



Whitewash

The Office of the Judge Advocate
General's Examination of the Death
of Khalil al-Mughrabi, 11, on 7 July 2001

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The Israeli Information Center for
Human Rights in the Occupied Territories

בצלם

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**The Office of the Judge Advocate General's
Examination of the Death of Khalil al-Mughrabi, 11,
on 7 July 2001**

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Cover: Khalil al-Mughrabi, 11, killed on 7 July 2001
by IDF gunfire on the Israeli-Egyptian border

Introduction

On Saturday, 7 July 2001, Khalil al-Mughrabi, 11, was killed in Rafah. Two other children, Ibrahim Abu Susin, 10, and Suleiman Abu Rijal, 12, were wounded.

In his response to the incident, the IDF Spokesperson stated that "dozens of Palestinians rioted near Rafah and endangered soldiers' lives... The soldiers acted with restraint and control and dispersed the rioters by using means for dispersing demonstrations and by live gunfire into an open area distant from the rioters."¹ The testimonies given to B'Tselem and the findings from the army's de-briefings contradict this version of the events.

B'Tselem contacted the Chief Military Prosecutor, Col. Einat Ron, to determine which measures were taken against those involved in the attack on the children, and requested a Military Police investigation if none had been opened. On 8 November

2001, the army informed B'Tselem that it had decided not to initiate an investigation of the incident because there was no suspicion of criminal behavior by the soldiers. The inquiry file was attached, apparently in error, to the army's response. The file included the operations de-briefings and the opinions of the Southern Command's Judge Advocate and of the Chief Military Prosecutor.

This report analyzes the army's inquiry into the events, based on the documents provided to B'Tselem. The report points out the primary problems arising from the inquiry and its results. Although the documents raise numerous other questions regarding the actions of IDF soldiers serving along the border, this report focuses on the shooting of the three children. The documents are presented in their entirety as an appendix to the report.

1. *Ha'aretz*, 8 July 2001.

The Incident: One Child Killed, Two Children Wounded

According to testimonies given to B'Tselem, on 7 July 2001, some twenty to thirty children aged ten to thirteen were playing in the Yubneh Refugee Camp, in Rafah, located near the Egyptian border. Around 5:00 P.M., the children saw a tank travelling west along the border fence, toward the Girit (Tel Zu'arub) encampment. The encampment has a tower used by the army as an observation post. At about 5:30, Khalil al-Mughrabi, 11, came to the site with his friend Suleiman al-Akhras, 13. They had a ball with them and started to play soccer.

Around 6:45 P.M., the children finished playing. Some of them sat down next to mounds of sand near the border fence. Others sat on the top of the mounds. Khalil and Suleiman sat on the mounds. At 7:10 P.M. or so, Khalil was shot in the head. According to the children, the shots came from the observation tower, about one kilometer from where the children were located. The firing continued, striking two other children:

- Ibrahim Kamel Abu Susin, 10, was hit in the abdomen, the bullet striking his intestines and liver.
- Suleiman Turki Abu Rijal, 12, was struck in the left leg.

Testimony of Suleiman Muhammad Salameh al-Akhras, 13, elementary school pupil, resident of Rafah²

Even before the intifada, I used to play soccer with my friends around Yubneh Refugee Camp, in Rafah, close to the Egyptian border. We used to play there because there aren't any other soccer fields in the city, and because the ground is flat and made of concrete, so it's good for playing.

On Saturday [7 July], I was playing there with twenty or thirty other children between the ages of ten and thirteen. They are all friends from the neighborhood and from school. We divided into a few teams of six and played a few games in order to give all the children a chance to play. About fifteen minutes before we finished playing, an Israeli tank drove along the border. It arrived from Salah a-Din Gate and drove west toward the Tel Zu'arub post, where there is a very tall military tower that overlooks the whole area. After we finished playing, we sat down to rest. Some of us sat alongside the sand piles that are near the border fence. Others sat on the top of the piles. While we were resting, the soldiers in the tower suddenly fired a bullet. We didn't hear it until it entered Khalil Ibrahim Muhammad al-Mughrabi's head. Khalil, who was sitting on top of one of the piles, fell down immediately. His head burst and parts of it flew toward the children who were near him.

Then the soldiers opened intense fire from the tower. This time, the shooting was very loud. It sounded different from the bullet that hit Khalil. When we ran north, toward the houses in the refugee camp, two more of my schoolmates were hit. Ibrahim Abu Susin was hit in the stomach and his intestines came out. Suleiman Abu Rijal was hit in the thigh. A number of civilians rushed to the place immediately and evacuated the deceased in a Mercedes public-transport vehicle. An ambulance, which arrived immediately after, evacuated the two wounded to the hospital.

The terrible sight that I saw in this incident shocked me so much that I couldn't speak for six hours.

2. The testimony was given to Nabil Mukhairez on 8 July 2001.

Testimony of Muhammad Salah Hussein al-Akhras, 14, elementary school pupil, resident of Rafah³

On the evening of Saturday [7 July], I was playing with about thirty more children at a soccer field near the border, in Yubneh Refugee Camp. The game started after the afternoon prayer, i.e., around 5:00 P.M. After a while, a tank drove along the border. It came from the east and drove west, toward Tel Zu'arub and the military tower there. The tank passed by quietly without shooting at us. After we finished playing, we lay on the ground to rest. Some of us sat on the piles of sand near the border. Around 7:10 P.M., I stood up and told the kids to leave the place. I was two meters away from Khalil al-Mughrabi. Then I heard a faint sound and saw Khalil's brain flying out of his head

and splattering all over my face and clothes. We started running away from the place. While we were running, intensive fire from the tower began. That gunfire resulted in two more children being hit. One of them was my neighbor, Ibrahim Abu Susin. He was hit in the stomach and his intestines came out. The other, Suleiman Abu Zeidan, was hit in the left thigh. Civilians who were there evacuated the deceased and the wounded to the hospital.

I spent the entire night after that dreaming about the incident, and about Khalil's brain flying in the air and splattering on my body. The morning after, I went to the sheik in al-Hoda mosque and told him the story. He started reading from the Koran and told me I had to pray and read the Koran all the time.

The Operations De-briefings: The Soldiers Violated the Regulations, No Measures to be Taken

Two days after the incident, on 9 July 2001, the battalion commander conducted a de-briefing of the incident. One day later, the brigade commander conducted his de-briefing, and on 12 July, the division commander also conducted a de-briefing. A summary of the de-briefings indicates that the de-briefings dealt primarily with operational aspects of the events that took place along the border on 7 July. The injuries sustained by the three children receive marginal attention.

The de-briefings indicate that, on 7 July, starting around noon, children threw stones and fragmentation grenades at the soldiers. Several times during the day, the soldiers fired warning shots. The soldiers also fired "rubber" bullets and percussion grenades.⁴

Around 7:00 P.M., when the three children were hit, dozens of children and adults placed objects and barbed wire on the "Dakar Route." The soldiers saw Palestinians moving sacks from the Egyptian side of the border. At this stage, the company commander ordered a tank to fire a warning shot. The tank fired twelve 0.5 inch shells towards the west.⁵ Regarding these shots, the investigations determined that, "The tank should not have been used to fire warning shots during the day. The company commander should have considered that the tank was exposed to the Egyptians during the shooting."⁶ The investigations also found that, "It was possible to return the armored vehicles to 18 instead of firing warning shots from the tank."⁷ The division

3. The testimony was given to Nabil Mukhairez on 8 July 2001.

4. See Appendix A, sec. 2(a) - 2(p).

5. See Appendix A, sec. 2(q) - 2(r). 0.5 inch shells are fired from a machine gun positioned on a tank and are lethal at a range of 1,000 meters.

6. See Appendix A, sec. 3(c).

7. See Appendix A, sec. 3(e).

commander determined that "the tank fire is a flaw."⁸

The investigations concluded that, "it is impossible to unequivocally determine that the child was killed by our forces' gunfire," although the investigations dealt minimally with this question. The conclusion is based on the following points:⁹

1. Throughout the day, no ambulances were seen at the site of the incident.
2. No injured person was seen.
3. There was no escalation and commotion that would occur if a person had been killed.

One of the testimonies given to B'Tselem indicates that the children were evacuated

to the hospital by a civilian vehicle, so no ambulances were seen in the area.¹⁰ The fact that soldiers did not see any injured persons actually reinforces the testimony given to B'Tselem that the children were far from the site where the incidents took place and that they did not take part in them. For the same reason, there was no "escalation and commotion" after they were injured.¹¹ The army officers who conducted the de-briefings do not deny that the children were injured and do not mention other firing in the area. Despite this, they reach their conclusion without offering any other explanation as to how the children were injured.

8. See Appendix B, sec. 2(b)(2).

9. See Appendix A, sec. 6.

10. See testimony of Muhammad al-Akhras.

11. It is interesting to note that the army is well aware that the soldiers' response to events directly affects the development of these events. This however, does not affect the soldiers' response. On this subject, see B'Tselem, *Illusions of Restraint - Human Rights Violations during the Events in the Occupied Territories 29 September - 2 December 2000*, p. 8.

Firing of Rubber-coated Metal Bullets

Earlier on the day Khalil al-Mughrabi was killed and Ibrahim Abu Susin and Suleiman Abu Rijal were wounded, the soldiers fired rubber-coated metal bullets ("rubber" bullets) at the children on several occasions. In at least one case in which the platoon commander shot a "rubber" bullet at a group of children, it struck one of the children in the head. He was slightly hurt and returned to the demonstration.

The operations de-briefings held by the battalion and brigade commanders indicate that the "rubber" bullets were fired in gross violation of the Open-Fire Regulations and directives. The de-briefings determine, among other things, that:

- "The platoon commander did not transmit the open fire regulations dealing specifically with firing rubber. (The platoon commander received training for firing rubber and knows how to use it. The platoon commander is aware of the seventy-meter minimum range.)"¹² It is later determined that "the rubber fired by the platoon commander does not deviate from the open-fire directives and regulations. However, one should realize that shooting is at least from forty meters range and is aimed at the legs."¹³
- "Rubber shots were fired using blanks and not rifle attachments."¹⁴ It is later determined that "improvised firing by officers is a flaw."¹⁵
- "The use of rubber was not right. The risk resulting from these shots was not considered."¹⁶

The de-briefings indicate that the soldiers acted as they saw fit, while disregarding regulations that are meant to save lives. The soldiers breached regulations and the platoon commander was not briefed in firing "rubber" bullets and fired deadly ammunition in violation of the regulations.

Between January 1988 and the end of August 2000, before the al-Aqsa intifada began, at least sixty-one Palestinians were killed by "rubber" bullets. Twenty-nine of them were minors under the age of seventeen. Because "rubber" bullets are lethal, for years B'Tselem has demanded that they cease to be considered a legitimate means for dispersing demonstrations.¹⁷ The office of the Judge Advocate General has flatly rejected this demand, and soldiers continue to routinely use "rubber" bullets.

12. See Appendix A, sec. 4(b).

13. See Appendix A, sec. 5(j).

14. See Appendix A, sec. 4(c).

15. See Appendix A, sec. 5(j).

16. See Appendix A, sec. 3(d).

17. See B'Tselem, *Death Foretold - Firing of "Rubber" Bullets to Disperse Demonstrations in the Occupied Territories*, December 1998; B'Tselem, *Illusions of Restraint*, pp. 12-14.

Southern Command Judge Advocate: Disciplinary Measures Should be Taken

After B'Tselem requested the Chief Military Prosecutor to initiate a Military Police investigation into the circumstances of the injuries to the children, the operations de-briefings were forwarded to the Southern Command Judge Advocate, Lt. Col. Baruch Mani. He gave his opinion on 29 August 2001.

Lt. Col. Mani describes the incident as follows:¹⁸

... during that day there were severe disturbances and rioting at the place. According to the de-briefings, "warning shots" and rubber bullets were fired in the direction of groups of rioters composed of dozens of children who were attempting to approach an IDF force at the place and threw stones and several fragmentation grenades at the force.

This description is inconsistent with the findings of the operations de-briefings. Lt. Col. Mani disregards the fact that, in the evening, when the children were injured, there were no "severe disturbances and rioting." Even if his description is precise regarding the events that took place earlier in the day, they are irrelevant to the time that the children were injured. Lt. Col.

Mani also totally ignores the children's testimonies given to B'Tselem. These testimonies, which were among the documents received by the Judge Advocate, indicate that the children who were injured had been playing soccer with a different group of children.

Relying on this description, Lt. Col. Mani determined that:

In light of the circumstances of the violent disturbance and the combat nature of the events, as described in the de-briefings, I do not think that there is cause to open a Military Police investigation.¹⁹

The Southern Command Judge Advocate later relates to the warning shots fired by the tank, which the operations de-briefings determined had been fired in breach of the regulations. Lt. Col. Mani suggests that disciplinary action for violating the Open-Fire Regulations should be taken against those responsible for the tank fire.²⁰ The Judge Advocate's opinion does not indicate that the children were injured at the same time that the soldiers fired from the tank, nor does he examine the causal connection between the tank fire and the injuries to the children.

Chief Military Prosecutor: Consider Presenting a False Version of the Events

The Chief Military Prosecutor, Col. Einat Ron, rejects the conclusions of the Southern Command Judge Advocate. The initial part of her opinion is the first serious analysis given to the incident in which the children were injured. Col. Ron relates to two points: one, the legality of the tank fire, and two, the causal connection between the tank

fire and the death of Khalil al-Mughrabi and the injury of the other two children.

Col. Ron rejects the determination made by the Southern Command Judge Advocate that the incident was of a "combat nature." Relying on the operations de-briefings, she holds that the tank fire was not in response

18. Appendix C, sec. 2.

19. Appendix C, sec. 3.

20. Appendix C, sec. 5.

to the grenades that were thrown and that it was doubtful that the soldiers' lives were in danger. The latter was clear because they only fired warning shots and did not fire with the intent of striking. The Chief Military Prosecutor adds that, according to the regulations, only light weapons may be used for firing warning shots and, in any event, firing at children in such circumstances is prohibited. Therefore, Col. Ron found that "a *doubt* exists whether the tank fire could be justified by the grenade throwing (which does not correspond in terms of timing), or by the force's feeling that it was in a life-threatening situation."²¹

Regarding the causal relationship between the tank fire and the injuries to the children, Col. Ron holds that "it is likely that the shots did not hit the children who were identified as rioters but rather children who were some distance from the place of the event." She emphasizes that no other shooting took place in the area that could have struck the children.²²

In her interim summary, Col. Ron states that it is likely that the children were struck by the tank fire and that the firing either violated the regulations (if intended as warning fire) or was unjustified (if intended to injure). Despite this, she offers three conflicting options, two of which are lies, for the treatment of the file:²³

1. There is suspicion of firing in violation of the regulations + suspicion that the gunfire killed and wounded innocent children. A thorough Military Police investigation should be ordered (among the matters to be examined are which open-fire directives were given to the force and whether it could be positively determined that it was that gunfire which struck the children).

2. The shooting was justified - the incident as a whole had a combat nature, grenades were thrown earlier in the day, the whole area is dangerous, the gunfire was justified, and if innocent people were harmed, one can only regret it. See the proposal for a reply letter to B'Tselem, derived from choosing this alternative.

3. Despite the combat nature - the shots were warning shots - which were not fired according to regulations: they were fired from a heavy machine gun and not light weapons and toward children. However, in light of the confrontation, the grenades, the danger, etc. it is not a "gross deviation" from regulations and disciplinary action against whoever fired warning shots from the tank should suffice.

Regarding the last option, the Chief Military Prosecutor mentions several difficulties, which are even more applicable to the second option, which is even more forgiving of the soldiers. In her words:²⁴

1. The "gravity of the deviation" and the "results of the event" are two corresponding criteria. The results here are very serious - an eleven-year-old child, who was innocently playing soccer, was killed. His two friends, 10 and 12, were injured (the ten-year-old apparently "severely"). Even if it is a "slight" deviation, the result should dictate a Military Police investigation.

2. The limitation allowing only light-weapons fire is to ensure that warning shots will pose as little danger as possible. The use of a heavy machine gun greatly increased the risk that someone 1,000 meters away would get hurt.

21. Appendix D, sec. 1 (emphasis in original).

22. Appendix D, sec. 2.

23. Appendix D, "Options for Action."

24. Appendix D, "Difficulties in Selecting the Middle Way."

3. If all the alleged suspicions are verified - firing warning shots against regulations + causal connection to death - an indictment won't be filed?

Col. Ron's comments clearly call for an immediate investigation by Military Police. Therefore, it is surprising, to say the least, that the Chief Military Prosecutor proposed

other options. The fact that she drafted a proposed letter to B'Tselem based on the second option indicates that, when writing the opinion, she had already decided to present a false version of the events and to refrain from ordering a Military Police investigation.

The Final Result: The Soldiers Acted Properly

In her letter of 31 October 2001 to B'Tselem, Col. Ron wrote as follows:²⁵

1. An examination of the circumstances surrounding the incident indicates that on 7 July 2001, children and, at some stages, adults gathered near an IDF force that was moving along the Egyptian border.
2. At certain points during this gathering, there was massive stone throwing and throwing of fragmentation grenades at the IDF force.
3. The force tried to disperse the disturbance using rubber bullets and warning shots, which were aimed at a protective wall, so as not to hurt the rioters.
4. Live gunfire was not aimed at the rioters, and no injuries were detected as a result of this gunfire.
5. Under the circumstances, we have not found any suspicion of criminal behavior on the part of the IDF soldiers, or that there is just cause to open an investigation.

According to Col. Ron's letter, the incident occurred in a different manner than the

one described in the operations de-briefings. It also differed from the first part of her own opinion. She selected this version even though all the officials handling the matter, from the battalion commander to the Chief Military Prosecutor, knew that her version was false. It was clear to all that the soldiers had fired in violation of the regulations, possibly killing an eleven-year-old child and injuring two other children.

B'Tselem does not know the considerations that the Chief Military Prosecutor took into account in choosing the second option. A handwritten comment on the opinion of the Southern Command Judge Advocate indicates that, on 30 October, a discussion was held at the office of the Chief Military Prosecutor. The comment states that, "The Chief Military Prosecutor is not ordering a Military Police investigation. The Southern Command Judge Advocate will handle it as a disciplinary matter." When the army decided to take disciplinary action against soldiers in the past following a B'Tselem request for an investigation, the army notified B'Tselem. This time, however, the Chief Military Prosecutor did not mention the disciplinary actions.

25. Appendix E.

Conclusions

The documents presented in this report raise grave questions about the manner in which the army investigates itself. An eleven-year-old child was killed and two children were injured without justification. However, the army failed to open any investigation against the soldiers responsible even though all the army officials involved in the review of the incident clearly knew that the soldiers had used lethal weapons when their lives were not in jeopardy and had violated army regulations.

The army conducted a shallow and superficial inquiry, at all stages of the process, and made no effort to understand what injured the children, to determine who was responsible, and to ensure that such incidents would not recur. All levels of the army hierarchy failed. The soldiers who violated the Open-Fire Regulations shot to death a child and injured two other children; the IDF Spokesperson provided an imprecise version of the incident (the Southern Command Judge Advocate even noted this in his opinion);²⁶ the Southern Command Judge Advocate submitted an opinion that offered a version different from that stated in the operations de-briefings.

The Chief Military Prosecutor, Col. Einat Ron, went even further. In her legal opinion, she proposed an obviously false version of events as a reasonable course of action. The fact that she did not hesitate to propose, in writing, possible courses of action that clash with the truth raises a serious concern that lying is considered legitimate practice in the office of the Judge Advocate General.

Since the beginning of the al-Aqsa intifada, the Judge Advocate's Office has rarely initiated Military Police investigations.

According to the IDF Spokesperson, because an "armed conflict" exists, "there is no reason to initiate Military Police investigations into the very existence of casualties on the other side as a result of the fighting, in the absence of suspicion of serious deviation from obligatory norms of behavior."²⁷

The attached documents clearly indicate that a "serious deviation from obligatory norms of behavior" took place. Despite this, the army did not initiate a Military Police investigation. It is clear, therefore, that the decision not to initiate Military Police investigations during the al-Aqsa intifada is completely unrelated to the definition given to the situation and to the nature of the events. Rather, the failure to investigate results from the conscious decision of the Judge Advocate General's office to ignore harm to the Palestinian civilian population and not to prosecute soldiers who violate the regulations. Among the reasons for this failure is the desire to present a favorable image of the army.

The commander of the Military Police investigations unit, Col. Miki Barel, stated in an interview on March 2001 that, "theoretically, there could be a case that gets buried somewhere in the chain of command, but since we are not alone in the field - there's the media, the Red Cross, and others - and there are several channels for reporting in the field, like via the Operations Command Branch to which I belong, you can't hide anything."²⁸ These optimistic comments are inconsistent with reality.

Since the beginning of the al-Aqsa intifada, IDF soldiers have killed hundreds of Palestinian civilians. Testimonies given to

26. See Appendix C, sec. 4(c).

27. Response of the IDF Spokesperson to B'Tselem's report *Illusions of Restraint*.

28. *Kol Hazman* [weekly newspaper], 2 March 2001.

B'Tselem and information from other human rights organizations, the media, and residents of the Occupied Territories indicate that soldiers violated the Open-Fire Regulations in many cases.²⁹ Despite this, the Military Police only opened some twenty investigation files relating to the illegal use of weapons. In none of the cases were indictments filed against the soldiers involved.

Criticism of IDF de-briefings was recently heard in the Knesset's Foreign Affairs and Defense Committee. In its hearing on 29 October 2001, MK Ran Cohen, of the Meretz party, sharply criticized the reliability of these de-briefings. He presented de-briefings on five incidents, in which five Palestinian soldiers and three Palestinian women were killed. In none of these instances was any action taken against those responsible, and no conclusions were reached. According to MK Cohen, "all the de-briefings were shallow and attempted cover ups, although they were conducted by senior officers."³⁰ These comments also apply to the material presented in this report.

Over the years, B'Tselem has received hundreds of letters from the Judge Advocate General's office regarding events in which Palestinians were killed, injured, or beaten by soldiers. In some of the cases, Military Police investigations were opened, and in some, the Judge Advocate General's office only conducted an internal investigation. Most of the replies that B'Tselem received state that the soldiers acted properly and that no action was taken against the soldiers

involved. The documents presented in the report call into question the reliability of these replies and raise the specter that this case is only the tip of the iceberg.

The message that the Judge Advocate General's office transmits to soldiers is clear: soldiers who violate the Open-Fire Regulations, even if their breach results in death, will not be investigated and will not be prosecuted. This policy grants prior immunity to security forces and allows them to violate the law. Furthermore, it shows utter disregard for human life.

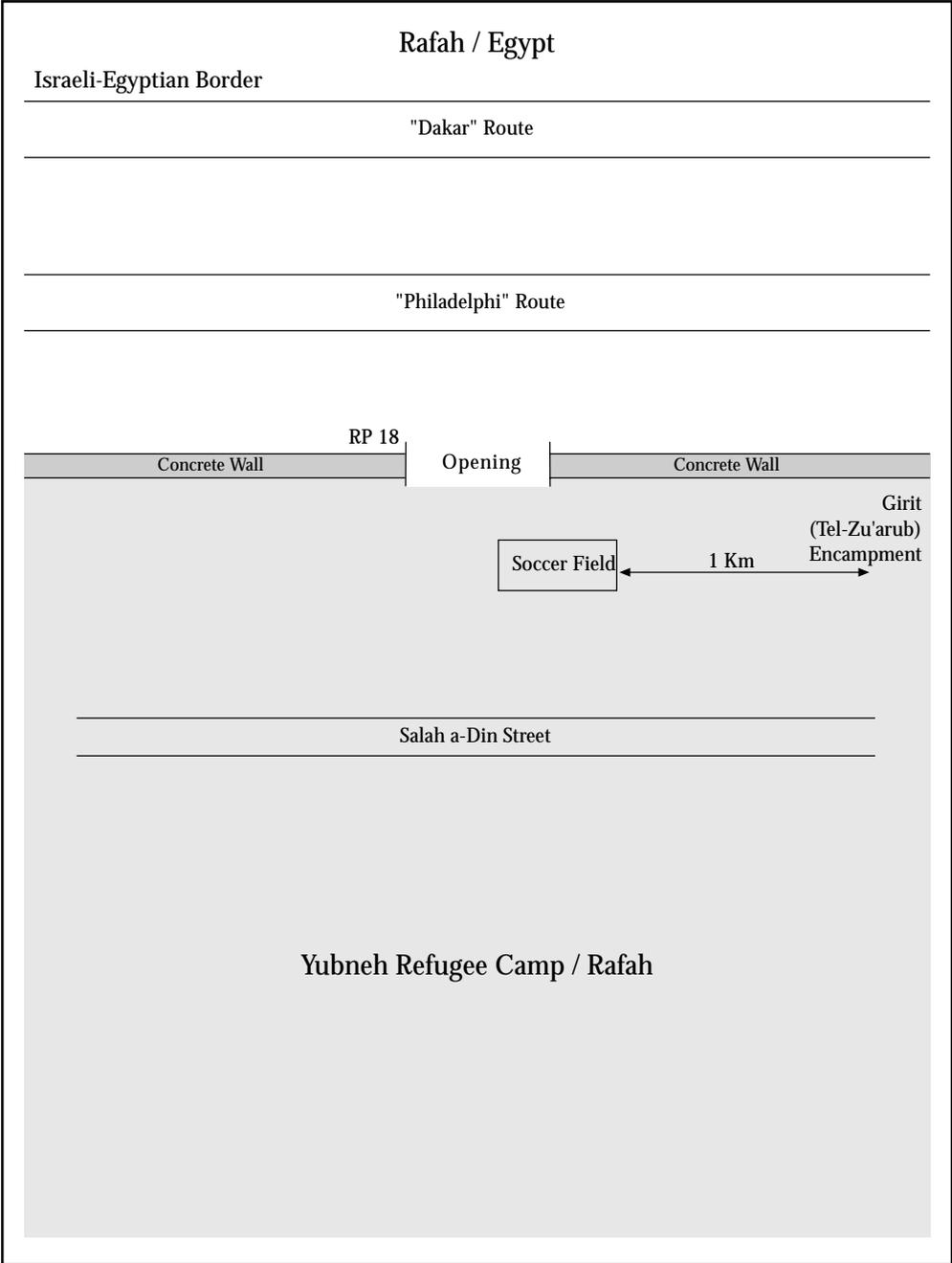
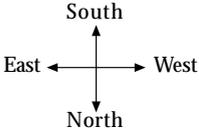
In light of the above, B'Tselem urges that:

- the Military Police investigate the circumstances of the death of Khalil al-Mughrabi and the injuries to Ibrahim Abu Susin and Suleiman Abu Rijal;
- if the findings of the Military Police investigation warrant, legal action be taken against all those responsible for the injuries to the children;
- investigations be conducted against all the officials who were involved in the documents discussed in this report and action be taken against those who intentionally presented a false version of the events.
- because the investigation file clearly proves that the army is unable to investigate itself, the responsibility for such investigations be transferred from the army to an independent and objective body.

29. On this matter, see B'Tselem, *Illusions of Restraint*.

30. *Ha'aretz*, 31 October 2001.

Diagram of the Area



Appendixes

(Translated by B'Tselem)

Appendix A: Summary of Battalion and Brigade Commanders' De-briefings

- Restricted -

Regional Brigade 6643
Operations Department
11 July 01

To: Battalion 424,229, 585 - Battalion Commander, Operations Officer

For the information of: Regional brigade 6643 - Brigade Commander, Operations Officer.
Division 643 - Commander, Operations Department Officer

Re: De-briefing Regarding Warning Shots on the "Philadelphi" Route

1. General:

- a. On Saturday 7 July 2001, an armored personnel carrier patrol mission was carried out between opening 16a and 18, a crowd of children gathered, there was stone and grenade throwing at the armored personnel carriers.
- b. According to Palestinian reports, an eleven-year-old boy was killed and two were injured by our forces' fire.
- c. On 9 July 2001 a de-briefing was conducted by the battalion commander with the participation of the Girit Platoon Commander, Platoon Commander 5, Sergeant 5, the tank platoon commander and the operations officer.
- d. On 10 July 2001 a brigade commander de-briefing was held.

2. Facts:

- a. On Saturday, 7 July 2001, an armored personnel carrier patrol mission was carried out on the "Philadelphi" route in order to prevent hostile terrorist action on the route and to prevent weapons smuggling.
- b. At 06:00 A.M. a route opening on "Philadelphi" was carried out by two armored personnel carriers [illegible in original]
- c. [illegible in original] between RP 16a and 18.
- d. Just before 12:00 dozens of children started to gather around the opening at 18. Stones were thrown at the armored personnel carriers from the mound and the ditch.
- e. A fragmentation grenade was thrown at the force.
- f. The children tried to cross "Philadelphi" route and reached "Dakar" route. The force inside the armored personnel carrier fired warning shots - five bullets, on the "Dakar" route in front of the children.

- g. In addition, the force fired five bullets at the protective wall - cement blocks around RP 18 - in order to prevent the children from entering the ditch and throwing stones from it.
- h. At 13:00 the forces on the ground switched and Platoon Commander 5 situated himself on the lookout at the opening on RP 18 from the north.
- i. At 13:30 approximately, grenade and stone throwing at the armored personnel carrier increased. Five grenades were thrown at the personnel carrier.
- j. The platoon commander fired warning shots at the children who were attempting to cross the "Dakar" route.
- k. The platoon commander fired rubber [bullets] at a group of children who were on the mound and tried to enter the ditch. The shots fired were blanks.
- l. During the firing of rubber [bullets], the platoon commander detected that one of the children had been in the head. The child held his head and ran. After a few minutes he returned to the demonstration.
- m. In addition, a number of bullets were shot from a machine gun toward the protective wall, which is the mound and the concrete wall.
- n. The force threw a percussion grenade into the ditch.
- o. While firing the warning shots, two grenades were thrown at the force. One fell near the armored personnel carrier and one fell into the ditch.
- p. The platoon commander entered the opening at 18 with the armored personnel carrier in order to look out onto the ditch and see if any of the children had been struck by the grenade. The platoon commander did not detect that anyone had been hit.
- q. At approximately 19:00 the platoon commander left with the armored personnel carrier to go back to Girit.
- r. When the force moved out, dozens of children and adults entered the "Dakar" route, put down objects and barbed wire. In addition, sacks coming in from the Egyptian side were detected.
- s. The company commander directed the tank to fire warning shots. The tank fired a 0.5 machine gun three times: at RP 17, north of RP 17 and at the T at the opening at 18. The shots were fired within the sector, three bullets each time, a total of twelve 0.5 bullets - all west of the concrete wall.
- t. Over the course of the incident no ambulance arriving at the area was detected, nor evacuation of a child by people at the place. As well, there was no apparent change in behavior during the disturbances.

3. Mistakes.

- a. The armored personnel carriers' activity was too static and not sufficiently mobile.
- b. The children got within too close a range from the armored personnel carriers.
- c. The tank should not have been used to fire warning shots during the day. The company commander should have considered that the tank was exposed to the Egyptians during the shooting.
- d. The use of rubber was not right. The risk resulting from these shots was not considered.
- e. It was possible to return the armored vehicles to 18 instead of firing warning shots from the tank.

4. Failures:

- a. A Roger (22 caliber anti-riot rifle) that was supposed to arrive for the mission, did not arrive.
- b. The platoon commander did not transmit open-fire orders dealing specifically with firing rubber (The platoon commander received training for firing rubber and knows how to use it. The platoon commander is aware of the 70-meter minimum range.)
- c. Rubber shots were fired using blanks and not by rifle attachments.

5. Lessons and Conclusions:

- a. Recently there has been an increase in disturbances in which children participate.
- b. Most of the disturbances take place at RP 18 because the Palestinians understand that we do not have effective weapons for that range.
- c. There is an increased use of children for the purposes of laying explosive devices, dummy devices and obstacles on the route.
- d. Daily patrols on RP 18 decrease hostile terrorist activity and disturbances on the route, but do not completely prevent them.
- e. This mission creates a high level of friction between the force and the children - which poses difficult dilemmas for the troops on the ground.
- f. It is necessary to ensure that the forces are mobile, in order to decrease the level of friction.
- g. From the de-briefing, it is not possible to determine whether a child was killed from our forces' fire.
- h. The mission is very complex and there are many difficulties in carrying it out, since the target is to keep "Philadelphi" route sterile, yet not fire shots at children.
- i. The fact that the children came within ten meters of the armored personnel carrier is a mistake. Such events should be avoided, even if it means that the personnel carrier is driven backwards in order to avoid a high level of friction.

- j. The rubber fired by the platoon commander does not deviate from the open-fire directives and regulations. However, one should realize that shooting is at least from forty meters range and is aimed at the legs. Improvised firing blanks by officers is a flaw and as a rule, firing rubber bullets, which are, in some instances deadly, should be avoided.
- k. The Roger - a Roger was ordered for the company, but it had not arrived and the company went out on its mission without it, which prevented the force from shooting accurately and safely.
- l. It is the company commander's responsibility to hold a commander conference and clarify the Open-Fire Regulations.
- m. There is no authorization for firing rubber, just a Roger.
- n. There is no doubt that Palestinians are using children for smuggling and laying devices, but shooting at children should be absolutely avoided.

6. Summary and Assessment

- a. It is impossible to unequivocally determine that the child was killed by our forces' gunfire:
 - 1. No ambulances were detected coming into the area of the events throughout the day.
 - 2. Nobody hurt was detected.
 - 3. There was no escalation and commotion that could have occurred as a result of a death during the events.

7. With kind regards.

Holi Moshe, Major
Operations Department Officer,
Division 6643

Appendix B: Summary of Division Commander's De-briefing

- Restricted -

Regional Brigade 6643
Operations Department
14 July 01

To: Battalion 424 - Battalion Commander, Operations Officer

For the Information of: Regional Brigade 6643 - Brigade Commander, Brigade Sub-Commander, War Room Officer; Division 643 - Operations Department Officer, Operations Officer

Re: Division Commander de-briefing relating to warning shots at RP 18 "Philadelphi", 7 July 2001

1. On Thursday, 12 July 2001, the above de-briefing was conducted by the division commander with the participation of the southern division deputy-commander, battalion 424 commander and operations officer.
2. Below is the division commander's summary:
 - a. The background for the de-briefing is a press report about the killing of a child and the wounding of two others in the Termit area, while they were at home. The report refers to an injury from a 0.5 bullet.
 - b. Mistakes:
 1. People should not be allowed to get within less than 50 meters from the vehicles - either by retreating or by operating a Roger (22 caliber anti-riot rifle).
 2. The tank fire is a flaw.
 - c. Open-fire guidelines for "Philadelphi"
 1. Ensure the shots do not hit - i.e., shooting toward a protective wall, west of the wall, the mound, and/or at the concrete wall, as far away as possible from people (do not set 50 meters)
 2. Shots should be fired from a precisely accurate weapon - Barret (50 caliber sniper rifle), a machine gun, a 0.5 parallel mounted on a canon, after setting the weapon's sights.
 3. Warning shots are fired during the day only, authorized by the company commander or deputy-commander only.
 - d. The patrol on "Philadelphi" should be constantly moving. Ensure it is moving and not static.
 - e. It is not possible to determine that the children were hurt by our forces' gunfire.

Moshe Holi, Major
Operations Department Officer,
Division 6643

Appendix C: Opinion of the Southern Command Judge Advocate

- Restricted -

Office of the Judge Advocate General
Land Forces/Southern Command
Tel: 0307-9351/4
Fax: 0307-9353
29 August 2001

JAO 9605 - The Judge Advocate General
JAO 9605 - Chief Military Prosecutor
H - 2025

Re: The circumstances of the death of Khalil al-Mughrabi
in Rafah on 7 July 2001

[references]

1. In addition to the letters of the Chief Military Prosecutor referred to above, we received for our review newspaper articles and a complaint from B'Tselem which indicate that on 7 July 2001, during a disturbance, which included stone and grenade throwing at IDF forces, the child Khalil al-Mughrabi was shot and killed.
According to the Palestinians, IDF soldiers used heavy machine guns. Army officials quoted in the papers denied that allegation.
B'Tselem's letter indicates that the child was not involved in violent events, but was playing nearby with his friends when he was shot and killed.
2. Recently, we received de-briefings with regards to the said incident. These de-briefings indicate that during that day there were severe disturbances and rioting at the place. According to the de-briefings, "warning shots" and rubber bullets were fired in the direction of groups of rioters composed of dozens of children who were attempting to approach an IDF force at the place and threw stones and several fragmentation grenades at the force.
These details do not conform with B'Tselem's version, according to which, at the said time, there were no violent incidents in the place, and the children who had been hit were playing ball games and not participating in any kind of disturbance.
3. In light of the circumstances of a violent disturbance and the combat nature of the events, as described in the de-briefings, I do not think that there is cause to open a Military Police investigation.

4. However, I have found it appropriate to point to the following problematic issues:
 - (A) It appears that tank fire was used as warning shots, which the regulations prohibit. The de-briefing itself specifies that the tank fire was a mistake (for reasons unrelated to the regulations). There was no mention of what measures, if any, were taken with regards to this shooting.
 - (B) The de-briefings mention that warning shots were toward the children. The regulations do stipulate that no warning shots should be fired to get children away from restricted areas on roadsides (section 19 of the *Ahuda* [sic] Regulation). However, in light of the nature of the disturbance (stones and a number of grenades), live ammunition and warning shots could be fired and there was nothing wrong in firing the warning shots in such circumstances.
 - (C) It appears that the IDF response given to the press, claiming that there was no use of heavy weapons, was wrong.
5. Therefore, I do not recommend, as noted above, a Military Police investigation into the matter. However, it appears that it is necessary to check which disciplinary action has been taken against those responsible for using the tank in the incident. In the event that no such action has been taken, it should be ordered.
6. For your instruction.

s/

Baruch Y. Mani, Lt. Colonel
Judge Advocate, Southern Command

Appendix D: Opinion of the Chief Military Prosecutor

The circumstances of the death of Khalil al-Mughrabi, 11, and the wounding of two children near the Egyptian border on 7 July 2001

B'Tselem's Complaint (attached, testimonies of two children)

1. On 7 July 2001, a group of twenty to thirty children were playing soccer on a field near the border, close to Yubneh Refugee Camp.
2. At about 17:00, a tank passes by them from east to west and pays no attention to them.
3. Fifteen minutes before they finished their game, the tank proceeds from Salah a-Din Gate westward toward the military tower at Tel Zu'arub.
4. At 19:10 - the children sit down to rest: some alongside the sand piles near the border, some on *top* of them (among these, Khalil, the boy who was killed).
5. Suddenly, gunfire from the direction of the military tower, a kilometer away from the children: a quiet bullet hits Khalil, his head shattered and he fell from the top of the pile. Immediately afterward the sound of loud shots - when running northward, two children were hit.
6. A Mercedes public-transport vehicle picked Khalil up, and an ambulance picked up the two wounded.

Operations de-briefing

1. An armored personnel carrier was patrolling reporting points (RP) 16a and 18, on the border.
2. At 12:00, dozens of children gathered at RP 18. The chronology of events:
 - a. 12:00, stone throwing. One fragmentation grenade is thrown at the troops. Children cross the "Philadelphi" route and reach the "Dakar" route (parallel to "Philadelphi"). *Response*: warning shots are fired on the "Dakar" route, in front of the children + five bullets toward the concrete blocks at RP 18.
 - b. 13:00, replacement of troops - platoon commander 5 situates himself on the lookout north of RP 18.
 - c. 13:30, increased stone throwing + 5 grenades thrown at the armored personnel carrier. *Response*: platoon commander fires warning shots + rubber bullets (hits, apparently lightly, a child who continues to run and demonstrate) + machine gun fire toward a battery and a concrete wall + percussion grenade into the ditch. Two grenades are thrown at the force.
 - d. 19:00, the platoon commander and the armored personnel carrier return westward to Girit. Dozens of children and adults enter the "Dakar" route, put down objects and barbed wire + bags coming from the Egyptian side were detected. *Response*: the platoon commander instructs the tank to fire warning shots - not toward the children themselves. A 0.5 machine gun was fired in three directions: RP 17, north of RP 17 toward the T in the opening at RP 18. No detection of children being hurt.

Recommendation of Southern [Command] Judge Advocate

1. Violent disturbance, combat nature, grenades were thrown - Military Police investigation unnecessary.
2. However, it is prohibited to use tank fire as warning shots - recommend disciplinary action against those responsible for operating the tank.

Response of the Chief Military Prosecutor

Examination of the event should be divided in two: a. An examination of the legality of the tank fire. b. Did this fire cause the death and injury of the complainants?

1. The legality of the shooting

It appears that the shooting was indeed done during a "combat" incident, grenades were thrown etc. However:

- a. There is no connection, either in timing or substance, between the grenades and the shots fired from the heavy machine gun on the tank. Prior shots during that day were fired as a response to grenades, not the tank fire at 19:00.
- b. The tank fire was shot in response to dozens of children and adults who arrived at the "Dakar" route and put down objects, in the words of the de-briefing.
- c. Shots were fired as warning - and not in order to hit. It is doubtful that the force felt that it was in a life-threatening situation.
- d. Warning shots - the regulations stipulate that:
 1. No warning shots should be fired at children.
 2. Warning shots should only be fired from light weapons (certainly not from heavy sub-machine guns).

In this matter, the de-briefing does not examine which regulations regarding warning shots were known to the troops, in general, and to the platoon commander who operated the tank, in particular.

The Southern [Command] Judge Advocate was aware of the problems surrounding the legality of the warning shots, yet advised that disciplinary action against those responsible for using the tank would suffice. He made this conclusion because grenades were also thrown. Therefore, "It was permitted to fire live ammunition, and warning shots are acceptable under such circumstance." See 4b in the judge advocate's letter.

As demonstrated, a *doubt* exists whether the tank fire could be justified by the grenade throwing (which does not correspond in terms of timing), or in the force's feeling that it was in a life-threatening situation.

2. Was the tank fire the cause of injury and death of the complainants

First, it is likely that the shots did not hit the children who were identified as rioters but rather children who were some distance from the place of the event.

- a. The children indicated that there were no violent events in the area.
- b. The children indicated that the tank passed by them at around 17:00, paid no attention to them and moved toward the military tower at Tel Zu'arub.
- c. From the complaint, it appears that the gunfire came from the military tower, which was about a kilometer away from them.
- d. The de-briefing indicated that no injury was detected, there was no commotion following an injury, there was neither an ambulance nor some other vehicle which evacuated the casualties. However, the children indicated that a Mercedes public-transport vehicle picked up the deceased and an ambulance picked up the wounded.
- e. The shots were not fired in the direction of the rioters, but to the side.
- f. The children were sitting by the side of the sand piles and some on the top of the piles.

Was there no other gunfire that hit the soccer children?

- a. The hours correspond - 19:10 according to the children, around 19:00 according to the de-briefing, the platoon commander goes back to Girit and the rioters arrive at the route, etc.
- b. The location is in close proximity.
- c. From the de-briefing it appears that there was no other gunfire in the sector.

Interim Summary

1. If there were warning shots - they were fired against regulations - only light weapons and not toward children.
2. Shooting in order to remove a life-threatening danger - there is a doubt whether live gunfire in order to hit could have been justified at that point (the relevant time - 19:00, when no grenades were thrown, and it is doubtful that the force felt its life was in danger).
3. It is likely, though not unequivocal (at this stage) that the allegedly illegitimate warning shots hit the soccer children, a distance of about 1,000 meters from the place of the incident.

Options for Action

1. There is suspicion of firing in violation of the regulations + suspicion that the gunfire killed and wounded innocent children. A thorough Military Police investigation should be ordered (among the matters to be examined are which open-fire directives were given to the force and whether it could be positively determined that it was that gunfire that struck the children).
2. The shooting was justified - the incident as a whole had a combat nature, grenades were thrown earlier during in the day, the whole area is dangerous, the gunfire was justified, if innocent people were harmed, one can only regret it. See the proposal for a reply letter to B'Tselem, derived from choosing this alternative.
3. Despite the combat nature - the shots were warning shots - which were not fired according to regulations: they were fired from a heavy machine gun and not light weapons and toward children. However, in light of the confrontation, the grenades, the danger etc. it is not a "gross deviation" from regulations and disciplinary action against whoever fired warning shots from the tank should suffice.

Difficulties in selecting the middle way.

- a. The "gravity of the deviation" and the "results of the event" are two corresponding criteria. The results here are very serious - an eleven-year-old child, who was innocently playing soccer, was killed. His two friends, 10 and 12, were injured (the ten-year-old apparently "severely"). Even if it is a "slight" deviation, the result should dictate a Military Police investigation.
- b. The limitation allowing only light-weapons fire is to ensure that warning shots will pose as little danger as possible. The use of a heavy machine gun greatly increased the risk that someone 1,000 meters away would get hurt.
- c. If all the alleged suspicions are verified - firing warning shots against regulations + causal connection to death - an indictment won't be filed?
- d. Perhaps the answer to the question on filing an indictment depends on which open-fire orders were given to the force when it went out on its mission?

Headquarters, Judge Advocate General
Office of the Chief Military Prosecutor
Telephone: 03-5693153
12 September 2001

Ronen Stein [sic] - B'Tselem
8 Hata'asiya St.
Jerusalem 93420

Re: Your letter regarding the circumstances of the
death of Khalil al-Mughrabi in Rafah on 7 July 2001
Ref: Your letter from 16 July 2001.

1. An examination of the circumstances surrounding the incident indicates that, on 7 July 2001, children gathered near an IDF force that was moving along the Egyptian border. While the gathering took place, stones and fragmentation grenades were thrown at the IDF force.
2. The force tried to disperse the disturbance using rubber bullets and warning shots, which were aimed at a protective wall, so as not to hurt the rioters.
3. Under the circumstance and in light of the fact that the IDF force was subject to fragmentation grenade throwing, we have not found a suspicion of criminal behavior on the part of the IDF soldiers, or that there is just cause to open an investigation.

Copy: Southern [Command] Judge Advocate

Sincerely,

Einat Ron, Colonel
Chief Military Prosecutor

Appendix E: Response of the Chief Military Prosecutor

Headquarters, Judge Advocate General
Office of the Chief Military Prosecutor
Telephone: 03-5693153
31 October 2001

Ronen Stein [sic] - "B'Tselem"
8 Hata'asiya St.
Jerusalem 93420

Re: Your letter regarding the circumstances of the death
of Khalil al-Mughrabi in Rafah on 7 July 2001
Ref: Your letter of 16 July 2001.

1. Following an examination of the circumstances surrounding the incident, there is an indication that on 7 July 2001, children and, at some stages, adults gathered near an IDF force that was moving along the Egyptian border.
2. At certain points during this gathering, there were massive stone throwing and throwing of fragmentation grenades at the IDF force.
3. The force tried to disperse the disturbance using rubber bullets and warning shots, which were aimed at a protective wall, so as not to hurt the rioters.
4. Live gunfire was not aimed at the rioters, and no hits were detected as a result of this gunfire.
5. Under the circumstances, we have not found any suspicion of criminal behavior on the part of the IDF soldiers, or that there is just cause to open an investigation.

Copy: Southern [Command] Judge Advocate

Sincerely,

s/

Einat Ron, Colonel
Chief Military Prosecutor

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.
