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# Human Rights in the Occupied Territories

1 January 2009 to 30 April 2010

Cover: Ahmad family's house, in Gaza City, which was struck by a missile during Operation Cast Lead. Photo: Kent Klitch, winter 2009.

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# Preface

This publication reviews the status of human rights in the Occupied Territories in the 16-month period between January 2009 and April 2010.

Both chronologically and substantively, a review of human rights during this period must begin with Operation Cast Lead in the Gaza Strip. The extent of the harm to civilians in Gaza as well as in southern Israel, and the severity of the allegations regarding the conduct of Israel and Hamas, dwarf many other human rights concerns.

Since the end of the operation, the human rights situation improved in several important spheres. The number of Israeli and Palestinian fatalities was much lower than in previous years. In the West Bank, Israel removed some of its restrictions on Palestinian movement. The number of administrative detainees held by Israel continued to decline.

In other spheres, however, the violations continued as in the past. Although Israel declared a freeze on construction in the settlements, their impact on Palestinians' human rights



> Palestinians looking at ruins of the Islamic University in Gaza, which was bombed on 29 December 2008. | Photo: Muhammad Salem, Reuters, 29 December 2008.

continued and even increased. By its nature, the settlement enterprise discriminates between two populations living in the same geographic area and under the same sovereignty. An individual's rights and benefits are determined by his or her nationality, with Palestinians suffering discrimination in a wide range of spheres, from the criminal justice system to freedom of movement and access to water, to the ability to build a house in accordance with fair criteria.

In the Gaza Strip, Israel's siege continues. The almost total prohibition on the import of raw materials and on exports has led to the collapse of the economy and the closing of most of the factories in Gaza. The restrictions on import of building materials have prevented the reconstruction of buildings that Israel destroyed during Operation Cast Lead. Poverty and deprivation, which were widespread before the operation, have worsened. Absurdly, Israel's decision to prevent imports and exports has encouraged the development of the tunnels economy between the Gaza Strip and Egypt, which is controlled by Hamas and increases its power.

Despite the widening gap between the reality in the West Bank and that in the Gaza Strip, the impunity with which Israeli forces act in both areas is a common denominator. From the soldier at the checkpoint to the top echelons of the military and government, accountability for harming Palestinian civilians is the exception rather than the rule.

As Israelis, we are deeply committed to ensuring that our own country act morally. I invite everyone who shares this value – government officials and ordinary citizens alike, whether in Israel or around the world – to take part in this vital enterprise. There is much work to be done and the reality is complicated, but in the spirit of Pirkei Avot (the Jewish Ethics of the Fathers): we may not finish the task, but are not free to desist from it.

Jessica Montell, Executive Director



From 27 December 2008 to 18 January 2009, Israel conducted Operation Cast Lead in the Gaza Strip. The operation resulted in many hundreds of dead and caused unprecedented destruction. Its impact is still evident over a year later. Israel and Hamas must undertake independent investigations regarding their conduct and hold accountable anyone found responsible for breaches of the laws of war.

> On 17 January 2009, the army fired phosphorous shells at the UNRWA school in Beit Lahiya, in the northern Gaza Strip, where residents had found shelter. The shelling killed two children and seriously wounded their mother. | Photo: Muhammad al-Baba, 17 January 2009.

# Operation Cast Lead

**Hundreds killed,  
thousands homeless**

## **Hundreds of dead who did not take part in the hostilities, 20,000 people left homeless**

The scope of the injury to the population in the Gaza Strip during the operation was enormous: 1,390 Palestinians were killed. Of these, at least 759 (including 318 minors under the age of eighteen) were civilians who took no part in the hostilities. Over 5,300 Palestinians were wounded, more than 350 seriously. Residential dwellings suffered enormous damage: according to the UN, Israel destroyed over 3,500 homes, leaving approximately 20,000 persons homeless. Israel also struck industrial and agricultural sites and electricity, sanitation, and water facilities, some of which were already on the verge of collapse due to the siege imposed on the Gaza Strip.

During the operation, nine Israeli soldiers were killed in the Gaza Strip, four by friendly fire. Over 100 soldiers were wounded, over 20 of them moderately or seriously. Qassam rockets fired into Israel by Palestinian organizations killed three Israeli civilians and one member of the security forces, and wounded dozens of civilians.

## **Suspected breach of international law**

B'Tselem's investigations, as well as information from many other sources, raise grave suspicions that the Israeli military acted unlawfully. The suspicions regarding breaches of the laws of war relate not only to the conduct of individual soldiers, but more



> On 4 January 2009, soldiers gathered dozens of members of the extended a-Samuni family in a house. The next day, when some members tried to leave, it was shelled, killing 21 people, 11 of them children. For two days, the army prevented evacuation of the wounded and the other persons, who remained in the house with the bodies and without food or water. In the photo: Maysa a-Samuni, who managed to flee shortly after the shelling, with her infant daughter. Her husband was killed. | Photo: Muhammad Sabah, B'Tselem, 8 January 2009.

importantly to questions of policy. In some cases, there are well-founded suspicions that injury to civilians resulted from violation of the principles of distinction and proportionality. These are the basic principles of International Humanitarian Law formulated to ensure that civilians remain outside of hostilities.

Armed Palestinian organizations breached international law by firing Qassam rockets at civilian population centers inside Israel; by endangering residents' lives when firing at soldiers from inside civilian neighborhoods; and by storing weapons in civilian buildings. In addition, Palestinian and international organizations have documented at least 18 cases in which persons suspected of collaboration with Israel were executed without trial by Hamas security forces and armed masked persons apparently connected to Hamas. 13 of the victims were prisoners and detainees who escaped from the central prison in Gaza after Israel bombed it during the operation.

### One year on, most questions remain unanswered

In January 2010, Israel stated that the military had decided to examine some 150 cases, over half of which had been completed. With the exception of seven cases, which were forwarded to the Military Police Investigation Unit, it was found that the soldiers had acted properly. 36 MPIU investigations were opened in cases in which there was a suspicion that

soldiers acted in contravention of military orders: 19 of these were for firing at civilians, and the remainder for using civilians as human shields, harming detainees, and looting. As far as B'Tselem knows, soldiers have so far been prosecuted for just two incidents related to Operation Cast Lead. In one case, a soldier was convicted of stealing a credit card and was sentenced to 15 months' imprisonment, half to be served in prison and half suspended; the soldier was also demoted from sergeant to private. In the second case, two soldiers were indicted for using a nine-year-old child as a human shield and ordering him to open bags they suspected were booby-trapped. In addition, two officers were prosecuted in disciplinary proceedings for deviating from orders regarding artillery fire of explosive shells.

### Once again, the buck stops with the ordinary soldier

MPIU investigations are not sufficient and do not meet Israel's obligations. The MPIU investigation does not examine the policy implemented during the operation and the responsibility of decision-makers from the political echelon. Thus, even if these investigations result in the filing of indictments, they will only be filed against low-ranking soldiers or against field officers. Those responsible for formulating policy will not be held accountable for their actions.



> On 4 January 2009, the army shelled the al-Kafarneh house in Beit Hanun, near Erez Crossing. Eight members of the family were in the house and all of them were injured, including the 2½-year-old Wiam al-Kafarneh, who died the next day from her wounds. After the injured were evacuated, the army demolished the house. The photos show the house as it once appeared and what it looked like after it was demolished. | Photo: Muhammad Sabah, B'Tselem, 16 April 2009.

In order to investigate the suspicions that the military acted illegally, therefore, Israel must conduct an independent and effective investigation outside the military. After the operation ended, B'Tselem and other human rights organizations wrote to Israel's Attorney General, demanding that he establish an independent investigative mechanism to examine the military's conduct during the operation. The Attorney General refused to do so.

The UN Human Rights Council appointed the jurist Richard Goldstone to head a fact-finding mission to examine the events around the hostilities that took place in Gaza. The Mission's report demanded that the sides investigate the suspicions of war crimes during the operation and prosecute those found responsible. Israel condemned the report, claiming it was misleading, tendentious, and one-sided. B'Tselem rejects these claims, though it criticized some aspects of the report. B'Tselem believes that the report did not reflect the severity of the violations committed by Hamas combatants, and that the conclusions regarding Israel's overall objectives in the operation were not sufficiently supported by the facts presented. However, B'Tselem accepts the report's main recommendation: Both Israel and Hamas must investigate the suspicions that they acted in breach of the law.

B'Tselem reiterates its demand that Israel conduct an independent and effective investigation of its conduct during Operation Cast Lead.



> A hole that soldiers made in a house in the town of Khuza'a, through which they fired, according to testimonies, at Rawhiyeh a-Najar. | Photo: Khaled 'Azayzeh, B'Tselem, 21 January 2009.



**Soldiers kill woman waving white flag** > On 13 January 2009, B'Tselem received a report from a resident of the Gaza Strip, Munir Shafiq a-Najar, that a relative of his had been shot by soldiers, and that a medical crew was unable to evacuate her because they were being fired at. Despite B'Tselem's calls to the Red Cross and the military, the wounded woman remained in the street and bled to death.

Testimonies given to B'Tselem in subsequent days indicated that, on the day of the incident, the military began to shell houses and called on the occupants to leave their homes in the area of Khuza'a, near the Israeli border with the southern Gaza Strip. Around 8:00 A.M., the forces ordered women and children to assemble in the middle of the village. A few women left neighboring houses and began to walk to the village center. Rawhiyeh a-Najar, 47, walked at the head of the group, waving a white flag. In a telephone conversation the next day with B'Tselem's researcher, another woman in the group, Yasmin a-Najar, 25, described the events that followed:

We managed to pass three houses in the street, and then I saw an Israeli soldier about forty meters from us aim his weapon at us. Suddenly, the soldier fired at us. I felt that I had been shot in the right leg. Rawhiyeh fell on the road next to me. I ran and hid behind a garbage can in the street. My leg was bleeding. The firing continued behind me. Rawhiyeh continued to lie in the road. Her head was bleeding. The women who had been walking behind us ran, scattering in different directions. I managed to get home in a few minutes. Some young women from the neighborhood bandaged my wound. Then I tried to sneak back to the street to get Rawhiyeh, but the soldiers fired at me, and I returned home. Rawhiyeh stayed lying in the street.

Marwan Abu-Rida, an ambulance driver who had been sent to the area, tried to reach Rawhiyeh a-Najar, but soldiers opened heavy fire at him a few times. At 8:00 P.M., after she was already dead, he managed to reach her and remove the body.

After B'Tselem wrote to the Attorney General, the MPIU opened an investigation into the case. In October and November 2009, B'Tselem assisted the MPIU in coordinating the taking of testimony from six eyewitnesses and provided the MPIU with medical documents, the coordinates of places mentioned in testimonies, and a-Najar's death certificate. B'Tselem does not know the present status of the investigation.



■ Since June 2007, when Hamas seized control of the Gaza Strip, Israel has imposed a tight blockade on the area. According to Israeli officials, the objective of the siege is to bring down the Hamas government and lead to the release of Gilad Shalit. The siege thus constitutes collective punishment of the civilian population, and as such it is unlawful.

> Palestinians gathering bricks for recycling. Israel prohibits the import of construction materials into Gaza, thus preventing rebuilding of houses destroyed in Operation Cast Lead and new construction. | Photo: Ibrahim Abu Mustafa, Reuters, 10 February 2010.

# 1.5 Million People Imprisoned

## The siege on the Gaza Strip

### Israel still controls the Gaza Strip

Although Israel withdrew its forces from the Gaza Strip in 2005, it continues to maintain complete control of the area's airspace and territorial waters, and of most of the land crossings. As a result, Gaza residents wishing to leave the area must first obtain a permit from Israel. Since the siege began, Israel has only granted permits in rare cases that it classifies as "humanitarian." The policy also applies to residents who merely wish to cross through Israel in order to reach the West Bank. Departure from the Gaza Strip via Rafah Crossing, for which Egypt is responsible, is also limited; Egypt only opens the crossing in exceptional cases. Even if Egypt could open the crossing more often, this does not eliminate Israel's responsibility toward the residents of the Gaza Strip, including patients who require medical treatment unavailable in Gaza.

### The result – economic collapse and severe poverty

Israel's policy has led to economic collapse in Gaza. The prohibition on bringing in raw materials and on exports has led to the closing of 95 percent of the factories and workshops. Tens of thousands of persons have lost their livelihood, and unemployment now exceeds 40 percent. As a result, over 70 percent of the population depends on aid from international organizations to obtain food. In 2007, humanitarian aid amounted to 3 percent of imports; by 2009, this figure had risen to 26 percent.

### Difficulties in rebuilding destroyed and damaged buildings

Israel prohibits the importing of building materials, including iron and cement. The prohibition has remained in place even after Operation Cast Lead, preventing the reconstruction of thousands of buildings destroyed during the operation.

### Frequent blackouts, sewage flowing into the sea

The siege also severely impairs the supply of electricity in the Gaza Strip. Since September 2007, when Israel declared the Gaza Strip a “hostile entity” following the firing of Qassam rockets, Israel has reduced the supply of industrial fuel, which is needed to operate the power station in Gaza. Following a petition filed by the NGOs Gisha and Adalah, the state agreed to supply some 63 percent of the fuel needed. In practice, however, it provides less. As a result, 98 percent of Gaza residents suffer from planned blackouts lasting up to ten hours a day. The other two percent of the population do not receive any electricity at all, in part due to the shortage of spare parts, which makes it impossible to repair infrastructure, or due to the proximity of their homes to the border with Israel.

The frequent power cuts and shortage of spare parts prevent

the proper operation of wells and desalination plants. This, combined with excessive pumping over the years, results in extremely poor water quality. At the end of 2009, 93 percent of the wells were found to be polluted with high quantities of chloride and nitrates. Waste treatment has also been affected: every day, some 100,000 cubic meters of untreated, or partially untreated, wastewater flow into the sea.

### Serious harm to agriculture and fishing

Agriculture has been hit hard by the siege and thousands of persons have lost their source of livelihood. This is due, in part, to the prohibition on the entry of basic items such as pesticides and spare parts for irrigation systems, as well as the prohibition on exports. In addition, farmers in areas near the Israeli border are unable to reach their land because Israel has declared extensive sections of land a “security strip” to which access is forbidden or restricted. Moreover, Israel has adopted open-fire regulations that permit the shooting of any person who enters these areas, even if the person does not pose any danger. Israel has also restricted the area in which fishing is allowed; since Operation Cast Lead, fishermen are only allowed to fish three nautical miles from the coast. The waters within this range yield a meager supply of fish, and fishermen find it difficult to make a living.



> Al'Aza tent camp, established in a-Tawam, in Beit Lahiya, for persons who were uprooted from their homes in Operation Cast Lead. | Photo: Muhammad Sabah, B'Tselem, 25 May 2009.



> Tent put up by the 'Athamneh family on the ruins of their house in 'Izbet 'Abd Rabo, a neighborhood in the northern Strip, in which the army destroyed some 150 houses. Because of the prohibition on entry of construction materials, which prevents the family from rebuilding their house, they built a house from mud bricks. | Photo: Muhammad Sabah, B'Tselem, 1 December 2009.

**Unemployed for two years following plant closure** > Ulfat al-Kafarneh, 28, lives in a-Nasser neighborhood, Gaza City, with her parents and nine siblings. When she was 20 years old, she began to work as a clerk at the Palestine Building Materials Plant in Gaza City. The plant made stone tiles using a unique method, and its products were in great demand by municipalities, the Ministry for Local Government, UN offices, and private customers. In her testimony to B'Tselem, of 4 November 2009, she described the six years she worked at the plant:

I worked every day from 8:00 A.M. to 4:00 P.M. Friday was my only day off. I worked hard and I was very happy with the job. I made 1,400 shekels a month (some \$ 350), which, for me, was a nice salary. It covered my personal expenses and enabled me to help my parents pay for clothes and other things we needed, and my brothers who were at university. I could also go out to eat with my sisters and friends, which gave me a chance to breathe a bit and enjoy a change of atmosphere.

**In 2007, Israel restricted import of sand and gravel and the plant closed. According to al-Kafarneh,**

At first, we thought that within a month or two the crossings might reopen and we'd return to work, but time passed and they remained closed. Since then, my life has gone from bad to worse... All I can think about is going back to work or finding another job so that I can make a living. I've applied for lots of jobs in institutions and private companies, but none were available, because the closing of the crossings had caused many companies and plants to close. Things are getting harder every day. I feel useless, and think back to the time I used to work. Then I was happy and felt good. Now, I worry all the time. I really want to be a useful person again, someone who works hard to earn a living.



> Ulfat al-Kafarneh. | Photo: Muhammad Sabah, B'Tselem, 4 November 2009.



> Entry into one of the tunnels in the Gaza Strip. | Photo: Muhammad Sabah, B'Tselem, 20 December 2009.

### The tunnels economy

As a result of the siege policy, an economy has developed in recent years based on tunnels between the southern Gaza Strip and Rafah, Egypt. Large quantities of goods have been imported through these tunnels. The Hamas government supervises the functioning of the tunnels and collects taxes from the operators. In addition to necessities, Palestinians also smuggle in weapons, including rockets. Following the expansion of tunnel activity, it was reported in 2008 that various products were once again available in the markets, and that prices had fallen somewhat due to increased supply. Nevertheless, tunnels are not a proper substitute for a stable local economy.

### Harsh restrictions on imports; no exports

Under agreements between Israel and Egypt, Gaza's foreign trade must be conducted through Israel. The quantity of goods that Israel allows into the area is less than one-quarter of what entered before the siege, and far below the amount required for the population's needs. The range of goods that Israel allows is limited: some 150 products compared with 4,000 before the siege. Prior to the siege, 70 trucks with goods intended for export, such as furniture, clothes, and agricultural produce, left the Gaza Strip daily. Israel currently prohibits almost all exports. From the beginning of the siege to the end of April 2010, Israel has only allowed the export of strawberries and flowers intended for the European market in a few isolated cases.



> Demonstration calling for the release of the abducted soldier Gilad Shalit. Photo: Ronen Zevulun, Reuters, 5 October 2009.

### Holding Gilad Shalit as a hostage – a grave breach

The Israeli soldier Gilad Shalit was abducted in June 2006, and has been held since then in an unknown location under unknown conditions. His captors have made it clear that he is being held as a hostage and are demanding the release of Palestinians imprisoned in Israel. Neither the International Committee of the Red Cross nor any other international body has been able to visit him. With the exception of a video Hamas published this year showing Shalit, as far as B'Tselem knows, no information has been provided about his physical or mental health. Shalit is a hostage due to the circumstances in which he was seized and the manner in which he is being held. International humanitarian law absolutely forbids the taking and holding of a person by force for the purpose of pressuring the adversary to comply with certain demands, while threatening to harm the person if the demands are not met. The taking of hostages is considered a war crime, for which all those involved bear personal criminal liability. The Hamas leadership in Gaza bears an obligation to release Shalit immediately and unconditionally. Pending his release, his captors must treat him humanely and enable representatives of the ICRC to visit him.



# The Human Toll:

## Palestinian and Israeli civilians killed since the end of Operation Cast Lead

The number of Palestinians and Israelis killed in the conflict after the end of Operation Cast Lead and through 30 April 2010 was lower than in previous years.

> Bassem Abu Rahma, 30, was killed on 17 April 2009 by a tear-gas canister that struck him in the chest, during the weekly demonstration against the construction of the Separation Barrier and theft of land in Bil'in, Ramallah District. Video footage of the incident shows that Abu Rahma did not endanger the soldiers' lives. | Archive photo. Photo: Oren Ziv, 25 July 2008, [activestills.org](http://activestills.org).

### Palestinians killed by the Israeli security forces

From 1 January 2009 to 30 March 2010, the Israeli security forces killed 83 Palestinians, 20 of them minors, not including the Palestinians killed in Gaza during Operation Cast Lead. Some 37 percent of the Palestinians killed were not taking part in hostilities. Most of the fatalities (67 percent) were residents of the Gaza Strip. In 2008, 90 percent of those killed were residents of the Gaza Strip, while during the early years of the second intifada, the figure was only 40 percent.

### Palestinians killed by the Israeli security forces, 1 January 2009 to 30 April 2010

(The figures in parentheses are for 2008)

	West Bank	Gaza	Total
<b>Did not take part in the hostilities</b>	15 (18)	16 (158)	31 (176)
<b>Took part in the hostilities</b>	5 (16)	34 (234)	39 (250)
<b>Unknown</b>	7 (8)	6 (22)	13 (30)
<b>Total</b>	<b>27 (42)</b>	<b>56 (414)</b>	<b>83 (456)</b>

\* The figures do not include Palestinians killed in the Gaza Strip during Operation Cast Lead, which ended on 18 January 2009.

\*\* In addition, in 2008, three Palestinians were killed inside Israel while taking part in hostilities.

\*\*\* In addition, an Israeli civilian killed a Palestinian who entered a settlement armed with a knife.



> ZAKA member examining the area where the Israeli civilian Meir Chai was killed by Palestinian gunfire at his automobile, near the Einav settlement, Tulkarm District, on 24 December 2009. | Photo: Gil Cohen Magen, Reuters.

### **Current policy: The military unit investigates itself**

The Judge Advocate General's Office continues to implement the policy it established at the beginning of the second intifada: not to open an MPIU investigation automatically when a Palestinian civilian is killed. Instead, the unit that was responsible for the death conducts an operational debriefing, whose findings are forwarded to the Judge Advocate General. He studies the findings, together with other information he has obtained, and decides whether to order a criminal investigation. The state justifies this policy on the grounds that an "armed conflict" is taking place in the territories, and accordingly, the death of civilians does not in itself suggest that a breach of law has been committed.

### **Criticism of the policy**

B'Tselem rejects this position. International law establishes rules that apply also in time of armed conflict – the circumstances in which it is permitted to open fire, which weapons may be used, and so forth. The Judge Advocate General's Office, which is charged with ensuring that the military acts in accordance with the law, is required to conduct a criminal investigation to examine whether the military indeed acted in accordance with these rules.

Moreover, an operational debriefing is not the proper means to determine whether to open a criminal investigation. Firstly,

the purpose of an operational debriefing is to improve military operations, and not to determine if criminal responsibility exists. Secondly, it is carried out by military officers who are not trained to conduct investigations. Thirdly, the debriefing is based solely on statements of soldiers involved in the incident – the very persons who will be held responsible if any of them are found to have acted in contravention of law. For these reasons, the debriefing lacks credibility, and relying on it regarding Palestinian deaths conveys a message to soldiers that Palestinian life is cheap.

Furthermore, the reality in the Occupied Territories is different now than it was in 2000. The sweeping declaration that the events in the Occupied Territories constituted an "armed conflict" was problematic then, and certainly does not reflect the situation today. This is particularly true in the case of the West Bank, where the vast majority of Palestinians killed over the past year died in the course of police actions – arrests, dispersal of demonstrations, and so forth – and not in combat actions.

### **The result: Accountability is the exception and not the rule**

The result of this policy is that steps are almost never taken in cases in which security forces kill Palestinians who were not taking part in hostilities. Generally, the operational debriefings do not lead to an MPIU investigation: according to the figures of the JAG's Office, from 2002-2008, operational debriefings



> Fatmeh Zaharan with a photo of her son, 'Abd al-Karim Zaharan. | Photo: Iyad Hadad, B'Tselem, 25 June 2008.

resulted in only 162 MPIU investigations. In 2008, B'Tselem reported 61 cases to the JAG's Office, and in only four cases was an MPIU investigation opened. In 2009, B'Tselem made 17 such demands, not including incidents that occurred during Operation Cast Lead. An investigation was ordered in just one case. In the first four months of 2010, B'Tselem forwarded four cases to the JAG's Office. The office ordered an investigation in only one of these cases.

The fact that the JAG's Office waits for the operational debriefing means that even in those cases where an MPIU investigation is opened, such a long time has passed as to impair its effectiveness. Physical evidence no longer exists; those involved have had time to coordinate their statements; witnesses' memory has faded. As far as B'Tselem knows, in only nine cases have soldiers been charged for causing the death of a Palestinian civilian. The most recent such indictment was in July 2003.

### Challenging the policy

In October 2003, B'Tselem and the Association for Civil Rights in Israel petitioned the High Court of Justice, demanding that the state return to its policy prior to the second intifada, when an MPIU investigation was automatically ordered whenever a Palestinian civilian was killed in an incident not involving "hostile terrorist activity." The petition is still pending.

### Demonstrator killed by gunfire in breach of open-fire regulations; MPIU will not investigate

On Friday, 17 April 2009, during a demonstration against the construction of the Separation Barrier in Bil'in, Ramallah District, a soldier fired an extended-range tear gas grenade at Bassem Ibrahim Abu Rahma, 30, killing him. Three video segments prove that Abu Rahma was standing on the eastern side of the barrier, about 30 meters from the soldiers when he was shot; that he was not throwing stones; and that he had not damaged the barrier or endangered the soldiers' lives.

B'Tselem wrote to the JAG, demanding an immediate MPIU investigation and that the security forces be instructed at once that it is absolutely forbidden to fire tear-gas grenades directly at a person. B'Tselem attached a selection of video footage proving that, contrary to the military's contentions, firing of the grenades directly at persons has for some time been accepted practice in the West Bank.

In March 2010, the JAG's Office informed Attorney Michael Sfard, who represents the Abu Rahma family, that it had decided not to order an MPIU investigation because the findings of the unit's operational debriefing found no support for the claim that the grenade had deliberately been fired directly at Abu Rahma. In

### **Soldier shoots and kills 16-year-old youth; MPIU investigation opened only after High Court petition**

According to testimonies given to B'Tselem, on the morning of 22 April 2007, a military jeep arrived in the center of the village of Deir Abu Mash'al, Ramallah District. The jeep continued on patrol along a farm road on the slopes of a-Rashatiya Mountain. Several youths aged 12 to 16, among them 'Abd al-Karim Zaharan, 16, went onto a nearby ridge from which they could see the jeep, which was about 300 meters away. Zaharan was holding a plastic soda bottle, which he filled with small stones and shook as a noisemaker. The jeep stopped on the ridge opposite the youths, and four armed soldiers got out. One soldier knelt down on one knee and prepared to fire. A few minutes later, at about 11:00 A.M., a number of successive shots were heard. The soldiers gave no warning before the shots were fired. Zaharan was hit and fell to the ground. The soldiers returned to the jeep and drove away. About 20 minutes later, Zaharan was put into a villager's vehicle to take him for medical treatment. When it got to the entrance to the village, soldiers stopped the vehicle. After several attempts to give the youth first-aid and resuscitate him, he died from his wounds.

B'Tselem requested the Chief Military Prosecutor to immediately order an MPIU investigation into this incident. In October 2007, B'Tselem was informed that the JAG decided not to open an MPIU investigation, though the platoon commander in charge of the patrol was subject to a disciplinary proceeding.

In August 2008, B'Tselem, together with the Association for Civil Rights in Israel and the youth's family, petitioned the High Court to order an MPIU investigation. In June 2009, the JAG informed B'Tselem that he had ordered an MPIU investigation. In March 2010, the Chief Military Prosecutor informed B'Tselem that the investigation cannot be completed because a soldier central to the events is abroad and cannot be questioned. B'Tselem does not know of any measures the authorities have taken to expedite this person's return, nor of any other investigative steps taken in the file.

June 2010, Attorney Sfar demanded that the JAG reverse his decision to close the file.

### **Israelis killed by Palestinians**

The number of Israeli civilians killed this year also fell. In 2008, Palestinians killed 21 Israeli civilians. From 19 January 2009 to 30 April 2010, Palestinians killed three Israeli civilians. Two were killed in the West Bank: a 16-year-old was stabbed to death in the Bat Ayin settlement, and another civilian was shot to death near the Einav settlement. Inside Israel, Palestinians choked a taxi driver to death near Gan Yavne. A citizen of Thailand was killed by a rocket in Netiv Ha'asara.

Palestinians also killed four members of the security forces during this period, compared to ten in 2008. One was killed in an explosion next to the Gaza Strip perimeter fence. One was stabbed to death at the Tapuah intersection, in the West Bank. Two others were killed in an exchange of gunfire by the perimeter fence along the border with the Gaza Strip.

In addition, in 2009, two Israeli Police officers were killed in the Jordan Valley by unknown assailants.

### **Palestinians killed by Palestinians**

During the same period, 19 January 2009 to 30 April 2010, 39 Palestinians were killed by Palestinians in the Gaza Strip.

Nine of them were extra-judicially executed by members of Palestinian security apparatuses. Marks of violence were found on all the bodies. Two were executed after being convicted of collaboration with Israel. On 5 May 2009, 28 people, including five bystanders, were killed in cross-fire between Hamas security forces and a militant group named Junud Ansar Allah.

### **Death penalty in the Gaza Strip**

On 15 April 2010, the Hamas government executed Muhammad Isma'il and Nasser Abu Freih, both in their thirties, after a military court in the Gaza Strip convicted them of collaboration with Israel. These were the first official executions in the Gaza Strip since Hamas took control in 2007. According to reports by the media and Palestinian human rights organizations, from January 2009 to April 2010, military courts in the Gaza Strip convicted 16 persons of collaboration with Israel, treason, and murder. Another death sentence was given by a civilian court in the area. During the same period, Palestinian Authority military courts in the West Bank sentenced three persons to death, one on charges of collaborating with Israel.

B'Tselem strongly condemns capital punishment in the West Bank and the Gaza Strip. Capital punishment violates the basic right of every person to life, is immoral, and has no place in the law books, whatever the circumstances.



# Sometimes, “a blow... is an integral part of the mission”

**Violence against  
Palestinians by Israeli  
security forces**

Over the years, B'Tselem and other human rights organizations have documented hundreds of cases in which soldiers and police have slapped and kicked Palestinians, insulted and degraded them, and delayed them at checkpoints for no reason. On occasion, more serious violence has also been exposed. Israeli officials evade responsibility for these cases by condemning the incidents and claiming that the perpetrators are “a few rotten apples” that do not reflect military policy. In practice, the system does not make it unequivocally clear that any violence against Palestinians is forbidden. Numerous complaints have been processed in a token manner, if at all. The implicit message to security forces is that even if the system does not support or accept these acts, offenders will not be held accountable.

## **No measures taken against offenders**

One of the manifestations of the approach described above is the failure to take steps against soldiers involved in such incidents. From the beginning of the second intifada, in September 2000, to the end of April 2010, B'Tselem reported 255 cases of violence to the Judge Advocate General's Office, demanding an investigation and prosecution of those responsible. Investigations were opened in only 186 cases, and only 11 investigations led to the filing of indictments, one of which was subsequently cancelled. During the same period, B'Tselem made a similar demand to the Department for the Investigation of Police concerning 180 cases of violence. An investigation was ordered in only 122 of the cases, and only 12 indictments were ultimately filed.

## **Some cases are not revealed**

Some cases of abusive treatment are not revealed because many Palestinians prefer to avoid the trouble inherent in filing a complaint against an Israeli soldier or police officer. Many others, primarily Palestinians who enter Israel illegally, do not file complaints even in cases of more severe violence, fearing that filing a complaint will harm them. Many Palestinians do not file complaints because they do not trust the Israeli law-enforcement system, which tends not to believe them and to protect those who harmed them, rather than bring them to justice.



> Firas al-Atrash being dragged by policemen in East Jerusalem, 9 October 2009. According to his testimony, policemen disguised as stone throwers assaulted him after he asked them to move away from his parents' house. | Photo: Baz Ratner, Reuters.

### Commander of Kfir Brigade: Sweeping endorsement of violence against Palestinians

The double message that the system transmits to forces in the field was clearly revealed in the trial of Lieutenant Adam Malul, an officer in Kfir Brigade, who was accused of abusive treatment of Palestinian detainees in the village of Qadum in September 2008. The testimony of Kfir commander, Colonel Itai Virov, and Lieutenant Colonel Shimon Harush, then-commander of Shimshon Battalion, painted a harsh picture of the use of deliberate violence against Palestinians.

The testimonies of Virov and Harush show that forces under their command had been given sweeping permission to use physical violence against Palestinians to "obtain information from them," and as part of what is referred to as "questioning." Col. Virov's testimony included the following:

The mission is to try to upset the equilibrium of the neighborhood, village, or particular location, to get information. . . or to cause a hostile entity inside the village to make mistakes as a result of, or in reaction to, actions of our forces, and thus disrupt and expose its activity. . .

We will detain, interrogate, and use appropriate physical pressure on any person in order reach the individual terrorist. Of all the means of pressure that we use, the vast majority are against persons who are not involved: the checkpoints, combing whole neighborhoods, questioning passersby. . . Standing them against the wall, pushing, a blow that doesn't cause injury. These are things that certainly are commonly used in an attempt

to accomplish the mission.

Searching for an address can lead to use of pressure on an innocent bystander, search for weapons, the sense of a threat to a force. There is a difference between going to a village where there isn't a threat and you don't suspect anything, and going on a defined mission, when the use of aggression toward every one of the residents in the village is certainly commonplace.

Lt. Col. Harush testified about the permission to use force:

When these people are interrogated, they might be put up against the wall, and cuffs or a blindfold might be put on them, and it is possible – I rely on the commanders' judgment – that somebody give a slap or blow to try to extract information. . . There is no formula, nothing written. You enter, speak with residents, and if you feel a shirt being grabbed, shouting, and there is something suspicious – sometimes, when you live the field, it is just a matter of a hunch – you feel that this is a guy who can give information, and sometimes, to achieve this, force is used.

These orders, which imply the routine use of violence and harassment of civilians, are patently unlawful.

In December 2009, Lt. Malul was convicted of assault with aggravating circumstances and conduct unbecoming an officer. In March 2010, the military court ruled that the 64 days Malul spent in military confinement and the 32 days he was under house arrest were adequate punishment for his actions, and rejected the prosecution's demand that Malul be sentenced to prison and demoted. The JAG's Office appealed the lenient sentence.



> Photos from an animated film made by B'Tselem depicting the destructive effect of violence in the Occupied Territories on its Palestinian victims and on Israeli society. The film is based on documentation of the shooting of a bound and blindfolded Palestinian in the village of Ni'lin. | Illustration: Alon Simon, 2009.

### Violence against Palestinians seeking to enter Israel without a permit

Between the beginning of 2009 and April 2010, B'Tselem received several reports of violence by soldiers and police officers against Palestinians who tried to enter Israel without a permit in order to work. This is not a new phenomenon: for years, B'Tselem has warned about the security forces' use of illegal abusive treatment and humiliation of these workers as a means of deterrence. In 2009, these cases occurred primarily around Jerusalem, Bethlehem, and the southern Hebron hills, in areas where the Separation Barrier has not been completed.

The reports paint a harsh picture of routine cruelty and abuse. In September 2009, B'Tselem documented several cases of soldiers assaulting Palestinians in a-Ramadin, in the southern Hebron hills. On 29 September, for example, soldiers stopped



a group of laborers who had tried to enter Israel without permits. According to testimonies given to B'Tselem, the soldiers ordered the workers to lie on the ground and then beat them. According to one of the workers, Nazir al-Hreibat, "... one of soldiers stepped hard on my back, pressing me to the ground. That happened two or three

times. Two other soldiers kicked me and hit me. I continued to lie on the ground. I was in great pain and was vomiting, but the soldier didn't stop kicking me. He insisted that I remain lying face down with my mouth on the ground... The soldier saw that my mouth was closed and told me to open it and place it on the ground. I did as he said, and soil went into my mouth. I vomited." Hreibat's condition deteriorated and he was taken to hospital in Hebron by ambulance.

The next day, soldiers again stopped a group of laborers. According to Muhammad Eqneibi, 55, one of the soldiers "ordered all of us to crawl on our hands and knees, one after the other. One at a time, he told each of us to crawl for twenty meters and then to crawl back. While we crawled, the soldier followed, kicking and hitting us with his rifle butt. He was laughing the whole time while the other soldier stood and aimed his weapon at us... The soldier ordered us to take off our shoes and, one after the other, to walk on thorns for about twelve meters and to return the same way." The laborers were held for six hours, during which time they were not given anything to drink and were not allowed to relieve themselves.

In October, the JAG's Office informed B'Tselem that MPIU investigations had been opened in both cases. As of May 2010, the first case was still being investigated. The second had concluded with no decision yet made on further measures.



> Sharif Abu Hayah. The photo is taken from the video filmed by Pal-Media during the incident, on 28 January 2009.

**Soldiers abuse elderly shepherd**> On the morning of 28 January 2009, six soldiers assaulted Sharif Abu Hayah, 66, from Khirbet Abu Falah, while he was grazing his flock in an isolated area north of Ramallah. According to his testimony, the soldiers went over to him, knocked him to the ground, and then cuffed his hands behind his back and blindfolded him. For about an hour, they took turns beating and kicking him. They dragged him along the ground, causing him to be injured by rocks and thorns, and pushed twigs into his mouth.

When residents of a nearby village tried to intervene and called the Palestinian DCO and the Palestinian TV agency Pal-Media, the soldiers stopped their abusive treatment of Abu Hayah but left him on the ground, handcuffed. An hour later, after Palestinian paramedics arrived at the site and sought to evacuate Abu Hayah, an military officer arrived and apparently ordered his release. Abu Hayah was taken to hospital by ambulance. He had bruises and scrapes, swollen hands, and a cracked bone in a finger on his right hand. He was released and told to rest for a week, during which he suffered pain all over his body.

The JAG's Office informed B'Tselem that an MPIU investigation had been opened. To date, however, B'Tselem has not been informed of the investigation's results, nor whether any action has been taken against the soldiers.

**The implicit message to security forces is that even if the system does not support or accept these acts, offenders will not be held accountable.**



There are currently 121 Israeli settlements in the West Bank that the Ministry of the Interior recognizes as communities. Another 12 settlements were built on land that Israel annexed in 1967 and included in the Jerusalem city limits. Also, scattered throughout the West Bank are some 100 unrecognized settlements known as “outposts.” In order to build the settlements, Israel expropriated tens of thousands of acres of Palestinian land, and forbid the Palestinian public from using it.

> Sign marketing a building project in the Na'ale settlement. | Photo: Hagit Ofra, 12 February 2009.

# Discrimination and Land Grab in the Service of the State

## Settlements in the West Bank and East Jerusalem

### Over half a million settlers

According to the Israeli Central Bureau of Statistics, in September 2009, the number of settlers living in the West Bank had reached 310,200. It was estimated that at the end of 2008 almost 194,000 persons were living in Jewish neighborhoods built on land annexed to Jerusalem. The total settler population amounts to 6.5 percent of Israel's population. The annual growth rate of the settler population in the West Bank is 5 percent, almost three times higher than the figure for Israel as a whole, which is 1.7 percent.

### Disproportionate investment in settlements

According to figures of the Housing and Construction Ministry, in 2009 there were 509 housing starts in West Bank settlements and 508 in the Jewish neighborhoods in East Jerusalem. These figures represent one-quarter of all the Israeli government's construction that year. In addition, according to the Central Bureau of Statistics, in the first ten months of 2009, 200 privately-built apartments were sold in the West Bank.

### The settlements are illegal

Under international humanitarian law, occupation is a temporary situation. Accordingly, it is forbidden to create “facts on the ground” in the occupied territory. The occupying state holds the territory only as a “trustee,” and is required to ensure the wellbeing of the local population and to refrain from exploiting the natural resources for its own population. Also, the occupying state is forbidden to transfer its citizens to the occupied territory or to encourage them to move there.

## In the same territory, some are more equal than others

All of Israel's financial, legal, and bureaucratic investments have turned the settlements into civilian enclaves in an area under military law. This situation has enabled Israel to create a regime of separation and discrimination in the West Bank. Two distinct legal systems operate in the same territory, and a person's rights depend on his or her nationality. While Palestinians live under military occupation, the settlers benefit from all the rights enjoyed by Israeli citizens living inside the Green Line, and in some cases even receive additional benefits.

## Diverse impact on human rights

The existence of the settlements violates not only the Palestinians' property rights, but also many other rights, including the right to housing, to livelihood, and to freedom of movement. The drastic changes Israel has made to the map of the West Bank also prevent any practical possibility for the Palestinians to realize their right to self-determination in an independent, viable Palestinian state.

## Lukewarm freeze

In November 2009, the Israeli government decided to freeze construction in the settlements for ten months. The freeze does not apply to East Jerusalem, to 2,500 apartments already under construction, and to 455 apartments whose marketing was approved by the defense minister. Six months after the freeze began, the state informed the High Court of Justice that it had discovered 423 violations of the construction freeze, and confiscated 39 pieces of construction equipment. The

deputy defense minister informed the Knesset that, "additional enforcement measures are being considered based on the order of priorities," but so far, few enforcement measures have been taken against illegal construction. Since this statement, several building foundations laid following the freeze have been demolished. As described by Israel's State Comptroller and the Sasson report on the outposts, and indicated by figures of the Civil Administration, the state does not generally enforce the law against illegal construction in the settlements.

## Plans for expanding the settlement enterprise

In 2009, before the freeze was declared, the defense minister approved advancement of a new settlement, Sensena, in the southern Hebron hills. The authorities classify Sensena as a neighborhood of the Eshkolot settlement, but its residents consider it an independent community. The "neighborhood" lies three kilometers away from Eshkolot. Etzion Bloc Regional Council is planning to expand the Gevaot settlement to include thousands of apartments. Gevaot is formally part of the Alon Shvut settlement, despite the physical distance between them. The building plans for these two settlements have not yet been finally approved by the planning committees and the defense minister.

## East Jerusalem

In recent years, the Jerusalem Municipality has accelerated the processing of several plans, some waiting for approval for over a decade, for building settlements in the heart of Palestinian neighborhoods. These plans include 60 apartments under construction in the Ma'ale Zetim settlement in Ras al-Amud;

> Zemach Sadeh neighborhood in Ma'ale Adummim, near the residential area of the Jahalin Beduin tribe, who are to be expelled. | Photo: Nir Shalev, 23 December 2009.





> Crops in the Beka'ot settlement, in the Jordan Valley. | Photo: Keren Manor, 13 July 2009, activestills.org.

### **Evacuation of Beduin families to expand Ma'ale Adummim**

Adjacent to the Judea and Samaria Police Headquarters are a group of wooden and tin structures belonging to members of the Sawahreh Beduin tribe. Under Outline Plan 420/4 for building in the area known as E-1, to the north of Ma'ale Adummim, this area is intended for construction of housing for settlers. The plan has not yet been approved. Hilwa Ahmad 'Ali Zar'i, who lives there, described her concerns to B'Tselem:

My father grew up here early last century, and I was born here in a tent in 1937. My five brothers still live here, in the place where they were born. There are about 150 of us now. We used to make a living from farming, mostly raising sheep and goats. Since Ma'ale Adummim was built, we've had much less grazing land. Therefore, we are forced to buy fodder, and since this is expensive, we have had no choice but to reduce considerably the number of sheep and goats we raise. Most of my relatives now work cleaning homes in Ma'ale Adummim and have left farming.

What worries us most now is that the settlers intend to build a new neighborhood in the area where we live. We have no other place. I am especially concerned about the future of my children and grandchildren: if the settlers build a new neighborhood of Ma'ale Adummim here, my family will be expelled from the place it has lived for over 100 years.



> Hilwa Zar'i. | Photo taken from B'tselem video documentary.



> Flock returning from grazing in the Palestinian community of al-Hadidiya, in the Jordan Valley. The community suffers a grave water shortage. | Photo: Keren Manor, 13 July 2009, [activestills.org](http://activestills.org).

approval to turn the Shepherd Hotel in Sheikh Jarrah into a building with 31 apartments; and preliminary approval, which has not yet been discussed by the planning committee, to add 24 apartments to Beit Orot Yeshiva, in a-Tur neighborhood. Settler associations in East Jerusalem have submitted additional plans to build a settlement in the former building of the Judea and Samaria Police Headquarters in Ras al-Amud, in the Wadi Hilwa compound in Silwan, and in the Shimon HaTzadik compound in Sheikh Jarrah. These plans, which call for the construction of 414 apartments, have not yet been brought before the planning committees for discussion. The two plans that have been heard in the District Planning Committee and were approved for depositing are for the construction of 975 apartments in the Gilo neighborhood and for 1,600 apartments in the Ramat Shlomo neighborhood.

### **Not a single outpost has been evacuated**

Some settlements are referred to as “outposts” because they are illegal under Israeli law, even though much of their construction was financed by the government.

In 2009, Israel did not evacuate a single unauthorized outpost that had been established in the West Bank after 2001, despite its promise to do so in the framework of the Road Map. The Civil Administration has done no more than to demolish a few temporary structures in unpopulated outposts.

Petitions to the High Court of Justice have also proved

ineffective. In response to a Peace Now petition demanding that the state evacuate the Migron outpost, which was established without permits eight years ago on privately-owned Palestinian land, the state announced that it intended to build a new neighborhood in the Adam settlement for the residents of the outpost. On 25 April 2010, the state informed the High Court that it was considering approving the Derekh Ha'avot outpost, which was built in 2001 next to the Elazar settlement in the Etzion Bloc. According to residents of al-Khader, the outpost lies on villagers' cultivated farmland. In May 2010, the president of the Supreme Court issued an order requiring the state to show cause within 90 days why it does not evacuate the Amona outpost, which was established in 1995 on privately-owned Palestinian land, all the construction there being illegal.

### **Dismantling the settlements and settlers' rights**

Since the settlements are illegal under international law, and given the severe human rights violations they entail, B'Tselem demands that the government of Israel dismantle all the settlements and return the settlers to Israeli territory. Temporary and limited freeze actions are insufficient. Removing the settlements must be carried out in a manner that respects the settlers' human rights, including the payment of compensation. B'Tselem emphasizes that the state is obligated to prepare an orderly plan to absorb the residents of the settlements and properly integrate them inside Israel.



# Predictable Attacks – Predictable Leniency

**Failure to protect  
Palestinians from attacks  
by Israeli civilians**

■ One of the principal functions of any government is to enforce the law and protect the life, limb, and property of those under its jurisdiction. The State of Israel is obligated to do this not only with respect to Israeli citizens – in Israel and in the settlements – but also with respect to Palestinians in the West Bank. In many cases, however, the authorities fail to take action against Israelis who injure Palestinians and damage Palestinian property.

> On 15 October 2009, settlers picked olives in the orchard belonging to al-Mughayer Village, Ramallah District, next to which the Adey Ad outpost was built. The settlers loaded the olives onto their vehicles. Yasser N'asan, a volunteer in B'Tselem's camera project, who documented the incident on video, reported the theft to the authorities, and a force from the liaison unit and the army arrested the thieves. The owner of the orchard filed a complaint with the police and the next day the stolen olives were returned to him. In May 2010, the police informed B'Tselem that an indictment had been filed against the settlers, a rare instance in such cases.

## History of leniency

Since the settlements began in the Occupied Territories, the authorities have adopted an undeclared policy of leniency toward Israelis who harm Palestinians and damage Palestinian property. Various state commissions and committees have noted this tendency, among them the committee headed by Deputy Attorney General Yehudit Karp in 1981, and the Shamgar Commission, appointed following the massacre by Baruch Goldstein in the Cave of the Patriarchs in Hebron on 25 February 1994. Numerous reports and publications issued by human rights organizations in Israel have reached the same conclusion.

Indifference and leniency toward settler violence reflect a shameful contempt for Palestinian life and property. By acting in this way, Israel violates its obligation as the occupying power in the West Bank to maintain law and order in the area. This responsibility includes ensuring the safety and wellbeing of Palestinians against violence by Israelis. To accomplish this, the state must make proper preparations and bring offenders to justice.

## Lenient police treatment of Israelis who harm Palestinians

Since the beginning of the second intifada in September 2000, B'Tselem has submitted 220 complaints to the Israel Police, demanding investigation of cases in which Israelis harmed Palestinians or damaged their property. The complaints deal with such actions as the destruction of property, forcing people off their land, threats, theft of crops, torching of fields, physical



Photo: Muna a-Nawaj'ah, a volunteer in B'Tselem's camera project.



### Investigation file closed in the case of settlers who beat Palestinians with clubs in the southern Hebron hills

In June 2008, four masked settlers assaulted three Palestinian farmers from the Nawaj'ah family in the southern Hebron hills. Volunteers in B'Tselem's video-camera project documented the settlers beating the 3 farmers with clubs. A year later, in June 2009, the police announced that the investigation had been closed on grounds of "offender unknown." In September 2009, B'Tselem appealed the closing of the file, requesting the State Attorney's Office to reopen the investigation and conduct it in a way that would lead to the filing of indictments against the assailants. Five months later, in March 2010, the State Attorney's Office informed B'Tselem that its appeal was being processed.

assault, and shootings. As far as B'Tselem knows, in 124 cases, an investigation was opened. Of these, nine led to indictments, 33 were closed without any measures being taken against anyone involved in the incident, and no decision has been made regarding the others. In 33 cases, no investigation was opened at all; seven cases are still being processed; and in 56 cases, B'Tselem received no response to its complaint.

#### "Price tag"

According to statements by settlers, some attacks on Palestinians came in response to demolition of illegally-built structures in the

settlements, to distribution of demolition orders, or to official statements indicating the intention to demolish structures. The calls to use violence against Palestinians increased following the government's decision in November 2009 to freeze construction in the settlements. These settlers refer to the violence as a "price tag" and say it is intended to deter the authorities from implementing decisions of the military and the political echelon they believe harm the settlement enterprise.

Although it is generally possible to anticipate events of this kind and to protect Palestinians, in most cases documented by B'Tselem it appears that the security forces did not make advance preparations. In quite a few cases, the security forces did not intervene to stop the violence, and after it ended did not question those involved and bring them to justice.

#### Security forces fail in their duty to protect Palestinians

In some cases, security forces were present during incidents of settler violence yet did not intervene; sometimes, they even took part in the violence. Since the beginning of the second intifada, B'Tselem has submitted 40 complaints of incidents in which it was suspected that security forces failed to act properly. Of these, B'Tselem was informed that investigations have been opened in only five cases. In 13 cases, it was decided not to open an investigation, and in the remaining 22, to B'Tselem's knowledge, no decision has been made.



> Settlers throwing stones, a soldier present alongside them, at Palestinians in Deir Nidham-Nabi Samwil, 8 January 2010. The photo was taken next to springs that Palestinians had once used for farming purposes. Now, only settlers use the springs, under the army's protection. | Photo: Yotam Ronen, [activestills.org](http://activestills.org).

### How offenders evade punishment: Shooting settler from Hebron will not be prosecuted

On 4 December 2008, Ze'ev Braude, a resident of the Kiryat Arba settlement, shot and wounded three Palestinians in Hebron. The incident took place as settlers rioted in Hebron, injuring Palestinians and damaging Palestinian property, following the evacuation of a new settlement in the city. With a rifle in hand, Braude went to the valley separating Kiryat Arba and Hebron and shot three members of the Matariyeh family, who live there. The incident was filmed by a resident of the city who volunteers in B'Tselem's video-



camera project. The tape was provided to the police the same day. Braude turned himself in to the police two days later and was released.

The investigative material also included classified evidence on which the defense minister signed a certificate of privilege, and which was not provided to the defense. Braude's attorney applied to the Supreme Court to remove the privilege and to obtain the material. In his opinion, Justice Rubinstein agreed that disclosure of the material might indeed harm state security, but found that the defendant's right to a fair trial prevailed over the public-security interest in this case.

The next day, the State Attorney's Office announced it intended to cancel the indictment against Braude, since "the price to the public in exposing the material prevails over the public interest" in prosecuting him. Cancellation of the indictment means that a violent and dangerous person, who was documented committing an offense, will avoid punishment and continue to endanger the lives of others. If the state preferred not to expose the evidence, it should have found other ways to bring Braude to justice. Simply cancelling the indictment was not a legitimate option.



> Settler firing at Palestinian and Israeli activists in the presence of soldiers during a protest action in 'Asira al-Qibliya. | Photo: Qassem Saleh, a volunteer in B'Tselem's camera project.

### **Dozens of settlers throw stones at Palestinians next to Kedumim, injuring three**

> Yihya Sideh, 45, is married and has five children, and lives in Jit, Qalqiliya District. He works in construction for an Israeli contractor from Jaffa. Early in the morning of 1 June 2009, the contractor, 'Imad 'Aref, collected a few residents from Jit who work for him and headed to Israel. According to the testimonies of Sideh and another laborer, about 500 meters from the entrance to the Kedumim settlement, stones hit passengers in the vehicle. In his testimony to B'Tselem that same day, which he gave at Rafidiyah Hospital in Nablus, Sideh described the incident:

The stones flew into the vehicle. The windows shattered and pieces of glass showered us. 'Imad tried to get away from the stone-throwing settlers, but he couldn't because there were dozens of them. After going a few meters, the vehicle stopped, and we got out. The settlers moved back a bit. Then we saw an Israeli-military jeep parked on the left side of the road, about twenty meters from us. When the soldiers saw us get out, four soldiers got out of the jeep and aimed their weapons at us. 'Imad and some of the laborers shouted, in Hebrew, that we had injured persons, and asked for first aid. The soldiers didn't care. They continued to shout at us: "Get away from here." When the settlers saw the soldiers force us to leave, they continued to throw stones at us and shouted at us, in Arabic and Hebrew, "Death to Arabs." We had to get back into the vehicle.

'Aref rushed the wounded to the medical center in al-Funduq, where a Red Crescent ambulance took them to hospital in Nablus. Sideh's wounds and the wounds of another laborer were stitched, and a third laborer, who had suffered a fractured skull and bleeding in the brain, underwent surgery and remained hospitalized. B'Tselem complained to the military and the police, demanding an investigation into the incident.



> Yihya Sideh on the day of the incident. | Photo: Zakaria Sideh, Rabbis for Human Rights, 1 June 2009.



# Annexation in the Guise of Security

## The Separation Barrier

In 2002, following a series of attacks inside Israel, the government decided to build the Separation Barrier. So far, 58 percent of the planned route has been completed, and this has entailed violation of the rights of hundreds of thousands of Palestinians. The state has the right and obligation to protect its citizens from attacks, but must not use the barrier's route to expand the area of settlements or its sovereign territory, while severely violating the rights of Palestinians. Therefore, Israel must dismantle all parts of the barrier that were built inside the West Bank.

> Muhammad 'Abd al-Qader 'Amira, resident of Ni'lin, next to the closed gate leading to his farmland on the other side of the Separation Barrier. The gate was built towards the end of 2009, but until mid-2010 was opened only twice: during the 2009 olive harvest, 40 farmers were allowed access to their land for one week, and in March 2010, one farmer was allowed access to his land. | Photo: Shahaf Polakow, [activestills.org](http://activestills.org).

### The Barrier's route annexes settlements

The route is based on extraneous considerations that are completely unrelated to the security of Israeli civilians. One of the major considerations in setting the route was the desire to annex parts of the West Bank to Israel. The planned route, 85 percent of which runs inside the West Bank, surrounds large settlements such as Ma'ale Adummim and Ariel. Upon completion, 9.5 percent of the West Bank, containing 60 settlements, will lie west of the Barrier. Not only does the barrier surround existing settlements, but in at least 12 places it was built hundreds, even thousands, of meters from the settlement, encircling additional lands in accordance with the settlements' expansion plans.

### Effect on Palestinians' human rights

The barrier severely harms the lives of Palestinians on the western side of the barrier and of one-quarter of the residents of East Jerusalem, those who live east of the Barrier. Access to basic services, such as education and health, is restricted, as is access to sources of livelihood and religious sites. The Barrier also makes it very difficult to maintain family and social ties.



> Palestinian child crossing through an opening in the Separation Barrier in Shu'afat. | Photo: Baz Ratner, Reuters, 19 May 2009.

### Changes in the Barrier's route

In early 2010, the state began implementing the High Court's judgment of September 2007 requiring it to alter the Barrier's route around the village of Bil'in. The new route will return 175 acres of farmland to the village, but 375 acres still remain on the western side of the Barrier.

At the same time, Israel also altered the Barrier's route in the vicinity of the Alfe Menashe settlement, in accordance with the High Court's judgment of September 2005. The new route removed the Palestinian villages of Wadi Rasha and Ras a-Tira from the enclave, so that they are now reconnected to the rest of the West Bank. However, the village of 'Arab a-Ramadin al-Janubi remains inside the enclave.

In December 2009, the High Court ruled that the amended route around the village of 'Azzun 'Atma is legal.

The village is still surrounded on all sides by the barrier. However, Israel opened a gate enabling freer access to the rest of the West Bank.

### East Jerusalem: Any route will violate human rights

East Jerusalem is an integral part of the West Bank. Although Israel annexed a large area to West Jerusalem, for years the municipal border set for Jerusalem was meaningless: new streets were built on both sides, with schools, health services, and other institutions serving all residents of the area. The construction of the Separation Barrier along the municipality's border ruined the fabric of life that had developed and severely violated the human rights of residents of the neighborhoods surrounding the city. Thus, East Jerusalem residents who live to the east of the Barrier, as well as other Palestinians holding permits to enter East Jerusalem, are permitted to enter the city via just three of the 16 checkpoints located along the Barrier. They may only enter on foot. The entry permits are voided whenever there is a general closure, which is generally declared on Jewish holidays and following security warnings.

Given the complex reality in the Jerusalem area, any route that is chosen for the Barrier will inevitably violate human rights.



> House of the 'Amer family in Masha Village. The house was separated from the rest of the village by the Separation Barrier. | Photo: Karin Smaller, 4 November 2009.

### Sharp drop in pace of Barrier construction

In 2009, work on the Separation Barrier slowed appreciably. According to the figures of the UN Office for the Coordination of Humanitarian Affairs (OCHA), only four kilometers were added in 2009. Of the planned 709 kilometers, 413 kilometers have been completed (58 percent). Another 70 kilometers are under construction and 22 kilometers are in planning. All the sections on which construction has not yet begun are located at a significant distance from the Green Line.

In June 2009, as part of a petition filed by the Sawahrah and Abu Dis local councils, the state informed the High Court of Justice that it had decided to freeze construction of the Barrier around the Ma'ale Adummim settlement due to budget constraints. The construction of the Barrier in this area is liable to create a partition in the heart of the West Bank, impeding travel from one section to the other.

### Farmers separated from source of livelihood

Thousands of Palestinians who live east of the Barrier are separated from their farmland and water sources to its west. Israel has built "agricultural gates" in the Barrier, but they are infrequently opened, or are opened seasonally only for persons who manage to obtain a permit from the Civil Administration.

Obtaining a permit is a difficult process and many requests are denied.

According to figures the state provided to the Association for Civil Rights in Israel, the number of permanent permits that were issued to farmers living east of the Barrier to work their land on the western side dropped by 83 percent from 2006 to 2009 (from 10,037 to only 1,640). During this period, Israel expanded the enclosed area west of the Barrier by 30 percent, to 29,900 acres.

### Every which way but loose – families trapped in the "seam zone"

Israel's policy of including as many settlements and as much unsettled land as possible on the western side of the Barrier has created several impossible situations.

Some villages, alongside which settlements were built or which have farmland close to the Green Line, are imprisoned between the Barrier and the Green Line, in an area Israel calls the "seam zone." Some villages are surrounded by the Barrier on all sides, seriously harming people's ability to move to and from their village to get to schools, jobs, necessary services, and so forth. They are cut off from the West Bank and are not allowed to enter Israel.

As a result of these restrictions, one-fifth of the residents of



> The checkpoint at the entrance to Sheikh Sa'ed, East Jerusalem. Since 2002, the authorities have prevented entry by automobile, which severely affects all aspects of the residents' life, including access to medical treatment. In 2010, the High Court of Justice approved the route of the Separation Barrier planned to be built around the village, thereby sanctioning the harm to its residents. The High Court ordered that residents were to be allowed access to the village by automobile, not via the main road leading to East Jerusalem, but by a still unfinished road that the state promised, in 2005, to build. | Photo: Amer 'Aruri, B'Tselem, 8 April 2010.

### **Elderly farmer prevented from working his land for six years**

> The olive orchards of Elias Mariyyeh, 80, a farmer from Bethlehem, lie to the west of the Barrier. Since the Barrier was built, his family has had trouble working their land and gaining a livelihood from the olive harvest. At first, the Civil Administration rejected outright requests for permits to cross the Barrier. Subsequently, a permit was issued only to Mariyyeh, who was unable to do the work alone. This year, he was not given a permit. In his testimony to B'Tselem, of 7 January 2009, he said:

Three days ago, we heard from the Bethlehem Municipality that the Israeli officials have not issued permits. There is a new condition: farmers with land on the other side of the fence have to provide documents showing they own the land. Of course, this new procedure takes time, and the olive harvest has already begun. Now the farmers are afraid they'll lose the harvest before the permits arrive. I've already lost this season. This is the sixth season that I haven't been able to get to my land for the olive harvest. I am afraid that I will die without saying goodbye to my land, with which I have had a bond since the day I was born.



> Elias Mariyyeh. | Photo: Suha Zeid, 7 October 2009.

Dhafer al-Maleh, in the Barta'a enclave west of the Barrier, abandoned their homes in early 2010.

Residents of 'Arab a-Ramadin al-Janubi, a village situated southeast of Qalqiliya, are imprisoned in an enclave that links the settlement Alfe Menashe to Israel. In the past year, the

Civil Administration again pressured residents of the village to leave their homes and move to the eastern side of the Barrier, despite the state's commitment to the High Court of Justice that it would ensure reasonable living conditions for the villagers inside the enclave.



In 2009, Israel removed some restrictions on Palestinian movement in the West Bank that it had imposed at the beginning of the second intifada. With some main checkpoints now open to both pedestrians and cars, it is much easier to travel on the main roads between the major Palestinian towns. However, despite the significant increase in ability to move about within the West Bank, movement is still not free.

> Sign the army posted next to al-Hadidiya, a community in the Jordan Valley, indicating the area is a firing zone. In the Valley, Israel places harsh restrictions on building and on freedom of movement on the Palestinians living there, forcing them from the area. | Photo: Noam Raz, B'Tselem. 4 October 2010.

# A More Comfortable Occupation

## Restrictions on Palestinian movement in the West Bank and East Jerusalem

The movement restrictions currently remaining in the West Bank are designed to direct all Palestinians to a small number of main checkpoints, thus enabling control of movement throughout the West Bank. The objective of most of the restrictions is to keep Palestinian traffic away from the settlements, from major roads that the settlers use, or from areas where Israel wants to strengthen its control and exclude Palestinians. Thus, the vast majority of the restrictions are on roads leading to Area C, in areas west of the Separation Barrier, in the Jordan Valley, in Jerusalem, and in the settlement in Hebron.

These restrictions on movement reflect an attitude that views the basic right of Palestinians to travel freely as a privilege that Israel may grant or deny as it wishes. They severely infringe the Palestinians' right to freedom of movement and consequently to other basic rights, such as the right to adequate medical treatment, to education, and to work, and make it difficult to maintain economic, family, and social ties.

### Current situation

In early February 2010, there were 44 staffed checkpoints inside the West Bank, compared to 64 in 2008. 18 of these are in Hebron. According to OCHA's figures, in October 2009, there were 488 physical roadblocks – dirt piles, obstructions, gates, and sections of roads closed to Palestinians – compared to an average of 537 in the first nine months of 2008. B'Tselem's research indicates that about 50 of these obstructions



> Farmers from a-Zawiya waiting during the olive harvest to cross through the agricultural gate in the Separation Barrier to get to their olive orchards on the western side of the fence. | Photo: Keren Manor, 8 October 2009, [activestills.org](http://activestills.org).

significantly hamper Palestinian movement and cause a marked increase in travel times and costs.

Along the Separation Barrier, there are 39 checkpoints and obstructions, 19 of which are the last inspection point prior to entering Israel. These checkpoints lie a few kilometers east of the Green Line and limit access of Palestinians to the land to the west, which is part of the West Bank.

### **Container Checkpoint – partition between the northern and southern West Bank**

The Container checkpoint, located on the road linking the north and south of the West Bank, is the main checkpoint in the West Bank. It channels all traffic that once passed via Jerusalem on the way north or south. Crossing the checkpoint often entails prolonged, arbitrary delays, primarily on Sundays and Thursdays. Among those affected by the delays are ill persons on their way to receive medical treatment and trucks carrying fresh produce.

### **Hebron – continuation of restrictions on Palestinians only**

Inside Hebron there are 18 staffed checkpoints around H-2, the area that remains under complete Israeli control due to the settlements there. The checkpoints obstruct Palestinian movement to and from this area, and many Palestinians complain about harassment and insults at them. In addition,

there are extensive restrictions on Palestinians' ability to use the main streets in H-2.

The road referred to as "Zion Route," which is used by settlers entering the city center from Kiryat Arba, was closed to Palestinian vehicles at the end of 2000. In early 2009, the military said it intended to cancel the prohibition, and in August 2009 announced the opening of the route for Palestinian travel. In practice, the military has established very stringent criteria that enable only a small number of Palestinians to use this road.

Shuhada Street, one of the main roads in the city, was closed to all Palestinian pedestrians and vehicles at the end of 2000. In December 2006, the military admitted it had been closed by mistake, and said that an order had been given to allow Palestinians to use it subject to a security check. However, a few days later, the military closed the road again. In October 2007, the Judge Advocate General informed the Association for Civil Rights in Israel that the military's position was that the road should remain closed to Palestinians.

All of these restrictions have led many Palestinian families to leave H-2, and to the closing of markets, an appreciable decline in economic activity, and a decrease in the number of students in schools.

### **An end to separate roads?**

For years, the Israeli military prohibited Palestinians from using the part of Route 443 that runs through the West Bank. The



> Palestinian vehicles parked next to the blocked exit to Route 443, in Beit Ur a-Tahta. Following the High Court of Justice's opinion, the army opened, in May 2010, a section of Route 443 to very limited Palestinian use. The exit from the village remained blocked, though it is possible to exit the road at the village's entrance. [Photo: Amer 'Awad, Reuters, 30 December 2009.]

prohibition resulted in the road being used only by Israelis and for movement between the central part of the country and Jerusalem, even though Israel is not allowed to act in the Occupied Territories solely for the benefit of its own population. In December 2009, in a petition filed by villagers living along Route 443 and by ACRI, Israel's High Court of Justice ruled that the military does not have the authority to institute a sweeping prohibition on Palestinian movement on the road. The Court gave the military five months to make alternate arrangements. The arrangements ultimately proposed by the military enable only minimal travel of Palestinians on the road, and do not provide access from the road to the urban centers of Ramallah and Bir Nabala. In addition, the road that was built between the villages of Beit Ur al-Fauqa and Bitunya, intended as a substitute for travel on Route 443, collapsed and was closed. As a result, residents have to travel along a long rural and winding road in order to reach Ramallah.

In October 2009, in a separate petition filed by ACRI, the High Court ordered the military to allow Palestinians to travel on a major road in the Beit 'Awwa area, south of Hebron. In 2001, the military had closed the road to the 45,000 Palestinians living

in the area, contending the closing was necessary to safeguard 150 settlers living in two illegal outposts, Negohot and Mizpe Lachish.

### **Separating the Jordan Valley from the rest of the West Bank**

The Jordan Valley remains almost completely closed to Palestinians who are not registered residents of the area. Other residents of the West Bank may enter only on foot or by public transport. The strict restrictions on movement in the area prevent farmers who own land in the Valley but do not live there from reaching their land.

Residents of other areas of the West Bank are unable to enter the Valley to buy the farmers' fresh produce as in the past. The military has also closed some of the dirt roads used by residents of the Valley to reach other parts of the West Bank. As a result, every time they leave the Valley, they face a long trip, which seriously impairs their access to education and health services. The military put up dozens of concrete pillars near almost every area where Beduins live, declaring a firing zone and thereby prohibiting the Beduins from living in areas where they earn their livelihood.



> Border policemen in Hebron. | Photo: Baz Ratner, Reuters, 10 March 2009.

**Israel hampers the life of Beduins in the Jordan Valley** > Israel's severe restrictions on Palestinian movement in the Jordan Valley have created substantial problems for residents of al-Hadidiya, a small Beduin community in the northern Jordan Valley. The Ro'i and Beka'ot settlements were established in the 1970s to the east of al-Hadidiya, in part on the community's farmland. Since then, Israel has pressured the Beduin residents to abandon their land. In 2009, in addition to the general prohibitions on movement in the area, the military erected a dirt pile blocking the path linking al-Hadidiya and the Allon Road, which runs through fields cultivated by settlers from Ro'i. To reach the Allon Road, residents of al-Hadidiya have to cross through the settlement, and when the settlement's gate is closed, they have to travel along a much longer path, which runs between the Ro'i and Beka'ot settlements. In addition, the military limits the residents' access to Palestinian towns Tamun and Tubas, on which they rely for services. A gate along the path that takes them to Tamun in fifteen minutes is only opened twice a week for a few hours. At other times, residents reach Tubas and Tamun via the Hamra checkpoint, a trip that takes one hour. They must also pass the checkpoint when they require emergency medical treatment: the military does not permit Palestinian ambulances to cross the checkpoint to reach Palestinian communities in the Valley, even in emergency cases. Instead ambulances must wait at the checkpoint for the person requiring medical care to arrive. There are no schools in al-Hadidiya; school-children travel a long route via the Hamra checkpoint to reach schools in Tamun. Most of the children spend the weekday nights with relatives in Tamun to enable them to maintain a regular study schedule. It is also hard for the residents of the Beduin community to market their produce elsewhere in the West Bank, as merchants from outside the Valley have trouble getting to al-Hadidiya and nearby communities.



■ According to B'Tselem's figures, from the beginning of 2009 to the end of April 2010, the Civil Administration demolished 44 residential structures built without a permit, leaving 317 Palestinians homeless. Over half the demolitions took place in Beduin communities in the Jordan Valley. In the second half of 2009, the Civil Administration issued hundreds of stop-work orders, including orders stopping construction on the Palestinian international stadium being built in al-Birah.

> Ruins of a house in the Bustan neighborhood, in Silwan, East Jerusalem.  
| Photo: Ofir Feuerstein, B'Tselem, 19 March 2009.

# The Planning System

## Restrictions, demolitions and overcrowding

### Background

Since 1967, Israel's policy has been to limit as much as possible construction in Palestinian communities in the West Bank. Israel has not prepared outline plans for Palestinian communities, allocated land for Palestinian building and development, or allowed new construction there. Instead, the authorities have relied on British Mandate outline plans, which classify most West Bank land as agricultural, on which building is forbidden. In addition, the planning authorities are run by Israelis and have no Palestinian representatives.

This policy still applies throughout area Area C, those areas of the West Bank which remained after the Oslo Process under complete Israeli control. Area C constitutes 60 percent of the West Bank and contains most of the land reserves for development of Palestinian towns and villages.

## Lawbreakers by default

This planning regime creates a grave housing shortage since it offers no planning channel for Palestinian communities, whose residents are left with no option other than building without a permit. The land reserves in Areas A and B, in which most of the population of the West Bank live, are very limited. Israel's planning policy is especially flagrant given the extensive planning and investment in expansion of settlements and development of their industrial and employment areas.

## East Jerusalem

In its planning policy in East Jerusalem, the Jerusalem Municipality severely violates the Palestinians' right to housing. One-third of the 70 square kilometers annexed to the city in 1967 were expropriated from Palestinian owners in order to build 12 settlements in which, at the end of 2008, almost 194,000 Jews lived. At the same time, Israeli governments and the Jerusalem Municipality have invested great efforts in

limiting new Palestinian construction. They did this, in part, by not drawing up outline plans for the Palestinian neighborhoods; by classifying broad expanses of land as "green spaces" on which building is absolutely forbidden; by setting very low building percentages compared to those in the Jewish settlements in the city; and by imposing conditions for beginning the planning process that greatly increased the cost.

Israel's policy results in a much higher housing density in Palestinian neighborhoods (11 square meters per person) than in Jewish areas (24 square meters per person). Lacking any real possibility to build lawfully, many residents built without a permit.

In 2009, the Jerusalem Municipality demolished 48 buildings in East Jerusalem, in which 247 Palestinians lived, compared with 89 buildings in 2008, in which 404 Palestinians lived. In 2010, until the end of April, the Municipality did not demolish any houses in East Jerusalem.

>Stadium in al-Birah, built with FIFA, German, and French funding, which is located inside the town's municipal boundaries. Israel approved the building plans in the 1980s. Following a petition by the Regavim organization, the Civil Administration issued an order stopping construction. | Photo: Alex Levack, 16 November 2009.





> Shweiki family after their house was demolished, Beit Hanina. | Photo: Silan Dallal, 13 July 2009, [activestills.org](http://activestills.org).

### **Silwan: sanctioning settlement while restricting Palestinian construction**

In December 2009, the Jerusalem Municipality declared a new planning policy in the Silwan neighborhood, in advance of its implementation in other neighborhoods. According to officials, the policy is intended to enable Palestinians to obtain building permits and to approve existing construction in the neighborhood. Such a plan is needed, as demolition orders are pending against over 100 Palestinian houses built without permits. However, the plan sets impossible conditions to approve existing construction, such as stringent parking standards, construction of access ways for the buildings, and the installation and maintenance of sewage infrastructure – all at the homeowners' expense. At the same time, the Municipality and government and municipal corporations aid in expanding the compound of the Elad settlers association and builds roads and parking lots for settlers in Silwan.

It appears that the main objective of the Municipality's policy is to approve Beit Yehonatan, the settlement house belonging to the Ateret Cohanim association, without improving the living conditions of Palestinians in the neighborhood. This although the court has ordered Beit Yehonatan sealed and the Attorney General and the State Attorney have ordered the mayor to execute the court's judgment. The Municipality has announced that if it carries out the court's order, it will be

forced simultaneously to execute dozens of orders to demolish Palestinian houses in Silwan that, like Beit Yehonatan, were built without a permit. Linking the two imposes a kind of "price tag" on Palestinian residents of the city for enforcement of the law on settler associations in East Jerusalem.

### **Israel's duty to allow construction for Palestinians**

Israel must provide a suitable response to the planning needs of Palestinians in the West Bank and East Jerusalem, and enable them to build according to their needs. Ensuring minimal living conditions, and principally the right to housing, is an obligation of the occupying power. Israel's policy contradicts this obligation and turns Palestinians into lawbreakers by default.

**Lacking any real possibility to build lawfully, many residents build without a permit.**



> Nimer 'Ali Hassan Nimer standing on the ruins of his house. | Photo: Kareem Jubran, B'Tselem, 1 November 2009.



**Family home demolished after their land is declared “green space”** > After marrying in 1982, Nimer 'Ali Hassan Nimer, a resident of Jerusalem, lived with his wife and seven children in a three-apartment building, along with his five brothers and their families. The family owns a plot of land in Um Lisun, east of Zur Baher, in an area that is classified as “green space” in the municipal plans. In 1993, due to the severe overcrowding in the building, the family and owners of other land in the area requested an engineer to try to rezone the land, a process that takes many years. In his testimony to B'Tselem, of 1 November 2009, Nimer stated:

By 2000, the overcrowding in the house was intolerable. I decided to build on the land I own, assuming it would be possible to obtain a building permit. I built a building with four apartments, each with an area of 170 square meters, for me and my sons, who were about to become independent. It was the first time we felt we were going to be free of the overcrowding and discomfort. This was true especially for my only daughter, Amal, who was ten years old at the time. She suffered more than her brothers from the situation we lived in, and the thought of having her own room made her happy and motivated her to do well in her studies. A few days before leaving the house, we were surprised to find an administrative demolition order on the door of the house.

**The family moved into their new home. They retained various attorneys to try to cancel the demolition order. The legal proceedings, which lasted eight years, cost the family over NIS 200,000 in city fines and attorneys fees, all to no avail. On 27 October 2009, police and Border Police removed the family and a small portion of their furniture, and municipal bulldozers demolished the house, with its contents inside.**

This was how my family was torn apart. My sons Muhammad, Mahmud, 16, and Ahmad, 6, and my daughter Amal, 18, all lived in my apartment. In the other apartment, my son 'Ali lived with his wife and six-month-old son Nimer. In the third apartment, my son Murad, 25, lived with his wife and two infant children. In the fourth apartment, my son 'Auni and his wife lived. They married on 23 October 2009 and only managed to live for three days in the house that they dreamed about their whole life. After the house was demolished, we all went to live in tents. What hurts the most is that, for nine years, we were swindled by the Municipality, the lawyers, and the engineers, and, at the end of it all, we found ourselves homeless and deep in debt.



# Without Trial

## Administrative detention

Over the past two years, there has been a steady drop in the number of administrative detainees. On 30 April 2010, the number stood at 222. Of the 237 detainees held at the end of March 2009, 55 percent had been in administrative detention for six months to one year, and 35 percent for one to two years. 25 persons had been held between two to four years, and one man had been held in administrative detention for over four and a half years.

### Without knowing why or when

Administrative detention is detention without trial, the declared aim being to prevent the person from committing an act that is liable to endanger public safety. Unlike a criminal proceeding, administrative detainees are not told the allegations against them. They also do not know when they will go free, since the detention order can be renewed indefinitely. Administrative detention violates the right to liberty and the right to due process, in that the detention is carried out without any charges filed, and without trial or judgment.

Over the years, Israel has held thousands of Palestinians in administrative detention for periods ranging from several months to a several years. The state has also held several Israelis, including settlers, for short periods of a few months. During the second intifada, the number of Palestinians held in administrative detention at any given moment exceeded 1,000.

### International law permits administrative detention only in exceptional cases

Under international law, it is permissible to administratively detain a person only in exceptional cases, when the person

### **Detained on the basis of old information and released after eight months without being charged**

> Muhammad Kharaz, 43, from Nablus, married with five children, who owns and operates a grocery store for a living, was detained in November 2008. After being interrogated for a month, he was held in administrative detention for six months. According to his testimony, the ISA interrogator told him during his interrogation that four persons who were interrogated in 1997 had provided information about offenses he purportedly committed. In April 2009, the military commander extended his administrative detention for another six months.

In May 2009, the military court held a hearing on the detention. The military prosecutor stated that no new information had been obtained in the file, but requested the judge to study the privileged material and approve the detention. Kharaz's attorney, Tamar Pelleg-Sryck, of HaMoked: Center for the Defence of the Individual, argued that, based on the disclosed information, the material against the client was very old. After studying the privileged material, the judge determined that he was convinced that the material could not be disclosed, and that "the decision to extend his administrative detention is lawful and only imperative security reasons made the extension of the order necessary. . . The detainee was indeed a member of Hamas and held a position of some standing in the organization."

However, the judge ruled that the information supporting the claim relating to Kharaz's dangerous activity was "old information, from about a year and a half to two years before he was detained. . . After such a long period without information on continuing activity. . . it has almost no weight in evaluating the danger posed by the detainee." Later in the decision, the judge wrote:

I gained the impression that even after some six months in prison, the danger accruing from the standing of the detainee has not completely passed. However, in my opinion, this is a danger that can be thwarted by means of detention for a relatively short period of only two months. Kharaz was released on 5 July 2009, after being held for eight months. A week and a half later, he said, in his testimony to B'Tselem: "They kept me from my wife, my mother, and my small children by force. They harmed my livelihood without any real justification, even though I hadn't committed any crime. . . I was punished for something I didn't do."



>Muhammad al-Kharaz. | Photo: 'Abd al-Karim Sa'adi, B'Tselem, 15 July 2009.

poses a danger that less harmful means cannot prevent. A detainee has the right to appeal the detention. Israel's use of administrative detention breaches these rules and severely violates the detainee's rights. Israel's policy with respect to administrative detention makes a mockery of the protections provided by Israeli and international law, which are intended to ensure the right to liberty and due process, the right to be heard, and the presumption of innocence.

### **Israel exploits administrative detention for other purposes**

From time to time, Israel has used administrative detention as an easy alternative to a criminal proceeding. Administrative detention is legal only when used to prevent a future danger posed by the person. Israel, however, has used it when unable to collect sufficient admissible evidence for criminal proceedings, or when it does not want to expose the evidence it has gathered.

Judicial review of the administrative detention proceeding gives no more than the appearance of due process. In almost all cases, evidence against the detainee is classified. Neither he nor his attorney can see it and they are therefore unable to refute the

claims or to present alternative evidence. As a result, the court approves the vast majority of administrative detention orders. From August 2008 to July 2009, military-court judges nullified 5 percent of the orders brought before them and approved 95 percent. Regarding the appeals against these decisions: in 2009, the Military Appeals Court accepted 47 percent of the 182 appeals filed by the military prosecutor and only 15 percent of the 1,124 appeals that were filed by detainees.

### **Israel must release or prosecute**

The number of Palestinians held in administrative detention has indeed dropped, but over 200 people continue to be held for months and even years without knowing when they will be released, and without any opportunity to defend themselves. The recent decline in the number of Palestinians in administrative detention can be attributed to various causes, including the drop in violence in the area. However, the fall in numbers does not reflect a change in policy: the military law enabling sweeping use of administrative detention remains the same. Israel must release all the administrative detainees or prosecute them in accordance with due process.



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