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DRAFT

Where Silence Reigns

Israel's Separation Policy and Forced Eviction of Palestinians from the
Center of Hebron

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Introduction

Hebron is the second largest city in the West Bank and the largest in the southern West Bank. It is the only Palestinian city with an Israeli settlement in the middle of it.¹ The Israeli settlement in Hebron is concentrated in and around the Old City, which traditionally served as the commercial center for the entire southern West Bank.

For years, Israel has severely oppressed Palestinians living in the center of the city. For example, the authorities have created a long strip of land that partitions the city into southern and northern sections and is forbidden to Palestinian vehicles. Parts of the strip are also closed to Palestinian pedestrians. The settlers, on the other hand, are allowed to move about freely in these areas. In the areas open to Palestinian movement, passersby are subject to repeated detention and humiliating inspections every step of the way. Since the massacre of Palestinian worshipers in the Tomb of the Patriarchs committed by the settler Baruch Goldstein in 1994, the Israeli military commander has ordered the closing of many Palestinian-owned shops, which provided a source of livelihood for thousands of persons. To aggravate matters, the defense establishment has knowingly and routinely permitted countless acts of settler violence against Palestinians in the city.

These restrictions, prohibitions, and omissions have expropriated the City Center from its Palestinian residents and destroyed it economically. Most of the shops in this area have been forced to close. Having no option, many families have left their homes in the City Center. Israel's ongoing restrictions and prohibitions make it impossible for Palestinians to renovate and rejuvenate the area.

This report does not deal with all of Hebron, or even with those parts of the city that Israel directly controls. The report concentrates on the City Center, the area comprising the Old City and the Qasbah, in which most of the settlement points are established, in which Israel imposes the most serious restrictions on Palestinian movement – an area that Palestinians have abandoned more than any other. What was once the vibrant heart of Hebron has become a ghost town.²

Palestinians have left the area primarily as a condemnable result of the "separation policy" Israel has implemented there. Oppression of the Palestinians in the City Center is part of this policy, which is openly aimed at protecting Israeli settlers in Hebron by and legally separating them, physically and legally, from the Palestinian residents. This objective is clear from the

¹ Other than East Jerusalem, which Israel annexed immediately following the occupation, in 1967.

² See below, "The City Center."

reasons the army gave for rejecting the suggestion of external Israeli security experts to protect the settlers without a physical separation them, a suggestion that was intended to enable rehabilitation of the Palestinian fabric of life in the city.³ The army responded to the suggestion as follows:

It seems that the basis of the opinion [of the security experts}, whereby it is possible for Palestinians to live a normal life in the area alongside that of Israelis, is inconsistent with the principle of separation that underlies the security forces' plan to safeguard the space...

Would anyone think it possible to protect the Jewish residents in the area of the Jewish neighborhoods, when these neighborhoods are isolated from each other, and when there is an area in which Palestinians live a regular and routine life? How is it possible to prevent friction in the space encompassed by these neighborhoods when on their doorstep (and in most cases, even under or alongside them) Palestinian commerce is taking place?⁴

A senior official in the defense establishment described Israel's policy on the center of Hebron as "a permanent process of dispossessing Arabs to increase the Jewish territory."⁵ The report describes in detail this process of dispossession.

The first chapter briefly describes the history of settlement in Hebron and control of the city over the years. The second chapter presents the findings of a survey conducted in preparation of this report that illustrates the degree to which Palestinians have left the areas adjacent to the settlements in the city. These figures include the apartments that became vacant and the shops that closed, either following an army order or as a result of Israel's policy in the city.

This policy is discussed in the following three chapters, which deal with the factors that have led to Palestinians leaving the areas near the settlements in Hebron. The factors are not all inclusive, but they provide the main explanation for Palestinians leaving the City Center.

Chapter Three discusses Israel's severe restrictions on Palestinian movement in the city, including the continuing curfew it imposed in the parts of the city under its control during the first years of the second intifada, and the closing of streets in the City Center to Palestinian

³ The Association for Civil Rights in Israel attached the suggestions to its letter of 27 August 2006 to the attorney general and the defense minister.

⁴ Letter of 31 January 2007 from Harel Weinberg, legal advisor for the West Bank, to Shai Nitzan, of the State Attorney's Office.

⁵ Amos Harel, "Report to Sharon and Ben Eliezer recommending enforcing the law on Hebron settlers," *Ha'aretz*, 11 August 2002.

pedestrians and vehicles. The chapter then discusses the large-scale closing of Palestinian businesses in areas near the settlement points, and the death blow it dealt to Hebron's commercial center in the first years of the second intifada.

Chapter Four discusses the refusal of the Israeli authorities to enforce the law against settlers who injure Palestinians and damage their property. Chapter Five deals with violence, abuse, and humiliation of Palestinians by police officers and soldiers, the seizure of Palestinian houses for operational purposes, and the searches, delays, and harassment by the security forces. Chapter Six examines Israel's policy from the perspective of international humanitarian law, international human rights law, and Israeli law. The report ends with conclusions and recommendations.

Chapter One

History of Israeli Settlement in Hebron

On Passover Eve of 1968, less than one year after Israel occupied the West Bank, a group of Israeli civilians rented a hotel room in Hebron for forty-eight hours, but declared that they did not intend to leave the hotel. Although the act violated official government policy at the time, after a few days passed, cabinet ministers visited the new "neighborhood" in a show of support. In the months that followed, the government refrained from removing the squatters, while the army equipped them with weapons and even trained them in their use.⁶

The settler-Palestinian-military triangle began to take its current shape already then, as Akiva Eldar and Idit Zartel explain:

A pattern of hostile and violent treatment of the local residents began, and with it came a sample of the Israeli reaction. At first, the settlers settled in the heart of the Arab population; long-time city residents, who naturally did not welcome the penetration of Israelis into the area in which they lived, tried to push away the unwanted guests, local skirmishes developed, large numbers of military forces were needed to protect the handful of settlers, and to protect the Jews from the danger of violent confrontation, veteran Hebron residents were removed from their homes and shops.⁷

Some six months later, in September 1968, the Ministerial Committee on Hebron and Gush Etzion [the Etzion Bloc] officially approved the establishment of a Jewish neighborhood in the city. The decision states that, for purposes of expanding the settlement in Hebron, it is necessary to consider the possibility of using Jewish-owned land. Three months later, the Ministerial Committee backed off its decision, and decided to establish a Jewish neighborhood near the city. In March 1970, the Knesset approved the establishment of the Kiryat Arba settlement, situated close to Hebron, and in the second half of 1971, the first fifty families moved into the settlement. Within a few years, Kiryat Arba contained hundreds of housing units available for Israelis.

⁶ Response of Defense Minister Moshe Dayan to an inquiry by MK Uri Avneri, *Knesset Record*, Vol. 29, session of 12 June 1968, pp 2230-2232.

⁷ Akiva Eldar and Idit Zartel, *Masters of the Land: The Settlers and the State of Israel 1967-2004* (Kinneret, Z'mora, Dvir, 2004), pp. 38-39. For an extensive survey of establishment of settlement in Hebron, see *ibid.*, 31-39, 327-333; Shomo Gazit, *Gullible Persons in a Trap: Thirty Years of Israeli Policy in the Occupied Territories* (Z'mora Beitan, 1999), 224-226.

The big push to solidify the Jewish settlement in the heart of Hebron came in 1980, following two attacks in which yeshiva students were killed in the City Center. The year before, female settlers from Kiryat Arba squatted in Beit Hadassah, which is located in the City Center. After a yeshiva student was killed on 30 January 1980, settlers from Kiryat Arba squatted in buildings in the City Center that had previously been owned by Jews. Prime Minister Menachem Begin did not remove them.

In March 1980, the government decided to build a structure for a yeshiva in the City Center and add a floor to the Beit Hadassah settlement for use as a school. With these actions, the government gave final approval for the establishment of the Jewish settlement in the heart of Hebron. In 1984, a number of Jewish families established a settlement point in the Palestinian neighborhood of Tel Rumeida.

Over the years, the Jewish settlement in Hebron grew, and now a few hundred settlers live in a number of locations in the Old City, primarily in and around what was the city's commercial area (see the map, Appendix 2).⁸ Each of the settlement points is a building or small group of adjacent buildings. The settlement in Hebron is primarily comprised of the Avraham Avinu neighborhood, Beit Romano, and Beit Hadassah, in the Old City, near a-Shohada Street, which was the heart of the Palestinian commercial district, and Tel Rumeida, near the Old City.⁹

In the pre-dawn hours of 25 February 1994, the settler Baruch Goldstein killed twenty-nine Muslim worshipers and wounded more than one hundred others in the Ibrahimi Mosque, located in the Tomb of the Patriarchs, in Hebron. Following the incident, Israel gradually adopted an official policy of separation of Palestinians and Israelis, first in and around the Tomb of the Patriarchs, and later elsewhere in the City Center.

In the interim agreement signed by Israel and the Palestinian Liberation Organization in 1995, the parties agreed to leave the city under Israeli military control, while the army retreated from the other cities in the West Bank. In 1997, the Protocol Concerning the Redeployment in Hebron was signed. This agreement divided the city in two: H-1, which comprises some eighteen square kilometers, in which most of the city's 115,000 residents live, was given over to the control of the Palestinian Authority, and H-2, which comprises 4.3 square kilometers, where 35,000 Palestinian are left under the control of the Israeli army, with the Palestinian

⁸ The precise number of settlers in the City Center has not been made public. Also, the number fluctuates, since many of the residents in the settlement are yeshiva students or foreign visitors.

⁹ In addition, there is the "Givat Haavot" settlement, which lies a few kilometers north of the Old City and is considered part of Kiryat Arba. A Hebron police station is located in the neighborhood.

Authority being given civil powers over the Palestinian residents in the area.¹⁰ H-2 contains the Old City and all the Israeli settlement points. The Old City contains the city's commercial center and also served as the city's north-south traffic artery.

In addition to the administrative division of the city, Article 9 of the Hebron Redeployment Agreement specifies that Israel and the Palestinian Authority shall strive for the movement of the city's residents:

Both sides reiterate their commitment to the unity of the City of Hebron, and their understanding that the division of security responsibility will not divide the city. In this context, and without derogating from the security powers and responsibilities of either side, both sides share the mutual goal that movement of people, goods and vehicles within and in and out of the city will be smooth and normal, without obstacles or barriers.

In September 2000, the second intifada erupted. This led the army to expand the limited separation policy it had adopted following the massacre in the Tomb of the Patriarchs, and apply it in every area in which an Israeli settlement was located. The separation entailed unprecedented restrictions on Palestinian movement in the city, primarily a continuous curfew and closure of main streets to Palestinian residents.

During the course of the second intifada, the distinction between H-1 and H-2 gradually blurred, and the declared commitment to free movement and unity of the city was rendered meaningless. In April 2002, during "Operation Defensive Shield," the Israeli army invaded and established positions in H-1. The Palestinian Authority gradually lost its ability to operate in H-1 in respect of the matters over which it was given control in the Hebron Redeployment Agreement. The commercial, cultural, and social center of Hebron became, as we shall see below, a "ghost town."

¹⁰ PCBS 2005 mid-year projections of the Palestinian populations in the two areas.

Chapter Two

Palestinians Leave the City Center

Over the years, many Palestinians have been forced to leave the City Center for locations further away from the settlement points. Also, many merchants have been compelled to close their shops near the settlements.

The City Center was once a commercial district, serving not only Hebron's residents and merchants but merchants from the entire southern West Bank. Now, this commercial district has all but disappeared. Most of the shops are closed, and Palestinian commercial activity has moved elsewhere, away from the area of the settlements.

In November and December 2006, in preparation for this report, a survey was conducted of over one thousand structures in the area encompassing the neighborhoods in or next to which settlements have been established, and in the areas adjacent to the roads used by the settlers and the Israeli security forces (see the map of the survey area). Most of the structures lie in H-2.

The survey covered the structures in the Qasbah (which is located in the middle of the Old City), the area near the Tomb of the Patriarchs, in the Tel Rumeida area, around the Avraham Avinu, Beit Romano, and Tel Rumeida settlement points, along a-Shohada Street, on the lower part of the Abu Sneineh neighborhood near the a-Sahala compound, along the roads settlers use to go to and from the City Center and the Kiryat Arba settlement, including the Kiryat Arba road and "Worshippers' Way," in Wadi al-Hassin, which runs between these roads and Kiryat Arba, around the Givat Haavot settlement (north of the contiguous settlement points in the City Center), and between the settlements Kiryat Avba and Givat Haharshina and adjacent to Givat Haharsina, which lies to the north.

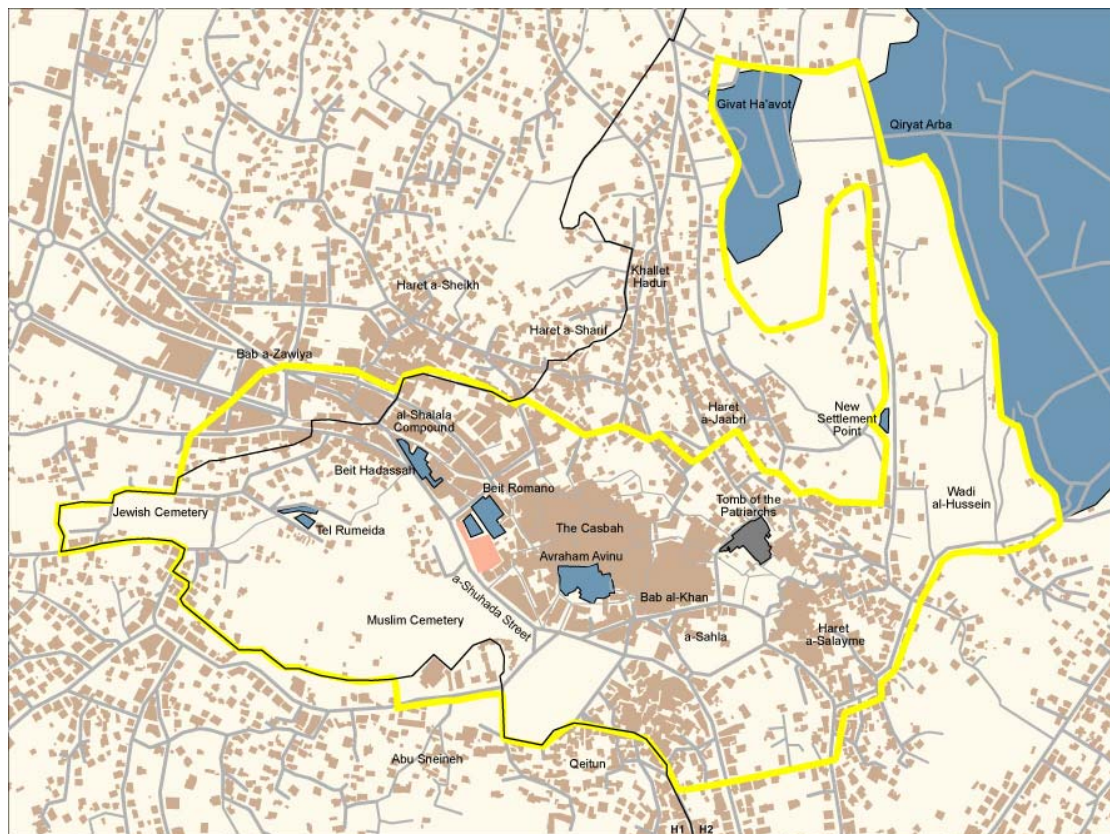
The survey also covers two small areas inside H-1: the southeast portion of the Bab a-Zamiyya neighborhood, whose residents and merchants were under Israeli army control for a long time during the second intifada, and the eastern part of Qarnatina Road, adjacent to the Avraham Avinu settlement, whose residents were detached from the commercial district during the intifada.

The statistics were collected by sixteen persons, who went door-to-door and documented all the residential dwellings to determine if they were occupied or abandoned. The same was done with every business establishment. The information was derived from preliminary

inquiries conducted with some 550 residents and merchants who remained in the areas surveyed.

Separate data were obtained for housing units that were unoccupied before the second intifada and those that became vacant subsequently. The same was done for the businesses in the relevant areas.

Map of the surveyed area¹¹



Number of Palestinians who left the area

The survey's findings show that at least 1,014 Palestinian housing units had been vacated by their occupants.¹² This number represents 41.9 percent of the housing units in the relevant

¹¹ The surveyed area is enclosed by a yellow line. In addition to these areas, the survey also included Wadi al-Jaruz and 'Ein Bani Salim, which lie north of the area on the map, near which the Givat Haharsina settlement was established.

¹² This number includes fifty apartments that became uninhabitable during the course of the second intifada because the army destroyed them or as a result of wear and tear.

area. Sixty-five percent (659) of the empty apartments became vacant during the course of the second intifada.

Regarding Palestinian businesses, 1,829 were not open for business.¹³ This number represents 76.6 percent of all the business establishments in the surveyed area. Of the closed businesses, 62.4 percent (1,141) were closed during the second intifada.¹⁴ At least 440 of them closed pursuant to military orders.¹⁵

Housing units

In practice, the number of apartments left by Palestinians is higher than the survey's figures. The collapse of Palestinian neighborhoods near the settlements led to a dramatic decline in the housing and living costs in these areas. Many poor families from distant parts of Hebron who did not have the money to pay rent moved into the Old City or other neighborhoods near the settlement points in the city. Some of these families also abandoned the homes. Since poorer

¹³ This number includes commercial warehouses and twenty-nine shops and commercial warehouses that became unusable during the course of the second intifada either because the army destroyed them or as a result of wear and tear.

¹⁴ Some of the businesses that ceased operations prior to the outbreak of the second intifada were closed on orders by the army following the massacre in the Tomb of the Patriarchs, in 1994.

¹⁵ The number of businesses closed by military orders is based on figures the army submitted to the court in HCJ 11235/04, *Hebron Municipality et al. v. State of Israel et al.*, Statement on Behalf of the Respondents, 16 November 2005. The orders were extended at the end of October 2006 (letter of 19 December 2006 from the office of the legal advisor for the West Bank to the Association for Civil Rights). The number of businesses and warehouses that were closed by order is larger than the number provided to the court since the latter does not include shops as to which the orders closing them were cancelled after the shop had already closed. Also, some shops were closed on military directive without a formal order having been issued. Following a petition filed by ACRI in the High Court of Justice regarding the closing of shops in the Shalalas compound, in 2003 the army cancelled orders it had issued to close more than one hundred shops in this compound, and in 2005 the army cancelled additional orders it had issued regarding shops in other areas. Despite the removal of the prohibition on opening for business, many of these shops remained closed for the reasons described below.

families moved into houses that had been vacated, the survey's findings reflect a more limited abandonment of the area than actually occurred..¹⁶

Testimonies indicate that, in many instances, the persons and families who continued to live and work in the areas near the settlements did not have the economic means to leave. Bahija Sharabati, a mother of six, who lives in Tel Rumeida, related that:

Many families were forced to leave this area because of attacks by settlers and actions of the Israeli army. We can't leave the house because we are poor. My husband's salary is barely enough to meet our family's basic needs. At times, I consider leaving because of the pressure and the tension, but rent in a safe place in Hebron is at least 1,500 Jordanian Dinars [about 9,000 shekels, or \$2,250] a year. We have no alternative and have to suffer these living conditions.¹⁷

'Eid al-Jabarini, 66, owner of a dairy-products shop in the Old City, said in his testimony:

More than once I have considered closing the shop in the Old City and renting a place in H-1, but to do that I need thousands of dinars, and I can't make enough profit from selling my goods. I have to remain in my simple shop, open it every day and wait for customers.¹⁸

Analysis of the survey's findings indicates that, in at least some of the cases, more Palestinians left in areas in or next to which settlement points had been established, while in neighborhoods further away from the settlements, a smaller percentage of Palestinians left their homes and shops.¹⁹

For example, thirty-two housing units are unoccupied on Old Shalala Street, in the section on which the Beit Hadassah settlement sits on one side and the Beit Romano settlement on the

¹⁶ New occupancy of abandoned apartments was possible only in certain parts of the City Center, where the restriction on Palestinian movement was not total, and the friction with settlers was not routine, such as in parts of the Qasbah.

¹⁷ The testimony was given to Musa Abu Hashhash on 31 December 2006.

¹⁸ The testimony was given to Musa Abu Hashhash on 29 December 2006.

¹⁹ Some neighborhoods further away from the settlement points were shelled by the army during the first years of the second intifada during exchanges of fire, and a substantial number of residents left these areas as well. Unlike Palestinians from areas near the settlement points, many of the residents from the more distant neighborhoods returned to their homes. Prime examples of this phenomenon are the Abu Sneineh and Harat a-Sheikh neighborhoods, most of which lie in H-1. The empty apartments in these neighborhoods are not included in the survey.

other side. These apartments comprise 74.5 percent of the apartments in this area, and a large majority (twenty-three) of them were abandoned during the second intifada.

An even higher rate of abandonment occurred in the Bab al-Khan area, which is located north of a-Sahala, between the Avraham Avinu settlement and the Tomb of the Patriarchs, an area in which whole buildings became vacant. The Bab al-Khan area contains twenty-eight Palestinian apartments, and twenty-four of them were abandoned during the second intifada, and three were vacated previously. One Palestinian family remains in the area. The area also contains forty-three shops: all were closed by army orders during the intifada. Not one shop remains open in the entire Bab al-Khan area.²⁰

In the a-Shohada Street area, the heart of the City Center, part of which was closed to Palestinian traffic and commerce as far back as 1994, following the massacre in the Tomb of the Patriarchs, there are 304 closed shops and warehouses (at least 218 of them were closed by army directive) and a central bus station that Israel seized for use as an army base. Not one shop in the area is open for business.²¹

Non-commercial entities that provided important services to the residents and were located in the commercial district moved during the course of the intifada to areas less affected by the presence of settlers and Israeli security forces so they could continue to operate in a reasonable manner. The Ministry of Supply, the Ministry of Information, the Waqf, the Farmers Association, and the Women's Association, and other such entities formerly operated in the markets area, in the Shohada and Qasbah area. In recent years they moved further away, most of them to H-1.²² During the second intifada, a few medical centers in this area also closed.

²⁰ In this area, the army also prevents the residents from returning to their homes (see Chapter Three).

²¹ The a-Shohada Street area includes a-Shohada Street from the Bab a-Zawiyya checkpoint to the al-Ibrahimiyya school and the markets facing the street, including the wholesale market, the camel market, and Bab al-Khan.

²² OCHA, *Humanitarian Update* (July 2005), 2.

Chapter Three

Restrictions on Palestinian Movement and Closing of Businesses

In 1994, immediately after the massacre in the Tomb of the Patriarchs, Israel imposed a curfew on Palestinian residents of Hebron. Since then, Israel has restricted the movement of Hebron's Palestinian population in the vicinity of the settlement points in the city.²³

In the autumn of 2000, with the outbreak of the second intifada, Israel increased the severity of the restrictions, making Palestinian movement in large areas the exception and almost impossible. The authorities imposed a more intense curfew, prohibited the movement of Palestinians in the City Center, and issued orders closing Palestinian-owned shops. Other Palestinian-owned businesses were forced to shut down because of unofficial restrictions imposed on their operation or because of settler violence and the severe restrictions on movement. These factors made life in Hebron, particularly near the settlement points, unbearable.

Curfew

In the beginning of the intifada, the curfew placed on H-2, especially in the vicinity of the settlement points, became routine. Many Palestinians in the area under Israeli control were required to stay in their homes day and night for weeks and months, except for a few hours once or twice a week to enable them to replenish their provisions. Generally, the curfew was imposed on all of H-2, and at times on H-1 as well, or on certain neighborhoods in the center of H-2. A curfew was never imposed on the settlers in Hebron.²⁴

When the intifada erupted, the army placed a three-month curfew on Palestinians in H-2. After that, the army repeatedly imposed prolonged curfews. The reasons varied. On 26 March 2001, a Palestinian sniper fired from the Abu Sneineh neighborhood, in H-1, and killed the infant Shalhevet Pass, who lived in the Jewish settlement in Hebron. Immediately, the

²³ The prime minister in 1994, Yitzhak Rabin, decided, immediately after the massacre in the Tomb of the Patriarchs, on the harsh restrictions on movement on Palestinians. He also rejected the proposal to evacuate the settlers from the city, despite the dangers facing them that Israeli intelligence sources anticipated.

²⁴ For further information on curfew and other restrictions on movement of Palestinians in the first days of the second intifada, see B'Tselem, *Civilians under Siege: Restrictions on Freedom of Movement as Collective Punishment* (January 2001).

army imposed a curfew on Palestinians in H-2 that lasted three weeks. In subsequent months, the army placed curfews on the area time after time on various pretexts. On 15 November 2002, nine Israeli security personnel and three members of an emergency alert squad of the Kiryat Arba settlement were killed by Palestinian ambush fire on "Worshippers' Way" in Hebron. Following the incident, Israel imposed a continuous six-month curfew on Palestinians in H-2 and on the Bab a-Zawiyya neighborhood, which lies in H-1 near the border of H-2 and had come under the control of army forces during "Operation Defensive Shield," in April 2002.

During the first three years of the intifada, the army imposed a curfew on H-2 for a total of more than 377 days, including a curfew that ran non-stop for 182 days, with short breaks to obtain provisions. On more than five hundred days, the army imposed a curfew that lasted a few hours.²⁵

The primary reason for the curfew was to enable Jewish settlers in the heart of the city to carry out their daily routine and to safeguard the security forces protecting them. The army, which stated that the curfew was imposed for security reasons, imposed the curfew as an immediate, easy, and cheap measure. The curfew resulted in the collective punishment of Palestinians in the city: there were times that the army placed a curfew on H-2 in response to gunfire at settlers that came from H-1. The army also imposed curfew during large-scale celebrations that Hebron settlers held in the city's streets. The army has argued more than once that the curfew was intended, among other reasons, to protect the Palestinians themselves.

Harm to the Palestinian residents

Curfew, which imprisons people in their homes, is an extremely harsh restriction on movement. The absolute prohibition, imposed for days on end, on going outdoors directly harmed every aspect of their lives. Naturally, the longer the curfew, the greater the effect on the daily life of persons subject to the curfew. The resultant economic and emotional hardship suffered by the families is obvious, especially for the poor families living in overcrowded conditions in the Old City.

The effects of the prolonged curfew were primarily economic devastation, loss of livelihood, poor nutrition, tension inherent in a family being imprisoned at home for a long period of

²⁵ The calculations are based on information obtained from a few sources. B'Tselem and ACRI contacted military officials a number of times to obtain precise figures on the number of curfew days in H-2, but were told that the army was unable to provide figures of this kind.

time, and severe harm to the education, welfare, and health systems. As a result, the prolonged curfew was one of the major reasons for the mass movement of Palestinian residents from areas near the settlements in the first years of the second intifada.

Samir al-Qawasmeh, 56, and his family were forced to leave their home in the Tel Rumeida neighborhood, and he had to close his grocery store. In his testimony, he related that:

I lived in this house for forty-five years. I spent my childhood and grew to manhood here, I got married and became father to ten children... In the beginning of the second intifada, the situation changed. The Israeli army imposed frequent prolonged curfews in our area. They usually let us go out to buy provisions for only two hours every two weeks. Sometimes, the curfew lasted for a whole month. The curfew was generally lifted suddenly, without informing us in an orderly way. Sometimes, they lifted the curfew in the morning and sometimes at night. There were instances in which we didn't know that the curfew had been lifted and did not have time to buy provisions.

No one can imagine what it is like to be closed in with twelve persons in a two-room house. Because of the curfew, [my] grocery was closed. I opened it only when the curfew was lifted. Sales dropped. The expiration dates on products passed, and I began to lose money.

Three of my sons, 'Abd al-'Aziz, Fahdi, and Firas, left the house in Tel Rumeida and went to live in a house we are building in H-1. They wanted to flee living in a prison, and the dread, and the unemployment forced on us by the curfew. My other children couldn't go to school. Our life became intolerable. To support my family, I had to take money that was intended to pay the rent for the grocery store. I still owe the owner of the grocery 5,000 [Jordanian] dinars.

The harsh restrictions on movement in Tel Rumeida and the settler violence caused us to leave the house. In 2003, on the 'Eid al-Adha holiday, we went to live with my family in the a-Dahduha neighborhood, near the Movement's office, north of Hebron. I rented another grocery store at an annual rent...

My family can't return to Tel Rumeida. We built our new house, and I am working in the new grocery store. But I really long for the old house. Ever since my father died, in 2004, my mother has been pressuring us to return to the old house. She said that she wants to spend her last days in the house in which she spent most of her life.²⁶

The curfew severely impaired health and access to medical treatment of many residents in the City Center, because emergency treatment was not available during the curfew and because of the long-term consequences of curfew on the medical systems and on the general health of the

²⁶ The testimony was given to Musa Abu Hashhash on 24 January 2007.

residents. Medical clinics and centers that had served residents of the City Center closed, and access of city-center residents to areas where medical facilities continued to operate was impossible because of the prolonged curfew. Sick persons, pregnant women, and the elderly, who required regular visits to clinics and hospitals for treatment and follow-up care were left without the necessary services. In certain cases, pregnant women had to leave their homes toward the end of their pregnancy to enable them to reach the hospital and give birth there.

Dr. Taysir Zahada, 52, formerly ran a small hospital in the Tel Rumeida neighborhood, which he had to close because of the prolonged curfew. In his testimony, he stated:

When the second intifada began, the situation started to deteriorate. At first, they let us drive our cars in the area after an inspection and search and proof that we lived in the area. But this situation didn't last long. The army set up fixed checkpoints and closed the roads leading to the area.

The Israeli army started imposing prolonged curfews. Our houses turned into prisons. The curfew lasted days and weeks. It was lifted for only a few hours, once every two weeks or month. My children and I took the risk and climbed down walls and snuck out to buy food. My children didn't go to school, and I closed the hospital because people couldn't get to the area.

I opened a temporary clinic in the Bab a-Zawiyya area, in H-1. But the situation there wasn't very different. The confrontations reached there as well, and the Israeli army expanded the curfew to cover H-1. Whenever somebody threw a stone, they [soldiers] came to Bab a-Zawiyya and forced the merchants to close their shops. For the first four years of the intifada, my clinic in Bab a-Zawiyya operated without much success. My original hospital remained closed.

I thought the situation would change back to the way it was. But I was wrong. I realized that I wouldn't be able to reopen the hospital. I sold my medical equipment and materials at wholesale price. Some of the equipment went very cheaply...

I was not the only one harmed. The whole area suffered from this. The hospital primarily served women who went into labor at night. Now, women about to give birth have to walk by foot to the closest place where a car can come, and then ride to the hospital in H-1.²⁷

Lethal curfew

Palestinians found outside their house during curfew – whether they did not know the curfew

²⁷ The testimony was given to Musa Abu Hashhash on 25 January 2007.

was on, or for any other reason – risked their lives, given the army's policy to open fire with live ammunition at Palestinians who ostensibly violated the curfew. In some instances, soldiers fired gas grenades at Palestinians outside their homes during curfew. At times, the firing was a way to inform people about the curfew, no prior notice having been given. In other cases, soldiers fired gas grenades to punish Palestinians who ostensibly violated the curfew.

At the peak of the intifada, 2002-2004, soldiers killed in this way at least thirty-five Palestinian civilians throughout the West Bank, and wounded many more. Most of the fatalities were minors. At least three of the fatalities died in Hebron: Basma Qeysiya, a thirty-five-year-old woman, was killed on 17 April 2002; 'Abd a-Rahim Tawil, 40, was killed on 3 August 2002; and Gharam Mana'a, a one-year-old infant, was killed on 26 September 2002.

The infant died when soldiers fired gas grenades at curfew violators in the Bab a-Zawiyya neighborhood. One of the grenades stuck her grandmother in the head. Gharam, who was in her grandmother's arms, inhaled the gas and died within a few minutes.²⁸

Cessation of the extensive use of curfew

In January 2003, the Association for Civil Rights petitioned the High Court of Justice to lift the prolonged curfew on the Palestinians in Hebron.²⁹ The petitioners argued that the prolonged curfew imposed on Palestinians in H-2 was illegal; that the army did not inform the residents when there were breaks in the curfew; that when the residents were informed of a break, they were prevented from leaving their homes; and that the decision to impose such a prolonged curfew ignored the severe harm to the population and placed full emphasis on security considerations.

In its statement in advance of the hearing, the state contended that breaks in the curfew enabled the residents to obtain provisions, that the curfew was intended to prevent harm to settlers, Palestinians, and security forces, and that it was a legitimate military means. In its decision, given on 9 July 2003, the court rejected the petition. However, the decision stated

²⁸ For further information on this subject, see B'Tselem, *Lethal Curfew: The Use of Live Ammunition to Enforce Curfew* (October 2002).

²⁹ HCJ 854/03, *Dr. Sufiyan 'Abd al-Rahman Sultan et al. v. Commander of Military Forces in the West Bank*. The petition also dealt with the curfew imposed on the neighborhoods, al-Bawir, Azzun, and al-Biqa, which lie near Hebron.

that curfew is a drastic means, and that before imposing it, the military commander must take into account its effect on the civilian population.

Although the petition was rejected, the army stopped imposing curfews on the city for long periods of time. Many Palestinians had already left their homes and shops near the settlement points. In 2004-2005, a curfew was placed on H-2 and on certain neighborhoods in H-1 for no more than a few days at a time. These curfews followed violence by Palestinians or were in response to settler violence, or to enable settlers to hold public events, which generally take place around Jewish and Israeli holidays. Curfew was also imposed on Palestinians during funerals of settlers.³⁰

Beginning in 2006, official curfews ceased being imposed on a regular basis. At public events in which many settlers take part, the army informs the few Palestinian families that an event is about to take place in the immediate area of their home, and that they won't be allowed to leave or enter their home for a few hours or for the whole day.

Prohibition on Palestinian movement in the City Center

In February 1994, immediately following the massacre in the Tomb of the Patriarchs, Israel closed a section of a-Shohada Street to Palestinian vehicles claiming that the restriction was needed to ensure the safety of the settlers. Entry by vehicle to that section of the street, which is the main thoroughfare in the City Center, was open only to Palestinians who lived there. The dozens of Palestinian shops along this section of the road were closed by army directive (see the next section). The two gas stations on the street were also closed. In following years, the section was opened and closed sequentially.³¹ When the second intifada began, in September 2000, Israel again prohibited Palestinian movement on this street and many other roads.³²

As the intifada continued, the army increasingly restricted Palestinian movement on other streets leading to the settlement points. In addition to the section of a-Shohada street on which

³⁰ For example, on 18 December 2005, a curfew was imposed on Palestinians in the City Center to enable the funeral in the Jewish cemetery in the city to take place.

³¹ See, for example, Amos Harel and Yair Sheleg, "Al-Shohada Street Opened to Traffic; Settlers Demonstrate in Reaction," *Ha'aretz*, 209 August 1999; Amos Harel and Nadav Shargai, "Tracks of Perpetrators of Attack near Tarqumiya Lead to Area B," *Ha'aretz*, 1 November 1999.

³² As a rule, in 2001, only residents of a-Shohada Street were allowed to walk on the street.

Palestinian vehicular traffic was forbidden, now almost the entire length of the street is closed to Palestinian vehicles. Palestinian vehicular and pedestrian traffic is forbidden on streets near the Avraham Avinu settlement and on most of a-Sahala Street. Palestinian vehicles are also forbidden on other main roads, such as streets in the Wadi al-Hassin, a-Saleyma and Tel Rumeida neighborhoods, the roads that circle the a-Saleymeh neighborhood, and the Kiryat Arba road, which Palestinians formerly used.

The restrictions on Palestinian movement are enforced by a large network of staffed checkpoints and physical roadblocks. In August 2005, the UN Office for the Coordination of Humanitarian Affairs (OCHA) counted 101 physical obstructions of different kinds in H-2. The staffed checkpoints prevent Palestinians from H-1 to enter H-2 by car and restrict crossing by foot. During most of the second intifada, Palestinians living on the other side of the checkpoint had to register with the army to be allowed to get to their homes.

This network of barriers created a contiguous strip of land in the City Center, along which Palestinian vehicles are completely forbidden. This strip, which stretches from the Kiryat Arba settlement in the east to the Jewish cemetery in the west, is separated from the rest of the city, and the army controls and restricts entry of Palestinians to it. The middle of the strip contains many sections of road that the army forbids even Palestinian pedestrians to use. The most important of these sections of road is the aforementioned a-Shohada Street, which is closed to Palestinian vehicular and pedestrian traffic between the Beit Hadassah and Avraham Avinu settlement points.

The declared purpose of the extensive prohibitions is to separate Israelis and Palestinians in Hebron, as appears from the state's response to the High Court of Justice in November 2005:

Since the fighting began in September 2000, the security situation in Hebron has been special, characterized by terror incidents and extensive combat – events that have resulted in the shedding of much blood, both among the Jews living in Hebron and among the Palestinian residents. These events took place in H-2 for the most part, where the Israeli population and the Palestinian population live side by side.³³

Later in the response, the state speaks of the means needed, according to the army, to protect the settlers in Hebron – the creation of protective spaces in the heart of the city:

The operational conception of IDF forces in Hebron dictates that there is a need for "protective space" near the places where terror attacks habitually occur, among them the neighborhoods of the Jewish community in the city, where large gatherings of people

³³ *Hebron Municipality*, supra, Statement on Behalf of the Respondents, 16 November 2005, Sec. 22.

usually do not take place, and where it is easier to notice hostile persons seeking to approach their target, and to thwart the intended attack.

According to the assessment of the most senior IDF commanders, there is a security and operational need for such protective spaces, both to safeguard IDF soldiers and the lives of the Jews living in Hebron...

The checkpoints and physical roadblocks are employed to implement the separation conception mentioned above: separating the city of Hebron from the area referred to as the "Jewish-community area." But this area is the heart of the Palestinian city, and it spreads out over main streets, and includes thousands of Palestinian dwellings and hundreds and hundreds of businesses.



Passageway between the wholesale market and the Qasbah, 1990s

Photo: Na'if Hashalmon/ al-Watan Center



Passageway between the wholesale market and the Qasbah, 2007

Photo: Keren Manor/ ActiveStills

Harm to the Palestinian residents

Closing of the main streets greatly disturbed Palestinian life and infringed their rights to work and earn a livelihood, to health, education, family life and social life, and to obtain basic services.

The effect of closing streets goes far beyond the closed area. The strip of road on which vehicular traffic is forbidden is a kind of partition that severs the traffic arteries between the northern and southern parts of the city. These arteries were regularly used by all residents of the city and surrounding areas; now these people have to use long bypass roads to reach their destination. Obviously, the primary losers are the residents of the City Center. For example, a

resident of the Old City wanting to go from one side of a-Shohada Street to the other has to go around the entire City Center, cross checkpoints, and walk uphill.

Raga Khatib, from Tel Rumeida, related to this problem in her testimony:

All the roads to the neighborhood are closed, and the checkpoint facing the house makes movement difficult. Basically, we live in an area that is completely closed. We can get home only by foot, and not by car.³⁴

As a result of the prohibitions on movement, and the prohibitions on opening shops and businesses, thousands of residents lost their source of income. Commercial activity in this area died. As shown below, many shops were closed even in the absence of an army order requiring it: the army, without an official order, prohibited the shops from operating, or it was no longer worthwhile to operate a shop in an area inaccessible to customers and suppliers.

In 2001, the army gradually began to close all the entrances to the houses of residents along a-Shohada Street, and some of the entrances to Palestinian houses near the Tel Rumeida settlement. For example, the soldiers soldered shut the doors facing the street. The residents had two options: either use alternate paths, which entailed harsh and dangerous ascents, sometimes crossing the roofs of neighboring houses, or move out of the area.³⁵

Hanaa Abu Heykhal, who also lives in Tel Rumeida, related in her testimony that:

Since November 2004, we have been forbidden to enter through the main entrance to the building, via the settlement, so all this time we got home by going through the olive groves that are on a hilly patch of land behind the house. My mother suffers from heart and blood pressure problems and diabetes... It is very hard for her to walk along that path... We are locked in our house as if it were a prison.³⁶

Decrees of this kind have been made every day of the year on many persons, including the elderly, pregnant women, the sick, and children. The Association for Civil Rights repeatedly wrote to the relevant authorities about this matter.³⁷

³⁴ The testimony was given to Musa Abu Hashhash on 21 January 2007.

³⁵ In 2007, the army allowed the four remaining families on a-Shohada street to use the main entrance to their homes.

³⁶ The testimony was given to Musa Abu Hashhash on 26 January 2007. In January 2007, the family was allowed to enter their home through the main entrance.

³⁷ Among the officials to whom the Association for Civil Rights wrote were the legal advisor for the West Bank (29 April 2003 and 15 June 2003) and the attorney general (1 March 2004, 29 November 2004, and 27 August 2006).



On the left: Zahira Qafisha, 55, resident of a-Shohada Street, in the City Center, forced to leave her house via the neighbors' roof because the street is closed to Palestinian movement. On the right: Door of her house facing the street, which the army soldered shut. Photos: Musa Abu Hashhash and Oren Yakobovich.

In some instances, the army prevents Palestinians from returning to their homes. This happens, for example, in the Bab al-Khan area, which is situated between the Avraham Avinu settlement and the Tomb of the Patriarchs. Fahriya al-Turk, who owns a building in Bab al-Khan, related that, "We didn't succeed in returning to our house. Every time we tried, we were told it is a closed military area and that it was forbidden for us to be in, or approach, the area. Our furniture and things are still inside the house."³⁸

Accessibility of Palestinians in the entire City Center, and especially near the settlement points, to necessary services – such as health, education, and sanitation – has greatly deteriorated. For example, B'Tselem and the Association for Civil Rights know of cases in which the lack of access to medical services caused pregnant women to leave their homes near the settlement points and move to other areas of Hebron.

The prohibition on Palestinian vehicles traveling in the City Center also severely impairs emergency and rescue services in the city. Palestinian ambulances are not allowed to enter H-2 unless they coordinate entry with the Israeli authorities. When Palestinian residents from the City Center need emergency medical treatment and there is not enough time to coordinate the entry of an ambulance to take them to hospital, the persons must go by foot to an area where vehicles are permitted, and from there are transported to one of the hospitals in the city. Naturally, persons requiring emergency treatment would find it difficult to make their way by foot to an area outside the City Center. The Palestinian Red Crescent estimates that the roadblocks in the Old City have added an average of ten minutes to the time needed to get to

³⁸ The comments were included in her affidavit of 12 September 2005.

patients in H-2. When coordination with the army is needed to enable the ambulance to go via a certain route, generally via a staffed checkpoint, it takes an average of forty-seven minutes to reach the patient.³⁹

Similarly, Hebron Municipality vehicles are not allowed into the City Center without prior coordination with the Israeli authorities, which might take several days to obtain. The ability of municipal crews to quickly repair electricity, telephone, water, and sewage problems has been severely impaired, and some families have been left without water or electricity for a number of days.

The army does not permit pupils from the Kortuba Girls School and the school's teachers to use a section of a-Shohada Street that leads to the school. As a result, for a long time the pupils have no choice but to use a long, steep, and dangerous dirt road to reach the school. In using this path, or the stairs recently built along the path, they are subject to constant assault by settler children, while the soldiers stationed in the area look on. During the course of the intifada, the number of pupils in the school dropped by fifty-five percent.⁴⁰ Two other schools – al-Ibrahimiya and al-Fihaa – are located on a-Shohada Street, and their pupils suffer from similar restrictions.

In her testimony, Siara Bitar, a widow with seven children, who lives near the Tomb of the Patriarchs, stated:

Each time I want to return home, Border Police officers at the checkpoint near my house detain me. They ask me who I am, where I live, and search my belongings, even the food bags. Each time, I have to explain to them where I live, and that I own the house facing the checkpoint... It is easy for us to leave the house, but hard to return... The hardest thing for us is to be separated from family and friends, who are not allowed to visit us... I have never considered moving, regardless of the circumstances.⁴¹

The restrictions on Palestinian movement also cover the roads linking the City Center and the Kiryat Arba settlement. Hisham Abu S'ifan lives with his family in Wadi al-Hassin, alongside which the Kiryat Arba settlement was built. In his testimony, he related that:

In 2002, the army closed the road leading to Wadi al-Hassin. Since then, it has been forbidden to enter the neighborhood by vehicle. This has caused us great hardship in our daily routine. For example, provisions for the house, such as food and cooking-gas

³⁹ OCHA, *Humanitarian Update* (July 2005), 2.

⁴⁰ This figure was provided by the Hebron Education Department. The decline was measured from the 1999/2000 school year to the 2004/2005 school year.

⁴¹ The testimony was given to Musa Abu Hashhash on 8 January 2007.

canisters, we have to carry by hand and pushcart. Also, there is always a water shortage in our neighborhood, and we used to buy water from tankers that came to the house and filled the water tanks on the roof. Since the army closed the road, the tankers can't get to us. Closing the neighborhood to vehicles also impedes our access to medical services.⁴²

Lack of justification on security grounds, collective punishment

Some of the restrictions on movement placed on Palestinians in the City Center can protect settlers from attacks by Palestinians.⁴³ In some cases, however, it is clear that the movement restrictions on streets imposed on Palestinians in Hebron have nothing to do with the attempt to prevent attacks on Israelis.

In many cases, even after Palestinian pedestrians underwent a comprehensive security check and it is found that they were not a threat and were not suspected of anything, they were not allowed to move about on streets in which Palestinian movement is forbidden. In other cases, soldiers prevented Palestinians from traveling city streets even though they knew the Palestinians could reach their destination by using alternate routes. An illustrative case is described by a soldier who served in Hebron during the intifada and gave his testimony to the organization Breaking the Silence:

Our job was to stop the Palestinians... To tell them that they are forbidden to cross... We knew that they had a way to cross. So on the one hand, it was forbidden for us to let them cross, and on the other hand, [there were] various elderly women who had to cross more or less to get to their homes, so we pointed out to them where the opening was... through which they could cross without us seeing. It was absurd... Our officers also knew about the opening; they told us about it...

This made us really wonder why we were at that checkpoint. Why was it forbidden? It was a pure case of collective punishment. It was forbidden to cross because it was forbidden to cross. If you want to carry out an attack, then go there, there to the right, and turn left after that. But if you don't want to carry out an attack, you have to make a very big bypass, or you can't get there at all.⁴⁴

⁴² The testimony was given to Musa Abu Hashhash on 12 December 2006.

⁴³ It should be noted that this fact is not legally sufficient to warrant restrictions on movement. See Chapter Six for a discussion of this issue.

⁴⁴ Breaking the Silence, Testimonies from Hebron, p. 6.

Prohibitions on Palestinian movement imposed without a legal order

For most of the intifada, the army did not issue official orders restricting Palestinian movement in Hebron, and the orders to impose the restrictions were given to the soldiers verbally. It was not until the end of 2005, following a petition to the High Court of Justice, that the military commander issued a series of formal orders restricting Palestinian movement, this in accordance with the "protective spaces" plan that was presented to the court.

However, the army continues even today to place extensive restrictions on Palestinians in the City Center that are not covered by official orders, even though the army agrees the action exceeds its authority.

For example, for most of the intifada, Palestinians were forbidden to walk along a-Shohada Street, which is the main street of the City Center, without any official order empowering the soldiers to impose the prohibition. Soldiers who prohibited Palestinian movement on this street contended that they had been given explicit orders that the street was a "sterile route" along which Palestinian movement was completely forbidden.⁴⁵

Given the long period these prohibitions were in force, and from additional information, it is clear that the prohibitions were not a result of the capriciousness of the soldiers in the field, but of orders given by the command echelon, which, lacking an official order, exceeded their authority. It appears that the army officials in charge consistently exceeded their authority, and even breached the army's commitment made in the High Court to impose restrictions only pursuant to official orders.

In December 2006, following a letter from the Association for Civil Rights to the legal advisor for the West Bank, army officials admitted among themselves that the movement of Palestinians along a-Shohada Street had been prohibited for years without an official order having been issued, this, they claimed, "by mistake." The legal advisor's office stated that a new directive had been issued canceling the prohibition.⁴⁶ In the days following this admission, a small number of Palestinians managed to walk on a-Shohada Street. Soldiers let

⁴⁵ To the best of our knowledge, no written order has ever been issued prohibiting Palestinians from walking along any street in the city.

⁴⁶ Letter of 25 December 2006 from Harel Weinberg, of the office of the legal advisor for the West Bank, to the Association for Civil Rights. The claim of "mistake" appeared as far back as August 2002, in the state's response to a petition opposing the closing of the Bab al-Khan and Hozeq al-Far markets, which lie adjacent to a-Shohada Street: "Due to a malfunction, no closing order was made in writing." See H CJ 4639/02, *'Abd Alsalleem Qatsrawi et al. v. Commander of IDF Forces in Judea and Samaria and Minister of Defense*, Supplemental Response on Behalf of the Respondents, 5 August 2002.

these Palestinians use the street only when escorted by a massive number of soldiers and not before they were detained for a long time and underwent body searches.

Within less than a week, soldiers on the street informed Palestinians wanting to use it that they could no longer do so. Subsequently, it was learned that the Hebron Brigade commander was the official who had issued the conflicting order. The legal advisor for the West Bank then issued an amended statement: "The IDF is now reexamining the question of opening certain sections of this street."⁴⁷ Months later, Palestinian movement is still forbidden on a-Shohada Street. Thus, the order currently given soldiers regarding Palestinian movement on the street still deviates from the orders given by the commanding officer and from the commitment that the army made to the High Court.⁴⁸

Giving orders of this kind without a written order supporting it and exceeding authority in the matter of restrictions on Palestinian movement in Hebron are especially grave and compounds the sin: as if the harm caused to Palestinian residents of the city, who are not allowed to move about freely on the streets in their city, is not enough, the army's practice provides an opening for arbitrary infringement of their human rights, without control, without transparency, making it difficult for the residents whose rights have been infringed to exercise their right to object to the harm caused them.

Hebron settlers and the restrictions on the Palestinians

"I am not willing to have an Arab pass next to my house." (A child residing in the Beit Hadassah settlement, September 2005)⁴⁹

In an interview with the press, a senior army officer who served in Hebron spoke about the connection between the brigade commanders in the city and the settlers: "They [the commanders] certainly represent the interests of the Jewish residents there. The Jewish residents embitter their lives, and they try to reduce the friction with them. There were

⁴⁷ Letter of 31 January 2007 from Harel Weinberg to Shai Nitzan, of the State Attorney's Office. The letter was attached on 31 January 2007 to the State Attorney's Office's response to the letter of the Association for Civil Rights.

⁴⁸ A video of the opening and re-closing of a-Shohada Street is available at www.btselem.org/english/video/20070311_shuhada_closed.asp.

⁴⁹ The remark was made on 12 September 2005, during a tour of Hebron by the Association for Civil Rights.

brigade commanders who wanted to cozy up to the Jewish community, but on the whole, the military commanders are a tool in the settlers' hands."⁵⁰

With the outbreak of the intifada, the heads of the settlement in Hebron prepared a document for the Hebron Brigade commander that contained a list of demands to close streets to Palestinian pedestrian and vehicular traffic. The document states, in part, that, "The movement of Arab vehicles will be forbidden on the following streets: a. TRP" T [1929] b. King David, c. Emek Hebron (Tnuva), d. Esther, e. Route 160 from Kiryat Arba to Ma'akeh, f. Prophets' Way."⁵¹ The document also states, in Section 3, that:

Arab pedestrian movement shall be forbidden in the following sections:

- a. The road above A. Yadi (behind the guard) (except for local residents);
- b. King David Street between the gas station and Beit Kastel (except for local residents);
- c. Small Shalala [Street];
- d. Tnuva Lane;
- e. In the Qasbah – Einav Lane (next to Jewish houses) (except for local residents);
- f. Erez Lane.

The demands presented in the document are almost identical to the restrictions that the army ultimately placed on Palestinian movement in the City Center. The practice of closing streets to Palestinians in areas near the settlements, along with the open statements made by the settlers in Hebron about their intention "to Judaize" the city and live in an area "free of Arabs,"⁵² show that the source of the prohibitions on Palestinian movement in this area apparently related to the army's surrender to the racist demands of settlers.

A soldier who served in Hebron in the beginning of the second intifada told of the circumstances in which the army decided to expand the prohibitions on movement of Palestinians in a-Sahala area:

Until 2001, Esther Route [the street demarcating the southern edge of a-Sahala] was open to Palestinian movement. Not pedestrians, but vehicles. In late 2001 or 2002, I don't recall exactly, the settlers began to use that route, though they could have gone via the

⁵⁰ Meron Rappoport, "Ghost Town," *Ha'aretz*, 18 November 2005.

⁵¹ "Restricting Arab Movement, Recommendations to the Brigade Commander," 1 November 2000, Sec. 2. The settlement's heads refer to the streets with the Hebrew names they have given them.

⁵² See, for example, the video available at www.btselem.org/english/video/20070416_Tel_Rumeida.asp.

Tnuva route [the street demarcating the northern edge of a-Sahala]. Our platoon understood that they used that route to expand their territory. They complained to the army that stones were thrown at them, so they [army commanders] quickly told us to close down this street also to Palestinian pedestrian travel. The street became sterile. This is the term used in briefings. It was clear to us as soldiers that we had to protect settlers and to do that we had to close this road as well.⁵³

Taysir Abu 'Ayeshe, a resident of Tel Rumeida, where a settlement was established next to his house, told about an incident that took place in the beginning of the second intifada that indicates the link between settler demands and army policy relating to restrictions on Palestinian movement:

One day, the wife of the settler Eitan Fleischman took her car and blocked entry to the street leading to the settlement and our house. She wouldn't move the car until the army closed the roads to Palestinian traffic. The same day, the army closed the roads leading to Tel Rumeida, and they remain closed. Palestinians are forbidden to travel in this area in their cars. We can only go by car to a place two or three hundred meters from our house. I have to carry gas balloons and food on my shoulder from the Bab a-Zawiyya checkpoint on the road that leads up to the house.⁵⁴

Settlers' demands also affected the return of Palestinians to homes they had left. A presentation given by the Civil Administration describes in brief the army's policy on "Camel Lane," near which lies the Avraham Avinu settlement: "The area is abandoned, the IDF does not allow Palestinians to return because of the Jewish opposition."⁵⁵

* * *

As of now, the many letters sent by the Association for Civil Rights, B'Tselem, and other organizations, and petitions filed in the High Court of Justice have not led to cancellation of these prohibitions and restrictions on Palestinian movement in the center of the Hebron.⁵⁶ The

⁵³ The testimony was given to Ofir Feuerstein on 15 April 2007.

⁵⁴ The testimony was given to Musa Abu Hashhash on 4 January 2007. The complete testimony appears in Appendix 1.

⁵⁵ Civil Administration, "Breaking the Law – Jews in the 'Ebb and Flow' Events – City of Hebron" (presentation).

⁵⁶ The petitions, which are still pending, were filed in *Hebron Municipality*, supra, and H CJ 6869/05, *Hebron Development Committee v. State of Israel*.

state admitted in court that the prohibitions on movement exist, and explained that the security forces were acting to separate Palestinians and Jews.⁵⁷

Israel thinks this separation is needed for security reasons – protection of the settlers and Israeli soldiers from attack by Palestinians.

As shown above, however, the term "protective spaces" entails the systematic impairment of Palestinian freedom of movement in the city. The harm is intended to enable the settlers to live a normal life, although they live there in contravention of international law (see Chapter Six). Thus, the only basis for distinguishing between persons in Hebron, regarding freedom of movement and other rights, is the ethnic group to which they belong.

Therefore, underlying the prohibition on Palestinian movement in the City Center is the army's capitulation to the racist demands of Hebron settlers to enable them to conduct their lives in an environment "free of Arabs," and the attempt to Judaize the area by separation based on ethnicity.

Closing of Palestinian businesses

The area in and around the Qasbah used to be one of the West Bank's important commercial districts. Now, most of its shops are closed, some by army directive and some because of the severe restrictions on Palestinian movement in the area, and because of the resultant economic recession that hit the area following the outbreak of the second intifada. During the intifada, the curfew and other restrictions on Palestinian movement prevented customers from entering the area regularly. As a result, many business owners and their families lost their source of livelihood. The restrictions killed the economy not only for these shop owners; it also killed business for owners of commercial establishments in a much wider area, including the entire Old City and other areas. The reason: the restrictions imposed on the area led to a situation in which almost nobody entered the area.

A total of 1,829 Palestinian businesses in the area of the settlements in the city are now closed. These businesses and warehouses constitute 76.6 percent of the businesses surveyed for this report (see Chapter Two). Of these, 62.4 percent (1,141) were closed during the second intifada, 440 pursuant to army orders.⁵⁸ Over the years, Israeli security forces set up

⁵⁷ *Hebron Municipality*, Statement on Behalf of the Respondents, 16 November 2005, Sec. 22.

⁵⁸ See footnote 15.

positions on the roofs of some of the abandoned shops, and settlers squatted in at least twenty-eight of the Palestinian businesses.

In 1994, following the massacre in the Tomb of the Patriarchs, the army ordered the closing of a section of a-Shohada Street – from Gross Square to the Beit Hadassah settlement – to Palestinian vehicles, contending the closing was needed to ensure the safety of the settlers. Some sixty shops on the street were closed by army directive. For similarly reasons, the two gas stations on the street were closed. In addition, the meat market and the wholesale market, which were near the Avraham Avinu settlement, were closed. The wholesale market had contained fourteen large produce shops.

As previously mentioned, with the outbreak of the second intifada, the army imposed a three-month curfew on Palestinians in this area. The curfew destroyed, among other things, most of the economic activity in the City Center. At the end of the three-month period, the shop owners faced unprecedented restrictions on them and their customers. As noted above, Israel closed more and more streets to Palestinian traffic, and repeatedly imposed curfews on the residents. The attempts of most of the shop owners to recuperate and reopen their shops failed.

In March 2001, following the killing of the infant Shalhevet Pass, settlers destroyed an improvised Palestinian market that had opened near the wholesale market that had been closed. Ever since, the army has refused to allow the market to be reopened. The army also ordered, following the killing of the infant, closing of the gold market which was situated next to the Beit Hadassah settlement, and seventy-three shops in Bab al-Khan and Hozek al-Far. In defending the closing before the High Court, the state raised the cynical claim that, in any event, H-2 was under curfew, "which prevents commercial activity anyway." The state also contended that the markets could not be re-opened because the settlers who had taken possession of the Palestinian shops had to be protected.⁵⁹

In 2001 and 2002, scores of businesses closed on Old Shalala Street, over which is situated, on a separate level, the Beit Hadassah settlement. Some of these businesses closed pursuant to army directives and others because of the prolonged curfew.⁶⁰ Since the 1960s, the al-Karki

⁵⁹ *'Abd Alsalleem Qatsrawi*, supra. In October 2002, the High Court recommended to the state that it consider compensating the merchants in these markets. See Moshe Gorali, "Let the Ones who Closed the Market Support the Merchants' Families," *Ha'aretz*, 20 November 2002.

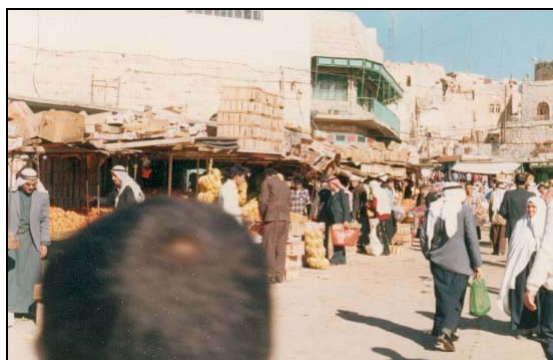
⁶⁰ At first, only verbal orders were given to close the businesses. A written order was issued only after the Association for Civil Rights petitioned the High Court. After the petition was filed, the military commander stopped the forced closing of more than one hundred businesses in the two Shalala areas,

family had operated four clothing shops in the Shalala compound. Taysir al-Karkui spoke about the circumstances that led to the closure of the shops during the second intifada:

In the past, people from Yata, a-Samu'a, and Bani Na'im [towns near Hebron] used to park their cars on a-Sahala Street and walk along Shalala Street to Bab-a-Zawiyya. The street was crowded with people during the day.

When the intifada began, the Israeli army imposed a curfew in the Old City. There was also a curfew in Bab a-Zawiyya, and in New Shalala and Old Shalala. The curfew lasted a long time. People stopped coming to the area. The economic situation continued to deteriorate because of the restrictions on movement along a-Shohada Street, in the Hozeq al-Far market, and the barriers inside the Old City...

Despite the restrictions on movement and despite the settler attacks in the Shalala compound in the first two or three years of the intifada, we tried to make a go of it and keep the shops open when there wasn't a curfew. We hoped that the situation would improve, but it got worse. People moved from the Shalala areas and from the Old City. Now, only people who live near here and have to use these streets come here. All the merchants lost money. We decided to use our savings. When we realized we wouldn't make money, we closed the four shops...



The Fruit Market, 1990s



The Fruit Market, 2007

[??] except for nine shops under the Beit Hadassah settlement. Despite this, many of the businesses did not reopen for the reasons described above and because of frequent harassment by settlers in Beit Hadassah.



a-Sahala area, near the Camel Market, 1990s

Photos: Na'if Hasalmon/ al-Watan Center



a-Sahala area, near the Camel Market, 2007

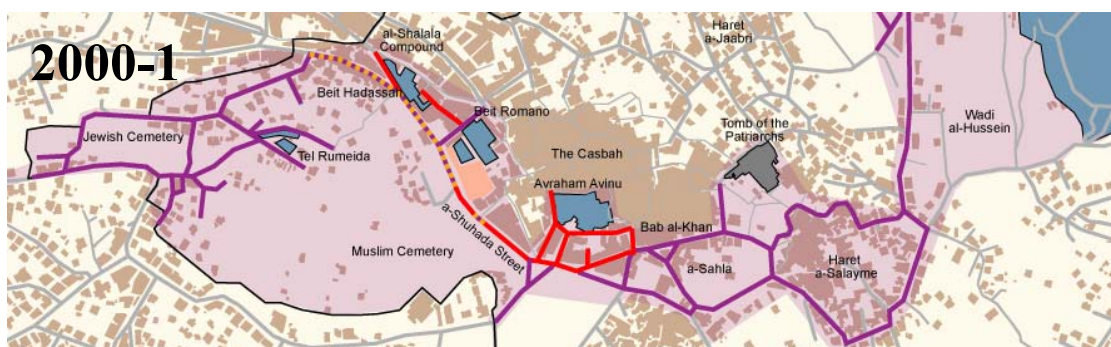
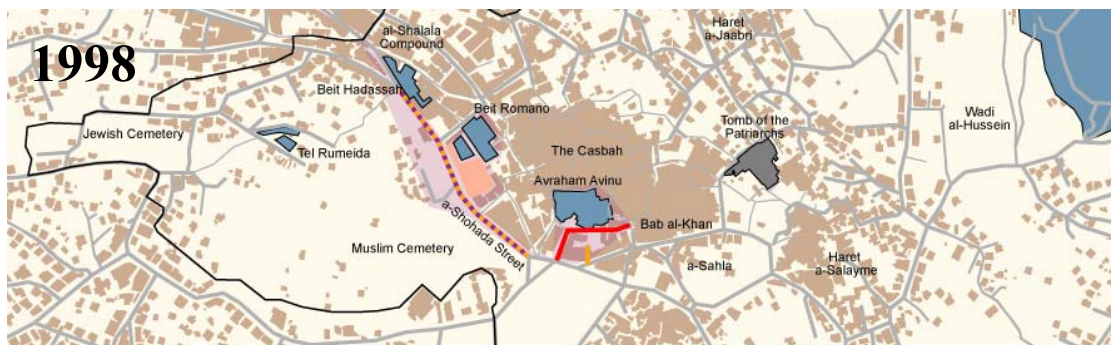
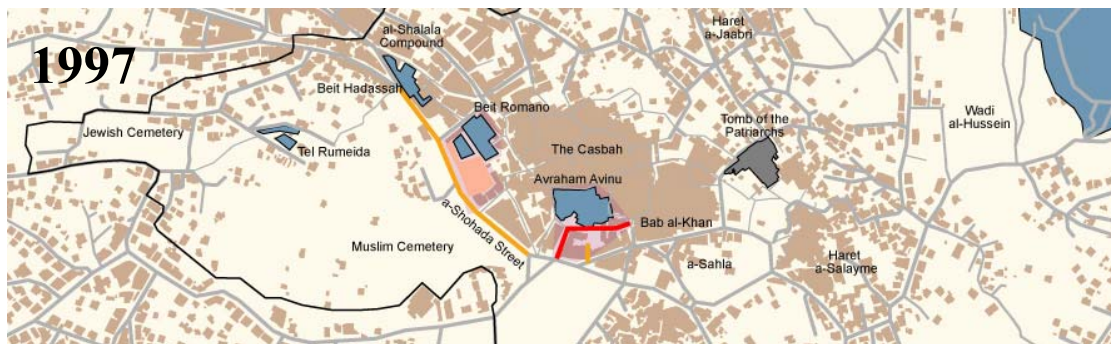
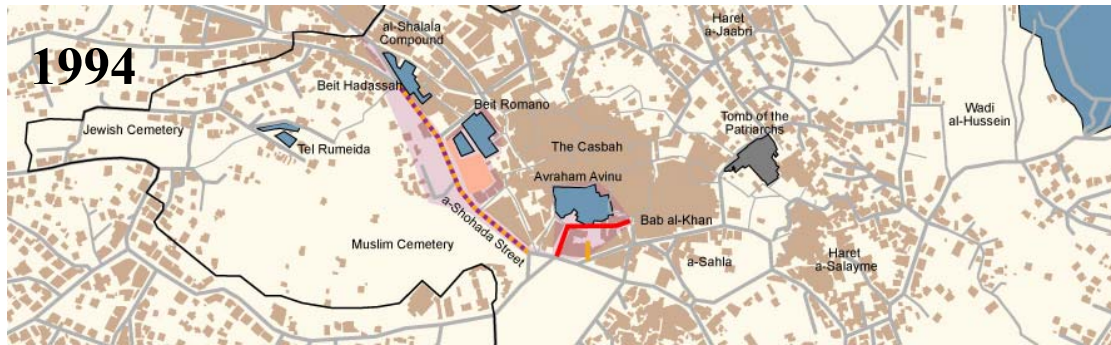
Photos: Keren Manor/ ActiveStills

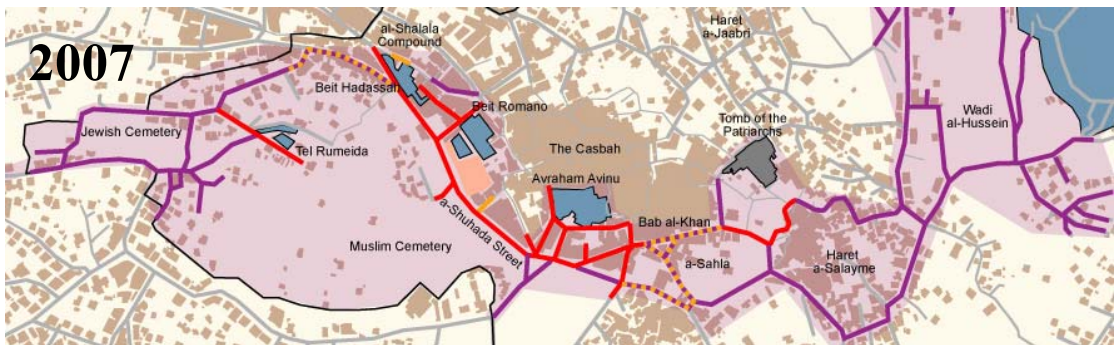
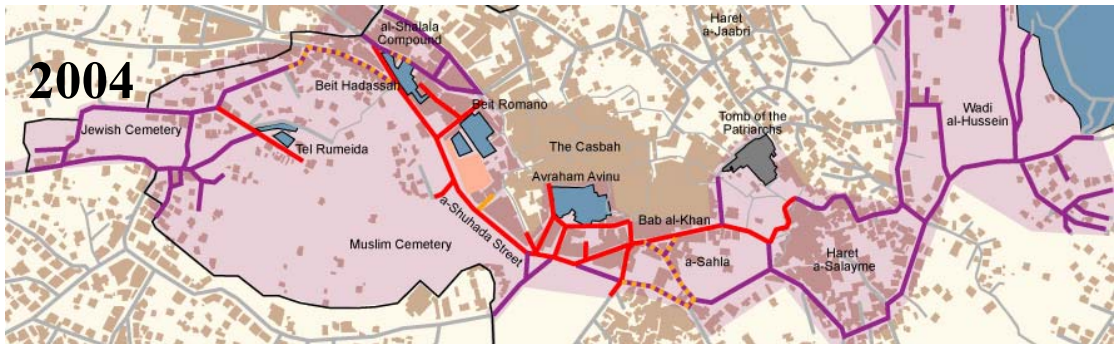
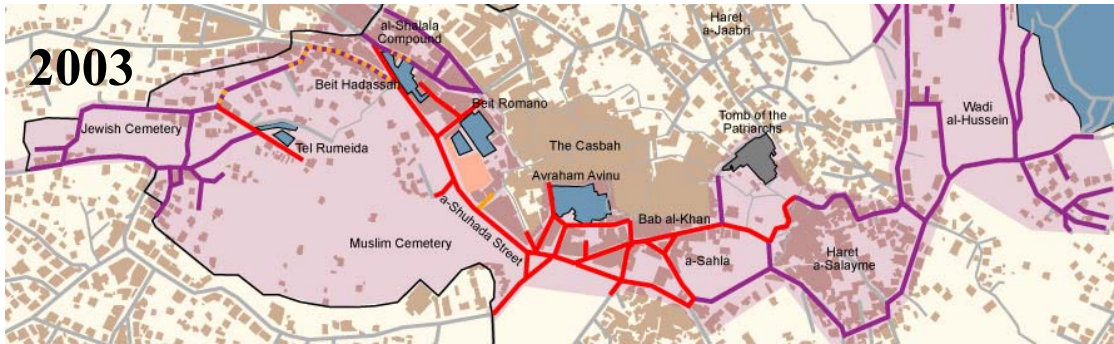
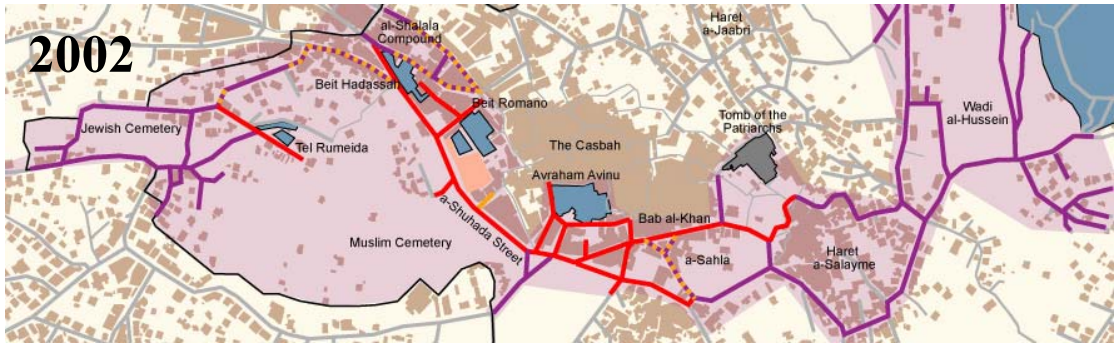
At the peak of the intifada, in April 2002, army forces took control of the Bab a-Zawiyya neighborhood, in H-1, which was part of Hebron's commercial district. From that moment until the end of 2003, the neighborhood was treated the same as H-2: the residents were put under curfew and their movement was restricted. Commerce in the area died for some two years. Many of the merchants in Bab a-Zawiyya formerly had shops in the Qasbah, which is in H-2, and they moved to Bab a-Zawiyya because of the difficulties in the Qasbah. B'Tselem and the Association for Civil Rights know of cases in which business owners, who were forced to leave the Qasbah and move to Bab a-Zawiyya, closed their doors once again.

The army generally refused to let shopkeepers return to their shops, not even to remove the merchandise that had been left there. The doors of many shops were soldered shut; barbed wire, iron gates, and other obstructions were placed around the markets, blocking all access to them. Some of the shopkeepers who managed to get to their shops to remove their merchandise found that the shop had been broken into, robbed, and in some instances torched. In many cases, the persons who broke into the shops were Hebron settlers, a fact that the state confirmed in the High Court.⁶¹ As a result, many business owners lost not only their source of livelihood, but also valuable merchandise. Also, when they were able to return to their shops, after the orders closing them had been canceled, there was no reason to reopen, inasmuch as the area no longer functioned as a commercial district.

⁶¹ The Israel Police confirmed that Hebron settlers' property crimes involving shops in the market that had been abandoned was a problem and thought that minors were responsible for a large percentage of the offenses. *'Abd Alsalleem Qatsrawi*, supra.

Restriction on movement of Palestinians and opening of businesses in the City Center over the years





Restriction on movement of Palestinians and closing of shops and markets – major events

1994, Massacre in the Tomb of the Patriarchs

Shohada Street is closed to Palestinian vehicles from Gross Square to the Beit Hadassah settlement. Palestinian shops along this section of the street are forbidden to open, as are the markets near the Avraham Avinu settlement.

1997, Hebron Protocol

Shohada Street is opened to Palestinian vehicles. Prohibition on operation of Palestinian shops remains.

1998

Shohada Street is again closed to Palestinian vehicles (following the killing of Rabbi Raanan in Tel Rumeida)

2000, The second intifada begins

A continuous curfew is placed on Palestinian residents of H-1 for three months, beginning on 1 October. a- Shohada Street is closed to Palestinian vehicles.

Roads leading to settlement points are gradually closed to Palestinian vehicles (the process ending in 2001).

2001

Shohada Street is closed to Palestinian pedestrians, except in unusual cases.

The continuation of Worshipers' Way in the Old City, known as Erez Lane, is closed to Palestinian movement.

The army closes the gold market under the Beit Hadassah settlement, and the Bab al-Khan and Hozeq a-Far markets.

Settlers destroy an improvised market near the closed markets, and the army prohibits its reopening (following the killing of the infant Shalhevet Pass).

More than 100 shops on Old Shalala Street are gradually closed, a process lasting until 2002, some because of the prolonged curfew and some because of army orders.

Nine Israeli families squat in the closed wholesale market, and the army does not remove them.

2002

The Banks Intersection, near the two Shalala areas, is closed to Palestinian vehicles.

In the framework of Operation Defensive Shield and Operation Path of Determination, the army imposes an almost continuous curfew on Palestinians in the H-2 area of the city for about 240 days, extending into 2003.

A-Sahala street, which leads to the Ibrahim Mosque, is closed to Palestinian pedestrians.

Exit by foot from the Qasbah is closed by physical obstructions or staffed checkpoints.

Settlers kill the young Palestinian girl, Nivin Jamjum, and wound others, burn a residence also used as a museum, and take control of another house (following the killing of the soldier Eliezer Leibowitz, who lived in a settlement in the city). Israeli security forces were unprepared for the expected vengeful attack.

The street on which the Beit Romano settlement is located is closed to Palestinian pedestrians.

Following the incident] on Worshipers' Way, the road is paved, a barricade is built along its entire length, and Palestinian vehicles are forbidden to use it.

A road in Tel Rumeida is gradually closed to Palestinian pedestrians, a process that continued until 2003. Palestinian residents on the street have to cross through gardens, terraces, and openings.

2003

Prohibition on operating shops in the two Shalala areas is cancelled, except for nine shops near the Beit Hadassah settlement (following the petition to the High Court filed by the Association for Civil Rights).

2004

Part of a-Sahala Street is opened to Palestinian pedestrians.

2006

Nine settler families are removed from the market (following an agreement with the army). A few months later, settlers return to the market and squat there.

2007

The western section of the Shalala areas, inside H-2, is opened to Palestinian vehicles (following the request of the Association for Civil Rights).

Effect of the overall restrictions on Palestinians – the economic aspect

The inability to move about freely and gain a livelihood raised the level of unemployment among Palestinians in Hebron and increased the number of persons living under the poverty line. In 2002, the harsh economic situation led the International Committee of the Red Cross to begin a food-distribution program, in which it provided food to some two thousand households in the Old City, including all households in the market; in 2004, the program was extended to cover 2,500 families.⁶² In 2005, average monthly income for Palestinian households in H-2 stood at only 700 shekels.⁶³

'Eid al-Jabrini, who has a dairy-products shop in the Old City, whose testimony was quoted in part above, stated:

I rented a shop in the White Market... At the time, the Old City was full of life. When the intifada began, everything changed. The Israeli army closed the part of Bab al-Khan that leads to the White Market. For long periods of time, it imposed a closure or curfew on the Old City. During closure, the army sets up checkpoints and only Old City residents are permitted to move about there. In cases of curfew, people are forbidden to leave their homes. Settlers attacked the residents and damaged shops repeatedly. Some families were forced to leave their homes. People stopped working and were reduced to ruin. Some families in the Old City survived on the food they received from the soup kitchen... When there was a curfew, I sold my products to neighbors who came via the roof. Our economic situation deteriorated... The White Market has between forty to fifty shops, but now only three are open.⁶⁴

The Hebron Brigade deputy commander admitted, in 2003, that "the economic burden is not incidental, it is part of a long process to pressure the residents of Hebron to get them to rid themselves from the terror in their midst."⁶⁵ This statement is an admission that the measures taken against the Palestinians in the City Center are collective punishment aimed at large numbers of persons in response to the acts of a few.

⁶² The figures are taken from page 285 of the ICRC's annual report, and from OCHA, *Humanitarian Update* (July 2005), 3.

⁶³ The figures, which were given by the Palestinian National Economy Ministry, relate to July 2005. See OCHA, *ibid*.

⁶⁴ The testimony was given to Musa Abu Hashhash on 29 December 2006.

⁶⁵ *Journal*, Channel One Television, 7 February 2003.

The prolonged curfew imposed in the first years of the intifada on houses located near the settlement points made normal living conditions in these areas impossible. This alone may have been sufficient to force many of these families to leave their homes for more distant areas, and it certainly played a crucial role in the massive closing of businesses in these neighborhoods. The various restrictions on Palestinian movement in the City Center as a whole and the prohibition on operating shops there brought economic ruin and damaged the fabric of life there. These extreme prohibitions and restrictions continue today, preventing the rehabilitation of the City Center.

Chapter Four

Failure to protect Palestinians and their property from settler violence

"Protecting the safety and property of the local residents is among the most basic obligations imposed on the military commander in the field." (High Court of Justice, 2004)⁶⁶

Since the beginning of the Israeli settlement in Hebron, there have been numerous violent incidents involving settlers and Palestinian residents, some of which were bloody. Over the years, dozens of Israeli civilians and dozens of Palestinian civilians have been killed in these incidents.

Israeli security forces generally act harshly in repelling Palestinian attacks at settlers and their property. They use very oppressive means against the Palestinian population, including, as was shown in previous chapters, sweeping and extreme restrictions on their movement.

The manner in which security forces respond to violations of law and order by Palestinians is apparent from their mode of operation – or, more accurately, lack of operation – regarding settlers. The Israeli security forces as a rule refrain from protecting the Palestinian residents and their property from attacks by settlers in the city.⁶⁷

Against this backdrop, a phenomenon of routine settler abuse, sometimes extremely violent, of Palestinians developed in the city. Hebron settlers have declared more than once that they are engaged in expanding the settlement to other parts of the city, and it appears that this objective is the reason for the violence: the settlers seek to embitter the lives of Palestinians in the City Center, make their lives intolerable, and get them to leave the area.

The Israeli authorities have from the beginning been well aware of the failure of the security forces to enforce the law on violent settlers. The subject was raised in a petition to the High Court as early as 1981.⁶⁸ Recently, the attorney general, Menachem Mazuz, admitted this problem existed:

⁶⁶ HCJ 9593/04, *Rashed Murar v. Commander of Military Forces in the West Bank*, Judgment, Par. 33 (not yet reported).

⁶⁷ See Yesh Din, *Appearance of Law: Enforcement of the Law on Israeli Civilians in the West Bank* (June 2006); B'Tselem,

⁶⁸ In HCJ 175/81, *Al-Natshe v. Minister of Defense*, *Piskei Din* 35 (3) 361. The security forces failure in handling settler violence against Palestinians in Hebron was discussed in many reports, governmental and non-governmental, among them the Karp Committee Report which was submitted to

Enforcement of the law in the territories is not only unsatisfactory, it is very poor... This reality has existed from about the beginning of settlement in the territories to the present time... The State of Israel does not invest sufficient resources on this subject ...⁶⁹

In response to the video that B'Tselem released to the media, showing a soldier refraining from enforcing the law on a female settler who was assaulting Palestinian women in Tel Rumeida, and on settler children who were throwing stones at the home of a Palestinian family (hereafter "the Tel Rumeida video"), Prime Minister Ehud Olmert said, "Clearly, this is not the first time. Only this time there was a camera, but there were certainly more cases."⁷⁰

Official entities – such as the Karp Committee, in 1982, the Shamgar Commission, in 1994, and one attorney general after the other – have sharply criticized the failure of the law-enforcement authorities to enforce the law on Israelis in the Occupied Territories, and in Hebron in particular. Yet, the policy remains the same.

Settler violence and property damage

Although the authorities have been familiar with the problem for years, the helplessness in handling settler violence that characterized the first years of the settlement in Hebron has grown worse and worse, and with it the violence has increased. Repeated assaults and violent abuse have become routine for residents living in the City Center near the settlement points.

Ian Christianson, who headed the international observer force in Hebron (TIPH), described the events in Hebron as follows: "The settlers go out almost every night and harm whoever lives near them, break windows and cause damage..."⁷¹

The settler attacks include physical assaults, including beatings, at times with clubs, stone throwing, hurling of refuse, sand, water, chlorine, empty bottles and other objects, including

the attorney general on 23 May 1982, the State Commission of Inquiry on the Massacre in the Tomb of the Patriarchs, 5754 – 1994 (the Shamgar Commission); B'Tselem, *Tacit Consent: Policy on Enforcing the Law on Settlers in the Occupied Territories* (March 2001), and countless requests by B'Tselem, the Association for Civil Rights, and other organizations to investigate cases of violence and the authorities' failure in their handling of the problem.

⁶⁹ The attorney general made these comments in response to a question at a talk he gave at a conference of the Public Law Association, held in Caesarea on 24 November 2006.

⁷⁰ The prime minister made these comments at a cabinet meeting. See Roni Sofer, "Olmert on the Violence in Hebron: I Saw It and was Ashamed," *Ynet*, 14 January 2006.

⁷¹ Arnon Regular, "Head of Observer Force in Hebron: Hebron's H-2 Area is being Cleansed of Palestinians," *Ha'aretz*, 16 February 2004.

sharp objects, destruction of shops and doors, shattering of windows, thefts, cutting of fruit trees, destruction of merchant's stands, and verbal insults. Also documented during the second intifada were cases in which Israelis were involved in gunfire, attempts to run people over, poisoning of a water well, breaking into homes, spilling of hot liquid on the face of a Palestinian, and the killing of a young Palestinian girl.⁷²

In his testimony, Ahmad al-Hadar, 10, told about an incident that took place on 4 February 2006:

I saw six or seven settlers dressed in black. They were holding stones and were running at us. I looked at them and was hit by two stones. One hit me on the top of my head, on the right side, and the other hit me above the right eyebrow... I tried to flee, but I fell from a one-and-a-half-meter-high fence that was next to the house. I fell on the stones. My right hand hurt and I couldn't move it. The area around my right eye hurt and my head was bleeding. It all happened very fast.⁷³

On some occasions, civilian security guards also took part in the violence. S'adi Jabber, whose house is situated near the Givat Haavot settlement and the al-Muhwal checkpoint, related what happened one day when he and his wife approached the checkpoint:

We saw two of the checkpoint guards beating 'Omar [our eldest son] while he was sitting on the ground. The checkpoint is run by armed civilians. They apparently are part of the settlement's security apparatus. 'Omar screamed... Within a few minutes, more civilians came to the checkpoint, and everyone beat 'Omar. I think they were settlers... 'Omar lay there on the ground, and his mother and I tried to rescue him from the attackers. They beat and kicked him and stepped on him. We ultimately managed to get him on his feet and we began to walk from the checkpoint. Suddenly, I felt a sharp blow on the right side of my head. I think it was the butt of a pistol that struck me. Lots of blood flowed from the wound, but I did not leave 'Omar, and I pulled him to the other side of the road. The attackers tried to pull him from me, but I didn't let him go. A large dog belonging to a settler came over to me and 'Omar, and 'Omar kicked it. The settler threw stones at us, and one of them hit me in the foot.⁷⁴

A large percentage of the attacks and abuse are carried out by minors. Taleb Jabber, who is in the transport business, told B'Tselem about an incident that occurred on 19 June 2006, in

⁷² Fourteen-year-old Nivin Jamjum was shot to death by an Israeli civilian on 28 July 2002. See B'Tselem, *Standing Idly By: Lack of Law Enforcement on Settlers in Hebron, 26-28 July 2002* (August 2002).

⁷³ The testimony was given to Musa Abu Hashhash on 5 February 2006.

⁷⁴ The testimony was given to Musa Abu Hashhash on 28 September 2006.

which youths from the Hebron settlement attacked him when he was in a-Sahala, the area next to the Tomb of the Patriarchs and the police station located outside:

A group of fifteen or twenty settlers aged 13-16 about arrived at the site, and stood around me... After I picked up a big tin container and put it onto the wagon, a stone hit me in the face, under the left eye. It bled a lot and flowed onto my shirt and hands. When the youths saw the blood, they moved back a few meters and threw stones. I told my son to run away, and I hid behind the donkey. A few stones hit the donkey in the neck.⁷⁵

Taysir Abu Ayeshe, whose testimony was quoted in part above, stated:

The settlers attack us all the time. They swear, throw stones, beat us with sticks, and spray water at us. Everybody in my family has been injured by their attacks... Most of the soldiers ask us to go into the house when there is a confrontation between us and the settlers. Some of the soldiers identify with us, but they can't do much. They shout at the children who throw stones...

Sometimes, we call the police and they don't come. There are settler attacks all the time. The parents, who stand alongside them, encourage the children, because the law doesn't apply to minors. We try to avoid contact with them. We try to avoid going into the street, except when we have no choice.

Offenses committed by minors who are not subject to punishment

Under Israeli law, and the law applying in the Occupied Territories, persons under age twelve are not criminally responsible for their acts. The trouble is that children under this age commit many of the violent offenses carried out by Hebron settlers. In an interview with *Ha'aretz*, the Hebron District police commander, Commander 'Ali Zamir, stated: "We have a major problem here. They [the settlers}] understand our weak point – and they use children under the age of criminal responsibility, under the age of twelve. They do this intentionally. The children throw stones, break walls. They are the tactical wing, even the strategic wing, of the adults."⁷⁶

In carrying out their function of enforcing the law on minors, law-enforcement officials use this fact to great purpose, granting absolute immunity to the children who assault Palestinians and to their parents, and systematically failing to take any measures to prevent the violence. For years, the law-enforcement authorities have refrained from detaining the perpetrators and taking them to the police station. Also, they do not assign welfare workers to get delinquent

⁷⁵ The testimony was given to Musa Abu Hashhash on 21 June 2006

⁷⁶ Meron Rappoport, "Ghost Town."

minors to change their behavior. They also refrain from issuing supervision orders, which would require the parents to post a bond that would be forfeited if their children commit another offense.

Failure of soldiers to intervene

Settler abuse of Palestinians has been occurring undisturbed for years, despite an enormous presence of Israeli forces throughout H-2.⁷⁷ Generally, soldiers are present at all times on every street near the settlement points. In many cases, settler assaults on Palestinians take place right in front of their eyes.

In the late afternoon of 27 January 2007, settlers broke into the house of the Abu Hata family in the a-Saleymeh neighborhood. In her testimony about the incident, Basemah Abu Hata, 40, related that:

...I saw more than thirty settlers – men and women, all of them young. They were beating my children. I shouted for help...

The children tried to push the settlers out of the house, through the door they had entered. The attack lasted about fifteen minutes. While this was happening, I saw two army vehicles that had stopped opposite the house. Some soldiers were standing next to the vehicles. During most of the attack, the soldiers did nothing. Only at the last moment, when my children had already managed to push most of the settlers out, a few soldiers came into the house and helped them...

I think that the settlers would not have entered our house if they didn't think the Israeli army would protect them and wait for them by the door. The army interfered in the attack to protect the settlers, not to protect us.⁷⁸

Ghandi Bader, 27, who lives on a-Shohada Street, told about an incident in which settlers beat him on his way home from work on 26 November 2005:

I was in the Muslim cemetery, about 150 meters from my house. This is about the only way I can go without crossing the DCO [Bab a-Zawiyya] crossing. Suddenly, three young settlers came out from behind one of the tall monuments. One of them grabbed my chest and hands from behind, and the other two hit me in the face. They were sharp, hard blows.

⁷⁷ Many hundreds of troops are permanently stationed in the area. They staff guard posts, lookouts, and checkpoints, and patrol the streets and passageways.

⁷⁸ The testimony was given to Musa Abu Hashhash on 12 December 2007.

I tried to get out of his grasp, but the settler was stronger than me. I shouted to workers in the cemetery for help. They ran over to me. The three settlers let me go and ran to a-Shohada Street, toward Gross Square.

When they beat me, the soldier closest to me was at the post about 125 meters, I estimate, from me, on a-Shohada Street. The soldier had a dog and was giving him water from a bottle. When the settlers beat me and I shouted for help, he continued to give the dog water and did not react.⁷⁹

On 21 November 2006, Ziad a-Raghbi, a sheep and goat dealer in the city, was preparing fodder in the Jabber neighborhood, next to where the Kiryat Arba settlement was built. In his testimony, he spoke about what happened to him.

When I got back to the auto to move more fodder, I saw four settlers, two men and two children, throwing stones at my auto and at other vehicles that were next to the obstruction. An Israeli army patrol jeep was there. The soldiers saw the settlers throwing stones at the vehicles, but did nothing to get them to stop. After a few minutes passed, three more settlers came and threw stones...

After a while, more army vehicles appeared. The settlers moved and went toward our farmland in the wadi. The soldiers followed them to protect them...⁸⁰

A soldier who served in Hebron during the second intifada told *Breaking the Silence* about an incident in which he was involved in the City Center:

An Arab from Abu Sneineh... who appeared to be sixty years' old or more, who had a cane, came to the intersection... Suddenly, three kids aged 16-17 knocked him down onto the ground in a second's time, took a stone and smashed him in the head. That is, they began to kick him on the ground, to crack his head open. A sixty-year-old man, his head bleeding badly. Kicking him... an officer came with the patrol. He didn't know what they did, so he didn't grab them. They simply fled.⁸¹

The commanders consistently refrain from instructing the soldiers to protect Palestinians from settler violence, and at times even brief them not to do so. In his testimony to *Breaking the Silence*, another soldier who served in Hebron during the intifada stated:

One of the things that really upset us was really the powers that they didn't give us to cope with the settlers. I am a soldier. I don't know how to stop a person, a Jew. I don't

⁷⁹ The testimony was given to Musa Abu Hashhash on 30 November 2005.

⁸⁰ The testimony was given to Musa Abu Hashhash on 31 January 2007.

⁸¹ *Breaking the Silence* provided the testimony to B'Tselem and the Association for Civil Rights without mention of the witness's particulars.

know what the law is. They didn't tell me that I would some time have to do such a thing, and in Hebron, they essentially told me, "This is not your function. That is why the police are here"... I remember that the police commander explained to us that they don't have the money to have enough police officers to respond to every call. So we essentially were helpless, and this is a decision that was made from above.⁸²

Another soldier told about a case in which a settler's child told him that he intended to harm Palestinians:

A small child, a child who was six years' old, passed near me... and he told me, "Soldier, listen, don't get upset, don't try to bother me. I am now going to kill Arabs.' I look at him, and don't really understand what I am supposed to do in that case... I had nothing to tell him. Nothing. I was empty inside.."⁸³

Noam Toker, another soldier who served in Hebron, in an interview with *Ha'aretz*, told about an incident that occurred in 2003:

The Jewish children sent a small girl to taunt young Palestinian girls and then beat them and throw stones at them from up close... I couldn't do anything to settlers, because according to orders, I am forbidden to arrest settlers.⁸⁴

The soldiers' impression that they are forbidden to detain or arrest settlers assaulting Palestinians or damaging Palestinian property was strongly supported by senior government officials. In response to the airing of the Tel Rumeida video, Prime Minister Olmert said, in addition to his remarks quoted above, "I felt great discomfort in seeing a soldier stand aside without the authority to act. One gets the impression, false in fact, that every act is carried out under government auspices."⁸⁵ Defense Minister Amir Peretz described the incident in this way: "A soldier stands there helpless, without being able to interfere, because he does not have enforcement powers."⁸⁶ On another occasion, Peretz emphasized: "Legally, he [the soldier] is helpless."

⁸² Breaking the Silence, Testimonies from Hebron, 14.

⁸³ Breaking the Silence, "Combatants Tell about Hebron: Photo/Video Exhibition," transcript of soldiers' testimonies (June 2004), 8.

⁸⁴ Meron Rappoport, "Ghost Town."

⁸⁵ Following the airing of the video in the media, the cabinet decided to establish a ministerial committee to examine and suggest "proposals relating to legal tools for the Police and security forces to enforce the law in Judea and Samaria. Cabinet Decision 1046 of 14 January 2007 (see below).

⁸⁶ Uri Yablonka, "Olmert: I Saw the Humiliation and Simply was Ashamed," *NRG-Ma'ariv*, 14 January 2006.

This is not true. Under the law in the Occupied Territories, soldiers have powers, and even the obligation, to enforce the law on everyone, including violent settlers. Section 78 of the Order Regarding Defense Regulations empowers soldiers to arrest, without an arrest warrant, every person who violates the order. These regulations classify the following acts as offenses: assault, throwing objects, and intentional destruction of property. The procedure for enforcing law and order on Israeli lawbreakers in the West Bank, which was published by the attorney general, clearly states that the security forces have the duty "to take every action necessary to prevent harm to life, person, or property," and also to "to detain and arrest suspects who might flee from the scene."⁸⁷ Section 6(3) of the procedure specifies that the army is responsible for handling events that develop without prior warning, until the police arrive and the responsibility for handling the matter is handed over to them.

Failure of police to enforce the law

The Hebron Police Department, whose sole function is to enforce the law in the city, has been completely helpless over the years. A soldier who served in Hebron described the police's action in an incident in which he and other soldiers were requested to trap an "unruly Jew," as the individual was classified over the radio transmitter:

They inform us that they caught him inside "Avraham Avinu." The operations-room commander [??]says: "Call the police, so they'll come and take him"... Five minutes later, the commander comes over to us: "The police aren't willing to enter. Take him out"... "We take him out of Avraham Avinu, how is that? What? We smack him? [??] We remove him from Avraham Avinu by force? What are you talking about? We are not allowed to do such a thing. You come to Avraham Avinu." Then the operations-room commander tells us, "OK, the police don't agree to enter Avraham Avinu. They are afraid of creating a provocation, and they are afraid they [the residents there] will throw eggs at them"... Then my commander says, "OK, there is nothing to do. Let him go."⁸⁸

Ghada Harbawi, a mother of ten, related in her testimony that:

⁸⁷ Attorney General, Procedure for Enforcing Law and Order on Israeli Lawbreakers in Judea and Samaria and in the Gaza Strip, Section 11(a)(5)(c). Following publication of the procedure, the army formulated its procedure. It, too, specified that "every soldier who is witness to the commission of an offense by an Israeli, either against a person or property, shall take immediate action to prevent and/or stop the offense, and, if necessary, detain and arrest the persons suspected of committing the offense, document the scene and preserve it" (letter from Harel Weinberg, of the office of the legal advisor for the West Bank, to the Association for Civil Rights, 31 July 2005).

⁸⁸ Breaking the Silence, Testimonies from Hebron, 29.

For more than five years, settlers from Kiryat Arba have been assaulting and annoying us to expel us from our house. In 2001, they torched the house and shattered the windows. In 2004, they broke into the house and stole furniture. In addition, they assault us, throw stones at us and chop our trees. Once, they came to our house and told us that it belongs to them and that we had to leave.

On Friday, 28 April 2006, when my son Fahdi, 16, and I were on our land surrounding the house, three men from the settlement's security contingent arrived. One of them said that he saw us steal the fence separating our house from the settlement. The fence had not been built, and parts were lying on the ground. The three of them came over to us and started to slap and kick Fahdi. They also pushed me a few times. At that moment, an Israeli police jeep arrived. The settlers told the police officers that we stole the fence, and as they talked they continued to push us. The police officers tried to move Fahdi and me toward the house, and then my husband came out, and the settlers pointed to him and Fahdi as the thieves. The police officers went over to my husband and told him and Fahdi to go to the jeep. They simply believed the settlers.⁸⁹

In general, the police do not investigate complaints of settler violence, a fact confirmed by the Hebron District police commander, Commander 'Ali Zamir.⁹⁰ At least once, it was contended that, "when the police know an offense has ostensibly been committed, and if it is informed of the facts of such a case, it will certainly investigate and gather the facts."⁹¹ But countless testimonies and videos obtained by B'Tselem and the Association for Civil Rights prove without doubt just the opposite: police officers and other security forces are regularly present when Hebron settlers carry out violent acts against Palestinians, witness them and are fully aware of them, yet the offenses are not investigated.⁹²

⁸⁹ The testimony was given to Musa Abu Hashhash on 11 May 2006.

⁹⁰ Letter of 5 October 2006 from Commander Zamir to the SHAI [Samaria and Judea] Police District legal advisor, who sent a copy of the letter to the Association for Civil Rights on 17 October 2006.

⁹¹ Letter of 17 October 2006 from Chief Superintendent Yonatan Lahav, legal advisor for SHAI Police District, to the Association for Civil Rights.

⁹² Israel conducts two separate systems of law for Israelis and Palestinians in the West Bank, flagrantly discriminating between the two populations. The two systems differ substantively and procedurally, with different standards and judicial rules. A Palestinian suspected of committing a violent offense against a settler is tried in the military court, under the military legislation, while an Israeli suspected of committing the identical offense against a Palestinian is tried under the Israeli penal law, by Israeli law-enforcement authorities, and is tried in the Israeli civilian courts. In this reality, a Palestinian suspected of committing a violent offense can expect to be detained until the end of the criminal proceedings against him, while an Israel suspected of a similar offense will be detained only in exceptional cases.

One reason many Palestinians refrain from filing complaints of settler violence is the lack of trust in the law-enforcement authorities and the Israeli justice system. Therefore, the number of complaints and investigations opened by the police do not reflect the full extent of settler violence in Hebron. Daud Jabber, who lives in the City Center, stated in his testimony that, "We did not file a complaint with anyone. Who should we complain to? We have complained a lot and nothing has happened."⁹³ Bahija Sharabati, who lives in Tel Rumeida, related in her testimony that, "We already filed dozens of complaints to the Israeli police, but nothing changed. I don't believe in complaints any more."⁹⁴

In recent months, B'Tselem has repeatedly requested the police to provide information on the handling of Palestinian complaints of Hebron settler violence in 2006.⁹⁵ The police have not yet provided the precise information.⁹⁶ Not long ago, the police claimed there had been an improvement in law enforcement on Hebron settlers, but the claim has not been supported by relevant data.⁹⁷

Study of data compiled by Yesh Din indicates that some ninety percent of police investigations of settler harm to Palestinians in the West Bank in which the investigations were completed (or where investigations were not conducted at all because formal complaints were not filed) were closed without filing of an indictment.⁹⁸ This number of cases

⁹³ The testimony was given to Musa Abu Hashhash on 31 January 2007.

⁹⁴ The testimony was given to Musa Abu Hashhash on 12 December 2006 For the full testimony, see Appendix 4.

⁹⁵ The first letter requesting the information was sent on 18 December 2006.

⁹⁶ In a letter of 20 February 2007 from Yaron Shitrit, assistant to the head of the SHAI District Investigations Department, to B'Tselem, the police provided general information on complaints of settler harm to Palestinians and to security forces, without separating the two. Regarding 2005, the police indicated they had opened 178 investigations into cases of Israeli harm to Palestinians throughout the southern West Bank. Apparently, a large majority of the offenses took place around the settlement points in Hebron. Letter of 10 January 2006 from Shlomi Sagi, spokesperson of SHAI District, to B'Tselem.

⁹⁷ Letter of 24 October 2006 from Itzik Rachamim, of the Investigations and Intelligence Department of SHAI District, to Shai Nitzan, of the State Attorney's Office. The letter was attached to the State Attorney's Office's response to a letter of 31 January 2007 from the Association for Civil Rights. The attached data sheet did not compare different periods, so the figures do not support the claim of improvement in law enforcement on Hebron settlers.

⁹⁸ Yesh Din, *Appearance of Law*, 72-73.

in which the assailants are not brought to justice is another layer of the lack of law enforcement on settlers.

Police helplessness in enforcing the law on violent settlers has often led to settlers continuing their rampage against Palestinians living in their neighborhoods. Presumably, many settlers against whom complaints have been filed, and those whose indictments are pending, still live in the neighborhood and regularly commit violent acts against Palestinians.

Ministerial Staff on Law Enforcement in the West Bank

As mentioned above, in early 2007, the government of Israel established the Ministerial Staff on Law Enforcement in the West Bank. The staff was established following the airing in the media of the Tel Rumeida video. At its first meeting, the staff decided to:

- a. determine the number of police forces that will be among the forces needed to handle the friction areas;
- b. ensure the said forces are specially trained for their mission;
- c. increase the use and handling of restraining orders;
- d. handle the institutions that are the center of the agitation and are state funded;
- e. budget personnel for the Civil Administration in light of the new orders.⁹⁹

These decisions are capable of improving law enforcement on violent settlers. Still, it seems that they fail to address the main problem of settler violence in Hebron. The members of the staff ignored the fact that in the area of the settlements in Hebron and elsewhere in the West Bank soldiers usually witness the violence and refrain from exercising their enforcement powers. The members also ignored the large number of investigation files that were closed without an indictment being filed, and the need to determine the reason for this failure. In addition, the decisions did not provide sufficient response to the problem of violence by minors under the age of criminal responsibility.¹⁰⁰

⁹⁹ Notice of the Defense Minister's media advisor, 30 January 2007.

¹⁰⁰ A member of the ministerial staff directed Deputy Defense Minister Ephraim Sneh to submit to the cabinet within thirty days recommendations on law enforcement in the territories. We do not know if Sneh has submitted the recommendations.

Chapter Five

Harm to Palestinians by Soldiers and Police Officers

"The ease with which you do what you want, without any supervision... What bothers me, I think, and what most frightens me in Hebron is the unregulated and uncontrolled power, and what it leads people to do." (Soldier who served in Hebron, 2004)¹⁰¹

The increased presence of soldiers and police in Hebron, especially in the City Center, brings with it violence and excessive and unjustified use of force and of the powers given them.

Violence, house searches, seizure of control of houses, harassment, detaining passersby, and humiliating treatment have become part of daily reality for Palestinians living in the center of the city and have led many of them to move to safer places.

The system's handling of violence, abuse, and humiliation by soldiers and police

Security forces' violence against Palestinians is not unusual. Long ago, harassment, humiliation, and "moderate" violence, such as a slap or kick, became commonplace for residents of the Occupied Territories. In Hebron, the police and soldiers have committed extremely severe violent acts against the Palestinians in the city, including bloody beatings and even killing. The violence is not part of operational activity; rather, it is abuse that, it is agreed by all, serves no military or police need. Compared with other cities in the West Bank, the enlarged presence of military and police forces in Hebron has brought with it more and harsher cases of violence against Palestinian civilians.

On 31 December 2002, four policemen forced 'Imran Abu Hamdiya, 18, a resident of the city, to get into a jeep the police were driving in H-2. The jeep continued to the industrial area. At some point, the policemen threw Abu Hamdiya out of the jeep while it was traveling at high speed, breaking his skull and killing him. B'Tselem and al-Haq investigated and exposed the incident.

At first, the police denied any involvement, contending no police jeep was in the area. A few months later, the four policemen were arrested, and on 1 May 2003, were indicted for the manslaughter of Abu Hamdiya, abuse of three other Palestinians, and obstruction of justice. Other police officers from the same company were arrested for a long list of violent acts

¹⁰¹ Breaking the Silence, "Combatants Tell about Hebron," 5.

against Palestinians in Hebron, and robbery while threatening the victims with a knife. A total of eleven indictments were filed in these cases.¹⁰²

Beating to death by security forces is not common in Hebron. The Abu Hamdiya case is the extreme manifestation of routine violence by police and soldiers in the city. Over the years, human rights organizations have documented numerous cases of violence by Israeli security forces against Palestinian residents of Hebron. Many of these cases took place near the settlement points, where a very large number of police and soldiers are present.¹⁰³

Investigation of the Abu Hamdiya case and prosecution of some of the suspects are exceptions. As a rule, the authorities do not properly enforce the law on delinquent soldiers and police officers. Presumably, the tragic consequences of this case, together with the extensive media coverage it received, led the authorities to change their practice and prosecute security forces who harmed Palestinians.

A soldier who served in Hebron during the second intifada confirmed, in his testimony to *Breaking the Silence*, that violent acts, abuse, and humiliation by soldiers are common:

In every company, there are uncultured persons. They would arrive and not consider anyone or anything. There was a case in which somebody grabbed some unfortunate Arabs by their beards and had their pictures taken with them. In Hebron. Or there were people who regularly beat Arabs there. They are really a minority of the soldiers in the company. If the company had seventy-eighty combatants, there were about five bad guys.¹⁰⁴

Incidents documented over the years include serious beatings, for example by smashing the victim's head with a blunt instrument or against the wall, hitting him with rifle butts and clubs, kicking him in the head and other parts of the body, flinging the person to the ground, twisting arms and legs with force, and stone throwing. In one case of abuse, soldiers forcibly cut the hair of their victims. In many cases, the violence was accompanied by damage to Palestinian property, including the shattering of car windows and slashing of tires.

¹⁰² Efrat Weiss, "Indictment: Police Beat and Rob Residents in Hebron," *Ynet*, 6 July 2003; Baruch Kara, "Serious Charges against Ten More Police Officers from Border Police Company in Hebron," *Ha'aretz*, 17 June 2003.

¹⁰³ See, for example, B'Tselem, *Hebron, Area H-2: Settlements Cause Mass Departure of Palestinians* (August 2003).

¹⁰⁴ Shovrim Stika provided the testimony to B'Tselem and the Association for Civil Rights without mention of the witness's particulars.

Sample cases

An army officer who served in Hebron during the second intifada gave her testimony to *Breaking the Silence* about an incident she witnessed.

I see these two soldiers lounging about... It was a case of a detainee whose hands were cuffed behind his back, his eyes covered. Suddenly, I see one of them go over to him, and without any prior warning, knee him in the head. He simply kned him in the head.¹⁰⁵

In September 2006, Sallem al-Qimri, a contractor, was asked to renovate Border Police offices in Hebron, and was given a special permit to enable him to do the work. In his testimony, he related what happened to him at a checkpoint on 6 September 2006:

While I was talking to two border policemen, the policeman in a blue uniform [that of the regular police], intervened and told me to give him my identity card. I gave it to him. I was standing behind a wooden table that was located at the checkpoint. Suddenly, and without knowing why, the border policemen went to the other side of the table, picked it up, and threw it on me. The table hit me under my knees, and my legs started to bleed.¹⁰⁶

Samer Idris, a high-school student, told about an incident that occurred on 31 March 2005 south of the Tomb of the Patriarchs, after he walked past a group of soldiers:

Five or ten meters after I passed them, I felt a foot being placed between my legs from behind me. I was pushed forward and fell to the ground, on my left side. I saw it was a soldier who did it. I didn't understand what was happening. The soldier slammed the left side of my face with his rifle butt, hitting me under the left eye. I felt a sharp pain. I put my hand to where he hit me and turned my head to the right. The soldier hit me again with his rifle butt, this time behind the left ear. That hurt a lot. I felt dizzy and my vision became blurred.

I laid there on the ground for about five minutes. I didn't know what was happening around me, or why the soldier did that. I heard a jeep move near me, but I don't know where it was headed.¹⁰⁷

Dr. Taysir Zahada, 52, a physician, who lives in Tel Rumeida, described what happened when soldiers invaded his house on 25 August 2006.

¹⁰⁵ *Breaking the Silence* provided the testimony to B'Tselem and the Association for Civil Rights without mention of the witness's particulars.

¹⁰⁶ The testimony was given to Musa Abu Hashhash on 15 October 2006.

¹⁰⁷ The testimony was given to Musa Abu Hashhash on 31 March 2005.

... the officer came over and ordered me to go inside... I told him that that I only wanted to take the sack. He pushed me with his chest toward the entrance of the house. I put out my hands to move him away from me, and so I wouldn't fall.

I don't know what happened after that. The six soldiers began to kick me and beat me all over my body with their hands and rifles. In the course of the beating, they pushed me toward the door. I tried to ward off the blows as best I could, but they were very aggressive. They hit me dozens of times. I couldn't believe what was happening to me. I thought they wanted to kill me and "do a job on me" for no reason.

After about five minutes passed, my daughter Susan, who is fourteen, came down and screamed. She tried to come over and defend me and separate me from the soldiers, but one of the soldiers pushed her hard, and she fell down and lost consciousness. The soldiers paid no attention to that and continued to beat me hysterically. My wife came down and tried to defend me, and the soldiers beat her on the arms with their rifle butts. She still has bruises on her arms.

The soldiers continued to beat me. I saw another of my daughters, Najiya, try to come to me, but one of the soldiers pushed her toward the door. She was hit on the left side of her waist and shouted in pain. The small children stood on the stairs and screamed.

I heard my brother Amjad shout from below and call for help. At that moment, I managed to get out of the grasp of the soldiers, grabbed Susan, and took her to the clinic on the second floor. I tried to revive her and gave her oxygen. The soldiers chased after me and closed the clinic door behind them. While I was treating Susan, they hit me in the back and swore at me, "Maniac, ass." After a while, Susan regained consciousness.¹⁰⁸

'Abd al-Hafiz al-Hashlamouni, a journalist who lives in Hebron, related an incident that took place on 18 April 2006:

I saw six soldiers stop a Palestinian fellow and push him into a fence. His hands were raised. I began to film the incident and one of the soldiers saw me. The soldiers left the fellow and came over to me. They beat me and took the camera... With another camera I had, I tried to film the soldiers and they noticed. A few of them came over to me, pushed me onto a car parked in the square and beat me. They kicked me a few times, punched me, and hit me with their rifle butts. The soldiers also took the second camera out of my hands... Later, the soldiers left and threw the cameras on the hood of one of the cars.¹⁰⁹

¹⁰⁸ The testimony was given to Musa Abu Hashhash on 28 August 2006.

¹⁰⁹ The testimony was given to Musa Abu Hashhash on 20 August 2006.

On 24 August 2005, police went into the yard of a building in which Bahar al-J'abri lived, in the area of Worshipers' Way. Al-J'abri described what happened when he encountered them and did not have his identity card on him:

He [one of the policemen] said that I had to carry my identity card with me at all times, even when I was sleeping. Another policeman started to hit me, and the first one joined in. They kicked me in the knees and one of them hit me twice with his rifle butt, once in the head and another in the back. I tried to defend myself, and managed a few times to grab the hand of the policeman to get him to stop hitting me, but the other one continued beating me, and I couldn't defend myself. This lasted for fifteen minutes... Two other policemen stood on the side and did not intervene. A fifth policeman stood guard behind the iron gate.¹¹⁰

Ra'id Fatafteh, an engineer from Tarquimya, told about an incident on 9 May 2006 at the checkpoint near the Tomb of the Patriarchs:

... one of the policemen told me to stop and asked for my identity card. He ordered me to wait by a low plastic fence, which was about a meter high... After about twenty minutes passed, I went over to the policeman and asked him if he could give me back my identity card. He told me to wait and move back, and then walk right and left. I felt he was trying to humiliate me. Despite this, I did what he said.

Suddenly, he came over to me, grabbed my shirt and dragged me over to the plastic fence. He bent me over it, so that my chest was touching it and my head facing the ground. I didn't understand why he was doing that. I stayed calm and did not respond, though I was angry and felt humiliated.

When the policeman left me, I asked him, in Arabic, why he had done that. He began to swear at me, in Hebrew; I didn't understand what he said. He jumped over the fence, put my hands behind my back, pushed me, and the right side of my head hit the fence, injuring me. That hurt a lot, and I put my hand on my head. I saw that I was bleeding badly. The policeman appeared frightened and confused. He brought my identity card and ordered me to go home.¹¹¹

Handling of offenses committed by soldiers and police officers

While justifying many of its violations of human rights of Palestinian in the West Bank on the grounds that the acts are intended to meet "security needs," the authorities generally condemn

¹¹⁰ The testimony was given to Musa Abu Hashhash on 30 August 2005.

¹¹¹ The testimony was given to Musa Abu Hashhash on 10 May 2006.

outright acts of violence, abuse, and humiliation by security forces. However, rejection of the violence is not accompanied by proper enforcement. Many acts of violence and abuse are not investigated, or the investigation does not result in indictments. For example, in the case of the beating of Ra'id Fatafah, presented above, the Department for the Investigation of Police (DIP), in the Ministry of Justice, closed the file against the assailant-police officer on grounds of lack of evidence.¹¹² This even though the incident took place and was witnessed by many persons.

Since the beginning of the second intifada, in September 2002, the Military Police have opened 427 investigations against soldiers suspected of committed violent acts (not including shootings) throughout the West Bank. Of these, only thirty-five led to the filing of indictments.¹¹³ Given that some of the investigations involved more than one soldier, more than ninety-two percent of the investigations did not result in the filing of an indictment.¹¹⁴

B'Tselem and the Association for Civil Rights do not have complete figures on the complaints being handled by DIP, but information on the complaints that B'Tselem recently submitted indicate a large number of files were closed without the filing of an indictment: eighty-two

¹¹² Letter of 7 December 2006 from DIP to Ri'ad Fatafah.

¹¹³ The figures, updated to 15 February 2007, were provided by the Judge Advocate General's Office to the Knesset's Constitution, Law and Justice Committee on 14 February 2007. The low number of investigations can be explained by the small number of complaints, a fact explained by the victims' lack of confidence in the system, which does not take the complaints seriously and does not bring the assailants to justice. Another explanation is the concern of victims about the time and energy they would have to expend, and to the humiliation they can expect at the police stations and DCO offices in the West Bank. B'Tselem, the Association for Civil Rights and other human rights organizations work diligently to identify cases of violence and abuse and report them to the authorities, but these substantial efforts have not overcome the systemic failures, which restrain victims from filing complaints.

¹¹⁴ The judge advocate general did not state the number of investigations that had been closed without an indictment being filed. It may be, therefore, that the number of investigations that did not lead to an indictment included investigations as to which no decision has been made regarding the filing of an indictment. However, the number is likely relatively small because the relevant period is more than six and a half years. If there are unfinished investigations that were opened years ago, this fact, too, is further evidence of the failure to bring delinquent soldiers to justice.

percent of the cases submitted to DIP during the second intifada that related to police violence against Palestinians were closed with no indictment filed.¹¹⁵

It appears, therefore, that the authorities do not give proper importance to the investigation of violence by security forces against Palestinians and do not bring the delinquent persons to justice. This failure sends a message to soldiers and police officers in the field that acts of violence, abuse, and humiliation are not considered serious, and that they are immune to prosecution if they commit acts of this kind in the West Bank, and in Hebron in particular.

In this reality, the phenomenon of severe violence in Hebron, and elsewhere in the West Bank, is deeply entrenched, raising its head time and again with disturbing frequency.¹¹⁶

Seizure of Palestinian houses

Thirty-five Palestinian residential dwellings and shops in Hebron have been seized by security forces for their continuous or sporadic use: ten of the structures are located in the area of the Avraham Avinu settlement, ten along Worshipers ' Way, four houses in Tel Rumeida, five houses in the area of the Beit Hadassah settlement, three buildings in the area of the Beit Romano settlement, and three buildings in H-1.

Clearly, turning a private dwelling into an army or police outpost severely impairs the living conditions of the occupants. The soldiers invade their private space and restrict their living area. When a family's roof is taken, they are not allowed to use it, and sometimes they are also not permitted to use the top floor of the building. As a result, large families, which in many cases were already living in overcrowded conditions, have been forced to vacate part of their homes and cramp themselves into an even smaller space.

However, their suffering does not end with the overcrowding. Often, these families are harassed by the invading soldiers. In some instances, the stairs leading to the roof pass through the family's living quarters, so that the family suffers from the movement up and down of the soldiers and from the objects they carry with them.[??] In other cases, the occupants suffer from frequent searches – once or twice a week is routine – and from other actions of the soldiers, such as causing property damage, playing loud music, leaving refuse

¹¹⁵ The figures relate to sixty-eight cases whose investigation was completed, or it was decided at the start not to investigate. Twenty-one other cases submitted by B'Tselem are still under investigation or their status is unknown.

¹¹⁶ For further discussion on this point, see B'Tselem, *Crossing the Line: Violation of the Rights of Palestinians in Israel without a Permit* (March 2007), Chapter 3.

lying around, and even urinating wherever they want. In some cases, the family suffers these conditions for years.

Sample cases

The army has been using the house of Suha Hadad on and off as a lookout. In her testimony, she described the situation:

The Israeli army takes control of our house time and again, always late at night, after ten or eleven o'clock. Generally, they arrive on Saturdays and holidays. They usually come in groups of eight and keep me and the children in the TV room. They enter the bedroom and set up a lookout over the nearby springs, where the settlers swim... At first, the children were frightened and cried, but they got used to it... They [the soldiers] have done this dozens of times.

Last Sukkot, eight soldiers came to our house in the morning. An officer told me that they would remain for three days. I told him that I wouldn't let them live in my house. He said that he had an army order... They took control of the interior terrace and the roof. They didn't let us leave the house while they were there. They used our shower.

Three or four months ago, when I was pregnant, eight soldiers came at night. They put the children and me in one room and used the other rooms. While they were in the house, I took my son to the bathroom and saw them relaxing on the floor...

Frankly, we can't move out because we don't have enough money to rent... We don't pay rent where we are living now.¹¹⁷

In 1999, soldiers set up a permanent position on the roof of the house of Bahija Sharabati, the mother of six from Tel Rumeida whose testimony was quoted in part above. Regarding this, she stated:

Our yard became a refuse dump. The soldiers eat and throw the food scraps on the ground around the house. They also urinate on the roof. Three years ago, my little daughter, Abrar, left the house and the urine of one of the soldiers sprayed her on the head. She hasn't forgotten that incident.

The soldiers shout, jump, run, and sometimes also play. Their shouting and movements disturb us a lot, especially at night. Sometimes, we can't get to sleep because of the disturbance, and sometimes their noise and the barking of their dogs wake us up. The noise usually starts at 1:00 A.M. and continues until morning ...

Some of the soldiers assault us... Last winter, a soldier on the roof broke out in hysterical laughter and threw sand and stones at me while I was standing outside the house. He

¹¹⁷ The testimony was given to Musa Abu Hashhash on 28 January 2007.

spoke to me in Hebrew and said things I didn't understand. My husband understands Hebrew very well, and he said that the soldier swore at me.¹¹⁸

A soldier who served in Hebron during the second intifada told *Breaking the Silence*:

We seized a house. You know the procedure: the family moves down a floor... We installed a pipe for when we peed. This was on the third floor. To pee outside... We installed the pipe in a way that the urine flowed into the yard of the house. There were chicken coops below, and everything landed there. That was the daily joke. Waiting for the father or one of the children to go to the coops, and everyone standing there and pissing down... or... one guy loved brushing his teeth... and he waited for somebody to appear below, and then he would spit into the yard... Yes, this was just some of the possibilities you had. Nobody prevented you from doing it. As a rule, the commanders in the field didn't stop you, unfortunately, because most of them were like the others, and were not exceptions to the rule... There was nobody to judge you for what you did.¹¹⁹

Searches, delays, and harassment

Searches of houses and shops, detaining of passersby to inspect their identity cards, and various kinds of harassment by soldiers and police are also part of the intolerable living conditions of Palestinians living under army control in the City Center. While in some cases a house search or check of an identity card is justifiable for security reasons, in other cases the actions are clearly improper and unreasonable.

Searches

A house search, even if carried out lawfully and in accord with all the proper rules, severely infringes the privacy and dignity of the occupants. In Hebron, offensive house searches have become routine, especially for Palestinians who live near the Jewish settlements.

It appears that in these areas, almost every house has been combed, most more than once. In the City Center, pinpoint searches are conducted where security forces have a concrete suspicion, extensive searches are conducted for mapping purposes, and routine searches take place in locations that have been decided arbitrarily, for the purpose of "establishing the presence" of security forces. The searches are usually conducted by the army, and sometimes by the Border Police.

Raga Khatib, from Tel Rumeida, a segment of whose testimony was quoted above, stated:

¹¹⁸ The testimony was given to Musa Abu Hashhash on 29 December 2006.

¹¹⁹ *Breaking the Silence* provided the testimony to B'Tselem and the Association for Civil Rights without mention of the witness's particulars.

Last year, almost no week passed without the soldiers coming into our house. Each time, they ordered us to leave the rooms. They searched all the rooms and made a mess of everything. This month, they invaded our house twice.

A soldier who served in Hebron during the second intifada, stated:

One of the functions of this patrol is to manifest a presence, so when the Palestinians wake up in the morning, they hear from the neighbors that we entered this house and that house, and so they get the impression that the army is present in every place at all times.

You have eight hours to burn, so you make coffee, but that still leaves four hours to burn, so you go into two houses and burn two hours, do a circuit, and burn another two hours. In houses close to the settlements, we make fixed visits. In houses further away, we make random checks. The soldiers patrol, they want to move about, so they say, lets go into this house, do a search and rest a bit.

There are also searches we initiate randomly. In those cases, we really turn the house upside down. The company commander opens a map, chooses this and that house. He only makes sure the house doesn't belong to a collaborator or whatever.¹²⁰

Another soldier who served in Hebron said in his testimony: "Whether night or day, any time I felt like it, we chose a house on the map, based on our geographical location. Make sense to us? Do we want to? OK, we enter."¹²¹ Another soldier related that, "Daily, a team of six soldiers go along the roofs and enter the house, search the entranceways, the exits, put the whole family into one room..."¹²²

A sergeant who served in the city in 2006-2007 stated in his testimony:

The company commander's primary emphasis is on always carrying out [searches] at night, when the family is at home... We went to some house, me and another Shati squad commander, knocked on the door a few times, waking up the whole house. Now I say to my company commander, "Why at two in the morning?" "Because everyone is there." Then we call to the whole family, comb some small room, put them all inside, go to the house, and essentially turn the whole house upside down. Then we comb the whole house, you now, you lift up furniture, move things, look inside the vase, and continue in that way... This is the worst thing in the world, this waking up your whole family.¹²³

¹²⁰ The testimony was given to Ofir Feuerstein on 8 March 2007.

¹²¹ Breaking the Silence, Testimonies from Hebron, 18.

¹²² Breaking the Silence, Testimonies from Hebron, 17.

¹²³ Breaking the Silence provided the testimony to B'Tselem and the Association for Civil Rights without mention of the witness's particulars.

Search operations aimed at mapping the neighborhoods repeatedly take place in the same areas. The sergeant related to this fact later in his testimony.

I have no idea who thought about these things. Until now, in all the years of Hebron, nobody preserved the mapping pages. Each time a company arrived, combed a thousand houses, threw out all the [pages] that were classified material to be destroyed.

The frequent invasions of the homes to search them, or on the pretext of a need to search them, severely harm the routine and privacy of Palestinians in the City Center. The soldiers surprise the occupants at various hours, day and night, destroy their daily routine, invade their privacy, and comb their private cabinets and personal belongings. More than once, incidental to a search of an apartment or shop, soldiers have damaged items, and there have been claims of looting of valuable personal property during search operations of this kind.

Hamza al-J'abri, a resident of the Old City, told about a search soldiers conducted in his house on 14 October 2006:

We were sitting in the guest room, getting ready to leave the house. Suddenly, a group of eight soldiers come into the house. They forced the whole family – my mother, my father, my sisters, and my brother Osama, 15 – into the guest room. The soldiers collected the males' ID cards. Two of the soldiers came into the guest room and started to search, helped by my mother.

One of the soldiers ordered me to leave the room. He asked me how to get to the roof, and I explained that there was no way to the roof from here, only from outside. The soldiers searched computers, diskettes, and my work equipment... Two soldiers took me into the bedroom and asked me to help them search the room...

I remained with two other soldiers, who asked me if I was a member of Hamas. When I said I wasn't, one of them threatened to kill me, cocked his weapon, aimed his rifle at my temple, and swore at me. Two soldiers who were also there beat me and swore at me.¹²⁴

Soldiers confirm that acts of humiliation and property damage occur during searches of homes. A soldier who served in Hebron in the second intifada told *Breaking the Silence*: "The sergeant and some other soldier decided that, before leaving, they would leave behind a memento. They destroyed the video and something else I don't recall."¹²⁵ Another soldier related:

¹²⁴ The testimony was given to Musa Abu Hashhash on 17 October 2006.

¹²⁵ *Breaking the Silence* provided the testimony to B'Tselem and the Association for Civil Rights without mention of the witness's particulars.

We are sitting, resting, in one of the Arab houses. Sitting on the sofa. Sitting opposite us is an old woman, very old, close to eighty or ninety years old... and two soldiers were sitting next to me... We were playing a game... I don't recall, rolling up pieces of paper that were there and throwing them at her... at the old lady.¹²⁶

Delay and harassment

Because the settlement points are located in the heart of the city, dozens of checkpoints and permanent positions have been set up in the City Center. Security forces also conduct frequent patrols in the area. Palestinian residents living there, or Palestinians who need to go there, must pass through checkpoints and by the army's positions. When they do, they are subject to physical checks and delays "for an identity-card check." Every Palestinian passerby, at any time of day, is liable to be detained, depending on the whim of the soldiers. The length of the delay varies from five minutes to a few hours or more.

These delays are clearly not justifiable on security grounds nor permitted by law. In most cases, the Palestinians detained are not suspected of committing any offense or of constituting a threat to the wellbeing or safety of another person. In some cases, Palestinian passersby are detained as a game soldiers play for an hour or more in nasty weather. In other cases, the soldiers are ordered to detain Palestinians crossing a certain point, even though the army knows that they can get to their destination without being delayed by means of an alternate route.

A staff sergeant who was stationed in Hebron told Breaking the Silence about one mode of operation adopted by soldiers in Hebron.

The officer and soldier get out. The driver stays in the jeep. They randomly collect twenty Palestinian males, stand them in a line in the middle of the street under the sun and do not allow them to move for an hour or so. When I went over to the officer to learn the explanation for this, he responded, "For the fun of it, you know." When they released them, they gave them a few sharp blows.¹²⁷

Another soldier, who served in the city during the second intifada, stated:

My company commander set a quota of twenty ID cards we had to check while standing guard... At some stage, the company got real excited about this and a competition began to check more and more ID cards...

¹²⁶ Breaking the Silence provided the testimony to B'Tselem and the Association for Civil Rights without mention of the witness's particulars.

¹²⁷ Breaking the Silence, Compilation of Testimonies No. 1, 5.

In one instance, one commander and a soldier decided to work at it and grab a lot, to break the quota... They took three guys from the two Shalala areas, brought them, put them on the side, and in the meantime checked the details on their cards by radio communication. Meanwhile, they grabbed three more guys... The number rose to seven, eight, nine persons who were standing there in a meter or two of space, standing and waiting for their cards to be checked by radio communication...

From an operations perspective, this is stupid... I realized how inhumane this is. How it is simply evil to do this to people. To take them and stick them next to each other, make them stand there for twenty minutes. And all this for no security reason whatsoever, but because the soldiers got some inertia and found a way to pass the time while on guard duty.¹²⁸

Ziad a-Saleymeh, who is unemployed, lives near the Tomb of the Patriarchs. He stated:

The suffering starts at the moment I leave the house. The Border Police have a post next to my house... The check can last a few minutes or more than an hour. They check us even though they see us every day. I think it is harassment and not for security purposes.¹²⁹

A soldier told about a case in which soldiers encountered a convoy of Palestinian vehicles decorated for a wedding:

Somehow, [the company commander] sees the wedding convoy... With the feeling, let's go, we can strike a blow just like that... we stop the car, remove the people, Palestinians, who are dressed in fancy clothes. You see the groom, you see the bride. The father. Their faces as they get out, the dread that the happiest day in their life might be lost... He [the company commander] doesn't let them continue on. He wants to dismantle everything, so they return home. He takes the keys to the car... Their pleas, the bride's wailing, the groom's father, they are all pleading... And on the other side I can see the company commander, how he looks at them and doesn't view them as humans. That is the way it was... You see them all dressed, the children, everything, a whole family watching this show of an IDF officer taking their car keys and wearing them down and canceling the [wedding]. For me it was seeing essentially... how the IDF views the Palestinian population.¹³⁰

¹²⁸ Breaking the Silence, Testimonies from Hebron, 10.

¹²⁹ The testimony was given to Musa Abu Hashhash on 31 January 2007.

¹³⁰ Breaking the Silence, Testimonies from Hebron, 32.

Soldiers conducting a body search of Palestinian pedestrians in the center of Hebron. [Photo: Gil Cohen Magen, Reuters]

Nidal 'Ashur, a blind resident of Abu Sneineh, related an incident that occurred in November 2006:

Border policemen stopped me at the al-Haram [Tomb of the Patriarchs] checkpoint. They know I am blind, I pass there every day. Anyway, one of them told me to give him my identity card and to stand along the wall. After a half an hour passed, I asked the policeman for my card. He said I had to wait longer. I waited ten minutes and asked again for my card. Again, he told me to wait. I lit a cigarette and he told me to put it out. My cell phone rang, and he told me not to answer it. An hour and a quarter passed like that. Every time I asked for my card, the soldier told me to wait.¹³¹

Victims of this phenomenon are random Palestinians, of all ages, walking along their city streets, on their way to school, to a shop, to visit a relative, to see the doctor, to go home, or some other reason. At any moment, they might be called by a soldier and detained for as long as the soldier likes, or at best, until he receives the "OK" by radio communication.

This arbitrary and frequent detaining and harassing of Palestinians also contribute to Palestinians leaving the City Center.

¹³¹ The testimony was given to Musa Abu Hashhash on 11 February 2007.

Chapter Six

Israel's Policy from the Legal Perspective

Israel's "separation" policy in the center of Hebron has over the years extensively violated the human rights of tens of thousands of Palestinians in almost every aspect of their lives. The obligation to protect these rights is enshrined in international humanitarian law,¹³² in international human rights law,¹³³ and in Israeli administrative and constitutional law. These three sources of law are binding on Israel as the occupier in the West Bank.¹³⁴

International humanitarian law, which deals with occupied territory, revolves around two main pivots: one – ensuring the legitimate security interests of the occupying power in the

¹³² International humanitarian law is comprised of the Regulations Attached to Hague Convention IV Respecting the Laws and Customs of War on Land, of 1907, and the Fourth Geneva Convention Relative to Civilians in Time of War, of 1949. For a discussion on the applicability of the Hague Regulations, see HCJ 606/78, *Ayub v. Minister of Defense, Piskei Din* 33 (2) 113. The State of Israel has agreed to comply with the humanitarian sections of the Fourth Geneva Convention. The question of the applicability of the Fourth Geneva Convention in its entirety has not been decided by the Supreme Court. See HCJ 7957/04, *Maar'abe et al. v. Prime Minister of Israel et al.* (not yet reported), Judgment, given in 2005, Par. 14. On the applicability of these conventions in the Occupied Territories, see the advisory opinion of the International Court of Justice, in The Hague, *Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, 43 ILM 1009 (2004) (hereafter: ICJ Advisory Opinion), Pars. 89-101.

¹³³ International human rights law is comprised primarily of three instruments, the International Covenant on Civil and Political Rights, of 1966, the International Covenant on Economic, Social and Cultural Rights, also of 1966, and the Convention of the Rights of the Child, of 1989. Israel ratified all three instruments in 1991. The ICJ's Advisory Opinion states that these instruments are a supplemental legal source governing Israel's actions in the Occupied Territories. The High Court of Justice has made a similar determination. See HCJ 769/02, *Public Committee against Torture in Israel v. Government of Israel* (not yet reported), Judgment, given in 2005, Par. 18.

¹³⁴ With the changes that have taken place in the occupied territory since they were first occupied, including the agreements signed by the PLO and Israel, have not altered the status of the areas as occupied territory or Israel's status as occupier of these areas. See ICJ Advisory Opinion. This is also the position the High Court has taken in a long list of cases. See, for example, HCJ 7015/02, *Ajuri et al. v. Commander of Military Forces in the West Bank et al.*, *Piskei Din* 56 (6) 352; HCJ 2056/04, *Beit Sourik Village Council v. Government of Israel et al.* (not yet reported); *Mara'abe*.

occupied territory; and two – ensuring the needs of the civilian population in the occupied territory.¹³⁵ Article 27 of the Fourth Geneva Convention, which is a fundamental provision of international humanitarian law, expresses this balance:

Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all time be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity....

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

The obligation to respect and protect the human rights of the population, first and foremost their right to life, liberty, personal safety, and freedom of movement, as well as other rights, are also enshrined in international human rights law, which also applies to Israel's actions in the Occupied Territories and is binding on Israel.

The obligation to respect and protect the human rights of Palestinians also appears in Israeli administrative and constitutional law.¹³⁶ This law enshrines, among other obligations, the duty of the authority to act only in accordance with lawful authority, the prohibition on infringing rights without being expressly allowed to do so, the duty to provide the right to be heard, the duty to act reasonably, and the principle of proportionality, which specifies that the decision of an administrative body is lawful only if the means used to achieve the objective are proportionate.¹³⁷

The sweeping restrictions on Palestinian movement in the center of Hebron, the prohibition on opening shops in large sections of this area, the arbitrary searches and seizures of houses

¹³⁵ HCJ 392/82, *Jam'iyat Iskan al-Mu'aliman al-Mahddudat al-Mas'uliyah v. Commander of IDF Forces in Judea and Samaria et al.* Piskei Din 37 (4) 785, 793-794.

¹³⁶ *Iskan*, 792-793; HCJ 69/81, *Abu 'Ita v. Commander for the West Bank*, Piskei Din 37 (2) 197, 231; HCJ 581/88, *Taha, a Minor v. Minister of Defense*, Piskei Din 45 (2) 45, 52; *Ajuri*, 382; HCJ 10356/02, *Yoav Hass v. Commander of Military Forces in the West Bank*, Piskei Din 58 (3) 443; HCJ 7862/04, *Abu Daher v. Commander of Military Forces in the West Bank*, Piskei Din 59 (5) 368.

¹³⁷ In *Beit Sourik*, the High Court specified three sub-tests in determining if an action is proportionate: one, is there a rational connection between the objective and the means; two, is it possible to obtain the objective in a way that causes lesser injury; and three, is the damage caused to the individual by the means used to achieve the authority's objectives in proper proportion to the gain brought about by that means.

there violate the residents' freedom of movement,¹³⁸ the right of property,¹³⁹ the right to gain a living by work they choose,¹⁴⁰ the right to an adequate standard of living, including the right to adequate housing,¹⁴¹ the right to the highest attainable standard of health,¹⁴² the right to education,¹⁴³ the right to family life,¹⁴⁴ and the right to privacy.¹⁴⁵

The ongoing and knowing failure of Israel to enforce the law on the delinquent Israelis, settlers, and security forces, and to protect the Palestinian residents from them, at times protects the lawbreakers in their abuse and harassment. This being the case, Israel breaches its fundamental obligation to ensure safety and public order, as well as its duty to protect the rights of the Palestinian residents to bodily integrity and personal safety, which similarly are deeply enshrined in international law and Israeli law.¹⁴⁶

The conditions that Israel forces on Palestinians in the City Center cumulatively amount to "cruel, inhuman or degrading treatment."¹⁴⁷

Prohibition on settlement of occupied territory

As shown above, the grave infringements of the human rights of the Palestinian residents of the City Center are the result – directly or indirectly – of the settlers' presence in the city.

¹³⁸ Universal Declaration of Human Rights, of 1948, Article 13; International Covenant on Civil and Political Rights, Article 12.

¹³⁹ Universal Declaration on Human Rights, Article 17; Hague Regulations, Article 46.

¹⁴⁰ International Covenant on Economic, Social and Cultural Rights, Article 6.

¹⁴¹ Ibid., Article 11; Convention on the Rights of the Child, Article 27.

¹⁴² International Covenant on Economic, Social and Cultural Rights, Article 12; Convention on the Rights of the Child, Article 24.

¹⁴³ International Covenant on Economic, Social and Cultural Rights, Article 13; Convention on the Rights of the Child, Article 28; Fourth Geneva Convention, Article 50.

¹⁴⁴ Fourth Geneva Convention, Article 27; Hague Regulations, Article 46; International Covenant on Civil and Political Rights, Articles 17 and 23; International Covenant on Economic, Social and Cultural Rights, Article 10;

¹⁴⁵ International Covenant on Civil and Political Rights, Article 17; Convention on the Rights of the Child, Article 16.

¹⁴⁶ Fourth Geneva Convention, Article 27; Hague Regulations, Article 43.

¹⁴⁷ International Covenant on Civil and Political Rights, Article 7.

Article 49 of the Fourth Geneva Convention states that, "The Occupying Power shall not deport or transfer parts of its own civilian population in the territory it occupies." This provision not only prohibits the deportation or transfer of a population by means of coercion, as occurred during the Second World War, but also the use of any means by the occupying power whose purpose is to organize or encourage the transfer of parts of its population to the occupied territory.¹⁴⁸ This prohibition applies so long as the territory is under the military occupation of another state. This provision expresses one of the fundamental principles of international law – the elimination and prevention of colonialism.¹⁴⁹

It is true that the settlement in Hebron was not initiated by individuals, nor by the government of Israel, but the development and expansion of the Israeli settlement in the city was carried out over the years with the approval, cooperation, support, and even encouragement of the various Israeli governments, and with the approval of other governmental authorities.¹⁵⁰

Obligation to ensure the needs and way of life of the local population

The military commander has the fundamental obligation to ensure the needs of the civilian population in the occupied territory.¹⁵¹

As we have seen, the fixed pattern of Israel's activity places the entire burden on continuing the Israeli settlement in the city on the shoulders of the local Palestinian population. This activity breaches Israel's obligations under international humanitarian law and exceeds the authority given by international humanitarian law to the military commander.

International humanitarian law, as mentioned above, recognizes the legitimate interests of the occupying power in the occupied territory, and toward this end grants special powers that allow grave harm to the local population and violation of its fundamental rights, provided that the act is required to meet security needs or to serve an imperative military purpose.

¹⁴⁸ ICJ Advisory Opinion, Par. 120. For an extensive legal analysis on the illegality of the settlements in the West Bank, see B'Tselem, *Land Grab: Israel's Settlement Policy in the West Bank* (May, 2002), Chapter 2.

¹⁴⁹ Jean Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), 283.

¹⁵⁰ Petitions filed by Palestinian residents of the city against the expansion of the settlements in the city were denied: *a-Natshe* (expansion of the Beit Hadassah settlement), HCJ 3352/01, *Zakaria al-Bakri v. Civil Administration* (unreported) (expansion of the Tel Rumeida settlement), HCJ 6442/01, *Zakaria al-Bakri v. Civil Administration for Judea and Samaria* (unreported).

¹⁵¹ Hague Regulations, Section 43.

However, these special powers do not include protection of the settlements. The absolute prohibition set forth in international humanitarian law supports this contention. Placing the burden of defending the security of the settler on the Palestinians therefore breaches the balance between the rights of the protected residents and the security powers of the military commander as specified in humanitarian law.

The High Court has ruled that Israel may infringe the human rights of protected residents to enable various actions of settlers in the occupied territory, and even destroy private Palestinian property.¹⁵² However, the High Court's decisions directly conflict with international humanitarian law, as described above.

Regardless of the question of the legality of the presence of Israeli settlers in the area, and so long as they remain in his area of responsibility, the military commander must protect their lives and ensure their safety. There is no dispute on this point. However, this objective and the actions routinely carried out to achieve it cannot lawfully be done in a way that the local population "pays the price" to enable the continuation of the settlement. Clearly, the actions cannot lawfully include the extreme measures currently taken against Palestinians in the City Center, nor the damage to the Palestinian fabric of life there. Israel has the duty to provide reasonable security to Israelis living in Hebron, while preserving the Palestinian fabric of life.

Guise of security

Many of the prohibitions imposed by the security forces on Palestinians in the City Center, and restricting free movement in the area to Israelis, cannot be explained on security grounds. We have seen that the source of the prohibitions on Palestinian movement in the City Center is a result of the army's surrender to the settlers' demands. By yielding to these demands, the authorities are doing more than protecting the residents of the settlements in the city: they are supporting the aspiration of many settlers "to Judaize" the area, and expand the settlement and Jewish control in the city, by creating territorial contiguity between the Kiryat Arba settlement and the Tel Rumeida settlement in the heart of the city.

The Israel authorities have acted unlawfully, therefore, by taking into account extraneous considerations and giving the stamp of legality to breaches of the law.

Furthermore, last year, external security experts and members of the Council for Peace and Safety proposed alternative ways to protect the settlers in the City Center that would harm the Palestinian residents to a much lesser extent. Under one of these proposals, which was submitted to the attorney general and the defense minister, the houses in the settlement would

¹⁵² See, for example, the court's decisions in *Hass* and *Mara'abe*.

have reinforced protection, security forces and lookouts would be increased, and the settlers would use vehicles with protective equipment.¹⁵³ The army rejected the proposal.¹⁵⁴ Inasmuch as there are proposals for protecting Hebron's settlers in a way that causes lesser harm to Palestinians, the sweeping infringement of the human rights of Palestinians is disproportionate and, therefore, illegal.

Obligation to treat persons equally and the prohibition on discrimination

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, of 1965, which Israel signed in 1966 and ratified in 1979, defines "racial discrimination" as follows:

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

All the actions discussed in this report, which gravely infringe fundamental rights, are based on discrimination based on national origin. The actions are not carried out by individuals, but are part of the State of Israel's policy of deliberate separation and discrimination. The actions of the military commander in Hebron are directed against every Palestinian citizen, and not only against those who are deemed a threat. The distinction, therefore, is grounded on their national-ethnic origin. A policy based on discrimination of this kind is absolutely forbidden and is denounced by the world as racist.¹⁵⁵

Israel has frequently argued that restrictions on Palestinian movement in the West Bank are not forbidden discrimination because the prohibition does not apply to the distinction between its citizens and persons who are not its citizens. The UN committee responsible for implementation of the International Convention on the Elimination of All Forms of Racial Discrimination responded to this argument:

The Committee is concerned at the State party's assertion that it can legitimately distinguish between Israelis and Palestinians in the Occupied Palestinian Territories on the basis of citizenship. It reiterates that the Israeli settlements are illegal under international law.

¹⁵³ The proposal was attached to a letter of 27 August 2006 from the Association for Civil Rights.

¹⁵⁴ Letter of 31 January 2007 from Harel Weinberg to Shai Nitzan, *supra*.

¹⁵⁵ See articles 1,2, 3, and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

The Committee recommends that the State party review its approach and interpret its obligations under the Convention in good faith in accordance with the ordinary meaning to be given to its terms in their context, and in the light of its object and purpose. The Committee also recommends that the State party ensures that Palestinians enjoy full rights under the Convention without discrimination based on citizenship and national origin.¹⁵⁶

Given that guests of the settlement in Hebron, some of whom are Jews but are not Israeli nationals, receive the same treatment as the settlers do clearly indicates that nationality is not the governing factor, and that the discrimination is based on national-ethnic origin.

An especially grievous breach of the convention is found in the official practice of separation based on national origin. As the aforesaid UN committee stated:

The State party should review these measures to ensure that restrictions on freedom of movement are not systematic but only of temporary and exceptional nature, are not applied in a discriminatory manner, and do not lead to segregation of communities. The State party should ensure that Palestinians enjoy their human rights, in particular their rights to freedom of movement, family life, work, education and health.¹⁵⁷

Therefore, Israel's refusal to cease this practice is liable to result also in breach of Article 3 of the convention, which particularly condemns racial segregation.

Prohibition on collective punishment

"The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers; every man shall be put to death for his own sin." (Deuteronomy, 24:16)

The prohibition on collective punishment is a fundamental principle in Israeli law and in international humanitarian law. Article 33 of the Fourth Geneva Convention states:

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

The sweeping means taken during the second intifada against all Palestinian residents in the City Center – such as the prolonged curfew, the prohibition on Palestinian movement along the streets, forbidding businesses to open – breach the prohibition on collective punishment.

¹⁵⁶ Committee on the Elimination of Racial Discrimination, *Concluding Observations, Israel*, Consideration of reports submitted by states parties (seventieth session, 2007), Article 32.

¹⁵⁷ *Ibid.*

Israel's official position is that the means are not collective punishment but are security measures to protect the settlers living in the city. As we showed above, the military commander uses the aforesaid means extensively against the entire Palestinian population in the city, for extremely long periods of time, when he has available alternatives that would protect the settlers. Also, it is clear that some of the means used are not necessary for security purposes. Therefore, whether the objective is collective punishment or deterrence, the acts constitute collective punishment.

Prohibition on forced transfer

As we have seen, Israel's declared policy, its actions in separating Israelis and Palestinians in the City Center, and the acts and omissions of its security forces in the city have brought about a "quiet transfer" of thousands of Palestinians from the City Center. The authorities surely should have anticipated this result. In several neighborhoods near the settlement points, the security forces also directly prevent Palestinian families from returning to their homes.

Article 49 of the Fourth Geneva Convention states, in part:

Individual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Given that this prohibition applies also to transfer within the occupied territory,¹⁵⁸ and inasmuch as international law specifies that forced transfer also includes indirect and hidden coercion,¹⁵⁹ the provision applies also to driving the Palestinian residents out of the center of Hebron.¹⁶⁰ Articles 146-147 of the Fourth Geneva Convention classify the unlawful transfer of a protected person as a grave breach of the convention, a war crime, for which the persons responsible bear personal responsibility.¹⁶¹

¹⁵⁸ See D. Fleck, *Handbook of Humanitarian Law in Armed Conflict* (Oxford: Oxford University Press, 1999), 233.

¹⁵⁹ *The Prosecutor v. Naletilic & Martinovic*, Case No. IT-9834-T (ICTY), 17 October 2003, Sections 125-128.

¹⁶⁰ Article 49 specifies a narrow exception that allows evacuation if the security of the population or imperative military reasons so demand. In our case, it is clear that neither of these exceptions apply, nor has Israel ever contended they do.

¹⁶¹ The prohibition on forced transfer and the prohibition on settling a population of the occupying state in the occupied territory are crimes within the jurisdiction of the International Criminal Court. See the Rome Statute, of 1998, Article 8(2)(b)(viii).

Conclusions

The constant and grave harm to Palestinians living in the center of Hebron is one of most extreme manifestations of human rights violations committed by the State of Israel. Israel's policy of protecting the Hebron settlement and encouraging it is based on "separation" that includes physical and legal segregation between Palestinians and Israeli settlers based on national-ethnic origin.

This policy involves the use of harsh oppressive measures against the Palestinians in the city. Residents in the City Center are subjected to extremely severe restrictions on their movement, whether by car or on foot, are repeatedly assaulted by violent settlers who attack them and their property, and to the arbitrary treatment of soldiers and their commanders during searches of the homes, to delays, and harassment, even to violence committed by the security forces. As we have seen, these actions violate Israel's obligations under international human rights law, international humanitarian law, and Israeli administrative and constitutional law.

These measures have led over the years to the expulsion of thousands of Palestinian residents and merchants from the center of the city. The measures have sharply embittered the lives of these Palestinians, making it impossible for them to continue to live and work in the area, leaving them no option but to get up and leave. This expulsion is unique in magnitude since the occupation of the West Bank began in 1967, and is a grave breach of international humanitarian law. The "separation policy" constitutes, therefore, a policy of expulsion. This is the result that, as we have shown, the authorities had to expect.

The authorities' failure to protect Palestinians from settler violence also contributes to the harsh results of this policy, and, as the testimonies have shown, is a significant cause, whether deliberate or not, in Palestinians leaving the City Center.

The army acts in the same way throughout the West Bank, but in Hebron, the only Palestinian city in the West Bank containing Israeli settlement, this regime of separation-discrimination is implemented in a small area. As a result, the concentration, magnitude, and severity of human rights violations in the city are especially great.

It appears that the source of Israeli policy in the center of Hebron is the profound disregard for the rights of the Palestinian residents, the flagrant and biased preference for the interests of the settlers, and the fear of confronting the settlers and of enforcing the law on them. Without hesitation, the authorities have made the entire Palestinian population pay the price for protecting the Israeli settlement in the city.

Recommendations

The State of Israel must cease infringing the human rights of the Palestinian residents of Hebron and refrain from oppressing them.

The Israeli settlement points in Hebron were established in breach of Israel's obligations under international law, and continue to cause severe breaches of prohibitions specified in international law that are intended to protect the human rights persons under belligerent occupation.

As noted, Israel contends that it is impossible to ensure the safety of the settlers without separating Palestinians and Israelis in the city, and without infringing the basic rights of the local Palestinians, which resulted in Palestinians leaving the City Center.

Therefore, and even assuming that the government's claim that Israeli settlement in the West Bank does not breach its obligations under international law is correct, it was forbidden to enable the settlement in Hebron to continue, given the grave infringement of the human rights of Palestinians living in the city.

The State of Israel has the legal and moral obligation to evacuate the Israelis who settled in Hebron, and return them to Israel.

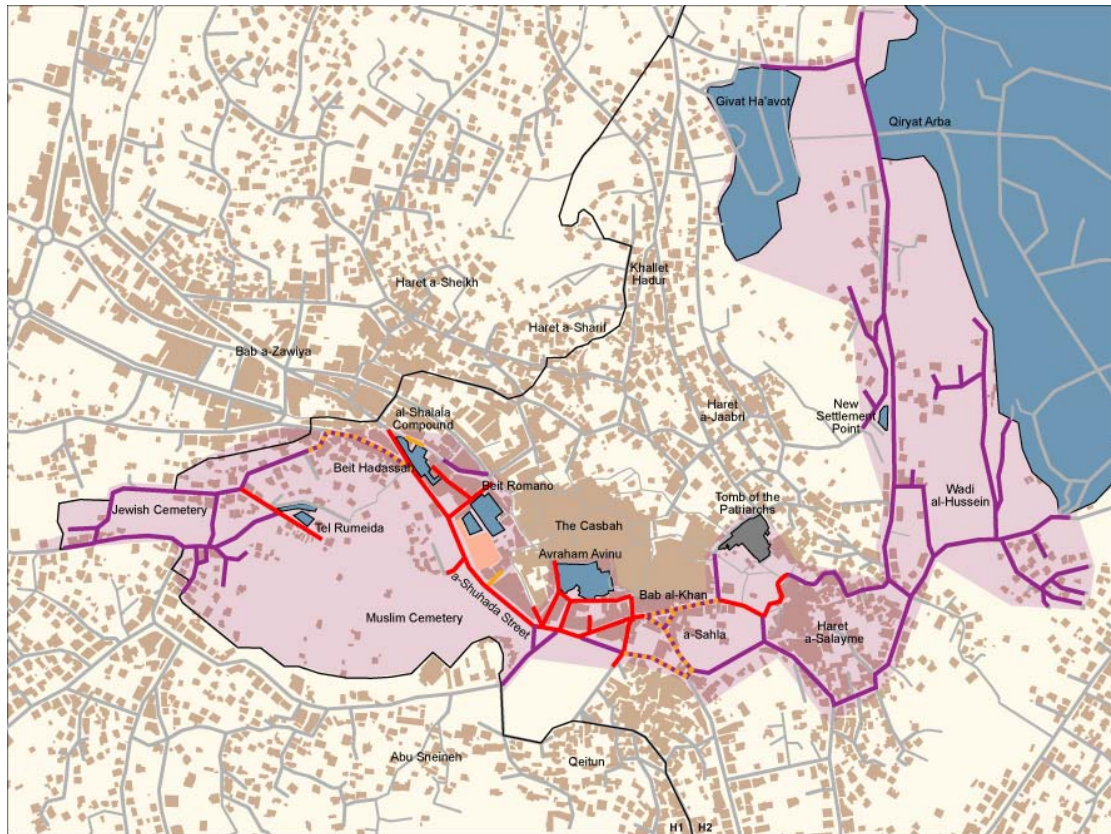
Until the settlers are removed, the Israeli authorities must ensure their safety in a way that enables the Palestinians to live a normal life and guarantees public order and safety, while minimizing the violation of the human rights of Palestinians.

In particular, the government of Israel must urgently take the following measures:

- allow Palestinians to move about in the City Center, and remove the physical obstructions separating the City Center from other parts of the city;
- allow and facilitate the return of Palestinians to their homes;
- rejuvenate the City Center as a commercial area, in part by enabling Palestinians to open shops and markets there;
- direct the security forces to vigorously enforce law and order on violent settlers, and toward this end, instruct all soldiers and police officers of their duty to stop and detain violent settlers committing an offense, ensure that the police properly investigate cases of violence and that the lawbreakers are brought to justice, and that the authorities take the steps necessary to cope with the problem of violence by minors under the age of criminal responsibility;

- direct the investigative authorities to investigate every case of violation of the law by security forces;
- direct the army and the police to prevent settlers from taking control of additional buildings and areas in the city.

Map of Hebron city center



Closed shops

Travel forbidden

Shops closed and travel forbidden

Completely closed (pedestrians, cars, shops)

Area closed to travel

Settlement

