

Promoting Impunity: The Israeli Military's Failure to Investigate Wrongdoing

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Summary

In May 2005, an Israeli military court convicted a soldier of “severe intentional harm” to a civilian and sentenced him to twenty months in prison. The soldier was charged with shooting an unarmed Palestinian man in the southern Gaza town of Rafah in October 2003. This was, as the Israeli daily *Ha’aretz* observed, “the harshest punishment imposed on an IDF [Israel Defense Forces] soldier in the four and a half years of fighting in the territories.”¹

That same month, on May 19, 2005, the IDF announced that it had opened a Military Police (*mezah*) investigation into the May 4 shooting deaths of two Palestinian teenagers in the West Bank town of Beit Lafia. The teenagers were among a large group that reportedly threw stones at bulldozers Israel was using to construct a metal and concrete barrier, or wall, in the West Bank.² The IDF had suspended the officer who opened fire the day after the incident. As one experienced journalist wrote, “Such a swift acknowledgement by the military of improper behavior in the fatal shooting of Palestinians is rare.”³

It remains unclear if these two developments represent a change in IDF policies regarding unlawful use of force resulting in deaths and serious injury to Palestinian civilians. Those policies until now have been characterized by inaction and cover-up. Such a change would therefore be most welcome.

In recent months several high-profile killings have drawn Israeli and international attention to the army’s failure to conduct thorough and impartial investigations where there is credible evidence of unlawful use of force against civilians—none more so than the October 5, 2004, incident in which Givati Brigade soldiers shot a thirteen-year-old Gaza schoolgirl. An internal IDF debriefing immediately after the incident found that

¹ Amos Harel, “Soldier who fired at unarmed Palestinian sentenced to 20 months in prison,” *Ha’aretz*, May 18, 2005 [online]. According to the statement on the IDF website, the maximum prison sentence for inflicting “severe intentional harm” is twenty years (“IDF Soldier Convicted in Rafah Incident,” available at www1.idf.il/DOVER/site/mainpage.asp?si=EN&id=7&clr=1&docid=39891.EN).

² Amos Harel and Arnon Regular, “Beit Latakia boys killed in IDF ambush, Palestinians claim,” *Ha’aretz*, May 20, 2005 [online]. Harel and Regular wrote in conclusion: “The Beit Lafia incident is not unusual. Every day, soldiers and border police officers operate in some 15 villages near this section of the separation fence, sometimes without either crowd control equipment or clear rules of engagement. Since work on that section of the fence began, at least 10 Palestinians have been killed during protests against it, including eight children. Dozens of others have been injured, some by live fire.”

³ Joel Greenberg, “Israel suspends officer in killings of 2 Palestinian teens,” *Chicago Tribune*, May 6, 2005 [online].

the company commander had “not acted unethically.”⁴ Fellow soldiers then released a communications tape to the media showing that another soldier had warned the commander that the victim was “a little girl.” The tape recorded the commander saying, “Anything that’s mobile, that moves in the zone, even if it’s a three-year-old, needs to be killed.”⁵ On the tape he also states that he “confirmed the kill” by firing at the girl’s body at close range. The IDF responded by opening a Military Police investigation that yielded a five-count indictment against the commander, but the charges did not include murder or manslaughter.⁶ The commander’s trial was still ongoing as of this writing in early June 2005.⁷

Between September 29, 2000, and November 30, 2004, more than 1600 Palestinian civilians not involved in hostilities, including at least 500 children, were killed by Israeli security forces, and thousands more were seriously injured.⁸ The IDF informed Human Rights Watch that as of May 10, 2004, it had criminally investigated just seventy-four alleged cases of unlawful use of lethal force, less than 5 percent of the civilian deaths in nearly four years of what is commonly known as the al-Aqsa intifada, or uprising.⁹ As of

⁴ IDF Official Website, “Investigation into the incident in which a 13-year-old girl was killed near an outpost on the Israeli-Egyptian border,” October 15, 2004, available at <http://www1.idf.il/DOVER/site/mainpage.asp?clr=1&sl=EN&id=7&docid=34453>.

⁵ A portion of the transcript of the radio communication appeared in the May 2005 issue of *Harper’s Magazine*, p.19.

⁶ The charges were: two counts of illegal use of weapons, obstructing justice, unbecoming behavior, and the improper use of authority that endangered others (Margot Dudekevitch, “Officer indicted for killing girl,” *The Jerusalem Post*, November 23, 2004). *Ha’aretz* reported in March that “the trial seems to be more focused on the Military Police’s investigation and the Judge Advocate General’s handling of the case than on R.’s behavior. And irrespective of how the judges rule on whether R. did use his weapon illegally, did try to obstruct justice and other behavior unbecoming an officer, the case has already been very unflattering to the MPs and the JAG officers.” See, Amos Harel, “Case of Capt. R casts a shadow over the Military Police,” *Ha’aretz*, March 21, 2005 [online].

⁷ The al-Hams family and the Public Committee against Torture in Israel (PCATI) petitioned Israel’s High Court of Justice in January requesting that the investigation be turned over to civilian authorities, and that it also address command responsibility for open-fire orders. In February the court declined to halt the military trial; the next hearing on the petition is scheduled for October 2005.

⁸ The IDF does not appear to keep statistics on the number of Palestinian civilians killed but several Israeli and Palestinian NGOs have attempted to calculate the number. The figures vary depending on methodology, access to victims and witnesses, and other factors. According to the Israeli human rights organization B’Tselem, between the beginning of the intifada and the end of November 2004, 3,040 Palestinians were killed by Israeli security forces, including 606 children, in the Occupied Palestinian Territories. According to their investigations at least 1,661 of those killed (including 531 children under the age of 18) were not involved in hostilities when they were killed. B’Tselem has not been able to determine whether an additional 550 Palestinians (including 31 children) participated in hostilities. According to the Palestinian Center for Human Rights, Israeli forces have killed 2,191 Palestinian civilians in the Occupied Palestinian Territories between the beginning of the intifada and April 2004 (including 493 children under the age of 17). The most detailed and up-to-date statistics are those of the Palestine Red Crescent Society, which put the number of deaths of children under eighteen at 612 through the end of October 2004.

⁹ Response of the IDF Spokesperson to Human Rights Watch inquiry, with a cover letter from Maj. Sam Wiedermann, May 10, 2004. The IDF response indicated that indictments had been issued in sixteen of these

June 6, 2005, the IDF had not responded to a February 2005 request for updated information on indictments and convictions since its May 2004 communication.¹⁰

There are two situations in which the death or serious injury of civilians should be investigated. The first is in situations of armed conflict where there is prima-facie evidence or there are credible allegations of unlawful killings, or where all feasible precautions were not taken to protect civilians and other protected persons, resulting in preventable or unjustifiable civilian casualties. International humanitarian law (IHL) requires that armed forces distinguish at all times between combatants and non-combatants, and absolutely prohibits any deliberate killing of civilians. It also requires that armed forces observe the principles of military necessity and proportionality.

Independent and impartial investigations are also required when death or serious injury results from the use of lethal force under circumstances that do not constitute armed conflict. In this case, human rights principles and the standards related to the use of force in policing and law enforcement contexts apply. Almost all of the cases of death and serious injury investigated in this report occurred in circumstances that cannot fairly be characterized as situations of armed conflict.

In any military occupation, the line between armed hostilities and law enforcement can blur. However, both IHL and standards governing the use of lethal force in law enforcement were established with the explicit intent to provide protection for civilians. Therefore, where indications of armed conflict conditions are ambiguous, the government should investigate to ensure that civilians are receiving the protection to which they are entitled under both IHL and human rights law.

The recent investigations and prosecutions cited earlier notwithstanding, Human Rights Watch has found that Israeli military's investigative practices and procedures are not impartial, thorough, or timely. The military rarely has brought wrongdoers to justice, and

cases but provided no details; nor did the response indicate how many of the seventy-four investigated shooting incidents had resulted in deaths or injuries.

¹⁰ On February 28, 2005, in an email to Jaron Pazi, Head of International Organizations Section, IDF Spokesperson Office, Human Rights Watch asked for an update on the cases mentioned in this report as well as an update in the total number of indictments, convictions and sentences of IDF soldiers for killing or serious injury of Palestinians during the current intifada. Human Rights Watch followed up this request with several phone calls to the IDF Spokesperson Office, but as of early June 2005 no new or additional information had been provided.

B'Tselem told Human Rights Watch on May 22, 2005 that as of that date a total of 108 investigations had been opened into cases involving deaths and injuries to Palestinians, resulting in nineteen indictments and six convictions— two for manslaughter, two for causing grave harm, and two for illegal use of a weapon (Human Rights Watch interview with Ronen Schnayderman, Jerusalem, May 19, 2005).

existing practices have exerted little deterrent effect. In May 2004, for example, Zvi Koretzki was convicted for the negligent killing of sixteen-year-old Muhammad `Ali Zaid; he was demoted and sentenced to two months of imprisonment.¹¹ In contrast, the same court system handed down a sentence of six months to a defendant who had stolen a mobile phone, cigarette lighter and \$500 cash. Conscientious objectors have been sentenced to twelve months in prison.

Apart from the Koretzki case, Human Rights Watch is aware of only one other conviction of an IDF soldier for negligent killing in the past four years: the February 2005 sentencing of a soldier for the shooting death of a Palestinian at a West Bank checkpoint. Human Rights Watch is also aware of two cases of convictions for inflicting “serious intentional harm” (including the October 2003 incident mentioned at the beginning of this report) and two convictions for unlawful use of a weapon that resulted in serious injury or death.¹² In no other case of which Human Rights Watch is aware has an IDF soldier been convicted of any criminal offense for killing or injuring a Palestinian.

At the heart of the problem is a system that relies on soldiers’ own accounts as the threshold for determining whether serious investigation is warranted. Instead of initiating impartial investigations in such cases, the IDF relies on operational debriefings, which Israeli officials have misleadingly referred to as “operational investigations,” “field investigations,” or “military investigations.” The frequent discrepancies between IDF accounts of civilian deaths and injuries, on the one hand, and video, medical, and eyewitness evidence on the other hand, is the result in part of the IDF’s practice of asking soldiers to “investigate” other soldiers from the same unit or command, without seeking and weighing testimony of external witnesses. Exculpatory claims of soldiers are taken at face value, at best delaying and at worst foreclosing a prompt and impartial investigation worthy of the name. So-called “operational investigations” may serve a useful military purpose, but they do not constitute proper investigations: they are wholly inadequate to determine whether there is evidence of a violation of human rights or humanitarian law, and they serve as a pretext for maintaining, incorrectly, that an investigation has taken place. Another critical weakness of this current system is the absence of victim involvement in the investigative process,

¹¹ Captain Koretski was sentenced on May 3, 2004, to two months of imprisonment, four months of “military tasks,” and six months probation for the October 5, 2002 killing. Koretski was also demoted to the rank of first lieutenant. See, Amos Harel, “IDF Captain Jailed for Death by Negligence of Palestinian Teen,” *Ha’aretz*, May 5, 2004 [online].

¹² The details of the six convictions mentioned here (two for negligent killing, two for severe intentional injury, and two for unlawful use of a weapon) were gathered from media reports and confirmed by B’Tselem on May 22, 2005.

and the demonstrated failure of the IDF to solicit or take seriously testimonies of victims or non-IDF witnesses as a basis for checking the reliability of soldiers' accounts.

This critique of the system and its flaws is nothing new. Different aspects of Israeli security forces' impunity in the Occupied Palestinian Territories have been aired in commissions and court cases, newspaper articles, and Knesset meetings for more than twenty years. Investigators rarely consult Palestinian witnesses, even though human rights groups and victims' families frequently present the Judge Advocate General's (JAG) office with directly relevant testimony from these witnesses. In the rare instances in which investigators recommended prosecution, the victims have tended to have foreign connections capable of producing external political pressure. The trial of the soldier who shot and killed Tom Hurndall, ongoing as of early June 2005, is a case in point (see below). When investigations do occur, deaths and injuries to Palestinians are treated less seriously than other infractions or violations, and differently from cases where those harmed by the IDF are Jewish Israelis.¹³

What is new is the mounting number of deaths and injuries of civilians that should, but do not, receive the serious investigation they deserve. All civilian deaths and injuries in the 1988-93 Palestinian uprising were investigated, although the quality of the investigations was often poor.¹⁴ Following the outbreak of clashes in late September 2000, the IDF changed this policy, saying that deaths of civilians in the Occupied Palestinian Territories would no longer be routinely investigated because the situation was "approaching armed conflict" and that investigations would be limited to "exceptional cases." The IDF's explanation fails to take into account its obligation to investigate deaths and serious injuries of civilians where there is prima facie evidence or there are credible allegations of serious violations of international humanitarian law, or where deaths occur when lethal force is used in law enforcement rather than armed conflict circumstances.

¹³ Even so, the IDF's investigative mechanisms for dealing with accidents that kill IDF soldiers have also come under fire within the military. See Amos Harel, "Accidents will happen," *Ha'aretz*, November 12, 2004 [online]. Harel writes that over the past two years a team of reserve battalion commanders "worked on formulating a new proposal for investigating accidents. The reserve officers came to the conclusion that the IDF lacks a professional body with the requisite knowledge and experience in investigating accidents that occur on land and sea.... In addition, there is great ignorance among officers and soldiers regarding the various investigative procedures...and the authority of each, as well as the rights of those under investigation... The reserve battalion commanders expressed concern that a continuation of the current system might lead to transferring the investigation of accidents out of the hands of the IDF."

¹⁴ See, Human Rights Watch [Middle East Watch], *The Israeli Army and the Intifada: Policies that Contribute to the Killings* (August 1990), pp. 64-159. For a detailed examination of one investigation in this period, see, John Conroy, *Unspeakable Acts, Ordinary People: The Dynamics of Torture* (New York: Alfred A. Knopf, Inc., 2000), chapters 2, 6, 10, and 14.

Militaries investigate allegations of wrongdoing by their soldiers for reasons of self-interest, among other reasons. They do so because members of the armed forces must be accountable to their superiors in order to maintain operational efficiency, enforce discipline, and uphold the integrity of the armed forces. In a functioning democracy, the accountability of individuals entrusted with the use of lethal force is essential.

Armies, furthermore, are obliged under IHL to investigate and criminally punish those responsible for serious violations of the laws of war. Israel has ratified the Fourth Geneva Convention and has a duty to prevent war crimes and other violations of humanitarian law. In certain circumstances, IHL holds commanders criminally liable for the crimes committed by their subordinates.¹⁵

Israel's duty to investigate alleged wrongdoing by its soldiers is reinforced by its obligations under international human rights law. Israel has signed and ratified a number of treaties that oblige it to investigate violations and bring perpetrators to justice. These treaty obligations together form an effective deterrent against unlawful killings, torture, and other serious human rights abuses. These are the obligations to:

- Investigate serious human rights violations;
- bring to justice and discipline and punish those responsible;
- provide an effective remedy for the victims of human rights violations;
- provide fair and adequate compensation to the victims and their relatives; and
- establish the truth about what happened.

An “effective remedy” for a serious human rights violation requires a prompt, thorough, and effective investigation capable of determining whether criminal wrongdoing has occurred and, if so, identifying the person(s) responsible. An effective remedy also includes access by the victim or complainant to the investigatory procedure, and, when appropriate, the payment of compensation. Remedies must be effective in practice, not just in theory, with a strong enough element of public scrutiny to ensure true accountability. A key requirement is that those investigating an alleged crime must be effectively independent from those implicated in the events in question.

¹⁵ Under the doctrine of command responsibility, a superior can share culpability for crimes committed by subordinates if the superior ordered the crime to be committed, if the superior knew or had reason to know that a crime was about to be committed but failed to take necessary and reasonable measures to prevent it, or if the superior knew or had reason to know that the crime had been committed and failed to take necessary and reasonable measures to punish the perpetrators.

The Israeli military's system for investigating wrongdoing by Israeli soldiers fails all of these requirements. The system is opaque, cumbersome, and open to command pressure. Victims and their representatives have little practical access to the investigation process. Furthermore, it is not independent. As a result, only a handful of perpetrators have been brought to justice. The Knesset has passed legislation that effectively prevents almost all future compensation claims. The system does not provide justice or truth or meaningful reparation.

The most significant factor underlying impunity is the reluctance of the JAG's office to investigate incidents, even when witnesses are accessible and the breach of international law is clear. JAGs are able to receive complaints, or at their own initiative open a preliminary investigation in any case where, in their opinion, there is an offense that a military court is competent to address.¹⁶

The JAG's office has shown that there are some abuses that it will not tolerate, such as sexual violence, in which it has often quickly and effectively identified and located the perpetrators and brought proceedings against them. Action in these cases contrasted strongly with those involving death or serious injury of Palestinians, in which case the default response has been to whitewash or ignore possible abuses. Many such cases drop off the radar screen entirely. In two cases of severe beatings of Palestinians while in IDF custody detailed below, for instance, one of which resulted in the man's death, an IDF spokesman responded to Human Rights Watch inquiries saying, "The incident is unknown to us."

Another factor is the practical inability of most victims, i.e. Palestinians living in the Occupied Palestinian Territories, to initiate a complaint. When the IDF declines or refuses to investigate, there are no alternative forms of accountability. The West Bank and Gaza Strip are ruled under military law: Palestinians cannot seek prosecution of Israelis in Israeli military courts, or in the courts administered by the Palestinian Authority. In theory, victims or their representatives can appeal a decision not to indict to the JAG and, if unsuccessful, to the High Court of Israel. None of the families interviewed by Human Rights Watch were aware of this option, which in any case would be limited to those with the financial resources and connections to obtain Israeli representation. Under prevailing conditions of strict closure, which sharply restrict freedom of movement in the Occupied Palestinian Territories and between the territories and Israel, Palestinians find it extremely difficult to have physical access to Israeli institutions.

¹⁶ Article 178 (4), Military Justice Law.

In many other countries, other institutions have the power to investigate human rights abuses. Unlike Mexico or Northern Ireland, Israel has no national human rights institution to receive complaints of human rights violations. Unlike Turkey, Colombia, or the Russian Federation, Israel is not subject to the jurisdiction of a regional human rights court. Israel's ongoing problems of military, security service, and police impunity will continue to fester until Israel chooses to strengthen its own accountability mechanisms.

The IDF has argued that investigating civilian deaths would harm the special nature of combat operations, and that only "exceptional" cases should be pursued, without indicating what the criteria would be. While it is true that not all deaths or injuries of civilians need trigger an independent investigation, the IDF's position cannot be reconciled with Israel's obligations under the international human rights and humanitarian law treaties that it has ratified. There are clearly established standards for determining whether particular actions have violated IHL in situations of armed conflict or constitute unlawful use of force in policing situations. The IDF should adhere to those standards.

The IDF has also maintained that armies elsewhere facing similar levels of hostilities do not carry out such investigations, sometimes citing U.S. practices in Iraq and Afghanistan, and has argued that the practical difficulties of investigating civilian deaths in the Occupied Palestinian Territories are simply too much for the system to bear.

In fact, the U.S. does not itself follow a "best practices" approach, with consequences in Iraq that are similar to those of Israel in the occupied West Bank and Gaza Strip.¹⁷ There are, however, other positive examples. In the last fifteen years, countries such as Britain, Canada, and Belgium have reformed their military justice systems and introduced external accountability mechanisms. While those countries did not face armed conflict situations, their relevance should not be dismissed out of hand, because they do include, for instance, British military and police engagement in the Northern Ireland conflict. There is, moreover, an emerging consensus in international law that military justice should not be used to try military personnel in cases where civilians are victims, and that military justice systems should investigate only offences that are strictly military in nature.¹⁸ The challenge for Israel is to ensure that its practices evolve to meet international standards and benefit from good practice elsewhere.

¹⁷ See Human Rights Watch, *Hearts and Minds: Post-war Civilian Deaths in Baghdad Caused by U.S. Forces* (October 2003), available at <http://www.hrw.org/reports/2003/iraq1003/index.htm>.

¹⁸ See below, "What makes a good investigation?"

Apart from emerging standards, though, Israel's existing obligations are clear. If lethal force is used in situations of armed hostilities, Israeli forces must distinguish at all times between civilians and combatants, never direct attacks at a civilian population or individual civilians, and refrain from attacks that indiscriminately harm civilians. Israel has an obligation to conduct independent and impartial investigations in all cases involving prima facie evidence or credible allegations that troops violated these principles. When performing law enforcement functions, Israeli forces should be provided with the equipment and training necessary for this purpose and should not use firearms except when strictly necessary to defend themselves or others against the imminent threat of death or serious injury, and then only to the extent necessary to avert the actual danger faced. Curfew enforcement and control of demonstrations, for instance, should comply with law enforcement standards, and rules of engagement should be changed to reflect this. Deaths and serious injuries to civilians in these circumstances, when there is not a situation of active armed hostilities, should always be investigated. When the circumstances of a death or serious injury are unclear, the authorities should err on the side of investigating, with the objective of providing the greatest possible protection to the civilian population.

Conducting serious investigations can be difficult in circumstances of military occupation. Every Israeli official interviewed by Human Rights Watch emphasized the difficulty of obtaining witness testimony. Undoubtedly many witnesses are reluctant to cooperate with IDF investigations, for reasons ranging from fear of retribution to cynicism about the intentions and effectiveness of the investigators. Yet, as the cases reviewed in this report show, there are many cases in which IDF investigators simply do not attempt to contact witnesses to abuse, even when they are readily available.

There is much the Israeli authorities can do to improve the accountability of their armed forces for arbitrary killings and other serious human rights abuses against civilians. The government of Israel should:

- Establish an independent body to receive and investigate complaints of serious human rights abuses committed by IDF soldiers and the agents of the Israel Security Service (Shin Bet).
- Ensure that international norms are reflected in the operational and training manuals of the Military Police.
- Publicize widely information on how to file complaints, including in the Hebrew and Arabic media and on the internet.

- Ensure that when a complaint is not upheld after an investigation, the complainant is given a reasoned decision in writing, in his or her own language, which sets out the evidence as well as the investigative findings.
- Establish clear guidelines and procedures for all individuals involved in organizing and obtaining witness testimony of individuals residing in Area A, which is under Palestinian Authority jurisdiction¹⁹; and
- Compensate all individuals who have suffered harm as a result of unlawful or criminal behavior by state agents – and amend current laws that make such compensation effectively inaccessible or unavailable to victims.²⁰

These and other changes are practical, possible, and necessary if Israel wishes to develop a justice system that effectively counters the impunity now granted to its security forces.

Recommendations

To the Government of Israel

Use of Force

Under international law, Israeli forces in the Occupied Palestinian Territories are obliged to restore and ensure public order and safety, and respect and protect civilians. The means and manner of law enforcement and military operations must conform to the standards of international humanitarian and human rights law.

In law enforcement situations, Israeli military forces should abide by the standards set forth in the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the U.N. Code of Conduct for Law Enforcement Officials, and be provided with the equipment and training necessary for this purpose. Israeli forces should not use firearms in law enforcement situations, except when strictly necessary to defend themselves or others against the imminent threat of death or serious injury, and only in proportion to the actual danger presented. Curfew enforcement and control of demonstrations should comply with law enforcement standards, and rules of engagement should be changed to reflect this.

¹⁹ Under the Oslo Accords the West Bank and Gaza were divided into three areas: Area A, under full Palestinian control; Area B, under Israeli military control and Palestinian civil control; and Area C, under full Israeli control. Area A comprises major Palestinian population centers outside East Jerusalem and amounts to approximately 18% of the West Bank.

²⁰ These recommendations are consistent with Human Rights Watch policy for all victims of abuse regardless of the identity of the perpetrator.

If, in the context of law enforcement, lethal force is used, Israeli forces must comply with the principles of human rights law. These principles include:

- The exercise of restraint in the use of force, acting in proportion to the seriousness of the threat and the legitimate objective to be achieved.
- Ensure that assistance and medical aid are rendered to any injured or affected person at the earliest possible moment.

If, in the context of armed hostilities, lethal force is used, Israeli forces must comply with the principles of international humanitarian law. These principles include:

- The obligation to distinguish, at all times, between civilians and combatants.
- The prohibition against attacking the civilian population or individual civilians and their property.
- The obligation to refrain from indiscriminate attacks.
- The principle of proportionality – namely, the military advantage of an attack cannot be outweighed by the impact on civilians or civilian objects.

Accountability

The government of Israel should:

- Allocate sufficient resources to monitor civilian casualties throughout the occupied West Bank and Gaza Strip. Military authorities should keep records, and observe and analyze trends, related to specific units and commanders, as well as tactics, to ensure accountability and minimize civilian casualties. These statistics should be made public on a regular basis.
- Maintain an official record of all complaints received against IDF personnel by date, location, alleged incident type, and action taken. Statistics regarding substantiated complaints and investigations should be made public on a regular basis. Statistics on all disciplinary proceedings taken by the IDF should be collected in sufficient detail and reviewed at a sufficiently high level to enable IDF authorities to identify patterns of wrongful behavior, and to adopt any necessary preventive or corrective measures. These statistics should be made public on a regular basis.
- End the practice of relying on operational debriefings or “field investigations” into alleged civilian killings in determining whether to open criminal investigations.

- End exclusive military jurisdiction over cases in which soldiers are accused of serious human rights abuses against civilians in non-combat circumstances.
- Establish an independent body to receive and investigate complaints of human rights abuses and breaches of international humanitarian law committed by Israeli security personnel, including members of the IDF, the Border Guard, Israel National Police, and the Israel Security Service (Shin Bet). This independent body should have the capacity to initiate investigations of alleged wrongdoing on its own, and not simply in response to complaints. It should be staffed by competent, qualified, and impartial experts, who are functionally and practically independent of the suspected perpetrators and the agency they serve. The independent body should have sufficient personnel and adequate resources to carry out its responsibilities.
- Provide the independent body with all information, as well as technical and financial resources, necessary to investigate fully all aspects of complaints, as well as to review patterns of abuse. Investigators should have unrestricted access to places of custody and the alleged incident, as well as to documents and persons it deems relevant. The independent investigative body should be empowered to summon witnesses and compel their testimony, and to demand the production of evidence and all relevant operational orders and related briefing materials. The body should have the ability to recommend for criminal prosecution any individual when credible evidence exists that the person has committed a crime.
- Remove alleged perpetrators from active duty or from the areas where the incident under investigation took place while the investigation is underway.
- Publicize widely information on how to file complaints, and contact details of investigating bodies, in the Hebrew and Arabic media, including media outlets in the occupied West Bank and Gaza Strip, and on the Internet. Complaint filing procedures should include a telephone hotline capable of receiving anonymous witness testimony. The process of registering a complaint should be straightforward, and persons making the complaint should be assured of confidentiality if they so request. All complaints for which evidence or credible allegations of wrongdoing exist should be investigated.
- Bring to justice all individuals responsible for wrongdoing in a timely manner. Punishments should be commensurate with the gravity of the crime, including judicial as well as administrative penalties for all individuals guilty of unlawful killings, torture, or other serious violations of human rights and international humanitarian law.

- Ensure that when a complaint is not upheld by an investigation, the complainant receives a decision in writing, in his or her own language, which sets out the evidence as well as the findings of the completed investigation. The investigation should establish a clearly auditable trail, one that demonstrates that a robust, impartial, and expeditious investigation took place and why the investigators reached the conclusions they did.
- Establish clear guidelines to all individuals involved in organizing and obtaining witness testimony of individuals residing in areas under the jurisdiction of the Palestinian Authority and not normally under IDF control, including basic procedures on how to identify and search for witnesses or complainants, support services for witnesses or complainants, and appropriate interview and liaison techniques. Ensure these guidelines are shared with Palestinian District Coordination Office (DCO) officials responsible for facilitating Palestinian testimony. Clearly inform all witnesses and complainants of the procedures available to assist their giving of testimony, including the guarantee of non-arrest and facilitation of travel. Enable the use of video conference facilities for individuals unable to travel. Witnesses should be protected from intimidation and retaliation.
- Ensure effective access by families and their legal representatives to any hearing and to all relevant investigatory information. Ensure that families can practically exercise the right to present other evidence.
- Enable compensation of all individuals who have suffered harm as a result of unlawful or criminal behavior by state agents by taking the following steps:
 - Amend Sections 5 and 5A of the Civil Torts Law (State Liability), 5712–1952, to allow individuals who suffered harm as a result of unlawful or criminal behavior by state agents to receive compensation.
 - Create a compensation commission to expedite claim proceedings for all compensation awards under a reasonable monetary threshold.
 - Make all victims of unlawful or criminal behavior aware of their right to receive compensation, and of the means to obtain it.
 - Apply Article 77 of the 1977 Penal Code pertaining to personal liability of perpetrators and monetary compensation for victims.
 - Make applicable in the occupied West Bank and Gaza Strip, as well as in Israel, victims' rights provisions of the Offense Victims Rights Act (2001).

I. Introduction

Ruwaida al-Hajin and her two sons were killed by thousands of tiny, dart-like flechette rounds one Friday night in August 2002, during a summer holiday picnic. That same month Fatima Abu Dhahir was shot while sleeping in her front yard to avoid the heat. These and many other civilians are the faceless victims of lethal force used by the soldiers of the Israel Defense Forces (IDF). Their deaths may have resulted from the unlawful use of lethal force or simply be the unfortunate result of incidents of armed conflict. But no one will ever know precisely what happened, because their deaths were never impartially investigated.

The situation is different for Ahmad Abu `Aziz, a six-year-old who died in June 2002 when he went out to buy a bar of chocolate. His death, recorded on video, was investigated by the IDF, as were some seventy other cases. But because Israeli military investigations are shrouded in secrecy and the results rarely made public, no one can judge whether the investigations were impartial – or if they had any result. The soldier alleged to have killed Ahmad along with his little brother and three other civilians is unlikely to stand trial. At the time of Human Rights Watch’s inquiry, he had reportedly left the army and was traveling overseas.

It is the army’s lack of accountability that has produced what a military court in 1989 termed this “bitter fruit.”²¹ This lack of accountability has reinforced the widely held belief that the Israeli army does not hold its forces responsible for the wrongful killing, injury, or ill-treatment of Palestinian or foreign civilians. Unlawful practices have gone uninvestigated and unchecked. With greater discipline and accountability on the part of Israeli forces, many civilians would not have been maimed or killed. And the lack of accountability is reflected in a surreal public relations war, in which the IDF first publishes inaccurate and self-serving accounts of victims’ deaths and later claims moral victory on the very few occasions when it finally agrees to investigate them.

²¹ “In our eyes, the defendants are not deviants and are no different from thousands of soldiers who belong to their brigade... Their failure is the bitter fruit of the lack of observation of norms which apparently received legitimization and even encouragement by commanders. Even, regretfully, by high-ranking commanders. . . .” Military Court opinion in the Givati trial, May 25, 1989. For an account of the Givati incident, see John Conroy, *Unspeakable Acts, Ordinary People: The Dynamics of Torture* (New York: Knopf, 2000), pp. 140-42.



The brother of Ahmad and Jamil Abu-Aziz holds of a photo of his brothers, killed by IDF tank fire on June 21, 2002. An indictment was issued for a soldier for allegedly killing the two brothers and two others to enforce a curfew. According to media reports in January 2004, the soldier had left Israel.
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The public outcry in the several incidents in which the IDF has injured Israeli civilians illustrates how arguments against conducting proper investigations to some extent rest on the assumption that those injured or killed may be Palestinians but not Israeli Jews. The case of Gil Na'amati, who was shot in the knee by IDF soldiers while participating in an unarmed demonstration against the West Bank separation barrier on December 26, 2003, is illustrative: Na'amati, an Israeli citizen, had recently completed his military service in a combat unit. In the public outcry that followed, the IDF reportedly opened both a special investigation and a Military Police investigation into this shooting. Chief of Staff Moshe Ya'alon was quoted as saying, "The Israeli army is not given orders to shoot at Israeli demonstrators, but under the circumstances, one cannot blame the soldiers for having made a mistake." The soldiers, he said, "did not believe they were dealing with Israelis."²²

²² "Israel will Not Punish Soldiers over Shooting of Peace Demonstrator," Agence France-Presse, January 6, 2004. The army later stated that the soldiers would not be disciplined because they had operated according to the rules of engagement, and one "senior military officer" told the press that it was not possible to equip troops with riot control equipment to deal with such incidents. See, Amos Harel and Tsahar Rotem "IDF Won't Act

As already noted, these problems are not new. Those Israeli soldiers who wrongfully kill or injure Palestinian civilians in the occupied West Bank and Gaza Strip have enjoyed effective impunity for decades.²³ Israeli public officials, human rights groups, journalists, and others have deplored this impunity at least since the formation of the Karp Commission in 1982.²⁴ The Karp Commission concluded, in May of that year, “The key lies not in the technical monitoring of the investigations, nor in criteria for investigative techniques, nor in the legal angle — but rather a radical reform of the basic concept of the rule of law in its broadest and most profound sense.”²⁵

Pressure for a proper investigation rises every time a high-profile killing takes place, but Israeli authorities have taken no serious steps to improve the accountability of the armed forces, create an independent investigation system, or reform the military justice system.

There is no reason this state of affairs should persist. Other armies have learned lessons from their own failures of accountability, by improving investigation procedures in these cases, transferring military cases to civilian jurisdiction, and revising their military justice laws. The IDF and its civilian authorities must do more to ensure that the IDF fulfills its duty to investigate impartially all suspicious civilian deaths and credible allegations of wrongdoing. It owes this duty to the civilians of the West Bank and Gaza Strip, whose lives depend on it. It owes this duty to its soldiers and officers, to protect them against unwarranted allegations of war crimes. And it owes this duty to the Israeli public, which has the right to expect a transparent, efficient, and accountable military that abides by international norms that the state of Israel has pledged to uphold.

Against Soldiers Who Shot Protester,” *Ha’aretz*, January 6, 2004. One of the recommendations to Israel of the Sharm el-Sheikh Fact-Finding Committee, appointed by President Clinton and headed by former Senator George Mitchell, was to “ensure that the IDF adopt and enforce policies and procedures encouraging non-lethal responses to unarmed demonstrators, with a view to minimizing casualties and friction between the two communities.”

²³ Complaints against Israeli police, in contrast to those against the IDF, are handled by the department of investigation of police misconduct within the Ministry of Justice. Although police investigations suffer from ongoing problems, they have complied to a greater extent with international standards of fairness than those of the IDF.

²⁴ The Karp Commission was formed in response to a petition by fourteen Israeli law professors protesting the practices of Israeli settlers towards Palestinians in the West Bank. The commission was created by the Israeli attorney general and headed by his deputy, Judith Karp.

²⁵ Deputy Attorney General Judith Karp, *Investigations of Suspicions Against Israelis in Judea and Samaria*,: “Conclusions” (Government Press Office, May 25, 1982); released in edited form by Government Press office, Jerusalem, February 7, 1984. Known as the Karp Commission Report, an English-language translation was published as *The Karp Report* (Washington D.C.: Institute for Palestinian Studies, 1984).

About This Report

This report examines the Israeli army's failure to investigate adequately allegations of wrongdoing by Israeli soldiers since the outbreak of clashes in September 2000. It addresses three major questions. First, it examines how the army's policy on investigations has operated since September 2000, and the obstacles to accountability it has created. Second, it assesses the impact of "operational investigations," in which allegations of wrongdoing are "investigated" by the colleagues of the alleged perpetrator. These debriefings may be appropriate for learning operational lessons, but they in no way constitute impartial investigations into suspicious incidents. Third, it looks at how the Military Police investigations opened since September 2000 have been conducted — and what can be done to improve them.

This report is based on field research conducted from April to August 2003, previous Human Rights Watch fieldwork and reports, and additional research and interviews in 2005. It is based on more than 150 interviews with victims, families, military officials, nongovernmental organizations, and intergovernmental groups. It also draws from meetings and written correspondence with the IDF from 2001 to 2005, as well as public statements and legal submissions by government officials. Human Rights Watch particularly wishes to thank the staff of the International Organizations Unit of the Office of the IDF Spokesperson, who were considerably more responsive to our requests for meetings in 2003-2004 than in previous years.

During the course of its fieldwork in 2003, Human Rights Watch researched some thirty cases of alleged wrongdoing by members of the IDF. The majority of these cases were incidents that had taken place at least six to twelve months earlier, allowing sufficient time for an investigation to take place. Others took place during Human Rights Watch's period of fieldwork. Human Rights Watch in February 2005 requested from the IDF any update in the status of each case, and as of early June 2005 had received no response.

In selecting cases for examination, Human Rights Watch concentrated on those cases of alleged wrongdoing that the IDF had publicly committed to investigate. In the great majority of these cases, the killings very clearly happened outside a situation of armed conflict. Human Rights Watch also followed up cases that it had itself presented earlier to the IDF for investigation. For the sake of comparison, Human Rights Watch also documented a number of cases of alleged wrongdoing that appeared to merit investigation, but no mention of investigation had been made. Reasons of space do not allow us to discuss in the report every troubling case.

II. Why Investigate?

Investigations are essential to justice. Their quality and impartiality affect almost every aspect of disciplinary or judicial proceedings, from identification of the perpetrator to the strength of the evidence and the decision to indict or dismiss. Efficient investigative procedures and resort to an impartial judicial process are essential safeguards against abuse and impunity — and against the pain, terror, and suffering that they cause.

At the most basic level, armies investigate allegations of wrongdoing by their soldiers for reasons of self-interest. Members of the armed forces must remain accountable to their superiors in order to maintain operational efficiency, enforce discipline, and maintain respect for principles of international humanitarian law (IHL). In almost all armies, the procedures for military investigations and disciplinary or judicial proceedings were originally based on the need to punish service-related offences such as desertion, insubordination, theft, or mutiny. The more frequent the military operations, the more important it becomes that patterns of unlawful or negligent behavior are detected and stopped.

A further reason to investigate is to uphold the integrity of the armed forces, ensuring that ill-disciplined or unlawful acts by soldiers do not discredit the army or the country they defend and represent. The accountability of individuals entrusted with the use of lethal force is an essential part of any functioning democracy. Functioning democracies require that the military be accountable to the civilian authorities. The greater the role the military plays in the daily life of a country, the more important this accountability becomes.

Investigations are required to ensure respect for the laws that govern the use of force in armed conflict: international humanitarian law. The advantages of such respect are obvious. It minimizes the suffering caused by armed conflict. It encourages higher morale and a sense of professionalism within the armed forces, and prevents the commission of war crimes. It increases the likelihood of reciprocal behavior by other government or quasi-governmental parties, minimizing the possibility of a downward spiral in which each party attempts to inflict the most pain, cruelty, and suffering. Respect for IHL also helps ease post-conflict transition, by lessening the trauma and bitterness that develop when war crimes or crimes against humanity are committed. Lastly, efficient and impartial investigations can forestall pressures for international tribunals to take up serious violations of IHL on the grounds that the responsible government had failed to do so.

Investigations are similarly essential into incidents in which security forces use lethal force in policing and law enforcement circumstances. In situations where military authorities exercise police powers, their conduct is governed by the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the U.N. Code of Conduct for Law Enforcement Officials. These international standards are clear: in policing situations, firearms should be used only when their use is “strictly unavoidable in order to protect life,” and then only in proportion to the danger presented.²⁶ In order to ensure accountability for the possible wrongful use of force, it is important to carry out thorough, prompt, and impartial investigations into all incidents resulting in death or serious injury to determine that lethal force was used properly and, if it was not, to ensure that soldiers and commanders are held accountable for the wrongful deaths or injuries. The investigation should determine the cause and circumstance of the death or injury, who is responsible, and any patterns or practices that may have resulted in the violation of the rights of the victims.

Legal Obligations

Military forces also conduct investigations and discipline or punish wrongdoers because they have specific obligations under domestic and international law to uphold rights, prevent crimes, punish perpetrators, and ensure that victims have access to an effective remedy. Military forces are official state organs, with clear organizational hierarchies and enforceable chains of command. There are no excuses for non-accountability.

Israel has occupied the West Bank, Gaza Strip, East Jerusalem, and Golan Heights since 1967. New administrative structures were introduced in the Oslo process, but Israel continued to exercise substantial military authority throughout the West Bank and Gaza, as well as overall responsibility against external threats.²⁷ Since the redeployment of Israeli troops into Palestinian urban areas in early and mid 2002, Israeli forces have strengthened further their wide-reaching control over Palestinian daily life.

International Humanitarian Law

There are two overlapping bodies of international law that apply to Israel’s conduct in the Occupied Palestinian Territories. The first is international humanitarian law (IHL). This includes principles of customary international law, the 1907 Hague Regulations

²⁶ U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, U.N. Doc. A/CONF.144/28/Rev.1 (1990), adopted in 1990 for the Eight U.N. Congress on the Prevention of Crime and Offenders.

²⁷ For a detailed discussion, see the summary of the legal analysis in Human Rights Watch, *Israel’s Closure of the West Bank and Gaza Strip*, July 1996, Vol. 8, No. 3 (E).

annexed to the Convention (IV) Respecting the Laws and Customs of War on Land, and the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), which Israel has ratified.

The Hague Regulations are widely considered part of customary international law, and the Israeli authorities accept their applicability to the occupied territories. Article 43 of the Hague Regulations clearly states that the occupying power “shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety” in the territory it occupies. In 1981, the Israeli High Court of Justice ruled that the Israel Defense Forces are obliged to investigate alleged wrongdoing by soldiers in the occupied territories as part of the authorities’ obligation to maintain law and order.²⁸

The duties of the occupying power, and the rights of the population under its authority, are set out further in the Fourth Geneva Convention. All protected persons shall be treated humanely and without discrimination.²⁹ This includes respecting family, honor, rights, the lives of persons, and private property. An occupying power is specifically prohibited from coercion, carrying out reprisals and imposing collective punishments. Violence to life and person, cruel treatment and torture, taking of hostages, and outrages upon personal dignity (including humiliating and degrading treatment) are absolutely prohibited “at any time and in any place whatsoever.”³⁰

The convention includes a mechanism to enforce the duty of humane treatment. It requires the occupying power to investigate and punish those responsible for serious violations of this duty. Article 146 requires the occupying power to investigate and prosecute “grave breaches” of the convention, defined in Article 147. It also requires the occupying power to provide effective penal sanctions for those who commit grave breaches, or those who order them to be committed. Article 147 defines grave breaches as, among other things, willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury to body or health, as well as extensive property destruction “not justified by military necessity” and the taking of hostages.³¹ Other

²⁸ See Human Rights Watch [Middle East Watch], *The Israeli Army and the Intifada: Policies that Contribute to the Killings*, August 1990, p.90, citing High Court of Justice 175/81.

²⁹ All Palestinian residents of the occupied West Bank, East Jerusalem and Gaza Strip are protected persons. Israeli citizens living or traveling in the Occupied Palestinian Territories are not. Article 4 of the convention defines protected persons as “those who, at a given moment, and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or occupying power of which they are not nationals.” Article Four, *Convention IV Relative to the Protection of Civilian Persons in Time of War*, Geneva August 12, 1949. (Afterwards referred to as the Fourth Geneva Convention).

³⁰ See, inter alia, Articles 3, 27, 31-34, and 147 of the Fourth Geneva Convention.

³¹ Other grave breaches include unlawful deportation or transfer or confinement of a protected person, and depriving a protected person of fair trial rights.

breaches of the Geneva Conventions should also be investigated, prevented, and prosecuted.

When considering which legal standards apply to a particular situation, military and political leaders must distinguish between a legitimate military response in situations of armed confrontation, such as exchanges of fire between Israeli forces and Palestinian armed groups, and law enforcement and public security requirements. This is particularly the case in a situation of protracted military occupation.³² Declaring a situation to be a “state of armed conflict” does not negate the obligation of the occupying power to apply law enforcement standards to maintain checkpoints, conduct raids on civilian homes and shops, or control civilian protests, even if some of these turn violent and require dispersal by soldiers or law enforcement officials.

Likewise, when a situation reaches a level of intensity that requires regulation by the laws of armed conflict, Israeli forces are obliged to observe customary international principles of military necessity, proportionality, and distinction. In essence, the primary goal of military necessity is to use the least amount of force needed to gain the submission of an enemy at the earliest possible moment.³³ Military necessity does not allow an armed force to take measures that violate the laws of war, or that do not have a military purpose. The rule of proportionality places a duty on combatants to choose means of attack that avoid or minimize damage to civilians. Intentional attacks against civilians are absolutely prohibited: the principle of distinction requires that combatants “shall at all times distinguish between the civilian population and combatants, and between civilian objects and military objectives, and accordingly shall direct their operations only against military objectives.”³⁴ Attacks that are not aimed at military targets, (or, because of the method of attack used, cannot reliably be aimed at military targets) are indiscriminate and forbidden.³⁵ Combatants must take “all feasible precautions” to minimize incidental loss of civilian life, and to verify that the objectives to be targeted are not civilians or civilian objects.³⁶

³² See, for example, Col. Kenneth Watkins, “Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict,” *The American Journal of International Law*, Vol. 98, No. 1, 2004, pp.1-34, at pp 26-28.

³³ *Ibid.*, p.10. For a more detailed discussion of these principles, see Human Rights Watch, *Jenin: IDF Military Operations*, Vol. 14, No. 3, May 2002, pp. 10-12.

³⁴ Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, Article 48. Israel has not signed Additional Protocol I, but the protocol’s provisions codifying the principle of distinction and prohibiting indiscriminate warfare are widely considered to express norms of customary international law.

³⁵ *Ibid.*, Article 51 (4).

³⁶ *Ibid.*, Article 57 (2) (a) (i)

The Israeli authorities also have duties under customary international law to prevent war crimes and crimes against humanity. Those who commit or condone war crimes, such as the willful killing of civilians, are individually criminally responsible for their actions. In certain circumstances, IHL also holds commanders criminally liable for war crimes or crimes against humanity committed by their subordinates.³⁷ The responsibility of superiors for crimes committed by their subordinates is commonly known as command responsibility. Although the concept originated in military law, it is increasingly accepted that command responsibility includes the responsibility of civil authorities for abuses committed by persons under their direct authority.³⁸ The doctrine of command responsibility has been upheld in recent decisions by the international criminal tribunals for Rwanda and the former Yugoslavia, and is codified in the Rome Statute of the International Criminal Court.³⁹

There are two forms of command responsibility. The first is direct responsibility for orders that are unlawful, such as when a military commander orders rapes or intentional attacks on civilians. The second is imputed responsibility, when a superior fails to prevent or punish crimes committed by a subordinate acting on his or her own initiative. This kind of responsibility depends on whether the superior had actual or constructive notice of the subordinates' crimes, and was in a position to stop or punish them. If a commander had such notice and still failed to take appropriate measures to control his subordinates, to prevent their crimes, or to punish offenders, he can be held criminally responsible for their actions.⁴⁰ Israeli officials who are aware of willful killings or other grave breaches of the Geneva Conventions committed by their soldiers, but do not seek out or punish those responsible, may be held individually criminally liable for the actions of their subordinates.

International Human Rights Law

International humanitarian law applies to situations of belligerent occupation as well as situations where hostilities rise to the level of armed conflict. The application of IHL does not pre-empt the application of international human rights law — particularly non-derogable rights such as the right to life. In situations as complex as Israel's long-term occupation of the West Bank and Gaza Strip, both legal regimes complement and reinforce each other. The two bodies of law share similar normative frameworks, areas

³⁷ See Maj.-Gen (ret) A.P.V Rogers, "Command Responsibility Under the Law of War," lecture given at the Lauterpracht Research Center for International Law, Cambridge University, 1999, available at www.law.cam.ac.uk/RCIL/Archive.htm.

³⁸ Art. 128, Rome Statute of the International Criminal Court, "Responsibility of Commanders and Other Superiors."

³⁹ Israel is not a party to the ICC Statute.

⁴⁰ See Prosecutor v. Delali, Judgment No. IT-96-21-T, Nov. 16, 1998 (Celebici case), para. 378.

of common content, and many instances of overlapping protections. The application of both regimes also ensures that no individual, regardless of nationality or participation in combat, is left without some form of humanitarian protection.⁴¹

Israel has signed and ratified numerous human rights treaties, but argues that its resulting obligations do not apply to the Occupied Palestinian Territories. This position has been rejected by the relevant U.N. treaty bodies responsible for monitoring Israel's compliance with its treaty commitments. Most recently, in August 2003, the U.N. Human Rights Committee, composed of individual experts who examine the compliance of states with the International Covenant on Civil and Political Rights (ICCPR), stated that:

in the current circumstances, the provisions of the [ICCPR] apply to the benefit of the population of the Occupied Territories, for all conduct by [Israeli] authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law.⁴²

Israel's duty to investigate is thus reinforced by its obligations under international human rights law. Israel has ratified at least five treaties that oblige it to investigate violations, bring perpetrators to justice, and to provide an effective remedy or fair and adequate compensation to victims. They include the ICCPR (ratified by Israel in 1992), the U.N. Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT, ratified by Israel in 1991), the International Covenant on the Elimination of all Forms of Racial Discrimination (CERD, ratified by Israel in 1991), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, ratified by Israel in 1991), and the Convention on the Rights of the Child (CRC, ratified by Israel in 1991).⁴³

⁴¹ For recent discussions see, Yoram Dinstein, *The Conduct of Hostilities Under the Law of International Armed Conflict*, Cambridge University Press, 2004, pp. 22-25, and Kenneth Watkin (Deputy Judge Advocate General/Operations Canadian Armed Forces) "Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict," *American Journal of International Law*, Vol. 98, 1, 2004, pp. 1-34.

⁴² United Nations Committee on Human Rights, *Concluding Observations of the Human Rights Committee: Israel*. 21/08/2003, CCPR/CO/78/ISR. (Concluding Observations/Comments). Human Rights Watch's discusses the applicability of Israel's treaty obligations to the Occupied Palestinian Territories in Human Rights Watch, *Israel's Record of Occupation: Violations of Civil and Political Rights*, August 1998, Vol. 10, No. 2 (E), available at www.hrw.org/reports98/israel/.

⁴³ Relevant provisions include Article 2 of the ICCPR, Articles 12, 13, and 16 of the CAT, Article 6 of the CERD, Article 2 (c) of CEDAW, and Articles 4, 6, and 37 of the CRC.

Regional and international human rights bodies characterize these obligations as a “duty of guarantee”: not only are countries bound to refrain from violating the rights of an individual, but they must also honor five basic obligations, which together form the cornerstone of the international system to protect human rights.⁴⁴ These are the obligations to:

- Investigate serious violations of human rights;
- bring to justice, and discipline or punish, those responsible;
- provide an effective remedy for the victims;
- provide fair and adequate compensation to the victims and their relatives; and
- establish the truth about what happened.

These duties are complementary – one does not substitute for another. Together, they comprise the most effective deterrent for the prevention of human rights violations. A state is accountable for human rights violations not only if it infringes rights through direct acts or negligence, but also if it fails to take appropriate steps to investigate facts, curb criminal behavior, and compensate the victims and their relatives.

The obligation to investigate wrongdoing, prosecute offenders, and compensate the victims is strongest in cases of the most serious human rights abuses, such as: torture or cruel, inhuman or degrading treatment; extrajudicial, summary or arbitrary executions; and “disappearances.” The rights to life and freedom from torture and ill-treatment are among the most strongly-protected of all human rights. No state may derogate from its obligation to protect these rights, even in states of emergency. They are widely recognized as having reached the status of customary international law.⁴⁵

Whatever situation they may be in, individuals are always protected from arbitrary deprivation of life. But when hostilities occur, the decision of what constitutes an arbitrary deprivation of life is interpreted by using IHL standards, which in this situation

⁴⁴ Federico Andreu-Guzmán, *Military Jurisdiction and International Law: Military Courts and Gross Human Rights Violations*, International Commission of Jurists/Colombian Commission of Jurists pp.21-26, available at http://www.icj.org/IMG/pdf/Trib._mil._ENG_-_part_I.pdf.

⁴⁵ For example, the Operational Law Handbook of the United States Army recognizes eleven rights as customary international law, including prohibitions against genocide, slavery, murder or disappearances, torture or other cruel inhuman or degrading treatment; all violence to life or limb, taking of hostages, punishment without fair trial, prolonged arbitrary detention, failure to care for or collect the wounded and sick, systematic racial discrimination, and a consistent pattern of gross violations of internationally recognized human rights. Maj. J. Berger, Maj Derek Grims, Maj Eric Jensen (Eds) *Operational Law Handbook*, International and Operational Law Department, Judge Advocate General's Legal Center and School, Charlottesville Virginia, 2004, pp. 43-44.

operates as *lex specialis*.⁴⁶ In this context, judging whether someone was killed or injured unlawfully will depend on whether the possible perpetrator obeyed the principles of proportionality, military necessity, and distinction discussed above.

In many cases, this means not just determining whether the individual followed his or her rules of engagement, but also whether these rules were appropriate in the first place. Declaring a situation to be one of armed conflict is not a blank check, and does not let people fire a weapon at will. Nor can it ever justify torture, ill-treatment or sexual abuse, which are forbidden at all times.

What Makes a Good Investigation?

If investigations are to promote accountability, they must meet international standards of thoroughness, timeliness, and impartiality.

Human rights bodies such as the U.N. Human Rights Committee, the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR) have discussed in detail the practical criteria that distinguish good investigations from bad. In cases of the most serious human rights violations, disciplinary or administrative action is not enough to satisfy the state's obligation to provide an effective remedy. According to the doctrine of the U.N. Human Rights Committee, "Where extrajudicial executions, enforced disappearance or torture are concerned, it is essential for the remedies to be judicial in nature."⁴⁷

The ECHR has developed more than a decade's worth of jurisprudence on investigations into alleged unlawful killings in Turkey and Northern Ireland. It has laid out standards of investigation into alleged human rights violations:

[T]he notion of an 'effective remedy' entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, and including effective access for the complainant to the investigatory procedure.⁴⁸

⁴⁶ Dinstein, *The Conduct of Hostilities*, pp. 22-25, and Watkin, "Controlling the Use of Force," p. 10.

⁴⁷ Communication No 778/1997, *Case of Coronel et al (Colombia)*, United Nations Documents CCPR/C/70/D/778/1997, October 13, 2000, para. 6.4.

⁴⁸ European Court of Human Rights, Judgment *Aksoy v. Turkey*, December 18, 1996, para. 98. Application no. 00021987/93.

Remedies must be effective in practice, not just in theory, with a sufficient element of public scrutiny to ensure true accountability.⁴⁹ In particular, alleged violations of the right to life

deserve the most careful scrutiny. Where events lie wholly or largely within exclusive knowledge of the authorities... strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.⁵⁰

The ECHR has also said that those responsible for or carrying out an investigation into unlawful killing by state agents must be independent from those implicated in events – meaning “not only a lack of hierarchical or institutional connection, but also a practical independence.”⁵¹ In addition, the court has held that a prompt response by the authorities in investigating the use of lethal force is essential. Once a matter has come to their attention, the authorities must act on their own initiative, without waiting for a victim’s relatives to lodge a formal complaint.⁵² Unwarranted delays in taking witness statements and opening investigation proceedings, or unexplained failure to make progress after a reasonable time, were each signs of ineffective investigations, the court found.⁵³

Perhaps the most useful guide to investigation procedures is the U.N. “Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.” These principles establish a thorough and widely respected set of standards for the investigation of alleged killings by security forces and the subsequent legal proceedings.⁵⁴ Although they are non-binding, the principles represent a detailed guide to good practice in investigating alleged unlawful killings. The principles include requirements for:

⁴⁹ European Court of Human Rights, Judgment *Hugh Jordan v. The United Kingdom*, May 4, 2001, Application no. 24746/94, para. 109.

⁵⁰ *Ibid.*, para. 103.

⁵¹ European Court of Human Rights, *Hugh Jordan v. The United Kingdom*, para. 107.

⁵² European Court of Human Rights, Judgment *McKerr v. The United Kingdom*, May 4, 2001, Application no. 28883/95, Para 111.

⁵³ Lapses in cases range from one to five years, and delays in taking witness statements from four months to several years. For a summary of cases see C. Buckley, *Turkey and the European Convention on Human Rights, A report on the Litigation Programme of the Kurdish Human Rights Project*, London, July 2000, p. 143, n. 781.

⁵⁴ Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

- thorough, prompt, and impartial investigation of all suspected cases of extra-legal, arbitrary, and summary executions;
- an independent commission of inquiry for those cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, and for cases in which there are complaints from the family of the victim about these inadequacies or other substantial reasons;
- protection from violence or intimidation for complainants, witnesses, families, and investigators;
- removal from power or control over complainants, witnesses, families, or investigators of anyone potentially implicated in extra-legal, summary or arbitrary executions;
- access by families and their legal representatives to any hearing and to all relevant information, and the right to present other evidence;
- a detailed written report on the methods and findings of the investigation to be made public within a reasonable time;
- government action to bring to justice persons identified by the investigation as having taken part in extra-legal, arbitrary and summary executions;
- responsibility of superiors, officers or other public officials for acts committed under their authority if they had a reasonable opportunity to prevent such acts; and
- fair and adequate compensation for the families and dependents of victims of extra-legal, arbitrary and summary executions within a reasonable period of time.

The texts of the sections of the Principles related to investigations and legal proceedings are reproduced in Appendix C of this report. In a meeting with representatives of the Criminal Investigation Division (CID) of the Israeli Military Police on July 13, 2003, Human Rights Watch asked whether international guidelines were incorporated into the CID's investigation manuals. Human Rights Watch was told, "We have Israeli law in our manuals... International law is with the JAG [Judge Advocate General]."⁵⁵

Very few military judicial systems conform to the guidelines above. Many fail to reach basic standards of competence, due process, or judicial independence. Most of the cases recounted in this report involved deaths of civilians in circumstances other than armed hostilities. Some of these cases may constitute extrajudicial executions—i.e., murder.

⁵⁵ Human Rights Watch Interview, July 13, 2003.

This is why it is crucial that thorough, impartial, and professional investigations take place. These are standards that apply to every country. Precisely because separate military jurisdiction all too often promotes impunity, and because military judicial systems often fail to provide most basic fair trial guarantees, “a consensus is taking shape...with regard to the need to exclude serious human rights violations committed by members of the armed forces or the police from the jurisdiction of military tribunals,” and “military personnel lose their exemption from [ordinary domestic] jurisdiction so that the rights of victims can be taken fully into account.”⁵⁶ Military judicial systems should investigate and punish only those offences that are strictly military in nature, such as internal issues of discipline. The U.N. Human Rights Committee and other treaty bodies, the Special Rapporteur on Torture, the Working Group on Arbitrary Detention, country mechanisms of the Commission on Human Rights and Inter-American Court of Human Rights have all reached similar conclusions, in countries such as Guatemala, Lesotho, the Philippines, Peru, Morocco, the Russian Federation, Croatia, Chile, Brazil, and Uzbekistan.⁵⁷

III. Israel’s Investigations Policy

During the first Palestinian uprising (intifada), which began in late 1987, the Israel Defense Forces (IDF) ostensibly acted in accordance with General Staff Command 33.0304, which required the opening of a Military Police investigation in every case in

⁵⁶ U.N. Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, “Administration of Justice: Issue of administration of justice through military tribunals,” Report submitted by Mr. Emmanuel Decaux pursuant to Sub-Commission decision 2002/103, E/CN.4/Sub.2/2003/4, June 27, 2003, paras. 22 and 40. The Sub-Commission report also cites a 1999 opinion of the Working Group on Arbitrary Detention whereby military justice “should be incompetent to try military personnel if the victims include civilians” (para. 21). See also, Federico Andreu-Guzmán’s introduction to International Commission of Jurists and Colombian Commission of Jurists, *Military jurisdiction and international law: Military courts and gross human rights violations* (vol.1) and Part I, Section I of the same volume, available at http://www.icj.org/IMG/pdf/Trib._mil._ENG_-_part_I.pdf.

⁵⁷ The Human Rights Committee has consistently criticized the scope, due process guarantees and impartiality of military judicial proceedings. It has also repeatedly taken the view that the jurisdiction of military courts be limited solely to military offences committed by military personnel, as in its 1992 observations on Colombia and 1994 observations on El Salvador. The Working Group on Arbitrary Detention recommended to the U.N. Human Rights Commission in 1999 that military judicial systems should be incompetent to try military personnel if the victims were civilians. It has repeated this recommendation in visits to Indonesia, Nepal, and Peru. The Inter-American Commission on Human Rights has examined military justice issues for more than three decades. It has consistently recommended in its country reports, annual reports and decisions in individual cases that the jurisdiction of military tribunals be confined to strictly military offences. In Columbia and Peru, the Commission has particularly criticized the use of military personnel as criminal investigators. See, Andreu-Guzmán, *Military Jurisdiction and International Law*, part I, section II, Chapters 2 and 4. For the European Court of Human Rights, see the discussion earlier in this section, and *ibid.*, Chapter 6.

which a civilian was killed by IDF soldiers, except if involved in combat activities.⁵⁸ In practice, this policy was poorly implemented.⁵⁹ Nongovernmental organizations strongly criticized the adequacy, timeliness, and partiality of these investigations, pointing to a repeated failure to interview Palestinian witnesses, ethnic stereotyping, careless procedures, and inexplicable delays in investigation progress.⁶⁰ In 1994 Brigadier General Amnon Strashnov, Judge Advocate General from 1988-1993, acknowledged the loose standards followed by the Judge Advocate General's (JAG) office when he described the lenient standards his office used in charging, trying, and sentencing soldiers as the "intifada factor."⁶¹

The IDF used a broad definition of "combat activities" several times between 1993 and September 2000 when justifying its refusal to investigate killings. For example, the IDF refused to investigate the 1996 killings of forty-seven Palestinian civilians and thirteen members of the Palestinian security forces during clashes at the opening of a highly controversial tunnel near Jerusalem's al-Aqsa mosque compound, stating it had designated the events as "combat incidents."⁶² The IDF similarly refused to investigate its soldiers' conduct in the killing of six Palestinian civilians and two security force members during the May 2000 demonstrations on the 52nd anniversary of the first Arab-Israeli war.⁶³

Within three weeks of the outbreak of current violence, in late September 2000, more than 120 Palestinians were killed by Israeli security forces, and over 4,800 injured. Thirteen Palestinian citizens of Israel were killed by the national police. In the outcry that followed, the government of Israel set up a formal commission of inquiry, known as the Orr Commission, to examine the deaths of the thirteen Israeli citizens.⁶⁴ In the cases

⁵⁸ See, the petitioner's brief in *B'Tselem and Association for Civil Rights in Israel v. The Judge Advocate General*, HCJ 9594/03, para. 14. Copy on file at Human Rights Watch.

⁵⁹ For a detailed account of IDF investigation practices during the first Palestinian uprising, see Human Rights Watch [Middle East Watch], *The Israeli Army and the Intifada: Policies that Contribute to the Killing* (August 1990), pp. 64-159. See also, John Conroy's extensive account of the case of Lt.Col. Yehuda Meir in *Unspeakable Acts, Ordinary People: The Dynamics of Torture* (New York: Knopf, 2000), chapters 2, 6, 10, and 14.

⁶⁰ See, Human Rights Watch [Middle East Watch], *The Israeli Army and the Intifada: Policies that Contribute to the Killings* (August 1990); HaMoked (Center for the Defence of the Individual), *Escaping Responsibility: The Response of the Israeli Military Justice System to Complaints Against Soldiers by Palestinians* (Jerusalem, December 1997).

⁶¹ As cited in HaMoked, *Escaping Responsibility*, pp. 9-10.

⁶² Letter to B'Tselem, Maj. Avital Margalit, Head of Assistance Branch, Office of the IDF Spokesperson, October 22, 1996. Quoted in B'Tselem, *Illusions of Restraint: Human Rights Violations During the Events in the Occupied Territories, 29 September to 2 December*, December 2000, p. 19.

⁶³ *Ibid.*

⁶⁴ The Orr Commission issued its report on 1 September 2003. The three-member panel found severe structural deficiencies in the response of the police and other public security officials to the demonstrations. It

of deaths of Palestinian residents of the occupied West Bank and Gaza Strip, the IDF determined that the situation was “approaching armed conflict,” and informed governments and human rights groups that these and subsequent killings would not be investigated.⁶⁵ In January 2001 IDF representatives told Amnesty International that three investigations had been opened into killings of civilians. By this stage, some 300 Palestinians had been killed, including at least 85 children.⁶⁶

The IDF’s policy of non-investigation was immediately criticized — and not just by human rights groups. The report of the Sharm el-Sheikh Fact Finding Committee, headed by former U.S. Senator George Mitchell, described Israel’s use of the term “armed conflict” as “overly broad, for it does not adequately describe the variety of incidents reported since late September 2000.” The report’s authors, charged with finding a means to return to a peace process, then underlined the consequences of Israel’s policy decision not to investigate:

Moreover, by thus defining the conflict, the IDF has suspended its policy of mandating investigations by the Department of Military Police Investigations whenever a Palestinian in the territories dies at the hands of an IDF soldier in an incident not involving terrorism... . We believe, however, that by abandoning the blanket "armed conflict short of war" characterization and by re-instituting mandatory Military Police investigations, the [Government of Israel] could help mitigate deadly violence and help rebuild mutual confidence.⁶⁷

recommended action (but not prosecution) against seven individuals, several of whom had already left their positions. It also recommended the Department of Police Investigations of the Ministry of Justice open criminal investigations into ten killings and stated that the police should abandon the use of live fire and rubber-coated metal buckets as crowd control techniques. The government agreed “in principal” to carry out the Commission’s recommendations. See, Inigo Gilmore, “Judges denounce Israeli police for deaths of 13 Arabs,” *The Daily Telegraph*, September 2, 2003, and the Adalah website, available at www.adalah.org. In September 2004, Teodor Orr, the former High Court justice who headed the commission, expressed frustration that “so far nothing has been done in the internal affairs investigation.” See, Yair Ettinger, “Justice Or blasts apathy a year after his report on Arab riots,” *Ha’aretz*, September 2, 2004, www.unitedjerusalem.org/index2.asp?id=483901&Date=9/2/2004 (accessed May 20, 2005).

⁶⁵ For example, the U.S. Department of State provided the Israeli government with a list of slain Palestinians and asked for explanations of each case. The Israeli government refused to provide the information, arguing the killings must be seen in the context of armed conflict. See, “Israel Rejects Mitchell Request for More Info,” *Ha’aretz*, February 8, 2001. See also, Amnesty International, *Israel and the Occupied Territories: State Assassinations and Other Killings*, February 21, 2001, AI-index: MDE 15/005/2001.

⁶⁶ Casualty data is taken from statistics of B’Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, available at www.btselem.org. Twenty-eight Israeli civilians and eleven security force members were killed during the same period.

⁶⁷ *Report of the Sharm el-Sheikh Fact-Finding Committee*, April 30, 2001. See, <http://usinfo.state.gov/regional/nea/mitchell.htm>, (accessed February 5, 2004).

From 2001 to 2002, this IDF policy continued with little public scrutiny. This began to change after an unprecedented series of suicide attacks against Israeli civilians in March 2002 led to major Israeli military operations throughout the West Bank. During these operations, thousands of Palestinians were injured, arrested, or made homeless. Israeli troops forced Palestinian civilians to assist military operations and used others to shield themselves from danger.⁶⁸ Troops looted and damaged the property of civilians and of the Palestinian Authority.⁶⁹ In April 2002 the IDF carried out a major military operation in Jenin refugee camp. A Human Rights Watch investigation at the time confirmed that at least twenty-two of the confirmed Palestinian deaths in the operation were civilians, including children and physically disabled and elderly people.⁷⁰ When the Israeli government reversed its earlier decision to cooperate with a United Nations fact-finding team on events in Jenin, the question of the behavior and accountability of Israeli military forces received greater scrutiny, for a short while, both in Israel and abroad.⁷¹ The Israeli government opened Military Police investigations into several cases of looting and the forced use of civilians in military operations, but did not investigate any cases of civilian deaths.⁷²

In the following twelve months — and in the wake of several high-profile civilian killings — Israeli military officials developed a more cohesive public relations strategy. Faced with increasing scrutiny from Israeli journalists, parliamentarians, and nongovernmental groups, military spokespersons and members of the JAG's office emphasized the frequency with which Military Police investigations were being opened —

⁶⁸ See Human Rights Watch, *In A Dark Hour: The Use of Civilians During IDF Arrest Operations*, Vol. 14, No. 2(E), April 2002.

⁶⁹ For a precise enumeration of statistics, see United Nations General Assembly, *Report to the Secretary-General prepared pursuant to General Assembly resolution ES-10/10*, July 30, 2002, A/ES-10/186.

⁷⁰ Human Rights Watch, "Jenin: IDF Military Operations," vol. 14, no. 3 (E) (May 2002), available at <http://hrw.org/reports/2002/israel3/>.

⁷¹ The fact-finding team was convened by the U.N. Secretary-General in response to Security Council Resolution 1405 (2002) and was disbanded on May 1, 2002.

⁷² On May 5, 2002, Human Rights Watch presented its findings from this investigation to Col. Daniel Reisner and Maj. Efrat Segev of the IDF Spokesperson's Office. Col. Reisner at that meeting undertook to examine each case for investigation and inform Human Rights Watch of the decisions taken and the progress of any investigations. In November 2002, Col. Reisner wrote to Human Rights Watch, saying that "these cases have been transferred to the appropriate IDF officials responsible for such examinations," and that "most of the substantiated cases in which Palestinian individuals were allegedly used as hostages or human shields have been transferred to the Military Investigative Police, and investigations have been instigated." The letter also provided summary numbers of Military Police Investigations and indictments against IDF personnel as of September 2002. On May 4, 2003, Col. Reisner wrote to Human Rights Watch that the IDF inquiries into the cases presented "had yet to find any factual support for the allegations regarding deliberate targeting of civilians," but that two investigations were still underway regarding incidents of civilian deaths in the larger West Bank operations of March-April 2002.

but no such increase occurred regarding cases in which civilians were killed.⁷³ In 2002, the new chief of staff, Moshe Ya'alon, ordered that initial “operational investigations” into civilian deaths cross his desk within three days of any incident, and that the findings of regional command level investigations—in both cases inquiries conducted without investigative standards—be given to him within three weeks.⁷⁴ The JAG’s office released more detailed information regarding the number and nature of Military Police investigations, and agreed to make biannual presentations to the Knesset’s Law, Constitution, and Legal Affairs Committee.⁷⁵ Human Rights Watch asked the chief military prosecutor in July 2003 whether the increased information meant any change in underlying policy regarding investigations, and was told that it did not.⁷⁶

Between September 30, 2000, and May 10, 2004, the IDF opened a total of 506 Military Police investigations into alleged wrongdoing by Israeli soldiers in the Occupied Palestinian Territories. In comparison to investigations into deaths and injuries, investigations into property damage or theft and beatings and ill-treatment were more frequent (see Graph 2): just seventy-four of these investigations were into alleged cases of unlawful use of lethal force causing death or injury.⁷⁷ Fifteen individuals were indicted as a result. One soldier was convicted of (negligently) killing a Palestinian and was sentenced to two months’ imprisonment.⁷⁸ The soldier responsible for killing a sixteen-

⁷³ Alex Fishman and Guy Leshem, “Poorly Investigated, Forgotten and Buried,” *Yedioth Ahronoth*, January 23, 2004.

⁷⁴ Initially publicized in media reports and confirmed by the Office of the IDF Spokesperson letter to Human Rights Watch on May 10, 2004.

⁷⁵ Transcript, Constitution Committee, 6682, Jerusalem 30 Sivan 5743-30 June 2003; Transcript No. 36, *Meeting of the Knesset Law, Constitution and Legal Affairs Committee, Sunday 22 Sivan 5743* (22 June 2003). Translated by Human Rights Watch.

⁷⁶ Human Rights Watch meeting with Col. Einat Ron, Chief Military Prosecutor, July 7, 2003.

⁷⁷ Response of the IDF Spokesperson to Human Rights Watch inquiry, with a cover letter from Maj. Sam Wiedermann, May 10, 2004. Human Rights Watch requested an update from the IDF in late February 2005, but as of early June 2005 had received no response. Israeli journalist Alex Fishman, writing in *Yediot Aharonot’s* Saturday Magazine on August 17, 2004 “561 Military Police Investigations are just the tip of the iceberg,” cites the Judge Advocate General’s office as noting that of a total of 561 Military Police investigations opened as of the end of June 2004, seventy-four concerned complaints of unjustified shootings. B’Tselem told Human Rights Watch in mid-May 2005 that as of that time a total of 106 investigations had been opened, into cases involving deaths and injuries to Palestinians, resulting in nineteen indictments and six convictions—two for manslaughter, two for causing grave harm, and two for illegal use of a weapon (Human Rights Watch interview with Ronen Schnayderman, Jerusalem, May 19, 2005).

⁷⁸ Captain Zvi Koretski was sentenced on May 3, 2004, to two months of imprisonment, four months of “military tasks,” and six months probation for having caused the death through negligence of sixteen-year-old Muhammad `Ali Zaid on October 5, 2002. Koretski was also demoted to the rank of first lieutenant. See, Amos Harel, “IDF Captain Jailed for Death By Negligence of Palestinian Teen,” *Ha’aretz*, May 5, 2004.

year-old student served only a fraction of the time to which five Israeli conscientious objectors had been sentenced a few months earlier.⁷⁹

During the same period some 500 Palestinian children and 2,500 Palestinian adults were killed. Estimates of how many of the Palestinians killed were civilians vary considerably, and range as high as 75 percent.⁸⁰ In January 2004, Israeli journalist Akiva Eldar reported that the Shin Bet had defined fewer than 600 of the 2,500 Palestinians killed as “terrorist.”⁸¹ According to the Israeli human rights organization B’Tselem, between the beginning of the intifada and the end of November 2004, 3,040 Palestinians were killed by Israeli security forces, including 606 children, in the Occupied Palestinian Territories. B’Tselem concluded that at least 1,661 of those killed (including 531 children under the age of 18) were not involved in hostilities when they were killed.⁸² The number of official investigations into alleged wrongful use of lethal force equals just two percent of the total number killed (see Graph 1) and only 15 percent of the number of children killed, despite the fact that many deaths occurred in non-combat circumstances and the extreme unlikelihood that many of the children killed were legitimate targets. During this period, Human Rights Watch itself notified the JAG’s office of more than sixty specific suspected cases of unlawful killing or injury.

When the IDF refuses to investigate its actions, there are no alternative forms of accountability. Unlike many other countries, there is no other institution with the power to investigate human rights abuses to which Palestinian victims and their families can effectively turn. The West Bank and Gaza Strip are ruled under military law: Palestinians cannot seek prosecution of Israelis in Israeli military courts, or in the courts administered by the Palestinian Authority. They must therefore seek recourse through Israeli civilian institutions, even though they almost always lack the mobility or resources to access them.⁸³ Unlike Mexico or Northern Ireland, Israel has no national human rights institution, nor any independent commissioner for complaints about human rights violations committed by the army. Unlike Turkey, Colombia, or the Russian Federation,

⁷⁹ Five Israelis refusing to perform their compulsory service were sentenced in December 2003 to one year’s imprisonment, with no reduction for time already served. Lily Gallili, “Five Conscientious Objectors Begin One Year Prison Sentence,” *Ha’aretz*, January 7, 2004.

⁸⁰ There is no consensus on what proportion of Palestinian casualties from IDF fire is civilian. See footnote 8, above.

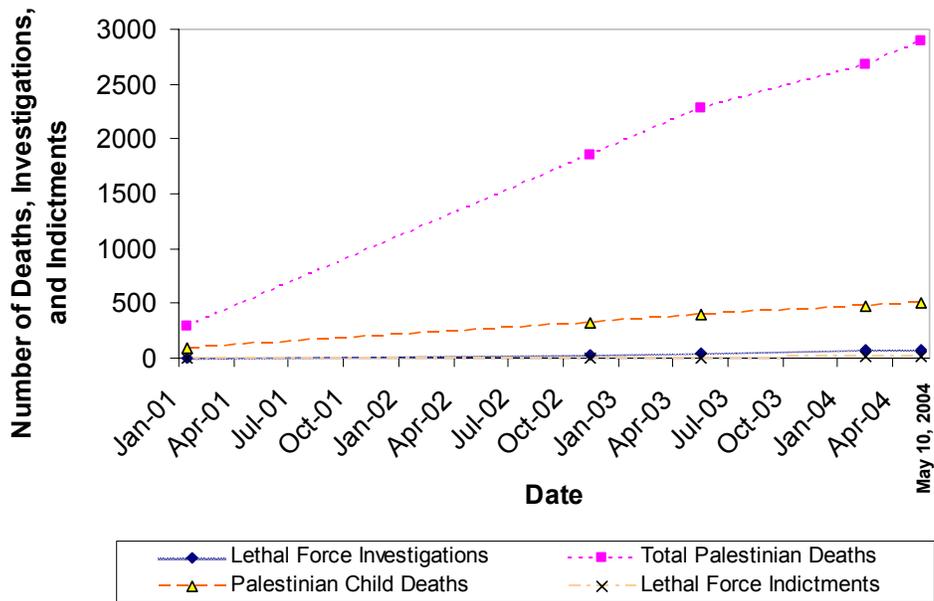
⁸¹ “The IDF’s Standards of Punishment,” *Ha’aretz*, January 6, 2004.

⁸² B’Tselem had not been able to determine whether an additional 550 Palestinians (including 31 children) participated in hostilities.

⁸³ The movement of Palestinians has been increasingly controlled since 1991. Since September 2000 movement within the West Bank and Gaza Strip has been severely restricted, and movement between Israel and the Occupied Palestinian Territories impossible for all but the holders of special permits. Israeli citizens are forbidden by military order from entering Area A.

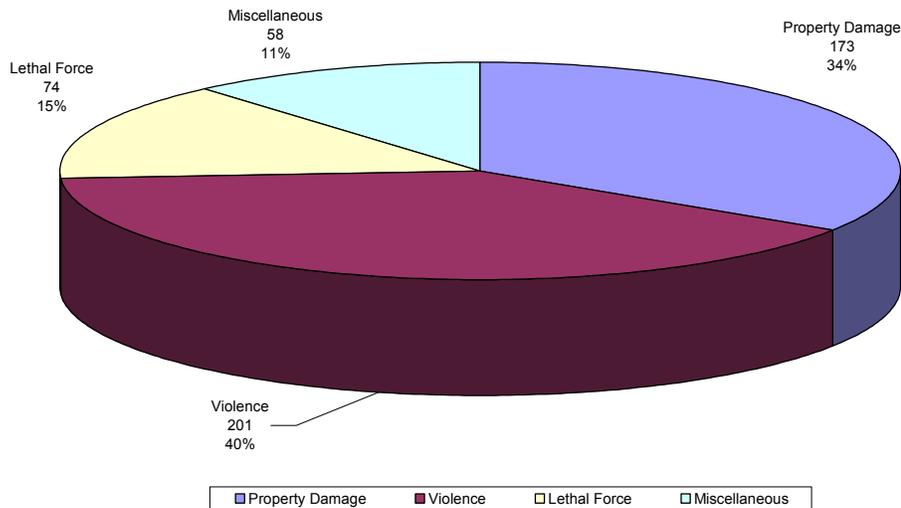
Israel is not subject to the jurisdiction of a regional human rights court, such as the Inter-American Court of Human Rights or the European Court of Human Rights. At best, Palestinians living in the West Bank or Gaza Strip may employ Israeli lawyers to petition Israel's High Court of Justice to order the IDF to investigate – if they can overcome the severe logistical and financial barriers to doing so.

Graph 1: Palestinian Deaths, IDF Lethal Force Investigations and Indictments.⁸⁴



⁸⁴ Source: Lethal force investigation numbers taken from IDF correspondence with Human Rights Watch, Knesset testimony, publications of Amnesty International, and reports published in *Ha'aretz*. Indictment numbers taken from Human Rights Watch interviews with IDF and Knesset testimony. Data on total Palestinian and total child deaths taken from the Palestinian Red Crescent Society, at www.palestinerccs.org, (accessed May 11, 2004).

Graph 2: IDF Military Police Investigations in the Occupied Palestinian Territories as of May 2004, by Investigation Type.⁸⁵



IDF Arguments

The IDF, in response to petitions before the High Court of Israel, has used several arguments to support its policy of non-investigation.⁸⁶ The first is that investigations would harm the special nature of combat operations. The second is that other armies facing a similarly intense level of hostilities do not investigate civilian deaths. The third, discussed in section VI of this report, is that the practical difficulties of investigating civilian deaths in the Occupied Palestinian Territories are simply too much for the system to bear.

The IDF argues that combat operations have “unique characteristics” and serve an important national interest. To subject military personnel to investigation would discourage them from taking the risks required for successful combat operations, and place an unjustified burden on morale and the chains of command. The State Attorney’s

⁸⁵ Source: IDF correspondence with Human Rights Watch, May 10, 2004. Of the fifty-eight miscellaneous investigations, Human Rights Watch was told by the chief military prosecutor that some forty were investigations into the forced use of Palestinians to assist military operations or the use of Palestinian civilians as human shields.

⁸⁶ See, HCJ 8794/03, Yoav Hess et al. v. Judge Advocate General et. al; Response on Behalf of the State Attorney’s Office (Translated by Human Rights Watch); and HCJ 9594/03 B’Tselem et al. v. Judge Advocate General, Response on Behalf of the State Attorney’s Office (Translation obtained from B’Tselem).

Office, responding to a petition to open an investigation of the July 2002 bombing of a Gaza apartment building that killed Salah Shihada, a leader of Hamas's military wing, and fifteen civilians, including nine children, cited an earlier High Court of Israel decision rejecting a petition for criminal prosecution on account of negligence, in which the Court wrote that "the unique characteristics of active operations sometimes constitute considerations negating the presence of a public interest in the instigation of criminal proceedings, even if criminal liability is present."⁸⁷ In its ruling the Court acknowledged that in ordinary cases "there is a clear public interest in deterring offenders from similar acts in the future," but concluded that "in cases of negligence committed during active operations, there is, at the present, almost no need for such deterrence...."⁸⁸ The state argued in the Shihada case that Court's reasons for not authorizing criminal investigations in negligence cases "during active operations" should be an even greater barrier to such investigations in "combat operations," where "the possible ramifications of a criminal investigation for the chain of command and the willingness of commanders to perform their functions are extremely dramatic.... Taking these policy considerations into account, it is clear that the cases in which a criminal investigation will be instigated with regard to combative operations shall be exceptional and unusual."⁸⁹

In a meeting with Col. Daniel Reisner, assistant military advocate general, on May 5, 2002, Human Rights Watch asked what kinds of cases were "exceptional" enough to warrant investigation. Colonel Reisner did not reply directly. Instead, he said "[t]here is a big question regarding criminal investigation during armed conflict. The gravity of the crime [required to trigger an investigation] increases during armed conflict. International practice is not clear."⁹⁰ Col. Reisner did not indicate if acts more serious than simple negligence would meet the gravity test; nor did he address the fact that many deaths and injuries did not occur in circumstances of armed hostilities.

⁸⁷ HCJ 4550/94 *Anonymous v Attorney-General et al.*, *Piskei Din* 49(5) 859, cited by the State Attorney's Office in HCJ 8794/03, *Yoav Hess et al. v Judge Advocate General et. al.*; Response on Behalf of the State Attorney's Office (Translated by Human Rights Watch).

⁸⁸ *Ibid.*

⁸⁹ HCJ 8794/03, *Yoav Hess et al. v. Judge Advocate General et. al.*; Response on Behalf of the State Attorney's Office (translated by Human Rights Watch). On August 2, 2002, the IDF Spokesperson issued a statement concerning the findings of an IDF inquiry into the killing of Shihada and the others. According to the statement, "The inquiry findings show that the procedures followed in the IDF operation were correct and professional, as were the operational assessments.... At the same time the inquiry found shortcomings in the information available, and the evaluation of that information, concerning the presence of innocent civilians near Shehadeh.... The IDF and the [Israel Security Agency, ISA] stated that if their information had indicated with certainty the presence of innocent civilians in Shehadeh's vicinity, the timing or the method of the action would have been changed, as was done a number of times in the past."

⁹⁰ Human Rights Watch meeting with Col. Daniel Reisner, assistant military advocate general and head of the International Law Department, IDF; and Maj. Efrat Segev, Public Relations Department, Office of the IDF Spokesperson, May 5, 2002.

The IDF's position cannot be reconciled with Israel's obligations under international humanitarian law or international human rights law. The government of Israel has ratified numerous treaties that contain explicit requirements to prevent violations of human rights or the laws of war and to discipline and bring to justice those responsible. This does not mean that every soldier's error must be followed by higher-level investigation or court-martial – but that all cases with prima facie evidence or credible allegations of serious wrongdoing should be investigated professionally and impartially. Mere operational debriefings (described in section IV) absolutely fail this test. No state can fulfill its responsibility to maintain public order if agents who abuse their authority or misuse lethal force are allowed to do so unchecked.

The IDF's second argument is to characterize the entire situation in the Occupied Palestinian Territories since late September 2000 as one of armed conflict, and assert that no other army investigates civilian killings in such circumstances. In support of its case, it has cited the lack of U.S. investigations in Afghanistan and Iraq, as well as the final report of a committee appointed by the prosecutor of the International Tribunal for the Former Yugoslavia to review the NATO bombing of the former Yugoslavia.⁹¹ When asked by Knesset member Gil'ad Arden in 2003 whether there was an army that handed investigations over to an external body, Major-General Dr. Menachem Finkelstein answered only in terms of U.S. practice:

[R]egarding your question, there is no similarity. I can give you examples. When the United States sent troops to Kosovo or to Eritrea, and to Somalia, there were cases in Somalia where hundreds were killed on the Somali side, and 18 on the American. If you think that in these cases there were investigations – there were not. At the same time, I think that in this matter, we do not need to learn from the Americans. We have our measures and our ethical standards. I think that there is no comparison”⁹²

In the same Knesset hearing, Finkelstein publicly stated his commitment to ensuring Israel's conformity to best practices. “They [human rights groups] say to me, and I

⁹¹ HCJ 8794/03, *Yoav Hess. v Judge Advocate General*; Response on Behalf of the State Attorney's Office, Section 6. (Translated by Human Rights Watch). For Human Rights Watch criticism of the lack of U.S. accountability for civilian killings in Iraq, see Human Rights Watch, *Hearts and Minds: Post-War Civilian Deaths in Baghdad Caused by U.S. Forces*, October 2003, Vol. 15, No. 9 (E), available at <http://www.hrw.org/reports/2003/iraq1003/>.

⁹² Transcript/ Constitution Committee, 6682 Jerusalem, 30 Sivan 5743 (June 30 2003), *Transcript No. 36, Meeting of the Knesset Law, Constitution and Legal Affairs Committee* Sunday, 22 Sivan 5743 (June 22, 2003), 10:00. (Translated by Human Rights Watch).

accept, that the Israeli army has to behave differently from the United States army. Completely acceptable to me. But, here I say to them: show me an alternative route to take.”⁹³

This argument ignores the fact that many killings of Palestinian civilians, including almost all of the cases investigated in this report, occurred when the army acted in law enforcement situations. When military forces engage in policing, they should be held to policing and law enforcement standards. Those standards are clearly articulated, and require timely, thorough, and impartial investigations into killings of civilians.

There are positive, practical alternatives to Israeli (and United States) practices in this regard, particularly when troops are accused of committing abuses in non-combat situations. There is the example of Canada, for example, which chose to investigate wrongdoing by Canadian troops accused of abusing prisoners while deployed in Somalia in 1993, and made sweeping changes to its military justice system as a result. Information on Canada’s reform process is widely available, including on the Internet.⁹⁴ The IDF has likewise failed to acknowledge a decade of U.K. reforms to investigation procedures in Northern Ireland. Ongoing complaints against abuses by the militarized Royal Ulster Constabulary and the British army recently resulted in an independent police complaints commission and ombudsman, and an independent assessor of military complaints.⁹⁵ While the U.K. explicitly defined Northern Ireland as a law enforcement situation, not armed conflict, it does provide indicators for positive change.

There is at present no international law that requires civilian investigation of combat killings. However, the IDF’s routine failure to conduct investigations extends to killings and serious injuries inflicted in clearly non-combat situations, when law enforcement standards apply. International law requires provision of an effective remedy for civilian deaths and injuries where there is credible information or prima facie evidence of excessive or unlawful use of force.

⁹³ Ibid.

⁹⁴ Brig.-Gen. J.S.T. Pitzul and Comm. John. C. Maguire, “A Perspective on Canada’s Code of Service Discipline,” *Air Force Law Review* Vol. 52, 2002. pp. 1-15; Canadian Department of National Defense *Report of the Somalia Commission of Inquiry*, 1997, available at <http://www.dnd.ca/somalia/somaliae.htm> (accessed February 15, 2004).

⁹⁵ U.S. Department of State, *United Kingdom*, Country Reports on Human Rights Practices, March 31, 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18399.htm>. For background, see Human Rights Watch [Helsinki Watch], *Human Rights in Northern Ireland*, October 1991; Human Rights Watch, *To Serve Without Favor: Policing, Human Rights and Accountability in Northern Ireland*, May 1997; Human Rights Watch, *Northern Ireland: A New Beginning to Policing*, November 1999. The website of the Police Ombudsman of Northern Ireland is available at <http://www.policeombudsman.org/>

IV. Overview of the Military Justice System

Israel's military justice system is based on Military Justice Law 5715-1955, and subsequent amendments (hereafter referred to as the MJL).⁹⁶ The law sets out the powers of the IDF's chief legal officer, the Judge Advocate General, and the composition and powers of courts martial and appeals courts. It defines offences for which soldiers may be punished, including looting (Art. 74); illegal use of arms (Art. 85); negligence (Art. 124); obstructing a military policeman (Art. 126); non-compliance with orders (Arts. 123 and 133); and non-prevention of an offence (Art. 134). Soldiers do not bear criminal responsibility for non-compliance with an order "when the order given him is manifestly illegal" (Art. 125). In addition, soldiers may be charged with crimes under the Israeli penal code. Murder and manslaughter, for example, are not included in the MJL. Charges for these crimes would be brought under the penal code.

The law establishes four mechanisms to ensure accountability in cases of suspected wrongdoing: disciplinary proceedings; operational debriefings (also referred to by the Israel Defense Forces (IDF) as "operational investigations," "field investigations," and "military investigations"); special investigations, performed by a senior officer at the request of the chief of staff; and Military Police investigations, carried out by the Criminal Investigation Division of the Military Police.⁹⁷

Disciplinary Proceedings

As in every armed force, disciplinary proceedings are used by the IDF to punish soldiers quickly, for relatively minor infractions. Punishments handed out include warnings, confinement to camp, forfeiture of pay, reduction of rank, and detention for up to thirty-five days. The proceedings are administrative, not judicial. Those who conduct disciplinary proceedings frequently know the defendant and are not bound by the rules of evidence in addressing a complaint. Instead, the MJL stipulates that the disciplinary

⁹⁶ Human Rights Watch could not identify an up-to-date English translation of the Military Justice Law. All unamended provisions cited are based on the text published in Laws of the State of Israel, Vol. 9, 5715-1954/55, From 4th Kislev, 5715-29.11.54 to 14th Elul, 5715-1.9.56, authorized translation from the Hebrew, prepared by the Ministry of Justice. All other citations were translated by Human Rights Watch from the Hebrew.

⁹⁷ The IDF Spokesperson Unit, in a communication dated May 10, 2004, responding to an inquiry by Human Rights Watch, stated: "the primary means for investigating operational incidents is through the military investigation. If the investigative findings indicate that a breach [sic] of conduct has been committed, justifying involvement of an investigative body, the Military Advocate general, or his deputy, may, after consulting with an officer at the rank of Major General and above, order the opening of an investigation by an investigative body ('investigative body'—appointed officer, Military Police, Military Judge)." The conclusions of the investigation into the killing of James Miller (see below) released March 9, 2005, spoke of "a field investigation" whose findings were reviewed by the JAG prior to launching a criminal investigation by the Military Police.

officer must “act in a manner he deems most effective to investigate complaints when MJL or other army orders do not instruct otherwise” (Art. 161). A recent deputy JAG described IDF disciplinary proceedings as “[b]eing the responsibility of commanders who have no legal training, and the rules of procedure as detached from the rules of procedure and evidence that are customarily applied in the courts.”⁹⁸

Complaints and penalties are not made public. It is unclear, in fact, whether the IDF conducts any oversight of the disciplinary proceedings that its members conduct. When Human Rights Watch asked the IDF for a summary of the numbers and kinds of disciplinary proceedings since 2000, an IDF spokesperson replied that “we do not possess statistics on the number of servicemen who were judged in disciplinary proceedings since the beginning of the incidents.”⁹⁹

Operational Debriefings

Operational debriefings, also referred to by the IDF as operational or field “investigations,” were incorporated into the Military Justice Law in 1997, reportedly to cope with the challenges to deaths and injuries during the Israeli occupation of southern Lebanon.¹⁰⁰ Article 539 (A) of the MJL describes operational debriefs as “a procedure held by the army, in the army” that is “conducted according to army orders and regulations.”¹⁰¹

Operational debriefings are intended to be part of the quality-control mechanism in which soldiers are supposed to review openly and fully the events of an operation with a superior officer of the same unit.¹⁰² According to attorney Michael Sfar, who petitioned the IDF to open a criminal investigation in the Brian Avery case (see below), “the purpose [of a field investigation] is exactly to see the situation through the eyes of the soldiers. The aim is not to uncover the truth or to find out what happened, but rather to see how the soldiers perceive and interpret the events.”¹⁰³ If an incident occurs in which

⁹⁸ “Not Likely I’ll Return to the Army,” *B’Mahaneh* [IDF Magazine], February 2002, cited in B’Tselem, *Trigger Happy: Unjustified Shooting and Violation of the Open Fire Regulations During the al-Aqsa Intifada*, March 2002, p. 13.

⁹⁹ Letter to Human Rights Watch from Maj. Sam Wiedermann, head, International Organizations Section, IDF Spokesperson Unit, February 17, 2004.

¹⁰⁰ Alex Fishman and Guy Leshem, “Poorly Investigated, Forgotten and Buried,” *Yedioth Ahronoth*, January 23, 2004.

¹⁰¹ The Military Justice Law specifies (Art. 539 A[a]) that “operational investigations” are to be used “with respect to an incident that has taken place during the course of training or operational activity.”

¹⁰² Alex Fishman and Guy Leshem, “Poorly Investigated, Forgotten and Buried,” *Yedioth Ahronoth*, January 23, 2004.

¹⁰³ Human Rights Watch interview, Jerusalem, March 6, 2005.

the JAG suspects unlawful behavior, the JAG may ask to view the notes of the debriefing. If the debrief reveals criminal activity, the JAG may decide to open a criminal investigation into the event – but the debriefing cannot be disclosed or used as evidence in a trial. Instead, Military Police investigators must begin the investigation afresh.

A problem with the operational debriefing is that it is a device that serves a military purpose but cannot serve as a tool to investigate serious violations of international human rights or humanitarian law. In cases where IDF use of lethal force results in Palestinian civilian deaths, the operational debriefing requirement has the effect of delaying if not foreclosing the possibility of a proper impartial criminal investigation.

In a May 2002 meeting with Human Rights Watch, Col. Daniel Reisner, assistant military advocate general for international law and head of the IDF's International Law Department, explained the operational debriefing in these terms:

We changed our policy on investigations in September 2000. There is no automatic criminal investigation for every allegation. Serious allegations always go to criminal investigation. The middle ground, it goes to the unit debrief, the report done after action. We want our soldiers to tell the truth not only for investigations, but also for operational purposes. Under article 539 (A) of the Military Justice Act the information provided in the operational debrief cannot be used in a court of law, cannot be released ever. But there is a loophole for war crimes. The chief military advocate can view the operational debrief and if he believes an investigation is warranted on the basis of what soldiers said in debriefing, then he can launch a criminal investigation. But he must have strong suspicion or fear, must consult, and he must start the investigation from scratch.¹⁰⁴

The words “debrief,” “debriefing,” “examination,” and “investigation” appear to be used interchangeably for the same procedure, which is not in fact an investigation at all but a review at the level of the military unit involved when operational mistakes are made or civilian casualties are reported. The debriefings are conducted by other soldiers from the same unit or line of command. Even if performed competently and professionally, they are in no way impartial or truly investigative. The Military Justice Law specifies that “operational investigations” are to be used “with respect to an

¹⁰⁴Human Rights Watch meeting with Colonel Daniel Reisner, assistant military advocate general for international law and head of the International Law Department and Major Efrat Segev, Public Relations Department of the Office of the IDF Spokesperson, May 5, 2002.

incident that has taken place during the course of training or operational activity or with connection to them.”¹⁰⁵ In a February 2002 letter to the IDF commander in Gaza declining the commander’s request to close an investigation into a case where an IDF booby-trap bomb had killed five children, Maj. Gen. Finkelstein noted, “Today fact checking is done by operational debriefing, and only highly irregular cases are passed on to my examination, to decide about an MP investigation....” Finkelstein also wrote, “I have to note, sadly, that in no few instances...investigation reports passed on to us were, to say the least, insufficient and unprofessional.” He reassured the Gaza commander that “the opening of an MP investigation does not necessarily mean an indictment; the data presented above testifies to that.”¹⁰⁶ A detailed January 2004 article in the daily *Yedioth Ahronoth* stated that the law had been altered in the mid 1990s, and that all suspicious deaths during IDF operations outside of Israeli sovereign territory would be “investigated” via operational debriefings.¹⁰⁷

Despite intensive searching and requests to the Ministry of Justice and office of the IDF spokesperson, Human Rights Watch has been unable to learn of any specific guidelines or rules for conducting operational debriefings. In early 2002, a reserve officer said in a radio interview:

I know that sometime in the past we killed a pregnant woman or a man. I still don’t know if it was a woman or a man. The de-briefing only involved the troops who were there, and not the command echelon – the rank of company commander and above. You have to understand that since we reached the line [of confrontation], with all the incidents that have been taking place, de-briefings are non-existent. The de-briefing must be written and handled in an orderly manner, it must be conducted by the common echelon and not the forces who were involved in the incident. This does not happen. This does not happen, and the lessons are not being learned...¹⁰⁸

¹⁰⁵ Article 539 A (a), Military Justice Law. The term in Hebrew is *tachkir miftaza-ee*.

¹⁰⁶ Uri Blau, “Not to Investigate Palestinian Deaths,” *Kol Ha’ir*, March 1, 2002, available at <http://oznik.com/news/020301.html> (accessed May 19, 2005).

¹⁰⁷ Alex Fishman and Guy Leshem, “Poorly Investigated, Forgotten and Buried,” *Yedioth Ahronoth*, January 23, 2004.

¹⁰⁸ Voice of Israel, February 25, 2002, cited in B’Tselem *Trigger Happy: Unjustified Shooting and Violation of the Open Fire Regulations During the al-Aqsa Intifada*, March 2002, p. 14. An IDF inquiry into the shooting of twenty-one-year-old Fatima Abu Jeish on January 7, 2001 also noted that no mission debrief was carried out (see, Uri Blau “900 Deaths, 1 Minor Indictment,” *Kol Ha’ir*, January 11, 2002). Sgt Eldad Benyamin was convicted of negligent manslaughter, with the verdict still pending as of January 2004 (see, Akiva Eldar, “People and Politics/Widening the Jordan Valley” *Ha’aretz*, January 6, 2004).

Knesset members have also criticized the operational debriefs as compromised and superficial. The most serious flaw is also the most obvious: essentially, the debriefs depend on alleged perpetrators reporting their own crimes. These are not investigations. They are soldiers reporting to superiors about recent activity. Soldiers' claims are taken at face value, and there is no checking mechanism.

The field inquiry, or "operational investigation," has useful purposes, lawyer Sfard noted.

The officers know the area, what the dangers and risks are. They can explain the circumstances of the shooting and why they think it conforms to regulations or not. But the field inquiry turns up a lot of people saying it was not us, and the field inquiry has no tools to investigate and find out the truth. Only the Military Police can investigate.... While officers are experts in what is lawful circumstances, they are not experts in finding out what happened when soldiers say nothing happened.¹⁰⁹

Military Police/Criminal Investigations

If there is evidence that an IDF member has committed wrongdoing more severe than those regulated by disciplinary proceedings, then the JAG may order the Criminal Investigations Division (CID) of the Military Police to open a criminal investigation. The JAG is the IDF's chief adviser on all legal questions, and supervises the enforcement of justice – including the appointment of military defense counsel and prosecutors. According to the Military Justice Law, the JAG must be a career military officer with at least six years of legal experience. He or she is appointed by the minister of defense upon the recommendation of the chief of the general staff (Art. 177). Both the JAG and the current chief military prosecutor during the period covered in this report were members of the JAG office during the first intifada.¹¹⁰

The JAG and the chief military prosecutor are the key decision-makers in deciding whether to open Military Police investigations. The JAG's office is technically able to refer a case to the Military Police at its discretion, although it apparently also frequently

¹⁰⁹ Human Rights Watch interview, Jerusalem, March 6, 2005.

¹¹⁰ For the period covering the cases examined in this report and Human Rights Watch's field research, the JAG and chief military prosecutor were Maj-Gen. Dr. Menachem Finkelstein and Col. Einat Ron, respectively. In September 2004, Brigadier General Avihai Mandelblit became the new JAG. Dr. Finkelstein had been chief military prosecutor and Col. Ron assistant chief military prosecutor during the first intifada.

consults with senior officers before doing so.¹¹¹ In practice, the chief military prosecutor is the primary contact for submitting complaints and deciding whether an investigation should be opened.

After the JAG's office refers a complaint to the Criminal Investigation Division of the Military Police, the police investigate. Files are referred back to the JAG office when the investigation is complete. The office then decides whether to close the file for lack of evidence, return it for further investigation, or issue an indictment. If an indictment is filed, the case proceeds to a court-martial. All army personnel below the rank of lieutenant-colonel (*sigan aluf*) are tried before a District Military Court (Art. 196). Those above the rank of lieutenant colonel are tried by a Special Military Court (Art. 197). Both the District and the Special Military Courts comprise three to five judges, the majority of whom have to be officers (Art. 201). Each bench must include at least one "military judge" and one "legal military judge" (Art. 202).¹¹² Decisions are taken by majority vote and need not be reasoned "unless the MJL prescribes otherwise" (Arts. 392-393).

Human Rights Watch asked how many of the court-martial proceedings since September 2000 had been made public, but did not receive a clear reply. The IDF Spokesperson's Unit stated that "[i]n general, all court martials [sic] of IDF personnel charged with offences against a Palestinian resident of the Administered Territories or foreign citizens are held publicly, except in the rare cases where such a public hearing could jeopardize State security."¹¹³

Once a district or special court-martial has decided upon a case, the decision can be appealed to the Military Court of Appeals. Until recently, the final decision of the Military Court of Appeals then had to be confirmed by the chief of general staff after consultation with the JAG. (Arts. 441-443).¹¹⁴ The chief of general staff could also choose to mitigate the penalty. Even when confirmed, a sentence may later be annulled,

¹¹¹ In the case of operational investigations, MJL Art. 539 A (4) (b) says that after reviewing the material, the JAG must consult with an officer of at least the rank of general (*aluf*) or above before opening a criminal investigation.

¹¹² A "Legal Military Judge" is an IDF officer who has some legal education, but not necessarily prior legal experience, unless that officer is serving as presiding judge (Art. 185).

¹¹³ "IDF Spokesperson's Response regarding your Request for Statistical Information," sent with cover letter by Maj. Sam Wiedermann to Human Rights Watch, February 17, 2004. MLJ Arts. 324-325 permit the convening authority or the court to decide to hold proceedings on camera at any part of the trial. Under Art. 326, the JAG may also decide to safeguard the secrecy of the proceedings, except for the sentence.

¹¹⁴ If a decision by a district court-martial is not appealed, then it is presented to the commander of the relevant territorial jurisdiction for confirmation or mitigation.

as happened in the Givati case in 1988.¹¹⁵ As of February 17, 2004, the IDF told Human Rights Watch, the chief of general staff had confirmed all sentences presented to him.¹¹⁶

Despite extensive research and a request to the IDF, Human Rights Watch was unable to obtain information on the regulations implementing the MJL or governing the Military Police during the conduct of their investigations. In contrast, U.S. army regulations for criminal investigations are unclassified and posted on the Internet.¹¹⁷

Victims or their legal representatives in theory can appeal decisions not to indict to the JAG and, if unsuccessful, to the High Court of Israel. None of the victims' families interviewed by Human Rights Watch was aware of this possibility. Physicians for Human Rights - Israel told Human Rights Watch that it had taken several cases of alleged denial of medical treatment to the High Court. Despite obtaining court orders for the IDF to investigate, no investigation had been initiated. Hadas Ziv from Physicians for Human Rights – Israel described the process thus:

I think that their policy now is to evade you as far as possible, just to continue corresponding and corresponding, and the High Court can do nothing about time limits. They hope you will just forget about it. It's a game of cat and mouse — classic. Every answer changes and gets nearer and nearer to the truth. You have to play your cards very closely. Finally they'll have to answer a direct question, [and then] they'll just have to delay.¹¹⁸

¹¹⁵ See, note 5. When Human Rights Watch asked the chief military prosecutor what amendments to the MJL were planned for the future, the chief military prosecutor said that the power to annul sentences should be removed.

¹¹⁶ "IDF Spokesperson's Response regarding your Request for Statistical Information," sent with cover letter by Maj. Sam Wiedermann, head of International Organizations Section, IDF Spokesperson's Unit, February 17, 2004. No date was given for the change in the chief of general staff's powers, but likely occurred in the last half of 2003.

¹¹⁷ Army Regulation 195-2 Criminal Investigation Activities, Headquarters, Department of the Army, Washington DC, 30 October 1985, unclassified, available at www.army.mil/usapa/epubs/pdf/r195_1.pdf; and Army Regulation 15-6 (Boards, Commissions and Committees) Procedure for Investigating Officers and Boards of Officers), Headquarters, Department of the Army, Washington DC, 30 September 1996, unclassified. Available at http://www.usma.edu/EO/regspubs/r15_6.pdf (accessed January 24, 2005).

¹¹⁸ Human Rights Watch telephone interview, Hadas Ziv, Physicians for Human Rights – Israel, June 10, 2003.

The Criminal Investigation Division of the Military Police

Israel's Military Police have three main functions: traffic control, investigation and discipline of IDF personnel, and the staffing and organization of military prisons. They deal with issues ranging from crimes of property, sexual crimes, negligence, fraud, drug abuse, deaths of soldiers unrelated to military operations, training accidents, stolen arms, and car accidents. While part of the IDF, Military Police do not generally have experience in combat operations. Because of their duties and distance from combat, they are not widely popular among other IDF soldiers.

The Criminal Investigation Division (CID) of the Military Police is widely seen as its most elite unit. Its training includes the basic training common to every IDF conscript, a policing course, and a three-month course in investigative techniques. All personnel undertake either sergeant's or officers' training, as well as additional advanced training in subjects such as economic crimes or investigating suicides. CID units are staffed by professional Military Police and by reservists who usually served as investigators during their compulsory military service. Conscripts may choose to stay on as professional CID officers after their service is completed. By age twenty-two or twenty-three, it is possible that a CID investigator who has finished his or her compulsory service would command one of the CID's nine bases.¹¹⁹ The current chief of the Military Police, Brigadier-General Micky Bar-El, is a former CID investigator. Human Rights Watch was told there are some 400-450 staff in the CID.¹²⁰

On July 13, 2003, three CID officers met with Human Rights Watch to discuss investigation procedures. In a power-point presentation, they described drug abuse, stolen weaponry, computer-related crime, and property crime as the CID's main threats and risks, confirming that these "have been the main issues for the last three to four years."¹²¹ When asked what proportion of their workload concerned cases in the Occupied Palestinian Territories, they told Human Rights Watch that "[i]nvestigations in the territories are about 10 percent of our entire investigatory workload. But the pressure is more than 10 percent, because everyone is interested."¹²² In January 2004, the Israeli daily *Yedioth Ahronoth* reported an unnamed senior MP official as saying that a new base would be established solely to investigate "intifada-related incidents."¹²³

¹¹⁹ Human Rights Watch interview, Col. Shami Cohen, Military Police, Tel HaShomer Military Base, July 13, 2003.

¹²⁰ Ibid.

¹²¹ Human Rights Watch interview, Col. Shami Cohen, Military Police, Tel HaShomer Military Base, July 13, 2003.

¹²² Ibid.

¹²³ Alex Fishman and Guy Leshem, "Poorly Investigated, Forgotten and Buried" *Yedioth Ahronoth*, January 23, 2004.

In an interview in July 2003, Human Rights Watch asked how current investigations in the Occupied Palestinian Territories differed from those of the first intifada. The officers listed the recurrence of live gunfire, the arrival of complaints much later at the CID, and increased difficulties in locating the complainant.

Cases usually go to the JAG first. There are very few cases that get to us after a few days. When a commanding officer in the field sees something—for example, he sees the beating of a Palestinian prisoner on the way to work—at the JAG, it’s possible it goes [on] for weeks to months. We are still getting stuff from June/July 2002.¹²⁴

When Human Rights Watch asked how quickly the CID aspired to get to the scene after an incident, they replied, “[t]o get there within a day is still our goal.”¹²⁵

They also emphasized the difficulty of getting to the crime scene, particularly in areas of fighting. They cited resource limits, in particular a lack of translators and bullet-proof vehicles:

There is an overabundance of tasks versus limited resources. Yes, we have only one bulletproof vehicle. Our personnel have to move; it’s hard to locate documents and people. Sometimes it’s the presence of fighters and officers in the area, the inaccessibility of fighting areas. We have not received another [pause] more investigators. We have some reservists, but it is very tough.

There is a work overload, the inaccessibility to fighting areas, inability to preserve the crime scene. Gathering information is really the most difficult. The lack of debriefing in the field — who is there to speak to? If we do have the chance to go on time and do it, it would be much easier, but time works against us.¹²⁶

When the JAG instructs the Military Police to begin an operation, trainee investigators work under supervision of a more senior officer. CID officers meet monthly with the JAG to review files, and each case is reviewed by the base commander. When an investigation

¹²⁴ Human Rights Watch interview, Military Police, July 13, 2003.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.* Later, however, one of the three officers said, “We got some resources, and have an open door to ask for more.”

file is complete, Military Police officers do not formulate recommendations: they forward the file to the JAG, who decides whether to proceed with an indictment, send the file back for further investigation, or close the case for lack of evidence.

Special Investigations

The minister of defense and chief of the general staff are also able to appoint an officer or group of officers to investigate any matter. In practice, these “special investigations” are launched into particularly high profile cases. Like the operational debriefs, however, the material gathered in special investigations may not be used as evidence in court proceedings. Instead, the special investigator makes findings and recommends any further steps. As in the case of operational debriefs, no criminal investigation can be initiated until the special investigators’ work is complete. The chief military prosecutor told Human Rights Watch that these special investigations were very useful for getting the attention of senior officers.¹²⁷

In early September 2002, the defense minister ordered a special investigation into three separate incidents in which thirteen Palestinians were killed. They included the alleged execution of four laborers in the village of Bani Na`im on September 1; the killing of Ruwaida al-Hajin, her two sons and nephew by a flechette-laden tank shell while on their family property near Netzarim on August 28; and the death of four children on August 31 during an attempted assassination by the IDF in the village of Tubas. The panel found that the IDF was not at fault in any of the three incidents.¹²⁸

¹²⁷ Human Rights Watch interview with Col. Einat Ron, Tel Aviv, July 7, 2003.

¹²⁸ Amos Harel, “IDF finds no blame in deaths of 13 Palestinians; soldiers acted properly,” *Ha’aretz*, September 9, 2003. Human Rights Watch is also aware of a subsequent special investigation into Israeli operations in Jabalya refugee camp on March 6, 2003. Seven civilians were killed and scores injured in an incident which eyewitnesses and victims alleged to be the result of firing a flechette-filled tank shell at a group of civilians. An IDF investigation panel stated five days later on the basis of interviews with the tank crew that the casualties were the result of a Palestinian nail bomb hidden inside a building and that no flechettes were used. Human Rights Watch has not been able to confirm whether the IDF sought access to widely-available news footage of the incident, viewed by Human Rights Watch and held by Reuters and Associated Press. The video depicts a group of firemen struggling to put out a fire with news journalists filming them. The door of the building in which the nail bomb was allegedly hidden does not blast outwards during the explosion, but instead stays in place until an explosion takes place out of the camera frame. Projectiles rain down shortly afterwards. Amos Harel, “Palestinian Bomb, Not Tank Fire, Caused Palestinian Deaths,” *Ha’aretz*, March 11, 2003.

V. “Lowest Priority”: Deaths of Palestinian Civilians

In August 1990, Human Rights Watch published a detailed examination of Israel’s criminal investigation system in the Occupied Palestinian Territories.¹²⁹ That report defined seven major deficiencies, including inadequate efforts to obtain Palestinian testimony; inadequate cooperation with NGOs and other intermediaries; the slow pace of investigations; and the appearance of partiality.¹³⁰

More than a decade later, many of these criticisms are still valid. The higher frequency since September 2000 of incidents involving live fire has increased the practical difficulties. The difference in administrative arrangements in Areas A and B may also play a role, particularly with access to medical records. But in the cases examined by Human Rights Watch, these two factors do not appear to have been the main obstacles to conducting thorough, professional investigations. Instead, reluctance to investigate, a problematic attitude toward Palestinian victims, and bureaucratic foot-dragging have played the most important roles.

In an interview with the Israeli daily *Yedioth Ahronoth* published in January 2004, an unnamed veteran reserve investigator summed up the situation as follows:

Investigations are influenced by public pressure. There is a sense we are pressured to reach a conclusion every time a bag blows up in the media... . The distribution of funds is imposed, and is not creative. Investigators deal with several cases at once, and cases dealing with the death of civilians take the lowest priority. However, one cannot clearly say that things are white-washed over. The objective circumstances are the very problematic ones. Despite the fact that on the professional level these are murder investigations in every way, but in actuality, we treat investigations of the murder of Palestinians like regular criminal investigations... . If we were talking about an incident where Israelis were shot by IDF soldiers, or a soldier shot by another soldier, the level of investigation would be entirely different. This is the reality.¹³¹

¹²⁹ Human Rights Watch [Middle East Watch], *The Israeli Army and the Intifada: Policies that Contribute to the Killings*, August 1990, pp. 57-152.

¹³⁰ *Ibid.* Other deficiencies were understaffing at the CID, inadequate response to requests for information about investigations and failure to seek medical evidence when autopsies were not possible.

¹³¹ Unnamed “veteran reservist investigator” quoted in Alex Fishman and Guy Leshem, “Poorly Investigated, Forgotten and Buried,” *Yedioth Ahronoth*, January 23, 2004, p. B10. English translation on file at Human Rights Watch.

Reluctance to Investigate

Without a doubt, the greatest contributor to impunity is the reluctance of the JAG office to investigate alleged abuses. The JAGs are able to act on complaints received or, at their own initiative, open a preliminary investigation in any case where, in their opinion, there is an offense that a military court is competent to address.¹³² Three Israeli human rights groups — the Public Committee Against Torture in Israel, the Association for Civil Rights in Israel, and B'Tselem — told Human Rights Watch that they believe the JAG's office has shown clearly that there are some abuses, such as sexual violence, that it will not tolerate. In these cases, it acted quickly and effectively to identify and locate the perpetrators and bring proceedings against them. Action in these cases contrasts strongly with those involving the alleged wrongful use of lethal force, in which case the default response is to whitewash or ignore possible abuses. In several cases, families and employers of victims have conducted their own witness interviews and hired professional ballistics and forensics experts, before finally convincing the JAG that an investigation should be opened. Those who lack the skills or resources to take these extraordinary steps have fared less well.

The IDF, in a written communication dated May 10, 2004, told Human Rights Watch that the JAG's office had opened investigations into seventy-four alleged cases of unlawful killings since September 30, 2000.¹³³ There is no way to assess the total volume of complaints against police and security forces: the IDF does not keep statistics regarding disciplinary proceedings. The CID told Human Rights Watch that the JAG had received some 1,000 complaints from September 2000 to July 2003, and investigated 330.¹³⁴ This number is far lower than the volume of complaints received in other countries in conditions of ongoing clashes. For example in Northern Ireland, some 7,148 complaints were filed with the Police Complaints Authority between April 2001 and March 2002, almost one quarter of which resulted in some kind of disciplinary or legal action.¹³⁵

¹³² Article 178 (4), Military Justice Law.

¹³³ Response of the IDF Spokesperson to Human Rights Watch inquiry, with cover letter from Maj. Sam Weidemann, May 10, 2004.

¹³⁴ Members of the CID told Human Rights Watch that of some 330 investigations conducted by July 2003, thirty-five were related to killings and eighty were related to looting. Human Rights Watch interview, Military Police, July 13, 2003. In August 2004, outgoing Judge Advocate General Menachem Finkelstein said that his office had undertaken twenty-two investigations into cases involving use of lethal force that killed or wounded Palestinians (Gideon Alon, "IDF probing 600 suspected cases of abuse of Palestinians," *Ha'aretz*, August 18, 2004). According to a follow-up account, "an IDF captain convicted of killing a child was sentenced to six months in jail, while a soldier convicted of taking bribes at a roadblock was sentenced to ten months in jail." (Gideon Alon, "Critics scorn IDF statistics on abuse probes," *Ha'aretz*, August 19, 2004).

¹³⁵ US Department of State Country Reports on Human Rights Practices 2002: UK and Northern Ireland, March 31, 2003.

The IDF response to one case pursued by the Israeli human rights group B'Tselem exposed the shallow and superficial manner in which the Israeli military investigates itself in matters of alleged unlawful killings. Following the July 7, 2001 shooting death of eleven-year-old Khalil al-Mughrabi and the injury of two young companions in the Rafah area of the Gaza Strip, B'Tselem requested an investigation by the chief military prosecutor. In its response to B'Tselem, the IDF included, by mistake, the operational de-briefing file concerning the incident in question, and written responses to the debriefings of the southern command judge advocate and the chief military prosecutor. The fatal incident occurred at around 7 p.m. The judge advocate determined that alleged warning shots fired by a tank crew had been in breach of open-fire regulations, but neglected to connect this firing to the death and injuries of the children. Apparently on the basis of IDF claims that there had been violent incidents in the area earlier in the day, the judge advocate characterized the event as being of a “combat nature” and concluded, “I do not think that there is cause to open a Military Police investigation.”¹³⁶ In her internal memo, the chief military prosecutor rejected the judge advocate’s assessment and concluded that the children were struck by tank fire that was unjustified or had happened in violation of regulations. The prosecutor nevertheless wrote to B'Tselem, “Under the circumstances we have not found any suspicion of criminal behavior on the part of the IDF soldiers, or that there is just cause to open an investigation.”¹³⁷

In international law, the standard is that every incident in which there is credible or prima facie evidence of a possible violation of international humanitarian law should be investigated. The U.S. Operational Law Handbook reflects that standard in stating:

WHEN IN DOUBT REPORT. Report a “reportable incident” by the fastest means possible, through command channels, to the responsible CINC [commander-in-chief]. A “reportable incident” is a reported, suspected or alleged violation of the law of war... .¹³⁸

This fundamental principle is essential in situations such as the Israeli occupation of the West Bank and Gaza Strip, where the military engages in law-enforcement and policing functions far more frequently than in armed hostilities, with a lower threshold for what constitutes unlawful use of lethal force.

¹³⁶ Response of Chief Military Prosecutor Col. Elnat Ron, dated October 31, 2001, in B'Tselem, “Whitewash: The Office of the Judge Advocate General’s Examination of the Death of Khalil al-Mughrabi, on 7 July 2001,” [n.d.], Appendix C, p. 23.

¹³⁷ *Ibid.*, Appendix E, p.30.

¹³⁸ Berger, Grims, Jensen (Editors) *Operational Law Handbook*, 2004, p. 34. Emphasis in original.

In law enforcement situations, when there is a death as a result of the use of lethal force, there must be an investigation to determine if the death resulted from an accident, a homicide, negligent behavior, self defense, or natural causes, and if the use of force was legitimate, strictly necessary, and proportional. But the investigation needs to take place.

Munib Abu Munshar

Munib Abu Munshar was killed by IDF gunfire on November 11, 2000, in non-combat circumstances. His case shows clearly the barriers that the relatives of Palestinians victims face when trying to have the killings of their loved ones investigated.

Abu Munshar, aged eighteen, had been unloading construction supplies in Shalala Street, the downtown commercial center of Hebron. His father, fifty-six-year-old Muhammad Abu Mushar, told Human Rights Watch that a local shopowner, who was also a friend, had ordered the supplies but urged Abu Manshar to deliver them only when the area was free of incidents of stone-throwing and the like. At about 4 p.m., Muhammad Abu Munshar said,

He called for the goods, he said the situation is very quiet, no clashes... . So we loaded the metal on the smaller lorry, the bars were sticking out over the front. When they reached Bab al-Zaweya, Munib and [his co-worker] climbed on the truck to unload the metal, one on each side. According to [the co-worker], they unloaded the first piece of metal when [the co-worker] was shot in the leg. He told Munib, "I'm injured, get down from the lorry." But Munib didn't have time to get down from the lorry.¹³⁹

At the time of the incident, `Abd al-Rahman Shabeni, Hebron bureau chief for the Arabic daily *Al-Quds*, was at his office just across the street. He told Human Rights Watch:

I was standing by the window; it was about 4 p.m. The sweets shop across the way was being reconstructed and Munib had parked his truck and was unloading building material. Munib and another worker were on top of the lorry.

¹³⁹ Human Rights Watch interview, February 19, 2001, in Human Rights Watch, *The Center of the Storm: Human Rights Abuses in the Hebron District*, May 2001, p. 54.

I opened the window and started talking to him. I didn't know him. I told him to be careful and not to fall down... . A friend came, and we were readying to go to the mourning for Ra'ed Muhtasib [killed November 10]. I went out of the office and reached Shalala Street. I saw that [Munib] was shot dead and his body was lying on top of the lorry. I didn't hear any gunshots. I was shocked to see him shot dead. According to my experience in the area and as a reporter, I expect that the shooting came from [the IDF position] at Shalala Street, from a distance of about 100 meters.

There were no clashes at all in the area; it was very quiet. There were about five or six people in the street. Hours before, there had been clashes.¹⁴⁰



The brother of Munib Abu Munshar holds legal documents requesting an investigation into his brother's killing by IDF gunfire on November 11, 2000. Although an IDF colonel at the scene had told the family that he would testify that there was no reason to open fire, the IDF declined to open an investigation.
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¹⁴⁰ Ibid., Human Rights Watch interview, Hebron, February 18, 2001.

The Abu Munshar family is well-known, established in business, and reputed to have helped save Jewish residents of Hebron from severe violence in 1929.¹⁴¹ Although the area was a well-known site of clashes, the military governor of the Hebron area, who met with the Abu Munshar family a few days later to express his regret about the shooting, acknowledged that the day had largely been quiet. The District Coordination Office (DCO) called the Abu Munshar family and apologized for the incident. According to Muhammad Abu Munshar, they said that if the Abu Munshar family wished to go to court, they would publicly confirm that the soldier had fired for no reason. A few days later Muhammad Abu Munshar went to meet with Colonel Noam Tibon at the Hebron DCO. Two other Israeli officials were also present. According to Abu Munshar, Col. Tibon confirmed that “if you want to open a case, we will testify that there was no reason to open fire.” In June 2003, Abu Munshar showed Human Rights Watch a brief letter of sympathy, written in Arabic and Hebrew and faxed to him the same day by the DCO.¹⁴²

Since November 28, 2000, the Abu Munshar family has tried in vain to have the killing investigated. The family hired an Israeli lawyer, who complained to the chief military prosecutor, and lodged a petition before the High Court of Israel, for which they were required to pay a 2,300 shekel deposit (approximately \$500). Human Rights Watch wrote to the JAG with details of this and ten other cases on March 15, 2001. Although the family had difficulties staying in contact with their lawyer, they had given him all relevant documents, including a list of seven eyewitnesses and the letter from the DCO. On December 16, 2001, the family received a letter from the military prosecutor saying the killing would not be investigated because it was a situation of armed conflict and there had been an exchange of fire. The family’s lawyer replied, pointing out the IDF’s acknowledgement of responsibility and eyewitness statements. In June 2003, the family’s lawyer told them the IDF had asked for more information. Six months later, Human Rights Watch asked the IDF for information on the case. On February 17, 2004, the IDF replied that “the incident is unknown to us.”¹⁴³ As of early June 2005, the IDF had not responded to a Human Rights Watch request in February 2005 for additional or updated information.

¹⁴¹ The family cited this information in its compensation application to the High Court of Israel.

¹⁴² Human Rights Watch interview, Muhammad Barakat Abu Munshar (al-Hajj Ahram), June 30, 2003.

¹⁴³ “IDF Spokesperson’s Response regarding your Request for Statistical Information,” with cover letter to Human Rights Watch from Maj. Sam Wiedermann, head, International Organizations Branch, IDF Spokesperson’s Unit, February 17, 2004.

Nidal Abu Muhsin

Nineteen-year-old Nidal `Abd al-Ra'uf Abu Muhsin was killed on August 14, 2002 when the IDF forced him to do its own dangerous work: to go from house to house and search for a wanted man. The forced use of civilians in military operations breaches numerous provisions of international humanitarian law (IHL), including the principle of distinction, and Israel's obligation to protect and respect civilians under Article 27 of the Fourth Geneva Convention.¹⁴⁴

Nidal Abu Muhsin was at home in the village of Tubas when IDF soldiers arrived during the afternoon. They had come to arrest Nasser Jarrar, an acknowledged member of the Hamas military wing. Abu Muhsin's uncle, `Ali Daraghmeh, was at home on his second-floor balcony. A fieldworker with the Israeli human rights group B'Tselem, Daraghmeh watched as soldiers surrounded the neighboring houses and spoke outside with Muhammad Fathi, his thirteen-year-old next-door neighbor. Fathi then walked to the house of Nidal Abu Muhsin, who came out with Yunis, a relative. Daraghmeh saw the soldiers speak to Abu Muhsin and Yunis. The men raised their shirts, and the soldiers tied Yunis's hands behind his back. Daraghmeh then watched as Abu Muhsin went from house to house telling the people to leave.

After some twenty minutes, Nidal came to Daraghmeh's house and knocked loudly on the door. Daraghmeh told him to calm down, that he would upset the baby. Nidal replied, "The soldier demanded that I go to every house and get the people out, loudly. He told me that if I didn't do it, he'd shoot me."¹⁴⁵

Daraghmeh left his house and spoke briefly with the soldiers, one of whom took Daraghmeh's mobile phones and video camera, and put the videotape in his pocket. They then told Daraghmeh to go sit at the side with the other families who had been removed from their houses. Daraghmeh went and sat down, his hands tied by soldiers. Some time later, the wife of Muhammad Abu Muhsin and her child joined the group. She told Daraghmeh, "I saw the soldiers with Nidal, he was wearing a bulletproof vest and was with a black dog and a dog's chain, walking in front of five soldiers."¹⁴⁶ The woman's child said, "Yes, I saw him."

¹⁴⁴ See Human Rights Watch, *In a Dark Hour: The Use of Civilians During IDF Arrest Operations*, Vol. 14, No. 2 (E), April 2002.

¹⁴⁵ Human Rights Watch interview, `Ali Daraghmeh, Nablus, July 7, 2003

¹⁴⁶ *Ibid.*

Shortly after this, Daraghmeh saw five soldiers crouch forward and fire four or five times towards the house of Muhammed Abu Muhsin, a cousin; there, unbeknownst to Daraghmeh, a wanted man from the Hamas military wing, Nasr Jarrar, had been hiding. Later, a soldier called Daraghmeh and told him to go and search his sister's house. Daraghmeh refused until the soldier told him, "If you do not answer, I will blow it up." Daraghmeh searched the house, accompanied by a soldier, and returned to the group. Nidal was nowhere to be seen.

The operation ended at approximately 5 p.m., after a bulldozer destroyed Muhammad Abu Muhsin's house. Daraghmeh went to all the houses, looking for Nidal. Unable to find him, Daraghmeh called B'Tselem and told them Nidal had disappeared. Half an hour later, B'Tselem called back to say that an IDF source had told them that Nidal was dead, killed by mistake.

Nidal Abu Muhsin was the first known person to be killed as a result of the IDF's forced use of civilians for military or policing operations. This practice, as well as the use of civilians as human shields, had been widely reported in the preceding months, and in May 2002 the IDF had agreed to alter them after seven human rights groups petitioned the High Court of Israel.¹⁴⁷ Because of the issue's prominence, Abu Muhsin's death was widely publicized in the local and foreign media. A summary of Daraghmeh's testimony is available on the B'Tselem website. Daraghmeh gave detailed affidavits to B'Tselem, who officially requested an investigation on August 15, 2002. Daraghmeh also gave the same details to a lawyer whom the family hired to pursue the case.

Abu Muhsin's killing formed the basis for a successful High Court petition by Israeli and Palestinian human rights groups requesting a temporary injunction to prohibit the army from using its "neighbor procedure." The policy was modified, but the practice has not been abandoned entirely. Despite the publicity that Abu Muhsin's killing received, and despite the IDF's written statement that "[a]ny claim of prohibited violations is examined seriously and with necessary thoroughness,"¹⁴⁸ when Human Rights Watch

¹⁴⁷ HC 3799/02, *Adalah et al. v. Yitzhak Eitan, IDF Commander in the West Bank et. al.*, (case pending) available at <http://www.adalah.org/eng/humanshields.php> (accessed February 11, 2004). In its "Response on behalf of the Respondents," dated May 21, 2002, the Ministry of Justice stated: "the IDF has decided to issue immediately an unequivocal order to the forces in the field. The command states that forces in the field are absolutely forbidden to use civilians of any kind as a means of 'living shield' against gunfire or attacks by the Palestinian side, or as 'hostages'." A translation of the state response is available at the same URL. See also, Human Rights Watch, *In a Dark Hour, the Use of Civilians During IDF Arrest Operations*, April 2002, Vol. 14 No. 2(E). Available at <http://www.hrw.org/reports/2002/israel2/>.

¹⁴⁸ Letter from Captain Anrietta Levi, Public Relations Branch, IDF Spokesperson's Office, to Attorney Yael Stein, B'tselem, November 14, 2002, reproduced in B'Tselem, *Human Shield: Use of Palestinian Civilians as Human Shields in Violation of the High Court Order*, November 2002, p. 18. Available at www.btselem.org.

interviewed `Ali Daraghmeh almost a year later, no one from the IDF had contacted him. Daraghmeh told Human Rights Watch

I do not know if the Israelis are investigating, but I don't think so because no one has spoken to me – and I was the only witness. Someone inquired about my video camera, because it came back to me. But no one, no one has contacted me to give an affidavit."¹⁴⁹

When Human Rights Watch checked whether Daraghmeh would still participate in a military investigation, he told them: "I would go to the end of the world to give an affidavit if there were an opportunity to do so. But there hasn't been one."¹⁵⁰

On July 8, 2003, the day after Human Rights Watch interviewed Daraghmeh, a Human Rights Watch observer attended an Israeli High Court hearing on the IDF's forced use of civilians. The state attorney assured the three-judge panel that all cases submitted by human rights groups to the court were under investigation. The next day, the IDF wrote to B'Tselem and informed the organization that the JAG office had decided not to open a Military Police investigation into the case, since the commanders in question had not thought that forcing Nidal Abu Muhsin to assist them would endanger his safety.

The case of Nidal Abu Muhsin illustrates the reluctance of the JAG to investigate even when witnesses are accessible, the event is immediate, and the breach of IHL is absolutely clear. It also shows the gap between the IDF's public statements and the reality of their actions. Finally, it illustrates the conflict in the JAG's overlapping role – working with IDF commanders to continue to justify the use of the neighbor procedure, on the one hand, and punishing soldiers who disobey the terms of the policy, on the other.

Investigations without Standards

Ahmad al-Quraini

Ahmad al-Quraini worked with the Nablus municipality. He was shot and killed on the afternoon of August 10, 2002. There is no claim that he was killed in circumstances of armed hostilities.

¹⁴⁹ Human Rights Watch interview, `Ali Daraghmeh, Nablus, July 9, 2003.

¹⁵⁰ Human Rights Watch interview, `Ali Daraghmeh, Nablus, July 9, 2003.

Al-Quraini was shot while driving with his colleague, Ahmad Sama`na, to the main electrical station. As essential municipality workers, both men were permitted to move even during curfew. On this day, they had stopped at Faisal Street under orders from the IDF, and slowly resumed movement when a soldier motioned them to do so. A soldier then fired two shots: one hitting the headlight, and the other hitting al-Quraini in the forehead. According to Sama`na, an officer at the site realized what had happened, and a Captain Kamal from the district coordination office telephoned the municipality the same day and spoke with Sama`na about what had taken place.¹⁵¹

Three days later, B`Tselem wrote to the chief military prosecutor, providing witness testimony and requesting that she open a Military Police investigation. The prosecutor replied on September 10. According to B`Tselem's summary translation,

She stated that, during an army patrol enforcing the curfew in the center of Nablus, the soldiers saw a commercial vehicle approaching them. The vehicle suddenly stopped about 150 meters from them, which "raised suspicion." The soldiers did not identify the truck as a municipal vehicle because it did not have a blinking orange light on it. They thought that the driver was trying to evade the soldiers, so they fired two warning shots into the air. Because the vehicle "stood at the edge of a moderate incline," one of the bullets that was fired "at a relatively flat trajectory penetrated the windshield, and possibly caused the death of the driver." Therefore, the Chief Military Prosecutor held that the soldiers "did not deviate from the domain of reasonable conduct expected in actions by military forces in the relevant area and circumstances," and that there was no justification for an investigation by the Military Police.¹⁵²

By this time, however, B`Tselem had been given an AP videotape of the incident scene, filmed immediately after the shooting occurred. The tape shows that al-Quraini's vehicle was equipped with an orange flashing light. B`Tselem wrote to the prosecutor a second time, on October 8, 2002, queried the logic of someone stopping in a "suspicious manner," and informed her of the existence of the video. Shortly afterwards, B`Tselem researcher Ronen Schnayderman participated in a public discussion on the killing of children in Tel Aviv, attended by a member of the JAG's office, where he showed the tape. On November 3, 2002, the prosecutor wrote to B`Tselem and requested a copy of

¹⁵¹ Human Rights Watch interview, Ahmad Dib Ahmad Sama`na, Nablus, July 9, 2003.

¹⁵² Human Rights Watch interview, Ronen Schnayderman, B`Tselem, Jerusalem, April 29, 2003. The abbreviated translation is available at http://www.btselem.org/English/Open_Fire_Regulations/Al_Qureini.asp (accessed February 19, 2004).

the video. A Military Police investigation was opened shortly afterwards.¹⁵³ In February 2004, nearly a year and a half later, the IDF told Human Rights Watch that the investigation was “currently in the process of being concluded.”¹⁵⁴ As of early June 2005 the IDF had not responded to a February 2005 Human Rights Watch request for additional or updated information.

Ruwaida al-Hajin

Ruwaida al-Hajin was the mother of twelve. The al-Hajin family lives in Jabalya refugee camp, but owns a small plot of grape vines in the Shaikh Ajlin area, near Gaza City. Their land is between 250 and 400 yards from the route of the IDF tanks that patrol the perimeter of the Israeli settlement of Netzarim. She was killed by flechettes from a tank-fired round, a weapon that risks indiscriminate harm when used in a built-up area such as Shaikh Ajlin.

Ruwaida al-Hajin had gone to the family plot with her children and husband on the night of August 28, 2002, to escape the heat and enjoy the beginning of the weekend, as they frequently did during the summer. Shortly after the dinner prayers, al-Hajin, her husband, and youngest son were lying on mattresses outside their small shed. Her sons Ashraf and Nihad had invited their cousin Muhammad to come along. The three older boys were sitting in a group with the younger children, under a canopy in the grapevines some fifteen yards away.

Ruwaida’s husband `Uthman told Human Rights Watch:

A tank came from the east; it came every day. It was far away, maybe four hundred meters. [This day] it opened fire at the structure with the boys, and of course it exploded with a huge noise. My wife had been sleeping. I ran to the west, but my wife ran towards the boys to see if they were OK. And they shot her. Sa`id [their four-year-old son] was with her, and she died, and he was also injured in the shoulder.

I went to my cousin’s place [next door] to get help. There were three shells fired straight at the boys, then six general bursts of gunfire. We wanted to get to the place, to the victims, but the tank was searching

¹⁵³ Ibid.

¹⁵⁴ Letter to Human Rights Watch from Maj. Sam Wiedermann, head, International Organizations Branch, IDF Spokesperson’s Unit, February 17, 2004.

with a huge light. So we were lying on our stomachs, and they fired bullets, automatic fire, continuously.

I pulled my son towards me, strips of his leg had been torn off. But he could move, so together we got to the car.¹⁵⁵

Each shell the IDF fired at the family contained thousands of flechettes, tiny metal dart-shaped objects, capable of penetrating dense foliage with a kill radius some 300 meters long and ninety meters wide.¹⁵⁶ Ruwaida al-Hajin, Ashraf, Nihad, and Muhammad were killed almost immediately. The four other children were injured by flechettes embedded in their torsos, arms and legs; one of them, Salah, was wounded in the chest, arms, and legs. The weapon punctured his lung and fractured his teeth. Another child required seven months' hospital treatment. The family showed Human Rights Watch their X-rays and medical reports, as well as flechette shards and shrapnel collected from the site.

Thirteen civilians were killed by IDF forces in three separate incidents during the week the al-Hajin family was targeted.¹⁵⁷ Gideon Levy, an investigative journalist at *Ha'aretz*, traveled to Gaza to meet the al-Hajin family and visit the site. In the glare of the accompanying publicity, the minister of defence apologized to the family, arranged for medical care for the children, and ordered the creation of a "special investigation" to examine all three incidents. The panel, headed by Major-General Yitzhak Harel, took one week to come to its conclusion: the IDF had acted appropriately in every case. With regard to the al-Hajin family,

IDF sources say that more than two weeks earlier the commander of the IDF platoon in the area met with local Palestinians and warned them not to approach IDF posts at night. The IDF tank spotted suspicious movement in its area, and responded. The committee found that the tank unit carried out a few warning measures before opening fire.¹⁵⁸

¹⁵⁵ Human Rights Watch interview, `Uthman Mahmud Hussain al-Hajin, Jabalya, June 18, 2003.

¹⁵⁶ For background on Israeli flechette use in Gaza, see, Human Rights Watch press release, "Israel: Stop Using Flechettes in Gaza," April 28, 2003. Available at <http://www.hrw.org/press/2003/04/israel042903.htm>.

¹⁵⁷ The other incidents included the killing of four children during an attempted assassination by the IDF in Tubas on August 31, 2002, and the alleged extra-judicial execution of four quarry workers in the town of Beni Na'im on September 1, 2002. See, Amos Harel, "IDF Finds No Blame In Deaths of 13 Palestinians; Soldiers Acted Properly," *Ha'aretz*, September 9, 2003.

¹⁵⁸ *Ibid.*

Findings were based on “interviews with officers and soldiers who were involved in the incidents, and on reviews of footage filmed by drones in the area, and intelligence material compiled by the GSS and military intelligence.”¹⁵⁹ No effort appears to have been made to interview the victims, even though an Israeli official had visited them and apologized, a visit coordinated by the Palestinian Preventive Security Service. Nor does any part of the inquiry appear to have touched on the IDF’s use of flechettes in a civilian area, a choice of weapons system that appears to have been both disproportionate and indiscriminate.

Family members disagree strongly with the army view that their activities on the evening of the killing were in any way different from those on any other night in the many years they had been visiting their land. They point out that the army was so used to them that some two weeks before the killing, a Druze IDF soldier had come on foot to speak to them. According to the surviving children, the soldier checked that they were the family who lived on the property and warned them not to climb up the rise to play around the army’s patrol route. The eyewitnesses also strongly dispute that any warning measures were carried out: they told Human Rights Watch that the first they knew of any incident was when a shell burst overhead.¹⁶⁰

The IDF’s investigation into the killing of the al-Hajin family served a useful media purpose for the Israeli government, but utterly failed to satisfy Israel’s duty to the victims under international human rights law. It was neither impartial nor thorough, and so cannot be considered to have established the truth about what happened. `Uthman al-Hajin has hired a lawyer to pursue a compensation claim through the Israeli courts.

Ignored or Lost

Tha’ir, Mustafa, and Iyad al-Samudi

Beatings, ill-treatment, and torture are never permitted under IHL or human rights law. Tha’ir Khalil Salih al-Samudi, aged twenty-seven, was beaten so badly while under the control of Israeli forces that he lost an eye. His case was followed in the media and by the Palestinian human rights group Al-Haq. Even though he was in the custody of Israeli officials and they were aware of the alleged beatings, no attempt was made to investigate.

¹⁵⁹ Ibid.

¹⁶⁰ Human Rights Watch interview, `Uthman Mahmud Hussain al-Hajin, Jabalya, June 18, 2003.

Tha'ir al-Samudi was a member of the PA civil police. Living in al-Yamun village, he worked in Jenin. Tha'ir's cousin, Iyad al-Samudi, was from the same village and worked for the Palestinian Authority (PA) drug police in Ramallah. Mustafa al-Samudi was uncle to both men. The Oslo Accords permit PA police and security officials to be issued firearms. Following the outbreak of violent clashes in September 2000, this became a dubious privilege: carrying weapons reportedly allowed IDF forces to shoot the Palestinian bearer, including security forces, on sight. This policy was only modified in late April or early May 2005.¹⁶¹

In the early morning of June 23, 2002, Israeli forces raided al-Yamun. Iyad was worried that his police employment and firearm would make him vulnerable to arrest. At approximately 5.30 a.m., Iyad, Tha'ir, and Mustafa left the village to walk to a neighboring village. After some fifteen minutes, the three men were in a hilly open area, when they heard a soldier's voice ordering them, in Lebanese-accented Arabic, to "Stop! Raise your hands! Come here!"¹⁶² The men obeyed. They walked a few steps forward, side by side. They were surprised by the sound of shooting. Tha'ir told Human Rights Watch:

First my uncle fell down, and he said "Look at my blood – they've killed me!" I saw red lights passing me on either side, whoosh, whoosh. Then my uncle fell and I saw the bullets. My uncle said, "Run, run! They want to kill us, they do not want to talk to us!"¹⁶³

The three men tried to run, crouching, back to the road. Mustafa, who had been hit in the shoulder, was hit a second time in the leg. He fell and crawled behind rocks and long grass to hide. Iyad and Tha'ir separated and kept running. The shooting continued. After several hundred meters, Tha'ir reached Iyad, who had fallen after being shot in the shoulder. Tha'ir continued on, but ran into a group of soldiers at the top of the rise. They ordered him on his knees. He knelt and, obeying instructions, took his identity card and threw it to the soldiers with his left hand. Then the soldiers who had been pursuing him arrived. Both Tha'ir and Mustafa say they heard one of the soldiers referred to as "Morris."

¹⁶¹ On May 15, 2005, the IDF announced that the decision had been taken several weeks previously. See, "No peace without Palestinian state: Abbas," Agence France-Presse, May 15, 2002.

¹⁶² Human Rights Watch interview, identity withheld, al-Yamun, July 5, 2003.

¹⁶³ Human Rights Watch interview, Tha'ir Khalil Salah al-Samudi, al-Yamun, July 5, 2003.

From this point, the sequence of Tha'ir's recollections becomes confused. He remembers being picked up by the arms and legs, heaved forward, and falling heavily onto the rocky ground. This happened six or seven times, until he began to lose consciousness. When he revived, he was being kicked and beaten, including by a soldier of Ethiopian origin (*Falasha*), who was hitting him on the head. Tha'ir told Human Rights Watch:

As they lifted and threw, and I fell, there was a tree branch. They were kicking and beating me. Another soldier found a piece of burned wood and hit me with it on and around my face, and I lost my eye. After that I lost consciousness. When I regained it, I saw the officer from the reserves and he smiled at me because I was still alive. They put me on a stretcher and took me to a military ambulance. After he [the officer] left, the *falasha* kicked me with his boots, put me on the ground, and kicked the top of my head... . After he kicked me, I do not remember, I lost consciousness.

While he was being beaten, Tha'ir heard the sound of a single shot, corroborated in a separate interview with Mustafa al-Samudi. Later, while waiting to be transferred to an ambulance, Tha'ir saw Iyad's body, shot in the head. Both men believe Iyad was extrajudicially executed.

The soldiers did not keep Tha'ir in custody. Instead, they transferred him to the main road some time before 9.30 a.m., where he was picked up by a Palestinian ambulance and taken first to the Jenin government hospital, then to al-Shifa private hospital in Jenin. According to his medical report, Tha'ir arrived with (among other injuries) severe nasal bleeding, multiple facial fractures, and a ruptured right eye. His eye was removed during six hours of surgery. When Human Rights Watch interviewed Tha'ir al-Samudi in July 2003, he also had partially lost his hearing, had restricted movement of his neck and upper body, was injured in the right leg, and suffered from frequent involuntary trembling.

During Tha'ir's recuperation, the events in Yamun were well publicized. Tha'ir al-Samudi was interviewed by journalists, television crews, and the Palestinian human rights group al-Haq.¹⁶⁴ Al-Haq also interviewed Mustafa al-Samudi and Dr. Ahmad Hamun, a

¹⁶⁴ The case was first published by al-Haq in 2002. It was published in its final form as al-Haq, *Beating and Willful Killing in Yamoun Village*, al-Haq Case Study, June 2003. Available at <http://www.alhaq.org/publications/Yamoun%20Village.htm>, (accessed February 13, 2004).

doctor who examined the corpse of Iyad al-Samudi. Tha'ir also told Human Rights Watch he had met with an Israeli man who came to interview him with a Palestinian cameraman from the neighboring village, although he did not know the man's exact function. At least one eyewitness spoke to his father and offered to testify if required.¹⁶⁵

Tha'ir al-Samudi was arrested two months later, on August 19, 2002. He was taken for questioning to an Israeli base at Salem, near Jenin. Tha'ir's captors asked him several times about his injuries and appeared to have heard of his case. But they did not, to Tha'ir's knowledge, ever suggest the case be investigated or refer the information to investigators. "I have never heard that the Israelis were going to investigate. When the Israeli army took me to prison, they wanted me to say I had fallen from a wall."¹⁶⁶

Both in Salem and later in detention at Kishon, Tha'ir's captors were aware of his case, but told him several times he had been injured by falling from a roof.¹⁶⁷ Tha'ir's strong impression was that both interrogators wanted to intimidate him into accepting their version of events: "They already knew what had happened to me, but they wanted me to confess what they wanted me to say."¹⁶⁸

The first time he was asked about it was during his initial interrogation at Salem, where he was given a chair and some tea, and asked questions about other villagers. Then the interrogator asked about his injury:

"What is this?" he said, pointing to my eye. I said, "You know what happened," and he said, "I want to hear it from you." OK, so I told him the story from beginning to end, and he said, "No, it wasn't like that!"¹⁶⁹

The interrogator asked Tha'ir why he had run away from the soldiers. Tha'ir objected, saying

"I did precisely what their directions said. I stopped, raised my hands, and so did my uncle and my cousin." He said, "You ran away, you were scared, and you fell down from a four-meter roof." And I said, "But there isn't anything that high in the area where I was arrested! There is

¹⁶⁵ Human Rights Watch interview, Khalil Salah al-Samudi, al-Yamun, July 5, 2003.

¹⁶⁶ Human Rights Watch interview, Tha'ir Khalil Salah al-Samudi, al-Yamun, July 5, 2003.

¹⁶⁷ Ibid.

¹⁶⁸ Human Rights Watch interview, Tha'ir Khalil Salah al-Samudi, al-Yamun, July 5, 2003

¹⁶⁹ Ibid.

nothing taller than thirty centimeters.” He said, “No, you were scared, you fell, you are lying!” I said, “There are witnesses!”

Human Rights Watch visited the place of Tha’ir’s arrest with Mustafa and Tha’ir, where both reenacted the events of June 23. The area behind the village is sparsely covered with grass, trees, and nettles. There are no buildings of any kind.

Tha’ir told Human Rights Watch that he spent twenty-three days in isolation before a fellow prisoner told the International Committee of the Red Cross (ICRC) of his medical situation. After the ICRC intervened, Tha’ir was transferred to Rambam hospital in Haifa before being returned to Kishon detention center and, finally, Megiddo prison. Tha’ir told Human Rights Watch he had been expecting to face trial before a military court, but instead was released as soon as his hearing commenced. He then traveled to Austria for two months of medical treatment, arranged by the PA. After his return he faced ongoing difficulties in continuing essential treatment because of the severe restrictions on freedom of movement in the West Bank.

Like many Palestinian victims, Tha’ir is deeply skeptical about the possibility of an investigation into his case. Although his injuries are severe, he is so pessimistic he has not tried to apply for compensation. “We did not get a lawyer because the Israeli High Court is not making any efforts for us. The High Court is not really looking at compensation cases. I am not going to use a lawyer when I already know that there will be no compensation.”¹⁷⁰ Human Rights Watch asked the IDF if they had ever opened an investigation to Tha’ir’s case. The IDF replied that “[t]he incident is unknown to us.”¹⁷¹ As of early June 2005, the IDF had not responded to a Human Rights Watch request of February 2005 for additional or updated information.

Husni `Amir

Husni `Amir, a forty-five-year-old sanitation worker from Jenin refugee camp, was beaten to death while in the custody of Israeli forces. Husni and his brother Muhammad were taken into custody on April 7, 2002, during one of the mass round-ups of men that occurred during Israel’s major operations in the West Bank in April 2002.¹⁷²

¹⁷⁰ Human Rights Watch interview, Tha’ir Khalil Salah al-Samudi, al-Yamun, July 5, 2003.

¹⁷¹ Letter to Human Rights Watch from Maj. Sam Wiedermann, head, International Organizations Branch, IDF Spokesperson’s Unit, February 17, 2004.

¹⁷² In late March 2002, in response to a series of devastating Palestinian suicide bombing attacks in Israeli cities, the IDF mobilized some 30,000 troops for an offensive in the West Bank that was reportedly its largest military operation since the 1982 invasion of Lebanon. The operation included indiscriminate and excessive use

According to interviews with *Ha'aretz* and later testimony taken by B'Tselem, shortly after 7 a.m., Muhammad `Amir heard loud knocking and opened his door. Outside stood Husni, with a large group of soldiers. The soldiers searched Muhammad's house and garden, then took both men to Husni's house. A chalk drawing on the wall showing houses and trees attracted the soldiers' attention; they alleged that it was a "terrorist map." According to Muhammad `Amir's interview with *Ha'aretz*,

Husni tried to explain that it was children's artwork. The soldier handcuffed both of the men. Then he started to beat Husni. Young Mustafa was sent to bring the hoe with which his father was beaten. While the beating was going on, Mohammed was standing handcuffed by the door, surrounded by soldiers and helpless to do anything. According to Mohammed, an officer in the room ordered the soldier to administer the beating. The soldier beat Husni in the back of the neck, the stomach and the back. Mohammed says it lasted about 45 minutes, maybe an hour. Every once in a while, they stopped and asked Husni about the drawing on the wall. "Say that these drawing are for the hoodlums and we'll stop the beating," he was told... .

Muhammad says that Husni kept shouting, "My stomach, my stomach!" and "My back, my back!" until the beating stopped. Then the soldiers ordered the brothers to leave the house. Husni leaned on Mohammed and they walked toward the entrance to the camp as directed. There, they were put into an armored personnel carrier that ferried them to Kafr Sa'adi, west of the town. There, they were again made to sit on the floor, and stayed that way until the afternoon. The whole time, Husni complained about the pain from his injuries. Every so often, he screamed or burst into tears. His stomach seemed to hurt the most. They were taken to the detention facility at Salem where many other detainees were being held.

Muhammad was blindfolded and handcuffed, but continued to hear his brother's distress. After a while, he heard Husni being taken aside. Muhammad was taken to speak with the Shin Bet interrogator, and afterwards was taken to sit next to Husni

of force, unlawful killing of civilians, use of Palestinians as human shields, and detention of at least 4,500 Palestinian men and boys, many of whom reported ill-treatment during arrest and interrogation.

Suddenly, Husni's head dropped on the shoulder of the prisoner next to him. Soldiers came and moved all the prisoners away and they started to take care of Husni. Muhammad managed to shift his blindfold enough to get a peek at what was happening. An Israeli ambulance soon arrived and took Husni away. Muhammad asked one of the soldiers how his brother was. "His condition is very serious," was the reply. That night, they slept on the gravel and in the morning Muhammad was sent home. Before he left, he again asked the soldiers about his brother. "Wait a minute," said one soldier, who went to check. When he returned, he told Muhammad: "No one knows where he is or what his condition is."¹⁷³

Husni `Amir died the same day. His body was taken to Abu Kabir Forensic Institute on April 8, where an autopsy reportedly found that he had died as a result of "serious contusion injuries, caused by beatings."¹⁷⁴ Despite intensive efforts to find Husni `Amir, his family learned of his death only in early June, when a friend showed them an IDF website that listed Husni's name, date of death, and reportedly alleged that "[b]efore he died, he told those present and those who tried to help him that he had been beaten by Arabs."¹⁷⁵ A few days later, the Palestinian DCO contacted the `Amir family to notify them of his death and arrange for the transfer of the body, which had been lying in Abu Kir for the entire period.

B'Tselem wrote to the Office of the Judge Advocate General with details of Amer's death on June 3; Gideon Levy's *Ha'aretz* article was published nine days later. Both Levy and B'Tselem asked the IDF whether `Amir's case would be investigated, and both were told an investigation was underway.¹⁷⁶

One year later, Human Rights Watch visited the `Amir family in Jenin. They told Human Rights Watch that after the barrage of media interest following publication of the *Ha'aretz* article, no one from the IDF, Israeli government, or DCO had attempted to contact them regarding the case—whether for witness interviews or to inform them that an investigation had taken place. Human Rights Watch wrote to the IDF Spokesperson's office in January 2004 to ask about the investigation's progress. The IDF replied: "The

¹⁷³ Gideon Levy, "The Twilight Death of Husni Amer," *Ha'aretz*, June 12, 2002.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.* The website URL is given in the *Ha'aretz* article as www.idf.il/english/news/jeninkilled/stn. The URL was not functioning when Human Rights Watch tried to access it in late 2003.

¹⁷⁶ *Ibid.*, and Human Rights Watch interview, Ronen Schnayderman, June 10, 2003.

incident is unknown to us.”¹⁷⁷ As of early June 2005, the IDF had not responded to a Human Rights Watch request of February 2005 for additional or updated information.

Nuha al-Muqadama

Nuha al-Muqadama lived with her family in Block Three of Bureij refugee camp in Gaza. The al-Muqadama home was one of four contiguous homes, each attached to the other. Almost nine months pregnant, she was killed when the IDF destroyed the house of a neighbor as a form of collective punishment.

At midnight on the night of March 3, 2003, Nuha al-Muqadama, her husband Shukri, and her nine children were all at home. Shukri and their son were cooking the next day’s food for the family’s small restaurant. Shukri suddenly heard shooting nearby, along with the sounds of a helicopter. Nuha and several of the children woke up, frightened. The family sat together, drank soft drinks, and tried to calm the children. They turned on the television and watched the news footage of the incursion. Shukri told Human Rights Watch “I tried to turn the television off, but [Nuha] said ‘No, keep it on. At least we know what’s going on.’”¹⁷⁸ After they watched for a while, Shukri said:

“If you want to go into the other room you can, because I want to sleep.” She was sitting on the bed and tried to get up holding Muna, our little two-year-old girl. Before that we heard something like knocking on the wall. We thought the neighbors were preparing food or doing something in their house. At the time she was trying to leave the room, there was a voice announcing that there was a curfew, four or five times. “Man` al-tajawwul” [curfew] was coming from the street. Even [my son] Majid was trying to calm her down – he joked and said everyone over sixteen years would have to leave their houses. So I threw my packet of cigarettes at him because he was joking and scared his mother more.¹⁷⁹

The electricity failed, and the entire family stayed in the same room, sitting on the bed and lying on mattresses. When the electricity returned, Shukri said he told the children to go into the other room to sleep. He continued:

¹⁷⁷ Letter to Human Rights Watch from Maj. Sam Wiedermann, head, International Organizations Branch, IDF Spokesperson’s Unit, February 17, 2004. Human Rights Watch supplied the victim’s name, date of death, place of death, and alleged cause of death.

¹⁷⁸ Human Rights Watch interview, Shukri Salman Hussein al-Muqadama, June 19, 2003.

¹⁷⁹ Ibid.

I was lying on my stomach. Suddenly I heard the loud noise of an explosion and saw the walls buckling back and forward. So I threw my hands on my head and lay forward. Then I heard shouts of “Help me Shukri!” twice. [Nuha] had been sitting on the bed. I wish she had gone to the other room. When I stood up from under the rubble I saw the mess of the collapsed walls, but none of my kids. Not a hand or a leg.

In shock and badly injured, Shukri al-Muqadama wandered in the dust and shouted to his neighbors for help. None came: there was still shooting on the street. Eventually Shukri went inside again and began to dig through the rubble. As the hours passed, his neighbors appeared to help. Together they dug up the children, three of whom were badly injured. Shukri found his wife, unconscious and with bad abrasions on her face and body. They took her to a nearby storeroom to give first aid: forty-five minutes later his neighbors wrapped her in a blanket and carried her through sporadic gunfire to a nearby clinic. Shukri waited in shock in the UNRWA clinic, expecting to hear that his three injured children had died. Eventually a friend told him that his wife had been killed.¹⁸⁰

Nuha al-Muqadama had been killed when IDF sappers demolished the adjoining house of `Adil `Abdullah `Abd al-Salam. `Abd al-Salam's son had carried out a suicide attack against Israeli soldiers on February 9, 2003, in the name of Islamic Jihad. Earlier during the same incursion, the IDF had demolished the house of arrested Muhammad Hassan Taha and his sons, who were Hamas members.

Nuha al-Muqadama's death occurred during a period of heightened violence and civilian casualties in Gaza. It was widely reported, and both the U.S. and the U.K. governments cited it in calling on Israel to minimize civilian casualties, end indiscriminate actions, and abide by international law.¹⁸¹ One week later, the Israeli newspaper *Ha'aretz* reported that the IDF admitted al-Muqadama had been killed as a result of a house demolition:

[T]he IDF now admit that the pregnant woman who was killed in the operation in the El-Burej refugee camp in the central Gaza Strip some

¹⁸⁰ Ibid.

¹⁸¹ Jack Straw “Israel Must Act Within International Law,” March 4, 2003. Available at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391638&a=KArticle&aid=1046455333900>; Adel Zaanoun, “Palestinian shepherd, 85, killed after US rebukes Israel for civilian deaths,” Agence France-Presse, March 4, 2003.

days ago, was hit as a result of the demolition of the nearby home of the Taha family, several members of whom are Hamas operatives. Although army sappers are instructed to comb residences near areas marked for demolition, in this case, the force came under heavy fire and the commanders - with the authorization of senior officers - decided to make do with calling on residents to vacate their homes. It seems that the woman and her family failed to hear the call.¹⁸²

The soldiers who blew up the Taha residence claimed that the quantity of explosives used should not have caused such widespread damage to the neighboring houses. The IDF believes that the force of the explosion was compounded as a result of bombs stored in the house by Hamas operatives.¹⁸³

This version of events clearly confuses the separate Taha and `Abd al-Salam demolitions. Shukri and Majid al-Muqadama gave separate detailed testimony to Human Rights Watch. They were emphatic: they did not hear any kind of warning to leave their house, which had only one cooking gas canister in the kitchen. In contrast, the `Abd al-Salam family later said that the Israelis had given them five minutes to evacuate the area.

Both B'Tselem and the Palestinian Center for Human Rights (Gaza) notified the JAG's office with details of the al-Muqadama case, and Shukri Muqadama's testimony was placed on the Internet. The chief military prosecutor wrote to B'Tselem on April 30, 2003 that she would notify them if a Military Police investigation was opened. When Human Rights Watch interviewed Shukri al-Muqadama two months later, he had not been contacted by the IDF, nor did he know whether any investigation was taking place. When Human Rights Watch tried to confirm the status of the case in January 2004, the IDF responded that "the incident is unknown to us."¹⁸⁴ As of early June 2005, the IDF had not responded to a Human Rights Watch request of February 2005 for additional or updated information.

The Killing of Nahla `Aqil and Injury of Her Three Children

Nahla `Abd al-Rahman `Abdullah `Aqil was killed on December 8, 2002, as she left her home to visit relatives to celebrate *Id al-Fitr*, the feast at the end of Ramadan. There are no indications that armed hostilities were taking place in the vicinity at the time she was killed.

¹⁸² Amos Harel, "Inquiry: Palestinian bomb, not tank fire, caused Jabalya deaths," *Ha'aretz*, March 11, 2003.

¹⁸³ *Ibid.*

¹⁸⁴ Letter to Human Rights Watch from Maj. Sam Wiedermann, head, International Organizations Branch, IDF Spokesperson's Unit, February 17, 2004.

`Aqil's family, including her husband and seven children, had moved into a new house in Tel al-Sultan, a neighborhood just west of the center of Rafah, a few months earlier. The development, part of an UNRWA project to rehouse refugees whose homes had previously been destroyed, is located opposite the sand dunes that separate Palestinian homes from the Israeli settlement bloc of Gush Katif, although the bloc's perimeter is not visible from the houses.

Human Rights Watch interviewed separately `Aqil's husband, `Adil, and her eldest daughter Shirin, at a relative's home in Khan Yunis. The day had been quiet, with no incidents, violence, or outside noises. No incidents in the area are listed on the IDF website.¹⁸⁵ Shirin, a twenty-year-old education student, told Human Rights Watch:

It was on Sunday, about 6.30 p.m. We had decided to visit relatives... . We were walking in a line in front of my neighbors' [front wall]. We were walking on the pavement; it was still unfinished, still rubble, a little bit lower than the rest of the ground. Mom was walking in front, she had a plastic bag with presents in it, and the small kids were around. She was in front of me and a gap had opened up a little [between us] as we reached the neighbor's house.

Suddenly as we walked, a light shone on us. I did not take any notice. It was a spotlight....it came from the direction of the settlement area. I do not know exactly [where from], but it was the first time I had seen such a light. Then there were shots, they came like rain, I don't really know how to tell you. I was shocked. We stopped. We threw ourselves down. My mother was in front of me then the kids, and I was in front of my father. After a short time, it [the shooting] lightened. I stood up in order to see what happened, because my face was not towards them, then the firing started again. It seemed like a long time. Nivin [her sister] told me she was injured in her leg, and she said, "Mom is hurt," but of course no one knew what it was. Nivin was closest to her, and the blood was spreading all around.¹⁸⁶

Finally the firing stopped. Shirin stood up, crouching, and went over to her mother. Shirin turned her over and saw blood all over her torso. She spoke to her, but her

¹⁸⁵ The December 8 announcement instead announces an operational forum that included discussions on how to minimize civilian casualties. See, <http://www.idf.il/english/announcements/2002/december/8z.stm>

¹⁸⁶ Human Rights Watch interview, Shirin `Adil Muhammad `Aqil, Khan Yunis, June 15, 2003.

mother did not reply. Her father took `Aqil to a neighbor's house, and Shirin rode from there in a car with her mother to the ambulance. By the time the ambulance staff examined her mother, Shirin knew she was dead.

In all, the `Aqil family experienced three intervals of automatic fire. Both Shirin and `Adil `Aqil were clear: there was no warning, no sound, before the shooting began.¹⁸⁷ Nahla `Aqil was killed by a bullet to the neck; her children `Ali (ten), Tamar (fourteen), and Nivin (sixteen) were injured.



The children of Nahla `Aqil, who was shot to death on December 8, 2002. All were with her at the time of the incident and three were injured. As of June 2005 the IDF had not responded to a request from Human Rights Watch to learn if an investigation had been completed.
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The following day, December 9, 2002, an IDF official said the IDF would investigate the incident.¹⁸⁸ As of June 15, 2003, no one from the IDF had contacted the family, nor was the family aware of any IDF visit to the site. `Adil `Aqil told Human Rights Watch that he had heard from relatives and the media that

¹⁸⁷ Ibid, and Human Rights Watch interview, `Adil Muhammad `Abd al-Hadi `Aqil, Khan Yunis, June 15, 2003.

¹⁸⁸ Molly Moore, "Israeli Forces Kill 3 Palestinian Civilians," *Washington Post*, December 10, 2002, p. A18.

the Israelis were saying at that time that there were six people trying to infiltrate the settlement. They said they killed three, and three escaped. It's just an excuse. Relatives told us, and there was something in the newspapers saying they were sorry - the guy from B'Tselem told me.

Despite their skepticism, the `Aqil family gave testimony to two human rights groups, and, two months later, gave medical records, affidavits, and other documents to the Gaza-based Palestinian Center for Human Rights to pursue a court case. When asked if he would be prepared to assist an IDF investigation, `Adil `Aqil said yes: "I cannot lose anything more than I have already lost."¹⁸⁹

On February 17, 2004, the IDF wrote to Human Rights Watch, saying, "The investigation of this incident has not yet been completed."¹⁹⁰ When Human Rights Watch contacted `Adil `Aqil two months later to check whether he had been interviewed regarding the incident, or updated as to the progress of the investigation, `Aqil told Human Rights Watch he had still not been contacted by the IDF.¹⁹¹

As of early June 2005 the IDF had not responded to a Human Rights Watch request of February 2005 for additional or updated information.

VI: Foreign Pressure: Special Treatment

Incidents in which Israeli forces have killed Westerners are investigated more frequently than the deaths of Palestinian civilians. This is partly because the Israel Defense Forces (IDF) and Israeli government are highly sensitive to the media impact of such killings. It is also because the victims' families have greater access to financial, media, and technical resources. But even investigations into the deaths of prominent foreign victims show clearly how the IDF's delays, equivocation, and lack of transparency result in investigations that fall badly short of the "effective remedy" required by international law.

¹⁸⁹ Ibid.

¹⁹⁰ Letter to Human Rights Watch from Maj. Sam Wiedermann, head, International Organizations Branch, IDF Spokesperson's Unit, February 17, 2004.

¹⁹¹ Human Rights Watch telephone interview, `Adil Muhammad `Abd al-Hadi `Aqil, April 16, 2004.

Tom Hurndall

Tom Hurndall was shot by an Israeli soldier late in the afternoon of Friday April 11, 2003. At the time he was shot, there were no ongoing armed hostilities. Children were playing in the area, and he was wearing a fluorescent yellow vest to alert the IDF to his presence. It appears that he was shot intentionally.

The Hurndall family's quest for an impartial investigation shows clearly the gap that exists between the image of investigations portrayed by the IDF's public relations unit and the reality.

A twenty-one-year-old British university student, Hurndall had traveled to Gaza five days before the shooting as a member of the International Solidarity Movement (ISM).¹⁹² On the day of the shooting, Hurndall and other ISM members had been planning to erect a tent in the Yibna district of Rafah to protest the repeated shooting by IDF forces into the area, including the shooting of two children on the two previous days, April 9 and 10.

Hurndall, ten foreign ISM members, two local contacts, and two photographers met at a house in Yibna at 4.15 p.m. A U.S. volunteer, Laura, and Mahmud Mansur, a local assistant, went ahead to check whether an IDF tank had taken its usual position close to the intended tent site. The others followed, approaching a "T" junction at the intersection of Kir Street and Salah al-Din Road. Several group members, including Hurndall and Laura, were wearing fluorescent yellow vests to alert the IDF to their presence. An IDF watchtower and concrete pillbox some 150 meters away directly overlooked the intersection. A mixed sand and rubble mound some 1.5 meters high had been placed at the Kir Street edge of the junction, partly blocking the mouth of the street. Children were playing in the street, including around the earth mound.

Human Rights Watch interviewed separately six witnesses to the shooting, four days after it took place. Their testimony was consistent. Laura and Mahmud met with warning shots from the IDF watchtower as they reached the Tawhid mosque, several streets away. They returned to the main group, which was standing a few meters in behind the earth mound. Shortly afterwards, a series of shots was fired into the wall of the building

¹⁹² The International Solidarity Movement is dedicated to raising awareness of and ending Israel's occupation of the West Bank and Gaza Strip. It is well known for its direct actions against Israeli forces and policies and organizing the presence of international activists in the West Bank and Gaza Strip. Israeli officials and media have repeatedly sought to block the entry of ISM members to Israel and have accused them of supporting terrorism after ISM offices in Gaza were visited by the perpetrators of the April 29, 2003 suicide bombing attacks on civilians in Tel Aviv. Two ISM members were killed by the IDF and one seriously injured in 2003.

on the left hand side of the earth mound, possibly hitting the mound itself. Human Rights Watch counted six distinct impact craters in the building wall. According to Mahmud Mansur,

The shots were constant: One shot, a short pause, another shot. Tom was standing in between me and Laura. There were two girls playing behind the barrier, very frightened; they did not know how to speak. So Tom walked forward and led them back down the street. Then he returned. He saw a boy behind the barrier. I saw him too, Salim Barhum. I wonder if I could have helped him more... . Tom went towards the boy, about two to three meters forward. The boy was stunned, petrified. Tom went to carry him, bent towards him with his arms out. Then he fell as a bullet hit him, and blood and brains began to pour onto his chest.¹⁹³

There were no more shots. Hurndall, still wearing his fluorescent jacket, was carried by his companions down the street, where a fellow ISM member administered first aid. He was put into a local car and taken to the Yusuf al-Najjar Hospital in Rafah, and then to the European hospital in Khan Yunis. After diplomatic intervention, he was transferred several hours later to an Israeli settlement and flown to Soroka hospital in Israel. He spent the next nine months in a non-recoverable condition in hospitals in Israel and London. He died on January 13, 2004.

Two days after the shooting, Israel radio reported the IDF's reaction: "The IDF says that soldiers spotted a young man wearing camouflage attire moving towards an IDF position while shooting. The Israeli troops returned accurate fire and the man was hit."¹⁹⁴ When Human Rights Watch contacted the Office of the IDF Spokesperson, the officer said, "I don't have any specific information about this case. As you're aware, in such cases the IDF always opens up an investigation. I'm sure something will be opened up."¹⁹⁵ An Israeli human rights group, the Public Committee Against Torture in Israel, formally requested that the case be investigated.

It was another six months before the IDF opened a Military Police investigation into the case. It did so in large part because of relentless efforts by the Hurndall family and the

¹⁹³ Human Rights Watch interview, Mahmud (Anis) Muhammad Hassan Mansur, Rafah, April 15, 2003.

¹⁹⁴ "Israeli Army Gives Reaction to Serious Wounding of UK Peace Activist," Voice of Israel, Jerusalem, in Hebrew 0500 GMT April 13, 2003. BBC monitoring Middle East, bbcnep0020030413dz4d000rt.

¹⁹⁵ Human Rights Watch telephone conversation with Maj. Sam Wiedermann, head, International Organizations Unit, Public Relations Section, Office of the IDF Spokesperson, April 14, 2003.

ongoing media attention their efforts attracted. Hurndall's parents and siblings immediately flew to Israel and arranged, via the British embassy, to visit the site of the shooting in Gaza. Anthony Hurndall, Tom's father, and a solicitor, attempted both before and after his Gaza visit to meet with an IDF representative. He was unsuccessful. He told Human Rights Watch:

My first contact with the IDF was when I was shot at [in the] Abu Huli crossing. No one from the Israeli government or defense force or any military official tried to contact us. The [British] embassy had contacted the IDF and MFA and tried to set up a meeting. They made several attempts, without success. They said the IDF declined to meet with us.

We made it clear that we were not out to blame, but to investigate. We wanted to be open with them and have them be open with us, with a view to finding out the truth.

After six weeks of refusing, they realized the publicity was so adverse [that] eventually the embassy got a meeting the day after we were supposed to have gone back [to the U.K.]. We met in Jerusalem with the Ministry of Foreign Affairs and two representatives of the IDF. There was no agenda. By that stage I had gotten to the point where I felt there was no point. I had an idea what had happened, and felt they were just trying to recapture the public relations ground they had lost.¹⁹⁶

Before this May 26 meeting, the IDF had conducted an "operational investigation" into the shooting and released a summary of results to the British embassy. Reportedly supervised by Major-General Giora Eiland, at that time head of the IDF Planning Office,¹⁹⁷ the operational inquiry was carried out by soldiers of the Southern Command, submitted to the division commander, and then accepted by the OC Southern Command, Major-General Doron Almog.¹⁹⁸

¹⁹⁶ Human Rights Watch interview, David Anthony Hurndall, London July 19, 2003. See also, Cahal Milmo "Israelis Fire on Parents of Injured British Peace Activist," *The Independent*, May 6, 2003.

¹⁹⁷ David Anthony Hurndall, *Investigation of Shooting of Tom Hurndall – Interim Findings – 3rd July, 2003*. Copy on file at Human Rights Watch.

¹⁹⁸ Alex Fishman and Guy Leshem, "Poorly Investigated, Forgotten and Buried," *Yedioth Ahronoth*, January 23, 2004, p. B10. English translation on file at Human Rights Watch.

The inquiry found that the IDF post commander had fired a single bullet with the help of the telescopic lens of an M-16 I-3 rifle at an armed Palestinian man dressed in camouflage.¹⁹⁹ The Palestinian had supposedly emerged from a house, followed by a second bearded man and two children, then pulled out a pistol and fired three shots in the air and two shots towards the observation post. The inquiry found the commander had acted according to the rules of engagement, and that “it is impossible to establish with certainty the cause of the injuries sustained by Mr. Hurndall.”²⁰⁰ Despite the abundance of witness statements, the findings were based on the testimony of only two people: the commander who shot Hurndall and a soldier who was with him.²⁰¹

When asked on a Channel Four (U.K.) documentary what independent witnesses the IDF had approached to establish that the observation post had been fired on, an IDF representative replied: “We don’t need witnesses... .”²⁰² Another IDF spokesperson, asked the same question, confirmed that no outside witnesses had been approached: “[T]he field investigation is done at a field level[,] in other words with the soldiers and with the commanders there. It doesn’t bring in other people.”²⁰³

Human Rights Watch obtained an English-language copy of the investigation summary. More than half of the twenty-two-page document is devoted to statistics regarding Palestinian attacks, tunnels used for smuggling, and criticisms of the ISM. Most noticeably, the report specifies the wrong location of the shooting, placing it in front of two houses located not on Kir Street, but closer to the IDF outpost.

The Hurndalls eventually met with Ministry of Foreign Affairs and IDF representatives on May 26. By this time Anthony Hurndall had already made preliminary inquiries in Gaza, and the IDF had been told that the location of the killing was incorrect. The Hurndalls asked that the “operational investigation” be revised. “But they said no, it is closed, and will not be re-opened.”²⁰⁴ Requests the family made to visit the observation post or view closed circuit television records from the site were rejected. Frustrated with the IDF’s lack of accuracy, Hurndall consulted an independent military expert and

¹⁹⁹ Ibid.

²⁰⁰ IDF document, *Thomas Hurndall’s Injury 11 April 2003*, undated, on file at Human Rights Watch.

²⁰¹ Alex Fishman and Guy Leshem, “Poorly Investigated, Forgotten and Buried,” *Yedioth Ahronoth*, January 23, 2004, p. B10. English translation on file at Human Rights Watch.

²⁰² *Transcript of Interview Between Major Sharon Feingold, IDF Representative, Rodrigo Vasquez, and Sandra Jordan, Undated, Tape 87*. Exhibit DAH3, submitted by Anthony David Hurndall to the British Foreign and Commonwealth Office, July 9, 2003.

²⁰³ *Transcript of Interview With Jacob Dallal, IDF Representative, Rodrigo Vasquez*, Exhibit DAH3 submitted by Anthony David Hurndall to the British Foreign and Commonwealth Office, July 9, 2003.

²⁰⁴ Human Rights Watch interview, David Anthony Hurndall, London, July 19, 2003.

sought the advice of Avigdor Feldman, a prominent Israeli human rights lawyer. He compiled a dossier of relevant information, including thirteen witness statements, area maps, media transcripts, and detailed photographs. He submitted the dossier to the Foreign Office in early July 2003, which conveyed it via the embassy to the Israeli Judge Advocate General's office.

Anthony Hurndall told Human Rights Watch that the family had “wanted to be part of a process of truth telling.”²⁰⁵ Deciding Tom had been intentionally killed was “not a conclusion I came to willingly. It took a long time.”²⁰⁶

The IDF opened a Military Police investigation some three months after the incident – after continuing foreign media coverage, ministerial intervention, and the receipt of Anthony Hurndall's dossier.²⁰⁷ In the final week of 2003, the Military Police arrested and questioned Tom Hurndall's killer, Sgt. Taysir, a member of a Bedouin patrol battalion.²⁰⁸ Although he at first maintained he returned fire after being shot at by an armed Palestinian, he later admitted to firing “in proximity to an unarmed civilian as a deterrent.”²⁰⁹ The soldier was initially charged with “infliction of pre-meditated, aggravated bodily injury”; a second soldier was also arrested for “having made a false declaration concerning the events of that day.”²¹⁰ The defendant's lawyer and the Hurndall family both voiced concern that the soldiers facing charges were being used as scapegoats to avoid scrutiny of a wider culture of impunity that exists in the IDF.²¹¹ After Tom Hurndall died in January 2004, and with pressure from the Hurndall family and the British Foreign Office, the investigation was re-opened, and Sgt. Taysir was charged with manslaughter. During trial proceedings in December 2004, Sgt. Taysir admitted he had lied when he said Tom Hurndall was carrying a gun, but said he was under orders to open fire even on unarmed people.²¹² The closing arguments in Sgt. Taysir's trial were presented on May 22, 2005, and a verdict is expected in late June.

²⁰⁵ Human Rights Watch interview, David Anthony Hurndall, London, July 19, 2003.

²⁰⁶ Human Rights Watch interview, David Anthony Hurndall, London, July 19, 2003.

²⁰⁷ The exact date is not clear. See, Amos Harel, “Military Police Arrest Soldier Who Shot Briton in Rafah,” *Ha'aretz*, January 1, 2004.

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*, and Jocelyn Hurndall, “What Price a Life?,” *The Guardian*, January 10, 2004.

²¹⁰ Letter to Human Rights Watch from Major Sam Wiedermann, head, International Organizations Section, IDF Spokesperson's Unit, February 17, 2004. The second soldier received a five-and-a-half month sentence. See, “Defense says British activist died of malpractice by his British doctors,” Reuters, May 22, 2005.

²¹¹ Jocelyn Hurndall, “What Price a Life?” *The Guardian*, January 10, 2004.

²¹² Chris McGreal, “Soldier who shot Briton admits lying,” *The Guardian*, December 16, 2004.

Shadin Abu Hijla

Shadin `Abd al-Qadir al-Salah Abu Hijla was a Palestinian, but her four children are all American-trained English-speaking professionals, two of them U.S. citizens, and she herself was a prominent social activist and advocate in Nablus. The sixty-one-year-old grandmother was shot by an IDF soldier on the afternoon of October 11, 2002 while sitting with her husband on their front porch. Much of Nablus was under curfew. Her killing did not occur in circumstances of armed hostilities.

Abu Hijla and her husband lived in the upper-middle-class area of Rafidiyya. At approximately 5:45 p.m., two IDF jeeps stopped in the street, forty yards from where Hijla was sitting. A soldier opened the door, and fired fourteen times towards the house. Sa`id Abu Hijla, Shadin's son, was standing in the doorway. He told Human Rights Watch:

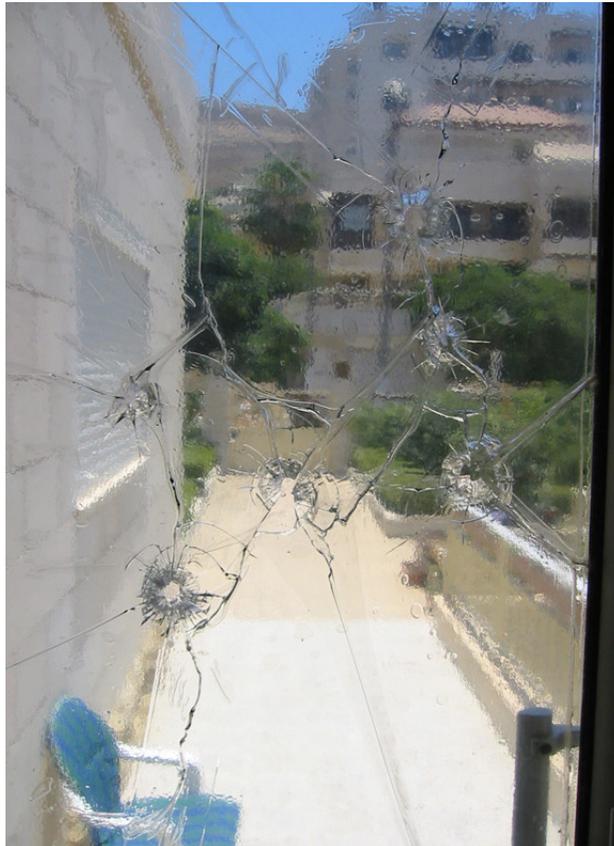
There were two jeeps, one waiting at the speed bump. I was wondering why they stopped, maybe they were waiting for another two. Then, without warning, without any kind of event, I felt a blast from the glass door explode into my face, and suddenly I was thrown on the floor. I said "I'm injured!" and went to the mirror and saw my neck and face bleeding, especially my neck. I didn't know what it was. My father is an ear, nose, and throat doctor. He came and started looking for a wound. He walked to the door and opened it. I was standing facing the door and then saw the body of my mother, stretched across the steps. I ran to her shouting. Her eyes were wide open; it was her last breath. I lifted her head and my hand was covered in blood. I thought she was injured in the head, so I said the *shabada* [prayer for the dying]. My father stood in front of us in shock.²¹³

Shadin Abu Hijla died not from a head wound, but a bullet that pierced her left side. Her husband was grazed by a bullet on the top of his skull. Her son was injured by fragments from the six bullets that penetrated the door.

The IDF knew of the killing immediately. As he went to hospital, Sa`id encountered a jeep of Israeli soldiers in his street. He waved and shouted at them not to shoot. They stopped, opened the jeep door, and stood in front of it. One soldier raised his weapon. Sa`id shouted "You killed my mother! Why, why did you kill my mother?" The soldier

²¹³ Human Rights Watch interview, Dr. Sa`id Jamal Abu Hijla, Nablus, July 6, 2003.

motioned Sa`id back with his gun, stepped back, and shot in the air. Sa`id shouted again, then the soldiers got back into the jeep, drove around him and away.



The front door of the Abu Hijleh family house, Nablus. Shaden Abu Hijleh was killed and two family members injured after an IDF soldier fired fourteen times at the house on October 11, 2002. Although the Abu Hijleh family carefully preserved the scene of the crime, no Military Police visited to investigate. In February 2005, two commanders of the brigade operating in Nablus at the time were ordered to appear before a disciplinary tribunal, but no criminal charges were filed.
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Shadin Abu Hijla was one of at least forty-one Palestinian civilians killed by Israeli forces that October.²¹⁴ Unlike other victims, however, her family decided immediately to insist on an investigation:

We sat down as a family and said “We won’t let this go. This is murder and they think Palestinian blood is cheap.” ... We started first with the

²¹⁴ Tracy Wilkinson, “Israeli Army Probes Slaying of Palestinian Grandmother,” *Los Angeles Times*, December 30, 2002.

media, with Joel Greenberg of the *New York Times*. Then [Israeli newspaper] *Ma'ariv* came during the condolences... . I think we were the first family to really test them; they are not really accountable. My mother will not come back, but maybe we will make the next soldier hesitate a little before killing another mother.²¹⁵

The army initially explained that Abu Hijla had been shot as a result of disturbances, a description that bore no relation to the incident's time, place, or other factual circumstances.²¹⁶

The family quickly hired an Israeli lawyer to officially request an investigation. The Israeli human rights group B'Tselem made the same request in a letter to the chief military prosecutor on October 14. As a result of media pressure and familial connections, the Abu Hijla case was raised at the highest levels, including by President Bush when Israeli Prime Minister Ariel Sharon visited Washington later that month. On November 24, the IDF chief military prosecutor replied to B'Tselem that the army would investigate.

The first investigation conducted into Abu Hijla's death was not conducted by the Military Police, but by other IDF soldiers — that is, colleagues of the possible perpetrator, subject to the same chain of command. Although it is difficult to find specific details, the Criminal Investigation Division of the Military Police told Human Rights Watch that they were instructed to investigate only in March 2003, nearly six months after the incident.²¹⁷ The soldiers investigating did not contact eyewitnesses or visit the site, but determined that Abu Hijla had been killed by a single stray bullet — ignoring the injuries to her husband and son, the widely available witness statements, and the physical evidence carefully preserved by the family. This evidence included fourteen cartridge cases gathered from the site immediately after the shooting by a respected Western diplomat.²¹⁸ The “investigation” findings reportedly reached the desk of IDF Chief of Staff Moshe Ya'alon in December 2002.²¹⁹ Alerted of the existence of

²¹⁵ Human Rights Watch interview, Dr. Sa'id Jamal Abu Hijla, Nablus, July 6, 2003.

²¹⁶ Nicole Gaouette, “Attention Builds Over A Slain Civilian,” *Christian Science Monitor*, January 10, 2003.

²¹⁷ Human Rights Watch interview, Captain Roni Stoller and Colonel Sami Cohen, Criminal Investigation Unit, Military Police, Tel HaShomer Military base, July 13, 2003.

²¹⁸ Human Rights Watch interview, Dr. Sa'id Jamal Abu Hijla, Nablus, July 6, 2003. The diplomat wished to remain anonymous. He is also quoted directly in Nicole Gaouette, “Attention Builds Over A Slain Civilian,” *Christian Science Monitor*, January 10, 2003.

²¹⁹ Akiva Eldar, “People and Politics/Too Close A Shave for Justice,” *Ha'aretz* January 2, 2003.

the bullet casings by an article by *Ha'aretz* columnist Akiva Eldar, who followed the case closely, Ya'alon ruled out the stray bullet theory and ordered the case reopened.²²⁰

Early the next month, the IDF made its first site visit. At about 8 a.m. on January 6, 2003, three soldiers arrived without notice at the Abu Hijla house. One was military commander of the Nablus area, another an officer from the District Coordination Office. Sa'id Abu Hijla opened the door, and later summarized the conversation in a memo to his lawyer. He told Human Rights Watch:

These were not the Military Police. These were the people that did it... . They said, "We have come to investigate the killing of Shaden Abu Hijleh," in Arabic. I said, "I have a lawyer, speak to him." They said, "No, can we speak with you?" I said, "Excuse me," went and got a notebook, and asked them to write their names. He wrote Doron. I said, "[w]hat is this? There are three of you. I do not know who you are. Write all your first and last names in Hebrew." There was Captain Doron and Captain Aharon, military commander of all the troops in the area. He gave me his phone number, and I said, "So now you're coming, after three months. Are you under pressure? After Bush, the *Christian Science Monitor*, and *Ha'aretz*?" The captain said, in English, "We came because we investigate all civilian deaths." I said, "[b]ut first you said in the media that she was killed in disturbances at Friday prayers!" And the captain said, "No, we have come because we want to know the truth."²²¹

Sa'id and his father told the soldiers what happened and showed the soldiers the bullet holes in the door and porch wall, as well as his mother's bloodied embroidery. During the conversation, the commander told Sa'id that they had interviewed the perpetrator, who said he had "opened the passenger door and fired into the air."²²² According to Abu Hiljeh, the officers agreed that the neighborhood was quiet, that the Abu Hijla family had not been breaking curfew, and that they should not have been shot at. The soldiers left after reportedly confirming that detailed witness statements were available with Sa'id's lawyer. Another group of soldiers visited the site again on January 14, but did not knock on the door or ask questions.

²²⁰ Akiva Eldar, "The 'road map' has been folded up," *Ha'aretz*, November 14, 2002, and Akiva Eldar, "If Only the Bullets Could Talk," *Ha'aretz*, March 4, 2003.

²²¹ Human Rights Watch interview, Dr. Sa'id Jamal Abu Hijla, Nablus, July 6, 2003.

²²² *Ibid.*

The JAG's office decided to open a Military Police investigation sometime between late January and March 2003. The IDF released an outline of the investigation findings to the media on June 22, 2003.²²³ The inquiry found that Shadin Abu Hijla had been hit by gunfire from an army patrol in Nablus that was enforcing the curfew. "The force spotted a man leaving the front of a house in the city, and conducted deterrent fire toward the house wall, and as a result, the woman who was sitting inside her courtyard, was killed."²²⁴ As a result, the chief of staff reportedly forbade the opening of fire for curfew enforcement, an order that, had it been given earlier, would have saved scores of civilian lives.

The Military Police investigators reached this finding without ever visiting the site. The circumstances undermine the IDF's assertion that it is the unwillingness of Palestinian witnesses to cooperate that makes investigations so difficult.

Sa'id Abu Hijla said that Allon Steinl, the MP investigator appointed to the case, telephoned him three times between January 29 and February 3, 2003. In his first call, the investigator asked Sa'id Abu Hijla and his father to visit the Israeli District Coordination Office (DCO) at Hawarra, a checkpoint on the outskirts of Nablus notorious for incidents of abuse of Palestinians. Sa'id said he would be happy to arrange for witness testimony, but that the Military Police should visit the crime scene. The investigator called back and said he could not visit the site for security reasons. Sa'id objected again, saying, "We want to help, but you should come. If you can come to the street to kill my mother, you can come to investigate. Bring a Merkava [tank]! Or bring civilian clothes and we will give you coffee." Sa'id's father explained, "I could not protect my wife even here in my own house. How can I protect myself [getting] to Hawarra?"²²⁵ Steinl said he would check with his superiors, and called back on February 3. He again said that the men would have to come to Hawarra. Sa'id told Human Rights Watch

I said, "I cannot give myself a permit to get safely to Hawarra, to be humiliated to reach you. You are more secure than me." Then the investigator asked, "There is a bullet from the wall. Can you bring it to me?" I said, "This is not an investigation! This is not the right way to do it!" Imagine a victim trying to convince an investigator just to visit the

²²³ Akiva Eldar, "People and Politics/Cause of Death: The army's rules of engagement," *Ha'aretz*, June 23, 2003.

²²⁴ *Ibid.*

²²⁵ Human Rights Watch interview, Dr. Sa'id Jamal Abu Hijla, Nablus, July 6, 2003.

crime scene. I said, “Captain Doron came twice, why can’t you? It is a very safe neighborhood, that is why the event is so shocking.”²²⁶

According to Abu Hijla, Allon concluded by saying, “OK, OK, it will take time but we will do it right.”

Sa`id Abu Hijla recorded one of his conversations with Allon and played it back to Human Rights Watch. Between calls, he forwarded the Military Police a site map, drawn to scale by an official surveyor, a compact disc of photographs of the physical evidence and the site, a panoramic video of the area, and the witness statements. Abu Hijla was aghast at the reported findings, which he learned from the Israeli media:

What really hurts is that after all this they have the audacity to say that the soldiers spotted a man leaving a house and they applied deterrent fire – and that a woman sitting inside was killed by accident! And they said this without even visiting the site... .We could have chosen not to give them the stuff, but we gave it. It is their duty, not ours, because the work has to be impartial. But we wanted to cooperate to the maximum with the investigation so they would do it well, but they did not. They cannot raise their eyes in front of the court.

In a July meeting with the Criminal Investigation Division of the Military Police, Human Rights Watch asked the Military Police how it was that Military Police investigators had still not visited the Abu Hijla site. Colonel Shami Cohen replied:

I think we gathered all the facts in this case, and much of the case is pretty clear. We were nearby. We have the shell cases, we investigated the soldiers. There were in this case restrictions... limitations due to firing. If we do not gather the shells [cartridge cases] the same day, they are unclear. We have to check the same day with the same weapons. The Shaden Abu Hijla case is not a classical case. They came to us on March 5, and it happened in November[sic]. And after the IDF force was there, after the internal investigation was unsuccessful, they ordered us [to do it]. It is a problem when we are not there. Now we know the soldier involved, the face exactly.²²⁷

²²⁶ Ibid.

²²⁷ Human Rights Watch interview, Capt. Roni Stoller and Col. Sami Cohen, Criminal Investigation Unit, Military Police, Tel HaShomer Military base, July 13, 2003.

When Human Rights Watch interviewed Sa`id Abu Hijla in July 2003, he was convinced that, despite the family's best efforts to assist the investigation, the IDF was acting unprofessionally and not in good faith. "The Israelis are only acting under pressure. It highlights the importance of the pressure you put on the Israeli government. At least then they have to show there is some kind of accountability."²²⁸ Many human rights groups and journalists interviewed by Human Rights Watch agreed. As of February 2004, the IDF had still not contacted the Abu Hijla family or their lawyer to inform them of investigation outcomes, nor had any Military Police representative visited the site.²²⁹ In response to a letter from Human Rights Watch, the IDF Spokesperson's wrote on February 17, 2004: "A decision has not yet been taken regarding how to proceed in the matter."²³⁰ In February 2005, the Military Advocate General, Brig. Gen. Avihai Manelblitt, ordered that the commanders of the Samaria Brigade and the company operating in Nablus at the time be brought before a disciplinary tribunal, "in light of the orders regarding the rules of engagement that were given by them and which overstepped the rules of engagement that applied in that area at the time."²³¹ The two officers will not face criminal charges. According to *Ha'aretz* reporter Akiva Eldar, the state "rejects any 'causal relationship' between the actions of the IDF soldiers and the shooting in the direction of the Abu Hijla family."²³²

Apart from the question of individual accountability, Shadin Abu Hijla's case also highlights another danger. If investigations into deaths or injuries are not carried out, then the IDF has no mechanism for detecting unlawful or problematic patterns of behavior. The IDF's use of lethal force as a first resort when enforcing curfews is a clear example of such a pattern. Use of lethal force while performing a law-enforcement function when there is no immediate threat to soldiers is illegal.

While it is not possible to calculate how many civilians have been killed or injured as a result of curfew enforcement since September 2000, human rights groups documented at least eight civilians killed as a result of curfew enforcement in the eight-week period of September and October, 2002.²³³ Human Rights Watch raised this issue with Israeli officials in May 2002 when requesting investigations into civilian deaths in Jenin refugee camp.

²²⁸ Human Rights Watch interview, Dr Sa`id Jamal Abu Hijla, Nablus, July 6, 2003.

²²⁹ Communication from Dr. Sa`id Jamal Abu Hijla to Human Rights Watch, February 17 2004.

²³⁰ Letter from Maj. Sam Wiedermann, head, International Organizations Section, IDF Spokesperson's Unit, February 17, 2004.

²³¹ Akiva Eldar, "Military mumbo-jumbo versus the morality of occupation," *Ha'aretz*, February 24, 2005.

²³² *Ibid.*

²³³ A detailed list of Palestinians killed is available on the B'Tselem website, www.btselem.org.

James Miller

British cameraman James Miller was shot to death in Rafah, in the southern Gaza Strip, on May 2, 2003. He and his colleagues had made themselves conspicuously visible when they left the house in which they were staying. There had been no shooting in the area for at least an hour. Miller was the sixty-fifth journalist to be injured or killed in the Occupied Palestinian Territories since September 2000.²³⁴ He was experienced in conflict conditions and had spent sixteen days in the area.

Miller and three colleagues visited a house in the al-Brazil area of Rafah to interview one of the subjects, a child, for a documentary they were preparing. For several hours Israeli soldiers in nearby armored personnel carrier had been playing Arabic music loudly and shouting at them in Hebrew and Arabic. Miller's co-producer, Dan Edge, told Human Rights Watch, "They had been playing Fairuz, asking us if we liked it, telling us to go to bed. They were in high spirits, they sounded like kids."²³⁵ Although there had been occasional shots fired earlier in the evening, by 11 p.m. the situation had been quiet for at least an hour. Miller, his colleague Saira Shah, and translator `Abdullah Rahman `Abdullah decided to leave the house by the most visible manner possible. The three left by the front door, wearing protective clothing with "TV" marked in fluorescent letters. Rahman held a white flag, Miller shined a flashlight on the flag, and Shah held a British passport in her upraised hands. Much of the incident was filmed by Dan Edge and viewed by Human Rights Watch. The three walked towards where they believed the nearest armored personnel carrier (APC) to be, shouting in English and Arabic that they were journalists. An unseen Israeli soldier fired once towards the group. Shah cried out, "We are British journalists." Thirteen seconds later, a second shot hit Miller. Five more shots followed.

The next day the IDF Spokesperson's office said Miller had walked into an exchange of gunfire, and "most likely been shot in the back by Palestinian terrorists."²³⁶ He said IDF soldiers had risked their lives to go Miller's assistance. "An IDF doctor who was on the scene shortly after Miller was shot stated that the bullet entered into Miller's rear left shoulder."²³⁷ Three days later, the autopsy results established conclusively that Miller had been shot through the front of the neck.

²³⁴ At the time of Miller's death five journalists had been killed and sixty injured. Reporters Sans Frontiers, "RSF report criticizes botched Israeli army investigations, lack of follow-up into deaths of two journalists in Occupied Territories," July 30, 2003. Available at http://www.rsf.org/article.php3?id_article=7664, (accessed April 9, 2004).

²³⁵ Human Rights Watch interview, Daniel Edge, New York, November 23, 2003.

²³⁶ "IDF: Initial Evidence Indicates British Journalist Shot by Terrorists," *Jerusalem Post*, May 3, 2003.

²³⁷ *Ibid.*

Miller's friends, family, and employers worked to gather all possible relevant evidence. Within three days, they had met with the U.K. ambassador, retained a prominent Israeli human rights lawyer, hired an independent military expert to examine all evidence, and sent out an independent pathologist to witness the autopsy, accompanied by a police photographer. On May 15, British Foreign Secretary Jack Straw raised the case with his Israeli counterpart, Silvan Shalom. Two weeks later the Miller family sent ballistics expert Frederick Mead to examine the fatal bullet – a 5.56 mm shot at short range. The family, via their lawyer, asked the JAG on June 2 to secure the weapons of the unit operating in the area the night of the shooting. After several reminders, the JAG ordered the weapons be secured three weeks later, on June 24. Ballistics tests were due to be carried out on July 13, when Mead discovered that only nine of fifteen guns had been secured. The family halted the tests until they could be sure that the correct weapons had been secured for testing.²³⁸ The international media reported regularly on the case throughout this period.

The IDF conducted an “operational investigation,” although it is not clear whether it was ever officially completed.²³⁹ The JAG opened a Military Police investigation at the end of August 2003, three-and-a-half months after Miller's death. Senior army officials outside of the JAG office followed the issue closely. By mid-November, Maj.-Gen. Giora Eiland had reportedly received an “interim” Military Police report, but said the authors “had not considered all the available evidence” and so the investigation would require more time.²⁴⁰ Saira Shah and Daniel Edge were officially interviewed in January 2004, some six months after a first “unofficial” meeting with JAG staff. Miller's family had been informed that they would not receive a copy of the final investigation report – a rule that applies to Israelis as well as foreigners. After ambassadorial intervention, Maj.-Gen. Giora Eiland reportedly agreed to let the family read a copy of the investigation report in an IDF office in Israel.²⁴¹

Miller's family, friends, and colleagues went to enormous lengths, with abundant credible evidence, to ensure that Miller's death was investigated. Few Palestinians have such resources, contacts, or journalistic skills. Nor should anyone have to go to these lengths to ensure that a disciplined military force take the first and most basic step towards accountability: namely, investigate.

²³⁸ Human Rights Watch interview, Daniel Edge, New York, November 23, 2003; Human Rights Watch telephone interview, John Miller, July 21, 2003. All dates are posted on the internet at <http://www.justice4jamesmiller.com/timelines.htm> (accessed February 10, 2004).

²³⁹ Human Rights Watch interview, Daniel Edge, New York, November 23, 2003; Human Rights Watch telephone interview, John Miller, July 21, 2003.

²⁴⁰ Email newsletter “James Miller – December Update,” December 23, 2003.

²⁴¹ Email newsletter “James Miller – December Update,” December 23, 2003.

On March 9, 2005, the IDF released the JAG conclusions regarding Miller's death. Miller's family said that Brig. Gen. Avihal Mandelblitt had told them that because there was no match between the fatal bullet and an IDF weapon, the officer involved would not be prosecuted, although he would be disciplined for breaking the rules of engagement and for changing his story during the investigation. The IDF's public statement said that the investigation found that an IDF lieutenant and commanding officer at the site "allegedly fired his weapon in breach of IDF Rules of Engagement," but that the forensic evidence "leads to the conclusion that the evidence available does not provide a reasonable chance for conviction as required under criminal law."²⁴² Miller's widow, Sophy, criticized the investigation, saying, "[a]lthough they strongly suspect one soldier, they cannot make a ballistics match. This is not surprising to us, as they failed to collect the weapons for eleven weeks." The family said they would request an Israeli court to review the findings.²⁴³

In a subsequent disciplinary hearing, the officer, a first lieutenant in the Bedouin Desert Reconnaissance Battalion, was acquitted of charges that he had violated open-fire regulations. The IDF said that Brig. Gen. Guy Tzur decided the shooting was "reasonable" in light of prevailing conditions, including "frequent terrorist attacks, thick darkness and earlier that same day the soldiers were fired at by anti-tank missiles."²⁴⁴ *Ha'aretz* quoted the IDF Spokesperson as saying that the investigation into the shooting was "unprecedented in scope," and included ballistics checks, examinations of satellite imagery, and polygraph tests.²⁴⁵ Prior to Brig. Gen. Tzur's decision, on April 7, a 79-page report by the chief lawyer of the IDF Southern Command reportedly stated that soldiers questioned in the investigation had changed their testimonies during the inquiry, and that the barrel of the rifle alleged to have been used in the shooting had been changed. The report also said that May 3, 2003 videotapes from the IDF observation system that may have filmed the shooting had disappeared and that attempts to locate them had not been successful.²⁴⁶

²⁴² The IDF statement is available at www1.idf.il/DOVER/site/mainpage.asp?sl=EN&id=7&clr=1&dpcod=38446.EN.

²⁴³ "IDF rules on UK filmmaker's death," Associated Press as published in *Jerusalem Post Online Edition*, March 9, 2005 [online].

²⁴⁴ Donald Macintyre, "Israel clears officer of killing journalist who had white flag," *The Independent*, April 15, 2005 [online].

²⁴⁵ Amos Harel, "IDF officer acquitted of killing UK journalist in Rafah," *Ha'aretz*, April 14, 2005 [online].

²⁴⁶ Mark Townsend, "Israeli army 'lied' about Miller death," *Observer*, April 24, 2005.

Brian Avery

IDF soldiers shot Brian Avery on April 5, 2003 from an APC on a Jenin street. The shooting was unprovoked and did not occur in circumstances of active hostilities. Avery's case highlights the problems when an untrained soldier conducts a field investigation.

Avery had traveled to the West Bank as a U.S. volunteer with the International Solidarity Movement and had spent about two months in Nablus before going to live in Jenin at the end of March 2003. Avery told Human Rights Watch that the day before he was shot, on April 4, the IDF had declared a curfew in Jenin in the aftermath of a large demonstration marking the first anniversary of the IDF military operation in the town and camp a year earlier.²⁴⁷ He said that ISM volunteers made a point of being on the streets during curfews to observe incidents, and that this had not previously caused problems with the IDF. "We would even chat with the soldiers," he said. "It was no big deal."²⁴⁸ That night, April 4, he worked "the ambulance shift" with a Red Crescent medical team and returned home to sleep during the day of April 5. When he awoke in the afternoon, he went to the roof of his apartment with an ISM colleague, Tobias Karlsson, and two Palestinian visitors. Avery and Karlsson left the ISM apartment just after 6 p.m. to investigate sounds of gunfire in the center of Jenin.²⁴⁹ Avery said he put on a red nylon vest with a white stripe designed to be visible at night, and Karlsson was in a white t-shirt. After they walked about two blocks, he said, they heard the sound of one or more armored vehicles approaching them from behind. Avery said that when he turned to look he saw an APC in front, followed by a tank.²⁵⁰ Four other ISM colleagues -- Lasse Schmidt, Martin Johansson, Jens Sandvej Grandin, and Eva Jasciewicz -- were walking towards them from the other direction. "We moved to the side to let [the IDF] pass and stuck out our hands showing we weren't holding anything. We weren't alarmed, it was an everyday occurrence. They were moving slowly, maybe about fifteen kilometers an hour, and when the APC was about thirty-five meters from us it seemed like it paused and just opened fire, twenty or thirty rounds."

²⁴⁷ See Human Rights Watch, "Jenin: IDF Military Operations," May 2002.

²⁴⁸ Human Rights Watch telephone interview with Brian Avery, March 17, 2005.

²⁴⁹ According to Avery's ISM colleagues, there had been a number of incidents in previous weeks in which the IDF opened fire in response to boys and young men throwing stones at tanks and APCs, resulting in several injuries and the death of a 15-year-old, and the ISM volunteers would try to be present at such times in the belief that their presence would restrain Israeli forces from responding with lethal force (affidavits of Jens Sandvej Grandin, dated April 7, 2003, and Lasse Schmidt, written "four days since Brian was shot," provided to Human Rights Watch by Brian Avery in March 2005).

²⁵⁰ *Ibid.* Grandin, in his April 7, 2005 affidavit, wrote that while he thought the second vehicle was a tank it may have been another APC.

Avery told Human Rights Watch that there was no voice warning or warning shot. The gunfire came from a mounted heavy weapon controlled from inside the APC; the soldiers remained within the armored vehicles throughout the incident and were not visible. Avery was shot in the left cheek, and the bullet exited on the right side of his face. He suffered extensive injuries to his cheekbones, jaw, teeth and one eye. Karlsson and the others moved away and were not hit. The APC and tank moved past Avery without pausing—"a drive-by shooting," Avery said. The incident occurred at about 6:30 p.m. "It was just becoming dusk," Avery said, "but there were streetlights and the headlights of the armored vehicles. It wasn't like they couldn't see us." According to Jens Sandvej Grandin, one of the ISM volunteers present, "We were all clearly visible; it wasn't dark but it was twilight, and Brian even had a reflective vest and was highly visible. There was also a street lamp at the intersection so there's no doubt in my mind that they knew we were internationals."²⁵¹

Avery's ISM colleagues gave him first aid and called an ambulance as well as the U.S. embassy and his parents. Martin Johansson, one of Avery's ISM colleagues who was present, described Avery's condition in an affidavit dated April 7, 2003, two days after the incident:

I kneeled down beside Brian. He had his hands up by his face, and a puddle of blood was forming around his head.... Lasse removed his white t-shirt and placed it under Brian's head in an attempt to stop the bleeding. When doing this Brian moved his arms and I was relieved to know he was still alive. When the ambulance arrived just a couple of minutes later it became clear in a gruesome way that Brian had been seriously injured. The lower part of his face was a complete mess and his left cheek and jaw were hanging by strips of flesh from his face.²⁵²

Doctors determined that neither the Jenin nor Nablus hospitals had the surgical capacity to treat Avery. After several hours of negotiations between the Palestinian doctors, U.S. embassy officials, and Israeli officials, permission was given to move Avery to Rambam hospital in Haifa, Israel. The Palestinian ambulance was nevertheless stopped at the border for about an hour until an Israeli ambulance arrived to take him to Afula and then by helicopter to Haifa, Avery said. He remained in the hospital about nine weeks and had several surgeries there before returning to the U.S.

²⁵¹ Ibid.

²⁵² Affidavit of Martin Johansson, April 7, 2003, provided to Human Rights Watch by Brian Avery, March 2005.

The IDF opened an “operational investigation” into the incident at the request of U.S. Ambassador Daniel Kurtzer, who had met with Avery’s father the week after the shooting.²⁵³ In this case, a member of the investigative team did conduct a videotaped interview with Avery in the hospital, but did not interview the other ISM witnesses despite being provided with affidavits and their contact coordinates. “They claim they asked me for witnesses and I refused to provide them, but the [video]tape shows this is not true,” Avery said.

The investigation found that:

four known events surround injury incident. None of the events match that of Mr. Avery’s injury, as detailed in ISM website and Avery’s interview. In all four events, IDF force acted in accordance with standing orders and ROE [rules of engagement]... .

No findings indicate that Mr. Avery was injured by IDF fire in any of the above-mentioned events. Medical assistance not given because IDF force did not identify casualties at any stage. Despite in-depth inquiry, IDF did not reveal any conclusive findings regarding the circumstances of Mr. Avery’s injury. Mr. Avery’s injury is an unfortunate incident. ISM activists knowingly endanger themselves by operating during curfew, in combat situations, seeking clashes and friction with IDF forces.²⁵⁴

The logic of the IDF’s findings was based on the assumption that the time of the incident given by witnesses of Avery’s shooting—around 6:30 p.m.—did not match that of any of the four events recorded by the IDF for Jenin that day. Yet the IDF inquiry appears not to have acknowledged one simple but vital fact, widely known to anyone who has had contact with Palestinian areas. From March 28 to April 6, Israel had switched to daylight savings time, but Palestinian areas had not. The time in Jenin remained one hour behind Israeli time. When this difference is taken into account, the discrepancies diminish. One of the incidents mentioned in the IDF report, shooting at unidentified “suspects,” was recorded as taking place at about 7 p.m. Israeli time, Avery said, which he thought was likely the shooting that aroused Avery and the others to go down to the street in the first place. Avery said that the armored vehicles they

²⁵³ Susan Broili, “Violence in Israel Alters Local Man’s Life,” *Chapel-Hill Herald-Sun*, June 23, 2003.

²⁵⁴ Undated IDF document, *The Injury of ISM Activist Brian Avery Jenin - 5 April 2003*. On file at Human Rights Watch. The text is presented as a series of bullet points.

encountered were probably leaving from that incident, and did not bother to record the shooting that gravely wounded him.

Avery told Human Rights Watch that he received a copy of the findings while he was in the Haifa hospital. The IDF, he said, despite disclaiming responsibility for the shooting, did cover his medical expenses in Rambam hospital, although they also made clear that once he left Israel they would not pay for additional medical costs. At the time he spoke with Human Rights Watch in March 2005, he had undergone six operations to rebuild the bone structure of his face, and required five or six additional operations for cosmetic purposes and to help his breathing. His lawyer in Israel, Michael Sfar, twice filed petitions with the Military Prosecutor's office to open up a criminal investigation, including sworn affidavits of the five ISM witnesses to the shooting, without response. He then petitioned the High Court of Justice, which on February 28, 2005 declined to order a Military Police investigation but did order the IDF to reopen the field inquiry by taking the testimony of the five ISM witnesses.

Rachel Corrie

Rachel Corrie, a twenty-three-year-old American university student, was killed by an Israeli bulldozer on March 16, 2003, while she was attempting to block it from demolishing a home. Her death, captured on camera by her colleagues, briefly attracted considerable media attention. She had undoubtedly placed herself in a dangerous situation, but the incident did not take place in the context of active hostilities, and did not threaten the safety of IDF personnel or other persons at the site. Under pressure from the U.S. government and the media, Israel conducted operational and Military Police investigations into Corrie's killing. But the investigations fell far short of the transparency, impartiality, and thoroughness required by international law.

Corrie also had traveled to the Gaza Strip as a member of the ISM. She had spent roughly one month in Rafah, the southern-most town in Gaza, on the border with Egypt. During much of this period, she had slept at the house of a local pharmacist, Dr. Samir Nasr Allah, who lived in the Hai al-Salam area adjacent to the Egyptian border. Many of the surrounding houses had been bulldozed by the IDF.²⁵⁵

²⁵⁵ For an analysis of IDF home demolitions in Rafah, see, Human Rights Watch, *Razing Rafah: Mass Home Demolitions in the Gaza Strip* (New York, October 2004).

Just after 2.45 p.m. on March 16, an ISM member who was helping Dr. Nasr Allah saw two bulldozers and a tank approach an open area at the rear of the house.²⁵⁶ Worried that the house might be demolished, she called Corrie and others to come. Eight ISM members met at the Nasr Allah house.

Over the next two hours, the eight foreigners shouted at them through megaphones, raised a banner, and stood in front of the bulldozers as they approached the structures to destroy them. They followed a routine, crouching as the bulldozer approached, then standing on the approaching wall of earth until the bulldozer stopped or the activist moved.²⁵⁷ The bulldozers demolished telephone poles, house foundations, a water tank, a low wall, and part of a garden shed. The IDF twice used tear gas, once fired a set of warning shots, and also shouted at the activists. Both groups of people, the ISM eyewitnesses said, were highly aware of one another: one of the soldiers in the tank even called to Corrie by name, shouting obscenities in broken English.²⁵⁸ She was wearing an orange fluorescent jacket.

Human Rights Watch interviewed separately three eyewitnesses to Corrie's death and visited the site. All witnesses gave consistent testimony. By 4.45 p.m., the bulldozers and tank had moved closer to the Nasr Allah house. Corrie had moved with them. She was walking some fifteen to twenty yards from her closest colleagues, who were scattered around the area. The ground was flat. Thomas Doyle was standing at the corner of a pile of rubble, with a direct line of sight. Doyle saw one of the bulldozers turn to face the Nasr Allah house. He told Human Rights Watch:

Rachel moved forward, walking. She saw the bulldozer and crouched, and at the point she did that the bulldozer was relatively far, about twenty meters away. The bulldozer kept advancing towards her with a massive mound of earth rearing up in front of it, and the blade stuck on the ground [i.e. sweeping the ground]. The earth came quite close, within a few meters, and she stood up.²⁵⁹

Corrie stood and balanced on the rising mound. The bulldozer continued without changing pace, and Corrie tried to get down.

²⁵⁶ Human Rights Watch Interviews, Alice (full name withheld on request), Rafah, April 15 2003 and Jerusalem, May 5, 2003.

²⁵⁷ Ibid., and Human Rights Watch interviews with Thomas Doyle and Nicholas Durie, Rafah, April 15, 2003.

²⁵⁸ Human Rights Watch interview, Alice (full name withheld on request), Jerusalem, May 5, 2003.

²⁵⁹ Human Rights Watch interview, Thomas Doyle, Rafah, April 15, 2003.

She seemed to be turning to the side – she really had to do it, she started to turn around to get down, but slid instead into the pile of earth. When she was standing on top she was standing quite high, so when she slid down she slid on her side and her right calf was out of view. She slid and then she fell and the earth went vooomsh. . . totally over her.

At the point where her calf disappeared and she disappeared, everyone was going crazy, yelling, shouting, motioning, screaming. I had my megaphone. The driver would have had a pretty good full view if he was looking at us... The bulldozer kept going on, forward, and then stopped a few meters after she disappeared. Her point of disappearance was underneath the cockpit. The bulldozer waited for what seemed like some time but was probably a few seconds, and then started to withdraw.²⁶⁰

Doyle's account is corroborated by that of Nicholas Durie, who told Human Rights Watch:

Rachel was kneeling on one leg. She got up on the rubble as the bulldozer approached, five miles per hour, at a steady pace. It did not change. Rachel probably noticed it would not stop, and she tried to get off the mound. Her foot caught in the mound, and she was carried over frontways onto the ground, and the earth was piled on top.

The bulldozer moved forward another five meters or so, despite us shouting and being visible to the others, and never lifted its blade or altered its course. It reversed at a steady pace, not lifting its scoop, and moved back some twenty to thirty meters, a bit further than its original distance.²⁶¹

Corrie came into sight again as the bulldozer reversed. Her companions ran to her; she said, "My back is broken."²⁶² Some gave first aid, others called an ambulance and took photographs. The bulldozer and two tanks left shortly afterwards without attempting to

²⁶⁰ Ibid.

²⁶¹ Human Rights Watch interview, Nicholas Durie, Rafah, April 15, 2003.

²⁶² Human Rights Watch interviews with Nicholas Durie, Rafah, April 15, 2003, and Alice (full name withheld on request), Jerusalem, May 5, 2003.

communicate. Corrie was evacuated to al-Najjar hospital in a local ambulance, and died shortly afterwards.

The news and photographs of Corrie's death received wide international publicity.²⁶³ President George W. Bush raised the case with Prime Minister Sharon the following day. Sharon reportedly promised that a "thorough, credible and transparent" investigation would take place.²⁶⁴ The IDF described the death as a "very regrettable accident," adding, "We are dealing with a group of protesters who are acting very irresponsibly, putting everyone in danger - the Palestinians, themselves and our forces - by intentionally placing themselves in a combat zone."²⁶⁵

The "Operational Investigation"

The Israeli military quickly opened an "operational investigation," conducted by the Southern Command. Within ten days, a copy of the findings - reached without contacting any witnesses - was given to the U.S. ambassador to Israel. The U.S. government, unsatisfied, asked for additional information.²⁶⁶ When the summary findings of the "operational investigation" were released to the media on April 15, a State Department spokesman said, "We do not consider this matter closed with the reception of the internal IDF report. We are going to press for a full and transparent investigation."²⁶⁷

Human Rights Watch obtained a copy of the summary of the IDF "operational investigation" into Corrie's killing. Like other investigation summaries seen by Human Rights Watch, the document is laden with generalities and emotive commentary, and contains major factual errors. Chief among these is the statement that "no signs substantiate assertion that Ms Corrie was run over by a bulldozer," a statement apparently based on a highly selective interpretation of the preliminary autopsy report.²⁶⁸

²⁶³ A number of photographs are available on the website of the Palestinian Center for Human Rights (Gaza), www.pchrgaza.org/images/2003/rachel/rachel.htm

²⁶⁴ Cindy Corrie "Seeking Answers from Israel," *Boston Globe*, March 18, 2004.

²⁶⁵ Chris McGreal and Duncan Campbell, "Bulldozer Crushes US Protester," *Guardian*, cases where IDF use of lethal force results in Palestinian civilian deaths, thus delaying or foreclosing the possibility of a proper impartial investigation. March 17, 2003.

²⁶⁶ "US dissatisfied with Israeli probe into death of American peace activist," Agence France-Presse, April 15, 2003.

²⁶⁷ *Ibid.*

²⁶⁸ The document reads, "[a]utopsy conducted on Ms Corrie's body - final autopsy report has not yet been completed. Pressure on her chest and back probably due to compression between two solid objects. Pressure caused rib fractures and lung puncture causing respiratory difficulties. No additional signs of injury or other physical trauma. *No signs substantiate assertion that Ms Corrie was run over by a bulldozer.*" Undated IDF

The report concludes:

Contrary to allegations, Ms. Corrie was not run over by a bulldozer, but sustained injuries caused by earth and debris which fell on her during bulldozer operation. At the time of the incident Ms Corrie was standing behind an earth mound and therefore obscured from bulldozer crew's view, whose line of sight was inherently limited. The irresponsible and dangerous conduct of ISM activists blatantly refusing IDF warnings to leave the area and purposely putting themselves in harm's way is a major factor leading to the tragic result of this incident.²⁶⁹

The report found that there had been no wrongdoing or negligence, and took no measures against the bulldozer crew. The army announced it would make operational changes to reduce the possibility of future incidents. These findings were again widely reported.²⁷⁰

The claim of the "operational investigation" that Corrie was not killed by a bulldozer is directly contradicted by the findings of the final autopsy report, conducted only four days after Corrie's death released on April 24 at Israel's National Center of Forensic Medicine. The author of the autopsy report stated: "Based on the results of the autopsy which I performed on the body of RACHEL ALIENE CORRIE, age 24, I hereby express my opinion that her death was caused by pressure on the chest (mechanical asphyxiation) with fractures of the ribs and vertebrae of the dorsal spinal column and scapulas, and tear wounds in the right lung with hemorrhaging of the pleural cavities."²⁷¹

Eyewitnesses interviewed by Human Rights Watch, other human rights organizations, and the media stated that the bulldozer crew could and did see Corrie. They noted that two other incidents had taken place on the same afternoon in which ISM members had been at the point of serious injury, but the bulldozer drivers had stopped at the last moment – indicating they could see the activists even when in close proximity, balancing

document, *The Death of Rachel Corrie, Military Installations Area (Philadelphi Road – Gaza Strip) 16 March 2003*, on file at Human Rights Watch, p. 25, emphasis in original.

²⁶⁹ Undated IDF document, *The Death of Rachel Corrie*, emphasis in original.

²⁷⁰ Connell Urquhart, "Israeli report clears troops over US death - Peace activist killed by bulldozer acted 'illegally and dangerously,'" *The Guardian*, April 14, 2003.

²⁷¹ "Expert Opinion (Opinion 3/459/2003)" of physician and pathologist Professor Yehuda Hiss, March 24, 2003, National Center of Forensic Medicine. Translation by U.S. Department of State done at the request of the Corrie family and provided to Human Rights Watch by Craig Corrie.

on the rising earth that the bulldozers pushed before them.²⁷² They said that the activists had regularly had eye contact with the bulldozer driver in the last moments before jumping off the earth mound. One ISM member described it thus:

To stop them, what we would do would be to stand on mounds. There was visual communication – he [the driver] would signal I was crazy with his hands. I was trying to look in the driver’s face, eyes very directly and communicate [that] I would not leave. I was fighting, feeling really sad . . . I didn’t want to be there, but I had no choice. I could see a blurry face and could make out facial expressions, but I’m not really good at describing people’s faces.

This is kind of going on, repeating, I am trying to communicate with him that I’m not going to move, standing in various places and then he stops. Basically we have to scramble up the sand as he pushes this big load of sand in front, you have to scramble up it to stay in the same place. So you scramble up and rise to the top and you can then look over the huge blade, look him in the face, and then he’ll stop.²⁷³

The possibility that the bulldozer operator could not see Corrie cannot be ruled out, however. Thomas Doyle and Nicholas Durie, as noted earlier, both said that she had been crouching or kneeling when the bulldozer was twenty meters away and that she stood up after the machine had come closer. This uncertainty is precisely why a credible and impartial investigation into this incident is essential.

The Military Police Investigation

In addition to the “operational investigation,” the IDF also opened a Military Police investigation into Corrie’s killing. The behavior of the Military Police investigators reveals how problematic IDF procedures can be even when responding to high priority cases.

²⁷² In one incident, a woman became trapped by a piece of metal in an oncoming pile of sand and could not move away. The bulldozer stopped shortly afterwards. In the other, William Hewitt was pushed onto a pile of debris and barbed wire by the oncoming bulldozer, and could not break free. Again, the bulldozer stopped shortly before crushing him. Human Rights Watch interview, Alice (name withheld), May 5, 2003 and Human Rights Watch interview, Nicholas Durie, Rafah, April 15, 2003. See also, the eyewitness affidavits given to Palestinian Centre for Human Rights, available at <http://electronicintifada.net/cgi-bin/artman/exec/view.cgi/7/1674>.

²⁷³ Human Rights Watch interviews, Alice (full name withheld on request), Jerusalem, May 5, 2003 and Nicholas Durie, Rafah, April 15, 2003.

The Palestinian Center for Human Rights Gaza (PCHR) was one of many groups that formally requested that an investigation be opened. It obtained detailed testimony from all eyewitnesses. Palestinian lawyers in the Occupied Palestinian Territories cannot practice in Israeli, nor can they travel outside of the Occupied Palestinian Territories. Because of these restrictions, when the Military Police began their investigation, the PCHR contacted Orna Kohn, an experienced Israeli lawyer with an Israeli-registered human rights group, Adalah. Kohn agreed to act on behalf of the witnesses to Corrie's killing for the PCHR.

Kohn dealt with the head of the special investigations team of the Southern Command CID, Shalom Mikhaili. She contacted Mikhali to give him witness details and stipulated that the witnesses would be accompanied by a lawyer, the interviews would be given and written in English, and copies of all written documents would be given to the witnesses before leaving the interview. Mikhaili objected, saying “[t]his is unusual. They do not have this as an automatic right.” Kohn said:

Mikhaili was very surprised about the terms and it was very clear it was very unusual, but I said take it or leave it. He was upset, but the next day he agreed. It was very clear that he had been ordered to facilitate the testimony whatever the price. They could not look like they had blocked it.²⁷⁴

Kohn was troubled by the investigators' behavior and seeming lack of preparation.

I had expected that they would be prepared, that they would ask questions, would show each witness a map or a photo to ask them to place the incident location. But they had nothing. I have the impression that they had heard the soldiers and believed the soldiers. There was even a rude comment from one of the investigators. It was April 1, so when he started taking something from the first witness, swearing them under oath, saying “you have to tell the truth” and so on, he added “But this is April Fool's day, so why bother?” He told the translators not to translate it.²⁷⁵

In addition, the investigators asked what Kohn considered to be hostile and irrelevant questions, such as “So you know by being there you were breaking the law under X or Y. You do understand that you can be indicted for this?” Kohn reminded them that they were taking testimony from the eyewitnesses to a crime and threatened to end the

²⁷⁴ Human Rights Watch interview, Adv. Orna Kohn, Adalah, Haifa, July 13, 2003.

²⁷⁵ *Ibid.*

proceedings. The commander eventually told the investigators to drop the questions. Kohn suggested several times that the Military Police officers ask witnesses to draw maps, but they did not – a potentially crucial omission.

A week or so after the testimony, Kohn received a call from Mikhaili. The investigators now needed to get the witnesses to define incident locations on a map, so they could check the bulldozer driver's field of vision. Kohn explained that some of the witnesses had already left Israel and attempted to arrange an interview for the others in the Rafah area. This failed because she was not permitted to enter Gaza, and the investigators would not consent to the presence of a local lawyer. Mikhaili then said he would send Kohn a copy of the witness affidavits and a map, and Kohn would ask witnesses to indicate the relevant locations and return them to him. Kohn agreed, but never heard from Mikhaili again, nor did he return her calls. "My feeling is that he got orders not to finish it. To leave something unclear on the testimonies, because to clarify them would not be in the interests of the army."²⁷⁶

Human Rights Watch interviewed separately three witnesses to Rachel Corrie's death who gave testimony to the Military Police. They described the incident in a manner similar to Kohn's. One described it as "...slapstick. They did not seem very interested. Their investigators kept getting told off by their boss because their questions were inappropriate. It was mostly accusatory, such as did I know Hai al-Salam was a frequent area for sniper fire and our work obstructed their work?"²⁷⁷ Another witness described it as "...banal. They did not really seem to care."²⁷⁸

The Military Police investigation was reportedly closed shortly before July 1, 2003.²⁷⁹ No wrongdoing or negligence was found. No one outside the IDF, however, is able to evaluate the quality of the investigation: neither the family nor the U.S. government has received a copy of the full investigation report. In March 2004, Corrie's mother wrote:

Despite promises of a transparent investigation, only two American Embassy staff members in Tel Aviv and my husband and I were allowed to "view" the full document. While it refers to evidence gathered by the Israeli military police, no primary evidence is included. Commenting on the report on July 1, 2003, Richard LeBaron, U.S. Embassy deputy chief

²⁷⁶ Ibid.

²⁷⁷ Human Rights Watch interview, Nicholas Durie, Rafah, April 15, 2003.

²⁷⁸ Human Rights Watch interview, Thomas Doyle, Rafah, April 15, 2003.

²⁷⁹ Cindy Corrie, "Seeking Answers from Israel," *Boston Globe*, March 18, 2004.

of mission in Tel Aviv, stated, "there are several inconsistencies worthy of note."

For our family, the report raises questions and fails to reconcile differences between Israeli soldiers who say they could not see Rachel and seven international eyewitnesses who say she was clearly visible.²⁸⁰

Human Rights Watch's own research indicates that the impartiality and professionalism of the Israeli investigation into Corrie's death are highly questionable.

VII. Denial of Justice

The Israel Defense Forces' (IDF) investigative procedures in cases in which Palestinian civilians in the Occupied Palestinian Territories are the victims of use of lethal force are not impartial, thorough, or timely. Individuals in the IDF, Judge Advocate General's (JAG) office, and Military Police may be dedicated professionals, but the IDF's flawed policies and practices have nurtured a system that is incapable of providing accountability for serious abuses.

Under international law, Israel is obliged to investigate serious human rights violations and establish the truth about what happened. If wrongdoing is found, the authorities should bring to justice and discipline or punish those responsible. It should provide an effective remedy for the victims of human rights violations, and fair and adequate compensation to the victims and their relatives.

The IDF investigations discussed in this report have failed to meet these standards. IDF authorities have said that any investigative flaws are a result of the practical difficulties they face operating in the occupied territories. These practical difficulties undoubtedly influence some cases. But they do not explain the foot-dragging, inconsistencies, and systematic partiality that have marked IDF policy since September 2000.

The Role of "Operational Investigations"

The IDF uses "operational investigations" as a first step in checking a suspicious killing or other possible crime. But this first step is seriously flawed, because it is based on the assumption that soldiers who acted wrongly will tell the truth. Since no external witness

²⁸⁰ Ibid.

testimony is gathered during a debriefing, there is no means of checking whether someone is telling the truth or not – as illustrated all too clearly in the cases of Ahmad al-Quraini, Shadin Abu Hijla, and Tom Hurdall. The IDF defines the debrief as the standard procedure when investigating events outside Israel’s sovereign territory on the grounds that combat soldiers can more accurately interpret the propriety of a soldier’s action than a military policeman without combat experience.²⁸¹ The line between an “accurate interpretation” and a self-serving account is hard to draw. Yet even the most conscientious soldier carrying out an “operational investigation” will probably lack training, experience, or contextual information crucial to the task, as in the case of Brian Avery. The “operational investigation” may be an appropriate routine for reviewing events for operational purposes. The problem is that they are treated as essential prerequisites to timely and impartial investigations in most cases where IDF use of lethal force results in Palestinian civilian deaths, thus delaying or foreclosing the possibility of a proper impartial investigation.

Another problem is that “operational investigations” do not appear to be conducted according to any identifiable standards beyond the language of the Military Justice Law. IDF media statements suggest no other regulations exist. Quoting Col. Daniel Reisner, deputy Judge Advocate General, the *Los Angeles Times* reported in late 2002:

Army officials also said there is no standard for how field investigations are conducted. Some delve deeply; others are quite superficial.

"Every commander determines whether he's reached the truth," Reisner said. "There is no textbook on investigations.... We see a great variety."²⁸²

This may be acceptable for purely operational purposes, but not for investigative purposes. Human Rights Watch has twice asked the IDF for information on the regulations for conducting “operational investigations.” The first time it was given irrelevant information regarding Military Police procedures. The second time it was directed to the military justice law.²⁸³

²⁸¹ Alex Fishman and Guy Leshem, “Poorly Investigated, Forgotten and Buried,” *Yedioth Ahronoth*, January 23, 2004.

²⁸² Tracy Wilkinson, “Israeli Army Probes Slaying of Palestinian Grandmother,” *Los Angeles Times*, December 30, 2002.

²⁸³ Letter to Human Rights Watch from Maj. Sam Wiedermann, head, International Organizations Section, IDF Spokesperson’s Unit. May 10, 2004.

“Operational investigations” have another major flaw. Even when conducted quickly and competently, they delay the opening of Military Police investigations by several months. Yet every day that passes after an incident takes place, physical evidence is lost or degraded, the scene is compromised, and witnesses’ memory deteriorates. Israeli officials repeatedly emphasize the difficulties of investigation, ranging from lack of physical evidence to the difficulty of locating witnesses. These problems are aggravated greatly by flawed “operational investigations” that create delays of many months. For example, when Human Rights Watch asked the Military Police about the differences between investigations in the first intifada (1988-1993) and those conducted after September 2000, the representative replied, “We get complaints much later; this is one very strong limitation... . Getting to the crime scene is impossible, and usually too late.”²⁸⁴ Asked about the impact of other kinds of investigation on their work, he replied “it does take time; it can delay [our investigation].” Asked about the delays in accessing the scene of Shadin Abu Hijla’s killing, he replied:

It came to us on March 5, it happened in November [sic]. And after the IDF force was there... after the internal investigation was unsuccessful they ordered us [to do it]. It is a problem when we are not there.²⁸⁵

Finally, “operational investigations” are not transparent. They are routinely conducted without involvement of the victims, victims’ families, or non-military witnesses. Summary findings may be reported in the media or stated by the IDF spokesperson, but they are not given to families or publicly released.²⁸⁶ Of the cases Human Rights Watch researched, no Palestinian families had ever been directly informed of the findings of an “operational investigation.” Human Rights Watch is aware of three cases in which the families of U.S. and U.K. victims were given summarized versions of the investigation findings via their embassies, and one in which they were verbally briefed regarding the outcomes.

This lack of transparency undermines whatever credibility the investigation procedures and their findings may have. Without the right to be involved in the proceedings, victims and their families cannot challenge fabrications, bring forward additional evidence, or

²⁸⁴ Human Rights Watch interview, Col. Shami Cohen, Military Police, Tel HaShomer Military Base, July 13, 2003

²⁸⁵ Ibid.

²⁸⁶ According to Art. 539 (B) (2-7) of the Military Justice Law, material from operational investigations is always confidential. It may be provided to the JAG, to military entities that require it for the fulfillment of their duties, or to another government office if approved by the chief of staff. It can never be used for criminal proceedings. The Knesset Foreign Affairs and Defense Committee may view the material if it requests to do so, but only in a privileged meeting.

ever be confident that the truth has in fact been told. Without public disclosure, interested parties, the general public, and even the IDF cannot be confident that justice has been done. “Operational investigations” should not obstruct, as they now do, proper impartial investigations into possible criminal wrongdoing.

The fundamental inadequacy of the operational debrief procedure for any investigative purposes is highlighted by the case of Gideon Levy, an investigative journalist for the Israeli daily *Ha'aretz*. He is an Israeli citizen, native Hebrew speaker, and easily contactable via the *Ha'aretz* office. Levy told Human Rights Watch:

I was traveling in an Israeli taxi, an armored taxi, with all the signs of an Israeli taxi and even a small press sign, traveling in Tulkarem under curfew. We coordinated ahead of time with the army spokesman. It was all coordinated we had all the permissions. One of the officers told us to use another lane, and when we did a soldier from another point started to shoot us. He shot eight bullets into the car. Thank God it was bulletproof or I'd be dead.²⁸⁷

Several weeks later, the minister of defense invited Levy to his office to discuss the investigation into the shooting. The minister said he could not let Levy take or view a copy, but read it to him aloud:

And can you believe it, no one [had] interviewed me! The minister of defense invited me into his office to see the official investigation report, and no one had asked *me* what happened to me! First, this is terrible for the victims. Secondly, it sends the message to soldiers that they can do anything they like and it does not matter.²⁸⁸

Timeliness

The Military Police emphasized to Human Rights Watch that delays hamper investigation proceedings. Yet it is IDF procedures that delay the opening of investigations by many months. In the first place, this delay is imposed by the insistence on completing inherently flawed and inadequate operational examinations before opening a criminal investigation, as discussed earlier. A second element is the period that

²⁸⁷ Human Rights Watch telephone interview, Gideon Levy, Jerusalem, July 1, 2003.

²⁸⁸ *Ibid.*

an investigation request may sit at the JAG's office pending the decision to open an investigation (and later, a decision whether to indict).

A third factor is the absence of continuity caused by the frequent use of reservist investigators, who work on a file for only one month before returning to civilian life. The file is thus passed from investigator to investigator. Time delays and administrative obstacles accrue as each investigator must familiarize him or herself with the case, re-establish relationships, and commence work. As B'Tselem researcher Ronen Schnayderman points out, "all those [cases] already opened are being conducted by reservists. How do we know? Because they call us to help! Each only serves thirty days and if a case takes a year, well... ."289 Another B'Tselem employee, Najib Abu Ruqaya, is a Palestinian citizen of Israel and is frequently asked by investigators to contact complainants and arrange for their testimony. He told Human Rights Watch:

Deal with the same person? No way! People come for reserve duty, begin to work for two or three weeks, and then until someone new begins, no work is done. It's very, very boring. They do not really repeat the same ground, but it takes a huge amount of time to re-start the case. And I have not ever really met someone who spoke Arabic.

When Human Rights Watch asked CID officers about the prevalence of reserve investigators, they said "[e]verything has to do with money... but the main decision to bring on reservists is that they are older and have more experience."²⁹⁰ This contrasts starkly with the practice of the first intifada, when Human Rights Watch reported that Military Police investigators tended to begin questioning alleged perpetrators in killing cases the same day.²⁹¹

When Human Rights Watch asked the chief military prosecutor what accounted for the long investigation delays, she replied, "[t]he time lag is because of the objective difficulties. First of all people report late, ... after this it is the objective difficulties. I do not feel the investigations are delayed. It is OK. We manage."²⁹² This statement is at best wishful thinking. As the cases discussed in this report show, there are often lengthy

²⁸⁹ Human Rights Watch interview, Ronen Schnayderman, B'Tselem, April 29, 2003.

²⁹⁰ Human Rights Watch interview, Col. Shami Cohen, Military Police, Tel HaShomer Military Base, July 13, 2003

²⁹¹ Human Rights Watch [Middle East Watch], *The Israeli Army and the Intifada*, p. 101.

²⁹² Human Rights Watch interview, Col. Einat Ron, Chief Military Prosecutor, Tel Aviv, July 7, 2003.

delays in opening investigations even in cases in which the IDF had immediate notice and abundant evidence at its disposal.

Obtaining Testimony

Without exception, every Israeli official interviewed by Human Rights Watch emphasized the difficulty of obtaining witness testimony. There are undoubtedly many witnesses who are reluctant to cooperate with IDF investigations, for reasons ranging from fear of retribution to cynicism about the intentions and effectiveness of the investigators. Yet, as the cases reviewed in this report show, there are also many cases in which IDF investigators do not attempt to contact witnesses to abuse, even when they are readily available. Human Rights Watch documented twelve cases of the alleged use of lethal force in which Military Police investigations were opened. Investigators had attempted to contact non-IDF witnesses in only half of these—namely, those in which the complainants had themselves presented the IDF with witness testimony and contact details.

This phenomenon is not new. More than twenty years ago, an Israeli inquiry into Israeli abuses in the Occupied Palestinian Territories emphasized the same problem; in 1988, the International Committee of the Red Cross reportedly followed up ninety-eight incidents that it had reported to the IDF, thirty-four of them fatal. In more than 70 percent of cases, no Palestinians had been questioned.²⁹³

Several factors complicate Military Police efforts to obtain Palestinian testimony. Both Military Police officers and the non-governmental organizations (NGOs) that liaise with them cited a nearly total lack of Arabic-speaking investigators, meaning that even the most routine means of finding witnesses are blocked – such as the efficient telephone directory service run by the Palestinian Authority. The lack of language competence is aggravated by a lack of training in interview skills with Palestinian witnesses, whose language and cultural background usually differ dramatically from that of the Israeli investigators. When Human Rights Watch asked directly whether investigators received training on working with Palestinian witnesses, the officer replied “It is not different from a complaint on another issue. The training is the same training, and experience counts.”²⁹⁴

²⁹³ “Conflicting Data,” *Ha’aretz*, June 16, 1989, cited in Human Rights Watch [Middle East Watch], *The Israeli Army and the Intifada*, p. 82.

²⁹⁴ Human Rights Watch interview, Col. Shami Cohen, Military Police, Tel HaShomer Military Base, July 13, 2003

In practice, IDF authorities appear to rely on two main means of contacting witnesses: first, by referring to a small number of Israeli NGO intermediaries for assistance, and second, by means of the joint Israeli-Palestinian District Coordination Offices (DCOs), set up as part of the Oslo process, which continue to operate in many parts of the occupied West Bank and Gaza Strip.

The IDF rarely contacts Palestinian groups, but deals regularly with a small number of Israeli NGOs, such as the Public Committee Against Torture in Israel (PCATI), B'Tselem, and Physicians for Human Rights – Israel. Staff members from both PCATI and B'Tselem told Human Rights Watch that investigators' requests were so frequent and so detailed that it seemed that the IDF had devolved the duty to investigate onto human rights groups, which had far fewer resources than the IDF itself. B'Tselem's Abu Ruqaya explained:

A good example is a letter the Military Police wrote to me on March 8, 2003. It's regarding a death in Netzarim. They said they wanted the medical papers, description of individuals wounded the same day, a death certificate, and a copy of the victim's identification. They gave the victim's name as [withheld] according to the Palestinian newspapers. So we didn't even send them the case. We have only one person in Gaza, and they ask us to do this — when they have the DCO and the General Security Service! I called them and said politely that they should give it to the DCO.

They just don't have any mechanisms to work with Arabs. The Military Police are really there to check soldiers' doings inside military encampments. They do not really have any way of investigating what happens with Palestinians.²⁹⁵

In several cases, NGOs have been contacted to locate Palestinian witnesses, only to find that the individuals in question are being detained by the IDF or inside Israeli prisons. For example, Gabby Lasky, a lawyer at PCATI, said,

They see themselves when it comes to Palestinians as defending the army, not looking at the complaints... . Most frequently they ask us to locate witnesses. Mostly they cannot locate them – often they are still in

²⁹⁵ Human Rights Watch interview, Najib Abu Ruqaya, Jerusalem, July 9, 2003.

jail or the phones do not work. Again, when they want to arrest them, they know where to find them.²⁹⁶

The lack of commitment to accountability is demonstrated by two cases in this report in which the Israeli authorities had custody of victims of serious human rights abuses, and knew of their allegations, but made no effort to assist or interview the victims. Tha'ir al-Samudi was arrested two months after he was allegedly severely beaten by IDF soldiers. Al-Samudi repeatedly told his captors of his allegations and required medical treatment during his detention. Yet none of the Israeli officials he met raised the possibility of investigation. The IDF had used Faisal Abu Sariyya as a human shield in the Jenin refugee camp in April 2002. He was detained in a mass roundup two months later, but his interrogators, though they knew of the abuse, made no effort to facilitate any kind of investigation (see below).

Almost every person interviewed by Human Rights Watch noted the huge contrast between the difficulties the Military Police report in locating witnesses and the government's efficiency in locating and arresting suspected militants. Al-Haq, the Palestinian human rights group, noted that the military's reluctance to use Palestinian testimony evaporated when that testimony could advance the government's position in court. Shawan Jabarin, Al-Haq's research and advocacy director, told Human Rights Watch:

I think the military does not try to do real investigations. They have never contacted us for information. That is, they did use our information once when a lawyer complained to us in a Jenin killing. Israel used our information to prove that the witness statement disproved the complainant's testimony and supported their version of events.²⁹⁷

Witness Fears

While many Palestinian witnesses are willing to testify to investigators, many others are not. In an environment where the Israeli army has controlled almost every facet of daily life for more than three decades and abuses are reported daily, many individuals fear

²⁹⁶ Human Rights Watch interview, Adv. Gabby Lasky, Public Committee Against Torture in Israel, Jerusalem, July 8, 2003.

²⁹⁷ Human Rights Watch interview, Shawan Jabarin, al-Haq, Ramallah, June 6, 2003. The case in point is the killing of Jamal Thalaji and Mahmud Khalil in al-Zababda village on July 1, 2001. See, al-Haq press release, "Three Palestinian Activists Assassinated, and Two are Killed In Israeli Instigated Attacks," July 2, 2001. Available at <http://www.alhaq.org/interventions/index.htm>.

abuse, humiliation, or other repercussions in any contact with the IDF. Others doubt the possibility that the institution that has committed an abuse is capable of investigating it in good faith. The bitter contrast between the consistent IDF spokesperson's accounts justifying IDF actions and the realities lived by the civilian population is a powerful disincentive. Still others may refuse to cooperate for political reasons.

Witnesses are almost always asked to go to the local district coordination office, often far away from their place of residence. In some areas, such as Jenin, these offices are located close to Israeli detention and interrogation centers. The association between the two is reinforced by the fact that the Arabic word most frequently used for investigation, *tahqiq*, is also a synonym for interrogation, with strong associations of forced confessions, ill-treatment, and collaboration. Even individuals with enough social standing or personal conviction to disregard these associations must have the time, resources, and commitment to overcome the curfews, checkpoints, and other movement barriers that so severely affect Palestinian civilian life.

Not surprisingly, some Palestinian witnesses fear that they will suffer official retribution for criticizing Israeli soldiers. Human Rights Watch encountered several witnesses who were reluctant to testify because of fears or threats of retribution. The brother of a man who had died in custody in 2002 believed that the Israeli officials had learned of his testimony to human rights groups and had retaliated by blocking his permit to work in Israel.²⁹⁸ A child who witnessed James Miller's shooting in Rafah told Human Rights Watch that a soldier had summoned her to speak with him and told her not to give testimony against Israeli soldiers or they would demolish her house.²⁹⁹

One man who had been used as a human shield had considered taking his case to the Israeli High Court, but decided against it. "I was worried I would be arrested on some pretext and then thrown in jail for six months. I am a schoolteacher. If I am arrested, I will lose my job."³⁰⁰

Other witnesses were worried about being arrested or humiliated as a result of agreeing to meet with Israeli representatives – particularly witnesses who had been arrested in the large-scale sweeps of thousands of men that marked the military operation in March 2002. They were very clearly unaware of the protections that the Israeli chief military prosecutor told Human Rights Watch she was prepared to extend to such witnesses,

²⁹⁸ Human Rights Watch interview, name withheld, Jenin, July 4, 2003.

²⁹⁹ Human Rights Watch interview, name withheld, Rafah, June 17, 2003.

³⁰⁰ Human Rights Watch Interview, name withheld, Jenin, July 4, 2004.

including the right to have another party present and the ability to check whether any of the individuals in question were wanted for arrest by the intelligence services. “If I can see that he is not wanted, I can guarantee he will not be arrested. If they have been on the list, that is a different matter.”³⁰¹ No witness Human Rights Watch spoke to was aware of this guarantee against arrest.

Jenin – Cases of Human Shields

The cases of civilians used as human shields by Israeli forces in April 2002 is instructive.³⁰² Although military investigations were opened into cases documented by Human Rights Watch, witnesses did not respond to IDF requests to take their testimony. IDF officials told Human Rights Watch that pursuing the cases had been made difficult because of the lack of specificity as to locations, and because there had been no cooperation from Palestinian or Israeli NGOs in contacting the witnesses.³⁰³ Human Rights Watch re-interviewed five of these men, four of whom said they had been contacted via the DCO. Several of them had discussed together whether they should agree, and went to meet the Palestinian DCO officers to discuss the issue. The meeting turned them against the idea, partly because of the experiences of another group of witnesses that had gone to give testimony the same day. According to `Aziz Taha:

When I was sitting in the DCO, the Abu `Aziz family was there and they had been searched and gone through very strict procedures. The officer told us that might happen to us, said he couldn't guarantee it would not happen. So that was one of the reasons we decided not to do it... . When we got there, the DCO people said, “I am a little afraid that if you go there something will happen or you might not be treated well.” And my brother Kamal asked whether he could guarantee that if he went there, there would be no problem to go back home. And the DCO said, “I cannot guarantee you whether there will be a problem or not. After that we decided not to go.”³⁰⁴

Faisal Abu Sariyya, another resident of Jenin refugee camp, was used as a human shield in April 2002 and injured as a result.³⁰⁵ He told Human Rights Watch that he had been

³⁰¹ Human Rights Watch interview, Col. Einat Ron, Tel Aviv, July 7, 2003.

³⁰² See Human Rights Watch, *Jenin: IDF Military Operations*, Vol. 14, No. 3 (E), May 2002, pp. 29-33.

³⁰³ Human Rights Watch meeting, Col. Daniel Reisner and Captain David Benjamin, legal adviser, Southern Command, IDF, October 28, 2002.

³⁰⁴ Human Rights Watch interview, `Aziz Muhammad Hussain Taha (Talib), Jenin, July 4, 2003.

³⁰⁵ Human Rights Watch, *Jenin: IDF Military Operations*, pp. 30-31.

detained with a group of other men two months after the incident, in June 2002. When he was taken to the nearby Israeli base at Salem, an Israeli official checked a computer and said, "You were with the soldiers inside the camp." The official asked Faisal to show him his injury and then asked whether he was interested in receiving medical treatment in Israel. He said no. "I was worried about being arrested or something else would happen," he told Human Rights Watch. "So then I went back home. I was surprised that he knew I was injured."³⁰⁶ The official did not ask him what happened or mention the possibility of investigation. Around September 2002, Abu Sariyya was contacted by the Palestinian DCO who told him the Israeli DCO had requested that he come and give testimony. Abu Sariyya said he agreed but that the next day, Sunday, a curfew was imposed. The area remained under curfew for twelve days, and he was never contacted again.³⁰⁷

Abu Sariyya said he was still willing to testify if contacted again. He had seen the officer who had led him through the streets of Jenin in a program on Israeli Channel Two television in early 2003. The presenter said the officer had been injured as a result of fighting in Nablus. Abu Sariyya had learned his name. In the television presentation, the officer reportedly told viewers how carefully the IDF had treated civilians in Jenin. Abu Sariyya was infuriated: "This was the officer of the troops who spent three days with me, he shot me in the street and left me without assistance. He let that happen. I want to make sure it does not happen to others." This officer had been assisted by two others who had slept at the Abu Sariyya house for two days; one of them had struck Abu Sariyya's pregnant wife, who miscarried soon afterwards. During the three days he was held by soldiers, Abu Sariyya had directly asked the officer at least twice to let him go. Abu Sariyya told Human Rights Watch, "I learned his name from the television and so now I have learned it by heart."³⁰⁸

Treatment of Witnesses

Even when the IDF locates witnesses and secures their agreement to testify, other problems emerge. Witnesses in some cases felt the investigators had behaved professionally, but witnesses in other cases did not. Given differences of language, social status, and power, it is no wonder that some Palestinian witnesses would perceive they were being treated suspiciously or unfairly. Many felt their testimony would be of little

³⁰⁶ Human Rights Watch interview, `Ali Mustafa Hussain Abu Sariyya, known as Faisal al-Sariyya, Jenin, July 4, 2003.

³⁰⁷ Ibid. The curfew statistics contained in the weekly United Nations Office for the Coordination of Humanitarian Affairs Humanitarian Updates indicate that Jenin was under strict, almost continuous curfew throughout September 2002.

³⁰⁸ Human Rights Watch interview, `Ali Mustafa Hussain Abu Sariyya, known as Faisal al-Sariyya, Jenin, July 4, 2003.

value because of a widespread Israeli assumption that Palestinians are liars. Several witnesses, however, described treatment that indicates troubling behavior by Military Police investigators.

Case of Ahmad and Jamil Abu `Aziz

The Abu `Aziz family had testified to Military Police investigators regarding the killing of its two sons, Jamil (aged thirteen) and Ahmad (aged five and a half). Both were killed on a Jenin city street on June 21, 2002, when an IDF tank open fired at them without warning as they went to buy chocolate. Two other civilians were also killed. The IDF's initial response was to apologize, but say that the tank had opened fire to "deter" Palestinians breaking a curfew and approaching them.³⁰⁹ The incident was captured on video, broadcast by news organizations, and a copy given to the IDF. The Abu `Aziz family had hired a lawyer, who coordinated the taking of witness statements with the IDF.³¹⁰

Dr. Samir `Awad, a neighbor, had been badly injured in the same incident. He agreed to give testimony to the Military Police investigators. He went with the family to the DCO some two months after the incident, in August 2002. Dr. `Awad had spent three to four hours at the DCO, closeted with one investigator and a translator. Although he had arrived accompanied by Palestinian DCO officials, he was searched and made to lift his shirt to show he was not carrying weapons, something most Palestinians find extremely humiliating. When asked about the interview, `Awad said:

The officers were sarcastic, and they said they were not responsible. They didn't even accept the live evidence of the tape... . They refused to speak English, and I do not speak Hebrew. I asked for a translator and they brought one. They asked me bad questions; I did not want to answer them. All of them seemed to be with bad will; they just tried to show I was wrong and to prove [the soldiers] were not guilty. I was very nervous because he [the investigator] was trying to upset me. I was sitting on the edge of my chair... .³¹¹

Recently released from hospital, `Awad said he tried hard to behave calmly and answer the questions in detail. He had brought photographs and drew maps. He was concerned

³⁰⁹ "Jenin Deaths Video Implicates Army," BBC News, Friday July 5, 2002, available online with video footage at http://news.bbc.co.uk/1/hi/world/middle_east/2102081.stm (accessed October 2003).

³¹⁰ Human Rights Watch interview, Yusuf `Abd al-`Aziz `Abd al-Khala` Abu `Aziz, Jenin, July 4, 2003.

³¹¹ Human Rights Watch interview, Dr. Samr al-`Awad, Jenin, July 5, 2003.

by the possibility that the investigator was not writing exactly what he told him, but summarized notes. He was asked to sign the officer's paper, in Hebrew, but refused. He signed the interpreter's statement in Arabic with some hesitation. At the end of the interview, `Awad said, the investigator told him that "it was the Palestinians that injured me, not the Israelis."³¹²

Lieutenant S. L., the soldier who killed the Abu `Aziz boys, has been indicted for killing four civilians by using tank fire to enforce a curfew. According to media reports in January 2004, he had left Israel and was traveling overseas.³¹³

In March 2004, the chief military prosecutor indicated that charges would be filed against an armored battalion commander in connection with the killing of the four boys.³¹⁴

Good Faith?

In July 2003, Human Rights Watch asked the Israeli military prosecutor what she considered an example of a good faith effort by the Military Police to locate Palestinian witnesses. Her answer focused on a later stage of proceedings – asking Palestinian witnesses to come to Israel to testify in courts martial. She said:

We need help for this. It is so difficult. Sometimes we give them cars, and say come to the place you want and we will take you to the court, give you whatever you want — just come because we cannot finish without you.

I am trying to guess why it is so difficult. They're maybe afraid; some times they are not so happy to come to Israel to testify. It takes a whole day to come, and it is not so nice to pass [pause] to come to Israel. It is not easy. I do not know what we could do to make it easier.³¹⁵

In reality, these efforts represent the bare minimum required to ensure that witnesses are physically able to attend the court-martial. Palestinian residents of the West Bank and

³¹² Ibid.

³¹³ Akiva Eldar, "The IDF's Standards of Punishment," *Ha'aretz*, January 6, 2004.

³¹⁴ Amos Harel, "IDF battalion commander to be charged in deaths of 4 Palestinians," *Ha'aretz*, March 18, 2004.

³¹⁵ Human Rights Watch interview, Col. Einat Ron, Tel Aviv, July 7, 2003.

Gaza Strip are forbidden from entering Israel, and frequently from leaving their own village or town of residence, without an Israeli-issued permit. Vehicles with Palestinian plates are forbidden to travel on almost all major roads in the West Bank; in some areas, all vehicular traffic is forbidden. According to maps prepared by the U.N.'s Office for the Coordinator of Humanitarian Affairs, more than 700 checkpoints, earth walls, or other movement barriers existed in the West Bank as of January 2004.³¹⁶

When asked further about steps to obtain witness testimony, Col. Ron said it would be possible to negotiate the location in which witnesses meet with Military Police officers: “If you give us an alternative, we will come. We will come to a place that Israelis can come to without putting the Military Police in danger.” A Palestinian neighborhood “without troubles” would be one such place, she said. Travel permissions could be organized, and, after checking with the intelligence service, she could guarantee that someone not wanted by the authorities would not be arrested. Witnesses, she said, could have another party present with them at the interview — although it was unclear whether this was a privilege or a right — and translators could be arranged.

None of the witnesses Human Rights Watch spoke to was aware of these possibilities. It is not clear whether the Military Police or DCO officials who actually perform the task of contacting witnesses are aware of them or explain them to potential witnesses. In several cases discussed earlier, the opposite occurred. When Human Rights Watch asked the prosecutor whether DCO officials know of these arrangements, she said, “I think the people in the DCO know our policy — I do not know if all the DCOs really do the job. Sometimes it is probably impossible and it depends on relations between people.”³¹⁷

Israeli military officials have repeatedly commented to Human Rights Watch that the success or failure of investigations largely depends on personal relations between the IDF and nongovernmental groups, and that to procure witness testimony successfully depends primarily on whether human rights groups will help them. Yet despite repeated criticism over more than two decades, the IDF appears to have taken few if any steps to improve its capacity to liaise with Palestinian complainants and witnesses. This failure appears to be a function of political will. When Human Rights Watch asked Col. Ron what policy steps the IDF had taken since the 1982 Karp Commission Report to encourage the gathering of Palestinian testimony, Col. Ron replied: “I do not know what

³¹⁶ U.N. Office of the Coordinator of Humanitarian Affairs, “West Bank Closures,” January 2004 (map). Available at http://www.reliefweb.int/hic-opt/maps/Closure/JAN/wb_closure0104_600dpi1.pdf (accessed April 4, 2004).

³¹⁷ *Ibid.*

to say. There are changes from time to time and it depends on the intifada, Oslo... it depends.”³¹⁸

There are many practical steps Israeli officials can take to improve the likelihood of obtaining victim testimony in investigations. The first and most obvious is to create an independent organization to receive and investigate victim complaints to help overcome witness fear of the IDF. Even without this, they can ensure that all complainants and prospective witnesses are clearly informed about the testimony arrangements mentioned by Col. Ron, thereby encouraging witnesses to come forward, and enabling the IDF to demonstrate these protections are truly available. They can ensure that these are passed in Arabic to Palestinian DCO officials and human rights groups. They can publicize their procedures, protection guarantees, and legal explanations on the internet and in the Palestinian media. They can recruit staff with the language skills and training to specialize in victim and witness liaison, set up a direct hotline to report incidents or provide information to potential complainants and witnesses. All of these steps are simple and achievable.

Lack of Transparency and Victim Involvement

There is strong international consensus that if investigations are to promote accountability, they must be open to the victims, victim representatives, and their families. Victims and victim representatives are entitled to participate in investigative proceedings, be made aware of the evidence, and have full access to the results. Yet the families of Husni Amer, Nuha al-Muqadama, Nahla `Aqil, and many other victims have no idea what has happened to Israel’s public promises of investigation. The families of James Miller, Shadin Abu Hijla, and Ahmad al-Quraini have yet to see any result. Without access to investigative proceedings and results, the victims of human rights violations and their families can never learn what happened, and can never be sure they have been told the truth. Without transparency and disclosure, investigation procedures inevitably seem partial, conducted in bad faith, or intended to cover up possible crimes. Likewise, if the public (including public officials) is to have confidence in the accountability of state agents, investigation findings must be made public. It is only then that the findings can be discussed, challenged, and trusted.

The Israeli system fails this test spectacularly. One line “findings” of “operational investigations,” in which victims or witnesses have had no input, are released to the media. No effort is made to contact the families — except in the cases of high-profile foreign victims. Victims hear updates via rumor, sympathetic Israeli journalists, and

³¹⁸ Human Rights Watch interview, Col. Einat Ron, Tel Aviv, July 7, 2003.

human rights organizations. In theory, victims have the right to obtain the final file of Military Police investigations. Out of the thirty cases it researched, Human Rights Watch knows of only one in which the Military Police investigation file may have been given to the victim's family.³¹⁹ Regulations appear to be secret, as are often the minutes of the military courts. Information on indictments and sentencing has been available only on request. The lack of public knowledge severely undermines the deterrent effect of disciplinary or judicial action. It compromises the credibility of the Israeli army and government. It denies justice to the victims.

The case of Ibrahim Abu Turki highlights the absurdity of current practice. Abu Turki's shooting is one of the sixteen cases since September 2000 in which the IDF has investigated and indicted the perpetrator. On October 13, 2000, an IDF officer at the settlement of Beit Haggai ordered a soldier to shoot Abu Turki, who was riding a donkey from his village of Qalqas to a neighboring village.³²⁰ Although at the time the IDF had stated that a soldier had fired warning shots against a suspicious Palestinian,³²¹ it later indicted "Officer A. P." for illegal use of a weapon. The officer received a suspended sentence and was removed from his position.³²² When Human Rights Watch visited different members of the Abu Turki family in July 2003, not one of them was aware that the indictment had been issued and the perpetrator sentenced.³²³ The IDF's lack of contact with victims and their families not only undermines the principles of fairness, but also detracts from the effectiveness of those measures that they actually do take.

Hamid al-Qut

Hamid Jabr Ahmad al-Qut was shot on August 19, 2001. Fifty-eight years old, al-Qut had been making a two-hour trip to fetch drinking water when an IDF soldier stationed at a post between Tel and Burqin shot him in the left side. Another Palestinian civilian was killed in a second incident the same day. Four days later, B'Tselem informed the JAG's office of the al-Qut shooting and provided it with witness testimony. Four

³¹⁹ Ibid. Col. Ron told Human Rights Watch, "[i]f the families ask for findings, we will give them, not directly, but via the NGOs. We cannot give them directly because we do not have their address. But for Rachel Corrie and others, we give the full thing." She also said other interested parties might be given a summary of the file, depending on the group in question.

³²⁰ See, Human Rights Watch, *Center of the Storm, A Case Study of Human Rights Abuses in the Hebron District*, May 2001, pp. 56-57.

³²¹ The area IDF commander explained that a soldier "fired towards a Palestinian whose behaviour was perceived to be suspicious. The soldier that spotted the Palestinian intended to fire warning shots and mistakenly injured him." Louis Meixler, "Israelis Shoot Palestinian Farmer," Associated Press, October 14, 2000.

³²² Akiva Eldar, "The IDF's Standards of Punishment," *Ha'aretz*, January 6, 2004.

³²³ Human Rights Watch interviews, Fadil Abu Turki, Ibrahim Muhammad Khalid Abu Turki Qalqas, and Isma'il Ibrahim Muhammad Abu Turki, Hebron and Qalqas, July 3, 2003.

months later, the Palestinian DCO informed the family that the IDF wanted to interview al-Qut, his son, and two other witnesses. They eventually went to the DCO three times because the appointment was twice postponed. Ibrahim al-Qut, the victim's son, traveled to the Israeli city of Lod to take a polygraph test in December 2002, facilitated by B'Tselem after Ibrahim had made several fruitless attempts to obtain travel permission from the Israeli authorities for the journey.³²⁴

Hamid al-Qut himself testified at the April 2003 court-martial of Lt. Y.K., who was indicted for illegal use of a weapon after he fired a machine-gun at a group of civilians some 500 yards away. Human Rights Watch interviewed the al-Qut family three months later, on July 9, 2003. Hamid al-Qut told Human Rights Watch, "[t]here were no results. They took my affidavit and that is all. No one has told me what happened. We checked again today and there is still no news."³²⁵ Ibrahim al-Qut was angry:

There are still no results, as far as we are concerned. I paid. I had to lose time at work and paid to go to the investigators and paid to go to get the license at the DCO at `Awarta, and it's all for nothing. The Lid people demanded my number and address and said they would call me to tell [me] the results and compensate me for my time and costs, and they did not even call me back. Their information is public relations.³²⁶

In January 2004, an Israeli journalist reported that Lt. Y.K. had been found guilty of illegal use of a weapon and given a suspended sentence of an unknown duration.³²⁷ No notification had been given to the family.³²⁸

Journalists, Knesset members, and human rights groups have all repeatedly criticized the current state of affairs, and the IDF has taken some steps to release more statistical information to the public. This is positive, but not enough. For justice to be done, it must also be seen to be done. Public accountability is the best defense against indifference, incompetence, and collusion. Without this, Israel's system will not be credible.

³²⁴ Human Rights Watch interview, Ibrahim Hamid Jabr al-Qut, Ma'adamah, July 3, 2003.

³²⁵ Human Rights Watch interview, Hamid Jabr Ahmad al-Qut, Ma'adama, July 9, 2003.

³²⁶ Human Rights Watch interview, Ibrahim Hamid Jabr al-Qut, July 3, 2003.

³²⁷ Akiva Eldar, "The IDF's Standards of Punishment," *Ha'aretz*, January 1, 2004.

³²⁸ Human Rights Watch telephone interview with son of Hamad Jabr al-Qut, June 4, 2004.



Hamid al-Qut was shot and wounded along with other civilians by IDF machine-gun fire while he was fetching drinking water on August 19, 2001. Al-Qut testified at the court martial of a lieutenant for the shooting. The officer was reportedly convicted of illegal use of a weapon and given a suspended sentence. The soldier implicated was reportedly convicted of illegal use of a weapon and given a suspended sentence. © 2002 Miranda Sissons/Human Rights Watch

Lack of Compensation

Israel has avoided as much as possible paying compensation to civilian victims of IDF wrongdoing. Article 5 of the Torts Law (State Liability) 5712-1952, titled “Warfare Operation,” declares that the state will not be liable for damage caused during war-related operations of the IDF. In mid-2002, the Israeli Parliament amended this law, greatly expanding the scope of acts for which compensation would not be paid by extending the definition of “wartime action” to include “any action of combating terror, hostile actions, or insurrection, and also an action as stated that is intended to prevent

terror and hostile acts and insurrection committed in circumstances of danger to life or limb.”³²⁹

The amendment includes a complex procedure that allows Palestinians to ask for compensation in an Israeli court in only limited circumstances. Within sixty days of the date of the incident, the injured person must file a written notice of intent to make a claim and then must file a civil suit within two years from the date of the incident. The provisions of section 38 and 41 of the Torts Ordinance [New Version], which offer lower evidentiary standards for some injury claims, cannot be applied. If it is proven to the court that the State of Israel is denied a fair opportunity to defend the claim because the Palestinian Authority has failed to comply with the legal assistance provisions set out in the Oslo Accords, it may deny the claim.

In addition, a new draft amendment has been pending since 2002 that almost completely abolishes any possibility of compensation for injuries inflicted intentionally or negligently during the second intifada. Amendment Number Five to the Civil Wrongs (Liability of State) Regulations has already passed its first reading in the Knesset and is now before the Knesset’s Constitution, Law, and Justice Committee. Once approved by the Committee, it will be brought for second and third readings in the Knesset, at which point it becomes law. According to the proposed amendment, “a national of an enemy state or a resident of a conflict zone” will be denied the right to bring claims for the compensation against the state in Israeli court for harm allegedly inflicted by Israeli forces.

These measures violate Israel’s commitments under international human rights law to provide an effective remedy to victims of human rights abuses. They are also spectacularly poor public relations, and cause additional resentment even in those cases in which the Israeli authorities have admitted responsibility for error or wrongdoing. In contrast, although the U.S. Foreign Claims Act has a combat-related exclusion, the U.S. has interpreted the exclusion more narrowly and paid compensation claims or arranged third-party payment of claims during operations in Vietnam, Grenada, and Iraq.³³⁰ In Iraq, commanders may give “gratuitous payments” of up to \$2,500 without any ruling or admission of responsibility. Claims of up to \$15,000 can be decided at the divisional

³²⁹ A translation of the law by B’Tselem can be found at http://www.btselem.org/Download/2002_Comp_Draft_Law_Eng.doc.

³³⁰ “The combat-related claims exclusion often directly interferes with the principal goal of low intensity conflict/foreign internal defense - obtaining and maintaining the support of the local populace.” See, Berger, Grims, and Jensen (Editors), *Operational Law Handbook*, International and Operational Law Department, Judge Advocate General’s Legal Center and School, Charlottesville, Virginia, 2004, pp. 13-9 to 13-10.

level, with claims up to \$50,000 being reviewed by a three-person claims commission. Between May 1 and September 18, 2003, the coalition Foreign Claims Commissions had adjudicated 4,148 claims, 1,874 of which were denied, and paid in total \$901,545.³³¹

In practice, Israeli officials have offered foreign victims of IDF deadly force payments as “humanitarian gestures” or as part of confidentiality agreements. In several Palestinian cases, individuals that the IDF informally admitted responsibility for injuring were quietly offered access to medical treatment in Israel. This practice, while commendable, falls short of Israel’s obligations. Not one of the families of Palestinian victims interviewed by Human Rights Watch had received any compensation.

³³¹ Human Rights Watch, *Hearts and Minds: Post War Civilian Deaths in Baghdad Caused by U.S. Forces*, Vol. 15 No. 9 (E), October 2003, pp. 47-49.

Appendix A: Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions³³²

Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989*

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.

Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extralegal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

³³² Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65, May 24, 1989. Available at <http://www.unhcr.ch/html/menu3/b/54.htm>, (accessed 9 June, 2005).

* In resolution 1989/65, paragraph 1, the Economic and Social Council recommended that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions should be taken into account and respected by Governments within the framework of their national legislation and practices.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices.

Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

Investigation

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of

all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect. over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

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