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Information Sheet

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Take No Prisoners

**The Fatal Shooting of Palestinians by Israeli Security Forces
during "Arrest Operations"**

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

Introduction

In the early morning of Friday, 3 December 2004, IDF soldiers killed Mahmud 'Abd a-Rahman Hamdan Kmeil in Raba, a village southeast of Jenin. The press release by the IDF Spokesperson stated that during an operation to arrest Kmeil, he was shot and killed while attempting to escape from the house in which he was hiding. However, testimonies collected by B'Tselem from eyewitnesses raise grave concerns that the IDF soldiers executed Kmeil as he lay injured on the ground, after his weapon had been taken from him.

During the course of the second intifada, Israel officially adopted a policy of assassinating Palestinians suspected of belonging to the armed Palestinian organizations.¹ Israel argues that the members of these organizations are combatants and are, therefore, a legitimate target of attack. However, Israel does not grant them the rights given to combatants by international humanitarian law, primarily the right to be recognized as a prisoner of war when captured, which entails immunity from criminal prosecution. In defending its position, Israel argues that the members of these organizations are illegal combatants.

Israel's policy of assassinations has been sharply criticized by international bodies and human rights organizations. The critics argue,

in part, that international humanitarian law does not recognize the category of "illegal combatants," and that any person who is not a combatant is considered a civilian. In an attempt to counter this criticism, Israel has argued, inter alia, that although it is not obliged to do so in accordance with international law, the assassination operations have taken place only when it has proved impossible to arrest the persons who constituted the targets of assassination.² Responding to a petition against the policy of assassinations filed in the High Court of Justice by the Public Committee Against Torture in Israel, the state argued that:

When realistic alternatives exist to the [assassination] operation, such as the alternative of arrest, such alternatives are to be implemented. Thus, for example, operations are sometimes initiated in order to arrest dangerous terrorists, including in Area A, although this sometimes poses real danger to the lives of the soldiers. However, such detentions are not always a "realistic alternative," and, accordingly, this alternative may not always be implemented.³

As evidence that Israel has indeed followed this approach, Israeli sources have commented that, in contrast to the situation in the Gaza Strip,

1. The cease-fire declaration made in February 2005 at the Sharm el-Sheikh summit by the president of the Palestinian Authority and the prime minister of Israel included an announcement by Israel of the suspension of the policy of assassinations.

2. By way of example, see the interview with Col. Pnina Baruch Sharvit, head of the International Department in the Judge Advocate General's Office, "International Plots," *B'Mahaneh*, 3 December 2004.

3. HCJ 769/02, *Public Committee Against Torture in Israel et al. v. Government of Israel et al.*, Supplemental Notice on Behalf of the State Attorney's Office, Section 200.

during the period preceding the declaration of the ceasefire, virtually no assassinations were carried out in the West Bank, where the IDF controlled most of the territory, because the IDF was able to make arrests in this area. In an interview in *Yediot Aharonot* on 11 April 2004, for example, the commander of IDF forces in Judea and Samaria, Brig. Gen. Gadi Eizencott, stated that “not a single targeted killing was carried out in Judea and Samaria this year... In my opinion, operational efficiency and deterrence are greater when we come into the Casbah, into the home, and arrest them.”⁴ In June 2004, Amos Harel, military correspondent for *Ha'aretz*, reported that, “in recent months, Israel has generally refrained from undertaking assassinations in the West Bank, since IDF control of the area means that, in most cases, it is possible to reach and arrest the wanted person.”⁵

However, B'Tselem's figures show that during 2004, eighty-nine Palestinians were killed during operations defined by the security forces as arrest operations. At least seventeen of those killed were not classified as wanted persons, but civilians who were not suspected by Israel of committing any offenses. Moreover, at least forty-three of the “wanted” persons who were killed were not armed, or were not attempting to use their arms at the time they were killed.⁶ As far as B'Tselem is aware, none of these deaths has been investigated by the Military Police investigation unit or by the police, in the case of actions by Border Police.⁷

The testimonies relating to the circumstances of the killing of Mahmud Kmeil and other testimonies presented below, when considered on the backdrop of these figures, raise concern that, in some cases, such operations were in fact assassinations. This suspicion is reinforced by the testimonies of soldiers, also presented in this report, who took part in these “arrest operations.” According to information obtained by B'Tselem, the security forces were not explicitly instructed to kill the “wanted” persons. However, the facts presented in this report raise the grave suspicion that, in some cases, they acted as if they were engaged in an assassination, and made no real attempt to arrest the person.

Two of the cases described below relate to incidents in which IDF soldiers besieged a house in which Israel claimed that a “wanted” person was present, and then fired at another occupant of the house when he opened the door, without prior warning and without offering them a chance to surrender. The persons killed were not armed and were not endangering the soldiers' lives. In the other two cases, the security forces disarmed the persons wanted by Israel, but then shot and killed them. In one case, one Palestinian was killed and another injured after they raised their hands to surrender when they encountered members of an undercover Border Police unit. In the other case, that of Mahmud Kmeil, he was shot and injured by IDF soldiers after attempting to escape, and was then shot dead as he lay

4. Alex Fishman, “There Will Be No Firing When We Vacate Settlements,” *Yediot Aharonot*, 11 April 2004.

5. Amos Harel, “IDF: Qawasmeh Killed During Attempted Arrest in Hebron Apartment,” *Ha'aretz*, 22 June 2004.

6. During the same period, one soldier, Lt. Moran Vardi, was killed by Palestinian fire during these operations.

7. The investigative authority relating to suspected offenses involving the use of firearms by police officers during duty in the West Bank and Gaza Strip rests with the Israel Police Force rather than the Department for the Investigation of Police, of the Ministry of Justice. See p. 24.

wounded on the ground, after his weapon had been taken from him.

This report begins with a description of these four incidents. There is then a brief discussion of the IDF's Open-Fire Regulations, with particular focus on operations that relate to the arrest of persons wanted by Israel

and the policy of refusing to open Military Police investigations in cases in which IDF soldiers have killed Palestinians during the second intifada. The last section of the report criticizes from the perspective of international law the actions of the security forces during these operations.

Four Cases of Suspected Assassination under the Guise of Arrest Operations

The circumstances surrounding the killing of Muhammad Abu Qabar Diriyah, 36, married with six children, shot by IDF soldiers in the village of 'Aqraba

On Sunday, 11 April 2004, IDF soldiers killed Muhammad Diriyah in 'Aqraba. Contrary to its usual practice in such cases, the IDF Spokesperson did not issue a statement relating to the circumstances of the incident. Immediately after the incident, the *Ha'aretz* website reported that Diriyah was shot and killed by IDF gunfire during the arrest of two “wanted” persons with whom he was staying. The soldiers allegedly besieged the home of a Tanzim activist and called on the “wanted” persons to surrender. After they refused, the troops opened fire, killing Diriyah. The “wanted” persons reportedly had in their possession a rifle, pistol, and telescopic viewfinder when apprehended.⁸ Two days later, *Ha'aretz* quoted military sources who claimed that Diriyah, who was not wanted by security forces, was in his house together with two persons wanted by Israel. Soldiers from a Nahal patrol unit who surrounded the house and called on the “wanted” persons to surrender fired warning shots. A number of bullets apparently were fired through a window and struck Diriyah. The report added that the two persons surrendered and that a pistol was taken from them.⁹

However, an on-site investigation by B'Tselem raises grave concern that Muhammad Diriyah was shot by the IDF soldiers as soon as he opened the door at the soldiers' order. The investigation further suggests that the two “wanted” persons who were arrested during the incident were not in Diriyah's house.

According to testimony given to B'Tselem by Khairiyah 'Ayash Sa'adah Diriyah, the mother of the deceased, she was inside the house, in which she lived with her son, Muhammad Diriyah, his wife, and their six children. There was no one else in the house with them. According to the witness, at about 10:00 P.M., she heard gunshots and explosions. She woke Muhammad and told him that the IDF was carrying out operations in the village. She stated that shortly thereafter, the shooting intensified, and several bullets struck their home. She also heard the soldiers shouting in Arabic, “Terrorist! Open the door!” In response, she shouted to the soldiers to come to the front door of the house. Immediately thereafter, she went to the door with her son Muhammad to open it. When they reached the door, Muhammad pushed her aside and told her that he would open the door. At this point, the witness went to the children's room to help her daughter-in-law wake her children. She stated that on returning to the front door, she found Muhammad lying on the doorstep with a gunshot wound

8. *Ha'aretz Online*, 11 April 2004 (the article is no longer available online).

9. “Palestinian Accidentally Killed by IDF Gunfire near Nablus,” *Ha'aretz*, 13 April 2004.

to his head. The witness also stated that the person who was subsequently arrested was her son Ibrahim, who was in his home, which is some thirty meters from the home of the deceased. Muhammad and the other occupants of the house were unarmed, and the soldiers surrounding the house were in no danger.¹⁰ The fact that Muhammad was found on the doorstep shows that he did not attempt to escape from the soldiers. These facts raise the suspicion that the soldiers shot him immediately on his opening the door (in response to their demand to do so), and made no attempt to arrest him. Nor was there any justification for the shooting.

B'Tselem contacted the chief military prosecutor and demanded that she order a Military Police investigation into the circumstances that led to the killing of Muhammad Diriyah.¹¹ In reply, the then judge advocate for the Central Command, Lt. Col. Liron Liebman, claimed that, based on an examination of the incident, it was found that Muhammad Diriyah was struck by gunfire during an operation to arrest his brother, who was believed to be present and armed in the house. He added that the armed brother was apprehended close by, and not in Muhammad's home. Lt. Col. Liebman's letter does not contend that Muhammad Diriyah had attempted to escape from the soldiers, nor that the soldiers were in a life-threatening situation when they opened fire. Despite this, the judge advocate determined that, in that the action took place in what was "essentially a combat situation," and in that the examination had further shown that the forces had acted in a graduated manner, and called on those present

in the house to come out, to no avail, there were no grounds for opening a Military Police investigation.¹²

The circumstances surrounding the killing of Muhammad Mahmud Ahmad Abu Rajab, 27, married with one child, shot by IDF soldiers in Yatta

Early on Wednesday morning, 3 March 2004, IDF soldiers killed Muhammad Abu Rajab in the town of Yatta. The IDF Spokesperson did not issue any announcement relating to the circumstances of the incident. However, *Ha'aretz* quoted military sources as claiming that a force from a Nahal patrol unit entered the town to arrest a person wanted by Israel, besieged the home of Abu Rajab, and called on all the occupants to come out. According to those sources, Abu Rajab was shot and killed while attempting to escape from the house, after the soldiers followed the procedures for apprehending suspects and he failed to respond to the demand to halt. The sources said that Abu Rajab was unarmed, was not affiliated to any organization, and was not the person whom the soldiers sought to arrest.¹³

However, B'Tselem's investigation raises the suspicion that the soldiers did not attempt to apprehend Abu Rajab, but shot him as soon as he opened the door to his home. His body was found just three meters from the door of his house, a fact that is incompatible with the claim that he was shot after the soldiers followed the procedure for apprehending suspects and that he attempted to escape. B'Tselem found that the IDF soldiers also shot at Abu Rajab's wife,

10. For the testimony of Khairiyah Diriyah, see Appendix 1.

11. Letter of 28 April 2004 from B'Tselem to Col. Einat Ron, chief military prosecutor.

12. Letter of 28 June 2004 to B'Tselem from Lt. Col. Liron Liebman, Central Command judge advocate.

13. Amos Harel, "Palestinian Shot Dead by IDF in West Bank," *Ha'aretz*, 3 March 2004.

Fatma Qa'aqur, who was carrying their baby daughter in her arms: immediately after she opened the door of their home to go outside after her husband had been shot, she came under fire without prior warning, and without being given any opportunity to surrender.

Testimony given to B'Tselem by Qa'aqur indicates that, at about 2:00 A.M., IDF forces entered the neighborhood in which the home of the Abu Rajab family is located and called on the residents in the area to come out of their homes. According to Qa'aqur, her husband, Muhammad Abu Rajab, awoke to the calls of the IDF soldiers and intended to go to his parents' home, which is above his own home, in order to waken them. However, immediately on opening the door to his house and stepping outside, Abu Rajab was shot and killed by the soldiers. After the shooting stopped, Qa'aqur attempted to leave her home, holding her ten-month-old daughter in her arms. She stated that the moment she opened the door, she also came under fire, without any prior warning. Fortunately, she managed to move back inside her home before she or her daughter were hit. Additional testimony taken by B'Tselem from a neighbor of the Abu Rajab family, Muhammad Gharbiya, also shows that the soldiers' gunfire was not preceded by any attempt to apprehend Abu Rajab. The testimonies of Fatma Qa'aqur and Muhammad Gharbiya further show that, after the shooting stopped, the soldiers ordered Qa'aqur, her husband's mother and his fourteen-year-old brother to carry Muhammad Abu Rajab's body some thirty meters on a stretcher to an army jeep.¹⁴

In light of the findings of its investigation, B'Tselem demanded the chief military

prosecutor, Col. Einat Ron, to order an investigation by the Military Police into the circumstances surrounding the killing of Muhammad Abu Rajab.¹⁵ In the reply, sent to B'Tselem on 20 March 2005, more than one year after the event, the Central Command's judge advocate, Lt. Col. Ehud Ben Eliezer, contended that, "on the said date, an operation was undertaken to arrest two "wanted" persons, and during the course of this operation the above-mentioned was identified while holding a suspicious object. Given that the soldiers opened fire believing that he was one of the two persons wanted by Israel and that he was armed, the judge advocate general did not find grounds to order a Military Police investigation."¹⁶ This contention contradicts both the testimony of the deceased's wife, which shows that Abu Rajab was not holding anything when he left the house, and the claims of the military sources quoted in *Ha'aretz* immediately after the incident, who claimed that Abu Rajab was shot while attempting to escape from the house, and after the implementation of the procedure for the apprehension of suspects. Moreover, the Central Command's judge advocate completely ignored the claim of B'Tselem that Abu Rajab's wife came under fire in exactly the same circumstances as he did, while carrying their baby daughter in her arms.

The circumstances surrounding the killing of Husni Mustafa Daraghme, 21, by Border Police near the town of Qabatiya

On Saturday, 24 April 2004, Border Police officers killed Husni Daraghme and injured Iyad Daraghme at the a-Shuhadaa intersection, near Qabatiya. Once again, the IDF Spokesperson did not issue any statement

14. For the testimonies of Fatma Qa'aqur and Muhammad Gharbiya, see Appendix 2.

15. Letter of 18 March 2004 from B'Tselem to Col. Einat Ron, chief military prosecutor.

16. Letter of 20 March 2005 to B'Tselem from Lt. Col. Ehud Ben Eliezer, Central Command judge advocate.

regarding this incident. *Ynet* (*Yediot Aharonot's* online newspaper) reported that an undercover Border Police unit attempted to arrest two Palestinians whom the IDF suspected were about to carry out a suicide attack in Israel, and that one was killed and the other injured during the operation. The report added that the two men were not found to be in possession of an explosives belt. The article also reported on "Palestinian sources" who contended that the incident was the result of mistaken identity, and that the two men were not wanted by Israel, as indicated by the fact that they were unarmed and the injured man was not detained after the operation. IDF sources told *Ynet* that the forces had entered Qabatiya on the basis of intelligence information in order to arrest the two men. The forces followed the procedure for apprehending suspects, during which the two men were shot.¹⁷ *Ha'aretz* reported that the Border Police opened fire on two unarmed men, whom the IDF claimed had attempted to escape. The report added that the security forces had information indicating one of the two men was on his way to carry out a suicide attack.¹⁸

However, B'Tselem's investigation raises the likelihood that the two men were not, in fact, attempting to escape, but were shot by the undercover Border Police officers after they raised their hands to surrender following the order to do so by one of the Border Police officers.

In his testimony to B'Tselem, 'Abd a-Nasser Khalil 'Abd a-Rahman Barghouthi stated that at the time of the incident, he was sitting in one of the restaurants at the a-Shuhadaa intersection. At about 3:00 P.M., a white van appeared, pulled out of the lane in which it was traveling

and stopped in the middle of the road. Two armed men in civilian clothes got out of the van. One of them shouted in Arabic at two men who were standing at the intersection: "Stop! Stop and raise your hands!" According to the witness, the two men immediately raised their hands in the air, and one of the armed men then shot at them. One of the two young men was hit and fell down. The other remained standing, his hands raised. Immediately thereafter, one of the armed men again shot at him; he was hit and fell to the ground. According to the witness, the two men were unarmed. Another witness to the event, 'Abd a-Nasser Mahmud Ibrahim Hana'isha, the owner of a restaurant, did not see the shooting itself, but told B'Tselem in his testimony that the two young men raised their hands immediately after the Border Police officers told them to do so. He stated:

I heard someone shout in Arabic, "Stop where you are! Raise your hands!" At the corner of the intersection, by the cemetery and opposite a Hyundai vehicle, two young men were standing. They lifted their clothes and hands in the air... At this point, I went to seek cover behind the restaurant. A few seconds later, I heard between three and five single shots. I went back to the corner of the restaurant and looked toward the intersection. I saw two armed men in civilian clothes standing by the Hyundai. The two young men who had been standing at the intersection were now lying on the ground.

According to the first witness, after the shooting stopped, additional Israeli forces arrived and searched the bodies of the two young men, using a robot. No weapons of any kind were found.

17. "Four Suspects Killed in Operations in Jenin; Border Policeman Sustains Moderate Injuries," *Ynet*, 24 April 2004.

18. Amos Harel and Amon Regular, "Eight Killed in West Bank: University Lecturer, Sixteen-year-old, and Six Hamas and Fatah Activists," *Ha'aretz*, 25 April 2004.

After the search, the two men were treated by one of the soldiers, apparently a member of a medical team, and were then removed from the scene by a Red Crescent ambulance. One of the young men, Husni Daraghmeh, was killed in the operation; the other, Iyad Daraghmeh, was severely injured.¹⁹

The circumstances surrounding the killing of Mahmud 'Abd a-Rahman Hamdan Kmeil, 19, shot by IDF soldiers in the village of Raba

In the early morning of Friday, 3 December 2004, IDF naval commando soldiers killed Mahmud 'Abd a-Rahman Hamdan Kmeil in Raba, a village situated southeast of Jenin. A statement issued by the IDF Spokesperson immediately after the incident stated that Kmeil was killed during an operation intended to arrest him. According to the statement, Kmeil was shot and killed while fleeing from a house that had been under IDF siege. The statement claimed that Kmeil was armed.²⁰

However, an investigation by B'Tselem into the circumstances in which Kmeil was killed raises the suspicion that the IDF soldiers shot and killed him as he lay injured on the ground, after his weapon had been taken from him. The investigation further shows that the soldiers forced two Palestinian civilians to go over to the injured Kmeil and search him, in violation of an order given by the High Court of Justice, which prohibits the use of Palestinian civilians as "human shields."

Testimonies given to B'Tselem by Tayil al-Bazur and Suleiman Qasrawi state that Kmeil was shot by the IDF troops after he attempted to escape from the house in which

he was staying and which was surrounded by the Israeli troops. According to the witnesses, Kmeil was injured but conscious. Later, the IDF soldiers ordered the witnesses at gunpoint to go up to Kmeil, bring him nearer to them and bring them his ID card and cell phone. The witnesses approached Kmeil and spoke to him. He told them his name and asked them to carry him to the soldiers, in the hope that they would provide medical treatment. The witnesses also gave the soldiers Kmeil's pistol and the two cell phones he was carrying. Then they took him toward the soldiers. At this stage, the soldiers ordered the two men to move away. They followed the soldier's orders, and about a minute later heard a volley of gunfire. After the shooting, the soldiers ordered Tayil al-Bazur to go back to where Kmeil was lying and bring them his wallet. Al-Bazur went up to Kmeil and discovered that he had been shot in the head and was dead. The testimonies of the two witnesses raise grave suspicion that the IDF soldiers shot Kmeil after he had been injured, after his weapon had been taken, and after he no longer presented any danger to the soldiers. The testimonies further show that the soldiers used the two witnesses as human shields by forcing them to undertake a life-threatening task – after the IDF had promised the High Court of Justice it would no longer use such a procedure.²¹

After the findings of B'Tselem's investigation were published in the press, the IDF Spokesperson issued a further statement relating to the killing of Kmeil, claiming that "a number of flaws" in the action taken by the soldiers had been identified in a preliminary investigation undertaken by the OC Central Command and the commander of the Navy. Accordingly, the

19. For the testimonies of 'Abd a-Nasser Barghouthi and 'Abd a-Nasser Hana'isha, see Appendix 3.

20. Statement of the IDF Spokesperson, 3 December 2004 (www.idf.il).

21. For the testimonies of Suleiman Qasrawi and Tayal al-Bazur, see Appendix 4.

OC Central Command, in coordination with the chief-of-staff, decided to appoint an expert investigative team to examine the troops' actions. The statement further noted that the Navy commander had decided to halt naval commando operational activities in the West Bank for several days pending the submission of the conclusions of this investigation.²² The statement of the IDF Spokesperson made no reference to the nature of the commando units' "flaws," but repeated the claim that Kmeil was shot and killed while attempting to escape. By contrast, in an interview with *Galei Tzahal* (the army's radio station), Chief-of-Staff Lt. Gen. Moshe Ya'alon stated that the problems in the incident related to "the opening of fire at the beginning of the incident, how an injured terrorist is handled, and the shooting at the end of the incident."²³ Following a conversation with the chief-of-staff, *Ha'aretz* correspondent Ze'ev Schiff reported that the investigation was to focus on precisely the two concerns raised by B'Tselem, that is, whether Kmeil was shot dead after he had already been injured and lay on the ground, and whether the soldiers had ordered two Palestinian residents to check the injured man after he had been hit.²⁴

On 4 January 2005, the IDF Spokesperson issued a statement relating to the conclusions of the investigative team. The statement of the IDF Spokesperson claimed that "during the investigation, discrepancies were found between the operational procedures in the area and familiarity with the procedures on the part

of the naval commando team." It was further claimed that these were "professional flaws" rather than "a failure in values or morals." Following the findings of the investigation, the procedures were again given to the naval commandos and the units operating in the Central Command zone, and a Command Headquarters notation was made in the personal file of the commander of the naval commando unit.²⁵ The IDF Spokesperson did not detail the "professional flaws" discovered in the actions of the naval commando unit, and completely ignored the specific claims raised by B'Tselem.

Ha'aretz reported that the conclusions of the investigation showed that the commander of the naval commandos allowed his troops to open fire at night on people fleeing from the houses to which the commandos had come to arrest the "wanted" persons, and had failed to follow the procedures for giving warning as was the practice of other units.²⁶ Regarding the findings of the investigation undertaken by B'Tselem, a senior officer told *Ha'aretz* that the IDF's investigation had clearly shown that Kmeil was not shot after he was already wounded. According to the senior officer, Kmeil was shot and killed by the troops after he left the house. Later, two of his neighbors were ordered to go to the body, and they came back with his weapon. The officer confirmed that Kmeil was shot at a later point in time, but justified this by claiming that intelligence (which was later disproved) suggested that Kmeil was carrying

22. Statement of the IDF Spokesperson, 6 December 2004.

23. "Chief-of-Staff: Recent Incidents Are Weakening the Foundations," *Ynet*, 7 December 2004.

24. Ze'ev Schiff and Amos Harel, "IDF Suspends Company from Operations in Territories and Appoints Committee of Inquiry; Ya'alon: In Some Places There Seems to Be Desensitization and Burnout," *Ha'aretz*, 7 December 2004.

25. Statement of the IDF Spokesperson, 4 January 2005.

26. Amos Harel, "Comment Recorded in Personal File of Commander of Naval Commando Unit in Case of Killed Fugitive near Jenin; Ya'alon: No Moral Failure," *Ha'aretz*, 5 January 2005.

an explosives belt and that the troops observed that Kmeil was seen moving, a report that also subsequently proved incorrect.²⁷

Apart from the fact that these claims are inconsonant with the testimonies of Tayil al-Bazur and Suleiman Qasrawi, whom the IDF confirm were the only persons who came into contact with Kmeil after the initial shooting, it is unclear how the IDF can claim with complete confidence that Kmeil was killed by the first shooting, and not the second shooting as he lay injured on the ground. No autopsy was carried out on his body, and the claim that Kmeil did not move (contrary to the report of the commandos' lookout) cannot be considered convincing proof that he was not alive.

As for the claim that the soldiers used the two witnesses as human shields, the senior officer stated that the High Court of Justice prohibited the procedure that enabled such use when the objective is to clarify the location of a "wanted" person and prevent injury to soldiers. By way of an alternative, the officer further claimed, the IDF had adopted the "Prior Warning Procedure"

– sending Palestinians ahead of troops for the sole purpose of checking a building to ensure that no civilians remain inside in cases in which the IDF intended to demolish the building on the "wanted" person hiding inside it. The army was not given permission to send Palestinians to secure a person's surrender or to clarify his precise location. As for the incident in question, the officer claimed that the troops acted properly, since the witnesses were sent to ascertain that there were no other people in the house and that when they reported that the house was empty, the commander of the force decided not to demolish it.²⁸ However, these comments contradict the statement by this same officer that, after the first shooting, the witnesses were sent to Kmeil and brought back his weapon.

The imprecise statement of the IDF Spokesperson regarding the conclusions of the investigation, as well as the dubious explanations offered by the officer to the correspondent of *Ha'aretz* regarding the sequence of events in this incident, strengthen the suspicions raised by B'Tselem's investigation.

27. Ibid.

28. Ibid.

The Use of Palestinian Civilians as Human Shields

During the second intifada, IDF soldiers began to use Palestinian civilians as human shields. Soldiers routinely selected a civilian at random and demanded that he protect them and undertake dangerous tasks. In some cases, IDF soldiers ordered Palestinian civilians to enter buildings to ascertain whether they had been booby-trapped or to bring out the occupants. In other cases, civilians were forced to remain inside buildings used as military posts by the IDF, to deter Palestinians from firing at the soldiers or to walk in front of soldiers to protect them from fire. This abuse of Palestinian civilians was not the result of an independent initiative by soldiers serving in the Occupied Territories, but was an integral part of the orders they received, which were formulated by the highest military echelon.²⁹

In May 2002, following a petition against this policy filed in the High Court of Justice by seven human rights organizations, including B'Tselem,³⁰ the state gradually announced restrictions on the circumstances in which it would use the policy. The state first announced that soldiers would be permitted to use Palestinian civilians only for the purpose of entering homes during the course of an operation, and only in cases in which the commander in the field believed

that the civilians would not be subject to danger.³¹

In August 2002, in accordance with the new procedures, IDF soldiers sent Nidal Abu Mukhsin into the home of Nasser Jarar, a Hamas activist, to tell him to come outside. As he approached the house, Abu Mukhsin was shot dead by Jarar, who presumably believed that he was a soldier.

Following this incident, the state claimed that the IDF no longer used Palestinians as human shields, but are merely assisted by residents during operations to arrest wanted persons, “to minimize the danger of injury to innocent civilians and to the wanted persons themselves.”³²

The new procedure presented by the state, which was called the Prior Warning Procedure,³³ establishes two cumulative conditions for its implementation. The first is that the “local resident” must express his consent to assist the soldiers, who must not use force or threaten him with violence or arrest. However, the assumption that a Palestinian civilian confronted by armed soldiers can exercise freedom of choice is spurious. The ostensible right of refusal enjoyed by the Palestinian citizen “asked” to help the soldiers is meaningless, given the balance of power between armed

29. See B'Tselem, *Human Shield: Use of Palestinian Civilians as Human Shields in Violation of the High Court of Justice Order*, November 2002; Human Rights Watch, *In a Dark Hour – The Use of Civilians during IDF Operations*, April 2002.

30. H.C.J. 3799/02, *Adalah v. OC Central Command*, Petition for Order Nisi and Temporary Injunction, 5 May 2002.

31. *Ibid.*, Response on Behalf of the Respondents to Petition for Temporary Injunction, 7 May 2002.

32. *Ibid.*, Response on Behalf of the Respondents to the Petition for Temporary Injunction and Supplemental Response on Behalf of the Respondents, 5 December 2002.

33. See “The ‘Prior Warning’ Operational Procedure,” attached to the state’s response to the High Court, *ibid.*

soldiers and Palestinian civilians who, in most cases, are required to follow the soldiers' instructions after being taken from their homes at gunpoint in the middle of the night.

According to the second condition, receiving "assistance" from civilians is dependent on the assessment by the military commander in the field that the "assistant" does not face mortal danger. However, the situations for which the new procedure was drafted – the detention of "wanted" persons – are by definition dangerous, and any involvement by civilians in such operations may endanger their lives, as clearly shown by the incident in which Nidal Abu Mukhsin was killed.

Accordingly, the Prior Warning Procedure is illegal, even if the state is accurate in claiming that it does not constitute the use of human shields. International humanitarian law requires that civilians are to be removed from combat zones and protected from the dangers resulting from military operations.³⁴

Coercing Palestinian civilians to endanger their lives constitutes a gross breach of this principle. Moreover, the procedure would be illegal even if the civilians required to participate in the Prior Warning Procedure did not face any mortal danger, since there is an absolute prohibition against forcing civilians to perform military operations of any kind.³⁵

In September 2004, the latest hearing was held by the High Court of Justice regarding the petition filed by the human rights organizations in May 2002. Supreme Court President Aharon Barak criticized the Prior Warning Procedure and urged the IDF to eliminate it, on the grounds that the Geneva Convention prohibits the use of local residents during the course of combat operations by the occupying army. Despite this criticism, however, the High Court declined to issue a temporary injunction prohibiting the use of the procedure, and announced that its ruling on the petition would be given at a later date.

34. See Articles 51-58 of the *First Additional Protocol to the Geneva Conventions, of 1977*. Israel did not sign the Protocol, but these articles constitute customary law, and thus bind countries even if they are not party to the Protocol.

35. See Articles 28 and 51 of the *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949*.

The Open-Fire Regulations and the Failure to Order Military Police Investigations

The four killings described above are the result of the changes introduced in the Open-Fire Regulations applied by the IDF during the second intifada. Until the outbreak of the intifada, in September 2000, the Open-Fire Regulations in the Occupied Territories were based on Israel's penal code. The use of live ammunition was permitted only in two situations: one, in the presence of life-threatening danger defined as "real danger of the loss of life of a person or severe bodily injury." In this situation, soldiers were permitted to shoot to hit the person, but only at the assailant and only when there was no other way to respond to the danger. The second situation was during the implementation of the procedure for apprehending suspects, which permits security forces to fire at the legs of a person suspected of committing a dangerous offense, but only as a last resort, after issuing a warning and firing in the air, and when there is no danger that other persons will be injured.

After the outbreak of the second intifada, Israel defined the situation in the Occupied Territories as an "armed conflict." One of the consequences of this redefinition was a change of the open-fire policy and, in particular, an artificial extension of the term "life-threatening danger," alongside a policy of refraining from providing the soldiers in the field with a clear and unambiguous understanding of the Open-Fire Regulations.

The IDF does not officially publish its Open-Fire Regulations. However, testimonies given by soldiers serving in the Occupied Territories, as well as information published in the media, reflect some of the changes that have been introduced in the Open-Fire Regulations, extending the circumstances and situations in which IDF soldiers may open fire. According to these sources, the new regulations permit the use of live ammunition against stone throwers; shooting without warning at any armed Palestinian in certain times and areas; and the use of firearms to enforce a curfew. In addition, authorization was given for the use of ammunition which has an impact on an extremely wide area, such as bombs weighing hundreds of kilograms and dropped from the air, or flechettes ("dart" shells) fired from tanks.³⁶

These sources further indicate that in addition to these changes, the procedure for apprehending suspects was also abolished in certain areas and circumstances, and the use of gunfire was permitted against Palestinian suspects without warning, even if they were not known to be armed. This change applies principally in the context of the Open-Fire Regulations during what are described by the security forces as operations to arrest Palestinians – the subject of this report.

In their book *The Seventh War*, Amos Harel and Avi Issacharof reported that, "since the danger

36. For further details on this aspect, see B'Tselem, *Trigger Happy: Unjustified Gunfire and the IDF's Open-Fire Regulations during the al-Aqsa Intifada*, May 2002.

of shooting by wanted persons increased during the conflict, the troops were given freedom of action, to the point of permitting the use of lethal fire against anyone seen escaping from the home of a wanted person in the dark, even if there was no proof that the person was armed.”³⁷ Following the killing of Mahmud Kmeil, *Ha’aretz* reported that the IDF “has relaxed the Open-Fire Regulations” in arrest operations. According to the paper’s military correspondent, “the approach is – if in doubt, don’t doubt – shoot first and explain things later.” He argues that this approach extends “the Open-Fire Regulations to situations that would not likely withstand careful legal examination.” The correspondent added that some units permitted themselves “exceptional flexibility” in this respect – “especially Border Police units.”³⁸

The IDF denies the claim that the Open-Fire Regulations permit its soldiers to open fire at any person suspected of escaping from a house to which they came to arrest “wanted” persons without first taking warning measures. According to *Ha’aretz*, the IDF’s investigation into the killing of Mahmud Kmeil revealed that the naval commando commander had indeed given such an order, which was the result of a “professional flaw,” following which a Command Headquarters notation was recorded in the commander’s personal file. According to the IDF, this was an isolated failure due to the discrepancy between the Open-Fire Regulations applying to naval commandos and those applying in the Occupied Territories; in

other units, it is claimed, warning measures are used in such cases.³⁹ However, the testimonies of soldiers who have participated in arrest operations during the second intifada show that this method of operation is common among the IDF units that carry out arrest operations in the Occupied Territories.

In a testimony given to the organization *Shovrim Shtika* (Breaking Silence), a soldier with the rank of staff sergeant who served in the Egoz reconnaissance unit stated that the procedure for the arrest of suspects was also suspended in his unit during arrest operations. He stated:

The procedure for the arrest of suspects during a house-siege was shortened. If someone escaped from the house, we had to shout at them to stop. We never shouted out everything according to the procedure... It was always a shout to stop and then immediately we would fire at their legs. At some stage they cut it back further, and then the procedure was to shout out while firing. They would tell us that – simply not to give them time to escape. Toward the end of my service, the procedure was cut back even further and we were to shoot at anyone who came out of the house.⁴⁰

A soldier who served in one of the elite units of the Golani brigade told B’Tselem in his testimony that during the first two years of the intifada, the regulations were to implement the full procedure for arresting suspects in the case of “escapees” – persons who fled from houses

37. Avi Issacharof and Amos Harel, *The Seventh War – How We Won and Why We Lost the War with the Palestinians* (Tel Aviv: *Yediot Aharonot* Publications, 2004), 333 [in Hebrew].

38. Amos Harel, “After Naval Commando Incident: Senior IDF Officers Acknowledge Need to Examine Open-Fire Regulations,” *Ha’aretz*, 8 December 2004.

39. Amos Harel, “Comment Recorded in Personal File,” *Ha’aretz*, 5 January 2005.

40. The testimony appears on the website of *Shovrim Shtika* (www.shovrimshtika.org).

to which the soldiers had come to make an arrest. He stated:

After numerous cases in which the wanted person managed to escape, they decided to truncate the procedure and adopt an accelerated procedure for arresting suspects: shouting out, then shooting in the air, and then shooting the “escapee,” aiming for the legs. Shouting out and shooting in the air would take place more or less simultaneously... At the beginning of 2003, the procedure was shortened still further, and known as “*waqaf* [halt!] boom” – we were ordered to shout out, and if the “escapee” did not stop, to shoot at him, even if he was unarmed and not endangering the troops. The orders were to shoot without giving a warning at anyone trying to escape, even though we couldn’t know who it was that was trying to run away...

At the end of 2003, a team from my company carried out an arrest in the Jenin area. There was a door in the back of the house that the soldiers did not know about. The soldiers ordered everyone to come out. The residents of the house came out through the door that the soldiers did not know about. When they came out, one of the soldiers opened fire at them as if they were trying to escape. After he realized that they were the family who lived in the house, he stopped shooting. One of the bullets flew past the ear of a nine-year-old boy. In the debriefing afterwards, which I read, the fact

that the boy was not hit was defined as an operational flaw.

In practice, shooting and shouting sometimes took place at the same time. Essentially, everything depended on the individual soldier in the field – how pressured he was, and particularly how badly he had been scared before the event. During the briefing before the operation, if the wanted person involved is real important, then they persuade us that there is no way that we will come out of it all without fighting, and no chance that he will not dig himself in and shoot and hurl grenades at the troops ... The result is that you expect to open fire – it is obvious to you that in this arrest you are going to shoot. In your mind, this is clear to you.⁴¹

A similar picture also emerges from the incident in which soldiers from the Magellan unit killed two Israeli security guards, Yoav Doron and Yehudah Ben Yosef, near the settlement of P’nei Hever in March 2003, after they mistook them for two Palestinians they were allegedly supposed to apprehend. The debriefing revealed that “the soldiers unnecessarily fired an enormous amount of ammunition – some one thousand bullets and seventeen M-203 grenades – at the guards, who were not even able to return fire,”⁴² and, according to the initial debriefing, presented no danger to the soldiers.⁴³ According to the *Ha’aretz* correspondent, the debriefing revealed “a pattern of a rapid and excessively

41. The name of the witness is on file at B’Tselem. The testimony was given to Ronen Shnayderman at B’Tselem’s office on 6 February 2005.

42. Amos Harel, “No More than Disciplinary Steps against Officers Involved in Killing Security Guards in P’nei Hever,” *Ha’aretz*, 2 November 2004.

43. Amos Harel, “IDF Sources Admit: ‘It Was a Terrible Mistake’; OC Central Command: We Will Learn the Lessons,” *Ha’aretz*, 14 March 2003.

simple transition from arrest situations to ‘targeted killing.’” “The fate of the two armed Israelis,” continued the correspondent, “was the same as that of many unarmed Palestinians.”⁴⁴ A senior officer involved in the operation claimed that “the incident revealed a ‘trigger-happy’ approach. For many combat soldiers, a clash with armed suspects (rather than a “high quality” arrest operation without the use of firearms) is their greatest aspiration. When the opportunity arises – they shoot freely.”⁴⁵

A soldier who served in a Nahal patrol company stated in testimony to *Shovrim Shtika* that the following method of operation was used during arrests under the command of one of the company commanders:

First, we would fire one LAU missile at the wall of the house to calm things down, so that people would realize that it wasn’t wise to mess with us. We’d also shoot a bit. We weren’t allowed to shoot at the windows, to avoid the risk of hitting soldiers on the other side of the house. We were also forbidden to shoot at walls that appeared to be very thin. I never really understood what a thin wall is supposed to look like... Most of the entries in this period were “wet entries.” A “wet entry” is when you burst into a room and spray gunfire, to be sure that no one in the room can fire at you. In one case, we made a “wet entry” and it turned out that a mother had left her three-year-old son in the room... We took everyone out and began to comb the building. We went through the whole building, making “wet entries” into all the rooms as we searched. After the wet

search, we did a search to find weapons, and then we found a three-year-old boy lying underneath a bed. He was lucky to be alive, because soldiers had shot inside the room, and even shot at the bed.⁴⁶

Details about the operational methods of the Border Police undercover unit, whose primary function is the type of operations discussed in this report, were revealed in an article that appeared recently in *Yediot Aharonot* following the award of the Medal of Valor to Superintendent Y., a company commander in the unit.⁴⁷

In the article, Y. claimed: “I cannot recall even one case when I was sent to kill someone. That doesn’t happen. I am always sent to arrest someone.” This comment was supported by another officer in the unit, who claimed that “we aren’t a unit of assassins. When we go out on an operation, we arrive with the goal of arresting the wanted person.”

However, the descriptions in the article, including some provided by Y. himself, regarding the way the police officers in the unit act during what he and his colleagues describe as arrest operations paint a very different picture. Y. described the circumstances in which he and his soldiers killed Kamal ’Abdallah ’Abd al-Fatah (also known as Kamal Tubasi), who was held responsible by Israel for sending a suicide bomber to commit an attack on a shopping mall in Afula a year earlier, in which three Israeli civilians were killed, and of planning a further suicide attack at the time of his death. He stated that after Tubasi left the house in which he had been staying, with his Kalashnikov rifle around his

44. Amos Harel, “OC Central Command Believes His Measures are Far-Reaching,” *Ha’aretz*, 24 April 2003.

45. Avi Issacharof and Amos Harel, *The Seventh War*, 332.

46. Unpublished testimony provided to B’Tselem by *Shovrim Shtika*.

47. Yossi Yehoshua and Reuven Weiss, “The Hunter,” *Yediot Aharonot*, 8 April 2005.

neck, and walked toward the car waiting for him at the entrance to the house:

He saw us, but did not realize that we were strangers. Another officer and I were about twenty meters away from him. We did not move. We didn't want to make any movement that might make him suspect us. The moment he took his eyes off us, we went into action. We moved toward him, firing as we went and following a straight line. He didn't manage to get into the car that was waiting for him. We hit the driver, who was killed.

According to Y., Tubasi was not hit at this stage, took shelter behind the car and opened fire at Y and his colleague. During the gunfight that took place on the scene, Tubasi was killed and Y. was injured.⁴⁸

Y.'s comments clearly show that neither he nor his colleague made any real effort to arrest Tubasi. The two officers opened fire on Tubasi, whom they had ostensibly been sent to arrest, immediately after encountering him, without first calling on him to surrender, and without Tubasi's having attempted to harm them before they opened fire at him. Indeed, Tubasi had no chance to surrender, since Y. and his colleague were undercover, dressed as Arabs, and hence he had no way of knowing that the people he was facing were Israeli security forces.

A similar pattern, whereby police officers from the unit open fire at Palestinians they have

supposedly been sent to arrest, without prior warning, without the suspects attempting to harm them and without their even knowing they were present is also revealed from the description of a further operation in which Y. took part. "As they drove through the alleyways of Tulkarm," the article relates, "Y.'s unit identified a number of armed wanted persons in a car. Y. and his comrades opened fire from their moving car, hitting the occupants of the other vehicle, which began to roll down the street." According to Y., who later ran to and stopped the car, two of the occupants of the car were killed during the first volley of fire. The third occupant was injured. After realizing that Y. was an undercover Israeli agent, he attempted to shoot at him, but Y. shot first, killing the man.⁴⁹

During the second intifada, the IDF has refused to publish its Open-Fire Regulations. Accordingly, B'Tselem cannot determine whether the methods of operation described above were officially endorsed in these regulations. However, even if the above-mentioned methods are inconsistent with the official regulations, this does not mean that the soldiers and commanders of units active in the Occupied Territories bear sole responsibility for their use. Such responsibility rests primarily with the senior IDF command and with the minister of defense, since a discrepancy between the official regulations and the reality in the field – if such a discrepancy indeed exists – is the inevitable result of IDF policy

48. This event took place in the Jenin refugee camp on 24 April 2004. During the incident, another Palestinian was shot dead by police officers from the unit, in addition to Tubasi and the driver of the car as mentioned in Y.'s comments above. At a later point, the correspondent mentions that after Y. was evacuated to hospital, his colleagues "continued the operation and also captured two associates involved in planning the suicide attack [which Israel claims Tubasi was planning at the time he was killed, R.S.] – the intended guide and suicide bomber." The two associates he referred to were Husni and Iyad Daraghme; the killing of the former and injuring of the latter are described above. Contrary to the claim that the two men were on their way to commit a suicide attack, they were not found to be in possession of an explosives belt.

49. The article does not give the date of this incident or the names of the persons killed.

during the second intifada regarding the way the Open-Fire Regulations are conveyed to commanders and soldiers.

During the previous intifada and the years that followed, soldiers received booklets detailing the Open-Fire Regulations. By contrast, during the second intifada, the IDF has refrained from issuing written regulations to its soldiers. As a result, these regulations have been conveyed orally, by officers who also receive them by word of mouth from other officers. This procedure inevitably creates fertile ground for personal interpretations, and may lead to the partial or even erroneous transmission of the regulations.

In his above-mentioned testimony, the soldier who served in the Nahal patrol company added that:

The nature of the arrest and the way of making it varied from one platoon commander to another. For example, I served under two platoon commanders who had completely different characters. The first platoon commander worked more by the book... while the second was much more aggressive in making arrests. At first, the operations had a better level of planning: we would sit for a week preparing scenarios, receiving authorization from generals, and so on. As time went on, the authorizations, including the Open-Fire Regulations, moved down the command chain, until they eventually came from inside the unit.

In the case of regulations intended to control and structure the situations in which security

personnel may open fire, the soldiers require unequivocal clarification, and it must be ensured that the orders actually reach all soldiers in the field. In practice, however, soldiers often seem to receive ambiguous and contradictory messages, eventually leading to a trigger-happy approach.

On more than one occasion, senior IDF officers have expressed concern at the unclear message that has been given to soldiers in the Occupied Territories regarding the Open-Fire Regulations, and have urged the chief-of-staff to clarify unequivocally what is permitted and what is prohibited regarding the use of firearms in the Occupied Territories. As early as May 2002, B'Tselem also warned of the inherent dangers of the method used to convey the regulations to soldiers. However, the IDF chose to ignore these criticisms and refused to change its policy.⁵⁰ Only after the incident in which Mahmud Kmeil was killed did Chief-of-Staff Moshe Ya'alon himself comment to *Ha'aretz* that "we need to check ourselves and carefully examine whether the orders for soldiers are clear and transparent and are not too vague."⁵¹

A further problem relates to the IDF policy regarding the opening of Military Police investigations in cases in which soldiers have killed Palestinians during the second intifada. In addition to the modification of the Open-Fire Regulations, the redefinition of the situation in the Occupied Territories as discussed above also led to a change in the policy of the Judge Advocate General's office regarding investigations. Before the outbreak of the second intifada, the JAG's office automatically ordered a Military Police investigation in any

50. For detailed discussion of the manner in which the Open-Fire Regulations have been conveyed to soldiers during the second intifada, see B'Tselem, *Trigger Happy*.

51. Ze'ev Schiff and Amos Harel, "IDF Suspends Company."

case in which IDF soldiers killed a Palestinian civilian, unless the person killed had been involved in the hostilities. After the outbreak of the intifada, the JAG's office stated that since "armed conflict" was taking place in the Occupied Territories, investigations by the Military Police would be instigated only in cases in which soldiers deviated grievously from the Open-Fire Regulations, causing death or injury. According to the new procedure, the yardstick to be applied in determining whether a given case entailed a grievous deviation from the Open-Fire Regulations was the results of the internal debriefing held by the unit whose soldiers had been involved in the incident.

The result of this policy is that, since the beginning of the intifada, only 108 investigations have been undertaken by the Military Police into incidents involving shooting by IDF soldiers in the Occupied Territories. Only nineteen of these investigations have resulted in prosecution, and only in two cases have IDF soldiers been convicted of manslaughter. In two cases, soldiers were convicted of aggravated assault, and in two cases soldiers were convicted of illegal use of weapons. However, during this period, 3,172 Palestinians were killed, including 622 minors, by security forces' gunfire. At least 1,718 of those killed were not involved in combat at the time of their death. Tens of thousands more Palestinians have been shot and injured by security forces.

It is difficult to argue that the new procedure established by the JAG's office constitutes a proper replacement for the previous procedure. First, the rule that an investigation is only to be instigated in cases of "grievous deviation" is vague and open to different interpretations. The

office did not establish clear criteria for cases in which an investigation is to be launched by the Military Police. Moreover, in one case, an investigation by B'Tselem clearly showed that the death of Khalil al-Mughrabi, an eleven-year-old boy, was caused as the result of a deviation from the regulations and unlawful shooting. Despite this, the JAG's office decided not to order an investigation by the Military Police and presented a false version of the events, raising questions as to the manner in which the office chooses to implement its policy.⁵²

Also, an internal debriefing cannot form a proper base for the decision by the JAG's office as to whether or not to order a Military Police investigation. The debriefing is held by those directly involved in the event, who will be required to bear the consequences if an investigation is launched. This conflict of interest clearly impinges directly on the outcome of the debriefing. Moreover, testimonies collected by B'Tselem from soldiers show that the debriefings held in their units were negligent and in many cases, no debriefing at all was held. Moreover, the Security Preparedness Subcommittee of the Knesset's Foreign Affairs and Defense Committee recently examined the manner in which debriefings are implemented in the IDF. According to the head of the Foreign Affairs and Defense Committee, MK Yuval Steinitz, who participated in some of the discussions of the subcommittee, "the members of the committee re-examined a series of debriefings implemented by the IDF in recent years." The principle conclusion of the subcommittee was that "the culture of debriefings in the IDF is defective. There is no system of penalization

52. See B'Tselem, *Whitewash: Office of the Military Advocate General's Investigation into the Death of Khalil al-Mughrabi, Age 11, on 7 July 2001*, November 2001.

for acts of falsification and deception by those responsible for the debriefings, and there have been more than a few cases of cover-ups and attempts to whitewash facts.”⁵³

B’Tselem and the Association for Civil Rights in Israel filed a petition with the High Court of Justice against the JAG’s new policy relating to the opening of Military Police investigations. The petitioners requested that the court order the JAG’s office to re-institute its earlier policy, whereby it ordered that a Military Police investigation be opened in every case in which IDF soldiers killed a Palestinian civilian who was not taking part in the hostilities. The court has not yet reached its decision on the petition.⁵⁴

In addition to the fundamental problems inherent in the new procedure established by the JAG’s office, numerous problems have emerged in its application. In most cases, many months, and sometimes more than a year, have passed between the event and the decision as to whether to open an investigation by the Military Police. As a result, when an investigation has been opened, the investigators have encountered problems in locating victims or witnesses, and have been unable to collect

evidence from the field. Moreover, the experience of B’Tselem in its contacts with the Military Police investigation unit has shown that it has almost no Arabic-speaking soldiers capable of collecting testimony from Palestinian witnesses. In addition, most of the investigations relating to actions by the IDF in the Occupied Territories during the intifada have been implemented by reserve-duty soldiers called up for one month’s service a year, with the result that investigation files are regularly passed from one investigation team to another, undoubtedly impairing the proper and effective management of the investigation.

The situation regarding law enforcement in the case of the Border Police is no better. The Department for the Investigation of Police, in the Ministry of Justice, which is responsible for investigating suspected criminal offenses by Israel Police Force personnel, is for some reason not authorized to investigate offenses involving the use of firearms by police officers while performing their duties in the West Bank and Gaza Strip. In these cases, investigative authority rests with the police;⁵⁵ thus, these investigations are effectively directed by the colleagues of the suspects, with all this implies.

53. Gidon Alon, “At Least the Investigators Will Not Be from the Same Unit,” *Ha’aretz*, 28 February 2005.

54. HCJ 9594/03, *B’Tselem et al. v. The Judge Advocate General*.

55. Letter of 21 February 2002 to B’Tselem from the deputy director of the Department of the Investigation of Police, Boaz Segalowitz.

Criticism

The change in the Open-Fire Regulations, in the way they are conveyed to the soldiers, and in the opening of investigations by the Military Police resulted from Israel's redefinition of the situation in the Occupied Territories. Israel's position, which was accepted by the High Court of Justice, argues, in the words of the president of the High Court that, "Since the end of September 2000, fierce fighting has been taking place in Judea, Samaria, and the Gaza Strip. This is not police activity. It is an armed struggle."⁵⁶

The fighting has indeed occurred at times in the Occupied Territories in recent years, particularly during the early incursions by the IDF into the Palestinian cities and refugee camps of the West Bank, and during its repeated invasions into Palestinian communities in the Gaza Strip. However, the indiscriminate redefinition of the situation ignores the fact that a substantial part of the operations of the security forces during the second intifada – including the dispersal of demonstrations, the placement of checkpoints, and the enforcement of curfews – are classic policing and law enforcement operations. They were defined as such prior to the intifada and continue to have the same character.

The same is true of arrest operations, the majority of which did not take place in a combat context. At least with regard to the West

Bank, the IDF effectively enjoys full control of the entire territory, and the danger faced by the soldiers participating in these operations is not substantively different from that faced by police officers engaged in operations to detain armed criminals. Accordingly, the international rules relating to the use of firearms in law enforcement, according to which security forces may use lethal force only in the case of real and immediate danger to life, apply to these operations.⁵⁷ The change in the Open-Fire Regulations regarding arrests (even if this change was de facto, and not recorded officially) cannot, therefore, withstand legal review, and the former Open-Fire Regulations, which were applied prior to the outbreak of the intifada, should have continued to apply to the security forces.

Israel has argued that the arrest operations during the second intifada took place in the context of "essentially a combat situation."⁵⁸ However, even if this claim is accurate, the methods of operation employed by the security forces during the arrest operations are still unlawful according to international humanitarian law.

When combat operations take place within an occupied territory, the occupying power is bound by the rules of warfare, as well as by the rules of international humanitarian law, which

56. HCJ 7015/02, *Ajuri v Commander of IDF Forces in the West Bank*.

57. *Code of Conduct for Law Enforcement Officials*, adopted by General Assembly Resolution 34/169 of December 1979; *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

58. See the comments of Lt. Col. Liron Liebman, above, regarding the circumstances surrounding the killing of Muhammad Diriyah.

deal with occupation. On the one hand, these rules extend the powers of IDF soldiers beyond regular law enforcement powers, permitting the deliberate injury of persons taking part in the fighting. On the other hand, the rules delineate the permitted behavior of armed forces during combat, with the goal of protecting, to the extent possible, civilians who are not involved in the hostilities.

One of the principles established to achieve this goal is the principle of distinction. This principle, which constitutes one of the most basic components of international humanitarian law, requires combating parties to direct their attacks solely at persons taking part in the hostilities. To ensure that this principle is respected, it was established, inter alia, that it is prohibited to carry out an attack that is not directed at a specific military object, and that the presence of persons engaged in combat while within a civilian population does not deny this population the protections it deserves. It was further established that the fact that one side violates these rules does not exempt the other side from observing them.⁵⁹

Accordingly, even if Israel is right to claim that the arrest operations are combat actions, shooting without warning at any person suspected of fleeing from a house in which a “wanted” person is hiding, even if it is unclear whether the person is armed, shooting at these houses as a means of deterrence, and “wet entry” into the houses as described above are incompatible with the principle of distinction. The first two cases described in this report, regarding the circumstances of the deaths of Mahmud Abu Rajab and Muhammad Diriyah – civilians who were unarmed, and who Israel

does not dispute were not involved in the fighting – and the response of the security forces to these events raise grave concern that the two men were killed as the result of these unlawful methods of action. Abu Rajab was killed as the result of the practice of firing, without prior warning, at any person suspected of escaping from a house to which the soldiers have come to arrest “wanted” persons. Diriyah was killed as the result of the practice of firing preliminary, deterrent shots at these houses although the soldiers faced no danger.

In addition to the rules intended to protect the civilian population, international humanitarian law also defines what is permitted and prohibited in terms of attacking persons taking part in the hostilities. One of the most basic rules in this context is the prohibition against attacking persons who have surrendered and laid down their weapons, or persons who can no longer defend themselves as the result of their injuries. Article 40 of the First Additional Protocol to the Geneva Conventions establishes that “it is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis.” Article 23(c) of the Regulations Attached to the Hague Convention establishes that it is prohibited “to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion.” Article 41 of the First Protocol establishes that a person shall not be made the object of attack if “he is in the power of an adverse party,” if “he clearly expresses an intention to surrender,” or if “he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself,”

59. Articles 48-58 of the *First Additional Protocol to the Geneva Conventions, of 1977* (hereafter: the First Protocol). These articles constitute customary law.

provided that “he abstains from any hostile act and does not attempt to escape.”⁶⁰

Accordingly, even if Israel is right to argue that Palestinian civilians suspected of taking part in the hostilities are legitimate objects of attack, shooting at them when they are completely at the mercy of security forces, injured and helpless, or after they have expressed their intention to surrender, as was the case with Mahmud Kmeil, Husni Daraghmeah and Iyad Daraghmeah according to the testimonies presented in this report, constitutes a flagrant breach of international humanitarian law.

As mentioned above, a senior IDF officer justified the second round of shooting at Mahmud Kmeil – the shots which, based on the testimonies given to B’Tselem, led to his death – by claiming that intelligence information, which was later disproved, stated that Kmeil was carrying an explosives belt, and that the forces’ lookout had reported that Kmeil had been seen moving. However, even if these circumstances had indeed existed, they would not have justified the shooting of Kmeil, since his condition at the time of the second round of shooting meets the definition of someone who “is in the power of an adverse party” as this expression is to be understood in Article 41 of the First Protocol. The official commentary of the Red Cross regarding this article states that:

... land forces might have the adversary at their mercy by means of overwhelmingly

superior firing power to the point where they can force the adversary to cease combat. A formal surrender is not always realistically possible, as the rules of some armies purely and simply prohibit any form of surrender, even when all means of defense have been exhausted. A defenseless adversary is *hors de combat* whether or not he has laid down arms.⁶¹

Similarly, the interpretation determines that the desire of a person who is participating in combat to surrender need not always be manifested by his laying down his arms. According to the official commentary, “if he is surprised, a combatant can raise his arms to indicate that he is surrendering, even though he may still be carrying weapons.”⁶²

Moreover, in accordance with Article 35(2) of the First Protocol, which constitutes one of the basic rules regarding the methods and means of combat, “It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.”⁶³ This provision is interpreted in accordance with the official interpretation of the Red Cross, which states that “it is prohibited to use any means or methods which exceed what is necessary for rendering the enemy *hors de combat*.”⁶⁴ The International Court of Justice, in The Hague, ruled, in this context, that it is prohibited to cause “harm greater than that unavoidable to achieve legitimate military objectives.”⁶⁵

60. Articles 40 and 41 of the First Protocol also constitute customary law.

61. *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: Martinus Nijhoff Publishers, 1987), 484.

62. *Ibid.*, 486-487.

63. Article 35 of the First Protocol constitutes customary law. According to the International Court of Justice, this rule constitutes one of the two cardinal rules of international humanitarian law; the second rule is the principle of distinction, as discussed above. See International Court of Justice, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 1996, General List No. 95.

64. *Commentary on the Additional Protocols*, 400.

65. International Court of Justice, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*.

This principle formed the basis for the official interpretation of the Red Cross regarding Article 40 of the First Protocol, which prohibits ordering “that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis.” The interpretation notes that:

The deliberate and pointless extermination of the defending enemy constitutes disproportionate damage as compared with the concrete and direct advantage the attacker has the right to achieve. It is sufficient to render the adversary *hors de combat*. The prohibition of refusing quarter therefore complements the principle expressed in Article 35... which prohibits methods of warfare of a nature to cause superfluous injury or unnecessary suffering.⁶⁶

Obviously, this principle applies all the more so in the case of persons who are recognized, or who should given the circumstances, be recognized as *hors de combat*, as defined in Article 41 of the First Protocol.⁶⁷ Accordingly, even if the soldiers suspected that Mahmud Kmeil was carrying an explosives belt and might activate it, they were still obliged to respond in a manner commensurate with the danger they ostensibly faced as a result thereof. Regardless, the soldiers were not allowed to kill him and thereby eliminate the possibility of his surrendering.

According to the official commentary of the Red Cross, the relevant criterion for the response in such situations is the surrender of the adversary, and this alone.⁶⁸ Kmeil was lying injured on the

ground, surrounded by the soldiers. Activating the explosives belt by Kmeil would not have presented an immediate danger to the soldiers, as evidenced by the fact that their shooting of Kmeil in response to their suspicion that Kmeil might activate an explosives belt could have itself caused an explosion. Thus, they should first have attempted to neutralize him by other, non-lethal means, as IDF soldiers have done in the past when arresting Palestinians wearing explosives belts. The explicit purpose of the operation, the arrest of Kmeil, would not have been impaired in any way had this approach been followed. Moreover, given the classification of the operation as an arrest operation, and given the suspicion that Kmeil might be armed with an explosives belt, the soldiers should have anticipated such a scenario and prepared for it in advance.

Defining the situation in the Occupied Territories as an “armed conflict” does not give Israel grounds to exempt itself also from the obligation to investigate thoroughly and efficiently cases in which civilians or combatants are killed, when there are grounds to suspect that these deaths were caused while breaching the rules of international humanitarian law. Article 146 of the Fourth Geneva Convention states that:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

66. *Commentary on the Additional Protocols*, 477.

67. *Ibid.*, 488.

68. *Ibid.*

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.⁶⁹

Accordingly, the protection of the civilian population in an occupied territory is manifested,

as noted by Professor Yoram Dinstein, “not only in a negative manner (in terms of the prohibition on the arbitrary taking of life), but also in a positive manner,”⁷⁰ that is to say, in the obligation to investigate thoroughly cases involving the death of civilians. This principle also applies to injury to combatants contrary to international humanitarian law, particularly when they are *hors de combat*.⁷¹

69. An identical provision appears in Article 129 of the *Third Geneva Convention Relative to the Treatment of Prisoners of War*, of 1949.

70. Yoram Dinstein, *The Rules of War* (Tel Aviv: Schocken, 1983), 222 [in Hebrew].

71. See Article 85 of the First Protocol, and Article 129 of the Third Geneva Convention.

Conclusions

During the course of the second intifada, Israeli security forces have carried out hundreds of arrest operations each year, particularly in the West Bank. In an interview conducted in April 2004, the commander of IDF forces in Judea and Samaria, Brig. Gen. Gadi Eizencott, stated that, since the beginning of that year, security forces carried out an average of about five such operations a day.⁷²

According to B'Tselem's figures, since the beginning of 2004, eighty-nine Palestinians have been killed during the course of such operations, at least seventeen of whom were not "wanted" persons, but civilians not suspected by Israel of having committed any offense. In addition, at least forty-three of the "wanted" persons killed were unarmed, or were not attempting to use their arms against Israeli security forces at the time they were killed. B'Tselem is unable to thoroughly investigate the circumstances behind all of these deaths. However, given the operational methods of the security forces as discussed above, there is grave concern that Muhammad Abu Rajab, Muhammad Diriyah, Husni Daraghme and Mahmud Kmeil were not the only victims of the improper methods adopted by security forces.

Furthermore, contrary to Israel's claim that these were indeed arrest operations, the methods employed by the security forces, even if not formally prescribed in the Open-Fire Regulations, transform those actions into assassination operations. Given these methods,

the persons wanted by Israel – and, in some cases, other persons in their vicinity – were almost completely denied the opportunity to surrender and survive the action without being injured or killed.

Following the incident in which Mahmud Kmeil was killed by the naval commando unit, Chief-of-Staff Moshe Ya'alon told *Ha'aretz* that, "We must examine ... whether we are not sending a mixed message to our combat units."⁷³ The change in the Open-Fire Regulations, the failure of the IDF to clarify the regulations unambiguously and ensure that clear directives are given to every soldier in the field, and the systematic refusal to order Military Police investigations of cases involving the fatal shooting of Palestinians by IDF soldiers, except in exceptional cases, suggest that the soldiers and commanders in combat units receive an unequivocal message: that they can disregard the lives of Palestinians and not be held accountable for their actions. This message ultimately leads to a trigger-happy attitude, and the creation of unacceptable norms of extra-judicial execution among security forces.

Accordingly, B'Tselem demands that the Israeli government:

- instruct its security forces to refrain from opening fire when their lives are not in danger;
- provide all security forces with written Open-Fire Regulations that state clearly

72. Alex Fishman, "There Will Be No Firing When We Vacate Settlements," *Yediot Aharonot*, 11 April 2004.

73. Ze'ev Schiff and Amos Harel, "IDF Suspends Company."

and unequivocally the circumstances in which they are prohibited and permitted to use their firearms;

- investigate thoroughly all cases in which Palestinian civilians not involved in hostilities were shot and injured by Israeli forces and, where appropriate, prosecute the persons responsible;
- investigate thoroughly all cases in which Palestinian citizens who took part in hostilities were shot and injured, if there

is reason to suspect that the shooting contravened international humanitarian law, and, where appropriate, prosecute the persons responsible;

- instruct security forces that it is forbidden in any circumstance to demand that civilians cooperate with Israel security forces and perform military tasks, investigate thoroughly all cases in which security forces used civilians in this way, and prosecute the persons responsible.

Appendix 1

The Circumstances Surrounding the Killing of Muhammad Abu Qaber Diriyah

Testimony of Khairiyah 'Ayash Sa'adah Diriyah, 61, widow with nine children, homemaker, resident of 'Aqraba, Nablus District⁷⁴

I am a resident of 'Aqraba. I lived with my son, Muhammad Diriyah, 36, and his wife, Hayah Fathallah Diriyah, 28, and their six children: Ala'a, 12, Usama'a, 11, Amal, 9, 'Asam, 6, Khawla, 4, and Deragham, who is one-year old.

Two days ago [Sunday, 11 April 2004], at about 10:00 P.M., I was saying evening prayers. While praying, I heard about ten explosions of stun grenades and loud sounds of gunfire. I woke Muhammad and told him that the army was in the village. I asked him to wake the children, so that they would not be startled if the soldiers came into the house. Muhammad got up and walked toward the bedroom window, and said that he also thought there were soldiers in the village. After about five minutes passed, the sound of shooting and grenades grew louder, and bullets came flying into the house. You can still see the bullet marks on the walls. I told my daughter-in-law Hayah that it would be better to take the children out of the bedroom, and I went to their room. On the way, I heard the soldiers shout in Arabic, "Terrorist! Open the door!" They kept on shouting all the time, and I could not tell where they were standing. I stood some seven meters from the window and shouted to the soldiers to come to the front door of our house.

Muhammad went to open the front door. I followed him. This was not the first time that

we had gone to open the door for soldiers who wanted to burst into our home. Muhammad moved me away from the door with his hand and told me that he would open it. I turned around and went to get the children and my daughter-in-law. I heard one of the soldiers say in Arabic, "We've killed a terrorist, we've killed a terrorist," but I did not hear any shooting. When I returned with Hayah and the children, we saw Muhammad lying on the ground by the entrance to the house. The floor and the walls by the entrance were covered in blood. The strange thing is that I did not hear any shots. Maybe the soldiers used a silencer. Muhammad groaned. I didn't know what to do or what to say. My beloved son was lying on the floor in his own blood. I shouted at the soldiers and said, "Why did you kill him? He didn't do anything." I cursed them and told them, "Kill me like you killed him. Why did you kill him? He didn't do anything."

Hayah and the children were in shock. They were crying and shouting hysterically. The children brought towels and wiped up their father's blood. The soldiers stood by and watched apathetically. I begged them to help Muhammad and call an ambulance, but they did not respond. There were about ten soldiers inside the house, and some of them searched the house. Hayah, the children, and I stood in the entrance to the house for about fifteen minutes. Then another group of about ten soldiers came over to us, and one of them ordered me to go up onto the roof of the house with them. He spoke to me in Arabic. The steps leading to the

74. The testimony was given to Salma Deba'i at the witness's home on 13 April 2004.

roof of the house are to the right of the main front door, where Muhammad was shot. I sat on the ground by Muhammad and lifted up his head. I saw that a bullet had struck the right, front side of his head. I wiped the wound and told the soldier, "You have no God, you don't have children, you don't have a heart. I want to help my son." Muhammad had lost a lot of blood and was unconscious, or perhaps he was already dead.

The soldier who spoke to me went up to the roof with another group of soldiers. They walked past Muhammad's body and past the children who were crying and shouting. Four soldiers were standing at the entrance to the house, but I cannot identify them because their faces were covered in black and green paint, presumably as camouflage. After another fifteen minutes or so, the soldiers came down from the roof. One of them told me that they had first-aid equipment, and there was a doctor with them. Several soldiers left the house and returned with a stretcher. They put Muhammad on the stretcher some twelve meters from the entrance to the house. One of the soldiers examined Muhammad and bandaged his head.

While I was standing outside by the stretcher, I heard other soldiers shouting, "Open, open!" They were knocking on the door of the home of my other son, Ibrahim, who lives about thirty meters from Muhammad's house. From the place where I was standing, I could not see the entrance to Ibrahim's house, but I heard him answer the soldiers and tell them that he was coming to open the door. I heard the door open. The soldiers brought Ibrahim and made him stand two meters from Muhammad. Ibrahim's hands were tied and his eyes were covered. The soldiers put him in an army jeep and left the area. Other soldiers took Muhammad in a military ambulance that was waiting by the house. Later, Ibrahim told me that the soldiers had removed his wife and baby daughter from the house and searched it for about half an hour.

At about 4:30 A.M., the soldiers left the area. Later in the morning, our relatives and some residents of the village went to the Israeli District Coordination Office to learn where Muhammad had been taken and what had happened to him. The commander of the liaison office informed them that Muhammad had died and that his body was at Rafidiya Hospital.

Appendix 2

The Circumstances Surrounding the Killing of Muhammad Mahmud Ahmad Abu Rajab

Testimony of Fatma Munir Sa'id Qa'aqur, 21, married with one child, homemaker, resident of Yatta⁷⁵

My husband, Mahmud Ahmad Abu Rajab, 27, our ten-month-old daughter Janat, and I live on the ground floor of a two-story building that belongs to Muhammad's parents. The ground floor is divided into two apartments. Our apartment is on the western side, and includes a bedroom and living room. On the northern side is the apartment of my brother-in-law Nidal, 24, his wife, and their two children. Muhammad's parents live on the first floor with their seven other children. My brother-in-law's home and his parents' home share a joint entrance to the north side of the building.

Muhammad worked as a laborer. Recently, he was unemployed. To the best of my knowledge, he did not belong to any Palestinian organization, political or military. He was never arrested by the Israeli army. Muhammad was a regular guy. Over the past few weeks, he had suffered from kidney problems.

Two days ago [Tuesday, 2 March 2004], at about 2:00 A.M., Muhammad and I woke up to the sound of shouting in Arabic. Although it was winter, the night was unusually warm and the fan was on in the bedroom. I asked Muhammad to turn off the fan so that we could hear the shouting more clearly. We heard the army telling the residents of our street to come out of their homes. Muhammad put his shoes on and told me that he wanted to go

to his parents' house to wake up the family. Before he went out, he asked me to get things organized, to take Janat and our ID cards and to follow him. He went out and I looked for his ID, but I couldn't find it. Immediately after he went out, I heard a volley of gunfire. I didn't know in which direction the shots were fired. After the shooting stopped, I picked up Janat and went toward the door of the house. When I opened the door, shots were fired toward me. I went back inside and waited until the shooting stopped. I went to the front door again and then heard Muhammad groaning and saying "Mama." I immediately realized that something had happened to him, and shouted, "Muhammad is dead, they've killed him."

At the same moment, my sister-in-law Ismahan, 19, came to the front door and asked me to wake up Muhammad. I guess that she hadn't noticed Muhammad on the ground because it was so dark. I told her that Muhammad had been killed. We both shouted, and in our fear we ran quickly toward my mother-in-law's house. As we left, we saw Muhammad lying on the ground about three meters from the front door. We came to the yard by the entrance to the apartments of my brother-in-law and father-in-law. Seven or eight soldiers were standing in the yard. I yelled out, "They killed Muhammad." My mother-in-law was standing in the yard about two meters from us. I told her that Muhammad was dead, and she shouted at the soldiers, "Why did you kill him?" One of the soldiers, who spoke Arabic, asked who Muhammad was, and my

75. The testimony was given to Musa Abu Hashhash at the witness's home on 4 March 2004.

mother-in-law said, "My son, my son." He asked her if he was a terrorist, and my mother-in-law replied, in tears, "He isn't a terrorist, he's a regular guy and he is sick. Why did you kill him?" I held Janat in my arms, crying and shaking, and then one of the soldiers told me to leave the child and go with Ismahan to bring Muhammad into the yard.

I saw that some of our neighbors and Muhammad's brothers were sitting on the wall that surrounds the yard to the east of our home. Bara'a, 10, Muhammad's sister, was also with them. I went to her and asked her to look after Janat. Ismahan and I went to the front door of our home, about three meters from the yard where the soldiers were. As we approached, I could see that Muhammad wasn't moving. I realized that he was dead. I held him from one side and Ismahan held him from the other side. We tried to lift him up, but he was very heavy, so we dragged him along the ground to a dirt path by the yard – about eight meters.

Two soldiers who were in the yard went up to Muhammad's body and searched him. At the same time, an army vehicle arrived and two more soldiers got out. They had flashlights which they shone at Muhammad's face, and then quickly moved them away. My mother-in-law went up to the two soldiers who were searching Muhammad and shouted, "You killed him. His ten-month-old daughter is an orphan now. Why did you do that?" I heard one of the soldiers tell her in Arabic that he was sorry. My mother-in-law asked the two soldiers to let her take Muhammad to hospital, but they refused.

Two more soldiers arrived from the north side of the path. They were carrying a stretcher. They put Muhammad's body on it and told me, my mother-in-law, and Muhammad's brother Ahmad, 14, to carry the stretcher toward an

army jeep that was parked by the mosque, about thirty meters away from where we were. When we got there, I saw a long army jeep and several army vehicles parked around the mosque. After we put Muhammad's body down by the jeep, two other soldiers came up to us and took my mother-in-law a few meters away from us. Ahmad and I stood opposite the mosque, by the stretcher. After about twenty or thirty minutes, my mother-in-law and two soldiers came back. The soldiers went up to Ahmad and asked him how old he was, and then told him to go with them. They moved about ten to fifteen meters away from us. Ahmad was also brought back after about twenty minutes. Then they took my mother-in-law away again for a few minutes and brought her back. When she returned, she asked me to go to the two soldiers. One of them called me by my name, Fatma. When I approached, I saw about twenty soldiers and a commander. I think the commander was from the General Security Service. He had a black shirt on, and was short, stocky and had blond hair. I noticed that he didn't pronounce the letter "r" properly.

The commander asked me if I work, and I said no. Then he asked me where I went the day before at about 9:00 A.M., what I did there, and who I saw in the area around our house by our goat shed when I came back. He added that he knew I wasn't gone for long. I replied that I had gone to take food to my aunt, who lives in Barqa'a. When I returned, I saw Muhammad with his brothers Ibrahim, Ahmad, and twelve-year-old Hamza standing by the goat shed. He asked me if we have an empty well, and I replied that since it is winter now, the well is full. He asked me if I was sure that there was no one in the house, and I replied that there wasn't anyone inside. He said that maybe I was unsure and not concentrating, because my husband

had been killed. I replied that I was sure that there was no one in the house, and then he said that Muhammad was a terrorist. I replied that Muhammad wasn't a terrorist, and that he had been killed when he left the house to wake up his parents and brothers.

The commander asked me what was in the goat shed, and I replied that it used to be Muhammad's grandmother's house. He asked if any men were living there, and I said no. He asked me to tell him the names of the daughters of Muhammad's grandmother. I told him that she had four daughters, but I didn't know their names, because I originally came from the village of Tarqumiya and had only married recently. I told him that I only knew my husband's immediate family. After he finished asking the questions, he told me to go into the home of Muhammad's grandmother, who lives by the mosque, and leave the door open. When I went in, I saw Muhammad's brothers and grandmother and my mother-in-law.

While they were interrogating me, I heard heavy gunfire. Later, I saw the bullet marks on the outside walls and inside my house and my father-in-law's house. While we were in the grandmother's house, I heard the soldiers calling for the occupants of my house to come out, even though the house was empty.

I asked my brother-in-law Ibrahim to ask the soldiers to let me bring clothes and diapers for Janat, but they refused. The shooting continued until the time of morning prayers, at about 4:45 A.M., and then stopped. Ibrahim, who was following what happened from the window in the grandmother's house where we had been imprisoned, told us that after the shooting stopped, the soldiers went into our house with

dogs. Then the soldiers must have seen Ibrahim watching them through the window, because they ordered him to close the window and the door.

After the shooting stopped, we came out of the grandmother's house. Outside were soldiers, as well as our neighbors, school students, and women. At about 7:00 A.M., an army bulldozer drove onto the dirt path and began to widen it. I thought it was going to demolish the houses, and the others probably thought the same thing, because the women and children threw stones at it. I stood opposite the grandmother's house and watched the soldiers throwing gas and stun grenades at the women and children. The bulldozer made a pile of earth in the middle of the road and then stopped working. After 8:00 A.M., the soldiers left the area. Muhammad's brothers and the neighbors told me that the soldiers had transferred Muhammad's body to a Palestinian ambulance that arrived on the scene, and it had been taken to 'Aliyah Government Hospital in Hebron. They told me that the soldiers had arrested Ibrahim. Later, my father-in-law and his sons told me that they had gone to the hospital and seen the body. They told me that there were six gunshot wounds on the body – on the neck, chest, stomach and legs. Muhammad was buried the same day in the village cemetery.

Testimony of Mahmud Ahmad Muhammad Gharbiya, 59, married with thirteen children, merchant, resident of Yatta, Hebron District⁷⁶

I live in a house to the south of the house of the deceased, Muhammad Abu Rajab, in Yatta. On Tuesday [2 March 2004], at about 2:00 A.M., as my family and I were sleeping, I awoke to

76. The testimony was given to Musa Abu Hashhash at the witness's home on 4 March 2004.

shouts in Arabic telling the residents to come out of their homes. I quickly went outside with my wife and children, where we saw about ten armed men in civilian clothes. I think they were from the Israeli special forces. I also saw two GMC vehicles parked about thirty meters to the south of our house. Some armed men led us to the yard in front of the house of Muhammad Abu Rajab. At the same time, seven soldiers in uniform arrived. I did not see how they came, and I did not see an army vehicle.

While we were standing in the yard, I heard someone shout in Arabic, "Come out of the house." I didn't know who they were shouting at. After about three minutes, I heard gunshots from the west side of Muhammad's house. The shooting was intensive. Then I heard someone shout "Mama." At this point, one of the soldiers told us to move a few meters away and sit on the ground on the north side of the yard. After a minute or so, I heard more shots. This time, the sounds came from the east side of Muhammad's house. I saw flashes of gunfire in the air toward the area where we were sitting.

I saw Ismahan, Muhammad's sister, going toward Muhammad's house, and then she and Fatma, Muhammad's wife, came over to where we were sitting. Fatma lifted her baby in her arms. She was crying and told the soldiers who were in the yard, "You killed Muhammad." Muhammad's mother, who was sitting by us in the yard, shouted at the soldiers, "You killed my son."

I heard one of the soldiers tell her in Arabic, "It wasn't us who killed him." There were seven soldiers standing by us, on the north side of the wall around the yard. One of the soldiers told Fatma and Ismahan to go and bring Muhammad's body. I begged the soldier to let me bring it instead. I said that they were women

and it would be hard for them, but the soldier refused. Fatma gave her baby to Muhammad's little sister, who is ten years old, and went with Ismahan to get her husband's body. After a few minutes, they came back, dragging Muhammad's body along the ground. They put the body down by the vines in the yard, about five meters from where we were sitting. At the same time, two soldiers arrived carrying a stretcher. They searched the body and put it on the stretcher. Muhammad's mother cried and went over to the body. She told the soldiers in Arabic, "What have you done to Muhammad? He's a poor, sick guy and he didn't have any security problems. He works in Israel."

A few seconds later, an army vehicle arrived and two more soldiers got out. They were holding flashlights and shone them at Muhammad's face. One of them told Muhammad's mother in Arabic that he apologized. I guess they realized that Muhammad wasn't the guy they were looking for. The same soldier told Fatma, Muhammad's mother and Ahmad, his fourteen-year-old brother, to move the body to the western side, in the direction of the dirt path. At about 5:00 A.M., the same soldier told me and the neighbors who had come to the scene to go home. I went home with my wife and children, but a few minutes later I left my house and went to stand by the mosque. I wanted to see what was happening in the yard where we had been sitting before.

Two long army jeeps were parked by the mosque, and Muhammad's body was placed on a stretcher on the ground by one of them. I saw an ambulance move toward the mosque, and then I heard a stun grenade explode. The ambulance backed up. After about fifteen minutes, another ambulance arrived – I don't know from which direction. I saw the soldiers move Muhammad's

body into the ambulance. Then an Israeli tractor came and started to widen the path alongside Muhammad's home. The villagers gathered around and threw stones, and the soldiers fired tear gas and stun grenades. After about half an hour, the tractor and soldiers left the area. It was about 8:00 A.M. I should add that during the whole time I was standing by the mosque, I could hear heavy gunfire.

After the army left the area, I went to the yard by Muhammad's house. Muhammad's brother called `Aliyah Hospital, and they told him that Muhammad's body was in the cold storage

room there. I went to the hospital with Muhammad's relatives and we brought the body back for burial. On the way back from the hospital, I sat by the body and saw that Muhammad had been injured on the top half of his legs, and his legs seemed to be broken. I also saw wounds to his chest and neck and behind his ear.

Later, Muhammad's relatives told me that the army had arrested his brother Ibrahim, who is 18, and that the soldiers had gone into Muhammad's home with dogs and fired shots throughout the house.

Appendix 3

The Circumstances Surrounding the Killing of Husni Mustafa Dababat Daraghmeh

Testimony of 'Abd a-Nasser Khalil 'Abd a-Rahman Barghouthi, 39, married with seven children, businessman, resident of Jenin⁷⁷

I have a stone-polishing business at the a-Shuhadaa junction, on the Jenin-Nablus Road. Other businessmen from the area and I usually sit in the restaurants and coffee shops along the roadside. We sit there, drink coffee or tea, and conduct business.

Last Saturday [24 April], around 3:00 P.M., I was sitting on the patio of Abu Omer's restaurant drinking tea. I was sitting alone on the right-hand side of the door leading into the restaurant. Abu Omer came in to get a pack of cigarettes for the driver of a Volkswagen van that was parked near the entrance. There were five men in the vehicle. A white Hyundai van pulled up. It came from the south and swerved from the right lane into the left lane. It stopped in the middle of the road, facing oncoming traffic, between the restaurant and the coffee shop of Subhi al-Badar, closer to Abu Omer's restaurant.

When the Hyundai stopped, the rear door flew open and out came two masked men with rifles. They were wearing white shirts with thin black stripes, and black pants and shoes. One of them shouted in Arabic, "Stop. Stop and raise your hands." Two men were standing at the junction, facing the Hyundai. They raised their hands immediately, and then one of the armed men fired three or four shots. The armed men were about ten meters from the two guys. One of the

guys fell to the ground, and the other continued to stand there with his hands raised.

I was in shock and did not know what to do. Then one of the armed men fired at the guy who was standing there. The guy shouted something that I couldn't understand and fell to the ground. The whole thing didn't take more than ten or twenty seconds. I got up and went to hide inside the restaurant. I saw the restaurant owner hiding under the food-preparation counter. One of the armed men, who apparently saw me, came into the restaurant after me and ordered me to raise my hands and stop. Then the other armed man came into the restaurant.

Then four or five soldiers came into the restaurant. I don't know where they came from. The moment they entered the restaurant, the two armed men left. The soldiers stayed. One of the soldiers ordered me, Abu Omer, and a woman with an infant and a five-year-old girl to go outside. We did as he said. Outside, I saw soldiers removing the five men from the Volkswagen. The soldiers told us and the five men to stand next to a small fence that separates the restaurant from Subhi's coffee shop. About twelve army vehicles pulled up. One of them was a truck with soldiers inside, and there were a few Hummer jeeps, a few regular jeeps, and an army ambulance.

Around 3:30 P.M., the soldiers ordered us to sit down behind Abu Omer's restaurant and to stay there. None of the soldiers stayed to guard us. The soldiers dispersed. Some of them

77. The testimony was given to 'Atef Abu a-Rob in Qabatiya on 26 April 2004.

went to one of the houses behind the restaurant. They broke through the door and went onto the roof. They stayed there until the end of the operation.

I walked over to a corner of the restaurant, from where I saw one of the guys who had been shot earlier. He was moving on the ground. Around five o'clock, about two hours after they were shot, soldiers brought a robot to check for explosives. The robot was yellow and was shaped like a small tank. It moved along the road while the soldiers spoke to one of the guys [lying on the ground], who was wounded. They told him, "Raise your hands so that we can bring you a doctor." I think that he moved his right hand. The soldiers continued to talk to him, and ordered him to lift up his shirt. In the meantime, the robot checked a garbage bag that the soldiers thought was suspicious looking. It dragged the bag, shook it, and emptied its contents. There were no explosives inside. I think that it was full of trash and weeds. After the robot finished checking the bag, it dragged the wounded guy by his left leg three or four meters in the direction of the van. The guy was closer to us than the other fellow. While the robot dragged him, his stomach was exposed. Then the robot went over to the other guy, who was dead I think, and dragged him about two meters toward the Hyundai.

Just then, an army jeep pulled up and stopped near the two guys. A doctor or medic carrying a bag got out of the jeep. He tore and removed the men's clothes. After examining the men, the soldiers summoned a Red Crescent ambulance, which waited at the a-Shuhadaa junction on the road leading to Barqin. The ambulance staff brought out green sheets, wrapped the men in

the sheets, and took them away. The soldiers continued to comb the area. They searched all the open fields and cemetery and then left the area.

The two guys who had been shot did not try to flee. They were not armed, and the soldiers did not find any weapons on them. The operation took about two and a half hours, and the two guys lay there on the ground until they were given first-aid at the end of the operation. I later learned the name of the guy who was killed: Husni Daraghmeah.

Testimony of 'Abd a-Nasser Mahmud Ibrahim Hana'isha, 36, married with four children, restaurant owner, resident of Qabatiya, Jenin District⁷⁸

I own a restaurant on the Jenin-Nablus Road, opposite the cemetery for Iraqi soldiers [from the 1948 war] and by the a-Shuhadaa junction.

Yesterday [Saturday, 24 April], when I got to the restaurant, around eight in the morning, the area was quiet and no Israeli soldiers were around. At about 12:30 P.M., I saw some army jeeps arrive from the direction of Jenin. The jeeps did not stop. At three o'clock or so, while I was cleaning up and throwing out the trash from the backyard of the restaurant, I heard three or four shots. I rushed to the southeast corner of the restaurant to see what was happening. I had a good view of a-Shuhadaa junction from where I was.

I saw three soldiers in uniform standing behind a Hyundai van. The van was parked on the road, facing Subhi al-Badar's coffee shop, facing oncoming traffic, in the direction of Jenin. I heard someone shout out in Arabic, "Stop

78. The testimony was given to 'Atef Abu a-Rob at the a-Shuhadaa junction on 25 April 2004.

where you are. Raise your hands.” At the corner of the junction, near the cemetery and opposite the Hyundai, there were two guys. They lifted up their clothes and raised their hands. I saw the people who were in Abu Omer’s restaurant, which is near my restaurant, also raise their hands.

I went to hide behind the restaurant. A few seconds later, I heard three to five shots. They weren’t fired in one volley. I went back to the corner of the restaurant and watched. I saw two armed men dressed in civilian clothes standing near the Hyundai. The two guys who had been standing at the junction earlier were lying on the ground. The two armed men and some soldiers were standing about ten meters from them. I did not see who shot the two men.

I went to sit on one of the chairs on the south side of the restaurant. I sat there as if nothing had happened so that if the soldiers saw me, they wouldn’t think that I was hiding from

them. There was a radio by the window. It was tuned to the local station. The station broadcast patriotic songs in memory of the three men who had been killed in Jenin two hours earlier. I got up and went over to turn off the radio and then went back to sit in the chair on the south side of the restaurant.

From where I was sitting, I could see army jeeps arrive. One of them was a Hummer, and its siren was on. Then some more jeeps pulled up. I was frightened, so I got up and walked away from the restaurant. I went into a field of weeds behind the restaurant and pretended that I was cleaning the area. I left my ID card in the restaurant, which had remained open. After I saw that the army had left the area, I went back to the restaurant, where people told me that an ambulance had taken the two guys who had been shot. They told me that they are from Tubas, and that one had been killed and the other wounded.

Appendix 4

The Circumstances Surrounding the Killing of Mahmud 'Abd a-Rahman Hamdan Kmeil

Testimony of Tayil Muhammad al-Bazur, 45, married with seven children, laborer, resident of Raba, Jenin District⁷⁹

Last night [Thursday, 2 December 2004], Mahmud a-Dab'i, my niece's husband, came to my house. He told me that he wanted to sleep at my house. I welcomed him the way a person welcomes a family member. I was at home with my wife and my children: Ahmad, who is nine, Amin, 8, Sanaa, 19, who is married and was visiting, Nasrin, 18, and Intissar, 14.

Around 10:30, I left Mahmud alone in a room, and went to sleep, as did my children and wife. Around 5:00 A.M., I heard explosions near the house. I also heard a voice call out through a loudspeaker: "Come out and raise your hands." I realized that the army was in the area. I went to the room where Mahmud was and saw that he was already up and dressed and holding his cell phone. He asked me where the army was, and I told him that based on the direction the voices were coming from, the army was to the east, because there weren't any sounds coming from the west and south. He tried to jump out the window, but I stopped him. He left through the door on the northern side of the house. After he left, I heard three to five shots fired one after the other. I did not know if the shots hit him. Meanwhile, somebody was calling over the loudspeaker for people to leave the houses with their hands raised. I decided to go outside with my wife and children. We opened the door on the east side, which faced the area where the army was, and went out with our hands in

the air. The soldier who was talking over the loudspeaker ordered us to come toward him. I did not notice if the loudspeaker was on the jeep or was held by one of the soldiers, because the soldiers shone the lights at us.

When we reached the soldiers, near our neighbor Amjad's house, they ordered me to go to another group of soldiers, who were near the house belonging to Qassem, another neighbor of ours. When I got close to the soldiers, a soldier ordered me to pull up my shirt and drop my pants. Then he ordered me to walk toward them. A number of soldiers were positioned near Qassem's house. There were about 30-40 soldiers. The soldiers had my two sons, Ahmad and Amin, stay near the jeep. Soldiers led my wife and daughters to Qassem's house. One of the soldiers kept talking to me in Arabic. He asked me, "Who left your house? Was it Mahmud? Was he the one who left your house?" I tried to deny it. He said that he would show me the film. I ignored what he said and kept denying it. He said that he would tear me apart if I didn't tell him the truth, but I stood firm. He ordered me to walk toward my house, and to go over to the pole and take a look. When I got to the electricity pole near my house, another soldier, who was in our neighbor Suleiman's house, shouted at me, "Not here, up there! Up there!" I walked over to the corner of the house, where I saw Mahmud lying on the ground. The soldier told me to bring Mahmud over, and I told him that I couldn't. Then the soldier who had spoken

79. The testimony was given to 'Atef Abu a-Rob at the witness's home on 3 December 2004.

with me earlier from below Suleiman's house told me to go over to him. He stood there with another 15-20 soldiers.

When I was about ten meters from them, one of the soldiers said, "Go and drag him over." I told him that I had a slipped disc and wasn't able to drag him. The soldier insisted, so I went over to Mahmud. He asked me to drag him to them so that they could give him first-aid. I told him that I can't. I tried to lift him up, but I couldn't. On my way back, my neighbor, Suleiman Qasrawi, came and the two of us went over to him. The soldier ordered us to bring him the cell phones. I gave one of the cell phones to the soldiers before Suleiman arrived. When Suleiman arrived and we tried to pick Mahmud up, he found a pistol in Mahmud's pocket. He held the pistol and told the soldiers, "He has a pistol!" The soldier ordered him to bring him the pistol. Suleiman went over to the soldiers, holding the pistol. After he gave them the pistol, he came back to me and told me that the soldiers insisted that we drag him over. Suleiman went over to Mahmud, and I heard Mahmud say that he does not have an ID card. Then Suleiman walked to the soldiers and came back to me.

We went over to Mahmud. He leaned on us, and said that the soldiers might give him first-aid. Suleiman and I walked with Mahmud leaning on us, his arms around our shoulders and our hands supported his legs, so that he sat on our arms, like on a chair. When we got halfway between my house and Suleiman's house, a soldier who was on the south side of my house shouted, "Put him down." We set him down on the ground. Another soldier, who was under Suleiman's house, shouted at us to bring him over, and we continued to walk toward

Suleiman's house. When we were a few meters from Suleiman's house, the soldier ordered us to put him down. He ordered Suleiman to go over to Mahmud and get his cell phone, in addition to the one that I took from him before Suleiman arrived. Suleiman took the cell phone and told the soldiers that the guy said his name was Mahmud a-Dab'i.

The soldiers told Suleiman to leave, and he did. I walked away with the soldiers' guns aimed at me. I walked about 20-30 meters and then heard four or five shots. When I looked, I saw Mahmud's body jump up a bit. I stopped in the middle of the road. One of the soldiers called to me in Arabic, "Come here!" I went back to the soldiers. One of them said, "Mahmud has a wallet, go bring it and see what is inside!" I went over to Mahmud and saw that he was dead. He had been hit in the head, and blood was splattered on the ground. I searched him, but did not find the wallet. I told the soldiers that I didn't find anything. The soldier told me, "Go home and look for the wallet." I went and found it on the ground where he had fallen the first time. I gave the wallet to the soldiers. One of the soldiers opened it, took out some papers and notepads, and counted the money. There was more than NIS 450. I don't remember how much exactly. He told me, "Take the money and give it to his widow. If you continue to act as you have, you'll pay with your life."

At the beginning, Mahmud had been wounded lightly in the neck, which was not bleeding. He was bleeding lightly from the back of his head. He spoke in a normal way to Suleiman and me. He was killed when they shot him in the head, which lay there shattered, with several holes in it.

Testimony of Suleiman Ahmad Muhammad Qasrawi, 50, married with five children, teacher, resident of Raba, Jenin District⁸⁰

My house is located near the western entrance to Raba on the right-hand side, if you are coming from the village of al-Zababda. Around 5:00 A.M. this morning [Friday, 3 December], I was at home and heard strange sounds from beneath the house. There was lots of noise and voices speaking Hebrew. I did not know what was going on because I don't understand Hebrew. I was sure, though, that it wasn't Arabic that I heard. I also heard the sound of a car engine. A few minutes later, I said morning prayers and went back to bed. I thought nothing special had happened, so I didn't wake up my sons.

Around 5:15 A.M., I heard an explosion from below the house and six or seven gunshots. My sons and my wife woke up. We all went to the living room. We knew that we had to leave the house in such a situation. We got dressed, and then somebody called out on a loudspeaker to turn the lights out. I turned out the lights. Then I heard an explosion far from the house.

Around ten minutes later, around 5:30, I heard knocking on our door. I heard somebody tell us to open the door. I asked who it was, and the soldiers shouted: "Open the door." When I opened the door, I saw about ten soldiers standing on the steps. One of them asked me to gather the whole family together in one room. We all went into a bedroom. The soldiers came in and some thirty soldiers followed them in. They told me to open the door leading to the roof. Most of the soldiers went onto the roof, and about ten soldiers remained inside the house.

After the soldiers spread out around the house and on the roof, one of the soldiers called to me, "Come here!" One of the soldiers went down the steps with me. He and I went toward the southeast corner of my house, and he pointed to the house of my neighbor, Tayil al-Bazur, and said to me: "There is someone there and I want you to bring him over!" I walked to al-Bazur's house. As I did, I saw Tayil standing outside his house. I said to him, "Come here. They want you!" He replied: "They don't want me. They want a wounded, young, wanted man who is near the corner of the house." Tayil and I went over to the wanted man and saw him lying on the ground. We tried to pick him up, but we were so frightened and nervous that we couldn't lift him.

While trying to lift him, I noticed that he had a pistol inside his pants. I took the pistol and raised it so that the soldiers could see it, and I shouted out that he had a pistol. One of the soldiers told me to bring the pistol to him. I took it and walked toward the soldiers who were under my house. While I was walking, the soldier told me twice to throw the pistol down, and then to proceed toward him and pick it up. When I was about five meters from the soldiers, one of the soldiers ordered me to throw down the pistol. When I threw the pistol, I told the soldier that we couldn't drag the man. The soldier asked me to bring over the man's ID card. I went back to the guy, who had been lightly wounded in the neck – I think it was on the right side. I told him that the soldiers wanted his ID. He told me that he didn't have it with him. I went back to the soldiers and told them that he did not have his ID. The soldier

80. The testimony was given to 'Atef Abu a-Rob at the witness's home on 3 December 2004.

who had spoken with me before told me to go back and bring the wounded man over.

I went back to the guy. Tayil was standing alongside him. We picked him up. On the way, soldiers in the other houses began to yell at us, and ordered us to set him down on the ground. We put him down, midway between my house and Tayil's house. The soldier who was under my house shouted to me to bring him over. I told him that I didn't know which of them I should listen to. He said, "Do what I say, and the others will keep quiet." We picked him up again and carried him to a distance of about 10-12 meters from the corner of my house, where the soldiers were standing. One of the soldiers told me to put him down. We set him down on the ground. The soldier told us to go over to him. The two of us walked toward the soldier. He ordered me to lift up Mahmud's clothes. I refused because it was embarrassing, and my religion forbids it. I told the soldier that he was lying on the ground. The soldier told me that he had a cell phone in his pocket, and that I should bring it to him. I went over to the wounded guy and asked him if he had a cell phone. He said it was in his pocket. He told me, "Make it easier, and tell them that my name is Mahmud

a-Dab'i." I took the cell phone from Mahmud's pocket. He also had a pack of cigarettes and a lighter in his pocket. I gave the things to the soldier, and told him that the man's name was Mahmud a-Dab'i.

The soldier took the cell phone and made a call with it. Then he shouted, "Come here!" He took me behind the stairway, and told Tayil to go toward the house of our neighbor 'Abdallah al-Bazur. Less than a minute passed, and then I heard five or six shots. Then I heard the soldier who had spoken with me shout, "Enough." The shooting stopped. He told me to go home. I went to the room where my sons and wife were. The soldiers were still inside the house. One of the soldiers told me that they would leave the house in another half an hour. In less time than that, the soldiers left the area.

I quickly went to the window to see what had happened to the wounded guy. The soldiers were still around. I saw the man lying on the ground. Around 7:15 A.M., the army left. Immediately, I went over to the guy and saw that he was dead. He had been shot in the head. There were parts of his brain and skull [on the ground] and lots of blood around the body.

Response of the IDF Spokesperson

13.07.05

ו' תמוז תשס"ה



IDF Spokesperson's response

Since September 2000, the State of Israel finds itself in an unprecedented state of Palestinian terror. As a result, the IDF is constantly engaged in mortal combat against Palestinian terrorism. During this period, more than 20,000 terror attacks were carried out by different Palestinian terror organizations, murdering 1,047 Israeli citizens and foreign residents and wounding an additional 7,154. This battle takes place under extremely complicated conditions: in populated urban areas; against well-armed terrorists which exploit the fact that they operate from amongst civilian populations; and against terrorist organizations which systematically violate moral and legal norms.

As part of Israel's struggle in defending its citizens, the IDF adopted a policy of arresting wanted Palestinians. These arrests are made only after a thorough collection of intelligence information and only in specific cases, while every effort is made to prevent harming innocent civilians as well as preserving the welfare of those being arrested, it should be made clear that before every operation, meticulously detailed briefings are held, during which all possible case scenarios are reviewed, while at the same time the rules of engagement are emphasized.

Unfortunately, the fact that Palestinian terrorists use civilian infrastructure and hide behind the innocent has caused the Palestinian population to pay a high price in the last four years, particularly because of the unwillingness of the Palestinian leadership to take measures against the terrorist infrastructure.

Despite these difficult realities, the IDF remains levelheaded in its actions against terrorist organizations, remaining sensitive to the well-being of innocent civilians and making a constant effort to abate their suffering. Furthermore, **in complete contrast to the claims found in the report**, even when facing the cruelest terrorists, the IDF's actions are well measured. The preference of the security apparatus is to apprehend the wanted terrorists and prosecute them, without endangering security forces or the civilian population in the area.

We would like to stress that there is no truth whatsoever to the claims in the report accusing the IDF of implementing a policy in which assassinations of wanted terrorists take place in

the guise of standard arrest operations. The rules of engagement strictly prohibit engaging fire towards wanted operatives during an arrest, as long as they do not jeopardize the lives of the arresting forces. The rules of engagement also apply once the wanted terrorists have surrendered.

In relation to the claims regarding the Military Advocate General's (MAG) policy not to open a military police investigation into every incident automatically when there is a claim that the deaths of Palestinians were caused by the actions of IDF soldiers: References to this claim have been elaborated upon in different forums on numerous occasions in length and particularly before "B'tselem" representatives; we will therefore address this claim in short.

Firstly, it is important to note that **any and all claims or information regarding the death of innocent civilians or terrorists from IDF fire that was carried out in a way not consistent with the rules of engagement are handled and investigated thoroughly and with all due gravity and severity.**

Under the current security situation, the initial tool of inquiry is the **operational investigation**. This inquiry, as a rule, is carried out a short period of time after the incident in question and in most cases is performed by a high ranking military official (brigade commander and higher). It is important to note that when the Palestinian violence first erupted in September 2000, the question of whether or not it would be correct to order an automatic military police investigation in every incident of Palestinian death came up. The conclusive finding of the MAG, based on theoretical and practical grounds, was that such a policy was unnecessary and impractical in a situation of ongoing combat.

On the theoretical plain, the military police's investigations are to be opened in cases of suspected criminal misconduct (be it intended or negligent). Given the current military realities of West Bank and the Gaza Strip, the death of an innocent Palestinian is not an immediate indication of criminal misconduct on the part of the soldiers involved in the incident. For example, an incident wherein a Palestinian civilian is killed in the crossfire between IDF soldiers and terrorists is by no means necessarily an indication of criminal misconduct on the part of the soldiers.

On the practical plain in combat in the West Bank and Gaza Strip, there is often a great deal of difficulty involved in terms of obtaining primary evidence and testimonies, rendering it difficult for the investigation to end conclusively. In most of the cases, those conducting the investigation are denied access to the body in question for an autopsy and there is no way to contact or, should the first problem be solved, receive the cooperation of the Palestinian witnesses. Additionally, there is a difficulty in recreating the scene of the incident or even determine whether the civilian or terrorist was killed by IDF or Palestinian fire. All these elements make it very difficult to conduct a criminal investigation under these circumstances.

Furthermore, the inspection and investigation procedures do not end with an operational investigation. The operational investigations are transferred to the MAG and are reviewed along with other materials related to the events, if they exist (petitions from human rights organizations, press releases, etc.). If, from these materials it is made evident that criminal behavior on the part of the soldiers involved, the MAG orders the opening of a Military Police Investigation.

In particularly severe cases, the MAG has ordered the opening of a Military Police Investigation before the initial investigation has been completed.

It is important to emphasize that the IDF works to accelerate and make efficient the procedures of clarification and the investigation, and they are not immune from criticism.

Betselem's report deals with four specific cases, several of which have already been investigated and dealt with. The following information details the status of each case:

The circumstances surrounding the death of Muhammad Diriyveh (Apr. 11, '04) in Kafr Aqraba:

Following an information request that we received on this subject, the IDF conducted an investigation to evaluate the circumstances surrounding Diriyveh's death. Following the investigation, the IDF decided that there was not sufficient cause for the Military Advocate General to launch an inquiry.

1. **The circumstances surrounding the death of Muhammed Mahmud Abu Rag'eb (Mar. 2, 2004) in Bita:**

After having received several information requests on this subject, the IDF conducted an investigation to evaluate the circumstances surrounding Rag'eb's death. The investigation revealed that a night operation had taken place in order to apprehend two suspected terrorists from the village of Yatta. During the operation, one man was seen fleeing from a building surrounded by IDF forces, carrying a suspicious object. The IDF force had sufficient reason to believe that the fleeing individual was an armed suspect, and therefore opened fire on him, causing his death. Later, the individual was identified as Muhammed Mahmud Abu Rag'eb. Despite the tragic nature of the event, and in light of the operational setting described above, the IDF decided not to open a military police inquiry into the event.

2. **The circumstances surrounded the death of Husni Draghmeh (Apr. 24, '04):**

The claims are currently under investigation.

3. **The circumstances of the death of Abd Ar-Rahman Hamdan Kmail (Dec. 3, '04):**

The claims are being investigated.

בצלם

בצלם מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)

بتسيلم - مركز المعلومات الإسرائيلي لحقوق الإنسان في الأراضي المحتلة

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