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(English Version)

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THE MILITARY JUDICIAL SYSTEM IN THE WEST BANK
Followup Report

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B’Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, was founded in February 1989 by a group of lawyers, intellectuals, journalists, and Members of Knesset.
The objective of B’Tselem is to document and to bring to the attention of policy makers and the general public, violations of human rights in the territories.
INTIFADA FATALITIES - TOTALS

646 Palestinian residents of the territories have been killed by Israeli security forces between the beginning of the Intifada and the end of April 1990. Of these:

* Shooting deaths (including plastic and "rubber" bullets): 613
* Non-shooting deaths (beatings, burns and other): 33
* Children: 146
  - Aged 12 and younger: 42
  - Aged 13 to 16: 104

More than 77 additional people died a short time after exposure to tear gas, of whom some 30 were infants. From a medical standpoint it is difficult to determine whether tear gas was the sole and direct cause of death.

An additional 29 Palestinians have been killed, apparently by Israeli civilians, and 6 apparently by collaborators.

During this period, 10 IDF soldiers and 9 Israeli civilians were killed by Palestinians in the territories. 3 of them were infants.

According to the Associated Press, 209 Palestinians suspected of collaborating with the Israeli authorities have been killed.

During this period, according to the IDF Spokesperson, 23 Israeli civilians and 4 soldiers were killed within the Green Line by Palestinian residents of the territories. At least 5 Palestinian residents of the territories have been killed by Israeli civilians.

B’Tselem’s data are based on fieldwork, independent investigations, and official Israeli sources, as well as on the data of Palestinian sources, especially human rights groups such as PHRIC and al-Haq.
FATALITIES IN APRIL 1990 — ANALYSIS

In the month of April, 1990, according to B’Tselem’s figures, 9 Palestinians were shot dead by Israeli security forces. 3 of them were in the West Bank, and 6 in the Gaza Strip.

One additional Palestinian was killed falling from a roof while attempting to escape from security forces. Another was apparently shot dead by a collaborator.

Of those Palestinians shot dead by security forces, 4, or approximately half of the total fatalities were children. One of these children was 11 years old, and the other three were between ages 13 and 16.

According to the Associated Press, 8 Palestinians suspected of collaborating with the Israeli authorities were killed.

B’Tselem would like to emphasize that despite the decline in Palestinian fatalities in the occupied territories in recent months, dozens of Palestinian residents of the territories have been killed, many of them children, and hundreds injured. This situation is intolerable, and it is incumbent upon the authorities to do their utmost to remedy it.
FOLLOWUP REPORT

In November 1989 B’Tselem published a report on the military judicial system in the West Bank. With the help of seven Israeli attorneys, we followed the judicial process over a period of eight months, from the moment of the West Bank residents’ detention right through to the ruling in the military courts. Since publication of the report, B’Tselem has continued monitoring the judicial system and has visited courts in Ramallah, Nablus and Hebron. In this Information Sheet we will review the primary conclusions of the November 1989 report, as well as the changes observed in the course of our visits to the courts. We will also present the IDF Spokesperson’s response to B’Tselem’s report as received by our office in March 1990.

CONCLUSIONS OF B’TSELEM’S REPORT (NOVEMBER 1989)

The report based itself on the law in force in territories, as enacted by the military legislator, and examined whether those minimal rights guaranteed by military law are actually upheld.

Our conclusions found two failings in particular. The first is the considerable injustice caused on a routine basis by an overwhelming propensity towards inefficiency, indifference, and neglect, which degrade not only defendants and their attorneys, but also the judges, prosecutors, and soldiers working within the judicial system. The second issue we raised was the existence of military procedures which violate the law.

In this atmosphere of neglect, commotion, and utter chaos, hundreds of people are sentenced to months and years in prison. The neglect and inefficiency are very evident — for example, all trials are scheduled for the morning but nobody present knows in what order they are to take place. The attorneys at the Ramallah court had no room in which to wait or meet their clients, so their discussions were held inside the courtroom itself, giving the place a marketplace atmosphere.

From observations carried out principally at the Ramallah military court, it was apparent that a considerable proportion of cases are delayed. This results either from defendants not being brought to court from their place of incarceration, or from the prosecution being unable to find the relevant files on the defendants or to produce witnesses for the prosecution. In a situation where the vast majority of defendants are detained through the end of proceedings, the repeated postponement of hearings constitutes a violation of justice. It undermines a person’s basic right not to be punished by prolonged detention until his guilt is firmly established through proper legal proceedings. The means of pre-trial punishment at the disposal of the prosecution place unwarranted pressure on defendants.

In these circumstances, the court changes 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, served prior to any formal conviction.
We also identified a number of procedures which have become ingrained in army practice and which contravene the law:

* The army's obligation to inform family members of the arrest and location of suspects is not fulfilled, even though the law stipulates that this is to be done. Nor are attorneys notified about the arrest or location of their clients, and lists giving details of detainees are not posted at the civil administration offices as required by law.

* Prisoners are transferred from one prison facility to another without the transfer being documented and without notification of their place of incarceration being passed to their attorneys or their families.

* A prisoner's right to meet with his attorney at the time of arrest is not infringed, 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 extensions of detention take place without the presence of an attorney.

Moreover, we pointed out that the principle of judicial independence is severely undermined by the fact that judges and prosecutors serve under the same military commander and depend on the same authority for their advancement. Judicial independence was an issue in several cases, particularly where relations between judges on reserve duty and judges in the standing army are concerned.

Our survey revealed that the judicial system operates unjustly and at times in direct contravention of those same military laws it is charged with upholding. The basic rights which the orders of the military commander accord to the residents of the territories are also not upheld.

Following the Association of Civil Rights' plea to the High Court of Justice regarding the matter of families not being informed of arrests, some improvements have been made to the system. Lists of detainees are now posted at civil administration offices. Also, the army has printed detention-notification cards which are supposed to be sent out to members of the detainee's family. However, very few families have actually received these cards and thousands of families still hear of their relatives' detention by rumour alone.
THE IDF’S RESPONSE

In the response, the IDF Spokesperson chose to deal exclusively with the conclusions drawn from our observations at Ramallah military court. The response did not touch on the issues of army regulations relating to detention, notification of families, or attorneys’ visits to prisons. His detailed letter does not argue with the conclusions of B’Tselem’s report; rather it stresses that the instances of injustice and severe damage to the judicial apparatus stem from the grave problems the courts have faced since the beginning of the uprising. The IDF Spokesperson details measures taken by the army to cope with these difficulties, and improvements made between November 1989, when the report was written, and now. The salient points of the response are reproduced below:

The courts’ workload since the beginning of the uprising:

A. The main problem facing the military courts in the Judea and Samaria and Gaza Strip regions is the considerable increase in the number of indictments reaching the courts. In 1987 some 1,300 indictments on disturbing the peace were issued in courts in the Judea and Samaria and Gaza Strip regions.

B. In the two years between December 9, 1987 and December 1, 1989, 13,089 indictments on disturbing the peace were issued in the military courts (the total number of defendants included in these indictments reached 17,851 persons!).

This is an increase of hundreds of percent during a period in which the number of hostile terrorist activity cases have by no means decreased, nor have cases defined as ‘external cases’ (various criminal offenses, traffic offenses, customs and income tax evasion etc.).

Solutions

Opening new courts:

Because of the heavy workload described above, it was necessary to build new courts. Thus an additional court-room was added in Ramallah, and two court-rooms and an independent facility were added in Jenin. A permanent legal facility has been opened in Hebron, and three new court-rooms have been added to the two existing ones in Gaza.

The appointment of judges from the standing army to the courts:

A. Until the end of 1987, two standing judges served in the Judea and Samaria region, and a third one was stationed in the court in the Gaza Strip region. A significant proportion of the judicial burden rested on the shoulders of reserve-duty judges. Although the reservists did a perfectly
adequate job, it was preferable for judges from the standing army to fill the role. This was because of both their greater output and a desire to instill some stability into the judicial apparatus and uniformity into sentencing.

B. Additional standing judges have gradually been appointed, some of whom were recruited from the reserve forces. Today, eight standing judges work in the military courts (six in the Judea and Samaria region and two in Gaza). This policy has quickly proven effective in quickening the pace of hearings and improving the quality of the judicial process.

C. In an effort to bolster standing judges, additional reserve judges have been appointed to facilitate various judicial procedures, and to help deal with prosecution and police requests to extend periods of detention of those suspected of or charged with offenses.

Non-production of defendants at trials:

A. Defendants summoned by the military courts are scattered among 23 IDF and Prisons Service detention facilities. As a result of the increase in the number of summonses and hearings, frequently the system fails to produce defendants at the courts.

B. Clearly this phenomenon has severely interfered with the carrying out of justice and the holding of trials within a reasonable period of time. This problem derives mainly from a lack of central control over the summons system, such that at times the appearance or non-appearance of a defendant was a matter of pure luck. Note also that the non-appearance of one or several defendants standing on a particular charge prevented the trial from taking place.

C. Non-production of defendants at trials has been discussed in the upper echelons of the military. The main focus was that non-production of defendants constitutes contempt of court and seriously undermines the status of the institution.

Solutions

Production of defendants at trials:

A. There has been a real turn-around in this sphere as well following the establishment of a control center to deal with this problem in Central Command, and the involvement of Southern Command. There has been a distinct improvement in the number of defendants produced at trials. Furthermore, things have improved since detainees from the Judea and Samaria region are no longer held in the Ketziot detention facility until the end of proceedings against them.

B. In the month of January 1990 an average of 87% of all defendants summoned to the military courts were present. In
the Nablus and Hebron courts over 90% of defendants were present for their trials.

C. Of course the aim should be to produce every defendant in custody summoned for his trial, but it would be difficult to achieve a 100% success rate. In some cases it is not possible to locate a defendant because of mistakes made in registering his personal details. It is worth mentioning in this connection that there is now an arrangement whereby court officers will personally visit prison installations to identify detainees who may not have been summoned to court for a long time.

Non-appearance of witnesses at court

A. A substantial amount of evidence is required for any judicial procedure, compelling the courts to summon witnesses for the prosecution to deliver evidence in court. The following categories of people are called as witnesses:

Regular or reserve soldiers who arrested people disturbing the peace at the time of the offense or shortly thereafter; police and army investigators who collected testimony from the defendants or who participated in the investigation; incriminating witnesses involved in the same offense or standing on other charges.

B. In the majority of cases the defendants summoned were sent back without the witnesses showing up in court. When witnesses did appear, it often turned out that the defendant had not been brought to court, so the witness was sent away.

C. Holding proper evidentiary trials demands a swift, fundamental solution to the problem of the non-appearance of witnesses. The solution outlined below comprises on the one hand of greater use of punitive measures against witnesses who fail to present themselves at court, and on the other hand taking steps to ensure a reasonably easy and safe way for witnesses to get to court.

Solutions

Witnesses getting to court:

A. For understandable reasons, prosecution witnesses are far from delighted at the prospect of coming to courts in the territories in order to give evidence. Road travel is not secure and the witnesses fear both for their personal safety and for the loss of days from work. Here we are talking mainly about the witnesses who have served in the field as regular or reserve soldiers.

B. In the past there were cases in which witnesses arrived but the hearing did not take place for lack of a defendant, and this factor has also contributed to the poor attendance of
IDF RESPONSE

witnesses.

C. Since there is no way around the requirement to present evidence, the appearance of witnesses is an absolute necessity and there is no room for compromise on this matter. Therefore it was decided that reserve soldiers should be summoned by order at one day's notice by an officer of the command, in addition to the court administration issuing its own summons.

D. To facilitate the orderly appearance of witnesses, rented vehicles, a driver and a security guard have been assigned to pick up witnesses from a meeting point and transport them to court. Thus it has been ensured that witnesses will reach the courts safely and without fear. Furthermore, court officers have been delegated to contact witnesses by telephone ascertain their appearance. In the worst cases, when witnesses have refused point-blank to attend court to testify, court orders have been brought against them.

E. The percentage of prosecution witnesses appearing in court has grown significantly. In January 1990, for example, the average appearance at Gaza courts was 55%, whereas the average now is more than 60%; in Hebron, it is more than 76%. To a similar extent, there has been a distinct improvement in the appearance of other categories of witnesses such as police, General Security Service (Shin Bet), and customs personnel, among others.

F. Obviously, we must not be complacent where this matter is concerned, and the courts' aim is to ensure full attendance of every witness summoned. At the same time, however, taking into account the special circumstances under which courts in the territories have been operating during the uprising, we may point with great satisfaction to the achievements attained so far.
FINDINGS OF B’TSELEM’S FOLLOWUP REPORT (NOVEMBER 1989-APRIL 1990)

What has changed?

B’Tselem closely monitored the changes and improvements which have taken place in the military courts on the West Bank, and observed trials in Ramallah, Hebron, and Nablus. The conclusions of our follow-up deal chiefly with improvements and changes that have taken place concerning the attendance of witnesses and defendants in court. According to the IDF Spokesperson’s statistics, 88.15% of defendants and 55.75% of witnesses appeared at regular trials* in January 1990. This is indeed a significant increase in the percentage of attendance at court since the publication of B’Tselem’s report in November 1989.

The improvement in the bringing of detainees in custody to court and the appearance of prosecution witnesses facilitates a speedy end to the proceedings and shortens the period of pre-trial incarceration of the detainees. The judicial system manages to "get through" more files than it did before and therefore lightens the heavy workload imposed upon it. The two chief ways the army has found to make the judicial system more efficient are opening additional courts, and holding quick trials by means of the "expedited procedure."

A. Opening additional courts in Jenin and Hebron:

The opening of new courts has eased the pressure on the courts at Ramallah and Nablus. However, while in Israel a defendant has the right to stand trial in his area of residence or in the place where the offense took place, in the territories defendants are tried at the court closest to the prison in which they are being detained. So defendants who are detained in Megiddo prison will be tried in Jenin and those detained at Hebron prison will be tried at the Hebron court.

Security considerations determine the placement of detainees in the different prison installations, and not place of residence. As Colonel Shoham, who is responsible for the West Bank courts, testified, the opening of new courts was designed to facilitate the army’s transportation arrangements and to shorten the distance from prison to court.

The new system was introduced without any consideration for the families of the detainees or their attorneys, who are forced to travel to courts far away. In the long term the new system could turn out to be awkward for the army too, as the army often transfers prisoners from one prison to another.

B. Expedited trials:

* Regular trials as opposed to quick trials or the ‘accelerated procedure’ which will be discussed later.
Expedited trials were also introduced to help shorten the judicial process, to shorten the period of detention until the completion of proceedings, and to bring the defendants to trial while the prosecution witnesses (usually reserve soldiers) are still at hand.

The IDF Spokesperson details in his response that in January 1990, 97.7% of defendants on "expedited procedure" were brought to trial, and 61.49% of the witnesses attended. However, from our observations at the Hebron military court, it appears that a significant number of defendants standing trial on "expedited procedure" do not have the opportunity to get an attorney, and sometimes do not even manage to notify their families of their arrest.

Moreover, the prosecutors do not have enough time to study evidence against the defendants before the trial, and the hearing is conducted for the most part by the judge who cross-examines the defendant during the trial.

The impression given is that the success of a court is measured by how many cases it can get through per day, and the judges often make it very clear that they want to finish the day's work.

Increasing the efficiency of the system is often obtained at the expense of proper legal proceedings. The end product of any legal system should not be a target-number of closed cases, but just and reasoned decisions based on proof, legal requirements, and fixed judicial standards.

What has not changed?

A. The policy of release on bail:

B'Tselem's 1989 report raised the question of the legality of the procedure for requesting release on bail at the Ramallah court. The report pointed out that the court allows attorneys to request release on bail only in writing. This violates the fundamental right of attorneys to present such requests in court.

Up to now, from the moment the date of the trial is fixed, attorneys' requests for hearings to discuss release on bail are put off. The judges state that a request for release on bail can only be heard within the framework of a full hearing dealing with the detainee's file, in spite of the fact that hearing dates can be fixed for several weeks after the date of detention.

B. Plea bargains and pleading guilty:

The IDF Spokesperson claims that one of the reasons for the great pressure on the military judicial system in the West Bank is the "policy among defendants charged with disturbing the peace to plead not guilty". According to an army claim in October 1988, "the defendants and their counsel have taken to pleading not guilty on a massive scale". It is known that in the past there was indeed such a phenomenon on a limited
scale, conducted by detainees in Megiddo prison (the lack of legitimacy in pleading not guilty is open to debate). But at least in the last year, since B’Tselem has been carrying out its observations, there has been no basis at all to support this claim. What is more, as we have pointed out in the past and as still applies today, the aim of 95% of defendants is to plead guilty and come to a plea-bargain agreement, if only to bring to an end the period of detention which automatically lasts until the completion of proceedings.

Our observations in court revealed that pressure from the judges to "finish" or "close the case" was a matter of routine. One of the judges complained in court about all the deliberations and told the attorneys to "come to court only with ready-made decisions." (Ramallah, April 22, 1990)

Recent observations in court also revealed that defendants who wished to plead not guilty were warned that such behaviour could "cost them dearly."

C. Physical conditions:

The courts were found to be cleaner than they were before. In Ramallah, a sidewalk has been paved to accommodate people waiting outside the courts, and a room has been set aside for the use of the attorneys.

The paved sidewalk does constitute some sort of improvement, but not a huge one in view of the fact that thousands of people wait there for many hours (sometimes 8-10 hours a day).

The room set aside for the use of the attorneys is the same stifling, unfurnished room with narrowly-barred windows where detainees were held in the past.

Some of our numerous visits to the courts coincided with the hot desert winds and heatwave at the end of April. We learned that:

1. Dozens of people still wait in the blazing sun with no shelter outside the court compound. There is no way of checking the order of the hearings, of finding out which of their loved ones are present or whose trial has been postponed. The suspense goes on for hours. Posting a list of cases being heard and the providing of a shelter for those waiting there would reduce the sense of helplessness from which these thousands of people suffer.

2. There are still no clear regulations regarding admittance into the court compound. The guards at the gate were not aware of the fact that, as the IDF Spokesperson himself pointed out, the judicial system is "an open system in which trials are carried out in full view of the public."

3. There is no photocopying machine available, making it difficult for attorneys to prepare the defence.
4. In the entire Ramallah court compound there is no drinking-water tap and nowhere where visitors or attorneys can buy any sort of refreshment.

5. There is no public telephone.

6. There is not enough room for all the attorneys to sit behind the defence bench in the court-room. Some of them have to stand throughout the hearing, which can last for hours; others sit on the court-room floor.

The slight improvements that have been made in the physical conditions at court show that the pall of indifference and neglect is not immutable. Making the judicial system more efficient and improving conditions for defendants, their families, and their attorneys does require a certain amount of effort and an increase in expenditure. However, these factors are of utmost importance, and it is difficult to accept IDF claims of budget and personnel limitations.
CONCLUSIONS

The rights granted residents of the territories by Israeli military law are minimal at best and fall short of the rights of suspects and defendants within Israel. It is thus essential to protect these basic rights.

The IDF response makes it clear that the army is aware of the delays and injustices inflicted upon thousands of Palestinian suspects and defendants. The IDF Spokesperson ascribes this, to a great extent, to the workload which burdens the system.

The external appearance of the courthouses, the filth, the disorder, the lack of punctuality, the fact that no one knows which cases will be heard or which postponed, the degrading treatment of lawyers who spend long hours in courtyards, without room, public phone, or a drinking tap on hot days are all symptomatic of the judicial process within the courtroom itself.

The lack of photocopying machines at the disposal of lawyers, makes it impossible to photocopy court records or to prepare a proper defence. The courts set dates for bail hearings, which means that detainees are held until their trial, a period which is weeks long.

Improvements in the system in recent months, such as establishment of a new court in Jenin and the new "expedited trials," have led to the "closing of cases" at a quicker pace than in the past. The impression is left that the military court, as a result of the pressure it is under, has begun measuring its effectiveness in terms of productivity.

Although a court must close cases, it must also determine guilt based on legitimate evidence and witnesses, use predetermined legal procedures, maintain an atmosphere of respect, preserve the rights of defendants and their attorneys, and take into account the feelings of defendants' families.
Yusuf Inkawi, nineteen years old, is the oldest of thirteen children of a crippled father. He has been in detention for two years and three months awaiting trial. He was arrested on charges of stone-throwing in his village, Beit Sira (adjacent to the Jewish settlement Macabim). On February 5, 1988, his family paid NIS 1000 in order to free him on bail, but he was not set free. Instead, he was taken for interrogation by the General Security Service (Shin Bet), and accused on additional charges. Since then he has been awaiting trial, along with three other suspects from his village, who are all accused of throwing Molotov cocktails (Abdullah Inkawi, Yusuf’s cousin, has been in solitary confinement for more than a year). The indictment states “the above defendants, at or near the beginning of 1988, plotted together to commit a crime, namely, to prepare Molotov cocktails and to throw them at Israeli vehicles.”

Despite numerous requests by family members, attorneys, friends, and MK Dedi Zucker, the suspects’ trial has yet to begin. Yusuf Inkawi has yet to be tried, but the Minister of Defence has already stated that “the defendant’s father seeks peace, while his son, most unfortunately, is busy seeking entirely different goals.”

Within Israel, the authority to lengthen a person’s detention to over a year rests only with the Supreme Court, which rarely exercises this power. Military law allows for detention of residents of the occupied territories for unlimited amounts of time until the trial.

This case, in which four people have been held for more than two years without proof of their guilt, is extreme but not unique. It attests to the fact that detention is being used as an alternative to proper legal process.

* The trial of the four defendants from Beit Sira was set for the following dates, but was postponed for various reasons:
  1988: June 30, July 31, August 11, August 15, September 11, September 29, November 1, November 24, December 15;
  1989: January 12, January 26, February 12, February 23, April 2, May 11, June 15, July 19, August 17, September 24, October 11, November 22, December 10.

Plea bargaining, "field arrest forms," and the daily routine in the military court

On March 7, 1989, ten residents of Ramallah were arrested for participating in an illegal demonstration. Nine months later, they were tried in the Ramallah Court (File 4257/89, December 14, 1989).

The single witness for the prosecution was the soldier who arrested them. As has been common practice over the last two years, the soldier filled out an "field arrest form," in which he described the event in one sentence. This form constitutes sufficient evidence in a military court. According to convention in Israel, the police must obtain accounts from witnesses in the greatest possible detail and make them available to the defence counsel for review a reasonable period of time before the trial.

Cross-examination of the soldier, the witness for the prosecution, is made extremely difficult by the sparse information available on the form used in the territories. Thus nine of the detainees engaged in plea-bargaining, like the majority of defendants from the territories. One of the defendants pled not guilty, and her attorney requested that the soldier write down his account of the event and allow her the opportunity to examine it. The judge agreed to this exceptional request. Two days later, the soldier called the defence counsel and the prosecutor, and said that after checking, it became evident that the described demonstration took place on a different date in a different city.

The courts instructed that the case be closed and the defendant acquitted. Again, however, the nine other suspects were convicted in plea bargains.