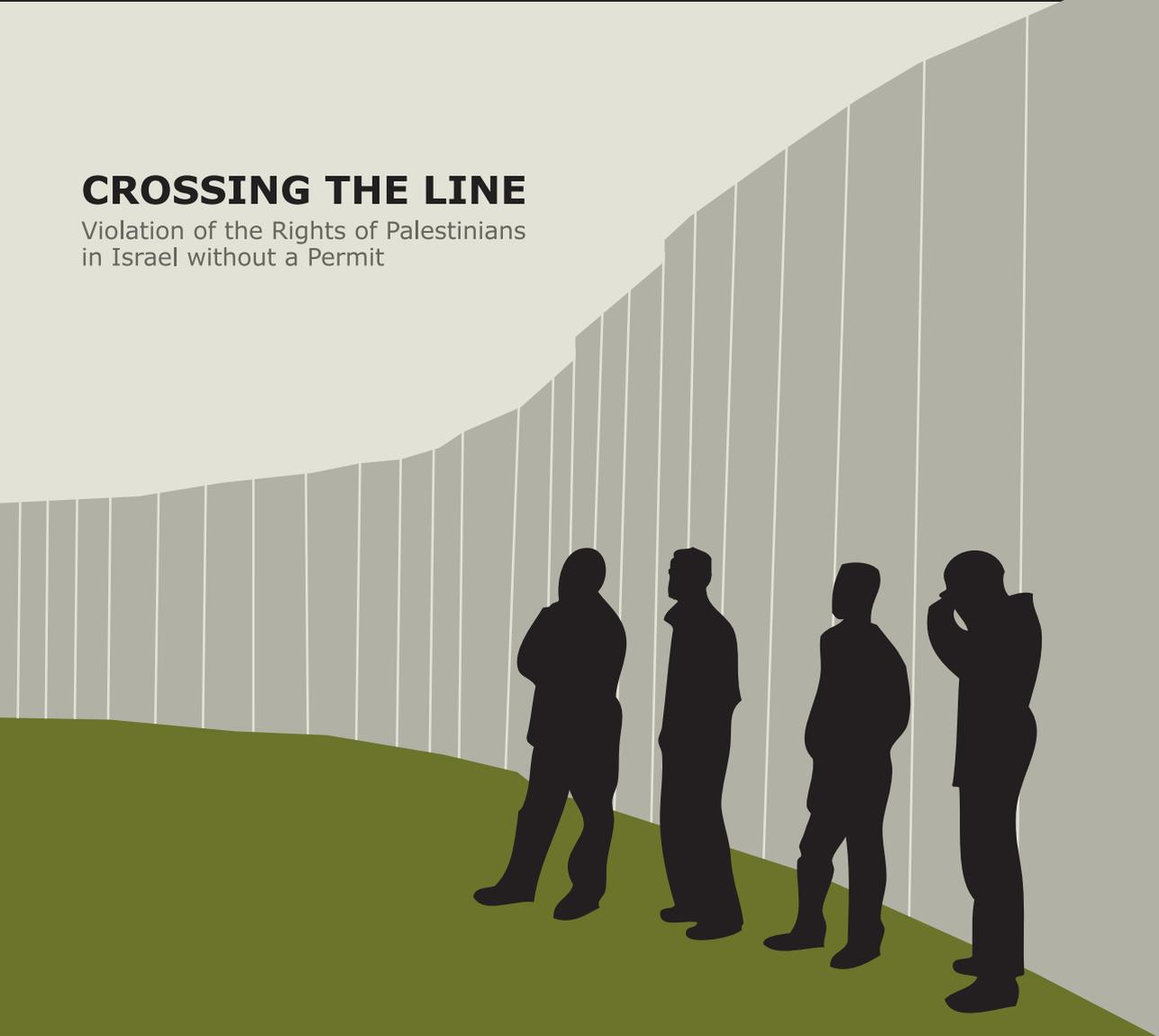


CROSSING THE LINE

Violation of the Rights of Palestinians
in Israel without a Permit



Researched and written by Eitan Diamond

Hebrew editing by Yehezkel Lein

Data coordination by Suhair 'Abdi, Yael Handelsman, Shlomi Swisa

Fieldwork by Musa Abu Hashhash, 'Atef Abu a-Rub, Salma Deba'i, Iyad Hadad, Karim Jubran, Zaki Kuhail, 'Abd al-Karim Sa'adi, Suha Zeid

Translated by Zvi Shulman

Cover design by Limor Weisberg

ISSN 0792-8114

B'Tselem thanks the following persons and organizations for their assistance in the preparation of this report: Attorney Haisham Abu Shahadeh, Attorney Anat Ben Dor, Denis Diamond, Ido Harr, Shir Hever, Attorney 'Alaa Masarwa, Prof. Guy Mondlak, Prof. Adi Ophir, Ron Shatzberg, HaMoked: Center for the Defence of the Individual, Worker's Hotline



March 2007

Crossing the Line

**Violation of the Rights of Palestinians
in Israel without a Permit**

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

Having undergone this bitter experience, the prolonged trauma of our being “strangers” in a foreign land, shamefully exploited and persecuted, we were commanded in the Torah, not once but twenty-four times, to love the strangers among us, not to exploit them nor put them to hard labor, to allow them to benefit from all the benefits from which we benefit: “And love the stranger because you were strangers in Egypt.”

In the meantime, we were “strangers” not only in Egypt, but in all countries of the Diaspora and of the exile. Not only were we strangers, there was no country in which we settled where we were not persecuted... It is this bitter experience that imposes on us the sacred duty not to do to others what others did to us, not to persecute any Gentile among us, any stranger who lives with us in our land, but to love and nurture and respect them.

Haim Cohn, *Human Rights in the Bible and Talmud*
(Tel Aviv: Ministry of Defense Publications, 1989)

Table of Contents

INTRODUCTION	7
CHAPTER 1 DEPENDENCE, CLOSURE, AND ENSUING DISTRESS	9
PREFACE	9
ISRAELI CONTROL OF THE PALESTINIAN ECONOMY AND THE ENSUING DEPENDENCE	10
DELIBERATE UNDER-DEVELOPMENT OF THE ECONOMY IN THE YEARS PRECEDING OSLO	10
CONTINUING ISRAELI CONTROL AND ITS RAMIFICATIONS	12
CLOSURE	13
CHANGE IN THE POLICY OF ENTRY INTO ISRAEL – FROM FREE MOVEMENT TO A GENERAL AND PERMANENT CLOSURE	14
THE CURRENT SITUATION AND FUTURE PLANS	16
POVERTY AND UNEMPLOYMENT	20
CHAPTER 2 OFFICIAL PROCEDURES, WRONGFUL ACTS, AND TURNING A BLIND EYE:	
TREATMENT OF PALESTINIANS IN ISRAEL WITHOUT A PERMIT	27
PREFACE	27
VIOLATION OF THE RIGHTS OF PALESTINIANS IN ISRAEL WITHOUT A PERMIT	29
ROUTINE MALTREATMENT	30
ILLEGAL USE OF FORCE	33
ILLEGAL DAMAGE TO PROPERTY	44
ILLEGAL COERCION TO OBTAIN INFORMATION AND RECRUIT COLLABORATORS	46
ILLEGAL USE OF FIREARMS	49
DOUBLE MESSAGES, TURNING A BLIND EYE, AND SILENT CONSENT	58

CHAPTER 3 FAILURE TO BRING DELINQUENT POLICE OFFICERS AND SOLDIERS TO JUSTICE	63
PREFACE	63
NEGATIVE INCENTIVES TO FILING COMPLAINTS	63
FILING THE COMPLAINT IS VIEWED AS USELESS	64
DIFFICULTY IN FILING COMPLAINTS	64
FILING THE COMPLAINT IS LIABLE TO HARM THE COMPLAINANT	65
WHY COMPLAINTS DO NOT RESULT IN THE PUNISHMENT OF OFFENDERS	66
DIFFICULTIES AND FAILINGS IN HANDLING COMPLAINTS AGAINST POLICE OFFICERS	66
DIFFICULTIES AND FAILINGS IN HANDLING COMPLAINTS AGAINST SOLDIERS	71
THE DAMAGING CONSEQUENCES OF FAILING TO PUNISH OFFENDERS	73
SUMMARY	75
CONCLUSIONS AND RECOMMENDATIONS	77
<i>APPENDIX 1 HARSH TREATMENT OF PERSONS AIDING PALESTINIANS STAYING IN ISRAEL</i>	
WITHOUT A PERMIT	81
<i>APPENDIX 2 TESTIMONIES ON HARDSHIP AND EXPLOITATION AT WORK</i>	83
RESPONSES OF THE ISRAELI AUTHORITIES	87
RESPONSE OF THE IDF SPOKESPERSON'S OFFICE	89
RESPONSE OF THE DEPARTMENT FOR THE INVESTIGATION OF POLICE	95

Introduction

In early October 2006, the state filed a harsh indictment against three border policemen. The indictment charged them with abusing ‘Abd Tareq Ahrub, 18, a Palestinian from the West Bank, after catching him in the Old City of Jerusalem without a permit.¹ According to the indictment, the three led Ahrub to an alleyway near the Jewish Quarter, grabbed him by force and began to beat him. First, the three policemen kicked him, then, after backing up, one of them rushed towards him, landing a sharp kick to his chest. One of the other policemen punched him in the face. Later on, while swearing at him, the three ordered Ahrub to empty his pockets and take off his shoes and belt. Then, the indictment states, one of the policemen struck him in the back with the belt buckle. After that, they ordered him to lift up his shirt, and one of the policemen squeezed his nipples with great force. The three then beat him in the face and chest, and, finally, forced him to kiss the Border Police symbol.

This incident is unusual, but also typical.

It is unusual because Ahrub filed a complaint against the policemen, because the authorities investigated the complaint, and because the investigation led to an indictment. The incident was reported in the media.² This, too, was unusual.

The case is typical because similar acts of abuse are, unfortunately, commonplace.

This report is the result of research conducted following numerous reports to B’Tselem of violence by police officers and soldiers against Palestinians staying in Israel, or attempting to enter Israel, without the permits required under Israeli law. B’Tselem’s fieldworkers took dozens of testimonies in preparation for the report. The findings, presented below, show that, although the authorities condemn the cases of abuse exposed in the media, these cases are not the exception, but a mere sample of routine practices of cruelty and maltreatment. The findings also show that the practices are the appalling result of Israel’s policy of separation and closure, and of the failure of the authorities to properly supervise the manner in which their agents implement this policy.

The report is divided into three chapters.

Chapter 1 presents the factors that have led many Palestinians to enter and remain in Israel even though Israeli law forbids them to do so and despite the hardship, exploitation, and harm to which they are thus exposed. As we shall see, during the first decades of the occupation, Israel practiced a policy of integration: tens and hundreds of thousands of Palestinians entered Israel and depended on Israel for work and commerce, social life, and the maintenance of family ties. When Israel then changed its policy and enforced a tight closure, these economic, social,

1. For the sake of convenience, Palestinian residents of the West Bank and the Gaza Strip will be referred to as “Palestinians” even though members of the Palestinian people also live in Israel and elsewhere.

2. Yehonatan Liss, “Three Border Policemen Accused of Abusing Palestinian,” *Ha’aretz*, 7 October 2006.

and family ties began to unravel and with it the entire fabric of life in the Occupied Territories.

Chapter 2 discusses the way the Israeli authorities treat Palestinians found in Israel without a permit. From the numerous testimonies given to B'Tselem's fieldworkers, and from other sources, it will be shown that, along with the official procedures and laws pursuant to which they are supposed to act, soldiers and police officers also use a variety of forbidden practices. In doing so, they trample on the dignity of many Palestinians, physically harm them and damage their property, and at times even take their lives. These improper practices are unjustified and flagrantly breach fundamental principles of Israeli and international law. The data also show that these forbidden acts are sometimes committed at the express instruction of commanding officers, and that the authorities, who officially condemn such actions, convey

a contradictory message to the soldiers and police officers by turning a blind eye and giving silent consent.

Chapter 3 describes the reasons why, in the vast majority of cases, police officers and soldiers are not prosecuted and punished for their illegal acts. In most cases, Palestinians do not file complaints against the perpetrators, primarily because of systemic impediments that deter them from doing so. When they do file a complaint, it is extremely unlikely that sanctions will be imposed on the delinquent soldier or police officer. The chance of sanctions would be far greater if the authorities were to make a proper effort to investigate the complaints and to correct other failings which doom, from the start, any possibility of a meaningful investigation and prosecution.

The report ends with a summary followed by conclusions and recommendations.

Chapter 1

Dependence, Closure, and Ensuing Distress

Preface

A fundamental provision of the laws of occupation, set forth in Article 43 of the Regulations attached to the Hague Convention of 1907 (hereafter: the Hague Regulations), states:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety...³

In the leading judgment given on 5 April 1983, Meir Shamgar, then vice-president of the Israeli Supreme Court, held that, in carrying out its obligation under this provision, the State of Israel should refrain from severing its economy from the economy of the Occupied Territories, and should allow free movement between the Occupied Territories and Israel.

Any separation of the economies as long as Israel rules over the territories – if that were at all possible in view of the territorial contiguity and the continuation of free conduct – would likely have immediate destructive effects on the economy of the territories and the well-being of the population. Cessation of free movement would immediately have even more serious ramifications from the viewpoint of manpower in the territories and from the viewpoint of trade and industry... For this reason, it was decided at the time of the establishment of the military

government that the two economies would not be separated... To separate them as aforesaid would impede the possibility of a return to orderly life and prevent the effective observance of the duty regarding the assurance of “*la vie publique.*”⁴

Almost twenty-five years later, Israel continues to maintain effective control of the territories it occupied in 1967, and therefore still has the obligation to ensure the well-being of the Palestinian residents, despite the numerous changes that have taken place during the occupation. In recent years, particularly after many Israelis were killed in a wave of attacks carried out by Palestinians in the course of the second intifada, the authorities have come to consider the presence of Palestinians in Israel as a threat to state security. Consequently, Israel stopped the free movement of Palestinians and limited both by statute and by physical obstructions the entry of Palestinians into Israel. In a decision given on 14 May 2006, Supreme Court Vice-President (ret.) Mishael Cheshin explained the new policy:

The State of Israel, as we all know, is engaged in a harsh and brutal war – or, at least, a quasi-war – against the Palestinian Authority and the terrorist organizations acting from within it. The Palestinian residents of the area are in a sense enemy subjects, and as such comprise a dangerous group for the citizens and residents of Israel. In order to protect its citizens and

3. Here the English translation deviates from the authentic and binding French text, which reads, “*l’ordre et la vie publics,*” that is, public order and life.

4. H.CJ 69/81, *Abu ‘Itta v. Commander of Judea and Samaria, Piskei Din* 37 (2) 197, 319-320.

residents, the state may, then, enact legislation that prohibits the entry of residents of the area – of the enemy’s subjects – to the state, so long as the situation of war (or quasi-war) persists.⁵

It may be that the transition from the policy of the blurring of borders, which Israel implemented in the first decades of the occupation, to the current policy of separation has indeed served the interests of Israeli citizens that the state must protect. However, in acting on behalf of the people on one side of the walls they built, the Israeli authorities abandoned the people living on the other side. As Justice Shamgar predicted, and as described below, the cessation of free movement between the West Bank and the Gaza Strip and Israel damages the economy of the West Bank and Gaza and harms the Palestinians. Many Palestinians looking for a way out of their poverty resulting from Israel’s change of policy are ready to break the law and risk entering Israel without a permit.

Israeli control of the Palestinian economy and the ensuing dependence

Because of its control of the Occupied Territories, Israel has played a decisive role in shaping the Palestinian economy. From the beginning of the occupation to the beginning of the peace process (the Oslo agreements), in 1993, Israel ran the economy in the Occupied Territories. Even after the Palestinian Authority was formed and given governing

powers, practical control over the Palestinian economy remained in Israel’s hands. As will be shown, Israel’s prolonged control has impeded development of an independent economy in the West Bank and Gaza Strip, leaving many Palestinian dependent on Israel for work and commerce.

Deliberate under-development of the economy in the years preceding Oslo

The Israeli officials who formulated economic policy in the Occupied Territories sought to advance the political and economic interests of Israel and, in the process, did not flinch from harming the Palestinian economy.⁶ Accordingly, Israel did not invest in developing the physical resources and human capital in the Occupied Territories.⁷ Rather, it instituted a policy of partial economic integration that was aimed at generating maximum profit.

This profit motive was evident in Israel’s exploitation of the new channels of trade provided by the integrated economy. Israel profited handsomely from the exemption of customs duties on goods moving between the Occupied Territories and Israel. To maximize these revenues, Israel impeded development of the Palestinian economy, as follows:

- *Creation of a “captive market” for Israeli products* Israel blocked the importation of some goods into the Occupied Territories to avoid competition.

5. HCJ 7052/03, *Adalah et al. v. Minister of the Interior, Tak-el* 2006 (2) 1754, 1812.

6. See, for example, S. Gazit, *The Stick and the Carrot: The Israeli Administration in Judea and Samaria* (Tel Aviv: Zemora Beitan, 1985) [Hebrew], 243, 250-252; A. Arnon et al., *The Palestinian Economy – Between Imposed Integration and Voluntary Separation* (Leiden: Brill, 1997), 1-11; S. Svirsky, *The Price of Arrogance: The Occupation – The Price that Israel Pays* (Tel Aviv: Adva Center and Mapa, 2005) [Hebrew], 16-42; B’Tselem, *Builders of Zion: Human Rights Violations of Palestinians from the Occupied Territories Working in Israel and the Settlements* (September 1999), 9.

7. See the report published by the Ministry of Finance, Economy and Research Department, on 27 June 2005, *General Information* (June 2005), Chapter 2, p. 19, available at www.mof.gov.il/research.

- *Prevention of investment to develop the Palestinian economy* Increase in Palestinian production was liable to reduce Israel's trade advantage over the Palestinian economy (Palestinians would purchase fewer Israeli products and more locally-produced goods), so Israel did not help develop the Palestinian economy, did not encourage others to do so, and created obstacles for potential investors.⁸ Even the taxes that Israel collected from Palestinians were not earmarked for investment in the Occupied Territories, and a large portion of the taxes flowed into Israel's treasury.⁹

Similarly, the economic integration benefited Israel in the labor market. The availability of tens of thousands of Palestinian workers (see Graph 1) reduced labor costs in the

country, enabling an increase in production and economic growth. In the short run, the Palestinians also benefited. Palestinians working in Israel earned wages low in Israeli terms, but higher than laborers received in the Occupied Territories. Jobs in Israel provided the growing Palestinian population a means of livelihood and raised the standard of living in the Occupied Territories. However, all was not rosy. The integrated labor market deepened the Palestinians' economic dependence on Israel. Because of the underdevelopment, which largely resulted, as mentioned, from Israel's policy impeding local development, there were not enough jobs in the Occupied Territories, and work in Israel became a major source of income for Palestinians.¹⁰

Graph 1: Palestinian workers employed in Israel (in thousands)*



* Source: Israel's Central Bureau of Statistics

8. Gazit, *The Stick and the Carrot*, 251; Arnon, *The Palestinian Economy*, Chapter 4; Svirsky, *The Price of Arrogance*, 20-23.

9. B'Tselem, *One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan* (March 2005), 36.

10. Economic development in the Occupied Territories also suffered as a result of the relatively high income Palestinians could receive for unskilled labor in Israel, which decreased Palestinian laborer's incentive to acquire new skills. For further discussion on Palestinian workers in Israel, see Gazit, *The Stick and the Carrot*, 252-258; Arnon, *The Palestinian Economy*, Chapter 3; Svirsky, *The Price of Arrogance*, 32-42; B'Tselem, *Builders of Zion*, Chapter 1.

Continuing Israeli control and its ramifications

In 1994, as part of the Oslo process, Israel and the Palestinian Authority signed the Paris Protocol, an instrument intended to regulate the economic relations between the parties.¹¹ The Protocol transferred certain economic powers to the Palestinian Authority, among them taxation, industrial policy, establishment of a monetary authority, and employment of civil servants. However, even after the signing of the Protocol and the transfer of these powers, a strong and independent Palestinian economy failed to develop. One reason for the failure was poor administration, which led to improper investment of resources.¹² Fighting by Palestinian groups against Israel and among themselves, which caused instability and deterred investors, certainly did not help. However, Israel continues to play a decisive role in shaping the Palestinian economy and, as before, continues to obstruct its development.

Under the Paris Protocol, Israel retained key powers that enable it to control the Palestinian economy:

- *Control of taxation* Israel collects for the Palestinian Authority import taxes and value added tax on goods intended for consumption in the West Bank and the Gaza Strip. Israel's sole control of these moneys – which amount to about one-half of the Palestinian Authority's

budget – enables it to cease, or delay, the transfer of the moneys to pressure the PA or punish it. The Protocol also enables Israel to determine unilaterally the tax rate on imported goods, giving preference to the economic interests of the Israeli economy.

- *Control of imports and exports* The Palestinian Authority carries out its foreign trade through Israeli seaports or land-crossing points in the West Bank and Gaza Strip under Israel's sole control.¹³ Thus, Israel can unilaterally stop Palestinian trade. Furthermore, in some cases, importation of certain goods is subject to quantity restrictions, and in other cases requires a permit from Israel (such as for kerosene and gas, telecommunications equipment, farm produce, and automotive parts).
- *Control of entry of Palestinian workers into Israel* Despite the Palestinian economy's reliance on the entry of Palestinian workers into Israel, the Protocol left Israel with the power to regulate their entry as it deemed fit, and to stop it completely.

Over the years, and particularly since the outbreak of the second intifada, in late September 2000, and the increase in violence against the occupation, Israel has exercised its control in all these areas, bringing the Palestinian economy to the brink of disaster.

11. Agreement on the Gaza Strip and the Jericho Area, signed in Cairo on 4 May 1994, Annex IV, Protocol on Economic Relations.

12. See, for example, World Bank, *The Palestinian Economy and the Prospects for its Recovery – Economic Monitoring Report to the Ad Hoc Liaison Committee* (Report Number 1, December 2005), 16-21; Hasan Abu Nimah, "A Palestinian Authority Steeped in Paralysis and Corruption," *The Electronic Intifada* (18 February 2004), available at www.electronicintifada.net/cgi-bin/artman/exec/view.cgi/10/2432.

13. Palestinians have the limited possibility of exporting goods via Rafah Crossing, but Israel retained the power to compel the Palestinian Authority to close the crossing. After the Israeli soldier Gilad Shalit was abducted, on 25 June 2006, Israel exercised this power, and since then, the crossing has remained closed most of the time.

Israel's restrictions on goods crossing to and from the West Bank and the Gaza Strip have had devastating economic consequences, particularly in the Gaza Strip. Although Israeli armed forces left Gaza in 2005 as part of the "disengagement plan," Israel has continued to hold complete control over the movement of goods to and from Gaza. Since the beginning of the second intifada, it has required that all exports from Gaza, and almost all imports to the Strip, cross through Karni Crossing. Crossing at Karni is subject to strict procedures and inspections, which take much time. Also, when Israel receives warning of attempts to smuggle arms or attackers through the crossing, or for other security reasons, Israel closes the crossing partially or completely. In these circumstances, Palestinian manufacturers and merchants have virtually no way of conducting foreign trade. They are unable to plan and commit to a time schedule, pay large sums for storing goods whose crossing is delayed, and suffer extensive losses on goods that spoil before reaching their destination.¹⁴

Another harsh blow to the Palestinian economy resulted from the Israeli government's decision, following the establishment of the Hamas government, in March 2006, to stop transferring to the Palestinian Authority the tax moneys it

collected for it.¹⁵ Lacking access to this major source of revenue, the PA fell into a severe fiscal crisis and now has difficulty paying the salaries of its 150,000 employees, upon whom about one-quarter of the population in the West Bank and the Gaza Strip is dependent.

The shortage resulting from these actions has only increased Palestinian reliance on income received from work in Israel, given that the Palestinian economy lacks the resources necessary to produce adequate sources of income for all the residents of the West Bank and the Gaza Strip. Moreover, as we shall see below, the continued dependence of many Palestinians on Israel for their livelihood has not deterred Israel from imposing a tight closure on the West Bank and the Gaza Strip.

Closure

Closure is one of a series of restrictions which Israel has placed on Palestinians' freedom of movement. These restrictions, which Israel justifies on security grounds, impede all aspects of daily life in the West Bank and the Gaza Strip.¹⁶ Dozens of checkpoints and other means cut up the West Bank into areas. To move from one area to another, Palestinians must first obtain a special permit.¹⁷ Palestinians wanting to go abroad are also subject to a permit regime, and the closure

14. For further details, see B'Tselem, *One Big Prison*, Chapter 4, Section 3.

15. Government Decision 4705, of 19 February 2006, on "The Palestinian System following the Elections in the Palestinian Authority – Israeli Policy in Light of the Swearing-in of the Palestinian Legislative Council." As stated above, Israel is not the only state that ceased handing over moneys to the Palestinian Authority under Hamas leadership.

16. For criticism on these restrictions, see, for example, B'Tselem, *Civilians under Siege: Restrictions on Freedom of Movement as Collective Punishment* (January 2001). For updated information, see www.btselem.org/English/Freedom_of_Movement.

17. *Ibid.*; B'Tselem, *Forbidden Roads: Israel's Discriminatory Road Regime in the West Bank* (August 2004). See also Amira Hass, "IDF Carries out 'Segregation' in the Occupied Territories: Prevents 800,000 Residents of the Northern West Bank from Traveling to the South," *Ha'aretz*, 13 January 2006; Amira Hass, "Israel Severs [Jordan] Valley from the West Bank," *Ha'aretz*, 14 February 2006.

prohibits Palestinians from entering Israel unless they have a third kind of permit – the permit allowing them to enter Israel.

The limited number of entry permits that the Israeli authorities issue to Palestinians fails to meet the demand. The permits issued are allocated, for the most part, to workers or merchants wanting to enter Israel to gain a livelihood. Permits are valid for a limited period, generally three months. Palestinians wanting to continue to enter Israel after their permit has expired must file a request for a new permit. A limited number of permits, subject to harsh restrictions, is given for humanitarian reasons or in other special cases, such as to obtain medical treatment or comply with a summons to appear in court.¹⁸ In extremely rare cases, Palestinians are allowed to enter Israel to enable them to travel between the West Bank and the Gaza Strip.

In addition to the general closure, which is continuously in effect, there are times – primarily after attacks by Palestinians that caused multiple Israeli casualties, when the Israeli authorities learn of planned Palestinian attacks, or during Israeli holidays – that Israel imposes a “comprehensive closure” on the West Bank. During a comprehensive closure, movement from the West Bank and the Gaza Strip to Israel is completely blocked, all entry permits are automatically cancelled, and requests for permits are not processed.

Palestinians who violate the closure and enter Israel without a permit breach the military commander’s order forbidding exit from the area¹⁹ and violate the Entry into Israel Law.²⁰

Change in the policy of entry into Israel – from free movement to a general and permanent closure

The current closure policy is the exact opposite of the policy implemented during the first decades of Israeli control of the Occupied Territories. Immediately after Israel seized control in 1967, the commanders issued orders classifying the West Bank and the Gaza Strip as closed military areas.²¹ The dispute over whether to permit residents of the Occupied Territories to enter Israel was resolved at a meeting of the Ministerial Committee for Economic Matters, held on 14 July 1968, when it was decided to allow Palestinians from the territories to come and work in Israel.²² In 1972, the military commanders issued orders that permitted residents of the Occupied Territories to enter Israel freely and to stay in the country from 5:00 A.M. to 1:00 A.M.²³ For many years, no further restrictions were placed on the freedom of movement from the Occupied Territories to Israel. During this period, a substantial proportion of the Palestinian workforce was employed in Israel (see Graph 2), and unemployment rates in the Occupied Territories were low, falling to less than five percent.

18. Generally, these permits allow the holder to stay in Israel in certain defined areas for a fixed period of time.

19. As explained below, upon establishment of the military government in the Occupied Territories, both the West Bank and the Gaza Strip were defined as closed military areas, exit from which required a permit. Since Israeli military forces left Gaza in 2005, only the prohibition on leaving the West Bank remains relevant.

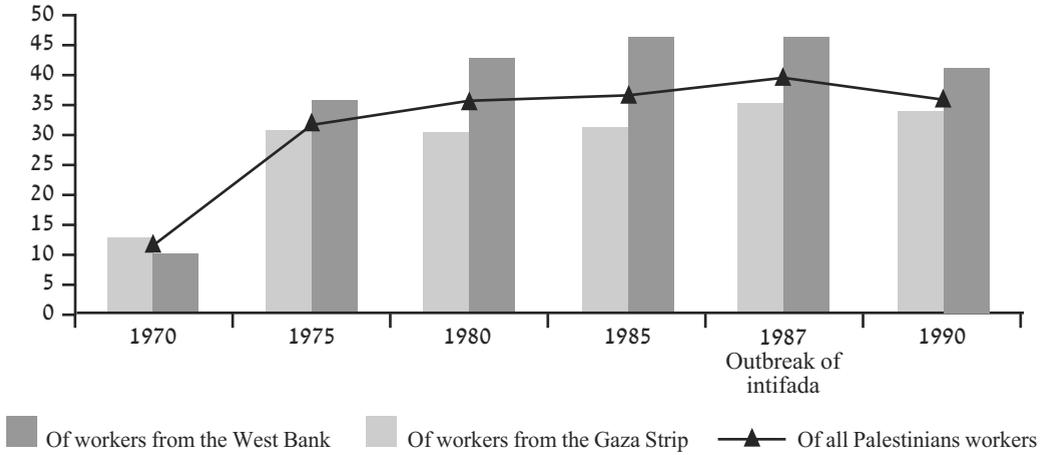
20. Entry into Israel Law, 5712 – 1952, Section 12.

21. Order Closing the Area (Gaza Strip and Northern Sinai) (No. 1), 5727 – 1967; Order Regarding Closed Territories (West Bank) (No. 34), 5727 – 1967.

22. Gazit, *The Stick and the Carrot*, 256.

23. General Exit Permit (No. 5) (Judea and Samaria), 5732 – 1972, and the comparable order issued for the Gaza Strip.

Graph 2: Palestinian workers employed in Israel, 1970-1990 (by percentage)*



* Source: Israel's Central Bureau of Statistics

A change began following the outbreak of the first intifada. After a number of stabbings in which Israeli civilians were killed by Palestinians in Israel, the Israel authorities took measures to restrict and supervise the entry of Palestinians into Israel and instituted non-transparent procedures based on unclear considerations. For example, in 1988, special green-colored identity cards were issued to West Bank residents with a "security history." Holders of these cards were forbidden entry into Israel. In June 1989, Israel began to require that every Palestinian worker entering Israel from the Gaza Strip, and later also workers from the West Bank, have a "magnetic card" to obtain a work permit. Furthermore, at the end of the 1980s, the Civil Administration's employment offices ceased issuing work permits for Palestinians automatically, as it had done previously, and issued permits only to those who met undefined security criteria.

The permanent closure began to take shape in the early 1990s. The first signs appeared in January 1991, during the Gulf War, when Israel cancelled the general exit permit of 1972. Since then, Palestinians wanting to enter Israel must have a personal permit to exit occupied territory. In March 1993, after Palestinians killed nine Israeli civilians and six Israeli security-force personnel, Israel imposed a general closure on the Occupied Territories "until further notice." If past procedure had been to allow entry into Israel except in extraordinary cases, now the rule was that Palestinians were not allowed to leave the occupied territory except in extraordinary cases in which the applicant met stringent conditions and received an individual permit.

The Oslo agreements raised expectations that the closure policy would change. These expectations were reflected in the opening words of Article VII of the Paris Protocol:

“Both sides will attempt to maintain the normality of movement of labor between them.” However, the expectation that restrictions on the movement of workers would be cancelled was not realized. No declaration has ever been made ending the general closure that was imposed in 1993. In fact, Israel intensified its closure policy in the intervening years.

In the first years following the signing of the Paris Protocol (1994-1997), Israel imposed many comprehensive closures for long periods of time in response to suicide attacks that Palestinians committed inside Israel. A certain loosening of the closure took place between October 1997 and the beginning of the second intifada, on 29 September 2000, when Israel reduced the restrictions on freedom of movement. The general closure remained in effect, but Israel did not impose prolonged comprehensive closures. Following the outbreak of the second intifada, this more lenient approach was abandoned and the closure has since been enforced with unprecedented harshness.

The current situation and future plans

In response to the severe violence that accompanied the beginning of the second intifada, on 8 October 2000, Israel imposed a comprehensive closure on the Occupied

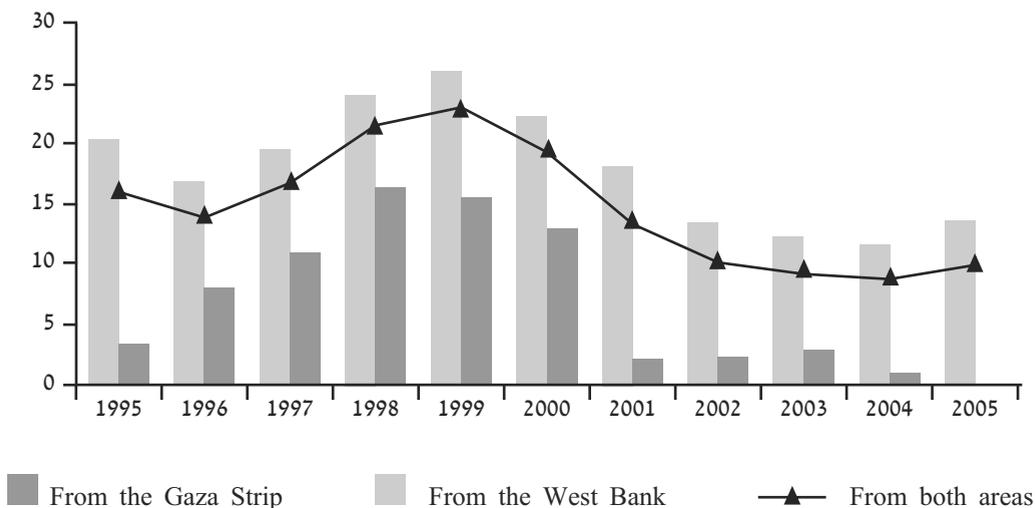
Territories and for several months prohibited Palestinians from moving between the Occupied Territories and Israel and between the West Bank and the Gaza Strip. The comprehensive closure was finally lifted, but the general closure has remained in effect since then, during which time Israel has periodically imposed a comprehensive closure.²⁴

In the past, too, Israel had issued a limited number of permits, but the general closure was not rigidly enforced (unlike the comprehensive closure, which has always been strictly enforced) and most Palestinian workers in Israel entered and stayed inside Israel without a permit. The situation has changed drastically. The perimeter fence around the Gaza Strip is guarded by military forces, and as we shall see in Chapter 2, these forces open fire whenever they identify someone trying to cross through the fence into Israel. As a result, very few Palestinians now enter Israel from Gaza without a permit. In the West Bank, the construction of the separation barrier is on its way to completion. The barrier has greatly reduced the possibility of avoiding the closure of the West Bank, and soldiers and Border Police stationed in the “seam zone” have further minimized violations of the closure.²⁵ Along with the increase in enforcement, Israel issued fewer permits.

24. In 2005, Israel imposed a comprehensive closure for 132 days, and for seventy-eight days during the period January-July 2006.

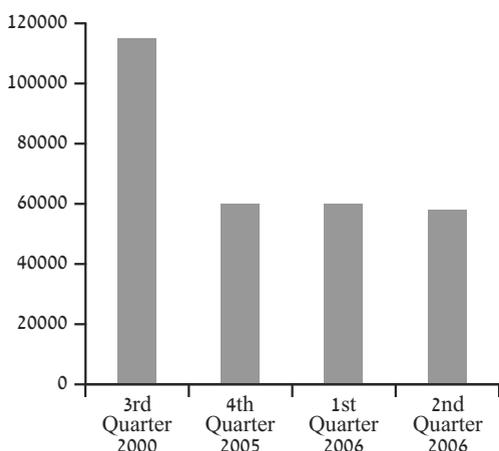
25. “Seam zone” is the name given by Israeli officials to the area between the separation barrier and the Green Line, in which security forces are especially active in seeking to thwart threats to the security of Israeli residents that arise from inside the West Bank.

Graph 3: Palestinian workers employed in Israel, 1995-2005 (by percentage)*



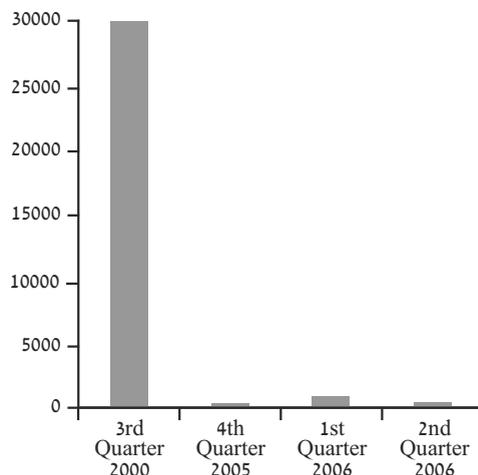
* Source: Palestinian Authority's Central Bureau of Statistics

Graph 4: Number of workers from the West Bank employed in Israel, selected quarters*



* Source: Palestinian Authority's Central Bureau of Statistics

Graph 5: Number of workers from the Gaza Strip employed in Israel, selected quarters*



* Source: Palestinian Authority's Central Bureau of Statistics

In light of the policy of disengagement and separation currently being advanced by the Israeli authorities – a policy whose physical manifestation is evidenced in the separation barrier – a tight closure in the future is also anticipated. Indeed, as part of the

disengagement plan that was implemented in 2005, the Israeli government has decided to gradually decrease the number of entry permits issued to Palestinians, and that, beginning in 2008, no Palestinians will be allowed to enter Israel.²⁶

Procedure for obtaining a permit to enter Israel

To obtain the desired permit, Palestinians must meet rigid criteria that are part of a complicated bureaucratic procedure. No reasons are given for the decision, which is based on unknown considerations.

The procedure begins with the submission of application forms at one of the Israeli District Coordination Offices. Confirmation by the GSS that there is no “security prevention” listed against the person is required, but not sufficient on its own.

Lack of “security prevention”

A Palestinian wanting a permit to enter Israel must first obtain a “magnetic card,” which is issued by the DCO following GSS approval. The card contains coded information on the security background of the holder of the card. To obtain the card, the Palestinian must go to the DCO, fill out forms, and pay a fee. Frequently, applicants are required to meet with a GSS agent to remove the “security prevention.” The GSS agents use these meetings to pressure Palestinians to collaborate.²⁷ The decision on whether to grant a magnetic card is not transparent, and is based on security reasons that the authorities fail to delineate.

A Palestinian without a magnetic card has almost no chance to obtain a permit to enter Israel, but even those who have such a card must overcome additional hurdles before they can hope to receive a permit.

A magnetic-card holder who applies for a permit must undergo another “security check,” in which DCO officials compare the applicant's details with the GSS's updated data. Every applicant who is found to have a “security prevention” that was added since being granted the magnetic card is rejected. Here, too, some of the applicants are required to meet with GSS agents and again are pressured to collaborate.

26. See Article 10 of Annex 1 to the Amended Disengagement Plan, of 6 June 2004. See, also, Ministry of Finance, Economic and Research Department, *General Information* (June 2005), Chapter 2, p. 19, available at www.mof.gov.il/research; Gil Amiram, “One Big Sweatshop,” *Ha'aretz*, 5 July 2005.

27. See, for example, B'Tselem, *One Big Prison*; B'Tselem, *Forbidden Roads*, Chapter Three; B'Tselem, *Builders of Zion*, Chapter Four. As described in greater detail in Chapter 2 (Illegal Coercion to Obtain Information), pressure of this kind violates international law.

The requirement of no “security prevention” is a significant obstacle in obtaining a permit. This impediment is placed, for example, on every one of the thousands of Palestinians who were once imprisoned or detained, including every Palestinian who was administratively detained, even if ultimately released from detention without being charged.

Other cumulative conditions

On this point, distinction must be made between applicants wanting to enter Israel to work (who comprise the majority of applicants), and those wanting to enter for other reasons:

- a. A person wanting to enter Israel to work must meet two additional principal conditions: one, he must be married and within a certain age group (usually 30-40), and two, the Israeli employer must request the DCO to issue the permit.
- b. A person wanting to enter Israel for another reason must provide documents verifying the reason for the request set forth on the request form (for example, summons to appear in court, or a medical document), and in some instances, meet other conditions as well.²⁸

Comprehensive closures and quotas on workers

Many Palestinians wanting to enter Israel are unable to meet the aforesaid conditions, but even those who do might not receive a permit. One reason is that whenever Israel imposes a comprehensive closure, crossing from the West Bank and the Gaza Strip to Israel is completely blocked, entry permits are automatically cancelled, and Israel does not process requests for permits. Second, Israel sets a quota, which changes from time to time, on the number of Palestinian workers permitted to enter Israel. When the quota is met, no more permits are granted, even to persons who meet the requisite conditions.

A person whose request for a permit is denied can petition the High Court of Justice. However, the High Court has traditionally summarily rejected such petitions on grounds that residents of the Occupied Territories do not have a “vested right” to work in Israel.²⁹ Consequently, the petitioner has almost no chance to succeed in court.

28. See, for example, the conditions for obtaining a permit to visit a relative imprisoned in Israel, in B’Tselem, *Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons* (September 2006), Chapter 2.

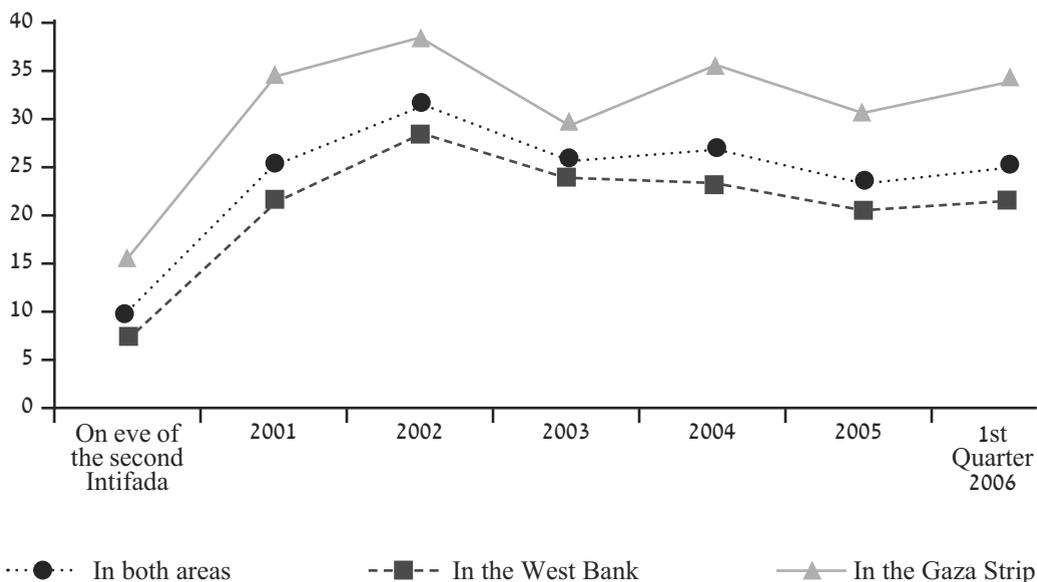
29. See, for example, H CJ 6662/00, *Hadad v. Minister of Defense, Tak-el* 2001 (2) 3; H CJ 7475/05, *K’abneh v. Commander of IDF Forces in the West Bank, Tak-el* 2005 (3) 2662. For criticism on this case law, see the Urgent Petition for Order Nisi, filed by Worker’s Hotline on behalf of a Palestinian on 12 November 2006, in H CJ 9359/06, *Lafi v. Commander of IDF Forces in the West Bank*.

Poverty and unemployment

The tight closure on the West Bank and the Gaza Strip in recent years has taken the bread off the tables of thousands of Palestinian workers and merchants who are unable to reach their sources of livelihood in Israel.

Just prior to the outbreak of the second intifada, in September 2000, 110,000 Palestinians worked in Israel, some one-fourth of the Palestinian workforce, and the unemployment rate stood at ten percent. When the intifada began, the unemployment rate in the Occupied Territories jumped and has remained high ever since.³⁰

Graph 6: Unemployment rate in the West Bank and Gaza Strip, 2000-2006



In the third quarter of 2006, the rate of unemployment (persons seeking, but not finding, work) in the West Bank and the Gaza Strip stood at 24.2 percent (19.1 percent in

the West Bank and 36.3 percent in Gaza).³¹ If we also take into account the persons who have given up looking for work, the unemployment rate in that quarter was 30.3

30. According to figures of the Palestinian Central Bureau of Statistics, in the third quarter of 2000, unemployment was ten percent, and in the fourth quarter it stood at 28.3 percent. Since then, the average rate of unemployment has been 26.5 percent.

31. See Palestinian Central Bureau of Statistics, *Labor Force Survey, 2006/Q34* (hereafter – PCBC 2006/Q3). At the conference of the donor states for the West Bank and Gaza that was held in London in December 2005, the Israeli delegation, the World Bank, and the International Monetary Fund gave comparable figures. See www.london.mfa.gov.il/mfm/Data/89284.ppt; World Bank, *Economic Monitoring Report*; International Monetary Fund, *Macroeconomic Developments and Outlook in the West Bank and Gaza* (Report to Ad Hoc Liaison Committee, 14 December 2005).

percent.³² Unemployment is particularly high among the young – 38.7 percent of persons in the 20-24 age group were unemployed in the first quarter of 2006 (32.3 percent in the West Bank and 53.7 percent in Gaza), and in the 25-29 age group, the figure was 25.9 percent (20.5 percent in the West Bank, 37.1 percent in Gaza).³³ Given the low wages paid in the West Bank and Gaza, a person who has a job is not ensured a proper livelihood.³⁴ Also, the workers support many dependants.³⁵ More than half earn monthly wages that leave them and their dependants under the poverty line.³⁶

The low wages and the rising unemployment have caused widespread poverty in the

West Bank and the Gaza Strip. The World Bank estimates that, in 2005, 45 percent of Palestinians (1.7 million people) were poor and that 15 percent of the population (600,000 people) lived in dire poverty, unable to meet their subsistence needs.³⁷ Estimates based on other methodologies led to a variety of findings.³⁸ However, all point to a grave and widespread problem.³⁹ The magnitude of the problem is clearly seen when we compare the statistics for the West Bank and Gaza with those for Israel. In Israel, some 20 percent of the population lives in poverty.⁴⁰ However, the poverty line in Israel is much higher than in the Occupied Territories.⁴¹ If the poverty line in Israel were applied to Palestinians in

32. PCBS LFS 2006/Q3. According to the standard definition of unemployment set by the International Labor Organization, the unemployment rate is based on the group of people looking for work. The figure presented here is based on a relaxed definition of unemployment, which relates to every person fifteen years of age and older, including persons who have given up on finding work.

33. PCBS LFS 2006/Q3. The findings of a survey conducted by the Graduate Institute of Development Studies (IUED), Palestinian Perceptions Report IX (July 2005) (hereafter – IUED Poll No. 9) indicate an even higher unemployment rate. The survey, which was financed by the UN, indicates that 55 percent of persons aged 18-24 were unemployed.

34. According to PCBS LFS 2006/Q3, the average daily wages per worker are NIS 78.2 in the West Bank and NIS 68.8 in Gaza.

35. In the third quarter of 2006, there were 5.9 unemployed persons for every employed person – a dependency ratio of 5.9. The ratio was 4.9 in the West Bank and 8.3 in Gaza. Ibid.

36. In the third quarter of 2006, 55.7 percent of employees in the West Bank and the Gaza Strip made less than needed to live above the poverty line in those areas. Ibid. The poverty line is based on the cost of subsistence needs (food, housing, and clothing) and a few additional basic needs (such as health care, education, and transportation), according to the number of persons in the household. According to the Palestinian Central Bureau of Statistics, in 2005, the poverty line for a family of six was NIS 2,143 (\$477) a month. See, PCBS, *Poverty in the Palestinian Territory, 2005 – Main Findings Report* (hereafter – PCBS 2005 Poverty Report).

37. World Bank, *Economic Monitoring Report*. Dire poverty, also referred to as subsistence poverty, chronic poverty, or absolute poverty, relates to people who are not even able to meet the costs of their essential needs (food, housing, clothing).

38. For a discussion on the different methodologies and the effects of the differences among them, see World Bank, *Four Years – Intifada, Closures and Palestinian Economic Crisis, An Assessment* (October 2004), 31-32 ;UNRWA, *Prolonged Crisis in the Occupied Palestinian Territory: Recent Socio-economic Impacts* (November 2006), 30.

39. Publications of the UN and IUED, for example, indicate a poverty rate of 64 percent and of dire poverty of 32 percent. See OCHA, *Occupied Palestinian Territories 2006 Consolidated Appeals Process* (2005), 8; IUED Poll No. 9. In other estimates, the poverty rate fluctuates between 25 percent and 70 percent, depending on the kinds of indices used. See OCHA, *Increase in the Poverty Rate in the Occupied Territories in 2005, Humanitarian Update*, September 2005, available at www.humanitarianinfo.org/opt.

40. National Insurance Institute, *Report on the Magnitude of Poverty and Gaps in Income 2004/2005*.

41. In Israel, the poverty line is based on a relative scale, and is defined as the level of income equal to 50 percent of the available median income. In 2005, the poverty line for a family of six was set at NIS 6,133 a month, more than three times higher than in the Occupied Territories at the time.

the West Bank and Gaza, the vast majority of the Palestinian population (some 90 percent) would be defined as poor.⁴²

To rescue the Palestinian economy from this dismal situation, considerable investment is needed to develop and create new jobs.⁴³ This investment is not on the horizon, and following Israel's decision not to hand over the tax moneys it collected for the PA, and given that other countries which oppose the Hamas government have also decided to cease transferring moneys to the PA, the few funding sources available to Palestinians are dwindling. The lack of funding sources has caused a further sharp decline in the Palestinian economy, which is liable to lead to an unprecedented depression. In September 2006, the World Bank estimated that real income per capita in the West Bank and the Gaza Strip would fall by thirty percent in the coming months, that unemployment would rise to forty percent, and that sixty-seven percent of Palestinians would be living in poverty.⁴⁴

In this situation, Palestinians will likely continue for some time to be dependent on employment in Israel. In the meantime, tens

of thousands of Palestinians desperate for a source of livelihood with which to support themselves and their dependents take the risk and enter Israel without a permit. According to the World Bank, in 2005, an average of 44,800 Palestinians were staying in Israel every day. Of this number, 18,800 had work permits, another 7,400 held an Israeli identity card or foreign passport, and the remaining 18,600 were in Israel without a permit.⁴⁵ The figures published by the security forces on the number of Palestinians they apprehended in Israel without a permit also indicate the broad scale of the phenomenon. In 2005, the Border Police alone caught 148,417 Palestinians without a permit.⁴⁶ From 1 January-14 June 2006, they caught 51,000.⁴⁷ Since then, the Border Police have caught thousands of persons without a permit week after week.⁴⁸ In addition to the thousands apprehended by the Border Police, many Palestinians trying to enter Israel without a permit are caught by soldiers operating in the "seam zone," and Palestinians who managed to enter and stay in Israel without a permit are caught by one of the various police units.

The distress that motivates so many Palestinians to violate the military orders

42. According to the World Bank, 88 percent of Palestinians live under the Israeli poverty line. World Bank, *Stagnation or Revival Israeli Disengagement and Palestinian Economic Prospects – Overview* (December 2004), n. 22.

43. World Bank, *Four Years' Assessment*, 16.

44. World Bank, *West Bank and Gaza Update*, September 2006, 11.

45. *Ibid.*, 4.

46. As reported in "Summary of 2005 Work Year – Border Police," published on the Police Department's Website. See www.police.gov.il/DistrictMain.asp?path=/web_magav/_Sikum_2005.xml. It should be noted that the figures relate to the number of times a person was caught, and some persons were caught more than once.

47. On 14 June 2006, the Minister of Internal Security, Avi Dichter, gave this figure in comments to the Knesset's plenum. Gidon Alon, "Dichter: From Beginning of Year 51,000 Persons Staying Illegally in Israel have been Caught," *Ha'aretz*, 15 June 2006.

48. The Border Police publishes weekly figures on the number of Palestinians caught without a permit in Israel for that week. See www.police.gov.il/districtmain.asp?path=/web_magav/Peilut_Shvuit.xml. By way of illustration, in the six-week period 28 May-8 July 2006, the Border Police caught 21,562 Palestinians, an average of 3,594 a week.

prohibiting them from leaving the West Bank and Gaza and to breach the Entry into Israel Law is apparent in testimonies given to B'Tselem in preparing this report. Some illustrative testimonies follow.

From the testimony of Samir Bazar, 38, married with seven children, resident of Beitillu, Ramallah District:

I have no choice but to work in Israel. There are almost no jobs in the West Bank, and if there were, the wages don't exceed one hundred shekels a day, before deducting for travel and food. It is hard for us to make a living and live in dignity, so I take the risk and work in Israel as much as possible, because working there enables me at least to keep my head a bit above water.⁴⁹

From the testimony of Ahmad Shatareh, 31, married with three children, resident of a-Duha, Bethlehem District:

We had a lot of bills to pay, and I already received warning that the electricity would be cut off. This situation worries me, because I feel that I am unable to provide for my family's needs. When Israel imposes a closure, I can't go to work in Israel because the army increases its presence in the field to prevent workers from entering Israel. When I am not working, I live off of the small amount of money that I saved, until nothing is left. I feel rage, sadness, and frustration when I can't give my wife money to buy necessities... Sometimes, having no option, I ask my relatives for money, but most of them are laborers and their financial situation is similar to mine...⁵⁰

From the testimony of Kamal Shawawra, 37, married with three children, resident of a-Shawawra, Bethlehem District:

For three years, I have been trying to obtain a permit, but without success. The reason is that the Israelis always mark me as "refused for security reasons." I don't know why. I have never been arrested and have not been active politically... I asked an attorney to file suit to find out the security reasons for not giving me a permit, and to try and overturn the refusal so that I can obtain a magnetic card and permit. The attorney sued and I received an answer that I was refused for security reasons that can't be revealed... I don't know what to do and how to support my family.⁵¹

From the testimony of Muhammad Ghaneimat, 19, single, resident of Surif, Hebron District:

The Israelis do not give work permits, certainly not to men my age, and I decided to sneak into Israel to work, even if it ends up costing me my life. I have no option. There is no work in the West Bank. I want to study [and need to make money to pay the tuition].⁵²

From the testimony of Khaled Si'areh 33, married with five children, resident of Kharas, Hebron District:

When the intifada and the closure policy began, most workers from my village stopped working, and our economic situation deteriorated. The time came that I could no longer stand it, so, despite the closure and the security situation, I decided to take a risk and sneak into Israel to find work.⁵³

49. The testimony was given to Iyad Hadad on 2 January 2006.

50. The testimony was given to Suha Zeid on 14 December 2005.

51. The testimony was given to Suha Zeid on 26 December 2005.

52. The testimony was given to Karim Jubran on 13 December 2005.

53. The testimony was given to Musa Abu Hashhash on 21 December 2005.

Crossing the line of reasonableness and fairness

The transition from free entry into Israel to strict closure not only impedes Palestinians' livelihood, it also had a dire effect on other aspects of their lives. By prohibiting them from staying in Israel, the closure has separated many Palestinians from their relatives and friends and has distanced them from their homes and other places of importance to them.

Separation of families

Since its establishment, the State of Israel has acted in various ways to ensure that the “demographic balance” in Israel favors the Jews. Therefore, the authorities have flinched from granting Palestinians residency status. Once, Palestinians who had spouses in Israel could have the spouse file a request for family unification, and those Palestinians who met the (rigid) conditions were given a permit to enter Israel as well as permanent-resident status. This policy has changed in recent years. Now, this possibility is almost non-existent: the Nationality and Entry into Israel (Temporary Provision) Law, 5763 – 2003, which provides for minimal exceptions, does not permit the granting of Israeli nationality, or even a permit to stay in Israel for purposes of family unification with their Israeli spouse, to residents of the Occupied Territories.⁵⁴ Palestinians who enter Israel despite the prohibition in order to live with their spouse and children violate the Entry into Israel Law and expose themselves to legal sanctions and deportation.⁵⁵

Persons staying illegally in their homes

In June 1967, Israel annexed some 70,000 dunams [~17,500 acres, or 70 square kilometers] of land it occupied in the area in and around East Jerusalem and incorporated it into Israeli Jerusalem. Whereas the rest of the Palestinians in the West Bank were given West Bank identity cards, most residents of the annexed areas were given Israeli identity cards and listed as residents of Jerusalem. However, a few thousand Palestinians who lived in the annexed areas were not recognized as residents of Jerusalem (in most cases because they were not at home when the census was taken, or because the census takers mistakenly thought they lived outside the annexed territory).

54. On 14 May 2006, the High Court of Justice, in a 6-5 vote, rejected a petition to invalidate this law (HCJ 7052/03, *Adalah v. Minister of the Interior* (not yet reported)). For criticism of the law and examples illustrating its devastating effects, see Guy Davidov et al., “State or Family? The Nationality and Entry into Israel (Temporary Provision) Law, 5763 – 2003,” *Ha'arat Din A(2)* (5764), 62; B'Tselem and HaMoked: Center for the Defence of the Individual, *Forbidden Families: Family Unification and Child Registration in East Jerusalem* (January 2004).

55. On 19 July 2006, the Knesset passed on first reading the Proposed Entry into Israel (Amendment No. 19) Law, 5766 – 2006, referred to as the “Persons Staying in Israel Illegally Law.” The proposed law states that a person who stays in Israel illegally for more than thirty days is not allowed to receive Israeli nationality or any other legal status, unless he leaves the country for a cooling-off period of from one to five years. If the proposed law is enacted, it would create another obstacle to family unification of residents of Israel with spouses from the West Bank and the Gaza Strip.

During the many years in which free movement was allowed between the Occupied Territories and Israel, the lack of an Israeli identity card had almost no effect on these persons. However, since the closure policy has been in effect, they require a permit (which they have almost no chance of obtaining) to stay in Israel, including in their own house in the annexed territory. Lacking a permit, they are classified as “persons staying illegally.” While these persons have not moved – in many instances, they and their families have been living in the same place for generations – the border has been moved, and now the Israeli authorities relate to them as trespassers. As a result, the Border Police from time to time – usually in the dead of night – go into Palestinian neighborhoods, drag people from their beds, detain them for hours, interrogate them, arrest them, and let them return home only after they sign a document confirming that they live unlawfully in their homes and know that they are not allowed to sleep there without a permit to stay overnight in Jerusalem.⁵⁶

Such rigid enforcement of the law leads to situations which cross the line into unreasonableness and enter the realm of the absurd. Thus, for example, the authorities held that Ayub ‘Alian was illegally living in his home in the West Bank because the access road to it was on land annexed by Israel.⁵⁷

56. B’Tselem has received repeated testimonies relating to such cases, some of which have been reported in the media. See, for example, Akiva Eldar, “Persons Staying Illegally in their Homes,” *Ha’aretz*, 14 September 2004; Gidon Levy, “Twilight Zone,” *Ha’aretz*, 1 October 2004; Yehonatan Liss, “The Quiet Transfer of Wallaja,” *Ha’aretz*, 13 July 2004.

57. See Gidon Levy, *ibid.* B’Tselem was given testimonies on similar cases in which the border passes near people’s homes or right through them (according to this rigid logic of enforcement, these persons would be deemed to be violating the law every time they went from the living room to the bedroom).

Chapter 2

Official Procedures, Wrongful Acts, and Turning a Blind Eye: Treatment of Palestinians in Israel without a Permit

Preface

A number of entities are charged with enforcing the closure policy. Around the Gaza perimeter fence and inside the West Bank, army units act to prevent Palestinians from leaving the West Bank and the Gaza Strip and entering Israel illegally. Border Police units stationed in the seam zone assist the army in this mission.⁵⁸

Despite the activity of army troops and Border Police, and the increasingly fewer ways to enter Israel as a result of the separation barrier, many Palestinians manage to enter the country without a permit. Various units of the regular police force have the task of pursuing and apprehending them, and police units, especially the Border Police, indeed capture thousands of Palestinians who enter without a permit.

Statutory provisions and official procedures establish rules according to which security forces are meant to carry out this task. Unfortunately, the manner in which security forces operate is a far cry from what these rules mandate.

By law, the security forces are not permitted to harm a person except where expressly allowed by statute, and even then they must use the minimal amount of force necessary to achieve the objective for which the power

was given. This principle exists in both international human rights law and Israeli constitutional law.

The Universal Declaration of Human Rights, of 1948, states, for example, that everyone has the right to life, liberty and security of person, and the right not to be subjected to cruel, inhuman, or degrading treatment (Articles 3 and 5, respectively). The Universal Declaration further states, in Article 29(2), that:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The Universal Declaration is not part of binding international law, but it reflects minimal legislative standards for democratic states, and has inspired binding rules of law that most nations have adopted. Indeed, the International Covenant on Civil and Political Rights, of 1966, which Israel signed and ratified, also recognizes the abovementioned rights and prohibits states from violating them except for reasons, and in accordance with procedures, prescribed by law.⁵⁹

58. The Border Police is part of the Israel Police Force, but in some geographic areas and fields of activity, Border Police units operate under army supervision. This is true of Border Police units in Jerusalem District and in Samaria and Judea District (i.e., the West Bank), which are engaged also in preventing Palestinians without a permit from entering Israel.

59. See Articles 6, 7, and 9 of the Covenant.

In this spirit, the Basic Law: Human Dignity and Liberty, a fundamental pillar of Israeli constitutional law, forbids violation of the life, body, dignity, liberty, or property of any person, except “by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required” (Section 8).

Thus, security forces may harm Palestinians staying in Israel without a permit only if and when the law and the procedures instituted pursuant thereto so empower them, and only to the degree necessary to carry out their task.

In practice, police officers and soldiers, in flagrant violation of these principles, regularly exceed their authority and trample on the rights of Palestinians staying in (or attempting to enter) Israel without a permit.

As shown below, these forbidden acts – at times executed pursuant to the express orders of the commanding officers – occur, in part, as a result of the failure of the governing authorities, which publicly censure the misdeeds yet simultaneously transmit a contradictory message by turning a blind eye and remaining silent.

Obstacles, dismal conditions, and meager compensation

In addition to the distress that drives them to enter Israel in the first place, and in addition to the frequent violation of their rights by police officers and soldiers, Palestinians in Israel without a permit face other ongoing hardships.

The many checkpoints and obstacles Palestinians must pass on their way to work in Israel create problems even for those with a permit. For those without a permit, the difficulties are far greater. To reduce the chance of being caught by forces lying in ambush along the way, many Palestinians cross the border into Israel under the cover of darkness. Some make their way by car, but this option is not always available. It also entails a significant financial outlay to cover the risk of persons transporting Palestinians who stay in Israel without a permit, which is now a criminal offense punishable by a prison sentence.⁶⁰ In other cases, Palestinian workers without permits walk to their workplaces in Israel for which purpose they often need to rise well before dawn and march a long distance.

In the past, Palestinian workers without permits would return to their homes in the West Bank after work each day. Now, with the increased difficulties and risks entailed in moving between the West Bank and Israel, most of them are unable, or do not dare, to return home daily. So they remain in Israel for one week, two weeks, or longer. Given that housing them

60. Section 12A(c)(1) of the Entry into Israel Law, 5712 – 1952, provides for a two-year prison sentence, or a large fine (more than NIS 67,000), for persons convicted of this offense. Following a Supreme Court ruling, judges have dealt severely with persons convicted on this charge, imposing prison sentences. In a decision given on 12 February 2006, the Supreme Court relaxed its call for stiff sentences and held that, as regards the proper punishment for this offense, “it assumes imposition of a prison sentence,” but the court added and clarified that, “this policy depends on the special circumstances of the particular case, and the punishment given must suit the special circumstances of the case and the specific offender.” Perm. Crim. App. 3674/04, *Muhammad Abu Sallem v. State of Israel* (not yet reported).

in Israel is a criminal offense, these workers have difficulty finding persons in Israel willing to give them accommodations in their home or in structures they own.⁶¹ Consequently, after completing work, they hide and sleep in improvised locations in abandoned structures, construction sites, or outdoors. The living conditions in these locations are dreadfully poor, lacking electricity and water, and providing limited shelter from harsh weather. Also, workers without permits are constantly fearful of police raids.

The workers without permits have an extremely weak bargaining position vis-à-vis their Israeli employers. While Palestinians are in desperate need of work, employers are deterred by the risk entailed in hiring them.⁶² A Palestinian worker without a permit who finds work must settle for wages that, although higher than the average wage in the West Bank, is lower than the wage customarily paid in Israel. In return for these low wages, they are often required to do hard work under deplorable employment conditions. As we shall see below, Israeli employers also take advantage of the Palestinian workers' distress by denying them rights to which they are entitled by law.

For testimonies on the hardships described here, see Appendix 2.

Violation of the rights of Palestinians in Israel without a permit

Sometimes, a Palestinian from the West Bank caught in Israel without a permit is returned to the West Bank without being mistreated. Often, though, this is not the case. In researching this report, during the period December 2005 to January 2006, B'Tselem interviewed Palestinians regarding their experiences in Israel without a permit. From April-October 2006, B'Tselem took more testimonies in the course of repeated visits to sites in Israel where Palestinians without a permit congregate. Even in this relatively minor sampling, of only a few dozen of the

tens of thousands of Palestinians who were caught in Israel without a permit, there were multiple reports of abuse, beatings, and humiliation suffered at the hands of Israeli police and soldiers.

These testimonies and other information obtained by B'Tselem and presented below indicate that, in addition to an ugly routine of violence and abuse, security forces have often damaged the property of Palestinians caught in Israel without a permit and used coercion in an attempt to force them to collaborate. In addition, police and soldiers regularly fire illegally at Palestinians trying to enter Israel, taking many lives.

61. The offense is set forth in Section 12A(a) of the Entry into Israel Law, 5712 – 1952. See, also, Section 2A of the Foreign Workers (Prohibition on Illegal Employment and Guaranteeing Fair Conditions) Law, 5751 – 1991.

62. Employing Palestinians who do not have permits is an offense punishable by imprisonment or fine. See Entry into Israel Law, 5712 – 1952, Section 12A(b); Foreign Workers (Prohibition on Illegal Employment and Guaranteeing Fair Conditions) Law, 5751 – 1991, Section 2.

Routine maltreatment

Alongside the official regulations according to which they are meant to operate, security forces employ a variety of unofficial practices when they catch Palestinians in Israel without a permit. As the following testimonies show, these practices entail many wrongs.

From the testimony of D., 21, a soldier in the Military Police checkpoint unit:

Whoever sneaks in without a permit gets slapped. The minimum [punishment] he gets for the impudence is standing for an hour, some also are made to sit and wait. They are not allowed to talk on their cell phone or smoke. We shout at them. If the Palestinian responds, he gets slapped. The quiet ones don't get hit... Actually, it all depends on the people at the checkpoint. The police never come for *shabahim* [Palestinians in Israel without a permit]... They are caught by the patrol, which takes their ID cards and makes them walk to the checkpoint... Sometimes, they have to walk five kilometers to get to the checkpoint.⁶³

From the testimony of Abdullah J'afar, 22, resident of a-Daheishe refugee camp, Bethlehem:

There were many cases in which Border Police officers caught me on the way to work. Sometimes, they delayed me for many hours, occasionally until ten in the morning. When they caught us on the way back, they kept us from about 4:00 P.M. to 10:00 P.M. There were many

times that they took my ID card and made me undress so they could search me thoroughly. Some policemen speak Arabic very well. They swear at us, mock us, and beat us, especially when no officer is around. They do what they please.⁶⁴

The practices vary, but it is possible to discern some abusive patterns of behavior which are repeated with disturbing frequency.

Prolonged delay as punishment

Governmental authorities are forbidden to detain a person unless expressly permitted by statute.⁶⁵ Where authorized, the action must be done in a manner that provides maximum protection of the detainee's dignity and rights.⁶⁶ Although the statute empowers police officers to detain a person, the power is limited to the time necessary to achieve defined objectives.⁶⁷ For example, if a police officer has a reasonable reason to suspect that a person committed an offense, the officer may detain him to check his identity and address, or to question him or deliver documents, but the officer is not allowed to detain the person for more than the time needed to do any of these permitted acts, and in any event, the detention must not exceed three hours. When many persons are detained, as occurs when the police raid a site where there are many Palestinians staying in Israel without a permit, the officer in charge may further extend the period of detention provided that he does so in writing and gives reasons.⁶⁸

63. The testimony was given to Ronen Shimoni on 26 September 2006 in Tel Aviv. The witness's particulars are on file at B'Tselem.

64. The testimony was given to Suha Zeid at the witness's home on 12 March 2006.

65. Criminal Procedure (Enforcement Powers – Detention) Law, 5756 – 1996, Section 1(a).

66. *Ibid.*, Section 1(b).

67. *Ibid.*, Sections 66-75.

68. *Ibid.*, Sections 67 and 73.

The Entry into Israel Law empowers the authorities to hold a “person staying illegally” in custody until he is deported from Israel in accordance with an order issued pursuant to the statute. According to the statute, a police officer may require the person to accompany him to the place where he will be held in custody, but it does not empower the police officer to hold the person in a place that does not come within the statute’s definition of place of custody, and the police officer is certainly not allowed to hold the individual as punishment or for a prolonged period of time.⁶⁹

Data provided to B’Tselem by HaMoked: Center for the Defence of the Individual, which documented dozens of cases in which Palestinians without a permit were detained by security forces, as well as testimonies given to B’Tselem indicate that police officers and soldiers often exceed their power and hold Palestinians without a permit for many hours, without giving them water or food or protection against the burning sun or from cold and rain. These actions are particularly outrageous because they do not appear to serve any legitimate purpose. The security forces do not bother to explain to the Palestinians why they are being held for so long. It thus seems the detention is deployed as an unofficial means of punishment. Since the security forces do not have punishment powers, detaining people as a means of punishment is illegal, even if the detention is for only a short time. Detaining them for hours only compounds the breach.

Another section of the testimony of soldier D. illustrates the situation.

The brigade commander’s instruction is to stop them [the Palestinians] for three hours. This is what the brigade’s operation’s department told me when I called to ask. Don’t check them, only “educate” them for three hours, so they’ll know not to come another time... Those who come to a checkpoint we hold for more than three hours sometimes, sometimes we release them at night, which means they have to go to the villages and look for transportation home... We often make them stay in the sun and sometimes we sit them down on thorns. Before they built the terminal, the improved checkpoint, there was a water trailer, a water container on wheels. The trailer stood in the sun all day, and the water was boiling. You could make tea with it. Soldiers would give this boiling water to the detained Palestinians.

Confiscation of identity card

The Penal Law states that a person who takes possession of the identity card of another person commits an offense punishable by one year in jail. The offense does not apply where the person was required or empowered by law to do so.⁷⁰ A soldier or police officer who takes the identity card of a person in the course of his duty (to check and record the person’s particulars, for example) acts lawfully.⁷¹ However, this exception applies only to the extent set forth in the statute. When security forces destroy identity cards or hold on to them for a long time without justification, as occurred in the cases described in the

69. See Sections 13, 13A, and 13B of the Entry into Israel Law.

70. Penal Law, 5737 – 1977, Sections 376A and 34M.

71. Section 13E(a)(1) of the Entry into Israel Law, for example, empowers a police officer to require a person suspected of staying illegally to show his identity card.

following testimonies and in many other cases documented by B'Tselem and HaMoked and others, their action is illegal.⁷²

From the testimony of Samer 'Awani Sabrin al-Heymoni, 24, single, resident of Hebron:

About two weeks ago, police officers who were patrolling in the market grabbed me. One of them held me and the other scratched me in the face and neck with his fingernails. One of them took my ID card and took out his lighter and burned it. He said that he did it because I voted for Hamas. I told him that I didn't vote for Hamas, and he said, "Then why did Hamas win the elections? Go to Hamas and let them find work for you."⁷³

From the testimony of S. T., 26, single, resident of al-'Obeidah, Bethlehem District:

In most instances, the police or soldiers stop the bus after it goes about half a kilometer. They get on the bus, take the ID cards and remove everyone who does not have a permit... They detain us for a few hours. They go away with our ID cards and make us stay and wait. Only when they return with our cards can we go home. I think that they detain us so we'll lose a day's work, so we won't return to Israel later in the day.⁷⁴

Undressing and other routine forms of humiliation

Security forces are empowered to remove the clothes of a person only for security reasons, and they must do so in a manner that causes the minimal degree of offense to the

person's dignity under the circumstances. In many of the reported cases, security forces forced Palestinians to undress in a way that unnecessarily and deliberately offended their dignity, while security forces swore at them and mocked them, and kept them naked for longer than needed to carry out the security check, exposing them for everyone to see and to the inclement weather.

From the testimony of 'Issam Shahin, 32, married with three children, resident of Bethlehem:

Every time they [the Border Police] catch us, they hold us for four hours at least. They don't always beat us – that depends on their mood – but they always order us to undress and search us. They order us to lift up our clothes or take them off. Most of the time, especially when it is very cold and rainy, they make us take off our pants and shirt and jacket, and we remain there in our underwear for hours while they mock us and joke about us. We sit on the ground, without clothes, in the bitter cold, which is usually the case early in the morning... I think they search us and make us undress to mock us and make fun of us while we are shivering from the cold.⁷⁵

The variety of ways in which security forces, and Border Police officers in particular, humiliate and otherwise torment Palestinians caught in Israel without a permit go beyond the methods listed above and are as diverse as the perverse imagination of the perpetrators. In some cases, Palestinians were forced to run several kilometers, to beat one another, to sing songs praising the Border Police, and to

72. See, for example, Amira Hass, "Border Police Confiscate ID Cards of Palestinians and Do Not Give Them Substitute Documentation," *Ha'aretz*, 8 November 2006.

73. The testimony was given to Musa Abu Hashhash at the witness's home on 4 April 2006.

74. The testimony was given to Suha Zeid at the governmental hospital in Beit Jala on 30 March 2006.

75. The testimony was given to Suha Zeid at the witness's home on 5 March 2006.

swear at themselves, their loved ones, and the Prophet Muhammad.⁷⁶

As the following testimonies demonstrate, and as we shall see in the following section, the offense to the dignity of Palestinians caught inside Israel without a permit is often accompanied by physical abuse.

From the testimony of Kamal Shawawra 37, married with three children, resident of a-Shawawra, Bethlehem:

I was on my way home from work in Jerusalem. At the Ras Kusba checkpoint in al-'Izariyya, two Border Police officers caught me. They took my ID card, slapped me, and ordered me to hop about fifty meters on one leg. They kept their rifles aimed at me as I did it. After that, they made me dance and laughed at me dancing. Whenever I stopped, they threatened to shoot me. One of them plucked hair from my eyebrows while the other policeman had his rifle aimed at me. That really hurt and was very degrading. I couldn't defend myself because I was afraid they would shoot me. After he plucked almost all the hair from my eyebrows, they gave me back my ID card and released me. I was scary-looking without eyebrows, and I didn't go to work for a few weeks. It was

a very painful incident that I'll never forget. The policemen didn't even question me or have me sign any document.⁷⁷

Illegal use of force

The tasks assigned to security forces pursuant to law naturally entail the use of force. Israeli law, as well as international law, recognizes this, and empowers security forces to use reasonable force in carrying out their duties, provided that such force is exercised for a legitimate purpose mandated by their task, such as self-defense, making an arrest, or preventing a detainee from escaping.⁷⁸ When security forces use force illegitimately, unreasonably, or disproportionately, they exceed their authority and act illegally.⁷⁹

Exceeding authority in the treatment of Palestinians staying in Israel without a permit has become the rule rather than the exception. If the dozens of testimonies collected in preparing this report are any indication of what happened in the thousands of cases where Palestinians were caught without a permit, the security forces use illegal force, cause physical harm, and offend the dignity of many of the Palestinians they catch. This practice has continued daily for years.

76. Occasionally, abuse of this kind is reported in the media. For example, see Ziva Mughrabi, "They Forced Us to Sing: 'I Love Humus, I Love Ful [a bean] and *Mishmar Ha'Gvul* [the Border Police]," *Ma'ariv*, 15 January 2002; Akiva Eldar, "Let the Palestinian Workers Perform for Us," *Ha'aretz*, 4 June 2002.

77. The testimony was given to Suha Zeid at the witness's home on 26 December 2005. The event described occurred in early 2003.

78. The powers of police officers are set forth in the Police Ordinance [New Version], 5731 – 1971. The Police Commissioner's orders and directives delineate the circumstances in which police officers may use force. According to Directive 4.03.02 – Use of Force, "Force may only be used if the law authorizes such use, when the duties of the police officer so require, and the force is necessary and justified under the circumstances. Police officers may use force only in the cases delineated in the Police Directives, and only to the extent that the force is needed to achieve the objective for which the use of force is required."

79. In addition to the various offenses to which a person using illegal force is subject, a public official who uses force illegally is also criminally liable for misuse of force inherent in the official's duties. Section 280(1) of the Penal Law, 5737 – 1977, states that a public official who performs or orders the performance of an arbitrary act that violates the right of another person commits an offense punishable by three years' imprisonment.

The forbidden violence takes various forms. Testimonies given to B'Tselem indicate that slapping, spitting, making threats, and swearing are routine. Punching and hitting with clubs and rifle butts are not rare. In some cases, the abuse is especially severe.⁸⁰

The site of the violence varies: the places where the Palestinians are caught and held, in police vehicles, at checkpoints, in fields and woods to where the Palestinians are taken, in hospitals, police stations, interrogation rooms, and detention facilities.

Border Police officers, who lead the law-enforcement efforts to capture Palestinians without permits, are responsible for most of the violence B'Tselem is aware of (as for the claimed "education revolution" in the Border Police and its questionable success, see the following section). By way of illustration, here is a segment of one of many testimonies on Border Police violence. In his testimony, the witness tells how, on 12 August 2006, he was beaten and degraded in front of his son, after they were caught trying to sneak into their workplace at the Har Homa settlement, in East Jerusalem.

From the testimony of Khaled Ghaneimat, 37, married with eight children, resident of Surif, Hebron District:

The policeman spit at me in the face and began to swear at me: "I'll screw your mother and your sisters and your wife as well... I'll screw you, you fool" He slammed me in the back with his rifle. I fell and he kicked me. After about

five minutes [of that], he stomped on my neck, saying, "I'll stomp on your neck like you're a dog." He pressed his foot down on my neck, and I started to choke. At that moment, I felt so humiliated that I hoped I would die, especially because my son was watching from only a few meters away. He was crying and was very upset.⁸¹

Border Police are not the only ones who harm Palestinians staying in Israel without a permit. Testimonies given to B'Tselem indicate that the other law-enforcement personnel enforcing the prohibition on entering Israel beat and degrade Palestinians: soldiers, police interrogators, members of the regular police force, police special patrol units, detectives, and plainclothes police officers. Even municipal inspectors exceed their authority and use illegal force against Palestinians without a permit to be in Israel.

By way of example, two more excerpts of testimonies follow, one describing how, on 22 August 2006, a soldier assaulted a Palestinian who tried to bypass a checkpoint and enter Israel without a permit, and the other how two Special Police Patrol officers caught a Palestinian on 25 November 2006, assaulted him, and broke his hand with a club.

From the testimony of Hamed Sadqeh, 35 married with five children, resident of al-Midya, Ramallah District:

The soldier asked me: "Why did you run away?" I replied, "I didn't run away!" Then he swore at me, "Shut up, fool." Again I asked him,

80. Most cases of abuse go unreported in the media, so the public is not aware of them. But some incidents, in which the abuse was especially severe, have been reported. See, for example, Yoav Stern, "Border Police Admit Abusing Palestinians," *Ha'aretz*, 28 September 2004; "Border Police Abuse Dozens of Palestinians in Jaffa," *NRG Ma'ariv*, 14 January 2002.

81. The testimony was given to Karim Jubran in Jabel Abu Ghanim on 15 August 2006.

“Why are you shouting and swearing at me, if I speak nicely?” The soldier took a silver-colored penknife from his pocket. He opened it in front of my face and shouted, “Shut up.” Then he punched me in the face, injuring my left cheek. Then, without even asking my name or to see my ID card, he put the blade of the knife to my left cheek and pressed. It cut my cheek and it started to bleed. Seeing the blood really frightened me. I didn’t know how deep or large the cut was. I asked him again why he was assaulting me. He took the knife and stabbed me in the left shoulder. It felt as if my back was bleeding. My clothes got dirty. I was afraid he would injure me even worse, so I stopped asking him why he was assaulting me.⁸²

From the testimony of Yasser Ahmad, 38, married with seven children, resident of Kafr Qalil, Nablus District:

Around 8:30 in the evening, I was walking on the side of the road near Geha, next to the site where I was working, and a white civilian vehicle stopped alongside me. Two police officers dressed in green uniforms [of the Special Police Patrol] were inside. One of them

asked me, “Where are you from?” I told him I was from Nablus. He got out, holding a wooden club. I realized he intended to beat me, so I ran. The driver drove the car up to me and stopped me. I took out my ID card and handed it to him. The policeman with the club took the card and threw it into the car without looking at it. The driver picked up the club and tried to hit me in the head, but I pushed it aside with my right hand. The other soldier hit me in the hand with his club. He hit me five times, and I used my hands to protect my head. The blows were very hard and painful. I was afraid of being hit in the head. I thought I was about to die or become disabled.⁸³

The above excerpts are a small sampling of the many testimonies given to B’Tselem by Palestinians who were physically abused after being caught in Israel without a permit. The following table presents the basic facts of some cases of this kind.⁸⁴ In all the cases listed, the person assaulted required medical treatment. In almost all of them, verbal assaults accompanied the maltreatment. In some, the violence caused psychological, as well as physical, injury.

82. The testimony was given to Iyad Hadad at the witness’s home on 27 August 2006.

83. The testimony was given to Salma Deba’i at the witness’s home on 6 December 2006.

84. For some of the complete testimonies, see B’Tselem’s Website, www.btselem.org/English.

Table: Cases in which security forces used illegal force against Palestinians staying in Israel without a permit

	Person assaulted	Perpetrator	Location	Date⁸⁵	Acts reported by the witness	Comments
1	Yasser Ahmad	2 Special Patrol Unit officers	Geba area	25.11.06	hit repeatedly with a club	He suffered two broken bones in his right hand, one broken bone in the left hand, and contusions
2	Hamed Sadqeh	IDF soldier	N'ilin checkpoint	22.8.06	punched in the face a pocket knife was pressed to his cheek until it bled stabbed in the left shoulder	Before he was assaulted, soldiers fired at him and other workers The stabbing caused light wounds
3	Khaled Ghaneimat	Border Police officer	Har Homa, East Jerusalem	12.8.06	beaten, mostly to the back kicked for some five minutes stepped on his throat, choking him, while swearing at him degradingly ("I'll stomp on you like a dog") made to sit uncomfortably on dirt for 5 1/2 hours without food or water	He was beaten and humiliated in front of his minor child, who was detained with him
4	Ramzi al-'Atawneh	Special Patrol Unit officers	Mizkeret Batya	27.7.06	beaten in the thighs and back with a club injured leg stomped on beaten while questioned about his employer and the work site	His right foot was fractured as a result of the blows He was caught with three other workers, who were also beaten

85. In some of the cases, only the month is mentioned because the witness did not recall the precise date.

5	S. T.	Border Police officer	Abu Dis, East Jerusalem	26.3.06	hit with a rifle in the abdomen, right side of his midsection, and right shoulder fingers on right hand were hit with the rifle barrel fingers on right hand were bent kicked	The contusions to the right hand were later bandaged, and he was given medicines to treat the injury
6	'Abdullah Jafer	3 Border Police officers	Separation barrier near al-Khas	February 2006	thrown to the ground beaten and kicked all over his body	He saw the Border Police officers beat another worker with their rifles, drawing blood
7	J. T.	Special Patrol Unit officers and a police interrogator in civilian dress	Parking lot near Jaffa Street, Jerusalem; police vehicle; Russian Compound police station	23.1.06	punched in the face his back was stepped on while his hands were bound behind him as he lay on the floor of a police vehicle forced to undress in a bathroom in the police station kicked in the stomach and face while naked threatened and beaten to force him to sign a statement that he had not been beaten	He was seventeen years old at the time of the incident After he was let go, he checked and saw that NIS 50 were missing from his wallet
8	'Adel Saleh	Policeman	Kfar Yona	15.12.05	punched in the face and kicked threatened he would be hit with a club and shot handcuffed very tightly, the cuffs penetrating his skin	The policeman beat him during questioning about the contents of a sack he threw (it was later found that the sack contained old clothes)
9	'Ali 'Altwaneh	Police officers	Ashkelon police station	12.12.05	head slammed against a wall beaten and kicked clubbed in the right elbow, back, and legs	The blows fractured his left elbow He saw the police officers beat workers who were with him

Person assaulted	Perpetrator	Location	Date	Acts reported by the witness	Comments
10 Ahmad Shatareh	4 Border Police officers	Hilly area on way from Har Homa to al-Khas	October 2005	kicked beaten with rifle butts	After the beating, he was forced to lie on the ground as "bait"; when a worker approached to help him, the police assaulted the other worker
11 Yazid 'Issa	Policeman	Hadera police station	September 2005	beaten to get him to sign documents although he did not know what was written in them	Before being beaten, he was assaulted by Israeli civilians ("they looked like settlers"), which required hospitalization and caused him pain all over his body After being beaten by the policeman, he vomited blood
12 Israr Samareh 'Ali Abu Rahman	4 Border Police officers	Near the fence between Modi'in and Safa Village	10.9.05	Israr Samareh: kicked in the stomach 'Ali Abu Rahman: hit in the throat with a flashlight kicked all over his body	The police officers ambushed them near the fence, threatened and swore at them because they were from Bil'in The two Palestinians suffered bruises and cuts all over their body
13 Samir Bazar	Detectives	Near the N'ilin checkpoint	August 2005	beaten and kicked his left hand was bent	His fractured left hand was in a cast for 15 days
14 A. A.	IDF soldier	Eastern edge of Kafr Qassem, near Oranit	25.7.05	kicked in the groin	He suffered swelling and internal bleeding and had to undergo a few operations. His problems, including sexual dysfunction, continue

15	Amjad 'Iasi	Police officers, some in civilian dress and others in uniform	On a street in 'Izariya and at Ramle police station	21.2.05	In 'Izariya: punched in the face kicked slapped In the police station: firecrackers thrown at him kicked in the back slapped spit at in the face threatened ("I'll burn you," "I'll screw you," "I'll kill you") beaten with an axe handle
16	Zaqariya Bara'ka	Police officers and police interrogators	At Talpilot police station, Jerusalem, and at Etzion detention station	15.2.05	He was beaten after he refused to sign an undertaking not to enter Israel again, and that, if caught, he would be fined NIS 5,000 The beating caused him to lose consciousness, and he suffered contusions all over his body

Person assaulted	Perpetrator	Location	Date	Acts reported by the witness	Comments
17 'Abdallah al-Halaqiya	5 police officers in civilian dress and 2 Border Police officers	In Kafr Qassam and at Beilinson Hospital	30.11.04	In Kafr Qassam: beaten in chest with a rifle butt kicked all over his body thrown down steps head stepped on At the hospital: rifle pressed to his head, pushing him ("the way a pool player pushes the ball") wheelchair he was in was pushed in a threatening way	He suffered pain all over his body, cuts and bruises, and a swollen face
18 Firas al-Bakari	5 Border Police officers	Hotel in Abu Dis, East Jerusalem	11.9.04	kicked, slapped, punched, and hit with rifle butts rifle pressed to his mouth, with threat to shoot forced to hit his injured forehead with soap forced to jump from a three-meter-high window	He suffered pain all over his body, cuts and bruises, and a swollen face

19	Samih Rahal	5 Border Police officers	Hotel in Abu Dis, East Jerusalem	11.9.04	punched in the face and abdomen doused with a bottle of urine kicked and beaten by hands and rifle butts cigarettes were put out on his body while his hands were bound rifle pressed to his body and the barrel put into his mouth hit with a rifle to get him to drink urine forced to pick up his ID card with his mouth from a pool of urine thrown out of three-meter-high window	He suffered bruises all over his body, was hospitalized for a few days, and required pain relievers and follow-up treatment
20	Wisam Bashir	3 Border Police officers	Wooded area south of a-Samu'a	1.7.04	punched in the face and body pushed from a moving police jeep, his eyes covered and his hands bound behind him	His left hand was broken, and he was bruised and scraped all over his body
21	Qahira Muhsan	2 Border Police officers	Jabalya area	18.6.04	punched in the face and chest kicked in the legs and body stepped on	The victim is a woman in her forties
22	Sa'id Pashapsheh	Several Border Police officers	Umm el-Fahm	4.5.04	threw tomatoes, cucumbers, and drink cans at him kicked and beaten cigarette was put out by rubbing it behind his ear forced to sing songs praising the Border police	

Person assaulted	Perpetrator	Location	Date	Acts reported by the witness	Comments
23 'A'laa Taher 'Arafat Taha	3 Border Police officers	al-Rugham al-Azraq, near Abu Ghosh	26.4.04	kicked and beaten all over their body spit at forced to kiss a shoe and put it in their mouth kicked in the groin stomach jumped on sand shoved in their mouths juice poured on their faces their body stepped on	Taha suffered bruises and wounds, and had nightmares for a long time Taha fainted from the blows, which caused bleeding, bruises, and swelling of his back and legs
24 H. M.	4 or 5 Border Police officers	Umm el-Fahm area	8.4.04	blindfolded and his pants taken off, with threats of rape ("Now I am going to fuck you") his hair was stroked, with sexual implications ("really pretty") threatening songs ("Mustafa, Mustafa, I'll fuck you, Mustafa") sung to him forced to say that he agrees to be fucked	At the end of the abuse, the police officers ripped his Koran, and his testimony raises the strong possibility that they stole money
25 Y. Y.	3 Border Police officers	Umm el-Fahm area	5.4.04	kicked beaten with a club forced to kiss the picture of a half-naked woman blindfolded, his pants were removed and his body searched, the implication being he would be sexually assaulted ("I want to fuck you") threatened he would be shot ("Run, I am going to shoot you")	In addition to the abuse, his testimony raises the suspicion that the assailants also stole his money

26	Fuad Fanun	2 Border Police officers	Checkpoint 300 (northern entrance to Bethlehem)	23.3.04	forced to stand, legs spread, for hours kicked in the legs, midsection, stomach, and chest rifle barrel pressed to his cheek and forehead choked by pressing the rifle to his throat a knife was run along his throat and face hit in the stomach, head, and back with a rifle cigarette put out between his fingers and on his head stepped on his ID card was thrown to the ground and he was told to “fetch it like a dog”	He suffered bruises, wounds, and cuts to his throat and hands
27	Jihad Halahleh ⁸⁶	Policewoman and two border policemen	Har Homa	8.2.04	punched, slapped, and kicked clubbed many times in the face, back, chest, shoulders, legs, and arms stepped on	His left foot and his hand were broken, and he suffered bruises all over his body He was caught with four other workers, who were similarly beaten

86. For testimonies of the workers who were assaulted along with Halahleh, see: www.btselem.org/English/Testimonies/20040208_BP_Officers_Beat_Workers_in_Har_Homa_Abd_a_Nabi_Halahleh.asp; www.btselem.org/English/Testimonies/20040208_BP_Officers_Beat_Workers_in_Har_Homa_Muhammad_Atawneh.asp; www.btselem.org/English/Testimonies/20040208_BP_Officers_Beat_Workers_in_Har_Homa_Rafiq_Akabneh.asp; www.btselem.org/English/Testimonies/20040208_BP_Officers_Beat_Workers_in_Har_Homa_Nihad_Halahleh.asp.

The misuse of force by law-enforcement officials illustrated in the cases described above is cynically compounded by the practice of compelling the person who has been beaten to sign a statement indicating he had not been struck. Sometimes, the victim is beaten immediately after signing the document.

From the testimony of J. T., 17, single, resident of Bani Na'im, Hebron District:

A young guy in civilian clothes was sitting in the [interrogation] room. He looked to be about thirty years old. He sat behind the table. He swore at me in Arabic: "What the fuck were you doing on Jaffa Street? Soon I'll get up and fuck you," and other things like that. He ordered me to sign papers. One of them was written in Arabic, stating that they had not beaten me nor assaulted me. I refused to sign it, and the big policeman beat me again. Then I signed. After that, the big policeman took me out of the building and told me to go. I replied, "I don't know the way." He punched me in the face and pointed in the direction of Musrara [Morasha].⁸⁷

Khaled Si'areh, a segment of whose testimony was quoted above, related that:

In September 2004, Border Police caught us at a site in Jabel Abu Ghanim. They forced me and other workers who were with me to run more than three kilometers, and they beat us. They hit me in the right hand, breaking one of my fingers. The break hasn't healed completely, and it still hurts. Before they left us, after

humiliating us for a few hours, they made us sign documents that stated we had not been beaten.

Abdullah J'afar, some of whose testimony was quoted above, stated that:

When the police officers caught us, they made us sign a document written in Arabic and Hebrew. They did not let us read it. They only gave us time to glance at the first line, which stated that they had not beaten us or harmed us. A few times I saw the police beat workers right after they signed such a document...

Illegal damage to property

In addition to the routine harm to body and dignity, Palestinians reported that security forces stole, robbed, or intentionally damaged their property, in violation of the penal law.⁸⁸

Palestinian laborers working in Israel without a permit do not carry their valuables with them. However, they have cash to cover their daily expenses and they are paid in cash, so they often have a fair amount of money in their wallets. Most have some personal items and basic goods, and many have cell phones. In their testimonies, workers told of cases in which police officers took their wallets and returned them without some of the money that was in them, in which cell phones disappeared, and in which their property was illegally confiscated or deliberately damaged.⁸⁹

Excerpts of testimonies given to B'Tselem that illustrate this behavior follow.

87. The testimony was given to Karim Jubran in West Jerusalem on 24 January 2006. The witness's particulars are on file at B'Tselem.

88. These offenses are set forth in sections 383 and 384 (theft), 402 (robbery), and 452 (intentional damage) of the Penal Law, 5737 – 1977.

89. For a press report on a case of this kind, see Anat Shihor-Aharonson, "Police Spilled Oil and Sugar on Us," *Ha'aretz*, 30 August 2004.

From the testimony of Ibrahim Hamdan Triera, 15, resident of Bani Na'im, Hebron District:

Two policemen in blue [regular police] uniforms caught me in the Mahane Yehuda market. They asked for my ID card and entry permit. I told them that I was a minor. Then they beat me in the face and stomach for about twenty minutes. After that, they took my merchandise. I had clothes pins, tape, aprons, cigarette lighters, and shavers. They were worth around NIS 250. They didn't give me any receipt for the goods they confiscated. It was a great loss for me, because those 250 shekels [of merchandise] were all that I had.⁹⁰

From the testimony of Walid Hassan, 25, married with two children, resident of Jeb'a, Jenin District:

The jeep continued to move, and the policeman sitting next to the driver asked Walid: "Do you have something like this?" He was holding a wallet. Walid said he did and I said I didn't. He told me I was lying, and told me to shut up. He told Walid to give him the wallet, and the policeman sitting in the back told me to stand up inside the jeep. I stood up and he searched me. He took my wallet from my pocket and gave it to the policeman sitting next to the driver. I told them, "You took the identity card, why do you need the wallet?" He shouted at me and told me to shut up...

Afterwards, he gave me back the wallet to put in my pocket, which I did without checking it. I didn't think they took the money, and I was

afraid that if I checked the wallet, they would notice that I had money in it and take it. The jeep stopped at Tura a-Sharqiya, east of the Umm a-Rihan gate. The policemen dropped me off and gave us back our identity cards. When the jeep left, I opened my wallet and saw that 700 shekels were missing. I had 1,400 before, and found only 700.⁹¹

From the testimony of Ashraf Ja'idi, 22, single, resident of a-Deheishe refugee camp, Bethlehem District:

Firas was holding his cell phone. It was a Nokia with a camera. One of the policemen took it and threw it onto the ground, about two or three meters from us. Another policeman went over and stomped on it... When they left, Firas picked up the phone and saw it was totally smashed.⁹²

From the testimony of H.M., 30, married with two children, resident of A'nin, Jenin District:

One of the police officers asked in Arabic, "Where are the wallets?"... I heard them talking outside in Hebrew about the money that was in our wallets, and I told my friends that the money was gone. I heard one policeman say that some of us had money and some didn't. Afterwards, I heard one of them say, "That's it, stop"...

Around 11:30 at night, we got to the outskirts of Qaffin. The soldiers removed us from the jeep and gave us back our ID cards and wallets. They took off the blindfolds and ordered us to run and not look back. We ran for a few minutes, until

90. The testimony was given to Karim Jubran in Jerusalem on 24 January 2006, the day of the incident.

91. The testimony was given to 'Atef Abu a-Rub at the witness's home on 11 May 2004. The incident occurred on 30 April 2004.

92. The testimony was given to Musa Abu Hashhash in a-Deheishe on 10 August 2004. The incident occurred on 28 July 2004.

we got to the entrance to the village. When we thought we were safe, we checked our cards and wallets. Khalil said he was missing 700 shekels. I know he had 1,200 shekels. I checked my wallet and found 150 shekels. I had 450 shekels in it before. Rajah also was missing money, one hundred shekels. The other fellows didn't have money in their wallets.

I should mention that the policemen searched our room. They spilled flour and oil on the floor. They spilled everything they found in the room. They also tore pages out of a Koran that we had.⁹³

Illegal coercion to obtain information and recruit collaborators

International humanitarian law, which is binding on the Israeli authorities, prohibits them from compelling Palestinians to provide information,⁹⁴ or to collaborate with the security forces.⁹⁵ Despite these prohibitions, as B'Tselem has reported extensively in the past, the authorities use a variety of means to compel Palestinians to cooperate, such as pressure, threats, and bribes (granting services and approvals in exchange).⁹⁶ For example, the authorities exploit the distress of Palestinians wanting to enter Israel to earn a living, and condition the granting of the necessary permits on their cooperating with the GSS.⁹⁷ The information and testimonies

collected for this report indicate that Israeli security officials also exploit the distress of Palestinians caught staying in Israel without a permit and of Palestinians suspected of aiding these workers and pressure them to collaborate.

From the testimony of Yusuf Hassan Abu 'Ajmiya, 25, single, resident of a-Deheishe refugee camp, Bethlehem:

About six months ago, at around 7:00 A.M., a police patrol car pulled up to where I was working, in Jabel Abu Ghanim (Har Homa). Inside were one Border Policeman and four men in civilian clothes. The policeman was heavysset and had a light complexion. I didn't manage to flee, and the policeman took my ID card. Then he and the four others began to beat me. At first, he slapped me. Then he threw me to the ground, and the five of them kicked me. The policeman also stepped on my back. After that, they put me in the patrol car and took me to the police station near Abu Ghanim, where they held me until about 11:30. The policeman gave me back my ID card and told me to leave.

A few days later, Border Police officers came to the site. The policeman who had stopped me a few days earlier was among them. He took my ID card and told me to get into the jeep. Three policemen were sitting in the jeep, which then started driving toward Checkpoint

93. The testimony was given to 'Atef Abu a-Rub at the witness's home on 18 May 2004. The incident occurred on 8 April 2004.

94. See Article 31 of the Fourth Geneva Convention Relative to Civilians in Time of War, of 1949, and Article 44 of the Hague Regulations.

95. This prohibition arises from Article 51 of the Fourth Geneva Convention, which states, inter alia, that, "The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted."

96. See, for example, B'Tselem, *Collaborators in the Occupied Territories: Human Right Abuses and Violations* (January 1994), 32-43.

97. B'Tselem, *Builders of Zion*, 45-54.

300 [at the entrance to Bethlehem]. On the way, the policeman asked me, in Arabic, why I enter Israel, and I told him that I want to earn a livelihood and to live. I asked him if it would be better if I steal and beg. We continued talking, and he asked me what I intended to do when he drops me off at the checkpoint. I told him that I am going back to where I work. He told me, "In the future, though, don't run from me." He came to my work site a few times. Each time, he took my ID card and didn't say anything or punish me. One time, he brought me a cola.

About four months ago, he came to the site again. I didn't run away when I saw him. He asked for my ID card and told me to get into the jeep. He introduced me to the policemen who were in the jeep and we drove to Sur Baher [a village in East Jerusalem]. The jeep stopped next to shops and the policeman told me to get out and read the signs for him. Then we continued until we got to the police station in Jabel al-Mukaber. The policeman put me in a caravan at the station and proposed that I work with him. We spoke in Arabic. I told him that I don't want to work with anybody, and he said that he would make it easy for me to work in Israel and would give me money. I stubbornly refused his offer, and he threatened me and aimed his rifle at me. I told him that he could murder me and throw me into the garbage bin, but that I did not want to work with him... I was really scared and was shaking in fear. Then he threw my ID card out of the office, cursing me as he did it, and told me to get out. I left, picked up the ID card, and walked to Checkpoint 300...⁹⁸

From the testimony of Samir Bazar, 35, resident of Beitillu, Ramallah District:

Each time they caught me, police interrogators or GSS agents interrogated me. One of the GSS interrogators was called Elias. He asked me about people from the village whom I know and about my work in Israel. He tried to get information from me. At the end of each interrogation, they took my fingerprints, and before releasing me, they threatened that if they caught me again, they would jail me for a long time and I'd have to pay a fine....

About a month before that incident [of 19 October 2005, in which three policemen badly beat him, breaking his leg], police stopped me and summoned me to a meeting with the GSS at Ofer Prison. I went there at the time set. I don't recall when it was exactly, maybe it was at the end of September 2005. When I arrived, they took my identity card and made me wait until evening, about eight hours. Then they put me into a room where the officer I mentioned, Elias, was sitting. He questioned me about my family, acquaintances, and the political and security activity in the village, and proposed that I collaborate. In exchange, they would give me money or permits to enter Israel or make sure I had permanent work in Israel. I rejected the proposals and told him, "I want to live my life without problems and without having anything to do with these things. I only want to work, and not be involved with such matters." The meeting lasted about thirty minutes. At the end, Elias ordered me to get out and threatened that, if I get caught in Israel again, he wouldn't show me any compassion.⁹⁹

98. The testimony was given to Karim Jubran in East Jerusalem on 3 April 2006.

99. The testimony was given to Iyad Hadad at the witness's home on 2 January 2006.

Refugees with no place of refuge

Palestinians who collaborate with Israel are deemed traitors and live under the threat of death. The Palestinian authorities, Palestinian organizations, and others in Palestinian society seek them out. Many persons suspected of collaboration are tortured by Palestinian security forces or by members of Palestinian organizations. Hundreds have been murdered and executed without trial or following a proceeding lacking any semblance of due process.¹⁰⁰

The State of Israel is obligated to protect collaborators whose lives are in danger. Israel's Assistance Security Administration (Rehabilitation of Collaborators) aids in the collaborators' absorption and integration in Israel, but most persons suspected of collaboration do not meet the ASA's confidential and rigid criteria for assistance. The problems of persons who are not covered have increased following the tightening of the closure in recent years. As with other Palestinians, they are granted permits to stay in Israel sparingly. Those lacking a permit can expect to be returned to the area from where they came. Unlike others who are caught and returned, they are liable to be tortured or even killed.¹⁰¹

Suspected collaborators who are not aided by the ASA can avoid expulsion by turning to the "threatened-persons committee." This committee, officially part of the DCO, was established to care for Palestinians not recognized as "collaborators" and who will be in danger if they are returned.¹⁰² The threatened-persons committee is empowered to grant threatened persons permits to stay temporarily in Israel. The committee is secret, and almost nothing is known of its composition, its mode of operation, the factors it takes into account, and how it reaches decisions. The only way to reverse the committee's decision is by petitioning the High Court of Justice, but convincing the court is very difficult without

100. According to figures of the Palestinian Human Rights Monitoring Group, between 28 September 2000 and 31 July 2006, Palestinians killed 157 Palestinians suspected of collaboration. Many of those who were tortured and killed did not collaborate. Some suspects were lynched or killed without being interrogated or tried. Others died as a result of the torture during interrogation or were executed immediately after interrogation. Some were executed following trial, or quasi-trial, without due process and without having been given the chance to prove their innocence. See, for example, B'Tselem, *Collaborators in the Occupied Territories*; Human Rights Watch, *Justice Undermined: Balancing Security and Human Rights in the Palestinian Justice System* (November 2001).

101. For a description of the bitter fate of a collaborator who was neglected by his handlers, see Gidon Levy, "Civil Servant," *Ha'aretz*, 10 March 2006.

102. In addition to suspected collaborators, the threatened-persons category also includes homosexual Palestinians, Palestinian women accused of disgracing their families, and other Palestinians who fled to Israel because of dangers facing them in the Occupied Territories. Over the years, Israeli security forces have often exploited the distress of these persons by pressuring them to collaborate. Their fleeing to Israel and hiding there strengthens the suspicion that they are collaborators, and increases the hostility against them in the West Bank and Gaza. See B'Tselem, *Collaborators in the Occupied Territories*. See, also, Vered Levy Barzilai, "Din Rodef" [Halachic rule allowing a pursuer to be attacked], *Ha'aretz*, 31 August 2001; Yosef Algazi, "Love without a Permit to Stay," *Ha'aretz*, 28 June 2002; Vered Levy-Barzilai, "Homos? Palestinians? Who Cares?" *Ha'aretz*, 21 March 2003; Vivian Abu R'ad, "For Them, Coming out of the Closet is Life-threatening," *Ha'aretz*, 25 May 2004; Gidon Levy, "Burnt," *Ha'aretz*, 14 October 2005; Eric Weiss, "Marrying the Enemy," *Ma'ariv*, 26 April 2006.

knowing the considerations the committee takes into account. Also, the committee's permits are limited in duration for one week to three months. When the permit expires, the person has to reapply to the committee. During the reapplication process, which may be prolonged, the person is not allowed to remain in Israel. Furthermore, the committee grants the right to stay in Israel, but not the right to work in Israel or to social rights of any kind. Having to make a living, these persons violate the law and subject themselves to arrest and prosecution.¹⁰³

Under the international-law principle of *non-refoulement*, a state is prohibited from expelling a person to a place where the person would likely be tortured.¹⁰⁴ In light of this, and of the fact that the State of Israel signed the Convention on the Status of Refugees, of 1951, the threatened Palestinians may, in theory, seek and receive political asylum in Israel. But, in practice, Israel acts in a way that denies this possibility: the Interior Ministry, which is in charge of asylum matters, handles the requests only after the Israeli delegation to the UN Commission for Refugees examines the matter and finds the application appropriate. The delegation, on the other hand, does not deem itself authorized to hear requests submitted by Palestinians who, it contends, are handled by another UN body – UNRWA – even though UNRWA is not organized to provide relief to threatened persons.¹⁰⁵ Thus, the threatened persons are unable to obtain asylum in Israel. They may, of course, seek asylum elsewhere, but the likelihood of success is minimal. Besides, it is a lengthy process, during which time the applicant remains under the threat of expulsion, with all the dangers this entails.

Illegal use of firearms

Shooting in the area of the Gaza perimeter fence

As pointed out in Chapter 1, the economic distress in the Gaza Strip is worse than in the West Bank. Israel allows few Gazans to enter its territory and imposes frequent closures on the area. The distress creates

a strong incentive to leave Gaza and enter Israel without a permit, but all who attempt to do so place their life in grave danger. A fence separates Israel from Gaza, and Israeli soldiers are deployed to thwart any attempt to break through the fence and enter Israel. The army does not publish the regulations pursuant to which the soldiers are instructed to use their firearms, but information from

103. This is the situation as stated by Attorney Anat Ben Dor, head of the refugee rights and refuge-seekers program at Tel Aviv University, in an interview with B'Tselem researcher Eitan Diamond on 27 April 2006. See, also, Gal Cohen, "Decidedly an Absolutely Secret Committee," *Kol Ha'ir*, 15 August 2003.

104. Article 3(1) of the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, of 1984, states: "No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

105. For a critical discussion of the state's position, see the petitioners' arguments in *A.S. v. Ministry of the Interior*, filed by the Association for Civil Rights in the Court for Administrative Matters in Tel Aviv, on 30 May 2004, available at www.acri.org.il/hebrew-acri/engine/story.asp?id=870. The matter was resolved by the parties before the court considered and ruled on the petitioners' arguments.

soldiers who served in the area, and incidents that took place there, indicate that anyone who tries to get across the fence, or even approach certain areas near the fence, is fired at with intent to kill. Military officials deny the existence of such “killing zones,” but in practice troops open fire at persons seen in areas near the perimeter fence.¹⁰⁶ Some of the persons killed were members of militias on their way to carry out attacks, but many others were civilians who posed no danger. As Major Rami Kaplan, who served as deputy battalion commander in Gaza at the beginning of the second intifada, said, the open-fire regulations in the area are set with the realization that civilians are liable to be injured, and with indifference to that possibility:

Every other day, we identified infiltrations in our sector. The infiltrators we caught were always pitiful, of course they weren't armed, and upon questioning, we realized they were not terrorists, but workers who broke the curfew to earn a living. The Israeli employer, who waited on our side, picked them up. The steady infiltration of workers exhausted the battalion and brigade, and to solve the matter, the division commander established the policy of killing infiltrators, because only that, and this was the explanation given, would stop the flow and deter others. I got the impression that the only crime these Palestinians committed was to infiltrate to earn a living, and the fact that, because of their financial hardship, they were willing to risk even dying did not bother Naveh [who was the

commander of the military forces in the Gaza Strip at the time], an officer whom I greatly admired.¹⁰⁷

In the years that have passed since then, the army has continued to implement this policy, killing and injuring dozens of unarmed Palestinians found near the perimeter fence or trying to cross it.¹⁰⁸

From the testimony of Anwar Abu Liba, 17, resident of Bani Suheila, Khan Yunis District, Gaza Strip:

When I finish work, the neighbors and I go and play soccer at the field in Bani Suheila. Sometimes I go to farmland we own, which is situated about 600 meters west of the border with Israel...

Last Friday [2 December], my cousin Sayid, who was sixteen years old, and Zahadi Abu Shahin, 17, a friend of mine who works with me, and I finished working at 6:00 P.M. We went straight to the fields, still in our work clothes arriving there at seven o'clock. We started to water the olive trees, finishing at 9:00. Then we made a fire and tea. After we finished drinking the tea, when we got up to put out the fire and go, shots were fired at us from the towers along the border. The gunfire continued non-stop for twenty minutes. I was the first to be hit, the bullet striking my right thigh. I fell to the ground, cried out, and couldn't get up. Zahadi and Sayid ran away, and the shooting continued. They ran far away from me, so I didn't see what happened to them. A half an hour later,

106. B'Tselem, *Trigger Happy: Unjustified Gunfire and the Open-Fire Regulations during the al-Aqsa Intifada* (March 2002), 39-41.

107. Quoted in Avihai Becker, “The Blacklist of Major Kaplan,” *Ha'aretz*, 27 April 2001.

108. According to B'Tselem's figures, from 26 April 2001 to the present, at least forty-seven Palestinian civilians were killed by army gunfire in the area of the perimeter fence. Most of the casualties were trying to enter Israel to find work.

an ambulance arrived and took me to Nasser Hospital, in Khan Yunis. The next day, one of the nurses told me that Sayid had been killed and that Zahadi had been wounded in the chest and leg.¹⁰⁹

From the testimony of Muhammad a-Sh'ar, 18, resident of Khan Yunis:

Because of our families' financial situation, Bilal and I decided to sneak into Israel and look for work... At 4:30 A.M. [on Saturday, 12 November 2005], we got very close to the border at the least dangerous point. We were about 700 meters west of the border. We hid in an olive grove, from where we watched the movements of the army jeeps and patrol vehicles along the border.

We observed the goings on until 9:00 P.M., when the movement of the patrol vehicles and jeeps stopped. We proceeded slowly, crouching, toward the border. We stopped near the barbed-wire fence running along the border. He went about fifty meters along the fence looking for an opening. When we didn't find an opening, Bilal took out barbed-wire cutters from his jacket. When he touched the cutters to the wire, gunfire from automatic rifles opened at us. It was clear that the firing came from the Israeli side of the border. When I heard the second volley of shots, Bilal cried out. We ran away from the fence, our heads down.

We managed to get ten meters from the border, when the shooting increased and bullets rained down on us, and Bilal fell to the ground... I stayed by him for about an hour, during which he was all bent up in pain. When I realized

his condition was worsening, I took a chance and crawled to find help. I dragged Bilal three meters, but he was too heavy for me to continue dragging him, and he couldn't crawl. I left him and continued crawling away from the border. I crawled about fifty meters when a bullet struck me in my left hand. I lay there without moving for ten minutes and then crawled another fifty meters. I stopped when I heard the sound of helicopters and tanks. I pretended I was dead, and didn't move at all. They had fired flares to light up the area. After about an hour passed, a Palestinian ambulance crew arrived and took me to hospital in Khan Yunis...

The doctors treated my hand. The bullet had entered and exited my hand, which made their work easier. At 11:30 P.M., I asked the doctors and National Security officials in the hospital about Bilal. They told me that he died at 11:00. He had bled to death.¹¹⁰

The frequent firing at civilians in the area, as well as soldiers' testimonies, point to a policy, or at least a practice, of firing automatically at any person entering the area of the Gaza perimeter fence. The automatic gunfire is aimed not only at persons who try to cross the fence, but at anybody who approaches certain areas – the death zones – near the fence. While the army has a legitimate interest in deterring Gazans from trying to sneak through the perimeter fence, and its task is to thwart any attempt at this, it is illegal to achieve these objectives by adopting a policy of indiscriminate shooting. Even if it requires more forces to be deployed, and extra effort expended, the army must find other, lawful,

109. The testimony was given to Zaki Kuhail at Nasser Hospital, in Khan Yunis, on 5 December 2005.

110. The testimony was given to Zaki Kuhail at the witness's home on 15 November 2005.

ways to combat Palestinian attempts to sneak into Israel. As shown below, Israeli law and international law are clear on this point.

Shooting in the “seam zone”

In the seam zone along the West Bank-Israel border, unlike in the case of the Gaza perimeter fence, it appears that the security forces do not open fire automatically as a matter of course. Yet, B’Tselem has learned of cases in which security forces used gunfire to drive away persons wanting to enter Israel from the West Bank. These cases have been reported and criticism of the soldiers’ “trigger happy” attitude has been raised, but the practice continues.¹¹¹ Recently, for example, there have been reports of firing at workers trying to get to their jobs in the Modi’in area, north of Jerusalem.

From the testimony of Jamil Salah, 36, married with five children, resident of Bidya, Salfit District:

We face lots of dangers. They sometimes fire at us when we sneak into Israel from this area. For example, this morning [Monday, 19 December 29005], I left the house around 5:30 A.M. I walked via Wadi al-Midya to get to my job in Modi’in. Border Police officers were waiting in ambush in the area, which is rocky and full of trees. They fired at us and we fled.¹¹²

Security forces’ activity in the seam zone filters over to other areas in the West Bank as well. On 6 March 2006, for example, Border

Police opened fire at a car with Palestinian workers inside at the end of a chase that began outside the seam zone, in the West Bank. The gunfire wounded the driver of the car. According to testimony provided to B’Tselem by one of the passengers, the driver was transporting the workers from a-Dahariya to a location inside Israel. When he saw the Border Police jeep, he turned around to return to a-Dahariya. The jeep chased the car, and close to a-Dahariya, slammed into the car, forcing it to stop. Then the jeep pushed the car onto the shoulder of the road, which was lower than the road, leaving the left wheels in the air. The witness related what happened then.

From the testimony of Amjaj a-Damiri, 26, single, resident of Hebron:

At that point, five border policemen got out of the jeep and opened fire at the car, from only about a meter or two away. They fired non-stop. I think they shot more than fifty live bullets at us, and every one hit the car. I thought I was about to die... The shooting stopped after a few seconds. I picked up my head and checked myself to see if I had been wounded. I looked at the driver and saw his head leaning to the side and his hand bleeding. I realized he had been wounded. At first, I thought he was dying...¹¹³

According to the testimony, the policemen opened fire without warning. Given that they went up to the car and fired from close range, it appears that they were not worried that the car or any of the passengers had explosives.

111. See, for example, B’Tselem, *Builders of Zion*, 26-32; Amira Hass, “Musa Daragmeh was Shot on the Way to Work,” *Ha’aretz*, 5 June 2002; Amos Harel, “Soldiers Killed Two Unarmed Palestinian Workers,” *Ha’aretz*, 1 October 2001.

112. The testimony was given to Iyad Hadad in the village of al-Midya on 19 December 2005.

113. The testimony was given to Musa Abu Hashhash at the witness’s garage in Hebron on 7 March 2006.

It is hard to think of any justification for opening fire in this case.

This is not the only instance in which Border Police, in enforcing the closure, assaulted Palestinians in the West Bank. For example, in the area of Sheikh Sa'ed, which is located in the West Bank, on the fringe of the border of the Jerusalem municipality, Border Police regularly use tear gas and stun grenades to keep Palestinian workers from sneaking into Israel. On 3 September 2005, three members of B'Tselem's staff were witness to these actions and recorded them on video.¹¹⁴ At a meeting B'Tselem held with the Jerusalem Border Police commander, Brigadier General Yoram Halevy, and members of his staff, on 5 September 2006, B'Tselem asked Halevy why his police officers use combat means against civilians before they commit an offense. Halevy responded that these are "actions carried out in the enemy's territory." According to him, just as when the army fights a war inside Lebanon, it does not wait for Hizbullah to enter Israel, police officers under his command "make a thrust" against the workers while they are inside the village, and do not wait for them to enter Jerusalem. This response reflects a dangerous misunderstanding of the difference between police activity and combat, and between civilians and combatants.

B'Tselem does not know the instructions given to soldiers on how to act when they identify persons trying to enter Israel by sneaking through the separation barrier under construction. The army, as noted, does not publish its open-fire regulations. B'Tselem also does not know what the law-enforcement policy will be when the separation barrier

is completed. However, there are worrying indications that practices much like those used in the area of the Gaza perimeter fence are being adopted in this area as well.

Soldier D., whose testimony was quoted above, told B'Tselem that:

On a Saturday about six months ago, next to the fence running along the southern side of the road, 200-300 *shabahim* [Palestinian's without a permit] were climbing over the fence to get to the other side. The soldiers fired at their legs. One Palestinian was hit in the stomach and another in the leg. The company commander was the one who fired. Anyone who climbed the fence was shot at. The fence had warning signs posted. At first, the soldiers fired in the air, then at their legs if they didn't stop climbing... The patrol doesn't fire in the air when it chases *shabahim*, because gunfire leads to a debriefing by the battalion commander. There was a time that the patrols used ammunition for [quelling] demonstrations, but because of shortages, they don't use it now...



The signs that D. mentioned, shown above, which are posted at various points along the barrier, state:

MORTAL DANGER – MILITARY ZONE
ANY PERSON WHO PASSES OR DAMAGES
THE FENCE ENDANGERS HIS LIFE

This is no empty threat. Recently, soldiers opened fire at workers trying to enter Israel by breaking through the fence in the area of

114. To view the video, see www.btselem.org/English/Video/Index.asp.

Deir Balut. One of the workers, Nasser Rateb Sabatin, was almost killed by the gunfire.¹¹⁵

An excerpt from one of the testimonies given to B'Tselem regarding this incident follows.

We got to a barbed-wire fence that had a small opening. One of my friends, Maher Musa Hassan, went through first, and we followed one after the other. There was a paved road on the other side that was intended for army use. On the other side of the road was a trench about four meters deep. On the other side of the trench was more barbed-wire, higher and more intricate. I went into the trench and fell into a rainwater sewer hole. I fell hard onto my hand and shouted out in pain, and then intense gunfire broke out at me and the others. I lay there where I had fallen. The others came over to me because the area was protected relatively well from the gunfire. The shooting continued for a few minutes, and I saw one of the men with me run back and forth, looking for a hole to flee through, but he couldn't find one. Another one of us, Nasser, stood up in the middle of the trench and shouted, "We are workers," and I heard a voice reply, in Hebrew, "We know that."

I saw Nasser fall to the ground. After he fell, some soldiers came toward us. They were standing on the road above us. They had rifles with a light attached. One of the soldiers descended into the trench and asked if there were wounded. Khaled, who was next to Nasser and tried to hide from the gunfire, told him there were wounded. Nasser cried out in pain from the injury.¹¹⁶

Flagrant breach of Israeli and international law

As mentioned above, Israeli law, like international law, allows security forces to use reasonable force in carrying out their duty. Use of firearms, even with live ammunition, may be deemed reasonable and permissible, but only if carried out in certain defined situations and conditions, and only if it is necessary and proportionate. Restrictions on the use of firearms are found in international human rights law and Israeli constitutional law, which prohibit government authorities from harming the life, body, or dignity of a person, except by law, for a proper purpose, and to the extent necessary to achieve that purpose. More specific descriptions of the restrictions are set forth in the rules regulating the activity of the law-enforcement authorities.

For example, police orders allow police officers to use their weapons only to arrest a person who actually endangers, or is suspected of having endangered, others, or to prevent imminent threat to life or to bodily integrity.¹¹⁷ The orders further provide that,

The use of firearms in carrying out duties shall be taken as a last resort, with due caution, and only when there is a logical relationship between the degree of danger entailed in using the weapon and the result that it seeks to prevent.¹¹⁸

115. Sabatin was shot in an artery in the leg. Soldiers tried to stop the bleeding, but he lost consciousness and arrived at the hospital in serious condition. The physicians saved his life but had to amputate his leg. He remained in a coma for over a week. See Ada Ushpiz, "Nasser Shouted 'Stop, We are Workers,' and Suddenly Fell," *Ha'aretz*, 5 May 2006.

116. The testimony was given to Karim Jubran at the witness's home on 7 April 2006.

117. The orders also permit shooting in the air to disperse rioters.

118. Section 1 of Police Commissioner's Order 06.02.14 – Use of Firearms. The specific circumstances in which a police officer may open fire to make an arrest are prescribed in Section 2. Regarding opening fire to prevent immediate threat to life, see Section 4. See also, Police Commissioner's Directive 4.03.03 – Use of Firearms.

Similarly, the rules formulated by the UN on the use of firearms by law-enforcement officials state that firearms are to be used only as a last resort where there is imminent threat to life and when less extreme means are insufficient, and the use must be proportionate to the legitimate objective to be achieved.¹¹⁹

The use of firearms by Israeli security forces, described above, flagrantly violates these standards. Entering Israel without a permit is indeed a violation of Israeli law, but the fact that a person entering is committing an offense – and even more so the assumption that such a person intends to commit an offense – is an insufficient reason for firing at him. Shooting to deter or to force a person to flee in the circumstances described in the above cases is utterly forbidden. Even if security forces have reason to believe that a person poses a real threat, it is permissible to open fire only if the threat is imminent and cannot be prevented by a less lethal means. As we have seen, the security forces fire at Palestinians when this is not necessary as a last resort, and fail to take due caution to prevent unnecessary or disproportionate injury.

Since the outbreak of the second intifada, Israel has argued that it is engaged in an armed conflict in the West Bank and the

Gaza Strip, and, therefore, its forces act in accordance with the laws of war. Accordingly, the open-fire regulations have been changed to permit the use of live ammunition in a broad range of circumstances and in many more situations than in the past.¹²⁰ For this reason, the argument might be raised that the legality of opening fire in these cases must be examined not according to the rules applying to law enforcement, but according to the laws of war. Where the actions are clearly within the rubric of policing (law enforcement against civilians that have no element of combat), such as the Border Police's activity in Sheikh Sa'ed mentioned above, this argument is baseless and must be rejected. Even if some of the cases described above were connected to the armed conflict and were thus subject to the laws of war, the security forces' conduct was unacceptable.

The laws of war, which form part of international humanitarian law, indeed grant military forces greater powers than those applying in times of peace and allows the sides to initiate actions against persons taking part in the hostilities, but these laws also place restrictions on harming civilians not taking part in the hostilities. The fundamental principle underlying the laws of war is the principle of distinction between combatants and civilians. Only military objects may be attacked.¹²¹ Accordingly, the sides must

119. See Code of Conduct for Law Enforcement Officials, Adopted by General Assembly Resolution 34/169 of 17 December 1979; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. These documents are not binding, but they reflect the broad consensus as to the rules of proper conduct which are to be applied and to be taken into account when drafting local legislation.

120. For a discussion on the change in the open-fire regulations, see B'Tselem, *Trigger Happy*, 6-8; B'Tselem, *Take No Prisoners: The Fatal Shooting of Palestinians by Israeli Security Forces during "Arrest Operations"* (May 2005), 17ff.

121. The principle of distinction is enshrined in Article 48 of the First Additional Protocol to the Geneva Conventions, of 1977, under the heading "Basic rule." Articles 51 and 52 prohibit intentional attacks against civilians and civilian objects, and indiscriminate attacks. Israel is not party to the Protocol, but these provisions are customary international law, and thus binding on all countries. On the customary status of these provisions, see, for example, Christopher Greenwood, "Customary Law Status of the Protocols," in *Humanitarian Law of Armed Conflicts: Challenges Ahead*, Delissen & Tanja, eds. (Boston: Martinus Nijhoff, 1991), 93, 108.

use caution, to the extent possible, so as to spare the civilian population.¹²² In case of doubt whether a person is a civilian or a combatant, the individual is considered a civilian.¹²³ Another pillar of the laws of war states that a lawful attack (one aimed at a legitimate military target) must be proportionate, i.e., the injury and damage to civilians and civilian objects is not excessive in relation to the concrete military advantage anticipated.¹²⁴

The trigger-happy attitude reflected in the above cases, and the automatic use of firearms along the Gaza perimeter fence flagrantly breach these principles: not only

is no attempt made to distinguish between civilians and legitimate military objects, Israeli forces occasionally deliberately open fire at civilians. In all the cases described above, the police and soldiers demonstrated little or no concern for human life.

Given that the attacks are deliberately aimed at civilians, or at least cause excessive injury to civilians, the use of weapons in these circumstances might constitute a war crime under international criminal law.¹²⁵

In addition to the state's responsibility, international law imposes personal criminal responsibility on the perpetrators of these acts.¹²⁶

Illegal exploitation by employers

In addition to the frequent human rights violations committed by the security forces, Palestinians staying in Israel without a permit also suffer from their illegal exploitation by their Israeli employers.

In accordance with the principles of international human rights law, Israel's labor laws protect workers against the arbitrary actions of their employers.¹²⁷ The protective laws, as they are referred to, require employers to provide their employees with rights that the workers cannot waive and are unconditional. Among these rights are minimum wage, vacation and holidays, sick pay, prior notice of dismissal, and severance pay. Employees are also entitled to social benefits pursuant to the expansion orders and collective-bargaining agreement. Employers are required to report to the National Insurance Institute [Social Security] on the wages paid and to pay the relevant insurance premium.

122. The obligation to take constant care is enshrined in Article 57 of the First Protocol. It, too, is part of customary international law.

123. This assumption has the status of customary law, and is reflected in Article 50(1) of the First Protocol.

124. The principle of proportionality, also customary international law, is enshrined in Article 51(5)(b) of the First Protocol, and is also set forth in Article 57(2)(a)(iii).

125. See Articles 8(2)(b)(i) and Article 8(2)(b)(iv) of the Rome Statute of the International Criminal Court, of 1998. Although Israel is not party to the Rome Statute, these provisions reflect the rules of customary international criminal law, according to which Israeli security forces must conduct themselves, and are subject to criminal liability if they fail to do so. See Ian Brownlie, *Principles of Public International Law*, 6th ed. (Oxford: Clarendon Press, 2003), 560-561.

126. See, for example, Yoram Dinstein, "International Criminal Law," 20 *Israel Law Review* (1985), 206, 225-220.

127. Regarding international human rights law, see, for example, Articles 7 and 9 of the International Covenant on Economic, Social and Cultural Rights, of 1966.

Every worker is entitled to these rights, even if the worker does not have a work permit or is not listed as required by law. Palestinian workers who do not have the requisite work and stay permits are also technically entitled to these rights.¹²⁸ However, the rights which these Palestinian workers have in principle are not given to them in practice, and they have no practical way of exercising them.

Even though they are often employed at high-risk jobs (in construction work, for example), unregistered Palestinian workers are not insured at all, so when they suffer a work-related injury, they must bear the medical expenses and loss of future earnings on their own. They are also denied the other rights to which workers are entitled.

In many cases these workers are unaware of their rights and, in any event, do not demand them. Other workers, especially those earning low wages are also unaware of their rights. Most of the Palestinians without permits, however, would not conceive that the state, which prohibits their entry and chases after them, would protect their rights. Consequently, their awareness of these rights is especially low.

Even those who are aware of their rights are not likely to take their employers to court. They, like other workers, fear that their employer would fire them if they filed suit. But Palestinians without the requisite permits have additional reasons not to sue.

First, when a worker without a permit sues, the military and civil authorities become aware of him, and he can then expect to be prosecuted for staying in Israel illegally.

Second, these workers have no legal right to appear at hearings in an Israeli court or to enter Israel to perform the actions necessary for handling a civil suit (such as meeting with an attorney or being examined by a medical committee).

Third, not having a work permit and not being registered as an employee, they usually do not have evidence to prove how long they worked, the wages they received, or even the fact that they worked for the particular employer, thus making it difficult for them to win the suit.

The protective laws, which exist on paper, fail to provide unregistered Palestinian workers with any real protection. The workers, so desperately in need of work, find themselves exposed to the arbitrary whims of their employers, who can deny them their rights and delay paying their wages without fear of being sued. This being the case, it is no surprise – as the testimonies given to B'Tselem show over and over again – that employers breach their obligations and exploit Palestinian workers who do not have permits.

For testimonies illustrating this phenomenon, see Appendix 2.

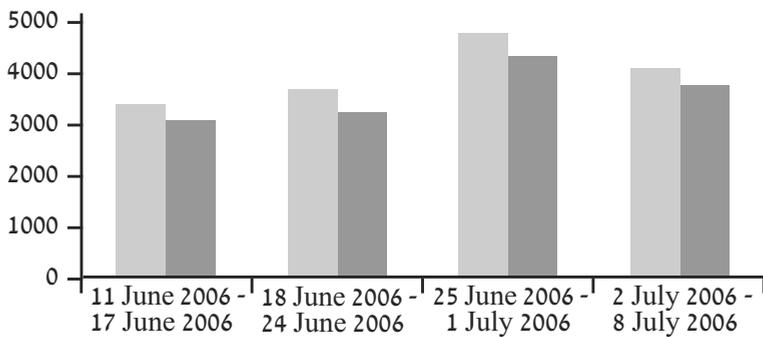
128. See, for example, D.M. (Beersheva District Labor Court) 1040/01, *Tomasneja v. Ambassador Hotel Ltd.* (not reported); Guy Mondlak, “Workers or Foreigners in Israel? ‘Underlying Contract’ and the Democratic Deficit,” 27 *Iyuneh Mishpat*, vol. 2 (5764 – 2003), 423, 459; B’Tselem, *Builders of Zion*, 55.

Double messages, turning a blind eye, and silent consent

The Israeli authorities are not organized to prosecute the thousands of Palestinians staying in Israel without a permit. The already full prisons are unable to hold this many more, and prosecuting them would severely tax an already overburdened judicial

system and require allocation of enormous resources, which would have to be taken from other budgets. Therefore, the authorities have adopted a procedure whereby the vast majority of Palestinians caught staying in Israel without a permit are returned without being tried (see the frame below), as we see from the Border Police's weekly figures.

Graph 7: Palestinian workers caught in Israel without a permit who are returned to the West Bank



■ Caught during the particular week

■ Returned to the West Bank

Official procedure for handling of Palestinians violating the Entry into Israel Law

According to the “Procedure for Handling Offenses Related to Illegal Stay – Palestinians,” which applies to police officers when they catch Palestinians in Israel without a permit, when a resident of the West Bank is suspected of staying illegally, the police data base is to be checked to see if the person was “suspected/convicted in the past for offenses under the Entry into Israel Law and/or was involved in another criminal offense and/or is needed for questioning and/or is a fugitive and/or is restricted entry and/or his request for family unification has been rejected.”¹²⁹

129. “Prevented entry” or “restricted entry” means that the person, in addition to not having a permit to enter Israel, is also expressly forbidden from entering. The police or the GSS make this determination. The prevention often results from a security or criminal offense attributed to the person, but it may be due to other reasons, such as the failure to pay a debt.

If none of the above apply to the suspect, and if the official in charge of the investigation does not find special reasons that justify his interrogation, the procedure dictates that the person should be delayed and that an authorized officer holding the rank superintendent or above interview him. During the interview, the suspect's particulars and comments are recorded, the suspect is told of the decision to remove him from Israel, and is warned not to try to enter Israel again without a permit. A file is opened on the suspect's name, his particulars are fed into the computer, and he is removed from Israel.¹³⁰

On the other hand, if one or more of the aforesaid applies, or if the officials decide that special circumstances justify it, the suspect is to be interrogated and, based on the results of the questioning, the officials decide whether to arrest and prosecute him.

If the procedure was enforced as written, every Palestinian who is caught in Israel without a permit would be interrogated if, at any time in the past, he had been caught and warned, even if he was not wanted or suspected of having committed an offense. In practice, the procedure is not followed, and proceedings are not necessarily initiated against persons who have been caught several times. This failure results apparently from the lack of resources to enforce the law, so enforcement is selective, based on the police officers' discretion.

Nevertheless, every month, a few hundred of the thousands of Palestinians caught in Israel without a permit are arrested.¹³¹ Those arrested are held in the regional detention facilities, police stations, and at Damun Prison.

Comments made by police officers who spoke with B'Tselem and statements made by Palestinian witnesses indicate that many Palestinians expelled from Israel return shortly afterwards as if through a revolving door: police raid a work site, catch the Palestinians without a permit, and expel them to the West Bank, then a day or two later, the same police officers catch the same workers in the same area and expel them, and the same scenario occurs again and again.

In view of this phenomenon – and the sense of frustration it surely produces – it is very

likely that police officers have developed unofficial modes of operation to deter Palestinians from returning, and to ensure that Palestinians who are caught are punished. However, there are reasons to suspect that the unlawful modes of operation described above are not only the result of the ad hoc actions of brutal or frustrated policemen and soldiers, but are the result of an illegitimate policy.

Abusive conduct towards Palestinians staying in Israel without a permit is not a new phenomenon. In 1996, for example, a B'Tselem report exposed a long list of cases

130. The procedure states that, after the suspect is expelled from Israel, the file is closed "due to lack of public interest."

131. According to police figures, as of 27 March 2006, 1,330 Palestinians had been arrested in 2006 for staying illegally in Israel, an average of 443 persons a month. In the years 2001 to 2005, the monthly average of arrests was 608, 506, 408, 409, and 397, respectively.

of maltreatment of Palestinians caught in Israel without a permit.

From the conduct of the security forces in many of the cases and because all of the workers caught without permits who gave testimonies to B'Tselem were beaten and returned to the Occupied Territories without being prosecuted, the suspicion arises that an unwritten policy exists under which beatings, brutal treatment, and degradation are used to deter Palestinians from entering Israel without a permit.¹³²

In the decade that has passed since then, the abuse and beatings of Palestinians without a permit have not ceased, and have even increased with the tightening of the closure in recent years.¹³³ The commanders are well aware of the phenomenon and repeatedly condemn it in public.¹³⁴ Recently, the media reported that the Border Police has initiated an “educational revolution”: Border Police officers and commanders attend workshops on this subject and the corps is in contact with human rights organizations to uproot the phenomenon of illegal use of force. The media report also stated there had been a drop in the number of complaints filed against

Border Police officers.¹³⁵ If such efforts are indeed being made, they are welcome. However, unfortunately, even if there has been a decrease in violence, B'Tselem's research shows that Border Police officers still frequently use illegal force, at times severely abusing the victim.

The report on the “revolution” was published about one month after a contingent of Border Police units was moved to Jaffa to reinforce police forces there. During that month, many complaints of Border Police violence were raised, which were also reported in the press. The most serious acts of violence reported were directed at Palestinian workers who did not have permits to stay in Israel. The case that received most of the headlines involved the shooting to death of Iyad Abu 'Iya. The media reported that, on 4 October 2006, Abu 'Iya and other workers without permits were severely beaten by police, during which one of the policemen drew his weapon without justification and fired intentionally or accidentally, killing Abu 'Iya.¹³⁶

A few days after the incident, and shortly before publication of the “revolution” in the

132. B'Tselem, *Beatings, Maltreatment, and Degradation of Palestinians by Police during June-July, 1996* (September 1996), 4.

133. See, for example, B'Tselem, *Sheer Brutality: The Beatings Continue: Beatings and Maltreatment of Palestinians by Border Police and Police Officers during May-August 1997* (August 1997); B'Tselem, *Builders of Zion*; B'Tselem, *Standard Routine: Beatings and Abuse of Palestinians by Israeli Security Forces during the Al-Aqsa Intifada* (May 2001).

134. In their official responses, army and police officials regularly condemn the abuse and beatings committed by their forces. However, there have been cases in which the officials acknowledged that the acts were not exceptional. For example, following the abuse exposed shortly after publication of B'Tselem's 1996 report, mentioned above, the then-Border Police commander, Superintendent Israel Sadan, stated that, “The incident in which Border Police officers beat Palestinians is not unusual. This is not an isolated incident in this company. There are more than two rotten apples in this crate of fresh apples” (*Yediot Aharonot*, 21 November 1996).

135. See Tal Yamin-Wolvovitz, “Border Police Presents: With the High Court of Justice and ‘B’Tselem,’” *NRG Ma'ariv*, 17 October 2006.

136. Avi Cohen, “The Policeman who Shot a Palestinian to Death Lied in the Investigation,” *Ynet*, 4 October 2006; Yoav Stern, “Brother of Palestinian who was Shot to Death by Policeman: He Shot Him without Cause; Department for Investigation of Police Rebuts Policeman's Version,” *Ha'aretz*, 5 October 2006. No determination has yet been made if the shooting was intentional or accidental.

corps, four Border Police officers caught two workers from Nablus who were staying in Jaffa without a permit. The policemen took them to the sand dunes in Holon where, it was reported, they brutally beat them with iron bars, stepped on their faces, and robbed them.¹³⁷ Testimonies presented above, in the section “Violation of the rights of Palestinians in Israel without a permit,” relate to other recent cases from around the country in which Palestinians without permits were abused by Border Police officers.

Thus, now, as in the past, there is an intolerable disparity between the official position set forth in law, “the written law,” and the unofficial practice, “the oral law,” which the forces adapt to suit their purposes. The fact that these practices have continued for so long despite repeated criticism, and that the authorities have failed to act effectively to eliminate them, raises the suspicion that, along with the official condemnation, the authorities, through their silent consent, if not express encouragement, give a contradictory message to the police officers in the field.

This suspicion is reinforced by the testimonies given to B’Tselem. For example, Lt. Col. (res.) Ron Shatzberg, who commands a reserve battalion, said that commanders, especially in Border Police units, are aware that their subordinates routinely use violence against Palestinians without a permit, but ignore the phenomenon, thereby creating an atmosphere of “neither law nor justice.” As he puts it, “there is a dissonance between

what the commanders say officially and the message conveyed by what they do.”

In addition to turning a blind eye to the violence and abuse, commanders order their troops to treat Palestinians cruelly. Shatzberg related that, in addition to the written orders, commanders also give illegal verbal orders. These include orders to confiscate identity cards of Palestinians staying in Israel without permission and as a form of punishment, and to delay them, even where there is no legitimate reason to do so.¹³⁸ An echo of these words is found in the testimony, quoted above, of the soldier D.:

The brigade commander’s order was to delay them for three hours. That is what operations branch told me when I called to ask. Not to check them, only “educate” them for three hours, so they’ll know not to come another time.

The findings of several public commissions and committees that have investigated police violence over the years further reinforce the suspicion that the commanders silently consent to, or even encourage, the violence. The state comptroller has also dealt with this matter. In a report published in 2005 dealing with police violence, the state comptroller concluded as follows:

The public commissions and committees and the researchers who have dealt with illegal use of force and improper conduct by police officers note that, in the police department, a dual message is given regarding police violence, reflecting a disparity between the position presented when instructing the police

137. See Amir Kurtz and Yael Apter, “Where’s the Limit,” *Iton Tel Aviv*, 13 October 2006; Gidon Levy, “Flowers in the Barrel,” *Ha’aretz*, 15 October 2006.

138. Shatzberg made these remarks at a meeting with B’Tselem researcher Eitan Diamond on 15 January 2006.

officers, which emphasizes the limitations on the use of force, and the position of the commanders in the field, who implement a policy of “turning a blind eye and silent consent.”¹³⁹

As B’Tselem has reported several times in the past, dual messages and silent consent are not limited to the conduct of unruly police officers. The same is true of the

conduct of soldiers who unlawfully harmed Palestinians.¹⁴⁰

The above increases the concern expressed in B’Tselem’s 1996 report that there is an unwritten policy encouraging security forces to harm Palestinians who stay in Israel without a permit, or alternatively, that the authorities deliberately turn a blind eye to these wrongful practices.

Stiff punishment and forum shopping

Palestinians who are indicted for staying in Israel without a permit are tried quickly, and almost all are convicted. Those charged with this offense for the first time generally receive a one-month to three-month prison sentence and a suspended sentence. A Palestinian who received a suspended sentence and is caught again can expect a lengthy term in prison. Judges have discretion when imposing sentence, but they tend to give the maximum sentence. As a result, Palestinians are sometimes given ten month’s imprisonment or more, without taking any account of their grave need to support their families.¹⁴¹ Under these circumstances, it is doubtful that such a stiff punishment meets the requirement of proportionality in sentencing, whereby severity of the punishment must suit the offense and take into account the specific facts of the case and the personal circumstances of the defendant.

Palestinians caught staying illegally in Israel are often brought before a military court in the West Bank. In a visit that B’Tselem made to Border Police Central Region headquarters on 17 May 2006, a Border Police investigator stated that, although offenses in violation of the Entry into Israel Law may be heard in courts in Israel, the policy is to try the offenders in military courts in the West Bank, where they are charged with violating the order forbidding exit from a closed military area. This policy works to the defendants’ disadvantage, given that military courts in the West Bank grant significantly fewer procedural rights than those given to defendants in courts in Israel, and impose stiffer sentences.¹⁴²

139. State Comptroller, *Annual Report 56A* (August 2005), 358-359. The findings of the committees and commissions discussed in the report were published in the following: (1) report of the Sirota-Eitan Commission, of 1979; (2) Ministry of Police, *Report of the Commission on the System-wide Handling of Police Violence*, June 1994; (3) Menachem Amir, *Force in Supervision, Violent Conduct of Police Officers: People, Situations, and Organization*, Ministry of Internal Security, Office of the Chief Scientist, November 1998; research of the chief scientist of the Ministry of Internal Security, of 1998; (4) Avraham Carmeli et al., *Police Violence against Civilians*, research report, Ministry of Internal Security, Office of the Chief Scientist, December 2000.

140. See, for example, B’Tselem, *Standard Routine*, 7-9; B’Tselem, *Soldier’s Abuse of Palestinians in Hebron*, 3 December 2002 (December 2002), 15; B’Tselem, *In Broad Daylight: Abuse of Palestinians by IDF Soldiers on 23 July 2001* (July 2001).

141. See Eli Ashkenazi, “Illegals get Stiff Sentences for Attempting to Work in Israel,” *Ha’aretz*, 11 December 2006.

142. For criticism of the military system in the West Bank, see B’Tselem, *The Judicial System in the West Bank* (November 1989); Lisa Hajar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (Berkeley: University of California Press, 2005).

Chapter 3

Failure to Bring Delinquent Police Officers and Soldiers to Justice

Preface

Article 2 of the International Covenant on Civil and Political Rights, of 1966, requires the signatory parties to take the necessary steps to ensure to all individuals within its territory that the rights set forth in the covenant – among them, the right to life, bodily integrity, and liberty – are respected and given effect. In its treatment of Palestinians staying in its territory without a permit, Israel – which signed and ratified the Covenant – has failed to comply with this provision.

Defense officials insist that the harm caused to the Palestinians by police officers and soldiers are exceptional cases, and that the police and army expend much effort to prevent them from occurring. Unfortunately, these encouraging statements are belied by reality. The frequent and extensive breaches set forth in Chapter 2 show that the harm to Palestinians, and Palestinians staying in Israel without a permit, in particular, is not an exception caused by a few rotten apples, but a common phenomenon, indicative of systemic failure.

In addition to failing to prevent unlawful conduct, the authorities have also been unsuccessful in their handling of offenses committed by the security forces and in deterring future breaches of the law. As we

shall see below, in the vast majority of cases, police officers and soldiers who exceeded their authority and unlawfully violated the rights of Palestinians are not penalized.

This failure to bring the delinquent security forces to justice is a result, first, of the fact that few Palestinians file complaints against delinquent security forces, and second, even when they do file a complaint, the perpetrator is rarely punished.

Negative incentives to filing complaints

In a reality in which abusing and harming Palestinians are routine, acts of violence and abuse, except for extreme cases, are perceived as the norm, and not the exception. Frequently, the victims are not aware that the police officers and soldiers who harmed them exceeded their authority, and never consider filing a complaint. When they are aware that the perpetrator acted without authority and though, by law, every person has the right to file a complaint regarding an offense that has been committed, the victims generally do not complain.¹⁴³ The reasons can be briefly summarized as follows: first, the victims do not think they will benefit from filing the complaint; second, they know that filing a complaint entails hardships; and third, they believe that filing a complaint will harm them.

143. On the right to file a complaint, see Section 58 of the Criminal Procedure Law [Consolidated Version], 5742 – 1982. For specific provisions on complaints against police officers, see Police Directive 4.05.01; Police Commissioner's Order 06.03.

Filing the complaint is viewed as useless

Palestinians do not believe filing a complaint will help them. Being exposed daily to the rude, violent behavior of Israeli law-enforcement officials, Palestinians do not trust the officials to investigate their complaints fairly and without bias. As one victim told B'Tselem, "The police are the ones who beat us, so how is it possible they will now investigate it?"¹⁴⁴

Although a substantial portion of the complaints against police officers and soldiers are investigated by persons who are not from the unit of the alleged perpetrator, the lack of faith is well founded. As we shall see below, the authorities relate to Palestinian complaints with suspicion and fail to investigate them properly, except in the unusual case in which there is extremely strong proof of misconduct. If the complaint relates to violence that the authorities deem "minor," the file is closed on grounds of "lack of public interest." In the common case in which the complaint is based solely on testimony of Palestinians that is contradicted by police officers' or soldiers' testimonies, the file is closed for "lack of evidence."¹⁴⁵

Difficulty in filing complaints

Theoretically, Palestinians harmed by police officers or soldiers are able to file a complaint by going to the Palestinian DCO, which forwards the complaint to the Israeli DCO. This possibility exists only on paper. First, the Israeli investigating authorities do not rely on testimonies given at the Palestinian DCOs,

and generally require the complainant to appear and file the complaint at their office. To save effort, Palestinians turn to the Israeli authorities at the start. Second, since Hamas took over control of Palestinian affairs, Israeli DCOs have refused to cooperate with the Palestinian DCOs, except in very exceptional cases, reducing the chances that a complaint filed with the Palestinian DCO will be investigated by the Israeli side. Third, because of the financial crisis in the West Bank and in the Gaza Strip, operation of the Palestinian DCOs – whose employees have not received their salaries for months and have gone on strike – has been completely disrupted.

In practice, therefore, Palestinians wanting to file a complaint have to do so at the Israeli DCO, or at a police station. As with other frameworks in which Palestinians come in contact with Israeli security forces, they are often humiliated and treated with scorn. To aggravate matters, the complainant undergoes an exhausting and frustrating bureaucratic procedure, whether the complaint is filed at the DCO or at a police station.

Some police stations are located in Israeli settlements. Palestinians wanting to file a complaint at these police stations sometimes have to obtain a permit to enter the settlement, which is not always granted. In any event, obtaining the permit entails time and effort.

Access to DCOs is easier, but frustrating. Each DCO is supposed to have a police officer present at all times to accept

144. The remark was made by Ramzi al-'Atuna on 6 August 2006 regarding abuse that he suffered on 27 July 2006.

145. State Comptroller, *Annual Report 56A* (August 2005), 361-363.

complaints from Palestinians, but this is not always the case, so complainants often have to wait hours for the police officer to appear. For this and other reasons that are not revealed to them, Palestinians who go to the DCOs to complain, and sometimes also those who go to police stations, have to spend an entire day and return the next day and then the day after that to file their complaint.

Filing the complaint is liable to harm the complainant

In addition to the humiliation and great effort needed to file a complaint, and the belief that filing a complaint is useless, Palestinians do not file complaints against security forces out of fear that sanctions will be taken against them for filing the complaint.

When a complaint is filed against police officers and soldiers, they routinely respond by alleging that the complainants assaulted them, and that they used force only to overcome the attacker. Given that the authorities find the security forces' version of the events (especially when the complainants are Palestinians who were caught staying in Israel illegally) more credible, Palestinian complainants risk being charged with an offense and prosecuted.

An illustration of this scenario occurred in the case of Ra'id Fatafah, who decided to file a complaint against a Border Police officer who had beaten him:

When I got to the stationhouse, I saw a number of Border Police officers in the yard. They

teased me and threatened me that I would go to jail because I had assaulted policemen and swore at them. I told them that I did not do that. While standing in the yard, the two policemen from the checkpoint came over and told me their versions. They wanted to influence me. The one who beat me spoke and the Druze policeman translated what he said. The policeman who beat me said, "We tried to grab you and you got injured when you did not obey us." They said that I had slammed my head against the fence.

The interrogator took the testimonies of the two policemen, and then I went into the interrogation room. In great detail, I told the interrogator what happened. At the end, another interrogator came in. He told me they would detain me, or that I could pay a 2,500 shekel bond. I was in shock. I told him that I was the victim and not the accused. He said there was no third option – it was either detention or bond.¹⁴⁶

Furthermore, Palestinians who are assaulted when caught in Israel without a permit believe that, if they file a complaint – during which they likely will have to admit they were staying in Israel illegally – the Israeli authorities are liable to prosecute them, or at least make it hard on them to get to their work sites in Israel. In their testimonies to B'Tselem, some Palestinians said they worried about retaliation. S.T., for example, asked that his particulars not be published. He refused to complain to the authorities about being assaulted: "I don't want more problems with the Border Police the next time I go to work in Israel."¹⁴⁷

146. Ra'id Fatafah, 26, is a resident of Tarqumiya, Hebron District. He gave the testimony to Musa Abu Hashhash at PARC offices, on 10 May 2006. For the full testimony, see www.btselem.org/english/Testimonies/20060509_BP_Beat_Raid_Fatafah_in_Hebron.asp.

147. The testimony was given to Suha Zeid at the governmental hospital in Beit Jala on 30 March 2006.

With these fears in mind, victims do not file complaints even in cases of abuse and beatings far more severe than the routine abuse they suffer.

Why complaints do not result in the punishment of offenders

Despite the reasons for not filing complaints, there are cases in which Palestinians caught while illegally in Israel do file complaints against police officers and soldiers. These usually occur when the victim suffers especially harsh abuse and beatings.

The Department for the Investigation of Police (DIP), in the Ministry of Justice, is charged with investigating complaints against police officers. The investigation of complaints against soldiers, when ordered by the judge advocate general, lies with the Military Police Investigation Unit. Generally, complaints checked by DIP or the Military Police are dismissed without an investigation file being opened and if investigation files are opened, in most cases they are closed without any criminal or disciplinary proceedings being taken.

Difficulties and failings in handling complaints against police officers

As explained in Chapter 2, the army operates in the West Bank, in the Gaza Strip, and in the seam zone to thwart the entry of Palestinians into Israel except through official crossing points, and the police force

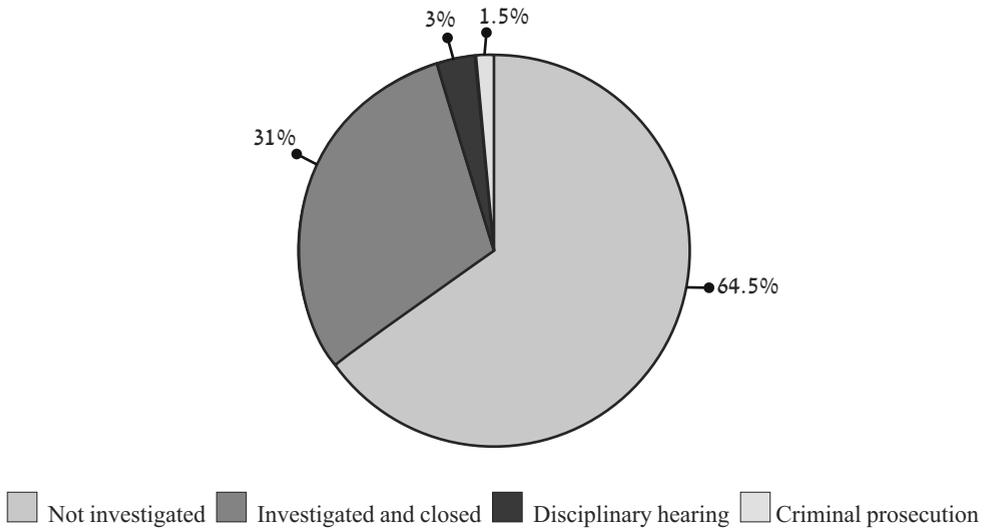
is charged with enforcing the law against Palestinians who entered Israel and are staying in the country without a permit. Thus, police officers, who come into almost daily friction with this group of Palestinians, are responsible for most of the abuse, and the majority of the complaints are filed against them.

B'Tselem submitted a number of requests for precise figures on DIP's handling of complaints alleging abuse of Palestinians. DIP replied that, "Due to computerization limitations in the Department, we are unable to break down the figures requested." Nevertheless, the findings of the state comptroller's report for 2005, which dealt with DIP's handling of complaints on illegal use of force by the police (the report dealt with all complaints about use of force, not only against Palestinians), as well as B'Tselem's statistics, provide some revealing information on this matter.

According to DIP's figures as published in the state comptroller's report, the majority of complaints alleging illegal use of force were not investigated (65 percent in 2002, 64 percent in 2003), or were investigated and closed (30 percent in 2002, 32 percent in 2003). Only three percent of the complaints received in 2002 and 2003 led to a disciplinary proceeding, and a criminal prosecution was initiated against the alleged wrongdoer in only 1.5 percent of the cases.¹⁴⁸

148. State Comptroller, *Annual Report 56A*, 361-363.

Graph 8: DIP's handling of complaints on use of force, 2002-2003



The dismal state of affairs portrayed in the state comptroller's report is reinforced by DIP's handling of complaints that B'Tselem forwarded to it over the years. When B'Tselem receives a credible report of severe police violence against residents of the West Bank, the organization writes to DIP and requests an investigation into the matter. Although these complaints are well documented and the injuries are especially severe, DIP has initiated disciplinary or criminal proceedings in only a small percentage of the cases. Since the beginning of the second intifada, in September 2000, B'Tselem has forwarded eighty-four such documented cases of police misuse of force. DIP did not investigate fifty-two of the cases, or closed the files. The complaints led to disciplinary proceedings in only three

cases, and to criminal proceedings in but four cases.¹⁴⁹

These figures are particularly worrisome because DIP is the only body that handles complaints alleging criminal responsibility for illegal use of force by police officers. When DIP closes a file – as it does in the overwhelming majority of cases – the police do not continue to investigate whether disciplinary proceedings should be instituted against the alleged wrongdoer. The situation is indeed absurd: while light disciplinary offenses of unbecoming conduct are handled and investigated by the police, misuse of force and abusive conduct are investigated only if they meet the higher standard of proof to support a criminal charge, even though illegal use of force is also a grave disciplinary offense.¹⁵⁰

149. The other complaints are under review. In four cases, DIP recommended criminal prosecution.

150. This point was emphasized by the representative of the state comptroller at a meeting of the Knesset committee that discussed the system's handling of complaints of police violence and unbecoming conduct. See Minutes No. 250, Knesset's State Control Committee, of 13 December 2005.

Closing of files on grounds of “lack of public interest”

When DIP decides not to investigate a complaint of illegal use of force, it generally bases its decision on “lack of public interest.” This reason is given primarily in cases in which the victim does not cooperate with the authorities (this occurred, according to the state comptroller’s report, in forty-five percent of the cases closed for lack of public interest) and in cases in which the force used was “minor” (thirty-four percent). In these cases, as in the cases in which information is found that refutes the complainant’s version, there is little chance that an investigation might lead to sufficient evidence to support a criminal proceeding, so DIP does not invest its limited resources and closes the file without investigating the complaint.¹⁵¹

This policy thwarts the investigation of many complaints filed with DIP relating to Palestinians staying in Israel without a permit, who fear cooperating with the investigating authorities. Without their cooperation, the complaint is not investigated, on grounds of “lack of public interest,” even if there is reason to believe that the police officer committed serious offenses.

For example, the minor J. T., an excerpt of whose testimony to B’Tselem appears above, described being forced to sign documents confirming that he was not beaten or assaulted by police officers, although two police officers from the special patrol unit had indeed beat him.

They took me to a parking lot on a side street near Jaffa Street [in Jerusalem]. The big policeman punched me three times in the face and told me to empty my pocket onto the hood of one of the cars in the lot. I took out my money, about 500 shekels, and put it on the car. The same policeman continued to beat me, and the black policeman counted the money. This went on for about ten, fifteen minutes. Later, the big policeman told me to take the money and the merchandise that was left, and they took me to a GMC vehicle. They twisted my hands behind me, cuffed them with iron handcuffs, and threw me onto the floor of the vehicle. The black policeman sat in the back, which had blue upholstery, and put his feet on my back...

The policemen removed me from the vehicle and took me into the station. They put me in a bathroom and told me to undress. I took off my clothes and remained in my underwear. The big policeman told me to take them off, and I removed them. Then, for about three minutes, the policemen kicked me in the stomach and hit me in the face. After that, they told me to get dressed and took me to an interrogation room.

J. T. also related that, after he was taken from the interrogation room, where he underwent further abuse, he counted the money in his pockets and found that fifty shekels were missing.

B’Tselem wrote to DIP, requesting that it investigate J. T.’s allegations that police officers committed criminal offenses when they beat him and stole his money. J. T.’s father believed that complaining to Israeli

151. State Comptroller, *Annual Report 56A*, 361.

authorities would be useless, and might even harm his son (who would have to admit that he was staying illegally in Israel), and refused to cooperate in the investigation. Following the refusal to cooperate, DIP informed B'Tselem that:

After seriously considering all the relevant circumstances in this complaint, we concluded that it would be improper to open a criminal investigation in this case. Our decision was based on reasons related to the overall public interest in investigating the file.¹⁵²

The policy implemented in this case is very difficult to accept. The public has a paramount interest in ensuring that persons given the task of protecting it against lawbreakers are not themselves criminals who misuse force and act abusively. Therefore, where a suspicion arises that police officers have committed serious crimes, such as those described in J. T.'s testimony, the public has a clear interest in investigating the suspicions, and if the victims are not willing to cooperate, DIP should investigate and try, at least, to determine if the allegations are true. In J. T.'s case, for instance, B'Tselem's letter of complaint to DIP included information on the circumstances of the assault, including the time and place, and a description of the assailants. Had DIP investigated, they would likely have been able to locate the alleged perpetrators, and had they questioned these suspects and confronted them with the testimony given by J. T., the investigators

might have obtained sufficient evidence to support the filing of an indictment.

Closing of files on grounds of "lack of sufficient evidence"

Most DIP investigations of illegal use of force and abuse by police are closed because of lack of sufficient evidence to support a criminal indictment.¹⁵³ One factor is the lack of supporting testimonies.

The police officers against whom the accusations are made generally give a contradictory version of the events, and in most cases there is no objective piece of evidence that supports one version or the other. In such case, it is very unlikely that the police officers would be convicted in a criminal trial, where the defendant's guilt must be proven beyond a reasonable doubt. For this reason, DIP closes the file on grounds of lack of sufficient evidence. DIP informed the state comptroller that more than half of its investigations on police violence are closed for this reason.¹⁵⁴ Files are closed also in cases in which the police officers admit that they used force, and even where signs of the violence are evident on the complainants' bodies, given that the police officers might argue that they acted with due authority given them by law and used reasonable, necessary, and justifiable force in response to the complainants' conduct. Without evidence to the contrary, the police officers' version cannot be rebutted beyond a reasonable doubt.¹⁵⁵

152. From DIP's letter of 30 July 2006 to B'Tselem.

153. State Comptroller, *Annual Report 56A*, 362-364.

154. *Ibid.*, 363.

155. *Ibid.*, 364.

In addition to this problem, there are also intentional acts or omissions that thwart the prosecution of offenders. Police in uniform must, by law, wear a visible tag with their first and last name.¹⁵⁶ However, some offending police officers are not in uniform, and some do not wear their name tag openly. Special Police Patrol Unit officers, for example, often wear turtle-neck shirts with no identifying tag, and Border Police officers fold their name tag or conceal it under their bullet-proof vests. As a result, complainants are often unable to provide precise details on the identity of the police officers. When the tags are visible, Palestinians have difficulty reading the names, as these are written in Hebrew, a language which many of them are unable to read. Furthermore, although, by law, police officers must identify themselves to anyone who requests it, victims of police abuse do not dare, in most cases, to make this demand, and even when they gather the courage and do so, police officers almost always refuse to identify themselves to them.¹⁵⁷

Closing files for lack of sufficient evidence is common in cases that B'Tselem sends to DIP involving allegations of police abuse of Palestinians caught in Israel without a permit. Often, DIP responds as follows: "We have decided to close the file for the reason that, unfortunately and despite our efforts, we have been unable to determine the identity of the alleged offender." This explanation is provided both when suspects are not identified and when insufficient evidence is found to support the charges against alleged wrongdoers who have been identified.

For example, on 24 March 2004, five Palestinians filed, with B'Tselem's aid, complaints relating to severe abuse they claimed to have suffered at the hands of Border Police officers who caught them, on 8 February 2004, staying illegally in the area of the Har Homa settlement, in East Jerusalem. On 7 September 2004, DIP wrote that it had closed the investigation file, and gave the standard reply quoted above in explanation of its decision. Study of the file indicates that, contrary to the explanation given, the alleged offenders were identified. They were three members of a patrol jeep who were on duty in the area at the time the complainants contended the incident took place. The three were questioned under caution, meaning that charges might be filed against them. Furthermore, the complainants had given statements indicating that a policewoman who took an active part in the maltreatment was called "Maya" by the other police officers. Maya also was the first name of one of three members of the patrol team who were questioned as suspects. The file was closed despite this fact, and despite the fact that the complainants provided medical documents supporting their contentions. DIP closed the file because the three suspects denied the complainants' version, and DIP officials thought, therefore, that they had insufficient proof to prove the suspects' guilt.

In this case and others like it, the standard reply – "unfortunately and despite our efforts, we have been unable to locate the suspected offender" – is inappropriate and unconvincing grounds for closing the investigation file. The presumption of innocence indeed requires

156. Section 5A of the Police Ordinance [New Version], 5731 – 1971.

157. The requirement is set forth in the aforesaid Section 5A of the Police Ordinance.

that proceedings not be initiated against persons where no proper factual basis exists. However, given the severity of the suspicions arising from the testimonies provided in these cases, the complainants' detailed description of the place and time of the incident and of their assailants, and the medical and other reports that support their version, DIP could have, and should have, made a greater effort to locate the suspects and investigate if they had committed the alleged acts. Despite the importance of resource allocation and the obligation of DIP to take this into account, this consideration cannot justify the automatic closure of files each time the alleged offenders deny the complainants' contentions. When there is prima facie evidence supporting the complainants' version, there is a real chance of successful prosecution of the case, and when serious offenses are alleged, the authorities should invest the resources and do what they can to turn this chance into reality.

Difficulties and failings in handling complaints against soldiers

As explained above, IDF soldiers experience much less friction and confrontation with Palestinians staying in Israel without a permit than do police officers. This notwithstanding, B'Tselem is aware of a number of cases in which soldiers assaulted Palestinians after catching them trying to sneak into Israel. Additionally, as aforementioned, soldiers seeking to thwart Palestinian attempts to break the closure, often open fire illegally, thus endangering the lives of civilians not taking part in the hostilities. This illegal gunfire has caused numerous casualties. Complaints filed against soldiers in these cases are even less likely to succeed than complaints filed against delinquent police officers.

First, all the factors that make it hard to investigate suspicions against police officers apply, possibly to a greater extent, when investigating alleged misconduct of soldiers:

- victims fear cooperating with the investigating authorities, and few do so;
- without objective evidence supporting the complainants' version and refuting the contradictory version given by the alleged offenders, proving use of illegal force is difficult;
- identifying the offending soldiers is especially difficult because soldiers do not have to wear identification tags, and, in most cases of illegal gunfire, are not even seen by the victims.

Second, in many cases in which soldiers beat and abuse Palestinians, a Military Police investigation is not opened, even if there are grounds to believe that the soldiers' conduct was criminal.

This failure is especially noteworthy in shooting cases. As pointed out above, since the beginning of the second intifada, the army has considered itself engaged in an armed conflict in the West Bank and the Gaza Strip. Consequently, the policy of handling cases in which unarmed Palestinian civilians are killed or wounded by soldiers' gunfire has been changed. In the past, every case in which a Palestinian civilian was killed was automatically investigated, even if the person killed took part in the fighting; now, the Judge Advocate General's Office decides whether an investigation will be conducted on the basis of an inquiry made by the commanders of the troops that were involved in the shooting incident.

This policy is fundamentally flawed. Entrusting the task of gathering the evidence with the force whose members and commanders are liable to bear criminal responsibility for the shooting is inherently a conflict of interest. Also, these persons are not professional investigators, so even if they act in good faith, they lack the tools and knowledge needed to carry out a criminal investigation.¹⁵⁸ In light of the army's policy, it is not surprising that, in most cases of Palestinian casualties by IDF gunfire, the judge advocate general decided not to order a Military Police investigation.¹⁵⁹ Indeed, in the vast majority of cases in which B'Tselem wrote to the judge advocate general demanding a Military Police investigation into the shooting of unarmed Palestinians near the Gaza perimeter fence, no Military Police investigation was initiated.

Three, when a Military Police investigation is opened in such cases – and even more so when an investigating officer or other official untrained to carry out investigations handles the task – the investigation is usually poorly

done and no genuine attempt is made to determine the truth. The explanation for this is three-fold:¹⁶⁰

1) *The army investigates itself*

Unlike complaints against police officers, which are investigated by an external body (DIP), complaints against soldiers are investigated by the army itself, at times even by the very units to which the alleged offender belongs, which constitutes a clear conflict of interest and is likely to create a bias in favor of the soldiers under investigation¹⁶¹

2) *Delay*

The Judge Advocate General's Office takes much time deciding whether to order an investigation. By the time the decision to investigate is made and the investigators begin the investigation, the scene of the incident will have changed and evidence will have disappeared. Furthermore, the passage of time makes it harder to locate witnesses and the soldiers who allegedly acted improperly (who may well have already been discharged), and

158. On 27 October 2003, the Association for Civil Rights in Israel and B'Tselem petitioned the High Court of Justice against the judge advocate general, demanding that he order a Military Police investigation in every case in which soldiers killed Palestinian civilians who were not taking part in the hostilities. For information on the petition, which is still pending, and for criticism on the failings of the current policy, see www.btselem.org/English/Firearms/JAG_Investigations.asp. See, also, B'Tselem, *Trigger Happy*, 11-15; B'Tselem, *Take No Prisoners*, 22-24.

159. Since the beginning of the second intifada, in September 2000, Israeli security forces have killed 3,707 Palestinians, 1,795 of whom were not taking part in the hostilities at the time they were killed. Of the remaining 570 fatalities, it is unclear if they were taking part in the fighting when they were killed. IDF gunfire also injured thousands of Palestinians who were not taking part in the hostilities. The thousands of shooting incidents that brought about such a great number of casualties led to, as of 7 May 2006, only 175 Military Police investigations and the filing of only eighteen indictments (as of 22 June 2005).

160. For more extensive discussion on this point, see B'Tselem, *Standard Routine*, 7-9; HaMoked: Center for the Defence of the Individual, *Escaping Responsibility: The Response of the Israeli Military Justice System to Complaints Against Soldiers by Palestinians* (November 1997), 47-68.

161. It should be mentioned that DIP investigations are also subject to bias, given that most of DIP's staff are police officers who are lent to the Ministry of Justice for a fixed period of time. The Knesset's Constitution, Law and Justice Committee discussed this problem at its meeting on 13 December 2005, as did the Interior and Environment Committee and the Constitution, Law and Justice Committee at a joint meeting held on 23 November 2004.

if witnesses are eventually located, they have difficulty recalling accurately the details of the incident.¹⁶²

3) *Flaws during the investigation*

The most professional investigatory body in the army, the Military Police Investigations Unit, has almost no Arabic-speaking investigators or translators to aid in collecting testimonies of the victims and of Palestinian eyewitnesses. This lack is even worse in the untrained investigatory bodies.

As a result, there are instances in which eyewitnesses are not questioned and the findings of the investigation are based solely on soldiers' testimonies. Frequently, Military Police investigations are handled by reserve-duty soldiers who complete their service before completing the investigation, and the investigation file is turned over to another soldier, resulting in slow and inefficient handling of the file.

The damaging consequences of failing to punish offenders

The failure to fully prosecute offenders has grave implications. In addition to the injustice of not taking action against persons who trample on fundamental social norms, and the manifest indifference to the human dignity of the Palestinian victims, the failure to take meaningful action against the perpetrators is dangerous. The message conveyed to offenders and victims alike is that, as far as the Israeli authorities are concerned, the lives and dignity of Palestinians count for naught. With no fear of punishment hovering over them, police officers and soldiers who capture Palestinians without permits are likely to continue to commit violations of the type and scope described in Chapter 2 of this report. For Palestinians, the impression that it is pointless for them to seek justice in the Israeli law-enforcement system will be reinforced, and their frustration, hostility, bitterness, and rage can be expected to increase.

162. In their petition to the High Court, mentioned above, B'Tselem and ACRI suggested that the Military Police document the scene shortly after the incident occurs and before decision is made to open an investigation. The State Attorney's Office rejected the suggestion.

Summary

Residents of the West Bank and the Gaza Strip are suffering great economic hardship. Poverty levels are high and many Palestinians are unable to find work with which to support themselves and their dependants. The State of Israel is responsible in large part for creating this bleak situation. Given that Israel effectively controls these territories, it is obligated to rectify the situation. However, rather than do something to alleviate the distress, Israel aggravates the situation.

Israel imposes a tight closure, forbidding Palestinians to leave the West Bank and Gaza and enter Israel without permits, which it grants sparingly. Many Palestinians lacking entry visas violate the closure and stay in Israel without permission, hoping to earn a living and rescue themselves and their families from the oppressive conditions clouding their lives.

Week after week, police officers and soldiers apprehend thousands of these persons. Routinely, the captors harass and humiliate those whom they catch, in flagrant violation of the law. Some commanders expressly

support these forbidden practices, while others silently consent. Moreover, police officers and soldiers frequently use force illegally and physically injure and degrade Palestinians they find staying in Israel without a permit. Often, the abuse is severe. In some cases, they also rob or damage the Palestinians' personal property. The Israeli authorities demonstrate deplorable negligence and laxity in combating this phenomenon.

Other forbidden practices receive broad and repeated support either explicitly or implicitly. These practices include, for example, the use of illegal force to compel Palestinians caught in Israel without a permit to collaborate, and unlawful shooting at Palestinians who try to enter Israel, killing and wounding many.

These practices flagrantly breach both Israeli and international law. As a result of the authorities' failings, most victims do not file complaints and, when they do and the complaints are investigated, the authorities rarely prosecute the delinquent police offices and soldiers to the full extent of the law.

Conclusions and Recommendations

Israel must put an end to the illegal practices described in this report. But it is also crucial to find solutions for the underlying problems that cause so many Palestinians to enter Israel illegally in the first place.

Effective enforcement of the law

As a means to help end the exploitation and harm to Palestinians in Israel without a permit, the law must be enforced on police officers, soldiers, and other state officials who exceed their powers and unlawfully harm Palestinians.

The failure of the law-enforcement system in dealing with this phenomenon enables security forces to continue to abuse, beat, humiliate Palestinians and damage their property, giving the clear impression that the Israeli authorities relate indifferently or forgivingly, if not with outright support, to the offenses committed by the security forces. To correct this impression and to end the illegal practices, the authorities must inculcate proper norms among the security forces and act vigorously and effectively to prosecute the police officers and soldiers who violate these norms.

At the very least the authorities must take the following actions:

- transmit to police officers and soldiers a consistent, unequivocal, forceful, and clear message that, in all cases, including those involving persons suspected of staying illegally in Israel, they must not violate the persons' dignity, injure them physically, or damage their property, and

may use only the minimal amount of force necessary to carry out their duties;

- require all security forces enforcing the law on Palestinians to wear identifying tags in Hebrew and Arabic and to identify themselves when requested to do so;
- act vigorously and effectively to identify cases in which security forces illegally harm Palestinians and to investigate complaints filed by Palestinians and by human rights organizations, making a sincere and serious attempt to determine the truth of the allegations;
- prosecute, by both criminal and disciplinary proceedings, police officers and soldiers who unlawfully harm Palestinians, and impose appropriate sentences on those found guilty.

Uprooting improper procedures

In some of the cases described in this report, the security forces did not violate internal procedures. However, these procedures themselves contravene Israeli law and international humanitarian law, which are binding on the Israeli authorities, and must be cancelled. In particular, the authorities must do the following:

- forbid security forces to exploit the distress of Palestinians caught in Israel without a permit by pressuring them to collaborate;
- establish in all areas, including the area of the Gaza perimeter fence and the seam zone in the West Bank, open-fire

regulations that allow firing at persons only in cases of imminent threat to life, and only as a last resort, with due caution, and in instances in which there is a logical relationship between the degree of danger inherent in using firearms and the result that the shooting seeks to prevent.

The underlying problems: imaginary and real solutions

The Israeli authorities contend that they do the best they can to establish proper norms for the treatment of Palestinians caught staying in Israel without a permit, and to instill these norms among the security forces. These claims are unconvincing, given the findings of B'Tselem's research. However, even if the authorities make a sincere effort to implement all the suggestions set forth above, abuse and maltreatment presumably would not stop completely.

With thousands of Palestinians having a firm desire to be in Israel and with the police officers and soldiers acting to prevent them from realizing that desire, instances in which the police officers and soldiers use force illegally are likely to occur. Of course, the foreseeability of such acts does not lessen the severity of the offenses committed by the security forces, and the authorities are obligated to prosecute and punish them for their unlawful acts. But the authorities' responsibility does not stop there. They must take action to solve the underlying problems that cause so many Palestinians to enter Israel without a permit.

In doing this, it is necessary to distinguish between imaginary and real solutions.

Many people believe that once the construction of the separation barrier is completed, Palestinians will no longer be able to enter Israel, and that the phenomenon of Palestinians staying illegally in Israel will disappear almost entirely. Some have suggested that, until the barrier is completed, the state must impose stringent penalties to deter Palestinians from staying in Israel without a permit – “every one of them must be arrested and sentenced to five years in jail.”¹⁶³

These are the imaginary solutions. It is doubtful that imposing harsher punishment is practical, given the massive investment that would be needed to imprison and try so many people. Also, it is not certain that the separation barrier will prevent Palestinians without a permit from entering Israel. So long as the grave hardship continues in the West Bank and the Gaza Strip, Palestinians will have a strong incentive to enter Israel, and given that the barrier will not hermetically seal the West Bank, many will presumably find a way to get in.¹⁶⁴

Even if these measures prevent Palestinians without a permit from entering Israel, Israel must do more. International humanitarian law requires it to ensure the well-being and livelihood of residents of territory over which it has effective control. Article 43 of the Hague Regulations requires the occupier to ensure “public safety and order.” As the Israeli High Court of Justice has explained,

163. See Dan Margalit, “The Fence Fraud,” *Ma'ariv*, 22 April 2006.

164. Hermetic sealing of the border is impossible, in part, because even after construction of the barrier is completed, movement will be allowed between Israel and the many Jewish settlements scattered throughout the West Bank.

this obligation covers all the varied needs of residents in the occupied territory, including, of course, the basic need to earn a living.¹⁶⁵ Israel has an increased obligation to ensure a livelihood for the residents of West Bank and the Gaza Strip because much of the residents' economic distress results from its policies and actions.¹⁶⁶ Moreover, international human rights law, too, requires Israel to take positive steps to ensure the right of residents of the occupied territory to work and to an adequate standard of living.¹⁶⁷

Even if Israel's legitimate security needs require restricting the entry of Palestinians into its territory, the State of Israel can and must do so in a way that infringes Palestinian rights to a much lesser extent.

Israel should promote an independent Palestinian economy. In doing so, it would not only meet its obligations under law, it would reduce Palestinian dependence on work in Israel and automatically diminish the incentive to enter Israel without a permit. As long as the economic situation in the West Bank and the Gaza Strip remains grim, and as long as Israel continues to have effective control in those areas, it must ease its closure policy and enable many more Palestinians to enter Israel, in a controlled manner subject to suitable security checks. Such controlled entry would not threaten the security of Israelis and would likely do much to reduce the hardships endured by Palestinians.

165. See, for example, H CJ 393/92, *Jam'iyyat Iskan al-Mu'aliman v. Commander of IDF Forces in Judea and Samaria et al.*, *Piskei Din* 37 (4) 785, 798.

166. On this point, an analogy may be made with Article 39 of the Fourth Geneva Convention, which states, *inter alia*, "Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependants." This article is found in the part of the Convention dealing with "Aliens in the Territory of a Party to the Conflict" and not in the part dealing with "Occupied Territory," but the attitude which it reflects can, and indeed should, also be applied to Israel's treatment of Palestinians residing in occupied territory.

167. See Article 6(1) and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. For discussion on application of the Covenant in the Occupied Territories, see B'Tselem, *One Big Prison*, 75-78; Orna Ben-Naftali & Yuval Shany, "Living in Denial: The Application of Human Rights in the Occupied Territories," *37 Israel Law Review*, No. 1 (2004) 17; International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, 43 ILM (2004) 1009, Par. 112.

Appendix 1

Harsh Treatment of Persons Aiding Palestinians Staying in Israel without a Permit

Since it has proved difficult to enforce the law against the thousands of Palestinians who enter Israel without a permit themselves, and following a number of instances in which Palestinians who entered Israel illegally committed terrorist attacks with the aid of Israeli citizens, the Israeli authorities decided to deal harshly with persons who transport Palestinians without a permit, provide them accommodations, and employ them inside Israel.

Thus, the “seam zone plan,” of July 2001, states that, “Activity aimed at preventing the phenomenon of Palestinians illegally staying in Israel will focus on those who aid them (transportation, employment, and accommodations), and enforcement of the law against them will be intensified.”¹⁶⁸

Along with the increased enforcement by the executive branch, the courts have imposed harsh sentences.¹⁶⁹

Testimonies given to B’Tselem indicate that law-enforcement officials sometimes use illegal force and violence in their treatment of these persons. In other cases, strict enforcement led to outrageous results. For example, the state filed an indictment against a Palestinian woman living in Jerusalem for “illegally giving accommodation to a

foreigner,” because her husband, who does not have a resident’s card, spent nights with her and their six children in their home in East Jerusalem.

From the testimony of Salwa Badawi ‘Aramin, 36, married with six children, resident of Dahiyat a-Salam, ‘Anata, East Jerusalem:

My family is originally from Jerusalem. I was born and raised in the city, mostly in the Sheikh Jarrach neighborhood. In 1993, I married Bassam ‘Aramin, from Sa’ir, a village in Hebron District. In 1994, I filed a request for family unification at the Israeli Interior Ministry. In mid-1994, my husband received a permit from the ministry allowing him to live in Jerusalem, and with the permit we received a permit from the Civil Administration so that he could stay here legally. The permit was good for six months, and when it expired, the Interior Ministry refused to renew it. A few months later, the family unification request was rejected. My husband continued to live with us in the Shu’afat refugee camp. Most of the time, he didn’t have a permit, but there were times that he had a permit to enter Jerusalem, which made it easier for us. When he didn’t have the entry permit, all the burdens fell on my shoulders. For example, I had to take the children to the

168. See the survey in State Comptroller, *Audit Report on the Seam Zone* (July 2002), 37.

169. See Perm. Crim. App. 5198/01, *Khatib v. State of Israel, Piskei Din* 59 (1) 769, 771-774. Following this decision, the courts imposed heavy sentences on defendants convicted of this charge, hardly ever taking into account arguments for imposing lighter sentences. Later, the Supreme Court drew back somewhat from the severity of its ruling in *Khatib*. See Perm. Crim. App. 3674/04, *Abu Sallem v. State of Israel* (not yet reported); Yuval Yoaz, “Supreme Court Directs: Prison Sentence not Required for Employers of Persons Staying Illegally,” *Ha’aretz*, 13 February 2006.

doctor and handle bureaucratic matters. He couldn't do it. He works in Ramallah, which makes things easier, given that he doesn't have to move about in Jerusalem all the time.

In 2004, we moved to Dahiyat a-Salam. On 31 August 2004, we were awoken by banging on our apartment door. My daughter, 'Areen, opened the door before we got there because she thought it was already morning. When she opened the door, Border Police officers rushed inside, and she ran screaming to my bedroom. My husband and I were in bed. We got up and ran to the living room. There were about four police officers. They demanded our ID cards, and my husband handed them over. The policeman asked if he had a permit to stay, and my husband said that this was his house, and that he doesn't need a permit to be here. The police officers ordered him to go with them, and they left the house. Bassam returned twelve hours later. He said they took him to the Russian Compound and to a new Border Police base, opposite 'Anata, and that I had to go to the police station in 'Atarot the next day.

I went with Bassam and our two small children, Ahmad, 2, and Hiba, 1. After waiting outside for about three hours, we went in to be questioned. The interrogator, who was dressed in civilian clothes, asked me if I knew that Bassam was

living in the house illegally. I replied, "I am unfamiliar with this law. I submitted requests to all the state agencies. I am married to Bassam and we have six children. Now you are telling me that he is forbidden to live in the house with his wife and children?" He questioned us, in Arabic, for about half an hour. At the end, he ordered me to sign a few papers. He said they contained the things I said during the questioning. After that, we went home.

On 25 February 2005, a woman who said she was a police officer called me. She said that I had to go to court on 2 March, and that if I didn't appear they would arrest me. I asked her what the case was, and she said it had to do with somebody from the West Bank who had been caught in my house in 2004. I said the person was my husband.

On 2 March, I went to court. They read the indictment filed against me. They said that I brought a man named Bassam 'Aramin into my house. They referred to me as Salwa Shalaldeh, which was my name before I married, even though, since 1993, I have been called Salwa Badawi 'Aramin. The prosecutor used my maiden name to emphasize there was no legal relationship between my husband and me ... I am very frightened and dumbfounded. I didn't commit any offense. I only wanted to live a normal life with my husband and children.¹⁷⁰

170. The testimony was given to Kamal Jubran at the witness's home on 3 May 2006. The criminal file against her is pending in the Jerusalem Magistrate's Court (Crim. File 4330/05, *State of Israel v. Shalaldeh*).

Appendix 2

Testimonies on Hardship and Exploitation at Work

In testimonies to B'Tselem, Palestinians without a permit spoke about the hardships they suffer at work sites and on their way to work.¹⁷¹ A few of the dozens of relevant testimonies follow.

From the testimony of Khaled Si'areh, 33, married with five children, resident of Kharas, Hebron District:

Getting to work in Israel is really dangerous. I usually leave home on Saturday night, because it is easier to cross at night, and return on Thursday. When we get to Jerusalem, an Israeli car takes us to the work site. It is a white Ford and there are usually three other cars that also make the trip. One drives a few kilometers ahead, to make sure that the road is safe, another car drives a few meters in front of us, and the third drives behind us. The four drivers coordinate the trip among themselves and report by telephone if it is safe to continue, until we get to the work site. For taking us there and back, each driver receives 140 shekels from each worker.

I usually sleep at the construction site. We generally sleep in the basement. We close the opening with wooden boards and iron bars so that people would think it is abandoned. We don't turn on lights and don't leave at night. If we need light, we use candles. We remain holed up there from about 5:00 P.M. until the next morning. Sometimes, we cover the open roof with metal sheets from the construction

site, leaving a disguised opening, so that people won't think it's a door. Most contractors I work for are from Beit Safafa (a neighborhood in Jerusalem). They know how much we need the work and that we are not in Israel legally, and they exploit us. I make 120-140 shekels a day, from which I have to pay for travel and food. I end up with less than one hundred shekels a day, and don't forget there are many days that I don't work, or there is no work, or the Israeli employers don't want to employ illegal workers...¹⁷²

From the testimony of Jamil Salah, 36, married with five children, resident of Bidya, Salfit District:

In early 1998, the Israelis suddenly stopped giving me an entry permit. But I snuck into Israel to work. I would go around the checkpoints. There were many cases in which soldiers and Border Police officers hid along the bypass routes that workers used. So I started off for work in the middle of the night, around one in the morning...

Since the last intifada began, it has been harder to enter Israel, especially since the separation fence was built. When I manage to enter Israel, I sleep at the work site for two weeks or more, even though this keeps me away from my family and friends. Inside Israel, I spend all my time working or hanging around the construction site. We sleep at the site, between the walls or wooden boards. I sleep on a board. We don't

171. These hardships have also been reported in the media. See, for example, Amira Hass, "Down in the Dumps," *Ha'aretz*, 16 November 2004.

172. The testimony was given to Musa Abu Hashhash in Hebron on 21 December 2005.

have enough blankets, and wintertime is really hard on us. I am always worried that the police will burst in looking for illegal workers.¹⁷³

From the testimony of Muhammad Ghaneimat, 19, single, resident of Surif, Hebron District:

Four other workers who were sleeping with me in the basement got up in the morning and started work around seven o'clock. We worked until 7:30 in the evening, with a half-hour lunch break at eleven. We ate bread and canned food. We were very careful at work. We noted everybody who passed by because we knew that Border Police jeeps might arrive at any moment. Generally, the police enter the construction site and look for illegal workers. When I finished work, I was exhausted and full of dust. I perspired a lot and was really hungry. When I asked the other workers where I could shower, they laughed at me: "What, you think you are in a hotel?" I washed my face and went into the basement. We prepared supper, which was the same as we had for lunch, and I went to sleep immediately afterwards. I slept soundly and didn't wake up until morning. That was the way I lived until the weekend...

When I recall the days that I began working in Israel, I realize it is much harder now. The fence closed the whole area. We walk a lot further than we did previously, more than an hour and a half, along a hilly path to get to work...

Many times, the police burst into the work site in the middle of the night. When that happened,

we ran to the hills or hid at other sites. Yesterday [Monday, 12 December], one of the workers heard the sound of an approaching jeep, and woke us up. Startled, we fled to the hills, where we hid until about 1:30. We returned when the jeep left the area.¹⁷⁴

Many Palestinian workers without permits also spoke about the exploitation they suffer at the hands of their employers in Israel.

Khaled Si'areh, whose testimony was quoted above, stated:

Most workers like me have no rights. We don't get vacation, are not sure we will get paid, and the employers exploit many of us. Last year, my brothers and I worked for a contractor from Beit Safafa. When we finished the job, he paid us only eighty percent of the wages we agreed on, and he said that the money he gave us was enough. We couldn't force him to pay us the whole amount because we were working illegally.

Muhammad Ghaneimat also related to the matter of exploitation:

What bothers me and my friends at work most is that we have no economic or insurance rights. Work accidents frequently occur, and we have to pay out of our own pocket. One of the workers, Faras Ibrahim 'Abdullah Ghaneimat, fell on the job and broke his leg. He is still at home, and the company that employed him did not help him at all with the treatment. We are exploited. In the summer, we work from seven in the morning to seven-thirty in the evening, and in the winter,

173. The testimony was given to Iyad Hadad in al-Midya on 19 December 2005.

174. The testimony was given to Karim Jubran in East Jerusalem on 13 December 2005.

until five-thirty. We don't make more than 120 shekels a day. Clearly, they are exploiting us, but we have no option.

Ahmad Shatareh, 31, married with three children, resident of a-Doha, Bethlehem District, points out that:

Over the years, there were many cases in which contractors I worked for got rid of me when the work was completed and didn't pay me. They said that if I didn't go quietly, they would call the police to arrest me, because I was working in Israel without a permit. In 2004-2005, that happened to me six times.¹⁷⁵

175. Shatareh made these comments to Suha Zeid on 14 December 2005.

Responses of the Israeli Authorities

B'Tselem sent a draft copy of the report to the IDF Spokesperson, the Department for the Investigation of Police, and the Israel Police Force. No reply was received from the IPF. The responses of the IDF and DIP follow.

Response of the IDF Spokesperson's Office

Israel Defense Forces
IDF Spokesperson Unit
International Organizations Desk

Phone: 972-3-5691842

Fax: 972-3-5693971

8-i-3274

2007 March 14



RE: Response to B'Tselem's draft report regarding Palestinians residing in Israel without permission

1. B'Tselem provided the IDF with a draft of its new report dealing with Palestinians residing in Israel without a permit, to allow the IDF to respond prior to publication. Below is the IDF response pertaining to the main issues B'Tselem raise in their report.

2. It is necessary to present the context in which the Israeli security services' activities in the region take place, something which is almost entirely absent from B'Tselem's report. It is the intention of the Palestinian terrorist organizations to enter Israel's territory and to harm Israeli civilians: This is a permanent and ongoing danger to Israeli civilians. The IDF is obliged to do everything in its power to protect Israeli civilians and soldiers from the terrorist organizations that try to harm them. The Israeli Supreme Court recently commented that:

In September 2000, the Second Intifada broke out. A strong terrorist offensive was directed against the State of Israel and against Israelis wherever they were found. This terrorist offensive does not discriminate between combatants or civilians or between men, women and children. Terrorist attacks are carried both in the territories of Judea, Samaria and Gaza and within the boundaries of the State of Israel. They are directed against civilian population centres, shopping centres and market places, cafes and restaurants. In the past five years, thousands of terrorist operations have been carried out against Israel in which over one thousand Israeli citizens have been killed and thousands more have been injured. [High Court of Justice, 769/02, *The Public Committee Against Torture In Israel V. the Government of Israel* (from the 14.12.06, before publication)]

3. In any case of a suspected terrorist infiltration within the state's borders the security services are called and act according to the conditions of the area and the different intelligence warnings. When conditions allow, as occurs in certain cases, the security forces frustrate the attempt, whether it is an attempt to carry out a terrorist attack or an attempted infiltration, by arresting the suspect, and without opening fire.

4. Complaints regarding injuries caused to Palestinians or the behaviour of soldiers are

investigated with extreme scrutiny. In accordance with the Military Advocate General Corps' general practices, when there are complaints of violence, abuse, humiliation or any other forbidden and intentional behaviour by IDF soldiers, the Military Police Investigative Unit are instructed to commence an investigation immediately. The procedure is different, however, when the complaint pertains to an incident in which a Palestinian was allegedly injured during an IDF operation. The Military Advocate General Corps' position with regard to complaints of this kind is that the demand to commence an investigation in every case where a complaint of this kind is made is unreasonable in light of the special security situation prevailing in the Judea, Samaria and Gaza territories, where security forces' operations are considered military activities rather than policing activities, for all the additional reasons detailed in the State's response to the 9594/03 appeal to the High Court of Justice. In these cases a field investigation is conducted, and its findings are examined by the Military Advocate General. In appropriate cases, an instruction is given to commence an investigation.

5. Below is the response to the main claims of the report:

a) Page 49 – The claim that the IDF does not publish the rules of engagement”.

Response: Throughout all the years of the conflict, the IDF has subjected its rules of engagement to repeated examination, adjusting them according to the changing reality. The rules are set after in-depth and intensive staff work, with the legal advice of the Military Advocate General Corps. At the end of the process, the rules are brought to the Chief of the General Staff for his approval and in certain cases the Attorney General's approval is also requested. The IDF, through commanders of all ranks, works to inculcate the rules of engagement in the commanders and soldiers posted in the territories. The rules of engagement are, however, classified and are not published. This is not for “arbitrary” reasons or due to a desire for opacity but for reasons of security. (See for example, High Court Justice ruling 66/89 *The League for Human and Civil Rights V. The Minister of Defence*). It is for understandable reasons that the rules of engagement are not made available to the general public, since doing so would, at the same time, also provide terrorists who wish to harm Israeli civilians and soldiers with access to these rules as well.

b) Page 50 – The claim that there are areas in which anyone entering or passing close by will be killed.

Response: There is nothing in the IDF rules of engagement which permits firing at a person simply for being in a certain place.

c) Page 63– The claim that in general, complaints pertaining to abuse do not result in the opening of an investigation.

Response: This is an erroneous claim. The policy of the Military Advocate General Corps is, as stated, that, in general, whenever there is a complaint of violence or abuse, an investigation is immediately commenced, without delay.

d) Pages 33-35 – The claim that violence was used against Palestinians that were caught whilst they were residing in Israel without a permit.

Response: Only two of the incidents described in the report pertain to IDF forces. With regard to one of these incidents, as B'Tselem has been informed, the Military Advocate General Corps has instructed that an investigation be commenced to clarify the claims made. The other incident is unknown to us, and any information passed on to us will be reviewed by the Military Advocate General Corps which will make a decision accordingly.

e) Page 71 – The claim that there were incidents in which B'Tselem appealed to the Military Advocate General requesting that investigations be commenced regarding the deaths of unarmed Palestinians close to the security fence around the Gaza Strip, and despite this, investigations were not conducted.

Response: According to the report, twenty-nine Palestinians were fired upon and killed near the security fence surrounding the Gaza Strip, despite not being involved in any fighting at the time. Nevertheless, according to B'Tselem, investigations were not subsequently commenced. In fact, the claims actually refer to seventeen incidents, several of which have been or are being examined by the Military Advocate General Corps. A considerable number of the other cases are unfamiliar to the Military Advocate General Corps, and we are unfamiliar with any complaint regarding those cases (a separate response regarding these incidents will be forthcoming). The Military Advocate General Corps' policy is to seriously examine all complaints relating to allegedly illegal or unjustified shootings, whether these occurred near the security fence or in other areas. **It should be emphasised that a separate response will be provided to B'Tselem regarding this matter.**

f) Page 72 – The claim that the army investigates itself

The legislature provides the Military Advocate General Corps with the authority to enforce the law within the IDF in the Military Justice Act 1955. The Military Advocate General Corps is an independent body, not dependent on the military command in its professional activities, subject only to the authority of law. The Military Advocate General Corps guides the Military Police Investigative Unit in carrying out criminal investigations. The Military Police Investigative Unit's inspectors in all districts are subjected to the Unit's Command, and not subordinate to the commanders of the units under investigation.

g) Page 72 – The claim that Military Police Investigative Unit inspectors lack professionalism

Response: The claim that the Military Police Investigative Unit's inspectors do not speak Arabic is not correct. There are Arabic-speaking investigators in almost every investigative department and if in the course of an investigation an Arabic-speaking investigator is not present at the Military Police Investigative Unit's base, assistance will be provided by an

investigator from another base. Similarly, most testimonies are collected in the DCO bases where Arabic-language translators and officers are also available.

Regarding the claim that most investigations are managed by investigators from the Reserve Forces, investigators that go back to their civilian lives, and thus keeping the case from being completed, it is in light of their accumulated experience and professionalism in dealing with these cases that Reserve investigators are assigned to investigations. We are unaware of any complaint regarding the mishandling of an investigation because the investigator was a reserve soldier.

h) Page 77 – The claim that there is a need to change the existing *Modus Operandi* and to find solutions for problems.

Response: In the past, a number of meetings were arranged between senior figures in the Military Advocate General Corps and between representatives of B'Tselem in order to hear their observations and proposals and increase cooperation between the two organizations. As a result of these meetings, which the IDF desires to continue, changes were made in military procedures regarding complaints about incidents that involve shooting.

i) Page 75 – The claim that those that injure Palestinians illegally residing in Israel are not brought to justice.

We do not accept the claim that there is no exhaustive examination of individuals who have allegedly abused Palestinians or used illegal force. Intensive efforts are made to bring anyone who transgresses the law to justice, and when sufficient evidence is available, indictments for serious offenses are filed with the prosecution's plea for a custodial sentence. When necessary, appeals are filed by the prosecution to the Military Court of Appeals to increase the punishment

j) Pages 29-33 – Claims regarding detention (עֵרֶב) of Palestinians and the confiscation of identity cards.

Response: Regarding the authority of IDF soldiers in Judea and Samaria to detain, a military committee has been established to draw up detention-authority legislation, and is at an advanced stage of its work. **In any case, there is an absolute prohibition on detention as a means of punishment.**

Regarding the alleged practice of confiscating identity cards, security legislation authorizes IDF soldiers to retain the identity card of individuals temporarily if they believe that this measure is necessary in order to implement an order given to that individual, or to ensure the individual's appearance at a specific place at a given time stated in an order of an IDF authority or on its behalf. **There is a clear prohibition on taking people's ID cards as a means of punishment.** If an ID card has been retained for the reasons mentioned above, the soldier is then obliged to provide the person in question with temporary documentation that is valid for, at the outside, ninety-six hours. According to the command which deals with the confiscation of Palestinian ID documentation by soldiers, it is illegal to take an ID card without providing temporary

documentation. This procedure also holds true for the police and the border police operating in the area. These regulations are reviewed frequently within the security forces in order to prevent irregularities.

6. The IDF sees itself as obliged to enable the Palestinian population to have as normal a life as possible whilst operating against the terrorist groups and infrastructure that function within Palestinian residential areas. At the same time, the IDF will continue to operate against these terrorist organizations in order to prevent infiltration by hostile elements, whose intent is to harm Israeli soldiers and civilians.

Sincerely,

Ron Roman, Academic Officer

Head of Int. Org. Desk

IDF Spokesperson

Response of the Department for the Investigation of Police

State of Israel
Ministry of Justice

State Attorney's Office
Department for the Investigation of Police Officers

Adv. Eitan Diamond
B'Tselem
8 Hataasiya St.
P.O.B. 53132
Jerusalem 91531

Re: **The DIPO Response to B'Tselem Report**

Dear Sir,

The following is our reference to the claims raised in the B'Tselem Report, relating to the Department for the Investigation of Police Officers.

1. The DIPO did not exhaust the law in a large part of the complaints relayed by B'Tselem organization

Complaints received in the DIPO against police officers are inspected by an attorney from the department, whose role is to decide whether to open a criminal investigation in light of the factual basis or to abandon the complaint, based on the grounds set in the law. Following the decision to open criminal investigation, the case is transferred to the relevant investigation team. Following the gathering of evidence by the department's investigators, the case is relayed to the consideration of an attorney that recommends to the head of the DIPO whether to close the file or to file criminal/administrative indictment, due to the offences attributed to the police officers. As stated in the report, some of the DIPO cases are closed after the conclusion of an investigation, due to lack of evidence, since insufficient evidence were gathered to prove the acts attributed to the police officers, in the level of certainty required for a criminal trial. Nevertheless, in many cases, where sufficient evidence exist to file a criminal indictment, criminal indictments are filed due to police officers behavior, among others, in cases concerning police officers violence against members of the Arab sector or any other sector, as will be detailed below. It should be emphasized that DIPO investigators do everything in their power to exhaust the investigation in the case and gather enough evidence, to inquire as to the truth.

2. Cases of use of force are closed by the DIPO, are not examined in the disciplinary level

This section does not relate to our department, but to the Israeli Police. DIPO, as an investigative authority, is not in control of the administrative or command manner of handling police officers, and therefore, following the termination of the investigation, the DIPO is firm in conveying the information regarding the existence of its investigations and the manner of their conclusion to the police, yet the continuance of disciplinary treatment is an inter-organization matter of the Israeli police, and our department has no relation hereto.

3. Even in cases of lack of cooperation by the complainant, DIPO must resume the investigation

It should be emphasized that in some cases the investigation resumes despite lack of cooperation on the part of the complainant. This in cases where beyond the complainant version, there are additional evidence supporting its version. Yet in cases where, there are no additional evidence supporting the complainant version, there is no other course of action but to close the case and not to proceed with the investigation. This decision is based on the fact that in cases lacking additional support to the complainant version and the complainant is not interested in cooperating, it will be impossible, even following a strenuous investigation, to file a criminal/disciplinary indictment against the officers involved and prove their guilt in the level of certainty required for a criminal trial.

4. Police officers avoidance from wearing identification badges

This matter does not fall under the authority of the Department for the Investigation of Police Officers, since an offence of not wearing an identification badge is a disciplinary rather than a criminal offence, under the jurisdiction of Israeli Police.

5. Most of the cases in the DIPO are closed due to lack of evidence.

The DIPO indicts, even when the complainant version is in contradiction to the police officer's version, in cases where the complainants' versions are supported by additional evidence. Also, indictments are filed in cases lacking evidentiary reinforcement beyond the complainant version, when truth signals can be found in the complainant version attesting to his credibility. It should be noted that in 2006, many criminal/disciplinary indictments were filed against police officers, despite the fact that the police officers denied the allegations attributed to them.

The following are examples of cases of abuse of police officers of members of the Arab population, where the investigations were exhausted and enough evidences were gathered to file severe indictments against officers, and several examples of cases where the legal proceedings were concluded and significant penalties were administered on the officers, due to their actions.

The manslaughter in Jaffa case

On October 10, 2006, during an activity of border Police officers for locating illegal residents, a Palestinian resident was killed after being shot; despite the initial statement of the policemen involved - that the deceased was shot while attempting to snatch the policeman's weapon. Following a fast and strenuous investigation, the policeman confessed that the deceased actually did not attempt to snatch his weapon and confirmed that he discharged the lethal gunshot. Also, the police officers on the scene confirmed that during the incident force was used against the complainants, including the deceased.

The manslaughter in Arara case

On January 19, 2006, in the course of an initiated activity of a joint detective team of the Iron station and the Alon unit, following an intelligence regarding the existence of weapon at the late Mr. Nidam Malcham home, a search was held at the family home in Kfar Arara. During a pursuit after the deceased, he was shot and killed by one of the policemen. Following a strenuous investigation, an incident on the charge of manslaughter has been filed to the Haifa District Court.

The manslaughter in the French Hill case

On November 19, 2005, while conducting an arrest of car-thieves in the French Hill area of Jerusalem, a border policeman shot and killed a person who attempted to escape; the policeman was indicted with manslaughter, and the case is now pending before the Jerusalem District Court.

The Abu Dis case

On September 11, 2004, in the area of Abu-Dis, five border policemen abused two illegal residents; Phares Albachri (hereinafter: "complainant 1") and Samich Rachel (hereinafter: "complainant 2"). The policemen placed the complainants in a deserted hotel, where they hit complainant 1, instructed him to rub his face and hit his forehead, using soap. Afterward, the policemen threatened complainant 1 with their weapons, whilst holding the weapon to his mouth. Later, the policemen ordered complainant 1 jump from the window. After complainant 1 left the place, the officers hit complainant 2 and forced him to drink urine. Later on, the officers placed the gun barrel in his mouth, tossed his identity card to a puddle of urine and instructed him to lift the I.D., soaked in urine, using his mouth. All this, whilst they stepped on his back and spat on him. At the end of the events, the officers threw complainant out of the room's window, 3 meters above the ground. Indictments were filed to the Jerusalem District Court against all five policemen, due to offences of abuse of helpless person and assault that causes actual bodily harm. All five were convicted and were sentenced to imprisonment.

The Nataf case

On June 24, 2004, during a patrol mission of border policemen, in the area of Adar Mountain, the policemen detained two illegal residents, one of whom was a minor

and took them to a remote forest, where they hit them, also using a club, shoved sand and stones to the mouth of one of the two. Later, one of the policemen forced of the complainants to kiss his shoes. An indictment was filed against the officers to the Jerusalem District Court, for the grave offences of the abuse of minor or helpless person and harm and wounding under aggravating circumstances. The court convicted the policemen and sentenced them to an imprisonment.

The robbery in Lod

On March 9, 2004, three border policemen robbed illegal residents in Lod, whilst hitting and abusing them. Due to the above event, an indictment was filed to the Tel-Aviv District Court. The court convicted the policemen with demanding property by threats, harm and wounding under aggravating circumstances, theft and abuse of office. Subsequently, the court sentenced the policemen to an imprisonment.

The manslaughter in Hebron case

On December 30, 2002, in the city of Hebron, border policemen abducted two residents of the city. The policemen hit and abused them and caused their bruising. Later, the policemen abducted a boy, of the residents, and placed him inside a jeep, and during the ride, threw him off the jeep. As a result, the boy died, the policemen were arrested until the termination of the proceedings and an indictment was filed against them for the severe offences of manslaughter, abduction in order to cause harm, assault causing actual harm and abuse of office. Regarding one of the policemen, that drove the jeep and took no active part in the manslaughter, a verdict was given, according to which he was sentenced to four and a half years of imprisonment. Regarding the remaining policemen, the case is still pending. It should be noted that following this indictment, another indictment was filed to the Jerusalem Court, against 11 policemen from the same company that served in Hebron city, due to severe offences of robbery and assault under aggravating circumstances.

In conclusion, contrary to B'Tselem report, as specified above, the Department for the Investigation of Police Officers devotes great efforts, both in the investigative and the legal arena. In the investigative arena, the investigators of the Department for the Investigation of Police Officers work indefatigably, to exhaust the investigations and collect sufficient evidence, to reach the truth. In the legal arena, the attorneys of the Department for the Investigation of Police Officers submit, in appropriate cases, indictments and direct these cases in the various courts with great effort and enormous success.

Respectfully,

Herzel Sheviro

Head of the Department for the Investigation of Police Officers

Crossing the Line

Violation of the Rights of Palestinians in Israel without a Permit

Economic distress prevails in the West Bank and the Gaza Strip. The State of Israel, which holds effective control of these areas, is responsible for much of this distress. However, rather than do something to alleviate the problem, Israel aggravates the situation. For example, Israel imposes a tight closure, forbidding Palestinians from leaving the West Bank and the Gaza Strip and entering Israel unless they have permits, which Israel grants sparingly. Many Palestinians lacking entry visas violate the closure and stay in Israel without permission, hoping to earn a living and rescue themselves and their families from the oppressive conditions clouding their lives.

This report reveals that police officers and soldiers routinely abuse and harass these violators of the closure, trampling on their human rights in the process. Although the authorities officially condemn these forbidden practices, their acts and omissions enable the phenomenon to exist and continue.

As a necessary step to eliminate these practices, B'Tselem urges the authorities to act vigorously and effectively to ensure that soldiers and police officers cease violating Israeli law and international law. Beyond this, B'Tselem calls for a solution to the underlying problems that have led so many Palestinians to enter and stay in Israel without a permit: Israel must take effective action to promote an independent Palestinian economy. So long as the Palestinians are controlled by Israel and are dependent on it for their subsistence, Israel must ease the closure policy and allow many more Palestinians to enter the country, in a controlled manner subject to suitable security checks. Such controlled entry would not threaten the security of Israelis and would likely do much to reduce the hardships endured by Palestinians.

