human Rights Violations in the Occupied Territories 1992/93**, Ch. 1.

2. IDF policy regarding distribution of weapons:

General Staff Order 2.0107 specifies the objective conditions and criteria that a civilian must fulfill before receiving a weapon. Among the criteria: physical and mental fitness and no prior criminal record.

Israeli law states that every civilian who has a personal weapon must carry a permit to bear arms and act in accordance with it. Under this law, civilians are not obliged to obtain a permit for weapons provided to them by the IDF pursuant to an authorization certificate...<sup>3</sup>

In a letter dated December 6, 1992, Capt. Avital Margalit, head of the IDF Spokesperson's Information Branch, informed **B'Tselem** that the IDF Spokesperson had no information on the number of firearms distributed to civilians in the West Bank and Gaza Strip. She added: "Nor can we tell you whether we shall be able to publish the number in the future."

## B. Types of Violence

Violence by Israeli civilians against Palestinians in the Territories takes many forms. Most serious, of course, is violence which causes loss of life.

### Cases of death by years

1988	1989	1990	1991	1992	1993	Total
15	17	9	6	1	14	62

In four of the sixty-two incidents, the persons firing weapons were in mortal danger, and in three other cases they deliberately placed themselves in life-threatening situations. Regarding eight cases, we do not have sufficient information to determine whether mortal danger existed. In the remaining forty-seven cases, the Israeli civilians who killed Palestinians were not in life-threatening situations.

The violent incidents against Palestinians involving Israeli civilians can be divided into two main types:

- a. immediate reaction to an attack or other action by Palestinians.
- b. actions initiated by settlers.

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3. In a letter dated January 13, 1992.



*A-Ram intersection at the entrance to Ramallah – November 7, 1993.  
A settler smashes the window of a Palestinian automobile.*

## **1. Immediate Reaction to Attack or Other Act**

### **a. Self-defense**

In some cases, Israeli civilians fired after being attacked by Palestinians. Self-defense was involved in only a small percentage of the incidents; as mentioned above, only four of the sixty-two cases in which Israeli civilians killed Palestinians were genuine instances of self-defense.

1. On November 7, 1988, Ahmad Hussein 'Abdallah Bisharat stabbed David Danieli, a reserve soldier on guard at the entrance to the settlement of Masua. A reserve soldier on leave, Haim Yisraeli, approached with his rifle. When Bisharat tried to attack him as well, Yisraeli shot and killed the assailant.
2. On October 31, 1993, Meir Ashur, an Israeli truck driver, killed Thamar Khalil Ziyadah, who had stabbed him. The incident occurred in the industrial zone at Erez Checkpoint on the northern edge of the Gaza Strip.
3. On November 14, 1993, Avraham Zarbiv, from Hebron, killed Muhammad Jodeh 'Abd al-Karim when al-Karim and another Palestinian attacked him with hatchets while he was walking to the Cave of the Patriarchs.
4. On November 16, 1993, Meir Bukobza, from Ashkelon, killed Shadi Musalah Muhammad 'Issa, after the latter had stabbed Aryeh Shitrit, from Nitzanit, a settlement in the Gaza Strip, and Boris Miller, from Netivot. Bukobza grabbed Shitrit's pistol and chased the assailant, who turned and ran at him brandishing the knife.

### **b. Excessive Reactions to Palestinian Acts**

Stone-throwing at Israeli vehicles, sometimes after they are forced to stop or slow down at barriers placed by Palestinians, is common in the Territories. In some instances, Israeli civilians find themselves in physical danger and are forced to use their firearms in self-defense. Often, however, the occupants of vehicles, especially if they live in the Territories, use their weapons in a manner that exceeds self-defense, chasing stone-throwers and shooting at them, though they obviously no longer present a danger, as "punishment." This is absolutely prohibited by the Penal Code and by the Rules of Engagement that apply to civilians. The Supreme Court described such behavior as "an act, which in its gravity subverts the very existence of a civilized human society."<sup>4</sup>

Examples of incidents involving settlers which resulted in Palestinian deaths are the cases of Rabbi Moshe Levinger (September, 1988),

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4. Criminal Appeal 175/88, *State of Israel v. Ishigayou*, Piskei Din 42 (2), 361, p. 367. For details about the incident, see below, pp. 96-98.

Pinhas Wallerstein, head of the Binyamin Regional Council (January, 1988), and Boaz Moscowwitz (February, 1991).

Levinger shot at passersby while being stoned – though not from the direction at which he fired – while standing at an IDF checkpoint. Wallerstein chased and fired at boys who were burning a tire. Moscowwitz, who was forced to stop his car at a makeshift roadblock, exited the vehicle and opened fire at houses eighty meters away. In each incident a Palestinian was killed, and the settler was convicted of "causing death by negligence."<sup>5</sup>

Repeated statements in the media and in settler publications indicate that the use of firearms against stone-throwers, even where no life-threatening situation exists, received legitimation, if not encouragement, from their political leadership.

In March, 1993, the YESHA (Judea-Samaria-Gaza) Council recommended that settlers "fire to deter" in every case of stone-throwing, even if those involved are fleeing.<sup>6</sup> In December, 1991, Pinhas Wallerstein told *Ha'aretz*:

We will not allow stones and firebombs to be thrown at us, or bullets shot at us, without reacting. If the legal system thinks we are in Tel Aviv, and considers our case as though it were Tel Aviv, at the worst people will pay a price for their actions – but they will remain alive. There is a law for Tel Aviv, and there is a law for a state of war.<sup>7</sup>

A resolution passed that month by the Binyamin Regional Council, which Wallerstein heads, stated:

In light of the circumstances in which Zvi Klein was murdered, it is recommended that residents should henceforth consider stone-throwing to be a life-threatening situation, with all that entails from the standpoint of the Rules of Engagement. "It is preferable that people end up in prison than in the cemetery," Wallerstein explained. He stressed, however, that this decision should not be construed as a call for general permissiveness or for the absence of sound discretion.<sup>8</sup>

The newspaper *Hadashot* reported that at an emergency meeting held in the settlement of Ofra on the day following Zvi Klein's killing, Hanoch Alon, a settler from Ofra, stated: "We have to make the decision to open fire on stone-throwers with intent to strike, because

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5. Criminal File 137/89, *State of Israel v. Moshe ben Eliezer Levinger*; Criminal File 265/88, *State of Israel v. Pinhas ben Moshe Wallerstein*, Criminal File 1440/92, *State of Israel v. Boaz Moscowwitz*.

6. *Ha'aretz*, March 3, 1993.

7. *Ha'aretz*, December 3, 1991.

8. Report on a meeting with the Judea-Samaria military commander, *Bulletin of Binyamin Regional Council*, December 23, 1991.



*The Ramallah-Nablus road, opposite Beit El – October 29, 1993  
A Palestinian automobile in flames after being ignited by settlers.*

we have reached the stage of shooting and have crossed all the lines restricting our behavior."<sup>9</sup>

These statements referred to opening fire in reaction to stone-throwing. Yet no stone-throwing occurred in the incident in which Zvi Klein was killed. He died when assailants opened fire at his car while he was inside it (a situation in which he could legally fire back). The settlers exploited, therefore, an incident which clearly involved a life-threatening situation in order to urge the indiscriminate use of firearms in circumstances where no mortal danger exists.

## **2. Actions Initiated by Settlers**

Actions initiated by settlers against Palestinians and their property are carried out by individuals or organized groups in order to intimidate, deter, or punish. An action may be in reprisal for Palestinian violence, or it may be unrelated to any specific incident. The firearms and ammunition used are provided to them overtly and officially.

As early as February, 1989, MKs Yossi Sarid and Dedi Zucker sent a letter to Attorney General Yosef Harish, warning against "operations by settlers in a militia format." They added:

Already today the settlers are operating organized armed patrols according to a central plan. These operations are conducted parallel to and concurrent with IDF activities... In addition to the patrols, settlers have undertaken numerous punitive actions against Arab villages. These actions are carried out within the framework of a policy agreed on by the leadership/command. They are not spontaneous reactions, but were and are part of a conception that rests on a chain of command and an organizational system that enables implementation of the policy.... It may be reasonably assumed that the settlers' militia has a contingency plan to meet possible developments in the Territories, and it is greatly encouraged by the lenient and forgiving attitude of the security authorities and the law.<sup>10</sup>

At the same time, the two MKs sent memoranda to Justice Minister Dan Meridor, Police Minister Haim Bar-Lev, and Defense Minister Yitzhak Rabin, elaborating on the "security committees" in the Israeli settlements.<sup>11</sup>

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9. *Hadashot*, December 20, 1991.

10. Letter to Attorney General Yosef Harish, February 13, 1989.

11. Letters, dated February 22, 1989, to the Ministers of Justice, Police, and Defense.

Three months later, on May 31, 1989, Defense Minister Rabin stated that there might be local organizing by Jewish settlers in the Territories, adding: "I cannot say for certain that there is a wider network."<sup>12</sup>

Pamphlets and leaflets distributed in the settlements and statements by settlers in the media confirm many of the details noted by Sarid and Zucker regarding the settlers' "policing" activities. These include assigning numbers to Palestinians' houses, and patrolling roads to demonstrate "presence." They indicate the organized character of the actions.

For example, a leaflet dated December 12, 1991, signed "Settlement Activists," and circulated in the settlement of Beit El, reported that a meeting of residents had decided to set up a committee "to initiate and organize various activities in reaction to the Arab terrorism which is gathering momentum, which we all hear, see, and feel."

Similarly, a report from a meeting of the "Forum of Settlement Activists," held on January 6, 1992 at Psagot, stated: "In accordance with the Forum's decision to react to every serious terrorist incident, roads were blocked on Sunday morning at some 14 places throughout Binyamin [a region in the West Bank], Samaria, and the Gaza District.... Where it is not quiet on YESHA roads, the movement of the area's Arabs and their travel to work will be restricted. The operation is being conducted in cooperation with YESHA's public leaders and rabbis."

#### **a. Riots and attacks on property**

Reprisal operations against Palestinians range from blocking roads and disrupting the normal daily activity of the Palestinians to violent disturbances in Arab villages and towns. The latter include shooting at solar heaters, igniting cars, smashing windows, and destroying crops.

We have chosen to illustrate the broad scale of settler-initiated actions against Palestinians by listing incidents that occurred in October, 1992, which was not one of the peak periods of violence by Israeli settlers during the Intifada (May 1989, December 1991, and November 1993).<sup>13</sup>

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12. *Davar*, May 31, 1989.

13. The examples are based on testimonies given to **B'Tselem**, information published in the Israeli press, and investigations conducted by the Palestinian human rights organizations 'al-Haq and the Palestinian Human Rights Information Center. Many additional examples are contained in: 'al-Haq, **Punishing a Nation**, 1989, Chap. 3: "Settler Provocation and the Use of Excessive Force"; **A Nation Under Siege**, 1990, Chap. 3: "Settler Violence"; **Protection Denied**, 1991, Chap. 4: "Settler Violence"; and in Palestinian Human Rights Information Center, **Uprising in Palestine: The First Year, 1989** and subsequent PHRIC publications.

Oct. 3: Residents from Kiryat Arba stoned the car of a Palestinian from Hebron, smashing the front windshield and slightly injuring the driver, who filed a complaint with the Hebron police.

Oct. 4: Soldiers noticed a Palestinian vehicle on fire in Hebron's commercial center and a container of flammable fluid lying next to it. They also spotted an Israeli car, an Audi, speeding away from the scene. Despite the soldiers' calls to stop, the car continued. The soldiers fired at the wheels and chased the vehicle, overtaking it in Kiryat Arba. The occupants were "Kach" activist Noam Federman and a Kiryat Arba resident, Yehoyada Kahalani. "Kach" leaflets, burglars tools, a can of gasoline, and a can of motor oil were found in the car, and the car had been struck by bullets.

Oct. 4: At about 9:15 a.m., a Peugeot 504 station wagon, belonging to Muhammad Samir Hikhmat Khaled al-'Aqel was ignited. It was parked next to his house, which is adjacent to Kiryat Arba, about 20 meters from the main street. His house is routinely stoned on the Sabbath, Jewish holidays, and when the settlers' children return from school.

Oct. 15: Settlers opened fire at the Kahil junction (next to Hebron), hitting rooftop water containers. They claimed they had begun shooting after stones were thrown at them. The police investigation found that two water containers had been damaged by the gunshots but that the settlers cars were unharmed.

Oct. 15: Three cars belonging to residents of the settlement of Ofra were stoned, with considerable damage, near Ein Yabrud. Later, four passengers on a bus were injured by stones. In reaction, dozens of Ofra's residents converged on the site and stoned houses in the village.

Oct. 15: At 7 p.m., a convoy of vehicles (four buses and a number of cars belonging to settlers and Jews from central Israel) set out from the Cave of the Patriarchs in Hebron for Jerusalem. Near one of the major junctions, the convoy was stoned, and one passenger was slightly injured. The occupants of the vehicles alighted, fired in the air, and threw stones at houses and cars. Palestinians say that shots hit the local mosque and a passing bus. The police investigation revealed that the tires of a bus had been punctured, and the windows of six cars belonging to Palestinians had been smashed. Two of the cars had been overturned.

Oct. 17: A "roadside bomb" exploded near the settlement of Matityahu near Ramallah, killing Yehudit Ostern and wounding nine other Israelis. In reaction, dozens of settlers from the Beit El area blocked the main road from Ramallah to Jerusalem. Settlers entered the nearby village of Hirbata, smashing car windows, one settler using the butt of his Uzi submachine gun. Settlers and Palestinians threw

stones at one another, and windows were broken in several houses in the village.

Oct. 19: At about 11:45 a.m., a group of settlers threw stones at houses and at a drugstore in the town of al-Bireh on the main road from Ramallah to Nablus. They seized and beat a local resident, Suheil Abd., after breaking the windows in his house. The settlers then handed him over to the army, which released him a week later. Windows in other houses and in the "Hia" drugstore were also shattered during the attack.

Oct 19: According to testimonies of residents of al-Bireh and Ramallah, settlers, accompanied by armed civilians and border policemen, marched on Ramallah. One resident testified that he saw a settler slash tires on three cars, while three other settlers stood guard. According to another witness, settlers threw stones at passersby.

Oct. 22: In a night action, some 150 settlers from the ultra-Orthodox town of Betar entered the village of Husan, near Bethlehem. They sabotaged a truck and cars and threw stones at houses. The settlers claimed they were reacting to an incident that morning where a tanker driver had been injured in the nearby village of al-Khadr, and to other incidents of stone-throwing at Israeli vehicles that day. Villagers living in the area where the settlers were operating alerted others, who soon arrived and began throwing stones at settlers and soldiers.

Oct. 23: Palestinians who were pressing olives, their main source of livelihood, were attacked four times by settlers from the Nablus area. The attacks occurred on October 23 and 28 in the village of Dir al-Khatab, on October 17 in the village of Krayot, and on October 30 in the village of Luban a-Sharqiyah, where settlers also demonstrated and set up roadblocks on October 29.

Oct: 25: The YESHA Rabbis Committee called on the public to protest the attack in which a reserve soldier, Shmuel Gersh, was killed that day. In the afternoon, settlers from the Kiryat Arba area began attacking Palestinian houses and property, smashing dozens of car windows. In the Cave of the Patriarchs, settlers damaged carpets and other items belonging to the mosque. The disturbances continued the next day. At the Cave of the Patriarchs, some 2,000 settlers from Kiryat Arba and Hebron held a protest rally, preventing Palestinians from entering the site. Hebron was under curfew at the time, but the settlers moved freely through the city's streets, waving the Israeli flag. They also shattered house windows.

Oct. 26: At about 7 a.m., hundreds of settlers from Kiryat Arba and from Hebron marched into the center of the city under the auspices of the army. During the march, which lasted the entire day, they chanted anti-Arab slogans. Palestinians' houses along the route were damaged by gunfire and stones. Windows of twenty-seven cars and houses were reportedly smashed. Live bullets were fired at the home of Jum'a 'Abd al-Athim D'ana, aged 33, four of which penetrated the kitchen and bedroom. Bullet holes are visible in the house of 'Abd al-Athim Mustafa Jabri, aged 80, in the Masharq neighborhood of Hebron's Old City. Live bullets were fired into the house through the porch windows while the family was inside. Another twenty car windows were also shattered with stones.

Oct. 28: Using a bullhorn, settlers warned residents in the village of Tsara, near Nablus, after a firebomb was thrown at a bus belonging to the Samaria Development Company. Several residents complained that windows in their houses had been shattered.

Oct. 29: At about 11:30 a.m., settlers raided the village of Luban al-Gharbiyeh, shattered windows in the house of Ya'aqub Mislak, and tried to ignite an automobile.

Oct. 30: At about 12:15 p.m., a group of settlers tried to set fire to a soft drink factory belonging to Muhammad Mar'i, age 32, from Jenin. They ignited empty containers, causing NIS 40,000 worth of damage.

## **b. Deliberate entry into life-threatening situations**

In some instances, settlers were involved in situations of mortal danger only as a result of confrontations they deliberately initiated. During an interview by the newspaper *Ma'ariv*, the head of the Kiryat Arba Council, Zvi Katzover, said: "We plan to react to every attack, and we will move into the field. An incident might develop with locals who threw stones, and this could lead to the use of firearms."<sup>14</sup>

On June 3, 1988, a number of settlers entered the village of Shayukh, burst into houses, and wrecked property. In reaction, a group of youngsters organized and stoned the settlers. The latter responded with gunfire, and Mustafa Ahmad 'Odeh Halaiqah was struck by two bullets in the back and one in the chest. He died on the way to the hospital. His body was later disinterred and taken to the Forensic Pathology Institute at Abu Kabir for an autopsy.

On May 29, 1989, Ibtisam 'Abd a-Rahman Buziyah, a 16-year-old girl from the village of Kifl Hareth, near Tulkarm, was killed when students from the Od Yosef Chai (Joseph Still Lives) Yeshiva entered the village on a pilgrimage to the supposed site of Joshua's grave. The yeshiva students ran amok, attacked an old man, shot at water containers, and set fire to a stack of hay.

About a year after the events, the Central Region District Attorney's Office charged Gadi Ben-Zimra and Yehoshua Shapira, both from Ma'alot Levona, and Yoel Alfred and Rafi Salomon, from Yitzhar, with manslaughter, firing in a residential area, assault and causing bodily harm in aggravated circumstances, arson, and harming animals. According to the indictment, the girl had been standing at the entrance to her house when she was hit by bullets, and died at the scene.

The trial began on April 4, 1990. Ben-Zimra and Shapira denied all the charges against them and claimed self-defense. After the indictment was revised as part of a plea bargain, Ben-Zimra, Salomon, and Shapira were sentenced to eight months in prison and eighteen months' suspended; Alfred received an eighteen-month suspended sentence.<sup>15</sup>

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14. *Ma'ariv*, December 22, 1991.

15. Finally, because of the prosecution's apparent inability to prove the cause of Buziyah's death and the family's refusal to cooperate with the authorities, the prosecution consented to a plea bargain with the defendants. The charges of manslaughter and of aggravated assault on an 83-year-old man were dropped, and the four defendants pleaded guilty to charges of rioting resulting in damage, arson, maliciously causing damage, harming animals, and causing bodily harm in aggravated circumstances. On September 26, 1991, two-and-a-half years after the event, they were convicted on the basis of their guilty plea, and were sentenced on December 16, 1991.

Even if the settlers in these two cases opened fire because they were in danger, the defense of self-defense is not available to them since they deliberately endangered themselves by entering the village and committing violent acts.

### **c. Forcible seizure of land and uprooting of trees**

In some cases, settler violence against Palestinians is intended to dislodge them from their homes or land, as was noted already in 1982 by the commission headed by Deputy Attorney General Yehudit Karp.<sup>16</sup>

#### ***Testimony of Hamad Badawi 'Abd al-Hai al-Boom, aged 67, from the village of Krayot, near Nablus, as given to B'Tselem fieldworker Bassem 'Eid on July 26, 1993***

I own a 12-dunam [3-acre] plot of land on which 176 olive trees were planted. The land is about half-a-kilometer from the settlement of Shilo. In recent years, the settlers cut down a number of trees every year.

Now only eight olive trees are left. The settlers put up a fence around the area in which the trees were uprooted, and planted apple and plum trees there. Altogether, the settlers seized 11 of my 12 dunams. Now I can't even get to the eight trees that are left. Every time I tried to reach them, the settlers beat, cursed, and chased me away, saying it is their land. The settlers also took sheep tended by shepherds from the village who crossed my land. I did not receive any notification or order from the authorities about land expropriation. I have all the papers to prove I own the land.

In the past I turned to the police in Ramallah and Nablus. The police were in contact with the head of the settlement, and afterward they informed me that he promised not to uproot trees. But the uprootings continued just the same.

In June, 1991, settlers helped soldiers uproot some 200 trees on land belonging to 'Awani 'Abd al-Hadi, from the village of Qifin. They then chopped up the trees for firewood and forced local villagers at pistol-point to deliver the timber to a settlement.

On December 13, 1991, residents of the settlement of Elon Moreh uprooted and cut dozens of olive trees in a grove belonging to a

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**16. Investigation of Suspicions against Israelis in Judea and Samaria - Monitoring Staff Report.** May 23, 1982 (hereinafter: Karp Commission Report), pp. 8, 20. For details about the Karp Commission Report, see below, pp. 64-67.

Palestinian from the Territories. This was done in broad daylight and in full view of media cameras.<sup>17</sup>

On May 27, 1992, after Rabbi Shimon Biran, from the village of Kfar Darom in the Gaza Strip, was stabbed to death, hundreds of settlers from the region entered nearby orchards with bulldozers in an effort to uproot the trees. Equipped with fuel, they burned fields and hothouses belonging to Palestinians, and uprooted saplings.<sup>18</sup>

## Summary

1. Attacks by settlers against Palestinians in the Territories have become routine over the years. Some of these operations are immediate reactions to Palestinian attacks, but most are actions initiated by settlers against innocent Palestinians.
2. Of sixty-two cases in which Jews caused the death of Palestinians in the Territories, we know of only four that clearly involved self-defense. Regarding eight other incidents, we cannot determine whether a life-threatening situation existed. In all the other cases, opening fire was unjustified and illegal, manifesting an excessive response to stone-throwing or other Palestinian activity, or comprising "punitive" actions by the settlers.
3. Repeated statements in the media and written material issued by the settlers show that the use of firearms, even if no mortal danger exists, is justified and encouraged by the settlers' leaders.
4. Settler-initiated actions against Palestinians and Palestinian property are carried out by individuals and by organized groups, using weapons and ammunition received from the IDF, to intimidate, deter, and punish. In many cases, such operations are planned, initiated, and well-organized by groups of settlers in various parts of the Occupied Territories. These groups receive support from the settlers' institutional leadership.
5. These settler actions include entering villages, firing at persons, houses, and solar heaters, sabotaging and igniting vehicles, staging violent disturbances, blocking roads, shattering windows, destroying crops and uprooting trees, and harassing merchants and owners of stalls in the market.

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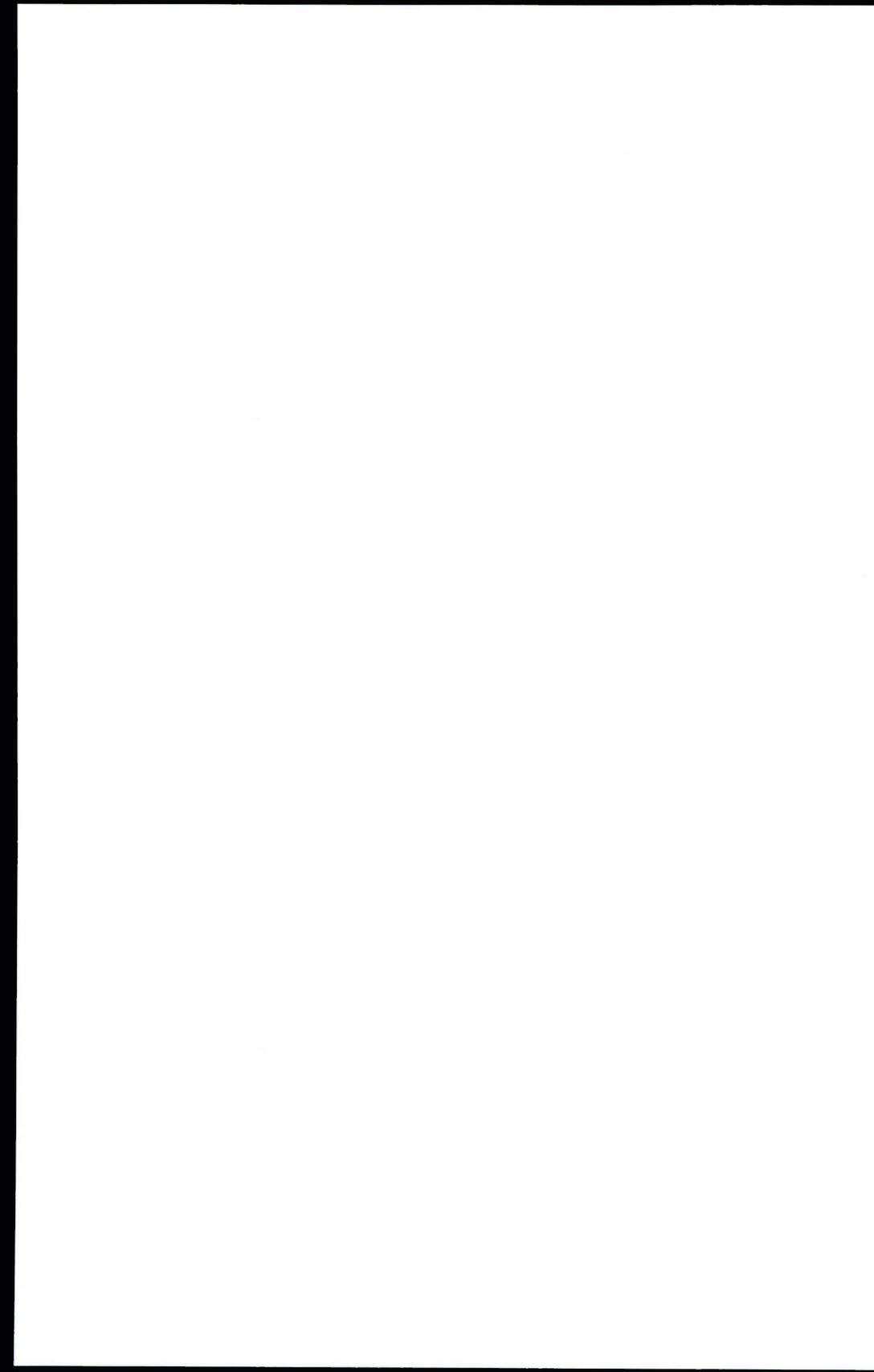
17. *Yediot Aharonot, Ma'ariv*, Dec. 13, 1991.

18. For details about the incident, see below, pp. 47-48.

6. With the exception of the use of firearms in self-defense, all the activity by settlers against Palestinians is illegal.
7. Despite many statements by IDF officers and government officials that the security forces bear exclusive responsibility for security in the Territories, it appears that at least some of the settlers' policing actions are conducted with the full knowledge and likely tacit consent of the defense establishment.<sup>19</sup> It is difficult to draw any other conclusion given the overt character of the settlers' operations, including the distribution of leaflets containing the names of those responsible for the patrolling operations.
8. The numerous riots and acts of violence perpetrated by the settlers against the Palestinians, and the organized character of many of the actions, indicate that they are both criminal offenses and manifestations of ideological-political violence.

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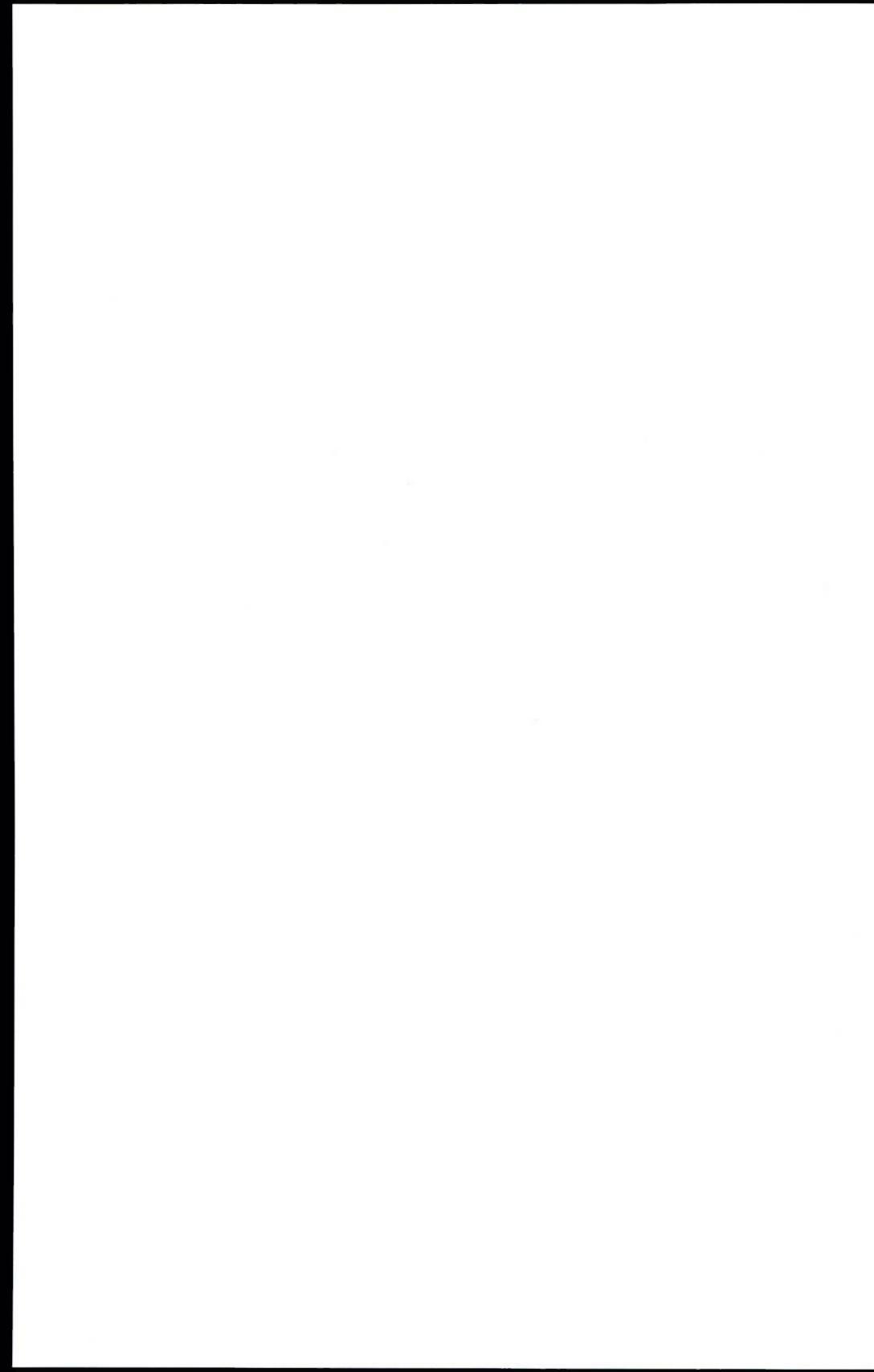
19. For example, "It is clear to all commanders in the regular, career, and reserve [armies]... and to the police that the only body responsible for imposing law and order is the security forces," Deputy Defense Minister Mordechai Gur on Israeli Radio, November 16, 1993; and, "They [the settlers] can move about with weapons and act only when they are defending themselves as a result of terrorist activity against them. They have no permits to do anything else with those weapons, neither private target practice nor patrols initiated by them..." Col. M., West Bank brigade commander, to Israeli Television, May 7, 1993, reported by Nitzan Chen.



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**Handling of Offenses Committed by  
Israeli Civilians against  
Palestinians in the Territories**

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# 1. THE ISRAEL DEFENSE FORCES

## A. Powers and Authority

Since 1967, the IDF has borne overall responsibility for maintaining law and order in the Territories; it is the source of power for all the state authorities that operate in the Territories. International law obligates, therefore, the IDF to protect the life, person, and property of all Palestinians under its control.<sup>1</sup>

Investigations conducted by **B'Tselem** indicate that the powers vested in Israeli soldiers, and their duty to enforce the law against Israeli civilians in the Territories, are unclear. Disparities exist between the written directives and the public declarations of senior commanders, the orders ultimately received by the soldiers in the field, and the soldiers' interpretation of those orders.

A case in point is the authority of soldiers to detain Israeli civilians suspected of violating the law. On November 22, 1993, Police Minister Moshe Shahal told the Knesset's Constitution, Law, and Justice Committee that on June 2, 1989, IDF orders had divided responsibility between the army and the police regarding the enforcement of the law as regards the settlers, "so that making arrests will be the IDF's responsibility, [and] investigating will be the responsibility of the police."<sup>2</sup>

In the same meeting, the committee chairman, MK Dedi Zucker, quoted from the Proclamations and Orders for Judea and Samaria: "As a rule, handling the investigation and trying Jewish settlers and demonstrators are the responsibility of the Israel Police Department; making arrests will be the responsibility of the IDF."<sup>3</sup>

However, the directives that reach the soldiers in the field completely contradict the IDF's orders on arrests, and confirm the statements of Maj. Gen. Meir Dagan, assistant head of Operations Branch, at the same session of the Law Committee, where he asserted that the IDF's role is confined to making a record of incidents involving illegal acts, and to transmitting complaints to the police.<sup>4</sup>

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1. Article 27 of the Fourth Geneva Convention; Article 43 of the Hague Convention.

2. Protocol No. 118 (uncorrected), p. 6.

3. *Ibid.*, p. 24.

4. *Ibid.*

Reserve soldiers who served in the Ramallah area in November, 1993 told *Ma'ariv*:

One morning, we were called to a barricade that settlers had erected west of Ramallah. We asked them [the settlers] to vacate the area, and they began to move in three vehicles toward the villages of Hirbata and Ras Karkar. We followed in a jeep. They entered the villages, shattered windows, sabotaged vehicles, and wounded an Arab resident. We chased them in the jeep, but we did not arrest them. All we could do was make a report, and that is what we did.<sup>5</sup>

One of the officers in a reserve unit of paratroops stationed in Hebron, opposite the Cave of the Patriarchs, said "it is impossible to arrest Jews unless they strike a soldier or wound an Arab in front of IDF soldiers."<sup>6</sup>

A month later, in December, 1993, the IDF issued a pamphlet entitled "Procedures for Enforcing Public Law and Order Concerning Israeli Residents in the Territories," prepared in cooperation with the Attorney General, the Military Judge Advocate's Office, and the police. The pamphlet stated that "IDF soldiers may, in exceptional cases, arrest settlers who are rioting in the Territories, upon the authority and permission of the sector commander of the area in which the settlers are rioting."<sup>7</sup> However, according to the detailed testimony of a reserve soldier who served in Hebron about a month later, in January, 1994, this directive did not reach the soldiers in the field.

A soldier wrote the following to Minister of Education and Culture, MK Amnon Rubinstein, on January 21, 1994:

On January 17, during my reserve service in Hebron, I witnessed a serious incident in which a group of settlers attacked vegetable stands belonging to local residents. I was unable to stop the rioters because the orders we received do not include that possibility. Even after the event, when I asked one of the commanders whether we were permitted to arrest settlers during a riot [by them], I received an explicit "No" in response. I was also not permitted, despite my repeated requests and the promises that were made, to submit a complaint to the police about what I saw.

On that day I was with another soldier from my unit... at a lookout near one of the entrances to the Hebron casbah and the road leading to the Cave of the Patriarchs. At about 3:00 p.m., a

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5. *Ma'ariv*, November 16, 1993.

6. *Ha'olam Hazeh*, November 17, 1993.

7. Quoted in *Ha'aretz*, December 17, 1993.

group of Jewish girls, accompanied by young men with weapons and a few older women, came out of the alleyway leading from the casbah. The girls began overturning crates of vegetables on stands located a few meters from the lookout. I yelled at them to stop, and when they did not, the soldier who was with me climbed down to stop them, and I radioed for reinforcements. During the entire time, the girls kept dumping the produce and trampling on them. They treated our demands to stop with contempt. The owners of the stands were not there at first, but came back when they heard the tumult and asked us to stop the attack on their property. In the meantime, one of the settlers' escorts slashed the four tires of an Arab car parked nearby and smashed the front windshield.

While all this was happening, I stayed at my post by the radio. The other soldier tried, with no success, to stop the rampage. The patrol jeep arrived as a reinforcement only after all the vegetables were already scattered on the ground. The soldier who was with me seized the young fellow who had slashed the tires. In the meantime, the owner of the car arrived, and a fight broke out between him and the person who had damaged his car. The officer in the jeep ordered the two separated, and in the melee that followed, during which the settler girls shouted at the soldiers in the jeep and sprayed them with water, the tire slasher escaped. The girls also fled.

We were told that the police would be summoned to take our testimony. A few minutes later the regional battalion commander arrived with a police jeep. The policeman spoke to the soldier who was on guard with me but did not take proper testimony. We emphasized to the battalion commander that we could identify the rioters, especially the one who had damaged the car. The battalion commander promised that we would be taken to regional brigade headquarters to give written testimony.

The battalion commander left around 4:30 p.m.; by 7:00 p.m. we had not yet been taken to brigade headquarters. In the meantime, a curfew was imposed in the area because of additional incidents. When I returned to the base, I asked the operations room officer to ask battalion HQ when we would be taken to give our written testimony. The officer explained that it was impossible to take me to brigade HQ. He had been told: "If the soldier wants to testify, let him come to regional brigade HQ." We had no way to get there, since individual soldiers may not cross Hebron by foot unescorted. So no testimony was taken from us. The next day we went home on a two-day leave.

I was very upset by the whole incident. A group of settlers had maliciously damaged the property and sullied the honor of Arabs in front of IDF soldiers, fearless and contemptuous of us and our demands that they stop. The orders we received did not enable us to arrest rioting Jews. We were told to record their actions with a camera and give a statement afterwards. But not every lookout has a camera, and we did not. As for giving a statement, in my case at least, that was merely theoretical. No arrangements or procedures exist for doing it quickly and efficiently, even if somebody wants to do it. My repeated requests in this matter encountered an apathetic bureaucratic reaction and the incredible advice to cross Hebron by foot without an escort in order to give a statement, as though it were my private caprice, and not the IDF's duty to preserve law and order in the region. I heard similar stories from soldiers doing compulsory service who are on duty in the area. In every confrontation with settlers, they encounter a coarse reaction and feel powerless. My impression is that in cases of attacks by settlers on local residents, anything goes. Is this really the policy of the government and the IDF?

In testimony to **B'Tselem** researcher Eitan Felner, the soldier added:

After I sent the letter to Minister Rubinstein, I was called to meet with the brigade commander. He told me that in cases of adult settlers, I had the authority to arrest them, and that orders to that effect had been given in the briefing. But when I asked other soldiers from my unit (thinking that maybe I hadn't heard the order during the briefing), they told me they were not allowed to arrest settlers. You could only document [the incident] and submit a complaint to the police. In any event, even if an order were given to arrest him, if no explanation was given to the soldiers how to go about it, the order was meaningless. How are we supposed to restrain a Jew who is disturbing the peace? Are we permitted to demand that he identify himself? The army has to issue orders on how to make arrests.

The other means soldiers may employ against settlers who violate the law and attack persons and property are unclear. Reserve soldiers who served in Ramallah in November, 1993 told *Ma'ariv*:

We were directed not to use any means, not even tear gas, against Jewish settlers, except in life-threatening situations.<sup>8</sup>

The soldier who wrote to Minister Rubinstein also told **B'Tselem** that no orders were given about what to do if a Jew attacked a Palestinian

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8. *Ma'ariv*, November 16, 1993.

physically, or about using tear gas against Jews. In an interview to Israeli Radio in January, 1994, the commander of an elite unit serving in the Hebron area, Lt. Col. Y., confirmed that IDF soldiers were not permitted to use tear gas or any other measures against settlers who violated the law. He added that the directives also prohibited opening fire on Jews, even if Arab lives were at risk.<sup>9</sup>

In the wake of that statement, Environmental Affairs Minister Yossi Sarid queried Chief of Staff Ehud Barak at a cabinet meeting about the directives applying to IDF officers and soldiers in the Territories where a settler aimed a firearm at a Palestinian with the intention of shooting him. Barak replied that the soldiers had received clear orders to use "reasonable force" to thwart settlers' attempts to fire at Arabs. He added that the directive was to place the shooter under arrest.<sup>10</sup>

If Barak was quoted accurately, his reply confirms that the orders are unclear: the term "reasonable force" is vague and amenable to various interpretations. It does not relate to what action a soldier should take to stop or prevent shooting by settlers. The Chief-of-Staff states that the shooter should be taken into custody, but he does not explicitly state that a soldier must fire his own weapon if no other way exists to prevent settlers from endangering Palestinian lives.

## **B. Non-intervention by Soldiers during Settler Violence**

On January 8, 1992, Khabath Othman al-'Abd al-Barghouti and 'Abd Samarin, a priest, went to Civil Administration headquarters at Halamish to complain about rioting by settlers in the village of Abud the night before. An officer, Lt. Eran Yariv, advised them to go to the police. When they complained that the army did not protect the local Arabs, the commander asked: "Do you control the masked individuals?" And when al-Barghouti replied that he did not, the officer retorted, "And we don't control the settlers." Testimony of Khabath Othman al-'Abd al-Barghouti, taken by **B'Tselem** fieldworker Bassem 'Eid, January 8, 1992.

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9. Lt. Col. Y. in an interview to Carmela Menashe, on Israeli Radio's "This Morning" program, January 7, 1994, 7:06 a.m.

10. *Ha'aretz, Ma'ariv*, January 10, 1994.

Soldiers who are present during settler violence rarely intervene. The many eyewitness testimonies collected by **B'Tselem** and other human rights groups show that non-intervention is the rule rather than the exception.

### **Ramallah, October, 1993**

On October 29, 1993, dozens of settlers entered the a-Tharbiyeh wa-Tha'alim neighborhood in Ramallah and threw stones at houses, ignited cars, and shattered windows. The following testimony, by a neighborhood resident, was taken by **B'Tselem** fieldworker Bassem Eid on November 1, 1993:

#### **Testimony of 'Abd al-Qadr al-Kanash**

From the window of my house I saw dozens of settlers throwing stones at houses. My sister screamed that my brother's car was on fire. I could not call the firemen because I do not have a telephone. And I could not leave the house for fear of being hit by stones. I glanced out of the window and saw a military vehicle of a GMC type moving slowly along the road. The settlers' activity continued for about an hour-and-a-quarter. After the settlers left, a large army force arrived. My sister and I went outside to extinguish the car-fire. Soldiers asked us in Arabic if we had seen who had burned the car. I told them that they themselves had seen who did it. They didn't answer, but rather only advised us to file a complaint with the police.

One of the most serious phenomena is vandalism committed by settlers while Palestinians are under IDF curfew. As testimonies gathered by **B'Tselem** and other human rights groups show, the settlers move about unimpeded in areas under curfew, shatter windows, slash tires, and throw stones at houses. Soldiers neither try to stop them nor ask for identification.

### **Hebron: June-July, 1992**

Following the stabbing of Hillel Horowitz, a Hebron resident, on June 26, 1992, dozens of Jews went on the rampage in the Hebron open-air fruit and vegetable market. They smashed car windows, slashed tires, and caused other property damage. Some residents were beaten by settlers. Residents' testimonies given to **B'Tselem** researcher Yuval Ginbar on July 7, 1992 indicate that the settlers took advantage of the IDF curfew on Hebron to break into the market, overturn



*Settler shooting at stone-throwers in Hebron. An IDF soldier stands on the right - December 3, 1993. (Photo: A.P.)*

stands, and loot merchandise and money. Arab residents said soldiers had been present during the rioting but had made no attempt to stop it.

**Testimony of 'Abd al-Hamid Muhammad al-Juneidi, seller in the market**

On Saturday, June 27, 1992, at about 11:30 a.m., we saw about twenty settlers beating people in the market, overturning crates of merchandise, and shooting in the air. After about five minutes, soldiers arrived and declared a curfew. We left the money and the goods where they were, and everyone shut down quickly. On Tuesday, when the curfew was lifted for two hours, we came back and found the door of the warehouse smashed. The merchandise was spilled on the ground and the safe had been opened. Invoices, receipts, and about NIS 10,000 in cash were missing from the safe.

**Testimony of 'Abd al-Fatah 'Abd al-Qadr a-Da'is, seller in the market**

On Saturday, June 27, 1992, the army imposed a curfew on the city. I closed my shop and went home. On Tuesday, when the curfew was lifted at 9 a.m., I went to the shop, where I saw that the lock on the back door was broken. Some merchandise had been taken and some destroyed, about NIS 8,000 were stolen, and bills and documents from suppliers were also taken.

The settlers returned three more times that Sabbath. Not until late in the day did more soldiers arrive and put a stop to the looting and vandalism in the market. But the army made no arrests.

On June 29, 1992, *Yediot Aharonot* reported that the police suspected that members of Kach had organized the rampage. On July 22, 1992, *Davar*, *Ha'aretz*, and *Ma'ariv* reported that Baruch Marzel, a Kach activist, had been taken from his home for interrogation and released on personal bond. On April 25, 1993, Superintendent Yoni Tsioni of the police Investigations Department, in reply to a query by **B'Tselem**, stated that the case had been closed by the State Attorney's Office due to insufficient evidence.

If the soldiers had arrested any of the rampaging settlers, or had insisted, at least, that they identify themselves, the case would likely not have been closed due to insufficient evidence, and those guilty would have been brought to trial.

A few days later, on July 1, 1992, settlers again ran wild in Hebron. They stoned houses and cars, entered shops, and dumped merchandise on the floor. Shop owners said money was also taken. An investigation

by Yuval Ginbar of **B'Tselem** found that the shops in question were fifteen meters from an IDF guard position. That night, settlers shot at balconies of houses, broke windows, and beat Arabs. According to local residents, the army did not intervene.

Twelve years before these events, the Karp Commission warned about similar incidents in which cases had been closed due to non-intervention by soldiers: "Various testimonies indicate that despite the curfew, civilians from Kiryat Arba wandered about in the city, some of them carrying arms and in uniform. In a number of cases they were seen throwing stones and damaging property." It was also found that soldiers who had witnessed a couple from Kiryat Arba maliciously damage property did not stop or arrest them, and did not ask them to identify themselves.

Epilogue: According to a report by Inspector Steinmitz dated November 25, 1980, all the files under police investigation in the case were closed due to "offender unknown."<sup>11</sup>

### **Testimony of Friel Rashad Hamis Abu Heikal**

A soldier was standing there. I spoke to him in Arabic, but he did not understand. I then spoke in English, telling him that if I were to protect myself and throw a stone at a settler, he would kill me. He did not reply and did not say a word to the settlers either. While I was speaking to the soldier, a male settler and female settlers came from the direction of the settlement. They threw stones at everything, at houses, shops, and people. Then another soldier arrived. The male settler threw stones, and the female settlers pounded on doors with stones, and cursed the neighbors: "Dogs," "Go home," and so on. I tried to talk to the second soldier, but he wouldn't even listen. He said: "Go home." I was very close to the male settler. He started hitting me with a stone he was holding. I was about two or three meters from the soldiers, but they didn't try to protect me. They just watched.

### **Hebron, May-June, 1993**

On May 28, 1993, Erez Shmuel, a student at "Nir" Hesder Yeshiva (which combines religious studies with compulsory military service) in

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11. Karp Commission Report, p. 25.

Kiryat Arba was killed while walking to the Cave of the Patriarchs. Shortly thereafter the public-address system in Kiryat Arba called the settlers to take to the streets. For the next few days, settlers from Kiryat Arba ran amok in Hebron.

Testimonies given to **B'Tselem** fieldworker Bassem 'Eid state that the settlers threw stones, shattered windows of houses and cars, and torched houses in the Jebel Johar neighborhood, which is along the route to the Cave of the Patriarchs.

**Testimony of Sa'id a-Salaima, aged 36, from the Masharqa al-Fuqa neighborhood in Hebron**

On May 28, 1993, I arrived home at 2:30 p.m. My family told me: Come in quickly, a settler has been murdered. I saw a lot of soldiers, and about half-an-hour later the area filled up with settlers. At about 5 p.m. the settlers began breaking the windows in the house of my uncle, Taleb Muhammad Isma'il a-Salaima, who lives next door to me. I saw the settlers enter the house. Powerful blows could be heard from the house. Soldiers were on the roof of the house...

The next day, at about 11 p.m., we saw my uncle's house go up in flames. After about two hours, firemen arrived and put out the fire... Everything in the house was burned: mattresses, sofas, blankets, kitchen cupboards, and eight cans of olive oil.

On May 30, 1993, *Ha'aretz* reported that the commander of the Hebron area, Col. M., had expressed concern about acts of vengeance by settlers:

We spoke with some leaders of the Jewish settlement in Hebron. They did not explicitly state that they intended to react. I hope they will not, and I also believe they will not. They know that if we have to deal with preventing disturbances by Jews, that will naturally make it more difficult for us to deal with the important things, i.e., apprehending wanted individuals. Naturally, if there are disturbances by the Jewish settlers, and if they take the law into their hands, we shall react as we have so far.

**Testimony of Akram Hamuda Jaber, aged 53, from the Masharqa al-Fuqa neighborhood**

On Sunday, May 30, 1993, at 12:30 p.m., I was at home with my family. Suddenly I heard shooting and shouts. People outside called to us to come out. Suddenly a bullet came through the

glass on the gate of the house. The bullet grazed my wife Hanan, who is forty-years-old, on the right side. The bullet hit the wall. Nearly twenty settlers arrived and started shooting at the windows of the houses... Young people from the neighborhood arrived and began throwing stones at the settlers.

After about a quarter-of-an-hour, soldiers arrived. The settlers kept shooting at the houses, even when the soldiers were present. A military ambulance arrived and took my wife and my small son, aged three-and-a-half, who was hit in the head by bullet fragments.

### **Deir al-Balah, June, 1992**

On May 27, 1992, following a terrorist attack in which Rabbi Shimon Biran, from Kfar Darom in the Gaza Strip, was killed, curfew was imposed on nearby Deir al-Balah. Immediately afterwards, hundreds of settlers from the area rampaged through Deir al-Balah. Affidavits taken from local residents by lawyer Zvi Rish, of the Association for Civil Rights in Israel, indicate that during the curfew, settlers attacked residents, threw stones at houses, uprooted saplings, and set fire to fields and hothouses belonging to Palestinians.

### **Affidavit of Khalil Salman Bashir, July 8, 1992**

I am a teacher at the local high school. On May 27, 1992, I was in the school. Curfew was declared at about 10 a.m. I left the school and went home. The plot of land adjacent to my house borders the settlement of Kfar Darom. My house is about 80 meters from the place where Rabbi Biran from Kfar Darom was murdered that morning. When I arrived at the house, I saw that settlers had broken in and caused lots of damage. They smashed windows, electrical appliances, furniture, and so on, and struck my pregnant wife (she is in the eighth month of her pregnancy) with a pistol butt. They hit her because she tried to protect my twenty-year-old son, who was struck in the eye and the mouth by a settler.

### **Affidavit of 'Abd al-Qadr Abu Bashir, July 4, 1992**

When curfew was declared. I remained in the house with my family. About fifteen minutes later I saw that the trees and the water pumps on my land were on fire. There was nothing I could do because I was under curfew.

**Affidavit of Ahmad Khalil Mahmoud Abu Samra, July 16, 1992**

On May 27, 1992, at about 11:15 a.m., I was on my land. Two people who came from Kfar Darom, wearing civilian clothes and with kaffiyehs on their heads, entered my plot of land. One of them was carrying a jerrican. Even though they saw me, they spilled [the contents of] the jerrican at the eastern end of the plot. They set fire to the place and fled back to Kfar Darom. The fire went out quickly because there was a west wind. About half-an-hour later a group of a few dozen men came out of Kfar Darom. They got into a brawl with some soldiers who tried to prevent them from continuing their march toward our fields. A fistfight, accompanied by cursing and yelling, broke out. The soldiers did not succeed in stopping them, and they raided the fields. At the same time, two women threw fireballs into the western section of my land and set it on fire.

The media reported the next day that the IDF and the police had "shown restraint" and arrested only five of the dozens of rioters. Several hours later, fearing that the disturbances would spread to other Arab locales, the soldiers acted more firmly and arrested some of the rioters.<sup>12</sup> Three of the detainees were released the next day. In reply to a query by **B'Tselem**, Shai Nitzan, a senior assistant to the State Attorney, stated on November 11, 1993, that as regards this case, in October, Shalom Mor Yosef had been charged with causing malicious damage and rioting.

The violence by residents of Kfar Darom in Deir al-Balah continued in the days that followed.

**Affidavit of Ahmad Alian Salim Falit**

On June 8, 1992, I came to my plot of land in the evening and found that the entire area, including the crop, had been burned. Neighbors told me that the fire had occurred in the afternoon, and that firemen had tried to bring it under control. My neighbor, Nasir Muhammad al-Shawi, told me he had seen persons from Kfar Darom burn the plot.

According to Arabs living in the area, settler violence against them has continued. Since the rampage, they say, they have been unable to reach their land to cultivate it because the army has fenced it off, denying them access.

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12. *Ma'ariv*, May 28, 1993.

In an internal report about the IDF's blunders in these instances, the **Association for Civil Rights in Israel** stated:

- a. The IDF commander in the Gaza District did not enforce the curfew in Deir al-Balah on Jews entering the area. Consequently, while residents of Deir al-Balah were confined to their homes, residents of Kfar Darom and other Israelis were free to move about unimpeded and to do whatever they wished with the property of the Deir al-Balah residents.
- b. Immediately after learning about the murder, the IDF commander in the Gaza District did not deploy sufficient forces in the Deir al-Balah area who could, among their other duties, ensure the public order and the safety of the residents of Deir al-Balah and of their property.
- c. The IDF commander in the Gaza District failed to protect the residents of Deir al-Balah and their property when the rioting by Jewish residents started in the immediate aftermath of the murder. Moreover, during the eight-day curfew that was imposed on the Deir al-Balah area, the army did not supplement its forces in order to prevent additional attacks on the residents and their property, although the IDF knew that acts of vengeance had been and continued to be carried out by Jewish residents against the property of Deir al-Balah residents. To abandon the residents and their property to acts of vengeance by the Jewish residents for more than eight days was to deliberately ignore the situation. The IDF conduct was criminally negligent.
- d. The IDF commander in the Gaza District did not utilize fully the legal measures available to him to stop the rioters and to prevent them from attacking residents of Deir al-Balah and their property.
- e. The IDF commander in the Gaza District did not investigate and/or did not investigate sufficiently the complaints by residents of Deir al-Balah in order to apprehend those responsible for the illegal acts described above and to bring them to trial.

## **C. Restricting Palestinian Residents' Movement to Protect Them from Settler Violence**

To prevent friction between the populations and to protect the Palestinians from settler violence, the IDF often curtails the Palestinians' freedom of movement. Seemingly, this is justifiable since the military thereby prevents clashes between them and the settlers, and consequently ensures the Palestinians' safety. The restriction, however, produces the absurd situation in which the IDF restricts the victim instead of the assailant.

### **Ein Yabrud village, June, 1993**

#### **Testimony of Zarifa Salim Shueib, aged 48, from Ein Yabrud, given to B'Tselem fieldworker Bassem 'Eid on July 1, 1993**

On June 23, 1993, at about 9:45 p.m., I was at home. My house is the most northerly in the village, and lies on the road that runs from the village to the settlement of Ofra. I was sitting in the southeast room, where the windows face the main road in the village. Suddenly I saw a civilian vehicle that was blocking the main road, and many vehicles surrounded it.

Persons dressed in civilian clothes got out of the cars. I saw them bend over and pick up stones. They were standing under the lamp, so I saw exactly what they were doing. A truck arrived which was on the way from Kfaf Silwad to Ein Yabrud. The settlers began stoning it although soldiers were alongside them. The settlers smashed the windows of the truck, but the soldiers did nothing to stop them. The truck turned around and went back the way it had come. The settlers still remained there, together with the soldiers. The soldiers prevented local vehicles going toward Ein Yabrud from continuing so that they would not be attacked by the settlers.

### **Jerusalem, November, 1993**

According to an investigation by the Palestinian Human Rights Information Center, on November 7, 1993, dozens of settlers attacked houses and shops of Palestinians on the Jerusalem-Ramallah road between Pisgat Ze'ev-Neve Ya'akov and the army checkpoint in the Dahiyat al-Barid neighborhood, north of Jerusalem. The settlers, who were apparently organized, blocked the road from and to Jerusalem with boulders and burning tires, and then wrecked property of Arabs who lived nearby. They overturned cars, smashed windows, and

attacked houses. All this activity took place within the view of the soldiers at the Dahiyat al-Barid checkpoint.

**Testimony of Jihad Hadad and Khalil Dirbas, owners of the Europa Bakery, gathered by the Palestinian Human Rights Information Center**

Our front door, 6 milimeters by 200 centimeters by 150 centimeters, which is made of glass, was shattered. Our sign, 6 meters by 12 meters, was also damaged. Khalil was injured in the side by a stone when he went out to close the door and retrieve his son from the soldiers and the settlers. When he tried to stop the settlers who were throwing stones at his store, soldiers grabbed my son by the back of the neck in order to push him into the car and protect him from the settlers. I don't understand why the soldiers took no action to get the settlers away from the store.<sup>13</sup>

**Hebron, November, 1993**

A reserve soldier who served in Hebron in November, 1993 provided testimony in writing to MK Haim Oron. Included within his testimony was the following:

On Saturday, November 7, the Jewish prayers were supposed to finish in the Cave of the Patriarchs, as on every Saturday, at 11 a.m., so that the Muslim muezzin could enter. However, a group of about thirty or forty members of Kach and others refused to leave, despite the army's requests. When an Arab resident entered the cave at about 11:20 a.m., I had to pull him out a few seconds before he would have been lynched by the persons who were then in the cave. The army and the police did not intervene, and they did not permit the Muslim muezzin to enter the cave.

**Organized Blocking of Roads by the YESHA Council, November, 1993**

A clear example of how the IDF permits the settlers to violate the law and restrains the Palestinians in order to prevent friction was its handling of the campaign organized by the YESHA Council in November, 1993 to block main roads in the Territories.

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13. See Palestinian Human Rights Information Center, "Settler Lawlessness in the Occupied Territories: Deliberate Shootings, Racist Attacks and Mob Violence," *From the Field*, November/December 1993, pp. 10- 11.

On November 1, 1993 the media reported that following the attack in which Haim Mizrachi was killed, the YESHA Council decided to block about fifty road junctions in the Territories that morning between 4:30-8 a.m.<sup>14</sup> It was also reported that "IDF commanders in the West Bank instructed the commanders of the forces in the West Bank not to permit the settlers to block central axes and ordered that [such] settlers be removed, even by force."<sup>15</sup> The next day it was reported that the settlers had in fact blocked dozens of roads and junctions.<sup>16</sup>

A week later, on November 8, 1993, following the attack in which Ephraim Ayubi, from Kfar Darom in the Gaza Strip, was killed, it was reported that the YESHA Council had decided again to block about fifty roads in the Territories, and that in order to prevent this, the IDF had fortified its forces there.<sup>17</sup> However, the following day it was reported that:

In the predawn hours yesterday, hundreds of settlers blocked forty-nine roads throughout the Territories as part of their protest operations in the wake of Ephraim Ayubi's murder two days ago. The IDF deployed forces by the junctions, but did not prevent the settlers from blocking the roads against Palestinians. In most cases the soldiers stood some 100 meters in front of the roadblocks, and ordered the Arabs not to continue, in order to prevent unnecessary friction with the settlers.<sup>18</sup>

Blocking roads is a less serious offense than the dozens of settler riots during that period, which involved attacks on life and property.<sup>19</sup> Nevertheless, the authorities' handling of the incidents shows, in some cases at least, that the soldiers' passivity was not due to the lack of clarity about their powers or to disobedience. On the contrary, it was the result of the instructions they had received. The IDF knew in advance about the road-blocking campaign, and there were large numbers of soldiers in the field. However, instead of preventing the settlers from blocking the roads, or at least arresting the activists, the soldiers abetted their illegal action by not permitting Palestinians to proceed.

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14. *Ha'aretz, Yediot Aharonot*, November 1, 1993.

15. *Ha'aretz*, November 1, 1993.

16. *Davar, Ha'aretz, Ma'ariv*, November 2, 1993.

17. *Ha'aretz, Yediot Aharonot*, November 8, 1993.

18. *Ha'aretz*, November 9, 1993. **B'Tselem** fieldworkers witnessed this behavior by soldiers at the Jalazoun junction near Ramallah.

19. See PHRIC, "Settler Lawlessness" (note 13), *ibid*.



*Jerusalem-Nablus road - March 15, 1993. Settlers burning tires.*

## **D. Soldiers' Involvement in Settler Violence against Palestinians**

Testimonies given to **B'Tselem** and other human rights organizations and media reports indicate that in some cases soldiers, far from trying to prevent violence by settlers, actively participate in the violent acts.

### **Hebron, December, 1991**

#### **Testimony by Amin Jamil Azhan Omar, aged 13, given to B'Tselem fieldworker Bassem 'Eid on December 29, 1991**

On January 22, 1991, at about 11:30 a.m., I was on my way home from school, on a-Salim Street. I saw a car with two settlers inside. They stopped next to me. One of the passengers got out with an Uzi in his hand. When I saw him, I started to run toward the nearest house, which was about 400 meters away. The settler ran after me and shot in the air. In front of the house, about 150 meters from us, I saw four soldiers who were on foot patrol.

I didn't want to get involved with the soldiers, so I entered an alleyway and hid there. The settler ran after me and threw a big stone at me that missed. He caught me and grabbed me by the hair. Then he grabbed my left hand and twisted it behind my back, first to one side and then to the other. My hand hurt a lot. It turned out that he had broken a bone in my hand. He threw me on the ground, grabbed me by the neck, and dragged me to where the four soldiers were.

The soldiers stood me up against the wall, and the four of them started to kick and beat me with their feet and helmets. One soldier took a club and started hitting me on the head. The two settlers stood next to their car. One of the soldiers called with the radio on his back, and a military jeep arrived with three soldiers. When the jeep came, the four soldiers left. One soldier got out of the jeep and tied my hands behind my back with plastic cord. He put me in the jeep and made me lie on the floor. Another soldier put his foot on my leg and another one stepped on my head. The jeep went to the Military Government building, and the two settlers followed behind.

When we arrived at the Military Government building, I was interrogated by a few police officers. They each asked me my

name and my age. I was taken from room to room, and the soldiers and settlers went with me. Then they took me to the police station. A soldier came and took me into a room with a heater. He took a knife and cut the plastic that was tying my hands and injuring me. Then he turned me over to the settler who had broken my hand.

The settler took me into a room, picked up a club, and said, "I will break your stone-throwing hand." Right away an officer came and yelled at the settler. The officer took me to another room. I told the officer that my left hand was broken. The officer called an ambulance from the Aaliya Hospital in Hebron. The ambulance took me to the hospital. I arrived at the hospital about 1 p.m. They operated on my hand, and I spent one night in the hospital.

Amin's mother did not complain to the police, "so that the settlers would not take revenge on him."

#### **Al-Azariyeh village, May, 1989**

On May 24, 1989, dozens of settlers from the town of Ma'aleh Adumim rioted in the nearby village of Al-Azariyeh, just outside Jerusalem, after a car belonging to a family from Ma'aleh Adumim had been stoned, causing the driver to lose control; the car plunged into a ravine, injuring the occupants.

According to reporters from *Ha'aretz*, the settlers damaged villager's cars and houses along the main road.<sup>20</sup> The report quoted local Palestinians as saying that a small number of reserve soldiers also took part in the vandalism. After army reinforcements arrived, settlers moved deeper into the village, where they were met by a volley of stones. The army tried to separate the two sides and chased the Palestinian stone-throwers, causing many of the local residents to take refuge in the mosque.

In violation of standing orders, the soldiers fired at least thirteen tear gas grenades into the mosque. Reporters who arrived while the incident was still in progress counted ten broken windows in the mosque and saw the spent tear gas canisters. During the clash, one of the settlers began firing into the air. When Brig. Gen. Gabi Ofir and the sector commander tried to wrest the man's weapon from him, they were attacked by settlers.

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20. *Ha'aretz*, May 26, 1989.

According to *Ha'aretz*, the only investigation into these events was conducted by the police against the shooter and the persons who attacked the officers; the IDF did not investigate the soldiers' involvement in assisting the settlers. Military sources confirmed that soldiers had continued in pursuit of the villagers as far as the mosque area, but said nothing about the use of tear gas. The sources added that only a specific complaint, including the name of the soldier involved, would be investigated.

### **Burqa village, February, 1988**

On February 26, 1988, reporter Danny Kirtchik was an eyewitness to an incident in which soldiers and settlers entered the village of Burqa together. The settlers, he said, fired in the air, while the soldiers fired rubber bullets and tear gas grenades.

### **Testimony by Danny Kirtchik, as reported in *Ha'aretz*, March 1, 1988**

I was in Jenin on Friday after the prayers there were completed. I drove south, passed the bend in the road near the village of Burqa, and I saw cars standing by the roadside. There were four civilians and two civilian cars, a rented Fiat 127, license number 42-617-87, and a car with the number 99-690-83. Two of the civilians were armed with M-16 rifles and two with Uzi submachine guns. They had clips on the weapons and in their pockets. They fired at the village at an angle that could definitely hit people. They fired single shots and bursts.

On the road there were stones that had apparently been thrown earlier. I asked them what they were doing, and one of them told me: "Beat it before I shoot you." I understood that he had spoken in a moment of passion, and I told him that I was not going to leave. They went on shooting for about another 30 seconds. About two minutes later an army jeep arrived, and then another jeep. Their numbers were [IDF]657758 and [IDF] 178641. I went over to the driver of the second jeep and asked him to intervene. He identified himself as Gur Elimelech, a reservist, from the settlement of Humash. He said he was responsible for this section of the road. Next to him was a man in a blue sweatsuit and slippers.

The officer asked me not to make problems. I asked him to file a complaint against [the shooters] in my name, and he asked me not to make problems. He promised to take down the details. In

the meantime, he tried to calm me down. I spoke with the civilians, and they told me they lived in Humash. One of them was called Rudo. He told me that his wife had been a passenger in a car that was struck by a stone earlier, so he had decided to act.

As we were talking, we saw an Arab in the village, about 80 meters away, carrying a slingshot. Rudo ran to the jeep, rested his M-16 on it, and fired one shot at the Arab. He missed. The officer yelled at him for shooting next to his ear. I now realized that I was dealing with a group of lunatics, and that the military commander had no control over events. I left after a while and drove along the road next to villages in the area, where demonstrations were being held.

Afterwards, we turned back south, toward Burqa. We drove behind a Peugeot 504 van. Suddenly very large rocks were hurled at us from above. The van stopped abruptly, and two people got out. One of them was the same Rudo we had seen before.

He and his companion assaulted the village like infantry troops, firing their M-16s in short bursts between the trees. About five minutes later Elimelech's jeep pulled up again. They summoned reinforcements by radio, and a patrol of soldiers in compulsory service arrived. All of them were sergeants, and no officer was among them. The Arabs on the hill began cursing them. In the meantime, two more settlers arrived. The soldiers and the settlers climbed up the hill to the village together. Rudo took a helmet from one of the jeeps. The settlers fired in the air, and the soldiers fired rubber bullets and tear gas grenades.

When they reached the village, they entered the alleyways, the settlers in the lead and about a dozen soldiers after them. It looked like a joint operation.

When they returned from the village, and the soldiers started arguing about whether they should have gone with the settlers or not, one of them complained that in past cases the settlers had also done whatever they pleased, and there was no way to restrain them.

The suspicion that IDF-settler cooperation in violent actions against Palestinians exists at higher levels is supported by statements of settlers to the press and by their own publications. On May 18, 1989, *A/ Hamishmar* reported that in private talks with settlers, army officers voiced their frustrations and told them, in effect, "Okay, react on your

own, but don't overdo it. We have to get approval for every reaction, and it's complicated." A day later *Hadashot* reported that "There are settlers who are willing to say that here and there they find a reservist or a border policeman who turns a blind eye to the settlers' actions, as long as 'they don't overdo it.'"

On January 6, 1991, the secretariat of the Beit-El settlement sent an open letter to the President of Israel, which stated, in part, that:

The interpretation you placed on our protest actions – that we do not recognize or respect the authority of the security forces – is far from an accurate representation. If you were to meet with us for a frank talk so that we could try to understand one another, we would tell you about statements made by army commanders, who told us explicitly that what the "settlers" can do no one [else] can do, and to us that might be interpreted as an invitation to assist.

## **E. Official Cooperation between the IDF and the Settlers**

In the wake of affidavits from the heads of the defense establishment, the High Court of Justice addressed itself to the security rationale of the settlements in a number of judgments dealing with the legality of seizing private land to establish a civilian settlement. In one such judgment, Supreme Court Justice Witkon wrote:

The main point, however, is that, as regards the pure security aspect, it cannot be doubted that the presence in occupied territory of settlements – even "civilian" settlements – of citizens of the occupying power contributes appreciably to security in that territory, and makes it easier for the army to carry out its task.<sup>21</sup>

In accordance with this policy, the IDF also established regional defense units in the Territories similar to those along the borders with Jordan, Lebanon, and Syria. Many settlers do reserve duty in the new units. By this means, the IDF enables and encourages the settlers' involvement in

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21. *Suleiman Tawfiq Ayyub et al v. Minister of Defense*, HCJ 606/78, 610/78, Piskei Din 33 (2) 113, p. 119.

security activity in the Territories, provided that it is executed in coordination with and under the command of the military.<sup>22</sup>

In a December, 1991 meeting between Brig. Gen. Ya'akov Orr, who then served as commanding officer of the West Bank, and the Binyamin Region Council. Orr announced that the IDF had decided that the involvement of regional defense soldiers from the West Bank in ongoing security activity in the area would soon be increased.<sup>23</sup>

A month later, the media reported that in the aftermath of terrorist attacks, standby squads of settlers had been organized to assist the IDF by order of Commanding Officer, Central Command, Gen. Danny Yatom. Military sources said that the regional brigade commander would activate the squads through a codeword transmitted via the regional defense officer. Each squad, numbering ten to fifteen men, would proceed to a pickup point and be taken to a predesignated section of road to stop and search vehicles. The commander of each squad in the field would be one of the settlers.<sup>24</sup>

In its report of October 31, 1993 about the actions taken following the attack in which Haim Mizrachi was killed, the Binyamin Regional Council stated that:

Roadblocks at short and long distances from each other were set up in the sector, and the reinforced IDF units combed the roads. It should be noted that representatives of the settlements and the council were integrated into the activities of division headquarters and the brigade.

The close ties between IDF officers and the leaders of the settlers are also evident from their frequent meetings, at which the commanders explain the army's special deployment against the Intifada. The Binyamin Regional Council bulletin of November 26, 1991 stated:

Within the framework of the ongoing meetings between the IDF and the heads of the settlements in Judea and Samaria, a meeting was held on Wednesday at which officers of Central Command reported to the council's heads part of the IDF's special deployment against the Intifada. The meeting included a detailed briefing and comprehensive field trip...

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22. In contrast, the IDF's attitude toward actions taken by settlers without prior coordination with the army, designed to impose order among the Palestinians, is, as shown above, more complex.

23. Report on a meeting with the military commander of Judea-Samaria, *Bulletin of the Binyamin Regional Council*, December 23, 1991.

24. *Ha'aretz*, January 29 and 31, 1992; "Israeli Army to Mobilize Settlers Against Attacks," *New York Times*, February 2, 1992.

The settlers display an ambivalent attitude toward the IDF. They express thanks and support for the IDF's protection,<sup>25</sup> but they frequently say that the IDF is not doing enough to ensure their safety, and is abandoning them to the enemy, just like the government.<sup>26</sup>

## Summary

1. International and Israeli law obligate the IDF to attempt to prevent injury to Palestinians. If Palestinians are attacked in the presence of soldiers, the soldiers must arrest the assailant and hand him over to the police. If they are unable to do that, the soldiers must report the incident to the police for an investigation. If Palestinians are in mortal danger from Israeli civilians, IDF soldiers obviously must use every means available to remove the danger, including firing at the assailants.
2. The powers granted to soldiers, and their duty with respect to law enforcement as regards the settlers, are not sufficiently clear. Disparities exist between the written guidelines and the public declarations of senior commanders, the orders that filter down to the soldiers in the field, and the way the soldiers interpret those orders.
3. It is difficult to say with certainty whether these disparities result solely from the protracted failure of the army high command, which does not act to clarify the orders, or whether the orders that reach

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25. "We have nothing against the IDF, which is flesh of our flesh. We do have something against the political level, which has to define for itself who the enemy is..." Gabi Butboul, head of the Karnei Shomron local council, *Yediot Aharonot*, December 25, 1991. "This army is our army. We must not weaken it under any circumstances." Rabbi Shlomo Inbar, *Nekuda*, 171, September, 1993, p. 23.

26. See, for example, Elyakim Haetzni, "Army in Fetters," *Uvda*, undated. The settlers' ambivalence towards the IDF was concisely described by Haya Shechner, director of the Welfare Department in Samaria and of the Institute for Child Development, when she explained the distress of children in the settlements by noting, among other reasons, "the ambivalence which parents sometimes display toward the soldiers. On the one hand, they praise the IDF for its stand against the Arab enemy, while on the other hand they attack it for its ineffectiveness against terrorism. The children have to distinguish between a protest directed against the government and not against the army, and the need for the existence of one army, the people's army, which represents us all." *Ha'aretz*, December 8, 1993, p. 3.

the field reflect true IDF policy, the written directives and media declarations being token gestures of the military to the rule of law.

4. The IDF has continuously failed to enforce the law on the settlers and to safeguard the life, person, and property of Palestinians during repeated attacks by Jewish settlers. The army's attitude toward these manifestations of violence fluctuates between "voluntary non-intervention" and active forms of cooperation.
5. Soldiers present during settler violence against Palestinians frequently make no effort to stop or prevent the violence, or to require the offenders to identify themselves in order for the soldiers to report them to the police. Attempts by the IDF to prevent illegal acts by settlers against Palestinians, or to arrest the perpetrators, have been infrequent, at best. In some cases the soldiers, far from trying to restrain the settlers, have participated in the violent activities.
6. Settler violence often leads the IDF to restrict the free movement of Palestinians by imposing curfews and other, harsher restrictions, but the IDF does not restrict the settlers. Although this is done to protect the Palestinians, the result is absurd – the victim, and not the assailant, is restricted.
7. Despite its legal obligations, the IDF has been powerless in dealing with settler violence against Palestinians. Its failure to act, notwithstanding repeated warnings by politicians, journalists, and human rights groups, suggests that its omissions are not the exception, but rather reflect overall IDF policy.
8. The special relationship between the IDF and the settlers raises the concern that the policy derives from a situation in which each side is aware of the other's contribution to strengthening Jewish rule in the Territories. The official position is that the security forces bear sole responsibility for imposing order and enforcing the law in the Territories. In common with the other branches of government, the IDF believes the settlers significantly contribute to security and the maintenance of public order in the Territories, and officially cooperates with them.
9. As long as the IDF pursues this policy of leniency and compromise, and cooperation, at times, in acts of violence, it contributes actively to the perpetuation of such violence.



*Jalazonn Refugee Camp – November, 1993. UNRWA school classroom that was set afire by settlers. (Photo: Awwad Awwad, A.F.P.)*

## 2. THE ISRAEL POLICE DEPARTMENT

### A. Powers and Authority

Shortly after the Six-Day War, the regional IDF commander issued an order regulating the powers of the police in the Territories.<sup>1</sup> Under the order, the police were granted the same powers soldiers had under the Security Provisions Order. The order also reaffirmed the powers granted to the police in the Territories on June 7, 1967 under the laws prevailing in the region on that day.

The responsibilities of the police in the Territories include the investigation of crimes committed against Palestinians by Israelis. The police must, therefore, accept and act on complaints from the public, locate and question suspects, detain them for further interrogation if necessary, and collect evidence to enable the State Attorney's Office to prosecute the case in court.

Undoubtedly, the police face onerous burdens in the Territories. Settlers who are suspects or witnesses in a case rarely cooperate in investigations. Indeed, a source in the State Attorney's Office told *Ha'aretz* that investigations are often impeded because police are sympathetic to Jewish offenders:

In some cases, policemen testifying in court about an event in which a Jew fired on Arabs who were disturbing the peace will prefer to give an account that is almost totally inaccurate in order to help the defendant. They do this either because they identify ideologically with the action and do not want the shooter to be punished, or because they know the defendant, and consider themselves on his side. I can understand them, because it is very unpleasant to help convict a Jew, especially if they know him.<sup>2</sup>

In addition, Palestinians, who mistrust the authorities, also frequently refuse to cooperate with the police, even in cases of crimes committed by Israelis against Palestinians.

The police contend that their main problem in the Territories is that they are underequipped and undermanned. This contention was the main point of a letter that was sent on April 7, 1984 (the day on which

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1. Order in the Matter of Police Forces Operating in Cooperation with the IDF (West Bank Region) (No. 52). 1967.

2. Quoted in Eyal Erlich. "Truncheon and Justice." *Ha'aretz*. April 7. 1988

the Karp Commission Report was published) by the then-head of the Israel Police Investigations Division, Maj. Gen. Y. Karti, to the police Inspector General. On November 22, 1993, Police Minister Moshe Shahal told the Knesset's Constitution, Law and Justice Committee:

With the number of policemen operating in Gaza, Judea and Samaria, it is impossible to enforce the law among the Palestinian or Israeli residents.<sup>3</sup>

## **B. The Karp Commission Report**

On April 29, 1981, a commission was established in the Ministry of Justice "to ensure, as far as possible, that suspicions about offenses committed by Israelis in the Judea and Samaria Region against Arab residents of that region be investigated speedily, substantively, and efficiently."<sup>4</sup> Headed by Deputy Attorney General Yehudit Karp, the commission was established in response to a petition submitted to the Attorney General's Office by members of the law faculties of the Hebrew University and Tel Aviv University. Referring to incidents in which settlers had broken the law and attacked Palestinians, the petitioners noted:

In many of these cases, no police investigation at all was conducted, or cases were closed in the initial stages of the investigation, for reasons related to – so the signatories fear – local lobbying by settlers of the police and the Military Government, or at a higher level.<sup>5</sup>

By coincidence, on the day the commission was established, the High Court of Justice heard a petition regarding an incident that had occurred at Beit Hadassah in Hebron, a site inhabited by Jewish settlers. The court was severely critical of police negligence in investigating complaints from Palestinians in connection with the incident.<sup>6</sup> In response to the criticism, the state undertook in court to act vigorously to prevent criminal offenses and disturbances, and to investigate thoroughly complaints and suspicions as regards handling of complaints from Palestinians.

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3. Meeting of the Knesset's Constitution, Law and Justice Committee, November 22, 1993, Protocol No. 118 (uncorrected version).

4. Karp Commission Report, p. 2.

5. *Ibid.*, pp. 1-2.

6. HCJ 175/81; see Karp Commission Report, pp. 2-3.

The Karp Commission monitored some seventy cases that were reported during that period, including killings, armed threats, trespassing, assaults, property damage, and public disturbances. In fifteen of the cases, the investigation resulted in findings with a recommendation to prosecute, which were transmitted to the public prosecutor. In all the other cases, the investigation was unproductive. Cases were closed for various reasons: offender unknown, lack of evidence, or because there were no findings. In some cases, an investigation was conducted only in response to the commission's request.

The Karp Commission Report cites examples in which cases were closed although the offender could have been found,<sup>7</sup> and others in which the Hebron Military Governor ordered the local police commander not to investigate.<sup>8</sup> In some instances, the investigation was not pursued on the Sabbath to enable the settlers to enjoy their day of rest,<sup>9</sup> or the police did nothing when settlers summoned for questioning on suspicion of manslaughter failed to appear.<sup>10</sup> One case was closed with the explanation: "Since everyone accepts the act because of its background (relations between an Arab man and a Jewish woman), no thread of evidence has been obtained that could lead to the identification of the assailants."<sup>11</sup>

The commission's conclusions (which received wide media coverage and had a considerable impact on public opinion when they were published in 1984) were unequivocal. The police had failed to honor its pledge to the High Court of Justice in the Beit Hadassah case to act with vigilance regarding events in sensitive locales, and to prevent unlawful acts.<sup>12</sup> As regards the investigations, the commission stated that the number of cases closed on grounds of "offender unknown" was inordinately high, that the police were lenient with settlers who refused to cooperate when interrogated,<sup>13</sup> and in some cases, apparently, no action whatsoever had been taken.<sup>14</sup>

Based on the results of police investigations, the commission formed the impression that the police in the Territories were ambivalent in their investigations; eyewitnesses were rarely questioned, and the investigations clearly were not impartial.<sup>15</sup> In its summary, the

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7. *Ibid.*, p. 13.

8. *Ibid.*, p. 11.

9. *Ibid.*, p. 19.

10. *Ibid.*, p. 30.

11. *Ibid.*, p. 22.

12. *Ibid.*, p. 26.

13. *Ibid.*, p. 30.

14. *Ibid.*, p. 28.

15. *Ibid.*, p. 27.

commission stated that the performance of the police was clearly deficient, and called for an urgent solution to prevent deterioration and undermining of the foundations of the rule of law.<sup>16</sup>

Surveys and studies conducted since the Karp Commission Report suggest that the police have not changed the manner in which they handle settler acts against Palestinians in the Territories, and that the police did not implement the recommendations of the commission. For example, a report published in 1985 by the **Palestinian Human Rights Information Center [PHRIC]** on settler violence from 1980 to 1984 indicates that settlers were suspected in the death of twenty-three Palestinians. According to the report, however, only one settler had been tried, and he was acquitted.<sup>17</sup> PHRIC found that in many cases no serious investigation was conducted as regards the circumstances of death, and that eyewitnesses, both Israelis and Palestinians, had not been questioned.<sup>18</sup>

A similar picture arose from a sample study carried out by the chairman of the Knesset's Constitution, Law and Justice Committee, MK Dedi Zucker. Zucker scrutinized forty police investigations of offenses committed by Israeli civilians against Palestinians between 1989-1992.<sup>19</sup> Replying to a parliamentary query by MK Zucker, Police Minister Moshe Shahal stated on July 11, 1993 that suspects had been tried in only five of the forty cases, three cases were still being investigated, and two others were being examined by the Judea-Samaria legal adviser or by the State Attorney's Office. However, twenty-six files had been closed (sixteen for the reason of "offender unknown," and ten due to insufficient evidence). The police could not locate the other four files.

A number of interviews with Israeli officials in the Territories, in which they admitted the impotence of the police investigations, have been published in recent years. For example, in July, 1988, Brig. Gen. Shaike Erez, then-head of the Civil Administration in the Territories, told members of the Knesset that, in effect, no police force existed in the Territories; the police lacked the capability to enforce law and order in the West Bank.<sup>20</sup> In November, 1992, *Ha'aretz* reported that

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16. *Ibid.*, p. 31.

17. See Palestinian Human Rights Information Center. **Israeli Settler Violence in the Occupied Territories 1980-84**, p. 16.

18. *Ibid.*, p. 17.

19. Direct parliamentary query on March 20, 1992 by MK Dedi Zucker to the Minister of Police on the investigation of offenses committed by Israelis against Palestinians; the Minister replied on July 11, 1993.

20. *Al Hamishmar*, July 4, 1988.

police officers, referring to a Palestinian study on the rising crime rate in the Territories, admitted that because of Intifada-related constraints, many offenses had not been investigated.<sup>21</sup>

In the same month, MK Zucker asked Deputy Attorney General Yehudit Karp to reexamine how the police dealt with offenses committed by Israeli civilians against Palestinians in the Territories. "My fear," Zucker wrote, "is that the picture this time is even more serious than the findings resulting from your last comprehensive study, since violence in the Territories has risen since the start of the Intifada, while the police have been greatly weakened."<sup>22</sup>

## C. Findings of B'Tselem

**B'Tselem's** findings show that MK Zucker's concern was well-founded; serious problems were found in the conduct of the police. When pertinent, the conclusions of the Karp Commission are cited in the following review.

### 1. Receiving Complaints

In most cases, the complaint filed with the police is the foundation for the entire investigation. Palestinians often do not file complaints, either because they are unaware of the powers vested in the Israeli authorities, or because they do not believe that the authorities (police, State Attorney's Office, courts), being representatives of the Israeli government, will bring the culpable Israeli civilians to justice.

Many Palestinians are also afraid of harassment by settlers. One such case involved thirteen-year-old Amin Jamil Azrahan Omar, previously described, who testified to **B'Tselem** fieldworker Bassem 'Eid that he had been attacked and badly beaten by settlers and soldiers.<sup>23</sup> On December 29, 1991, his mother stated that she did not complain to the police, "so that the settlers would not take revenge on him." In another case, Muhammad Samir Hikhmat Khaled al-Akal, from Hebron, told the

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

22. *Davar*, November 27, 1992.

23. For details on the incident, see above, pp. 54-55.

'al-Haq organization, on October 12, 1992, that settlers repeatedly threw stones at his house:

My brother and I complained about this phenomenon to the police and to the Civil Administration in past years. Four years ago we filed a complaint in the name of my brother, Nabil. At the time there were many local residents in the police station who had come to make complaints... [Settlers] attacked and beat the people who had come to complain. That made us think twice, and we avoided complaining to the police against settlers.

Even when Palestinians want to file a complaint, they often encounter difficulties, which begin when they enter the police station. Most police stations in the Territories are usually located in the local Civil Administration compound, and in many cases soldiers or police prevent the entry of Palestinians who want to file a complaint. If they do get through, the police may refuse, in violation of their duty, to record the complaint.

For example, on July 3, 1992, a shop owner in the Hebron vegetable market, Walid Abdul-Munam Qafishi, told **B'Tselem** fieldworker Yuval Ginbar why he had not complained about the theft of merchandise from his shop during a curfew in June, 1992:

Because they don't respond and they don't even let you enter. Two months ago, children and settlers came and overturned my merchandise. I complained to the patrol, and I went to the police twice, but they wouldn't let me in.

Often a Palestinian who wants to make a complaint is sent from one police station to another. A would-be complainant can spend days going from station to station fruitlessly.

Another reason that Palestinians rarely file complaints is that they know from experience that, generally, nothing will be done. The vicious circle that the Karp Commission warned about persists: refraining from making complaints and inadequate police work are mutually reinforcing.

There is undoubtedly a direct correlation between the large number of investigation files that are closed, the many files in which the investigation drags on, and the [decision to] forgo the right to complain. There would seem to be a [vicious] circle in which events are not investigated because no complaints are filed, and complaints are not made because of substandard investigations. The rule of law and public order certainly do not benefit from this.<sup>24</sup>

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24. Karp Commission Report, p. 26.

On September 17, 1991, **HaMoked**: Center for the Defense of the Individual asked Police Inspector General Ya'akov Terner to intervene in eighteen cases in which the police had hindered Palestinians who wanted to file complaints. A reply was received on May 13, 1992 from Chief Superintendent Sarah Mar-Haim, head of the Supervision and Control Division, stating: "No records were found of the cases specified in the affidavits sent to us. Nevertheless, the police in the sub-districts should act as police act in any other police station, and in general should permit every complainant to file a complaint to the police."

On July 15, 1992, **HaMoked** sent another collective complaint in the same matter to the police legal adviser, Deputy Commander Dr. Oded Mudrik. On August 3, 1992, Dr. Mudrik replied that after receiving the letter, he informed the commander of the Jerusalem District and the commanders of the police sub-districts in the Territories that "the police may not refuse to accept a complaint from a citizen, irrespective of whether he is a resident of Israel or a resident of an administered territory." However, the phenomenon persists, and the police still refuse to accept Palestinian complaints against Jews. Such cases continue to be reported by **HaMoked**.

### **Jerusalem, March, 1991**

On March 21, 1991, Muhei a-Din Shalabi was attacked and beaten by Jews next to the taxi stand at the Western Wall in Jerusalem, for which he received hospital treatment. Four days after the incident, Shalabi went to the police station in the Old City of Jerusalem to file a complaint. According to his affidavit to **HaMoked**, policemen at the station told him they did not handle that type of complaint, and that he should apply to the police station in the Russian Compound in West Jerusalem. Upon inquiring at the Russian Compound that same day, Shalabi was told that since the incident had taken place in the Old City, he should file his complaint there. Shalabi turned around and immediately returned to the Old City station, and after waiting for several hours he still had not been able to file his complaint. Only on his fourth attempt, on March 27, did the police at the Old City station accept his complaint, and only when he was accompanied by **HaMoked** coordinator, Ali Hatib.<sup>25</sup>

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25. Complaint No. 2002. **HaMoked**: Center for the Defense of the Individual.

## **Jerusalem, January, 1991/ November, 1993**

On November 7, 1993, according to an investigation conducted by the **Palestinian Human Rights Information Center**, dozens of settlers attacked houses and shops belonging to Palestinians on the main road to Jerusalem between the Pisgat Ze'ev-Neveh Ya'akov suburbs and the army roadblock at Dahiya, north of the city. Abdallah Isma'il Abu Zohariya, a 54-year-old local resident and an American citizen, testified that he saw settlers throwing stones at cars and houses near his home.<sup>26</sup> He also saw soldiers and two settlers armed with submachine guns. Hearing shots, he asked an officer what had happened. According to Zohariya, the officer replied: "This is what the Arabs did to you, not what we did." He indicated what then occurred:

I went over to a police van that was parked in front of Jaafar's sweets shop. The police did not seem concerned about the incidents. I asked why it was happening, and I was told to go to the police station in Neve Ya'akov. There they told me: "You do not have an Israeli identity card, and you may not file a complaint."

The Neve Ya'akov station has consistently refused to accept complaints from Palestinians. On January 8, 1991, Faisal al-Halabiya went there to complain that he had been beaten by his employer, the owner of the Dana Garage in Jerusalem's Talpiot industrial zone, and by Jewish workers. The police refused to record the complaint, and they detained Halabiya on a stabbing charge. Three days after his release, he tried again to file a complaint, this time at the nearby Gilo station. He was accompanied by a representative of **HaMoked**. This time the police told him openly that his complaint would not be accepted. Why? "That is the policy," he was told.

## **2. Conducting Investigations**

Even if no complaint is made, but the police know about an event from external sources (such as parliamentary queries, the media, or extra-governmental organizations), it is their duty to initiate an investigation. **B'Tselem** found that in this area, too, nothing had changed since the Karp Commission Report, which stated:

As a generalization, it can be said that the activity of the police in maintaining public order and the well-being of the residents in

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26. For additional details about the incident, see **PHRIC**, "Settler Lawlessness in the Occupied Territories: Deliberate Shootings, Racist Attacks and Mob Violence." **From the Field**, November/December 1993.

Judea and Samaria (at least in the area of relations between Jews and Arabs) focuses on investigations of complaints. If the law is breached but no complaint is filed, no investigation is conducted.<sup>27</sup>

The most serious cases are those in which no police investigation is conducted, even though army personnel were present when the event occurred or intervened afterward. It is the IDF's duty to report offenses committed by Israelis in the Territories to the police so that investigations can be conducted.

Police-initiated investigations are rare. At a meeting of the Labor Party's Knesset caucus on June 5, 1989, MK Haim Ramon, at the time chairman of the caucus, placed on the agenda a document dealing with acts of settler violence. Ramon referred to incidents which had occurred the previous month, as culled from the Israeli press by **B'Tselem**.

In a July 3, 1989 letter to Ramon, Police Minister Haim Bar-Lev described the state of the investigation of each of the cases noted in the document. Of twenty-three incidents, investigations had been opened in only six. In thirteen cases, no investigation had been initiated because, as Bar-Lev noted, "there was no report to the police." Bar-Lev's reply did not mention the other four incidents. Three of the events not reported to the police had involved intervention by the IDF, which perhaps did not transmit the information. Nevertheless, the police should have acted, and was obligated to act, on the basis of the press reports.

### **Hebron, September, 1989**

On September 18, 1989, at 9:30 a.m., a bus with settlers inside stopped next to the home of Muhammad Hanihan, in Hebron. About ten people alighted and began shooting into the house and smashing everything in their path. Hanihan, his wife, and their small children were in the house at the time. A passing army patrol did not intervene. Hanihan tried several times to file a complaint. After three attempts, he finally succeeded, and an investigator accompanied him to survey the damage. Hanihan heard no more about the investigation. In reply to an inquiry from **HaMoked**, the police stated on November 19, 1990 that they had no record of a complaint, and had not, therefore, dealt with the case.<sup>28</sup>

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27. Karp Commission Report, p. 25.

28. Complaint No. 1044, **HaMoked**: Center for the Defense of the Individual.

### **Yatta, March, 1989**

Ali al-Harinath, from the village of Yatta, near Hebron, makes a living from working a plot of land which he owns. In 1988, his entire crop was uprooted, in plain view of soldiers, by a tractor operated by settlers who had purchased an adjacent plot of land. His crop was again destroyed on March 16, 1989, this time by a crop duster.

On March 26, 1989, **HaMoked** wrote to the Hebron police about the case, and requested that its letter be considered a formal complaint. On June 13, 1989, al-Harinath went to the police station to give testimony, accompanied by **HaMoked** coordinator, Ali Hatib. The case was handled by a police investigator named Shlomo and by a Civil Administration official named Marco, and conversations regarding the taking of testimony were held with the commander of the Hebron police, Superintendent Roland.

When **HaMoked** asked where the investigation stood, the head of the Investigations Department, Commander Amira Shabati, replied: "The Israel Police does not provide updates about developments in an investigation to anyone other than the complainant, his representative, or whoever is entitled to receive the data requested."<sup>29</sup>

On December 26, 1990, Chief Superintendent Sarah Mar-Haim, head of the Supervision and Control Division at the Police Department's national headquarters, reported: "A check of our records indicates that the complaint referred to was not received, and consequently was not dealt with."

On April 9, 1991, Superintendent Riki Guy, from the Supervision Division, reported that from the point of view of the police, no complaint had been made, since a letter cannot be considered a complaint. Following repeated appeals by **HaMoked**, Chief Inspector Uri Weisskopf stated on December 19, 1991 that a thorough search had failed to turn up any such complaint.<sup>30</sup>

### **3. Files not Located**

Requests by **B'Tselem** for information on the progress of investigations sometimes meet with the response: "File not located." The police say that this category covers cases in which no file was opened and files which the police cannot locate. The reply is the same even when investigative actions are taken – an autopsy, for example, or a house search, or even the detention of suspects for questioning.

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29. In a letter dated July 1, 1990.

30. Complaint No. 527, **HaMoked**: Center for the Defense of the Individual.

Of seventy-eight cases monitored by **B'Tselem** in which Palestinians were wounded by Israelis, the police said that twenty files could not be located. In other cases, in which we knew with certainty that complaints had been filed, the police denied receiving the complaints, even where they had been made in the presence of a representative from **HaMoked**.

There were two particularly serious cases, involving deaths, in which the reply of the police to **B'Tselem's** inquiry about progress in the investigations was "File not located." Complaints by Palestinians from the Territories against Israelis "disappear" at police stations even when they are filed with police stations in Israel, as is evident from an affidavit given to **HaMoked** by Muhammad al-Ash'hab.

On August 9, 1990, Mr. Balfour, owner of a store called "Ronen Shoes" in Tel Aviv, threatened to shoot al-Ash'hab, his employee, during an argument over Balfour's refusal to pay al-Ash'hab his wages. Al-Ash'hab ran out of the store and went to the police station in Jaffa. Policemen from the station accompanied him to the store, where Mr. Balfour admitted that he had indeed threatened to shoot the complainant "because he [Balfour] had become irritated." The police took down the details and proposed that the two "make up." When al-Ash'hab refused, he was summoned to the Investigations Department of the Jaffa police and told to "go home" because his complaint was "nonsense."

**HaMoked** sent queries to both the Investigations Department of the Tel Aviv police and to the Jaffa station. The former replied on September 25, 1990, stating that since the complaint had been made in Jaffa, the complainant should contact the Jaffa station. The Jaffa station replied that since the event itself had occurred near the central bus station in Tel Aviv, it was reasonable that Tel Aviv should handle the case. A query by **HaMoked** to the police Inspector General elicited the following reply on February 14, 1991 (seven months after the incident): "We were unable to locate a complaint or any other record relating to the case described, or to Mr. al-Ash'hab." The police suggested that he file a new complaint.

Muhammad al-Ash'hab accepted the suggestion, but on October 24, 1991, the police informed **HaMoked** that the case had been closed on October 13, 1991 "due to lack of public interest."

The phenomenon of "disappearing" files is not new. It was noted by the Karp Commission in 1982.<sup>31</sup>

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31. See complaint made by Nicholas Jeris, Karp Commission Report, p. 16.

### **Nidal Ibrahim Muhammad Miseq**

On August 9, 1989, Nidal Miseq, a high school student in Hebron, left his father's shoe-repair shop to go home. As he was walking on al-Salem Street, a No. 440 Egged public transportation bus, on the Jerusalem-Beersheva run, passed by. According to an investigation conducted by the **Palestinian Human Rights Information Center (PHRIC)**, the bus was stoned, and settlers rushed out of the vehicle, shooting in all directions. Nidal Miseq was hit by three bullets and then fell from a 2.5-meter-high fence. Eyewitnesses said the settlers left as soon as they saw that someone had been hit by their shooting. A physician called to the scene pronounced Miseq dead. His body was snatched, and he was buried the same day.

According to testimony given by members of the family (to both **PHRIC** and **HaMoked**), the local Military Governor, accompanied by soldiers, arrived at the boy's home at 7 p.m. on the day of the shooting and demanded the body. The mourners refused. The soldiers carried out a violent search of the premises, during which three of those present were shot and wounded. The army appeared again on the two following mourning days.

Despite this testimony, which proves that the security authorities in the area knew about the incident, MK Roni Milo, then serving as Police Minister, in reply to a parliamentary interpellation by MK Dedi Zucker of July 16, 1990, stated that "the police have no record of this event." The State Attorney's Office, in a letter dated May 7, 1991, informed **B'Tselem** that "The file was not located."

On August 23, 1992, **B'Tselem** again asked the police whether an investigation had been conducted and, if so, what the results were. On April 25, 1993, Chief Inspector Yoni Tsioni, of the Department of Investigations and Claims, informed **B'Tselem** that no file on Miseq's death had been located.

### **Al-Birah, December, 1989**

Beginning on December 14, 1989, and during each of the five days that followed, a settler harassed the residents of a particular street in al-Birah. Fifteen people testified that he had often caused them damage by throwing stones at their houses and by shooting at windows and water containers. They also reported that the man lived in the Psagot settlement and drove a beige Peugeot station wagon, license number 47-936-53.

On December 31, 1989, one of the local residents, Sa'id Atama Jaber, went to the Ramallah police station, accompanied by the coordinator of **HaMoked**, Ali Hatib, to file a complaint. The soldiers would not let them in, saying: "There is no public reception today." A policeman standing at the entrance told them that he did not deal with cases of that kind.

On the same day, **HaMoked** sent a letter to MK Amnon Rubinstein describing the events. Copies went to Deputy Attorney General Yehudit Karp and to the Israel Police Ombudsman, David Maiberg. On January 4, 1990, the police Ombudsman's Unit informed **HaMoked**: "We found that *prima facie* grounds exist for a clarification by us in the wake of the refusal to accept a complaint."

The complaint, including the car's license number, was accepted on January 21, 1990 during a second visit to the Ramallah police station. The complainants were told that the settler in question was known to the police; his name was Baruch, and the police were aware of his activity. From the Ministry of Transportation **HaMoked** learned that the vehicle was registered to the Psagot settlement, population 650.

The complainants were now confident that the complaint would be dealt with properly. But two months later, on March 16, 1990, the head of the Investigations Department of the Ramallah police, in reply to a query from **HaMoked**, stated: "The complainant gave no details about suspects. We checked out the matter and conducted an investigation, but there were no findings. In the meantime, the file was closed by the head of the Investigations Bureau of the Judea District, Superintendent Naoti."

On June 13, 1990, **HaMoked** asked Superintendent Naoti why the file had been closed with no findings, since details about the suspect were known, and there were many witnesses. Naoti called **HaMoked**'s lawyer on June 26 and told her that the details she had given him did not appear in the complaint, and that the complainant should return (for the third time) to the police.

In another letter, dated January 15, 1991, police Major General B. Gilad, in charge of special tasks, stated: "A complaint in the name of Sa'id Jaber was not found at the station... On January 29, 1990, the file was closed since no suspects were found."

**HaMoked** then asked to photocopy the file, but after repeated requests (including the intervention of MK Amnon Rubinstein), on November 19, 1992, the Ramallah police explicitly stated that the file had been lost and could not be found even after a thorough search.<sup>32</sup>

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32. Complaint No. 1159. **HaMoked**: Center for the Defense of the Individual.

## **Muhammad Salim Sharab**

According to eyewitness testimony given to the **Palestinian Human Rights Information Center**, an Israeli oil tanker was stoned as it drove through Khan Yunis on September 10, 1989. The security man riding on the vehicle exited the vehicle and opened fire. Two bullets struck fourteen-year-old Muhammad Salim Sharab in the chest, killing him instantly.

According to a report in *Ha'aretz* on September 12, the guard was interrogated, and the body was transferred to the Institute of Forensic Medicine at Abu Kabir for an autopsy. On August 23, 1992, **B'Tselem** asked the police whether there had been any progress in the investigation. On April 25, 1993, Chief Inspector Yoni Tsioni from the Investigations Department informed us that "the file was not found."

## **Dahariya Road, June, 1991**

On June 25, 1991, on the road south of Dahariya (near Hebron) the driver of a Peugeot van bearing Israeli license plates signaled an Arab taxi, on its way from Hebron to Beersheva, to pull over. When the taxi driver complied, the van driver pulled up, alighted from his vehicle, and walked over to the cab. Inside the taxi were the driver, thirty-eight-year-old Kamal Abu-Alan, and Omar 'Ahmad Mawas, a twenty-five-year-old resident of Bnei Naim. The van driver drew out a pistol, shot at the two from close range, and fled. Mawas was seriously wounded, and Alan suffered light wounds. They were taken to Aaliya Hospital in Hebron, and Mawas was later moved to al-Muqased Hospital in East Jerusalem.

About a week later, the police informed the press that on July 3 a young Jew had been arrested in the case by the Judea District police. A pistol, believed to be the weapon from which the shots had been fired, was found in his house. The suspect, who had a permit for the pistol, cooperated with the interrogators and admitted having committed the deed. In his defense, he said that Alan had been driving dangerously, and that he had only meant to warn him, but the pistol had fired accidentally.

On July 4, the suspect was taken to Jerusalem Magistrate's Court for remand on suspicion of shooting in aggravated circumstances. The court ordered him released on a personal bond of NIS 5,000. The judge, Michaela Shidlovsky-Orr, said that "An act of hooliganism does not constitute a basis for detention before an indictment is filed." The judge issued an injunction barring the suspect from leaving the country, and prohibited the press to reveal his identity.

On October 20, 1992, **B'Tselem** asked the police whether there had been any new developments in the case, and on April 25, 1993, Chief Inspector Yoni Tsioni, of the Investigations Department, informed us that "the file was not located."

#### **4. Handling of Active Police Files**

The police Prosecutions Department is responsible for preparing indictments in cases of relatively light offenses. Serious cases are referred to the State Attorney's Office.

Some files are held up in the Prosecutions Department long after the case has been solved, without an indictment being filed. This "foot-dragging" has serious implications as regards the likelihood of obtaining a just result. Protracted investigations make it difficult for the police to locate witnesses and for the witnesses to remember details of the event. Long delays also affect the decision whether to file an indictment. Even where an indictment is filed, the delay affects the judgment. The Supreme Court has ruled more than once that delay of justice (usually because of an extended trial) is a consideration for showing leniency at sentencing:

On the one hand, punishment dispensed long after the offense loses a great deal of its deterrent force, and on the other hand, the defendant has already served a considerable part of his sentence – the sword of justice was hanging over his head, and he was in a situation, for a period that exceeds any reasonable length, in which he did not know what his fate would be, and other reasons of a similar nature.<sup>33</sup>

The following are examples of cases that remain unsolved although three years or more have passed.

#### **Muhammad al-Hatib and Maryam Suleiman Bashir Hassan**

On November 7, 1990, Muhammad al-Hatib, a sixty-five-year-old farmer from the village of Luban al-Sharqiya, was riding on his donkey to the olive press. According to the testimony of Jamal al-Lutfi, as given to reporters from *Ha'aretz* and *Hadashot*, a Peugeot 404 bearing Israeli license plates suddenly passed. Shots were fired from the car, and al-Hatib fell to the ground. Shortly afterward, more shots were fired from the car. Maryam Suleiman Bashir, a sixty-year-old widow standing at the entrance to her house, was hit in the throat and

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33. Justice Menachem Elon, *Halevy et al v. State of Israel*, Crim. App. 786/84, 795/84, *Piskei Din* 39 (2), 714, p. 717.

chest. Her daughter, an eyewitness to the murder, said two bullets struck her mother, and the car immediately fled in a southerly direction. The two casualties were taken to al-Ittihad Hospital in Nablus, where they were pronounced dead. The security authorities took their bodies from the hospital to the Institute of Forensic Medicine at Abu Kabir for autopsies.

The two elderly Palestinians were killed on the day following the murder in New York of Kach leader, Meir Kahane, and the police assumed that the West Bank murders were revenge for the Kahane assassination. On November 10, 1990, the police detained three suspects in the case, all of them residents of the Tapuah settlement and members of Kach: Ben Zion Gopstein, Baruch Axelrod, and David Cohen. Axelrod and Cohen were released that same day, but Gopstein was remanded for five days after the judge found that the police had evidence that might implicate him. On November 14, Axelrod was again detained, this time for five days, the police claiming that ballistics tests had shown that his weapon had been used in the murder. Gopstein's remand was also extended for another five days, although the judge was critical of the General Security Service (GSS) investigators, who do not document their investigations.

On November 19, both Gopstein and Axelrod were released, as there was no evidence to justify detaining them any longer. Reports in the months that followed indicated that Meir Kahane's son, Binyamin Ze'ev Kahane, had been interrogated in the case (on December 2 and 12, 1990, August 18, 1991, and September 4, 1991). No other information was published relating to the progress of the investigation.

On January 6, 1994, Moshe Shiloh, first senior deputy in the Central Region District Attorney's Office, informed **B'Tselem** that "At this stage, there is insufficient evidence in the file to prepare an indictment. As is customary in murder cases, the file remains open, and if we receive additional evidence, we shall, of course, consider filing an indictment."

### **Muamin Dahar, November, 1990**

On November 20, 1990, nine-year-old Muamin Dahar was playing next to his house in the West Bank village of Luban al-Sharqiya. According to reports in *Davar* and *Hadashot* (November 21), a white Subaru, license number 833-603, containing four settlers, pulled up alongside the house. The car's occupants grabbed the boy and beat his mother when she tried to stop them. The boy was taken to an abandoned area, beaten viciously with blows to the head, back, and stomach, and left there.

On November 22, *Ma'ariv* reported that a resident of the Yitzhar settlement had been arrested on suspicion of having been involved in the kidnapping. On April 25, 1993, two-and-a-half years after the event, Chief Inspector Yoni Tsioni, of the police Investigations Department, told **B'Tselem** that the file was still in the Prosecutions Department at the Nablus police station.

### **Sa'ir Village, December, 1991**

On December 20, 1991, settlers entered the village of Sa'ir, near Hebron. According to local residents, they fired their weapons and threw stones, causing considerable damage to windows, solar heaters, and a car. The settlers also rampaged through the nearby village of Shuyukh. The army tried to block their way, but they entered by a circuitous route.

On December 26, 1991, six residents of Kiryat Arba (among them Kach activist Baruch Marzel and Bella Gonen, a member of the Kiryat Arba local council) were questioned by the police about the events in Sa'ir and Shuyukh. They refused to cooperate, claiming it was a "political interrogation." An Uzi submachine gun belonging to one of the suspects, Ilan Galon, was taken by the police for examination.

On April 25, 1993, replying to an inquiry from **B'Tselem**, Chief Inspector Yoni Tsioni stated that the file was in the Prosecutions Department of the Hebron police. On January 24, 1994, the latter wrote to **B'Tselem** that the file had been transferred to the Jerusalem Prosecutions Department to initiate prosecution, and that the matter was still being handled.

### **Hebron, December, 1991**

On December 27, 1991, a group of settlers arrived at the Hebron truck market and vandalized vehicles parked there. They fired shots into the air, smashed windows of nearby cars and houses, and wrecked solar heaters. The settlers were passing through Hebron on their way to the village of Khahil, where they also damaged property.

On December 29, 1991, it was reported that the Hebron police were investigating a complaint made by twelve residents of the city against settlers who had damaged their property. Two settlers, Ronen Cohen (from Beit Hadassah in Hebron) and Bella Gonen (a Kiryat Arba local council member), were detained for questioning.

Replying to an inquiry from **B'Tselem**, on April 25, 1993, Chief Inspector Yoni Tsioni, of the police Investigations Department, stated that the file was in the Prosecutions Department of the Hebron police.

On January 24, 1994, the Hebron police informed **B'Tselem** that five suspects had been detained and questioned. The file had been transferred to the Prosecutions Department in Jerusalem on July 9, 1992 in order to prepare an indictment. However, no criminal charges have yet been filed.

### ***5. Files Closed by the Police for "Offender Unknown"***

Thirteen cases of death about which **B'Tselem** made inquiries were closed by the police on the grounds of "offender unknown." The same reason was cited by the police for closing ten files relating to cases in which Palestinians were wounded by Israeli civilians and twenty-two cases involving property damage.

In some of the cases, especially those involving deaths, the decision to close the file is puzzling since the police presumably had sufficient information to locate the suspects – such as motor vehicle license numbers, descriptions of vehicles and of settlers, and in some instances even their names.

An examination of the investigation files (which **B'Tselem** or **HaMoked** obtained after receiving power of attorney from the families or the complainants) often turned up evidence of sloppy work. The Karp Commission referred to this phenomenon:

Although the monitoring team had no tools for comparison, its *prima facie* impression was that the number of files that had been closed due to offender unknown exceeded the average elsewhere. It would not be inaccurate to say that there is a direct link between the large number of files closed for offender unknown and inadequate investigations, either because of the failure to act with proper alacrity shortly after the event occurred, or because efforts to locate [suspects] were insufficient...<sup>34</sup>

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34. Karp Commission Report, p. 27.

The disinclination of the police to conduct exhaustive investigations, its propensity to quickly close files in which Israeli settlers have assaulted Palestinians – even where deaths have occurred – and the serious consequences of this behavior are illustrated in a case that did result in a conviction.

### **Aziza Salem Jabar**

On August 6, 1990, Aziza Salem Jabar, from Hebron, was shot to death while she was traveling in a car near Kiryat Arba. Three months later, the Police Minister at the time, MK Roni Milo, stated, in reply to a parliamentary interpellation from MK Avraham Burg, that "In this case, the Hebron police opened an investigation file and a comprehensive investigation was conducted, but there were no positive results. The file... was closed on the grounds of offender unknown."<sup>35</sup>

According to the Jerusalem weekly *Kol Ha'ir*, then-Attorney General Yosef Harish asked the Investigations Branch at National Police Headquarters (NPH) for details about the case. Harish, the report said, acted after receiving a letter (in which was enclosed a copy of an article by Michal Sela that had appeared in *Davar* shortly after the event) from a citizen who expressed surprise that the investigation had failed to reveal anything. When the police confirmed that the file had been closed on the grounds of "offender unknown," Harish wrote, on February 3, 1991, to the head of the Investigations Branch at NPH, Maj. Gen. Uzi Berger:

This reply by the police is entirely unsatisfactory, and *prima facie* indicates insufficient diligence in determining the identity of the offender. If the investigation was conducted with the proper diligence, but nevertheless did not lead to the discovery of the murderer's identity, I request that you furnish me with the complete findings.<sup>36</sup>

On March 7, 1991, approximately one month after Harish sent his letter, four residents of Kiryat Arba were arrested on suspicion of murder. One of them, Nahshon Wells, confessed and was convicted by the Jerusalem District Court for the murder of Aziza Salem Jabar and for attempted murder. On February 8, 1992, Judge Ya'akov Bazak sentenced him to life imprisonment.<sup>37</sup>

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35. Reply on November 27, 1990, to parliamentary interpellation no. 2866.

36. *Kol Ha'ir*, March 15, 1991.

37. *Yediot Aharonot*, March 9, 1992; *Kol Ha'ir*, March 13, 1992.

According to the report in *Kol Ha'ir*, the then-Israel Police spokesperson, Adi Gonen, denied any link between Harish's reprimand and the progress made in the investigation. Gonen said the success of the security forces in solving the case was unrelated to the exchange between the Attorney General and the police.<sup>38</sup>

However, even if the spokesperson's account is accepted, it is undisputed that the police had closed the file on the grounds of "offender unknown" four months after the murder, and that a subsequent, serious investigation provided positive results.

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38. *Kol Ha'ir*, March 15, 1991.

### **Sami Mahmoud a-Sabah**

On August 21, 1989, Sami Mahmoud a-Sabah, aged 19, from the village of Takuah, near Bethlehem, was killed. His father, Mahmoud Ahmad a-Sabah, was an eyewitness to the incident. In testimony gathered by **B'Tselem** fieldworker, Suha Araf, on November 2, 1992, in Takuah, he related that his son and a few other youths had gone to the main road to set up a barricade to prevent army jeeps from entering the village. A settler, with whom a-Sabah claims he was personally acquainted, from the nearby town of Efrat was traveling on the road and saw the boys putting up the roadblock. He got out of his car and advanced toward them. At a distance of about 250 meters, he fired about twelve shots, two of which hit Sami a-Sabah, one in the heart and the other in the right side of his chest. The settler then left. About two hours later the police arrived, took testimony, and conducted a preliminary investigation. According to the father, the police did not return to further investigate the case.

The spokesman of the Judea District police told **B'Tselem** on September 12, 1989 that one suspect had been detained. He was later released on bail, and his weapon was taken for examination. On July 16, 1990, the Police Minister stated, in reply to a parliamentary query from MK Dedi Zucker, that the file had been closed on November 12, 1989 on the grounds of "offender unknown." In reply to a query from **B'Tselem**, the police stated again, on April 25, 1993, that the file had been closed on the grounds of "offender unknown."<sup>39</sup>

### **Isa Muhammad Ali Sabiah**

On October 24, 1989, Isa Muhammad Ali Sabiah was injured in the head when a stone was thrown at his car from a No. 160 Israeli bus of the Egged company on the Jerusalem-Hebron route. According to testimony by his brother, Omar Muhammad Sabiah, given to **HaMoked**, they were traveling from Hebron to Bethlehem when a bus coming from the opposite direction blinded them with bright lights. When they slowed down, four or five big stones were thrown at them. One of them smashed through the front windshield and struck the driver, Isa Muhammad Ali Sabiah, causing him to lose consciousness. The car veered left and crashed into a tree. The bus then pulled over to the immobile car and pushed it into the valley below. Isa Muhammad

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39. According to a letter by Chief Inspector Yoni Tsioni, Department of Investigations and Claims, dated April 25, 1993.

Ali Sabiah died on November 18, 1989 from the injuries sustained in the incident.

According to a report in *Ha'aretz* (October 20, 1989), it later emerged that a bus on the Jerusalem-Hebron line, which exited the Jerusalem bus station at 5:30 p.m., had been stoned as it passed the Deheishe refugee camp. A few windows were shattered, but no one was hurt. In reaction, passengers got off the bus and collected stones, and as the journey proceeded hurled them at passing cars from the Territories (distinguishable by their blue license plates). Several cars were hit, and in addition to Sabiah, three other Palestinians were hospitalized in serious condition after the furniture truck in which they were traveling overturned after being struck by stones.

On November 19, 1989, the spokesman of the Judea District police told the press that an investigation was underway, but that no arrests had been made. On December 7, 1989, in reply to a query by **B'Tselem**, the police Ombudsman's Unit stated that the bus could not be located because the eyewitnesses had not supplied its number, and since, in addition to the regular buses on the route, other buses carried soldiers, workers, and tourists. Moreover, according to the head of the unit, Commander Maiberg, even if the driver were identified, he would not necessarily be able to identify the passengers or indicate which passenger had thrown the stone.

On August 23, 1990, Chief Inspector Riki Gal, of the Investigations Department at National Police Headquarters, told **B'Tselem** that the file had been closed on the grounds of "offender unknown." At the family's request, the police permitted the lawyer of **HaMoked** to photocopy the file. It contained information to the effect that Sami and Awni Abu Rian, who were passengers in another car that was also hit by stones shortly after the incident with Sabiah, definitely identified the bus as belonging to the Egged company by its red color. The police had questioned two bus drivers who were on the No. 160 line from Jerusalem to Kiryat Arba that day at about the time of the incident. One of them, Yehuda Mahabti, who was on his way from Jerusalem to Hebron when the event took place, said his bus had been stoned and that he had seen the overturned furniture truck. He denied having seen or hitting the Peugeot in which Sabiah had been traveling. The other driver, who had driven the route earlier, also denied any involvement. Both drivers said no stones had been thrown from their vehicles.

Testimony was also furnished by a policeman who had been on Mahabti's bus and, on his own initiative, reinforced the driver's statement. Beyond this, the investigators do not seem to have gone out

of their way to find passengers who had been on the two buses, the army officers who had been at the scene, or to determine, through the Egged company, whether other buses, on private trips, had been in the area at the time of the incident.

On August 23, 1992, **B'Tselem** asked the police why no further efforts had been made to locate the bus. On April 25, 1993, Chief Inspector Yoni Tsioni, of the police Investigations Department, stated that "Eyewitnesses were interrogated and investigative actions were taken as required."

### **Birkat Aadel Fakhouri**

On October 10, 1989, Birkat Aadel Fakhouri, a sixteen-year-old high school student from Hebron, was shot next to the Ibn Rushad School in the city, apparently by Israeli civilians whose car had been stoned.

Two days later, the newspaper *Yediot Aharonot* reported that an investigation conducted by the police and the army on the day after the event revealed that the boy had not been among the stone-throwers. He was hit about 200 meters from the site from which the stones had been thrown, suggesting that the shooter had not directed his fire at the assailant. On December 18, 1989, it was reported that the body had been disinterred in order to perform an autopsy.

On January 19, 1990, the *Jerusalem Post* reported that the police had found the bullet that was the cause of death and was conducting ballistics tests on weapons in the possession of local settlers. The paper added that Benny Katzover, deputy chairman of the Kiryat Arba local council, had been arrested on a charge of obstructing the investigation; he had refused to submit his rifle for a ballistics test.

Six months later, on July 16, 1990, Police Minister Roni Milo stated in the Knesset, in reply to a parliamentary interpellation from MK Dedi Zucker, that the case was still under investigation by the Hebron police.

On April 25, 1993, three-and-a-half years after the incident, and eight months after **B'Tselem's** query to the police, Chief Inspector Yoni Tsioni stated: "An investigation could not be conducted in the absence of identifying details. The file was closed on the grounds of offender unknown."

### **Habarta Village, September, 1988**

On September 25, 1988, Ramadan Mahmoud Ahmad Bet Ilu, from the village of Habata, who worked in a factory in Bnei Brak, near Tel Aviv, complained to **HaMoked** about an incident that had occurred a week earlier and its aftermath. On September 19, while he had been driving home, the bumper and tail light of his car had been damaged by

stones thrown by residents of the settlement of Nili, whom Bet Ilu knew, who had taken up positions on both sides of the road. On the same day and in the same place, olive trees in a grove belonging to Bet Ilu had been chopped down.

Bet Ilu was told that he should file a complaint with the police, which he did on September 25. In the complaint he reiterated that he knew the settlers involved and could easily identify them.

Nevertheless, the police initially did nothing. Not until October 16 and 20, three weeks after the complaint was filed, did the police question two residents of Nili who jointly owned a vehicle resembling the one mentioned in the complaint. The two settlers denied any connection with the event and said they knew nothing about it. As a result, the case was later closed on grounds of offender unknown.

On August 5, 1991, **HaMoked** attorney Andre Rosenthal, after obtaining a photocopy of the file (following repeated requests), asked the Ramallah police why no confrontation had been arranged between the complainant and the suspects, or why their pictures, at least, had not been shown to him for identification.

On August 14, the commander of the station, Superintendent Sofer, replied: "We did not consider it fitting, based on the investigation material, to conduct a frontal confrontation between the suspects [sic], and the complainant was unable to carry out a lineup based on photographs."

On December 9, 1991, attorney Rosenthal asked Deputy Attorney General Baruch Avrahami to examine suspicions that the complaint had been covered up, since the replies given by the Ramallah police were not internally consistent, nor were they consistent with the complainant's unequivocal statement that he could identify the perpetrators.

On December 24, 1991, **HaMoked** received a copy of a letter sent by Avrahami to the Investigations and Claims Department at National Police Headquarters, asking why no attempt had been made to identify the suspects even though the complainant said he could make a positive identification. Despite many inquiries, **HaMoked** received a response only after two years had passed.

On October 9, 1993, the assistant to the Attorney General, attorney Noam Solberg, wrote to **HaMoked** that Avrahami had received a reply from the police on March 17, 1992 stating that there had been a number of suspects, and that a lineup based on photographs had not turned up any positive results. Solberg added that in light of the efforts by the police and the time that had transpired since the event, it would be pointless for the Attorney General to intervene.

After Bet Ilu gave **HaMoked** a sworn affidavit denying that he had been shown a lineup, **HaMoked** again wrote to Solberg.

On January 30, 1994, a senior assistant to the Attorney General, attorney Gilad Nevital, wrote in response that the police had erred; no lineup had taken place. Nevertheless, he continued, since so much time had passed, and in light of the police activity in the matter, action at this stage would be fruitless.<sup>40</sup>

## Summary

1. Police handling of offenses imputed to Israeli civilians against Palestinians in the Territories is seriously flawed. In fact, nothing has changed in this regard since the publication of the Karp Commission Report more than a decade ago.
2. In many cases, including fatalities, no investigation of any kind is conducted. In general, although the police have external information about the offenses, violations of law for which no complaint is submitted are not investigated.
3. Palestinians are often deterred from making complaints to the police against Israeli civilians because they have a fundamental disbelief in the willingness of the police and the Israeli judicial system to enforce the law in such cases.
4. The behavior of the police toward Palestinians who try to file complaints, and the manner in which the complaints are handled, reinforce the Palestinians' mistrust. Often the police refuse to accept complaints from Palestinians, or send complainants aimlessly from one station to another. Investigations that do take place rarely result in criminal charges being filed.
5. The police are often unable to locate files, even in instances where the media report developments in the investigation, such as autopsies, house searches, and even arrests of suspects. Or the police deny that a complaint was filed, although volunteers from human rights organizations were present at the time the complaint was made.
6. Some files are held-up for long periods in the Prosecutions Department, and indictments are not filed, even after the case has been solved. These delays seriously affect the attainment of justice.

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40. Complaint No. 1159, **HaMoked**: Center for the Defense of the Individual.

7. Closing files on the grounds of "offender unknown" has almost become the norm, even in cases for which *prima facie* details identifying the offender exist.
8. Although some deficiencies are attributable to lack of resources and understaffing, these cannot explain the repeated refusals by the police to accept complaints from Palestinians. Nor do they account for Palestinians being sent from station to station, the lost files, or the wide-scale closing of files on the grounds of "offender unknown."
9. Indeed, the lack of resources shows that enforcement of the law against Israeli civilians in the Territories lies at the bottom of the government's and police department's list of priorities. Increasing police personnel in the Territories and providing greater resources would certainly help, but the status quo will remain so long as the attitude of the police toward such offenses remains unchanged.
10. The scale, character, and recurrence of the omissions clearly indicate that the failure is systemic and not happenstance. The many cases, some involving deaths, in which no investigation is opened or files "disappear" suggest that the police take a disparaging attitude toward the life, person, and property of Palestinians.
11. Police impotence in dealing with offenses imputed to Israeli civilians in the Territories against Palestinians does not stem only from the investigators' negligence or a shortage of manpower. A dozen years ago the Karp Commission pointed to "substantial deficiencies" in the performance of the police in such cases, and concluded:

These deficiencies, notwithstanding that they must be dealt with thoroughly, are only the symptom of a deeper problem, containing the seeds of a dangerous process of which the end cannot be known.... The key lies neither in the technical monitoring of investigations, nor in criteria for conducting investigations, nor in the legal perspective, but in a radical new approach to the idea of the rule of law in its broad and profound sense.<sup>41</sup>

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41. Karp Commission Report, pp. 31, 33.

### 3. THE JUDICIAL SYSTEM

When [Prime Minister and Minister of Defense Yitzhak] Rabin visited here a week ago, I told him: What upsets me more than anything else is the judicial system. The army carries out all the procedures. We arrest a Jew. He goes to court and the judge releases him... Justice is not fully done – and when there is no justice, there is no deterrence."<sup>1</sup>

– Col. Meir Kalifi, commander, Hebron Sector<sup>1</sup>

The judicial system comprises the State Attorney's Office and the courts. The State Attorney's Office receives the findings of police investigations, and is responsible for bringing suspects to trial in the courts, which pass judgment and sentence the convicted.

#### A. Closing of Files by the State Attorney's Office

The State Attorney's Office decides whether to prosecute on the basis of the material contained in the police investigation file. Files are generally closed by the State Attorney's Office because one or more elements necessary to prove criminal guilt cannot be proved, insufficient evidence, or "lack of public interest."

In reply to **B'Tselem's** query about the number of files that had been closed, Shai Nitzan, senior assistant to the State Attorney, indicated, *inter alia*, that "as a rule, the State Attorney's Office does not furnish details on investigation material in closed criminal files to anyone who is not directly involved."<sup>2</sup>

The following are two examples of files that were closed inexplicably, given the facts in **B'Tselem's** possession.

##### **Fa'iq Subhi Suweidan**

On July 30, 1989, Fa'iq Subhi Suweidan, a nineteen-year-old Gaza resident who worked in Israel, was killed while walking with several

1. In an interview with Nahum Barnea, *Yediot Aharonot*, December 15, 1993.
2. Letter to **B'Tselem**, September 11, 1992.

other workers from Erez Checkpoint to Bet Hanoun. According to an investigation conducted by the **Palestinian Human Rights Information Center**, a Volkswagen car pulled up next to the group, and the driver began shooting at them. Suweidan was hit in the chest and back. He was taken to the hospital, where he died within thirty minutes of arrival.

Later that day, David Shtibi, from the settlement of Rafiah Yam in the Gaza Strip, was detained on suspicion that he had been the assailant. According to *Ha'aretz* (July 31), Shtibi had been driving the car, and his two nephews were passengers. The vehicle was stoned, and he then fired in the air. He claimed he did not know he had hit anyone. A report the following day indicated Shtibi had admitted firing at a group of youngsters who were throwing stones at him. He said he had been forced to get out of the car and shoot at the stone-throwers. He had tripped while firing the weapon and did not know if he had hit anyone.<sup>3</sup>

On August 1, 1989, Shtibi was remanded for three days by Judge Shmuel Mintzer in Beersheva Magistrate's Court. *Hadashot* reported on August 2 that a soldier who was an eyewitness to the incident told police: "There was no provocation or stone-throwing by the Arabs. David Shtibi opened fire on his own initiative." When a police representative said in court that the charge had been changed from manslaughter to causing death by negligence, the judge pointed out: "The soldier's testimony makes Shtibi suspect of a far more serious offense than causing death [by negligence]." Shtibi's lawyer argued that the soldier could not have seen the stone-throwing from his lookout. During the hearing it emerged that the police had not questioned Palestinian eyewitnesses.<sup>4</sup>

On August 3, after the police announced that its investigation had been completed, Shtibi was released on bail of NIS 50,000. On January 21, 1990, it was reported that the Gaza police had transferred the file to the State Attorney's Office with a recommendation to prosecute.

On May 7, 1991, Shai Nitzan, senior assistant to the State Attorney, wrote to **B'Tselem** that the State Attorney's Office had closed the file for lack of evidence. On August 23, 1992, **B'Tselem** asked the police to clarify whether Palestinian eyewitnesses had been questioned. The police replied that "Investigation procedures were carried out as required."<sup>5</sup>

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3. *Ha'aretz*, August 1, 1989.

4. *Hadashot*, August 2, 1989.

5. Letter from Chief Inspector Yoni Tsioni, Department of Investigations and Claims, to **B'Tselem**, April 25, 1993.

### **Mahmud Muhammad al-Nawaj'ah**

On June 7, 1991, Mahmud Muhammad al-Nawaj'ah, aged fifty-five, a shepherd from Yatta village, near Hebron, was tending his herd near the Susiya settlement. According to testimony by Jabar Hamad Naser Nawaj'ah, given to the **Palestinian Human Rights Information Center**, Mahmud al-Nawaj'ah was shot in the stomach by a settler on horseback after the settler had told several other shepherds to leave the area. On June 9, 1991, *Davar* reported that al-Nawaj'ah had been shot in the course of a violent argument between the settler and shepherds. The altercation had begun when the settler told the shepherds to leave and they refused. The settler then started shooting at sheep, after which the shepherds struck him on the head. He then shot Mahmud Muhammad al-Nawaj'ah. The wounded man was taken to Aaliya Hospital in Hebron, where he was pronounced dead.

On June 9, *Ha'aretz* reported that the police had arrested Baruch Yellin, from Susiya, on suspicion of having killed al-Nawaj'ah. Yellin was remanded for twelve days by Judge David Frenkel in Jerusalem Magistrate's Court. The judge noted that the suspect "did not follow the precautionary rules, which he could have done before he decided to open fire at the shepherd." Chief Inspector Raphael Mizrahi told the court that the material already in the possession of the police indicated that Yellin could be charged with murder.

On June 12, *Ha'aretz* quoted the deputy commander of the Judea District police, Chief Superintendent Yossi Portugal, as saying that the investigation would be completed within a few days. On June 20, Yellin was remanded for another eight days by Judge Yehudit Tsur in Jerusalem Magistrate's Court. She noted: "At this stage it is possible that the suspect will be charged with murder; the court may not, therefore, release him on bail."<sup>6</sup>

Yellin was released on bail on July 10, 1991, after he was charged with manslaughter rather than murder. He was prohibited to enter Susiya until the end of the trial. On July 12, 1991, the weekly newspaper, *Jerusalem*, reported that the police had been forced to release Yellin on bail and to reduce the charge because two judges, Yehudit Tsur and Dalia Kobel, thought that the remands were being requested unnecessarily.

On April 25, 1993, Chief Inspector Yoni Tsioni, of the police Investigations Department, informed **B'Tselem** that the file had been transferred to the State Attorney's Office and closed due to insufficient evidence.

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6. *Yediot Aharonot*, June 21, 1991.

## B. Public Pressure on the State Attorney's Office

In many cases public pressure not to prosecute, or to have a serious charge reduced, is exerted on the State Attorney's Office. If the pressure is ignored, various political circles sharply criticize the State Attorney's Office, claiming it is harassing the settlers.

A case in point is the judgment given by District Court Judge Ya'akov Tsemah in January, 1991. Fifteen settlers had been accused of committing serious offenses during a violent disturbance at Deheishe refugee camp on June 6, 1987, six months before the start of the Intifada. Judge Tsemah convicted eleven of the defendants on relatively light counts, and four were exonerated. Following criticism of the State Attorney's Office by politicians who identify with the settlers, a senior source in the State Attorney's Office told the media:

Tremendous pressure is placed on us, and we have reached the situation that we close files involving charges similar to those in the Deheishe case for lack of evidence. If there is the slightest reason to believe that self-defense was involved, we prefer to close the file.<sup>7</sup>

At the opening of the trial of Moshe Levinger – a leader of the Jewish settlement in Hebron – for manslaughter in the death of Ka'id Salah, settlers demonstrated outside the courthouse to protest the trial.<sup>8</sup> Leading rabbis from the religious-Zionist camp issued a statement condemning the State Attorney's Office. The then-head of the Bnei Akivah movement's yeshivas, Rabbi Moshe Zvi Neriah, wrote: "The arrest of Levinger, who set out neither to murder nor to kill, is a warning to all of us to defend ourselves. We must protest against the State Attorney's Office, which ties our hands and denies us the right of self-defense."<sup>9</sup> At one point, Levinger appeared at court carrying a large effigy of then-Justice Minister Dan Meridor. The dummy held scales of justice that were tilted toward the left.<sup>10</sup>

A pamphlet entitled "The 'Rule of Law' – Really?", distributed by a Kiryat Arba-based organization called "Zedek" ("Justice") claims that the State Attorney's Office has a deliberate policy of charging settlers with particularly serious offenses.

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7. *Hotam* (weekly magazine of *Al Hamishmar*), April 4, 1991.

8. *Al Hamishmar*, May 22, 1989.

9. Nadav Shragai, *Ha'aretz*, May 9, 1990.

10. *Hadashot*, December 4, 1992.

## C. Going to Trial

All sectors of the public should be made aware that committing violent acts against peaceful citizens for ethnic reasons, even planning such acts, will result in serious, substantial, and painful punishments imposed by the judicial system. It goes without saying that it makes no difference whether the acts of violence are perpetrated by nationalist rioters from the minorities and directed against citizens who are part of the majority population group in the state, or whether they are acts of harassment against peaceful, innocent victims from the minorities or workers from the Territories who are employed [in Israel].

– *Supreme Court Justice Gabriel Bach*<sup>11</sup>

### 1. Types of Offenses

#### Incidents involving death

Between 1988 and 1992, twelve Israeli citizens were charged with murder, manslaughter, or causing death by negligence in cases involving Palestinians from the Territories. Two of the indictments involved the deaths of two Palestinians in each case. Of the forty-eight instances during this period in which Palestinians were killed by Israelis, therefore, fourteen reached the courts. As of the date of this report, eleven of the trials, involving thirteen deaths, had concluded. The results were as follows:<sup>12</sup>

1. Murder conviction – **one**
2. Manslaughter conviction – **one**
3. Death by negligence convictions – **six**
4. Found unfit to stand trial and committed to psychiatric hospitalization – **one**

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11. Crim. App. 652/88, *State of Israel v. Binyamin Ben Shishi Saadia*, Piskei Din 42(4) 523, p. 527.

12. During the Intifada, two trials involving the deaths of Palestinians at the hands of Israelis, in incidents which predated the uprising, were concluded. Nissan Ishigayov was accused of manslaughter in the death of a thirteen-year-old boy in 1982, and the same charge was brought against Shimon Ben-Yifrah in the death of Intasar Bat Abdallah in November, 1987. The two defendants were convicted of manslaughter.

5. Convicted of arson, shooting in a residential area, wounding in aggravated circumstances, damaging property and harming animals – **one**

6. Not guilty – **one**

In five of the cases, an original charge of manslaughter was plea bargained to the lesser charge of causing death by negligence. With the exception of the murder conviction – which drew a mandatory sentence of life-imprisonment – the sentences were conspicuously lenient. The defendant who was convicted of manslaughter, which carries a maximum sentence of twenty years in prison, received a three-year sentence. The maximum sentence for causing death by negligence is three years in prison. Of the six defendants convicted on that charge, one received eighteen months, another five months, and the other four were ordered to do community service for periods of up to six months.

### **The cases involving death that reached trial**

1. Aziza Salem Jabar, killed on August 6, 1990. Nahshon Wells was convicted of **murder** and sentenced to life imprisonment.
2. Juda Abdallah Thayim, killed on May 5, 1988. Yisrael Ze'ev was convicted of **manslaughter** and sentenced to three years' imprisonment.
3. Rabah Ghanam, killed on January 11, 1988. Pinhas Wallerstein was originally charged with manslaughter, but the charge was reduced to **causing death by negligence** in a plea bargain. Sentenced to one year in prison, seven months of which were suspended.
4. Qa'id Hasan Salah, killed on September 30, 1988. Moshe Levinger was originally charged with manslaughter, but the charge was reduced to **causing death by negligence** in a plea bargain. Sentenced to one year in prison, seven months of which were suspended.
5. Adali Mahar Muhammad Sa'id, killed on March 23, 1989. Ovadia Salumi was originally charged with manslaughter, but the charge was reduced to **causing death by negligence** in a plea bargain. Sentenced to three months in prison, which were served doing community service, and a twenty-month prison sentence was suspended.
6. Omar Yusuf Abu Jabar, killed on May 17, 1989. Menashe Yisrael was originally charged with manslaughter, but the charge was reduced to **causing death by negligence** in a plea bargain. Sentenced to three months in prison, which were served doing community service, and a twenty-month prison sentence was suspended.

7. Mustafa Khaleb, killed on February 6, 1990. Yigal Sasson was originally charged with manslaughter, but the charge was reduced to **causing death by negligence** in a plea bargain. Sentenced to six months in prison, which were served doing community service, and a twenty-month prison sentence was suspended.
8. Salame Muslah Jalal, killed on February 18, 1991. Boaz Moscowitz was originally charged with manslaughter, but the charge was reduced to **causing death by negligence** in a plea bargain. Sentenced to five months in prison, served doing community service, and a one-year prison sentence was suspended.
9. Ibthisam Abd a-Rahman Bozaya, killed on May 29, 1989. Gad Ben Zimra, Yehoshua Shapira, Yoel Eliran, and Rafi Solomon were originally charged with assault and causing bodily harm in aggravated circumstances, shooting in a residential area, arson, and doing harm to animals. As a result of a plea bargain, they were acquitted of manslaughter and convicted of **rioting resulting in damage, doing harm to animals, and causing bodily harm in aggravated circumstances**. They were sentenced to eight months in prison and an additional eighteen-month sentence was suspended, except for Yoel Eliran, who received only an eighteen-month suspended prison term.
10. Hamdallah Radi Khalil Alawana, killed on January 13, 1991, and Jamil Duweikath, killed on April 14, 1991. Pinhas Asayag, who was tried in both cases, was **committed to psychiatric hospitalization** after being found unfit to stand trial.
11. Ahmad Abu Hussein Barguti and Rayad Mahmoud Awad Barguti, killed on February 27, 1988. Nehemiah Schneider was **acquitted**, the court accepting his claim of self-defense.

In addition to these cases, four members of the Kach movement were charged in the murder of Abd a-Raziq Abd a-Rahman a-Dikyak. Their trial is still in progress.

The consistently lenient sentences in cases involving death are not coincidental. Judges look for precedents. One sentence in particular became the model in such cases. It was given in the trial of Nissan Ishigayov, which concluded shortly after the Intifada began, although the incident predates the uprising.

Ishigayov was convicted of manslaughter in the death of a thirteen-year-old boy who had thrown stones at him. On February 22, 1988, he was sentenced by the Tel Aviv District Court to six months of community service.<sup>13</sup> The sentence was widely criticized by legal

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13. Crim. File 461/83.

experts<sup>14</sup> and by the Supreme Court when it heard and sustained the state's appeal against the leniency of the sentence and denied the defendant's appeal. Justice Eliezer Goldberg, writing for the court, stated:

The punishment that the appellant received does not reflect the value that should be placed on human life. It could be construed as acceptance of a norm of behavior which is intolerable when the act involved is one "which by its gravity subverts the very existence of a civilized humane society."<sup>15</sup>

The Supreme Court also took into account the time that had passed since the event, and the general principle that "full sentences are not exacted on appeal." Ishigayov was sentenced to five years in prison, two of which were suspended. The court remarked that this did not express "the appropriate sentence which the [lower] court should have imposed."<sup>16</sup>

Judges have cited the Ishigayov precedent, or judgments that relied on it, in various cases involving Israeli civilians. In doing so, however, they disregarded Justice Goldberg's rationale, and imposed lenient sentences on Israelis who killed Palestinians. For example, Jerusalem District Court Judge Zvi Cohen relied on the Ishigayov case when he sentenced Yisrael Ze'ev to three years in prison and two-years suspended after convicting him of manslaughter in the death of Joda Abdallah Awad.<sup>17</sup> In sentencing Moshe Levinger, convicted of causing the death by negligence of Qa'id Hasan Salah, Jerusalem District Court Judge Shalom Brenner relied on the minority opinion of Supreme Court Justice Dov Levin in the Yisrael Ze'ev appeal.<sup>18</sup> And in passing sentence on Boaz Moscovitz, convicted of causing the death of Salam Muslah, Judge Ruth Orr, referring to two precedents cited by the

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14. Haim Ganz, "How Much Does Manslaughter Cost," *Iyunei Mishpat* 13 (1), p. 6; S.Z. Feller, "Crim. File 461/83: Purely Legal Questions on the Margins of a Strange Judgment," *ibid.*, pp. 231-233 (both in Hebrew).

15. Crim. App. 175/88, *State of Israel v. Ishigayov*, Piskei Din 42 (2) 361, p. 367.

16. *Ibid.*, p. 368.

17. Crim. File 153/88, *State of Israel v. Yisrael Ze'ev*.

18. Justice Levin suggested (in a minority opinion) that the defendant be exonerated on the manslaughter charge, convicted of causing death by negligence, and to impose an eighteen-month prison term. The District Court sentenced Levinger to five months in prison. It is noteworthy that in the majority opinion in the Ze'ev trial, Justice Beiski commented that the circumstances in that case were more serious than those in the Ishigayov case. *Ibid.*, p. 660.

defendant's attorney, the Levinger and Wallerstein cases, sentenced Moscovitz to five months of community service.<sup>19</sup>

### **Nonlethal attacks**

Of seventy-eight cases examined by **B'Tselem** in which Israeli civilians wounded Palestinians, eighteen reached the courts. In these cases also, the judges tended to impose lenient sentences. With the exception of one case, in which James Goldenberg received a prison term, sentences were suspended, or the convicted were ordered to do several months of community service.

### **Attacks on property**

Of eighty cases examined by **B'Tselem** in which Israeli civilians damaged property belonging to Palestinians in the Territories, fourteen reached the courts. Lenient sentences were the norm.

But not all Israelis convicted of attacking Palestinians received light sentences. In September, 1990, Jerusalem District Court Judge Ruth Orr sentenced a sixteen-year-old Jewish boy to ten-months imprisonment for throwing stones at Arab vehicles.<sup>20</sup> On March 1, 1993, the Supreme Court sustained the state's appeal and sentenced Yitzhak Legami, who had been convicted in three cases of assaulting Arabs, to one year in prison.<sup>21</sup> These sentences were more severe than most of those imposed on Israelis convicted of assaulting Palestinians, and exceeded sentences imposed in cases involving fatalities. They are still more lenient than the punishments imposed on Palestinians in similar cases.<sup>22</sup>

For example, Palestinians, who are tried in military courts, upon conviction for stone-throwing routinely received prison terms of twelve-months, and in some cases substantially longer. On September 1, 1988, a minor from Silwan was sentenced to two years in prison and a two-year suspended sentence for throwing stones at a bus in East

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19. Crim. File 265/88. *State of Israel v. Pinhas ben Moshe Wallerstein*.

20. *Al Hamishmar*, September 4, 1990.

21. Crim. App. 4484/92. *State of Israel v. Yitzhak Legami*, unpublished. The convictions are also for providing false information and causing bodily injury in aggravated circumstances.

22. See **B'Tselem. The Military Justice System in the West Bank**. November, 1989; **Amnesty International, The Military Justice System in the Occupied Territories: Detention, Interrogation and Trial Procedures**. July, 1991.

Jerusalem. In some instances, the security forces demolished the homes of stone-throwers who had not caused damage.<sup>23</sup>

The average punishment imposed on Palestinians who throw incendiary bombs (without causing physical damage) is two years, although substantially harsher sentences are occasionally imposed; in August, 1988, the Lod military court imposed a ten-year prison term, reduced to three years on appeal, for that offense.<sup>24</sup>

The Supreme Court, sitting as a criminal appeals court, has always been vigilant against the tendency to mitigate the punishments of Israeli civilians who committed offenses against Palestinians for nationalist reasons. It tends to deal more harshly with Israeli offenders than the lower courts, and constantly stresses the need to deter persons prone to take the law into their own hands, and to ensure that the punishment is commensurate with the crime.<sup>25</sup> The Supreme Court's ability to influence punitive policy is, however, limited for two reasons:

1. Only cases involving appeals by the State Attorney's Office reach the Supreme Court. The state, however (as described below), did not appeal in some cases in which the punishment imposed was far lighter than what its own prosecutors had demanded; and
2. In the few cases that do reach the Supreme Court, the judges' hands are bound by its self-imposed rule not to impose a full sentence on appeal.<sup>26</sup>

## **2. Grounds for Mitigation of Punishment**

The sentences and their rationale reveal the judges' attitude toward offenses committed by Israeli civilians against Palestinians in the Territories. The reasoning may differ from case to case, but the statements of the judges provide a clear indication of that attitude.

In some cases, the judges invoked the circumstances in the Territories, meaning the Intifada, to account for leniency in the sentencing of Israeli offenders. The judges frequently expressed understanding for the distress of the Jewish civilians, or questioned the integrity of the

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23. **B'Tselem. Demolition and Sealing of Houses as a Punitive Measure in the West Bank and the Gaza Strip During the Intifada.** September, 1989.

24. *Davar*, September 2, 1988.

25. See, for example, Crim. App. 175/88, *State of Israel v. Ishigayov*, Piskei Din 42 (2) 361, p. 367; Crim. App. 537/89, *State of Israel v. Ya'akov ben Moshe Avrahamin*, Piskei Din 43 (4), 772, p. 779.

26. See, for example, *State of Israel v. Ishigayov*, *ibid.* p. 368; *State of Israel v. Ya'akov ben Moshe Avrahamin*, *ibid.*, p. 780.

Palestinian victims, who were identified as Intifada activists. In the case of Nissan Ishigayov, for example, Tel Aviv District Court Judge Strusman wrote:

We regret that children, youths, and adults as well, are victims of the struggle and war between Israel and the Arabs. I am fully conscious of the suffering and grief of parents, the pain they feel at the death of a son, whether they are Israelites or Ishmaelites. But when it comes to passing judgment, one law must apply, whether the defendant harmed a Jew or a Muslim, or someone from a different religion.

Now, as I pass judgment, as I consider the circumstances in which the defendant found himself, circumstances caused by children and youngsters, unfortunately, who instead of being supervised by their parents and teachers in these deranged times, engaged in stone-throwing that endangered the police and forced it to retreat, I do not think the defendant should be punished severely for the manslaughter.<sup>27</sup>

In another case, the head of the Binyamin Regional Council, Pinhas Wallerstein, was convicted by the Jerusalem District Court of causing the death by negligence of Rabah Ghanam Hamad. Judge Ezra Hadaya sentenced Wallerstein to four months of community service, a one-year suspended prison term, and a fine of NIS 8,000. In his decision, Judge Hadaya wrote:

The case before us is undoubtedly most unfortunate, especially since it involved loss of life. However, at the same time, we cannot forget that the deceased and his friend, Ziyad, were apparently active in the Intifada. They were the "assailants", who by their violent actions and their gross and aggressive behavior threatened the well-being, the person, and even the life of the defendant, the victim of the attack... I have also kept in mind the saying that you "should not judge another until you walk in his shoes."<sup>28</sup>

Judges also cite the political or public activity of Israelis in mitigating their punishment in cases involving attacks on Palestinians. For example, when imposing a lenient sentence (five months' imprisonment) on Rabbi Moshe Levinger, a leader of Gush Emunim, for causing the death by negligence of Qa'id Hasan Salah, Jerusalem District Court Judge Shalom Brenner noted that "his [Levinger's] primary concern and care,

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27. Crim. File, 461/83, *State of Israel v. Ishigayov*, quoted in appeal, Crim. App. 175/88, p. 36b.

28. Crim. File 265/88, *State of Israel v. Pinhas ben Moshe Wallerstein*, p. 10.

for some twenty years, has been the interest of the public he leads."<sup>29</sup> Similarly, Judge Hadaya cited Pinhas Wallerstein's public position as head of the Binyamin Regional Council and member of the YESHA (Judea-Samaria-Gaza) Council.<sup>30</sup>

Some judges expressed understanding for the ideological motivations of Jewish settlers. This understanding is implicit, for example, in the decision of Tel Aviv District Court Judge Natan Amit against members of the Yitzhar settlement who ran amok and damaged property in the village of Imrin.<sup>31</sup>

From the rationale in some cases, it may be understood that the judges identify with the national-religious attitude of the settlers. Jerusalem District Court Judge Ruth Orr noted that Boaz Moscowitz, convicted of causing the death by negligence of Salameh Muslah Jalal, had suffered from anti-Semitism in the Soviet Union, where he "was beaten and abused by gentiles."<sup>32</sup> In another case, decided December 13, 1989, Moshe Levinger was acquitted in Magistrate's Court of charges that he attacked the Samuah family in Hebron and insulted a soldier. Judge Yoel Tsur accepted Levinger's testimony in preference to that of the family and the soldier. "I believe the defendant's statements, which I accept as true, that for religious reasons he would not lift a hand against a woman, let alone a girl."<sup>33</sup>

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29. Crim. File 137/89, *State of Israel v. Moshe ben Eliezer Levinger*, Judgment, p. 7.

30. *State of Israel v. Pinhas ben Moshe Wallerstein*, *ibid.*, p. 10.

31. See quotation below, at page 117; see also note 26, above. This tendency did not begin with the Intifada. Already in the judgment handed down in the trial of the Jewish underground, it was noted that "The majority served in the Israel Defense Forces and took part in Israel's wars. The majority are men of Torah and work, who left behind a comfortable life and, together with their families, went to build a Hebrew community." Quoted in the Knesset Protocol, June 7, 1989, p. 2388.

32. Crim. File 1440/92, *State of Israel v. Moscowitz*, Judgment, p. 19.

33. Crim. File 1872/88, *State of Israel v. Moshe Levinger*, p. 11. The Jerusalem District Court upheld the appeal of the State Attorney's Office against his acquittal, and Levinger was convicted of assaulting the family, trespassing, and insulting a soldier. See *Davar, Ha'aretz, Al Hamishmar*, September 24, 1990.

### 3. Sample Cases

It is beyond the scope of this report to examine all the cases in which Israeli civilians attacked Palestinians. We shall, therefore, elaborate as regards a few cases.

#### The Trial of Moshe Levinger

On September 30, 1988, Rabbi Moshe Levinger opened fire with live ammunition in the center of Hebron, killing Qa'id Hasan Salah and wounding Ibrahim Bali. Levinger was detained for questioning and released on bail. On April 12, 1989, he was indicted on charges of manslaughter, causing serious bodily injury in aggravated circumstances, and causing malicious damage. His trial opened on May 22, 1989 in Jerusalem District Court. Levinger pleaded not guilty to all the charges.<sup>34</sup>

The trial proceeded for two years. On May 1, 1990, following a plea bargain between the Jerusalem District Attorney's Office and Levinger's lawyer, Levinger was convicted of causing death by negligence, causing bodily injury in aggravated circumstances, and causing malicious damage. The two original serious charges – manslaughter and causing serious bodily injury – were dropped, and Levinger agreed to plead guilty to the lesser counts. Jerusalem District Court Judge, Shalom Brenner, immediately imposed a twelve-month prison sentence, seven of which were suspended.

Levinger's attorney requested a two-week delay before his client would commence serving his sentence to enable Levinger to arrange personal matters before entering prison. The judge consented. On May 14, 1990, Levinger entered Eyal Prison in the Sharon District.<sup>35</sup>

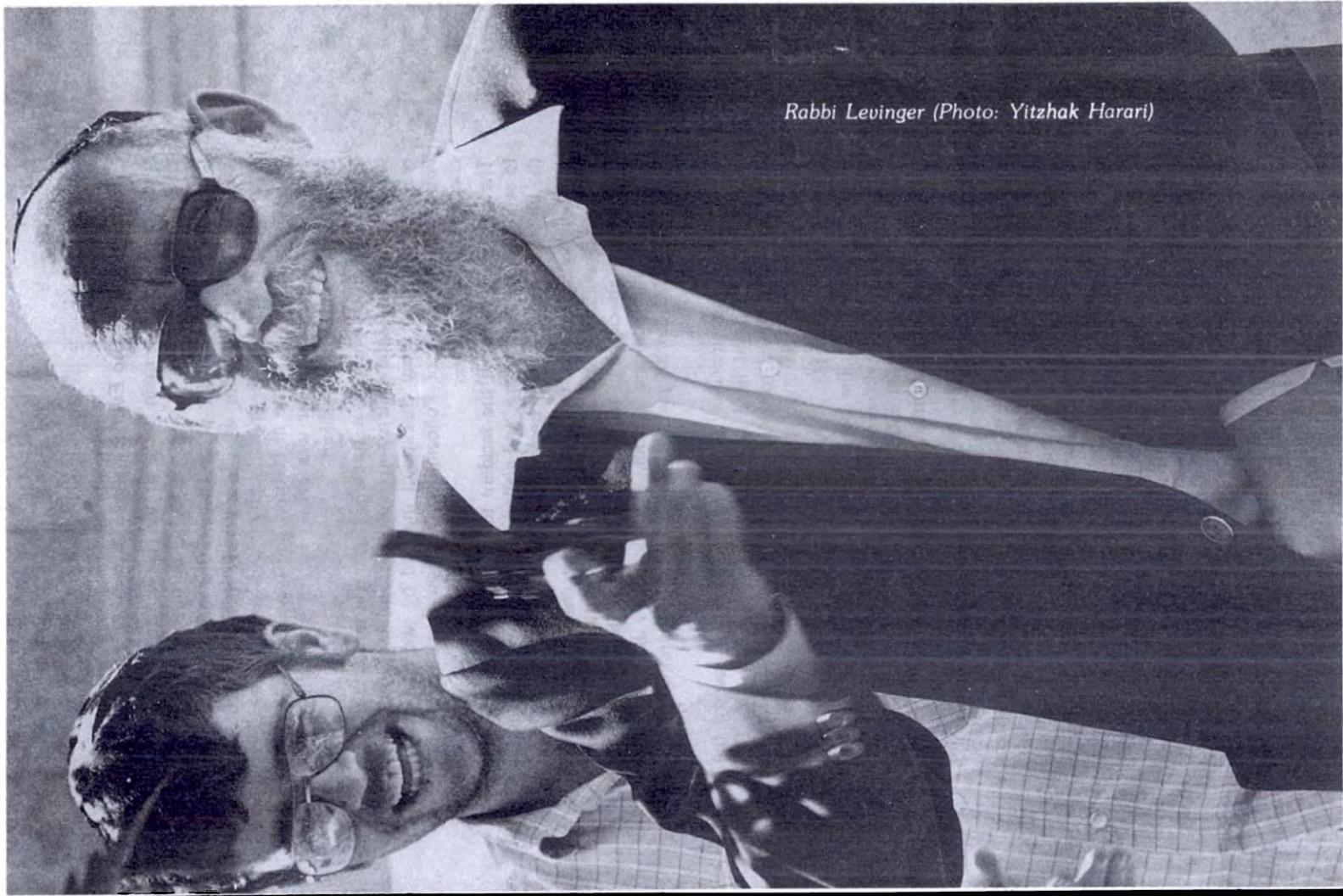
He was released on August 14, 1990, after serving some three months of the five-month sentence, a third having been deducted for good behavior. His followers celebrated his release.<sup>36</sup>

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34. "Announcement of admission of facts with the claim of additional facts," attorney Nehushtan. Levinger's counsel, August 21, 1990.

35. *Ha'aretz, Al Hamishmar*, May 14, 1990.

36. *Hadashot, Yediot Aharonot*, August 15, 1990.



*Rabbi Levinger (Photo: Yitzhak Harari)*

## **1. Description of the Event**

The following are the main facts in the case, as set forth in the amended indictment:

On September 30, 1988, at or about 10 a.m., the defendant was a passenger in a car with four family members, two little girls (his daughter and his granddaughter) and his two sons. They had set out from his home in Hebron and traveled through the center of the city. The car was driven by his son. They were headed north, toward Jerusalem.

In the center of Hebron a thrown stone shattered the front windshield. The defendant's son continued driving until they reached an Israeli army checkpoint manned by two soldiers on Faisal Street, north of Policeman's Junction (hereinafter: the checkpoint).

The defendant reported the incident to the soldiers, asked them to send a patrol to the site, and waited next to his parked car for the patrol to arrive at the checkpoint.

As they waited, stones were thrown at the checkpoint by two groups of youths located at the upper part of the street, to the north of the checkpoint, and by a group located to the south of the checkpoint near the bottom, at Policeman's Junction. The defendant pulled out his pistol, a 9mm Baretta... (hereinafter: the pistol).

The defendant advanced a few steps to the north, toward the rise of the road, and fired two or three shots in the air. The defendant then turned toward the south and advanced downhill, walking next to the partition that separated the traffic lanes.

The deceased, Qa'id Hasan Abdul Aziz Salah, a merchant aged forty-two (hereinafter: the deceased), was standing by the show window outside his shoe store with a client, Ibrahim Bali (hereinafter: the complainant), to whom he was showing shoes for the complainant's daughter, who was waiting inside.

As he made his way southward along the said partition, the stone-throwing from the north having ceased, and while some stones were being thrown at him by the group of youngsters standing at Policeman's Junction, about 50 meters to his south, the defendant fired single shots toward the shops and the sidewalks on both sides of the street, where passersby were present. The defendant, his arm extended in front, fired from a range of between 15 and 20 meters at the facade of the deceased's shop. When the shooting occurred, the complainant

and the deceased were standing outside, in front of the shop, and the defendant's shots struck both of them.

A bullet seriously wounded the shopkeeper. The injuries induced internal bleeding and the entry of air into the chest cavity, which caused his death.

Another bullet entered the complainant's right shoulder from the side, and after traveling about 10 cm inside the shoulder and hitting soft tissues and muscle, it lodged in the muscle at the rear side of the shoulder. Shortly thereafter, the complainant drove to Aaliya Hospital in Hebron, where surgeons operated to remove the bullet from his shoulder. After firing at the shops, Levinger advanced along the sidewalk, walking downhill in a southerly direction, overturned crates containing fruits and vegetables, threw saplings, dumped the merchandise on the ground, damaging the items and their wrappings, and shouted at the merchants to close their shops immediately.

## **2. Commentary**

### **2.1. Manslaughter Charge Reduced to Causing Death by Negligence**

As part of a plea bargain with Levinger, the Jerusalem District Attorney's Office amended the indictment, replacing the "manslaughter" charge with a charge of "causing death by negligence." **B'Tselem** has no authoritative information about the considerations of the authorities in agreeing to the plea bargain.<sup>37</sup> However, a close perusal of the amended indictment and the prosecutor's arguments at sentencing raise several perplexing questions.

Causing death by negligence is the lowest of the three levels, after murder and manslaughter, stipulated in the Penal Code for responsibility in causing death. The difference between manslaughter and causing death by negligence is strikingly reflected in the maximum punishments for each crime: twenty years for the former, three for the latter. The same disparity exists as regards the moral stigma attaching to the crime. Levinger said of his conviction on the charge of causing death by negligence: "The amended indictment according to which I was convicted is for a minor charge of not taking caution while shooting... The whole charge against me is based on the fact that I did not shoot accurately while I was in danger."<sup>38</sup>

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37. For possible conjectures, based on the course of the trial, see Nadav Shragai, "The Soft Belly of the Prosecution in the Levinger Trial," *Ha'aretz*, May 9, 1990.

38. *Davar*, May 2, 1990.

An analysis of the facts, as they appear in the amended indictment, suggests that Levinger was guilty of manslaughter. Under Israeli law, two elements are required to prove manslaughter: 1) gross negligence, and 2) recklessness, or indifference to another's safety, "and there can be no recklessness other than where the defendant knew the danger... Knowledge of the danger can be shown to have existed from the total circumstances that were proved."<sup>39</sup>

Gross negligence relates to behavior, and is expressed by a substantial deviation from reasonable caution. Recklessness is a mental element, and means that the offender was "aware of the danger to the life or body of others that was to be expected from his behavior... If the defendant disregarded... another person's safety and not necessarily his life, recklessness of a sufficient degree is found to exist."<sup>40</sup>

The difference between the mental element required for conviction on a charge of causing death by negligence and the mental element required for a manslaughter conviction lies in the person's consciousness of the damage his act may cause. A person who acts recklessly "foresees a concrete possibility of realizing the risk that he created," whereas a person who acts negligently "is not aware of that risk, although a reasonable person in similar circumstances could and should have been aware of it."<sup>41</sup>

The amended indictment described Levinger's behavior while he was shooting as follows:

... after the stone-throwing from the north had ceased, and while some stones were being thrown at him by the group of youngsters standing at Policeman's Junction, about 50 meters to his south, the defendant fired single shots toward the shops and the sidewalks on both sides of the street, where passersby were present. The defendant fired, his arm extended in front, at a range of between 15 and 20 meters, at the facade of the deceased's shop... As a result of the shooting, the deceased was seriously wounded by a bullet that tore through his body.<sup>42</sup>

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39. *Crim. App. 84,81/79, Arutz et al v. State of Israel*, Piskei Din 34 (1) 679, p. 684.

40. On the judgment quoted here, see Ya'akov Kedmi. **On Criminal Law: The Law as Reflected in Adjudication**. Diyonon Publishers, Tel Aviv University, Part II, p. 449, fn. 1 (Hebrew).

41. *Ibid.*, p. 535.

42. *Crim. File 137/89, State of Israel v. Moshe ben Eliezer Levinger*, amended indictment, par. 4c. The circumstances as described in the original indictment are even more serious. "In the course of these events the defendant fired with hand extended in front at shoulder height, with the barrel of the pistol parallel to the ground, from a range of about twelve meters, at the facade of the deceased's store."

According to the indictment, Levinger shot in an uncontrolled manner, "his arm extended in front," toward the chance passersby. He did not take even minimal precautions to avert bodily injury. Opening fire in a public place which is crowded with people is by definition a dangerous act. It cannot, therefore, be considered negligence; *prima facie*, it indicates "gross negligence," the mental element necessary to prove manslaughter.

The circumstances of the incident, as they are detailed in the indictment, indicate that Levinger must have been aware of the danger to the safety of others created by his acts. The proof is that he first fired in the air, after he and his family had been stoned from two different directions. Only afterward, when the stone throwing from one direction had ceased, "and while some stones were being thrown at him by the group of youngsters standing at Policeman's Junction, about 50 meters to his south,"<sup>43</sup> did Levinger shoot at the passersby. In other words, at this stage Levinger's shooting could not be considered an act of self-defense in the face of an immediate threat to life.<sup>44</sup>

In addition, Levinger testified at his trial that he is well-trained in the use of firearms, so he certainly was aware of the danger in shooting with arm extended towards passersby. At the very least, Levinger's behavior shows an indifference to the results of his actions that constitutes recklessness, the mental element required to sustain a manslaughter conviction.

Indeed, there was nothing unusual about Levinger's indifference to the safety of Palestinians, which was clearly reflected in this assault. His behavior throughout the incident, his previous attacks on Palestinians and Palestinian property (seven prior convictions), and his public statements about Palestinians suggest that Levinger thinks it is his innate right to take the law into his hands.<sup>45</sup>

At a press conference after the incident, for example, Levinger stated:

Regarding the actual deed, I will respond when the time comes. I have already said that as far as the substance of the case goes, the State Attorney's Office knows that I am innocent, and that I did not have the privilege of killing that Arab. Not that I may not

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43. Amended indictment, *ibid.*, par. 4.

44. Nowhere in the amended indictment is it claimed that either Levinger or anyone from his family was ever in mortal danger.

45. This, despite the judge's comment: "I am even ready to accept, despite the defendant's unfortunate statement in a press interview during the course of the trial, that he does not think the Jews who have settled in Judea and Samaria have an innate right to take the law into their hands." Crim. File 137/89, *State of Israel v. Moshe ben Eliezer Levinger*, Judgment, par. 6.

have wanted to kill him or that he did not deserve to die, but I did not have the privilege of killing that Arab.<sup>46</sup>

In conclusion, the facts of the incident, as contained in the amended indictment (to which Levinger pleaded guilty), show that the two elements required to sustain a manslaughter conviction were present.

## **2.2 Position of the State Attorney's Office**

The questions regarding the stance of the State Attorney's Office in this case, notably the reduction of the charge from manslaughter to causing death by negligence, become acute in light of the prosecution's arguments prior to sentencing. Even after the plea bargain was concluded, the prosecutor continued to use terminology befitting a manslaughter charge:

The defendant admitted committing the offense. He committed an act of reckless negligence. This was not an **unintentional act**. The defendant chose to fire in the manner that he did.<sup>47</sup>

There is no dispute that, as described in par. 8(b)(5) of the indictment, uncontrolled shooting, with one's arm extended in front, with no self-scrutiny, toward a place from which no danger loomed, is neither an **unintentional act** nor a mistake caused by a trembling hand. It is shooting that the defendant chose, as indicated in the latter part of par. 8(b)(5). This was not an involuntary or **unintentional act**.<sup>48</sup>

As noted above, one element of manslaughter is recklessness, a term the prosecutor used in describing Levinger's actions, even after the indictment had been amended. In addition, the prosecutor emphasized that the act had not been unintentional. The Supreme Court has ruled that an "unintentional" aspect distinguishes negligence from recklessness:

Negligence and recklessness are substantially different: one is unintentional behavior, the other is knowingly advancing toward the danger.<sup>49</sup>

No less peculiar was the punishment demanded by the prosecution. Causing death by negligence carries a maximum penalty of three years in prison. Although the prosecutor argued that within the parameters of causing death by negligence, "the defendant's act of negligence and recklessness borders the limit of the scale, the upper limit of the

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46. Protocol, court session of May 1, 1990, pp. 12-13.

47. *Ibid.*, p. 3 (our emphasis).

48. *Ibid.*, p. 9 (our emphasis).

49. Crim. App. 419/68, *State of Israel v. Ze'ev Raphael*, Piskei Din 22 (2), 754.

scale,"<sup>50</sup> the prosecution asked that Levinger be sentenced to only eighteen months in prison and an additional suspended prison sentence.<sup>51</sup> This was incommensurate with the prosecutor's own description of the gravity of the defendant's acts:

The punishment must express condemnation of the defendant's reckless reaction to the throwing of a few stones from the south, and to its consequences. It must be a message to the defendant and to potential offenders who have a light trigger finger. And it must reflect the value placed on human life as such.<sup>52</sup>

### **2.3 The Judgment**

Although the prosecution requested a sentence of eighteen months in prison, Levinger received five months' imprisonment and a suspended seven-month sentence. Judge Brenner's explanation for the lenient sentence referred to the precedent which both sides had cited – Justice Dov Levin's minority opinion in the appeal of Yisrael Ze'ev – though each with a different interpretation. Quoting Justice Levin to the effect that Ze'ev had faced sudden danger and was under pressure, Judge Brenner said he would pass sentence based on the rule laid down by Justice Levin: "The level of the recklessness will be diminished to the degree that the shooter acted under pressure and the fear of being harmed."<sup>53</sup> Judge Brenner added:

I accept defense counsel's argument that the defendant was under pressure, and that in the circumstances of the time and place, there was at least subjective justification for the feeling of danger and anxiety he experienced... I do not think, therefore, that the defendant in the case before me should receive the same sentence that was proposed by the Justice in the minority opinion in C.A. 26/89 (eighteen months in prison), as the prosecution suggests.<sup>54</sup>

Justice Levin thought that because of the pressure in which Ze'ev found himself, his behavior should not be construed as gross negligence, amounting to manslaughter – the view of the court's majority – but that

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50. Protocol, court session of May 1, 1990, pp. 21-22.

51. Judge Brenner wrote in the judgment that the prosecutor had asked for a prison term of eighteen months. According to the protocol, he had asked for only one year. However, the context indicates that there was a mistake. See protocol, court session of May 1, 1990, p. 22.

52. *Ibid.* p. 21.

53. *Ibid.* p. 19, par. 23, quoted in Levinger judgment, p. 6, par. 4.

54. *Ibid.* p. 7, par. 6. As noted, according to the trial protocol, the prosecution asked for one year only and not a year-and-a-half, as noted by the judge.

he should be convicted of causing death by negligence. The prosecutor in the Levinger case cited Justice Levin when he agreed to reduce the charge from manslaughter to causing death by negligence. Judge Brenner, however, adopted the argument that Levinger had been under pressure, not to justify the lesser charge, but to place Levinger's action at the lower end of the scale within the parameters of causing death by negligence.

Judge Brenner also explained his other considerations:

The defendant is a prominent individual and the father of eleven children. His primary concern and care, for some twenty years, has been the interest of the public he leads. I am even ready to accept, despite the defendant's unfortunate statement in a press interview during the course of the trial, that he does not think the Jews who have settled in Judea and Samaria have an innate right to take the law into their hands. However, since the incident did occur, and he chose to make his own law, the punishment that the court decrees on him must express "the value placed on human life as such [Crim. App. 175/88, Piskei Din 42(2) 361, p. 367], otherwise it could be construed as acceptance of a norm of behavior which is intolerable."

Despite these remarks, the judge sentenced Levinger, as mentioned above, to five months in prison and seven months' suspended. Judge Brenner denied Levinger's request to serve his punishment doing community work, noting: "To the defendant's disadvantage are, *inter alia*, his previous convictions for assault, criminal trespass, and causing malicious property damage..., and this is the eighth time he has faced trial in the courts."<sup>55</sup>

Even though the judge gave Levinger a lighter punishment than the prosecution had requested, the State Attorney's Office did not appeal. Its decision not to appeal is puzzling since, *inter alia*, the prosecutor had said that Levinger's act bordered the higher end on the scale of seriousness in the crime of causing death by negligence. In addition, Levinger's previous criminal convictions were well-known.

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55. *Ibid.*, p. 8, par. 7.

## **The Trial of Boaz Moscowitz**

On July 12, 1993, the Jerusalem District Court sentenced Boaz Moscowitz, from Tekoah, near Bethlehem, to five months of community service and a one-year suspended prison term. Moscowitz had been convicted, on the basis of his guilty plea, which resulted from a plea bargain, to the charge that he had caused the death by negligence of Salameh Musalah Jalal, aged 14, from the village of Bet Sahour.

### **1. Description of the Event**

The facts of the incident, according to the amended indictment, are described in the court's judgment:

On February 18, 1991, at about 6:30 p.m., the defendant was driving his car from Jerusalem to Tekoah via Bet Sahour. When he reached the junction known as "the junkyard," at the northern entrance to Bet Sahour, he saw a barrier of stones blocking the road and within it an object that looked suspicious. The defendant, who was alone in the vehicle, stopped and got out, carrying his weapon, an M-16 rifle, and fired a few shots in the air. Two shots were fired on a flat trajectory at houses located some eighty meters from where he stood, and one of the bullets hit the solar heater on the roof of a house.

At the same time and place, Masalem Bin Jalal Hana Ibrahim Musalah, about fifteen-years-old (hereinafter: the deceased), and his family were sitting on the closed porch of their house watching television. When they heard the shots, the deceased and the other family members rushed from the porch into the house. As the deceased was fleeing, he ran through an open door between the center of the house and the kitchen. As a result of the defendant's shooting, a bullet passed through the kitchen window, the kitchen and the open door, struck the deceased, and tore through his skull. The bullet seriously wounded Ibrahim. He was taken to al-Husseini Hospital, where he received first-aid, and then he was transferred to Muqased Hospital, where he was pronounced dead.<sup>56</sup>

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56. Crim. File 1440/92. *State of Israel v. Moscowitz*.

## 2. Commentary<sup>57</sup>

### 2.1. Circumstances of the Event

Since Judge Ruth Orr did not permit us to review the trial protocol, we do not know how closely the account in the amended indictment is based on evidence and testimony given during the trial.<sup>58</sup> In any event, the description contained in the judgment is woefully deficient.

It is unclear whether Moscovitz could have driven around the barrier, or whether the stones completely blocked his way. This fact is important. If he could have bypassed the stones, why did he stop, get out of the car, and start shooting? And if he could not have bypassed the stones, how did he continue on his way after the incident? Even if he could not continue, why did he not return the same way he had come, instead of getting out and opening fire?

The judgment states that a bullet "passed through the kitchen window, the kitchen and the open door," and struck the boy. Clearly, then, the shot was fired at a level angle, otherwise the bullet would have hit the roof or the ceiling.

The questions become more acute in the light of additional findings resulting from an investigation conducted at the site of the incident by attorneys Avraham Gal and Yosef Levy, and by Dr. Veronica Cohen, three days after the event. Affidavits were taken from eyewitnesses and were compared with the physical data (e.g., the marks left by the bullets, the terrain, and the wounds) and with information furnished by a physician who was present at the autopsy. According to the investigation, the incident was more serious than the amended indictment suggests:

The driver stopped his vehicle next to the stones (which numbered five or six) that were lying on the road, got out, fired two shots in the air, and then easily removed the stones with his foot (kicking them). After clearing the way, he propped his rifle on the car and aimed at the houses to the north. At first he fired at the solar heaters and the porch of the house next to the house of the deceased, and then he fired at the lighted window in the

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57. Many of the points that follow were brought to our attention by attorney Eliahu Abram, of the **Association for Civil Rights in Israel**.

58. On September 7, 1993, attorney Eliahu Abram, of the **Association for Civil Rights in Israel**, requested permission to examine and photocopy the documents but five days later received permission to photocopy only the judgment. **ACRI** petitioned the High Court of Justice, arguing that the public had a right to see and copy documents from public hearings. See Tom Segev, "What Is the Judge Hiding," *Ha'aretz*, October 22, 1993. The petition is pending in the High Court of Justice.

deceased's house... He fired in the single-shot mode (about six shots) and, according to both his position while firing and his hits, seemed to be aiming at a concrete target, except for the first two shots, which were clearly fired into the air.

## 2.2 Position of the State Attorney's Office

Boaz Moscowitz was initially charged with manslaughter. This was reduced, in a plea bargain, to the lesser charge of causing death by negligence. In her decision, Judge Orr wrote: "The prosecution does not argue that the defendant intended to kill. This is apparently the reason it agreed to replace the offense of manslaughter with that of causing death by negligence." However, conviction on a manslaughter charge does not require proof of intention to kill, or even awareness of an action's lethal consequences. "It is enough to foresee concrete physical harm (which ended in death)."<sup>59</sup>

Moscowitz shot at a house without himself being in concrete danger, indicating a gross disregard of reasonable caution, which is the behavioral element required for a manslaughter conviction. This supposition is supported by the eighteen months he served in the Israeli army,<sup>60</sup> from which he could be expected to know the results of flat-trajectory fire. As the Supreme Court stated in its judgment in the appeal of Yisrael Ze'ev:

A guard who underwent military training in the Israel Defense Forces, even if as a soldier who did not do full service, was necessarily aware, or had to have been aware, of the risk entailed in his actions.<sup>61</sup>

If so, the facts of the amended indictment point to a mental state of recklessness or indifference to the consequences of opening fire, which conforms to a charge of manslaughter.

Based on the facts which appear in the amended indictment, it is difficult to understand why the prosecution agreed to a charge of "causing death by negligence." This is, *prima facie*, a manslaughter case.

Equally perplexing is the position of the State Attorney's Office regarding the punishment. As part of the plea bargain, the prosecution agreed not to ask for a punishment exceeding seven months in prison

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59. Ya'akov Kedmi. **On Criminal Law: The Law as Reflected in Adjudication**, Part II, p. 450.

60. Noted in the judgment.

61. *Crim. App. 26/89, Yisrael Ze'ev v. State of Israel*, Piskei Din 43 (4) 631, p. 660.

(the defense agreed not to ask for less than four months, to be served doing community service). The prosecution in fact requested a sentence of seven months, emphasizing the need to deter others.<sup>62</sup> But this punishment hardly expresses the value of human life, and is unlikely to deter others from being quick on the trigger. Once the prosecution agreed to such a light punishment in a plea bargain, the sentence could not be appealed.

### **2.3 The Judgment**

In accord with the plea bargain, the parties agreed on a sentence of not less than four months of community service or more than seven months in prison. Moscowitz was sentenced to five months of community service in the computer department of Hadassah Hospital. Some of the reasons presented by the judge to justify the lenient sentence are as astonishing as the punishment itself.

The judge described Moscowitz's life. Born in the Soviet Union, he experienced anti-Semitism at an early age "and was beaten and harassed by gentiles." His family was denied permission to emigrate to Israel. Moscowitz fled from the Soviet police because he refused to serve in the army. Judge Orr noted that his life in the Soviet Union had been a difficult time for the defendant, who feared for his life and "learned how to defend himself." When he arrived in Israel, "he fit in well from the social and functional point of view," doing eighteen months of military service in the area of his professional expertise.

The relevance of Moscowitz's background is, at best, unclear. The judge also referred to two precedents cited by the defense (the prosecution did not cite any precedents for punishment), one involving Moshe Levinger and the other Pinhas Wallerstein. After being convicted of causing death by negligence, Wallerstein was sentenced to four months of community service, a one-year suspended prison term, and a fine. According to Judge Orr, Moscowitz's case was both more serious, since Wallerstein was in greater mortal danger, and less serious, since Wallerstein's shooting had been more of a danger to the nearby youngsters than had been the case with Moscowitz.

As for Levinger, he had received five months in prison and a seven-month suspended sentence after being convicted of causing death by negligence, causing bodily injury in aggravated circumstances, and causing malicious damage. According to Judge Orr, the Levinger case was more serious than the Moscowitz case: Levinger opened fire

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62. Judgment, p. 20.

in daylight, there were soldiers at the scene, and he shot at close range on a busy street. Moscovitz, in contrast, had been alone, it was dark, and he had fired from a considerable distance.<sup>63</sup>

The prosecution had been right to ask for a severe punishment in order to deter others from firing recklessly, the judge noted.

But at the same time it is impossible to prevent a person completely from opening fire if he feels threatened. Everything depends on the circumstances. In the case before us, with the defendant alone in his car at night, in a hostile area, and seeing a roadblock containing a suspicious object, and from his own and others' experience knowing that the purpose of this kind of barrier is to make vehicles stop to enable the commission of hostile acts, it was natural for the defendant to feel threatened and to want to send a message to potential troublemakers in the area that he was armed, and that they should keep their distance. The houses were about eighty meters away, and if he had been attacked there was no one in the immediate vicinity to help him.

These are puzzling remarks. Why did he have to send a message to 'potential troublemakers' when he could remove the stones, or, if he thought the barrier was booby-trapped, return the way he had come and seek help?

In conclusion, Judge Orr wrote that if Moscovitz had only fired in the air she would not consider that an offense, and she added:

It is true that the defendant did not shoot to maim and certainly not to kill, but he was negligent in shooting at houses and in using flat-trajectory fire.<sup>64</sup>

This, too, is perplexing: if Moscovitz did not want to hit anyone, why did he aim at the houses?

One must wonder – in the context of the value of human life – at the way Judge Orr chose to describe Moscovitz's actions:

The defendant shot flat-trajectory fire – at the houses – and those shots hit the solar heater and the deceased.<sup>65</sup>

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63. *Ibid.* p. 21.

64. *Ibid.* p. 23.

65. *Ibid.*

## **Trial of Four Jews for Damaging Property in the Village of Imrin**

### ***1. Description of the Event***

On March 27, 1993, three residents of the West Bank settlement of Yitzhar Shomron – Einat Noked, Eyal-Haim Noked, and Rehaviah Avraham Piltz – and Binyamin Lev, from Tel Aviv, were indicted in Tel Aviv District Court. All four pleaded guilty to, and were convicted of, maliciously damaging property and trespassing; Lev was also convicted of shooting in a residential area. According to the facts in the charge sheet, to which the four admitted, on June 27, 1991, they entered homes in the village of Imrin, beat the occupants, shattered windows, and destroyed furniture and household goods, causing damage of thousands of shekels. Binyamin Lev also shot at houses.

### ***2. Commentary***

#### ***2.1 Position of the State Attorney's Office***

The prosecution, citing considerations both for mitigation and aggravation of punishment, asked for a lengthy suspended prison term and a fine. On the one hand, the prosecution argued, considerable time (two years) had elapsed since the event, the defendants had no prior convictions, and their guilty plea, which should be considered an expression of regret, had saved the court much time by being made at the beginning of the trial.

At the same time, the prosecution added:

The court, even in turbulent times like these, must take into account the need to deter others from committing the offenses for which the defendants were convicted. This is a situation in which they took the law into their own hands and carried out acts of retribution against local residents, against women and elderly people with whom the defendants have absolutely no connection....

The defendants live in an area in which they were exposed to danger. Such defendants must be deterred, since they have shown that they are prone to take the law into their hands, and the deterrence should take the form of a fitting punishment that will be like a sword dangling over their heads, so that they will think twice about taking the law into their hands and committing offenses of this kind.

## 2.2. *The Judgment*

In his judgment, delivered on March 24, 1993, Judge Natan Amit wrote, *inter alia*:

These are young settlers who, in this case, moved there, as I formed the impression, not to obtain a fine house cheaply, but because of their belief that the whole Land of Israel belongs to the Jewish people. The defendants' belief and, I suppose, their awareness of what the residents of the area are doing – I refer to many acts of violence against person and property by squads made up of those residents – led the defendants, so one can understand, to commit the offenses in this case... Israel is a law-abiding state, and it is the court's duty to ensure that the law is upheld. Indeed, only by upholding the law, acting innocently and preserving our humanity will the Jewish people be differentiated from its neighbors who perpetrate brutal acts without fear of man or God.

I believe, therefore, that the defendants should be held accountable for their deeds, although I can understand the motives that led them to commit their offense. All the defendants referred to in this judgment are young people with no criminal record and with no criminal life-style. They committed their offense, one can say, because of their philosophy. I am certain that the investigation against them, including the trial, together with the punishment to be imposed on them, has provided them with the right lesson and taught them that it is wrong to take the law into one's hands. This is in fact the principal significance of the punishment which the court must impose on the defendants in this case.<sup>66</sup>

All the defendants received suspended prison terms, the three settlers receiving six months and Binyamin Lev twelve months. Einat Noked and Eyal Noked were fined a total of NIS 1,000, and Binyamin Lev and Rehavia Avraham Piltz were each fined that amount. The State Attorney's Office did not appeal the lenient sentences.

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66. Crim. File 4/92. *State of Israel v. Anat Noked et al*, pp. 29-30.

## Summary

### *State Attorney's Office*

**B'Tselem** encountered difficulties in examining the manner in which the State Attorney's Office handles cases of Israeli civilians suspected of committing violent offenses against Palestinians in the Territories. Among these difficulties were insufficient information about files closed by the State Attorney's Office, the lack of knowledge about the considerations weighed in agreeing to plea bargains, and the lack of clarity as regards the reasons for the State Attorney's Office failing to appeal the imposition of lenient sentences.

We cannot, therefore, arrive at unequivocal conclusions. **B'Tselem** is also aware of the objective difficulties faced by the State Attorney's Office, as explained by State Attorney Dorit Beinish:

The situation in the field is abnormal. How can we complete an investigation? Who will testify? How can we investigate a case of death where the body is snatched? And then it becomes difficult to prosecute for murder, [so we resort to manslaughter or aggravated assault]. Building a file for submission to the criminal courts is problematic because the infrastructure is complicated.<sup>67</sup>

Nevertheless, **B'Tselem's** investigation indicated several significant points.

- a. A high percentage of files involving fatalities were closed by the State Attorney's Office on grounds of insufficient evidence.
- b. In several cases involving fatalities, the State Attorney's Office agreed to plea bargains pursuant to which the original charge was reduced from manslaughter to causing death by negligence. In itself, this is not unusual, since the State Attorney's Office consents to thousands of such deals every year.<sup>68</sup> However, **B'Tselem** found that in at least some cases in which Jews were tried for causing the death of Palestinians, there was substantial evidence against the defendants to prove the graver charge. In these cases, no apparent reason existed for the State Attorney's Office to consent to reduce the charge as part of a plea bargain.
- c. In some cases in which the lower court imposed lenient sentences on Jews who had assaulted Palestinians, the State Attorney's Office

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67. Quoted in *Al Hamishmar*, May 15, 1989.

68. See Eliahu Arnon, **Plea Bargaining in Israel in Practice, Comparative Background**, Jerusalem, 1981.

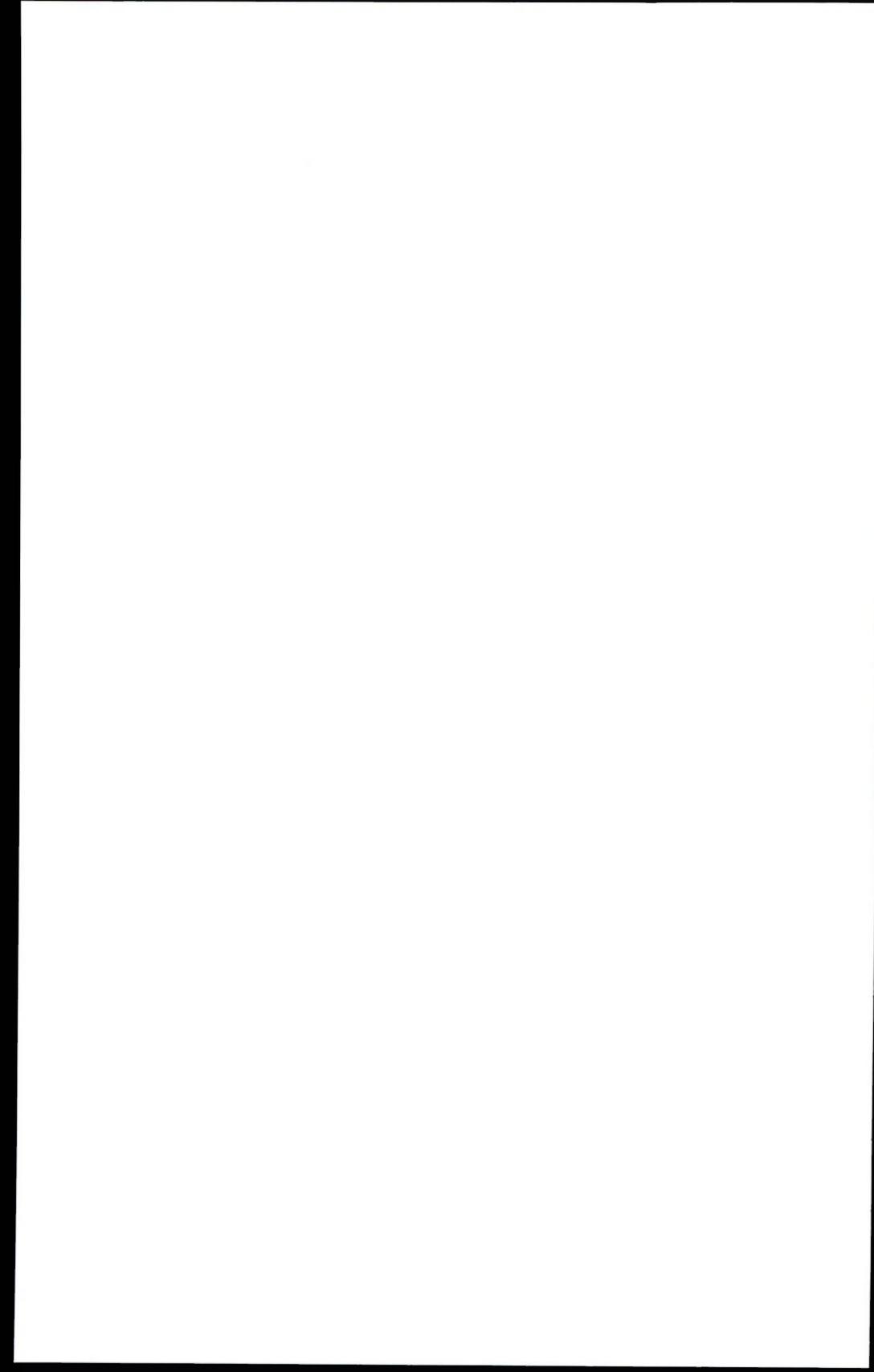
did not appeal, notwithstanding the prosecutor's demand for a harsh sentence during his arguments prior to imposition of sentence by the court.

**B'Tselem** cannot prove a causal connection between public pressure, or settlers' criticism of the State Attorney's Office, and the above findings. In light of the public atmosphere in Israel (especially during the Intifada), in which little importance is given to assaults by Israelis on Palestinians in the Territories, and knowing the political pressure engendered by the settlers and their supporters, the suspicion exists that this situation induced a tolerant attitude toward the settlers, and that justice was not fully attained in cases involving Israeli offenders.

### ***The Courts***

Severity of punishment reflects the gravity with which the judge views the offense, and the overall punitive policy of the judicial system toward a particular offense reflects the society's scale of values.

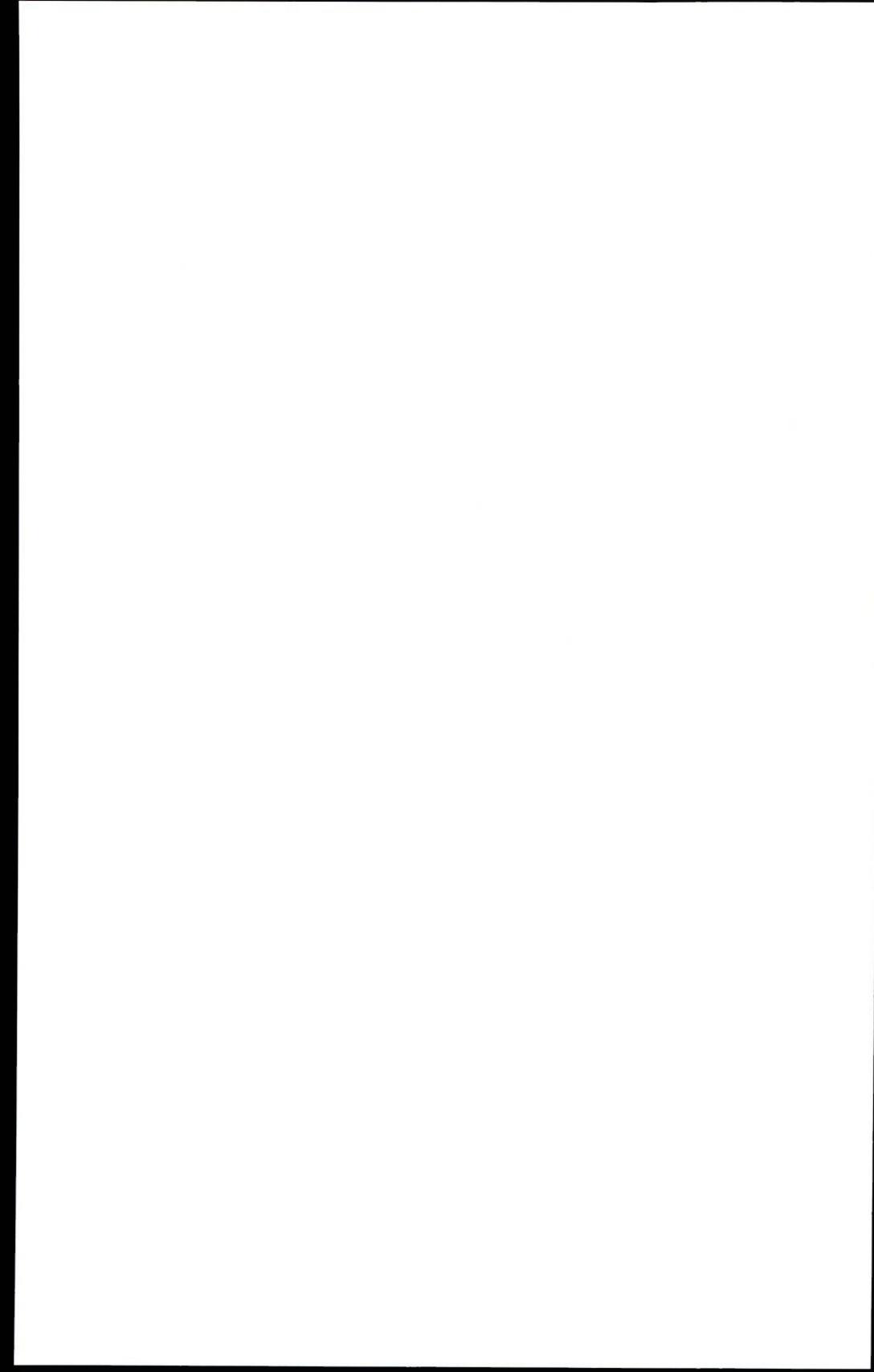
- a. The courts are extremely lenient when punishing Israeli civilians convicted of assaulting Palestinians. The sentences bear no reasonable relationship to the gravity of the offense, particularly when compared with the sentences imposed on Palestinians convicted of similar offenses.
- b. Some judges display understanding for the defendants' ideological and religious motives, and the consequent mitigation of punishment fails to properly express the supreme value of human life.
- c. The message emanating from Israeli courts, particularly at the trial court level, as regards the punishment of Israeli civilians who perpetrated violent acts against Palestinians is acceptance of ethnic-national discrimination, and a forgiving attitude in cases involving the deaths of Palestinians or attacks on their person and property.
- d. The Supreme Court, sitting as a criminal appeals court, has long been vigilant against this tendency. The court usually imposes harsher sentences and reiterates the need to deter those who would take the law into their own hands, to ensure that the punishment is commensurate with the gravity of the crime, and to uphold the supreme value of human life.



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## **Conclusions and Recommendations**

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# 1. Conclusions

The Israeli government has been derelict in its duty to protect the life, person, and property of Palestinians from attacks by Israeli civilians in the Territories.

The authorities have adopted an undeclared policy of absolution, compromise, and mitigation for Israeli civilians who harm Palestinians.

Each of the branches of government tend to attach little importance to the numerous manifestations of violence committed by Israeli civilians against Palestinians in the Territories.

The Israeli authorities discriminate between Israelis and Palestinians in enforcing the law in the Territories. This partiality and the many failures of law enforcement as regards Israeli settlers in the Territories undermine the foundations of the rule of law in Israel.

## 2. Recommendations

### A. General

1. The government of Israel bears overall responsibility for enforcing the law. The government must ensure that it enforces the law against Israeli civilians in the Territories.
2. Everyone suspected of committing an offense in the Territories must stand trial under the same judicial system and the same laws, regardless of his ethnic identity. The application of Israeli criminal law solely to Israeli citizens and non-Israeli Jews must be abolished. In accordance with international law, so long as Israel continues to control the Territories, military justice and local law must apply to everyone who violates the law in the Territories. At the same time, human rights must be respected and administrative collective punishment avoided.

3. Israel must fulfill its duty to preserve the safety and security of all the residents of the Territories, Israelis and Palestinians alike, without discrimination or partiality.
4. Israel must take concrete measures to ensure the security, life, and property of the Palestinians in the Territories, including the following:
  - a. Provide supervisory machinery to enforce the law on Israeli civilians who commit offenses against Palestinians: a permanent interministerial committee (Ministries of Justice, Police, and Defense) should be established to monitor law enforcement in cases of offenses committed against Palestinians in which Israeli civilians are the suspects. The activity of the committee would include, *inter alia*, the centralization of information in this area, the initiation of investigations when needed, and ensuring enforcement of the law.
  - b. Issue periodic reports on law enforcement in cases involving offenses committed by Israeli civilians against Palestinians in the Territories. The Israel Police Department publishes an annual report on its activity inside the Green Line; it should also publish data about cases involving Israelis in the Territories.

## **B. Israel Defense Forces**

The IDF must act vigorously to prevent attacks by Israeli civilians on Palestinians by:

1. Immediately revoking the order prohibiting the security forces to open fire on a Jew who is shooting to maim or kill.
2. Clarifying the powers of soldiers and their duty to arrest Israeli civilians suspected of committing offenses against Palestinians.
3. Introducing mandatory reporting in cases of shooting with an IDF-issue weapon, even if there are no casualties (as recommended by the Karp Commission).
4. Confiscating the weapon of every Israeli civilian who uses, or threatens to use, it for any purpose other than self-defense.
5. Taking disciplinary action against soldiers who do not intervene in cases of violence by Israeli civilians.

6. Investigating thoroughly every case in which soldiers cooperate passively or actively in attacks by Israeli civilians on Palestinians. Soldiers suspected of such behavior must be brought to trial and punished if found guilty.
7. If it is necessary to restrict movement in order to prevent rioting by Israeli civilians, the restriction must be imposed on those rioting, and not on Palestinians.

### **C. Police**

1. Every Palestinian who wishes to file a complaint to the police against an Israeli civilian must be permitted to do so. The practice of sending complainants from one police station to another, or otherwise preventing them from complaining, must cease.
2. Investigations must be conducted in serious cases of violence by Israeli civilians although no official complaint is made. It is, therefore, essential to monitor media reports, especially in the Palestinian press, continuously (as recommended by the Karp Commission).
3. Police handling of offenses by Israeli civilians against Palestinians must be accelerated, and a thorough investigation conducted, in every case.
4. If a Palestinian is killed by Israeli civilians, efforts must be made to locate Palestinian eyewitnesses and to take their testimony.

### **D. State Attorney's Office**

1. The State Attorney's Office must demand from the police thorough, speedy, and comprehensive investigations of offenses imputed to Israeli civilians against Palestinians in the Territories.
2. If there is evidence that Israeli civilians committed an offense against Palestinians in the Territories, the suspects must be brought to trial.
3. Appropriate deterrent punishments should be demanded for Israeli offenders who injured Palestinians or damaged Palestinian property in the Territories.

## **E. Courts**

1. Parity must exist in the punishment imposed on convicted Israelis and Palestinians. Only parity can ensure that punishments are commensurate with offenses and deter future similar criminal offenses.
2. When deciding on the punishment for Israeli civilians who have been convicted of offenses against Palestinians, judges should consider only the concrete case before them, and not base their verdicts directly or indirectly on the offender's origin or ideological motives.

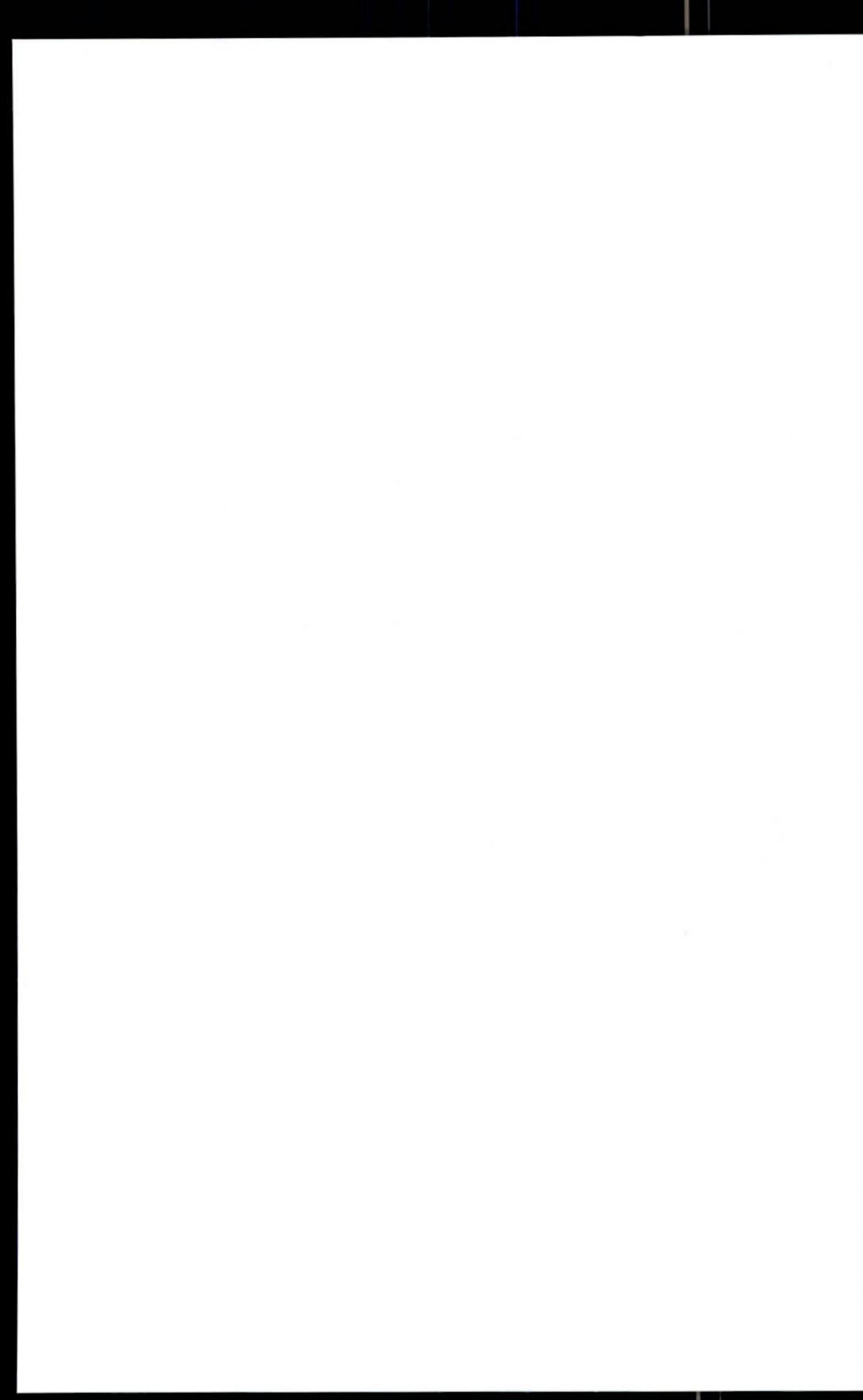
## Epilogue

On February 25, 1994, Baruch Goldstein, a resident of Kiryat Arba and a member of Kach, entered the Hall of Isaac in the Cave of the Patriarchs in Hebron. The hall was filled with hundreds of Muslim Palestinian worshippers. Goldstein, carrying an automatic rifle supplied by his army reserve unit, opened fire as they kneeled on the floor, killing twenty-nine of the worshippers. Dozens more were wounded. The government established a judicial commission of inquiry to investigate the event. Headed by Justice Meir Shamgar, President of Israel's Supreme Court, the committee began its hearings on March 8, 1994, a week before the publication of this report.

**B'Tselem** is of the opinion that the facts contained in this report show that Goldstein's act did not originate in a vacuum. Its background was the continuous incitement to attack Palestinians, and was another link, the most serious and tragic of all, in the chain of violent acts perpetrated by settlers against Palestinians involving the frequent and illegal use of firearms. Throughout this chain, most of the offenders escaped punishment.

In the more than six years of the Intifada, and indeed, as the Karp Commission report suggests, for a much longer period, the authorities ignored this abnormal and dangerous situation, rarely choosing to enforce the measures prescribed by both Israeli and international law.

Against this background, and in the light of the pronouncements of residents of Kiryat Arba and of other settlements after the Hebron massacre, Goldstein's act cannot be perceived as the act of a single person estranged from his environment. It was the bitter fruit of long years of faulty acts and omissions.



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## **Appendices**

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# Appendix 1

## Comparison Between the Rights of Israeli Detainees and Palestinian Detainees in the Territories

### *Authority to arrest without a warrant*

<b>Palestinians in the Territories</b>	<b>Israeli Citizens</b>
<p>Any soldier or policeman may arrest any person who violates the Security Provisions Order or is suspected of doing so, regardless of the likelihood that the detainee committed the offense, or of its seriousness. The order covers an array of offenses, some of them vague, such as "an act liable to impair the public safety." The detainee may be held in custody for ninety-six hours. An officer of the Police Department may then extend the detention period if he has reasonable cause to think that the person violated the order, or that the evidence before him requires an extension of the detention (sec. 78 of the Security Provisions Order).</p>	<p>A policeman may detain a person only in one of eight circumstances which take into account the severity of the offense and the degree of certainty that the person committed the offense. The permitted period of detention is forty-eight hours. Examples of these circumstances include: where a person commits an offense in the presence of a policeman, escapes from lawful custody, or refuses to identify himself or accompany the police officer (sec. 3 of the Criminal Procedure (Detention and Search) Ordinance [New Version], 1969.) A private individual may detain another person if he is escaping from lawful custody, if he saw him commit a crime, or has been ordered to do so by a judge (sec. 6 of the Criminal Procedure (Detention and Arrest) Ordinance [New Version], 1969).</p>

***Duration a detainee may be held before being brought before a judge***

Palestinians in the Territories	Israeli Citizens
<p>Detainees may be held in custody for eight days before being brought before a judge. Adult detainees may be held for eighteen days for certain offenses, e.g. deliberately causing death, sheltering a person suspected of causing death, aggravated espionage, assaulting a person serving the IDF or its branches. (Order No. 1391, March 24, 1993, in the West Bank and Order No. 1903, March 25, 1993, in Gaza)</p>	<p>Adults:            May be held in custody forty-eight hours before being brought before a judge. If this condition is not met, the detainee is released. If the judge was absent for a justifiable reason, the detainee may be held for another forty-eight hours. (Sec. 16 of the Criminal Procedure (Detention and Search) Ordinance [New Version], 1969)</p> <p>Minors:            A minor above fourteen must be brought before a judge within twenty-four hours; if there is a special reason that he could not be brought before the judge, the minor may be held an additional twenty-four hours. A minor below fourteen must be brought before a judge within twelve hours, extendable for another twelve hours if a special reason exists and if the extension of detention is essential for public security or the minor's security, or if there is a danger that evidence will disappear. (Sec. 10 of the Youth (Prosecution, Punishment, and Procedures) Law, 1971)</p>

## ***Arrest by a judge before an indictment is filed***

<b>Palestinians in the Territories</b>	<b>Israeli Citizens</b>
<p>A jurist-judge (a military court judge who has legal training) may issue an order of arrest for up to thirty days, extendable, against a detainee who has not yet been indicted. After three months, if no indictment has been submitted, only the regional legal advisor may ask for an extension, and only via the military appeals court. The latter may extend the detention for three more months. (Amendment 68 to the Security Provisions Order, Order No. 1378 of Oct. 20, 1992 in the West Bank, and Amendment 70 to the Security Provisions Order, Order No. 1081 of Oct. 11, 1992 in Gaza)</p>	<p><b>Adults:</b> The court may detain a suspect prior to indictment for fifteen days, extendable for fifteen more days. After thirty days, the Attorney General must request an extension (sec. 17 of the Criminal Procedure (Detention and Search) Ordinance [New Version], 1969). If after ninety days no indictment has been submitted, the suspect is released (sec. 51 of the above law). A Supreme Court judge may, however, order a further detention of up to three months, which may be extended from time to time (sec. 51 of the above law).</p> <p><b>Minors:</b> As above, but ten days of detention instead of fifteen days are permitted each time, and a total of twenty days in detention is permitted instead of thirty days. (Sec. 10(4) of the Youth (Prosecution, Punishment, and Procedures) Law, 1971)</p>

## **Meeting with an attorney**

<b>Palestinians in the Territories</b>	<b>Israeli Citizens</b>
<p>The detainee must be permitted to meet with an attorney as soon as possible. If he is being interrogated, a police officer with the rank of chief inspector and higher may, after submitting his reasons in writing, delay the meeting by a few hours if he thinks that interrupting the interrogation might be damaging. The order permits a meeting to be deferred for fifteen days from the day of detention if the person in charge of the interrogation so directs in writing, citing the security of the region or the good of the interrogation. A police officer with the rank of chief superintendent and higher or the head of the GSS interrogations division may, in writing, extend this for another fifteen days. A jurist-judge may prevent a meeting for the above reasons for thirty more days, and the president of a military court or the on-duty president may extend this another thirty days if the IDF regional commander stated in writing that the restriction is necessary for reasons of regional security. A detainee may be kept from seeing a lawyer for a total of ninety days. (Sec. 78b-d, Security Provisions Order)</p>	<p>The detainee must be permitted to meet with an attorney as soon as possible. If a police officer with a rank of superintendent or higher thinks that interrupting the interrogation would be damaging, he may ask in writing for a delay of a few hours, and if state security or human life, or preventing a crime is involved, the meeting may be delayed again, but on no account for more than forty-eight hours. In case of suspicion of crimes such as treason, espionage, or violations of the anti-terrorist ordinance, the head of the interrogation, if he thinks it warranted by state security or the good of the interrogation, may prevent a meeting between the detainee and his attorney for seven days from the day of detention. For these same reasons, a police officer with a rank of commander and higher or the head of the GSS interrogations division may prevent the meeting for another eight days. A detainee may be kept from meeting with an attorney for fifteen days. (Sec. 29, Criminal Procedure Law [Consolidated Version], 1982)</p>

## ***Remand until the end of proceedings***

<b>Palestinians in the Territories</b>	<b>Israeli Citizens</b>
<p>After filing of the indictment, a jurist-judge may order the suspect held in custody until the end of the proceedings against him for an indefinite period, regardless of the length of time of the proceedings. After a year from the date the detention commenced, the defendant may request, once every six months, that his detention be reviewed. If there are new facts or new circumstances, including the amount of time that has passed since his detention, a review may be requested even before the end of the first year. A judge's decision to detain the suspect until the end of the proceedings or to reject a request for a rehearing by the military appeals court may be appealed. A detainee being held in custody until the end of the proceedings in the wake of an indictment may appeal the detention order only after three months' detention. (Amendment No. 68 to the Security Provisions Order, Order No. 1378 of Oct. 20, 1992 in the West Bank, and Amendment No. 70 to the Security Provisions Order, Order No. 1081 of Oct. 11, 1992 in Gaza)</p>	<p>A defendant may be ordered held in custody until the end of his trial only in defined instances enumerated in law:</p> <ol style="list-style-type: none"><li>1. His release may lead to an obstruction of justice, may endanger life or public security, etc.</li><li>2. For serious crimes: drugs, violence involving use of a weapon, offense against a minor, or exploitation of a victim's mental or emotional impairment. Other than these crimes, the gravity of the offense does not justify remand until the end of the proceedings, and release on bail is to be preferred.</li><li>3. The bond set by the judge was not paid, or the terms of bail were violated.</li></ol> <p>In any event, a defendant will be held in custody until the end of the proceedings only after the court has heard arguments, the defendant being represented by counsel, and there is sufficient evidence to prove the charge (sec. 21a, Criminal Procedure Law [Consolidated Version], 1982). If the trial has not ended within a year, the defendant will be released (sec. 53 of the above law). A Supreme Court judge may, however, order a defendant to be detained for an additional three months, and he may extend the detention from time to time (sec. 54 of the above law).</p>

## Appendix 2

### Palestinians Killed by Israeli Civilians in the Territories, December 9, 1987 - December 31, 1993

Name	Date of Death (M.D.Y.)	Last Known Status of File
<b>1988</b>		
1. Rabah Ghanem Ahmad	1.11.88	Convicted of causing death by negligence
2. 'Abd al-Basset Jum'ah	2.7/8.88	Closed - "No criminal fault"
3. Kamal Muhammad Darwish	2.21.88	Closed - "Insufficient evidence"
4. Rawdah Lutfi Najib Hasan	2.22.88	Closed - "Offender unknown"
5. Ra'ed Lutfi Najib Hasan	2.27.88	After a trial - not guilty
6. Ahmad Abu Hussein Barghuthi	2.27.88	After a trial - not guilty
7. Khader Muhammad Hemeidah	3.8.88	Closed - "Insufficient evidence"
8. Musa Saleh Da'ud Bani Shamsah	4.6.88	Being handled by Military Judge Advocate
9. Hatem Fa'ez Ahmad al-Jaber	4.6.88	Being handled by Military Judge Advocate
10. Mustafa Ahmad Awdah Halayqah	5.3.88	Closed - "Offender unknown"
11. Jawdah 'Abdallah Tayyem	5.5.88	Convicted of manslaughter
12. Sa'ib Muhammad Ha'eq	6.12.88	Closed - "Insufficient evidence"
13. Nidal Rabadi	7.19.88	Closed - "No criminal fault"
14. Qa'id Hasan Saleh	9.30.88	Convicted of causing death by negligence
15. Ahmed Hussein Bisharat	11.7.88	Closed - "Shooting according to directives"

<b>Name</b>	<b>Date of Death (M.D.Y.)</b>	<b>Last Known Status of File</b>
<b>1989</b>		
16. 'Adli Maher Muhammad Sa'id	3.23.89	Convicted of causing death by negligence
17. Awwad Farah 'Amdu	4.1.89	Closed - "Insufficient evidence"
18. Khaled Yusuf Ishaq a-Shawish	4.10.89	Closed - "Offender unknown"
19. Walid Najajrah	4.13.89	Closed - "Offender unknown"
20. Nader Da'nah	4.28.89	Closed - "Insufficient evidence"
21. 'Omar Yusuf Abu Jaber	5.17.89	Convicted of causing death by negligence
22. Ibtisam 'Abd a-Rahman Buzyah	5.29.89	Convicted of causing a disturbance
23. 'Aziz Khamis Yusuf 'Arrar	6.21.89	Closed - "Insufficient evidence"
24. Fa'eq Subhi Sedan	7.30.89	Closed - "Insufficient evidence"
25. Nidal Misq	8.9.89	File not found
26. Sami Mahmud 'Atwah a-Sabah	8.21.89	Closed - "Offender unknown"
27. Muhammad Salim Sharb	9.10.89	File not found
28. 'Abdallah Mustafa Abu Safiyah	10.12.89	Closed - "Offender unknown"
29. Issa Muhammad Ali Sebeih	11.18.89	Closed - "Offender unknown"
30. Na'im Sa'id Nawfal	12.10.89	Closed - "Insufficient evidence"
31. Barakat 'Adel Fakhuri	12.10.89	Closed - "Offender unknown"
32. Muhammad Jamil al-Karmal	12.22.89	Closed - "Offender unknown"

<b>Name</b>	<b>Date of Death (M.D.Y.)</b>	<b>Last Known Status of File</b>
<b>1990</b>		
33. Mustafa Kallab	2.6.90	Convicted of causing death by negligence
34. Samih a-Sheikh	5.15.90	Closed - "Offender unknown"
35. Naji Ibrahim Musa Abu Saqallah	5.22.90	Closed - "Insufficient evidence"
36. 'Azizah Salem Ja'bar	8.6.90	Convicted of murder
37. Salim al-Khaldi	10.24.90	Closed - "No criminal fault"
38. Maryam Suleiman Bashir Hasan	11.6.90	Active file - District Attorney's Office
39. Muhammad al-Khatib	11.6.90	Active file - District Attorney's Office
40. Tawfiq 'Atiq	11.26.90	Closed - "Offender unknown"
41. Ahlam Ibrahim 'A'id	12.12.90	Closed - "Offender unknown"
<b>1991</b>		
42. Hamdallah Radi Khalil 'Alawnah	1.13.91	Under psychiatric treatment
43. Salamah Musleh Jalal	2.18.91	Convicted of causing death by negligence
44. Jamil Duweikat	4.14.91	Under psychiatric treatment
45. 'Omar Harb a-Saber	4.15.91	Active file - District Attorney's Office
46. Mahmud Muhammad a-Nawaj'ah	6.7.91	Closed - "Insufficient evidence"
47. Iyyad Muhammad Zadafiyah	6.16.91	Closed - "Offender unknown"

<b>Name</b>	<b>Date of Death (M.D.Y.)</b>	<b>Last Known Status of File</b>
<b>1992</b>		
48. Marzuq a-Deqeiq	11.16.92	Indictment filed
<b>1993</b>		
49. Liwa' Rafiq Muhammad Bakrun	1.19.93	Indictment filed
50. Jum'ah 'Abd al-'Aziz Misq	3.2.93	Indictment filed
51. Na'im Mahmud Hussein al-Mahdun	3.8.93	Closed - "Insufficient evidence"
52. Musa Suleiman Abu Sebeihah	3.23.93	At trial
53. Ra'ed Muhammad Sha'ban	4.12.93	Indictment filed
54. Munir Abu Nijmeh	5.31.94	After a trial - not guilty
55. Thamer Khalil Ziyadah	10.31.93	Under investigation
56. Muhammad Jawdah Yaqin 'Abd al-Karim Burqan	11.15.93	Under investigation
57. Shadi Musleh Muhammad 'Issa	11.16.93	Under investigation
58. Talal Rushdi Murshed al-Bakri	12.5.93	Under investigation
59. Khamis Rashid Abu 'Awwad	12.9.93	Indictment filed
60. Ishaq 'Abd al-Hadi Fataftah	12.10.93	Under investigation
61. Muhammad 'Abd al-Hadi Fataftah	12.10.93	Under investigation
62. Sa'di 'Abd al-Hadi Fataftah	12.10.93	Under investigation

## Appendix 3

### Testimony on Violence by Israeli Civilians in the Territories

#### *Firing by Settlers at a Palestinian Sitting in his Automobile, Halhoul/Hebron, November 3, 1993*

**Testimony of Saadi Muhammad Abd a-Rahman Abu Arish (Karaja), aged 35, I.D. No. 94825154, resident of Halhoul/Hebron.**

*The testimony was given to Bassem 'Eid on November 11, 1993 at the home of the witness.*

On November 3, 1993 at about 6:10 p.m., I was in the nylon factory which is located on the Hebron-Jerusalem road. My brother Hamadi, aged 32, who is married and has five children, was doing excavation work on a construction project about 15 meters from the factory. Suddenly I heard shots. I looked toward the main road and I saw my brother sitting in his vehicle (a light blue Peugeot 404) and four settlers, two in front of the car and two behind, shooting into the car.

I ran there, shouting: "Stop, you bastards." The four of them got into a beige Peugeot 204 and fled. I immediately went over to my car, which was parked next to the factory, got in, and chased them. Even before I had checked to see what happened to my brother, I chased them. When I got to about 20 meters from Kiryat Arba, I saw the car enter the settlement. I wrote down the license number - 47-618-03 - and went back to see what happened to my brother.

I drove through Ras al-Joura. Along the way there is an army lookout on the roof of the Abu Hamadiyah building. A military vehicle with soldiers was standing next to the lookout. I told them in Hebrew what had happened, and I explained to them how to get to the site of the event. They told me to go ahead and they would follow.

When I got back I saw my brother Hamadi alive and well. He wasn't hurt, but the car had four bullet holes. The soldiers arrived after me. They examined the car, collected the shells, and called the police. The police came and took testimony from me and from another fellow,

named Alaa Ibrahim a-Qadr Abu Asaba, who was present at the time of the event. I gave the car's license number to the police.

My brother Hamadi was taken in the police vehicle to Kiryat Arba to identify the settlers' vehicle. The police asked me to take my brother Hamadi's car to Military Government HQ in Hebron so that a police explosives expert could check it. At about 11 a.m., the police returned to the Military Government building with my brother. I asked Hamadi whether they had found the car, and he said the police had found it. The duty-officer told me that the owner of the car was a resident of Kiryat Arba and gave me his name.

The police told my brother to go home and to come back the next day at 8 a.m. My brother told me that he arrived at the police station the next day at 8 a.m. and sat in the waiting hut until 3 p.m., and only then was he called in for questioning. He said the interrogator had tried to trip him up, but he had been sure of his facts. Shortly afterward, the police van arrived at the station, and in it was the owner of the car, the man who had shot at my brother's car.

As my brother told me, he pointed to the man and said: You are the one who shot at me. He [Hamadi] then tried to attack him. The police who were there told him that the man was a police officer, and that he couldn't have been the one who shot. My brother insisted that he was the man. One of the policemen went over to my brother and told him that this was really the man who had shot at him, and that they had looked for him all night until they found him and seized him.

Just then I entered the police station where I heard the police saying to the suspect settler: What would you like to drink? Do you want a sandwich? When I heard that I got angry, and I said to a policeman: "Give me the keys to my brother's car and I will settle accounts with the settler myself." The policeman called me over and took me into one of the rooms. He made me sign an undertaking that I would not touch and would not try to take revenge on the settler who had shot at my brother. Because I was angry, I told him that even though I had promised, I would still try to get him. Then my brother and I left.

When I was in the station, I noticed that they were fingerprinting the settler. To this day, I have heard nothing from the police about the investigation of the incident.

**Bassem 'Eid adds:** I saw the car. There were two bullet holes in the hood that had been filled by the owner of the car. Another bullet hit the front area of the car and lodged in the radiator.

***Assault on a Palestinian Couple by Settlers,  
Kiryat Arba, November 6, 1993***

**Testimony of Muhammad Lutfi Dawrish al-Raouf a-Zaro, aged 33, married, three children, I.D. No. 981876675, resident of Jabel Johar/Hebron.**

***The testimony was given to Bassem 'Eid on November 20, 1993 at the home of the witness.***

On November 6, 1993, at about 9 a.m., I was on my way with my wife to visit my sister, who lives in Dahiyat al-Rama. I drove through Kiryat Arba. About 200 meters after entering Kiryat Arba, at a distance of about 50 meters in front of me, I noticed a group of settlers walking along the main road. One of them lifted his hand and signaled me to stop. I kept going in slow gear and stopped next to the group of settlers. I saw that three of them were armed, two with M-16s and one with a pistol.

One of those with an M-16 came over to the car window and looked at me. I asked him what he wanted, and he punched me in the left eye. The blow knocked me flat onto the seat. The settler stuck his rifle through the window, aimed it at me, and cocked it. My wife, who was sitting in the back seat (she was in the fifth month of pregnancy and couldn't sit with a seatbelt) grabbed the end of the rifle and pushed it toward the front windshield. She shouted at the settler: "Have pity on him." The settler grabbed my wife's hand and pulled it forward hard. My wife's stomach struck the back of the seat, and then the settler pushed her back. She began to cry. I lost my wits, got out of the car, and grabbed the settler by the shoulder. One of the settlers kicked me from behind, and I fell to the ground. Then they all started to hit me, among them a woman. That lasted about five minutes.

My car started to roll forward. The settlers shouted at me to get up and stop the car. I got into the car, turned around, and drove back the way I had come.

I arrived at an army checkpoint that was located after the entrance to Kiryat Arba (it was a Sabbath, during which many roadblocks are placed on the roads to protect the settlers going to worship at the Cave of the Patriarchs). The soldiers were surprised to see my face covered with blood. I told them what happened. They said that I must first go to the hospital for treatment. I went to the Red Crescent hospital, received treatment, and returned to the checkpoint. The soldiers radioed for an official of the [Civil] Administration, I don't remember his name, who arrived in a gray jeep. I told him what had happened.

The Administration official talked over the radio, and when he finished, he told me that he had spoken with the [military] governor of Hebron, who said that I should wait by the checkpoint and identify the settler when he returned from the Cave of the Patriarchs, and inform the officer in charge of the checkpoint.

I sat at the checkpoint from 10 a.m. until 1 p.m. At that time the settler returned from the Cave of the Patriarchs. When I saw him I went up to one of the soldiers and pointed at the settler. The soldier ran after him and asked to see his I.D. card. The settler said to the soldier: "What do you want with my I.D. card? Who are you anyway?" And he kept walking. The soldier ran after him. The officer in charge of the checkpoint arrived. I told him that the settler had returned, and a soldier was chasing him. The officer ordered me to get into his jeep. I got in and we drove toward the entrance to Kiryat Arba. At the entrance the settlers were milling around the soldier who had chased the settler. When they saw us they gathered around the jeep and demanded that the officer turn me over to them. They said to him: "How do you dare bring an Arab who will testify against us and get us arrested? We won't answer your questions until you turn the Arab over to us."

The officer said: "All right. I will hand him over, but only on condition you back away from the vehicle at least 20 meters." They moved away, and the officer told the driver of the jeep to turn around and take the "Arab" back to the checkpoint. The driver took me back to the checkpoint. I kept sitting there. Every so often I asked the soldiers what had happened. They kept telling me: "Sit quietly, there is an argument about you at the entrance to Kiryat Arba." I sat there until 2 p.m. My eye hurt, and I told the soldiers at the checkpoint that I wanted to go to the hospital. They agreed, and I drove to Aaliya Hospital. I underwent tests, and they took x-rays. The doctor told me that I had to be examined by both a dentist and an eye doctor. I went home.

The next day I went to "Captain" Zvika at the Civil Administration to get an exit permit to St. John's Ophthalmic Hospital in Sheikh Jarrah. While I was sitting with him, the phone rang. Zvika spoke with someone and when he finished he looked at me and asked: "Are you happy?" I asked what happened, and he said that Palestinians had killed two settlers. Zvika told me that if I had not been there with him, he would have accused me of killing them, and he would have come to my house right away and arrested me. He said: "Now the settlers will run wild. I am giving you a permit, but go to your house and do not go to the hospital in Jerusalem because there is a curfew now."

I went home. A curfew was imposed that lasted until November 10. During the curfew, my wife complained about pains in her stomach. On November 11, after the curfew was lifted, we went to a doctor who examined her and said that the twins inside her had died. I didn't believe him, and the next day, November 12, I went to another doctor, who told us the same thing. On November 13, my wife was hospitalized and underwent surgery to have an abortion. I asked the hospital for the bodies of the twins, and I preserved them in a jar.

On November 14, I went to the Hebron police, where I waited from 9 a.m. until 12 noon. Every so often I went up to the policeman at the gate, but he kept repeating that I should sit until I was called. I went home and returned the next day, November 15, at 10 a.m. I waited until 12 o'clock, but again I was not let in. On the 16th, I arrived at the police station at 8 a.m. and waited until 9:00 a.m.

Then I went to the [Civil] Administration building (which is close to the police station). I told an officer named "Captain" Tomer what had happened, and I asked him to write me out a summons to the police so I could get in. Tomer said he couldn't help me. I went home and called the police. I gave the details of the event to a policeman and asked if the [Civil] Administration had sent them a complaint on the subject. The policeman told me that no complaint had been received, and that I should make it myself at the station on Sunday, Tuesday, or Thursday - the days for filing complaints. I told them that I had already been there three times, but they wouldn't let me in. He did not get excited at the story. "Come here and wait outside," he told me.

I went to the station and I saw an Arab policeman there. I asked him to let me in. He refused. I asked him whether I had to murder someone before they would let me in. The policeman laughed and took me to the interrogations room. An interrogator named Golan was there. He told me that in case I forgot his name I should think of the Golani soldiers, and I would remember it. I told Golan everything that had happened. He asked me where my wife was, and I told him she was in the hospital. He said: "You beat your wife and you blame the settlers." I laughed.

I told the interrogator that my wife had been pregnant, and that the twins in her stomach had died as a result of the event. Golan told me that my wife had to come and give testimony. I said: "Why can't you go to the hospital and take her testimony there?" He said that according to the law a complainant must come to the police himself. Golan said I was young and that I could make plenty of twins. I burst out: "Take my testimony, and when my wife gets better, I will come here with her." Golan said: "I will take your testimony only when you come here with

your wife." Then he grabbed me by the shoulder and led me out of the station.

My wife was in the hospital for five days. To this day, November 20, 1993, I have not gone with her to the police because she is still weak from the operation and she can't sit and wait for hours in the police waiting hut. I do not believe that the police will detain, interrogate, or try a settler from Kiryat Arba. In the past, settlers smashed the windows of my car three times, but I did not go to the police because I knew they wouldn't investigate, and that nothing would come of it.

### ***From Testimony of an IDF Reserve Soldier who Served in Hebron***

#### **The testimony was given to Yuval Ginbar on March 14, 1994.**

I did reserve service in Hebron from August 28 until September 23, 1993. It was my first reserve duty in the Territories. When I got there, I spent the first two nights in the "Dukhifat" unit that guards the Cave of the Patriarchs. My assignment was to drive on patrols. I was not given a briefing at this stage. They put me in the "war room" across from the Cave so that I would be available. I started doing patrols.

On one of the first patrols, Yoav (the deputy company commander) explained the rules of behavior, including the Rules of Engagement. He told me it was forbidden to aim your rifle at people. He did not tell me what to do about settlers.

The unit I was with, a company from the Combat Engineers, had its quarters not far from Beit Hadassah, on the base. There is a yeshiva on the base, and we were there together with settlers. It was no problem for them to listen in on the [army] radio, if there was an incident or something.

Our living quarters were about 200 square meters. There was a row of soldiers' quarters and a row of residences for the yeshiva people, and next to that was the war room. The war room was open, and the children of the Beit Hadassah settlers would go inside. The settlers would curse the Arabs from inside the base.

I became friendly with [Rabbi Moshe] Levinger's bodyguard. He has two bodyguards from an elite unit.

Next to Baruch Marzel's house at Tel Rumeida, it says "I have already killed an Arab today - what about you?" Next door is the house of a Hebron notable. They are right next to each other. Marzel's children

play in their yard, and the Arab's children play in theirs. Marzel's children began cursing the children of the Arab and threw stones at them. Marzel's wife tried to get her daughter to come into the house, but the children kept cursing and throwing stones until the Arab mother forcibly took her children into the house. I was on an inspection at the adjacent outpost at the time.

One day there was a large riot by settlers in Uri Square after Arabs put up flags. The settlers hit them. Two women, one was Levinger's wife, entered the Kasbah. Levinger's wife spat on Arabs and overturned carts. I got there a minute after it started. We radioed for help. The Border Police came and separated the settlers and the Arabs, but they really gave it to the Arabs. They fired in the air above the heads of the Arabs, and they shoved and beat the Arabs. They never behave like that with settlers. With settlers they tell them to disperse using bullhorns; they beat the Arabs, and they drag the Jews by force. I stood there, a little ways off, next to the cemetery. The basic problem was that the soldiers just didn't know how to handle the settlers.

There was also another incident, something really appalling. There was an Arab funeral. I saw the family sitting and crying, and a group of settlers went by laughing. It was directed at them, at the family.

One time I was on a patrol in the sector between the small "Policeman's Junction" and the base. I was driving in the direction of Tel Rumeida. Suddenly an Arab stopped me. The soldier sitting next to me told me to keep driving, but I stopped and asked what was wrong. He said that Baruch Marzel had beaten his son, stepped on him, and kicked him. He was crying. He told me he was hurrying to take him to the hospital. The father ran with the boy (he was about two-and-a-half or three), who was unconscious, all the way to the hospital. I drove to the base and asked the company commander to intervene. He went with me. I don't understand why I, as the army, couldn't take the boy to the hospital. After about an hour he came back, still crying. I asked him to tell the company commander what he had seen. Suddenly I saw that he was afraid to say that Baruch Marzel had hit his son. He said: I don't know, someone with a beard, with a kipa, without a kipa.

The army informed the police. You understand – the army informs the police instead of dealing with the case immediately by itself. I don't think they did anything about this case. I am ready to go to Hebron, find the father, and testify against Baruch Marzel, only to clear my conscience about this incident.

On the eve of Rosh Hashanah, the settlers were ordered not to blow on the shofar in the Cave of the Patriarchs during the Muslims' prayers. They did it anyway, and as far as I know nothing was done about it;

they (the soldiers) only waited for them to calm down. I heard about the incident over our radio.

There were also a few cases where settlers confronted officers, even Dov (commander of the Cave of the Patriarchs), and told them how they should act.

## Appendix 4

### Findings of the Sample

To examine the work of the police and the judicial system, **B'Tselem** examined a sample of 206 cases of attacks on Palestinians – including attacks on property, physical assaults, and cases of death – in which there is at least a reasonable suspicion that the perpetrators were Israeli civilians. The following are the findings.

#### *Palestinians Killed by Israeli Civilians*

	1988	1989	1990	1991	1992	Total
Not known if complaint filed	-	2	-	-	-	2
File closed	8	12	5	2	-	27
File in DA's office	-	-	2*	1	-	3
File with Judge Advocate	2	-	-	-	-	2
Indictment filed	-	-	-	-	1	1
Trial completed	5	3	2	3	-	13
<b>Total</b>	<b>15</b>	<b>17</b>	<b>9</b>	<b>6</b>	<b>1</b>	<b>48</b>

\* According to the Central Region District Attorney's Office, there is insufficient evidence at this stage to submit an indictment. The files remain open, and the possibility of filing an indictment will be considered if new evidence is received.

### ***Palestinians Injured by Israeli Settlers***

	1988	1989	1990	1991	1992	Total
Not known if complaint filed	-	-	9	2	2	<b>13</b>
No complaint filed	-	2	2	1	-	<b>5</b>
File not found	-	-	15	4	1	<b>20</b>
File closed	-	3	6	6	3	<b>18</b>
File in DA's office	-	-	2	-	-	<b>2</b>
Case under investigation	-	-	2	-	-	<b>2</b>
Indictment filed	-	-	-	2	2	<b>4</b>
Trial completed	3	3	5	3	-	<b>14</b>
<b>Total</b>	<b>3</b>	<b>8</b>	<b>41</b>	<b>18</b>	<b>8</b>	<b>78</b>

### ***Damage to Palestinians' Property Caused by Israeli Civilians***

	1988	1989	1990	1991	1992	Total
Not known if complaint filed	1	-	-	-	-	<b>1</b>
No complaint filed	-	13	2	-	-	<b>15</b>
Police refused to accept complaint	-	-	3	-	2	<b>5</b>
File not found	-	-	-	5	1	<b>6</b>
File closed	5	4	7	6	8	<b>30</b>
File in Jerusalem Police Prosecutions Dept.	-	-	-	2	2	<b>4</b>
Case under investigation	-	-	-	-	5	<b>5</b>
Indictment filed	-	-	-	1	2	<b>3</b>
Trial completed	-	4	3	2	2	<b>11</b>
<b>Total</b>	<b>6</b>	<b>21</b>	<b>15</b>	<b>16</b>	<b>22</b>	<b>80</b>

## Appendix 5

### Police Handling of Roadblocks Set Up by Israeli Civilians in the Territories\*

On November 1, 1993, the media reported that in the wake of the attack in which the settler Haim Mizrahi was killed, the Judea-Samaria-Gaza Council had decided to block some fifty road junctions in the Territories that morning. Reports the following day said that the settlers had realized their threat and had blocked dozens of roads and junctions. A week later, on November 8, 1993, following the murder of Ephraim Ayubi, from the Kfar Darom settlement in the Gaza Strip, the press reported that the Council had again decided to block some fifty roads in the Territories, and that the IDF had increased its forces accordingly. Nevertheless, it was reported that hundreds of settlers had succeeded in blocking dozens of key roads throughout the Territories. **B'Tselem** wrote to the Israel Police Department regarding these events. The response of the Department of Investigations and Claims of the Israel Police Department follows.

On the IDF's handling of these incidents, see above, pp. 51-52.

## Response of the Israel Police Department\*

Unclassified

National Headquarters/Investigations  
Department of Investigations and Claims  
Telephone 02-309330  
Fax 02-309111  
Jerusalem, March 7, 1994

Mr. Eitan Felner  
B'Tselem  
43 Emek Refaim Street  
93141 Jerusalem

Dear Sir:

Re: Erection of Roadblocks by Israeli Civilians in the Territories

Ref: Your S.M. 3816 of January 12, 1994

1. In response to your abovementioned letter, please be advised that there were 3 cases of Israeli civilians setting up roadblocks during the aforementioned period.
2. On November 9, 1993, file PA/688/93 was opened at the Camps station. A suspect was arrested. The file was forwarded to the district attorney with the recommendation to indict. The suspect was freed on bail with restrictions.
3. On November 9, 1993, the road opposite Kfar Darom was blockaded by settlers, and file PA/689/93 was opened at the Camps station. The file was closed for the reason "offender unknown".
4. On November 7, 1993, the road in the Gush Katif area was blockaded by settlers. File PA/1625/93, opened at the Han Yunis station, was closed due to "offender unknown".
5. For your information.

Sincerely,  
s/  
Israel Eisner, Chief Inspector (Ret.)  
Supervision Section Officer  
Department of Investigations and Claims

Unclassified

\* Translated from the Hebrew by B'Tselem

# Appendix 6

## Response of IDF

15 March 1994



### **IDF Spokesman's Response to the Betsalem Report on the Subject of Enforcing Law and Public Order on Jewish Settlers in Judea and Samaria**

The IDF is responsible for the security of the Jewish and Arab residents of Judea and Samaria (and following the signing of the Gaza-Jericho Agreement, Israel continues to be responsible for Jewish residents living in designated areas of the Gaza Strip), and in this capacity, for upholding law and order with regards to Jewish settlers who violate the law. In conjunction with this, the IDF detains, and if necessary arrests, those suspected of violating the law until the arrival of the Police, and lodges complaints with the Israel Police against Israeli suspects. The investigation and bringing of charges against Israelis in these areas is the responsibility of the Israel Police and the State Attorney General's Office.

Additionally, and in accordance with the directives of the Government of Israel, a number of steps were taken recently against Israeli citizens who, according to the assessment of security authorities, have engaged in violence, threats and incitement, mainly against Arabs.

These steps included decisions to rescind the weapon permits of a number of Israeli citizens, and to confiscate those weapons, an order restricting the movement of 18 Israelis living within Judea, Samaria and the Gaza Area, exclusion orders preventing six Israeli citizens who live in Israel from entering the territories, and, in six serious cases, orders of administrative detention for a period of 3 months were issued.

Additionally, on March 13, 1994, the Government of Israel declared the organizations of "Kach" and "Kahane Hai" to be terrorist organizations, under the Anti-Terrorist Act. Parallel declarations were issued by the Commanders of the Judea and Samaria Command and the Gaza Area Command on March 14.

## Response of the Ministry of Justice\*

State of Israel

Ministry of Justice  
State Attorney's Office  
1 May 1994  
Our file: 377  
(13706)

Mr. Yizhar Be'er  
B'Tselem  
43 Emek Refaim Street  
Jerusalem 93141

Re: Response of the State Attorney's Office to Draft of B'Tselem's Report: "Enforcing the Laws on Israeli Civilians in the Territories"

The response of the State Attorney's Office refers to Chapter of the report, entitled "The Legal System". That chapter criticizes the State Attorney's Office, and the following is our response to the allegations presented.

The criticism directed at the State Attorney's Office can be divided into two types. One is of a general character, and the other refers to specific cases. Our response will address both.

### General criticism

1. The report contains general statements that are critical of the State Attorney's Office without providing a factual foundation for the criticism.

For example, the following appears on p. 110:

A high percentage of files involving fatalities were closed by the State Attorney's Office on grounds of insufficient evidence. The closing of these files is puzzling in light of the data that emerged from B'Tselem's inquiry (as mentioned above, B'Tselem was not allowed to peruse these files).

Obviously, it is not possible to conclude that the closing of files is "puzzling" without seeing the evidence. That was not possible for legal reasons relating primarily to the obligation to protect privacy and the fear that the work of the police would be thwarted. In any event, we cannot understand how this kind of general

\* Translated from the Hebrew by B'Tselem

criticism can be made without reviewing the files and without referring to the reasons for their closure.

2. The State Attorney's Office categorically rejects this kind of generalized criticism, which appears repeatedly in the report. The State Attorney's Office believes that criticism of this kind, lacking a clear, factual foundation and not referring to concrete cases, precludes a serious response to the allegations and serves no purpose.

It is the State Attorney's position that if B'Tselem has a complaint or objection regarding a specific decision of the State Attorney's Office, it should approach the State Attorney's Office, which would reply to the complaint, as it responded to all the organization's allegations in the past. There is no point in making general allegations not based on facts or not made in an attempt to determine the facts.

3. Despite the generality of the allegations and the absence of factual support, we shall try to address them to the degree possible.

As regards the criticism of "closing files for lack of evidence", despite the objective difficulties entailed, in recent years the State Attorney's Office has made considerable efforts to enforce the law on Jewish residents of the Territories. The difficulties are primarily related to collecting evidence under Intifada conditions and coping with claims that the shootings by Jews were in self-defense, significant arguments which have on more than one occasion been accepted by the courts.

In many cases, these objective difficulties dictated the decision to close a file for lack of sufficient evidence to go to trial. However, in many other cases, where sufficient evidence to prove their guilt was collected, Jewish residents were brought to trial.

4. B'Tselem's report also criticizes generally the appeals policy of the State Attorneys' Office. According to the organization, the State Attorney's Office did not appeal the light sentences in certain cases where the punishment imposed was less than that sought by the state prosecutor (Report, p. 110). The report's editors do not approve of that policy.

Unfortunately, your organization ignores the fact that the Supreme Court has ruled, on more than one occasion, that its duty is not to impose harsher punishments in every case in which the State Attorney's Office believes that punishment imposed by the District

Court is too lenient. The Supreme Court has ruled that its duty is to set a "punitive policy" in flagrant cases in which an excessively light punishment has been imposed. However, it is not willing to intervene in every case, even if the punishment is relatively lenient. It is improper, therefore, for the State Attorney's Office to file an appeal every time its request for a harsh sentence is not accepted.

In addition, the Supreme Court has frequently rejected appeals filed by the State Attorney's Office involving both acquittals and lenient sentences.

Obviously, appeals on a "wholesale" basis should not be filed every time the position of the State Attorney's Office is rejected by the District Court. Nevertheless, if the State Attorney's Office concludes that apunishment is excessively lenient, an appeal is, in fact, filed with the Supreme Court.

This appeals policy applies in all types of criminal cases, and no reason exists to deviate from it in the subject covered by the report.

5. We wish to add that although the editors of the B'Tselem report did see fit to "commend" the Supreme Court for increasing sentences upon appeal, the editors forgot to mention that those appeals, relating to flagrantly lenient sentences, were filed by the State Attorney's Office, which in those cases did not accept the light punishment imposed. This "oversight" is inconsistent with a fair and objective report.
6. As regards the report's criticism of a number of "plea bargains" in which a charge of "manslaughter" was replaced with "causing death by negligence", the State Attorney's Office makes such deals mainly in cases in which, owing to developments that occur during the trial, it is feared that if the case is allowed to proceed to its conclusion, the prosecution will be unable to prove the defendant's guilt beyond a reasonable doubt. In such cases, the State Attorney's Office prefers to ensure a conviction for causing death by negligence by making a plea bargain with the defendant according to which he will admit his guilt to that offense, rather than risk not being able to meet the heavy burden of proving guilt beyond a reasonable doubt, which failure would result in the defendant's acquittal of all charges. We see nothing wrong with this policy: these plea bargains are implemented solely from professional considerations in order to further the public interest.

7. The State Attorney's Office rejects categorically the report's insinuations that the manner in which it carries out its duties is influenced by political pressures emanating from the political Right. One wonders how these insinuations can be reconciled with the conclusion contained in the draft of the report, in a different context, that the State Attorney's Office did not yield to political pressures on such issues.
8. In conclusion, the State Attorney's Office believes that it is improper and unfair to publish a report containing harsh and trenchant criticism of the work of the State Attorney's Office without first trying truthfully to ascertain the facts and without obtaining a response to specific allegations. It is improper and inappropriate to level criticism that is both general and unfounded.
9. We also wish to point out that much of the factual information contained in the report was transmitted to the organization by the State Attorney's Office over the years in a spirit of cooperation and in a sincere attempt to clarify matters fully. It is a pity that the report's editors also considered it inappropriate to mention this fact, if only for the sake of fairness.

#### Specific criticism

In the report, the organization chose to focus on five cases only. The criticism concerning these cases was written without the organization having first tried to clarify the considerations that led the State Attorney's Office to make the decisions criticized in the report. It was only after receiving a draft of the report, on April 1, 1994, that the State Attorney's Office began trying to clarify the details of the cases on which the organization chose to concentrate. The following are the findings concerning the four cases in which you criticized the State Attorney's Office in the course of your analysis.

#### (a) Case of Faveq Subhi Suweidan

The event in question occurred five years ago. We informed B'Tselem already in 1991 that the case had been closed due to insufficient evidence. Since then, the organization did not ask the State Attorney's Office even once why it had decided to close the file. Nor, obviously, was a request made to reconsider that decision. In any event, after receiving the draft of the report, we

asked the Gaza police station for the file so that we could examine the reasons it was closed. Because of the evacuation of the Gaza police station, however, it is not currently possible to locate the relevant file, which had been closed some time ago. Consequently, the State Attorney's Office cannot respond to the allegations of B'Tselem in this case.

(b) Case of Mahmud Muhammad al-Nawaj'ah

Although this file was closed in the initial stage because of insufficient evidence, following an objection filed some time ago, the State Attorney's Office decided to reconsider the decision. The file remains open and a final decision has not been reached as of yet. For understandable reasons, no additional details can be furnished in this matter.

(c) Case of Rabbi Levinger

In recent years, the District Attorney's Office has filed two indictments against Rabbi Levinger, one for causing death and the other for assault.

In the case of causing death, to which the report refers, a plea bargain was consummated with Rabbi Levinger since evidentiary difficulties had become apparent during the trial, and it was feared that if a plea bargain were not arranged, it might not be possible to prove the charges imputed to him in the indictment with sufficient certainty to obtain a conviction. As a result, the State Attorney's Office preferred an arrangement that would ensure that Rabbi Levinger would be convicted of causing death by negligence, rather than proceed with a trial that might result in a total acquittal. As regards the charge of assault filed against Rabbi Levinger, the report's editors chose to ignore it completely. In that case, the Jerusalem District Attorney's Office filed an indictment against Rabbi Levinger for aggravated assault. The Jerusalem Magistrate's Court acquitted Rabbi Levinger, and the Jerusalem District Attorney's Office appealed to the District Court. The state's appeal was accepted. Rabbi Levinger was sentenced to eight months in prison, four to be served in jail and four of which were suspended.

One wonders why the report's editors did not choose to describe the events of this case in order to portray the full picture.

(d) Case of Boaz Moscovitz

As in the Levinger case, a plea bargain was made with the defendant because of difficulties of proof. The plea bargain was agreed to only after representatives of the District Attorney's Office visited the scene where the incident occurred several times with a certified surveyor, and only after the latter's measurements indicated that it might not be possible to refute the accused's claim of self-defense.

Conclusion

As shown above, in recent years the State Attorney's Office has made considerable efforts to impose the law in the Territories. In every case where it was possible, offenders against whom sufficient evidence was accumulated were placed on criminal trial, and a sentence appropriate to the gravity of the offense was requested.

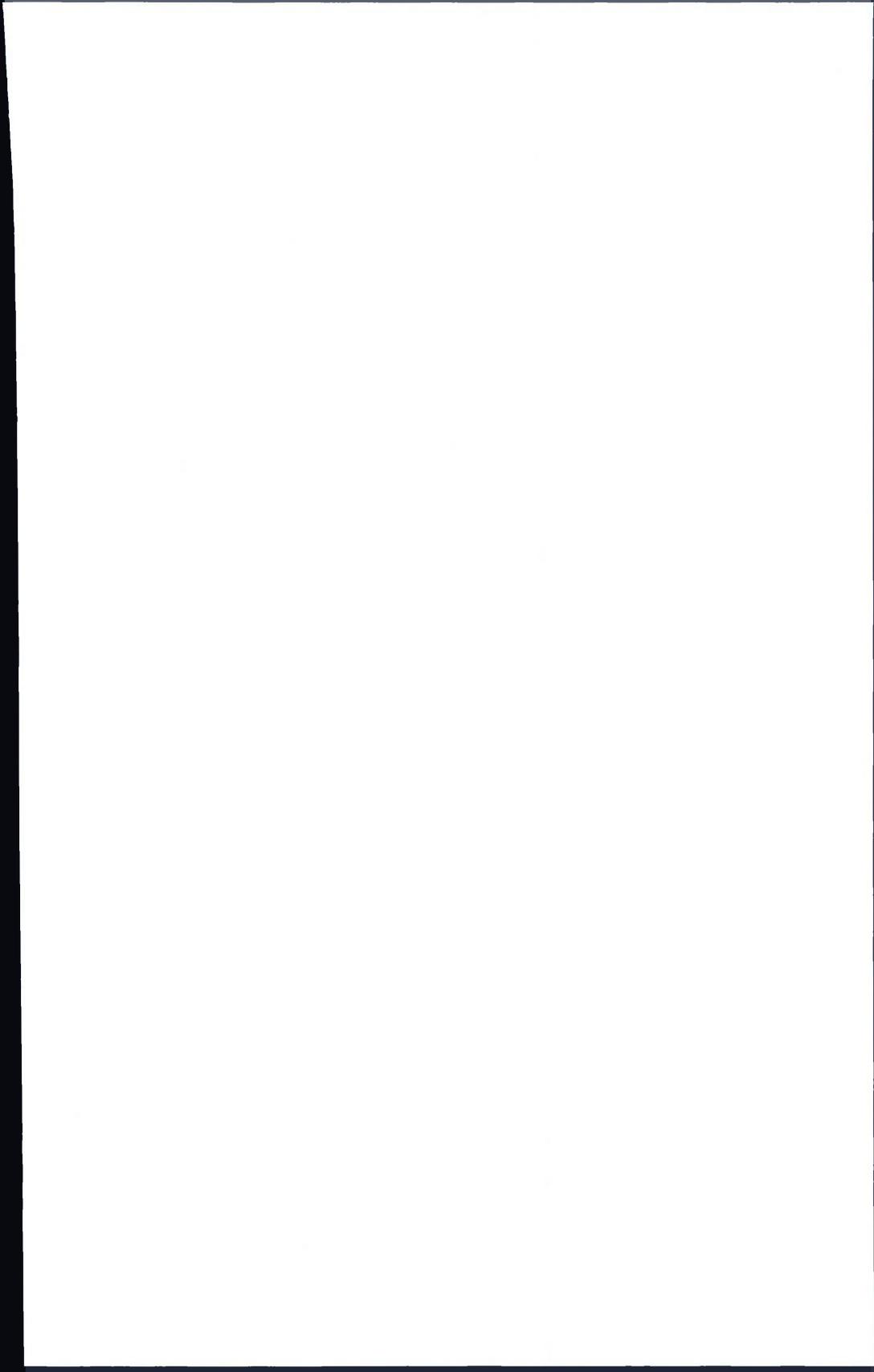
As part of the same aim, the State Attorney's Office filed appeals to the Supreme Court in cases of excessively lenient sentences so that the Supreme Court would determine the proper punishment for the offenses committed.

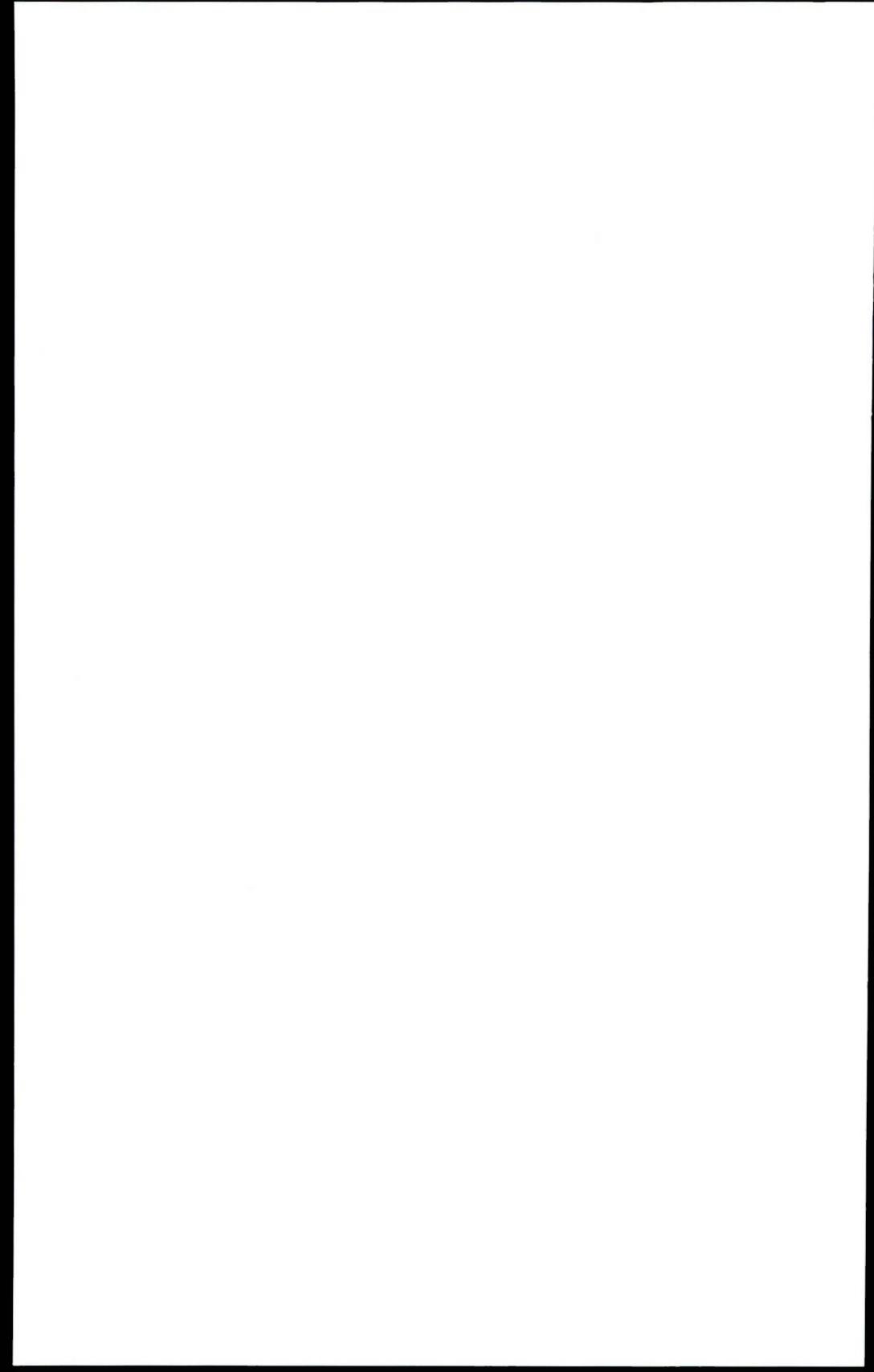
In our view, the report presents only a partial picture and does not reflect the significant efforts made by the State Attorney's Office in this area, and we regret that your organization failed in this regard.

Sincerely yours,

s/

Shai Nitzan  
Senior Deputy to the  
State Attorney





## **B'Tselem Publications**

### ***Monthly Information Bulletins***

May 1989	Data, Confiscation of ID Cards, Death Cases
June 1989	Plastic Bullets, Curfew, Settlers, House Demolitions
July 1989	Death Cases, Settlers, Deportations
August 1989	Detention Facilities
September 1989	Death Cases, Administrative Detention
October 1989	Banned Books and Authors
November 1989	Soldiers' Trials and Restrictions on Foreign Travel
January 1990	Cases of Death and Injury of Children
February-March 1990	Censorship of the Palestinian Press in East Jerusalem
April 1990	IDF Posts on Private Homes, Purimshpiel in 'Abud, Follow-up Investigation: The Death of Rafaida Abu Laban
May 1990	The Military Judicial System in the West Bank, Follow-up Report Update, June-July 1990 – Violence Against Minors in Police Detention
August 1990	Limitations on Residential Building on the West Bank
September-October 1990	Closure of Schools and Other Setbacks to the Education System in the Occupied Territories
October 1990	Loss of Control: The Temple Mount Events Preliminary Investigation
November 1990	House Sealing and Demolition as a Means of Punishment
January-February 1991	Human Rights in the Occupied Territories during the War in the Persian Gulf
Update June 1991	The Death of a Youth: Mahmud 'Alayan; Maltreatment by an Income Tax Clerk; Pressure on Families of Wanted Persons
September-October 1991	Renewal of Deportation of Women and Children from the West Bank on Account of "Illegal Residency"

January 1992	Limitations on the Right to Demonstrate and Protest in the Territories
April 1993	The Closure of the West Bank and Gaza Strip: Human Rights Violations against Residents of the Occupied Territories
May 1993	House Demolition during Operations Against Wanted Persons
June 1993	The Killing of Palestinian Children and the Open-fire Regulations
February 1994	Firing at Vehicles by Security Forces in the Occupied Territories
September 1994	Bureaucratic Harassment; Abuse and Maltreatment during Operational Activities in the West Bank in the First Year of the Declaration of Principles
November 1994	Torture during Interrogations: Testimony of Palestinian Detainees Testimony of the Interrogators

***Comprehensive Studies***

September 1989	Demolition and Sealing of Houses in the West Bank and the Gaza Strip as a Punitive Measure During the Intifada
November 1989	The Military Judicial System in the West Bank
December 1989	Annual Report 1989 Violations of Human Rights in the Occupied Territories
February 1990	The System of Taxation in the West Bank and Gaza Strip as an Instrument for the Enforcement of Authority during the Uprising
July 1990	The Use of Firearms by the Security Forces in the Occupied Territories
November 1990	Collective Punishment in the West Bank and the Gaza Strip
March 1991	The Interrogation of Palestinians during the Intifada: Ill-Treatment, "Moderate Physical Pressure" or Torture?

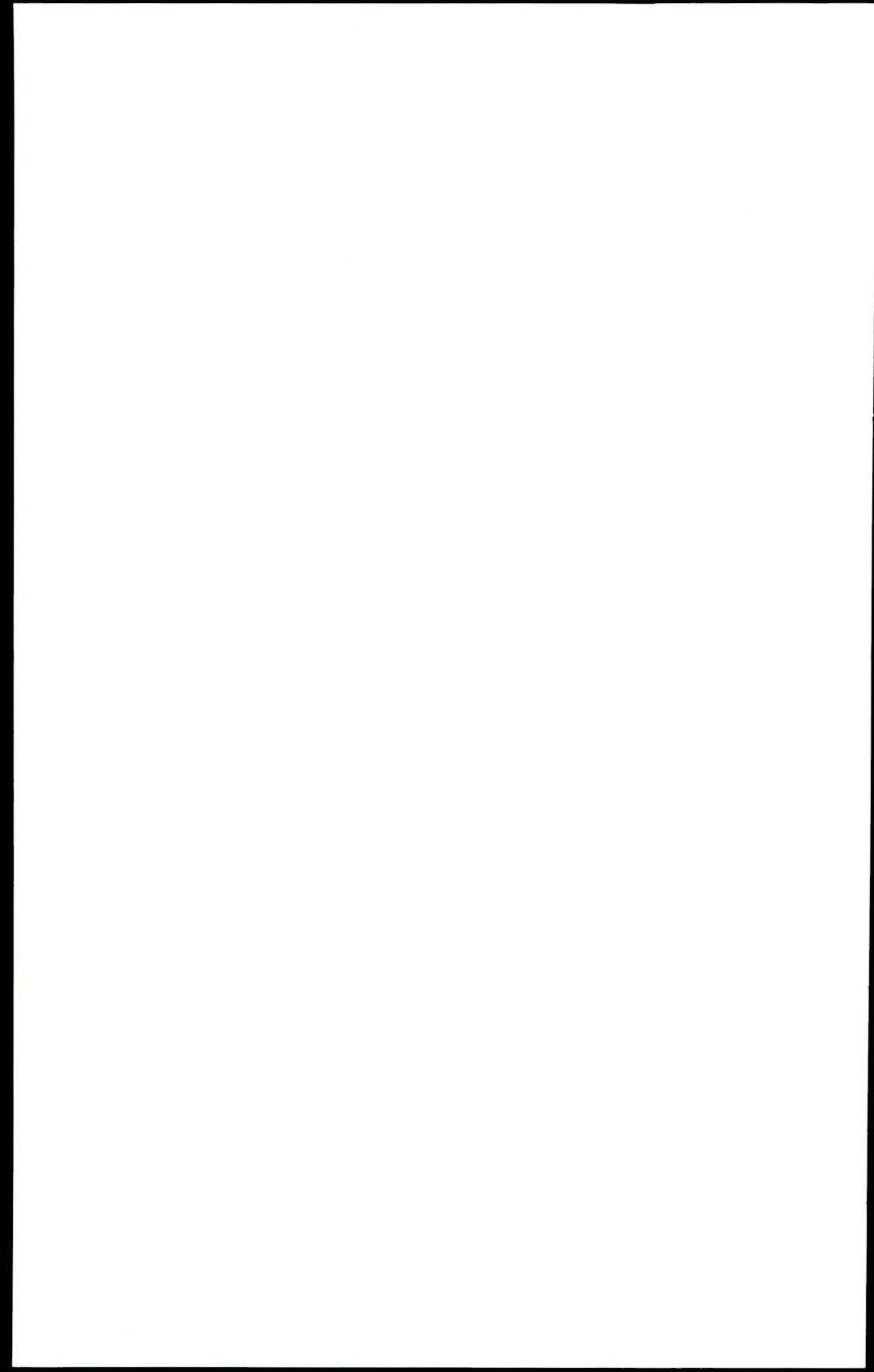
January 1992	Bi-Annual Report 1990-1991, Violations of Human Rights in the Occupied Territories
March 1992	The Interrogation of Palestinians during the Intifada: Follow-up to March 1991 B'Tselem Report of March, 1991
May 1992	Activity of Undercover Units in the Occupied Territories
October 1992	Detained Without Trial: Administrative Detention in the Occupied Territories since the Beginning of the Intifada
June 1993	Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992
January 1994	Bi-Annual Report 1992-1993, Violations of Human Rights in the Occupied Territories
January 1994	Collaborators in the Occupied Territories: Human Rights Abuses and Violations
May 1994	Law Enforcement vis-a-vis Israeli Civilians in the Occupied Territories

### ***Case Studies***

September 1992	The Death of Mustafa Barakat in the Interrogation Wing of the Tulkarm Prison
January 1993	Khan Yunis, December 1992
November 1993	The "New Procedure" in GSS Interrogation: The Case of 'Abd A-Nasser 'Ubeid
March 1994	Lethal Gunfire and Collective Punishment in the Wake of the Massacre at the Cave of the Patriarchs
April 1994	Summary Execution: Jabalya Refugee Camp, March 28, 1994 (Joint report with the Palestinian Lawyers for Human Rights)

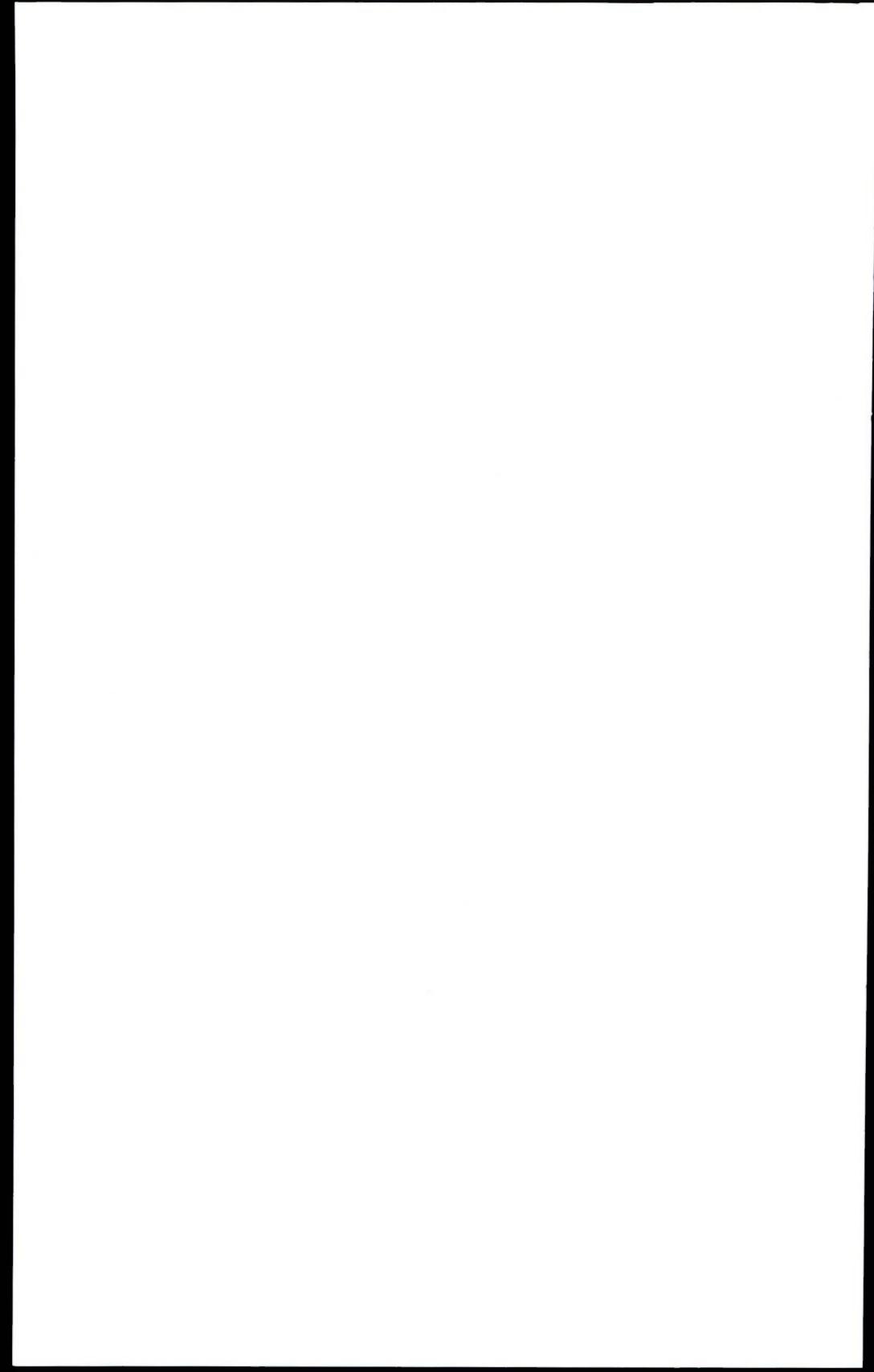
### ***THE B'TSELEM HUMAN RIGHTS REPORT***

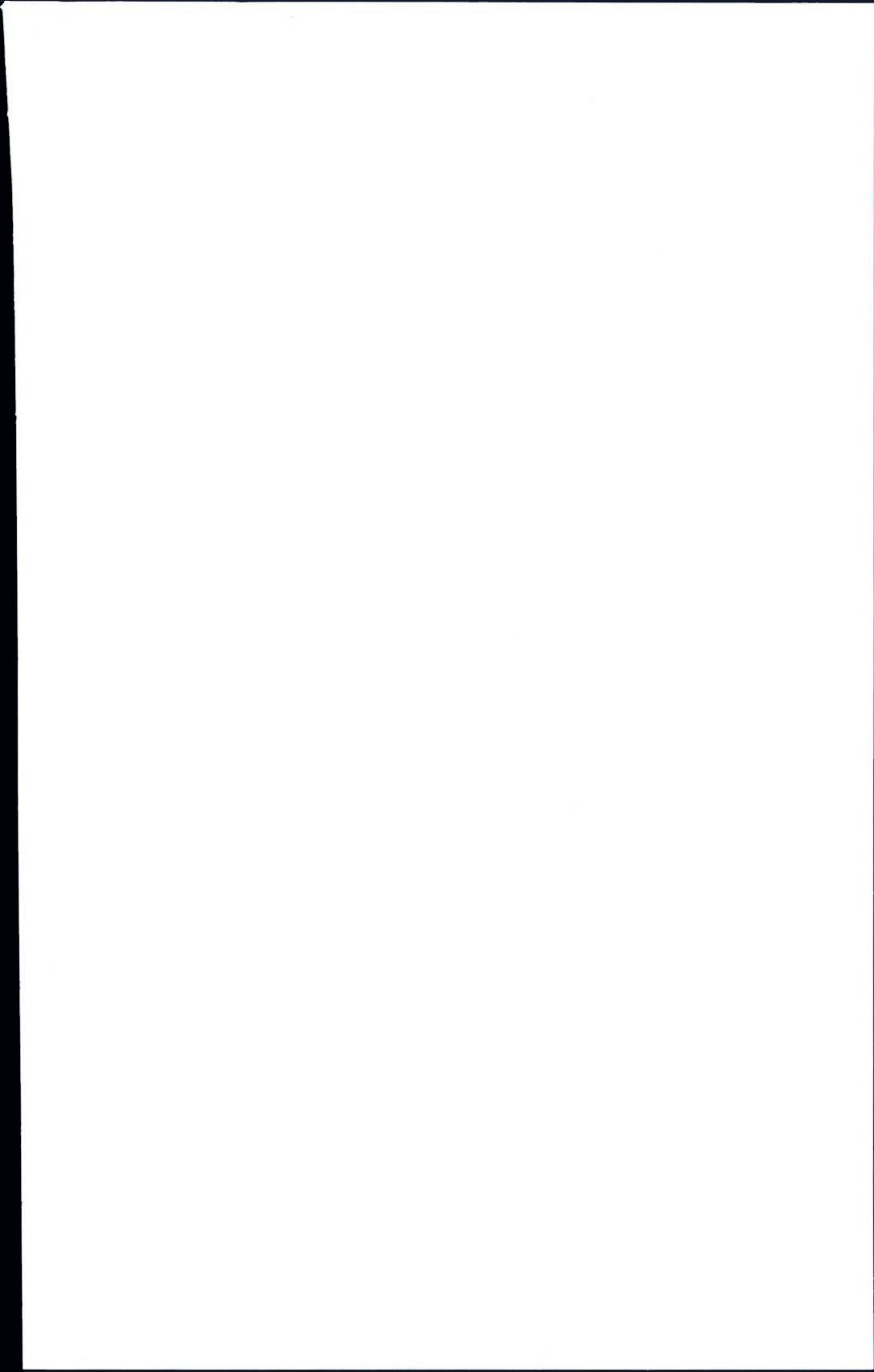
Summer 1993	Volume 1, Issue 1.
Spring 1994	Volume 2, Issue 1.

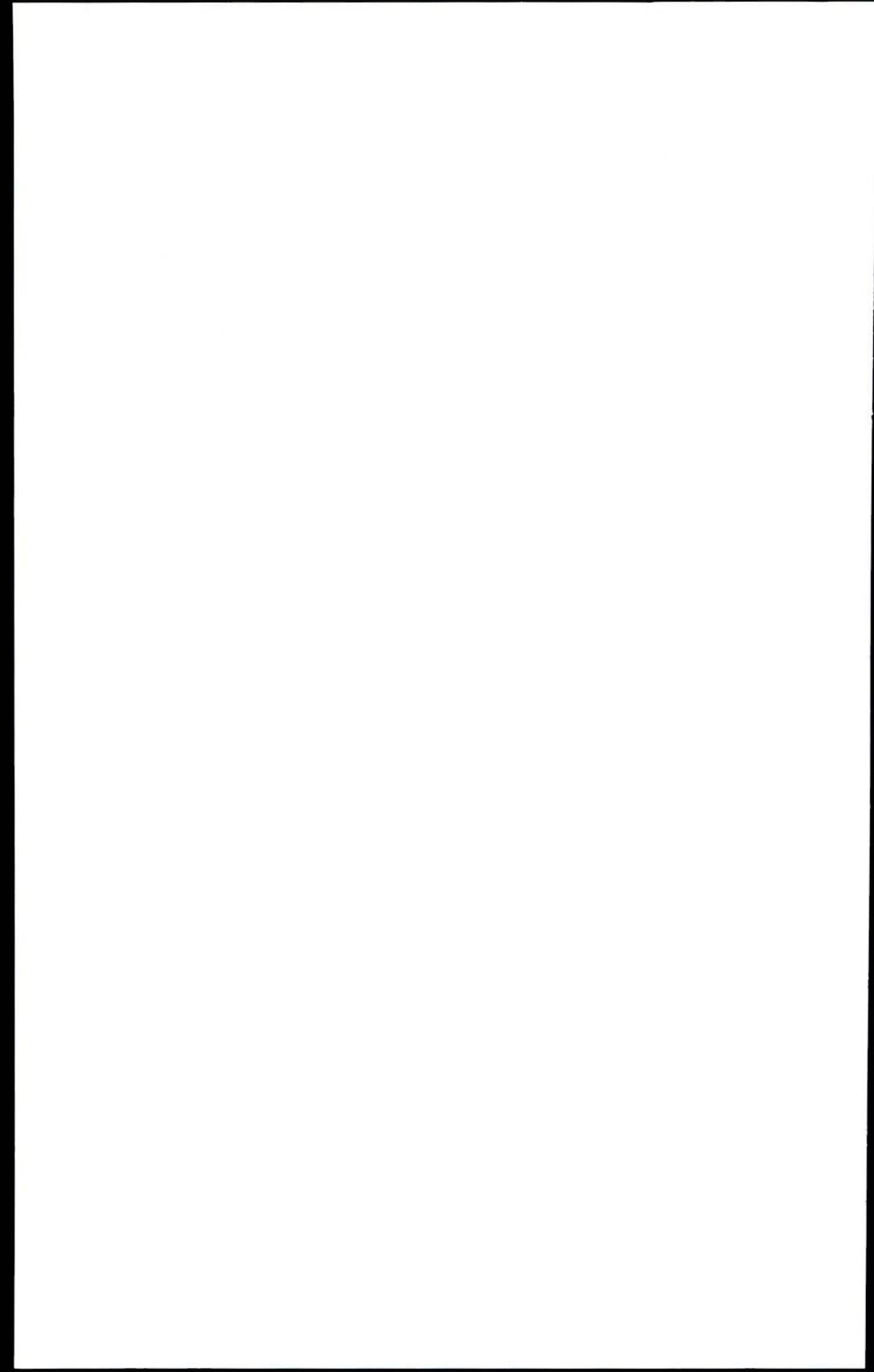


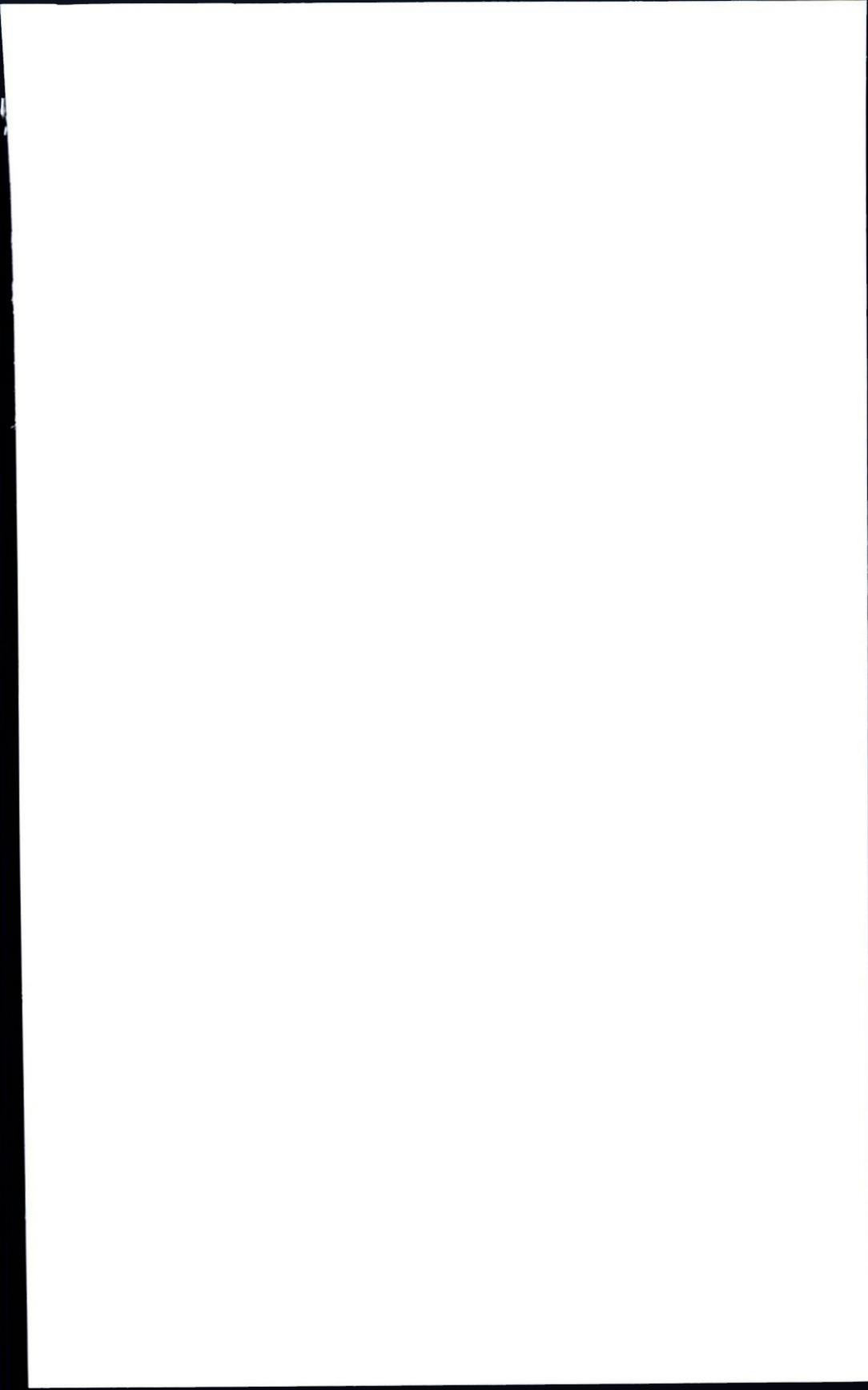
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Commission of the European Communities, Christian Aid, Danchurchaid, Danida. European Human Rights Foundation, EZE. Ford Foundation, Funding Exchange, ICCO. International Commission of Jurists – Swedish Section, John Merck Fund, New Israel Fund, New Prospect Foundation, NOVIB, Open Society Fund, Stone Foundation, and Swiss Development Cooperation









**B'TSELEM - The Israeli Center for Human Rights in the Occupied Territories, was established in 1989 by a group of prominent academics, attorneys, journalists, public figures and Knesset members. It endeavors to educate the Israeli public about international human rights standards and norms, to foster public debate within Israel on human rights violations in the Occupied Territories, and to press for policy changes in human rights issues.**

**The reports, information sheets, case studies, and other informational literature published by B'TSELEM are thoroughly researched by its staff. Fieldwork data and findings are cross-checked with relevant sources, including official government agencies and Israel Defense Forces offices, and other Israeli and Palestinian human rights organizations. Drafts of the reports are forwarded to the relevant governmental authorities for their response, which are published in their entirety as an appendix to the report.**

**B'TSELEM opposes human rights abuses committed by any party, whether in Israel, the Territories, or abroad. Its mandate is limited, however, to documenting and responding to human rights violations in the Occupied Territories. Despite the potential offered by the signing of the Declaration of Principles in 1993, the necessity of safeguarding human rights remains. As the peace process proceeds, B'TSELEM will continue its activities to help ensure that human rights are not violated.**