

Table of Contents

Acknowledgments	i
Introduction	1
A. Legal Standards.....	8
B. Other Factors Contributing to the Killings	16
C. Summary of Conclusions	22
D. Recommendations.....	25
 Chapter One	
The Rules of Engagement.....	29
A. General Operation of the Rules.....	30
B. In Life-Threatening Situations	32
C. The Procedures for Apprehending Suspects.....	34
1. Shooting Persons Wearing Masks.....	36
2. Examples of Killings While	
Apprehending Suspects.....	39
D. Plastic Bullets	44
 Chapter Two	
Official Investigations.....	57
A. Introduction.....	57
B. The IDF's Mechanisms for Investigating	
Killings.....	64
1. Debriefings and Operational Reports	65
2. Investigators Specially Appointed	
by Senior Commanders	71
3. Criminal Investigation Division (CID).....	72
4. After the CID Investigation:	
Action by the Prosecutor	75
5. Appealing Decisions Not to Prosecute	76
6. Courts-Martial and	
Disciplinary Trials	77

C. The CID Investigations:	
Seven Major Deficiencies	78
1. Inadequate Efforts to Obtain	
Palestinian Testimony	79
a. Procedures for Accepting	
Civilian Complaints	88
b. The Perception of	
Palestinians as Liars	91
2. Inadequate Cooperation with	
Nongovernmental Organizations	
and Other Intermediaries	93
a. UNRWA and Investigations	97
3. Slow Pace of Investigation	100
4. Understaffing at the Criminal	
Investigation Division	108
5. Inadequate Response to Requests for	
Information About Investigations	111
a. Autopsies	117
6. Failure to Seek Medical Evidence	
When Autopsies Are Not Possible	129
7. The Appearance of Partiality	137
a. Soldiers Reporting on	
Other Soldiers	143
b. Greater Independence for the	
Investigative Process	145
D. The Givati Trial	149
1. The Court-Martial	151
2. The Verdict	152

Chapter Three

Independent Human Rights Monitoring	161
A. Access to Events	164
1. Israelis and Foreigners	164
2. Palestinians	171
B. Extrajudicial Sanctions against	
Palestinian Monitors	173

C. Censorship.....	176
1. Israeli and Foreign Press.....	176
2. Palestinian Press.....	178
D. Members of Knesset	179
E. Soldiers as Monitors.....	180
F. The Yehuda Meir Case.....	180
 Appendix I: Cases.....	 187
Appendix II: IDF Response, Middle East Watch	
Rebuttal, and Further IDF Response	213

INTRODUCTION

This report examines three aspects of Israeli policy that have contributed to the excessive number of Palestinians killed during the intifada. These policies are reflected in the rules issued to Israeli troops operating in the occupied West Bank and Gaza Strip on when they can open fire, which Middle East Watch finds to be unduly permissive; the procedures followed by the Israel Defense Force (IDF) to investigate and punish troop misconduct against Palestinians, which Middle East Watch finds to be ineffective; and the restrictions imposed by the IDF on independent bodies attempting to monitor its conduct in the occupied territories, which Middle East Watch finds to be unjustified. Middle East Watch urges immediate modification of these policies to reduce the number of Palestinians killed unjustifiably at the hands of Israeli troops and to ensure that Israeli use of lethal force in the occupied territories is made consistent with internationally recognized standards of necessity and proportionality.

During the first 31 months of the intifada, Israeli security forces¹ killed over 670 Palestinians and injured many thousands more.² Israeli

¹ We use the term "security forces" to include all Israeli state agents: IDF troops; the Border Police, which is institutionally part of Israel's Police Ministry but operates in the occupied territories under the direction of the IDF; and the General Security Service (Shin Bet). Although a statistical breakdown is not available, the vast majority of killings by security forces in the territories have been inflicted by the IDF.

² Unless otherwise noted, the statistics used in this report are those reported by the human rights organization B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories.

authorities lay the blame for these casualties on the Palestinians, arguing that their violent resistance to Israeli troops has necessitated a forceful response to restore and maintain order. Officials claim that, with few exceptions, soldiers have responded to constant dangers and provocations with great restraint and with no more force than appropriate.

Our investigation found that, to the contrary, Israeli policies all too often encouraged a lack of restraint by IDF troops. This conclusion was reached after extensive interviews with witnesses to the use of lethal force by Israeli troops; Palestinian and Israeli lawyers who have represented the families of those killed by the IDF; representatives of Palestinian, Israeli and other human rights organizations; five IDF reserve soldiers and officers; and several senior IDF representatives.³

With regard to the number of Palestinians killed by the gunfire of security forces during the intifada, there is not much disparity between official and independent figures. There are wider discrepancies between official and independent tallies of casualties due to causes other than bullets, such as beatings and tear gas. The IDF acknowledges responsibility for very few non-shooting deaths, while B'Tselem counts 34 inflicted by security forces through June 30, 1990. In addition, B'Tselem has counted more than 80 Palestinians who died shortly after exposure to tear gas, although it acknowledges that, from a medical standpoint, it is difficult to determine whether tear gas was the direct cause of death. (B'Tselem press release, July 1, 1990.) The IDF claims that no causal link has been demonstrated between the use of tear gas and a single Palestinian death. (Paul Adams, "Children in the Front Line," *Middle East International*, May 25, 1990.)

³ The IDF representatives interviewed by Middle East Watch included the Chief Military Prosecutor, the Deputy Judge Advocate-General, the commander of the Criminal Investigation Division (CID), the head of the IDF's International Law Section, and others.

The IDF requested as a condition of the interview that the name of the commander of the CID, a colonel, not be published; consequently, he is referred to in text only by his title. The reserve officers interviewed asked to be quoted

The most glaring exceptions to this stated policy of restraint can be seen in aspects of the open-fire orders issued to IDF troops, the so-called rules of engagement. These rules explicitly authorize soldiers to use lethal force in response to certain situations that are not life-threatening to soldiers or bystanders. They include orders authorizing relatively liberal use of lethal force to stop fleeing Palestinians suspected of crimes that do not involve threats to life; orders authorizing the use of lethal force to shoot masked Palestinians who try to escape arrest, without regard to whether they are engaged in violent, let alone life-threatening, activities; and orders authorizing the use of plastic bullets, which are supposedly non-lethal if used according to procedures outlined in the rules of engagement but in fact have resulted in well over 100 deaths during the intifada, in situations far short of threats to life. These permissive rules are the direct cause of many of the IDF killings of Palestinians during the intifada.

A second factor contributing to excessive killings is the system used by the IDF to investigate and punish soldiers who violate the rules of engagement. This report focuses for the most part on investigations into fatal incidents, for two principal reasons. First, the arbitrary deprivation of life is a paramount human rights concern and deserves heightened scrutiny. Second, because the IDF has undertaken as a matter of policy to launch a formal investigation into every Palestinian death in which IDF involvement is suspected – the IDF investigates nonfatal incidents only under certain circumstances, described in Chapter Two – an examination of killing cases allows Middle East Watch to evaluate how well the IDF polices itself when it claims to be at its best.

To ensure that standards of conduct are adhered to, soldiers must believe there is a substantial risk that they will be discovered and punished if they violate those standards. For this to be the case, investigators must collect evidence thoroughly and impartially,

anonymously; they are referred to by number and by the date of their interview.

prosecutors must act on that evidence by filing appropriate charges, a court-martial or disciplinary hearing must weigh the evidence fairly, and a proper sentence must be meted out to those found guilty. This is not the reality for soldiers who operate in the West Bank and the Gaza Strip.

Of the approximately 450 killings by security forces through the end of June 1989 -- a date chosen to allow the IDF over one year to have completed an investigation and brought a case to trial -- there were no more than 16 cases in which soldiers were court-martialed for causing death (never on charges more serious than manslaughter or negligent homicide), and no more than ten cases in which soldiers were convicted, although a few trials are continuing. (In a small number of other death cases, soldiers were indicted for illegal use of a weapon or for violating standing orders, but no proof was introduced that the violation resulted in a casualty.) The punishments handed to those convicted ranged from an official reprimand to, in some six cases, prison sentences of between two months and two years.⁴

In the case of the more than 400 other IDF killings, either no legal decision has been issued despite the passage of at least one year, or the military prosecutor decided against a court-martial, presumably because the official investigation failed to turn up sufficient evidence of soldier misconduct.⁵

⁴ There have also been a few border policemen tried in death cases during the intifada, although the exact number is not available.

⁵ In an undisclosed number of these cases, however, soldiers were subjected to a milder disciplinary procedure: a hearing before an officer who is empowered to impose sanctions such as demotions, reprimands and terms of detention of no more than 35 days. The IDF Judge Advocate-General, Brig. Gen. Amnon Strashnow, said on October 18, 1989 that between 500 and 600 soldiers have faced disciplinary hearings since the beginning of the intifada (*Jerusalem Post*, October 19, 1989), but many of these did not involve killings. The IDF told Middle East Watch on March 1, 1990 that it did not have a breakdown by type of offense for these hearings.

These statistics, while not definitive, indicate that no more than one in 20 killings that occurred at least one year ago led to a court-martial, while less than one in 60 resulted in a prison sentence for a soldier. No case resulted in a prison sentence commensurate with what would ordinarily be considered appropriate for the willful commission of a serious crime of violence.

Middle East Watch believes that the few courts-martial to date represent only a small portion of fatal incidents in which there is *prima facie* evidence -- credible eyewitness testimony in particular, but also medical evidence in some cases -- that soldiers exceeded their open-fire orders. Part of the reason, we found, is that investigations into killings by IDF troops lack the vigor and resourcefulness needed to bring to justice those responsible for unjustified killings. IDF investigators regularly fail to seek the testimony of Palestinian witnesses, neglect to obtain medical records that will shed light on the circumstances of killings, and ignore offers of intermediaries to provide pertinent evidence. In addition, investigations into likely violations routinely drag on for months at a time, reducing the likelihood of a successful prosecution and reinforcing a lack of faith in the Israeli military justice system.

This failure to vigorously investigate and prosecute sends a signal to soldiers that they have leeway to exceed their open-fire orders. Although in interviews soldiers indicated that the few courts-martial which have taken place have impressed upon them that there is some risk of being interrogated and punished for deviating from their orders, this sense of accountability must be reinforced by more systematic investigations and prosecutions if unjustified killings are to be curtailed.

One potential source of outside pressure for more thorough and expeditious investigations are the independent observers -- human rights workers, lawyers, journalists and certain members of the Knesset -- who monitor IDF conduct in the occupied territories. One vivid example of this external pressure occurred in February 1988, when a CBS News crew outside Nablus used a telephoto lens to film four soldiers holding down

two Palestinians and systematically pounding their arms with rocks. This film caused an uproar when it aired abroad and, in a censored version, in Israel. It prompted Gen. Amram Mitzna, commander of the Central Command, to investigate the incident personally and to order the arrest of the four soldiers and the suspension of an officer.⁶

This case is illustrative of a pattern found by Middle East Watch: many of the incidents of excessive force that have led to prosecution were those that were noticed by monitors outside the IDF. Often, these monitors produced relevant witnesses or crucial evidence. In other cases, their inquiries and pressure appear to have prodded the military's legal system to pursue a case more vigorously. If allowed to operate more freely, these independent monitors could increase the pressure for more aggressive official investigations.

Although as a rule Israel permits independent observers to function, it frequently prevents their access to areas of confrontation between Palestinians and Israeli troops, at the very moment when their presence would be most powerful as a restraining force. This practice also impedes quick, independent access to those who have witnessed a confrontation and might provide useful testimony. The obstacles are greatest for Palestinian journalists and human rights monitors, many of whom have been placed under broad travel restrictions or detained without charge or trial.

In the view of Middle East Watch, these policies -- the permissive rules of engagement, the deficiencies in the investigative process, and the obstacles placed in the way of independent monitors -- reflect a lack of political will on the part of Israeli authorities to establish a meaningful system of accountability for unjustified killings of Palestinians. We are

⁶ Two soldiers were sentenced to 10 and 21 days in jail for their role in the beatings, and the other two received suspended sentences and demotions for "shameful conduct." Their officer, a lieutenant, received a suspended sentence for "improper conduct."

convinced that most of the failures and deficiencies described in this report could be readily overcome if senior military and civilian officials were determined to stop unjustified killings. For example, Israeli authorities could quickly reduce the number of killings by dismissing senior military officials who fail to curb such killings by troops under their command. The failure to establish lawful rules of engagement and an effective system of accountability thus must be taken to reflect a policy decision that the high number of Palestinians killed is an acceptable cost for asserting Israeli control in the occupied territories.

This lack of will to end unjustified killing of Palestinians reflects a basic contradiction in Israeli policy. On the one hand, the IDF deploys troops in the occupied territories as if they are engaged in combat. They use rifles and bullets instead of equipment more appropriate to crowd control, such as plastic shields, tear gas and water hoses. On the other hand, the IDF maintains that it has established rules of engagement and a system of accountability that would be appropriate for law enforcement in the context of civil strife. This legal regime has broken down because the senior officials whose direction is needed to make it work persist in giving their troops the leeway that would be appropriate in time of war. That is, these officials speak the language of law enforcement, but their actions, taken cumulatively, more closely resemble what one would expect if they were facing enemy combatants.

In confronting the intifada, the Israeli government is clearly concerned with public opinion, particularly international opinion but also opinion within Israel. For a variety of reasons, it is important to the government that these audiences perceive the conduct of Israeli troops as lawful. But it is incumbent on Israeli authorities to show that the rules of engagement and the system of accountability said to enforce those rules serve more than a public relations purpose, that they genuinely apply and enforce international standards on the use of lethal force. Israel will fail in this effort so long as its system of accountability continues in all but the rarest cases to deliver impunity.

A. Legal Standards

Middle East Watch begins with the premise that Israeli actions during the intifada should be analyzed as a problem of crowd or riot control, rather than as one of war-like conflict between combatants. As noted, this is a premise shared at least officially by Israeli authorities. For example, IDF spokesman Nachman Shai has stated, "For Israel to eliminate the uprising by involving the kind of massive brute force that the army exercises on the battlefield in a full-scale war would fly in the face of the country's essence as a Jewish state and as a democracy abiding by the rule of law."⁷ Israel says that it regards participants in non-life-threatening violence not as combatants who can be targeted for attack, but as law-breakers who should be apprehended and punished instead of shot.⁸ According to the rules of engagement, soldiers are permitted to open fire only in a discrete set of circumstances and only when certain conditions are met. When soldiers are suspected of killing an intifada participant, they are investigated rather than decorated, as they might be if they had killed a combatant in war; and, it is claimed, "wherever it appears that an actual offense has been committed, steps

⁷ Nachman Shai, "Palestinian Intifada Poses Double Bind for Israel's Citizen Army," *Boston Globe*, March 5, 1990.

⁸ When Israeli authorities have referred to the intifada as a war, they have tended to use the term metaphorically rather than in the sense of two armed camps that attack one another militarily. They have called the intifada a war for public opinion, a war to subvert Israeli morale, or the latest phase in the 50-year war between Arab and Jew.

Using an ambiguous phrase that many Israelis would likely accept, Lt. Arik Gordin of the IDF spokesman's office called the intifada "a war and not-a-war." (Interview in Tel Aviv with Middle East Watch, June 8, 1989.) Even Prime Minister Shamir's dramatic pronouncements on the subject do not suggest that the intifada poses a *military* threat to Israel.

are taken against the soldier in question."⁹

The imbalance in weaponry underscores the propriety of treating the intifada as a civil revolt rather than a war. While each soldier carries a loaded M-16 or Galil assault rifle, Palestinians involved in the intifada have, with few exceptions, shunned the use of guns against soldiers. According to IDF figures, only five percent of violent activity by Palestinians during the intifada involves the use of clearly lethal weapons: guns, knives and gasoline bombs. Eighty-five percent is stone-throwing, 60 percent of which is carried out by children 13 years of age or younger.¹⁰ (Stone-throwing ranges in severity from the tossing of pebbles at far-away soldiers to the hurling of small boulders from rooftops or at the windshields of moving cars.) The remaining ten percent, while not specified, presumably includes such weapons as slingshots and iron bars, which in their potential for inflicting injury lie between most stone-throwing and weaponry that is clearly lethal.

The casualties that flow from the conflict are as lopsided as the arsenals used. While security forces have killed over 670 Palestinians -- the vast majority of them unarmed -- Palestinians have killed a total of 11 soldiers: five by gunfire, two by stones or blocks being dropped on their heads, two by gasoline bombs, and two by stabbing.

In confronting a civil conflict short of war, Israel must abide by internationally recognized standards governing situations of occupation. Israel as the occupying power has the duty under such standards to take appropriate steps to "restore, and ensure, as far as possible, public order and safety."¹¹ But that duty coexists with an obligation to treat the

⁹ Statement issued by the Embassy of Israel, Washington, DC, June 1990.

¹⁰ Joel Brinkley, "Israeli Sees Failure to Halt Uprising as It Nears 3d Year," *New York Times*, December 5, 1989.

¹¹ Article 43 of the Hague Regulations of 1907. The Hague Regulations are

population under occupation humanely. Article 27 of the Fourth Geneva Convention of 1949, which sets forth the duties of an occupying power, requires that "protected persons...shall at all times be humanely treated, and shall be protected especially against all acts of violence...."¹²

In addition, the Fourth Geneva Convention establishes a

recognized to be customary international law, and Israel accepts their applicability to the occupied territories. See Adam Roberts, "Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967," *American Journal of International Law*, January 1990.

¹² **Israel has ratified the Fourth Geneva Convention but maintains that it is not applicable to the territories it occupied in 1967. It has nevertheless stated consistently that it will comply on a de facto basis with the "humanitarian provisions" of the Convention, without ever specifying which provisions it regards as humanitarian.**

Israel's objection to the applicability of the Convention relates to the pre-1967 status of the West Bank and Gaza Strip. Article 2 of the Convention states that the Convention shall apply to "all cases of partial or total occupation of the territory of a High Contracting Party..." Israel contends that the land it seized in 1967 does not meet this criterion, since it views the West Bank as having been administered by Jordan and the Gaza Strip by Egypt as a result of illegal occupations. To recognize the applicability of the Geneva Conventions, Israel contends, might appear to accord Jordan and Egypt the status of an ousted sovereign with reversionary rights.

Virtually the entire international community, including the United States, as well as the International Committee of the Red Cross, which is regarded as the guardian of the Geneva Conventions, maintains that the Fourth Geneva Convention does apply to Israeli rule in the occupied territories. Among the principal arguments in favor of applicability are the strong precedents for viewing the laws of war, including the laws on occupation, as embodying important humanitarian principles that should apply even in cases that differ in some respects from the situations contemplated in the Hague Regulations and the Geneva Conventions. See Roberts, 64-66.

mechanism to enforce the duty of humane treatment by requiring that an occupying power investigate and punish those responsible for serious violations of this duty. Article 146 of the Convention requires the occupying power to investigate and prosecute "grave breaches" of the Convention. It obliges an occupying power to "search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and...[to] bring such persons, regardless of their nationality, before its own courts." Article 147 provides that "willful killing" and "willfully causing great suffering or serious injury to body or health [of protected persons]" constitute "grave breaches" of the Convention.

While the Fourth Geneva Convention's requirement of humane treatment and protection against violence establishes an important safeguard for a population under occupation, it provides only the broadest standard for assessing the conduct of soldiers who encounter the demonstrations and rock-throwing that have come to characterize the intifada. Middle East Watch thus has looked to other sources of law to clarify the meaning of the duty of humane treatment in the context of the occupied territories. The most directly pertinent sources of codified law are the international standards governing the behavior of law enforcement agents in situations of riot or crowd control. That Israel relies primarily on its army to police the occupied territories does not make law enforcement standards any less relevant, since the task of maintaining order in the occupied territories is essentially one of police work.

The leading codification of international standards on such police practices is the 1979 United Nations Code of Conduct for Law Enforcement Officials. Article 3 provides: "Law enforcement officials may use force only when strictly necessary to the extent required for the performance of their duty." The official commentary to the Code elaborates: "The use of firearms is considered an extreme measure....In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender." In applying these standards to the situation of the

intifada, Middle East Watch has drawn on two outstanding principles: first, that the use of lethal force be proportional to the harm faced, i.e., that it be reserved for situations in which lives are endangered; and, second, that it be necessary to meet that threat to life, i.e., that no lesser means is adequate. When in this report we refer to unjustified killings, we mean killings in violation of either or both of these principles.

As a formal matter, Israeli authorities state that the Code is not legally binding, and that it is not intended to apply in situations of military occupation. While the Code in fact is not a treaty binding on Israel, its standards, as noted, are the most pertinent for understanding, in the context of the intifada, the requirements of the duty of humane treatment contained in the Fourth Geneva Convention, which do apply to the occupied territories and by which Israel is bound. Moreover, Middle East Watch is of the view that the principles of necessity and proportionality reflected in the Code have assumed the character of customary international law. Customary international law is binding on all nations regardless of formal treaty commitments. As Amnesty International has pointed out:

the Code embodies the internationally recognized principles of necessity and proportionality in the use of force, which are intended to safeguard international legal rights, foremost among which is the right to life and the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. Such rights must be protected under all circumstances.¹³

Despite their formal protestations, Israeli authorities as a practical matter have repeatedly affirmed that the behavior of IDF troops in the occupied territories is governed by the standards of necessity and proportionality. Responding to U.S. criticism that soldiers frequently opened fire in non-life-threatening situations, "causing many avoidable

¹³ Amnesty International, "Killings by Israeli Forces," January 1990.

deaths and injuries,"¹⁴ the Foreign Ministry stated:

The principles of restraint and gradual response are applied...Live bullets are fired only as a last resort, in life-threatening situations; according to the exigencies, rubber or plastic bullets may be used first...

A soldier who is suspected of improper or excessive use of force is subject to military trial and punishment. While some excesses have occurred, these have been unacceptable departures from policy, and have been dealt with accordingly.¹⁵

In another explanation of IDF conduct in the territories, the Foreign Ministry said in January 1990:

(S)pecial efforts have been undertaken to make clear to Israeli security personnel that, however great the provocation, their behavior must conform to strict regulations and standards, and that restraint must be exercised.

According to regulations, force may be used to stop violent activity and to overcome resistance to arrest. Force is prohibited as a form of punishment or to deliberately inflict injuries; similarly, the use of force is forbidden against a person who, after having been arrested, shows no resistance or makes no attempt to escape.¹⁶

¹⁴ **U.S. State Department, *Country Reports on Human Rights Practices for 1988*, p. 1377.**

¹⁵ **Statement reprinted in the *Jerusalem Post*, February 9, 1989.**

¹⁶ **"Israel's Measures in the Territories and Human Rights," Consulate General of Israel in New York, January 1990.**

It is worth noting, moreover, that within Israel, the law on when a killing is justified corresponds with the international standards of necessity and proportionality. Under the Israeli Penal Code, a court may absolve a person of criminal responsibility "if he can show that [he acted] in order to avoid consequences which could not otherwise be avoided and which would have inflicted grievous harm or injury on his person...or on the person...of others whom he was bound to protect...and that the harm caused by him was not disproportionate to the harm avoided."

In assessing IDF conduct with respect to the killing of Palestinians, Middle East Watch thus has applied standards that are broadly recognized as applicable to situations of internal strife like the intifada. In so doing, Middle East Watch seeks to hold Israel to the same internationally recognized standards that it and its sister Watch Committees of Human Rights Watch have applied to countries worldwide.

In undertaking this examination, Middle East Watch takes no position on Palestinian self-determination or the legality of Israel's occupation of the West Bank and Gaza Strip. These issues lie beyond our mandate.

B. Other Factors Contributing to the Killings

Middle East Watch notes that the three issues examined at length in this report -- the permissiveness of the rules of engagement, the inadequacy of IDF investigations, and the unjustified restrictions on independent monitoring -- are not the only factors contributing to the high number of Palestinians killed by the IDF during the intifada. Although this report does not explore these other factors in depth, we feel compelled to note three further IDF policies that contribute to the level of excessive

killings: IDF tactics in aggressively suppressing Palestinian demonstrations and other acts of defiance; IDF policies on troop deployment and equipment; and the lack of sufficient training of IDF troops in how to handle intifada confrontations without resort to lethal force. We explore these other factors briefly here before turning to the three aspects of IDF policy that are the principal subject of this report.

Perhaps the most important factor behind the high level of killings by IDF troops is what some observers have termed the IDF's "offensive" posture. In general, the IDF has sought to project an image of undisputed control over the territories by suppressing demonstrations and other "illegal" activities, such as the flying of Palestinian flags and the writing of political graffiti -- whether or not these acts pose an imminent security threat. According to the emergency regulations that have been in effect since the occupation began in 1967, political assemblies and demonstrations are forbidden unless authorized by the military government. Permission is rarely sought and, when sought, rarely granted. Consequently, most demonstrations are deemed illegal. While Israeli authorities may offer security reasons for blocking and suppressing demonstrations, this policy has contributed to the types of confrontations in which Palestinians are killed.

Bernard Mills, the former director of UNRWA operations in Gaza, has made a similar point about the IDF response to funerals for those killed by Israeli troops: "Funerals are emotive events and the presence of Israeli soldiers near the processional route or at the grave side will always lead to further demonstrations and often, loss of life."¹⁷

The human rights organization B'Tselem made much the same point after ten Gazans were killed and many hundreds were wounded in

¹⁷ Bernard Mills, "Minor Scuffles That End with Fatal Consequences," the *Independent* (London), April 27, 1989.

the three days following the massacre by an Israeli civilian of eight Palestinians in Rishon LeZion in May 1990. B'Tselem observed that "security forces did not show enough prudence to give residents sufficient opportunity to in any way express their pain and anger, acting instead to nip all signs of protest in the bud."¹⁸

Moshe Arens, who assumed the post of minister of defense in mid-June 1990, seems to understand this point quite well. According to press reports, Arens has encouraged soldiers to avoid confrontations with Palestinians inside towns and villages and to focus instead on securing the major roadways. June 1990 saw the lowest number of Palestinians killed -- eight -- of any month since the start of the intifada. The *New York Times* described how a new policy of restraint affected the outcome of a memorial procession in Gaza on the Muslim holiday of Eid al-Adha:

IS]everal thousand Palestinians marched from refugee districts to the graves of people killed in the uprising....They raised hundreds of Palestinian flags, chanted nationalist slogans and pelted military posts with stones. In a departure from their actions in previous years, Israeli soldiers sat back and watched, inflicting no casualties.

Last year Israeli troops shot and killed three Palestinian mourners during the holiday observance. Nearly 200 other Palestinians were wounded, and a few of them died later. The deaths and injuries had become a ritual almost as familiar to Gaza residents as the holiday observance.¹⁹

¹⁸ Press release, June 1, 1990.

¹⁹ Joel Brinkley, "Killings of Palestinians Dipped in June," *New York Times*, July 3, 1990. See also Brinkley, "No Troops (and No Stone-Throwing)," *New York Times*, July 13, 1990.

Since long before the recent change of defense ministers, the role that IDF tactics can play in reducing IDF killings was illustrated in Israeli-annexed Arab Jerusalem, which includes the city and some surrounding villages and refugee camps and is home to a population of 150,000 Palestinians, roughly one-tenth of the Palestinian population of the West Bank and Gaza Strip. Although Arab Jerusalem has seen its share of demonstrations, road-blocks, rock-throwing and even gasoline bombs, no more than ten Palestinians have been killed during the intifada by security forces in the city. This lower rate of killing can be attributed in significant part to a policy decision to employ a less aggressive strategy in confronting Palestinian demonstrators. As Israeli journalists Zeev Schiff and Ehud Yaari noted early in the uprising:

Strict orders forbidding the police [in Jerusalem] to open fire were reinforced. Commanders warned that if any man did use his weapon, he had better be prepared to prove that his life had been in real and present danger, and "not to his superior officer but to a judge." Even the use of .22-caliber bullets (designed to wound but not kill) was absolutely ruled out. Thus the contest in Jerusalem followed lines very different from the one in the territories. For months not a single person was killed in the capital despite severe rioting and even assaults on Jewish neighborhoods that sometimes caused extensive damage.²⁰

The role of IDF tactics in heightening the number of killings can also be seen by comparing the behavior of different battalions. Several reserve officers told Middle East Watch that some units are known to complete their tours of duty in the territories while resorting only rarely to firearms, a record that the reservists attribute less to variations in the sort of resistance encountered than to such factors as a commander's tactics in responding to common intifada situations such as roadblocks and the tasks he assigns to soldiers who are known to behave problematically.

²⁰ Zeev Schiff and Ehud Yaari, *Intifada: The Palestinian Uprising -- Israel's Third Front*, New York: Simon and Schuster, 1990, p. 112.

For example, one reserve sergeant (whom we have designated reserve sergeant #2) told Middle East Watch, "Most rock-throwing is just a cat-and-mouse game, and I choose to ignore it. My job is to keep the main roads open and that's what I do. In units whose soldiers chase after every rock-thrower, you're going to get more injuries, killings, and tension."²¹

According to another reserve sergeant (reserve sergeant #3), his commander instructed the unit not to fire live ammunition at stone-throwers or persons who were fleeing. While soldiers, of course, had leeway to violate this command when exceptional hazards arose, the presumption was clear: stone-throwers rarely present a life-threatening hazard.²² These more restrained tactics contrast with the more aggressive approach that has led to many IDF killings of Palestinians.

In addition to IDF tactics, IDF policies on troop deployment and equipment contribute to the high level of killings. Although troops find themselves numerically overwhelmed less frequently now than during the first months of the intifada, the IDF continues to send small, heavily armed units to do jobs that larger contingents of soldiers could probably carry out more safely. Similarly, in dealing with the civilian population of the territories, the IDF has preferred battlefield weapons to shields and other riot gear that, while putting soldiers on a more defensive footing, would also make them feel more secure and less likely to perceive the need to resort to lethal force.

By deploying small units, the IDF seeks to preserve as much manpower as possible for external defense, and sends a message that it will contain Palestinian defiance without a costly drain on its resources. In addition, there are logistical difficulties in deploying large forces, given that resistance activities are spread out over a large geographic

²¹ Interview in Jerusalem with Middle East Watch, June 14, 1989.

²² Interview in New York with Middle East Watch, July 17, 1989.

area and often erupt in unpredictable fashion. But whatever the benefits of using small units, their deployment increases the likelihood that soldiers will resort to lethal force.²³

Finally, the training of IDF troops to manage intifada confrontations without resort to firearms is plainly an important component of any effort to reduce the level of killing. IDF soldiers regularly find themselves in difficult, frightening and at times dangerous situations. Detached from central control, they patrol the narrow streets of cities, villages and refugee camps, making arrests, compelling Palestinians to remove roadblocks, flags and graffiti, enforcing curfews and tax collection, and suppressing demonstrations. The physical resistance that soldiers encounter ranges from small children tossing stones from a distance to an angry mob hurling large rocks, cinder blocks, sharpened metal objects and sometimes gasoline bombs from close range, or physically trying to prevent soldiers from making an arrest. A soldier trained in crowd or riot control will tend to be better equipped to handle such situations without firing his weapon.

In the early weeks of the intifada, Israeli officials conceded that some of the casualties at the hands of the IDF were due to a lack of preparedness in handling the massive and violent demonstrations that were taking place almost daily.²⁴ Unfortunately, this has remained a

²³ This point was made by Bernard Mills, the former director of operations for UNRWA in Gaza:

The Israeli army rarely, in my opinion, deploys a sufficient force to carry out an operation, whether it be to contain a demonstration, to search a village or to arrest suspects. They rely on the use of firearms to force entry into a village or to clear a street of demonstrators when any Western country dealing with stone-throwers would use force of numbers to achieve their aim. (Bernard Mills, "Minor Scuffles That End with Fatal Consequences," the *Independent* (London), April 27, 1989.)

²⁴ Although the eruption of the intifada found IDF troops lacking proper training and equipment for riot control, there is no reason they should have been so

serious problem. As the military correspondent for the *New York Times* wrote in 1989:

Notwithstanding the Israeli view that the troops are now better prepared for what they face in the occupied territories, relatively little training appears to have been done to prepare them for such duty.

What little there is does not address mob psychology and how to deal with it through nonviolent means. Most soldiers receive only a few lectures and briefings before going into the occupied territories. These include instructions on how to deal with the press and on when soldiers may use deadly force.²⁵

A reserve sergeant interviewed in August 1989 by Middle East Watch (reserve sergeant #4) expressed support for this view. He said that shootings in the territories often occur because "soldiers do not assess the danger correctly, especially when they're inexperienced."

C. Summary of Conclusions

IDF tactics, deployment and training thus form an important backdrop to the main subjects examined in this report. As for the

unprepared. Throughout the 1980s, Palestinians had been staging large demonstrations, building roadblocks and throwing stones at soldiers, although with less frequency and intensity than since December 1987. During these years, the IDF frequently responded with live ammunition rather than with standard riot-control techniques. From January 1986 until the outbreak of the intifada 23 months later, soldiers' gunfire killed 17 Palestinians in the West Bank, according to the Ramallah-based human rights organization al-Haq.

²⁵ **Bernard Trainor, "Israeli Troops Prove Newcomers to Riot Control," *New York Times*, February 19, 1989.**

principal areas of inquiry, Middle East Watch has reached the following conclusions:

Several Israeli policies and practices increase the number of killings of Palestinians by security forces in the West Bank and Gaza Strip. By failing to act decisively to change these policies and practices, Israel's government effectively condones the unjustified killing of Palestinians.

International standards apply the principles of necessity and proportionality to the use of lethal force in situations akin to the intifada. While Israel says that it adheres to these principles in confronting Palestinian unrest, the conduct of the IDF, taken cumulatively, more closely resembles what would be appropriate to a situation of combat, with the result that many Palestinians are killed outside of life-threatening situations.

- o A direct cause of unjustified killings are the rules of engagement, which permit the use of lethal force not only in life-threatening situations, but also:**
 - To apprehend a suspect who disobeys orders and warning shots to halt, even when that suspect is not suspected of posing an imminent mortal threat to others;**
 - To apprehend persons wearing masks, if they ignore orders and warning shots to halt, without regard to whether they are threatening the safety of others;**
 - To disperse disturbances by firing plastic bullets which, despite their proclaimed non-lethality, have killed 147 Palestinians, by the IDF's count.**

Since scores of Palestinians have been killed while fleeing, the rules on apprehending suspects amount to a "Wanted: Dead or Alive" policy. Both these rules and the rules on plastic bullets effectively allow

soldiers to inflict summary capital punishment on suspects who are not posing a threat to life.

o The lack of restraint in opening fire is further encouraged by the failure to investigate vigorously and to mete out appropriate punishments when soldiers exceed their orders. These investigations are marred by:

-- Inadequate efforts to obtain Palestinian testimony;

-- Inadequate cooperation with nongovernmental organizations and other intermediaries who are able to facilitate contact with witnesses;

-- Unreasonable delays before an investigation is completed and a legal decision reached, due in part to a lack of manpower and resources in the investigative division to keep pace with the huge increase in killing cases during the intifada;

-- The failure to respond in a timely and thorough fashion to outside requests for information about investigations.

These deficiencies could be readily corrected if the Israeli government demonstrated the will to hold soldiers fully accountable for misconduct toward the population of the occupied territories.

o The accountability that soldiers feel for their conduct is further undermined by the imposition of restrictions on independent observers in the occupied territories. While allowing monitors in principle to operate freely, the IDF impedes their work by:

-- Routinely declaring closed military zones, preventing human rights field-workers, journalists and others from witnessing and gathering information about alleged abuses.

-- Imposing administrative sanctions on many Palestinian human rights field-workers, lawyers and journalists, including detention, travel restrictions and town arrest. These sanctions, imposed without charge or trial, clearly hamper the ability of these monitors to bring pressure to bear on authorities to investigate and punish abuses.

D. Recommendations

- o Middle East Watch calls on the Israeli government to revise radically those rules of engagement that in practice have routinely caused death and serious injury in non-life-threatening situations. In particular, the rules on apprehending suspects and on firing plastic bullets should be brought into compliance with the principles of necessity and proportionality.**
- o The Israeli government must demonstrate the political will to bring to justice those soldiers who violate their orders. One important way to do so would be to transfer the investigation of suspected abuses by soldiers from the IDF to an independent investigative body capable of carrying out professional and impartial probes.**
- o The IDF must make clear to its personnel that the use of excessive force will not be tolerated, and that officers will be held accountable for abuse by their subordinates. Establishing such accountability for officers would help to overcome the difficulty of determining which soldiers committed particular abuses and would make the officers themselves take responsibility for preventing abuses.**

- o If the IDF is to conduct credible investigations of its own conduct, authorities should enhance the impartiality, thoroughness and promptness of the investigative process by correcting the major deficiencies of the current system:**
 - The investigative division must be given the resources it needs to give each case the attention required and to complete inquiries in a timely manner;**
 - Investigators must make greater efforts to seek Palestinian witnesses, welcoming offers of assistance from intermediaries in locating witnesses;**
 - Investigators must undertake greater efforts to obtain medical evidence;**
 - The IDF must strive to implement in reality its stated policy of openness with regard to investigative files, making their findings open to the scrutiny of interested parties.**
- o To heighten further the accountability that soldiers feel for their actions, a number of steps should be taken in the field. All troops patrolling in the territories should, like law-enforcement officers in many parts of the world, wear clearly legible badges giving either their names or a unique number, so that they can more easily be identified by eyewitnesses or civilians who wish to file complaints. IDF record-keeping of troop movements and actions should be of a uniformly high standard. Soldiers should be required to report every incident in which a shot is fired, stating the type of ammunition used and the reasons for the incident. Officers should keep careful records of the whereabouts of all personnel on patrol.**

- o Israel should allow greater freedom for independent human rights monitoring in the occupied territories. In particular, zones should not be closed off to the media and other observers except in the rare cases, approved by a senior commander, when there are compelling security reasons to do so. Military authorities must not interfere with the work of Palestinian human rights monitors, journalists and lawyers unless the authorities file specific charges of offenses that are recognizably criminal, and try the accused in open court.**
- o Finally, Middle East Watch urges the United States government to increase its monitoring of the use of excessive force in the occupied territories, not only by having its diplomatic staff in Jerusalem and Tel Aviv collect data about possible abuses by the military authorities, but also by following closely how the IDF investigates and disciplines personnel suspected of mistreating the Palestinian population. The State Department, in its report on Human Rights Practices for 1989, found:**

[Israel] soldiers frequently used gunfire in situations that did not present mortal danger to troops, causing many avoidable deaths and injuries....[R]egulations were not rigorously enforced; punishments were usually lenient; and there were many cases of unjustified killing which did not result in disciplinary actions or prosecutions.

In addition to making such a statement once a year in its annual human rights report, the U.S. government should be voicing regular public disapproval of these serious human rights abuses as they continue to occur, and urge Israel to take steps immediately to curtail the unjustifiable killings by its troops in the occupied territories.

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The conclusions of this report are the responsibility of Middle East Watch alone.

CHAPTER ONE

THE RULES OF ENGAGEMENT

This chapter examines the rules of engagement governing use of the two types of ammunition responsible for the vast majority of killings by security forces: metal (standard) bullets and plastic bullets. It focuses on two aspects of those rules that have led to large numbers of killings in non-life-threatening situations: the procedures for apprehending suspects and the procedures for using plastic bullets against participants in violent disturbances. Despite the number of unjustified killings they have brought about, the IDF has failed to revise these open-fire orders. As noted in the Introduction, Middle East Watch assesses these rules, and the conduct of IDF troops in applying them, according to the dual principles of necessity and proportionality.

The IDF open-fire orders reflect these principles to some extent, by imposing conditions on when soldiers may open fire with rubber, plastic and metal bullets. But the orders remain sufficiently lax to permit the use of lethal force in many situations that are not life-threatening. Unjustified fatalities are the predictable result.

When deaths occur not because a soldier exceeded his open-fire orders but because the orders themselves were too permissive, the IDF legal system clears the soldier. While that may be an appropriate determination of individual responsibility, it is not an adequate institutional response. What should be scrutinized in addition are the orders themselves. A tightening of those orders in accordance with the principles of necessity and proportionality would reduce these

unjustified deaths.

Such a reassessment of specific orders occurred two years ago with regard to beatings, when the IDF saw how Defense Minister Rabin's policy of "force, might and beatings" against demonstrators was being interpreted in the field. Gen. Dan Shomron, the chief of staff, issued guidelines in February 1988 making clear that physical force was forbidden as a form of punishment. Illegal beatings declined over the next few months. Instead of similarly tightening the open-fire orders, the IDF has liberalized them over the course of the intifada, as illustrated by the discussion below of the instructions on the use of plastic bullets and on firing at masked persons.

A. General Operation of the Rules

The open-fire orders are laid out in the Manual of Regulations Concerning Rules of Engagement of the Operational Branch of the IDF. Except as noted, the current open-fire orders are essentially the same ones that were in effect prior to the intifada.

Army regulations require each soldier to carry on his person a written copy of the rules of engagement. In addition, the commander of each platoon or company is supposed to brief his troops regularly on the rules.¹

The IDF does not make public the complete rules of engagement, on the grounds that Palestinians would "exploit" them if they knew when soldiers were permitted to shoot.² Our discussion of the rules is based on the portions that have been released by the government or reported by

¹ Lt. Col. Arik Gordin of the IDF spokesman's office, interview in Tel Aviv with Middle East Watch, March 4, 1990.

² Lt. Col. Gordin, interview in Tel Aviv with Middle East Watch, March 1, 1990.

the Israeli press.³

Soldiers and border policemen operating in the West Bank and Gaza Strip are armed not only with metal bullets but also with ammunition which the IDF considers nonlethal when properly used, such as rubber bullets, plastic bullets and tear gas canisters. This chapter, as noted, focuses on the two types of ammunition that have caused the vast majority of fatalities during the intifada: metal and plastic bullets.⁴

The rules of engagement state that, as far as possible, opening fire should be carried out or ordered by the commander himself, and that, when executing the procedures for apprehending a suspect, the commander must consider whether it is necessary to open fire under the circumstances of the event, even if there is no other way to apprehend the suspect.

As much as the rules of engagement circumscribe what Israeli soldiers are permitted to do in the field, Israeli troops are given discretion in deciding when to use weapons. If they deviate slightly from the rules while acting in good faith, they are not prosecuted.⁵

³ Substantial excerpts of the rules appear in English in the Appendix to "Israel's Measures in the Territories and Human Rights," published by the Consulate General of Israel in New York, January 1990. Our citations of the rules come from this source except when otherwise noted.

⁴ Rubber bullets and rubber-coated metal balls generally bruise but do not penetrate the body. When fired at close range, however, they have caused fatalities and severe injuries.

⁵ For example, in a possibly precedent-setting case, a Military Court on February 11, 1990 acquitted Lt. Yuval Wilf on charges of negligent manslaughter. The military prosecutor had charged that in firing a plastic bullet at Tareq Samhadanah of Gaza in November 1988, Lt. Wilf had violated orders by not shouting a warning and by firing from a distance of less than 70 meters.

Lt. Wilf claimed he opened fire because he feared that fellow soldiers would be

At the same time, a system for maintaining order fails if it does not monitor and take account of deficiencies in its rules of conduct. If, as we have found, unjustified killings occur not only when soldiers deviate from the rules on opening fire but also when they follow the rules, then the rules themselves must be reexamined. The Israeli government's failure to amend the rules to prevent unjustified killings amounts to a policy of condoning the killings.

B. In Life-Threatening Situations

A soldier may fire metal bullets at individuals in only two situations under the rules of engagement: when the target presents a "mortal danger," and when the soldier is following the procedure for arresting a suspect.

The IDF considers two basic situations to pose mortal danger. The first is when troops come under attack by gunfire or explosives or, as of March 1988, gasoline bombs.

The second is when troops are attacked bodily, by stones or other means, in a riot situation. In these latter circumstances, according to the IDF rules:

hit by stones or other objects that the victim was throwing. The court ruled that not every deviation from the standing orders demonstrates negligence. Instead, it could have been caused by the "special circumstances in which the defendant operated, that is, the surprise which elicited a quick reaction by the defendant, and the fact that for the first time the defendant used his weapon against a living person, as distinct from a firing range." (See B'Tselem, "Opening Fire by the Security Forces in the Occupied Territories," July 1990, and Eitan Rabin, "Southern District Military Court Acquits an Officer Accused of Negligently Killing an Arab Youth," *Haaretz*, February 12, 1990.)

["The use of firearms is allowed only when there exists a real and immediate danger to their [the soldiers'] lives....The question whether the use of non-firearms constitutes a real and immediate danger to life shall be examined according to the circumstances of each incident, including the numerical ratio between the attackers and our forces, the terrain and the age of the attackers.

In these circumstances, according to the rules, the opening of fire is to be carried out "as much as possible" in stages, beginning with shouting "Stop or I'll shoot" in Arabic, then firing a warning shot into the air, and finally aiming a single shot at the legs of an attacker. Soldiers are permitted to shoot only at a specific attacker who has been identified as a danger to human life. Once the danger has passed, firing is permitted only in accordance with the procedure for apprehending a suspect, which is outlined below.

These somewhat general criteria for identifying and responding to a "real and immediate" mortal danger would be consistent with the principles of necessity and proportionality, provided that the army's legal system holds soldiers to a reasonable standard when scrutinizing their determinations of the threats they encounter. As shown in Chapter Two, the IDF's system of accountability generally fails to provide this level of scrutiny.

C. The Procedures for Apprehending Suspects

The rules for firing metal bullets in apprehending suspects violate the principles of necessity and proportionality in several respects. At first glance, the rules appear to have many safeguards. Soldiers are to "avoid opening fire on a suspect in circumstances in which there exists a danger that other people are liable to be hit." As far as possible, they are to avoid shooting at women and children.⁶ Fire may be directed at a

⁶ No definition of "children" is provided at this point. Col. Menachem Finkelstein, the chief military prosecutor, told Middle East Watch that the general open-fire

fleeing suspect "only as a last resort" and "once all the other means have proven ineffective." Even then, the commander is supposed to "consider whether it is necessary to open fire under the circumstances...."

The rules on apprehending suspects violate the principle of proportionality at the point where they specify the suspects at whom metal bullets can be fired. The rules provide that the suspect must be someone "against whom there exists a reasonable suspicion that he has committed, or abetted in the commission, or attempted to commit a terrorist activity or any other serious felony." A "serious felony" for these purposes is defined as "murder, attempted murder, illegal possession of a weapon, membership and activity in a hostile organization, stone-throwing at persons or vehicles where there exists a real danger and the [attempt to] arrest takes place immediately after the event,⁷ [and] malicious damage to property for ideological purposes."

The belief that a person is a suspect under the terms outlined above "must be based on facts, information or reliable data, taking into account the place and the time. A mere suspicion, a feeling or a hunch [is] insufficient."

As in the case of soldiers who face life-threatening situations, a soldier pursuing such a fleeing suspect is directed "as much as possible" to open fire according to a series of stages. Before firing, a soldier must call out in Arabic, "Stop or I'll shoot!" If the suspect continues to flee, the soldier may then fire into the air at a 60-degree angle. Finally, if the

orders intend the term to refer to youths under 14, while the orders on plastic bullets intend the term to refer to youths under 16. Interview in Tel Aviv, March 4, 1990.

⁷ As noted, these are the conditions for opening fire with metal bullets at stone-throwers. The conditions for firing plastic bullets at stone-throwers are more lenient, as outlined below.

suspect persists in fleeing, the soldier may fire toward his legs,⁸ with the gun in the single-fire mode. He may continue firing until the suspect is apprehended, but may never aim above the legs.

Despite these safeguards, the rules permit soldiers to use lethal force against Palestinians who pose no imminent threat to life at all. For example, the rules allow lethal force to be used in apprehending someone suspected of causing "malicious damage to property for ideological purposes" -- a crime which on its face does not entail a threat to life. Similarly, the rules permit soldiers to use lethal force in apprehending anyone suspected of "membership and activity in a hostile organization." Anyone suspected of being active in any faction of the Palestine Liberation Organization falls within this definition because such membership or activity is illegal in Israel and the territories, whether or not the suspect engages in violence.

The task of authorities in apprehending suspects should be to arrest them so they can be charged and tried, in a court of law. That scores of Palestinians have instead been killed by soldiers who, according to the IDF, were following the procedure for apprehending suspects, is proof that the procedure in its current form often imposes a severe and summary punishment. While such summary killings should be avoided regardless of the crime that the suspect is believed to have committed, they violate the principle of proportionality when there is no reason to believe that the suspect is posing an imminent threat to the life of others.

The rules on apprehending suspects also violate the principles of necessity and proportionality in that they permit too much discretion on when lethal force can be used to apprehend a suspect, even when he is believed to have committed a violent crime. As noted, the rules caution that bullets can be fired at a suspect "only as a last resort" and "once all the other means have proven ineffective," and that even then the

⁸ The IDF told Middle East Watch that the rules for metal bullets require soldiers to fire at the legs, while the plastic bullet rules specify below the knees.

commander must "consider whether it is necessary to open fire under the circumstances...." But these rules do not make clear that, even in the case of a suspect believed to have committed a violent crime, lethal force should be used only if the suspect continues to pose an imminent threat to life. In the view of Middle East Watch, the principles of necessity and proportionality require that lethal force, with its ever-present danger of summary execution, not be used to apprehend those suspected of committing past violence if they are no longer posing an imminent threat to life.

1. Shooting Persons Wearing Masks

During the summer of 1989, the definition of suspects whose apprehension can be secured with lethal force was expanded in a disturbing new direction. The new category of such suspects was anyone covering his face with a mask.

Throughout the intifada, Palestinian youths and activists have covered their faces to avoid identification by authorities and informants. At times, they have done so while committing acts of violence, but often they have done so during nonviolent political activities such as funerals and marches, to avoid identification and retaliation by Israeli authorities. Often, the mask is fashioned from a *kaffiyeh*, the traditional Arab headdress that is worn by thousands of men every day in the territories.

The new open-fire orders mean that masked youths are automatically at risk of gunfire if they ignore an order to halt and a warning shot, regardless of whether they are engaged in any sort of violent activity, let alone a life-threatening activity.

The IDF stated that preemptive action was necessary against masked youths, whom it accused of enforcing strikes and spearheading the campaign of harassment and violence against Palestinians

suspected of collaborating with Israeli authorities.⁹ "We say that the masked people in the street are not innocent," Brig. Gen. Amnon Strashnow, the Judge Advocate-General, told the *Los Angeles Times*. "This is not Halloween. They still have the opportunity, when told to stop, of giving themselves up to authority. If they run away, they are in trouble."¹⁰

An additional problem arose because the orders on masked youths, which were implemented first in the Gaza Strip and then in the West Bank, were characterized by a lack of clarity. That led to their being interpreted in the field more liberally than was intended, as Col. Menachem Finkelstein, the chief military prosecutor, acknowledged in an interview with Middle East Watch in March 1990. At least one soldier who fatally shot a masked youth told IDF investigators that he believed his instructions were to shoot to kill masked youths.¹¹

A comparison of official descriptions of the orders illustrates the confusion surrounding them. Brig. Gen. Strashnow, the Judge Advocate-General, stated in July 1989 that the rules on apprehending those wearing masks permitted the use of only plastic bullets, and applied only to those masked persons who were moving about "in a suspicious manner" and whose intentions were "clearly illegal."

On September 14, 1989, Brig. Gen. Zvi Poleg, commander of IDF troops in the Gaza Strip, offered his version of the rules, distinguishing between two types of masked persons. He explained that while all

⁹ Letter from Brig. Gen. Amnon Strashnow, the Judge Advocate-General, to the Association for Civil Rights in Israel, July 19, 1989. See also Joel Greenberg, "Both Sides Digging In," *Jerusalem Post*, October 20, 1989.

¹⁰ Dan Williams, "Are Soldiers to Blame for Abuses? Or Are They Just Following Orders?" *Los Angeles Times*, February 18, 1990.

¹¹ Reserve sergeant #5, interviewed in Israel by Middle East Watch, February 28, 1990.

persons wearing masks were immediately suspect,

[t]here are two types of masked men...There are masked men who lead local disturbances by children, etc. The order is not aimed at that population...Fire is opened only against masked men who deal with violent activity against locals and impose terror.¹²

Gen. Poleg did not elucidate how to distinguish the two types of masked men. Carrying a weapon is no litmus test, since, according to new guidelines announced at the beginning of September, soldiers are permitted to use live ammunition to apprehend masked persons whether or not they are armed.¹³ These new guidelines also superseded earlier directives specifying that only plastic bullets could be used in apprehending unarmed masked persons.

2. Examples of Killings While Apprehending Suspects

According to IDF statements on fatal incidents, a large number of killings have occurred while soldiers were following the procedures for apprehending suspects. These killings have arisen in a variety of situations: in the aftermath of stone-throwing or demonstrations, as well as while soldiers were carrying out raids or setting an ambush. (See, for example, the case of Yasser abu Ghosh, in the Appendix to this report.) Some of the victims were identified as masked; others were not. Some were suspected of having just committed an act of violence; others had been wanted for some time. It is clear that many were killed while posing

¹² Tel Aviv Educational Television in Hebrew, September 14, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, September 18, 1989.

¹³ Tel Aviv IDF Radio in Hebrew, September 13, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, September 14, 1989.

no imminent threat to anyone.

Some of these killings are the outcome of an IDF strategy, adopted during the second year of the intifada, of identifying and pursuing a core group of militants. As the *Jerusalem Post* reported:

In practice, that policy means using intelligence, the Shin Bet, and special IDF forces to go after the "hard-core" activists responsible for terrorizing the local population and keeping the uprising afloat. Since August, over 100 such activists have been captured, and the army estimates another 30 to 40 are still at large. Overall, 500 wanted men have been captured this year....¹⁴

The raids and ambushes undertaken pursuant to this policy have resulted in many suspected activists being killed, allegedly while attempting to flee. The regularity of these killings suggests that Israeli authorities have adopted a "Wanted: Dead or Alive" approach toward these suspects. If the suspects do not submit to arrest, they risk summary execution, without regard to whether they pose any threat to life.

The following accounts of killings suggest this pattern. One report in the *Jerusalem Post* went as follows:

Military sources said: "[O]n January 23, 1989, a force operating in Hable [near Qalqilya] encountered six masked men wanted by the security forces. During the encounter, they were called upon to stop, and in the ensuing chase, two were wounded. [Issam Ghanem, 19,] died of his wounds, and four others escaped...."

Villagers reported that soldiers wearing civilian clothes arrived in commandeered Arab cars and ambushed the six young men as they returned from hiding places outside Hable....

¹⁴ Joel Greenberg, "The IDF's Political War," *Jerusalem Post*, December 8, 1989.

Palestinians have reported several cases in recent months in which armed men arriving in civilian cars had fatally shot youths wanted by the authorities.¹⁵

In another account that appeared in the *Jerusalem Post*:

A wanted intifada activist from the Gaza Strip was fatally shot inside the courtyard of his home [on September 14, 1989]...[Muhammad] Al-Akra had tried to flee from his home upon seeing that he was surrounded by troops and, according to an IDF spokeswoman, he was ordered to stop by the troops. When he refused shots were fired and he was killed.¹⁶

Reports of masked youths killed while fleeing grew particularly frequent during the second half of 1989. For example, on August 27, Israel radio broadcast the following report, clearly based on military sources:

Muhammad Sha'ban, 20, of the Jabalyah refugee camp, died ...of wounds sustained [two days earlier]. He, together with other masked men, incited local inhabitants. An IDF patrol chased them, and when they did not heed a call to halt, the soldiers fired at them, hitting the youth.¹⁷

¹⁵ Joel Greenberg and Michal Sela, "Youth Killed During Areas Strike," *Jerusalem Post*, January 25, 1989.

¹⁶ Michal Sela, "Wanted Intifada Activist Killed at Home by Troops," *Jerusalem Post*, September 15, 1989.

¹⁷ Israel radio in Hebrew, August 28, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, August 28, 1989.

Middle East Watch asked the Chief Military Prosecutor's office for the findings of the investigation into this killing by the Military Police Criminal Investigation Division. On March 4, 1990, Lt. Yuval Horen of the Prosecutor's office replied that the probe had found that the soldier had "generally fired according to

Similarly, on October 13, 1989, Israel radio reported:

An IDF unit encountered a group of masked men who were trying to incite the population to engage in violence. The soldiers ordered the young men to halt, but when they refused, shot in the air and then at their feet. One of the youths was hurt and later died of his wounds.¹⁸

And in an incident on June 5, 1990:

A 14-year-old youth was killed by IDF soldiers in Nablus this afternoon....[Four] ax-carrying masked figures were spotted by the troops who proceeded to call on the group to halt, as required by the regulation on detention of suspects. After the youths failed to obey the order, the soldiers fired in their direction, wounding one of the four. A hospital later reported that the youth died of his wounds.¹⁹

In October 1989, Israel radio reported that since the new orders on masked persons were implemented, "There has been a sharp rise in the number of masked activists killed in the territories. One of the principal tasks of the soldiers now is to lie in wait for the masked gangs,

the rules," but had "deviated a little." The deviation was not explained. No disciplinary action was taken, however, because the time limit for such action had elapsed by the time the prosecutors had issued an opinion on the case in February 1990. Horen stated that the soldiers who had seen the incident testified that the soldier who had fired had aimed at Sha'ban's legs.

¹⁸ Israel radio in Hebrew, October 13, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, October 17, 1989.

¹⁹ Israel radio in Hebrew, June 5, 1990, as reported in Foreign Broadcast Information Service, Near East and South Asia report, June 7, 1990.

especially at night, and to seize them when they pass by."²⁰

These killings have taken place despite the numerous conditions imposed on firing at fleeing suspects. In the view of the Military Prosecutor's office, the fatalities are generally not the outcome of soldiers exceeding their orders, nor of the orders being too permissive. Instead, the office maintained, they are the unintended outcome in an acceptably low percentage of the cases in which the procedures to arrest suspects are carried out. Lt. Yuval Horn of the Military Prosecutor's office stated that the procedures in most cases end with the suspect either escaping or being apprehended with minor or no injuries.²¹

Col. Menachem Finkelstein, the chief military prosecutor added:

The intention is not to kill the suspect, but to catch him. However, if you shoot from 50 meters at the legs, there's a five percent chance you won't hit the legs. Hitting someone who is running is a very difficult task. He jumps, falls, climbs a wall. The bullet ricochets, there are slopes in the ground.²²

These potentially deadly uncertainties seem to have made it difficult for military prosecutors to court-martial and courts to punish soldiers who have killed fleeing suspects, provided there is no evidence that the soldiers violated the steps leading to the opening of fire. While a few soldiers have been court-martialed during the intifada in connection with killings while apprehending suspects, Middle East Watch is not aware of any who has been given a jail sentence.²³

²⁰ Israel radio in English, October 22, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, October 25, 1989.

²¹ Interview in Tel Aviv with Middle East Watch, March 4, 1990.

²² Interview in Tel Aviv with Middle East Watch, March 4, 1990.

²³ The most severe sentence of which we are aware was handed to Yosef Eliahu,

The fatalities are a predictable outcome of the IDF's policy on apprehending suspects. Even if the five percent margin of error cited by the chief military prosecutor is correct, it is unacceptably high when it may result in the killing of a suspect who is unarmed, running away, and posing no imminent threat to anyone. Continuing this policy of shooting at such fleeing suspects is a clear violation of the principles of necessity and proportionality and an important contribution to the number of unjustified killings.

D. Plastic Bullets

The IDF introduced plastic bullets in August 1988. Authorities explained that this supposedly "nonlethal" ordnance would permit soldiers to fire more readily to quell violent disturbances in situations in which tear gas or rubber bullets were ineffective, but where metal bullets were forbidden because the soldiers did not face a threat to life.

While the premise for allowing use of plastic bullets more permissively than metal bullets is that plastic bullets are supposed to be "nonlethal," they began immediately to cause fatal injuries. Between August and late January 1989, plastic bullets killed 47, according to IDF figures -- roughly half the fatalities of that period.

This new ammunition was causing unjustified deaths for two

who was convicted in the Central District Military Court on June 7, 1990 of negligent homicide and violating open-fire orders. He was sentenced to four months' labor at a military base. Eliahu opened fire during a June 1989 raid on the West Bank village of Silwad, killing Abdel Raouf Hammad. Joel Greenberg, "Soldier Gets Work Term for Killing Suspect," *Jerusalem Post*, June 8, 1990.

As stated in the Introduction, the IDF has not released statistics on the number of soldiers subjected to disciplinary action for specific offenses.

basic reasons. First, given the capacity of plastic bullets to kill, the open-fire rules were too permissive in that they allowed opening fire in non-life-threatening situations. Second, soldiers appeared regularly to be firing the bullets in excess of those rules, after being told that the bullets were not lethal.

Plastic bullets have the same shape, dimensions and metal casing as metal bullets. The projectile, however, is hardened plastic rather than metal. Plastic bullets have a lower velocity than metal bullets.

The open-fire rules provide that plastic bullets are to be fired from a minimum distance of 70 meters. At this distance, the IDF claims, they are intended to wound but not kill. However, a direct hit in the heart or head could be fatal even at 70 meters, as IDF Deputy Advocate-General Lt. Col. Uri Shoham acknowledged.²⁴

"Our purpose," Defense Minister Rabin stated with regard to plastic bullets in September 1988, "is to increase the number of [wounded] who take part in violent activities, but not to kill them....I am not worried by the increased number of people who got wounded, as long as they were wounded as a result of being involved actively, by instigating, organizing, and taking part in violent activities."²⁵

As with his advocacy of "force, might and beatings" nine months earlier, Rabin seemed with plastic bullets to be condoning the use of force as summary punishment and deterrence. The summary use of force for these purposes violates elemental standards of due process.

Once again, other Israeli officials felt compelled to clarify Rabin's

²⁴ Interview with the Lawyers Committee for Human Rights, February 19, 1989. Lt. Col. Shoham has since become president of the military appeals court in the occupied territories.

²⁵ *Jerusalem Post*, September 29, 1988.

blunt declaration. In October 1989, Attorney General Yosef Harish stated that plastic bullets were intended to disperse rioters, but not to deter them through injury.

Three months later, responding to continuing controversy and confusion over when plastic bullets were to be used, the IDF publicly clarified many details of its standing orders. It said:

- o Plastic bullets may be shot when there is not a life-threatening situation.**
- o They may be used against stone-throwers, throwers of other objects such as *ninfot* (sharpened metal discs) and against those igniting tires and building roadblocks where all of the above actions are aimed at harming people or moving vehicles.**
- o Shots must first be fired in the air to warn the rioters. Plastic bullets are then to be fired at the rioters below the knees.**
- o In situations where these rules cannot be obeyed, don't shoot.**
- o One should try to avoid shooting at youths under the age of 16 and at women.**
- o Those authorized to shoot include officers from the level of platoon commander and above, and NCOs who are in command of a force.**
- o At night only officers are authorized to shoot plastic bullets.²⁶**

²⁶ "Update for Officers and NCOs Authorized to Fire Plastic Bullets," reprinted in

Other accounts of the IDF orders appeared the same week in the Israeli press, specifying further conditions on the use of plastic bullets:

- o When visibility is poor, no shots should be fired.**
- o Shooting should be avoided when people not participating in the "violent disturbance" are standing by the subject.**
- o Shooting should be confined to conditions in which it is impossible to confront demonstrators by use of tear gas or rubber bullets.²⁷**

According to the rules, plastic bullets may be fired either during a "violent disturbance" or immediately afterward to apprehend fleeing participants "within the framework of the standing procedures for the detention of a suspect." A violent disturbance is defined as three or more persons throwing stones, manning a roadblock or barricade, or burning tires in a way that jeopardizes traffic.²⁸ Participants are permissible targets regardless of whether or not they are viewed as instigators or organizers.²⁹

While the issuance of standing orders on plastic bullets in

the *Jerusalem Post*, January 23, 1989.

²⁷ ***Hadashot* daily, January 27, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, January 27, 1989.**

²⁸ ***Ibid.***

²⁹ **This point was confirmed recently by Chief Military Prosecutor Col. Menachem Finkelstein and Lt. Col. Arik Gordin of the IDF Spokesman's Office, in an interview in Tel Aviv with Middle East Watch, March 4, 1990.**

January 1989 may have cleared up some of the confusion as to when their use was permissible, it did nothing to indicate that the IDF was striving to resolve the contradiction between its new form of supposedly nonlethal ammunition and the mounting death toll from its use in non-life-threatening situations. To the contrary, the rules affirmed that plastic bullets were intended for routine use against disturbances, including when there was no threat to life.

Member of Knesset Amnon Rubinstein, a professor of law, charged that the IDF policy on plastic bullets effectively sanctioned killing without due process as a form of summary punishment. "Plastic bullets," he said, "have proven fatal and the new directives effectively give leeway to kill even in cases when there is no danger to the lives of the security forces. Killing as a punishment, or as deterrence, is illegal, and therefore the new instructions are patently illegal, and according to the law should not be obeyed."³⁰

The army's position was that the number of casualties had to be viewed in the context of the number and intensity of violent incidents.³¹ Given that the bullets had been in use for five months, "really 47 deaths is a minor number"³² compared to the tens of thousands of persons involved in demonstrations, IDF spokesman Maj. Gen. Ephraim Lapid said.

Overall, Chief of Staff Gen. Shomron claimed, the number of fatalities had decreased by one-third since the introduction of plastic

³⁰ Joel Greenberg, "MK Says Orders on Plastic Bullets 'Illegal'; Urges Soldiers to Disobey," *Jerusalem Post*, January 22, 1989.

³¹ Israel Radio in Hebrew, February 1, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, February 2, 1989.

³² Joel Brinkley, "Israeli Army Lawyer Defends Use of Plastic Bullets," *New York Times*, January 29, 1989. Maj. Gen. Lapid was replaced as IDF spokesman later in 1989 by Nachman Shai.

bullets compared to the previous six months.³³ One year later, in March 1990, the IDF spokesman made a similar claim about plastic bullets: "Their use considerably reduced the number of fatalities and enabled a small number of troops to be deployed against relatively large groups of rioters – and without the need to engage them physically at close quarters."³⁴

Gen. Shomron's claims that plastic bullets were reducing fatalities proved to be premature. While it is true that the rate of killings declined during the first five months after the introduction of plastic bullets, it climbed back during 1989 to the level prevailing prior to the introduction of plastic bullets. During the first ten months of 1989, the monthly average of killings by security forces was 25.4, compared to 26.5 for the first six months of 1988.

This tally was all the more disturbing because of the circumstances in which plastic bullets killed Palestinians. Of the 47 deaths caused by plastic bullets through late January 1989, only about one-third came when soldiers fired in life-threatening situations, according to Deputy Chief of Staff Maj. Gen. Ehud Barak. If this statistic is accepted, it would mean that fully two-thirds of those killings violated the principle of proportionality. Several causes of this high rate of unjustified killings were acknowledged. Maj. Gen. Barak reported that some deaths were due to mistakes made in determining whether the suspect was the required 70 meters from the soldier, and that others may have been due to some misinterpretation of the open-fire orders by lower commanders. "They think they understand [the orders] but perceive them differently," he said. "It's a problem the military hierarchy should fight."³⁵ Bad aim was

³³ *Hadashot* daily, February 10, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, February 13, 1989.

³⁴ Nachman Shai (IDF spokesman), "Palestinian Intifada Poses Double Bind for Israel's Citizen Army," *Boston Globe*, March 5, 1990.

³⁵ Nancie L. Katz, "Israeli General Defends Deadly Force," *Newsday*, January 26,

another contributing factor, according to IDF Spokesman Maj. Gen. Lapid. He explained that from 75 yards it was not always easy to hit only the legs.³⁶

In reality, the number of killings due to plastic bullets was too high to be dismissed as aberrations. They were the predictable outcome of the way the bullets were being used.

First, plastic bullets were being fired quite liberally. The IDF's claim that they were nonlethal had resulted in a "trigger-happy" phenomenon, according to the testimony of reserve soldiers collected by the Israeli human rights organization B'Tselem.³⁷

Reserve Sgt. Yoav Evron described the gap between the orders and the actual use of plastic bullets in an affidavit submitted in May 1989:

[S]hooting was directed at every stone-thrower in organized demonstrations, since it is impossible to single out instigators....The conditions of the encounter are generally a built-up area and a distance of less than 70 meters. As a result, plastic [bullets] are frequently fired contrary to regulations.³⁸

Reserve soldier Ami Dar, who served in Nablus in January 1989, described the oral instructions on plastic bullets he received from his

1989.

³⁶ Joel Brinkley, "Israeli Army Lawyer Defends Use of Plastic Bullets, *New York Times*, January 29, 1989.

³⁷ B'Tselem Information Sheet, June 1989.

³⁸ Cited in "Opening Fire by the Security Forces in the Occupied Territories," B'Tselem, the Israeli Center for Human Rights in the Occupied Territories, July 1990.

superiors. Dar explained that his unit received "very explicit" orders that "every stone-throwing incident must end either in an arrest or in a stone-thrower with a plastic bullet in his leg. At the same time, we must do our best not to kill anyone."³⁹

Such commands clearly violate the standing orders on plastic bullets: the directive to arrest or shoot suspects at each confrontation conflicts with the procedure of first establishing a distance of 70 meters from the suspect, shouting warnings and firing into the air.

Dar reported that his unit wounded 17 Palestinians with plastic bullets during 20 days of duty. "None of these 17 youths was shot in self-defense," he observed. "They were all shot as punishment for throwing stones."

Dr. Rustom Nammari affirmed the impression of "trigger-happy" soldiers on the basis of the patients admitted to al-Maqassid Hospital in East Jerusalem, a private Palestinian hospital of which he was medical director until recently. "After the introduction of plastic bullets," he recounted in January 1989, "we took more wounded. Now we have a sudden increase in people, especially being shot in the head."⁴⁰

According to records analyzed by the Lawyers Committee for Human Rights, al-Maqassid Hospital treated 31 patients during January and February 1989 for plastic-bullet wounds. Of these, eight had been hit in the legs and arms, five had been hit in the head, and the other 18 had been hit between the groin and the shoulders. Dr. Nammari told the Lawyers Committee that many of these injuries -- bone fractures, for example -- could have been caused only by plastic bullets that were fired

³⁹ *Jerusalem Post*, February 21, 1989.

⁴⁰ John Kifner, "Israel Uses New Bullet against Arabs," *New York Times*, January 14, 1989.

from a range of 25 meters or less.⁴¹

As this testimony suggests, many soldiers were exceeding the orders on firing plastic bullets. But in the view of Middle East Watch, the problem is more fundamental than trigger-happy soldiers or unclear orders. Even if soldiers conscientiously adhered to the rules on the use of plastic bullets, killings would continue to occur because the rules do not adequately ensure that plastic bullets will injure but not kill. Soldiers are supposed to be no less than 70 meters from their target when firing plastic bullets. Leaving aside the ease with which soldiers might misjudge that distance, they will find, even if firing from that distance, that it is not easy to aim below the knee with much accuracy. (Nor is it easy to establish from that distance that the target is 16 years old or older, as required.) B'Tselem, summarizing the testimony of reserve officers, reported:

There is no certain method of ensuring, even for experienced snipers, when firing from a distance of 70 meters, that the weapon is aimed precisely below the knee. The plastic bullet is less heavy than the regular bullet, and its aim is less accurate.⁴²

The impossibility of aiming precisely is highly significant because plastic bullets can be fatal even when fired from a distance of 70 meters if they strike the head or heart.

The inability to follow the rules of engagement and prevent lethal injuries makes plastic bullets as a practical matter a lethal weapon, as the number of fatalities caused by their use confirms. By authorizing the use of plastic bullets as a routine means of confronting violent disturbances that do not pose a threat to life, the IDF is inviting fatalities

⁴¹ Interview in Jerusalem, March 29, 1989.

⁴² B'Tselem Information Sheet, June 1989.

that cannot be justified under the principles of necessity and proportionality.

For this reason, according to one reserve officer interviewed by Middle East Watch, "A lot of soldiers don't want to have anything to do with plastic bullets, because they would prefer to shoot only when they have to [i.e., in a life-threatening situation]."⁴³

The number of Palestinians killed by plastic bullets has continued to mount. During the eight months following the eruption of controversy over their use in January 1989, plastic bullets killed another 70 persons, according to the IDF.⁴⁴ This amounted to slightly less than one-third of the fatalities caused by security forces during this period.

Since the fall of 1989, the number of Palestinian casualties has declined generally, including those that the IDF attributed to plastic bullets. The number of Palestinians killed by plastic bullets during the intifada stood at 147 through July 17, 1990, the IDF reported.⁴⁵

Despite the high percentage of killings due to plastic bullets, the IDF has not announced any significant revision of its orders on their use, and no other branch of government has intervened. The Justice Ministry reviewed the IDF's orders on plastic bullets at the height of the controversy in 1989, and declared them legal.

The Supreme Court, sitting as the High Court of Justice, also upheld the orders on firing plastic bullets in response to the first lawsuit challenging them. The suit, filed by attorney Felicia Langer and the Israeli

⁴³ Reserve sergeant #3, interviewed in New York, July 17, 1989.

⁴⁴ The IDF provided the Lawyers Committee for Human Rights a figure of 117 plastic bullet deaths through September 27, 1989.

⁴⁵ Statistics provided to Middle East Watch by the office of the IDF spokesman.

League for Civil and Human Rights in January 1989, asked for nullification of the IDF orders on shooting plastic bullets in non-life-threatening situations.

The court is now considering a second suit, filed in October 1989 by attorney Avigdor Feldman on behalf of the Yesh Gvul Organization.⁴⁶ Feldman's petition seeks to require the same rules for the use of plastic bullets as for the use of metal bullets, on the grounds that plastic bullets have been shown to be lethal. The suit also asks that the orders on firing at masked persons, described above, be restricted to reflect the principle that deadly force can be used only where an imminent danger exists to the life of the soldier or others.⁴⁷

Middle East Watch does not have the data to say whether changes in the use of plastic bullets have contributed to the general decline in fatalities since late 1989. According to one press report of March 30, 1990, the IDF had issued new guidelines by which only company commanders equipped with telescopic sights would be allowed to shoot plastic bullets. The introduction of the sights in January, the IDF claimed, had reduced the number of killings.⁴⁸

⁴⁶ Yesh Gvul (There is a Limit) was formed during the Israeli invasion of Lebanon as a protest group for soldiers imprisoned for refusing to serve in Lebanon. It has since supported those who refuse to serve in the occupied territories.

⁴⁷ Attorney Feldman's suit is pending before the court after surviving a motion by the Attorney General to dismiss it. In the suit filed by the Israeli League for Civil and Human Rights, the IDF refused on security grounds to provide attorney Langer with a complete version of the rules of engagement on plastic bullets. Since Langer rejected a plan whereby the Supreme Court judges could examine the complete rules but the petitioners could not, the Court instead examined only the general rules on plastic bullets and in August 1989 upheld their legality.

⁴⁸ Israel radio in English, March 30, 1990, as reported in Foreign Broadcast Information Service, Near East and South Asia report, March 30, 1990.

It may be that the trials of soldiers charged with misuse of plastic bullets have also had some effect on their use in the field. At least four soldiers have been court-martialed in connection with deaths caused by plastic bullets. One of them thus far has been acquitted; one was convicted and sentenced to a reprimand; and the other cases are pending, as far as Middle East Watch knows.

What remains clear, however, is that even when soldiers follow the existing rules on plastic bullets, the risk of death or severe injury is too great to consider them an appropriate response to non-life-threatening disturbances. If the IDF is to continue using plastic bullets, it should bring its directives in conformity with the principles of necessity and proportionality. Unless the risk of serious injury can be minimized, plastic bullets should not be used outside of life-threatening situations. Failure to make such changes will be to continue to condone unjustified killings by IDF troops.

CHAPTER TWO

OFFICIAL INVESTIGATIONS

A. Introduction

In theory, the IDF follows an admirable policy of investigating abuses of Palestinians by soldiers. According to a statement prepared by the Israeli Embassy in Washington in June 1990:

The IDF automatically investigates any case of death. Furthermore, any complaint that reaches the IDF concerning unlawful behavior by soldiers is investigated, irrespective of the source. The investigation file is conducted under the review of the military prosecutor. The military prosecutor orders the instigation of proceedings, monitors their conduct, and issues a legal opinion at the completion of the investigation. As a matter of principle, the investigation file is open for the examination of all persons involved, who can request through an attorney to see it. Decisions by the prosecutor may be appealed, and where appropriate, civil suits may be filed.

In the course of the investigation...every effort is made to gather all existing relevant evidence in order to bring all the facts to light.

IDF officials have explained that the Criminal Investigation Division of the Military Police (CID) opens an inquiry "immediately upon receiving information concerning the death"¹ and "meticulously, diligently and without fear"² does "everything to arrive at the truth."³ According to the IDF, the findings of the investigation, when completed, are reviewed by the military prosecutors with "seriousness and thoroughness"⁴ and "in every case where evidence exists of violations, appropriate steps are taken."⁵

If there are any serious flaws in this process, according to Col. David Yahav, head of the IDF's international law section, they are the fault of Palestinians, who refuse to give testimony to army investigators and who routinely obstruct the collection of evidence by abducting the bodies of shooting victims before they can be examined.⁶

While the obstacles cited by Col. Yahav are real ones, they are hardly the only reasons that official investigations fall far short of the claims made by the IDF. Fault for many of the deficiencies lies with the IDF itself.

¹ Letter from Minister of Defense Yitzhak Rabin to MK Dedy Zucker, December 14, 1989.

² *Ibid.*

³ Commander of the CID, interview in Tel Aviv with Middle East Watch, March 1, 1990.

⁴ Letter from Rabin, *op. cit.*

⁵ Statement released by the IDF spokesman's office, reprinted in the *Jerusalem Post*, February 9, 1989.

⁶ Interview in Tel Aviv with Middle East Watch, June 8, 1989.

The seven chief problems are:

(1) Inadequate efforts to obtain Palestinian testimony. Investigators make little effort to seek the testimony of Palestinian eyewitnesses, and end up usually speaking only to soldiers and their commanders.

(2) Inadequate cooperation with nongovernmental organizations and other intermediaries. Investigators often do not explore the assistance offered by lawyers and human rights and humanitarian groups to lead IDF investigators to witnesses who are willing to testify. This omission reinforces the practice of limiting investigations to a process of soldiers talking to soldiers.

(3) Slow Pace of Investigation. Many months and even a year commonly elapse before an investigation into a killing is completed and the Judge Advocate-General's office issues a decision. This delay diminishes the opportunity to collect pertinent evidence, the prospects for a successful prosecution, and the deterrent effect of a conviction.

(4) Understaffing at the Criminal Investigation Division. During the intifada, the CID caseload has increased far more quickly than the Division's staffing and budget, undermining the CID's ability to give cases prompt and adequate attention.

(5) Inadequate response to requests for information about the investigations. The IDF's stated policy of willingness to show the completed investigative file to interested parties is a laudable one, but one of which many human rights organizations and lawyers were unaware before Middle East Watch informed them of it in 1989. To date, we are unaware of any instance in which the IDF has granted a request from an interested party to examine the files, although the IDF has often provided a summary of the findings, and in a few cases it has given lawyers representing families of victims some investigative material after the lawyers petitioned the High Court of Justice to see the material.

Although investigators in many other countries refuse to divulge their investigative files, the failure of the IDF to open readily the files for inspection compounds a lack of confidence in the investigative process that is pervasive among Palestinians.

One area where openness has increased since 1989 has been in access to autopsies, including the right to assign an independent physician to be present at the official post-mortem.

(6) Failure to seek medical evidence when autopsies are not possible. When Palestinians abduct the bodies of their comrades who have been killed by security forces, they impede autopsies and thereby deprive investigators of important evidence. Despite this problem, investigators have failed to gather evidence from alternative sources, such as hospital records and the statements of attending physicians.

(7) Appearance of Partiality. In the highly polarized political environment of the occupied territories, immediate suspicion attaches to the impartiality of a process in which soldiers investigate other soldiers in an atmosphere lacking in openness and oversight. The protracted nature of the investigations and the paucity of resulting prosecutions add to these suspicions.

Each of these weaknesses in the IDF's investigations will be addressed in Section C of this chapter, following a survey of the types of investigations that the IDF conducts. The chapter concludes with a discussion of the "Givati trial," which highlights both the strengths and weaknesses of the overall system of accountability that the IDF has established to address abuses by its personnel.

It is difficult to apportion responsibility among the various agencies involved in holding soldiers accountable: the investigators, who gather evidence; the Judge Advocate-General's corps (including the prosecutors), which decides whether to file charges and then handles the prosecution; and the military courts, which try the soldiers. The outcome of the process, however, is that few soldiers are held criminally liable and

punished for misconduct.

If we look at the approximately 450 killings committed by security forces through the end of June 1989, soldiers were convicted for causing death in no more than 10 cases. Not one soldier has been convicted of murder; the most serious charges sustained were negligent homicide and manslaughter, and some were convicted of illegal use of a weapon. The punishments handed to those who were convicted range from an official reprimand to, in about six cases, prison sentences of from two months to two years.⁷ In a few additional trials, a verdict has not yet been reached. The number of border policemen tried in death cases during the intifada is not available, but adds no more than a handful to the total.

In the other 400-plus killings, either no legal decision has been issued despite the passage of one year or more, or the official investigation did not turn up evidence of misconduct that was deemed sufficient to justify a court-martial. In an undisclosed number of these cases, however, soldiers were subjected to a milder disciplinary procedure: a hearing before an officer who is empowered to impose sanctions such as demotions, reprimands and terms of detention of no more than 35 days.⁸

Defense Minister Yitzhak Rabin⁹ claimed that soldiers are rarely court-martialed because "in most of the cases the IDF soldiers acted according to orders given to them by their commanders, and within the

⁷ The conviction that led to the two-year sentence – for negligent homicide – has since been vacated on appeal, and the case has been remanded to the trial court for new testimony.

⁸ See footnote 5 to the Introduction.

⁹ Rabin stepped down as Defense Minister when the "National Unity" government was ousted by a no-confidence vote in March 1990.

legal limits."¹⁰

While the available evidence is not sufficient to permit us to determine the percentage of killings in which violations were committed, it is clear that there is a large gap between the number of killings in which there is *prima facie* evidence that soldiers exceeded their orders, and the small number of courts-martial to date.

Much of that evidence consists of credible Palestinian testimony. Other evidence of misconduct can be derived from medical records, such as x-rays, photographs and other data collected by hospitals, which can shed light on the circumstances of a killing.

It is not reasonable, of course, to expect a court-martial for every deviation from standing orders. In some cases of misconduct, the evidence sufficient to convict the soldier eludes even diligent investigators. In others, the deviation is a minor one and might result in a disciplinary hearing rather than a court-martial. It may even be, in a few cases, that the only deviation is bad aim, which, the Chief Military Prosecutor asserted, will never result in prosecution, provided that the procedures for opening fire were followed."¹¹

Even with these limitations, the number of killing cases that go to trial is still quite low compared to the number in which evidence exists of serious malfeasance. This outcome is due in part to the deficient manner that these killings are investigated. By improving the vigor and quality of investigations and prosecutions, the IDF would strengthen the sense of accountability that soldiers feel when using force. More vigorous investigations would also yield data about the consequences of IDF policies in the field, data that could be used to revise policies that

¹⁰ Letter to MK Dedy Zucker, December 14, 1989.

¹¹ Chief Military Prosecutor Col. Menachem Finkelstein, interview in Tel Aviv with Middle East Watch, March 1, 1990.

contribute to unjustifiable killings.

The Givati trial, described at the end of this chapter, is a partial exception which had both of these effects. Despite the light sentences given the defendants and the failure to indict others in the case, the lengthy trial prompted scrutiny within the army about the conflicting orders governing the use of physical force. At the same time, the public exposure of the brutality of these four members of a respected brigade made their comrades everywhere feel that their own actions might some day be subject to similar scrutiny.¹² One perverse indication of the feeling of accountability generated by this trial was that it reportedly prompted a "beating strike" by soldiers in the Givati brigade, who protested the court-martial of their associates by insisting for several days that they would not use physical force against Palestinians.¹³

¹² Middle East Watch interviews with soldiers.

¹³ Glenn Frankel, "Israeli Trial Raises Issue of Blame," *Washington Post*, February 12, 1989.

B. The IDF's Mechanisms for Investigating Killings

According to the IDF spokesman's office:

Every fatality involving a resident of the territories and resulting from IDF activities is investigated by the Military Police. Every such file is then passed to the office of the Judge Advocate-General. In every instance where evidence exists of violations, legal steps are taken.¹⁴

In cases of possible misconduct by soldiers that do not result in death, investigations are opened at the discretion of the Area Commander or the Judge Advocate-General. Either of these two officers can order an investigation in response to complaints filed by anyone: civilians, soldiers, lawyers, or organizations.

This section describes three types of IDF investigations. Section C of this chapter will then analyze the quality of investigations by the CID,

¹⁴ Quoted in the *Jerusalem Post*, February 9, 1989. While this continues to be the stated policy of the IDF, other statements by officials indicate that there are exceptions to the policy of investigating every death. Deputy Judge Advocate-General Col. Ilan Schiff told Middle East Watch that killings are not investigated if they occur "during a battle or something like a battle." He added that only one such case has occurred involving residents of the territories since the start of the intifada. He did not specify the case. (Interview in Tel Aviv with Middle East Watch, March 1, 1990.)

Senior officials also told al-Haq of the "military operations" exception to the policy of investigating every killing. Such operations are considered analogous to a state of war in which fatalities are to be expected. See the chapter on investigations in al-Haq's annual report for 1989, *Nation under Siege*.

Middle East Watch lacks the data to judge whether the IDF has abused this designation to remove suspicious incidents from the purview of investigators.

which has principal responsibility for investigating all killings committed by IDF personnel.

If a member of the Border Police (or an Israeli citizen, including a settler) is suspected of misconduct, the investigation is conducted by the Israeli National Police. The Border Police is a paramilitary unit within the Israeli National Police, operating in the West Bank and Gaza Strip, under the jurisdiction and procedures of the IDF. According to Police Commander Ami Fleissig, who heads the Police's public complaints unit, investigations into suspected abuses by border policemen are conducted in the same fashion as all other criminal investigations carried out by the Police.

Police investigators submit their reports to the office of the State Attorney, who has the same basic options as the Military Judge Advocate-General: to file criminal charges, to order internal disciplinary measures, to send the file back for further investigation, or to close the file without legal action. Like her counterpart in the IDF, the State Attorney employs the standard of "probable cause" in deciding whether to indict border policemen.¹⁵

1. Debriefings and Operational Reports

Following an incident, various steps are taken to gather information quickly. First is the operational debriefing that all soldiers are required to give their commanders each time they fire a gun, even if only into the air.¹⁶ According to reserve soldiers interviewed by Middle East Watch, this requirement is followed unevenly, varying from division

¹⁵ Commander Ami Fleissig, head of the Public Complaints Unit of the Israeli National Police, interview in Jerusalem with Middle East Watch, June 11, 1989.

¹⁶ Col. David Yahav, head of the IDF international law section, interview in Tel Aviv with Middle East Watch, June 8, 1989.

to division. At one extreme is the complete breakdown of the chain of information depicted by the soldier who told Prime Minister Shamir in January 1989:

You cannot possibly know what goes on here. Even the commander who sits here may not know what really goes on. When a patrol goes out alone, it does whatever it can without informing anyone. You may know how many were killed and how many were wounded, but you know nothing more. Only the soldiers involved know exactly what happens.¹⁷

An army medic aired a similar grievance in 1988 when he informed the Minister of Defense about numerous acts of misconduct by a reserve unit in the West Bank. During the entire period of their reserve duty, he claimed, no senior officer had spoken with members of the unit.¹⁸

Debriefings and operational reports serve three functions that are relevant to the investigative process. First, they are part of a record-keeping system that assists the CID in investigating an incident. Second, they serve as a basis for provisional disciplinary measures against personnel, when *prima facie* evidence suggests wrongdoing. Third, they provide information to the IDF for public comments about incidents.

Uneven record-keeping complicates the task of investigators. For example, the Hotline, a Jerusalem-based victim services agency, submitted a complaint about an injury which the CID investigated "seriously," in the view of the Hotline. The CID gave the Hotline a detailed account of its investigation, but said it had failed to identify the soldiers involved, even after examining the logbooks. The complaint came from a woman who claimed her infant son had been burned by a heater that was

¹⁷ *Jerusalem Post*, January 18, 1989.

¹⁸ "Reservists Complain of IDF Brutality," *Jerusalem Post*, October 17, 1988.

overturned when soldiers raided her house in search of a youth.¹⁹

In the beating death of Iyad Akal in Gaza (the "Givati II case"), army investigators at first said they could not locate the culprits and recommended closing the case. If a good-faith search was undertaken, then this inability to locate the soldiers responsible suggests that records of troop movements were being kept loosely at best. Only after the Judge Advocate-General sent the file back for further investigation was sufficient evidence located to bring charges.²⁰

The commander of the CID acknowledged that uneven record-keeping by field commanders in the past had complicated the task of investigators, particularly when a military force involved in an operation was composed of more than one unit. But he said that the situation had improved in response to CID demands for more precise record-keeping.²¹

The preliminary fact-finding serves as the basis for provisional disciplinary measures. For example, on May 1, 1988, soldiers opened fire in the West Bank village of Faqua and killed a youth; the same day, the IDF announced that it was suspending the deputy commander of the unit, pending completion of the CID investigation.²²

The initial reports from the field also provide the basis for the IDF's first public statements concerning incidents, issued the same day or shortly after. These statements, usually emanating from the IDF

¹⁹ Tsili Goldenberg, director of the Hotline: Center for the Defense of the Individual, interview in Jerusalem with Middle East Watch, February 27, 1990.

²⁰ Glenn Frankel, "Israeli Army Fights Charges of 'Whitewash' in Deaths," *Washington Post*, April 1, 1989. The trial is now finished and a verdict is awaited.

²¹ Interview in Tel Aviv with Middle East Watch, March 4, 1990.

²² Joel Brinkley, "Israeli Punished in Arab's Death," *New York Times*, May 2, 1988.

spokesman's office, more often than not recount the incident in formulaic language that exonerates the soldiers involved. The statements frequently claim that soldiers fired only after finding their lives in danger or only after suspects ignored orders to halt and warning shots.

These initial statements have less integrity than the CID investigative findings that come much later. As the following examples indicate, the initial pronouncements are often contradicted by the conclusions of the CID investigations:

- o After the fatal beating in February 1988 of Iyad Akal (the "Givati II case") the IDF spokesman claimed at first that the Akal family, in accusing soldiers, was "trying to hitch a ride on the unrest." Twenty months later, soldiers were brought to trial.²³**
- o The special IDF investigation into the eight killings that occurred in and around Nablus on December 16, 1988 found that soldiers had acted properly. One year later, following the CID investigation, four soldiers underwent a disciplinary hearing for violating their orders; one was acquitted, two received a reprimand and one received a warning.**
- o In September 1988, four IDF personnel were charged with severely beating Khader Tarazi (the "Golani case"), after the IDF admitted that its original claim that he had died of heart failure was incorrect. (However, the defendants were later acquitted.)²⁴**
- o On December 28, 1989, a border policeman shot and mortally wounded Fadi al-Zabqali, 17, in Bethlehem. Military sources said**

²³ Glenn Frankel, "Israeli Army Fights Charges of 'Whitewash' in Deaths," *Washington Post*, April 1, 1989. A verdict in the case is awaited.

²⁴ Glenn Frankel, "Israeli Army Charges 4 in Beating Death of Arab," *Washington Post*, September 9, 1988.

that an officer had first fired warning shots and then fired at masked youths carrying iron bars and axes who had set up a barricade of burning tires and stoned the police.²⁵ The sources said that the officer had acted properly, "according to the preliminary inquiry." But an ABC camera crew filmed the incident, and their footage indicated that the youths were not carrying axes, that the officer had not fired a warning shot, and that al-Zabqali had been hit in the back of the head while fleeing.²⁶ Two border policemen were later suspended for giving false information and a criminal investigation was opened.

In a January 22, 1990 article in *Yediot Achronot*, MK Amnon Rubinstein noted that during the preceding few weeks, the IDF spokesman had repudiated his initial statements not only in the case of al-Zabqali but also in three other cases in which Palestinians were killed or injured.

- o On October 26, 1989, a police officer shot and killed 18-year-old Karim Da'amseh near Bethlehem. That day, IDF Radio reported:

Preliminary IDF and police reports indicate that an Arab car this morning deliberately hit an Israeli police officer at a police roadblock...The driver kept on going and refused to stop. A chase took place, and policemen followed the procedures for apprehending suspects (and shot Da'amseh fatally)...The police reported that he is a well-known rioter.²⁷

²⁵ Joel Greenberg, "Fatah Leaflet: Only Arafat Can Authorize 'Collaborators' Deaths," *Jerusalem Post*, December 29, 1989.

²⁶ ABC World News Tonight, December 28, 1989.

²⁷ IDF Radio in Hebrew, October 26, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, October 27, 1989.

Senior police officials had given this account on the basis of testimony from the policemen present at the shooting, despite available eyewitness testimony from Palestinians that Da'amseh had been shot at close range while offering no resistance, after he had stopped his car following a chase and had stood beside it waiting for the police to approach.

Two weeks later, following a special inquiry that substantially accepted the Palestinian account of the event, the Police Inspector-General dismissed all six policemen, pending a criminal inquiry into the shooting and into possible charges of providing false testimony and obstructing justice.²⁸

The unreliability of initial IDF statements such as these was virtually conceded by Nachman Shai, the head of the IDF spokesman's office. "The army spokesman can't be an eyewitness every time a Palestinian is killed," he said. "We are entirely dependent on the reports of soldiers and officers in the field."²⁹

Unless the IDF spokesman is prepared to offer in his initial comments on incidents something more than what is reported to him by soldiers in the field, it would be preferable for the integrity of the investigation -- as well as for the credibility of the IDF spokesman -- if no official comment were made at this preliminary stage. Such initial findings that no misconduct took place may influence CID investigators as they set about their work. These initial findings may also create an impression of a foregone conclusion to the investigation which can only reinforce Palestinian reluctance to cooperate with investigators.

²⁸ David Horowitz, "Six Policemen Dismissed, Held in Beit Jalla Killing," *Jerusalem Post*, November 9, 1989.

²⁹ "An Israeli Rights Group Fights for Palestinians," *New York Times*, January 19, 1990.

2. Investigators Specially Appointed by Senior Commanders

The army command has the option of appointing an officer to conduct a special investigation into a particular incident. During the intifada, this has occurred at least twice in response to the killings of Palestinians: first, after eight were mortally wounded in incidents in and around Nablus on December 16, 1988; and, second, after border policemen killed five in the West Bank village of Nahalin on April 13, 1989.

Unlike the parallel CID inquiries, these special inquiries are not criminal investigations. However, the investigating officer can recommend disciplinary measures against the soldiers involved. Their findings are submitted to the army command rather than to the Judge Advocate-General.

3. Criminal Investigation Division (CID)

The principal investigation into a killing committed by IDF personnel is conducted by the Criminal Investigation Division (CID). The CID is a component of the Military Police, the branch responsible for discipline within the army. The CID carries out all routine criminal investigations involving the actions of IDF personnel, including fatal shootings, traffic accidents, thefts and other misconduct.

The size of the CID and its budget are not known. The IDF, citing security considerations, declined to disclose this data to Middle East Watch. According to a reserve officer in the unit, the total number of investigators, including reservists, is "in the hundreds."³⁰

CID investigators are considered the elite soldiers of the Military

³⁰ Reserve officer #5, interview in Israel by Middle East Watch, February 28, 1990.

Police. Their preparation includes basic training, a military policeman's course and a two-month investigator's course.³¹ They are not required to be lawyers. Investigators on reserve duty are briefed on the first day of their call-up by the CID commander on events in the pertinent field of operation and changes in the rules of engagement.

What follows is a run-through of investigative procedures, summarizing information provided by a reserve officer in the CID who was extensively interviewed by Middle East Watch. The officer had served in the CID in Lebanon before working in the occupied territories during the intifada.

The reserve officer made the general observation that investigators "get a lot of discretion to do their job well." In other words, the written instructions and oversight mechanisms do not guarantee a certain standard of work; rather, the quality depends heavily on the effort made by a particular investigator.

According to the reserve officer:

- o CID investigators are based at principal IDF compounds in and near the West Bank and Gaza Strip. Their work on a case begins when a call comes in from an officer or a hospital informing them that a Palestinian has died. The investigator who takes the call is supposed to report immediately to his commander and to double-check by phone the information that he has received. After doing so, he phones the information to CID headquarters in Tel Aviv, where it is entered into a central computer.**
- o The CID immediately begins organizing a group of investigators to go into the field. In "98 percent" of the cases, the group is led by an officer. The group usually consists of at least three, but usually**

³¹ *Haaretz*, February 5, 1989. Translated by the Government Press Office, February 23, 1989.

four or five, investigators.

- o In cases involving fatalities, the written rules require investigators to go into the field within one hour of receiving news of the death. Except in rare cases in which "operational reasons" interfere, this rule is obeyed.**
- o Upon reaching the field, the investigators meet the local area commander and obtain his version of what happened. They ask him about the behavior of Palestinians (e.g., whether they threw stones, wore masks) and about the orders that had been given to individual soldiers and their units.**
- o The investigators then speak to the soldiers who were at the scene of the killing, seeking first to establish who fired the fatal bullets. The soldiers are asked who was shooting and what kinds of bullets were used.**
- o Investigators are usually able to identify the soldier who fired. In most cases, soldiers do not deny they had used their guns, because "they know they were involved in a legal operation." In cases in which the investigators are unable to identify the soldier, they summon the suspects to the CID office at the base for further questioning.**
- o If the investigators identify the soldier who fired, investigators query him on the orders he had received. He is also asked what he encountered in the field, and why he decided to shoot.**
- o If a body is found at the scene, investigators can frame their questioning of soldiers on the basis of how the body is lying. In those cases in which the IDF has custody of the body and sends it for examination, the investigator waits for the autopsy findings before completing his report. (During the intifada, however, the reserve officer said he did not work on a single case in which he was able to examine the body at the scene of the killing -- see**

Section C.5 below.)

- o Within 24 hours of launching an investigation, the CID team assigned to the case is required to report to the Ministry of Defense, outlining preliminary findings and a plan for future action on the case.**
- o When the investigation is complete, a report is submitted to the district military prosecutor with a summary of findings. According to the written instructions governing CID investigators, they are to determine whether soldiers followed orders. The reserve officer interviewed by Middle East Watch stated that in applying this rule he tries to determine what "the reasonable man" would have done in the situation, although this standard does not come from the written instructions.**
- o If the prosecutor is not satisfied with the CID report, he returns it to the investigators with questions. This occurs "at least ten percent of the time." The investigators then attempt to provide further information until the prosecutor is satisfied and willing to rule on the case.**

4. After the CID Investigation: Action by the Prosecutor

On the basis of the CID file, the district military prosecutor writes an opinion on the case and submits it to the Judge Advocate-General for final approval. The prosecutor recommends one of four options:

- o Closing the file on the grounds that there is insufficient basis for prosecution;**
- o Returning the file to the CID for additional information;**
- o Ordering a disciplinary trial; or**
- o Filing an indictment in military court.**

The Judge Advocate-General can either accept or reject the district prosecutor's recommendation. If accepted, the district prosecutor issues a final report. The Judge Advocate-General also has the option, in cases of exceptional legal or factual complexity, to appoint an "investigating judge."³²

According to the IDF, a decision to indict is based on the ordinary standard of criminal law, i.e., a finding of "probable cause" to believe that an offense has been committed.³³ This means, of course, that the military prosecutors need not prove guilt beyond a reasonable doubt before bringing soldiers to court; they need only to find probable cause, and to believe that they can produce enough admissible evidence to persuade the court beyond a reasonable doubt of the defendant's guilt.

5. Appealing Decisions Not to Prosecute

When a decision is made not to indict in a particular case, interested parties may file an appeal with the Judge Advocate-General's corps. Beyond that, they may petition the Supreme Court, sitting as the

³² This occurs very rarely. In one instance, the Judge Advocate-General appointed a special investigating judge with the rank of colonel to probe the fatal shooting of two detainees during a riot at the Ketziot detention facility on August 16, 1988. Some witnesses accused the commander of the camp, Col. David Tsemach, of at least one of the killings. In November 1989, the investigating judge recommended against prosecution on the grounds that opening fire had been justified and that it had not been possible to determine which weapons had been used to kill the Palestinians. The findings were accepted one week later by the Judge Advocate-General. See Michal Sela, "IDF Will Not File Charges in Case of Ketziot Killing," *Jerusalem Post*, November 9, 1989; and letter from Minister of Defense Yitzhak Rabin to MK Dedy Zucker, December 14, 1989.

³³ Col. David Yahav, head of the IDF's international law section, in interview in Tel Aviv with Middle East Watch, June 8, 1989.

High Court of Justice, to overrule the decision.

For example, the Hotline, the Jerusalem-based victim services agency, has on occasion written to the Judge Advocate-General's corps to dispute its rulings on cases, arguing on the basis of the evidence that legal action is warranted.

In 1989, the New York-based Lawyers Committee for Human Rights brought to the attention of the Judge Advocate-General's corps new eyewitness testimony in a killing in Nablus on December 16, 1988. The case was reopened, despite the completion of the district prosecutor's ruling in the case, and disciplinary charges were eventually filed against four soldiers, three of whom received reprimands or warnings.³⁴

Petitioners who contested decisions not to court-martial before the High Court of Justice met without success until December 1989, when the court overturned the Judge Advocate-General's ruling in the case of Col. Yehuda Meir. That landmark case is described in Chapter Three.

6. Courts-Martial and Disciplinary Trials

Soldiers can be court-martialed for offenses both under Israel's Penal Code and under its Military Justice Law. The latter includes military offenses such as disobeying orders, exceeding authority, illegal use of firearms, and conduct unbecoming an officer.

Unlike many other countries, military authorities in Israel have the power to grant pardons to soldiers sentenced in courts-martial (see the discussion of the Givati trial later in this chapter).

³⁴ Joel Greenberg, "Paratroop Officers To Be Tried for Nablus Killings Last Year," *Jerusalem Post*, November 30, 1989. Deputy Judge Advocate-General Col. Ilan Schiff told Middle East Watch that the evidence produced by the Lawyers Committee helped to reopen the case. Interview in Tel Aviv, March 1, 1990.

Courts-martial consist of three or five members, the majority of whom are officers. At least one must be legally trained, unless the president of the court makes an exception, in which case he must explain his reasons. Proceedings in military courts are open to the public unless the convening authority decides, in the interest of state security, to hold them *in camera*.

IDF disciplinary hearings are internal procedures that can be ordered by senior officers or the Judge Advocate-General. Officers presiding at such hearings can consider only military offenses – not infractions of the Israeli Penal Code – and have limited powers to punish. Courtroom rules of evidence do not apply. The hearings can result in warnings, reprimands, demotions, forfeitures of pay, and terms of detention of up to 35 days. The proceedings are not open to the public, but the outcome is sometimes made public.

C. The CID Investigations: Seven Major Deficiencies

This section addresses the following practices that cripple the investigative process: inadequate efforts to obtain Palestinian testimony; inadequate cooperation with nongovernmental organizations and others who might supply witnesses or other evidence; the slow pace of investigation; understaffing at the Criminal Investigation Division; inadequate response to requests for information about investigations; the failure to seek medical evidence other than autopsy reports; and the appearance of partiality.

1. Inadequate Efforts to Obtain Palestinian Testimony

A credible system of investigating killings must include a good-

faith effort to locate Palestinian witnesses. Unfortunately, such an effort is often not made.

The task is complicated enormously by the reluctance of most Palestinians to cooperate with investigations, for reasons that will be discussed below. But even in cases in which Palestinians express a willingness to talk, investigators do not routinely seek them out. Nor have investigators shown much initiative in overcoming the entrenched obstacles to eliciting testimony. MK Dedy Zucker, who has been monitoring the quality of CID investigations throughout the intifada, charged that "an insufficient effort has been made to elicit testimony from Palestinian eyewitnesses. The extent of the phenomenon of investigations which lack eyewitness reports by Palestinians is widespread."³⁵

The phenomenon is not new. In the early 1980s, the Commission headed by Deputy Attorney General Yehudit Karp that studied official investigations into suspected abuses against Palestinians in the West Bank found:

In the majority of the CID investigations...the CID interrogates soldiers only....[When Palestinian complainants and witnesses are questioned about an event, they are questioned] long after its occurrence (at least a month), and this method has a direct and immediate effect on the duration of the investigation and on its results (the ability to locate witnesses, details being forgotten, the ability to identify people, etc.). Findings which have come to the attention of the team raise the fear that the split method of investigation substantially impairs the possibility of achieving any tangible results in the investigation....³⁶

³⁵ Letter to Minister of Defense Yitzhak Rabin, November 5, 1989.

³⁶ "The Karp Report: An Israeli Government Inquiry into Settler Violence against Palestinians on the West Bank," Washington, D.C.: Institute for Palestine Studies, 1984, pp. 7-8.

IDF officials insist that investigators strive to locate Palestinian witnesses, but their efforts are met with a nearly unanimous refusal to cooperate. According to a statement released in June 1990 by the Israeli Embassy in Washington,

[L]ocal residents impede...investigations, refusing to testify, giving contradictory testimony, or denying previous allegations....Furthermore, due to the difficult and tumultuous conditions existing at times in the area, and for other objective reasons, it is often very hard to identify, locate and reach plaintiffs and the witnesses.

After questioning soldiers and officers about a fatal incident, investigators are supposed to go to the victim's family, relatives and neighbors to seek eyewitnesses to the incident, the commander of the CID told Middle East Watch. But, he said, "it is difficult to find people ready to give evidence. They claim they were passing by and a demonstration just erupted." The commander added that "investigators also try to locate witnesses through the Civil Administration or local IDF units, but it is often dangerous and difficult [for investigators] to enter [Palestinian areas]."³⁷

Lt. Yuval Horn of the Chief Military Prosecutor's office told Middle East Watch, "In most cases [of fatalities], investigators speak to the [victim's] family to find out what they know about the incident....In the problematic cases, the CID almost always interviews family members."³⁸ **Even if this were the case -- and several families interviewed by Middle East Watch claimed that no investigators had contacted them -- this step is of questionable value unless the families were asked to lead investigators to eyewitnesses.**

³⁷ Interview in Tel Aviv, March 1, 1990.

³⁸ Interview in Tel Aviv, March 1, 1990.

The claim made by the CID commander that investigators routinely look for Palestinian witnesses after they have interviewed IDF personnel is not credible. A more accurate picture was provided by attorney Eliza Herman of the Hotline, who said, "If you don't give them the witness on a silver platter, they close the file."³⁹ (For examples, see the Hirzallah and abu Ghosh cases in the Appendix.) The reserve CID investigator interviewed by Middle East Watch commented, "unless there's a letter [to authorities about a Palestinian witness who is willing to give evidence] we usually don't get testimony from Palestinians." As reporter Dan Sagir wrote in *Haaretz*, "only in isolated cases, mainly those which reached the High Court of Justice or the press, did the CID approach Arab eyewitnesses of its own initiative."⁴⁰

The IDF declined to estimate the percentage of investigations into killings that included testimony by Palestinians,⁴¹ and it is not possible for an outside party to estimate the percentage without examining a large sample of case files. "In the majority of cases," according to Col. David Yahav, the Palestinian "population does not cooperate with us....We ask them to give evidence and they don't come."⁴²

A study by the International Committee of the Red Cross indicates that the problem may be less one of lack of cooperation by Palestinians than a lack of inquiry by CID investigators. The ICRC, which regularly submits detailed allegations to the IDF about incidents of possible misconduct in the occupied territories, followed up 98 incidents on which

³⁹ Interview in Jerusalem with Middle East Watch, March 4, 1990.

⁴⁰ *Haaretz*, February 5, 1989. Translated by the Government Press Office, February 23, 1989.

⁴¹ Letter from IDF Spokesman Lt. Col. Arik Gordin to Middle East Watch, July 5, 1989.

⁴² Col. David Yahav, head of the IDF international law section, in interview in Tel Aviv with Middle East Watch, June 8, 1989.

it reported to the IDF, including 34 fatal incidents, according to an article in *Haaretz* daily. In 72 of the 98 cases, the ICRC later discovered that Palestinians had not been questioned at all, and in nearly all of the other 26 the questioning was reported to have been superficial. In 23 of the 34 fatal incidents, the people who provided the information to the ICRC had not been questioned, and in the other 11, the questioning had been brief and conducted mostly in Hebrew.⁴³

Journalists and human rights organizations also report that when they visit the scenes of killings weeks later, witnesses and local residents tell them that while they have sometimes seen officials visit the scene, no official has sought the testimony of Palestinians in the vicinity.

Middle East Watch interviewed a young man, Ali Muhammad Malsiyyeh, who was beside Atwa Hirzallah when he was killed by a soldier in February 1989 (see Appendix). Although military authorities put Malsiyyeh in detention for several days immediately following the killing, they questioned him only briefly about the circumstances of the shooting and then, he said, mainly to induce him to confess that he and his companions had been throwing stones. Investigators interviewed Malsiyyeh more fully only months later, after the lawyer for Hirzallah's family pressed the case and served as a go-between.

In looking into a fatal shooting in questionable circumstances in the West Bank village of Beit Our al-Tahta in April 1988, journalist Joel Greenberg reported that villagers had told him two weeks after the incident that no investigators had come to the village. A man who brought the victim, Ahmad Hassan Salem Amro, to the hospital said he had been questioned by police who tried to get him to say that Amro had been killed

⁴³ The ICRC, which as a matter of policy does not publicize its interventions except in a few exceptional circumstances, declined to comment on these figures, which the *Haaretz* article attributed to "sources close to the ICRC." "Conflicting Data," *Haaretz* daily, June 16, 1989.

on April 23, instead of the 24th.⁴⁴ Lt. Horn of the Military Prosecutor's office told Middle East Watch that investigators had not questioned any Palestinians during the investigation; he could not say whether they had made an effort to do so. Lt. Horn said the soldiers were cleared because they were in a life-threatening situation – molotov cocktails and stones had been thrown – and had fired first in the air and then at the legs of Palestinians, and because investigators had been unable to identify the soldier who shot Amro. Lt. Horn did not say what role, if any, Amro allegedly played in posing a threat to the lives of the soldiers.⁴⁵

Shortly after the killing of Nidal Habash in October 1989 (see Appendix), one witness described what she saw to the International Committee of the Red Cross, the British consul, the Lawyers Committee for Human Rights, and the *Jerusalem Post*, which quoted her by name. Despite her widely disseminated testimony, CID investigators did not approach her until at least one month later, after the Lawyers Committee for Human Rights wrote to the Deputy Judge Advocate-General informing him of her willingness to speak to CID investigators.

After eight were killed in disturbances in and around Nablus on December 16, 1988, Defense Minister Rabin answered questions in the Knesset about a special IDF investigation into the events that had just exonerated the soldiers involved. When asked whether the investigators had taken testimony from Palestinian witnesses, he replied, "I don't have an answer. Maybe not."

The investigation to which Rabin was referring in this case was not the CID investigation into the killings, which was continuing, but rather a special probe by a senior officer; but the admission about failing to interview witnesses could have applied to the majority of CID inquiries

⁴⁴ Joel Greenberg, "What Happened in the Wheat Field?" *Jerusalem Post*, May 6, 1988.

⁴⁵ Interview with Middle East Watch in Tel Aviv, March 4, 1990.

as well.⁴⁶

* * *

It is not the case that the IDF alone holds the key to obtaining the testimony of Palestinian witnesses. After a killing has taken place, it would be hazardous, if not impossible without the use of force, for an investigator to enter a neighborhood and ask questions. It does not help that investigators who arrive on the scene are in uniform and escorted by armed soldiers. The escort, while perhaps a reasonable precaution in many cases, is hardly conducive to eliciting testimony.

The reluctance of Palestinians to cooperate, according to both Palestinians and the IDF, is rooted in a variety of factors, including fear of the army, cynicism about the effectiveness and impartiality of the investigations, and a refusal to legitimize Israeli institutions by cooperating with them.

The cynicism of Palestinians is perpetuated in a vicious circle: Palestinians will not talk to investigators in part because they do not believe the IDF will actually punish soldiers for wrongdoing; and in the absence of Palestinian testimony, files are closed with no finding of misconduct.

⁴⁶ Transcript of Knesset floor debate, December 26, 1988. See also Kenneth Kaplan, "IDF Acted Properly in Nablus," *Jerusalem Post*, December 26, 1988. The CID investigation into one of these Nablus killings was reopened after it had been initially closed with no action recommended, because a U.S.-based monitoring group, the Lawyers Committee for Human Rights, alerted the CID to a relevant Palestinian witness who had been overlooked. Following the reopening of the investigation, four paratroop officers were summoned to disciplinary hearings on charges of violating open-fire orders, the *Jerusalem Post* reported on November 30, 1989.

Palestinian fears of talking to investigators, especially after they have witnessed a killing, are understandable. Some Palestinians charge that this fear is fed by acts of intimidation or retaliation by authorities against witnesses who have stepped forward to give testimony.⁴⁷ Col. Yahav dismissed this allegation as "nonsense," saying, "I never heard of any witness being intimidated or punished for giving evidence."⁴⁸ Middle East Watch has not had an opportunity to investigate whether a pattern exists of intimidation or retaliation by authorities against Palestinian witnesses.

Witnesses may also avoid coming forward if the killing occurred in the context of Palestinian stone-throwing or other illegal acts, out of fear that they could incriminate themselves or their acquaintances. To its credit, the IDF has stated its willingness to consider granting legal immunity to any Palestinian witness who fears that his evidence might incriminate him.⁴⁹ As of December 1989, Defense Minister Rabin said, the IDF had received only one such request. In March 1990, Middle East Watch learned of a second such request and spoke to the lawyers who had negotiated both agreements. The lawyers said they were satisfied with the immunity agreements they had obtained.⁵⁰ At the same time, the

⁴⁷ See, for example, the chapter on investigations in al-Haq's report for 1989, *Nation under Siege*, and Felicia Langer, "The Death of Ibrahim al-Umtur, or The Closed File Which Remains Open," serialized in *Al-Fajr* English weekly from November 20, 1989 to January 1, 1990.

⁴⁸ Interview in Tel Aviv with Middle East Watch, June 8, 1989.

⁴⁹ Minister of Defense Yitzhak Rabin, in letter to MK Dedy Zucker, December 14, 1989.

⁵⁰ Dan Simon of the Association for Civil Rights in Israel negotiated an immunity agreement for a youth who was with Nasr al-Qassas when he was shot dead in a confrontation with soldiers in the Deheishe camp on April 16, 1989. Mona Rishmawi of al-Haq obtained an agreement for testimony by a witness to the killing of Yasser abu Ghosh in Ramallah, July 10, 1989 (see Appendix).

lawyers stressed that because the army has the power to detain persons without charge or trial for extended periods, an immunity agreement is only as valuable as the army's good faith.

The highly charged atmosphere of the intifada has no doubt compounded Palestinian reluctance to cooperate with the CID. In addition, according to the IDF, the mass resignation in early 1988 of Arab policemen deprived investigators of go-betweens who knew the local residents well. Moreover, the violent campaign carried out during the intifada by Palestinians against scores of persons suspected of collaborating with Israeli authorities may have dissuaded some Palestinians from wanting to be seen having any contact whatsoever with members of security forces.

For these reasons, many Palestinian witnesses who give affidavits to nongovernmental organizations will then decline to give the same information to CID investigators. Moreover, in deciding whether to talk to the CID, they sometimes defer to local political committees or bend to community pressures. For example, a witness to a killing from Deheishe refugee camp gave an affidavit to the Association for Civil Rights in Israel. When ACRI sought to convince the witness to tell the CID what he had seen, he consulted first with a political committee at the Deheishe camp, which initially refused permission but later consented.⁵¹

Despite the real obstacles it faces, the IDF could do a lot more to elicit Palestinian testimony. It could better inform the Palestinian community, through announcements on the Arabic-language radio and television broadcasts, of the process by which soldiers are investigated and disciplined, and of the need for witnesses to step forward. It could require investigators to log in their reports the efforts made to find Palestinian witnesses upon arriving at the scene of a killing, or to explain why such efforts were not made. The CID could make better use of the

⁵¹ ACRI attorney Dan Simon, interview in Jerusalem with Middle East Watch, February 26, 1990.

offers of human rights lawyers and organizations to produce witnesses or to serve as intermediaries (see Section C.2 below). The IDF could also revamp the procedures for civilian complaints, so that would-be plaintiffs are not discouraged from filing grievances (see below, this section).

Apart from improving the system of investigation, the IDF could facilitate the ability of witnesses to identify soldiers by requiring troops to wear name-tags or badges with numbers. This is a practice widely followed by police forces around the world, including inside Israel. Col. David Yahav of the IDF international law unit told Middle East Watch, "We haven't heard this [suggestion]." He then insisted that "soldiers aren't police." As noted, this is not quite true, since soldiers in the occupied territories are performing a policing or law-enforcement function. Bilingual name-tags would make it easier for Palestinians to identify soldiers alleged to be engaged in wrongdoing.

None of the measures we have suggested can compel Palestinians to come forward. Many Palestinians are likely to continue to refuse to do so. But if its investigations are to be seen as thorough and credible, the CID simply cannot rest content with its current record of failing to obtain testimony from anyone other than soldiers in nearly all cases of killings.

a. Procedures for Accepting Civilian Complaints

Currently, the procedure for filing grievances about the actions of soldiers evokes cynicism among Palestinians. By making it easier for civilians in the occupied territories to file complaints, the IDF could show its interest in deterring misconduct of all types, including unwarranted deadly force.

Prior to the intifada, no formal system existed by which residents of the West Bank and Gaza could file complaints against soldiers. In February 1988, after the Association for Civil Rights in Israel inquired about the absence of such a mechanism, the West Bank legal advisor

directed local police stations to take civilians complaints.⁵²

Complaints concerning misconduct by IDF personnel are forwarded to the office of the Judge Advocate-General, which decides whether to open an investigation. Complaints about members of the Border Police may also be filed at local police stations; they are then investigated by the Israeli National Police's office of public complaints.

The IDF said it had no statistics on civilian complaints of misconduct.⁵³ Interviews with staff at two organizations that assist victims of human rights violations, al-Haq and the Hotline, suggest that the numbers of complaints filed is low. Members of the staff of both organizations suggested that Palestinians are reluctant to file complaints for the same reasons that they decline to testify to investigators: fear, cynicism, and a refusal to legitimize Israeli institutions.

Furthermore, those who have tried to file complaints have found it difficult. Palestinians who wish to file a complaint have often been kept waiting for hours at the gate of the police station or told to go home.⁵⁴

⁵² Jonathan Karp, "Police Await New Directive on Complaints against Soldiers," *Jerusalem Post*, February 29, 1988.

⁵³ Letter from IDF spokesman Lt. Col. Arik Gordin to Middle East Watch, July 5, 1989.

⁵⁴ Mona Rishmawi, director of al-Haq through March 1990, interview in Ramallah with Middle East Watch, February 26, 1990; and Tsili Goldenberg, director of the Hotline: Center for the Defense of the Individual, interview in Jerusalem with Middle East Watch, February 27, 1990.

Also, to cite an incident that occurred on March 17, 1988, al-Haq's director at the time, Raja Shehadeh, tried to file a complaint at the Ramallah police station about a Palestinian who had just been beaten by soldiers in the stairwell below the al-Haq office. Authorities at the police station ordered Shehadeh to leave and would not take his complaint. For more examples, see al-Haq's annual report for 1989, *Nation under Siege*.

Police authorities, in conversations with staff of the Hotline, said this failure to receive complainants occurs only rarely, and attributed it to the combination of a manpower shortage and the need to maintain tight security inside police stations.⁵⁵ The problem is frequent, according to credible reports from al-Haq and the Hotline.

Palestinians who succeeded in filing complaints on their own told Middle East Watch that the results were inconsistent. In some instances, they were approached by investigators for further information. In other cases, they said they never heard from the IDF again.

In light of the duty to investigate -- derived by the Israeli High Court of Justice from the obligation of authorities to maintain law and order,⁵⁶ and, as we have shown, an obligation under Articles 146 and 147 of the Fourth Geneva Convention -- the IDF must not be complacent with the low rate of civilian complaints. Instead, it has a duty to encourage submission of legitimate complaints.

That Palestinian reluctance to submit grievances can be overcome to some extent has been demonstrated by one victim services agency, the Hotline. In its first year-and-a-half of existence, the Hotline, a modest storefront operation in East Jerusalem, helped Palestinians -- overwhelmingly residents of East Jerusalem and the West Bank -- to file complaints about a variety of abuses. These included 250 complaints about acts of violence (by security forces and settlers), 100 about theft and damage to property, and 300 about infringements of civil rights (e.g., confiscation of ID cards, refusal of permission to travel abroad).⁵⁷ The Hotline has succeeded because it assists Palestinians in what they would

⁵⁵ Tsili Goldenberg, *op. cit.*

⁵⁶ High Court of Justice 175/81.

⁵⁷ Brochure of the Hotline: Center for the Defense of the Individual, dated January 22, 1990.

be reluctant to do on their own. Staff members and volunteers help plaintiffs through the bureaucracy, often accompanying them to the appropriate agency and serving as their interpreter when submitting complaints or answering questions. (The Hotline will be discussed in more detail in Section C.2 below.)

The participation of Palestinians in the system should not depend on their access to a handful of small and overburdened private organizations. Unfortunately, many are discouraged by the unresponsive and at times hostile system that they encounter when filing complaints.

A more responsive system of handling complaints would likely improve the environment for investigating killings. If Palestinians perceived a serious response by the IDF to Palestinian-initiated complaints about soldier misconduct, they would probably feel it more worth their time to volunteer information of relevance to IDF investigations.

h. The Perception of Palestinians as Liars

Another impediment to gathering testimony from Palestinians is the stereotype prevalent among many Israeli Jews that Arabs are liars. Palestinian, Israeli and Western journalists and human rights monitors cited this stereotype as a probable hindrance to CID investigations, although one that is difficult to measure.

The IDF, like many Palestinians, believes that the intifada is in part a battle for public relations. Col. Yahav of the IDF international law section said, "There are a lot of rumors, false allegations, since the main aim, perhaps, of the intifada is to deliver the problem to the eyes of the media."⁵⁸ This perception reinforces the stereotype that Arabs are generally untruthful.

⁵⁸ Interview in Tel Aviv with Middle East Watch, June 8, 1989.

Israelis frequently use the phrase "oriental fantasies" to dismiss Palestinian allegations.⁵⁹ In the view of the CID investigator interviewed by Middle East Watch, "In general, Israeli soldiers give more truthful testimony [than Palestinians]."

While Palestinians often have reasons for coloring their testimony, the same is true of soldiers and border policemen, who are usually the only other eyewitnesses to fatal clashes. As Hebrew University law professor David Kretzmer observed, CID investigations "are usually restricted to the versions of the soldiers who were present at the scene, and they are of course interested in describing every shooting situation as a life-threatening one."⁶⁰

The job of weighing the credibility of witnesses is not unique to investigators in the occupied territories, although the difficulties are exacerbated by the highly politicized and disaffected nature of the population. Like investigators worldwide, the CID has a duty to sort through the testimony of witnesses, some of it at odds with or less credible than the rest, without automatically dismissing an entire category of witnesses.

2. Inadequate Cooperation with Nongovernmental Organizations and Other Intermediaries

⁵⁹ For example, Moshe Melamed of the Foreign Ministry told Middle East Watch that there is a difference "between reality and oriental fantasy. Tens of Arab organizations give day after day information about the number of casualties, that vary from the army's information. Arab propagandists need as many martyrs as possible." (Interview in Jerusalem, June 11, 1989.)

⁶⁰ David Kretzmer, "Human Rights and the Rule of Law," *Jerusalem Post*, December 8, 1988.

Israel permits a wide array of nongovernmental organizations interested in human rights to operate in the West Bank and the Gaza Strip, including the United Nations Relief and Works Agency, the International Committee of the Red Cross, and human rights and relief organizations. Persons affiliated with these organizations speak regularly with Palestinians who have witnessed incidents involving security forces; some of these organizations systematically collect Palestinian testimony, in the form of sworn affidavits or other records, and publicize the evidence they have collected. Many encourage witnesses to testify to CID investigators, and have been willing to help in setting up interviews.

Nongovernmental organizations do not have direct contact with the CID. They are supposed to direct inquiries to the Judge Advocate-General's corps. According to the reserve investigator interviewed by Middle East Watch, the CID learns that an organization has a witness or piece of evidence of potential relevance only if the Judge Advocate-General's corps forwards that information to them. The IDF must then clear any contact that investigators make with organizations or lawyers; they are not permitted to pursue such contacts on their own.

It might be expected that CID investigators would pursue these offers, in light of the difficulties they face in finding Palestinians to testify on their own. Indeed, the official policy of the IDF is to pursue every lead that comes to its attention. Defense Minister Rabin said that "once the [Judge Advocate-General's corps] receives information of an eyewitness, either through the lawyers or through international organizations, the Military Police promptly set about taking evidence and adding it to the investigation file."⁶¹ Lt. Yuval Horn of the Chief Military Prosecutor's office, who said he sees 90 percent of the letters that come from international and Israeli organizations, said, "Every single complaint is dealt with." Complaints, he said, are forwarded to the CID, and the prosecutors make

⁶¹ Letter to MK Dedy Zucker, December 14, 1989.

sure that the CID responds before closing the file.⁶²

In reality, the CID's record in pursuing offers of assistance from intermediaries has been uneven: it is more cooperative with some organizations than with others. Both the Association for Civil Rights in Israel (ACRI) and the Hotline reported that CID investigators have been contacting them regularly to set up meetings with witnesses and complainants, although the time between the filing of the grievance and the call from the CID is unacceptably long, in the view of the Hotline (see Section C.3 below).⁶³ But the CID has not once contacted the Ramallah-based organization al-Haq, despite the fact that al-Haq collects hundreds of affidavits annually from witnesses to alleged abuses and publicizes its findings.⁶⁴

The IDF denies there is a policy of discriminating among organizations, but said that investigators cannot follow leads unless the organization submits its information directly to the IDF. Lt. Yuval Horn of the Chief Military Prosecutor's office said, "The fact that al-Haq goes to people with allegations is not enough for us to investigate. The rules are, if they want to help, they have to come forward by writing to us the details."⁶⁵

Lt. Horn's answer is unsatisfactory for a number of reasons. While it is true that al-Haq has chosen in many cases to release information to

⁶² Interview in Tel Aviv with Middle East Watch, March 1, 1990.

⁶³ Interviews by Middle East Watch with Dan Simon, ACRI lawyer for the West Bank, February 26, 1990, in Jerusalem; Tamar Pelleg, ACRI lawyer for the Gaza Strip, February 26, 1990, by phone; and Tsili Goldenberg, the director of the Hotline, February 27, 1990.

⁶⁴ Al-Haq report for 1989, *Nation under Siege*, chapter on investigations.

⁶⁵ Interview in Tel Aviv with Middle East Watch, March 1, 1990.

the international community and the press without contacting the authorities, the IDF has not contacted al-Haq even on those occasions when al-Haq informed authorities directly that it had information relevant to a case. Moreover, in some instances, other organizations have informed authorities that al-Haq was in possession of relevant information, but this did not prompt investigators to contact al-Haq. For example, after al-Haq issued a bulletin on the killing of Yasser abu Ghosh in July 1989, Middle East Watch wrote to the IDF about the case and mentioned that al-Haq had interviewed over 30 witnesses and was willing to encourage those witnesses to give testimony (see Appendix). The IDF did not reply to this letter; nor was al-Haq ever contacted.⁶⁶ Also, the Israeli press frequently reports on al-Haq's findings. But, according to Lt. Horn, "We can't sit in the offices of the Judge Advocate-General or the Military Police and read newspapers in order to find the relevant people. They have to contact us."⁶⁷

If the CID were serious about its self-declared vow to do "everything to arrive at the truth," they would not scorn taking the initiative to contact routinely al-Haq and other serious monitoring groups that might be in a position to facilitate their search for witnesses.

The IDF is aware of many of the issues that need to be addressed if the CID is to encourage Palestinians to give testimony, both as individuals and via nongovernmental organizations. Deputy Judge Advocate-General Col. Ilan Schiff told Middle East Watch:

- o CID investigators will meet witnesses in "neutral" places that are not dangerous to investigators.

⁶⁶ Letter from Middle East Watch to Minister of Defense Yitzhak Rabin, August 2, 1989. Copies were sent also to the office of the IDF spokesman and the Judge Advocate-General.

⁶⁷ Interview in Tel Aviv with Middle East Watch, March 1, 1990.

- o CID investigators are ready to come in civilian clothing if witnesses prefer.**
- o The CID always has an interpreter available.**
- o The CID will permit, if a witness insists, any neutral person chosen by the witness to attend the questioning.⁶⁸**

In practice, these laudable policies are not satisfactorily implemented. The Hotline, which has worked with both the IDF and the police (including the Border Police in the territories), finds the IDF far less forthcoming than the police on these issues.

First of all, police investigators are willing to come to the East Jerusalem office of the Hotline to interview plaintiffs, while the head of the CID in Jerusalem told the Hotline that he did not send investigators to East Jerusalem out of concern for their safety.⁶⁹

CID investigators have travelled to the offices of the Association for Civil Rights in Israel and to the office of human rights attorney Felicia Langer, both in West Jerusalem, to take testimony from witnesses. The CID commander added that the division also has an arrangement with the International Committee of the Red Cross to meet witnesses from the territories in "neutral" places inside the borders of pre-1967 Israel.⁷⁰

This sort of flexibility is important to encourage Palestinians to

⁶⁸ Interview in Tel Aviv with Middle East Watch, March 1, 1990.

⁶⁹ Eliza Herman, attorney for Hotline, interview by phone with Middle East Watch, July 9, 1990. Herman said that on two occasions reserve investigators came to the Hotline office to conduct interviews, apparently in ignorance of their commander's policy.

⁷⁰ Interview in Tel Aviv with Middle East Watch, March 1, 1990.

step forward. At the same time, because many Palestinians are reluctant to travel inside Israel, the CID should strive to make itself available for testimony in as wide a range of locales as possible.

The Hotline, as well as attorney Felicia Langer, disputed the IDF's assertion that CID investigative teams always come with an Arabic speaker.⁷¹ Police investigative teams, by contrast, consistently include Arabic speakers, according to the Hotline. Also, while the police permit a representative of the Hotline to attend the questioning of a witness if the witness requests it, the IDF has on many occasions prevented a Hotline representative from attending the session.

a. UNRWA and Investigations

With its more than 7,000 employees spread throughout the cities and refugee camps of the West Bank and the Gaza Strip, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is potentially a rich source of witnesses and intermediaries for witnesses to human rights violations. To date, IDF investigators have done little to develop relations with this key institution or to encourage its staff to cooperate with investigators.

In the occupied territories, the UNRWA staff consists mostly of Palestinian employees, plus a few dozen foreign nationals. The staff includes teachers, doctors, nurses, and relief workers, who are ubiquitous in refugee camps in the territories. During the intifada, UNRWA added to its staff 20 non-Palestinian "Refugee Affairs Officers" (RAOs) whose official function is to patrol the territories and observe UNRWA operations, but who also are there to observe contacts between the IDF and the local population, and to intercede when deemed appropriate.

The IDF's prospect for eliciting greater cooperation from UNRWA

⁷¹ Felicia Langer in phone interview with Middle East Watch, March 4, 1990.

in investigations is poor at the moment. Relations between the IDF and UNRWA have always been delicate, and the deployment of RAOs as observers did not help matters.⁷² UNRWA has not actively encouraged its staff to step forward and provide testimony to the CID.⁷³

The CID, for its part, rarely bothers to contact UNRWA, even when there is reason to believe that UNRWA employees either witnessed an incident, accompanied an injured Palestinian to obtain medical care, or treated him at a clinic or hospital. Bernard Mills, who served as director of UNRWA operations in Gaza from 1986 to 1988, wrote that "neither I nor my international colleagues have ever been asked to give evidence to [military police], despite our many written and verbal reports to the Israeli authorities on terrible incidents we have personally witnessed."⁷⁴

In the few cases since 1988 in which UNRWA in Gaza initiated complaints about incidents of alleged abuse of Palestinians -- for the most part based on the testimony of UNRWA's international staff members -- the IDF's response has been inadequate. According to Christian Berger, UNRWA's legal officer in Gaza, military authorities have sent to UNRWA formal acknowledgment of their complaints but never substantive information about the outcome of investigations.

For example, in February 1989, a foreign UNRWA employee encountered a nine-year-old boy from the Shati refugee camp shortly after he had been severely beaten and then released by soldiers. UNRWA

⁷² On worsening IDF-UNRWA relations, see Ori Nir, "Agency of the Intifada," *Haaretz*, December 22, 1989, and George D. Moffett III, "Palestinian Uprising Foists New Role on UN Aid Workers," *Christian Science Monitor*, July 6, 1988.

⁷³ Christian Berger, UNRWA Legal Officer in Gaza, in phone interview with Middle East Watch, March 4, 1990.

⁷⁴ Bernard Mills, "Minor Scuffles That End with Fatal Consequences," the *Independent* (London), April 27, 1989.

wrote the Civil Administration liaison officer, describing the injuries and asking for an investigation. UNRWA was informed that the incident would be investigated, but then heard nothing further until the Association for Civil Rights in Israel raised the case with the Israeli authorities one year later. At that point, IDF investigators contacted UNRWA and requested help in locating the victim, but the UNRWA staff member who had picked up the boy had left the region.⁷⁵

That investigators have sought information about incidents from UNRWA staff on a few occasions raises the question why such evidence is not sought more routinely. This is not to say that the testimony of UNRWA employees is worth more than that of other witnesses, or that UNRWA's local employees will prove more willing than other Palestinians to cooperate with IDF investigators. But in an environment in which the testimony of witnesses other than soldiers is hard to obtain, UNRWA offers a large potential pool of witnesses, and the CID should at least be talking with the agency to foster cooperation.

3. Slow Pace of Investigation

In most cases, several months elapse from the day that a Palestinian is killed to the day that the Judge Advocate-General issues his legal opinion on the case. Some cases take one year or more to complete. The two main processes pursued during this period are the CID's investigation and the prosecutor's deliberation. It is difficult to apportion responsibility between these two branches for the length of time taken. What is certain is that the inordinate passage of time diminishes the likelihood of successful prosecution, because witnesses become harder to find and, if found, are more likely to have forgotten details or to have had their testimony influenced by third parties, and reserve investigators are more likely to have returned to civilian life and handed over pending files to their replacements.

⁷⁵ UNRWA legal officer Christian Berger, *op. cit.*

Protracted investigations also undermine the cause of justice because there are statutory limits to the period following a soldier's demobilization in which he can be court-martialed or disciplined. While Middle East Watch has no statistics on the total number of cases in which the statute of limitations closed off options for military punishment, we encountered three such cases involving killings during the preparation of this report: in the Atwa Hirzallah case (see Appendix), because of the passage of time, the military prosecutor was compelled to transfer the file to the State Attorney for action;⁷⁶ in the killing of Muhammad Sha'ban (see Chapter One), the elapse of six months precluded disciplinary action against the soldier for a "minor" deviation from the rules, an option that the military prosecutor's office claimed to have been considering;⁷⁷ and in the case of Rafaida abu Laban (see Appendix), the passage of time precluded a disciplinary hearing, leaving the military prosecutor with the option only of ordering that the soldier be censured.

Interviews with reserve soldiers indicate that most investigations get under way promptly following a killing, with the CID usually questioning soldiers and officers in the unit within one day of an incident.⁷⁸ The systematic delays begin when and if investigators press their queries beyond the routine questioning of IDF personnel, all the while being handed new cases and facing pressure to complete older files (see Section C.4 below on understaffing at the CID).

The investigative pace also tends to be slow when the incident

⁷⁶ The Justice Ministry announced in July 1990 that the soldier had been charged with negligent homicide.

⁷⁷ Lt. Yuval Horen of the Chief Military Prosecutor's office, interview in Tel Aviv with Middle East Watch, March 4, 1990.

⁷⁸ This claim was also made by the CID commander in an interview in Tel Aviv with Middle East Watch, March 1, 1990.

under scrutiny is a nonfatal one. The Hotline victim services organization in Jerusalem outlined the CID procedure for handling complaints, which compares unfavorably with the system used by the Israeli police. When a Palestinian files a complaint about the IDF, the Hotline must submit the details in writing to the district military prosecutor, rather than directly to the CID. The prosecutor may then request additional information before deciding whether to order an investigation. An average of four to six weeks passes, according to the Hotline, before it receives a reply stating whether the complaint has been forwarded to the CID for investigation. Another month passes on average before the Hotline receives a call from investigators concerning the complaint. During this time, the plaintiff and other witnesses may become harder to find, less willing to testify, and less precise about details.

The Hotline said the response time is much faster when the complaint involves members of the Border Police, since that branch has its own investigative unit. The Hotline has developed a working relationship with that unit and can contact it directly by phone.⁷⁹

While acknowledging that investigations take a long time, the IDF denies that this harms the cause of justice. Defense Minister Yitzhak Rabin said that the time involved reflected the thoroughness of the process:

The inquiries into cases involving death take a few months. The handling of the cases by the district prosecutor takes a few weeks, owing to the large number of cases and to the inclination to handle each case with the seriousness and thoroughness it deserves. Sometimes the prosecutors order the continuation of the investigation in a further attempt to investigate and discover all the relevant factors and collect the material which will be sufficient to prosecute in the relevant

⁷⁹ See also Joel Greenberg, "Police Inquiries Quicker, More Thorough than IDF's," *Jerusalem Post*, November 9, 1989.

cases.

At this stage, once a report has been submitted, the file is given to the Judge Advocate-General and Chief Military Prosecutor, who study it *again*, from beginning to end, carefully making sure that what is stated in the report factually corresponds to the investigative material, and legally corresponds to the policy of prosecution. I believe that this meticulous handling, which occasionally takes a while, shows how seriously such cases are treated.⁸⁰

Brig. Gen. Amnon Strashnow, the Judge Advocate-General, also defended the pace of investigations. He told the *Washington Post*, "I'm not bothered about [the time it takes] as long as an investigation is held to inquire into the roots of the case without any attempt to smear or put things under the rug."⁸¹ Had he wanted to move more quickly, he said, "I could have closed many more files." Strashnow said that in one case he had ordered the investigation reopened three times until the suspects were identified. Four soldiers were later tried.⁸²

MK Dedy Zucker has charged that the bottleneck in the process occurs during the period when the files are in the hands of the prosecutors. He asserted that while 85 percent of the CID investigations are completed within six months, the file review by the military prosecutor's office often takes up to several months, during which time the file is often left virtually untouched.⁸³ In its monitoring of specific

⁸⁰ Letter to MK Dedy Zucker, December 14, 1989.

⁸¹ Glenn Frankel, "Israeli Army Fights Charges of 'Whitewash' in Deaths," *Washington Post*, April 1, 1989.

⁸² The case, known as "Givati II," involved the February 1988 beating death of Iyad Akal, a 17-year-old Gazan. A verdict has not yet been reached.

⁸³ Letter to Minister of Defense Yitzhak Rabin, November 5, 1989.

cases, Middle East Watch has found that investigative files spend a long time in the prosecutors' hands before decisions are made, but we are unable to say whether the prosecutors are scrutinizing the files during this time, as the IDF claims. Whatever the case may be, the drawn-out nature of the entire process ill serves the cause of justice.

The data is not available to state precisely how long the entire process of investigating and reaching a legal decision on a killing takes on average. However, a non-random sample of ten cases by Middle East Watch gives a sense of the time involved.

On June 8, 1989, Middle East Watch submitted inquiries to the IDF concerning ten deaths of Palestinians that occurred between October 1988 and May 1989. These cases are:

- o The death in detention of Ibrahim al-Umtur on October 19, 1988 (see Section C.5 below);**
- o Amar Hamayel, killed by a soldier's gunfire in Beita on November 19, 1988;**
- o Badr Qaradeh, 13, who died nine days after falling or being thrown from a jeep in Nablus on December 10, 1988;**
- o Abdullah abu Mahraka, shot by a soldier in a detention center in the Gaza Strip on December 12, 1988;⁸⁴**

⁸⁴ MKs Yossi Sarid and Dedy Zucker heard from two reserve soldiers who witnessed the shooting, who charged that a captain shot Abu Mahraka while the detainee was lying wounded on the ground. The suspect claimed the prisoner had made threatening movements with the knife still in his hand, but the witnesses said the prisoner was so wounded that he was no longer a danger to anyone. (Michal Sela, "No Steps against Officer Who Shot Detainee," *Jerusalem Post*, June 12, 1989.)

- o Eight Palestinians fatally shot by soldiers in numerous incidents in and around Nablus on December 16, 1988;**
- o Atwa Hirzallah, killed by a soldier's gunfire on February 27, 1989 (see Appendix);**
- o Imad Qaraqe, 22, killed by gunfire in the Deheishe refugee camp on April 15, 1989;**
- o Nasr al-Qassas, 17, killed by a soldier's gunfire in Deheishe camp on April 16, 1989;**
- o Rafaida abu Laban, killed by gunfire on April 17, 1989 (see Appendix); and**
- o Khaled al-Atawneh, killed by a soldier's gunfire on May 25, 1989 (see Appendix).**

The IDF's reply, dated July 5, 1989, gave status reports on the cases. The ten cases, involving a total of 17 fatalities, had occurred between six weeks and nine months before the IDF's reply. In only three of the ten cases had the IDF completed its scrutiny:

- o Ibrahim al-Umtur (October 1988): the death of the detainee had been ruled a suicide (see Section C.5 below);**
- o Abdullah abu Mahruka (December 1988): the prosecutor had decided against charging the soldier, on the grounds that he had fired after the detainee had threatened his life;⁸⁵ and**
- o Imad Qaraqe (April 1989): the file had been transferred to the police on the grounds that he accidentally shot himself with a**

⁸⁵ See also Michal Sela, "No Steps against Officer Who Shot Detainee," *Jerusalem Post*, June 12, 1989.

homemade weapon.

In the other seven cases, including three from 1988, legal opinions were still awaited, although investigations into three of them -- Hamayel (November 1988), al-Qassas (April 1989), and the eight killings in Nablus (December 1988) -- were complete.

By the end of 1989 there had been developments in the three outstanding cases from 1988:

- o Amar Hamayel (November 1988): The Judge Advocate-General had ordered a court-martial for the soldier who had killed him; he was charged with negligent homicide, convicted of a lesser charge, illegal use of a weapon, and sentenced to a reprimand.**
- o Badr Qarade (December 1988): the investigation had been closed on the grounds that no evidence of wrongdoing had been found, and no soldiers were charged or disciplined.**
- o Eight deaths in Nablus (December 1988): According to press reports, four soldiers had been ordered to undergo a disciplinary hearing for violating their open-fire orders. One was acquitted, two received reprimands, and one received a warning.**

By March 1990, only one of the four outstanding 1989 cases on the Middle East Watch list had been completed, although there were developments in the other three:

- o Rafaida abu Laban: According to the IDF, the district military prosecutor had determined that the sergeant whose gunfire apparently killed her had deviated from open-fire orders. But, the IDF said, since the statutory limit for subjecting him to a disciplinary hearing had been exceeded, the prosecutor could not order such a hearing and instead ordered that the sergeant be censured severely.**

- o Khaled al-Atawneh: The investigation had been completed and was awaiting an opinion from the district military prosecutor.**
- o Nasr al-Qassas: The case had been reopened after ACRI informed the CID of a relevant eyewitness, and arranged for investigators to question him.**
- o Atwa Hirzallah: The investigation into the killing of Atwa Hirzallah had been completed, but the file had been transferred to the State Attorney where it was awaiting a decision. The case had been transferred because the statute of limitations for a military prosecution had been exceeded. (The State Attorney later filed negligent homicide charges against a soldier.)**

The fact that disciplinary steps were eventually taken against soldiers in three of the ten cases to date does not allay concern that the passage of time undermines the process of justice. Over a year after the last of these killings, not a single soldier had received a punishment more severe than a reprimand, despite *prima facie* evidence of serious wrongdoing in many of the cases.

Had the investigative and legal system moved faster, prosecutors may have chosen to file more serious charges appropriate to the offenses. For example, affidavits collected from witnesses to the eight killings in and around Nablus by al-Haq and the Lawyers Committee for Human Rights suggested severe wrongdoing by soldiers. But nearly one year after the events, press reports indicated that four soldiers had been ordered to undergo only a disciplinary hearing -- not a court-martial -- on accusations of illegal use of their weapons, shooting at close range, shooting live ammunition instead of plastic bullets, and shooting directly before firing warning shots in the air. Had a prompt and thorough investigation into the eight killings been conducted, it is likely that evidence more appropriate for a court-martial than a disciplinary hearing would have been assembled. As the court noted in the Givati trial (see Section D below), after acquitting the four defendants of manslaughter on the grounds that the fatal blows had most likely been administered by another group of soldiers, "We find it difficult to believe that now, after so

long a period has elapsed since the incident took place, the investigation can be resumed and the guilty parties can be found.”⁸⁶

Moreover, these extended delays fuel doubts about the credibility of IDF investigations. Since interested parties are unable to obtain any information about the progress of investigations until the file is completed and ruled upon, it is difficult to learn in a timely fashion whether a serious effort to determine the facts is under way. Judging by the few convictions obtained, the IDF has so far failed to substantiate its claim that its slow investigative pace is due to thoroughness and seriousness, rather than to such factors as understaffing and indifference.

4. Understaffing at the Criminal Investigation Division

The IDF proudly states that the pressures of the intifada have not prompted the IDF to abandon the policy of investigating every killing by its personnel. This assertion prompts the question of how the standards of investigation could be maintained without huge manpower increases in the CID.

In February 1989, *Haaretz* reported:

⁸⁶ *Military Prosecutor v. 1st Sgt. Yitzhak Adler, Pvt. Ron Hakhal, Pvt. Aryeh Lutzato, Pvt. Yitzhak Kibudi and Capt. Dr. David Nussam, Southern District Military Court, DR 248/88. Translation on file at Middle East Watch.*

Three weeks after the verdict, the Judge Advocate-General agreed to reopen the investigation into the death of Hani al-Shami, after refusing to heed earlier appeals to do so. Although the investigation was resumed in this case, the delay probably diminished the chances for a successful prosecution. The new probe, begun nearly one year after al-Shami had been fatally beaten at an army compound in August 1988, has not yet led to charges against any of the soldiers at the compound, or against officers who gave oral orders that sanctioned illegal beatings.

The Military Police has made no change whatsoever in the deployment or number of its investigators who deal with investigations related to events in the territories. An official IDF source who conveyed this information noted that his staff is feeling a certain "strain," but this has not impaired investigations, which are conducted "in accordance with all the accepted regulations."⁸⁷

In June 1989, Judge Advocate-General Strashnow insisted, according to *Haaretz*, that the system of investigation was working with fairness, thoroughness and professionalism, and was not collapsing under the pile-up of cases.⁸⁸

This claim is simply not credible. In view of the very modest increases in manpower since the start of the intifada, many cases will inevitably be handled in a cursory or unreasonably protracted fashion. As reporter Joel Greenberg of the *Jerusalem Post* put it: "The CID is overloaded; they weren't set up to investigate an intifada."⁸⁹ **Some critics put it more harshly. Knesset member and law professor Amnon Rubinstein charged that "the Military Police/CID and the Judge Advocate-General's Corps are collapsing under their work load, which impairs their very ability to function...."**⁹⁰

The CID investigator interviewed by Middle East Watch said that the agency had a definite manpower strain. The commander of the CID acknowledged that understaffing was a problem, "in addition to all of the

⁸⁷ *Haaretz*, February 5, 1989. Translated by the Government Press Office, February 23, 1989.

⁸⁸ *Haaretz*, June 16, 1989.

⁸⁹ Interview in Jerusalem with Middle East Watch, June 11, 1990.

⁹⁰ *B'Tselem, Annual Report 1989*, p. 118.

other difficulties." The commander said the division had grown during the intifada, but not significantly. Declining to give precise figures, he would say only that the CID "has not doubled,"⁹¹ adding that other branches of the army had also been constrained from expanding to meet their needs.

It is clear that whatever limited manpower increase has occurred pales in comparison with the growth in the number of killings, each of which is supposedly investigated. In the 23 months between January 1986 and the outbreak of the intifada in December 1987, for example, security forces fatally shot 17 Palestinians in the West Bank, according to al-Haq. By contrast, during the next 23 months, security forces killed 365 Palestinians on the West Bank.

Another staffing issue that affects the quality of CID work is the use of reservists as investigators, a practice that has increased during the intifada.⁹² According to Joshua Schoffman, legal director of the Association for Civil Rights in Israel (ACRI), continuity problems arise when investigations, which commonly take months, are begun by one set of reserve investigators, turned over to their replacements, and so on, until completion.

The court's opinion in the Givati trial, which is examined in Section D below, criticized the discontinuity of the investigation into that death-by-beating case, noting that good detective work effectively ended when the first investigator finished his tour of duty and handed the file to his successor.

⁹¹ Interview in Tel Aviv with Middle East Watch on March 1, 1990. The IDF told Middle East Watch in July 1989 that figures on the staffing and budget of the CID "are not made public."

⁹² Lt. Col. Arik Gordin of the IDF spokesman's office, interview in Tel Aviv with Middle East Watch, June 8, 1989.

The commander of the CID acknowledged that relying on reservists was not an optimal solution to handling the caseload. The CID investigator interviewed by Middle East Watch contended, however, that while reservists were being relied upon increasingly, the continuity problem should not be exaggerated. He evoked the closely knit nature of the CID's reserve corps, and said reserve investigators on active duty commonly phone their predecessors when they had questions about cases. However, he acknowledged that these were not ideal working conditions. Summing up, he said there is a morale problem in the CID: investigators are "tired of death cases. They do the job, but they're frustrated. The conditions of investigation [during the intifada] are very bad."

5. Inadequate Response to Requests for Information about Investigations

The IDF's official policy of maintaining open investigative files is laudable in theory, but has yet to be realized in practice. Unlike, for example, a criminal investigation by a federal grand jury in the United States, which must ordinarily remain secret by law if no indictment is voted, CID investigative files are supposedly open for inspection by interested parties, subject to military censorship, once the Judge Advocate-General's corps has ruled on the case.

A statement issued by the Israeli Embassy in Washington in June 1990 said, "As a matter of principle, the investigation file is open for the examination of all persons involved, who can request through an attorney to see it." An earlier statement asserted that "findings are forwarded to families and other plaintiffs."⁹³

⁹³ Embassy of Israel, Washington, D.C., June 1990 statement and "Comments and Reservations Concerning the Department of State Rights Report for 1989 with Respect to the Section on Judea-Samaria and the Gaza District," May 1990.

Deputy Judge Advocate-General Col. Ilan Schiff elaborated: "We will show the file to every family lawyer once a security check is done to censor points like which units were involved and their size....Any lawyer can come here to see the file."⁹⁴

An official policy of openness also surrounds autopsies, by which the families of persons killed are permitted to send physicians of their choosing to attend the official post-mortems, and to obtain copies of the official pathologist's report. The issue of autopsies will be treated separately later in this section.

We welcome the IDF's stated policy of openness, both in its own right and because we view it as virtually required to deal fairly with the controversial circumstances of the territories. Indeed, in light of those circumstances, the IDF should be doing far more to make this policy a reality.

The right of victims' families and their lawyers to information is affirmed in the preeminent international instrument on the investigation of killings, the U.N. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Article 16 of the Principles provide that families and their lawyers are to be "informed of, and have access to, any hearing as well as to all information relevant to the investigation."

⁹⁴ Interview in Tel Aviv with Middle East Watch, March 1, 1990.

The need for openness in investigating the killings of Palestinians is heightened by the severe credibility problem confronting IDF investigations. As noted, Palestinian distrust is intensified by the fact that the IDF conducts its own criminal investigations of its soldiers' actions, rather than turning over the task of investigating to an independent body. Distrust is also reinforced by the IDF's practice of permitting investigations to drag on for months, during which time virtually no information about the case is available to interested parties. An investigative process governed by a relatively high degree of openness would, in our view, go a long way toward improving public confidence.

Such openness does not exist in reality. For example, Middle East Watch could not locate any Palestinian family to whom investigative files had been shown. When in June 1989 Middle East Watch first learned from Col. David Yahav of the IDF international law section that the IDF welcomed interested parties to view investigative files upon completion, we could find no human rights organization that was aware of this policy.

Thus, at least as a practical matter, there was little openness because, other than in a few cases of death in detention (see the section on autopsies, below), few human rights organizations and lawyers had known they could request files. The IDF should actively make this option known to all relevant organizations as well as to the relatives of every Palestinian whose death or injury is investigated.

As far as Middle East Watch is aware, the few attempts that have been made so far to test the IDF's willingness to reveal files have not met with satisfactory results. In 1990, Hotline attorney Eliza Herman asked the military prosecutor of the central district to see the contents of a particular file related to a complaint that had been submitted by a Hotline client. She received no response. In a spring 1990 meeting with Hotline staff, Deputy Judge Advocate-General Col. Schiff added an important qualification to the policy of open files, stating that the IDF would reveal the contents of a file only to a victim's family and their lawyer, but not to a civil rights group. According to Herman, Col. Schiff considered the Hotline

to be in the latter category, and thus ineligible to inspect files, despite the fact that the Hotline served as legal counsel to the plaintiffs.⁹⁵

Middle East Watch's own requests to see files met with a disappointing response. On March 1, 1990, Middle East Watch asked to see the completed files in two killing cases: Muhammad Sha'ban, killed in August 1989, and Ahmad Hassan Salem Amro, killed in April 1988. The Chief Military Prosecutor's office agreed to provide the files at a second meeting three days later. On the appointed date, representatives of the Chief Military Prosecutor's office arrived with what they said were materials from the files, which they said they would summarize orally but were closed to Middle East Watch.

The ill-fated efforts of attorney Osama Halaby to obtain the file on the killing of Jiryis Yusef Qunqar also challenge the IDF's claim that access to files is open. Halaby was retained by the family of Qunqar, who was killed by three bullets, including one in the back, fired by a reserve sergeant who chased him during disturbances in the West Bank village of Beit Jala in July 1988.

Halaby first wrote to Defense Minister Rabin in October 1988, asking for an investigation and providing the names of neighbors who had heard the shooting and found Qunqar's body. the CID never contacted Halaby for assistance in locating the neighbors and, as far as he knows, they were never contacted.⁹⁶

Halaby did not hear from the IDF until January 1989, when he received a letter informing him that the investigation was over and the military prosecutor had decided to put a soldier on trial. The letter did not

⁹⁵ Hotline attorney Eliza Herman, interview by phone, Middle East Watch, July 9, 1990.

⁹⁶ Interview with Osama Halaby in Jerusalem with Middle East Watch, March 2, 1990.

name the soldier, or state when and where the trial would take place. Halaby immediately wrote back, requesting to see the full investigative file and the charge sheet. Two weeks later he received a note acknowledging his request. In late March 1989 he requested the same information once more.

Finally, in April 1989, Halaby received a letter from the Chief Military Prosecutor's office ignoring his request for the file but informing him that the court had reached a verdict in the case in March. A copy of the judgment was enclosed.

In the judgment, the court accepted defendant Reserve Sgt. Nissim Dahan's defense that the shooting had been entirely accidental. The court convicted him of negligent homicide, however, because they found that he had had his finger on the trigger and the gun set in the automatic-fire position while climbing over a wall in pursuit of a fleeing, unarmed person. The sergeant received a four-month suspended sentence.

In the eyes of many in the village, the killing of Qunqar was no accident. Members of Qunqar's family told the Lawyers Committee for Human Rights that eyewitnesses had described the killing to them as deliberate. The CID's lack of cooperation with the family's lawyer and its apparent failure to seek Palestinian witnesses contributed to the impression of a closed and inadequate investigation which ended in lenient treatment of the responsible soldier.

Asked to comment on the IDF's treatment of the lawyer representing the Qunqar family, Lt. Yuval Horn of the Chief Military Prosecutor's office said that Halaby's experience, if true, was an aberration. Lt. Horn said that since he had assumed responsibility for responding to requests for information in 1989, all such inquiries have been replied to seriously and substantively.

In fact, the prosecutor's office generally sends out one of two standard responses to journalists, lawyers and human rights

organizations that request information about investigative findings. The first is a note acknowledging their letter and informing them that the CID investigation is still in progress or is complete and awaiting a ruling by the Judge Advocate-General's corps. The second, issued after a ruling has been made, summarizes the investigative findings and the ruling.

The second type of response rarely provides enough particulars about the investigation to answer the questions that the interested party might have, although the number of detailed two and three-page responses to queries appears to have increased over the past year (see, for example, the IDF's reply to Attorney Felicia Langer on the Yasser abu Ghosh case, in the Appendix). Nevertheless, IDF replies often fail to address specific questions posed in the query, and follow-up questions are often ignored. This has been the experience of Middle East Watch, and other monitoring organizations.

Haaretz journalist Yizhar Be'er received the same brief and inadequate reply while researching an article containing case studies of killings. While the IDF summarized the findings in the specific files that had been completed,

Additional questions weren't answered: When were the files with the investigations' findings transferred to the military prosecutor's office. When did the prosecutor's office give its recommendations? When were the soldiers tried? When were they convicted, and what was their punishment?⁹⁷

The terse manner in which the IDF generally replies to requests for information about completed cases damages the credibility of the process. It also complicates the work of attorneys who may wish to appeal the Judge Advocate-General's rulings on cases.

⁹⁷ "A Procedure for the Arrest of a Suspect Was Carried Out," *Haaretz Weekend Magazine*, May 11, 1990. Translated in *Al-Fajr English weekly*, May 21, 1990.

Although it may be reasonable to withhold information while an investigation is in progress, the IDF should volunteer as much as feasible once the investigation is complete, providing interested parties information about, among other things, when, how many, and what sorts of persons were interviewed by the investigators, what forensic and medical evidence was collected, and how these types of evidence were weighed. Such access should be granted to Palestinian residents of the occupied territories, except for details that are withheld because of genuine security and right-to-privacy considerations, such as the names of particular witnesses.

When the unnatural death being investigated by the CID is that of an Israeli soldier, the Military Prosecutor's office keeps in close touch with the family about the progress and findings of the investigation. Palestinian families should enjoy the same access, if they so desire, when it is their kin who have died.

a. Autopsies

IDF regulations require that an autopsy be performed "in principle" on any person who is killed,⁹⁸ with the possible exception of persons killed in a "military operation" (see footnote 14 to this chapter). All autopsies are carried out at the Pathological Institute at Abu Kabir.⁹⁹

⁹⁸ Letter from Defense Minister Rabin of December 14, 1989 to MK Dedy Zucker. Rabin outlined some of the exceptions:

Occasionally the transfer of the body to the laboratory might cause an escalation of the disturbances, at other times the cause of death is obvious and the shooting soldier has been located. Consequently, the regulations concerning the evacuation of bodies determine that the regional commander should detail his reasons for deciding to bury a body quickly and quietly.

⁹⁹ The Leopold Greenberg Institute of Forensic Medicine at Abu Kabir, in Jaffa, operated by the Israeli Ministry of Health, conducts all autopsies on residents of Israel and the occupied territories.

In each case, according to the Director of the Institute, Dr. Yehuda Hiss, a complete autopsy is carried out, including toxicological and drug tests. The Institute then submits its report to the IDF, and it becomes part of the CID investigative file.

Autopsies are conducted on only a minority of Palestinians killed by security forces -- in 25 to 30 percent of cases, according to one press report.¹⁰⁰ Most of the time, autopsies are not performed because Palestinians abduct and bury the bodies of their brethren before the IDF can take custody of the body (see Section C.6 below). In other cases, the IDF commander on the scene may decide to release the body for immediate burial; when this occurs, the commander must report the reasons for his decision.

Section C.6 below describes how the CID proceeds when autopsies are not conducted, and criticizes their inadequate efforts to seek other forms of medical evidence. The present section focuses on the problems in cases in which an autopsy was conducted. In this aspect of the official investigative process, there has been an encouraging trend toward openness following a number of petitions to the High Court of Justice.

The official policy of openness with regard to autopsies, which reportedly has been promoted by Dr. Hiss during his tenure at Abu Kabir, is commendable. However, it has been manifested so far primarily in cases that have attracted attention from the press and human rights groups, and has not yet been routinized.

¹⁰⁰ Yizhar Be'er, "A Procedure for the Arrest of a Suspect Was Carried Out," *Haaretz Weekend Magazine*, May 21, 1990. Translated in *Al-Fajr* English weekly, May 21, 1990. Neither the IDF nor the Pathological Institute was able to provide Middle East Watch with statistics on the number of autopsies conducted on Palestinians killed by security forces during the intifada. However, in July 1990, the Institute reported partial figures would soon be available.

In theory, families are permitted to send doctors of their choice to witness official autopsies, but in practice they often are not made aware of this option. Families are also entitled to receive a copy of the autopsy report, but only after the official investigation is over, which often means a wait of many months, and sometimes more than a year.

The impartiality and thoroughness of the autopsies conducted at Abu Kabir are not matters on which Middle East Watch is qualified to judge. The Forensic Institute, according to Dr. Hiss, is a "completely independent institution," free of any pressures from the IDF or any other official body. Outside experts who have reviewed autopsy reports from Abu Kabir during the intifada found no basis to doubt their narrow medical accuracy.¹⁰¹ However, as will be discussed below, Abu Kabir was criticized by the Scottish pathologist Dr. Derrick Pounder of Dundee University, who observed autopsies in two death-in-detention cases. Dr. Pounder faulted the autopsies for failing to investigate whether the way the victims had been treated before they died had contributed to their death (see the cases of Ibrahim al-Umtur and Yusef al-Masri, below).

Our concerns regarding the work of the Pathological Institute thus center less on the content of the findings than on the importance of making the findings and procedures more accessible to the parties concerned.

Dr. Hiss explained that families have a right to send a doctor of their choice to observe an official autopsy. Upon receiving a body from the territories, he said, the Institute tries to contact the family, through the Civil Administration or other agencies, to ask whether it wishes to

¹⁰¹ There had been allegations of falsified autopsy reports prior to the intifada, notably in the 1984 "Bus 300" case, in which two Palestinians who hijacked a bus in Israel were captured and then executed while in custody, and in the 1987 death in detention of Awad Hamdan. On the latter case, see the section on deaths in detention and autopsies in al-Haq's annual report for 1988, *Punishing a Nation*.

exercise this right. The Institute will delay an autopsy "for 24 to 48 hours to allow the family to make up its mind."¹⁰²

Over the course of the intifada, there have been no more than ten cases in which independent doctors have attended autopsies at Abu Kabir. The main reason for this, according to Dr. Hiss, is that Palestinian families that are contacted express the desire only to have the body returned as quickly as possible. While this may be true in some cases, the low number of independent doctors present at official autopsies is also due to a failure to reach families. In many cases in which the IDF has control of the body, the bereaved family has no contact with authorities until soldiers arrive at its door with the body, following the autopsy. Dr. Hiss said that it is not always possible to locate family members without unduly delaying the autopsy.

Another problem of access concerns the disposition of the official autopsy report. According to Dr. Hiss, the autopsy report is "public, but you have to get it from the Army." Dr. Hiss acknowledged that the IDF does not release the document before a legal ruling in the case is made, on the grounds that to do so might influence the investigation. Withholding the findings might be reasonable if the investigation were concluded within a period of two or three months. But when months pass and no information is released, the withholding of the autopsy report undermines confidence in the process. It also prevents interested parties from suing quickly for a second autopsy on the grounds that the first was flawed. While the delay continues, the soft tissue in the body decomposes, diminishing its evidentiary value in certain types of killings.

Furthermore, there is a logical flaw in the stated grounds for withholding the autopsy report until completion of the investigation. If a family-appointed pathologist may attend an autopsy and then describe it to the press, it is hard to see how the investigation is going to be tainted

¹⁰² Interview in Abu Kabir with Middle East Watch, March 1, 1990.

by release of the official report. Moreover, release of the report could help clarify the issues presented by the case and thus enable interested attorneys or organizations to produce pertinent witnesses.

Lawyers representing bereaved families have generally had little success in obtaining autopsy reports from the CID, either during or after the investigation. Gaza-based lawyer Raji Sourani has filed written requests with the IDF for autopsy reports in six or seven cases while investigations were still under way. The IDF has not once sent him a report, even after the investigations were completed.¹⁰³

After 21-year-old Ata 'Ayyad was found hanged in the Dhahriya detention center on August 14, 1988, lawyer Ahlam Haddad filed several unsuccessful written requests for the autopsy report. In June 1989 authorities informed her that the investigation into the death had not yet been completed. In August she petitioned the High Court of Justice, demanding information about the investigation and requesting a second autopsy by an independent pathologist. Finally, in early 1990, Haddad was given the autopsy report and a substantive report on the investigative file.¹⁰⁴

In late 1988, however, human rights organizations and lawyers

¹⁰³ Interview by phone with Middle East Watch, June 18, 1990.

¹⁰⁴ On January 4, 1990, *Hadashot* daily reported that the military prosecutor's office had ordered three CID investigators court-martialed for falsifying evidence surrounding the hanging of Awad. *Hadashot* reported that because Awad's body was found hanging 2.5 meters from the ground, there was suspicion he could not have reached this height himself. The indictment, according to *Hadashot*, charged that the investigators climbed a ladder to photograph the noose, to make it easier to close the investigation. The IDF did not, however, modify its conclusion that the death was a suicide, the daily reported. The indictment of CID investigators compounded the IDF credibility problem in this case, which was already hurt by the year-and-a-half wait for information about the investigation.

began to experience more success in compelling authorities to make the autopsy process more accountable. By aggressively pursuing a handful of cases, particularly in the High Court of Justice,¹⁰⁵ these parties have obtained CID investigative reports, autopsy reports and even the opportunity in one instance for an independent pathologist to carry out a second autopsy.

It is worth summarizing at this point the highlights of these cases. They are described in fuller detail in al-Haq's *Nation under Siege*, published in 1990, and in an article by Joost Hiltermann, "Deaths in Israeli Prisons," in the Spring 1990 issue of the *Journal of Palestine Studies*.

Ibrahim al-Umtur

On October 21, 1988, Ibrahim al-Umtur died in Dhahriya prison. His death was officially classified as a suicide by hanging. After authorities did not respond to a request from the family's lawyer, Felicia Langer, for a copy of the autopsy report and the performance of a second autopsy, Langer petitioned the High Court of Justice.¹⁰⁶

Before the court ruled on Langer's request, the IDF agreed to give her the autopsy report, even though the CID investigation was not yet complete. Langer took the report to an American pathologist associated with the Boston-based Physicians for Human Rights, who reviewed it and questioned the failure of Abu Kabir to examine the ligature and to investigate under what circumstances the death had occurred.

¹⁰⁵ The Supreme Court sits as the High Court of Justice when it hears petitions to review administrative actions by the government, i.e. those actions that are not within the jurisdiction of any other court or tribunal.

¹⁰⁶ The history of the case is told in great detail in Felicia Langer, "The Death of Ibrahim al-Umtur, or: The Closed File Which Remains Open," serialized in *Al-Fajr* English weekly between November 20, 1989 and January 1, 1990.

Langer then demanded to see the official investigative report into the circumstances of the death, and requested an exhumation of the body for a second autopsy in the presence of an independent pathologist. In March the army agreed to furnish a summary of the completed investigation, which had found no criminal wrongdoing, and the High Court granted her request for the second autopsy. In April 1989, the second autopsy was conducted in the presence of a pathologist representing the al-Umtur family, Dr. Derrick Pounder, who had been brought in from Scotland by the Physicians for Human Rights and the American Association for the Advancement of Science.

Dr. Pounder confirmed that the cause of death was strangulation, most probably due to hanging. However, after reviewing the medical evidence and the summarized investigative file, he said that while the official finding of suicide was possible, it was not possible to rule out homicidal hanging, homicidal strangulation followed by suspension after death, or "aggravated suicide precipitated by mental and physical abuse."

By failing adequately to consider these other possibilities, the initial investigation and autopsy report were incomplete, Dr. Pounder concluded.¹⁰⁷ On this basis, Langer petitioned the High Court for a new

¹⁰⁷ Middle East Watch lacks the expertise to take sides in the dispute about the appropriate scope of the al-Umtur autopsy report. According to one expert, Dr. Robert Kirschner, there were aspects of the case that should have prompted the pathologist to visit the scene of the death. Dr. Kirschner is Deputy Medical Examiner in Chicago and a board member of the Physicians for Human Rights. On behalf of PHR, he has studied autopsies conducted by Abu Kabir.

Chief Pathologist Dr. Hiss described the procedures followed at Abu Kabir as follows:

The forensic doctor...compares his findings and conclusions with the findings and conclusions of the investigators in the field and in the event that the two versions are not identical, additional examinations are immediately performed on the body and at the scene of the event. This approach is most reliable, prevents possible mistakes and isolates the

probe by an impartial commission.

In July 1989, the court denied the request, saying no new evidence had been presented to merit a new investigation into al-Umtur's death. While Langer's efforts to force a criminal prosecution failed, her lawsuit helped to hasten the release of information about the investigation, and subjected a CID investigation to unprecedented scrutiny.

Mahmud al-Masri

When on March 6, 1989 Mahmud al-Masri died in the interrogation wing of Gaza Prison from a perforated ulcer, Langer again went to the High Court of Justice. This time she obtained a copy of the autopsy report within two weeks of the death. Authorities then granted permission for Dr. Pounder, who was again brought in to represent the family, to examine the stomach of the deceased. Dr. Pounder was also permitted to examine portions of the investigative file, prepared in this case by a police investigative team.¹⁰⁸

influence of one investigative factor on another. (Felicia Langer, "The Death of Ibrahim al-Umtur, or: The Closed File that Remains Open," serialized in *Al-Fajr* English weekly between November 20, 1989 and January 1, 1990.)

Dr. Hiss rejected Dr. Pounder's criticisms. He said that in the al-Umtur case the medical evidence did not warrant an examination by the pathologist of the circumstances of the death. (Interview in Abu Kabir with Middle East Watch, March 1, 1990.) In a few other cases, like the death in detention of Khaled al-Sheikh Ali, which is recounted below, pathologists from Abu Kabir did visit the scene of death.

¹⁰⁸ **This case was investigated by a police investigative team rather than a CID unit because Gaza Prison is part of the civil prison system, which is administered by the Ministry of Police. The detention center where Ibrahim al-Umtur died, Dhahiriya, is run by the IDF; consequently, his death was investigated by the CID.**

Dr. Pounder concluded that "the psychological stress of sudden imprisonment followed by intense interrogation...with the associated physical violence (as evidenced by the injuries to the body) undoubtedly precipitated the perforation of the previously existing stomach ulcer."¹⁰⁹

The State Attorney, however, decided that there were no grounds for criminal charges against any of the Shin Bet interrogators, but recommended that a medic face a disciplinary trial within the Prisons Service for having been negligent in providing treatment for al-Masri, whose ulcer had burst 24 hours before he died.

The High Court refused to order a new investigation into the death, but recommended that the family have access to the statements given by al-Masri's interrogators, so that they could file a civil suit against those implicated in his death.

The family, after failing to obtain the statements, petitioned the High Court of Justice again in November 1989 to gain access to them, and asked the court to consider ordering the prosecution of any interrogators who may have contributed to al-Masri's death.¹¹⁰

Amjad Jabril

On August 18, 1989, a Palestinian-American youth, Amjad Jabril, was found dead of a gunshot wound on the West Bank. After an official autopsy was carried out in disputed circumstances, authorities allowed Dr. Pounder to perform a second autopsy, in the presence of Abu Kabir pathologists, on August 23. Dr. Pounder confirmed the official finding that

¹⁰⁹ "Death of Mahmud Yusef al-Masri," expert opinion submitted by Dr. Derrick Pounder in H.C. 241/89, signed June 30, 1989. The injuries indicated that al-Masri may have been beaten.

¹¹⁰ Michal Sela, "Rafah Man's Family Seeks Probe of Shin Bet over his Death," *Jerusalem Post*, November 29, 1989.

the youth had been killed by a single bullet wound, and that there was no convincing evidence to support initial allegations that Jabril had been tortured.

This was the first time that the IDF had permitted an independent autopsy to be performed on a Palestinian killed in suspicious circumstances in the territories. The most that had occurred previously was that an independent pathologist had been permitted to observe an official autopsy. Undoubtedly a key factor in this case was that the victim was a U.S. citizen. In June 1990, Israeli officials stated that after a "thorough" investigation, "no evidence has been found connecting any IDF soldier with [Jabril's] death."¹¹¹

Muhammad Abu al-Nasr, Ayman Jamus and Amer Qalbuneh

In three cases in 1989, appeals by the families of Palestinians killed and then buried by Israeli authorities in a cemetery reserved for those they consider "terrorists" led to the exhumation of the bodies and the carrying out of autopsies at Abu Kabir in the presence of independent Palestinian doctors.

In the first case, Muhammad abu al-Nasr of Gaza was killed after firing a pistol at soldiers attempting to arrest him, according to the IDF.¹¹² After the family's attorney petitioned the High Court of Justice to find out why no autopsy had been conducted, the IDF agreed to an autopsy with a family-appointed doctor present.

In the second case, Ayman Jamus, 23, and Amer Qalbuneh, 17, were killed on September 2, 1989 in a raid on a house in Nablus where the IDF

¹¹¹ Statement issued by the Embassy of Israel in Washington, D.C., June 1990.

¹¹² Glenn Frankel, "Kidnapper of American Shot by Israeli Soldiers," *Washington Post*, June 29, 1989.

reported finding an arms cache.¹¹³ After a local campaign in Nablus and rumors that organs of the two youths had been taken for transplant, authorities exhumed the corpses and conducted an autopsy in the presence of a Palestinian doctor on September 15.¹¹⁴ In May 1990, the IDF stated that an investigation into the killings was continuing.¹¹⁵

Jamal Abd al-Ati and Khaled al-Sheikh Ali

In December 1989, human rights groups brought in pathologists to observe the autopsies of Jamal Abd al-Ati and Khaled al-Sheikh Ali, who died in the interrogation wing of Gaza Prison on December 3 and December 19 respectively. The second case represented a major breakthrough because, for the first time in a death-in-detention case, an independent specialist joined a pathologist from Abu Kabir in visiting the alleged interrogation site to collect evidence and question the Shin Bet agents who identified themselves as having been involved in questioning Ali. The two doctors made the trip after concurring that the death was due to internal bleeding caused by blows to the abdomen. All of the Shin Bet agents questioned denied inflicting blows upon Ali. Two of them, however, have since been charged and are undergoing a closed trial in Jerusalem District Court for manslaughter. A decree forbids publication of their names.

These cases represent a welcome trend toward greater

¹¹³ Michal Sela, "Seven Palestinians Die in Violent Weekend," *Jerusalem Post*, September 3, 1989.

¹¹⁴ An unofficial translation of the autopsy report by the Palestinian doctor, Hatem Abu Ghazaleh, is published in the October 1, 1989 *Update* of the Database Project on Palestinian Human Rights. No evidence was found that organs had been removed.

¹¹⁵ Letter from the IDF Spokesman's office to Middle East Watch, May 3, 1990.

openness with regard to autopsies. It should be noted however, that most of these cases had unusual characteristics – in one, the victim was a U.S. citizen, and in four, the victims died in detention – while in the other three cases the Israeli authorities had buried the victims without autopsies in a cemetery for “terrorists”. In addition, each of these cases was taken up by human rights groups or lawyers.

The headway made in these cases may encourage other Palestinians to seek independent involvement in the autopsy process. During 1990, Palestinian doctors attended the official autopsies in two more cases, Dr. Hiss said. Since the well-publicized breakthrough in the Sheikh Ali investigation, al-Haq has received several inquiries from families asking how they could be represented at autopsies, according to Mona Rishmawi, executive director of that organization until March 1990.¹¹⁶ Such inquiries underscore a key contention of this report: investigative procedures that are more open and responsive *can* increase Palestinian participation.

6. Failure To Seek Medical Evidence When Autopsies Are Not Possible

In cases of unnatural death, the most important medical evidence is usually the autopsy report. But when autopsies are not feasible, investigators should determine what other forms of medical evidence are available. As a rule, CID investigators have failed to take this step.

In gunshot killings, the autopsy helps to confirm the relationship between the weapon and the death, especially when the bullet remains lodged in the body. An autopsy can also provide information about the circumstances of a shooting, such as the distance of the shooter and whether the bullet hit the victim directly or after a ricochet.

¹¹⁶ Interview in Jerusalem with Middle East Watch, March 5, 1990.

For this reason, the Palestinian practice of abducting bodies shortly after death poses a major obstacle to official investigations. In some cases, the lack of an autopsy deprives investigators of any physical evidence against which soldiers' testimony can be tested, and has led to cases being closed on grounds of insufficient evidence and to cases of soldiers facing charges less severe than manslaughter. Brig. Gen. Amnon Strashnow, the Judge Advocate-General, told the *Washington Post* in March 1989 of cases in which soldiers were convicted of illegal use of weapons rather than wrongful death because bodies could not be found and the cause of death could not be legally established.¹¹⁷

Palestinians abduct the bodies of "martyrs" for a variety of reasons. First, local tradition calls for a prompt burial. Second, the grieving family wants to spend time with the body and prepare it for burial, and does not want to see the body evacuated by the soldiers who have just committed the killing. Third, activists who wish to give the victim a "martyr's" funeral – an occasion for a defiant gathering – can do so only if they have the body; when the authorities have custody of the body, they seek to prevent such funerals, usually by returning the corpse to the family at night and ordering an immediate burial with only a few people permitted to attend. Finally, since few Palestinians trust or recognize the legitimacy of IDF investigations, they feel no incentive to allow soldiers to take the body for autopsies.¹¹⁸

The IDF could attempt to use force to thwart the abduction of bodies, to ensure that an autopsy is carried out, but the consequences could well be additional casualties and passions further inflamed. "We'd have to fight with the population, causing other deaths," said Col. David

¹¹⁷ *Washington Post*, April 1, 1989.

¹¹⁸ **To complicate matters further, there have been rumors in the occupied territories that authorities remove the organs of Palestinians who are taken for autopsy. These rumors have not been substantiated.**

Yahav of the IDF's international law section.¹¹⁹

There is no easy solution to this dilemma. It is as if the IDF and the activists were acting in a tacit alliance: the army allows activists to abduct the bodies and hold "martyrs" funerals, and in so doing, the activists also remove evidence that could potentially assist in the prosecution of soldiers for homicide.

"The biggest problem [in investigations] is the lack of bodies," stated Col. Yahav. But as with other external obstacles facing CID investigators, the IDF overstates the problem. In some cases in which the authorities did have control of the corpse, they failed to conduct autopsies.¹²⁰ And, as will be discussed below, in the absence of the bodies of the deceased, investigators have failed to obtain other types of relevant medical evidence.

One question that arises is why the IDF does not exhume bodies of intifada victims more often in order to perform an autopsy. It did so in the case of Amjad Jabril, following allegations he had been tortured, and in the cases of Amer Qalbuneh and Ayman Jamus, following rumors that their organs had been removed. (Both accusations were disproved by the autopsy.) In other cases in which an exhumation might answer questions about a killing, such as the Nidal Habash case (see Appendix), the IDF could, in consultation with the victim's family, exhume the body for a post-mortem in the presence of a family-appointed physician.

Neither the IDF nor the Pathological Institute at Abu Kabir could provide Middle East Watch with statistics concerning the percentage of Palestinians killed by security forces whose bodies had been submitted to autopsies, but the proportion appears to be well below one-half of the

¹¹⁹ Interview in Tel Aviv with Middle East Watch, June 8, 1989.

¹²⁰ See the Jamus and Qalbuneh cases in Section C.5 above and the Nidal Habash case in the Appendix.

total. A May 1990 article in *Haaretz* gave the figure of 25 to 30 percent.¹²¹

At al-Maqassid, a private hospital in East Jerusalem, Palestinians kidnap the corpses of their brethren about 90 percent of the time, former medical director Dr. Rustom Nammari told Middle East Watch in June 1989.

The absence of an autopsy raises questions about the conduct of investigations. When autopsies are not performed because Palestinians abduct the body, what efforts does the CID undertake to obtain other sorts of relevant medical evidence? And when the IDF does control the body, is an autopsy conducted in each case in which it might be legally relevant?

Middle East Watch does not have sufficient data to answer the latter question. However, in at least one case described in the Appendix to this report, the killing of Nidal Habash of Nablus in October 1989, it appears that a decision was made not to conduct an autopsy even though it may have provided evidence to corroborate a witness's allegation that a soldier had fired three shots at close range at the youth when he was already wounded and lying on his back. Lt. Horn of the Chief Military Prosecutor's office stated in December 1989:

According to the preliminary report, Habash's body was buried on the day of his death and [no autopsy was performed]. We asked to find out why....We presume that the reason for this is that the soldier who shot him was identified.¹²²

On March 4, 1990, Lt. Horn told Middle East Watch that he was still waiting

¹²¹ Yizhar Be'er, "A Procedure for the Arrest of a Suspect Was Carried Out," *Haaretz Weekend Magazine*, May 11, 1990. Translated in *Al-Fajr* weekly, May 21, 1990.

¹²² Letter from Lt. Yuval Horen to the Lawyers Committee for Human Rights, December 6, 1989.

for an answer from the CID as to whether an autopsy was conducted, and if not, what the reasons were.

In those cases in which the IDF does not have custody of the body, it is clear that the CID fails to seek other sorts of medical evidence. Investigators routinely contact hospitals to confirm deaths, but almost never inquire whether attending physicians or hospital records might shed light on how patients were killed.

Lt. Horn of the Chief Military Prosecutor's office stated that every file on a killing contains some form of medical evidence, since the file cannot be closed until the fact of death is established.¹²³ However, the reserve CID investigator and Palestinian doctors interviewed by Middle East Watch made clear that in cases in which no autopsy was conducted this evidence is rarely more than a death certificate. The CID investigator stated: "We don't take testimony from local [i.e., Palestinian] hospitals. It's just the way it is: we don't speak to [Palestinian] doctors."

This policy amounts to a determination not to include important medical evidence of death, since hospital records can contain photographs, x-rays, charts and descriptions that describe the number, location and angle of entry and exit wounds. In addition, attending physicians in some cases can describe the type of bullet used and estimate the distance from which it was fired. For example, the type of wound caused by a plastic bullet, which has a relatively low velocity, varies depending on whether it is fired from a distance of 20 or 80 meters.

At al-Maqassid hospital, which receives many of the grave intifada injuries, physicians record the medical findings and the circumstances of a shooting as provided by the injured patient or the persons who accompanied him or her to the hospital. The files also can include x-rays, charts and photographs. Such information is presumably available at other private and government-run hospitals in Israel and the

¹²³ Interview in Tel Aviv with Middle East Watch, March 4, 1990.

territories that treat intifada injuries.

Despite the availability of such information, CID military investigators have never come to al-Maqassid hospital during the intifada to investigate fatal shootings by soldiers, Dr. Nammari told Middle East Watch on March 3, 1990. He added that no physicians from al-Maqassid had been summoned to testify in trials of soldiers charged with abuses. According to Dr. Nammari, the only criminal investigators who had visited al-Maqassid hospital were members of a police unit -- not CID investigators -- looking into whether the head injury of a Jerusalem youth had been caused by a fall from atop a wall, as the police initially claimed, or by a bullet -- a visit that, again, demonstrates different treatment for Jerusalem from the West Bank and Gaza. Dr. Nammari told investigators that bullet fragments were visible on the x-rays and CAT-scan of the boy's head, and gave the x-rays to the authorities.¹²⁴

Dr. Nammari added that al-Maqassid does not deny authorities access to its medical records, and is required to report to authorities all patients who die or who are admitted with gunshot wounds. This is the case for all hospitals in the occupied territories, whether private or government-run.

Merwan Khater, administrative director of the small, private St. Luke's Hospital in Nablus, said that during the intifada military authorities came on occasion to check the identities of intifada-related admissions and to question the wounded about their activities and associates. But, he said, as far as he knew, no investigators had ever come in search of medical information that would help a criminal investigation.¹²⁵

Lt. Horn of the Chief Military Prosecutor's office disputed Dr.

¹²⁴ Andy Court, "Doctor, Witnesses Contradict Police Version on Semi-Conscious East Jerusalem Teenager," *Jerusalem Post*, January 24, 1989.

¹²⁵ Interview in Nablus with Middle East Watch, February 27, 1990.

Nammari's contention that the CID had never contacted doctors from al-Maqassid in connection with death cases during the intifada. Regardless of who is correct in this instance, it is clear that investigators seek more than a death certificate from attending physicians infrequently at best.

It is important not to exaggerate the evidentiary value of hospital records and doctors' reports in the absence of autopsies. Dr. Hiss of Israel's Forensic Institute stated that physicians who are not forensically trained generally would not fare well under cross-examination if they were to deliver an opinion on forensic matters.¹²⁶ This view was supported by Dr. Robert Kirschner, a forensic pathologist on the board of the Physicians for Human Rights, who observed: "[Non-specialists] are not good at describing wounds, not even at distinguishing entry and exit wounds. It is more difficult than it seems."¹²⁷

Moreover, investigators may doubt the objectivity of information provided by Palestinian-run hospitals, where the majority of intifada casualties are treated. There is undoubtedly some variation in the reliability of the medical evidence, just as there is with the testimony of soldiers and other eyewitnesses. Nevertheless, given the frequent obstacles that CID investigators face in conducting autopsies and finding Palestinian eyewitnesses, their failure even to bother checking with hospitals for medical evidence in most cases is disturbing.

That medical evidence has some potential value and should be sought more often is indicated by the fact that in a few cases it has been sought from doctors who are not pathologists. For example, in the court-martial of Sgt. Ilan Arev for killing two youths in the West Bank village of Beni Naim in May 1988, the prosecution, in the absence of autopsy reports, sought testimony from a Palestinian general practitioner who examined the victims at the scene of the shooting. Despite a challenge to his

¹²⁶ Interview in Abu Kabir with Middle East Watch, March 1, 1990.

¹²⁷ Interview by phone with Middle East Watch, June 6, 1990.

testimony by a pathologist summoned for the defense, the court accepted the Palestinian physician's judgment that the wounds in the back of the heads of both victims were the entry wounds. This assessment undermined the defendant's claim of having fired while in a life-threatening situation.¹²⁸ Arev was convicted of two counts of negligent homicide and sentenced to two years in prison and one year suspended. (The conviction has since been vacated on appeal on unrelated grounds and new testimony is being heard.)

In the court-martial of Sgt. Nissim Dahan (see Section C.5 above), the court heard descriptions of the gunshot wounds from an army medic who examined the victim, Jiryis Yusef Qunqar, at the scene of the shooting. The medic estimated that the shooting took place from a distance of between half a meter and 20 meters. In the case of Nasr al-Qassas of the Deheishe refugee camp, who was killed in a clash with soldiers in April 1989, the issue of soldier misconduct seems to hinge on whether the fatal shots were fired at the youth while he was facing the soldier or after he had turned to flee. One year after the killing, the CID interviewed a Palestinian eyewitness, produced by the Association for Civil Rights in Israel, who disputed the soldier's contention that the victim had been facing him when he opened fire.

At this point the CID decided to obtain the medical records from the hospital that had treated al-Qassas before he died and his body was abducted. In July 1990, the office of the district military prosecutor told ACRI attorney Dan Simon that al-Qassas's hospital record had been obtained by investigators and was found to have little legal value. The investigation file is still open.

7. The Appearance of Partiality

¹²⁸ *Military Prosecutor v. Sgt. Ilan Arev*, Central District Military Court 433/88, verdict issued on October 15, 1989.

Can the IDF conduct objective criminal investigations of itself? The army insists that it can. Lt. Col. Arik Gordin of the IDF spokesman's office called the CID an "autonomous island" that "takes no instructions from chiefs in the army." Col. David Yahav, head of the IDF's international law section, called the CID "independent" and said that "the military prosecutor won't close a file if he believes it's not done properly."¹²⁹

Despite these claims, the impartiality of military justice seems to be undermined in ways ranging from biases in the approach of investigators to the involvement of senior officers in decisions on whether to prosecute.

Behind-the-scenes pressure is difficult to document, but it is clear that at least in cases involving senior officers, Brig. Gen. Amnon Strashnow, the Judge Advocate-General, does not make decisions autonomously. When Brig. Gen. Strashnow was given the investigative file on Col. Yehuda Meir (see Chapter Three), who would have been the highest-ranking officer to face charges for offenses during the intifada, Strashnow arrived at the decision to subject him to a disciplinary hearing and dismissal rather than a court-martial after consulting with Chief of Staff Gen. Dan Shomron.

In another case involving a colonel, the chief of staff overruled the Judge Advocate-General's recommendation of a court-martial and ordered a disciplinary hearing instead, according to the *Jerusalem Post*. In that case, the unnamed colonel had shot and killed a Palestinian during a helicopter chase in the West Bank village of Beni Naim when the colonel's life was not in danger.¹³⁰

¹²⁹ Interviews in Tel Aviv with Middle East Watch, June 8, 1989.

¹³⁰ According to the *Post*, Gen. Shomron justified the lighter punishment by saying the colonel, whose name was not published, had done "good work" in the past. (Kenneth Kaplan, "Brigade Commander Suspended for Killing Demonstrator in Areas," *Jerusalem Post*, August 17, 1988.) Defense Minister Rabin also defended the choice of punishment by saying that the colonel had fired *after* the helicopter

Middle East Watch has heard no evidence to suggest that CID investigations -- as opposed to the Judge Advocate-General's decision -- are tainted by interference from superiors. The investigator interviewed at length by Middle East Watch said he "feels no pressure to decide cases one way or another."

Even if superiors do not interfere in specific cases, the investigators clearly work in a partisan atmosphere, the roots of which lie in the common experience of serving in the Israeli army. Investigators share with the soldiers they are probing the bonds that develop during basic training, three years of army service, and three decades of reserve duty. It is natural that investigators will feel camaraderie and empathy for the soldiers under investigation. That empathy may be intensified by the investigators' guilt at not being subjected to the unenviable duty of facing a hostile and sometimes violent population.

In addition, although Israelis have divergent views on how to make peace with their Arab neighbors, they are more united in supporting a tough military response to the intifada. Investigators who set out to probe the killing of Palestinians by soldiers find, as ACRI attorney Dan Simon put it, that "the point of view of the system is it's a kind of war, and [the investigators] are trying to find out why the good guys killed the bad guys."¹³¹

Providing backing to one's comrades-in-arms -- *giboui* in Hebrew -- is an important value among IDF troops in the occupied territories. As Dan Sagir, defense correspondent of *Haaretz* and a reserve captain in the

had landed, and that no factual connection between the shooting and the death of the deceased had been established, since no autopsy was conducted. He did not explain why an autopsy did not occur. (Letter from Defense Minister Yitzhak Rabin to MK Dedy Zucker, December 14, 1989.)

¹³¹ Interview in Jerusalem with Middle East Watch, June 7, 1989.

IDF explained, fighting the intifada is "a controversial mission, and the IDF doesn't want to abandon its soldiers. The basic value from chief of staff to the lowest soldier is I send you and I back you if you do the mission."¹³²

The pressure to lend support to soldiers on the front line naturally comes into conflict with the value of discipline. If soldiers are uncritically supported regardless of what they do, they feel that they can act with impunity, and discipline breaks down. But if discipline is strictly enforced, for example, by officers punishing even minor infractions and by soldiers zealously informing on one another, soldiers will feel they have no support in their mission, and grow discouraged or refuse to serve.

A senior military officer, speaking anonymously, explained to the *Washington Post* how the tension between these two values affects the IDF's attitude toward investigations and prosecutions of soldiers:

[The officer] said there is internal conflict because the army wants to appear to be following all legal directives but at the same time does not want to be seen as punishing soldiers trying to cope with the complex and troubling mission of suppressing a civilian revolt.

"If our troops get the impression we don't back them when they get in trouble, no one will be willing to take any initiatives and we will be a frightened, weak army."¹³³

While the IDF does not publicly talk about striking a balance between the value of discipline and the value of backing soldiers on the front line, it is probably assimilated in the approach of army investigators and prosecutors. Many investigations of killings hinge on the question of

¹³² Interview by phone with Middle East Watch, June 5, 1989.

¹³³ Glenn Frankel, "Israeli Army Fights Charges of 'Whitewash' in Deaths," April 1, 1989.

whether to give credence to a soldier's claim that he was in a life-threatening situation. While the written orders state that, before deciding that a situation is life-threatening, soldiers must consider the balance of forces, the conditions in the field, the size of the stones, and the age of the attackers, there clearly remains a wide margin for discretion. Even investigators who are tough when encountering wanton and gratuitous misconduct are likely to give soldiers the benefit of the doubt in these more stressful situations.

This was clearly the message of a briefing given to a group of incoming reserve soldiers in Gaza last September by an officer from the Judge Advocate-General's corps with the rank of captain. After telling the battalion that the written rules of engagement were binding, he is reported to have said:

In the Judge Advocate-General's corps, when investigative files are received from the CID, we are well aware of the difficult conditions under which you have to operate -- pressure, tension, and so forth. We do not engage in hair-splitting, the scope for discretion is quite broad. What I really want to do is to warn people who want to vent sadistic pressures. So far no one has been tried for firing from 30 or 50 meters instead of 70 in the heat of an operation. The key word is discretion -- there is no arithmetic here. It's all a matter of discretion. No one has been put on trial if his discretion was a centimeter too much, or even more than a centimeter.¹³⁴

This message shows that, instead of providing soldiers better training in handling civilian unrest and then holding them to higher standards of conduct, the IDF reassures soldiers of the discretion they have and the backing they will receive, provided that their misconduct is

¹³⁴ Cited in B'Tselem, the Israeli Center for Human Rights in the Occupied Territories, "Opening Fire by the Security Forces in the Occupied Territories," July 1990.

not wanton. When considered together with the inadequacies of investigation outlined so far in this chapter, such reassurances from the Judge Advocate-General's corps send a message that soldiers can expect most misconduct to go unchallenged.

Contributing to the atmosphere of partiality is the IDF's practice of issuing statements shortly after most killings announcing that the soldiers had acted properly (see Section B above). While some CID investigations have gone on to contradict those exculpatory statements, which are based on preliminary debriefings, such official comments can plainly serve to bias some investigators as they set about their probe.

In some cases, the bias of investigators amounts to criminal malfeasance. Joshua Schoffman of the Association for Civil Rights in Israel described an investigation in which a reserve soldier who violated standing orders by shooting plastic bullets from a moving vehicle was coached by the investigator to report that the vehicle had been stationary when he opened fire, so that the file could be closed.¹³⁵

In the investigation into the death in detention of Ata 'Ayyad, cited in Section C.5 above, three CID investigators allegedly falsified evidence related to 'Ayyad's hanging to facilitate closing the file. They now face charges. As far as Middle East Watch is aware, this is the only time during the intifada that CID investigators have been court-martialed on charges of engaging in a cover-up. We lack the data to say whether this kind of blatant malfeasance by investigators is common.

a. Soldiers Reporting on Other Soldiers

Other than Palestinians, the only witnesses to most shootings are soldiers. Because evidence from sources outside the IDF so rarely becomes a part of investigative files, the testimony of soldiers that

¹³⁵ Interview in Jerusalem with Middle East Watch, June 7, 1989.

incriminates their comrades is of particular value.

Israeli soldiers rarely step forward to offer evidence against their comrades. In this they resemble soldiers and law enforcement officers around the world. Commissions in various countries that were created to study this problem have recommended special procedures or mechanisms to induce law enforcement personnel to step forward. The Israeli army has done little to promote this process.

This has not stopped many Israeli soldiers from going to the press, human rights organizations and sympathetic politicians with allegations of misconduct by fellow soldiers, believing perhaps that voicing their grievances inside the army would be less effective or more risky to themselves. Because of a military law forbidding the unauthorized disclosure of information about the IDF, these soldiers have usually given their allegations anonymously. Some of their complaints have led the IDF to order CID investigations, and some of these have led to the punishment of soldiers.¹³⁶

However, not all soldiers who are bothered by IDF misconduct would take their allegations outside the army, not only because to do so is illegal, but also because they would view it as disloyal. Whether they file

¹³⁶ See, for example, Joel Greenberg, "IDF Confirms that Reservists Stripped and Beat Palestinians," *Jerusalem Post*, November 1, 1988. According to this article, the incident was revealed by a reservist. MK Dedy Zucker then submitted details to the IDF, and a Jerusalem weekly published news of the incident. On October 31, the IDF confirmed the incident; military sources said three officers would be summoned to a disciplinary hearing and a deputy battalion commander would be removed from his post.

In another case, military police reportedly opened an investigation after MK Dedy Zucker made public an affidavit signed by a reservist charging that soldiers systematically kicked and beat young Palestinian prisoners with plastic pipes at Dhahriya prison while their commander, a captain, looked on. William B. Montalbano, "Prisoners Abused, Israeli Charges," *Los Angeles Times*, May 31, 1988.

complaints within the IDF would depend on the risk they perceive in doing so and the seriousness of the response they expect to receive.

Col. Ilan Schiff, the Deputy Judge Advocate-General, said that the army is highly receptive to complaints from its personnel. According to Col. Schiff, the complaints procedure requires soldiers to bring the information to the Judge Advocate-General or to the district office of the Military Prosecutor. These legal officers then decide whether an investigation is warranted.

The IDF has apparently taken some positive steps to facilitate the filing of complaints by soldiers. In one case, Col. Schiff said, the Judge Advocate-General's corps arranged for a soldier who had given testimony about his comrades to transfer to another unit. Another soldier asked for and obtained immunity to relay information about misconduct to a journalist, Col. Schiff said. Despite these measures, Col. Schiff acknowledged, it is "very rare" that soldiers step forward to file complaints.

The IDF should take further steps to combat the conspiracy of silence among its soldiers. It could, for example, establish a hotline for soldiers to call anonymously to discuss the procedures for providing such information, obtaining immunity, and preserving their rights.

b. Greater Independence for the Investigative Process

An investigative unit independent of the army to examine killings by soldiers would go a long way toward alleviating the problems of partiality identified in this report. Investigators in such a unit, as they establish an *esprit de corps* independent of the IDF, would be far more immune to outside pressures of leniency. The independence of the unit could also encourage soldiers and Palestinians to step forward with evidence of misconduct.

If Israel maintains the current system, its credibility could be

enhanced by mechanisms to increase CID independence. Greater oversight by the executive and judicial branches of government, in particular the Justice Ministry and the Supreme Court, would be helpful in this regard. To date, IDF investigations have been subject to little scrutiny from other branches of the government.

The High Court of Justice

There are mechanisms in Israeli law that empower the Justice Ministry and the High Court of Justice to examine the work of the CID and the Judge Advocate-General's corps. The High Court can hear challenges by extraordinary writ (*bagatz* in Hebrew) to the legal opinions issued by the Judge Advocate-General. The Court can require the IDF to explain its actions and can overrule its policies or decisions if it finds that the IDF has acted unlawfully, in a discriminatory or grossly unreasonable manner, in violation of natural justice, in breach of a duty to perform an act, or in abuse of its discretion.

In a few cases over the last two years, petitions to the High Court have brought gains for the accountability of IDF investigations. In two death-in-detention cases described in Section C.5 of this chapter, petitions to the Court helped to expedite the release of information related to the investigations that the lawyer for the family had sought.

In December 1989, the High Court of Justice took a far more significant step by overruling the Judge Advocate-General's legal decision in a case for the first time. The Court rejected the relatively mild disciplinary action he had decided upon for Col. Yehuda Meir (see Chapter Three) and ordered instead that the colonel face a court-martial on serious charges.

The Court's ruling in the Meir case, according to some analysts,

both embarrassed the Judge Advocate-General and strengthened his hand vis-a-vis those in the IDF command who oppose the strict disciplining of soldiers found guilty of misconduct. It is too early to assess the impact that this ruling will have on the work of investigators and prosecutors, but it is clearly a victory for accountability.

The Ministry of Justice

The Judge Advocate-General is the IDF's chief legal officer. He is not directly responsible to any civilian ministry. At the same time, he must abide by the decisions of the Attorney General, who is the chief legal officer of the State. He is also accountable to the Justice Ministry by virtue of the ministry's representation of the IDF when petitions are filed in the High Court of Justice against IDF decisions and policies.

Although the Justice Ministry does not exercise routine legal oversight of IDF policies, it does occasionally make its views known. After Defense Minister Yitzhak Rabin announced in January 1988 a policy of "force, might and beatings" to crush the intifada, the Attorney General wrote to him that the "number of complaints raised the suspicion that classifying these [beating] incidents as exceptions no longer reflects reality." He demanded that the illegality of beating demonstrators be made clear to soldiers. Soon after, the Chief of Staff publicly clarified the orders on using physical force.

The IDF also occasionally seeks legal opinions from the Justice Ministry. When controversy erupted in January 1989 over orders that permitted the firing of plastic bullets when there was no threat to life, the Ministry of Justice was consulted and declared the orders to be legal (see Chapter One). The ministry went on to defend the orders on plastic bullets in two High Court petitions seeking their modification.

The CID's investigations into incidents of alleged misconduct and the Judge Advocate-General's decisions in these cases are not generally scrutinized by the Justice Ministry, according to State Attorney Dorit

Beinish.¹³⁷ Occasionally, she said, attorneys at the Ministry of Justice request investigative files from the Judge Advocate-General and make suggestions, but the ministry lacks the resources to monitor closely the army's criminal investigations. She added, "The military prosecutors don't need us professionally."

The Justice Ministry told Middle East Watch in June 1989 that it had not become actively involved in any IDF investigation into killings during the intifada, other than those cases in which the ministry represented the Judge Advocate-General's corps as respondent before the High Court of Justice.¹³⁸ In an indication of the Justice Ministry's distance from army investigations, Beinish said she had known nothing about the Col. Meir case until she had read in the press about the army's decision to let Col. Meir off with a disciplinary hearing, about one year after the CID investigation had begun. The Justice Ministry did, of course, come to know the case quite well, when it was compelled to defend the Judge Advocate-General's decision, unsuccessfully, in the case before the High Court of Justice.

The Justice Ministry plays a greater role in overseeing investigations of misconduct by border policemen, since the decision on whether to prosecute is made by the State Attorney rather than the IDF's Judge Advocate-General. For the same reason, the Justice Ministry also plays a more active role in monitoring investigations into alleged abuses of Palestinians by settlers.

An example of meaningful oversight is provided by the commission established by the Attorney General in 1981 to examine problems in the investigations of suspected offenses by settlers against Palestinians in the West Bank. Chaired by Deputy Attorney General

¹³⁷ Interview in Jerusalem with Middle East Watch, June 19, 1989.

¹³⁸ Justus Weiner, Deputy Director of the Human Rights Division of the Justice Ministry, interviewed in Jerusalem by Middle East Watch, June 7, 1989.

Yehudit Karp and including a district attorney and representatives of the IDF and the police, the commission saw itself as a "follow-up and coordination body" to monitor complaints, check the quality and pace of investigations, and identify incidents that merit investigation despite the absence of complaints.¹³⁹

The commission did not have the authority to intervene in the investigations, but took for granted that its monitoring would influence the efforts of investigators. The commission was eventually disbanded, but it submitted a highly valuable and critical report on the investigations of suspected offenses committed by settlers.

In June 1988, a permanent committee was created to monitor investigations of complaints about offenses by Israeli civilians in the occupied territories. The committee, again, is chaired by Deputy Attorney General Karp, and includes the legal advisor to the Civil Administration for the West Bank, a district attorney and the head of the police investigative division.

A similar commission, to monitor the IDF's investigations into suspected offenses by its own personnel, could help to enhance the credibility of those investigations, provided that it received the political support needed to be effective. It would, in any event, bring an improvement over the current situation, in which the investigators and prosecutors are not ordinarily accountable to anyone outside the IDF.

D. The Givati Trial

Practices that weaken accountability for human rights abuses exist at many points in the IDF's operations. We have seen that investigators, for a variety of reasons, fail to probe adequately incidents of

¹³⁹ "The Karp Report: An Israeli Government Inquiry into Settler Violence against Palestinians on the West Bank," Washington, D.C.: Institute for Palestine Studies, 1984, p. 4.

alleged abuse. But even when investigators are diligent, their work can be undermined later, first by a military prosecutor who mishandles the file or is reluctant to press appropriate charges, later by a military court that treats offending soldiers with leniency, and finally by a military commander who pardons soldiers after conviction.¹⁴⁰

Throughout this process looms the question of whether the superiors of the soldiers under scrutiny are in any way complicit in the suspected offenses and whether they too should be disciplined. Although the issue has arisen in several trials of subordinates, no commander has been indicted in the wake of a court-martial of his subordinates.

The case that best illustrates these interlocking problems of accountability is the Givati case, which was among the most closely watched trials to date of soldiers charged with mistreating Palestinians during the intifada. In that case, four soldiers from the Givati brigade were charged with manslaughter in the 1988 beating death of 43-year-old Hani al-Shami, a resident of Jebalya refugee camp in the Gaza Strip. Their trial is worth recapping because, even though it was a beating rather than a shooting death, it underscores many of the key points in this report.

The testimony presented at the trial established the following facts: On the afternoon of August 22, 1988, a day of fierce clashes in the camp, the four defendants entered al-Shami's home in pursuit of suspected stone-throwers. Al-Shami tried to prevent them from opening the door to the room where his children were hiding, but the soldiers

¹⁴⁰ The IDF command can pardon or commute the sentences of soldiers, and has successfully resisted proposals to abolish this power. One critic, MK Avraham Poraz, who served in the army as a Military Police investigator, said, "Even where military courts hand down stiff penalties and the sentenced men go to prison, these courts are all too often made a mockery of, by the regional commanders or the IDF chief of general staff, who remit their sentences or pardon them." (Asher Wallfish, "Shinui MK Sees Arens in Defense as Hopeful Sign for Military Justice," *Jerusalem Post*, June 15, 1990.)

pried the door open. They entered and, even though al-Shami was no longer resisting, they severely beat him with a broomstick, rifle butts and their hands for more than ten minutes, and jumped from a bed onto his body.

The defendants then arrested al-Shami and his eldest son and transferred them to a local military post. That evening, other soldiers beat al-Shami while he was held at the post. By 1 a.m. he was dead.

1. The Court-Martial

In October 1988, the court-martial got under way before a three-judge panel of the Southern District Military Court. Faced with the charge of manslaughter, the four defendants presented two basic lines of defense.¹⁴¹ First, they claimed that their blows were not the fatal ones. Second, they tried to put their superiors on trial by arguing that their orders were to beat hard on the limbs each Palestinian they arrested for disturbing the peace, even after he had stopped resisting, to deter him from future acts. One defendant testified that these orders seemed consistent with comments he had heard in the media from Minister of Defense Rabin on the use of physical force.

The court-martial went on for more than 25 court sessions over seven months, in which various senior officers, including the Chief of Staff, gave testimony on the IDF's orders governing the use of physical force.¹⁴² Two of al-Shami's sons also took the stand. The pathologist who

¹⁴¹ A fifth defendant in the case, a medic charged with causing death by negligence for failing to provide al-Shami with proper medical care at the army compound, was acquitted of all charges.

¹⁴² Chief of Staff Gen. Dan Shomron's three hours of testimony before a packed courtroom was the first time in at least four years that an active-duty chief of staff testified in a military court. Glenn Frankel, "Beating Orders Defended," *Washington Post*, March 2, 1989.

performed the autopsy testified that only once before had he ever seen such severe injuries on a human body.

The court-martial evoked sympathy for the defendants from their comrades in the Givati brigade. In a perverse form of protest over the prosecution, according to Israeli press reports, members of the brigade carried out a "beating strike," refusing to beat Palestinians for several days until their brigade commander threatened them with imprisonment if they did not follow orders.¹⁴³

2. The Verdict

On May 25, 1989, the military court acquitted the four defendants of the most serious charges and convicted them on a lesser charge. They were found innocent of manslaughter on the grounds that the court could not rule out that the blows that actually had killed al-Shami were the ones administered at the military post, after he had left the custody of the defendants. They were also acquitted on an alternative charge of intentionally causing grievous bodily harm (Art. 329.1 of the penal code), which carries a maximum sentence of 20 years, on the grounds that their acts lacked the high degree of intent that, in the court's view, is required by the statutory language.¹⁴⁴

The court found the four defendants guilty of beating a person in their custody (Art. 65 of the Military Justice Law). The defense argument

¹⁴³ Glenn Frankel, "Israeli Trial Raises Issue of Blame," *Washington Post*, February 12, 1989.

¹⁴⁴ The court interpreted the article to require "conduct aimed at achieving a certain goal...or...conduct which includes the anticipation of the illegal result and a will to strive towards its realization." The court concluded that "even if [the defendants in this case] knew they might cause the forbidden result, they did not desire it, were indifferent to its happening or took the risk that it would not happen."

that they were following orders was rejected on the grounds that they had exceeded even the manifestly illegal beating orders they claimed they had been following.

The soldiers received sentences of between six and nine months in prison. After they had served four months, the commander of the Southern Command, Maj. Gen. Matan Vilnai, released one for good behavior and pardoned the other three shortly afterward.

The 93-page opinion of the court is a compelling essay on accountability:

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, regrettably, by high-ranking commanders....[A]n order, whose basis is correct,...eroded and deteriorated, while going down the ranks of command, until reaching the soldiers who carried it out, and lost its value as a legal and permissible order.

The opinion points out the contrast between the written orders issued by the chief of staff, which restrict the use of force to a violent event and only until the end of such an event, and the oral instructions by officers in the field, which encouraged soldiers to understand that they should beat suspects forcefully as a deterrent, unless the suspect had been handcuffed. A number of officers testified at the trial that these more permissive orders were given by brigade commander Col. Meron Keren, whose orders to beat Palestinians allegedly made no distinction between those who resist arrest and those who do not. Such orders, the court observed, are manifestly illegal.

The verdict criticized not only the ambiguity of the orders, but also the CID's investigation into the killing, which it termed "incomplete and not sufficiently professional." While praising the manner in which

the first investigators took testimony from the four Givati soldiers who beat al-Shami in his home, the court condemned the CID's failure to get to the bottom of what happened to al-Shami at the military post, once evidence emerged that the beatings administered there would have legal importance. By that time, the court noted, the initial investigators had been released from active service and the file had been turned over to another investigator, who

seems not to have made too many efforts to reach a full investigation of the facts, perhaps because he had the impression that there is no connection between the violence, if there was any, at the post and the material which had been collected by the [first] investigators and which indicated the responsibility of the [present] defendants for the deceased's death, or perhaps because not one of the witnesses who spoke about that violence at the post ever mentioned or recalled in his testimony those who had taken part in the violence and as this mainly involved...soldiers...who were not permanently posted at the army post and the reserve soldiers had already been released, perhaps he did not see the point of continuing the investigation in that direction, when the chance of finding those [soldiers responsible for the beatings] seemed at the time slim and an unworthy effort.

Due to the passage of time, the court expressed doubt that investigators could now find those guilty of assaulting al-Shami at the military post.

In closing, the court recommended equipping soldiers in the field with "written and clear instructions regarding everything connected to cases in which it is permitted to employ force, though emphasizing the cases in which it is forbidden to do so."

After sentencing, the president of the court, Col. Emanuel Gross, urged the Judge Advocate-General to investigate whether charges were merited against the officers who had ordered the Givati soldiers to carry

out the beatings. "If the defendants are the only ones to pay the price in this case," Gross said, "this will be a sign that the lessons haven't been learned, and justice hasn't been done."¹⁴⁵

Following the verdict, the CID pursued further investigations, both of the officers who issued the illegal orders and of the soldiers at the post where al-Shami received his final beating. But as of July 1990, no officer had been charged in connection with the Givati case.

The Givati case illustrates the role that Israel's democratic institutions can play in strengthening accountability. The trial, in a courtroom packed with spectators and journalists, dramatized for the Israeli public the issue of the IDF's moral erosion during the intifada and the question of who in the chain of command should bear responsibility for the misconduct of their troops.

The public trial, along with other developments, contributed to self-scrutiny within the army. The rules governing physical force were clarified. For many soldiers, the court-martial probably made them more cautious about their own actions, despite the derisory sentences that were meted out. *Haaretz* reporter Dan Sagir said after the verdict: "No one will argue today that beating someone who stopped resisting arrest is not acting in a manifestly illegal way. It's clear today where the line is."¹⁴⁶

At the same time, it can be asked how much benefit was derived from all this public scrutiny. Illegal beatings continue to occur, although they caused far fewer deaths in 1989 (three) than in 1988 (twenty), according to B'Tselem. And, as noted, no officer has been charged in

¹⁴⁵ Kenneth Kaplan, "Givati Trial Judge: IDF Must Have Courage To Look at Itself," *Jerusalem Post*, June 16, 1989.

¹⁴⁶ Interview by phone with Middle East Watch, June 5, 1989. See also his article "Only Commanders Get Clear Written Orders on Beating Residents of the Territories; After the Givati Trial, Soldiers May Also Get Instructions," *Haaretz*, May 28, 1989.

connection with the illegal beating orders that were transmitted to the Givati defendants.

The trial revealed how the chain of accountability was weakened at every step of the legal process:

The investigation: The CID launched a serious investigation and then fumbled it, contributing to an outcome in which no one was convicted of manslaughter, even though the court established that the "deceased almost certainly found his death as the result of blows he received in the chest area some three hours prior to his death," i.e., when he was in custody at the military post. Part of the problem appears to be one of continuity, owing to files being transferred from one investigator to another. This problem was mentioned in Section C.4 of this chapter.

The prosecution, according to press reports, repeatedly refused to reopen the probe after evidence emerged that the soldiers at the military post were responsible for the fatal beating.¹⁴⁷ The inquiry was reopened in June 1989, only after the urging of the president of the court that tried the Givati case.¹⁴⁸

The sentencing: The defendants received sentences of six to nine months in prison, although their conviction for beating a person in their custody under article 65 of the military judicial law carried a maximum sentence of three years.

The pardon: In an even more controversial move, Maj. Gen. Matan

¹⁴⁷ According to the *Christian Science Monitor*, the chief military prosecutor in the Givati case, Capt. Yaron Levy, termed a new investigation "unrealistic" but declined further comment. George D. Moffett III, "Do Israeli Officers Order Beatings?" February 15, 1989.

¹⁴⁸ Andy Goldberg, "Strashnow to Re-open Inquiry into Death of Gaza Man," *Jerusalem Post*, June 18, 1989.

Vilnai, the new commander of the Southern Command, pardoned the three defendants who were still in prison on the eve of the Jewish New Year in September 1989.¹⁴⁹ (The fourth had already been released after Maj. Gen. Vilnai had reduced his sentence.) The pardon was reportedly urged by Defense Minister Rabin. Alluding to these reports, the *Jerusalem Post* wryly observed, "Whether or not Mr. Rabin was influenced by the argument of the soldiers' parents that their sons had only been carrying out his, Mr. Rabin's, orders, cannot be ascertained."¹⁵⁰

Maj. Gen. Vilnai justified his decision by referring to the difficult circumstances that soldiers face in the Gaza Strip. At the same time, the general denounced the actions of these four soldiers and dismissed them from the Givati brigade.

The pardon was criticized by human rights activists and some Israeli newspapers. Writing in *Hadashot*, legal affairs columnist Moshe Negbi said, "it now appears that the IDF leadership prefers to cover for the commanders and pardon the soldiers. In so doing, it becomes a party to the crime denounced by the judges."¹⁵¹ MK Amnon Rubinstein, a law professor and member of the centrist party Shinui, called the pardon "a signal to soldiers that the Army will be soft on...acts of sadism."¹⁵²

Failure to hold senior officers accountable: One year after the conviction of the Givati soldiers, not one officer has been court-martialed

¹⁴⁹ The powers of the Israeli military command to pardon convicted soldiers is discussed above in footnote 140.

¹⁵⁰ "Judging Military Justice," September 29, 1989.

¹⁵¹ "Commuting the Sentences of the Givati Accused is a License to Spill Blood," September 20, 1989.

¹⁵² Alain Frachon, "Un Nouvel An Juif Marqué par la Violence," *Le Monde*, October 3, 1989.

in connection with transmitting the beating orders that the court judged to be manifestly illegal. This fact is perhaps the biggest failure of the Givati verdict and its aftermath. When the verdict was announced in May 1989, Moshe Negbi wrote in *Hadashot* that Defense Minister Rabin, who initiated the ambiguous beatings policy, should have stood in the docket with the defendants:

When, 15 months ago, Rabin proclaimed a "policy of beatings"...some warned that his statements would be transformed into manifestly illegal orders and involve soldiers in war crimes. This is why they demanded then to give soldiers precise instructions on the limits to permissible force. But the minister contemptuously dismissed such demands, declaring, "I am responsible for the orders, and they are clear for all the commanders."

...The verdict makes clear that Minister Rabin deceived himself, and deceived the Knesset with his claims that "the orders were clear for all the commanders." In fact, the President of the Court stressed again the urgency of making soldiers understand the limits between the permissible and the forbidden -- one-and-a-quarter years after the supposedly reassuring remarks of Rabin.¹⁵³

The balance-sheet in the Givati trial indicates that a system of accountability for abuses potentially exists inside the Israeli army, but inadequacies, pressures and -- most of all -- a lack of will seriously undermine its effectiveness. On the positive side, the Givati case featured a trial that was open to public scrutiny, CID investigations that were vigorous to a point, and a court that was willing to explore tough issues of accountability within the chain of command. On the negative side, these positive elements failed to culminate in strong measures by the IDF to show its abhorrence of the misconduct witnessed in a case of murder and

¹⁵³ May 26, 1989.

to deter similar acts in the future. Because the Judge Advocate-General failed to continue the investigation vigorously and charge senior officers who gave illegal orders, and because the IDF command pardoned the defendants from their short sentences, the Givati case failed to send the message that severe mistreatment of Palestinians is a grave transgression that will be punished accordingly.

CHAPTER THREE

INDEPENDENT HUMAN RIGHTS MONITORING

Toward the end of the last chapter, we observed that the other branches of Israel's government exercise only minimal oversight over the army's investigations into its own conduct. The most effective oversight so far has been that performed by nongovernmental "monitors." This broad designation refers not only to human rights professionals but also to journalists, humanitarian field-workers, lawyers, diplomats and others who have pressed the IDF to account for its conduct toward Palestinians in the occupied territories.

The ability of these monitors to expose IDF conduct and hold it up to wide scrutiny has been diminished by restrictions that Israeli authorities place on their activity. These include such measures as preventing the media and others from reaching scenes of disturbances, detaining tens of Palestinian journalists and human rights workers, banning unlicensed fax machines, and occasionally confiscating footage from foreign film crews.

While imposing obstacles such as these, Israel has allowed extensive human rights work to take place, as shown by the media coverage worldwide of IDF conduct and the steady flow of human rights information from the territories. International organizations and delegations regularly arrive in the territories to investigate and report on human rights conditions, and two major Palestinian human rights groups function openly on the ground. The Israeli government considers that it permits an extraordinary amount of monitoring to take place under the circumstances. Moshe Melamed, a Foreign Ministry official, spoke for

many Israelis when he said, "I don't know of any population that is so well-protected from all points of view, by our laws, by the foreign press, by the local press."¹

Authorities also contend that when they do limit the freedom of journalists and others, the purpose is never to stifle the monitoring of human rights. The detention of Palestinian journalists or human rights workers, authorities claim, is never for their work but for unrelated subversive political activity.² The barring of journalists from the scene of a demonstration, they say, is to prevent their presence from inciting Palestinians, and not to keep them from seeing what soldiers are doing.

Whatever their stated justification, these powers are exercised in an unacceptably broad fashion which weakens the protection of human rights. While human rights workers should not be above the law, their unique role in securing the rule of law and defending the rights of others should prompt governments to restrict them only when there are clear and compelling security reasons for doing so, and then only to the extent and for the duration required. The role of monitors becomes that much more crucial in a situation of prolonged military occupation, where

¹ Interview in Jerusalem with Middle East Watch, June 11, 1989.

² Authorities responded to a protest over the detention of two al-Haq workers in 1988 as follows:

It is not the practice of Israel to arbitrarily carry out arrests without the existence of evidence attesting to involvement in acts of violence or incitement thereto. Clearly neither Mr. Shqeir nor Mr. Kan'an [the two workers] were arrested for being officers of al-Haq which...functions freely, as do other bodies, as long as they are not involved in violence or do not act as fronts for the various terror organizations. (Letter from Alan Baker, Deputy Legal Advisor at the Ministry of Foreign Affairs, to the International Commission of Jurists in Geneva, December 30, 1988.)

Authorities never offered evidence of any offense committed by Shqeir or Kan'an, nor were the two charged.

soldiers have killed several hundred civilians and wounded thousands in disputed circumstances during two-and-a-half years of unrest.

The preceding chapter examined the information flow between nongovernmental monitors and the IDF's legal system. We looked at how the IDF responded to evidence provided by nongovernmental monitors, as well as how the IDF responded to requests for information from monitors. Examples indicated that authorities cooperate less with Palestinian monitors than with Israeli and foreign monitors.

This chapter finds discrimination also in an earlier phase of the work of nongovernmental monitors, namely, in their freedom to collect and disseminate information. Authorities allow Israeli and foreign monitors far more freedom of movement and expression than their Palestinian counterparts. Accordingly, it is necessary to consider the treatment of Palestinians separately from that of other monitors.

What follows is no more than a brief survey of nongovernmental monitoring in the occupied territories and the obstacles encountered. The chapter concludes with an account of the case of Col. Yehuda Meir, whose belated court-martial for ordering beatings illustrates the vital role that monitors can play, when unfettered, in pressing for accountability for human rights violations.

More thorough accounts of the plight of monitors during the intifada can be found in Human Rights Watch's *The Persecution of Human Rights Monitors*, 1988 and 1989 editions; al-Haq's annual reports for 1988 and 1989, respectively, *Punishing a Nation* and *Nation under Siege*; The Lawyers Committee for Human Rights's *An Examination of the Detention of Human Rights Workers and Lawyers from the West Bank and Gaza*, and *Conditions of Detention at Ketziot*, published in 1988, and *In Defense of Rights: Attacks on Lawyers and Judges in 1989*; *Journalism under Occupation*, published jointly by the Committee to Protect Journalists and Article 19, in October 1988; and issues of *CPJ Update*, the newsletter of the Committee to Protect Journalists.

A. Access to Events

1. Israelis and Foreigners

This section focuses on the press, since journalists are by all accounts the monitors who have the greatest impact. However, much of what is said here applies also to other types of monitors who seek to reach the scene of events, both at the time of an occurrence and in its aftermath.

Israel's record on allowing press access during the intifada is mixed. Hundreds of correspondents have traveled extensively throughout the territories during the intifada. Their reporting on human rights conditions has provoked international sympathy for the plight of Palestinians, while heightening criticism of Israeli practices. A number of incidents of abuse were investigated and punished by the IDF partly or mostly because of press coverage; some of those are recounted in this report. In this regard it is telling that the Israeli print press is considered by many who follow human rights to be the single best source on the human rights situation in the occupied territories.

The IDF has resisted pressure from some Israeli politicians to emulate those countries that systematically bar the press when the coverage is likely to be unflattering. Lt. Col. Arik Gordin of the IDF spokesman's office said:

The policy is that the territories are open. The complaint that we close areas off in order to deter coverage is not serious; just look at the evidence of the coverage. We fully understand the role of the press, and we pay a heavy price for their presence.³

³ Interview in Tel Aviv with Middle East Watch, June 8, 1989.

While maintaining in principle that the "territories are open," the IDF in practice has closed areas when access mattered most. With increasing regularity during the intifada, the army has kept journalists from observing unrest and military operations.

The mechanism by which the IDF excludes journalists and others from an area in the occupied territories is the declaration of a "closed military zone" (CMZ). Such an order, which bars anyone without a permit from entering or leaving an area, must be signed by a senior officer. However, numerous journalists have reported being stopped by soldiers of lower rank who pulled out a signed blank closure-order form and filled in the details on the spot. Zvi Gilat, who covers the territories for *Hadashot* daily, wrote,

I have seen [junior] officers, the minute they spot a journalist in the field, inform him that the area is closed. If the reporter demands to see a signed order to that effect, the order, often blank, is produced, and the relevant details are filled in on the spot: date (today), place (here), period of validity (until further notice).⁴

Jacques Grenier, a producer for ABC News in Tel Aviv, called the practice of designating CMZs "capricious: they sometimes close areas when they see a camera crew, even if nothing is going on."⁵

In November 1989, ABC News correspondent Dean Reynolds said:

The situation this year is much more difficult than it was last year: It appears that the Israeli army has instructed the troops to keep

⁴ Zvi Gilat, "The Intifada and the Press," *New Outlook*, November-December 1989.

⁵ Interview in Tel Aviv with Middle East Watch, June 16, 1989.

the press out at all costs. We have tapes of the army reacting to the press before they react to the demonstrations.⁶

The press is frequently prevented from entering cities, villages and refugee camps that have been placed under curfew or under siege, since the army usually declares them closed military zones as well. In September 1989, after the citizens of Beit Sahour launched a nonviolent campaign to withhold payment of taxes, troops went into the West Bank town and, on the grounds of nonpayment of taxes, seized property from the homes and businesses of residents, damaging it in many cases, and arrested some 40 persons. During this operation the IDF sealed off Beit Sahour and cut phone lines for weeks. Seven Western European consuls who attempted a fact-finding mission on October 6 were turned back at a roadblock. On October 24, three Arab Members of Knesset, accompanied by journalists, were stopped in the town and ordered out, after which the army announced it intended to submit a complaint against the group for entering a closed military zone.⁷

Other Members of Knesset have also been kept from entering zones in the territories. MK Dedy Zucker, who is well known as a human-rights activist, said in June 1989 that officers had twice declared closed military zones upon finding him on the scene.⁸

When fierce clashes erupted in Gaza on May 20, 1990, following the massacre by an Israeli civilian of eight Arab laborers inside Israel, authorities put the entire Gaza Strip under a round-the-clock curfew for several days. For more than a week, soldiers at the Erez checkpoint at the

⁶ Interview, November 11, 1989, cited in al-Haq's annual report for 1989, *Nation under Siege*.

⁷ IDF Radio in Hebrew, October 24, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, October 26, 1989.

⁸ Interview in Jerusalem with Middle East Watch, June 7, 1989.

entrance to Gaza turned back all journalists who they identified attempting to enter the Strip; only journalists under military escort were permitted. B'Tselem also sought IDF permission to enter the Gaza Strip, but was turned down for several days. According to the Foreign Press Association, reporters were

systematically prevented from covering the events in the West Bank and the Gaza Strip except under close military escort and then only within a very restricted area. Military escorts have prevented direct contact with the civilian population, as well as with soldiers engaged in the events.

Reporters and other monitors have sometimes been able to slip past roadblocks, either by using back roads or by disguising themselves as Jewish settlers. Such subterfuge, of course, is easier for print than broadcast journalists, whose equipment is easily spotted. Journalists and others who get by, however, are sometimes later identified and ordered to leave. One photographer, Claudio Nutkiewicz of Media Images, received a four-month suspended sentence and a fine of NIS 1000 (U.S. \$500) for entering a closed military area on December 17, 1987.

Researchers with several Israeli and foreign human rights organizations have been thwarted at army roadblocks and, on a few occasions, ejected from areas when soldiers spotted them talking to people. In May 1990, soldiers turned back a B'Tselem fact-finding mission at the entrance to the West Bank town of 'Anabta, which had been under an extended curfew. When B'Tselem protested, the army conceded the area had been closed mistakenly and instructed soldiers to allow B'Tselem staff freedom of movement as long as their activities did not interfere with army operations.⁹

⁹ Israel Radio in Hebrew, May 9, 1990, as reported in Foreign Broadcast Information Service, Near East and South Asia report, May 9, 1990, and Ghadir Kraishah, "B'Tselem Protests Army Obstruction," *Al-Fajr* English weekly, May 14, 1990.

In addition to closing off areas, the IDF has used other measures to stifle coverage during the intifada. On several occasions, angry soldiers have placed hands over lenses, damaged photographers' equipment and physically assaulted journalists. Their hostility may have been exacerbated by anti-media comments made by Israeli politicians and senior officers.

Assaults by soldiers on journalists appear to have declined since the start of the intifada, and some soldiers have been disciplined for misconduct toward the press. "There is less overt hostility than at the beginning of the intifada," said ABC producer Jacques Grenier.¹⁰

The IDF contends that its relations with the press in the field have improved since the early months of the intifada, due to greater experience and to efforts by the IDF's education department. "The CBS incident in Nablus [the February 1988 episode, described in the Introduction to this report, when a camera crew filmed soldiers beating two Palestinians in their custody] was an authentic incident that gave us a real shake and changed attitudes in the army," said Lt. Col. Arik Gordin. "The IDF produced a videotape on relations with the media, 'The Camera Sees It All,' that has had a good influence on the troops."¹¹

A reserve lieutenant confirmed that the IDF's education department had been training soldiers on relations with the press, explaining to them that the press was not the enemy, but rather a weapon that Israel could also use. But the lieutenant also noted that in his unit the prevalent attitude toward the press remained negative, because of the conviction that the presence of journalists changes the nature of incidents, and that journalists are looking to catch soldiers making

¹⁰ Interview in Tel Aviv with Middle East Watch, June 16, 1989.

¹¹ Interview in Tel Aviv with Middle East Watch, June 8, 1989.

mistakes.¹²

Press access has also been hurt by at least two episodes in which security forces impersonated journalists to facilitate the arrest of Palestinians. A consequence of this practice was to put all journalists under suspicion in Palestinian eyes and even to jeopardize their safety. Following the most recent documented incident, which occurred in March 1989, Police Inspector-General David Kraus told journalists that he would allow police to impersonate journalists only in very special circumstances, and only with his personal approval.¹³

The confiscation of materials from journalists also jeopardizes their access to Palestinians, particularly if the IDF then uses the material to identify suspects. While there are no proven instances of this occurring, a couple of incidents raise strong suspicions. On February 24, 1988 soldiers seized a videotape from a Cable News Network crew after discovering the crew in the town of Qabatiya, where earlier that day, a collaborator had fired his gun at residents, killing a four-year-old boy, and was then killed and hung from an electricity pole. The IDF told CNN that the censor would not allow the footage to be aired and did not return the cassette.

CNN complained that the film was used to identify participants in the killing. The IDF apparently did not confirm the accusation, but Defense Minister Yitzhak Rabin rejected a request by the Foreign Press Association that security forces refrain from using film shot by foreign television crews to identify Palestinian suspects.¹⁴ Two months after the Qabatiya

¹² Reserve officer #1, interview in Jerusalem with Middle East Watch, June 11, 1989.

¹³ Andy Court, Menachem Shalev, and Asher Wallfish, "No More Unmarked Cars with 'Press' Signs in the Windows," *Jerusalem Post*, March 29, 1989.

¹⁴ "Rabin Rejects Proposed Media Ban," *Washington Post*, March 3, 1988. *Haaretz* reported on March 3, 1988 that the confiscation was intended to prevent

killing, a military court charged 95 residents of the town in connection with the incident. FPA president Robert Slater commented:

There's no way of knowing what they're using the CNN film for. But it unfortunately gives the impression to Palestinians that it may be used for the purpose of identifying suspects....It makes our neutrality that much more difficult to preserve.¹⁵

In an analogous incident involving a Gaza-based journalist in October 1989, soldiers confiscated the personal phone book of Taher Shriteh, who contributes to the *New York Times*, CBS News and Reuters, and proceeded to use the phone book to summon Shriteh's Palestinian contacts for questioning. The army later ordered that these calls stop.¹⁶

The International Committee of the Red Cross has a mode of operation that gives it far greater access than human rights organizations and journalists. Because it adheres to a strict policy of communicating its findings privately to the authorities rather than publicizing them, ICRC field staff are generally permitted to travel freely in the territories, including in closed military zones and areas under curfew. ICRC representatives intercede with authorities both on the spot and in follow-up communications.

The international observers of UNRWA, described in Chapter Two, perform a similar function, traveling in the field to monitor the army and defuse tensions where possible. Despite occasional run-ins with

Palestinians from taping the footage when it was broadcast and then distributing copies among the population.

¹⁵ **Interview by phone with the New York-based Committee to Protect Journalists, April 21, 1988.**

¹⁶ **"Israel to Stop Using Arab Reporter's List of Contacts in Gaza," *New York Times*, November 2, 1989.**

soldiers, the UNRWA observers have enjoyed considerable freedom of movement in the territories.

2. Palestinians

While Palestinian journalists and monitors work at substantially greater risk than their non-Palestinian counterparts, they also enjoy certain advantages that make them indispensable to their colleagues. Living inside the territories, they have unmatched contacts and knowledge of the area, and witness events when others are kept away by the IDF or are covering other stories. Because they are trusted in the community, foreign and Israeli monitors rely on them for access to local residents who might otherwise be too suspicious to speak with a non-Palestinian.

In March 1988, when authorities summarily closed the respected Palestine Press Service in Jerusalem, foreign journalists lost a daily source of unofficial information on the day's events throughout the territories. (Authorities permitted the PPS to reopen in March 1990.) Similarly, the detention of case-workers for al-Haq or the Palestine Human Rights Information Center cuts the flow of information about abuses for everyone attempting to keep track of developments.

Palestinian monitors are treated by soldiers in a harsher and more arbitrary manner than are Israelis or foreign monitors. They are frequently harassed or turned back at checkpoints, subjected to identification checks, and on occasion assaulted. Palestinian photographers have been the targets of soldiers' wrath when they were noticed using their cameras. For example, in March 1989 soldiers assaulted and destroyed the film of Mahfouz Turk, a photojournalist with Sanabel Press Service, when they spotted him photographing a house in a village near Bethlehem that authorities had just demolished.¹⁷

¹⁷ Interview in Jerusalem with Middle East Watch, June 6, 1989.

After collecting information, Palestinians often face obstacles in disseminating it. On several occasions soldiers have raided local news offices in the territories, confiscating notes, address books, photographs and other materials. Some offices were shut down on the ground that they were serving the Palestine Liberation Organization. Shortly before al-Haq field-worker Sha'wan Jabarin was detained in October 1989, soldiers raided his home and confiscated affidavits and photographs he had collected for al-Haq. Formal military censorship, discussed below, also imposes a heavy burden on Palestinians.

Human rights monitoring is further impeded by interference with telecommunications. From March 1988 until April 1989, all international telephone lines from the Gaza Strip and the West Bank, excluding Jerusalem, were severed by military order, on the ground that this would disrupt strategizing for the intifada.¹⁸ In August 1989, another military order prohibited the buying, selling or use of fax machines in the Gaza Strip without prior approval. An official at the Israeli Embassy in Washington said the move was taken because the machines were used to "disseminate and distribute illegal information," such as "commands to local units in the territories."¹⁹

B. Extrajudicial Sanctions against Palestinian Monitors

Extrajudicial sanctions such as administrative detention, town arrest and travel restrictions, which Middle East Watch opposes on the grounds that they are imposed without trial or charge, are doubly objectionable when these measures immobilize those who protect the rights of others.

¹⁸ Alan Cowell, "Israel Cuts Phone Lines to Arabs; Four More Are Slain," *New York Times*, March 17, 1988.

¹⁹ Interview by phone with the Committee to Protect Journalists, October 31, 1989.

Short of shutting it down, the most effective way to hamper an organization is to jail members of its staff. While permitting both al-Haq and the Palestine Human Rights Information Center (PHRIC) to operate, authorities have placed at least nine field-workers from the two organizations in administrative detention during the intifada, for periods ranging from two to twelve months. While some other staff members of PHRIC have been charged with offenses, not a single staff member of al-Haq has been charged while working at al-Haq.

Administrative detention is the internment of an individual without formal charge or trial. In these cases, Israeli authorities often accuse individuals in general terms of subversion, primarily unspecified activity on behalf of the Palestine Liberation Organization, but disclose no details or evidence on the ground that to do so would expose the sources of the incriminating evidence. Detainees may appeal their internment to a military judge, and then to the High Court of Justice, but these procedures afford them insufficient due process.²⁰ Few detention orders have been canceled on appeal since the start of the intifada, although several hundred have been shortened.

As stated above, Israel has claimed repeatedly that individuals are detained for security reasons and not for their *bona fide* professional work. But there is no way to verify this claim so long as those detained are denied the right to know the specific evidence and charges against them and to challenge the basis for their detention in court.

The same can be said with regard to the administrative detention during the intifada of more than 30 Palestinian journalists and four

²⁰ Appeals to the military judge are generally heard weeks if not months after the arrest. At the hearings, detainees and their lawyers are not given sufficient specific information about the reasons for detention to enable them to exercise effectively the right to challenge the detention order. See Amnesty International, "Administrative Detention during the Palestinian Intifada," June 1989.

prominent human rights lawyers. Authorities accused at least three of the lawyers -- Raji Sourani of Gaza, Muhammad Shadid of Tulkarm and Adnan abu Leila of Nablus -- of activity on behalf of the Palestine Liberation Organization, but disclosed no specific charges or evidence.

Palestinian applications to travel abroad have sometimes been rejected by Israeli authorities. The reason, when provided, has generally been to prevent the individual from contacting "hostile" elements. After some delay and considerable protest from human rights groups, authorities permitted attorney Raji Sourani to attend the 1990 Human Rights Advocates Program at Columbia University but required him to agree in writing to abide by several conditions. The conditions forbade him from participating in activities involving "propaganda" against Israel, establishing "connections," and traveling outside New York during his stay. The refusal by officials to elaborate on these stipulations effectively constrained Sourani from speaking on human rights issues while in the United States.

Palestinian monitors have also been subjected to local travel restrictions. For six months in 1989, military authorities placed al-Haq's Zahi Jaradat under town arrest, preventing him from leaving his village of residence near Hebron, except to report daily to the police station in Hebron. Upon their release from administrative detention, several of the al-Haq workers were given temporary green identity cards that barred them from entering Israel for a renewable period of six months. These cards made them more likely to be harassed by soldiers at checkpoints. Green identity cards greatly encumbered the ability of two al-Haq fieldworkers who live south of Jerusalem to travel to the offices of al-Haq in Ramallah, since the only reasonably direct route passes through Jerusalem. A Gaza field-worker, Yusef abu al-Jidyan, has been unable to come to al-Haq's headquarters since the army turned down his request to travel to the West Bank in June 1989.

One al-Haq field-worker, Sha'wan Jabarin, was severely beaten by soldiers during and after his arrest in October 1989. After letters of protest from ex-President Jimmy Carter and others, the Justice Ministry

stated in March that, on the basis of the CID investigation, one soldier had been court-martialed for striking Jabarin while in custody, and other soldiers faced disciplinary hearings. Al-Haq later learned that three of them had been imprisoned for periods of between 14 and 28 days.²¹ Jabarin, meanwhile, was given a one-year term in administrative detention.

C. Censorship

1. Israeli and Foreign Press

Israeli censorship laws require all news reports to be submitted to the military censor prior to publication. For the foreign and the mainstream Israeli press, this requirement is honored more in the breach than in reality. Israeli television, radio and daily newspapers observe an unwritten agreement with the censor whereby editors agree to submit only news copy that touches on a list of topics considered sensitive. Foreign correspondents submit next to nothing before publication.

The core topics on the list are strictly military matters and the activities of Israel's secret services. Human rights conditions are not on the list, and the foreign and Israeli press has generally been able to report what it uncovers on human rights -- provided access to the story was not blocked by the *before-the-fact* forms of censorship described above.

There has been some censorship of reports touching on human rights, however, particularly when human rights reporting implicates the activity of secret services. When Reuters and the *Financial Times* reported on undercover units operating in the territories in October 1988,

²¹ According to al-Haq, "Israeli authorities did not inform either Mr. Jabarin, his lawyer, his family or al-Haq of the pending charges against the soldiers, nor of the time and place of the trial and the disciplinary hearings." Al-Haq Alert, June 13, 1990.

authorities revoked for one month the press credentials of three correspondents for not first submitting their stories for censorship.²²

ABC's Jacques Grenier said, "They're very concerned about undercover units being filmed. When we're noticed, the network gets a call from the army demanding to see the film." Grenier described filming a besieged IDF jeep in the territories being rescued by a unit that arrived "shooting at random." He said the IDF seized the tape, watched it, then told ABC they could not screen it and kept the tape.²³

Grenier and Israeli journalists added that the censors also sought to block coverage that exposed the identities of Palestinians who collaborate with authorities. When ABC sent by satellite footage of an armed collaborator paying a visit to military headquarters in Nablus, the censor was furious, but took no action against the network.²⁴

The Israel Broadcasting Authority, a public corporation, operates Israeli television and all but one radio station, which is run by the Ministry of Defense. All of the stations enjoy a considerable degree of independence from state control, although their independence has eroded during the intifada. Coverage of human rights in the occupied territories has declined, due not only to political pressure but also to financial constraints, and many critics accuse Israeli television, the most influential news medium in Israel, of inadequate and biased coverage of human rights violations.

2. Palestinian Press

²² The only other time during the intifada that authorities revoked a journalist's credentials involved an uncensored report on the assassination, apparently by Israeli agents, of the PLO's Khalil al-Wazir in Tunis.

²³ Interview in Tel Aviv with Middle East Watch, June 16, 1989.

²⁴ *Ibid.*

The Palestinian press is subject to far greater censorship than the foreign or Israeli press, on the asserted ground that its readership is more likely to be incited to violence or racial hatred by its contents. Many human rights stories are wholly or partially excised, regardless of whether the censor believes them to be accurate, and regardless of whether they have already appeared in the Hebrew press.

According to a February 1990 study by the Israeli human rights organization B'Tselem, the censor partially or fully banned more than one third of the items submitted by the daily *Al-Shaab* and the weekly *Al-Bayadir al-Siyasi*. More than a quarter of the material originating in the Israeli press was banned, including many stories that had been translated word for word.²⁵

The Palestinian press, which consists of four dailies and many news agencies and magazines, is based in East Jerusalem. Its tone is generally highly partisan, with most of the news organs supportive of the Palestine Liberation Organization. Much of the news reporting concerns allegations of Israeli abuses against Palestinians in the occupied territories.

In January 1990, the censor banned one story in *Al-Shaab* about Amnesty International's criticism of Israeli open-fire orders, on the ground that it failed to mention that Amnesty also condemned inter-Arab murders. A generally accurate report in *Al-Quds* daily on B'Tselem's 1989 annual report on human rights in the occupied territories was censored in its entirety, although the censor later called this decision an error. However, other – but not all – reports on B'Tselem during December 1989 were censored from *Al-Quds*.²⁶

²⁵ B'Tselem Information Sheet, February-March 1990.

²⁶ These and other examples are cited in the above-mentioned B'Tselem Information Sheet.

Palestinian publications must obtain licenses to operate from the Ministry of Interior and permits to distribute from the military governments in the West Bank and Gaza Strip. During the intifada, the Interior Ministry closed one Palestinian monthly magazine and several Palestinian press services.²¹ Military authorities on many occasions suspended the distribution of Palestinian dailies in the West Bank and Gaza for days or weeks at a time on the grounds that they had not submitted items to the censor.

D. Members of Knesset

As mentioned, Members of Knesset are able to travel with relative freedom in the territories, including to prisons, to investigate human rights conditions. They have a further mechanism for demanding accountability from the army: they can submit formal questions (*she'ilta* in Hebrew) to the Defense Ministry on the floor of the Knesset or in parliamentary committees; the ministry must respond to these queries within a specific time. Many Knesset members have used this highly public means to demand statistics on casualties, the results of investigations into specific cases, and other information relating to IDF conduct in the territories.

Some human rights activists in Israel are trying to organize a lobby of Knesset members who are willing to support the protection of human rights activists. On February 20, 1990, Labor MK Aryeh Eliav intervened to obtain the release of two field-workers for the Palestine Human Rights Information Center, who had been arrested in Jerusalem that morning.

E. Soldiers as Monitors

²¹ See, for example, Glenn Frankel, "Israel Closes Office of Prominent Palestinian Journalist," *Washington Post*, June 16, 1989.

Soldiers who report on their colleagues are a critical source of information on abuses. Although they go public with allegations less frequently than do human rights groups, soldiers tend to capture more attention from the Israeli public and the army when they do. Section C.7 of Chapter Two and the Atwa Hirzallah case in the Appendix provide examples.

F. The Yehuda Meir Case

The nongovernmental monitors discussed in this chapter -- journalists, a member of Knesset, and human rights and humanitarian organizations -- all played a role in exposing a particularly flagrant string of beatings that occurred early in the intifada and, with the help of Israel's Supreme Court, in bringing to trial a colonel for directly ordering some of those beatings.

Had independent monitors not persisted in this case, the beatings would have gone uninvestigated and unpunished. Instead, as this report goes to press, the court-martial of Col. Yehuda Meir continues with new revelations at each session. The colonel, like the Givati sergeant and privates whose trial was described in the previous chapter, is defending himself by accusing his superiors and then-Defense Minister Yitzhak Rabin of sanctioning the beatings policy that he carried out.²⁸

The story of the Meir case begins six weeks into the intifada. On January 21, 1988, only days after Minister of Defense Rabin announced a policy of "force, might and beatings" to quell Palestinian unrest, a group of soldiers, acting under the orders of Lt. Col. Meir, entered the West Bank village of Hawara late at night, rounded up twelve young men whose names they had on a list, put them on a bus and drove them to a field. There the soldiers bound, gagged, and severely beat the Palestinians,

²⁸ Joshua Brilliant, "'Rabin Ordered Beatings,' Meir Tells Military Court," *Jerusalem Post*, June 22, 1990.

breaking bones in the process. At a time when the beatings policy was receiving wide coverage, the incident at Hawara passed with little notice.²⁹

There were other beating incidents in the region under Lt. Col. Meir's command. On a particularly violent day shortly before the Hawara incident, Lt. Col Meir gave on-site orders to soldiers in the village of Beita to take people out of their homes and break their arms and legs. On February 5, soldiers used a bulldozer to bury Palestinians under piles of earth in the village of Salem. On February 25, soldiers held two youths down in Nablus and pounded their arms with rocks, an incident that was filmed by CBS (see the Introduction to this report).

Meanwhile, some of the victims of the beatings in Hawara complained to the International Committee of the Red Cross (ICRC). On February 1, the ICRC filed a complaint with the IDF about the incident, citing their testimony.

The IDF does not automatically open investigations into incidents in which no one is killed. The complaints that some soldiers voiced concerning the Hawara operation were kept inside the army and did not trigger an investigation. However, when the IDF received the complaint from the ICRC, it ordered the Criminal Investigation Division (CID) of the Military Police to open an investigation.

The probe was begun in April 1988. Over the next few months, the CID questioned more than two dozen soldiers and commanders about the beatings. Col. Meir, however, exercised his right to remain silent. None of the Palestinian victims was interviewed, even though the investigators could have obtained their names from the list that the soldiers used to

²⁹ A brief mention of the incident appeared in the *Christian Science Monitor*. George D. Moffett, "Outcry Prompts Israel to Reconsider Beatings," January 25, 1988.

round them up.³⁰

Shortly before the investigation was launched, Lt. Col. Meir had been promoted to full colonel. Later, he was reassigned to a post inside Israel. According to senior military sources quoted later in the press, the transfer was not connected to the CID investigation, but to Area Commander Gen. Mitzna's sense that his orders were not being properly executed in the region under Col. Meir's command.³¹

In November 1988, the CID submitted its findings to Brig. Gen. Ammon Strashnow, the Judge Advocate-General. Its report stated that Col. Meir had given a company commander specific instructions to arrest the Hawara residents on the list, to have soldiers break their hands and legs but to avoid breaking the legs of one prisoner so he could run for help, and then to untie the prisoners and leave them in a field.

Brig. Gen. Strashnow decided not to court-martial the soldiers involved in the incident on the grounds that they had been following orders. When it came to the disposition of Col. Meir, Brig. Gen. Strashnow turned to Chief of Staff Gen. Dan Shomron. Together, they arrived at a plan to offer Col. Meir the choice between a court-martial and resigning from the IDF with a reprimand. In April 1989, Col. Meir accepted the second option.

Throughout this period the findings of the CID investigation were not publicly known, and the case was not in the public eye. On April 10, the press reported blandly that Col. Meir had agreed to leave the army, and that the reason was linked to two incidents under his command: the beatings in Nablus that had been filmed by CBS, and the bulldozer burial of

³⁰ Yossi Sarid, "Night of the Broken Clubs," *Haaretz*, May 4, 1989. Translated in *Harper's Magazine*, September 1989.

³¹ Shmuel Tal, "We Received Orders to Leave Arabs on the Ground after Breaking Their Arms and Legs," *Hadashot*, May 5, 1989.

Palestinians in Kafr Salem. No mention was made of the Hawara affair.

By the end of April, however, the Israeli press was getting closer to the real story. First, an article in *Hadashot* entitled "Who's Afraid of Col. Yehuda Meir?" suggested that a cover-up was taking place inside the IDF. Then, on May 4, Member of Knesset Yossi Sarid, in his column in *Haaretz*, blew the lid off the story, detailing what had happened at Hawara, including Col. Meir's explicit orders. Clearly, Sarid had found a hot source inside the IDF.³²

Five days later, Gen. Shomron gave Col. Meir a "severe reprimand" for "overstepping authority" in ordering the Hawara beatings. Meir was relieved of his command, and was to be sent on leave until he qualified for his army pension.

In the wake of Sarid's expose, the reprimand and dismissal prompted an outcry from some members of Knesset, columnists, and civil rights activists, who said that Col. Meir deserved nothing less than a court-martial.

Judge Advocate-General Brig. Gen. Strashnow defended the lesser sanction, arguing that reprimanding a colonel and forcing his resignation was severe punishment, and that at the time Col. Meir had ordered the beatings, the IDF's policy on physical force was ambiguous and prone to misinterpretation.

³² It was revealed one year later that Col. Meir himself went to Sarid in April 1989, after details of the beatings at Hawara and Beita began to emerge in the press. Because of those reports, Sarid had begun questioning a planned deal to transfer the colonel from the IDF after his reprimand to a post with the General Security Service (Shin Bet). At that point, Col. Meir met with Sarid at his own initiative, in an attempt to convince Sarid that he had acted according to orders at Hawara, and that the incident was unexceptional. Yossi Sarid, "Why He Came To Me," *Haaretz*, June 28, 1990.

On May 28, the Association for Civil Rights in Israel (ACRI) petitioned Israel's Supreme Court, sitting as the High Court of Justice, on behalf of four of the victims of Hawara and Concerned Parents of IDF Soldiers, a group concerned with IDF conduct in the territories. They asked the Court to order a court-martial of Meir for his role in the beatings at Hawara and Beita. ACRI submitted affidavits by the four petitioners from Hawara describing the beatings.

Seven months later, the Court stunned the country by ruling in favor of the petitioners and ordering the IDF to court-martial Col. Meir. For the first time, the Court had overruled a prosecutorial decision by the Judge Advocate-General.

The Court rejected the arguments presented by the Attorney General on behalf of the IDF. Despite some confusion over orders at the beginning of the uprising, the Court wrote, there "could be no lack of clarity that it is patently illegal to round people up and break their arms and legs." The failure to court-martial Col. Meir was both unreasonable and "contrary to public interest and the meting out of justice." The Court ordered that Col. Meir be charged with aggravated assault, a charge that carries a maximum penalty of 20 years in jail.

On January 18, 1990, the Chief Military Prosecutor filed an indictment against Meir listing eight charges, including aggravated assault, torture, intentionally causing bodily harm, and unbecoming conduct. In March, a special military tribunal began the court-martial, making Col. Meir the first officer of so high a rank to face trial for misconduct during the intifada.

The case has also opened the IDF policies to broader scrutiny. Col. Meir testified that Minister Rabin told officers at a meeting in Nablus, "Go in and break their bones. If they will be beaten it will hurt them, and the demonstrations will stop." Col. Meir also charged that Gen. Mitzna talked of breaking bones as a punishment. Col. Meir said that after the CID implicated him in the Hawara beatings, Chief of Staff Gen. Shomron tried to move him out of the IDF quietly. Gen. Shomron, said Col. Meir, "led me to

understand that if there is a public trial a pandora's box will open up and higher-ranking officers will have a problem...so I had better go home quietly."³³

The investigative file was made available to Col. Meir's attorneys, and excerpts were published in the press. The defense team also obtained an order allowing them to review the records of the IDF Command for the Central District and of IDF units in that region in order to seek evidence of other beating episodes and of a policy of beatings.

That Col. Meir is facing a court-martial is due in large part to the efforts of monitors outside the IDF. It is worth noting that despite the involvement of some 30 soldiers and officers in the Hawara incident, it took more than one year to uncover. When the IDF first decided to investigate the beatings -- albeit three months after they had happened -- it was because the ICRC had gathered testimony and filed a complaint. That the army, after investigating the incident, found itself unable to discipline Meir quietly and leniently is due to an aggressive press, an outspoken member of Knesset, the efforts of civil rights groups, and a Supreme Court that was willing to review the IDF's handling of the case.

Whatever the verdict in this case and the possible sentence that awaits Col. Meir, the cause of protecting human rights advanced only because of the persistent efforts of a range of nongovernmental monitors. In countless cases of lesser drama, abuses have gone unrecorded or uninvestigated because journalists were kept from the scene, or a field-worker was in detention instead of collecting information, and consequently news never reached lawyers and others who might have taken up the matter.

A policy of more open access for independent monitors would ensure that a far broader range of IDF actions in the occupied territories

³³ Joshua Brilliant, "'Rabin Ordered Beatings,' Meir Tells Military Court," *Jerusalem Post*, June 22, 1990.

is subject to scrutiny. That, in turn, would heighten the sense of accountability felt both by individual soldiers and by the IDF as an institution.

APPENDIX I

CASES

Though not a representative sampling, these six cases of Palestinians killed by Israeli security forces illustrate some of the themes of this report: permissive open-fire orders, the failure of authorities to investigate thoroughly, the delays in reaching a legal decision, initial official reports that are contradicted by later investigations, the lenient punishments handed to soldiers, and the role of independent human rights monitors in creating pressure for accountability.

1. Atwa Lutfy Omar Hirzallah, fatally shot on February 27, 1989, in Deir Ibziya, the West Bank

2. Salem Ismail Muharak, fatally shot on March 30, 1989, in Taamreh, the West Bank

3. Rafaida abu Laban, fatally shot on April 17, 1989, in Deheishe refugee camp, the West Bank

4. Khaled al-Atawneh, fatally shot on May 25, 1989, in Jebalya refugee camp, the Gaza Strip

5. Yasser abu Ghosh, fatally shot on July 10, 1989, in Ramallah, the West Bank

6. Nidal Habash, fatally shot on October 9, 1989, in Nablus, the West Bank

1. Atwa Lutfy Omar Hirzallah

Two days after Atwa Lutfy Omar Hirzallah was killed, IDF statements appeared in the Israeli press announcing that he had been shot by an army patrol that opened fire when it was attacked with rocks at a roadblock. One year later the army retracted this account, and a soldier has been charged with negligent homicide. The facts of the case strongly suggest that the pressure of independent human rights monitors contributed to this outcome.

On the evening of February 27, 1989, a soldier shot and killed 27-year-old Hirzallah in the West Bank village of Deir Ibziya. Hirzallah, a student, had reportedly served a nine-month sentence in 1987 for alleged membership in the Democratic Front for the Liberation of Palestine, a radical PLO faction, and was reputed to be a leading activist in his village. In an August 1988 raid on the village, authorities confiscated his identification card and ordered him to follow them, family members said. Hirzallah fled instead, and had since been sought by the authorities. Three months later authorities raided his house and confiscated some of his personal effects.

According to villagers, on the day of the shooting, soldiers entered the village after army vehicles had been stoned on the road at its perimeter. One Palestinian was shot and wounded, and local youths took him out of the village for treatment. Some witnesses said that Hirzallah was among those who helped to evacuate the wounded youth; others told Middle East Watch that Hirzallah had only joined these others as they walked home from the upper part of the village. In any event, Hirzallah and four others were descending a steep street when they found themselves face-to-face with a group of two or three soldiers. One of the soldiers shot Hirzallah three times. According to two of the youths in his company, the soldier fired from a distance of three meters or less.

Hirzallah died before reaching the hospital. His medical report described bullet wounds in the head and shoulder.

Three of the youths accompanying Hirzallah told lawyers, one of them in a sworn affidavit, that the two soldiers had been waiting in hiding behind a wall. When the youths approached, the soldiers emerged. They ordered the youths to stop. One of the soldiers shined a flashlight into the faces of each of the five Palestinians. When the beam rested on Hirzallah, the other opened fire on him, hitting him three times. The youths said that soldiers prevented anyone from approaching his body for three quarters of an hour.

Hirzallah was then taken to Ramallah Hospital in a civilian car accompanied by military escort. The medical report from Ramallah Hospital stated that he was dead on arrival. Doctors reported finding more than one wound in his skull and a bullet entry wound in his shoulder. X-rays showed foreign objects in the skull and chest.

Soldiers returned the body within a few hours and ordered the family to bury it the same night. Apparently no autopsy was conducted.

The four young men with Hirzallah were taken into custody. The two who were minors were released, but the two adults were detained for at least ten days. One of them, Ali Muhammad Malsiyyeh, said authorities questioned him briefly about the circumstances of the shooting, but mainly tried to get him to confess that the youths had been throwing stones.¹

Many villagers charge that Hirzallah was deliberately executed. This conclusion is based on their contention that authorities had been seeking him, that he was hit by more than one bullet at close range while he was apparently putting up no resistance, and that the soldiers then obstructed his rapid evacuation.

The army reached a completely different conclusion. The initial

¹ Interview in Deir Ibziya with Middle East Watch, June 10, 1989.

IDF report on the incident said a military patrol had opened fire and hit Hirzallah when Palestinians attacked the patrol with rocks at a roadblock, endangering lives.² Apparently some probing did take place; according to Salah Hirzallah, Atwa's brother, two officers questioned residents near the scene of the killing hours after the burial. He said some of the soldiers present at the shooting returned with a commander and reenacted the incident.³

A later CID investigation found that troops had acted properly, according to the *Jerusalem Post*.⁴

In April 1989, Member of Knesset Dedy Zucker went public with information provided by a reserve sergeant that cast strong doubt on the official findings. The unnamed sergeant, who arrived for duty in the district two days after the killing, recounted that during the orientation session, the brigade commander was asked by a reservist what sort of backing soldiers could expect if they were investigated. The commander responded by giving the example of the Hirzallah case, in which he suggested he had helped cover up the soldier's culpability.

Press reports of this alleged cover-up, along with inquiries by human rights organizations, focused attention on the case. Amnesty International called the killing a possible deliberate execution, urged an investigation, and asked to be informed of the findings.⁵ In July 1989, authorities informed Amnesty International that the killing was under investigation.

² *Jerusalem Post*, March 1, 1989.

³ Interview in Deir Ibbziya with Middle East Watch, June 10, 1989.

⁴ David Horovitz, "Amnesty Accuses IDF of Executing Palestinian," *Jerusalem Post*, May 21, 1989.

⁵ Amnesty International, Urgent Action Bulletin, May 18, 1989.

Further pressure was exerted by the attorney representing Hirzallah's family, Felicia Langer, who wrote the IDF in April 1989 calling the incident premeditated murder and demanding a prompt investigation. Langer produced for CID investigators some of the youths who were at Hirzallah's side at the time of the killing. Because she acted as a go-between, the investigators finally took testimony from Palestinian eyewitnesses, whom they apparently had failed to question properly after the shooting, even though they had been in custody at the time.

In November 1989, Defense Minister Rabin stated in a letter to MK Zucker that the investigation into the killing had been completed but the disposition of the case was no longer in the IDF's hands. Because the soldier under investigation had long since left active duty, the statute of limitations for a court-martial had expired, and the Military Prosecutor was obliged to transfer the file to the State Attorney for possible action.

In July 1990, Middle East Watch learned that a soldier had been charged with negligent homicide under the Penal Code. A communique from the Ministry of Justice stated:

This matter was investigated by the [CID]....The facts in this case were found to be as follows:

....[Reserve] soldier Melkman Ben-Melkman Mangashi was ordered with three other soldiers to go into the village to disperse a group of violent demonstrators. The patrol arrested one rioter and Mangashi, together with another soldier, continued to search the alleys for other participants in the demonstration. The other two men in the patrol guarded the arrested individual. At around 9:00 p.m. Mangashi and the other soldier came upon a group of five individuals, who were walking toward them. The soldiers shouted to the five to stop. Mangashi, without an order or permission, fired three rifle bullets in the direction of the group, which was approximately 16 feet away. One of the group, Atwa Hirzallah...was struck with two of the bullets....

Mangashi told the investigators that he felt threatened by the imminent confrontation with the approaching group of five and that he had no intention of causing harm. As a result of this shooting, Mangashi was charged with violation of section 304 of the Penal Code for negligently causing death. The case is pending trial in the Jerusalem Magistrate's Court.⁶

2. Salem Ismail Mubarak

Salem Ismail Mubarak was killed by members of the Border Police, not soldiers, so his death was investigated by police rather than IDF investigators. The case is nonetheless worth recounting in this report on IDF investigations, not only because it was mishandled so thoroughly, but also because Border Police are under IDF command in the occupied territories, and the IDF initially claimed to be investigating the death.

As it turned out, it seems that there would have been no investigation at all were it not for a persistent journalist and a family lawyer. And the delay in getting a probe under way apparently impeded the possibility of bringing criminal charges in the case.

On March 30, 1989, Mubarak was plowing a field outside his home in the village of Taamreh, near Beit Sahour, when a bullet struck him in the head, wounding him critically. His family drove him to al-Maqassid Hospital in Jerusalem. He never regained consciousness and died one week later.

When journalists first inquired about the incident, the IDF spokesman said Mubarak had been shot during a violent clash with security forces, and that the matter was under investigation.

⁶ Ministry of Justice fact sheet, July 3, 1990, file no. 164.1-556.

Witnesses to the killing offered another version. According to testimony gathered by an attorney retained by the family, Darwish Nasser, border policemen in jeeps had been pursuing youths who had set up a roadblock nearby. When the soldiers gave chase, the youths hid in the area of Mubarak's field. Shots were fired, and Mubarak and members of his family reacted by hitting the ground. When Mubarak heard the jeeps begin to drive away, he rose to his feet. A border policeman saw him and opened fire, then mounted a jeep and left.

The case would have attracted no attention were it not for some accidental circumstances. Mubarak, 26, had worked as a house cleaner for Edy Kaufman, a professor at Hebrew University and a human rights activist. Distraught by the killing, Kaufman contacted several journalists and urged them to look into the incident. Kaufman, who knew Mubarak's family and viewed the victim as unconcerned with politics, found the killing highly suspicious.

One journalist who took an interest in the story was *Haaretz* editor Uzi Benziman. Looking for a case that would illustrate what happens after the IDF announces the opening of an investigation, Benziman began making inquiries with authorities about the Mubarak killing.⁷

Darwish Nasser, the Mubarak family's attorney, also began making inquiries. In May he wrote to the Minister of Police and the IDF commander of the Central Command, calling the shooting premeditated murder and demanding that those responsible be tried. He received a reply stating that the matter was being pursued.

On June 16, 1989, *Haaretz* ran the first of Benziman's reports on how authorities were handling the case, entitled "Death Behind the Plow."⁸ The picture painted of the investigation was one of utter chaos

⁷ Interview in Jerusalem with Middle East Watch, February 26, 1990.

and inaction. For over one month, reporters who asked the police about the killing were told that it was under investigation. When they asked who was investigating, they were at first informed that it was being handled by Gilead Benyamin, in charge of special functions at the Police Ministry. They were then told that the investigation had been passed to the Judean region police branch, and later to the Border Police command.

Benziman contacted the Border Police in June, but was unable to obtain details of their investigation, other than a statement that the IDF was *not* investigating the incident, despite the IDF's statements shortly after the killing that it was. The IDF spokesman confirmed that there was no IDF investigation despite the earlier statements.

The day that Benziman's first article appeared, Border Police Commander Meshulam Amit said he had no record of the case being investigated, and said he had heard of it only the day before. Commander Amit said that the Israeli National Police is responsible for investigating an incident in the territories involving the Border Police.

It became clear that no investigation had been started by anyone. The letter from attorney Nasser had not triggered the investigation that, according to official policy, should have been launched automatically upon Mubarak's death two months earlier. The police claimed that they did not know anyone had been killed that day until *Haaretz* approached them. The police log for March 30 did not report Mubarak's being critically wounded.

A police inquiry was finally begun in June. Investigators interviewed border policemen and members of Mubarak's family, but no autopsy was conducted and no bullets were found.

On July 23, 1989, Police Minister Chaim Bar-Lev announced that as a result of a police investigation, he was recommending criminal charges

⁸ *Haaretz*, June 16, June 26, July 24, and December 1, 1989.

against the two commanders of the Border Police units on the scene. He maintained that both should be tried because in the absence of forensic evidence it was not possible to determine who had fired the fatal bullet.

Two months later, however, the district attorney concluded that the evidence was not sufficient to prosecute the two suspects criminally, and recommended a police disciplinary trial instead.

The criminal file was closed for lack of evidence, and a police disciplinary trial was begun. The two defendants are charged with two infractions: failing to report an incident and violating open-fire orders.

The disciplinary proceedings are open to the public. Members of Mubarak's family gave testimony at one session.

The accused have yet to give their version of what happened. According to Edy Kaufman, there are two versions of the event. Mubarak's family charges that a border policeman took aim at Mubarak and scored a direct hit. The other possibility raised during the investigation was that the policeman had aimed at the youths that the unit had been pursuing and missed, hitting Mubarak.

The hearing resumes in late July and is expected to last several more sessions. If found guilty, the defendants face only a limited range of possible sanctions; these include up to 45 days of confinement. Meanwhile, they continue on active duty in the force.

3. Rafaida abu Laban

This case is remarkable both for the IDF's changing accounts of what occurred and for the questions raised by the outcome of the investigation.

On April 17, 1989, 14-year-old Rafaida abu Laban of Deheishe refugee camp was hit in the back of her head by a bullet and killed.

Deheishe residents gave the Israeli human rights organization B'Tselem the following account of events that day: Because the camp was under curfew, the funeral of a Deheishe youth killed by army gunfire the day before was being held in the nearby village of Artas. Many residents of Deheishe had gone to Artas by way of the hills. On their return, they encountered a group of soldiers near the camp. Some threw stones at the soldiers, and the soldiers responded with gunfire. One bullet hit abu Laban. Youths carried her to Irtas, and from there she was driven to a hospital, where she was pronounced dead. Residents carried her body from the hospital and buried her in Artas.

A resident took a photograph of abu Laban shortly after the shooting. B'Tselem showed it to an Israeli doctor, Emanuel Theodore, who described the large wound in her face as an exit wound.

A reporter with the Israeli daily *Yediot Achronot* who came to investigate the killing heard conflicting versions of what had happened. According to abu Laban's father, she had left the house only to retrieve her brother, who had gone out while the camp was under curfew. Youths from the camp told the reporter, however, that the girl regularly acted as a lookout for soldiers and threw stones. They also reported that abu Laban had been among the group of youths returning from the funeral who had thrown stones at the soldiers.⁹

Officers questioned the family on the night of the killing, according to *Yediot Achronot*. It is not clear what further steps were taken to investigate the killing.

The following day, Israel radio reported that, according to military sources, no connection had yet been proven between the death of the girl and the IDF. The sources stated that there were no soldiers in the area when the girl was hit, and added that the family would not permit

⁹ Anat Tal-Shir, "Warm Weapons in Deheishe," *Yediot Achronot*, May 12, 1989.

exhumation of the body for an autopsy.¹⁰

According to the *Yediot Achronot* report, the IDF stated that soldiers had chased youths some 200 meters from where abu Laban was shot. During the chase they fired plastic bullets, but did not notice a girl fall or get hurt.¹¹

Writing in response to an inquiry from Middle East Watch, the IDF in July 1989 offered new information about what allegedly had happened to abu Laban:

[I]t appears that she was killed...by local Arabs who tried to attack and kill IDF soldiers and who missed their target. The local Arabs fired a homemade gun that was made in a factory in the Deheishe refugee camp. A final and definite answer on the circumstances surrounding her death will be available following the completion of the CID's investigation.

On September 11, 1989, the Ministry of Defense informed B'Tselem that the investigation had been completed and the file was awaiting a legal opinion from the Judge Advocate-General's Corps. The following month, *Al-Hamishmar* daily published a list of all the Palestinian children killed during the intifada, together with the IDF spokesman's comments. On Rafaida abu Laban, the spokesman commented:

Case closed. Impossible to link the death...to the shooting that occurred there. However, a soldier was reprimanded for illegal use of arms (unrelated to the local's death).¹²

¹⁰ Israel radio in Hebrew, April 18, 1989, as reported in Foreign Broadcast and Information Service, Near East and South Asia report, April 19, 1989.

¹¹ *Yediot Achronot*, May 12, 1989.

¹² Cited in the B'Tselem Information Sheet, April 1990.

In March 1990, the Minister of Defense provided details of the case in response to a query sent nine months earlier by MK Yair Tsaban:

The legal opinion concerning the circumstances of the death of Rafaida abu Laban found as follows: On April 17, 1989, curfew was imposed on Deheishe. An IDF patrol spotted a disturbance and the soldiers acted to disperse it. At a certain stage the supply of rubber bullets ran out and the soldiers' lives were threatened by the throwing of stones and bottles. One of the commanders fired two plastic bullets, but his firing deviated from the relevant operational orders. Apparently one of these bullets hit the deceased and caused her death. As more than three months have elapsed since the sergeant's demobilization, he cannot be placed on disciplinary trial, and given that the circumstances of the shooting were in his favor (the feeling that his and his soldiers' lives were endangered) and that the rubber bullets had run out, the [district military prosecutor] directed the battalion commander to censure the sergeant severely for deviating from orders. It bears stressing that the military prosecutor took this step despite the life-threatening situation in which the unit found itself.¹³

As B'Tselem has pointed out, this explanation raises many questions. It was initially claimed that the unit of soldiers was operating at quite some distance from where the girl was allegedly hit, and that while soldiers fired plastic bullets, they were not aware that they had hit anyone. The photographs of the exit wound suggest that the bullets had been fired from extremely close range; a plastic bullet fired from 200 meters away would not have gone through the skull as this one did. Evidently, the soldiers at least initially misled the army, either about the distance from which they had fired or about the type of ammunition fired, and perhaps also about whether they had noticed anyone injured.

¹³ B'Tselem Information Sheet, April 1990.

However, the letter from the Minister of Defense mentioned no soldier being disciplined for providing false information to investigators.

It is also worth noting that the slow pace of investigation precluded the option of a disciplinary trial for the soldier apparently responsible for the killing.

4. Khaled al-Atawneh

The killing of Khaled al-Atawneh, 20, on May 25, 1989, attracted no more than one paragraph in the newspapers the following day and has gotten no subsequent publicity. It appears to be a rather ordinary case -- a killing that occurred during clashes between youths and soldiers in the tense Jebalya refugee camp, during which 12 other Palestinians were injured, according to camp residents, and five soldiers were slightly wounded by stones, according to the IDF.¹⁴ Like other killings during clashes, the killing of al-Atawneh raises questions about the appropriateness of the force that is commonly used in such situations. And, more than one year after the event, despite inquiries by Middle East Watch, the IDF has provided no details of its findings, or about the disposition of the case.

A Palestinian UNRWA employee who was in the camp that day told Middle East Watch that a van carrying soldiers in civilian clothes drove into the camp. Residents started shouting "Settlers!" and threw stones at them. The soldiers got out of the van and began shooting. Reinforcement troops were brought in. Troops raided a boy's school in the camp about 100 yards from the site of the killing, apparently, the UNRWA employee said, in the belief that stones had been thrown from there.¹⁵

¹⁴ Joel Greenberg, "Two Die in Jebalya Clashes," *Jerusalem Post*, May 26, 1989.

¹⁵ The UNRWA employee, who asked not to be named, was interviewed at UNRWA headquarters in Gaza City by Middle East Watch, June 3, 1989.

Ahmed al-Hinawi, a youth from Jebalya who was with al-Atawneh when he was shot, told Middle East Watch that the two had been in the orchard beside the narrow street that leads to the school, when they saw a uniformed soldier about 10 meters away, at the edge of the orchard, and turned to flee. The soldier opened fire on them, fatally wounding al-Atawneh in the chest and hitting al-Hinawi with a bullet in the back. Al-Hinawi said the two had not been engaged in any form of violent activity.¹⁶

Ambulances took al-Atawneh and al-Hinawi to al-Ahli hospital in Gaza City. Al-Atawneh was dead on arrival.

That afternoon Israel radio reported that, according to the IDF's preliminary investigation, al-Atawneh had been

killed by IDF troops after he ignored their command to halt and attempted to run away. It was learned later that he had been previously imprisoned for security offenses.¹⁷

The initial press reports said that the killing took place amidst clashes, but cited no IDF allegations that al-Atawneh had been engaged in acts of violence at the time he was shot.

In July 1989, the IDF spokesman told Middle East Watch that the case was still under investigation. In March 1990, the IDF stated that the investigation was complete and the recommendations of the district military prosecutor were awaited. A July 1990 inquiry by Middle East Watch on the status of this case was not answered by the IDF before this report went to press.

¹⁶ Interview in al-Nasr Hospital, Khan Yunis, by Middle East Watch, June 3, 1989.

¹⁷ Israel radio in Hebrew, May 25, 1989, as reported in Foreign Broadcast Information Service, Near East and South Asia report, May 26, 1989.

5. Yasser abu Ghosh

The killing of Yasser abu Ghosh illustrates how the orders on opening fire while in pursuit of a suspect permit the use of lethal force in clearly non-life-threatening situations. Although a soldier was reportedly brought before a disciplinary hearing for illegal use of a weapon, the lightness of the punishment suggests that, in the view of the Judge Advocate-General's corps, he did not deviate much from his standing orders when he shot an unarmed fleeing suspect in the back while chasing him down a narrow alley.

On July 10, 1989 at about 11:30 a.m., men in plain clothes shot and killed abu Ghosh, 17, as he fled down an alley in Ramallah. The Ramallah-based human rights organization al-Haq, an affiliate of the International Commission of Jurists, began documenting the killing that day, and collected testimony from some 30 witnesses.

In the view of al-Haq, abu Ghosh was the victim of a summary execution.

The numerous accounts collected by al-Haq were consistent with one another, and are summarized here:¹⁸

At a time when there were no demonstrations in the area, abu Ghosh was walking with companions in downtown Ramallah when a van stopped in front of the youths. Three men jumped out of the van, and the youths began to run in the opposite direction. The men gave chase, firing pistols into the air. The youths turned down an alley. When one of the men reached the alley he fired several shots at abu Ghosh, hitting him with more than one bullet from a short distance. The other Palestinians continued running and escaped.

¹⁸ Al-Haq alert, July 22, 1989.

The van was brought near to where abu Ghosh was lying. Two army jeeps quickly arrived. Soldiers ordered local residents and shopkeepers to leave the scene. A Palestinian doctor who was wearing a white doctor's coat approached the soldiers, and requested permission to see abu Ghosh, but was refused. The soldiers then lifted the youth into the jeep. Just before the jeep drove away, the doctor later testified, he managed to approach abu Ghosh and determine that he still had a pulse. The doctor charged that as the jeep left the scene, abu Ghosh's head and shoulders were hanging outside the jeep.

Rather than drive to a nearby hospital, the jeep went to the local military headquarters. The men in civilian clothes climbed into their van and also left the scene.

Late on the night of July 12, soldiers brought abu Ghosh's body to his family in the village of Beitunia and permitted them to hold a small funeral under military guard. Family members said it appeared that an autopsy had been performed.

Abu Ghosh was well known as an activist in his village and had been sought for arrest by Israeli authorities. Within hours of the killing, Israel radio reported that abu Ghosh had been wanted for "attacks on local residents who cooperated with Israel and coordinat[ing] violent activity in the area on behalf of the Democratic Front for the Liberation of Palestine."¹⁹ Military sources said he had been killed by "security forces" after he had ignored orders to stop, and that the incident was under investigation.²⁰ Witnesses testified to al-Haq that they had heard no such

¹⁹ Israel radio in Hebrew, July 10, 1989, as reported by Foreign Broadcast Information Service, Near East and South Asia report, July 11, 1989. Later press accounts reported that abu Ghosh was affiliated with the Popular Front for the Liberation of Palestine.

²⁰ *Jerusalem Post*, July 25 and 27, 1989.

orders shouted; nor had the plainclothesmen identified themselves as law enforcement agents.

Al-Haq based its conclusion that the killing was a summary execution on testimony indicating that the gunmen had not tried to arrest abu Ghosh; that they had fired bullets at close range, with no attempt to shoot at his legs in accordance with open-fire orders; and that abu Ghosh had been denied medical treatment.

Attorney Felicia Langer, who was retained by abu Ghosh's family, wrote to Defense Minister Rabin on July 26 stating that the youth had been shot "in cold blood with intent to kill." The family demanded an investigation and prosecution of those responsible.

When al-Haq made its findings public in a bulletin 12 days after the killing, the CID had yet to question any of the Palestinian witnesses that al-Haq had interviewed. Nor at any later point did the CID approach al-Haq for help in locating witnesses, despite that organization's stated willingness to release evidence and encourage witnesses to give testimony.

The CID did eventually question at least two Palestinian witnesses, after attorney Langer served as a go-between. Some form of immunity agreement was negotiated for these two witnesses.

However, the CID never contacted al-Haq regarding their fact-finding. Asked for comment, Lt. Yuval Horn of the Chief Military Prosecutor's office said, "The fact that al-Haq goes [public] is not enough for us to investigate. If al-Haq doesn't forward material to us it's worthless."²¹

When told that the CID could have learned about al-Haq's collection of testimony in the case by reading the *Jerusalem Post*, Lt. Horn

²¹ Interview in Tel Aviv with Middle East Watch, March 1, 1990.

replied: "We can't sit in the Judge Advocate-General's office or at the Military Police and read newspapers and try to find relevant people. They (i.e., al-Haq's staff) have to find us."

Three weeks after the killing, Middle East Watch attempted to draw the CID's attention to al-Haq's fact-gathering in the case, in a letter to Defense Minister Rabin. Copies were sent to the IDF spokesman, the Judge Advocate-General, the Ministry of Justice and Israeli diplomats. Lt. Horn said he had not seen the letter. Middle East Watch never received a reply to it.

In March 1990, Middle East Watch asked the Chief Military Prosecutor about the status of the investigation. Lt. Yuval Horn confirmed that the incident did involve IDF personnel. He said an investigation had been opened immediately and a preliminary report had been filed two days after the killing. Lt. Horn said that the district military prosecutor had submitted her recommendations and that a final ruling was awaited.

By May 1990, a legal decision had been reached. A letter explaining the decision was sent by the Defense Minister's office to attorney Langer. It is worth quoting at length:

The incident was investigated thoroughly by Military Police investigators and was checked by the police as well. According to the investigation's findings...a force of four soldiers went out to arrest Yasser abu Ghosh, who had been wanted for several months for serious security offenses.

The wanted man was identified in a coffee shop in Ramallah and the force arrived on the scene in a civilian vehicle bearing a local license plate.

When the vehicle stopped by the coffee shop, the wanted man noticed the soldiers and started to flee. A chase ensued, during which one of the soldiers shouted in Arabic to the fleeing man, "Stop, army" and fired two shots into the air, but the wanted

man increased his pace.

After approximately 60 meters the wanted man turned into a side alley with the force after him. When he had not stopped 20 meters into the alley, one of the soldiers fired at the lower segment of his body. One of the bullets hit his back and he fell. The soldier explained that he had aimed for lower portion of the body but that it was likely that the shakes caused by running raised the gun somewhat, thus hitting the back.

According to Mrs. Nahiya Ratroot, who was an eyewitness to the incident, in an affidavit given to attorney Langer, after abu Ghosh fell two soldiers approached him and shot him in the head.

In the statement taken from the witness she changed her version,...now saying that the weapon was indeed aimed at his head, but she did not say that a shot had been fired.

This claim clearly contradicts the soldiers' testimony. Moreover, the pathological report found that the victim had been shot by a single bullet that entered his lower right back, exiting the left chest. Death was caused by internal loss of blood...

The Judge Advocate-General found that the procedure for opening fire in apprehending a suspect had not been carried out and, accordingly, ordered that the soldier who had fired be brought to a disciplinary hearing for illegal use of a weapon. He further ordered him to study anew the procedure for detaining a suspect.

After abu Ghosh was hit a Border Police jeep arrived on the scene. The policemen put the injured man into the jeep. According to Dr. abu Awad, he was laid on the jeep in a manner in which an injured man should not be evacuated to the hospital. He said that he did not care for abu Ghosh and had only taken his pulse when the jeep quickly left the scene.

According to the policemen, the injured man was put into the jeep and his head was held on the knees of one of the policemen. They reject the claim that his head was hanging out of the jeep. Dr. Awad did not show up for the meetings scheduled for him with the police and, therefore, no verification of his version against that of the police could be made.

The injured man was evacuated, in accordance with orders given, to the government clinic instead of the hospital. The Judge Advocate-General noted that the treatment did not suit the circumstances of the injury, and ordered the relevant authorities to issue suitable instructions regarding the need to facilitate medical treatment to anyone injured and to evacuate him in a suitable manner.

The findings of al-Haq and of the CID investigation differ in some details but are consistent in striking ways. It is clear from both accounts that abu Ghosh had not been engaging in any violence when troops began the chase that ended in his death. Both accounts confirm that he was killed by a bullet in the back fired in an alley, and that he was subsequently not given proper medical attention.

The two accounts are in dispute as to the distance of the victim from the soldier, and whether the soldier had ordered the suspects to halt and had fired warning shots. In addition, according to the al-Haq account, the soldier stopped and aimed his gun before hitting abu Ghosh with several bullets, while the soldier claimed he had aimed at the lower part of the body but the shakes caused by running had caused him to raise the gun. The pathological report, according to the CID, showed that abu Ghosh had been hit by a single bullet in the lower back.

The CID, having interviewed few witnesses other than the soldiers – the letter to Langer refers to two Palestinian witnesses – was left to weigh the word of soldiers against that of Palestinian witnesses as to whether warnings were shouted, whether warning shots were fired, and

whether the soldier aimed at the legs. These factual discrepancies have a direct bearing on whether the killing was a summary execution.

But even if the CID version is accepted, the mild institutional response to the fatal outcome of this manhunt – a reported disciplinary hearing for a soldier for some unspecified illegal use of his weapon, and no reported measures against those who delivered a man who was bleeding to death to a government clinic rather than to a hospital – provides persuasive evidence that the IDF views the killing of a wanted person who attempts to flee as at most a minor deviation from the permissive rules.

6. Nidal Habash

The investigation of the shooting of Nidal Habash illustrates the failure of the CID to seek Palestinian witnesses unless they are hand-delivered to them. It also raises questions about whether autopsies are conducted in all cases when they are warranted.

On the afternoon of October 9, 1989, a day when Nablus was under curfew, a soldier shot and killed Nidal Habash, 21, in a vacant lot. Within two days of the incident, Gen. Yitzhak Mordechai, commander of the Central Command, stated that the soldier involved had properly followed the procedure for apprehending suspects.²²

Several residents in the area gave an entirely different account. They reported that a soldier had shot Habash after he had surrendered.²³

²² *Jerusalem Post*, October 12, 1989.

²³ *Jerusalem Post*, October 12, 1989, and Jackson Diehl, "Uprising Has Spawned Brutality on Both Sides in Nablus," *Washington Post*, October 18, 1989.

One of the residents, Asma al-Masri, gave her version to Israeli journalists, the British consul general, and an Israeli human rights group. According to al-Masri, who said she saw the shooting from a balcony, the soldier fired at Habash from a distance of 10-15 meters, after the youth had stopped running and raised his hands, and then fired three more shots at him as he lay on his back.

Al-Masri said that three soldiers then gathered at the scene. Neighbors called a local Red Crescent²⁴ clinic, and an ambulance soon arrived and transported Habash. It is not known whether he had already died; al-Masri said she saw no movement at all and assumed he had.

On the basis of the testimony of al-Masri and others, the British consul-general urged a full investigation into the killing.²⁵

In the weeks that followed, however, investigators never contacted al-Masri, despite her having been quoted by name in the Israeli press and having proclaimed her readiness to tell authorities what she had seen. She was finally questioned only after the Judge Advocate-General's office received in November a letter from the New York-based Lawyers Committee for Human Rights summarizing her account.

In reply to the Lawyers Committee letter, the IDF stated that investigators had not previously contacted al-Masri because they "have no objective method to find out who was an eyewitness – especially since she saw the occurrence from her

²⁴ Red Crescent is an emergency relief organization.

²⁵ *Jerusalem Post*, October 17, 1989.

apartment." The IDF reply continued:

Knowing that there is an eyewitness, we referred your letter to the CID, requesting her immediate questioning. Moreover, we asked for testimony from the other eyewitnesses you mentioned, and drew the CID's attention to the article published in the *Jerusalem Post*.²⁶

The Association for Civil Rights in Israel (ACRI) also investigated the case and spoke to witnesses. ACRI attorney Dan Simon took an affidavit from one witness who said he had seen soldiers closing in on two men and then had seen one of the soldiers shoot one of the men twice in the back. According to this witness, the man was not shot again while lying on the ground. Simon said that the CID had received a lot of evidence in the case and was pressing ACRI to produce witnesses. Many of them, however, were refusing to cooperate, including the one who had given the above-mentioned affidavit to ACRI.

In its letter to the IDF, the Lawyers Committee asked whether an autopsy had been conducted in the case. The IDF replied that, according to the preliminary investigative report, no autopsy had been conducted. "We presume," the letter continued, "that the reason for this is that the soldier who shot him was identified." The IDF nevertheless promised to determine why no autopsy had been conducted.

In many cases, no autopsy is performed because Palestinians abduct the bodies of persons killed by the army in order to bury them quickly in the local tradition and have some control over the funeral. This creates an evidentiary problem in many investigations.

In a case like that of Nidal Habash, however, in which soldiers

²⁶ The letter from the Lawyers Committee for Human Rights, dated November 4, 1989, and the reply from the Chief Military Prosecutor's Office, dated December 6, 1989, are reprinted in al-Haq's annual report for 1989, *Nation under Siege*.

were near the body and controlled the area of the incident, the apparent decision not to conduct an autopsy raises suspicions. The forensic evidence would have helped to answer allegations that he had been shot at close range while lying on the ground.

Such questions might be answered if the army agreed to exhume the body for an autopsy, as it did in the cases of Ayman Jamus, Amer Qalbuneh and Amjad Jabril (see Chapter Two, Section C.5 of this report). As far as we are aware, no effort to arrange an exhumation has been made in the Habash case.

As of early July 1990, the Lawyers Committee was still waiting for an explanation why no autopsy had been conducted. When Middle East Watch pressed the question in March, the prosecutor's office said it, too, was waiting for an answer to the question from the CID.

Middle East Watch requested an update from the IDF on the status of the case before this report went to press in July 1990. No reply was received.

APPENDIX IIb:
MIDDLE EAST WATCH REBUTTAL
OF IDF RESPONSE

26 July 1990

Lt. Col Arik Gordin, Tel Aviv (via fax)
Lt. Col. Moshe Fogel, Jerusalem
Office of the IDF Spokesman

Dear Cols. Gordin and Fogel,

Middle East Watch regrets that the response of the IDF spokesman to the MEW report, "The Israeli Army and the Intifada: Policies that Contribute to Killings," is not based on a serious reading of the report. I will answer the spokesman's points in the order they were made in Press Bulletin #21, dated July 25, 1990.

Contrary to the assertion of the IDF spokesman, the report acknowledges (p.10) that military authorities have the authority (and duty) under the Geneva Convention to ensure "public order and safety" in the territories. However, those powers must be balanced against their obligation to treat the civilian population humanely.

Contrary to the assertion of the IDF spokesman, the report mentions that the High Court of Justice has reviewed the open-fire orders on occasion, including the appeal that is currently sub judice (p.54-55). However, the fact of court review does not alleviate our concern over the open-fire orders. Whether or not the Israeli courts have upheld these orders, Middle East Watch stands by its conclusions that these orders are excessively permissive and violate international norms of proportionality and necessity governing use of lethal force.

Contrary to the assertion of the IDF spokesman, the report acknowledges that Palestinians often do not cooperate with military police investigations, and that this complicates "enormously" the work of investigators (p.79). However, Middle East Watch does not agree that investigators have made "widespread and sincere" efforts to provide Palestinians with "fair and proper means of giving testimony." Middle East Watch believes that if investigations are to be thorough and impartial, far greater efforts must be made to encourage Palestinian witnesses to step forward.

The Middle East Watch report does mention that investigations are complicated by the abduction of bodies by Palestinians (p.130-131). Contrary to the assertion of the IDF, Palestinians do not abduct bodies in order to "intentionally thwart" investigations. The primary motives for the abductions are given in the report (p.130). To return to the main point in this section, Middle East Watch criticized the IDF investigations because, when the body had been abducted, investigators made inadequate efforts to seek other forms of medical evidence; and in cases when the IDF did have custody of the body, it did not seem to conduct autopsies in all cases where legal questions arose.

Contrary to the IDF spokesman, the report mentions that IDF investigations are subject to legal review (p.76-77) and discusses at length the IDF claim that investigative files are open to families and their lawyers (p.111-117). While praising the IDF for proclaiming this policy, Middle East Watch found that this policy was far from becoming a reality. Many interested parties were unaware of this policy, while, as far as Middle East Watch is aware, no Palestinian family or their lawyer had yet been granted access to a full investigative file involving a killing by a soldier.

The IDF spokesman states that authorities spend much time responding to human rights organizations. Through extensive quotations of interviews and correspondence with officials, the Middle East Watch report gives a fair picture of the extent of the IDF's responsiveness. We stand by our view that, given the frequency and gravity of events in the

West Bank and Gaza Strip, the degree of responsiveness is inadequate.

The IDF spokesman states that Israel allows free movement and entry at all times and to all places, subject to security needs. As Middle East Watch concluded from talking to journalists, human rights fieldworkers and others, this ideal picture is not borne out in reality. Access during and following a military operation or a confrontation is frequently blocked. We do not believe that the declared security reasons were justified in many cases.

The IDF spokesman correctly cites the recommendation of Middle East Watch that observers, e.g. journalists and human rights workers, be permitted to travel and gather human rights-related information freely throughout the territories. However, the IDF spokesman suggests without any foundation that the Middle East Watch report called for the placement of "supervisors" in the territories to "supervise" army activities."

The extent of cooperation and openness that Middle East Watch received from authorities is fully reflected in the text of the report. The report did not "ignore" the testimony of IDF personnel; that testimony was carefully weighed against the testimony of other sources outside the IDF, and in many cases the conclusions we reached were at variance with the official IDF version. When the assertions of the IDF were verified, we noted this in the report, and gave praise where it was due. For example, we note that IDF investigators have grown more responsive to efforts by certain nongovernmental organizations to produce Palestinian witnesses (p.94); that access has improved with regard to autopsy reports (p.119) and that the IDF has facilitated testimony in at least two cases by negotiating immunity agreements for witnesses (p.86).

In short, nothing in the IDF spokesman's response to our report persuades us to alter our findings. I welcome further comments from you and would be pleased to come to Tel Aviv to discuss with you any aspect of this report, or your work or ours.

....

Thank you for your consideration.

Yours,

Eric Goldstein

APPENDIX IIa

INITIAL IDF RESPONSE TO "THE ISRAELI ARMY AND THE INTIFADA: POLICIES THAT CONTRIBUTE TO THE KILLINGS"

Jerusalem, July 25, 1990

Press Bulletin #21

During the last two and a half years, in the areas of Judea, Samaria and the Gaza Strip, there has been extensive terrorist and violent activity, initiated and guided by the PLO, Hamas, as well as other terrorist organizations. The incidents include murders and killings of innocent people, including many Palestinians. These organizations do not hesitate to use any means at their disposal, including, cynically and maliciously exploiting women and children for the purposes of implementing their goals, which are to create anarchy, cause the collapse of local authorities and cause as much damage as possible to the IDF and the State of Israel.

The organization Human Rights Watch completely ignores these facts, and for some reason does not state the broad authority vested in the army by international law, authority of which the IDF makes only partial use while demonstrating caution and responsibility toward human life in difficult situations. Although orders concerning the opening of fire in these circumstances are extensive under international law, the IDF, despite the extreme difference in circumstances regarding motives, severity and scope of the incidents, has limited itself to orders comparable to those customary in Israel.

Human Rights Watch ignores the fact that orders regarding the opening of

fire are determined and approved by the Military Advocate-General and are subject to the judicial supervision of the Israeli High Court (including an appeal pending in court at present). Neither has it been stated that orders regarding the opening of fire are in accordance with High Court legal rulings, which are determined from time to time.

In addition, in an appeal which was reviewed regarding the legality of the use of plastic bullets for dispersing violent demonstrations, the high court ruled that IDF operational orders in this matter are considered reasonable and legitimate.

Human Rights Watch accuses the IDF of not thoroughly investigating incidents in which Palestinians were killed or injured. The organization unfortunately does not give due consideration in its report to the fact that Palestinian Arabs in the areas do not usually cooperate with the investigating authorities in spite of widespread and sincere efforts by those army elements authorized to provide them fair and proper means of giving testimony.

The organization does not mention in its conclusions that Palestinians intentionally thwart many investigations by abducting bodies and preventing autopsies in order to prevent the gathering of important evidence by investigation bodies. They also disrupt some IDF investigations by providing false evidence for propaganda purposes and in order to harm the image and good reputation of the State of Israel.

The organization ignores the fact that IDF investigations are subject to legal review and that investigation files are open to the families and those having power of attorney.

The State of Israel is concerned about the issue of human rights no less than those who criticize it, and does its best to protect human rights in difficult times. Israel makes an effort to cooperate with human rights organizations in Israel and abroad. Authorities in Israel in general, and in the IDF in particular, dedicate much time to various organizations,

including Human Rights Watch, and deal with their requests.

Israel allows free movement and entry at all times and to all places subject to security needs, contrary to what is implied in the report.

The demand being made of Israel, to allow observers and supervisors to be placed in the areas for the purpose of investigating and supervising army activities, seems strange and is completely contrary to the principle of sovereignty of the State of Israel and IDF rule in the areas.

It is unfortunate that the extent of openness and cooperation which the organization enjoyed from IDF authorities, cooperation which is not characteristic of other countries, has not brought the organization to draw objective conclusions. In many instances, it appears that there is little connection between facts presented in the report and the report's conclusions. In addition the report ignores the testimony of IDF personnel which was so extensively quoted.

We appreciate the large amount of space dedicated to IDF responses in the report, although it seems to us that these did not sufficiently influence the conclusions of the report.

APPENDIX IIc

IDF SPOKESMAN'S REPLY TO MIDDLE EAST WATCH'S COMMENTS REGARDING INITIAL IDF SPOKESMAN'S JULY 25, 1990 RESPONSE

September 2, 1990

Re: *Policies That Contribute to Killings*

Attached is the IDF's reply to your comments [of July 26, 1990] regarding the IDF Spokesman's response of July 25, 1990. As promised, this reply includes examples of arguments.

Generally, the criticism in the report is both misleading and unconvincing:

It does not consider the dangers soldiers face when trying to disperse riots and catch terrorists.

It does not mention the casualties on both sides.

It does not include a proper observation of international law when claiming that IDF policies contradict it.

It does not explain that autopsies are not a magical tool which will automatically better the investigations and produce the soldiers who are to blame for the death.

In short, the IDF feels that the report is not balanced.

Weighing MEW's criticism and observation of the Judge Advocate-General's Unit, the IDF feels that the JAG does its job well.

IDF policies do not contribute to the excessive killings. They prevent them.

Sincerely,

**Lt. Col. Arik Gordin
Head of Information Branch
IDF Spokesman's Unit**

1. The report's "objectivity"

The IDF does not initiate policies that contribute to killing. The title of your report implies otherwise. What purports to be an objective report does not begin with an objective title. As was mentioned in the IDF Spokesman's reply, we found, after reading this report very carefully, that although IDF personnel were quoted correctly, many one-sided conclusions which do not evolve from any factual material were presented.

For example, on pp. 94-95 of the report, you quote Lt. Horn, from the Military Prosecutor's office, correctly, when he claimed in your meeting on March 1, 1990 that "the fact that al-Haq goes to people with allegations is not enough for the IDF to investigate. The regulations state that if they want to help, they have to come forward in writing to the IDF with the details." Following this quotation, MEW argues that this is "unsatisfactory for a number of reasons."

MEW's report claims that al-Haq "informed authorities directly that it had information relevant to a case." We see no basis to this claim. In fact, the report does not include any interviews with al-Haq reporters in which they presented documents proving this theory. The Military Advocate-General's Office has received hundreds of reports including relevant information since the beginning of the Uprising. To the best of our knowledge, *not one* of these reports came from al-Haq. al-Haq sends its

reports worldwide for propaganda use and does not find it necessary to send them to the authorities which may make substantive use of them. The CID investigators are instructed to investigate every single report or claim sent to the Military Advocate-General's office. At times these reports provide real help, including information concerning local eyewitnesses to incidents. Al-Haq has not provided such information yet, maybe because its aims differ from the aims of human rights organizations. Contrary to MEW's claim, al-Haq has never informed the IDF that it had obtained relevant information. Had it done so, we would have asked them to provide the information, so that we would be able to make good use of it.

The Yasser abu Ghosh case, which is included in the report as an example, is an exception. The CID investigated local eyewitnesses, and the Lawyers Committee for Human Rights did not reveal any new information in its letter, which was forwarded, as any other report, to the CID. Therefore, the Lawyers Committee was not asked to help in locating the witnesses. By the way, why did al-Haq inform the IDF through the Lawyers Committee when MEW claims that it "informed authorities directly"? (p. 95)

You state that the Israeli press "frequently reports on al-Haq's findings." Whether this is true or not, and we know it is untrue, IDF personnel should not, cannot and do not need to read newspapers in order to receive al-Haq's findings. The role of the IDF is to uphold the rules and regulations which apply in the Territories. The IDF does not *request* outside help, because it conducts investigations through the CID. If al-Haq wishes to help the CID and to provide information, it may do so. It has not done so to date.

The report's final assertion is that the CID is not serious about its "self-declared vow to do everything to arrive at the truth" because it does not contact al-Haq routinely. The CID has contacted human rights organizations which claimed that they had information, and has requested their aid. We feel that the CID carried out its aims properly.

2. "Excessively permissive orders"

The Middle East Watch claims that the rules of engagement (ROE) are "excessively permissive and violate international norms of proportionality and necessity governing the use of lethal force" (your letter of July 26). You assert that these permissive orders, together with the investigations and punishment system, contribute to excessive killings (p. 3).

First, this assumption ignores the number of riots, their severity, and the danger which they pose to Israeli soldiers. An objective report about the Uprising must include a detailed description of the nature of the riots, of the number of casualties and of the fact that a third of Arab casualties are caused by the inhabitants of the territories themselves. The report chose to create a "sterile" picture of the difficult reality in the Territories. Of course, it is much easier to criticize this way, but it also distorts reality, thus diminishing the report's objectivity.

The IDF's role in the Territories is to preserve law and order and to enable the local inhabitants to conduct a normal life. As was explained in previous meetings, many riots have evolved into life-threatening situations. The ROE permit soldiers to fire at any person who shoots at them or poses a serious threat to their lives by throwing molotov cocktails, activating bombs etc. *In no other circumstances are soldiers permitted to open fire on local inhabitants.* It must be emphasized that permission to open fire at a person who endangers one's life is well based both in the Israeli law, and in the international law.

In situations which are not life-threatening, soldiers may not use regular ammunition. In order to disperse riots, they have been supplied with alternate means, including tear gas and rubber and plastic bullets. They are expected to disperse riots before they reach levels which will endanger soldiers' lives. Even when it does pose danger to the soldiers, they are not allowed to point and shoot, aiming to kill. They are instructed to shoot according to the *suspect apprehension* stages (see p. 33 of the report). The highest level of danger posed to any Palestinian who

endangers a soldier is that he will be shot in the legs. Even if the soldier is seriously injured by various objects thrown at him, he may not deviate from these rules.

On page 33 of the report, you mention that soldiers must adhere to the stages "as much as possible." This statement remains vague, and thus misleads the reader. It must be clarified that in no case may the soldier aim above the legs while dispersing a riot. These rules are permitted by international law, even when he is outnumbered. As was stated previously, they provide a less than proportional response to violent riots.

Recently, the ROE were revised, following the Israeli Supreme Court landmark decision in the *Ankonia* case. The permission was omitted to conduct the suspect apprehension stages towards one who causes malicious damage to property without endangering life. The Suspect Apprehension Rules apply only to those suspected of committing *dangerous crimes* (as opposed to serious crimes before). One may not apply these rules towards any local inhabitant. Those categorized as "suspects" have terrorist backgrounds, including throwing petrol bombs at soldiers, leading armed attacks on soldiers, and other crimes. Notwithstanding the fact that they have committed dangerous crimes, the apprehending soldier must adhere to the stages -- including shouting, shooting in the air, and if those stages have not aided in preventing the suspect from fleeing, the soldier may shoot, only *aiming at the suspect's legs*.

These precautions are the essence of necessity and proportionality as applied by international law. The IDF finds it difficult to understand the logic behind the statement beginning the section on Procedures for Apprehending Suspects (p. 34), which claims that "the rules for firing metal bullets in apprehending suspects violate the principles of necessity and proportionality." Those caught after the use of firearms, as described above, pose a danger to their surroundings.

Moreover, the fact that the report mentions only the proportionality and necessity factors as the most important criteria in international law,

proves a partial understanding of this intricate subject. International law permits the military in circumstances such as the Uprising to apply much more force than is applied by the IDF in the territories. International law permits any act which is not expressly forbidden. It does not forbid the use of firearms. The IDF, however, has issued means of dispersing riots in order to minimize the use of firearms. International law does not set specific criteria and stages for shooting. The IDF however, has established clear and strict criteria and stages regarding the use of firearms. International law does not set clear barriers concerning the use of force in order to disperse riots. The IDF chief of staff, however, issued a dispatch to troops in which he set clear the instructions regarding riot dispersal. The IDF issued restrictive orders concerning the use of plastic and rubber bullets. In a state of hostility, international law does not require an army to limit itself in so many varied ways in order to avoid casualties. The IDF does so.

When deciding what may be described as proportional, one must compare this situation to that in other countries. Such a comparison, which would have been favorable to the IDF, was not included in this report.

3. Palestinian testimony

The Middle East Watch feels that "far greater efforts" must be made in order to encourage Palestinian witnesses to step forward. CID officers clarified that they do their utmost to bring witnesses and have them testify so that the whole picture will be revealed in the evidence before the prosecutor. Besides being instructed specifically by the Military Advocate-General's Unit, CID officers are instructed by their commanders to do so in *every single case*.

This had been done in most cases. Naturally, every rule has its exceptions. If the Middle East Watch would have contacted members of the Association for Civil Rights in Israel (ACRI), it would have understood the depth of collaboration on this aspect of the investigations.

Only recently the Military Prosecutor's office received a letter from one of ACRI's lawyers requesting an extension of an investigation, in order to convince a Palestinian eyewitness to testify. For a month and-a-half, the CID tried to contact this witness through ACRI, without success. Examples of existing, fruitful cooperation are not included in the MEW report.

Therefore, this aspect of the report provides a tainted image of the reality in which hundreds of investigations were carried out successfully, and hundreds of soldiers were court-martialed or otherwise disciplined. Once again, no comparison with other countries was included in the MEW report.

4. "Inadequate efforts to seek medical evidence"

In your letter to us, you state that "investigators made inadequate efforts to seek other forms of medical evidence." On what grounds is this assumption based? What is the basis of your assumption that investigators "almost never inquire whether attending physicians or hospital records might shed light on how the patients were killed?" (p. 133) Investigators search for medical evidence in every case concerning a fatality. When there is a difficulty of interpretation of a certain medical document, CID investigators get testimonies from the doctors. If the words of a reserve investigator mentioned in the report would have been presented to the IDF, the chief of the CID would have been able to comment. In general, the investigator's words are not the policy.

Medical reports are included in every case investigated, without connection to the autopsy report. Anyone familiar with autopsy reports knows that when a bullet is shot from a distance of less than one meter, the forensic doctor is able to say so. When the distance is more than one

meter, the autopsy report will not reveal this fact. In the Nidal Habash case, for instance (p. 133 of the report), none of the witnesses claimed that Habash was shot from a distance of less than one meter. The question was whether he posed a danger to the soldiers' lives, as the soldiers claimed, or if he had his hands up, as the eyewitness claimed. An autopsy report cannot verify either of these theories.

The report claims that investigators do not obtain evidence such as x-rays, charts and other documents. This is untrue and unfair. This assumption is based on statements made by al-Maqassid hospital officials (p. 134). When CID investigators tried to obtain x-rays of Palestinians who were beaten, in order to prepare the file for the *Yehuda Meir* case, they received incomplete medical files. Several days were spent trying to convince al-Maqassid officials that the x-rays must exist, but nonetheless the requests were repeatedly turned down. As a result, the prosecution was not able to present a single x-ray to the court, thus somewhat weakening its case that many Palestinians had their arms and legs broken.

Some Palestinian doctors have testified in military courts, when their testimony was relevant to the case. This was done several weeks ago in the *Chief Military Prosecutor vs. Colonel Scafe*.

5. Access to investigation files

You claim in your letter that no Palestinian family or their lawyer has ever been granted access to a full investigative file. No Palestinian has ever asked to see the file concerning the death of a family member. This omission misleads the reader. In addition, the IDF fails to see the link between prohibiting access to files and killings.

IDF policy, which was stated clearly by the Deputy Military Advocate-General meeting with MEW representatives is that the IDF will allow any family member or lawyer representing a victim's family to receive an investigation file. This file will include all of the testimonies and evidence,

save that which may reveal classified information (i.e. numbers of troops, etc.). Therefore, MEW's claim has no basis.

6. "Inadequate responsiveness"

On page 101, the Hotline is quoted as claiming that the response from the Military Advocate-General usually takes 4-6 weeks to be received. The IDF's response, "once the JAG receives information...the Military Police promptly set about taking evidence," appears in a different place (pp. 93-94). On pages 115-116 another segment of the IDF response appears. Thus, there is a gap, of 21 pages in the IDF response, making it difficult for the reader to grasp important differences.

On page 116 the report mentions that "follow-up questions are often ignored." This statement is obviously based on one or two odd examples. In fact hundreds of complaints have been lodged and all have received replies.

Naturally, there are details which may not be revealed. In general, the IDF's openness is exemplary. The IDF believes that an objective report must present in full all of the relevant details.

Your letter mentions that according to MEW's view, "the degree of responsiveness is inadequate." The IDF thinks otherwise. The openness that the IDF has displayed towards international organizations, and towards complaints of all kinds, has been respectable. The JAG's openness to Middle East Watch exemplifies this. IDF meetings with MEW representatives have lasted for hours at a time, all of the relevant information was presented and summaries of prosecution files in English were prepared. Somehow the report neglected to mention this.

The question centers around what activities should the Judge Advocate-General's unit place emphasis. The JAG's unit deals with investigation files fairly and objectively, trying to reach the truth in every single file, while managing to deal with numerous complaints. If, at times, a reply to a

lengthy complaint takes a longer period of time, it is because the Prosecutor's office is dealing with investigation files, with prosecution of soldiers, and with the ROE.

7. A final note

As stated in the IDF's previous response to the report, the overall impression is that many segments were "misplaced," and that in many places favorable points were omitted.

The IDF does not seek praise from independent human rights associations. It strives to comply with international law, and to adhere to those morals which have been part of its foundation since the establishment of the State of Israel 42 years ago. It is difficult to control riots without the use of a certain degree of force, including lethal force if necessary. Nevertheless, the IDF has issued clear and concise rules of engagement (some say too strict) which prevent soldiers from deviating from the course set by international law.

To every rule, exceptions exist. This is the reason that deviations end, at times, in court-martial. A soldier, who was given a rifle in order to protect himself, and the means to disperse riots can find himself in front of a military judge against a prosecutor trying to prove criminal charges. The border between right and wrong is at times quite unclear. For instance, what is considered real danger? Does this danger vary from soldier to soldier? This fine line leads to difficult prosecutions, and therefore, the several acquittals.

In the past three years, the IDF has managed to preserve law and order legally and humanely and has listened to the local population and its representatives in cases of deviations.

IDF policies do not contribute to excessive killings. They prevent them.

* * *

This was the extent of correspondence between Middle East Watch and the IDF concerning this report at the time it went to the printers.

APPENDIX IIb

**MIDDLE EAST WATCH REBUTTAL
OF IDF RESPONSE**

26 July 1990

**Lt. Col Arik Gordin, Tel Aviv (via fax)
Lt. Col. Moshe Fogel, Jerusalem
Office of the IDF Spokesman**

Dear Cols. Gordin and Fogel,

Middle East Watch regrets that the response of the IDF spokesman to the MEW report, "The Israeli Army and the Intifada: Policies that Contribute to Killings," is not based on a serious reading of the report. I will answer the spokesman's points in the order they were made in Press Bulletin #21, dated July 25, 1990.

Contrary to the assertion of the IDF spokesman, the report acknowledges (p.10) that military authorities have the authority (and duty) under the Geneva Convention to ensure "public order and safety" in the territories. However, those powers must be balanced against their obligation to treat the civilian population humanely.

Contrary to the assertion of the IDF spokesman, the report mentions that the High Court of Justice has reviewed the open-fire orders on occasion, including the appeal that is currently sub judice (pp.54-55). However, the fact of court review does not alleviate our concern over the open-fire orders. Whether or not the Israeli courts have upheld these orders, Middle East Watch stands by its conclusions that these orders are excessively permissive and violate international norms of proportionality and necessity governing use of lethal force.

Contrary to the assertion of the IDF spokesman, the report acknowledges that Palestinians often do not cooperate with military police investigations, and that this complicates "enormously" the work of investigators (p.79). However, Middle East Watch does not agree that investigators have made "widespread and sincere" efforts to provide Palestinians with "fair and proper means of giving testimony." Middle East Watch believes that if investigations are to be thorough and impartial, far greater efforts must be made to encourage Palestinian witnesses to step forward.

The Middle East Watch report does mention that investigations are complicated by the abduction of bodies by Palestinians (pp.130-131). Contrary to the assertion of the IDF, Palestinians do not abduct bodies in order to "intentionally thwart" investigations. The primary motives for the abductions are given in the report (p.130). To return to the main point in this section, Middle East Watch criticized the IDF investigations because, when the body had been abducted, investigators made inadequate efforts to seek other forms of medical evidence; and in cases when the IDF did have custody of the body, it did not seem to conduct autopsies in all cases where legal questions arose.

Contrary to the IDF spokesman, the report mentions that IDF investigations are subject to legal review (pp.76-77) and discusses at length the IDF claim that investigative files are open to families and their lawyers (pp.111-117). While praising the IDF for proclaiming this policy, Middle East Watch found that this policy was far from becoming a reality. Many interested parties were unaware of this policy, while, as far as Middle East Watch is aware, no Palestinian family or their lawyer had yet been granted access to a full investigative file involving a killing by a soldier.

The IDF spokesman states that authorities spend much time responding to human rights organizations. Through extensive quotations of interviews and correspondence with officials, the Middle East Watch report gives a fair picture of the extent of the IDF's responsiveness. We stand by our view that, given the frequency and gravity of events in the

West Bank and Gaza Strip, the degree of responsiveness is inadequate.

The IDF spokesman states that Israel allows free movement and entry at all times and to all places, subject to security needs. As Middle East Watch concluded from talking to journalists, human rights fieldworkers and others, this ideal picture is not borne out in reality. Access during and following a military operation or a confrontation is frequently blocked. We do not believe that the declared security reasons were justified in many cases.

The IDF spokesman correctly cites the recommendation of Middle East Watch that observers, e.g. journalists and human rights workers, be permitted to travel and gather human rights-related information freely throughout the territories. However, the IDF spokesman suggests without any foundation that the Middle East Watch report called for the placement of "supervisors" in the territories to "supervise" army activities."

The extent of cooperation and openness that Middle East Watch received from authorities is fully reflected in the text of the report. The report did not "ignore" the testimony of IDF personnel; that testimony was carefully weighed against the testimony of other sources outside the IDF, and in many cases the conclusions we reached were at variance with the official IDF version. When the assertions of the IDF were verified, we noted this in the report, and gave praise where it was due. For example, we note that IDF investigators have grown more responsive to efforts by certain nongovernmental organizations to produce Palestinian witnesses (p.94); that access has improved with regard to autopsy reports (p.119) and that the IDF has facilitated testimony in at least two cases by negotiating immunity agreements for witnesses (p.86).

In short, nothing in the IDF spokesman's response to our report persuades us to alter our findings. I welcome further comments from you and would be pleased to come to Tel Aviv to discuss with you any aspect of this report, or your work or ours.

Thank you for your consideration.

Yours,

Eric Goldstein