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CAPTIVE CORPSES

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In those days, they shall say no more, "The fathers have eaten sour grape, and the children's teeth are set on edge". But every one shall die for his own iniquity; every man that eateth the sour grape, his teeth shall be set on edge. Jeremiah, Chap. 31, verses 28-29

Introduction

This report deals with one of the lesser known aspects of Israel's policy against Palestinians in the Occupied Territories: refusal to return bodies of Palestinians killed in bomb attacks they initiated or in clashes with the IDF.¹ As a result of Israel's policy, the families of these persons are unable to have a funeral and bury their bodies in a cemetery in their community. Israel holds these bodies, which are buried in what are called "cemeteries for enemy dead." The military rabbinate is entrusted with the responsibility for these cemeteries, of which there are at least two - one near the Adam Bridge, in the Jordan Valley, and the other near the Daughters of Jacob Bridge, in the Golan Heights. In each, the Israeli authorities bury the bodies in a demeaning and shameful manner.

Underlying this report is the belief that a sharp distinction should be made between the heinous acts attributed to most of those killed, which HaMoked and B'Tselem utterly condemn, and the right of the bereaved families to hold a funeral and establish a gravesite for their loved ones. Israel's policy, like other measures it takes against the families of perpetrators of bomb attacks, such as demolition and sealing of their homes, constitutes collective punishment of innocent persons. This punishment is immoral and contravenes international humanitarian law. Also, Israel's treatment of the bodies it holds violates the standards set by the laws of war for the handling of the bodies of enemy dead. The intransigence and disdain characterizing the state's policy is particularly problematic given the emphasis that the Israeli public places on respect for the dead and the concern the state demonstrates for Israeli families whose sons have fallen or are missing in action.

The report discusses several issues related to Israel's refusal to return the bodies. The first section looks at the mirror image of the policy, i.e., the attitude of the public and the state, in various contexts, to death, family loss, and bereavement. The second section presents the principal elements of the policy since the beginning of the occupation. Section three examines the various motives for the policy from a factual, legal, and moral perspective. The fourth section presents two cases illustrating how Israel identifies and buries the bodies. Section Five examines the effect of the policy on the Palestinian families involved and presents several testimonies. The report concludes with a summary and recommendations.

¹ The report includes three cases that do not fit into these two categories: the case of Badran Abu-'Asba, who was apparently killed when preparing explosives in his home, and the case of 'Adel and 'Emad 'Awadallah, brothers who were killed in an action initiated by the IDF.

The principal sources of information for the report are the following:

- A. Testimonies of the families affected.
- B. Petitions to the High Court of Justice and related correspondence with the authorities.
- C. Media reports and articles.

It should be noted that the IDF Spokesperson, the Chief Military Rabbinate, and the Ministry of Defense did not respond to repeated requests for updated information and clarifications.

A. Israeli Society's Attitudes toward Bereavement and Burial

Coping with death and the dead are central motifs in all cultures. This motif is especially prominent throughout Israeli society, both because of the centrality of Judaism in public affairs and because of the continuing hostilities that cause heavy loss of life. This prominence is reflected in the intensive attention to matters like respect for the dead and everything that entails, consecration of burial sites and perpetuating the memory of the dead, bringing fallen IDF soldiers held by the enemy home for burial, and the attitude toward missing soldiers. These matters periodically appear on the national agenda, mostly when disputes erupt, but also at times of national and religious holidays. As we shall see, Israeli society deals with these loaded issues in various contexts and in a manner involving various sectors of society.

1. Soldiers' Bodies held by the Enemy

Israel has a long and honored tradition of expending enormous effort to return soldiers' bodies to Israel for burial. "We do not leave injured soldiers lying in the field" is an almost sacred principle among Israelis, and has been expanded to include "dead bodies in the field." For example, in the prisoner exchanges after the Six Day War, Israel transferred to Syria 572 prisoners-of-war in exchange for one prisoner-of-war and three bodies of IDF soldiers; in April 1968, Israel transferred twelve Jordanian prisoners-of-war in exchange for the body of one Israeli soldier; in 1975, Israel received, in exchange for the release of ninety-two prisoners held in Israel on security matters, thirty-nine bodies of IDF soldiers killed in the Yom Kippur War; in May 1998, Israel made a deal with the Hizbullah, exchanging the body of sea commando Itamar Ilya for sixty Lebanese prisoners and the bodies of forty Hizbullah combatants.² These deals give the clear message that bringing fallen IDF soldiers home for a proper and dignified burial is no less important than returning live prisoners-of-war.

2. Perpetuation of the Soldiers' Memory

Israel places great importance and invests substantial resources in perpetuating the memory of Israelis who have fallen while defending the country. The military cemeteries are important national sites. As such, these cemeteries broadcast the message that dying in service of the country is exalted and meaningful. In addition to the military cemeteries, dozens of sites and monuments perpetuating the memory of soldiers from various corps and units are situated throughout the country.

In recent years, bereaved families whose loved ones are buried in military cemeteries have increasingly called for the right to engrave on the gravestone an inscription other than the standard uniform inscription. They are waging a battle against the Ministry of Defense, which opposes the change, on this point. This ongoing battle indicates the tension in Israeli society between collectivism and individualism. The High Court of Justice ruled that the value of personal mourning overrules the value of total uniformity and equality of the inscription on soldiers' gravestones in military

² These data were taken from the IDF Website.

cemeteries,³ which led the Knesset to amend the relevant law.⁴ In any event, both those who favor a uniform inscription on the gravestone and those who oppose it affirm the centrality of the act of burial and perpetuation of the memory of those who have died.

3. *Collecting and Removing Body Parts after Bomb Attacks*

Following lessons learned from the bombing on Bus Line 405 in 1989, a head of the *Hevra Kadisha* [burial society] established an organization of ultra-orthodox Jewish volunteers - *Hesed shel Emet*. The organization's objective is to bury according to Jewish tradition the body parts of persons killed in bomb attacks. Its members were of the opinion that the military rabbinate had not been handling these burials efficiently. The organization works in cooperation with the IDF and the Israel Police Force, and receives wide support and appreciation of the Israeli public for its efforts.⁵

4. *Battle of the Ultra-Orthodox Jews*

Israel's ultra-orthodox Jews wage a persistent political battle to incorporate within Israel their perception of respect for the dead. They oppose paving roads and conducting archeological excavations where bones indicating the presence of a Jewish burial site have been found. In many instances, they succeed. The significant point relating to the matters discussed here is that the public considers legitimate their contention that respect for Jewish dead, even those who died thousands of years ago, must be protected even if it creates difficulties in the present.

5. *The Grave of Baruch Goldstein*

On 25 February 1994, Israeli settler Baruch Goldstein murdered twenty-nine Muslim worshippers in the Cave of the Patriarchs, in Hebron, and was killed during the course of his attack. Goldstein was buried in Kiryat Arba's central square. A monument praising him was placed alongside the gravesite. The Civil Administration did not intervene during construction of the site, even though it was established without the appropriate building permit. The Civil Administration granted the permit retroactively.

The site provoked protest and anger among portions of the Israeli public, leading to the Knesset's enactment, on 2 June 1998, of Prohibition on Placing Memorial Monuments in Memory of Perpetrators of Terrorist Acts Law, 5758-1998. This law, which was explicitly enacted in response to the monument in memory of Goldstein, does not direct that the grave be removed to another site, or that it or the gravestone be harmed in any way, but that the surrounding symbols (like pavement, bookcases, and candles), which turn the gravesite into a shrine, be removed.⁶

³ HCJ 5688/93, *Wichselbaum v. Minister of Defense*, *Piskei Din* 49(2) 195.

⁴ Military Cemeteries (Amendment No. 3) Law, 5756-1996. The law provide that a personalized inscription may be added to the gravestone.

⁵ See, *Kol Ha'ir*, 28 October 1994.

⁶ On 5 November 1998, Goldstein's parents petitioned the High Court of Justice opposing the state's intention to remove these markings. The High Court of Justice has not yet ruled on the petition.

The legislature's action in this matter leads to the conclusion that, even where persons committed a heinous terrorist act, prohibiting establishment of a gravesite and gravestone or harming those that already exist is inconceivable. Such action is unimaginable because of the importance given to ensuring respect for the dead and the feelings of their families.

6. *Desecration of Cemeteries*

The Israeli public decries desecration of cemeteries, and the Knesset enacted a special provision in the Penal Law dealing with the desecration of cemeteries.⁷ Also, whenever Jewish cemeteries abroad are desecrated for anti-Semitic reasons, almost every public official in Israel protests vociferously.

7. *Court Rulings*

Israeli courts have ruled several times and in varied contexts on the issue of "respect for the dead" and the rights of their families relating to burial arrangements and perpetuation of their memory. One of the conspicuous conclusions that may be drawn from these rulings is that the fundamental value of human dignity includes within it respect for the dead. In the words of Justice Menachem Alon:

Human dignity is not only a matter for the period of the life of the individual, but also relates to the time after the person passes away... This fundamental value also includes respect for the dead, respect for the family of the deceased, and even respect for the public.⁸

Justice (now President of the Supreme Court) Aharon Barak expressed the same idea:

Human dignity is not limited to the dignity of a living person. It also refers to dignity after death, and the dignity of his loved ones who preserve his memory in their hearts. This dignity is expressed, in part, by placing the gravestone, visiting the cemetery on memorial days and public ceremonies, and caring for the gravesite. This is the same relationship - at times rational and at times irrational - between the living and the dead, which develops the human being within us, and which gives expression to the yearnings of the soul. This is the "hand" that the living extend to the dead. This is the external expression that reflects the internal relationship between the generations.⁹

In another case, Justice Barak ruled on a petition filed by the family of a Palestinian who had been killed in a clash with the IDF. The regional commander had ordered, for security reasons, to conduct the funeral at night. The family wanted to hold the funeral during the day, as is customary. Although the court rejected the petition, Justice Barak emphasized that the authorities should refrain, as much as possible, from failing to show respect for the dead, and, in any event, denying burial is inconceivable:

⁷ Section 172 of the Penal Law relates to the unauthorized entry to a ritual and burial site, and section 174 makes it an offense to damage public buildings and monuments.

⁸ Civ. App. 506/88, *Yael Sheffer v. State of Israel*, *Piskei Din* 38(1) 87, 102, 103.

⁹ Civ. App. 294/91, *Hevra Kadisha v. Kastenbaum*, *Piskei Din* 46(2) 464, 523.

Disrespect for the dead and his family in order to safeguard security and peace should not be the first means, but rather the last... Under such circumstances, respect for the dead and his family must give way somewhat, in order to ensure security and public order. In the circumstances of the matter before us, the "giving way" that is necessary is not total. Burial of the dead is not to be precluded. The presence of the family (up to one hundred persons) is not to be precluded. The funeral and interment will be conducted according to tradition.¹⁰

In a related context, Justice Izhak Englard interprets the perspective of Jewish tradition:

Whatever the law of mourning be, placing a gravestone is in essence done in respect for the living... According to Jewish tradition, placing the gravestone is not done in respect for the deceased. Therefore, it seems that even if a person is killed while committing a crime, no fundamental preclusion exists to memorializing his name out of respect for his parents and relatives and to console them.¹¹

The conclusion of the matters presented above is that, despite disagreements and differences of belief, Israeli society as a whole considers attitudes toward the dead, respect for the dead, and the manner of burial a central, sensitive issue. On the other hand, the message that Israel gives in regard to bodies of Palestinians is that such special treatment is reserved only for Israelis.¹²

B. The Policy

In contrast to other aspects of Israel's policy regarding Palestinians in the Occupied Territories, the contours and motives of its policy on the handling of the bodies of Palestinians killed in circumstances defined as "hostile terrorist activity" are vague. The few relevant comments made by the IDF Spokesperson and the Ministry of Defense over the years have generally been laconic and uninformative.

The cases known to HaMoked and B'Tselem indicate two distinct periods of time related to this issue. The turning point occurred following the third bomb attack during the wave of suicide attacks that began in 1994.

During the period between 1967 and this turning point, there appears to be no consistent pattern on handing over the bodies to the families. Apparently, the decision was made *ad hoc*, at times completely arbitrarily.

Various factors could determine the fate of the body: the degree of perseverance of the family and its relationship, or that of the village, with the Civil Administration; intervention by a third party, like an attorney, human rights organization, or the Red

¹⁰ HCJ 3933/92, *Barakat v. OC Central Command*, *Piskei Din* 36(5) 1.

¹¹ HCJ 4763, *Hahim v. Mizkeret Batya Local Council*, *Takdin-Elion* 98 (1) 318.

¹² In light of the many cases in which families of non-Jewish IDF soldiers killed during their military service were treated with disdain and intransigence by the authorities, it can be argued that, in some degree, the respectful treatment is not provided to all Israelis, but only to Jews.

Cross; a petition to court; the severity of the incident in which the person killed was involved; the government's decision to "make a gesture" or "flex its muscles," in accordance with the current political situation; and the compassion, or lack of compassion, of the IDF regional commander.

It is difficult to estimate precisely how many bodies Israel holds from this period. The lack of information results from the refusal of the authorities to provide the figures and from the absence of systematic reporting by the print media. The following are examples in which bodies were returned, and reflect the arbitrary behavior of the authorities.

1. Ismail Hassan Salam Hamed-'Awad, resident of Yata, was shot and killed during a clash with IDF soldiers on 13 August 1977 in the area of Halhul, Hebron District. The family sought the assistance of the Red Cross in obtaining the body. The Red Cross claimed that Israel held the body and that the decision on returning the body was that of Israel alone. During contacts with the PLO relating to the exchange of prisoners, which took place in 1985, the Civil Administration promised that Hamed-'Awad's body would be returned, but Israel did not return the body. At the end of 1993, the deceased's mother, who was more than ninety years old, requested attorney Leah Tsemel to assist her in obtaining her son's body so that she could bury him before she died. Attorney Tsemel contacted the office of the legal advisor of the Civil Administration in Beit-El on 10 December 1993. She did not receive a response. In 1994, she sent five follow-up letters, which also remained unanswered. As a result, on 15 January 1995, she sent a letter to the State Attorney's Office indicating her intention to petition the High Court of Justice, in response to which the OC Central Command announced that he did not oppose handing over the body to the family.¹³
2. Ibrahim Khalil Muhammad Tamizi and Muhammad Zidan Salman Tamizi, residents of Idna, Hebron District, and Musbah Kafafi, resident of Nuba village, Hebron District, were members of an armed band, and were killed at the beginning of the intifada in a clash with IDF soldiers. Their bodies were buried in the Jordan Valley cemetery for enemy dead. In June 1994, following the intervention of MK Hashem Mahmid, the authorities returned the bodies to their families in what was called a "gesture in light of the peace process."¹⁴
3. Jamal Hamed Musa a-Zir, born in Dura village, Hebron District, was killed by IDF soldiers on 24 April 1991 when he was hiding on the Syrian border while preparing to attack Kibbutz Dan. The authorities did not hand his body over to his family, who reside in the Occupied Territories and whose identity was known to the IDF. In early 1996,

¹³ Letter of 15 January 1995 from attorney Leah Tsemel to Nili Arad, head of the High Court of Justice Department, Ministry of Justice. Pre-HCJ Petition 44/23, 'Awad.

¹⁴ The handing over of the bodies was broadcast on Israeli television's Channel One *Journal*. The broadcast upset several MKs, leading to a stormy Knesset session (session 213 of the Thirteenth Knesset, 22 June 1994).

the family requested MK Mahmud to use his contacts to obtain Jamal's body for them. In May of that year, Israel handed over the body to the Palestinian District Coordination and Liaison office, which forwarded it to his family for burial in Dura village.¹⁵

4. Ra'id Zakarneh, from Qabatiyeh refugee camp, Gaza Strip, killed himself in the suicide-bombing attack in Afula in April 1994. 'Emad 'Amarneh, of Y'abed village, killed himself in the suicide-bombing attack in Hadera that same month. Their families contacted the Civil Administration, which forwarded their remains a few days after the bombing. As a condition for the authorities' action, the funeral had to be held between 1:00 A.M. to 2:00 A.M. and no more than fifteen persons were allowed to take part.¹⁶

After the suicide bombing at Netzarim, a Jewish settlement in the Gaza Strip, on 11 November 1994, the authorities began to apply a more consistent policy, according to which it would not hand over bodies except in extremely rare cases. Before examining the motives for the policy, it should be noted that the change in policy resulted largely from the new reality that had been created following the suicide-bombing attacks, where it was impossible to punish those who physically committed the terrorist acts (as opposed to those who had given the orders). Since the November 1994 bombing, research by HaMoked and B'Tselem indicates that Israel has accumulated at least twenty-four Palestinian bodies that it continues to hold, as follows:¹⁷

Person Killed	Place of Residence	Act Leading to Death	Date
Iman Kamel Jum'ah Radi	Khan Yunis refugee camp, Gaza Strip	Attack at Binyaney Ha'ooma, Jerusalem	5 December 1994
Salah 'Abd al-Hamid Shaker	Rafah, Gaza Strip	Attack at Beit Lied junction	22 January 1995
Anwar Mahmud Sukar	Saj'ayeh, Gaza	Attack at Beit Lied junction	22 January 1995
Khalid Muhammad al-Khatib	Nusirat refugee camp, Gaza Strip	Attack at Kfar Darom	9 April 1995
'Imad Mahmud Suleiman Abu Amuneh	Shati refugee camp, Gaza Strip	Attack at Kfar Darom	9 April 1995
Labib Anwar Farid 'Azam	Karyut, Nablus District	Attack in Ramat Gan	24 July 1995
Sofiyan Salem 'Abd Rabu Tsabih	Dahariyeh, Hebron District	Attack on Bus Line 26 in Jerusalem	21 August 1995
Muhammad 'Abd a-Rahim Hassan Abu Hashem	Rafah refugee camp	Attack in Gush Qatif	2 November 1995

¹⁵ The information is based on the testimony of the deceased's brother.

¹⁶ The father of Ra'id Zakarneh provided the information to B'Tselem researcher Najib Abu-Rokaya on 30 January 1999.

¹⁷ The list was prepared for this report and is based on the independent fieldwork of B'Tselem's researchers. In addition to the persons listed, many other bodies from prior incidents have not been returned to the families. We do not have any information about these bodies.

Ribhi Ahmad Mahmud Kahalot	Jabalyeh refugee camp, Gaza Strip	Attack near Kfar Darom	2 November 1995
Majdi Muhammad Abu Wardeh	al-Fawar refugee camp, Hebron District	Attack on Bus Line 18 in Jerusalem	25 February 1996
Ibrahim Ahmad Hassan a-Sarahneh	al-Fawar refugee camp, Hebron District	Attack at Ashkelon junction	25 February 1996.
Ra'id 'Abd al-Karim Sharnobey	Burqa, Nablus District	Attack on Bus Line 18 in Jerusalem	3 March 1996
Ramez 'Abd al-Kader Muhammad 'Abid	Khan Yunis refugee camp, Gaza Strip	Attack at Dizengoff Center, in Tel-Aviv	4 March 1996
Musa Mahmud 'Abd al-Qader Ghaneimat	Tsurif, Hebron District	Attack at Cafe Apropous, in Tel-Aviv	21 March 1997
Taufiq 'Ali Muhammad Yassin	'Asireh a-Shmaliyeh, Nablus District	Attack at the Mahane Yehuda market, in Jerusalem	30 July 1997
Mu'awiyeh Muhammad Ahmad Jerarah	'Asireh a-Shmaliyeh, Nablus District	Attack at the Mahane Yehuda market, in Jerusalem	30 July 1997
Yusuf a-Shuli	'Asireh a-Shmaliyeh, Nablus District	Attack in Jerusalem's city center	4 September 1997
Bashar Sawalheh	'Asireh a-Shmaliyeh, Nablus District	Attack in Jerusalem's city center	4 September 1997
Khalil Ibrahim Tufiq a-Sharif	Nablus	Attack in Jerusalem's city center	4 September 1997
'Adel 'Awadallah	al-Bireh, Ramallah District	Attack initiated by Israeli security forces	10 September 1998
'Emad 'Awadallah	al-Bireh, Ramallah District	Attack initiated by Israeli security forces	10 September 1998
Suheib 'Abd a-Rahman 'Abd a-Rahim Temraz	Jabalyeh refugee camp, Gaza Strip	Attack at Gush Qatif junction	29 October 1998
Yusuf Muhammad 'Ali Zughayer	'Anata, Ramallah District	Attack at the Mahane Yehuda market, in Jerusalem	6 November 1998
Suleiman Tahayneh	Silat al Harthayeh, Jenin	Attack at the Mahane Yehuda market, in Jerusalem	6 November 1998

C. The Motivating Factors

What is the reason behind the refusal to hand over the bodies? What do the Israeli authorities hope to achieve? In the response given to the parliamentary query of MK 'Abd al-Malek Dahamsheh concerning the return of the body of a Palestinian who apparently was killed while preparing an explosive device in his home, Minister of Defense Yitzhak Mordechai stated:

The General Security Service opposes returning the body of Badran Abu-'Asbeh, who was killed while attempting to prepare a destructive explosive device, just as it opposes in general returning terrorists' bodies.¹⁸

The Defense Minister said nothing more. Statements of defense officials and politicians and legal developments offer a few possible explanations for this policy.

¹⁸ Knesset Record, session 211 of the Fourteenth Knesset, 3 June 1998. It should be noted that the authorities recently returned the body of Abu-'Asbeh. The reasons for the return are unclear.

1. *Preventing the Funeral*

Israeli security officials periodically argue that bodies of Palestinians killed in hostile acts should not be returned because of the reverence the Palestinian population gives to them. Their funerals are prone to enflame passions, create massive disturbances, and may lead to injury. The argument that such security considerations prevent Israel from meeting its fundamental humanitarian obligations is unreasonable and illegitimate. It is unreasonable because, in most cases, the IDF no longer directly controls the areas in which the funerals are to take place. For this reason, confrontation with the local population is not likely. It is illegitimate because, even if such security considerations are the reason that the General Security Service “opposes in general returning terrorists’ bodies” (in the words of the Minister of Defence), security considerations should be balanced against respect for the dead and his family. In any event, burial of the dead in the presence of his family should not be totally forbidden since it would result in total harm to the family (see *Barakat v. OC Central Command*).

2. *Exchanges*

During Israel’s occupation of South Lebanon, exchange of bodies with the Hizbullah has become commonplace, like the exchange of living captives, discussed above. However, there is no precedent for any sort of a deal between Israel and Hamas or the Islamic Jihad, on whose behalf most of the Palestinians whose bodies Israel refuses to hand over acted. In any event, there is no information that either of these organizations is holding the body of an Israeli soldier or citizen.

As regards the legitimacy of holding a body as a bargaining chip, the High Court of Justice recently ruled on the matter. In this case, the family of Hassan ‘Abas, through HaMoked, petitioned the High Court of Justice to obtain his body.¹⁹ ‘Abas had been killed in the bomb attack he perpetrated in Jerusalem’s city center in October 1994. The State Attorney’s Office responded that returning the body depended on discovering the body of Ilan Sa’adon, an IDF soldier murdered by a terrorist group in 1989 whose body had not been found. Attorney Nili Arad, who represented the state, argued that the state does not take lightly the family’s desire to respect the dead, but when humanitarian considerations conflict with security considerations, the latter control.²⁰ According to the logic behind this argument, respect for Palestinian dead constitutes a humanitarian consideration, while respect for Israeli dead is a security consideration. The three-judge panel found the state’s contention reasonable and decided not to intervene.²¹

¹⁹ HCJ 6807/94, *‘Abas v. State of Israel*. The testimony of Hassan ‘Abas’s father is presented in Section Four below.

²⁰ Reported by Moshe Reinfeld in *Ha’aretz*, 3 February 1995.

²¹ Supreme Court President Meir Shamgar wrote for the court: "We did not find any basis for this court to interfere in the state's considerations, which do not reveal, under the circumstances of the matter, the lack of reasonableness as contended by petitioner's learned counsel."

In July 1996, the body of Sa'adon was found, and six months later, following HaMoked's requests, the authorities handed over the body of 'Abas for burial in Gaza.²²

Some time prior to discovery of Sa'adon's body, HaMoked contacted the Ministry of Defense again, this time to request return of the body of Sofiyan Tsabih, who died in the suicide-bombing he perpetrated on Bus Line 26 in Jerusalem in August 1995. As in the previous case, the Ministry of Defense linked its willingness to meet the request with finding Sa'adon's body.²³ Even after Sa'adon's body was located, the Ministry of Defense continued to refuse to hand over the body. The family, through HaMoked, is about to petition the High Court of Justice to require the state to return the body.

On the one hand, the desire to make a future deal with the enemy by exchanging bodies of missing Israelis for bodies of Palestinians held by Israel may be the motive behind the policy. On the other hand, the lack of consistency evident in the Tsabih case, the lack of a precedent for such a deal with organizations like the Hamas and the Islamic Jihad, and the lack of Israeli bodies held by them for which Israel would want to negotiate, make it doubtful that this is the principal motivation for the policy.

Even assuming that this is the main motivation, and without considering its reasonableness, the act itself is morally unacceptable and contravenes the Fourth Geneva Convention, article 34 of which stipulates, "The taking of hostages is prohibited." The authorized commentary on the Convention, by Jean Pictet, does not even contemplate the use of bodies as hostages, but does state that, "the word 'hostages' must be understood in the widest possible sense."²⁴

MK Yossi Sarid spoke well on this matter, in the context of a comparable case, in 1985:

Traders in bodies descend to the lowest level of human morality. Where the dead are shown no respect, never will there be respect for the living.

Mr. Prime Minister: no condition, no exchange deal, no bodies for bodies. Let each side do whatever it has to do in accordance with its humane duty.²⁵

3. *Punishment*

²² According to newspaper reports, Sa'adon's body was found following information provided by the Palestinian Authority. In exchange, Israel handed over the body of 'Abas and another Palestinian. The IDF Spokesperson denied any deals with the Palestinian Authority. See, *Ha'aretz*, 30 January 1997.

²³ In his response of 19 March 1996 to HaMoked, Haim Israeli, on behalf of the Minister of Defense, wrote: "I checked with the competent authorities in the army and their position is that they oppose handing over the aforementioned body. Special attention is directed to the decision in HCJ 6807/94" [*'Abas*].

²⁴ J. Pictet, *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 230.

²⁵ The comments were made during deliberations on the Israeli government's refusal to return the body of Fahed Qawasmeh, a PLO activist from Hebron, who was apparently killed by Palestinians, until the PLO provided information on missing Israelis. Knesset Record, session 40 of the Eleventh Knesset, 2 January 1985.

Examination of the patterns of Israel's response to bomb attacks or to major riots by residents of the Occupied Territories leads to the conclusion that punishment is the primary motivation in not returning the bodies. Those punished are not the guilty, nor even suspects, but rather innocent persons subjected to collective punishment.

Imposing a curfew or closure on a village where an attack occurred or where the family of the perpetrator lives is one of the most common practices of the Israeli occupation and implements the collective punishment approach. An even harsher application of this approach is the demolition or sealing of houses of families of persons who perpetrated attacks. The refusal to hand over bodies to the families is grounded, apparently, on the same concept of punishment.

The official pretext for collective punishment is that "it deters potential terrorists." However, the relationship between the different types of collective punishment and the prevention of terror has never been proven. Moreover, the assumption that collective punishment perpetuates hatred and violence and terror is no less likely to be true than the theory that collective punishment deters.

Furthermore, even if collective punishment were proven to be effective, it is unjustifiable under any circumstances in that it violates human rights and international humanitarian law. The Fourth Geneva Convention, in article 33, stipulates unequivocally that:

No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

A similar provision is found in article 50 of the Hague Regulations, which are part of customary international law, i.e., they apply even though its provisions have not been explicitly incorporated into domestic law. The principle that a person is responsible, and may be punished, only for an offense that he or she has committed lies at the foundation of every legal system.

4. Punishing the Dead

It is difficult to ignore the feeling that the intent of Israel's policy is to punish the perpetrator post-mortem. Someone who committed suicide or was killed by the defense forces cannot be brought to trial, but the desire to retaliate and revenge remains strong. These feelings are apparently directed at the body, as the physical representation of the dead. As understandable as this psychological need may be, a civilized society does not inflict retribution on dead bodies, and punishes individuals only through the courts in accordance with due process. For good reason, denial of burial is not one of the punishments found in Israel's penal code.

D. Handling of Bodies in Israel's Possession

The first section presented a few examples illustrating the great importance Israeli society attaches to respect for the dead and to the mourning and grief of bereaved families. Do these attitudes carry over to Israel's treatment of Palestinians who have

been killed and of their families? Despite the collective punishment policy described above, does Israel treat the Palestinian bodies it holds in a manner consistent with respect for the dead and in accordance with international law?

The following two cases indicate that the answer to these questions is a categorical no. Contrary to the treatment given to dead and missing Israeli soldiers, Israel acts disdainfully and negligently in identifying and burying Palestinian bodies and obtusely toward the families of those killed. Also, this treatment fails to meet the standards of international humanitarian law.

1. *'Issa 'Abd Masalam Zawahareh*

In 1992, the mother of 'Issa Zawahareh, 'Alia Abirijeh, 74, a Palestinian residing in Jordan, sought the assistance of HaMoked in finding out what happened to her son. When he was sixteen, 'Issa ran away from his home in Jordan following a family feud. On 5 February 1990, a Palestinian organization in Lebanon informed her that 'Issa had been killed in a clash with IDF soldiers two days earlier. However, according to Jordanian television reports, 'Issa had only been wounded and was subsequently held captive in Israel. Two Palestinian prisoners who had been held in Israel claimed that they had seen 'Issa in the hospital at Ramle Prison.

Following the mother's request for assistance, HaMoked checked with the IDF and the Israel Prisons Service. These checks provided no information about 'Issa. In November 1992, HaMoked's attorney, Andre Rosenthal, petitioned the High Court of Justice to order the state to inform the mother about what had happened to her son.²⁶ In its response to the court, the State Attorney's Office confirmed the clash on 3 February 1990 in South Lebanon, during which two terrorists were killed. However, the state indicated that the two were not identified. As for Zawahareh, attorney Yochi Genesin, senior assistant to the State Attorney, who represented the state, claimed that he was not being held by any state body and had not been tried in Israel. The State Attorney's Office also contended that, "A check made with the military rabbinate showed that no body bearing the name of the missing person was found in the possession of the IDF and none had been buried by the IDF."²⁷

Following the High Court of Justice's order to continue the search, the state suddenly indicated that its answer to the petition had been wrong: Zawahareh was in fact one of those killed in the hostilities in Lebanon and had been buried in the cemetery for enemy dead located near the Daughters of Jacob Bridge. There also was a picture, ostensibly of Zawahareh, taken before burial. The mother was requested to identify the body in the picture, but identification was not possible because rabbinate personnel did not clean the blood-smearred face before the photo was taken. HaMoked then requested a DNA test of the body to confirm the state's contention that the body was that of Zawahareh. After several hearings, the state agreed to open grave number 245, where Zawahareh was supposedly buried, and remove the body.

²⁶ H CJ 5267/92, *Abirijeh v. Minister of the Interior and the IDF Commander in South Lebanon*.

²⁷ *Ibid.*, Statement on Behalf of the State Attorney's Office, 31 January 1993.

Attorney Rosenthal was present on behalf of the petitioners when the body was removed on 8 August 1994. In his affidavit to the High Court of Justice, Rosenthal stated:

A bulldozer opened grave number 246, which is located in the row containing grave number 245. The body was buried at a depth of around fifty centimeters. The jaw protruded from the plastic sack containing the body... The rabbi who was there could not identify the body; the number of the body recorded on the sack with a felt-marker had disappeared over time. There was no tag or other external identifying mark.

The reason that there was no metal tag, according to the rabbi, is that animals in the area eat everything. The bulldozer turned to plot 245. The rabbi stated that the plots had been marked in 1993, about a year before it was opened. It was impossible to identify the number of the body by the inscription on the sack. There were two bodies in the plot. The bulldozer turned to grave 244 to check if it was empty, and it was.²⁸

It should be noted that the Office of the Military Advocate General, in its response to attorney Rosenthal, did not deny any detail of his description, yet explicitly contended that the burial procedures for enemy dead are "satisfactory."²⁹

Based on the DNA test, which was conducted at a laboratory in the United States, the body removed from grave 245 is not that of 'Issa Zawahareh.³⁰

In December 1995, the State Attorney's Office unexpectedly announced that the two terrorists killed in the clash in Lebanon were carrying identifying documents, which were in the IDF's possession. Consequently, there was positive identification of the bodies. According to attorney Genesin, the two persons killed had been buried in graves 245 and 246. The body that had been removed, the State Attorney's Office contends, belongs to grave 244 and is not involved in the case before the court. The reason? The bodies had moved. According to attorney Genesin, "Movement of the bodies resulted apparently from movement of the ground during all the years that had passed." As a result, she concluded, "There is no longer any reason to open the three graves to perform DNA tests on all three of them."³¹

Another relevant point mentioned in the letter is that, even though the clash occurred on 3 February 1990, the burial took place eleven days later, on 14 February. The State Attorney's Office explained this time gap in a statement submitted to the High Court of Justice in 1997. According to this document, "for these and other reasons, the terrorists were buried later..."³²

²⁸ *Ibid.*, Statement on Behalf of the Petitioners, 14 February 1997

²⁹ Letter of 13 August 1994 from Ro'i Belcher, deputy consulting officer on behalf of the Military Advocate General's assistant on international law, to attorney Rosenthal.

³⁰ The test was conducted in the United States because the forensic laboratory at Abu Kabir lacked the necessary technical means to compare the tissues. Dr. Robert Kirschner, of the University of Chicago, did the test on behalf of Physicians for Human Rights.

³¹ Letter of 20 December 1995 to attorney Rosenthal.

³² *Abirijeh*, Statement of the State Attorney's Office, 31 March 1997.

In July 1998, samples for DNA testing were taken from the bodies buried in graves 244, 245, and 246 to determine if Zawahareh is one of them. According to the findings of the Forensic Institute at Abu Kabir, none of the three bodies is that of Zawahareh.³³ Furthermore, the IDF's letter to attorney Rosenthal leads to the conclusion that one of these three bodies is not the one that was examined the first time.³⁴ That is, another body "was lost" while the matter was being checked.

The Zawahareh case illustrates the obtuseness, disdain, and negligence inherent in Israel's handling of Palestinians who are dead or missing as a result of clashes and attacks. Firstly, the changing versions stated by the State Attorney's Office concerning the fate of Zawahareh and the piecemeal manner in which information was disclosed indicate gross negligence at best, and an attempt to deceive at worst. Secondly, the contention that the "bodies had moved" assumes that bodies 244 and 245 not only moved, but in fact exchanged places. This contention apparently was made in an attempt to cover-up the negligence that had accompanied the entire process.³⁵ Thirdly, the case shows that, as a rule, the authorities do not expend minimal effort to identify those killed, such as by taking teeth X-rays, or by making sure that the bodies can be located in the future, for example by using indelible markings on the sacks, metal tags, and by marking each grave when the body is interred.

The First Geneva Convention, to which Israel is party,³⁶ establishes standards for handling the bodies of enemy dead. Article 17 stipulates:

Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body....

They shall further ensure that the dead are honorably interred, if possible according to the rites of the religion to which they belong, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found....³⁷

Fourthly, the eleven-day gap between the date of death and burial for "these and other reasons" raises certain questions and speculation. Where was the body during this period? When was it determined whose body it was - that of Zawahareh or of the

³³ On this matter, see, also, *Kol Ha'ir*, 14 August 1998, 26 February 1999.

³⁴ Letter of 28 October 1998 from Lieutenant Eren Shamir on behalf of the Military Advocate General's assistant on international law.

³⁵ This conclusion is reached from the state's contention that, in fact, the body removed the first time, which had been placed between graves 244 and 246, does not belong to grave 245, as was initially thought, but to plot 244, which is not relevant to Zawahareh's case.

³⁶ It should be noted that in the specific case of Zawahareh, these rules lie within the context of the norms stipulating the proper conduct in a similar situation, but are not necessarily required by law. The reason is that it is difficult to consider Zawahareh to have died while serving in an enemy army.

³⁷ *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*. Similar provisions, stipulating the manner of handling deaths of internees and POWs, appear in article 130 of the Fourth Geneva Convention and article 120 of the Third Geneva Convention.

other person? Is it possible that the reason for the delay in burial was that Zawahareh lived through the clash and died while an Israeli prisoner for “these and other reasons?” In any event, it is reasonable that the negligence surrounding the burial did not result from haste in burying Zawahareh immediately upon his death.

Fifthly, the State Attorney's Office's statement that no reason existed to continue the tests after the documents had been discovered raises the question whether it would be suggested to parents of a missing Israeli soldier to give up the attempt to identify positively the body or burial place of their son.

Yona Baumel, father of Yehuda Baumel, who is missing-in-action, understands the feelings of the Jordanian mother:

I can understand what this poor woman is going through. The uncertainty is the most devastating thing of all. The wailing of a Jordanian mother hurts no less than that of an Israeli mother. In the past, I helped Palestinians who wanted to locate missing terrorists or bring their bodies home for burial. I know the IDF's handling is problematic. There was a time that they were not careful, did not keep files the way they should have. I think that the situation has improved. In any event, if the authorities would admit that there had been a lack of order, everybody would be better off.³⁸

2. *Bassem 'Abdullah Sabah Sobeh*

Bassem Sobeh is a Palestinian holding Jordanian nationality who has been missing since 1984. That same year, the Red Cross notified his family that he had been killed by the IDF on 14 September 1984 while trying to enter Israel illegally. Ten years later, in 1994, the family heard a rumor that Bassem had been seen alive in 'Atlit Prison in Israel and at al-Khiam Prison in South Lebanon. His brother requested HaMoked to assist in determining what had happened to Bassem.

The IDF Spokesperson informed HaMoked that IDF forces had indeed killed Sobeh and that he had been buried in the cemetery for enemy dead near Adam Bridge. The IDF agreed to hand over the body, which supposedly had been buried in grave 5028A. The family requested that, before receiving the body, information be provided to it about how the deceased had been identified. The family wanted to be sure that the body was indeed that of Bassem Sobeh. The office of the Military Advocate General responded to the request, as follows:

Requests directed to various military officials indicated that they have no identifying documentation. Also, we are unable to reconstruct now, thirteen years after burial of the terrorist's body, what procedure led, at the time, to identifying the body as Bassem Sobeh.³⁹

The family submitted several requests to the IDF to perform a DNA test to determine with certainty whether the body is that of Bassem Sobeh. Because the IDF did not respond, the family, through HaMoked, petitioned the High Court of Justice to order the test.⁴⁰ Following filing of the petition, the IDF agreed to perform the test. The results of the test, performed at the Forensic Institute at Abu Kabir, have not yet been received. However, the anthropological tests conducted at Abu Kabir clearly show

³⁸ From an article written by Yiftah Elazar on the Zawahareh case. *Kol Ha'ir*, 14 August 1998.

³⁹ Letter of 6 April 1997 from Daniel Reisner, the Military Advocate General's assistant on international law, to attorney Andre Rosenthal, who represented the family.

⁴⁰ HCJ 4883/97, *Sabah Sobeh et al v. Minister of Defense*.

that the body removed from the plot was around fifty years old at the time of death, while Bassem Sobeh was twenty-eight when he died.⁴¹

Even if it has yet to be determined if the IDF records are correct in this case, negligence and disdain comparable to the previous case are already evident. Firstly, why is there no record of how Bassem Sobeh was identified? Is it possible that a person would leave on a mission without having any identifying document or object? An order of the General Staff regulating the handling of enemy dead stipulates that documents, possessions, and identification papers are to be placed together in separate envelopes, the commander of the cemetery unit being responsible for filing a report with the department of injured persons of the IDF's personnel division.⁴² Secondly, how is it that the rabbinate does not have a simple method for identification, such as photographing the body? Thirdly, why is a court order to the IDF necessary to obtain a DNA test? Is the desire of knowing with certainty whether the person killed is a family member hard to understand or unreasonable?

These two cases offer a few hints indicating that they are not exceptional, but rather are representative. For example, the rabbis who accompanied attorney Rosenthal at the cemetery admitted that all the cemetery markers had been placed a short time before and not when the bodies were buried; the office of the Military Advocate General did not deny attorney Rosenthal's contentions based on his findings at the cemetery and did not argue that the omission was a rare case; as a matter of policy, the state refuses to respond to family requests except pursuant to orders of the High Court of Justice.⁴³

In sum, contrary to international law, Israel does the minimum to ensure identification of those killed and marking of their bodies and graves, much less ensure burial according to the relevant religious rites.

E. The Bereaved Families

The principal victims of Israel's policy of punishment are, as mentioned, the families of the dead. The emotional harm resulting from not being allowed to make the final separation from loved ones and bury them is well documented and described in the psychological literature.⁴⁴

Direct proximity to the body of a loved one who has died is one of the major conditions for turning death into actual fact and to the beginning of bereavement and acceptance. Denial of the death of a close relative or friend is a widespread psychological phenomenon, which grows in the absence of any proof indicating the opposite: "I do not believe that they killed my sons," the father of 'Adel and 'Emad

⁴¹ It should be explained that courts do not generally negate identification of a person based solely on an anthropological test. The DNA comparison, which is considered more scientific, continues.

⁴² General Staff Order 38.0109, of 1 September 1976.

⁴³ Some persons argue that one of the reasons for the errors of omission in identifying bodies is not related to the attitude toward Palestinians but rather to the battle of the military rabbinate to maintain its monopoly over identifying the dead (including IDF soldiers), without having been trained for the job. On this point, see the article of Ron Bergman, *Ha'aretz*, 4 December 1998.

⁴⁴ B. Raphael, *The Anatomy of Bereavement* (New York: Basic Books, 1983); E. Chigier (ed.), *Grief and Bereavement in Contemporary Society* (London: Freund Publishing House, 1988).

'Awadallah said after Israeli soldiers killed him in an action initiated by the IDF, and added, "Until they show me their bodies, I won't believe it... Israel is afraid of them, for years it has been looking for them, and now it makes up the story that it killed them to make your people [Israelis] happy."⁴⁵

The full burial ceremony also plays an important role in enabling the bereaved family to cope with their loss. The ceremony constitutes the separation of the living from the dead, on the one hand, and offers the opportunity to obtain the support of the persons taking part in the service, who identify with the family's loss, on the other hand. With the passing of time, the ability to visit and care for the gravesite is another important link in accepting the death. The gravesite serves as a symbolic site for preserving the relationship and union between the family and their relatives who have passed away.

Precisely because coping with the death of a close friend or relative is a sensitive point in human experience, it was chosen as the objective of Israel's policy of punishment against Palestinians in the Occupied Territories. In other words, hit them where it hurts.

Most of the families affected must cope, therefore, not only with the material and emotional distress accompanying demolition of their homes, but also with not being allowed to mourn and come to terms with the death of a family member. It should be explained that the ostensible joy over "the death of the martyrs" often heard in the mourning vigils of Palestinians does not express the absence of pain and loss, but rather the opposite, i.e., the need to find significance and reason for the death in order to ease the pain. The attempt of bereaved families to justify and give significance to the loss of one of their sons, especially in wartime circumstances, is also recognized in Israeli society and is an almost universal phenomenon.⁴⁶

In addition to the universal aspect of families coping with the death of their loved ones, Israel's policy also prejudices these families' religious practices and customs related to death and burial. The importance in Palestinian culture of respect for the dead is no less than in Israeli society. Islamic practice entails strict rules for burial and mourning. Also, making pilgrimages to the gravesites of family members on holidays has become an extremely common practice among Palestinians. Israel's refusal to allow them to perform this custom, as shown in the testimonies collected in preparation of this report, is a significant blow to the families. Consequently, Israel's policy not to return the bodies in these cases is a blatant violation of article 27 of the Fourth Geneva Convention, which stipulates, in part:

Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices.

It should be noted that the rights mentioned in article 27, which Israel violates, are rights granted to the families of those killed and not those of the persons killed.

The following are testimonies of relatives of Palestinians whose bodies are being held by Israel:

⁴⁵ From an article of Ada Ushpiz, *Ha'aretz*, 18 September 1998.

⁴⁶ For a discussion on the Israeli perspective, see Hana Naveh, "On Loss, Bereavement, and Mourning at the Israeli Funeral" (in Hebrew), 16 *Alpayim* (Spring, 1998), pp. 85-120.

1. *Testimony of Maryam 'Abd Allah Ibrahim Muhammad Shaker, born 1932, widow with five children, resident of Rafah refugee camp*⁴⁷

My son Salah was killed at age twenty-five in the bombing at Beit Lied. I went to the Red Cross offices in Rafah about a year after he died, and they told me that they cannot help me, but I filled out a form and left it with them. Then I went to the Red Cross offices in Gaza, where they referred me to the Rafah branch, where I had already been. All kinds of people from human rights organizations also came, took information, and left.

I am aware that my son's body may have been blown into many pieces, but even if there's one hand left, they should give it to me. I want something of him. I want to make a proper gravesite for him, and to perform the commandment of the 'Eid al-Fitr holiday, where we make a pilgrimage to the gravesite of loved ones on the morning of the holiday. I am heartbroken when I see the many people gathering together to remember their loved ones at the cemetery, and I have no grave for my son so that I can be with him.

2. *Testimony of Amaneh Hassan Muhammad Yasin Kahalot, born in 1942, married with ten children, resident of Jabalyeh, Gaza Strip*⁴⁸

My son Ribhi was killed in an attack when a booby-trapped car he was in collided with an Israeli bus on the Dir al-Balah - Khan Yunis road on 2 November 1995.

I was shocked when I was watching television and saw parts of his body. I went to the Palestinian District Coordination and Liaison office in Gaza and asked that his body be returned to us. After about a year, the officials at the Palestinian DCL called us at home and said that the Israelis are willing to hand over the body to us. Later, after our expectations had been raised as a result of this information, the Palestinian DCL officials told us that the Israelis had reneged on their promise.

His sister Emal always dreams about him. He appeared in a dream and told her that we should stop talking about him and mentioning him, that he cannot rest because of all the talk about him.

I beg everyone who can return my son's body to act toward that end. He is so dear to me! It is a pity that I did not know what he had planned to do. If I had, I would have locked him in my heart to save his life. I cry all the time. It hurts and makes me sad. Maybe his burial will bring me some comfort.

3. *Testimony of M'azueh Musbah Ahmad Sukar, 40, married with nine children, housewife, resident of the Saj'ayeh neighborhood, Gaza*⁴⁹

⁴⁷ The testimony was given to Najib Abu-Rokaya at the home of the family on 14 January 1999.

⁴⁸ The testimony was given to Najib Abu-Rokaya at the home of the family on 15 January 1999.

⁴⁹ The testimony was given to Najib Abu-Rokaya at the home of the family on 14 January 1999.

My son was killed in the bomb attack at Beit Lied. After he died, I spoke with the Palestinian minister of welfare, Intisar al-Wazir, personally so that she would do something to obtain my son's body. She said, "Go to those who sent him to commit suicide. Let them return his body."

I need to bury my son so that I can cope with the loss. I need a gravesite to touch and to stand alongside while reading a verse from the Koran. The holiday of 'Eid al-Fitr is approaching. All the people are going to the cemeteries to visit their loved ones, and I have no gravesite to go to, and I have no way to be alone with memories of my son.

People from human rights organizations came to me, but it did not help. We did not retain an attorney to handle the matter.

4. *Testimony of Kamal Jum'ah Radi, born in 1937, married with ten children, resident of Khan Yunis refugee camp, Gaza Strip*⁵⁰

My son Iman was killed near Binyaney Ha'ooma on 25 December 1994. Since then, I went to the Red Cross in Khan Yunis to ask them to help get his body back. Other than the Red Cross, I do not know whom to turn to. I contacted only them, and they have not responded other than to say that the matter is being handled. My wife is always crying: "If we only had a gravesite! I would visit the grave like those who visit the graves of the other *shahidim* [martyrs]. I want my son's body." I call out to everyone with a conscience to help my family gain some emotional peace.

5. *Testimony of Mahmud 'Issa Hassan 'Abas, born in 1935, married with nine children, resident of the Alfuakhir neighborhood, Gaza*⁵¹

My son Hassan was born on 12 July 1975 and was killed in a gun battle with Israelis on Jaffa Street in Jerusalem on 9 October 1994. I heard about the incident on the news and never thought that my son was involved. My son did not come home, which was unusual, during the three days prior to the incident. I learned about his death from the Israeli media. I was watching television with my late wife, and when we saw his body on the cameras and in the news, we were sure it was him.

About two to three weeks afterwards, I began to request that his body be returned to us. I wrote a letter to Yassir Arafat, asking him to help me get my son's body. It was important for me emotionally to obtain the body and bury it. Burial would remove the depression and comfort my soul.

I asked the Palestinian Authority to help me. I went to Raji Sourani, of the Palestinian Center for Human Rights, and with his assistance, and that of an Israeli who petitioned the High Court of Justice (I do not know if it was an attorney or a human rights organization), on 29 January 1997, we received the body and buried it in the Gaza Strip in a proper funeral.⁵²

⁵⁰ The testimony was given to Najib Abu-Rokaya at the home of the family on 14 January 1999.

⁵¹ The testimony was given to Najib Abu-Rokaya at the home of the family on 14 January 1999.

⁵² See footnote 19, above.

To the best of my knowledge, the Palestinian Center for Human Rights also acted to obtain the return of the body of Sala Jadallah, just as it acted to obtain my son Hassan's body. My only regret is that my wife, Kawkaba, died in grief about a year before we received Hassan's body. She would awaken at night and cry her heart out all the time, and it is a shame that she did not get to see her son, the dearest to her of them all, buried in a dignified funeral, and was unable to visit his grave according to custom. Maybe she would be alive today, who knows?

6. *Testimony of Ahmad Ismail Salah 'Awadallah, born in 1932, married with two children, resident of al-Bireh*⁵³

My two sons, 'Adel, who was born in 1967, and 'Emad, born in 1969, were wanted by both the Palestinian Authority and the Israeli authorities. They were wanted for two years before the Israelis killed them, on 10 September 1998, in the area of Taibeh village, west of Hebron.

I spoke with Yassir Arafat personally and requested that he do what he could to achieve the return of my sons' bodies. I also turned to the Red Cross in Ramallah, human rights organizations, and the public to ask that they intervene on our behalf. We also asked attorney Jawad Boulus to take legal action vis-a-vis the Israelis, but he has not yet begun to act.

Just after my two sons were killed, we prepared two graves. I am doing whatever is possible to obtain their bodies and to bury them properly. I live with the constant question that maybe my sons were not killed, but rather that the Israelis are holding them captive.

We did not see any pictures in the media, and if the Israelis took pictures of those who were killed, let them show us their pictures or let them give us the bodies. Why punish my wife and me? Why are they punishing Hudeh, 'Adel's widow, his three sons and daughter? Why are they punishing Shifah, 'Emad's widow and his two sons and two daughters? I call upon everybody who can help to do whatever possible to ensure the return of my sons' bodies, if they were indeed killed. I want to put an end to the story of their life and death, and to remove the doubts I live with.

7. *Testimony of 'Abd al-Kader Muhammad 'Abid, born in 1939, married with nine children, resident of Khan Yunis refugee camp, Gaza Strip*⁵⁴

My son was killed on 4 March 1996 in the attack on Dizengoff Center [Tel-Aviv]. I later contacted the Gazan human rights organization headed by Raji Sourani hoping that he could help in having my son's body returned. I also contacted various agencies of the Palestinian Authority, who said they would make every effort to help me.

⁵³ The testimony was given to Najib Abu-Rokaya at the home of the family on 27 January 1999.

⁵⁴ The testimony was given to Najib Abu-Rokaya at the home of the family on 14 January 1999.

Who are the Israelis punishing? Did my son ask me before he went and committed suicide? Did I know about my son's plans and do nothing to stop him? Why are they abusing me, my wife, and his family?

I was proud that I had a son at university. That was my heart's desire. He was my sixth child. He was the only one to get to university. He was dear to me, and my pride among all my children.

Obtaining his body and burying him is important to me. In that way I can touch and feel his grave. That would bring me comfort and enable me to accept and internalize his death. I am sick and lie at home. If only I can live long enough to bury my son.

8. *Testimony of Mahmud Muhammad Mahmud al-Khatib, married with six children, resident of Nusirat refugee camp, Gaza Strip*⁵⁵

My brother was killed on 9 April 1995 in the car bomb explosion on the Dir al-Balah - Khan Yunis road. Since then, we requested both the Red Cross offices in Gaza and the Palestinian District Coordination and Liaison office in the Gaza Strip to help us get back the body. We also asked Nasser Yusuf [Palestinian police chief in Gaza] for help. The DCL officials told us that the Israelis are in full charge of this matter. About two weeks ago, Red Cross officials came and asked for more information and promised that they would do something.

The day after his death, officials from the Palestinian Authority informed us that the Israelis want to give us the body. We prepared a grave and waited. Then they informed us that the Israelis refuse to hand the body over. The situation remains the same today. The grave is open and ready.

As believers, we want my brother to be buried and to go on holidays and Fridays [the Sabbath] to visit his grave. The situation is particularly hard on my father and mother. My father became disabled after Khalid was killed. He cannot talk or stand on his feet after having had a stroke about a year after Khalid died. It is humane that a person's body be buried, and it is a sign of respect to bury the dead in a respectful manner.

⁵⁵ The testimony was given to Najib Abu-Rokaya at the home of the family on 15 January 1999.

CONCLUSIONS AND RECOMMENDATIONS

Israel's refusal to return bodies of killed Palestinians to their families is another Israeli violation of Palestinians' human rights in the Occupied Territories. This report was prepared to document the various aspects of this policy and delineate the effects of the human rights violations involved. We reiterate that HaMoked and B'Tselem unequivocally condemn and denounce the terrorist acts attributed to those whose bodies Israel holds.

The principal findings of the report are the following:

1. From the beginning of the occupation until 1994, Israel did not have a consistent policy on returning the bodies of Palestinians who were killed in attacks or clashes with the IDF, and bodies were held, or returned, more or less arbitrarily. Since the third suicide attack in 1994, Israel has implemented a clear policy of not returning bodies of Palestinians killed under the aforementioned circumstances to their families.
2. This policy constitutes another type of collective punishment, and is part of the broader philosophy of "detering potential terrorists."
3. This policy causes the families much suffering and distress and makes it very difficult for them to cope with the death and their loss. Also, it violates the Palestinians' religious beliefs and customs dealing with deaths of family members.
4. The bodies held by Israel are buried in a negligent and demeaning manner, making future identification difficult. The families are also precluded from visiting these cemeteries.
5. Israel's policy contravenes fundamental norms derived from international humanitarian law:
 - a. The absolute prohibition against collective punishment in any form.
 - b. The duty to respect the rights of the family, the way of life, and the religious beliefs of civilians under occupation.
 - c. The duty to bury enemy dead in a dignified manner that enables identification.
 - d. The inferential prohibition against holding bodies as hostages.
6. This policy absolutely contradicts basic values of Israel—human dignity and respect for the dead. It stands in disturbing contrast to the attitude toward Israeli bereaved families and their unquestioned right to bury their dead in accordance with their beliefs.

HaMoked and B'Tselem urge the Israeli government to end the policy described above, and to return to the families the bodies of their loved ones. No consideration should be given to the severity of the acts attributed to those killed. Returning bodies to the families is a purely humanitarian act that does not affect Israeli security interests in the Occupied Territories. Furthermore, international law mandates their return. On the other hand, maintaining the current policy will only aggravate the anguish and hatred among the Palestinian population.

APPENDIX

RABBIS FOR HUMAN RIGHTS

Don't Close Off This Small Opening Towards Peace

by

Rabbi Jeremy Milgrom

A Jewish ethic on treatment of enemy corpses lies at some point along a broad spectrum. On one end is the harsh biblical commandment to annihilate completely the actual or symbolic descendants of *Amalek*. At the other extreme is the pacifist view that envisions the lion and the lamb lying together. Furthermore, drafting a rabbinic perspective on the matter of the treatment of enemy bodies calls for, in addition to an abstract textual examination of Judaism's moral heritage, confronting the spiritual condition of Israeli society today and challenging its conscious and unconscious failings

A superficial reading of the Torah would lead Jews to fight as if nothing mattered but the physical survival of the Torah's adherents. This understanding is hard to reconcile with the account of Deborah's battle against Sisera. Why does the story include the thoughts and expectations of Sisera's mother as she futilely awaits his return? The biblical author clearly expects us to be empathetic towards her predicament, and if we cannot muster that empathy, to recognize our failing and learn that lesson.

Even a fleeting acquaintance with the demands of daily Jewish life indicates a morality in which the sanctification of God's name is the driving force. In classical Jewish theology, that task is assigned primarily to Israel, providing it with its *raison d'etre*. However, as we now from the story of Adam, every human body contains the divine spark, and no excuse for abusing the human body can be tolerated. If, in contemporary times, we state that a society is to be judged by the way it treats its weak, the society must also be aware of how it treats those it vanquished.

The Bible does not offer us a real picture of what transpires on the battlefield; the sanitized, almost idealized result, when Israel is in God's good

graces, is one of total victory (i.e., no Israelite casualties) and a demanding religious self-discipline regarding the taking of booty and captives. Thus, destruction of enemy property is cast as the fulfillment of a divine ban against anything tainted with idolatry, and sexual assault of captive females during hostilities is constrained by a compulsory thirty days of abstinence to give the captive woman time to mourn for her family, after which sexual relations are permitted solely within the framework of [and albeit forced] marriage. In this context, it is not surprising that in the case of the five Canaanite kings (Joshua 10), the lone mention of enemy corpses in the Bible, the medieval Jewish sage Nachmanides understood their burial by Joshua on the day of their execution as an application of the civil law that requires same-day burial (Deuteronomy 21:23).

As befits a code for daily living - as well as a means to address our own situation, in which the drama and cataclysm of major war against a fantasized, faceless enemy has been replaced by the continual strife of a low-grade inter-communal conflict the Torah addresses the reality of personal enmity, which is reversible, and that of enemies whose behavior exceeds the limits of our tolerance. For example:

- a. In the case of the enemy's grazing farm animal (Exodus 23:4), we are not allowed to seize it and settle accounts, we are rather commanded to incur further losses and return the animal without delay.
- b. According to rabbinic law, as a final act of mercy when a criminal is executed, a swift, painless death that does minimal disfigurement to the body must be chosen. The Sages saw this as a fulfillment of the Golden Rule, "Love your neighbor as yourself"(Leviticus 19:18).

The violation of the aforementioned requirement for same-day burial is both inhumane and an affront to God. We see this in the allegory of the identical twins in *Tosefta Sanhedrin*, chapter 9, where the corpse of an executed criminal is removed when passersby mistake him for his twin brother, the king. As soon as criminals no longer endanger society, the attitude towards them shifts radically. Where before they induced vigilance and fear, now consideration must be given to their, and their families, feelings. These criminals, like an enemy whose animal is lost, are not belligerent at the moment. Their vulnerability providentially opens the door to an act of reconciliation that can end the enmity. As long as clear and present danger persists, the covenanted community may consider itself worthy of God's protective cover. But when the non-covenanted Other is in need, we must emulate God in acting with compassion. Lingering hostility is a defamation of God's name, and the inability to be empathetic is a denial of grace.

The Jewish people has known periods of harmonious co-existence with its non-Jewish neighbors during which it extended its care to all disadvantaged people, Jews and non-Jews alike. Jewish law codes from the 3rd, 12th and 16th centuries base the commandment for Jews to bring non-Jewish corpses to proper burial and to console their mourners based on the rationale and exhortation to act "*mipnay darkey shalom*" (for the enhancement of peace). The high importance accorded to peacemaking in

Jewish tradition is sufficient to invalidate the policy of withholding enemy bodies from their families and of disrupting their mourning traditions, especially given the absence of any evidence as to the efficacy of such policy. Even in the darkest moments of shock and anger that may prevail after an awful terrorist act, Jewish law demands that we not close off this small opening towards peace.

In sum, the ferocity of sanctioned, even commanded, warfare described in the Deuteronomy passages in the Bible cannot possibly serve as a blanket permission for a beleaguered society to use every means at its disposal to gain an advantage and/or demoralize the enemy. More serious than any outside threat is the corrupting influence of behavior whose result, in biblical terms, is impurity, which results in God's abandonment of Israel.

Response of the Israel Defense Forces*

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Response of the IDF Spokesperson to B'Tselem's Report on Burial of Terrorists' Bodies

As a rule, the IDF's policy concerning bodies of terrorists complies with Israeli and international law.

We point out that, in many cases, terrorists do not carry identifying markings, making it difficult to identify them following terrorist acts they had been involved in or had planned to execute.

Where it was difficult to identify a terrorist, as in the case of 'Issa Zawahereh, mentioned in the draft of the report, a professional committee was established to investigate the events that had transpired.

As a rule, in recent years there has been some activity in this area and improvements have been instituted in burying the bodies, such as placing them in wooden coffins.

As regards the policy of returning bodies of terrorists, the matter is currently under review at the highest level of the IDF. The staff has not yet completed its work on this matter.

* Translated by B'Tselem