Jerusalem, November 1989

The MILITARY JUDICIAL SYSTEM in the West Bank

בצלם

B'Tselem -- The Israeli Information Center for Human Rights in the Occupied Territories

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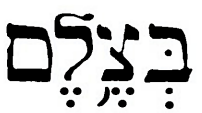

B'Tselem -- The Israeli Information Center for Human
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ADDENDUM

NOTE:

The IDF Spokesperson's response to our questions arrived only after the original Hebrew version of this report was already at the printer's. For this reason we did not relate to this information in the body of the report. The entire response appears in Appendix B.

Of about 40,000 Palestinians who have been arrested (as of October 19, 1989), the IDF Spokesperson indicates that some 17,000 have been brought to trial for crimes of disturbing the peace. Of these, some 10,000 have been convicted and some 400 acquitted.

The IDF Spokesperson also states that between May 1, 1989 and October 30, 1989, 314 people were released on bail. It should be noted that in May, 1989, 142 people were released, while in September only 25 and in October only 24. These figures indicate that it is possible that a change in procedures for release on bail led to a reduction in the number of people actually released, as was noted in the body of the report in Chapter 4.

The IDF's figures indicate that the trials of some 7000 suspects have not yet concluded.

Our questions regarding the number of months of detention which preceded acquittals and which preceded the start of proceedings remain unanswered.

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INTRODUCTION

The Military Advocate General reported at a press conference on October 19, 1989, that since the beginning of the Intifada, security forces had made 40,000 arrests in the territories. Of those arrested, 18,000 Palestinians were actually tried before military courts. From the data provided by the Military Advocate General it is apparent that the judicial system is heavily burdened, and that despite the increase in personnel in recent years, the system is collapsing under the weight of the large numbers of detainees and judicial proceedings.

In 1989 lawyers appearing before the military courts in the territories held two strikes in an effort to shock the system and effect a change in procedures which, according to them, deny basic rights to Palestinian suspects and defendants.

This report examines the functioning of the military judicial system in relation to the law governing the territories. The report is divided into two parts. The first is based on interviews with lawyers, prosecutors and military judges. The second part focuses on observations in the Ramallah courts conducted over a period of eight months with the help of seven Israeli lawyers.

This report does not cover all aspects of the functioning of the military judicial system. It focuses solely on the West Bank, and not on the Gaza Strip.

The report deals only with instances in which judicial proceedings actually took place. Nevertheless, it is important to remember that many of the imprisoned Palestinians do not reach the courts, but are imprisoned for a period of administrative detention without being brought to court. The military commander has the right to order administrative detention if there is "a reasonable basis to suppose that regional security or public security necessitate that the person should be imprisoned." (1) According to the data provided by the Military Advocate General, since the beginning of the Intifada more than 9,000 administrative detentions have been ordered. Since August 1989 it has been possible to impose 12 months of detention without judicial review, instead of the six month limit which was previously in effect. (2)

This report is the first of its kind, and B'Tselem will continue to follow and publish further data and evaluations of the military judicial system in the territories.

SOURCES OF THIS STUDY

Until now few reports regarding the military judicial system in the territories have been published. In 1987, the human rights monitoring organization, "Al-Haq -- Law in the Service of Man" published a booklet entitled **Justice? The Military Court System in the Israeli-Occupied Territories. (3)** That pamphlet compares the military judicial system and the legal basis upon which it draws its authority with the demands of international law.

In July 1989 the American "Lawyers Committee for Human Rights" published a report which dealt with the causes of the lawyers' strike on the West Bank **(4)**. The report is based on interviews with Israeli and Palestinian lawyers and analyzes their complaints regarding difficulties in representing their clients.

The main part of the report published here is based on interviews which B'Tselem conducted with lawyers, judges, and prosecutors and on observations made by seven Israeli jurists and attorneys in the courts in Ramallah and Nablus.

The data published here were provided by the Military Advocate General at a press conference. Our letter to Brig. Gen. Nahman Shai, the IDF Spokesperson, asking for details on the number of those imprisoned, the number of indictments issued and their juridical outcome, remains unanswered (our letter appears in Appendix B). Although we repeatedly requested information, both in writing and orally, we received no reply. Therefore, important statistical data is missing. The number of cases processed in 1988 and 1989 is unknown; the numbers of defendants acquitted and convicted are also unknown; and it is unclear how many people have been imprisoned and how many freed on bail.

THE LEGAL FOUNDATION OF THE WEST BANK JUDICIAL SYSTEM

The military courts on the West Bank operate on the basis of the Order Regarding Security Instructions adopted in 1967, and a new order issued in 1970 which superseded the previous one (5). The regional commander appoints officers serving in the regular army and reserves as military judges and prosecutors, based on the recommendations of the Military Advocate General.

The courts are presided over either by three judges who are IDF officers, and of whom at least one has legal training, or by a single arbiter who is a judicial officer (6). A court presided over by a single officer has the authority to sentence defendants to a prison term of no more than five years or to a fine not exceeding that established by the Order Regarding the Imposition of Fines in the security code of 1980. Sentences from the military court of three are valid only when approved by the regional commander (7).

According to directives of the Israeli police, which were issued on the advice of the Attorney General and the Military Advocate General, the following cases can be brought before a military court: (a) a local resident who violates regional security legislation; (b) a local resident who violates a local ordinance and which violation harms the security of the IDF in the region, Israelis working or visiting in the area, local residents through his work in the IDF or collaboration with it; or those who severely interfere with government arrangements; (c) a visitor from Israel (including a tourist) who acts in violation of a local ordinance or security legislation, even if that act does not constitute a violation of any Israeli law; (d) anyone who commits a crime in the region and the regional chief police investigator believes the case should be tried before a military court, and the regional attorney general concurs (8).

In practice, only local Palestinian residents, and sometimes foreign visitors, are brought before the military courts. Residents of Israel and Jewish residents of the territories are tried in courts in Israel.

Hearings are conducted with open doors (9). It is the duty of the court to appoint an interpreter for anyone who does not understand Hebrew (10), and the judge must keep a record of the hearing (11). The prosecution is conducted by someone appointed by the local commander as the military prosecutor (12), and the defendant can be represented by a defense lawyer (13). If the charge is serious, the defendant must be represented and the court appoints a defense attorney when necessary (14).

The military judicial system on the West Bank is divided into two regions, one located in Ramallah and the other in Nablus. The regular court in Ramallah serves the Districts of Ramallah, Hebron, Bethlehem and Jericho. Subsidiary to this court is one in Hebron which has recently begun hearing cases in expanded sessions. The court in Nablus serves the districts of Nablus, Jenin, and Tulkarm. In January 1989 a permanent court, where hearings take place three or four times a week,

was opened in Jenin, as a subsidiary of the Nablus court.

The military courts have two offices, one in Ramallah and the other in Nablus. Military prosecution also operates with this geographic distribution.

Upon the advice of the High Court of Justice, appeals courts were opened in Ramallah in April 1989 (15).

The regional commander appoints the prosecutor and the judge, based on the recommendations of the Military Advocate General. He is permitted to reduce sentences or annul convictions.

DETENTION

The Legal Basis for Detention

Article 78 of the Order Regarding Security Instructions establishes that it is permissible to detain a person for up to 18 days without an arrest warrant issued by a judge.*

In Israel it is permissible to detain a person for no more than 48 hours without an judge's order. As soon as it becomes clear that the suspicion on which the detention was based is groundless, or as soon as the need for detention has ended (because, for instance,the investigation is over or is not bearing fruit), the police must release the detainee immediately and not wait for the 48 hours of detention in Israel to pass (16).

Detention is a severe abrogation of human rights. It is harmful to a person's freedom, family, and livelihood. Imprisonment for 18 days without a judge's order, as is currently the case in the territories, constitutes an extraordinarily long period of detention.

The Landau commission, the government committee which investigated the activities of the General Security Service (GSS, also known as the Shin Bet), noted in its conclusions that imprisonment without a judge's order for a period of 18 days represents a severe denial of human rights. The commission recommended, among other things, that the length of detention before a person is brought before a judge in the territories be shortened from 18 days to 8 days.

It should be noted that the recommendations of the commission were adopted by a government decision, but nothing was done to implement this decision. Attorney Joshua Shoffman, of the Association for Civil Rights in Israel (ACRI), petitioned the Military Advocate General requesting implementation of this decision. The latter's reply was that the implementation of this decision would be postponed this year because of the situation in the territories.

In the territories, a judge may extend the period of detention to six months even if no indictment has been issued (17).

In Israel, it is possible to detain a person for investigative purposes for up to 30 days. A judge can extend the term of detention to 90 days only if a request has been made by the Attorney General. This procedure is used only very rarely (18).

In the territories, after an indictment has been issued, a person can be detained through the end of proceedings. There is no limit to the length of time it is possible to detain someone before a conviction.

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* Article 78(c) authorizes up to 96 hours of detention.
(d) authorizes an officer to extend the period by seven days.
(e) enables him to extend the period by another seven days, to a total of 18 days.

In Israel, according to the law, "a defendant who, after being issued an indictment, has been detained for that indictment for a combined period of up to one year and the trial court has yet to hand down a verdict in his case, shall be released from detention." **(19)** Only a Supreme Court justice is authorized to extend detention beyond this period.

In Israel, as well as in the territories, the court can release prisoners on bail. In the territories, the courts make very limited use of this option.

In the territories, as in Israel, a suspect has the right to see an attorney from the moment of his imprisonment. An attorney can ensure that the investigation will be conducted properly and that the suspect can enjoy his rights to proper defense and to release on bail. The defense attorney is expected to explain to the suspect his legal rights and the judicial implications of his conduct **(20)**.

In the territories, a suspect's meeting with his attorney can be postponed for 30 days, if needed for purposes of interrogation.

In Israel meeting with and attorney can be postponed for only 15 days in the case where a person is suspected of certain security violations. Only a judge is authorized to extend this period to 30 days.

In the territories, at the end of the 30 day period ordered by the civil administration during which the meeting is disallowed, a judge is authorized to extend the period for another sixty days.

In Israel, suspension of the right to meet with an attorney is rare.

In the territories, in every case in which there is a GSS interrogation, meeting with an attorney is postponed until the conclusion of the interrogation. It should be noted that in the majority of cases where lawyers have petitioned the High Court of Justice charging that there is no true security reason justifying the disallowing of a meeting, the order has been overturned. In other words, there is reason to suppose that the abrogation of the right to meet with an attorney has become a matter of custom, having, in many cases, no true security justification.

In the territories, the decree emphasizes that abrogation of the right to meet with an attorney requires the written approval of the proper authorities (in most cases the GSS) **(21)**. In practice the written approval is never shown to the attorney, and prevention of meetings with suspects is simply the common custom in most cases of those suspected of criminal terrorist violations in the territories.

When there is no order preventing the meeting, an attorney can, in principle, meet immediately with the prisoner. In practice, an attorney is unable to see his client in the holding facilities. These facilities are located within military compounds, where contrary to law, attorneys are not permitted to meet with prisoners. Prisoners are

held in holding facilities for a period of up to a week (22).

A meeting between a lawyer and a prisoner is therefore impossible while the prisoner is being held in a holding facility, and for the thirty days in which such meetings may be disallowed by the proper authorities, that is, in most cases in which the security services interrogate a prisoner.

In practice, despite the provisions of the order, lawyers are met with severe problems which prevent them from conferring with their clients even when the suspects are not being held in holding facilities and security reasons are not preventing the meeting. The two chief reasons are difficulty in locating prisoners and postponement of visits by detention center commanders or their staff.

Non-Notification of Arrest and Place of Incarceration

The Order Regarding the Security Instructions establishes in paragraph 78A(b) that "when a person is arrested, information regarding his arrest and place of incarceration should be immediately conveyed to a relative, unless the prisoner requests otherwise." **(23)**

It is a detainee's right to notify his relatives of his arrest and place of incarceration -- this is a basic right. This right is called for by general principles of justice and the respect due a human being **(24)**. A prisoner's family anguishes when it does not know what has happened to the prisoner, where he is, or by whom he was taken. Notifying the family of a prisoner's arrest and place of incarceration is necessary to prevent this suffering. Without knowledge of a prisoner's arrest and place of incarceration, relatives cannot contact an attorney and the attorney cannot meet him to offer legal advice.

The military legislator wanted to insure the rights of prisoners with a clear-cut order that establishing that "upon the request of the prisoner, information mentioned in paragraph (b) shall also be given to an attorney designated by the prisoner." **(25)**

The chairperson of the Union of Arab Lawyers on the West Bank, Ali Ghuzlan, charges that attorneys are not notified of their clients' arrests and places of incarceration, and that for the most part families of the prisoners are served by rumor regarding the arrest and location of their family members **(26)**. Every attorney with whom we met described difficulties in locating prisoners. First, they must go to the Military Attorney General in Beit El to receive information regarding a prisoner's location. It can take between a day and a week to receive the information, and then the attempt to locate the person in the various detention centers begins. In the instance where the prisoner has been transferred to another detention center, the prison administrative office releases only the information that the prisoner has been transferred, not his new location.

Advocate Avigdor Feldman noted that the transfer of prisoners from one detention facility to another is for the most part not documented, and that the courts have encountered severe difficulties in past attempts to reconstruct the movement of prisoners **(27)**.

At the beginning of August '89, the families of prisoners Musa Yunis Mohammed 'Odeh, Ahmed Jaber Yusuf Shahin, 'Aziza Jam'a Suleiman Abu Shakrah, along with Advocate Dan Simon of ACRI, petitioned the High Court of Justice concerning the withholding of information on the arrest and place of incarceration of detainees held in the territories by the IDF. According to the testimony of three of the petitioners, they were not informed by either telephone, postcard, telegram, or any other means of their family members' arrest, and they learned only by rumor of the imprisonment facility to which the prisoners were transferred. To this petition was added a deposition by 'Osama Zeid Kilani, a lawyer who represents hundreds of prisoners in the territories, that "he has never been notified by either the commander of a detention facility, a detainee, or anyone else who ought to respond, of the arrest of any of his clients" (Appendix C).

Musa 'Odeh, the first petition, a resident of Al-Azariyah, declares that on July 5, 1989, at 1:30 am, soldiers arrived at his house, removed his son from his bed and took him with them. From the day of his arrest until August 8, 1989, Mr. 'Odeh did not receive any notification by telephone, postcard, telegram or by any other means, of the arrest or place of incarceration of his son. It should be noted that his house has a telephone. Rumor reached him that his son was being held in the Dahariya jail. On July 17, 1989 he went to the jail, but his son's name did not appear on the list of prisoners that was posted there.

In response to a further rumor, according to which his son was being held in the prison at Anatot, Mr. 'Odeh traveled with Advocate Ahmed Diad to Anatot. Advocate Diad entered the jail to clarify whether the son of the petitioner was being held there, but was given a negative response by the jail authorities. On the 30th of August, almost eight weeks after the detention and after the petition to the High Court of Justice, Mr. 'Odeh was notified of his son's place of incarceration.

The petitioners detail repeated failure to give notice and state that because of that failure, the legal defense to which they are entitled is withheld from them, including advice to prisoners on their legal rights, the opportunity to submit immediate requests for release, etc. Prisoners are also denied the knowledge that someone outside the prison walls is looking after their interests.

The petitioners added that "failure to notify harms the relatives of the prisoner as well, in that, from the moment the imprisonment begins, they lose all contact with the prisoner. They must put themselves out and travel in order to locate the place of incarceration. They are unable to send lawyers to care for the prisoners and they live under fear and by rumor." **(28)**

Two days before the case was to heard by the High Court of Justice, the Attorney General issued new instructions regarding notification of families of arrests and places of imprisonment. The Attorney General states that "because of the uprising and its resultant increase in violent incidents and disturbances in the region, there has been a significant rise in the number of prisoners, which has necessitated their placement in various holding and prison facilities, as well as increased mobility between the facilities." Therefore, "great difficulties have accumulated in the way of fulfilling the order." "Nevertheless," added the Attorney General, "procedures are currently being changed which will, among other things, make it possible to answer the petitioners' charges." **(29)** (Appendix D).

The essence of the instructions as they were formulated by the State's Attorney's Office are:

(a) A reporting method was established between the detention facility and a control center, where information regarding arrests and the movements of prisoners between the various detention facilities is kept. The control center is responsible for reporting the status

of prisoners daily to, among others, the military governors in the various districts of the civil administration.

(b) A procedure was established by which each prisoner will be given a postcard so that he can write to members of his family, and thus inform them of his location.

(c) Additionally, in each district of the Civil Administration, a list of prisoners held in the various district detention facilities will be published daily **(30)**.

According to the new procedures, detailed lists of all detainees, including those held outside of the district, will be posted at the civil administration. The list, which will be protected from removal, will be updated and will indicate changes of location, and to which prison detainees have been transferred.

ACRI Advocate Dan Simon visited the civil administration building on October 29, 1989, and found that the new procedures were not being followed. The lists of prisoners are not posted each day, they are not protected, as is required by the new procedures, and they do not give any information regarding residents of the region who are not being held in the Bethlehem facility or who were transferred from this facility to other facilities **(31)**. The same situation was true when Advocate Dan Simon visited Jenin on November 12, 1989, five weeks after the new procedures had gone into effect. Responding to Simon, the regional Attorney General for Judea and Samaria admitted that he had yet to implement the new procedures and that he hopes that within two weeks everything would be in order. (Appendix F)

In interviews we conducted with Advocates Mary Rok, Ibrahim Barghouti, Lea Tsemel, and Ali Ghuzlan, all of whom represent many detainees in the territories, it was apparent that they did not perceive any improvement.

On October 26, 1989 more than a month after the new procedures for notification went into effect, Advocate Ali Ghuzlan described his efforts of the previous day to locate five prisoners. Regarding two of them the Attorney-General had no information, and regarding three others he received incorrect information, including incorrect information regarding the place of incarceration of Advocate Adnan abu-Leila.

Affidavit of Petitioner 2:

AFFIDAVIT

I, the undersigned, Ahmed Jaber Yusuf Shahin, ID No. 94396641-6, of Nusseirat in the Gaza Strip, having been warned to tell the truth or face punishment specified by law if I do not, hereby declare as follows:

1. I am giving this affidavit to be submitted to the High Court of Justice in support of a petition.

2. I am the father of a son named Nashat Ahmed Jaber Shahin, ID No. 93496645 (henceforth "my son").

3. On July 6, 1989, at 11:00 pm, seven soldiers, among them officers and someone known to me as a General Security Service officer, entered my home in Nusseirat, where my son also lives, and arrested my son.

4. Until today, August 2, 1989, I have not received notification of his place of incarceration from any authority.

5. The day following my son's arrest, July 7, 1989, I went to the Red Cross where they promised me they would check into the matter and notify me at home in two weeks.

6. Since the Red Cross told me nothing, I went back to them at the end of two weeks. I told them that a man who had been released from the Gaza prison told me he had seen my son in that prison.

7. After a half hour's wait the Red Cross confirmed that my son was indeed in the Gaza prison.

8. Several days later a rumor reached me to the effect that a man who had been released from the coastal prison said that he had seen my son there, apparently on July 20, 1989.

9. One day earlier, I had asked Gaza attorney Jamal Susi Hawilas to visit my son in Gaza prison. After hearing the rumor described in (8) above, that my son had been transfered to the coastal prison, I asked Advocate Jamal Susi Hawila to visit him in the coastal prison.

10. On July 31, 1989, I visited Advocate Jamal Susi Hawila in his office, where he told me that he had asked to meet with my son in the coastal prison the previous day, July 30, 1989. However, this was not permitted him, and he was not even told whether my son was in the facility or not.

(-)
Signature of Declarer

I, Advocate Tamar Pelleg Sryck, hereby certify that on August 2, 1989, Mr. Ahmed Jaber Yusuf Shahin appeared before me and identified himself by ID No. 94396641-6 (with which I am personally familiar) and, after I warned him to state the truth or face punishment specified by the law, confirmed to me the correctness of the aforementioned declaration and signed it.

(-)
Advocate

On November 21, 1989, the Justices of the Supreme Court ruled on H. Ct. J. 670/89, despite the fact that the petition had been rejected because the government's representative, Nili Arad, announced a change in the procedures for notification of arrests and places of incarceration.

From the opinion of Associate Chief Justice M. Alon:

> As has been mentioned, this petition concerns the failure of the respondents to fulfill the obligation to make public the arrest and place of incarceration of anyone arrested by them in the Judea, Samaria, and Gaza regions.
> This obligation on the part of the respondents is stated in article 78A(b) of the Order Concerning Security Regulations (Judea and Samaria) (No. 378), 1970:
>
> > When a person is arrested, notice shall be sent without delay to a relative, unless the detainee requests otherwise.
>
> This obligation to inform is derived by the authorities from a prisoner's fundamental right, both moral and legal, to have the former bring his arrest and place of incarceration to the attention of his relatives, in order that they might know the fate of their relative and how to offer him needed assistance in defending his freedom. This right is a natural, is based on respect for man and general principles of justice, and is granted both to the prisoner himself and to his family as well.

Visits by Lawyers to Prisons

On orders of the GSS, meetings between attorneys and their clients can be precluded for thirty days following the day of arrest. However, attorneys argue that even after this period, they are often prevented from visiting their clients.

Advocate Mary Rok described a visit to the Megiddo prison on January 29, 1989. She wanted to meet with one of her clients, Salah Taviov, 16, from Hebron. The meeting with him was important to her because the prisoner was asthmatic and his case was to be heard on February 6. She was told by the registrar that the detainee was not in the prison. She insisted, saying that she had seen him in the prison two weeks earlier. The officer in charge explained to her that according to the computer, "he was in tent 7, but we can't find him there." She went out to accompany another client to the infirmary since he had digestive problems and had spat up blood. When she returned the 16 year old Taviov was waiting for her, trembling all over, one eye very red, with deep red marks on his wrists from his having been tied **(32)**. The attorney complained to the officer in charge, saying that he had tried to prevent her from meeting with her client so that she would not see signs of the severe conditions under which he was being held.

The prevention of meetings with prisoners following improper treatment in detention facilities was reported by other lawyers as well. We also received copies of complaints which had been sent to the Attorney General in Beit El, on the delay of lawyers for hours at detention facility entrances, and on the transfer of prisoners between facilities without notice. (Appendix G)

Extending Detention

In the territories, according to the law, "a soldier may arrest, without a warrant, any person who violates the instructions in this order [378] or if there are grounds to suspect him of violating this order." (33) As has been mentioned, it is permissible to detain a person, without a judge's order, for a period of up to 18 days. Most of the prisoners are freed in the period between the first day and the 17th day of arrest.

Remanding suspects to detention beyond the eighteenth day occurs, then, only upon a judge's order. B'Tselem's observers were not present during remand hearings, which are held in the detention facilities or in prison. However, in interviews with Palestinian lawyers, we were given details on severe problems in remand hearings. The attorneys claimed that in many instances they are not given advance notice of the time of the hearings, and that in fact, even the prisoners do not know when the judge will come to the jail to hear their case, so that they are unable to prepare for the session. Similarly, remand hearings are generally not open to the public, and the sessions are generally held in the presence of only the defendant and the prosecutor.

Advocate Mary Rok reported an incident where her client was held for three days without a remand order, and her complaints to the Attorney General in Beth El were not answered (Appendix H). This illustrates the fact that in some circumstances, after a person has been held in detention for investigative purposes for weeks or even months, an indictment is not issued and he simply receives an order for administrative detention.

In many instances evidence presented for remanding a suspect to detention is not revealed to attorneys, and according to the latter's complaints, the reason often given for the remand to detention is that the indictment has not been prepared. In the Nablus court on October 18, 1989, the presiding judge accepted this complaint and decided to lengthen the period of detention even though defense counsel argued that the failure to prepare an indictment was not sufficient judicial grounds for extending detention. The defense lawyer added that the defendant has only one kidney, which was also damaged, and had already been held for 42 days under harsh conditions. The presiding judge noted that he was extending detention by 16 days because:

> The practice in the region, as well as in Israel has been to extend the term of imprisonment in order to give the prosecutor a chance to prepare an indictment. This is the reason for detention which has been dictated by circumstances. In the region the number of prisoners is greater and therefore longer terms are given.

OBSERVATIONS AT THE RAMALLAH MILITARY COURT

The observers at the Ramallah military courts were skilled Israeli lawyers who made accurate transcripts of the courtroom proceedings. The information was coordinated by Dr. Celia Fassberg; the observers were Dr. Celia Fassberg, Advocates Dana Briskman, Yuval Gal'on, Eyal Wittenberg, Orna Meir, Assaf Shacham, and Hagai Shmwali. Also assisting were Dr. Anita Mittwoch and Dr. Idit Doron, whose report is published separately in Appendix J. Apart from their written reports, the observers summed up their impressions by comparing the proceedings with those of the Israeli courts with which they are familiar. This was done by means of a questionnaire prepared by Dr. Celia Fassberg and Dr. Daphna Golan (Appendix K).

Two complementary methods were used in the observations. Firstly, random observations were carried out over a period of eight months, with no advance notice given. The observations were made on different days of the week, in court rooms were various judges presided and various attorneys acted for the prosecution. Secondly, a controlled observation was carried out on a daily basis in the period from September 10 - 21 (except for one day of curfew when we were not permitted to enter) in order to gain an understanding of the court's daily routine, and to complete the random sample carried out over a longer period of time. In general free access to the court was permitted, though it should be noted that the soldiers guarding the entrance, and those guarding the prisoners are apparently unaware of the principle of the public nature of the proceedings, and many of them view with suspicion anyone attempting to observe the proceedings, especially those who take notes during the proceedings.

In five cases relatives of the defendants approached us while we were observing, and told us that the presence of Israeli witnesses influenced the judges and prosecuting attorneys. In one instance, several defendants who had been acquitted told us that our presence in the court room had contributed to their being cleared of the charges. It is of course difficult, if not impossible, to assess what influence the presence of Israeli lawyers has on the proceedings of the military courts. However the possibility exists. It should be noted that on one occasion a B'Tselem staff member was refused entry to the court room. This was when Bassem 'Eid, a resident of Israel, wished to enter together with Advocate Yuval Galon. To date we have received no reply to the telegram sent to the Regional Commander, requesting an explanation of the discriminatory practices in admitting Jews and Arabs to the court room.

The observing attorneys were not briefed beforehand. They were not told of the claims of the attorneys who appear in the court rooms in the territories, and they were instructed not to talk with the defendants or to investigate what was happening beyond the confines of the court room. They were asked to report only on what they saw and heard while observing.

For a comparison, we visited the Nablus military court, another

large court operating in the West Bank. The problems there seem to be more numerous and more serious than in the Ramallah court. Advocate Ali Ghuzlan, Chairperson of the West Bank Bar Association, explained that the courts in Nablus and Ramallah are very different, and that, comparised to Nablus, Ramallah is "a lawyer's paradise" **(34)**. This view was confirmed by all the lawyers we spoke to, although there were differences of opinion as to the reasons for this **(35)**. We were told that the sentencing is more severe in Nablus than in Ramallah, that the attitude shown lawyers is worse in Nablus, that because of the poor administration in the Nablus court offices it was very difficult to conduct a trial there, and that there are more postponements in Nablus than in Ramallah.

Several of the observing attorneys thought that the differences between the two courts derived from their geographical location. Nablus is the scene of more hostile acts directed against Israel, and the court serves the various refugee camps in the district, from where many of the detainees are brought. The Nablus court also serves for hearings on administrative detention. Other attorneys thought that the differences could be attributed to the personality differences between the Presiding Judges of the two courts. And there were those who attributed the relative orderliness of the Ramallah court to the fact that it had been administered for many years by soldiers serving in the regular army, in contrast to the rapid turnover of the conscript soldiers serving in Nablus.

The observations are thus a description of the proceedings in one particular military court, described as the best of the military courts, and not representative of other courts. The impressions of the court were uniform and with the exception of the appeals court, whose sessions are held in Ramallah. The appeals court left a good impression, as described by Advocate Dana Briskman, summing up her observations there:

> My impression was that the proceedings were orderly. The appellants and the respondents were given an opportunity to make their claims before the court, and they were accorded a fair and serious hearing. Simultaneous translation into Arabic was provided throughout all of the hearings, and the Presiding Judge took the trouble to ascertain that the proceedings were understood by both appellant and respondent.

In the observations at the other courts, there was severe criticism of the legal proceedings, of the workings of the court's administrative offices, of the way the lawyers were treated, and of the physical conditions of the court room and surroundings.

The following section deals with four principal issues; the problematic physical conditions under which the court functions, frequent postponement of hearings, release on bail, and the actual court proceedings.

Physical Conditions

The Ramallah military court comprises three court rooms and an administrative office. The building, both inside and out, is dirty in the extreme; the court rooms and the surrounding area show signs of neglect appropriate for neither a courtroom nor a military compound.

Facilities for the Attorneys

No waiting room is provided for the attorneys, and they are obliged to stand outside the building, in the office entrance, or in the court rooms where seating is provided. During the observers' visits it was noted that the attorneys spend long hours in the military court and the surrounding area, with neither facilities in which to prepare their cases or to attend to their business, nor any suitable place in which to meet with their clients or their colleagues. Without a place to meet clients, most of the meetings take place in the court room itself, in the presence of the judge, the prosecutor, and the public, or communication is established by shouting between the corridor and the lock-up.

No room is provided for meetings between attorneys and their clients. The defendants are brought from the prison to the court by bus. While waiting to be brought into the court room, they are held in one of two small dirty rooms, with no seating arrangements. Here large numbers of prisoners are kept in crowded conditions for many hours, without proper lighting or ventilation, and with no provision for separation of prisoners according to age or type of charge brought against them. No place is provided for family visits. Apparently there are no permanent arrangements for such visits, and much depends on the good will of the soldiers on guard duty.

The prisoners and the Palestinian defense attorneys are denied access to the dining room and the army provision store, both of which are used by the soldiers and are available to the Jewish attorneys. The defendants who are not prisoners have to leave the army camp in order to obtain food and drink. The camp is situated some distance from the center of Ramallah, and those entering it encounter numerous bureaucratic obstacles.

Since September 1989, the attorneys have not been permitted to enter the court's administrative office, and this is clearly stated in a sign posted on the office door. The attorneys are supposed to receive all the material pertaining to the court cases, dates of the hearings, release on bail, etc., through the open reception window of the office. They are obliged to stand outside, with no protection from the elements, and wait in line. As of this writing it was not known what arrangements would be made for the winter. All requests are made through a translator, and there are no fixed hours when he is on duty. In addition to handling the attorneys' requests, the translator also works as a courtroom translator. Attorneys are therefore often not aware of the dates fixed for the hearings of their clients, or are unable to handle their release or release on bail.

Court Timetables

A court summons sent to a defendant or a witness calls for them to appear at 8:30 am. In every instance that we observed, the prisoners did not arrive before 9:30 am. On only one occasion did the hearing begin before 10:15, and on most days the hearings began between 10:30 and 11:00. At around 12:00 the recess starts. Generally no announcement was made as to the duration of the recess, and when an announcement was made, it was not adhered to. For example, on September 10, 1989, 33 cases were scheduled to be heard before the Ramallah court. The hearings began at 10:40. Ten cases were heard before the recess, all of them postponed to another date. At 12:15 the judge announced a recess of 15 minutes. He returned at 1:40.

During the recess, the prisoners are kept in the lock-up, the attorneys wait with nothing to do, with no room in which they could usefully work. Because there is no indication of when the hearing will resume, in many cases the at the beginning of a session, or after a recess, the defense attorneys and the escort officers were absent when the court reconvened; when the judge entered, the proceedings were delayed while someone was sent to look for them. Further, although the office generally knows which attorney is representing which defendant, attorneys' cases are often heard in different courts, and since the attorney does not know exactly when each case will be heard, it often happens that they are not in the right place at the right time. The hearings continue into the evening hours, often until 7:00 or 8:00 pm. Since it is not clear which cases will be heard when, the attorneys, the defendants, and their families have to wait for days until their case is heard.

Defendants' Families

Every day, dozens of relatives are to be found outside the fence surrounding the court room, waiting for an opportunity to meet with defendants who are to stand trial. There are no seating arrangements, and the waiting relatives sit on the ground, with no protection from the elements. They wait there helplessly, not allowed to enter the court, and with no one to tell them when, or even if, they will be allowed to enter.

On their arrival at the court, the Palestinian lawyers are surrounded by dozens of family members who want to know if their relatives' cases will be heard that day, or if they are waiting in vain. The list of cases posted on the wall of the court's offices is not posted outside, and those waiting have no way of knowing which cases will be heard. On September 25, 1989, two women told us that this was the fifth time that they had come and the case was not heard. In many instances when the cases are heard, defendants in custody are not brought to court, and thus do not meet with their relatives.

The treatment of defendants' relatives is humiliating in the extreme. Dozens of people wait for long hours, and nobody bothers to inform them of what is happening in the court room, which, because it is located inside the Military Government compound, is surrounded by

fences, with soldiers guarding the entrances. Despite the order which says that hearings are open to the public, unless the court decides otherwise, the decision as to who enters the court room rests with the soldiers posted at the gate. Generally one relative of each defendant is permitted to enter.

Complaints of insulting behavior and physical violence against defendants and their relatives were heard from all the attorneys. Advocate Avigdor Feldman recounted an incident he witnessed in which his client Samiha Halil was beaten and seriously injured by a soldier who did not want to allow her to enter the court. The attorney asked the Presiding Judge, Lieutenant Colonel Shapira, to intervene but was told that the arrangements outside the court were not under his jurisdiction **(36)**.

Order in the Court

Each group of prisoners is escorted by a number of soldiers. In addition, in each court room there are some soldiers from each prison facility, either on duty or sitting there because there is nowhere else for them to go. At any given moment there could be a further ten soldiers in addition to the police, the prosecutors, the translator and the court clerk. There is no guarantee that the soldier who looks after the lists of file numbers and the prisoners is present in court, and there is unavoidable turnover of soldiers in the court room. Unending coming and going, and the resulting incessant noise throughout the hearing, are caused by people looking for the soldier in charge, relieving of the guards on duty, and consultations between the judge, the translator, and the court clerk throughout the session. The noise is compounded by the soldiers and the prisoners outside the courtroom, and by the soldiers elsewhere in the camp. Every day the hearings are conducted with shouting and raised voices.

Beyond the courtroom windows there is continual heavy vehicular traffic, and the sound of blaring radios is heard clearly inside the courtroom. As a result, the participants in the case cannot hear one another, and the case cannot be conducted with the expected calm and decorum. The incessant noise and movement cause the sides to become irritable and confused, and this is evident in their demeanor. The soldiers who are involved in the proceedings do not view the place as a court of law, and barely treat the judge with the respect due him. Not all the military prosecutors even make an effort to stand when the judge is speaking.

A translator is present in every court. On one occasion when we were present, there was practically no translation of the proceedings. On most of our visits the translator spoke in a low monotonous voice, and it was difficult to understand his words. One translator in the Ramallah court translated more or less word for word, and fairly accurately, but another translator did not translate everything that was said by the various sides in the proceedings, made many errors, was corrected by the defense attorneys who were sitting in the room, and often was unable to translate the proceedings. The translator is supposed to help the defendant understand the court proceedings of his

case. However in many instances the translator (usually a regular soldier) also serves as a court clerk busy looking for files, and not as a translator. As a result, the defendants, and sometimes the Palestinian attorneys, do not have the benefit of a translation of the proceedings.

In each court room is an enclosed section for the defendants in custody. Generally there is not enough seating for the prisoners; they are crowded together, and some of them remain standing for nearly the entire session. The benches for the public are also very crowded, because of the uncertainty regarding the order in which the cases will be heard.

On September 25, 1989, a case with 21 defendants was heard. The Presiding Judge ordered the court cleared so that representatives of the defendants' families could be present. On September 12, 1989, Judge Isaacson threatened six times to charge members of the public present with contempt of court for whispering in the courtroom. He even sent one of the defendants to the lock-up until his case was due to be heard. The whisperings were by no means the chief disturbance in the court room, as the court proceedings were barely audible on account of the noise of vehicles, blaring radios, and the voices of soldiers entering and leaving the court room.

Postponement of Trials

Because most defendants are detained until the conclusion of the proceedings against them, it is particularly important to hold the trials when scheduled and to conclude them quickly. Postponement of the trials of those later acquitted causes unnecessary suffering to them and their families. Postponement also clutters up the legal system, and lays an additional and unnecessary burden on it, at a time when the system is already overloaded with a huge number of cases.

Notwithstanding, postponement of trials without any hearing of the case is so prevalent in the Ramallah military court that for every case that was heard in court, nine or ten cases were postponed because the defendants had not been brought to court, the witnesses were not present or because the files could not be found. All the judges complained of the difficulties caused by the prevailing conditions, of the prolonged delays in proceedings, of the contempt of court shown by the prosecution and of the sloppy practices of the administrative staff. Although these complaints were expressed many times, no improvements were noted from the beginning of our observations in March 1989 till their conclusion in October.

The chief reasons for the postponements of trials are:

1. Defense request for postponement in order to conclude plea bargains.
2. Defendant in custody not brought to court.
3. Prosecution witnesses absent.
4. File missing, or material evidence missing from file.

The first of the above reasons for postponement (defense request) is common in Israeli courts. The other three reasons are characteristic of the military courts in the territories, and will be discussed further.

On four occasions when we were present, trials were postponed because of the absence of the (defense) attorney. In one case, the defendant only learned in the court room that his attorney was abroad, and that the trial was postponed six weeks (37). In two other cases when the attorneys were not present, it was not clear whether they were aware of the dates of the trials. During the period of our observations, we learned of several occasions when the attorneys learned of the date of the trial by chance, when they happened to be pleading at another trial (38). On the fourth occasion, the attorney did not show up because he himself was under administrative detention in Ketziot (39).

Non-Production of Defendants in Custody

In most cases hearings cannot take place in the absence of the defendant. Thus the hearings of many detainees are delayed by no fault of their own, and they are remanded to an additional month or so of custody until the rescheduled trial date.

We witnessed three instances in which the Court heard cases where the defendants were absent. One case was heard in the presence of the father of a 15-year-old accused rock thrower who had been detained for more than four months. The father agreed to the plea-bargain in his son's name. Judge Seffi-Alon agreed to the plea-bargain and said that he was taking into consideration the young age of the defendant and the fact that the prosecution had failed to produce its witness for the fifth time (40).

The judge sentenced the defendant, in absentia, to twelve months, to be served only until the date of the hearing. The remainder was suspended to complete a two year period. He also fined him 350 NIS or seven days' imprisonment.

In another case, Judge Shapira agreed on October 25, 1989 to a plea-bargain in the absence of the defendant. The bargain was reached in July, but was never implemented, since the defendant has not since been brought to court.

The defendant was arrested when he was 16 and has been detained since May 9, 1988. His attorney claimed that he was held in such poor hygienic conditions in the Atlit detention center that he contracted a severe skin disease which later became chronic for lack of proper treatment. She further claimed that "we reached a plea-bargain of one to two years and he has been in jail for a year and a half. I want to finish." She added that every case from 1988 which is closed by the end of 1989 should be blessed. The prosecutor remarked that there are still open files from 1987, but the judge agreed to the plea-bargain, and sentenced the defendant in absentia to 45 months' imprisonment, 21 of which would actually be served (41).

In a third case which we observed, the judge agreed to a plea-bargain in the defendant's absence after checking the certificate of power of attorney presented him by the attorney (42). These were exceptional cases. In general a third of the trials in which the defendant is not brought to court are postponed.

On at least one occasion we observed, none of the defendants held in the Ofer prison were brought to court (43). On every other day we observed, at least some of the defendants failed to arrive from their place of incarceration: some were not in the detention centers to which their summons was sent, while others did not appear on the list sent to the detention center secretary. One day, for example, defendants in 16 cases were not brought to court (44).

In one case the escort officer charged with bringing defendants from the Offer camp, a Major in the reserves, explained to the court that there is no communication between the courts and the detention

center, that summons are not received at all, and that defendants are brought to court based on the memory and scribblings of Yehuda (probably the bus driver) **(45)**.

The escort officers are often sent to ascertain who is present, and there is usually no correlation between the list of cases to be heard and the list of detainees brought to court.

As has already been mentioned, all but three of the cases were postponed, most often for a month's time. Defendants are remanded during this time, despite the fact that they have no control over when they are or are not brought to court.

This situation, in which detainees are often not brought to court, results in varying sentences for different defendants charged in the same case. Defendants actually brought to the hearing can receive sentences different from those who, by no fault of their own, were not. One example is the acquittal of one of three defendants in a case in which the prosecution failed to produce its witness. The other two defendants remained in detention, were not brought to the hearing, and were not similarly acquitted.

Following a prosecution motion for a postponement, the hearing went as follows:

Judge: Who is in custody? Who has been released? What is going on with all of the other defendants?

Prosecutor: Defendants three and four were released on bail.

Judge: Are you even aware that defendant one was acquitted? There is no record of that here.

Prosecutor: I have a note here that one of the defendants was acquitted. I'm not quite sure. Exactly which defendant is not specified, but apparently it's number one.
Number two is apparently still in custody, and three and four are out on bail. One of them might be in for other things.

Attorney: Defendant number three is under a six month administrative detention in Ketziot.

Prosecutor: I'm not sure that has anything to do with the charge we are currently discussing.

Judge: In light of the repeated deferment of this case, the prosecution's lack of evidence, and the many unwarranted delays, I am rejecting the prosecution's motion for a deferment. I hereby acquit the defendant **(46)**.

As has been mentioned, despite the facts that the prosecution produced no evidence and that the defendants were, by no fault of their own, not brought to the hearing, only one of them was acquitted: the one who had been released on bail and was thus able to appear at his trial.

Faulty communication between the courts and prison administrations and arbitrary decisions by prison commanders or other authorities which prevent detainees from appearing at their own trials create not only delays of trials and inordinate encumbrances to the judicial system. They also waste the needed time of judges and prosecutors, and weigh heavily on defendants' families and attorneys as well. Recall that the families sit beyond the compound fence and have no idea whether or not their loved ones have arrived. They cannot find anything out outside of the compound. Rather, they must wait to be called, if they are called at all, and only then may they learn whether or not the defendant was actually brought to court.

The Ramallah courts serve a very large geographical area. Every time we entered the court we were surrounded by dozens of people wondering if their relatives had finally been brought that day. Some of them complained that they had come five times for naught.

Attorneys also charge that the non-production of defendants makes their work difficult. Advocate Hussien Abu Hussien explained to B'Tselem that he currently represents few clients from the occupied territories. From his perspective, travelling to the courts in Ramallah to represent one client is, in many cases, a waste of an entire day. Because it is impossible to know what time a hearing will take place, he must be at court from 9:00 a.m. until the evening. In many instances, he learns that his client was not even brought to court, and the hearing is postponed (47).

The phenomenon of non-production of defendants in custody is widespread not only in the Ramallah and Nablus courts. The Military Prosecutor, Captain Moshe Bachar, complained of eighteen trials postponed in one day in Hebron. He wrote to the Regional Chief of Staff and the Military Advocate General as follows:

> 1. Yesterday, May 8, 1989, eighteen expedited process cases from the Bethlehem and Hebron districts were scheduled to be heard in Hebron.
>
> 2. The court administrative offices in Ramallah informed me that the trials had been coordinated as usual with the Hebron division, and the list of cases scheduled for that day had been conveyed to the prosecution early enough for the prosecutor in Hebron to have all the files sent to him.
>
> 3. When the judge and prosecutor arrived in Hebron, they were informed, after a thorough search, that none of the defendants was in the holding facility in Hebron. Without even going into the fact that not a single witness appeared to testify ...

4. Obviously, in this state of affairs, it was impossible to hold even one of the eighteen scheduled trials. (Appendix L).

Non-Appearance of Witnesses

The failure of prosecution witnesses to appear in court constitutes a further cause to postpone trials. Trials are usually postponed for about a month, during which most defendants are kept in detention. For every prosecution witness who appeared in court during the period of observation, four did not appear.

The prosecution witnesses are mostly soldiers and police officers who arrested the defendants or were eye-witnesses to the incident. Very few are Palestinians or settlers. It is normal for witnesses not to appear for four or five hearings. A plea bargain is usually reached after the fifth or sixth hearing for which the witnesses have not arrived.

An experienced military prosecutor of the rank of Captain (reserve) told us that the non-appearance of prosecution witnesses is an accepted norm in court; there is little the prosecution can do to bring the witnesses to testify in court. Reserve soldiers finish their service and are unwilling to return to the territories to testify. According to the military prosecutor, the defense attorneys also find the situation satisfactory for, when witnesses do appear in court, their testimony is almost always accepted, which leads to a more severe sentence. The judges comment on the situation, protest, call an administrative representative to find out why witnesses do not appear, and reprimand the prosecution for neglecting its duties. In one session, the judge held up trials six times in order to reproach the prosecution for its negligence **(48)**.

There are legal sanctions which can be imposed in order to ensure that prosecution witnesses appear in court. Judge Isaacson noted that he does not refrain from applying sanctions in the case of Israeli prosecution witnesses. In one case, which was reported in the press, a prosecution witness was detained for a week in order to ensure his appearance in court **(49)**. However such cases are extremely rare.

We witnessed four cases in which defendants were acquitted due to the failure of witnesses to appear in court. We shall describe two of these unusual cases as examples of the general situation.

1. During the eleventh hearing in which the prosecution witness had not yet appeared in the trial of a case which had been in process since 1988, the judge commented to the prosecutor:

"The address stated in the indictment is Ben Gurion Blvd. in Holon, and why isn't the number given? Are we supposed to be a branch of the postal service? I could understand it if it was only in five cases, but this is absurd. The situation is embarrassing" **(50)**.

The judge requested that Attorney Osama Odeh reach a plea bargain, but the attorney claimed that after so many postponements, he could not represent his client honorably or arrive at any plea-bargain.

The prosecutor said: "I understand that there have been at least ten hearings for which the witness did not appear. In light of the fact that the defendant was in detention and was released on bail, if your honor sees fit not to postpone the case, I will understand this." **(51)**

2. The trial of case no. 2572/89, in which five defendants were acquitted (the sixth was acquitted previously) after the failure of prosecution witnesses to appear six or seven times, is presented in full in Appendix I **(52)**. In this case, six people were charged with throwing stones, and one of them was released after the court saw a medical certificate: the man is blind. After their release, the judge made it clear to them that they were being released because of technical problems but he was convinced that they had in fact thrown stones.

It should be noted that in some cases, the prosecution witnesses who did not appear in court were policemen. In one case, the judge requested that an attempt be made to locate the witness, a policeman, that same day and bring him to court as it was the third time he had failed to appear.

Lost Files

Many court sessions begin with the judge asking the interpreter, "Which files have you got?" "Which files do we have witnesses for?" It is then established for which files the defendants have appeared, and the session is conducted accordingly.

Every day during the observation period, files were missing. Some of them were later found in the court offices. Others were not found. There were several cases in which the prosecutor did not have the file of a case scheduled for that particular day and in other cases crucial investigation material was missing from the file **(53)**. When the files are not found, the trials are adjourned, and most defendants are detained until the date set for the next hearing.

In other cases, either the judge or the prosecutor has a file in his possession, and then attempts are made to cooperate. We were present in a number of cases in which the prosecutor saw the file for the first time at the beginning of the session, and requested a postponement in order to study the case. One of the judges commented that the court room was not the place to begin studying the files, and that if this was to be the case, the prosecutors would have to start paying tuition fees **(54)**.

In one case, a trial was set and the prosecution was prepared against a man for an offense for which he had already been tried and had served his sentence. At first, the file could not be found, and

when it was finally located and the verdict pointed out to the judge by the defense attorney, the prosecutor could not find any record of the matter in his file (55).

In another case, after the defendant had already been in detention for a year, Judge Shapira explained to the prosecution that this was the third defendant and that two others charged together with him had already been tried. The defendant wished to reach a plea bargain even though his attorney was not present, but the trial was postponed by about a month in order for the prosecution to study the case (56). Many postponements of trials are made at the request of the prosecutor who claims that he did not receive the evidence from the military prosecution offices (57).

Advocate Mary Rok gave us details of a case (No. 1511/89) in which 16 people were charged and arrested on September 4, 1988. The judge ordered them released at 2,500 NIS bail, but two of them could not raise the money and were therefore kept in detention. During the first five months of the trial, the prosecution witnesses did not appear in court. There have been no sessions held since as the file has not been found. The defendants, who are charged with illegal organization and throwing stones at a Palestinian, have been in detention for over a year with no progress being made on their case.

Release on Bail

A court is authorized to release detainees on bail by Article 79 of the Order Concerning Security Instructions (58). In practice very few people are released on bail and most are detained until the end of proceedings.

Detaining defendants until the end of proceedings is virtually automatic the territories when it comes to stone-throwing offenses. Military judges justify denying release on bail with the claim that throwing stones has become a national plague. This policy has also been confirmed in the High Court.

In fact, because trials go on for long periods due to the non-appearance of prosecution witnesses, failure to bring detainees to court, and the heavy work-load, detention until the end of proceedings constitutes a significant sentence in and of itself. During our observations in court, it became clear that detention is perceived by all parties in the legal system as a means of punishment and that denial of release on bail is an accepted norm in the territories. Dr. Idit Doron reported a case in which the prosecution agreed to release the defendants on bail but the judge rejected the request. (Report and protocol of court session in Appendix J). In another case, on June 22, 1989 in Nablus, the judge asked the prosecutor "Why do you wish to extend the detention until the end of proceedings?" and the prosecutor replied: "Why not? That's what's always done."

In September 1989 there was a change in the court regulations and the option of release on bail was severely restricted. The new regulations, or the "Isaacson regulations" (named after the judge who

established them), as they are called by the lawyers working in Ramallah, have caused much bitterness on the part of the lawyers.

In the Ramallah court, attorneys' opportunities to request release on bail in a special session have been greatly reduced. According to the new regulations, every request must be presented by the attorney in writing. In Ramallah, Judge Isaacson or the Presiding Judge, Lieutenant Colonel Shapira, reads the requests and reaches a verdict without the presence of the attorneys or the defendant. The judges ask the police or the prosecution to present their position, and decide the matter without the presence of the parties involved. Sometimes, they arrange a date for a hearing. The requests must be presented at the lawyers' window and only to a court interpreter. If the interpreter is not available or is busy translating, there is no one to receive the requests. Thus the receipt of a request for release on bail is sometimes delayed for several days, during which time the suspect is kept in detention.

The new regulations greatly reduce the chances of release on bail after a verdict has been given for detention until the end of proceedings. Without a court hearing, and without the defendant's presence, nearly all requests for release on bail are rejected. During our observation period, we witnessed cases in which defendants were detained in spite of the fact that even the prosecution was of the opinion that there was no reason to detain them until the end of proceedings. The cases in question usually involved tax and license offenses, for which detention until the end of proceedings cannot be justified on a security basis.

Following the tax revolt in Beit Sahour, many merchants were tried for "failure to report to the tax authorities." Advocate Shlomo Lecker represented fourteen of the merchants and requested their release on bail. The request was submitted in writing to the presiding judge, as is the norm in this court. The judge ordered the suspects released on bail of 30,000 - 35,000 NIS. Following an additional request by the attorney, the judge agreed to reduce the amount of bail to sums of 10,000 NIS and above. This is a much higher sum than the fine imposed in the verdict. Such a sum prompts many questions concerning the institution of release on bail. The merchants were tried for failure to report to the tax authorities, which is a relatively light charge. Their attorney claimed that there was reason to believe that the high bail was intended to serve as punishment. In a situation in which trials are constantly and repeatedly postponed, detention until the end of proceedings is liable to be much longer than the maximum sentence requested by the prosecution.

We asked the IDF Spokesperson for official statistics on the number of people released on bail, but our request was not met.

It should be noted that the instructions concerning release on bail appear on the wall of the court office, but they are not "official" instructions. In other words, although all attorneys are ordered to act according to the new regulations, these regulations were not issued by the Regional Commander. Even if such orders were to be issued, it is doubtful whether they would be approved by the

High Court of Justice. The right to appear in court, to present claims and to plead one's case is a basic right, denial of which undermines the principles of justice.

Some of the reserve judges tend to treat requests for bail more positively. During the last week of September, a reserve judge ordered the release of two defendants on bail. As is customary, the families were asked to post bail and to appear before the judge in order for the release order to be signed. As the verdict was passed at the end of the day, when the post office was already closed, the families only made the payment the following day and then went to the judge with the payment receipt. The reserve judge had completed his service and been replaced by Judge Isaacson, who refused to order the detainees' release and referred the case to the presiding judge.

In one case **(59)**, the presiding judge ruled that he was "freezing" the decision to release the defendant on bail in order to examine whether it was correct, and that he would set another date for the hearing. However, he suggested that the attorney reach a plea-bargain, saying that the incident could help to reduce the defendant's sentence. He added that the reserve judge was mistaken in agreeing to release the defendant on bail. The attorney agreed to a plea-bargain, according to which his client was sentenced to seven months in prison and a fine of 750 NIS, which is a lighter sentence than is customary in similar cases, the offense in question being "construction of an incendiary object". In another case, Advocate Mary Rok reached a plea bargain after the presiding judge had refused to uphold the military judge's decision.

These cases indicate the fact that reserve judges are subordinate to and guided by the presiding judge, and that, when they try to use their own discretion, the presiding judge intervenes without authority in the legal proceedings. Any violation of the independence or impartiality of a judge violates the principle of fair trial.

The Judicial Process

Judges' Performance

The judges' treatment of defendants is usually regular, as is their treatment of the defense and the prosecution. Nevertheless, there are some exceptions. For example, there was one judge who, when he was informed that the defendant had arrived and was standing, said to the defense attorney: "Let him sit down. I don't want to see him." This judge commented to the defense attorney, who claimed in a very respectful manner in Hebrew that there was no basis for a claim of "no case to answer" and that "lawyers from the territories are also allowed to read Israeli law." **(60)**

One judge was heard shouting impatiently at the defense attorney and the defendants, who was released on bail, refusing to let them speak and demanding "yes or no" answers to his questions. When the defendant testified that he had submitted income tax reports, he was not allowed to add any thing at all or to explain his claim, and the

judge rebuked him in a threatening and suspicious tone that if he was deceiving the court, this would be taken into consideration when it came to passing sentence. It should be noted that in the same case, the prosecution was not at all familiar with the facts of the case and evaded the question of whether or not the defendant had submitted income tax reports, and in the end was obliged to agree that "he may have submitted them, but late" **(61)**. There were cases in which the judge took an extremely active part in examining witnesses and conducting the trial. Although this may sometimes serve to make the trial more efficient, over-involvement in an adverse manner is to be avoided, especially when both the judge and the prosecution are wearing the same uniform.

Likewise, there were a number of cases in which the judge put pressure on the prosecutor to be severe in his claims for sentencing and in the plea-bargains which he made. Thus for example, he refused to accept the prosecution's claim that the only appropriate sentence for the offense of driving without a license is revoking the offender's license, saying "You cannot request that; the detainee has already spent a month in detention" **(62)**. In another case, the judge pondered aloud as to why the prosecution was requesting only a prison sentence and no fine, and in another case, he asked why he was requesting such a short suspended sentence period. The same judge also shouted more than once at detainees and at the public, and threatened many defendants with immediate arrest. In one case, he sent an defendant back to the detention cell because he was talking to the person sitting next to him on the bench. It bears mentioning that the defendants sit in very cramped conditions and have great difficulty in following the proceedings. The incident in which the defendant was sent out of the court-room occurred immediately after the judge had been talking to one of the soldiers, during the trial, about the repair of his car **(63)**.

It should, however, be noted that most of the judges behave properly, although they are clearly exhausted, irritable and fed-up with the conditions under which the trials are conducted and with their inability to impose any order on the situation.

A serious problem in the military court system is the fact that the military prosecutors and the military judges are subordinate to the same military unit. Promotions of prosecutors and judges are the responsibility of the Judge Advocate General's Corps, and it is not rare for officers who have served as judges to be promoted to other senior positions in the Corps. Transfer from prosecution to judging, and sometimes vice versa, together with the dependency on the Military Advocate General for promotion, create a problem of unhealthy legal dependence and obligation on the part of judges to the system which is responsible for their promotion.

Creating a separate unit for judges, subordinate to a different IDF body, would solve this problem justly.

Plea Bargains

Most trials end in plea bargains; in other words, the defense and the prosecution reach an agreement according to which the defendant pleads guilty and is given a sentence agreed upon by both parties. In a situation in which almost all defendants are detained in prison cells for months until the conclusion of the trial and are not released on bail, there is a tendency to plead guilty if only to reduce the detention period.

In many cases, judges put pressure on the relevant parties to "finish the matter today." As most of the prosecution witnesses do not appear in court, the judges make it clear to the defendants that if they "finish it today" they can be released, and if not, they will have to remain in detention until the next hearing, to which the prosecution witnesses will be summoned again.

The request to "finish today" is in effect a request to plead guilty. In one case, in which the defendant was not in detention and refused to plead guilty, the judge made it clear to him that he was taking a great risk and that he should plead guilty today rather than sit in prison for years after the next hearing, to which the prosecution witness would come **(64)**.

The lawyers who appear frequently in court claim that the difficult conditions of detention and the knowledge that the trial may be postponed again and again due to failure of witnesses to appear, lead many defendants to plead guilty even to an offense which they did not commit, simply to be released.

In at least six cases which we observed, a plea bargain was presented by the judge as an easy way out of the whole business. Remarks such as the following were made repeatedly: "Finish it today and you'll be out tomorrow," or "If you refuse the deal, the trial will be postponed, you'll sit in detention until the end of the trial and if you're convicted you'll get an additional punishment".

On the one hand, one can regard such common remarks as realistic accounts of the situation, and not as unfair pressure. On the other hand, when such remarks are added to the situation in which trials are constantly postponed, witnesses do not appear, detainees cannot be sure of being brought to trial, and so on, the temptation to forego a trial in which guilt is proven and to plead guilty in order to get out of the situation, is extremely great and in fact unfair.

This unfairness is reflected not only in the fact that the detainee is denied any reasonable chance of insisting on his right to a full trial, but in the fact that the whole legal process is reversed, and punishment precedes conviction. In fact it replaces it and makes it redundant. The picture which develops is one in which the detainee is punished by means of detention. Only when he is prepared to plead guilty is he released or at least informed of a day of release. Sentencing precedes conviction not only in actual fact but from a moral point of view as the court becomes a body which determines the date for the end of punishment, rather than an arbiter of guilt or

innocence.

A great deal of the negotiation between the defense and the prosecution takes place in court during trial. Although judges occasionally comment that such matters should be concluded before the trial, they encourage the practice by initiating bargains, repeatedly proposing them at various stages of the trial, calling many recesses, discussions, negotiations, consultations with clients and so on, and asking several times whether the defendant does not want to "finish today."

In several cases, when a trial was postponed to another date, the judge explicitly requested that the parties reach an agreement or attempt to do so. A lot of negotiating goes on during discussion of the case, whether at the judge's behest or not, or even during the hearings of other cases, a factor which neither contributes to quiet or order in the court nor adds to its dignity, as it begins to look like a "bazaar," as described by the soldiers on guard in court.

Plea bargains help reduce the courts' work-load in that they cut down on the stage of hearing evidence. This is presumably the reason why judges "pressure" the parties to reach a plea bargain and inform defendants of the advantages of pleading guilty.

Advocate Ali Ghuzlan tells of a client of his who pleaded not guilty to throwing stones and was sentenced to 20 months imprisonment. The judge explained that he was giving him such a long sentence because he had not agreed to plead guilty. Hundreds of people accused of similar offences, who pleaded guilty and accepted plea bargains, were released after a prison sentence of one to eight months. In one case, the presiding judge in the Ramallah court explained to two defendants that failure to plead guilty would lead to a much heavier sentence than what would be imposed under a plea bargain.

In one case, Judge Shapira suggested to two defendants, one of whom was 15 years old, that they plead guilty of ordering shopkeepers to close their shops at noon, as has been the custom since the beginning of the Intifada. After the defendants pleaded not guilty, the judge imposed a heavy sentence of one year's imprisonment, in addition to a suspended sentence **(65)**.

In most cases, the plea bargain does not specify the period of the suspended sentence to be given, but suffices with a prison sentence, so that when the verdict is given, the defendant is surprised to hear that in addition to what was proposed in the plea bargain, he is also given a considerable suspended sentence. We witnessed a number of cases in which a suspended sentence was given for a period which not only the defense but the prosecution considered excessive.

On one day in which we were present in the Ramallah court, the judge consistently questioned the plea bargains and said that he would honor them even though they seemed too light on the matter of the sentence **(66)**. However, he extended the suspended sentence period considerably and stressed the fact that the stipulation was that the defendant not commit any security offences.

On another day in Nablus, the judge imposed a prison sentence which was much heavier than that requested by the prosecution under the plea bargain **(67)**. The prosecutor said: "In light of the defendant's clean record, we request a prison sentence of 10 months, one month's suspended sentence, and a fine at the discretion of the court..."In his sentence, the judge said:

> It should be noted that the defense attorney was allowed to elaborate, expand his claim and convince us to honor the deal, but in the end I was not convinced and so the bargain will not be honored. The requested punishment is excessively light. The appropriate punishment for the defendant is far higher than that which I will in fact impose. I have decided to impose a lighter sentence than he deserves and I am doing so due to the deal which was nevertheless reached by both parties. I sentence the defendant to three years' imprisonment, of which one and a half shall be suspended. **(68)**.

Standards of Punishment

According to observations in the courts in Ramallah, the standards of punishment are high. It is entirely inappropriate for rulings which affect peoples fate so greatly to be made in the atmosphere of informality, neglect, and confusion which characterizes the proceedings. More than once the Israeli attorneys who participated in the observations compared the confusion, noise, and disruptions in the military courts to traffic court. However, in the Ramallah courts, with all their disorder, filth, and neglect, hundreds of people are sentenced to months and years in prison.

Advocates Mary Rok and Osama Odeh of Bethlehem, who represent dozens of defendants in the territories, claim that the military prosecutors have a "price list" by which they reach plea bargains with defense attorneys **(69)**. The price list, they claim, changes with the political situation in general, and with specific security-related events in particular. Advocate Lea Tsemel explained that "it isn't worth going to court" the day after a "security-related event," and that defendants are treated very harshly on these days.

Different sentences are handed down by the Ramallah and Nablus courts. Defendants in Nablus are given longer sentences than in Ramallah.

CONCLUSIONS

The system of military justice has not coped well with the challenges posed by the Intifada -- namely, the enormous growth in the caseload of the military courts. Its failure is both behavioral-institutional and legal.

Two failings stand out in particular. The first is the significant injustice that is caused on a routine basis by inexplicable inefficiency, unjustifiable indifference, and lack of initiative. Neglect, commotion, and a sense of utter chaos characterize the judicial process, and effectively deprive it of many of the physical and psychological aspects of authority. The physical surroundings, the apparent inability to ensure that prisoners and witnesses are produced, and the haggling over plea-bargaining all bring the system into disrepute.

The repeated postponement of trials resulting from the failure to produce prisoners and witnesses, coupled with the widespread phenomenon of plea-bargaining, undermine the principle that the defendant should not be denied his freedom (for an extended period) before his guilt is properly established. They further degrade the court by turning it from an arbiter of guilt and innocence to a tribunal whose primary purpose is to fix the date for terminating punishments of no predetermined length which are served prior to any formal conviction. These degrade all the participants in the process and ultimately degrade the process itself.

The second failing is the existence of IDF procedures which violate the law. The basic rights granted residents of the territories by orders of the military commander are not protected. These violations are not occasional, but are rather ingrained in military procedures.

-- The army's obligation to inform family members of the arrest and location of suspects is not fulfilled. Nor are attorneys being informed of the arrest or location of their clients.

-- Prisoners are transferred from one prison facility to another, without the transfer being documented, and without information regarding their place of incarceration being reported to their attorneys or their families.

-- A prisoner's right to meet with his attorney at the time of his arrest is violated, since attorneys are not allowed into temporary holding facilities.

-- The principal that court hearings should be open to the public is not adhered to in the case of hearings on extension of detention. A suspect's right to representation is violated, since most of the extensions of detention occur without the presence of an attorney.

-- The semblance of justice is severely undermined by the fact that judges and prosecutors serve under the same commander and depend on the same authority for their advancement.

-- Judicial independence is undermined when judges on reserve duty are briefed by judges in the standing army, who at times even interfere with the former's rulings.

-- The military court in Ramallah undermines the fundamental rights of prisoners by restricting attorneys' appearance before the court to request their clients' release on bail.

The judicial system is supposed to be the authorities' principal tool for enforcing military law in the territories. It is apparent that this system is not functioning in a manner which inspires confidence. Moreover, the judicial system produces significant delays of trials and often functions in defiance of the same military laws it is charged with upholding.

NOTES

1. Order Concerning Administrative Detention (Emergency Regulations), Article 1a.

2. Military Advocate General, Brigadier General Amnon Strashnow, in a press conference, Hadashot, October 19, 1989. On extending the period of administrative detention. See also B'Tselem, Update: August 1989, and Update: September 1989.

3. P. Hunt, Justice? The Military Court System in the Israeli-Occupied Territories, (Al-Haq -- Law in the Service of Man, 1987).

4. V. Sherry, Boycott of the Military Courts by West Bank and Israeli Lawyers, (Lawyers' Committee for Human Rights, 1989).

5. Order Concerning Security Regulations (Judea and Samaria Regions) (No. 378), 1970, heretofore: "Order."

6. Order, Article 3.

7. Order, Articles 39, 14, 50.

8. As cited in State Comptroller Report (35), 1984.

9. Order, Article 11.

10. Order, Article 12.

11. Order, Article 15.

12. Order, Article 8.

13. Article 8 of the Order Concerning Defense Counsel in Military Courts (Judea and Samaria) (No. 400), 1970, which defines a defense attorney as a local or Israeli lawyer.

14. Article 4 of the Order Concerning Defense Counsel in Military Courts (Judea and Samaria) (No. 400), 1970. The order does not define a "serious charge," so it is unclear when defense counsel must be appointed.

15. On the various announcements regarding the establishment of an Appeals Court: Baruch Beracha, Ha'aretz, January 30, 1989; Darwish Nasser, Al Hamishmar, April 6, 1989; and summary article by Oz Frankel, The Jerusalem Post, April 7, 1989.
According to Ali Ghuzlan, Chairperson of the Union of Arab Lawyers in the West Bank, Palestinian lawyers are boycotting the Appeals Court charging that its main purpose is to allow the prosecution to appeal the lightness of sentences, and that sentences handed down from the Appeals Court set a higher standard of punishment than had been in effect previously.

16. The Association for Civil Rights in Israel, The Rights of Suspects and Defendants, (Jerusalem 1986), p. 11.

17. Order, Article 78(i).

18. Article 51 of the Law of Criminal Justice (Combined Version), 1982. Article 54 adds: "Despite what is stated in Articles 51 through 53, a Supreme Court Justice may order the extension of detention, or a new detention, for a period not exceeding three months, and may order similarly from time to time."

19. Article 53 of the Law of Criminal Justice. See the qualification of Article 54 there.

20. The Association for Civil Rights in Israel, The Rights of Suspects and Defendants, p. 17.

21. Article 78 c.

22. See Affidavit of Advocate 'Osama Abdullah Mohammed Zeid, Appendix C.

23. Order Concerning Security Regulations (Judea and Samaria) (No. 378) 1970, Article 78A(b).

24. From the petition of Musa Yunis Muhammad 'Odeh, Ahmed Jaber Yusuf Shahin, 'Aziza Jam'ah Suleiman Abu Shakra, and the Association for Civil Rights in Israel, via Advocate Dan Simon vs. IDF Forces Commander in the Judea and Samaria regions and the Gaza Strip. H. Ct. J. 690/89.

25. Article 78A(b) of above Order.

26. Advocate Ali Ghuzlan to B'Tselem, October 26, 1989.

27. Advocate Avigdor Feldman to B'Tselem, November 13, 1989.

28. Advocate Dan Simon, H. Ct. J. 690/89.

29. Announcement by the State's Attorney's Representative, H. Ct. J. 690/89.

30. Announcement by the State's Attorney's Representative, H. Ct. J. 690/89, see Appendix F.

31. Advocate Dan Simon's letter to the State's Attorney in Appendix E details the non-fulfillment of obligations by the IDF Gaza Command.

32. Advocate Mary Rok in an interview with the Lawyers' Committee for Human Rights as published in their report, Boycott of the Military Courts by West Bank and Israeli Lawyers.

33. Article 78 (a).

34. In an interview with B'Tselem, Jerusalem, October 26, 1989.

35. B'Tselem interviews with: Advocate Andre Rosenthal, October 31, 1989; Advocate Osamah Odeh, October 27, 1989; Advocate Ibrahim Barghouti, October 26, 1989; Advocate Lea Tsemel, October 25, 1989; Advocate Jawad Boulous, October 25, 1989.

36. Advocate Avigdor Feldman to B'Tselem, November 13, 1989.

37. Ramallah, August 24, 1989.

38. Ramallah, August 24, 1989 and September 10, 1989.

39. Ramallah, October 25, 1989, Advocate Abu Leila.

40. Ramallah, September 10, 1989, File 2276/89.

41. Ramallah, October 25, 1989, File 1299/88.

42. Ramallah, October 25, 1989, File 1469 before Judge Hess.

43. On September 10, 1989, no prisoners from Ofer detention camp arrived.

44. Ramallah, May 25, 1989.

45. Ramallah, August 24, 1989, before Judge Shapira.

46. Ramallah, September 10, 1989.

47. Hussien Abu Hussien to B'Tselem, October 3, 1989.

48. Ramallah, File 2454.

49. Yediot Aharonot, November 3, 1989: "Reservist taken to detention in order to testify at trial."

50. Ramallah, September 12, 1989.

51. File 2314/88, Ramallah, September 12, 1989.

52. This inexact formulation "Prosecution witnesses did not appear five or six times, six or seven times" appears repeatedly in many hearings.

53. On September 12, 1989, in Ramallah, files 277/88, 2436/89, 2354/89, and 4694/89 could not be found; the prosecution appeared without files 2572/89, 4158/89, and 2483/89; and file 2534/89 was missing vital investigation information in the prosecution's files.

54. Ramallah, September 17, 1989.

55. August 24, 1989, File 4493.

56. Ramallah, August 24.

57. Ramallah, September 10, 1989, 4660/89.
Ramallah, September 10, 1989, 4208/89.
Ramallah, September 12, 1989, 2138/89.
Ramallah, September 12, 1989, 2534/89.

58. Order 378.

59. A reserve judge ordered defendant Musa al-'Amur released for 1500 NIS bail after the latter had spent five months in prison and the prosecution's witness failed to appear.

60. Ramallah, September 12, 1989, File 2481/89.

61. Judge Shapira, Ramallah, August 24, 1989.

62. Ramallah, September 12, 1989, File 1104/89. The written report of the hearing appears in Appendix M.

63. Judge Isaacson, Ramallah, September 12, 1989.

64. Ramallah, September 12, 1989, File 2481/89 before Judge Isaacson.

65. October 25, 1989, before Judge Shapira.

66. Ramallah, September 12, 1989, October 25, 1989.

67. Nablus, October 18, 1989. File 6977/89.

68. Nablus, October 18, 1989, File 6977/89.

69. Advocate Mary Rok, in an interview with B'Tselem, on September 22, 1989; Advocate Osama Odeh in an interview with B'Tselem, on October 27, 1989.

APPENDIX A

Press release of the West Bank Association of Arab Lawyers

PRESS RELEASE

Issued By The Arab Lawyers Committee

Jeursalem

We, the lawyers had declared on the 2nd of January 89, our decision to stop appearing before Israeli military courts in the occupied West Bank for the reaosns issued in a detailed memorandum sent to each of the defence minister, the general military prosecuter, the legal advisor, the head of the military court, the Israeli laweyrs' syndicate, the Law and Constitution Committee in the Knesset, and local, Israeli and international associations concernd with human rights issues.

Owing to the pledges taken by the occupation authorities, through the assertions made by the military prosecuter general, Amnon Strashnov, the then-head of military courts, Dani Goteh, and the then-military legal advisor David Yahav, recognizing the legitimacy of our demands we suspended our previous decision to stop apearing before military courts on March 15, 1989 as a good will gesture to give the authorities time to implement their pledges.

But despite the passage of more than four months since our return to work, we found that things went opposite to what we had been hoping for. In fact, things became worse despite the fact that we maintained contacts with the authorities and repeatedly warned of the consequences of a continued neglect of the deteriorating conditions in military courts and of detention facilities.

Strashnov, at the time pledged the following:

To instruct the legal advisor to issue clear instructions to safeguard the detainees basic rights from the time they are detained, wether they are detained from their homes or from anywhere else, and the need to inform their families of the place and reasons for the arrests.

He also pledged to inform lawyers of the time and place of remand hearings before they take place.

But none of this was implemented. On the contrary, despite the fact tnat lawyers inquiries with the police, the prosecutors office and detention facilities, no information was being provided. And such answers still persist until now, were most remand hearings usually take place without the presence of lawyers. This continues to happen despite the fact that remanding detainees in court is a clear violation of the law, and despite the fact that remand hearings usually take place en masse, where hundreds of detainees get remanded in one day.

Strashnov also pledged to cancel all measures that disrupt lawyers visit to their clients. Instead, we were surprised to find out that more obstacles had been placed to obstruct lawyers visits. These measures, for example, include forcing detainees to undress for searches before they are allowed to see their lawyers, a measure which violates human dignity and our religous beliefs. To add insult to injuries, prison directors, especially the commander of Ansar III detention center, Tsemach, had arrogantly told lawyers, when complaining about such practice, that "God created humans naked." He even threw away a memorandum, which we sent to him demanding respect for detainees' rights.

Furthermore, Strashnov pledged to issue clear direction to respect lawyers in court sessions and outside, but instead lawyers were subjected to the following measures:

1) Attorney Muhammad Shadid was administratively detained for six months.
2) Soldiers physically attacked lawyers Muhammad al-Halabi, Ahmad Nimer, Lu'ai Hamarsheh and Usama al-Kilani.
3) Attorney Ibrahim al-Barghouthi was detained from his home at 1:00 a.m. on the pretext that he refused to paint over wall graffitti.
4) Attorney Awni al-Barbarawi was held from the Ramallah military court.
5) Detention facilities, on several ocasions were declared closed military areas and lawyers visiting clients were ordered to leave them.
6) Military judges repeatedly insulted and verbally abused them and threatened them during court letigations.
7) Violating the sanctity of Palestinian judges (employed in civilian courts) homes and physically assaulting them.

The military prosecutor also took many pledges upon himself, none of which were implemented, were we still suffer from:
a) Disrespect of the principle of the one punishment for the same charges. Sentencing for the same charges, the same judge, the same court and on the same day vary from one person to another, thus reinforcing our belief that sentencing is geered by a policy aimed at driving a wedge among detainees and among detainees and their lawyers.
b) The difficulty in getting the cooperation of the courts secretariat in order to obtain charge sheets and to set dates for court hearings, or to discuss any other matter. Lawyers had been repeatedly thrown out of courts secretariates without any sign that eforts to rectify such problems are underway.
c) The courts' secretariat change the dates of court hearings without coordinating that without coordinating that with lawyers.
d) The secretary of military courts and his deputy act as judges in cases which involve three judges, a practice which contradicts their .work, wereby they usually leave after a court hearing starts and return just before a verdict is given to sign the verdict.
e) Continued failure to bring large numbers of detainees to courts on trial or remand dates. In some detention facilities, no detainees had been brought to courts for months.
f) Many court files, minutes of court hearings, verdicts and even receipts for the release of detainees on bail were lost.
g) Charge sheets are often not available in Arabic and detainees are not provided with these charge sheets. In general, no translators are available in the offices of military prosecutors, and there is a severe shortage of translators in courts, while those available are not competant translators.
h) Families of detainees are often barred from entering court rooms to attend hearings, while in many cases they are barred from visiting their sons in detention facilities.
i) The continued attacks which result in injuring, and sometimes cold-blooded murder of detainees, and the physical attacks on detainees family members during visits and during trials.
j) Preventing lawyers from visiting their clients long after they are detained. this in addition to failing to bail hearings in assertion of the measure of barring lawyers from seeing their clients. Detainees also often get transfered from one detention facility to another to obstruct their appearance before courts and thus prevent their families and lawyers from seeing them.

As a result of all mentioned above, and due to the failure to heed our demands and the continued deterioration of conditions, at a time when represion and violations of human rights - including mass arrests, expulsions, house demolitions and others - we decided to refrain from appearing before military courts from July 20 till August 20. We appeal to all legal institutions and those concerned with human rights to adopt our stand and intervene with the occupation authorities to heed our demands immediately.

The Arab Lawyers Committee
Jerusalem, July 20, 1989

Demands of the lawyers who appear in the territories, spelled out with the declaration of their strike, as detailed in a letter to the Bar Association:

The Bar Association
Via Lawyer Dan Sheinman
Tel Aviv

Dear Colleague,

Pursuant to what was agreed in our meeting, we are herein forwarding a concise list of the elementary conditions we require in order to pursue our profession with dignity. A full and current description of all our problems is contained in the 5-page memorandum distributed to those who attended our meeting.

It should be noted that in our meeting with the Presiding Judge of the Military Courts in the West Bank we apprised him of these very difficulties. He affirmed that a basic problem did in fact exist which must be dealt with. In part it is amenable to immediate solution, while in part it requires a long-term solution since it necessitates the coordination of many different bodies.

1. Section 78A of the Order Concerning Security Provisions (Amendment No. 5) (Judea and Samaria) (No. 1220), of February 3, 1988, makes it mandatory to immediately inform a detainee's family or lawyer about his arrest and place of incarceration.

2. Informing the detainee of the reason and substance of his arrest, as set forth in HCJ 726/88 (Mutawakel Sa'id Bakr Nazal).

3. Making an immediate record of every item taken during a search and the occupants of the house given a receipt for the items.

4. Immediately locating a prisoner's place of detention.

5. Advance notification to attorneys of dates of hearings on extending clients' remand in custody.

6. Holding hearings on remand extension -- security constraints permitting -- in open court session and with the detainee's lawyer present.

7. Establishing a procedure to deal with requests for release on bail within a short time, with detainees concerned to be brought to the hearing.

8. Adhering to the procedures of "prohibition of meeting" between a client and his lawyer as set forth in Section 78C of the Order Concerning Security Provisions -- cited in No. 1, above -- that is, prohibiting such a meeting for a limited period only on the basis of a lawfully signed order.

9. Arranging visits in the detention facility of the same station at which the detainee is being held, rather than making lawyers go to the central station.

10. Allowing regular, productive visits of lawyers in military detention centers at all times on every working day, without protracted waiting periods, and allowing them to see all the clients on their list. Permitting the lawyer to meet with his client for the required amount of time, while ensuring that the meeting remains confidential.

11. Allowing lawyers resident in the territories to visit without difficulty clients who are also residents of the territories but who are detained or imprisoned in Israel.

12. Equalizing the policy concerning release on bail in the territories with the policy in effect in Israel.

13. Submitting indictments as soon as possible, but not longer than an average of six weeks after an arrest. At the same time, arranging family visits for residents of the territories being held in Israel if their interrogation has been completed, even if no indictment has been filed.

14. Immediately translating indictments into Arabic and making them available to detainees without delay.

15. Coordinating trial dates with the lawyers concerned.

16. A more efficient method of deciding the defendant's place of detention during the trial, with his place of residence to be taken into consideration in this matter. Assuring that the detainee is brought to court on the day of his/her trial.

17. Improving the conditions in which detainees are held while being brought to trial or while waiting in the courthouse. Improving the attitude of the army and the police toward them, toward their families and toward their lawyers during the trial.

18. Setting up an efficient and timesaving schedule of hearings and of bringing detainees to court.

19. Ensuring the appearance of witnesses in order to enable a not-guilty plea to be entered without this adversely affecting the client by causing him to remain in custody for a protracted period while his trial is postponed indefinitely due to witnesses' failure to appear.

20. Respecting the accepted level of punishment for offenses that are similar in nature and respecting the level of punishment in the same case. If there is no intention to honor a plea-bargaining arrangement, the defense and the prosecution should be duly informed.

21. Respecting the decision of the High Court of Justice concerning the appeal procedure in cases of administrative detention and setting a date for the appeal hearing within two weeks of its submission.

22. Giving advance notification to a family liable to be adversely affected by an order for house demolition, confiscation or sealing, so that the family can file an objection to the order and thus ensure the right of a hearing.

23. Expediting the handling of lawyers' requests concerning ongoing matters relating to residents' rights.

We have already forwarded to you a series of written complaints which are in the possession of the committee's secretary. Complaints relating to each and every one of the matters listed above were forwarded and explained orally and in writing. Please try to abide by the minimal professional requests.

We await your notification concerning the joint meeting which was discussed in our meeting on January 22, 1989.

Respectfully,

(-)

L. Tsemel, Advocate
on behalf of the lawyers.

January 25, 1989

APPENDIX B

April 10, 1989
Ref. No. 196

Brig. Gen. Nahman Shai
IDF Spokesperson
Hakirya, Tel Aviv

Dear Sir,

Dr. Celia Fassberg and I are conducting a comprehensive study on the military courts in the West Bank. To that end, we observed several trials in the courts and we intend to publish the impressions we formed. We will forward the results of the study to you in advance of publication to obtain your response.

To assist us in the study, we are interested in data concerning the number of files opened, indictments issued, acquittals and convictions. The pages attached set forth the questions as they appeared in the past in the 35th State Comptroller's Report. We would be grateful if you could provide us with the data requested.

We have also been informed that the orders regarding release on bail have recently been changed. We would be grateful if you could forward us the new orders, and apprise us whether they are valid for all or only some of the courts, and the number of persons released on bail since the new regulations took effect.

Thanking you in advance,

Sincerely,
(-)
Dr. Daphna Golan
B'Tselem

November 6, 1989
Ref. No. 262

Lt. Col. Arik Gordon
Information Branch
IDF Spokesperson's Office
Hakirya, Tel Aviv

Dear Sir,

Over a month ago I wrote to Brig. Gen. Nahman Shai requesting information on the military courts.

Two weeks later I was informed by telephone that I should contact the assistance section in the External Relations Branch.

I spoke with Osnat, who told me that she had never received my letter, but after many clarifications (and many phone calls by me), she told me that if I would send her the letter again, she would deal with the matter.

The letter was duly sent again.

I am sending you this letter for a third time. since Osnat, from the assistance section, informed me today (after I had called her, of course) that she did not deal with these subjects and that I should contact you.

I hope you will be able to deal with my request at an early date and that I will not be compelled to send this letter a fourth time.

Thanking you in advance,
(-)
Dr. Daphna Golan
B'Tselem

CC: Brig. Gen. Nahman Shai, IDF Spokesperson

We received a partial response to our inquiry from the IDF Spokesperson on November 28, 1989, after the original Hebrew version of this report was already in its final stages of production. The response was as follows:

IDF Spokesperson's Office
Information Branch
Ref: 2926 2-מ
November 28, 1989

Dr. Daphna Golan

Re: Military Courts

Dear Madam,

Following your inquiry of October 4, 1989 and our telephone conversation today, here are the answers we have to the questions you asked regarding the military courts:

1. Figures since the beginning of the uprising:
Number of indictments issued against local residents in the Judea, Samaria, and Gaza regions: about 13,000.

Number of suspects indicted: about 17,000.

Some 10,000 suspects have been accused [sic--convicted].

Some 400 suspects have been acquitted.

* It should be noted that all of these figures relate only to disturbances of the peace.

2. Release on Bail:
Between May 1, 1989 and October 30, 1989, a total of 314 people were released on bail. Following is a monthly breakdown of those released (over the last half year):

May	- 142
June	- 101
July	- 65
August	- 57
September	- 25
October	- 24
	314

Sincerely,
(-)
Avital Margalit
Officer, Information Section

APPENDIX C

AFFIDAVIT

I, the undersigned, 'Osama Abdullah Mohammed Zeid, a resident of Kafr Ya'abud, having been warned to tell the truth or face the punishment specified by law if I do not, hereby declare as follows:

1. I work as a lawyer and have an office in Jenin.

2. I represent residents of the Jenin area, most of whom are suspected of security offenses. Recently I have represented some fifty detainees in the detention facilities in the Judea and Samaria regions. In six years working as a lawyer I have represented many hundreds of residents detained by IDF forces.

3. I have never been notified of an arrest by either detention facility commanders or by detainees, neither by telephone nor by any other means.

4. I generally learn of my clients' arrests from the families of detainees. As far as I know, the families learn of the arrest by witnessing their family member's arrest or by rumor that reaches them by way of other people.

5. The way I confirm arrests and meet with my clients is by physically going to the detention centers in Judea and Samaria. I go to the detention center and ask them if the people I represent are held there. These clarifications are done by telephone by the guards, and generally take an hour.

6. When a person is held in a detention facility inside the military government in Jenin, neither I nor other lawyers are permitted to enter to visit the detainees, and we are thus unable to visit them. The majority of the detainees held in this facility are transfered out of it, generally within a week.

7. I am signing this affidavit after it was translated and read to me in English.

(-)

Signature of Declarer

I hereby confirm that today, August 3, 1989, Mr. 'Osama Zeid appeared before me, Adv. Dan Simon, in Jenin, and identified himself by ID No. 995641156 (which is personally known to me), and after I warned him to tell the truth or face the punishment specified by law if he does not, confirmed the accuracy of the above declaration and signed it.

(-)

Adv. Dan Simon

APPENDIX D

The Supreme Court
Sitting as the High Court of Justice

HCJ 670/89
Set: 21.9.89

Musa, Muhammed 'Odeh et al.
Rep. by The Association for Civil Rights in Israel
Advocate Dan Simon
9 Diskin St., Jerusalem — Petitioners

Vs.

1. Commander of IDF Forces
   Judea and Samaria Region
   Central Command HQ

2. Commander of IDF Forces, Gaza Strip
   Southern Command HQ, IDF

Rep. by State Attorney's Office
Ministry of Justice, Jerusalem — Respondents

Statement from the Representative of the Attorney General

1. This petition involves two matters: a request to be apprised of the place of detention of petitioners 1-3; a petition that, generally, notification shall be made of the act of arrest and place of incarceration of detainees in the Judea and Samaria and Gaza District regions.

2. Notification of the place of detention of the relatives of the petitioners was made to their lawyer, Advocate Dan Simon, on August 30, 1989, and thus the petition was fulfilled in its specific aspect.

   The following response, therefore, concerns the petition's general aspect, as we believe that its principled nature warrants our setting forth the cardinal points at this time.

General

3. Section 78A (b) of the Order Concerning Security Provisions states:

   If a person is arrested, notification of his arrest and his whereabouts shall be made without delay to a close person, unless the detainee requests that such notification not be made.
   [Hereafter: The Order]

This provision was promulgated in the form of an order by the Military Commander in February 1988, taking into consideration the needs of the local population. At the same time, the military authorities were aware of the difficulties this order entailed for the entire system.

This was especially true in the light of the uprising, when as a byproduct of the increase in acts of violence and disturbances in the regions, there was a significant rise in the number of detainees, requiring that they be incarcerated in various confinement and imprisonment centers with a great degree of mobility between them.

These conditions placed numerous difficulties in the way of applying and implementing The Order.

4. Despite the serious situation in the field, and despite the objective difficulties of applying the provisions of The Order scrupulously, Procedure Directives were issued in each region concerning "notification of arrest to the families of detainees and to the Red Cross."

The gist of these directives was as follows:

(a) A reporting method was worked out between the different detention facilities and a Control Center which concentrated the information about arrests and movements of detainees within the various detention centers.

The Control Center was directed to issue a daily status report on the the detainees, which was sent also to the military governors in the subdistricts of the Civil Administration.

(b) A procedure was established whereby every detainee was given a postcard to inform his family about his place of detention.

(c) In practice, besides these measures, the Civil Administration subdistricts issued daily lists of the names of the detainees then incarcerated in the detention centers.

Throughout, the military authorities made efforts to improve the modes of notification to the families of arrests and the transfer of detainees from one installation to another -- among other reasons, because they were aware of the hitches which occasionally occurred in locating detainees.

5. Just in the past few days changes have been made in the Procedure Directives which, among other points, will also provide a solution to the complaints contained in the petition (particularly the complaints in Sec. 14 thereof).

The Main Points

(a) Sending of postcards - While the detainee is being processed at a detention or imprisonment center, he will fill out a special postcard containing notification of his arrest, the detention facility, the date of his incarceration, and the name and address of the person to whom the detainee wishes the postcard to be sent.

These postcards will be taken to the local post office every day, from where they will be distributed in the region.

(b) Transmitting lists of detainees from the detention center

1. The commander of the detention facility will be responsible for the daily transmission, to the Regional Administration Officer (RAO) in the subdistrict where the facility is located, of a list of the detainees in the facility and of those who were moved the previous day to other facilities, including the names of those facilities.

2. If the list contains the name of a detainee from a different subdistrict, this will be noted on the list, and the person's name will be made known to the AO of that subdistrict, who will include the detainee's name and place of incarceration in his own daily list of detainees.

3. In the Gaza District, lists will be transmitted daily from the detention facilities to the Civil Administration, detailing the status of detainees for that day, the names of those being processed, those moved to a different facility, and the names of those who were released. The lists will be posted in all Civil Administration offices in the subdistricts.
Status reports from the detention facility at Ketziot will be similarly transmitted to the Civil Administration.

4. At all times, there will be posted on the subdistrict's bulletin board a list of names, in Arabic, of the detainees being held in the detention facility and a list announcing the transfer of detainees from the detention facility to [other] incarceration centers during the previous seven days.

5. The lists will be posted in a protected place from which they cannot be removed, and the public will be given access to them at all times.

6. Residents unable to locate their relatives on the lists will fill out a form containing full details of their missing relative. The RAO will carry out the required check for them to locate the detainee and will make his reply to the family as soon as possible.

(c) The Control Center will continue to compile reports and data concerning the status of persons imprisoned in the various detention facilities.

(d) Publicity - The subdistrict governors will make known to the residents the procedure of notifications of arrest via postcards and the lists, the place where they will be posted for perusal, and the possibility of requesting the RAO to locate a relative whose name does not appear on the lists.

(e) In exceptional cases (e.g., the detainee requires special medication), notification will be made by telephone to his family or a person close to him concerning his arrest and present location.

(f) Review
Within one month of the publication of the procedure, a review body will be established to examine the implementation of the procedures in the field, and will submit its findings to the chief of staff of the O/C's HQ within two months of the body's establishment.

6. In conclusion - The military authorities recognize the need to notify the family about the arrest and place of detention of their relatives, and the purpose is to fulfill the provisions of The Order in the most fitting and most efficient manner.

The changes in the Procedure Directives, which will take effect within two weeks, will streamline the procedures, so that the arrest and place of detention will be made known to the family as soon as possible--all this while taking into account the conditions currently prevailing in the regions.

7. This being so, the general arguments contained in the petition have been answered, and the honorable court is requested to dismiss it.

This day, September 1989 [sic]

(-)
Nili Arad
Director, High Court of Justice Cases
State Attorney's Office

350/JS

APPENDIX E

The Association for Civil Rights in Israel

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2 November 1989
West Bank/68 (S/0601)

To:
Col. Ahaz Ben Ari
Legal Adviser, Judea & Samaria Region
POB 10482
Beit El

Dear Col. Ben Ari,

Re: Notification of Detention of J&S Residents

I am writing to you regarding the obligation to notify family members of the arrest of residents of J&S, pursuant to HCJ 670/89.

On October 29, 1989, I visited the Civil Administration building in Bethlehem in order to examine the operation of the procedure described in the announcement of the State Attorney's Office within the framework of the High Court deliberations. According to that statement, the procedure took effect more than three weeks ago. Posted on the office wall were lists of the detainees being held at the Bethlehem facility and dated October 19, 22, 23, 24, 25, 29.

1. It is a safe assumption that the majority of the detainees named in the lists have since been moved to other detention centers. Nevertheless, there is no mention of which detainees were transferred and to which centers. As a result, it is impossible to know where most of the detainees are being held. This constitutes a violation of the undertaking specified in Sec. 5(b)(1) of said statement.

2. No lists of detainees existed for October 26, 27, 28. On the assumption that arrests were carried out on those days too (on the five preceding days the numbers of persons arrested were: 6, 18, 15, 20, 18), the RAO was in breach of his duty to post lists of detainees every day (Sec. 5(b)(1) of the above). The failure to give notification of the arrests on these three days explains the fact that on October 29 a record 37 arrests were recorded (a number which evidently includes the detainees of the three preceding days).

3. The lists were not protected and could be easily removed, thus violating Sec. 5(b)(5) of the statement.
We have yet to receive details concerning the actual practice of sending postcards from detention centers (Sec. 5(a) of the statement). We trust that this procedure is being faithfully carried out.

The above facts suggest that IDF HQ in Judea and Samaria is not executing the procedure it laid down and is violating the commitment made in its name to the Supreme Court. In our view, this procedure, even when it is followed to the letter, does not properly guarantee the fulfillment of the duty set forth in Section 78A(1) of the Order Concerning Security Provisions. It is superfluous to add that the failure to abide by the procedure constitutes breach of a legal obligation, in addition to causing intolerable damage to the detainees and their families.
I request that you take steps to ensure implementation of the letter of the procedure as soon as possible.

Respectfully,

Dan Simon, Advocate

CC: Advocate Nili Arad, State Attorney's Office, Salah a-Din St., Jerusalem.
Lt. Col. Yaakov Hasidim, Legal Adviser, Gaza District, POB 01105, IDF.

APPENDIX F

I S R A E L D E F E N S E F O R C E S

Judea and Samaria Region

Office of the Attorney General

Date: 08 November 1989
Ref: 114/05 - 09913

Adv. Dan Simon
Association for Civil Rights in Israel
POB 8273
Jerusalem

Re: Notifications of Arrest
Your letter: West Bank/68 (S/0601) of 2 Nov. 89

1. It is only in the past few days that we have completed printing postcards and a standard form to be posted on bulletin boards. We also held a briefing for representatives of the Military Government concerning implementation of the notification procedure.

2. We hope to have things running smoothly during the coming two weeks.

Sincerely,
(-)
Ahaz Ben Ari, Col.
Legal Adviser

ABA/pn

POB 10482, Beit El. Tel. 02-249989, 213251

On November 21, 1989, the Supreme Court justices sitting in HCJ 670/89 handed down a judgment, even though the petition was dismissed because the representative of the state, Ms. Nili Arad, announced a change in the procedures for giving notification of a person's arrest and place of detention. The following are excerpts from that judgment:

From the judgment of Associate Chief Justice M. Elon:

As mentioned, this petition concerns the non-fulfillment of the respondents' obligation to give notification of the arrest and place of detention of anyone arrested by them in Judea and Samaria or the Gaza District. This obligation of the respondents is set forth in Section 78A(b) of the Order Concerning Security Provisions (Judea and Samaria) (No. 378) 1970, as follows:

> If a person is arrested, notification of his arrest and his whereabouts shall be made without delay to a close person, unless the detainee requests that such notification not be made.

The obligation to give such notification stems from a basic right accorded to a person who is arrested, lawfully, by the authorities so empowered, to inform his relatives of his arrest and his place of detention so that they will be apprised of what befell their arrested relative, and will be able to proffer him the help he requires in order to protect his liberty. This is a natural right inherent in human dignity and the general principles of justice, and accrues both to the detainee himself and to his relatives.

From the judgment of Justice T. Orr:

The son of the first petitioner was arrested on July 5, 1989, the son of the second petitioner was arrested on July 6, 1989, and the son of the third petitioner was arrested on July 13, 1989. None of the petitioners received notification concerning the places of detention of their children, and their efforts to discover this on their own were to no avail. Therefore they filed their petition in this case on August 10, 1989. The petition was received in the State Attorney's Office on August 13, 1989. Not until August 30, 1989, did the petitioners' representative receive notification concerning the whereabouts of each of the three detainees, and it may be assumed that the submitting of the petition in this case was a contributing factor in the families ultimately being given the said notification. As the representative of the State Attorney's Office argued in her written statement, the section of the petition relating to the detention of the children of petitioners 1-3 was thereby fulfilled. It seems to me, however, that in light of the facts set forth above, the statement from the State Attorney's Office should have clarified and explained what or who was the reason that notification of the detainees' place of incarceration was not given to their relatives for such a lengthy period.

No such explanation was forthcoming, even though in three instances the provision contained in Section 78A(b) of the Order Concerning Security Provisions (Judea and Samaria)(No. 378) 1970, as quoted by my distinguished colleague, was not fulfilled. It is a basic

right of a person who is arrested that his relatives should be apprised of his arrest and place of detention. This is also required so that they can give him aid and assistance while he himself is incarcerated and therefore limited in his ability to help himself and ensure that his rights are upheld. (...)

Indeed, the respondents were aware of the snags that occurred in notifying the detainees' families, and sought to correct the situation, as is elucidated in the judgment of my distinguished colleague, the Associate Chief Justice. This is a welcome development, and it is to be hoped that the amendments to the procedures which have already been implemented, and those which are still to be implemented, in the light of what will be gleaned from experience and from criticism regarding notification, will ensure that no more instances occur of an unreasonable period of time elapsing before a person's arrest and place of incarceration are made known.

The obligation to notify a detainee's relative must be carried out "without delay," as stated in the abovementioned Section 87A(b). It seems to me that under normal circumstances, when it is possible and does not entail limitations or difficulties -- whether technical or due to security reasons -- said obligation should be carried out by means of notification by telephone to a relative of the detainee, thereby avoiding unnecessary delay in conveying the information.

From the judgment of Justice A. Matza:

Like my two distinguished colleagues, I, too, believe that the petitions should be dismissed, with costs to be paid by the respondents. Undoubtedly the respondents, as part of their efforts to improve to the utmost the previous procedures, will also give due consideration to the useful comments of my distinguished colleague, Justice Orr.

APPENDIX G

September 29, 1989

To:
Advocate Y. Rubin
Chairman, Bar Association
2 Chopin St.
Jerusalem

To:
Presiding Judge
Military Appeals Court
Ramallah

Dear Sirs,

Re: "Judgment in the Absence of a Lawyer"

Following my letter of August 27, 1989, to the Presiding Judge of the Military Appeals Court concerning the subject referred to, of which you received a copy, the President of the Appeals Court was kind enough to reply to the letter. He did not address his letter to me, heaven forbid, for who am I and what am I that he should refer directly to what I had to say -- I am nothing but a lawyer who appears frequently in military courts, and apparently such persons are really unworthy to be addressed directly.

He did, however, directed his lengthy reply to none other than the chairman of the Bar Association, who was a recipient of a copy of my letter, while I, without any effort on my part, became the second recipient of a copy of his letter. This, too, I welcome.

From this episode we learn that the Bar Association is still our bastion, and that if any institution has the power to oil the grinding wheels of the military justice system in the territories, it is perhaps the Bar Association.

It bears recalling that our collective and individual approaches to the Bar Association has a long history, dating back to early 1988. We requested assistance from the Bar Association, which showed a genuine desire to help, but the good intentions were always shattered due to the refusal of the Military Advocate General to meet with a delegation of ours in the presence of representatives of the Bar Association.

In view of the considerable agitation that seized the hierarchy of the military judiciary following my letter, it seems to me that we must be quick to seize this propitious moment. I propose, therefore, that the Bar Association immediately set up a joint meeting between the Presiding Judge of the Military Appeals Court, lawyers who appear in the military courts in the territories, and a delegation of the Bar Association in order to clarify together the urgent problems relating to the foundations of the machinery of justice in the military courts in the territories.

I have reread my letter of August 27, and I stand behind every word. If the Presiding Judge of the Appeals Court were more attentive to the lawyers working in the courts in the territories, he would be well aware that every word is a minimalist and understated formulation of a lengthy series of daily complaints and objections which we raise.

When the Presiding Judge of the Appeals Court assumed his post, a great many lawyers met with him and with his own ears he heard things that were even sharper than my remarks here. His promises of major improvements have not materialized, and he has no one to blame but himself.

Substantively:

1. In the copy of the Presiding Judge's letter sent to me, he didn't bother attaching a copy of "the decision handed down by the Appeals Court, a copy of which is attached to this letter."

2. That the lawyers refrained from appearing in court was another outcry that hung, unanswered, in the void. As he did not bother to clarify with those involved the substantiality of their points, it is easy for his honor to declare that they are immaterial.

3. With all due respect, his honor is deficient in his knowledge of the manner in which the military courts and the prosecutors conduct trials without lawyers, both when we refrained from working and currentlt, as well, after our return to the courtroom. With our own ears we hear, every day, the court and the prosecution addressing defendants who are unrepresented (because the lawyer did not appear, but usually because the lawyer was not informed of the trial date) and offering them reduced sentences if they confess to indictments which are not in the defendants' possession since they are not automatically translated into Arabic, accompanied by a clear admonition that this is a one-time "offer," an "one-time opportunity," and that if they do not take it their future situation will be worse. The defendant is not informed of the possibility--however theoretical--that he has a chance of being acquitted.
Indeed, let an independent body ask defendants who were tried in this manner what message they received and why they decided to act on it.

4. As for his honor's contention that in cases decided by a single judge (empowered to mete out punishments of up to 5 years) there is no need to appoint a defense counsel, his honor is setting forth only a small part of the truth and does not point out (or perhaps does not know) that courts, even when they consist of a panel of judges (in which case they are empowered to hand down an unlimited sentence, even life imprisonment or the death penalty), contend that they have been instructed by the Appeals Court that a defense counsel must be appointed only in cases where the prosecution demands a punishment not exceeding 10 years! They say that what determines the need for defense counsel is not the prescribed penalty for the offense, but the level of punishment which satisfies the prosecution! As mentioned, the courts say they have been thus instructed by the honorable Presiding Judge

himself. Why does he not see fit, with all due respect, to add this distressing fact?

5. Moreover, I stated in my letter: "In some manner, totally unclear to me, it was ruled that if the prosecution does not request a penalty exceeding 10 years, a person may be judged without a lawyer."
Well, his answer was beside the point. In fact, the law does not distinguish between judgment before a single judge, and judgment before a panel. Sec. 8 of the Order Concerning Security Provisions, 1970, states that "the defendant is entitled to be aided in his defense by defense counsel." In other words, it is the defendant's right to decide whether or not he wants a defense counsel, and his desire is definitive.
Even if we refer to the growing tendency to "equalize" the situation in the military courts to the situation in Israel (for the most part, unfortunately, in order to deprive and not to obligate) we still find ourselves within the same realm in which the length of the penalty set for the offense determines the duty to appoint defense counsel.

6. As for "the vilfications of Adv. Tsemel on the second page of her letter" -- who better than his honor knows that in response to those same "vilifications" which were voiced unanimously, in his presence, by all the lawyers who appear in the West Bank, in that one and only meeting, he himself said that they were justified and that everything possible must be done to change the situation which engendered them.
It is unfortunate that he did not bother doing anything about this matter.
It is my hope that some good will come of these developments, and that the desired meeting will in fact take place.

Respectfully,

L. Tsemel, Advocate

CC: Military Advocate General

Military Court of Appeals
Judea, Samaria, & Gaza District
File Ref 7 0157
18 September 1989

To:
Adv. Ya'akov Rubin
Chairman, Bar Association
2 Chopin St.
Jerusalem

Re: Adv. Lea Tsemel's Entreaty on "Judgment in the Absence of a Lawyer"
Adv. Tsemel's letter of August 17, 1989

1. In recent months, ever since the establishment of the Appeals Court in the territories, Adv. Tsemel has frequently approached me directly concerning various and sundry complaints and objections regarding the operation of the military courts in the Judea & Samaria Region and the Gaza District Region.
In the majority of cases, Adv. Tsemel gets a response to her entreaties within a reasonable amount of time, following an examination and clarification of the subject by the Appeals Court officer.

2. This time I have decided to depart from custom and reply personally to Adv. Tsemel's letter of August 17, 1989, because in it she has gone too far and the letter constitutes contempt of court.

3. In her letter, Adv. Tsemel contends that in the period in which the lawyers went on strike and did not appear in the military courts in Judea and Samaria, their clients "were coerced" into admitting guilt without being apprised of the significance of the act and under threats.

4. It seems to me that it takes a good deal of affrontery to make a claim of this kind while Adv. Tsemel and her colleagues chose, for insubstantial reasons, to refrain from appearing in the military courts and ceased to represent their clients. It seems to me very doubtful that it was the defendants' best interests which guided Adv. Tsemel when she decided, along with others, to declare a moratorium on appearing in Judea and Samaria courts and to let the defendants appear unrepresented.

5. Since it was the lawyers' unilateral decision not to appear in court, my instructions were to continue with the normal judicial operations in the territories and not to give in to the dictates of the strikers. In the same breath the judges were told to uphold stringently the rights of the defendants and to clarify to them the essence of the proceedings and give them every possible assistance. All this in the spirit of the decision delivered by the Appeals Court, a copy of which is attached to this letter.

6. To the best of my knowledge, not a single defendant was "coerced" to admit to a charge and certainly no threatening language was used to the effect that his punishment would be far worse if he did not do so.

   Naturally, if such a case did occur, an appeal or a request to lodge an appeal could be submitted to the Appeals Court, where the complaints could be put forward substantively, notwithstanding the voicing of generalized complaints lacking support or foundation.

7. As for the obligation to appoint a defense counsel, Adv. Tsemel is undoubtedly aware that in cases heard by a single judge, whose punitive power does not exceed five years' imprisonment, the court does not appoint a defense lawyer. It seems that Adv. Tsemel prefers to ignore these elementary rules and to make unsubstantiated charges.

8. It seems to me that there is no need to respond to the vilifications of Adv. Tsemel on the second page of her letter. Lawyers appear before the military courts in the territories and assist their clients with great success. I see no place to respond to Adv. Tsemel's personal feelings, but perhaps she too should occasionally take under advisement her own actions and behavior in the courtroom.

9. The decision whether to deal with Adv. Tsemel's letter from the standpoint of professional ethics rests with the Bar Association, and I will respect any decision taken in this matter.

CC: 1. Military Advocate General
    2. Adv. Lea Tsemel

Respectfully,

(-)

Uri Shoham, Col.
Presiding Judge, Military Court
Judea & Samaria and Gaza District

May 5, 1988

To:
The Attorney General
Beit El

Dear Sir,

Re: The Dhahiriya (Dvir) Facility

I am writing to you in order to solve the problems at the Dahariya facility which thwart any possibility of work by a lawyer and a proper defense of his client.

Waiting: I visit this facility frequently, as do other lawyers. For example, on April 13, 1988, I arrived there at 12:30 p.m. When I arrived, I spoke with the soldier guarding the gate and he spoke with the registration office; the office told him I should wait. I waited until 16:30, about four hours, without result. Repeated appeals to the guard and a soldier drew no response.

At 16:30 hours the registrar arrived and I handed him a list of twenty people. An hour later he returned and said he was sorry but he did not have all those named, only one of them.

At Dahariya a lawyer who has already entered is allowed to see his clients for no more than 20 minutes, no matter how many clients he has. On at least one occasion I had to see 8 people within 20 minutes. This is demeaning to our work.

Very often -- almost always -- when the registrar tells me the inmates are not there, and I am prevented from seeing them, ultimately it turns out that they are there, and my visit amounts to naught.

I request that this matter be dealt with urgently.

Respectfully,

(-)

Elisa Sha'aban, Advocate

Dec. 15, 1988

Ms. Nili Arad, Attorney
Director, High Court of Justice Division
State Attorney's Office
Jerusalem

Dear Ms. Arad,

Re: Complaints About the Megiddo Prison Authorities

Pursuant to my letter of December 15, 1988, in which I complained, among other points, about the offensive and insulting attitude of the authorities at Megiddo Prison, I am writing to you once again on the following matters:

On Monday, December 12, 1988 I contacted the Megiddo Prison authorities and after much waiting I arranged with a soldier named Arbeli that on Friday I would visit my clients being held at the Megiddo detention facility.

Thus, on Friday, December 16, 1988, my partner in the firm, Adv. Anis Riad, arrived at the prison as agreed. However, he waited for three full hours, along with two or three lawyers from the territories and Adv. Said Athili, until finally they were told that it was pointless for them to wait and that there was a meeting of officers in the facility.

Needless to say, I had the very unpleasant feeling that the army authorities are not interested in permitting lawyers' visits and use their authority to do everything possible to torpedo such visits -- how else can you explain their behavior?

Furthermore, it has been brought to our attention that the army authorities are making preparations to transfer detainees to the Ketziot site in the Negev, and I only wonder to myself how it will then be possible to bring the prisoners to court, since even today, despite their being at Megiddo, they don't manage to bring a tenth of the inmates to the military court in Jenin, which is just a short distance from the Megiddo installation!

I await your reply, please.

Respectfully,

(-)

Hussien Abu Hussien, Advocate

CC: Association for Civil Rights in Israel

Abu Hussien Law Firm

December 15, 1988

Ms. Nili Arad, Attorney
Director, High Court of Justice Division
State Attorney's Office
Jerusalem

Via fax

Dear Ms. Arad,

Re: Release of Imprisoned Detainees

Pursuant to our telephone conversation at the beginning of the week, I am honored to provide a written version of my entreaty:

1. I am a resident of the city of Umm al-Fahm and live in the 'Ein-Ibrahim neighborhood which abuts on the Wadi 'Ara highway.

2. Recently many neighbors have told me that administrative detainees, residents of the West Bank and Gaza, who are released in the dead of night from Megiddo Prison, which is located 8 km. from the Umm al-Fahm junction, have been shamefacedly knocking on their doors and requesting a few shekels to pay for their trip home, as they were released from prison without a penny in their pockets.

3. In a clarification I conducted with administrative detainees whom I represent, I was told that whether a detainee has money or not is a matter of good or ill fortune at the time of their arrest: if they happen to be arrested when they have cash on them, the money is safeguarded and returned upon their release, and then there is no problem. The problem arises in connection with detainees who are arrested in their homes in the middle of the night or while on their way home from work without money in their possession.

4. The case of administrative detainee Mahmoud Ahmed Salah Abu Alroub:

(a) On December 5, 1988 I represented administrative detainee Mahmoud Ahmed Salah Abu Alroub, Prisoner No. 5865, before a review board regarding administrative detention in the Ketziot facility. He was arrested on September 25, 1988 and shortly after his arrest an appeal was filed with an appeals board. The hearing was set for November 14, 1988, but then someone thought all the appeal hearings scheduled for that day should be postponed because of the meeting of the Palestine National Council in Algiers!? What does one thing have to do with the other? Even so, I could understand things up to this point -- but what I cannot comprehend is why I

was not informed of the postponement. In fact, on November 10, 1988 I had my secretary confirm with the woman responsible for appeals hearings whether the hearings would take place, and she was told they would. Unfortunately, even though I was very ill I went to Ketziot and there I was told as though it were perfectly normal that there would be no review hearings that day.

(b) The appeal, then, was submitted in early October and not heard until December 5, 1988. The judge ordered the appelant released forthwith and he was released on December 6, 1988 at 3 p.m. at the Arad junction without a penny in his pocket and about 300 km. from his home.

Visiting detainees in the prisons

1. Locating inmates: A major and very serious problem exists in locating security prisoners, and sometimes I throw up my hands and tell the prisoners' parents I just cannot help them. Ms. Gita at Beit El is very difficult to get on the phone, even after consecutive days of trying with an available secretary and phone. Evidently the only reasonable way to locate a prisoner today is through the Red Cross -- CAN THIS BE?
I asked the Prisons Service in Jerusalem whether it is possible to get information about the place of detention of inmates incarcerated in army-run prisons, and I was told it was not.

2. Visiting inmates in Megiddo and Atlit Prisons: From my bitter experience with the soldiers in these two prisons, I can say with understatement that the message is clear: "Don't come back here again." In the past week I was at the entrance to Megiddo Prison twice, along with Adv. Anis Riad, and in both instances lawyers from the territories and from Tira waited with us. After a tense wait of a few hours in the sun we were told that it was impossible to see the detainees.

A few practical efficiency suggestions for those interested in greater efficiency, if there are any?!:

1. The army authorities will transport the detainee to his place of residence.

2. Alternatively, an inmate will receive from the coffers of the "welfare state" an amount of money that will suffice him to get home and he will be released at a decent hour so that he can use public transportation instead of becoming an "overnight guest."

3. Alternatively to the alternative, if the "welfare state" refuses to pay the price of a bus ticket from its coffers, the inmate will be allowed to receive from the canteen, via his parents, a reasonable amount of money which will enable him to get home after his release.

4. Notification will be made to the detainee's family, soon after his arrest, of his place of detention and his prisoner number.

5. A military body will be set up to supply lawyers with information like that of the Prisons Service and which will be responsible for organizing lawyers' visits.

6. Suspension of visits of lawyers and families in prisons will be publicized in the media immediately.

7. Appeals of administrative detainees will be heard within a reasonable period of two weeks after they are filed, as ordered by the High Court.

It is my hope that this entreaty will be brought before the authorized bodies for discussion if they wish to become more efficient.

Respectfully,

(-)

Hussien Abu Hussien, Advocate

Advocate Foad Mansor
44915 - Tyra
Tel. 052-938122

Date: January 2, 1989

To:
Military Advocate General
Brig. Gen. Amnon Strashnow
Hakirya - Tel Aviv

To:
Legal Adviser, Judea & Samaria Region
Col. David Yahav
Beit El

Registered

Dear Sirs,

Re: Complaint about an affront to my dignity as a lawyer and as a human being by His Honor Judge Lt. Col. Yehoshua Halevy while performing my duty in the course of appearing in Jenin military court.

I am writing to the honorable gentlemen in the following matter:

1. On December 27, 1988 I appeared in the Jenin court representing the detainee Taysir Arabasi who had been in detention since September 6, 1988 in File No. 5798/88 A and whose trial was at the stage of testimonies.

2. The prosecution witnesses did not appear, something which unfortunately happens in other cases as well and which precludes holding a proper trial.

3. Since the witnesses did not arrive, and the detainee had been imprisoned since September 6, 1988, I requested his release on bail because of the delay in the proceedings and because, in my view, even if he were to be convicted he would not be sentenced to a longer period than he had already spent in detention.

4. The request for release on bail was denied, with the comment that there was no basis whatsoever for this, even though I pointed out that the defendant had a chance for acquittal given the prosecution's deficient evidence, and in addition, one of the prosecution witnesses had not yet been tried.

5. His Honor set April 11, 1989 as the date for the trial's continuation, a very distant date given the fact that the defendant is under detention with all that this entails as noted above.

6. Since I felt that an injustice would be done to the defendant, I objected to the date set and I explained this to His Honor.

7. His Honor refused to hear my grounds for advancing the trial date, and when I asked him why he would not move up the date he became furious without any cause and said to me, "Don't be impertinent!"

8. I did not understand how I was being impertinent since I was doing my duty as a lawyer, and I said that no impertinence had been intended in my request. The judge persisted in his behavior and shouted at me: "You are being impertinent because I have already been asked a thousand times to move up dates but I have not done so." As though this were a reason for a lawyer to abandon his client to his fate and not dare even to ask for an earlier trial date.

9. When I tried to explain once more that there was no impertinence intended and that it was my duty to ask for an earlier date as the prisoner had instructed me, the judge ordered me to leave the courtroom.

10. I felt insulted and demeaned in front of the defendants, among them my client, the audience and the lawyers who were in the courtroom -- there were about six of them and they will testify to the accuracy of my description. I remarked that I really had no desire to be there, referring to the contemptuous and humiliating attitude to which I had been subjected by the judge, who said to me, "You will see the consequences."

11. The judge's behavior is totally incommensurate with his standing. Indeed, this constitutes abuse of the judge's position and a gross affront to a lawyer who is doing his duty.

12. Under the rules of ethics, we lawyers are enjoined to defend our clients "without fear or favor." But how can I do this when the judge intimidates me, shames me in front of my client and his family, and thereby adversely affects my ability to do my duty and to earn a livelihood, without any wrongdoing on my part.

13. Judge Yehoshua Halevy has offended lawyers on more than one occasion by evincing hostility toward them, as though they were bothering him. But they have not responded, and this is apparently why the insults have persisted to the point described above.

14. I request the intervention of your honors to ensure that such incidents do not recur and so that I can continue to fulfill my duty under the law and not feel like a defendant while appearing before a judge as defense counsel.

I await an early reply from your honors.

Respectfully,

(-)

Foad Mansor, Advocate

CC: - Bar Association, Jerusalem
- Association for Civil Rights in Israel, Tel Aviv

APPENDIX H

Remand in custody until the completion of proceedings and administrative detention for Ribhi 'Aziz Ghawabra, File 267/89

Arrested on April 26, 1989 on suspicion of disturbing the peace and harassing persons suspected of collaboration. At the end of 18 days' detention he was not released but rather was held in detention for three more days without a judge's order.

On May 16, 1989 his detention was extended for 45 days by a judge.

During this time his attorney came to the detention facility three times to request his release on bail, but on each occasion the prosecution appeared without the file and nothing was done.

The attorney filed a complaint with the legal adviser at Beit El stating that her client "was illegally for three days." The complaint was stamped July 3, confirming its receipt.

At the conclusion of the additional 45-day period, the attorney arrived at Dhahiriya where she was told that her client was about to be released. While she was waiting, and meeting with other clients, the registrar informed her that an administrative detention order for her client had been received by telephone. The lawyer questioned the legality of a telephone order, but was told by the registrar that he could not release Mr. Ghawabra because the date of the order was for that day, namely, June 29, 1989.

Mr. Ghawabra was transferred to Anatot, where only on July 12 was he handed an administrative detention order effective that day. In other words, from June 29, 1989 until July 12, 1989 he was held without any legal order. Moreover, the period of administrative detention was set only from the date the order was issued -- July 12, 1989 -- without the entire earlier period of his detention being taken into account.

APPENDIX [

File 2572/89, Ramallah 12.9.89, Judge Isaacson presiding

(Defendants rise.)

Judge: Be seated.

(Defendants are seated in the audience, dispersed among 23 people)

Judge: Advocate Odeh, are you representing them?

Adv. Odeh: I represent 2, 3, 4, and Mary Rok represents 1, 6 and 4 jointly.

Adv. Rok: 5 was released.

Judge: Yes.

Adv. Odeh: We request the defendants' acquittal for the following reasons:
1. In the previous session, on June 26, 1989, there was a decision by his honor in the case.

Judge: Not exactly. It wasn't me.

Adv. Odeh: I do not mean his honor himself, I mean the court.

Judge: Sir, go straight to your second reason. We're wasting time.

Adv. Odeh: The defendants were in prison for a month and a half, including defendant No. 5, who was acquitted because of a doubt concerning what the witness said.

Judge: I understand, I understand, just a second. (Writes and reads aloud) Detainees were incarcerated for a month and a half.

Adv. Odeh: The defendants have been summoned about 6 or 7 times and the prosecution witnesses have not appeared. The fourth is a local witness.

Judge: A local witness is better. He's like their brother. Who should we believe, their brother or their cousin?

Adv. Odeh: Their brother. But their brother hasn't come for half a year.

Adv. Rok: There is a lot of incorrect information. The fifth is blind but there is testimony against him that he threw stones.

Judge: Why can't a blind person throw stones? Someone told him where the army was and he threw.

Adv. Odeh: The judge saw the blind boy. He can't walk by himself.

Judge: I understand, I understand.

Adv. Odeh: The witness testified about himself to the police: "I am crazy."

Judge: A lot of people should say that about themselves but they haven't got the guts.

Prosecutor: The file is not in front of me. I leave it to the discretion of the court.

Judge: Let all of these guys rise. One is missing.

Adv. Rok: One of them has already had a trial.

Judge:

Ruling: Since I have already expanded on my decision in File No. 2314 and what was said there applies just as well to this case; and because of the long delay from which the defendants suffered and the quality of the evidence, I acquit the defendants in this case.

(The acquitted defendants leave. The judge calls them back.)

Judge: For heaven's sake, don't throw stones. Just because you were acquitted because of the mistakes of all kinds of people doesn't mean you didn't do something wrong. It doesn't mean that I think you didn't throw stones -- I'm positive you threw stones.

APPENDIX J

A day in the military court in Ramallah, Dr. Edit Doron:

On Sunday June 18, 1989, I appeared in the military court in Ramallah for the trial of Borhan Alisah, a resident of Deheisha, who was arrested on April 16, 1989 and since has been detained in Megiddo.

In an indictment issued on April 30, 1989 he was accused of throwing stones at IDF troops during the curfew.

Borhan is known to me as a student at the Hebrew University, studying for a Masters degree in education. I had spoken with him a number of times over the course of the year, and he told me about the difficulty he has in paying the high tuition costs, yet said that he was willing to make every effort in order to study. This is why I came to his trial -- I wanted to try and prevent his entire academic year from being wasted. Final exams began during the week of the trial, and I hoped that it might be possible to obtain his release, at least on bail, so that he could take his exams.

When I reached the court it became clear that Borhan's file number did not appear on the list of trials for the day, and that he had not been brought from the Megiddo detention center. The defense counsel Odeh states unequivocally that the trial had been set for that day, and in fact he and I both note that it is written in the court's daily record book.

Advocate Odeh asks prosecuting attorney Lieutenant Gabriel Weizman about Borhan and informs him of my arrival. The prosecutor promises to consider the request for release on bail positively, but says that the judge will certainly not agree to discuss the matter with neither the file to view nor the defendant being present.

Attorney Odeh insists on raising the issue for discussion before Judge Isaacson, and notes that a professor from Borhan's university is present in court. His honor asks to see the professor, so I stand up. Then his honor remarks that by my appearance I am a woman professor, and he finds that funny for some reason. Then he says: "You will not be able to give all the speeches you have prepared, because the file is missing." Adv. Odeh answers that he opened a duplicate file in the administrative offices after it was discovered that the file was missing, so there is no formal problem. (The defendent's absence does not concern anybody). His honor asks where Borhan studies, and he is surprised to hear at the Hebrew University. "I did not know that they are accepted at the Hebrew University." Then his honor asks what Borhan studies and I say he is studying Education.

"It is not very educational to throw stones" says his honor, and laughs. "What year is he in?" asks his honor, and I answer that he is a Masters student . "And where did he get his B.A.?" "At Bethlehem University." The answer astonishes his honor: "With a B.A. from Bethlehem university one can be accepted to a Masters program at the Hebrew University?" "Yes sir."

Judge Isaacson says that when he was a student at the Hebrew University he took his examinations during the second exam period when he was called for his military service, and no one protested. And so he does not see any problem in Borhan missing the first exam period. Advocate Odeh keeps insisting, and reminds the prosecutor that he had promised to consider the request positively. His honor tells both that he will discuss the issue once they reach agreement.

Finally, the prosecutor agrees to release Borhan on bail, after learning that I would agree to sign as a third party guarantor. The defense counsel and the prosecutor inform his honor of their agreement. Then to the surprise of both sides, his honor decides not to accept the agreement but to keep Borhan in jail until the new date which was set for a month later.

Minutes

June 18, 1989
Before: Major Isaacson
Prosecutor: Major Isaacson [sic]
Defense: Attorney Odeh for the two defendants.
(the defendants were not brought from jail)

Attorney Odeh: We are requesting release of both defendants on bail. Defendant number 1 is a graduate student in education.

Prosecutor: Regarding defendant number 1 the prosecution does not object as long as the following conditions are met: His instructor who is present in court is ready to guarantee his appearance and is personally familiar with him. He has exams this week. For for this reason alone am I willing to agree to his release contingent on his posting significant bail and the third party guarantee of his instructor. The prosecution is opposed to (release of) the second defendant.

Attorney Odeh: Regarding defendant number 2, I think the matter should be left to the discretion of the court, for we are speaking of a man born in 1970.

DECISION

In this case I was asked by the defense to release defendant number 1 on bail, as he stated that he is a graduate student in education at the Hebrew University. The defense counsel introduced the instructor who explained to me that the defendant has several exams during the cousre of this week, and that if he is not released the defendant will be unable to pass these exams.

The military prosecutor decided for some reason to differentiate between the two defendants, and was willing to release defendant number 1, conditioned on the guarantee of his apppearance [at a later trial date] and on the guarantee of the defendant's professor (who was present today in the courtroom). However, regarding defendant number 2 the prosecution could not present criteria such as those shown for defendant number 1.

The prosecution's position is wonderous if not strange as considerations that should guide the prosecution should relate to the severity of the offense, its being widespread or rare, and only issues of this sort. Other considerations should not influence the judicial system in reaching a decision in this area. Incidentally, I will note that the exact same evidence is presented against both defendants, and as such there is no reason to discriminate between them (the defendants). Considerations of personal nature have almost no weight in this stage of deliberations. In addition, from the tesitimony of the defendant's instructor it is clear that the defendant can take his exams during the second, later, exam period.

The defense's request was actually a request to reexamine a previous decision to detain the defendant until the end of proceedings. In order for such a request to be accepted the defense must show new facts or a change in the circumstances under which the previous decision was made. The facts that the defendant is a graduate student in the university and that this defendant has exams are neither new facts nor a change in the previous circumstances. It is known that this court is not in session to serve as an appeals court for its' own decisions. As such, without new facts or a change in previous circumstances, there is no place for changing previous decisions. A number of legal decisions relate to this case:

See:

69/73/B"S it was decided in legal decision 28 part 2 page 85. The decision in this case was given by then Associate Presiding Judge Zisman.

Also see in this matter:

955/72/H"M in legal decision 27, part 1, page 146, given by his honor Presiding Judge Agranat.

The actions attributed to both defendants are severe offenses which have become epidemic. When a certain offense becomes epidemic the considerations of the court become more severe in such matters as remanding the defendants through the end of proceedings. See in this matter:

994/84/B"S in legal decision 38, part 4, page 119, and also in 897/82/B"S in legal decision 36, part 4, page 441.

In these circumstances I am of the opinion that there should be no discrimination between the two defendants and as such there is no place to release one of them on bail, not even on binding bail. I therefore deny the motion.

The case is thus postponed to July 19, 1989, at which time the two defendants and the one witness will be brought from jail.

APPENDIX K

B'Tselem's questionnaire for observing attorneys.

Military Courts in the Occupied Territories

Judge's Name:_____ Name:_____
Prosecutor: _____ Date:_____
Defendant: _____ Location:_____
Attorney: _____

Charge: _____
Date of Arrest:_____
Number of times summoned for hearing: _____

In case of absent defendant, witnesses, or attorney (reason and how the judge handled it): _____
_____
_____

Record of hearing proceedings: _____
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Appendix L

J & S Region
Military Prosecution
Judea Districts
Ref: 669
Date: May 11, 1989

Central Command/Chief of Regional Staff
Commander/Judge Advocate General's Corps
Ramallah District/Presiding Judge, Mil. Court of Appeals
J & S District 877/Commander
Judea Brigade Commander
J & S Region/Legal Adviser
Dvir Facility/Commander
Dvir Facility/Registrar

Re: Expedited trials in Hebron

1. As of yesterday, Monday, May 8, 1989 18 (eighteen) cases were set for expedited trials in the Bethlehem and Hebron districts, all of which were to be heard in Hebron.

2. The administrative offices of the military court informed me that the cases had been appropriately set up with the division in Hebron and that the list of cases set for this particular day was conveyed to the prosecution in sufficient time, and that the prosecutor appeared in Hebron with all the relevant prosecution cases intact.

3. The judge and prosecutor arrived in Hebron, and following an extensive inspection carried out at the scene, it was clear that not even one defendant was present in the holding cell in Hebron, not to mention that none of the witnesses had appeared to give testimony. Also, over the course of the day, until the afternoon, none of the defendants had been brought nor had a medical witnesses appeared.

4. It is clear that in such a case it was not possible to hold even one of the eight to ten trials that had been scheduled.

5. I need not expand on the degree of seriousness of such a series of events as described above, especially considering the background of the many discussions held on this matter, some in expanded forums of senior officers.

6. The most serious result, from the standpoint of the military prosecution, of breakdowns such as described above is the loss of control over the process from time of arrest to the end of the legal proceedings. That is defendants whose cases were to be tried in expedited proceedings were transferred to different facilities without being remanded to detention until the end of proceedings at a time when their arrest warrants are due to expire in a few days, if they had not already done so. As a result, a heavy burden now falls upon the prosecution which the latter has difficultiy withstanding: locating the place to which each defendant was transferred, and extending his arrest warrant through the end of proceedings, all within a minimal time period.

7. All concerned authorities should take note of this issue in order to prevent such serious cases in the future.

(-)

Captain Moshe Bachar
Military Prosecutor

APPENDIX M

File 1104/89 before Justice Isaacson, from September 12, 1989, in the Ramallah court (the entire proceeding was held in Hebrew)

Judge to prosecutor:
What is happening with this case? You were asked to check this. Was it checked? The defendant refused to stop as requested by IDF troops. That he is driving without a license is dangerous. He's apt to kill people, but refusing to stop is very severe.

Judge to defendant:
On September 1, 1988, in the Beit Omar area, at 10:30 am, you were driving in your father's blue Volkswagen Golf without a driver's license, and failed to stop when soldiers ordered you to stop. Were you driving without a license?

Defendant:
Yes.

Judge:
Today you have a drivers license?

Defendant:
Today I have one.

Judge:
See, no one prosecuted him in time and now he has gone and gotten a drivers license.

Judge to defendant:
Is it true that soldiers told you to stop and you did not stop?

Defendant:
No.

Judge:
Did the soldiers ask you to stop? If the soldiers didn't ask you to stop how did they know that you didn't have a drivers license?

Defendant:
I saw the soldiers and stopped on the side. I turned around and returned and stopped next to my friend's house. There were many soldiers in the street who then began to search in the homes. They asked me whose car this was.

Prosecutor:
This is a regular misdemeanor. His license can be revoked.

Judge:
Now it is impossible to revoke his licence. He has already been incarcerated for a month.

Judge to defendant and prosecutor:
Speak between yourselves afterwards.

B'TSELEM, the Israeli Information Center for Human Rights in the Occupied Territories, was established in February 1989 by a large group of lawyers, doctors, scholars, journalists, public figures, and Knesset members.

B'TSELEM has taken upon itself the goal of documenting and bringing human rights violations in the occupied territories to the attention of the general public and policy and opinion makers and of fighting the repression and denial which have spread through Israeli society.

B'TSELEM gathers information -- reliable, detailed, and up to date -- on human rights issues in the occupied territories, follows changes in policy, and encourages and assists intervention whenever possible. The center is assisted in its work by a lobby of ten Knesset members from various parties. B'TSELEM makes its information available to any interested individual or organization.

B'TSELEM was created through commitment to and concern for the security and humanistic character of the State of Israel. This commitment and concern underlie all of the center's activities and form the core and cause for its existence.