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CRIMINAL NEGLIGENCE? SETTLER VIOLENCE AND STATE INACTION DURING THE AL-AQSA INTIFADA

A PHRMG Report
Volume 5, Issue # 2, March 2001

'The settlers of Yesha are facing a battle that was forced on them, and they are doing so calmly and bravely, and are setting an example. I salute them...'
- Israeli Minister of Defence, Benyamin Ben-Eliezer (Haaretz 13/03/2001)

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Introduction

Since the beginning of the Al-Aqsa intifada on 28/09/2000, the PHRMG has evidence that settlers have killed at least 7 Palestinians.¹ At least 39 Palestinians have been shot and injured by settlers. At least 11 have been beaten, there have been at least 48 reports of stoning attacks and another 48 attacks against property, especially the uprooting, or cutting down of olive trees. Although these figures are small in comparison with the number of Palestinians killed and wounded by the Israeli army during the uprising, they are nonetheless significant - settler violence remains a serious problem.

However, the focus of this report is not primarily on the phenomenon of settler violence, but on the inadequate response of the Israeli authorities to this phenomenon. What is most disturbing about settler violence is the impunity the settlers appear to enjoy. The Israeli government, through its law enforcement agencies - the army, the police and the judiciary - is failing to live up to its international obligations to protect the Palestinian civilian population against attacks, and is also failing to fulfil its duty to ensure that everyone is equal before the law.

Although settler violence is not new, it has increased during the Al-Aqsa intifada. The settlers have reacted to what they see as inaction and restraint on the part of the army, by taking their own steps to crush the uprising and to increase their own 'security'.

This report does not make judgements about who is innocent and who is guilty in individual cases. That is a question for the courts (Palestinian and Israeli). However, it does hope to raise some uncomfortable questions about the way that Israel is performing its duties to administer justice and protect Palestinian civilians in the Occupied Territories.

The structure of the report is as follows: Chapter [1](#) examines the demographic characteristics of the settlers and provides a brief history and analysis of the settlement movement and its links to extremism and violence. Chapter [2](#) describes the local and international legal context and analyses the legal apartheid in the Occupied Territories that applies different laws to people living on the same land. Chapter [3](#) scrutinises the performance of the Israeli law enforcement agencies - the army, the police and the judiciary, concentrating on the period since the beginning of the Al-Aqsa intifada. Chapter [4](#) presents a selection of testimonies gathered by the PHRMG of Palestinian victims of settler violence, together with an analysis of the violence. Chapter [5](#) puts forward the conclusions drawn by the PHRMG together with some recommendations of what can be done to improve the protection of Palestinian human rights against settler violence.

The PHRMG wishes to thank all the different organisations who contributed to this report, and especially: The Applied Research Institute of Jerusalem (ARIJ), Al Mawasi Charitable Organisation, B'Tselem, the Christian Peacemaker Team in Hebron and Rabbis for Human Rights (RHR).

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I. Chapter 1: Settlers, Settlements and Violence

A. Who Are The Settlers?

It is important to differentiate between different kinds of settlers, between the settlers and the settlement movement, and between the individuals and groups prone to violent, vigilante action within the settlement movement and the non-violent majority. According to Peace Now, there are about 199,000 Israeli settlers living in approximately 145 settlements in the West Bank and Gaza Strip. Another 200,000 settlers live in occupied East Jerusalem. Approximately half of the settlers live in 9 large, urban settlements like Ma'ale Adumim, Givat Ze'ev and Ariel. But the majority of settlements are relatively small, with fewer than 1,000 inhabitants.²

The settlers are not a homogenous group. Contrary to the common stereotypes, the majority of them are not religious or nationalist fanatics, but social and economic migrants who moved into the settlements because of the financial incentives offered by the Israeli government, or to live among friends and family. In a poll of West Bank settlers (not including East Jerusalem) conducted for Khalil Shikaki's Center for Palestine Research and Studies (CPRS) in 1997, 42% of settlers surveyed said their motivation was primarily economic, while only 27% said it was religious/ideological.³ Had the poll included settlers in East Jerusalem (Gilo, Psagot, East Talpiot) the number of 'quality of life' settlers would presumably be higher. Another 24% were either born in the settlements or moved there to be with family and friends. Because around 86% of the settlements are designated areas of highest national priority, settlers get a 7% income tax break, housing grants, subsidized mortgages, free schooling from age 3, free school busing, and grants for businesses in industry, agriculture and tourism.⁴ Thus the Israeli state has primary responsibility for the establishment of settlements in Occupied Palestinian Territories, in contravention of the Geneva Convention which explicitly prohibits the transfer of civilian population into occupied areas.⁵

In terms of the demographic characteristics of the settlers, the 1997 poll confirms the findings of a CPRS poll from 1995 that most settlers are well-educated - almost 25% have a university degree - and have an income above the Israeli average. About 44% of them define themselves as Orthodox or ultra-Orthodox, while 23% see themselves as "traditional" and 33% as secular. The proportion of settlers who define themselves as Orthodox or ultra-Orthodox is thus well above the national average of between 10 and 20%. About 50% of settlers work inside Israel and another 50% work in the West Bank. About 30% of all settlers also own houses inside Israel. Most settlers (72%) were born in Israel and the rest come from Asian-African countries (6%); the former Soviet Union (5%) and Europe, North America and Canada (10%).

In their political views, the settlers tend to be more right-wing than the rest of the Israeli population. Supporters of parties like Meretz and Labour are severely underrepresented. Settlers vote mainly for religious parties, especially the National Religious Party (NRP or *Mafdal* in Hebrew), and to some extent for the Likud (especially in direct elections for Prime Minister). About 30% of the West Bank settlers believed that a Palestinian state will be established in the next 5-10 years, while 32% believed that the peace process will fail and the Israeli army will reoccupy the West Bank. Regarding the peace process and its impact on relations with their Palestinian neighbors, 41% of the respondents (compared to 36% in 1995) expressed the view that it will worsen the relationship while 14% (compared to 16% in 1995)

expressed the views that it will improve the relationship.

The settlements enjoy significant support inside Israel (though some more than others), and have to a large extent managed to portray themselves as merely continuing the Zionist enterprise. However, left-wing Israeli grassroots groups like Peace Now, Gush Shalom etc. have consistently denounced the settlements as one of the major obstacles to peace and called for their dismantling. According to Professor Galia Golan of Peace Now 'There is no question that the expansion of settlement activity was one of the central elements in Israel's failure to create minimum credibility in the eyes of the Palestinians and, as such, a central reason for the grassroots frustration with the peace process that is fueling the current conflagration.'⁶

Moreover, a poll published in the Israeli newspaper Yediot Aharonot on December 8, 2000 showed that large numbers of Israelis have little or nothing to do with settlements, and often know very little about them. Six out of ten Israeli Jews have not visited a settlement (except for military service) during the last five years. Of those who did visit, one-half did as tourists, about a third went to visit relatives, and around one tenth did so for business. The majority of Israeli respondents did not personally know anyone living in West Bank or Gaza Strip settlements. This percentage increases among young people and among those over the age of 60. Only 16% of Israeli Jews have family members living in settlements. And a staggering 82% of those questioned did not know where the settlement of Kiryat Arba is located.

In 1979, the settlements were incorporated into the Israeli local government system of regional councils. The settlements are now organized into 15 Local Councils, 6 Regional Councils and two cities (Ariel and Ma'ale Adumim). In addition to these local governments, the settlers are also represented by a privately funded group called the Council of Yesha (acronym in Hebrew for Judea, Samaria and 'Aza: the Biblical names of the West Bank and Gaza). The Yesha Council, which fundraises, lobbies, meets with the press and writes newsletters on behalf of the settlements, is not an official government body. Its members are appointed, not elected. Nonetheless the Council of Yesha and the associated Committee of Rabbis of Yesha, see themselves as spokespersons for the settlers, and probably do reflect public opinion in the settlements to some extent. According to the Yesha Report (a bimonthly newsletter), the intifada is a war started by Arafat's 'murderous' security forces in order to destroy all of Israel and liberate all of Palestine 'from the river to the sea.' Furthermore, the settlements are the only thing defending Israelis in Israel from the terrible onslaught of 'Palestinian terrorists.'⁷

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B. Israeli Settlement Policy

Settlements began to be established by Israel in the Occupied Territories directly after the 1967 war. However, it was during Menachem Begin's right-wing, Likud government in 1977 that the settlement drive really took off. Between 1977 and 1979 the settler population more than doubled, from some 4,000 to around 10,000. The settlement policies of Likud and Labour governments have been importantly different. For Labour the Occupied Territories, except Jerusalem, were to be exchanged for peace in the future, for the Likud, they were integral parts of Israel which should never be relinquished. And for many right-wing politicians from Begin to Sharon, the settlements are the way to ensure that land is not returned to the Palestinians.

Nonetheless, governments from both sides have continued to encourage settlement, and allowed the setting up of new settlements seriously violating the Oslo Accords' provision that 'Neither side shall initiate or take any step that will change the status of the West Bank and Gaza Strip pending the outcome of the permanent status negotiations.'⁸ The Accords also state that the two parties consider the West Bank and Gaza Strip as a single territorial unit, 'the integrity and status of which will be preserved during the interim period.'⁹

Netanyahu (Prime Minister 1996-1999) designated the settlements 'areas of national priority', and began construction on Har Homa (Abu Gneim). Barak's government too continued to give high priority to the settlements, building more housing units even than Netanyahu, including starting a new settlement in Mitzpe Hagit. In Barak's proposed budget for 2001, the settlers were to receive approximately NIS 1,2 billion (more than 1% of Israel's GDP) in subsidies, public expenditure on transport and housing, and income tax breaks.¹⁰

The two main types of arguments used to justify Israeli settlements in the West Bank and Gaza Strip are that Jews have a historical/religious right to the land of Eretz Israel, and that settlements are necessary for Israel's security. Both of these arguments are weak crutches on which to base a contemporary occupation of the land and the subjugation of around 3 million Palestinians, but the arguments themselves will not be addressed here.

Another important motive, though seldom acknowledged, has always been to 'create facts on the ground' which will complicate or even make impossible the ceding of land for the creation of a contiguous Palestinian state and peace with the Palestinians. As a reflection of these motives, the three main areas of settlement are 1) along the Jordan River, serving as Israel's 'security border' and separating the West Bank from Jordan, 2) along the 1967 border, within commuting distance from cities like Jerusalem and Tel Aviv, and 3) around Jerusalem, separating it from the rest of the West Bank to ensure that Jerusalem remains Israel's 'eternal and undivided capital'.¹¹

In 1996, then Israeli Minister of Finance, Dan Meridor was quoted as saying '...[i]t is clear that if we are serious in our intention not to return to the 1967 lines, words alone will not suffice. Settlement is one of the things that determines the map of the country. Therefore, if we stop the settlement in one place or another it means that we have surrendered that place.'¹²

Equally revealing is a letter written by Ariel Sharon contained in a brochure for Netzarim settlement in Gaza: '...[s]trategically, massive Jewish settlement in the Netzarim area will dissect the Strip into two parts, and connect the Negev with the sea. Settling in Netzarim is today the key to and guarantee for our continuing hold on the entire Strip, and constitutes a vital obstacle to the autonomy plan.'¹³

The current coalition Likud-Labour government has pledged not to build new settlements, and on Labour's insistence agreed in principle that outlying settlements may be dismantled. However, with Sharon as prime minister, ways will no doubt be found around such agreements as they were under Netanyahu and Barak.

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C. The Settlement Movement and Jewish Fundamentalism

The settlement movement is not one unified movement, but rather a collection of groups and individuals more or less organized and more or less united in their belief that Jews have a right to the Occupied Territories, and that settlement activity is for the good of all of Israel and thus must be promoted. Gush Emunim ('Bloc of the Faithful') founded in 1973 and based on the teachings of Rabbi Zvi Yehuda Kook, has long represented the religious-nationalist core of the settler movement. It is the religious-nationalist, or religious-Zionist, settlers who are responsible for the vast majority of vigilante and punitive violence against Palestinians.

Leaders and rabbis from groups such as Gush Emunim, and the Council of Yesha proclaim that Eretz Israel was given to the Jewish people by God. 'Unto thy seed I give this land' God promises Abraham in the book of Genesis. Gush Emunim rabbis declare that settling in Judea and Samaria is a *mitzvah*, or good deed. According to Gush Emunim the conquest of these lands in the 1967 war demonstrated that the Messianic era had begun. They believe that the 're-settling' of Jews in and Samaria is part of a divine process that would inexorably lead to the End of Days, the coming of the Messiah and the redemption of mankind.¹⁴

Even a rabbi in a semi-official position, such as Rabbi Zalman Melamed, chairman of the Committee of Rabbis of Yesha, can state that 'No rabbinical authority disputes that it would be ideal if the land of Israel were inhabited only by Jews'. Rabbi Goren, former chief rabbi of Israel, has argued that Judaism prohibits 'granting any national rights to any group of foreigners in the land of Israel.'¹⁵ The Committee of Rabbis of Yesha issued an appeal one year before the Oslo agreements, stating '[i]t has already been ruled by our rabbi, Zvi Yehuda Kook of blessed memory, that any decision, Jewish or non-Jewish, to rob us of any part of our land can have no validity because the Will of God will prevail.' Any expectation of making peace with the 'terrorist' Palestinian leadership, referred to as 'animals in human shape' is 'a delusion inspired by Satan.'¹⁶

Settler groups have acted as lobbying, or interest groups pressuring the government to expand settlements, and build new ones. The right-wing political parties have always enjoyed a special relationship with the settler movement. The Likud government headed by Begin tacitly supported their setting up of settlement outposts which were subsequently recognized, legalized and expanded. Thus, Begin used Gush Emunim to create settlements in areas where he was not politically able to do so.

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D. Settlers, Extremism and Violence

The settlement movement in Israel, as opposed to the majority of individual settlers, has always been strongly linked to extreme ideological, national-religious goals and to the view that even illegal means are justified in achieving these goals. In the 1980's a group was formed by national-religious settlers which became known as the Jewish Underground (or *Makhteret* in Hebrew). In June 1980 the *Makhteret* placed bombs in the cars of three prominent Palestinian West Bank mayors. Two of the mayors were seriously maimed in the attacks, while one was warned and escaped unharmed.

The attacks were in 'revenge' for the killing of six yeshiva students in Hebron one month earlier. The *Makhteret* carried out several other attacks between 1980 and 1983, including placing booby-trapped fragmentation grenades on Hebron's football field and in a mosque injuring a dozen Palestinians - many of them children. In 1983,

the Hebron Islamic College was the target of a machinegun and grenade attack that killed three Arab students and wounded thirty-three others. In 1984 the *Makhteret* attempted to attach explosive charges to five Arab buses in East Jerusalem. However, this scheme was discovered by the Shin Bet who arrested some 30 settlers and dismantled the bombs. Twenty-five of those arrested were eventually convicted for the various attacks and for plotting to blow up the Haram al-Sharif (Dome of the Rock). However, even those given life sentences, were released by 1992 after having their sentences reduced by President Chaim Herzog.¹⁷

Shachak and Mezvinsky, argue that the violence by the religious-Zionist arm of the settlement movement relies on *Halachic* (Jewish religious law) rulings by right-wing rabbis that the holy need to keep Judea and Samaria Jewish justifies exceptional means, and that even the killing of non-Jews is a far less serious crime than the killing of Jews.¹⁸ Though such opinions are not shared by the majority of religious Jews in Israel, it is clear that acts of settler or religious-national violence against Palestinians occur in an atmosphere of permissibility and tacit endorsement, since at least within the national-religious communities such acts are almost never condemned or criticized.

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An Alternative Jewish View

- Rabbi Arik Asherman (Rabbis for Human Rights)

Judaism is an ancient and multilayered tradition. There are so many differing opinions reflected in our ancient texts that one should always be wary when somebody claims 'Judaism says.' For a variety of sociological and historical reasons, the religious community in Israel is increasingly socialized into a volatile mixture of nationalism and particularism. However, there is an equally authentic and textually based humanistic understanding of Judaism.

We learn two basic ideas in the very first chapters of the Bible. In Genesis 1:1 we read that God created heaven and earth. In other words, humanity is not the pinnacle of existence which can create its own humanity. There is something, call it God, truth, Justice or whatever, which is above us. Soon after we learn that all human beings are created in God's image. Our commentators learn from this that no human being can claim that s/he is better than any other on the basis of skin color, place of origin, etc. We are taught that, just as defacing the image of an earthly ruler is an attack against that ruler, harming another human being is attack against God.

Judaism is not a pacifist religion, but we do have a doctrine of minimum necessary force. We are taught that we can harm others to defend ourselves or an innocent third party, but that to kill, even to save life, when there was another option, is murder. One cannot justify the use of lethal force merely by saying that there was danger and one can not employ force as revenge or as a preventative measure when there is no immediate danger. Judaism teaches that one can defend one's self against one who is attacking you, but must not harm an innocent third party even to save one's self. From this reading of the Jewish tradition it is clearly unacceptable to impose collective punishment causing great suffering and sometimes death on a population which is not directly threatening us.

It is clear that it is a small number of people that are repeatedly involved in vigilantism and punitive attacks. The same individuals and the same settlements are

repeatedly involved in attacks on Palestinians. And they comprise a very small proportion of the almost 400,000 people that live in the settlements. Nonetheless, the wider population, especially in the settlement movement, is partly responsible for tolerating a culture of hatred and permitted private violence. While the incitement of Arafat and the PA is regularly excoriated, the pronouncements of certain settler rabbis, many of them state employees, and other e.g. Yesha officials are not subjected to similar scrutiny.

Rabbi Moshe Levinger, father of the settlement movement and founding member of Gush Emunim, is an example of the most extreme type of settler. He believes in the necessity of transforming Eretz Israel into a holy nation - one that would be ruled according to the *Halacha* and the Torah. He rejects any form of political compromise with the Palestinians and opposes the creation of a Palestinian state. Sharon has called Levinger and his wife 'heroes of our generation.' However, Levinger has been convicted twice of attacking Palestinians in Hebron. In one of the attacks, in 1988, he shot and killed Khaled Salah (42) and injured Ibrahim Bali, after some other Palestinian youths had thrown stones at his car. He was sentenced to 5 months in prison, but released after just 10 weeks. Rabbi Levinger, though now an old man, is still an active and revered leader of the settlers in Hebron.

Kach, founded by Rabbi Meir Kahane and outlawed in both the US and Israel for its racist views and support for terror, is one of the most extreme Jewish fundamentalist organisations. After Kahane's assassination in 1990, his son, Binyamin Kahane, established *Kahane Chai* ('Kahane lives') modeled on the same principles as the outlawed *Kach*. Kahane senior is infamous for pronouncements such as 'A good Arab is a dead Arab'. His son kept a lower profile, avoided scandal but carried on his father's work. Binyamin Kahane and his wife Talia were shot and killed on December 31, 2000 on a bypass road near the settlement of Ofra. Graffiti and stickers saying 'Kach', and 'Kahane was right' became widespread during the Al-Aqsa intifada, in most of the settlements as well as certain neighbourhoods in West Jerusalem.

Various Jewish terrorist/vigilante groups exist, e.g. TNT (Hebrew acronym for *Terror Neged Terror* - or Terror Against Terror) and Defending Shield (*Egrof Magen*). Such groups were responsible for a number of more or less organised attacks on Palestinians and their property in the 1980s. During the first intifada (1987-1992) there were many reports of Jewish vigilantism, including shootings, punitive raids on refugee camps, and assaults on Arab motorists in retaliation for rock-throwing attacks by Arab youths. However, most of these appeared to be spontaneous actions by settlers of individual communities.

On February 25, 1994, Baruch Goldstein, a resident of Kiryat Arba and a member of *Kach* massacred 29 Muslims at prayer in the Ibrahimi Mosque (Tomb of the Patriarchs) in Hebron before himself being killed.

More revealing than the attack itself was the reaction it elicited from nationalist-religious settlers. Goldstein's deed was given religious sanctification by settlement rabbis such as Dov Lior from Kiryat Arba 'Since Goldstein did what he did in God's own name, he is to be regarded as a righteous man.'¹⁹ Rabbi Levinger, when asked if he was not sorry about the incident, said 'I am sorry not only about dead Arabs but also about dead flies.'²⁰

Goldstein's funeral procession was attended by at least a thousand mourners. Rabbi Israel Ariel eulogized Goldstein as follows: 'The holy martyr, Baruch Goldstein, is from now on our intercessor in heaven. Goldstein did not act as an individual; he heard the cry of the land of Israel, which is being stolen from us day after day by the Muslims. He acted to relieve that cry of the land!...The Jews will inherit the land not

by any peace agreement but only by shedding blood.²¹ In 1995 the Kiryat Arba municipality received permission from the Civil Administration to build a shrine on Goldstein's tomb, which has since become a place of pilgrimage. Also that year a book was published, entitled Blessed the Male, where various authors (including Rabbi Ginsburgh, head of the Joseph's Tomb yeshiva) praised Goldstein and presented *Halachic* justifications of his act. At Goldstein's funeral, Rabbi Yaacov Perrin said 'One million Arabs are not worth a Jewish fingernail.'²² Most recently, during Purim celebrations in Hebron (11/03/20010) some settlers dressed their children up as Baruch Goldstein in homage.²³

Goldstein carried out his massacre with a weapon issued to him by the Israeli army. He was a doctor in the reserves. Settlers are in general allowed to do reserve military service (about 1 month a year) in or around their settlements. In some cases this gives extremist settlers opportunity and official protection to carry out violence against Palestinians.

On January 1, 1997 22-year-old Noam Friedman, an orthodox off-duty soldier and a settler, opened fire in a crowded market in Hebron, wounding eight Palestinians, two seriously. He later explained, 'I am not insane....I wanted to kill Arabs. Hebron is ours forever and I wanted to prevent redeployment from Hebron.'²⁴ In a CNN interview also on Israeli television he said he had no regrets about the attack and that it was for the good of Israel.²⁵

The violence of the national-religious right is not directed exclusively at Palestinians, although they are its main victims. Peace Now demonstrators and other 'leftists' in Israel have been attacked and in some cases killed because of their opposition to the settlements or their support for Palestinian rights. Yitzhak Rabin (Israeli Prime Minister 1992-1995) was assassinated by a national-religious settler for agreeing to surrender parts of 'Eretz Israel' (i.e. the Occupied Territories) in return for peace. One settler, in a conversation with PHRMG, said 'Our greatest enemy is not the Arabs, but the Israeli government.' The national-religious settlers are a minority that most of the time feels at odds with the Israeli state, and the majority of Israelis. In one of the few thorough academic studies made of the phenomenon of settler violence, David Weisburd notes that it is justified by reference to norms and values higher than those embodied in the laws of the (Israeli) state. The violence generally enjoys high levels of support in the communities and is intended either to deter Palestinian 'crimes', i.e. vigilantism, or taking the law into one's own hands, or as punishment for such 'crimes'.²⁶

Disturbingly, PHRMG has also received numerous reports and testimonies of extensive security co-operation between the volunteer teams of settler 'security co-ordinators' and the Israeli army. Israeli army radio, and three settlers have confirmed reports of patrols of private citizens on the roads around settlements. The purpose of these patrols is apparently to protect settlers traveling on the roads and to force the Israeli army to increase the number of their patrols. Such private security patrols require the knowledge and the at least tacit consent of the Israeli army. Private security patrols are a dangerous development because they are unconstrained by the structures of accountability of state law enforcement agencies. Do, for example, these private security patrols have open-fire regulations? If someone violates them, are there any disciplinary procedures? Furthermore, private security patrols undermine the crucial distinction between combatants and non-combatants, upon which international humanitarian law such as the Geneva Conventions are based. This issue will be further discussed in chapters 3 and 4.

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II. Chapter 2: The Law ²⁷

'There shall be one law for the citizen and the stranger who dwells among you.' (Exodus 13: 49)

1. The Legal Context

'In Judea, Samaria, and Gaza there are two legal systems and two types of people: there are Israeli citizens with full rights, and there are non-citizens, non-Israelis with non-rights.' MK Amnon Rubinstein²⁸

It is a cardinal duty of all governments to protect the populations under their jurisdiction and to maintain law and order. This principle is recognized and safeguarded in domestic legislation in most liberal democracies. The UN's Universal Declaration of Human Rights (UNUDHR) establishes equality before the law and the right to effective redress against crime as two of the most fundamental human rights in international law.

'All are equal before the law and are entitled without any discrimination to equal protection of the law.' Article 7, UNUDHR

'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.' Article 8, UNUDHR

In addition, the Geneva Conventions lay down that civilians 'shall be protected *especially against all acts of violence* or threats thereof and against insults...'²⁹ (emphasis added). In the Geneva Conventions it is envisaged that the Power which is in control of a certain territory, will also be responsible for upholding law and order there.

Since 1995 the responsibility for providing law and order in the West Bank and Gaza Strip is divided up between Israel and the PA. The Occupied Territories are divided up into areas A, B and C, with Israel having total security responsibility over area C, overall security responsibility for the protection of Israeli citizens and confronting the threat of terrorism in area B, and the PA having security responsibility over area A.³⁰

Thus, Palestinians committing crimes in areas A and B generally fall under the PA's criminal jurisdiction, are investigated by the Palestinian Police, and tried in Palestinian courts. However, Palestinians committing crimes in area C, as well as Israeli citizens committing crimes anywhere in the Occupied Territories, come under Israeli criminal jurisdiction.³¹ Since most Palestinian attacks against settlers occur in area C, both Palestinians who attack Israelis and Israelis who attack Palestinians are generally tried in Israeli courts. However, Palestinians are tried in military courts under military orders, while Israeli settlers are tried under Israeli civilian penal law in normal criminal courts. Thus, in effect two legal systems operate concurrently in the Occupied Territories - one for Palestinians and one for Israelis. In theory the Interim Agreement grants the fledgling Palestinian Authority the right to administer criminal justice over its 'citizens'. However, Israel's retention of jurisdiction over all 'security' offences committed in area C, means that the legal dualism of trying Israelis and Palestinians under different legal codes continues.

The existence of two different legal systems institutionalises and obscures the ethnic discrimination in judicial treatment between Palestinians and Israelis (effectively

Jewish Israelis). Furthermore, the Israeli legal and law enforcement establishment fails even to implement the existing laws in a non-discriminatory and effective way (see Chapter 3).

Palestinians living in the Occupied Territories are subject to two sets of penal codes. The pre-1967 local law (Jordanian, British and Ottoman in the West Bank, and Egyptian, British and Ottoman in the Gaza Strip) and Israeli military orders.³² The pre-1967 local law remains in force insofar as it has not been superceded by Israeli security legislation. Corresponding to these two penal codes, two Israeli court systems exist: local courts and military courts.

Israeli citizens are in theory subject to the same penal codes plus Israeli penal law. In practice, however, Israeli civilians are tried in Israel under Israeli penal law. The result is that Israeli settlers who commit crimes are granted the full range of judicial safeguards, rights and guarantees in Israeli law, while these are denied the Palestinian defendants residing on the same territory. Furthermore, the maximum sentences to which Israeli citizens are subject are less severe than those to which Palestinians are subject.³³

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B. Differences in Legal Rights of Palestinians and Israelis

1. Arrest

Palestinian suspects may be arrested by any soldier or policeman without taking into account the seriousness of the offence or the probability that the person arrested committed it. However, such considerations must be taken into account when an **Israeli** is arrested without a warrant.³⁴

2. Detention Without Seeing A Judge

A **Palestinian** suspect may be held in custody for eight days before being brought before a judge to extend the detention period. An adult can be held for 18 days if suspected of certain crimes, such as: intentionally causing death, sheltering a person suspected of causing death, aggravated espionage or assaulting a person serving in the Israeli army or one of its branches. An **Israeli** however, must be brought before a judge within 48 hours (24 hours if a minor above the age of 14, and 12 hours if below the age of 14).³⁵

3. Access To Lawyer

A **Palestinian** may be prevented from meeting his/her lawyer for 15 days after arrest for reasons of regional security or the good of the investigation. This period may be extended for another 15 days. A jurist-judge (a military court judge with legal training) can additionally extend this period by 30 days. Detainees are routinely prevented from meeting their counsel for 15 days. An **Israeli** may be denied access to his lawyer on the same grounds for only 7 days following the arrest. This period may then be extended by another 8 days, though this rarely occurs with Israeli civilians.³⁶

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4. Arrest By Judge Before Indictment Is Filed

A **Palestinian** can be held without indictment by an order from a jurist-judge for an initial period of 30 days, which can be extended. The maximum period for which the detention can be extended, by the regional legal advisor via the military appeals court is six months. For an **Israeli** adult the initial period is 15 days, 10 days for a minor. For an adult the period can be extended another 15 days, for a minor 10 days. To extend the period further requires a request from the Attorney General. If after 90 days no indictment has been brought, the suspect is released, unless there is intervention from the Supreme Court.³⁷

5. Custody Until End Of Proceedings

Following an indictment, a **Palestinian** may be held in custody until the end of proceedings for an indefinite period, on the order of a jurist-judge. Such an order may be appealed only after three months in detention. After a year in custody, the defendant may request a review of his detention once every six months. An **Israeli** defendant may be held in custody until the end of the trial only in certain defined circumstances, i.e. if:

- a. His release may lead to obstruction of justice, or may endanger life or public security
- b. The crime he is accused of is serious: drugs, violence involving use of a weapon and similar crimes
- c. The bond set by the judge was not paid or the terms of bail were otherwise violated.³⁸

TOP

6. Sentencing

Maximum punishment allowed differs in the two penal codes applying to Israeli citizens and to Palestinians. This is one of the reasons why Israeli settlers and Palestinians are frequently seen to be given vastly different punishments for similar crimes. For example:

A **Palestinian** convicted of manslaughter is subject to a maximum sentence of life imprisonment. An **Israeli** convicted of manslaughter faces only a maximum of 20 years.

A **Palestinian** convicted of maliciously damaging property is subject to a sentence of up to five years in prison. The maximum sentence for an **Israeli** convicted of the same crime is three years.

This bias in the law is reinforced by regulations in the two penal systems regarding the early release of prisoners. According to the **Israeli** penal code prisoners may be released after serving two-thirds of their sentence. The military orders under which **Palestinians** are judged does not allow for any early release for good behaviour.³⁹

TOP

7. Compensation

The dual penal systems, and the Israeli legal code, both discriminate against Palestinians (whether Israeli citizens or not) on the issue of compensation for the

victims of nationalist-political violence. Israeli civilians who suffer injury to person or property as a result of nationalist-politically motivated violence are entitled to receive compensation from the state, but Palestinians are not. Israeli Member of Knesset Haim Oron, has since 1992 introduced several bills trying to achieve parity of compensation paid to victims of nationalist-political violence, irrespective of ethnicity, but so far the law remains the same.⁴⁰

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III. Chapter 3: Law Enforcement

A. General

The Palestinian-Israeli Interim Agreement from 1995 calls for the 'efficient and effective handling of any incident involving a threat or an act of terrorism, violence or incitement, whether committed by Palestinians or Israelis' and stipulates that 'Each side shall immediately and effectively respond to the occurrence or anticipated occurrence of an act of terrorism, violence or incitement and shall take all necessary measures to prevent such an occurrence.'⁴¹ The reality in the Occupied Territories, at least for Palestinians, is very different. This chapter examines the performance of the Israeli army, police and judiciary in protecting Palestinians in the Occupied Territories and providing them with efficient redress.

Between December 1987 and March 2001, 119 Palestinians (including 23 children under the age of 17) were killed by Israeli civilians in the Occupied Territories.⁴² Of 89 cases that were monitored by B'Tselem during this time, only 3 (around 3%) led to sentences of life imprisonment, commuted by the President of Israel to 13 years in one case and 15 in another. Two suspects were convicted of murder, but received sentences of less than life imprisonment. Seven cases led to convictions for manslaughter and prison terms of between 6 months and 7 ½ years. In another 7 cases the defendants were convicted of 'causing death by negligence', receiving sentences of between 3 months community service and 18 months imprisonment. Two suspects were sentenced to psychiatric hospitalization instead of prison. An inordinate number of files were closed without legal action (39, or 44%) and an unacceptable number of cases were not investigated or 'lost' (10, or 11%). In 5 cases, the court acquitted the defendants.

By contrast, 114 Israeli civilians were killed by Palestinian civilians in the Occupied Territories in the same period. Of 81 cases, 30 (34%) resulted in murder convictions and life imprisonment without reduction of sentences by the President of Israel, or parole on grounds of good behavior (compared to 5 out of 89 Israelis convicted for murder). In addition, in many of the cases, the convicted's house, or his family's house was demolished or sealed as punishment. In 15 cases (around 17%) the suspects were 'eliminated' by Israeli security forces. No Palestinian convicted of murder received a sentence less than life imprisonment. No Palestinian was prosecuted for 'manslaughter' or 'death by negligence' instead of murder. No Palestinian was acquitted because they had acted in self-defense. No Palestinian suspect was committed to psychiatric hospital instead of prison. In every single case an investigation was opened. In no case did the authorities have difficulty locating the case files. In only 11 cases (including the killing of Baruch Goldstein in the Ibrahimi mosque) was the file closed with no measures taken.

Different penalties for murder? How the Israeli law enforcement agencies have dealt with Palestinians accused of murdering Israelis and Israelis accused of murdering Palestinians.⁴³

Outcome	Palestinians (out of 81)	Israelis (out of 89)
Life in Prison (for murder)	30	3
Less than Life (for murder)	0	2
Convicted of accessory to murder	1	3
Convicted of 'manslaughter'	0	7
Convicted of 'death by negligence'	0	7
Psychiatric hospitalization	0	2
Manslaughter charges dropped, convicted for lesser offences	0	2
Acquitted	0	5
Suspects 'eliminated' by security forces	15	0
Suspects killed while carrying out killing	2	1
Suspect 'eliminated' by Palestinians	1	0
Charges dropped	0	1
Being processed by the authorities	21	7
No investigation opened	0	6
Case file not located by the authorities	0	4
File closed, no measures taken	11	39

TOP

B. The Israeli Army

Since 1995, the Israeli army has had general responsibility for law and order in area C, and overall responsibility for security in area B. The Interim Agreement prohibits Palestinian police forces from arresting Israeli citizens. They may only detain a suspected offender until such time as a Joint Patrol, or other representative of the Israeli army arrives to take the suspect into custody.⁴⁴ The fact that almost all settler violence occurs in areas B and C, and that settlers are, as a rule, armed, means that the Palestinian police's ability to combat settler violence is extremely limited.

The Israeli army is obliged by international law to provide the same protection to Palestinian civilians in areas B and C as they are to Israeli civilians. However, far from providing equal standards of protection, the Israeli army regularly fails to intervene, let alone arrest settlers attacking Palestinian persons and property within their sight. In fact, the army often protects settlers attacking Palestinians.

One of the reasons for failure of Israeli soldiers to intervene against attacks on Palestinians, seems to be that instructions given to soldiers about how to react to violent attacks by settlers are contradictory and vague. In theory it is the Police's responsibility to conduct investigations and collect evidence, and the army's responsibility to make preliminary arrests as well as intervening to prevent crime.⁴⁵ However, the soldiers supposed to be carrying out these responsibilities seem often unsure, or badly informed, about what degree of force they may use in preventing attacks, and in apprehending suspects.

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A Soldier's Story

A reserve soldier serving in Hebron in 1994 wrote the following to the then Minister

of Education and Culture, MK Amnon Rubinstein:

'On January 17, during my reserve service in Hebron, I witnessed a serious incident in which a group of settlers attacked vegetable stands belonging to local residents. I was unable to stop the rioters because the orders we received do not include that possibility. Even after the event, when I asked one of the commanders whether we were permitted to arrest settlers during a riot [by them], I received an explicit "No" in response. I was also not permitted, despite my repeated requests and the promises that were made, to submit a complaint to the police about what I saw.

On that day I was with another soldier from my unit...at a lookout near one of the entrances to the Hebron casbah and the road leading to the Cave of the Patriarchs. At about 3:00 p.m., a group of Jewish girls, accompanied by young men with weapons and a few older women, came out of the alleyway leading from the casbah. The girls began overturning crates of vegetables on stands located a few metres from the lookout. I yelled at them to stop, and when they did not, the soldier who was with me climbed down to stop them, and I radioed for reinforcements. During the entire time, the girls kept dumping the produce and trampling on them. They treated our demands to stop with contempt. The owners of the stands were not there at first, but came back when they heard the tumult and asked us to stop the attack on their property. In the meantime, one of the settlers' escorts slashed the four tires of an Arab car parked nearby and smashed the front windshield.

While all this was happening, I stayed at my post by the radio. The other soldier tried, with no success, to stop the rampage. The patrol jeep arrived as a reinforcement only after all the vegetables were already scattered on the ground. The soldier who was with me seized the young fellow who had slashed the tires. In the meantime, the owner of the car arrived, and a fight broke out between him and the person who had damaged his car. The officer in the jeep ordered the two separated, and in the melee that followed, during which the settler girls shouted at the soldiers in the jeep and sprayed them with water, the tire slasher escaped. The girls also fled.

We were told that the police would be summoned to take our testimony. A few minutes later the regional battalion commander arrived with a police jeep. The policeman spoke to the soldier who was on guard with me but did not take proper testimony. We emphasised to the battalion commander that we could identify the rioters, especially the one who had damaged the car. The battalion commander promised that we would be taken to regional brigade headquarters to give written testimony.

The battalion commander left around 4:30 p.m.; by 7:00 p.m. we had not yet been taken to brigade headquarters. In the meantime, a curfew was imposed in the area because of additional incidents. When I returned to the base, I asked the operations room officer to ask battalion HQ when we would be taken to give our written testimony. The officer explained that it was impossible to take me to brigade HQ. He had been told: "If the soldier wants to testify, let him come to regional brigade HQ." We had no way to get there, since individual soldiers may not cross Hebron on foot unescorted. So no testimony was taken from us. The next day we went home on a two-day leave.

I was very upset by the whole incident. A group of settlers had maliciously damaged the property and sullied the honour of Arabs in front of IDF soldiers, fearless and contemptuous of us and our demands that they stop. The orders we received did not enable us to arrest rioting Jews. We were told to record their actions with a camera and give a statement afterwards. But not every lookout has a camera, and we did not. As for giving a statement, in my case at least, that was merely theoretical. No arrangements or procedures exist for doing it quickly and efficiently, even if somebody wants to do it. My repeated requests in this matter encountered an apathetic bureaucratic reaction and the incredible advice to cross Hebron by foot without an escort in order to give a statement, as though it were my private caprice, and not the IDF's duty to preserve law and order in the region. I heard similar stories from soldiers doing compulsory service who are on duty in the area. In every confrontation with settlers, they encounter a coarse reaction and feel powerless. My impression is that in cases of attacks by settlers on local residents, anything goes. Is this really the policy of the government and the IDF?⁴⁶

In later testimony to B'Tselem, the soldier added:

'After I sent the letter to Minister Rubinstein, I was called to meet with the brigade commander. He told me that in cases of adult settlers, I had the authority to arrest them, and that orders to that effect had been given in the briefing. But when I asked other soldiers from my unit (thinking that maybe I hadn't heard the order during the briefing), they told me they were not allowed to arrest settlers. You could only document [the incident] and submit a complaint to the police. In any event, even if an order were given to arrest him, if no explanation was given to the soldiers how to go about it, the order was meaningless. How are we supposed to restrain a Jew who is disturbing the peace? Are we permitted to demand that he identify himself? The army has to issue orders on how to make arrests.'⁴⁷

Other soldiers interviewed on Israeli Radio and in newspapers confirm that they are given inadequate instructions for how to deal with violent settlers, and often told not to use any force against them whatsoever.⁴⁸

Whether because of inadequate instructions, or for other reasons, soldiers often stand idly by, observing without intervening in, settler violence. On January 15, 2001 settlers from Gush Katif went on a rampage through the Palestinian neighbourhood of Al Mawasi, in revenge for the killing of settler Roni Tzalach, the day before. The attack was anticipated by the Israeli media, and must have been expected by the Israeli army, yet the settlers were allowed to rampage for several hours, destroying houses, burning cars and greenhouses before the army finally intervened. (See Chapter 4 for more details.)

Palestinians who wish to complain about attacks or the lack of protection are regularly dismissed or abused and insulted by soldiers. The only response to settler violence that the Israeli army normally makes is to impose a curfew on the Palestinians residents, 'for their own protection'. This has been the case in places like Hebron, Huwwara, Al Mawasi and Silat Adh Dhaher.

Palestinians in Hebron are used to the Israeli army's inaction. The Dana neighbourhood in Hebron is less than 100 metres from the settlement of Kiryat Arba. Settler youth from Kiryat Arba often throw stones over the fence at nearby Palestinian houses lying below them on the hill and sometimes people are injured.

Emad Dana (33) described to the PHRMG the pattern of the army response:

'On 20/12/2000 around 100 settlers from Hebron and Kiryat Arba marched through Dana, throwing stones, breaking car windows, shouting racist slogans etc. Approximately 15-20 soldiers walked with them to protect them. They did not intervene or try to prevent any of the settlers from throwing stones at houses, or breaking car windows. When the local Palestinian shabab began to retaliate by throwing stones at the intruders, a curfew was imposed on the whole neighbourhood.

On 5/01/2001, some young settlers were throwing stones from Kiryat Arba onto my family's house just below. When an army jeep passed by the house, I stopped it and asked the soldiers to do something, to stop the settlers from throwing stones at us. The officer I spoke to refused. He said it was not his responsibility. "You stop them", he said.'

This testimony unfortunately reflects the experience of many Palestinians. Not only are soldiers often abusive and dismissive, but they repeatedly fail to perform their duty to intervene on behalf of the Palestinian population for whose safety they are responsible. The PHRMG has also received numerous reports of soldiers protecting settlers who attack Palestinians (e.g. see testimonies on Husan in [next](#) chapter) or damage Palestinian property, especially cutting down, or uprooting olive trees. In a few, relatively rare, cases it appears that that Israeli soldiers also participated in attacks on Palestinians.⁴⁹

One very alarming question concerns the extent of security cooperation between the settlers and the army, and the extent to which the army does exactly what the settlers demand of them. Several reports from Husan and Huwarra describe how soldiers come with bulldozers and uproot trees that are pointed out to them by settlers, who of course need provide no proof that the trees have been used as cover by shooters, or stone-throwers.

In November 2000, Peace Now discovered a document sent by the settlers in Hebron to the local army command demanding that certain measures be implemented against the local Palestinian population.⁵⁰ The document, entitled 'Travel Restrictions for Arabs, Recommendations to the IDF Brigade Commander' calls for 9 highly repressive measures to be taken against the Palestinian population, from closing streets, banning Palestinian traffic, restricting Palestinian traffic to 'half the daylight hours', to closure of the 'flea market', a gas station, the Waqf offices and any Palestinian shops close to Jewish houses. The document was dated 1/11/2000 and the Christian Peacemaker Team in Hebron reported seeing that several of the 'recommended' measures had been implemented two weeks later.

The fact that the settler community in Hebron feels that it can 'advise' the army, and that its advice seems to have been taken, raises disturbing questions about who decides on army policy in Hebron, and perhaps the rest of the Occupied Territories.

Another example of the Israeli army apparently following instructions given by settlers is the killing of Mohammed Abed Ahmad Souf (27), from Haris, the father of two children. His brother Mazouz Souf (19) told the PHRMG:

'On the 8/01/2001 at around 20.30, we were throwing stones at settler cars on the road outside our village. We hit a settler car. The settler drove straight to the nearest army checkpoint and complained. Within 5 minutes, a jeep arrived, stopped on the road and the soldiers began shooting at us. Mohammed was hit in the chest, and bled to death. The soldiers didn't allow us to evacuate him.'

Although in this case, the settlers themselves did not use violence, what is disturbing is that the soldiers seem to have shot Mohammed Souf merely on the strength of a report of stone-throwing by settlers. The soldiers lives themselves were not endangered by the group of stone-throwing youth, even if the settler's might have been. Mohammed Souf was killed by a soldier because he had thrown a stone at a settler car a few minutes earlier.

The phenomenon of settler patrols is extremely alarming. These groups of armed settlers (often volunteers), who travel on the roads in the West Bank in order to protect other settlers have become increasingly common during the Al-Aqsa intifada. The Israeli army is reportedly considering giving legal recognition to these patrols which have been happening, in parts of the Occupied Territories, since the last intifada.⁵¹ Palestinians have long complained of these semi-official security patrols which roam through areas B and C unhindered. Three sources within the settler community confirmed that patrols exist and that they have been approved, at least tacitly, by the Israeli army since 1995. The patrols typically consist of 4-5 people, armed with Uzis or M-16s provided by the army. They escort other settlers to their homes, or simply stand on stretches of road that are known to be particularly dangerous.

The army claims that 'There is no reason for concern that these patrols will turn into militias. These people are operating from a position of self-defiance. After all, their arms come to them from the IDF in any case, and many of them serve in the reserves in the territorial defense system.'⁵² They also argue that the settlers can be trusted to operate these patrols because they have shown great restraint during the last 5 months. Chapter 1 outlined the legal reasons for concern at private security patrols - the lack of open-fire regulations and accountability, and the subsequent difficulty in distinguishing between combatants and non-combatants. Chapter 4 will show why the PHRMG disagrees with the army's assessment that the settlers have been restrained, and presents a short argument why these groups could indeed turn into militias if the fighting intensifies.

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C. The Israel Police Department

It is the responsibility of the Israel Police Department to investigate crimes committed by Israelis against Palestinians in the Occupied Territories. Their duties thus include: accepting and acting on complaints brought to them by Palestinians, locating and questioning suspects and witnesses, detaining suspects for further questioning when necessary and gathering evidence to allow the State Prosecutor to bring the case to court.

In many cases, Palestinian victims of settler violence do not complain to the police, either because they are unaware that this is the responsibility of the Police, or because they believe that their complaints will be ignored. This perception is based on experience and is unfortunately often correct. However, it is important for Palestinian victims of crime to keep lodging complaints with the Israeli police, to insist upon their rights and to keep up the pressure on the Israel Police Department. If no complaints are made, this gives the police yet another excuse not to open investigations.

In 1984, the Karp Commission, set up by the Israeli Ministry of Justice in response to a petition from the law faculties of Tel Aviv University and the Hebrew University in

Jerusalem with the mandate of investigating the state's handling of crimes by Israeli civilians in the Occupied Territories, published its findings. The Commission concluded that the Israel Police Department's handling of complaints against Israeli civilians was severely deficient, and called for urgent action to safeguard the rule of law.⁵³ The Commission found that cases were needlessly closed where evidence and sometimes eyewitnesses existed.⁵⁴ The Military Governor of Hebron had ordered some cases closed without investigation. Some investigations were not pursued on Shabbat in order to allow the settlers to enjoy their day of rest, and police would often do nothing when settlers refused to cooperate with an investigation.⁵⁵

In 1994, a B'Tselem report examining the handling of complaints against Israeli settlers by the police found that 'nothing has changed in this regard since the publication of the Karp Commission Report more than a decade ago.'⁵⁶ It was still difficult for Palestinians to have their complaints accepted by the Police. In many cases, even when complaints were accepted, they were not investigated. And if they were investigated, the investigation was not pursued efficiently, leading to the case being closed on grounds of 'offender unknown', 'insufficient evidence' or some other such pretext.

Palestinian complainants have been denied their right to lodge complaints with the police by being prevented from entering police stations, by being beaten up by settlers waiting outside police stations, by being sent from one police station to another in a circle of endless referrals, by being told that the police do not accept complaints from people without identity cards, or simply because 'that is the policy'.

Even when complaints are accepted, the police sometimes deny having received them. On several occasions when B'Tselem or a similar organization such as HaMoked, Center for the Defense of the Individual, contacted the police to inquire about the progress of an investigation, the police denied receiving a complaint, despite the fact that a complaint had been made by the victim, sometimes accompanied by B'Tselem or HaMoked volunteers.

The failure of the Israel Police Department to accept and act on complaints increases Palestinian reluctance to complain and further undermines any trust in the Israeli authorities. Naaman Shukri Dana (58) from the Dana neighborhood in Hebron (al-Khalil) has a house less than 30 meters from the fence around Kiryat Arba. His house is often stoned and several members of his family have been injured over the years. In 1996 settlers attempted to burn down his house during the night. The family escaped unhurt except for smoke inhalation injuries to their lungs and throats. When the police finally agreed to investigate, after 6 months of complaining, their attitude was typical of the contempt shown by the Israeli police to Palestinian complainants. They asked him if he knew the names of the attackers or could identify them, although they knew that the attack took place at night when the family was sleeping. They then made him take a lie-detector test, treating him as though he were the criminal, and not the victim.

In his testimony to the PHRMG, Mr. Dana told the PHRMG of other times he has tried to complain.

'On the 16/06/1997 at around noon, 4 settler youths, whom I recognized, were throwing stones over the fence at my house. I went to the Israeli Police Station in the old city of Hebron and after waiting for close to an hour, the officer agreed to come and investigate. When we approached my house however, he insisted on going on foot. Of course, as soon as the stone-throwers saw us, they ran away. The officer paid them no attention. When we reached the spot where they had stood, he said "We have come to the place you spoke of, and I can see no settlers!" I tried

to argue with him, but he ignored me. A soldier from the nearby checkpoint agreed that he had seen them, and agreed to be a witness, but the officer just repeated "I have seen nothing."

More recently, on the 20/8/2000, we asked the police to come and arrest two settler youths who were again throwing stones at our house. The police officer this time came and did in fact arrest the two. However, a few hours later they were back in the same place, throwing stones again. When we again called the police they said "Do you want us to imprison them their whole lives for throwing a few stones?"

Mr. Dana estimated that he had complained over 30 times to the Police and the army during 2000, but says that now he has given up.

In the absence of a complaint, it is still the legal duty of the Police to investigate suspected crimes if they hear of them from the media or other sources. And it is the duty of the Israeli army to report crimes they witness, or hear about. However, the Karp Commission found that as a rule, 'If the law is breached, but no complaint is filed, no investigation is conducted.'⁵⁷ This conclusion was echoed by the B'Tselem report ten years later. The B'Tselem report documents cases of the police reporting that files 'cannot be located' or have 'disappeared' far more frequently when the offender is a settler killing a Palestinian. The report also found a surprising number of files were closed on grounds of 'offender unknown' even when testimonies given to B'Tselem and HaMoked indicate that a significant amount of prima facie evidence existed.

The two settlers from Itamar arrested on suspicion of killing Farid Nasrasrah, and injuring 3 others on 17 October, 2000, were released 5 days later on grounds of insufficient evidence.⁵⁸ Nasrasrah was shot while picking olives near Nablus and there were plenty of other Palestinian farmers who witnessed the event. Nonetheless, the State Attorney's Office is considering closing the investigation because of difficulties formulating an indictment.⁵⁹ Two settlers suspected of killing Mohammed Shalash, near Ramallah on 17 December, 2000, were also released after a few days in custody for similar reasons.

PHRMG fears that the defects uncovered by the Karp Commission and the B'Tselem report have not been satisfactorily addressed within the Israel Police Department. Settler violence continues to go uninvestigated, Palestinian witnesses continue to be ignored, or dismissed in favor of testimony by settlers. Complainants continue to be turned away, and files continue to be closed inexplicably. Naturally the task of investigating crimes has been made harder by the intifada, not least because the settlers see themselves as fighting in a war, and presumably many police officers sympathize with them. Nonetheless, the difficult circumstances do not justify the police neglecting their duties, and the failures of the Israel Police Department did not begin with the Al-Aqsa intifada.

TOP

D. The Judiciary

1. The State Attorney's Office

The State Attorney's Office, in cooperation with the Police, is responsible for bringing suspects to trial. The State Attorney can choose to close a file because there is insufficient evidence, or because of 'lack of public interest'. Statistics on numbers

of cases closed for these reasons by the State Attorney's Office are not available. However, B'Tselem examined two cases of Palestinians (Fa'iq Subhi Suweidan and Mahmud Muhammad al-Nawaj'ah) killed by settlers, whose files were closed due to insufficient evidence, despite the existence of several eyewitnesses (Palestinian). The eyewitnesses were not questioned.⁶⁰

The B'Tselem report also refers to the phenomenon of public pressure being brought to bear on the State Attorney's Office by settler organisations. In 1991, a senior official from the State Attorney's Office told the media:

'Tremendous pressure is placed on us, and we have reached the situation that we close files....for lack of evidence. If there is the slightest reason to believe that self-defence was involved, we prefer to close the file.'⁶¹

TOP

2. The Courts

The General Courts' System is responsible for deciding cases and handing down sentences. There are three levels of courts in Israel: the Magistrate Courts dealing with offenses with maximum prison terms of 7 years, or maximum damages (in civil cases) of \$30,000, the District Courts dealing with cases where the maximum penalty is more than 7 years, or more than \$30,000, and the Supreme Court which hears appeals from the District Courts.

In addition to Palestinians and Israelis being tried under different penal codes for the same crime, there is systematic discrimination in how strictly the law is applied. Judges presiding in cases against Israeli settlers are extremely susceptible to the argument of self-defence, whereas Palestinian arguments of self-defence are rarely accepted. In cases where the defendant is convicted, the judges consistently hand down more lenient sentences than the law allows, or else a plea bargain is struck to permit the defendant to be tried for a less serious offence in exchange for a guilty plea.

The consistently more lenient sentences than the law allows derives from the convention of judges to follow legal precedents in sentencing. The trial of Nissan Ishigayov in February, 1988, in particular set a precedent for the sentencing of settlers who kill Palestinians. Ishigayov was convicted of manslaughter for killing a thirteen-year-old Palestinian who threw stones at him, and received 6 months of community service. The sentence was overturned by the Supreme Court, which gave Ishigayov 5 years in prison, two of which were suspended, arguing that:

'The punishment that the appellant received does not reflect the value that should be placed on human life. It could be construed as acceptance of a norm of behaviour which is intolerable when the act involved is one "which by its gravity subverts the very existence of a civilized humane society."⁶²

Nonetheless, the case and the sentence became a model for subsequent trials, and the precedent has repeatedly been cited in the cases of, e.g. Rabbi Moshe Levinger, Boaz Moscovitz, and Pinhas Wallerstein, all accused of killing Palestinians.

Nahum Korman (37) who was the security coordinator of Beitar Illit settlement near Bethlehem, was given 6 months community service and a NIS 70,000 fine for beating 12-year-old Hilmi Shousha to death in 1996. Korman attacked Shousha for throwing

stones at him, kicked him and beat him on the head with the butt of a pistol. The lenient sentence was the result of a plea bargain - from murder to manslaughter - which State Prosecutor Edna Arbel, in response to massive criticism by human rights groups, the media and Justice Minister Yossi Beilin, admitted was 'a mistake'.⁶³

By contrast, on the same day (January 21, 2001), an Israeli military court sentenced Su'ad Hilmi Ghazal, a Palestinian girl from Sabastiya, near Nablus, to 6 ½ years in prison. In 1998, she tried to stab a settler from Shave Shomron and managed to injure him. The crime was committed when she was 15 and allegedly suffering mental problems. After her arrest in 1998, Ghazal was held incommunicado for 37 days, without access to a lawyer or her family, despite the fact that she was a minor. Of those 37 days, 17 were spent in solitary confinement. Because Ghazal was tried under military law, she will not be eligible to have her sentence reduced by the President, or to be paroled for good behaviour.⁶⁴

While Palestinians are regularly sentenced to 12 months or more in prison for throwing stones,⁶⁵ settlers who throw stones at Palestinian vehicles and homes, are almost never apprehended, let alone given prison terms.

TOP

IV. Chapter 4: Settler Violence During the Al-Aqsa Intifada - Testimonies and Analysis

A. Types of Attacks

1. Killings

Between December 1987 and August 2000, Israeli civilians killed 115 Palestinian civilians in the Occupied Territories, an average of less than one a month. In the five months since September 28, 2000, 7 Palestinian civilians have been killed by Israeli civilians in the Occupied Territories. In most of these cases, no investigation has been opened by the Israeli Police, and in those where an investigation has been opened, and suspects have been arrested, they have been released shortly afterwards for 'lack of evidence'. As far as the PHRMG is aware, the police has not contacted Palestinian eyewitnesses.

The first part of this chapter presents the 7 cases of Palestinians killed by settlers for which the PHRMG has strong evidence. The second part brings up the 4 cases of Palestinians who were killed since 29/09/2000 in which the evidence is insufficient or unclear. It is important to distinguish between these kinds of cases because killings of Palestinians have been mistakenly reported as settler violence in the past.⁶⁶

Tahrir Suleiman Riziq (21) from Hizma, north of Jerusalem, was killed by a settler responding with force out of all proportion to an attack on his person and property. Tahrir's father, Suleiman, told the PHRMG:

'On 31/12/2000 four or five youths from Hizma were throwing stones onto the Ramallah bypass road leading from Maale Adumim to Ofra. They may have hit a settler car, because the car, a white Mitsubishi, turned around and came back. It stopped on the road, and the driver fired around 10 shots out of his car-window. One of the shots hit Tahrir in the head at a range of less than 10 meters. Eyewitnesses say they believe the man was a settler because he was traveling alone, in civilian clothes and a civilian car.⁶⁷ Tahrir was taken to Al Mukassed hospital in

Jerusalem in a civilian car because they did not want to wait for an ambulance. The family has made no complaint to either Palestinian or Israeli authorities because we do not believe that it will lead to anything. "If the judge is your enemy, what justice will you get?"

The fact that the driver turned the car around and drove back to where the youths were standing shows that he was not using reasonable force to protect his own life, but rather wanted to punish the stone throwers. Although, Palestinians who were with Tahrir say they can identify the vehicle and remember some of the licence number, and despite the fact that this case was reported in the Israeli newspapers, the police has not contacted the family for their testimonies. Sometimes, the 'reaction' is even more delayed. The killing of Mohammed Shalash (18) from Shuqba, near Ramallah on the 17/12/2000, may have been in revenge for the stoning of a settler's car a week earlier. Mohammed's father Haj Hamed, told the PHRMG:

'Mohammed and some classmates were waiting for a taxi to come back home when some settlers stopped their car and came in their direction, so the boys ran away towards the town of 'Abud, but Mohammed ran in the opposite direction, into the fields. Two of the settlers followed him and fired in the air, so Mohammed had to stop. They approached him and shot him in his forehead from a very close range, 3-5 meters only. The settlers did not offer any help to him until he passed away. After three hours, the Israeli army arrived with an ambulance that carried the body to Beit-El, and after that to Abu-Kabir hospital in Tel Aviv for the autopsy. It seemed the settler who killed my son wanted to take revenge because his car was stoned a week before. Anyhow, the Israeli police apprehended 3 settlers for one night, and released them the following day.'

However, not all attacks by settlers are clearly in retaliation for anything in particular. Farid Nasasrah (28) was killed in a shooting attack by two settlers on some farmers from Beit Furik who were harvesting their olives. Farid's cousin Khaled Issa Nasasrah, who was injured in the same attack, told the PHRMG:

'On Tuesday 17/10/2000, and after coordinating it with the Palestinian-Israeli District Coordination Office (DCO) some Palestinian farmers from Beit Furik went to their fields to harvest their olives. After two hours or so, 15-20 armed Jewish settlers suddenly appeared shooting in all directions. Farmers tried to hide behind anything, a rock or a tree. Farid was shot in his chest, and I was shot in my leg. Another relative called Malek Nasasrah was shot in his abdomen. A fourth farmer, Hamdi Nasasrah, was luckily carrying a bag full of olives, so the bullets didn't hit him directly in his back. This crime, which was committed in cold blood, occurred before the eyes of the Israeli soldiers who weren't far from the scene. I know that the Israeli police apprehended two settlers for investigation, but released them soon after due to insufficient evidence.'

Fahed Mustafa Baker Odeh (22) was killed when settlers attacked his home village of Bidya, near Nablus on the 7/10/2000. Khadri Fayez Mohammed Marjan (27) from Bidya, a clerk working in a private company gave the following testimony to B'Tselem:

'On Sunday 8/10/2000, in the evening, settlers attacked Bidya in five cars - including a Ford transit, and a GMC van. They arrived from the West, i.e. the direction of Ariel. They attacked some shops and damaged some groceries on the eastern side of the village. One of the villagers

started calling through the loudspeakers of the mosque for the youth to come to the centre of the village in order to stop the settlers from entering. The youth arrived and divided into two groups. The group in which Khadri was went to the eastern part of the village while the other group went to the south of the village (direction of Mas'ha village). The first wave of settlers attacked some shops and tried to set them on fire. They then moved towards Mas'ha. At 21.15 two settlers arrived in a fiat stationwagon pulling a big box. They reached the outskirts of the village and stopped by the mound of stones put up by the youth. One settler got out of the car and started shooting around him blindly. I was standing beside the martyr. None of us threw any stones at the settler before he opened fire. The settler shot 14 bullets towards us at a distance of 15 metres. Fahed was hit in the head as he was seeking cover. The bullet entered his head from the back. I noticed the entry hole when we carried him to safety.

Fahed did not at any time endanger the life of the settler. The settler arrived on purpose to shoot at us. We took Fahed to a nearby house and later we managed to take him to a local clinic in Bidya. There were no ambulances around that day. We had to call an ambulance from Qalqilya, which arrived much later, probably because they were held up by Israeli soldiers.

Fahed died one and a half hour after he was shot. He died before the army allowed an ambulance to enter into the village. They kept his body for that night in the clinic, and he was buried the next day.'

This case is similar to the attack on Husan (see [Shootings](#)) in that it was a planned attack initiated by settlers in which they began firing on Palestinians who were not endangering their lives.

The only case of an Israeli civilian killing a Palestinian civilian in the Occupied Territories which was actually in self-defence occurred near the Erez industrial zone on 7/12/2000. Mohammed Joudy Abu-'Assi (30) from Gaza stabbed his Israeli employer and was shot by a passing Israeli truck driver.

Najeeb Obeido (20) from Hebron was shot in the head by a settler while he was lying helpless and wounded on the ground. He had attacked an Israeli policeman and the policeman had shot and wounded him. As the policeman was leaving the scene he met a settler and told him what had happened. This settler then went to where Najeeb was lying and shot him in the head Najeeb's brother Jihad Obeido told the PHRMG:

'On Friday 22/12/2000 Najeeb went to my sister's house for the Ramadan breakfast in the evening there, he left the family house at about 2:30 in the afternoon. We heard on the news that an Israeli policeman and a settler shot a young Palestinian in Hebron when he tried to stab the policeman, we never thought it was my brother Najeeb. Then an Israeli intelligence officer called my brother Maher to the Civil Administration offices, where they told him that my brother was detained and shot by the policeman, but that he was still alive when the policeman left some settlers with him and went to get an ambulance. One of the settlers shot Najeeb in the head and so he died.'

In this case there appears to have been no issue of self-defence as far as the settler was concerned. He clearly intended to kill Obeido in retribution for his attack on the policeman.

Mustafa Mahmoud Mousa Elayan (48) from Askar camp in Nablus, was killed by a stone thrown at his car. Hussein Musallam who was with Mustafa when the attack occurred said to the PHRMG:

'More than 13 Jewish settlers attacked the truck in which Mustafa sat next to his son Ala' who drove it. We were three men in the truck, Mustafa was struck with stones that broke the front glass of the vehicle, and hit him in his head and chest. Mustafa and his son often travel to 'Anata, north of Jerusalem, to sell vegetables, and return in the evening. The day before the accident, they couldn't come back home because the settlers closed the road between Ramallah and Nablus, so they stayed in 'Anata for the night. On the day of the attack, while they were traveling home, settlers from Ofra settlement didn't allow us to go on, so we went on a minor road, but other settlers attacked the truck and Mustafa was fatally injured. When the stones hit his father, Ala' drove faster, and Mustafa slumped in his seat unconscious. When we reached Rafidia hospital in Nablus they said Mustafa had died from a strong blow from a heavy object on his chest.'

The number of Palestinian civilians killed by settlers during the Al-Aqsa intifada up till 10/03/2001 is by no means insignificant. Especially troubling is the fact that in only one of these cases has the violence used by the settlers been a case of genuine self-defence. The PHRMG's observation in this respect confirms the earlier finding by B'Tselem. Of 64 cases monitored by B'Tselem during the period 1987 to 1994, only 4 were clearly situations of self-defence.⁶⁸ Moreover, in those cases where investigations were opened by the Israeli police, and suspects arrested, the suspects were all released within a few days for 'lack of evidence'. This lack of evidence is difficult to understand when in all the cases referred to above there were eyewitnesses to the attacks.

In addition to the 7 reasonably clear cut cases, there are also 4 cases of Palestinians killed in unclear circumstances. Some evidence points at settlers, but either there were no eyewitnesses, or it is unclear whether the victim was killed by a settler or a soldier, or where it is difficult to determine whether the attack was a car accident or whether it was intentional. Shadi Mohammed Ahmad al-Za'oul (16) from the village of Housan, near Bethlehem was killed in a highly suspicious hit-and-run accident. He was definitely killed by a settler, there are eyewitnesses. However, there is not enough evidence to determine whether the driver intended to kill Shadi. His uncle, Yousef (32) told the PHRMG:

'On 30/11/2000, at about 6 a.m. Shadi was walking to school on route 60, a by-pass road used by both Palestinians and Israelis. I passed him in my bus on my way to take some workers from the village. I stopped my bus at the entrance to the settlement of Beitar Illit. I saw a large vehicle carrying cement and a GMC van, both Israeli. Suddenly the GMC van crossed the street very fast towards Shadi, and hit him so hard that he flew about 10 metres. I ran to see him, he was bleeding from his head. His arms and legs were broken, and he was unconscious. I quarreled with the driver of the van, an armed settler with a kippah, who said he didn't kill him. People from the village gathered, and settlers came too. When the killer saw settlers around him, he told them that he killed the boy. He felt proud for doing that. Settlers began to sing and dance, they were very happy that an Arab was killed. One of the settlers said he was a doctor, and tried to check Shadi. He said the boy was in a serious condition, so he called for an ambulance. The Israeli army arrived and

told everyone to go away, including the GMC driver, the killer. Then the ambulance arrived and took Shadi to Hadassah Ein-Kerem hospital, where doctors received him and tried hard to save his life with no success. The police allowed members of the family to go with them to Abu-Kabir hospital for the autopsy, near Tel-Aviv. The medical reports said the boy sustained fractures to the skull, to his spinal-cord, arms and legs.'

Ibrahim Abdel-Rahman Daoud al-'Olami (25) was shot and killed while travelling past Beit Einoun in Hebron district on 12/10/2000. However, there were clashes in the area at the time in which both settlers and soldiers shot at Palestinian protestors. Hence, it is not clear whether he was killed by a settler or a soldier. Nonetheless, the phenomenon of settlers taking part in clashes is absolutely unacceptable. Settlers supposedly have their weapons solely for self-defence. When clashes break out they should seek cover and remain passive. The fact that they participate in clashes as though they are part of the security forces, is another indication of certain settlers' dangerous refusal to remain non-combatants in the conflict.

Ahmad Hasan Mohammed 'Allan (25) from Qariout was found dead on the 3/03/2001 near the settlement of Shilo. On the 17/03/2001 the body of Mohammed Ismail Nassar (11) from Dahyiet al-Barid, near al-Ram was found near Neve Yakov settlement. There were no eyewitnesses who could tell the PHRMG what happened. The PHRMG urges the Israeli police to open investigations into these cases immediately, and to question settler suspects.

TOP

2. Shootings

The number of non-fatal attacks involving weapons is also very high since the beginning of the Al-Aqsa intifada. PHRMG has reports of at least 66 Palestinians being injured in such shooting attacks. Although no comparative data exists, it seems likely that, just as with fatal attacks, there has been an escalation with the start of the intifada. The injuries sustained and the circumstances surrounding the attacks are again very varied. The injuries range from small wounds in hands and other extremities, to large, potentially life-threatening, internal wounds in the chest and abdomen. However, the PHRMG is aware of only one case - that of the shooting of Mansour Jaber (13) - where the police have opened a serious investigation after the shooter, Yehoshua Shani a settler from Kiryat Arba, admitted that he might have been responsible for the injury.

Mansour Jaber was shot and injured in the hand and abdomen by Shani, during an attack by settlers who occupied the home of Ata Jaber. The Jaber family has repeatedly been harassed by settlers from the nearby settlement of Kiryat Arba. Mansour's grandfather Khader Ahmad Jaber told PHRMG:

'On 9/12/2000, at about 9 a.m. many cars and vehicles from the settlement of Kiryat Arba drove to a hill very close to our house. There were more than 200 settlers, and about 50 Israeli soldiers. We knew there were after something. They came closer and closer towards the house of my married daughter, 30 meters away from us. The armed settlers began to shoot in the air, others threw stones at our houses damaging windows and doors. We felt the danger and decided to go out to defend ourselves. My sons tried to stop the settlers from attacking their sister's house, by throwing stones at them. The confrontations

continued for about 90 minutes, with the Israeli army and police watching. Finally, one of the settlers took out his M16 machinegun and shot my grandson Mansour, 13 years old. The bullet hit him in his right hand, and went through his abdomen to the other side. He fell on the ground bleeding.

The settlers tried to prevent us from helping the poor boy, but we went to the police who called a military ambulance that took Mansour to Hadassah Ein Karem hospital, where he stayed for more than 40 days. The situation remained tense for more than 4 hours during which the Israeli soldiers and settlers entered the house of Ata Abdel-Jawad Jaber, my cousin, which was demolished twice by the Israeli authorities but was built for the third time with a permit that Ata obtained from the Israeli authorities. The Israeli settlers left the house after three days, but they burnt the whole interior of it before doing so, and now the Israeli soldiers occupy the house. My cousin Ata, the owner of the house got a legal judgment from the Israeli High Court ordering the evacuation of the Israeli army and settlers from the house, to let the legitimate owner live there. But until now the Israeli soldiers haven't implemented the court decision.'

This account is confirmed by the Christian Peacemaker Team, who however believe the number of settlers was lower - somewhere between 50 and 100. Members of the Christian Peacemaker Team asked policemen sitting in two vans nearby why they did not intervene. In response they were told that they could not, that the army had decided to let them vent their frustration in response to the killing of two settlers a week earlier.

One of the most serious non-lethal shooting attacks by settlers took place on 3/12/2000 in the village of Husan, near Bethlehem. Ali Khalil Hamamreh, member of the Village Council, told PHRMG:

'At around 5:30 p.m., an Israeli van (a white GMC/Savana) stopped and four armed men in civilian clothes got out, walked for 20 meters to the other side of the road, and then opened fire from their automatic guns wounding two persons who were near the mosque. In response to the attack, youths began to throw stones at the settlers. Within a few minutes, two Israeli military jeeps arrived and started shooting to protect the settlers. The shooting continued until after midnight, and more than 30 people were wounded, most of them in the first 10 minutes. The Israeli soldiers also used tear-gas which caused one child to be hospitalised for suffocation. There were no disturbances in the village prior to the gunfire, everything was quiet.

During the gunfire, and the confrontations that occurred after that, the Israeli army cut the electricity and telephone lines to the village. Moreover, the army prevented ambulances from entering the village to take away the wounded people. The wounded people were transferred to al-Hussein hospital in Beit-Jala by civilian cars, and only after a considerable delay. A few Palestinian houses and vehicles were also damaged. It is worth mentioning that the same GMC van had a week earlier run over Shadi Ahmad Hussein (15) from the village.'

In the attack on olive-picking farmers in which Farid Nasasrah was killed, three other farmers were also wounded. In a similar attack on the 1/11/2000, two Palestinian farmers were shot at and injured while picking their olives near 'Urif, Nablus. One of the farmers, Fawzi Helil Shihadeh, told the PHRMG:

'On that day, members of al-Safadi family left their house to go to the fields with other villagers to harvest their olives. While we were picking the olives, 20 Israeli settlers armed with guns and wearing civilian clothes attacked us. We ran towards the village, but they ran after us. One of them shot Said Abed al-Safadi (18 years old) and wounded him seriously. Faleh Mohammed al-Safadi (38 years old) was shot in his abdomen. The villagers carried both injured men for about 2 kilometers before they were taken by a car to Rafidia Hospital in Nablus. Both of them were taken into the operations room immediately, Said remained in hospital for 21 days, and Faleh for 15 days. When the two injured men were taken to hospital, we contacted the Israeli Military Coordination office, and a force from the Israeli army arrived, when we told them what had happened, one of the soldiers said jokingly: "Why didn't you shoot them?" The Israeli Coordination officers asked us to come back the following day in order to identify the settlers. But when we came the following day, no settlers showed up.'

In a seemingly completely unprovoked attack on Huwwara Boys School on 19/12/2000, Ahmad Yosef Salim Odeh (17) was shot at and injured in his leg, and Mohammed Ahmad Harzeen (14) was injured in the abdomen. Odeh told the PHRMG:

'At about 7:15 a.m. five armed settlers came to my school, Huwwara Boys School, in a green GMC van, got out and started shooting at the school. I wanted to close the main gate of the school because if those settlers came into the school yard there would have been a disaster. But one of the settlers shot me in my leg. My classmates helped me and we closed the gate. The Israeli army arrived later and took the settlers away, but prevented the ambulance from arriving to the school in order to take me to hospital. In the end the ambulance took a sandy minor road, and managed to take me to Rafidia hospital in Nablus where I stayed for one day. Apparently, there was some stone throwing earlier that morning on settlers' cars, which made them more angry and dangerous. In the same attack, Mohammed Ahmad Harzeen (14) was also shot and wounded in the abdomen. He was kept in Rafidia hospital for 5 days.'

The very high number of shooting incidents is alarming in and of itself, as are the often serious injuries sustained by Palestinians, who are not even throwing stones. However, it is especially disturbing to note, that in the majority of cases reported to the PHRMG, not only are settlers using firearms without being in danger of their lives, but often the attacks seem to various extents planned, premeditated and initiated by the settlers themselves. Again, despite many eyewitnesses, the police have not opened investigations, except for the case of Mansour Jaber. The Israeli army intervened in the attacks on Husan, Huwwara boys' school, and 'Urif seemingly only concerned with the welfare of the settlers, and neither the army nor the police took any measures against settlers who refused to cooperate in the case of the attack on 'Urif.

TOP

3. Beatings

Beatings also form part of the picture of settlers venting their rage on Palestinians, trying to intimidate them (as in the case of journalists in Hebron) or wishing to teach

them a lesson. Again, the police show little interest in investigating such cases, and the army routinely fails to intervene to protect Palestinians. One particularly grave example of settlers attacking a minor while soldiers stand by and do not intervene is given by the attack on Baha' Dandis (12) in Hebron. His father Nimer Ahmad Dandis told the PHRMG:

'One night, on 18/01/2001, at about 22:00, my children were playing in the yard in front of the house, when a settler, about 18 years old, shouted at them, insulted them, and pushed them inside [because of the curfew]. My eldest son, Baha', refused to go inside and returned the insult. The settler got angry and pulled Baha' out and took him by force to the settlers compound. They beat him very badly there. When the children told me I ran after him, I feared they were going to kill him. The soldiers prevented me from entering the settlers' compound, one of the soldiers went inside and brought out Baha'. He was unconscious and bleeding from his head, they had sprayed some sort of gas into his eyes and nose. I took him to a doctor immediately who helped him and he recovered. It was a nightmare; and since then the children never play or stand outside in the yard. The Israeli soldiers were standing watching when the settlers were beating my son.'

Adults are also often the target of settler aggression, which doesn't need much provocation. Abdel-Latif Qasmieh (27) from Bal'a near Nablus, seems to have been beaten simply for using one of the settlers' roads:

'On 9/10/00 I was on my way from Bal'a to Nablus. When I approached the entrance of Anav settlement on the main road, there was a group of settlers who stopped me. They made me get out and started beating me savagely, with clubs and guns. They did that for 15 minutes until a military jeep arrived and stopped them. I was lying on the ground in severe pain for half an hour without any help from the soldiers. Finally, a taxi arrived and took me to Rafidia hospital where I remained for 10 days.'

Journalists are regularly attacked, especially in Hebron, for taking pictures of settler rampages through the market and other attacks which would further harm their image in the media. Palestinian journalist Hussam Abu-'Allan (46) told the PHRMG:

'On 12/12/00 I was covering a visit by a group of foreign women, wives of Palestinians living abroad, to the old city of Hebron, when some Jewish settlers attacked the vegetable market, so we rushed to cover the incident and do our duty. But 8 armed settlers caught me and beat me using a wooden club. I fell to the ground, almost unconscious, the Israeli police or army did not interfere. When the group of women gathered around me and started arguing with the settlers, the Israeli army interfered, to protect the settlers mainly. I was taken to Alia hospital where I stayed for two days. Of course, I do not trust the Israeli police, therefore I did not complain to them.

On 26/12/00 I was among other journalists covering the confrontations between the youths and the Israeli soldiers in al-Shalaleh street, we heard some cries behind us so I ran to see what was happening, there were Israeli settlers attacking three Palestinian women, I tried to help the women run away, but the settlers attacked me, three of them were armed and threatened to kill me. My friends gathered and started quarreling with the settlers. Finally, the Israeli army came and took the settlers away. Of course, if the police or army does not allow Palestinian

journalists to enter a street to cover a certain event, how can we trust them and complain to them about settler violence and abuses?!

Luay Abu-Haikal (21) a photographer with Reuters told the PHRMG:

'On 12/12/00 I was covering some confrontations in the Shalaleh street when we heard that settlers were attacking the vegetable market in the old city, so we made our way there. When we arrived and started filming, the settlers attacked us. I was injured in my right hand. They broke my camera. My colleague Mazen Da'na helped me and took me to an ambulance where I was given first aid.

Settlers often insult and threaten us. They say "Arabs deserve to be killed! All of you will be killed some day!" Of course we as journalists do not reply to those provocations because if we do, the Israeli army will accuse us of making trouble and prevent us from entering the area. For instance, once I was filming a fight between settlers and Palestinians near al-Ibrahimi Mosque. When I tried to defend an old Palestinian man, the Israeli army took my ID and ordered me to leave the area. I said I would complain to the police station in Kiryat Arba, but a settler said to me, "If you go and complain they will not listen to you, and if you don't leave now I will claim you tried to steal my gun and you will stay for a long time in prison."

In addition to violating the right to security of person and property, settler attacks on journalists, and the Israeli army's failure to intervene in such attacks, also violate the right to freedom of expression and the right to 'seek, receive and impart information and ideas through any media and regardless of frontiers.'⁶⁹ These rights are also protected by the International Covenant on Civil and Political Rights, and in Israeli domestic law.

TOP

4. Stonings

PHRMG has reports of 45 cases of settlers throwing stones at Palestinians travelling in their cars, or merely sitting in their houses. While less serious than attacks with firearms, stonings can nonetheless cause severe injury and even death, especially if the stone hits a car travelling at high speed down a motorway, as shown by the case of Mustafa Elayan (see [Killings](#)). Ali Mahmoud al-Damouni (28) from Burin, Nablus was seriously injured when his car was stoned by settlers. His sister Iman told the PHRMG:

'On 08/12/2000 at about 7:30 a.m. my brother Ali was driving his bus on the by-pass road near Burin when settlers in a GMC van drove by and threw two big stones on the front screen of his car smashing the glass and injuring him seriously in his head. The settlers' van drove off before people gathered and took Ali to the Special Hospital in Nablus where he remained unconscious for 12 days. The doctors said he had a concussion and internal bleeding.'

In another serious attack, Khaled Muwaffak Ibrahim al-Madani (35) from Nablus, told the PHRMG:

'On 11/10/00, I was attacked by Jewish settlers near the settlement of Eli

who threw stones at my car. I lost control of the car, which hit some of the settlers as it turned over, and I was taken to hospital in an Israeli helicopter with the injured settlers. I suffered a spinal fracture and a broken arm, and lost my memory for two months. I remained in hospital in the Intensive Care Unit for 25 days. The treatment cost NIS 112,000 at Hadassah hospital. The Israeli police have already taken my testimony twice.'

These attacks are aimed at keeping Palestinian cars off the roads, as well as perhaps at exacting revenge for stonings by Palestinians. The settlers regularly keep Palestinians from using 'their' roads by erecting unofficial roadblocks stopping Palestinian cars. On 5/02/2001 for example, settlers from Beit El, blocked one of the main intersections near Ramallah and refused access to Palestinian vehicles. The Israeli army had to remove the settlers by force.

In a far more organised incident, on the 3/11/2000 settlers from Karnei Shomron, Kedumim, Alfei Menashe and Immanuel in the northern West Bank blocked Route 55 at two points (the Qalqilya Junction and a point near Azzoun). Hold Lieberman, head of the Karnei Shomron council, said the roadblocks were aimed at enforcing the principle that 'if we can't travel on a road, they [Palestinians] won't be able to travel on it either.' Lieberman also stressed that this action was coordinated with and approved by the Israeli army.⁷⁰

Nadia Matar from the right-wing women's movement Women in Green, confirmed that the police often assist with these actions of illegally infringing Palestinian freedom of movement on the roads, although the police also sometimes prevent settler road-blocks.⁷¹

Palestinian cars on the road between Husan and Nahhalin are stoned almost every Saturday by settlers from the Beitar Illit settlement. Mohammed Hasan Ghayada (33) told the PHRMG:

'Since about two months ago the settlers have started to throw stones every Saturday at Arab cars. They do that between 2 - 3 p.m. They all dress in black trousers and white shirts, and chose Wadi al-Bakar area, because it is very dangerous there, if a driver loses control, his vehicle will end in the valley. The settlers start throwing stones without any excuse, just to harm Palestinians.'

This was confirmed by three other victims, among them Naim Ibrahim Fannoun (42), who told the PHRMG:

'Every Saturday it happens. On 23/12/00, my car was stoned in the Wadi al-Bakar area, at about 2 p.m. I was in the car with a friend, advocate Mohammed Musallam, when we saw more than 80 settlers all dressed in black and white, throwing stones at Arab cars passing by.'

Settlers also throw stones at Palestinian houses. Certain houses are especially exposed to attacks, such as those close to the bypass roads in villages like Husan and Huwwara. However, houses that are close to settlements, such as Kiryat Arba, are also regularly stoned without being close to any main roads. Mohammed Mustafa Ibrahim Elayan (45) from Husan, told the PHRMG:

'Settlers often throw stones at our house, which is 3-4 meters away from route 60. But it has got worse since the eruption of the al-Aqsa intifada. They usually throw stones from the windows of the bus that takes them to/from the settlement of Beitar-Illit. On 30/10/2000 at about midnight, a

GMC van stopped on the road outside the house, and a Molotov cocktail was thrown from its window at our house, hitting the main door and exploding outside it on the ground. Of course, no Arabs would wonder around at this time of the night, besides, a few minutes after the van disappeared, a military vehicle with four Israeli soldiers in it arrived at the house. They asked me what had happened. I replied they must have known what happened. They said they saw the settlers' van, so I asked to speak with their commander who arrived in another jeep a few minutes later. He was a Druze officer called Mansour, and he asked if I was sure it was the settlers who did it, not one of my sons! I told him to be more logical.'

Similarly, Omar Ahmad Salim Issa (32), from Al Khadr, told the PHRMG:

On the 31/12/2000, between 15-20 settlers came in 3 vehicles, and started throwing stones at my house. I hid with my 5 children at the other end of the house behind a wall. They destroyed the front of the house completely, most of them were armed, they were there for 6-8 minutes, then they disappeared.'

And Zeinab Omran Salim al-Mahsiri (46) also from Al Khadr, and who also had his house attacked on the 31/12/2000, told the PHRMG:

'Suddenly more than 15 Israeli settlers surrounded my house. They were shouting in Hebrew, I didn't understand what they said. They started throwing stones at the house and destroyed all the windows on the front of the house. They were armed; I was worried about my four children who were terrified. But after about 15 minutes, the settlers left as suddenly as they had come.'

One of the most disturbing stoning attacks was perpetrated against Mustafa Hmus (52) from Huwwara, Nablus on 6/01/01 at around 16.00. Hmus told the PHRMG:

'I was grazing my 5 sheep around 200 meters from my house on the outskirts of Huwwara. After about an hour, two settlers probably from the nearby settlement of Yitzhar came walking towards me. They were both armed with Uzis, one wore a black balaclava and they had two dogs with them. When they reached me, they told me I was 'trespassing' on their land. They made me sit down on a stone with my hands in the air. Then one of them started throwing stones at me, while the other held me at gun-point. They kept saying to me in Arabic: "Don't move, don't try to resist!" This lasted for about 15 minutes, before I got hit by some small stones and thought it would only be a matter of time before a stone hits me in the head. So, I lunged at one of the settlers and tried to get away. I was kicked to the ground and one of the settlers smashed a big stone on my head. Bleeding heavily from my head, I managed to get up and run away. The wound needed 10 stitches at Rafidia hospital. I wanted to complain to the DCO, but there was nobody there.'

As previously noted, Palestinians who throw stones at settlers or military, are shot at, or, if arrested, often given around 12 months in prison. However, settlers throwing stones is not considered a serious enough offence, by the army or police, to warrant more than a few hours in prison (see Mr. Dana's testimony in chapter 3,C: [The Israel Police Department](#)).

TOP

5. Damage to Property and Theft

It is important to remember that settler violence is not confined to the more serious attacks which result in death or injury. The vast majority of attacks are directed at property. Thefts and vandalism of varying degrees of seriousness, carried out under the cover of curfews, are routine for many Palestinians. Even a cursory examination of the nature and scope of such attacks, shows the extent to which certain settlers consider themselves above the law, at least when it comes to crimes against Palestinians.

During the current intifada, the almost weekly attacks by settlers on market stallholders in the old city of Hebron have continued. The testimony of Nidal Mousa Jamjoum to the PHRMG provides but one example:

'On 23/01/2001, in the afternoon, more than 25 Jewish settlers - men, women and children - gathered with about 15 Israeli soldiers protecting them. They entered the vegetable market, shouting slogans against all Arabs, calling Arabs "dogs" and "pigs" "who deserve to be killed." Then they attacked the vegetable and clothes stands, damaging the goods of the Palestinian salesmen. Eventually, they came to my vegetable stand. Two women settlers attacked it, turning over the vegetable boxes, and damaging the fruits and vegetables in them. I tried to stop them, because that stall is my only source of living, but the Israeli soldiers threatened that if I touched the women they would shoot me. So I stood there watching while their rampage continued for almost one hour.

The Jewish settlers have this practice two or three times every week, they come to the vegetable market and turn it upside down, under the armed protection of the Israeli army, of course. They couldn't do it without the help from the army. They have made our lives miserable. Since the start of the current Intifada, hardly any customers come to the vegetable market. They fear harassment from the settlers and the Israeli army.'

The Palestinians Hebron, have long been used to constant harassment from the army and the settlers. The reports of regular rampages by settlers through the market upturning market stands and trampling on the goods under the protection of the army are well known.⁷² According to the Christian Peacemaker Team (CPT) there is a clear pattern to the attacks. Palestinians in the Israeli area of Hebron (H2) are under almost continual curfew. As soon as it is lifted even briefly, the settlers descend on the market to try to provoke an incident which will force the army to reimpose the curfew. Karam Mohammed Othman al-Za'atari (30) gave this testimony to the PHRMG:

'On 01/01/2001, at about 13:30, more than 10 armed settlers came to my shop. They threw the clothes hanging outside my shop on the ground. When I shouted at them - "Why are you doing this?", they entered the shop and beat me. They continued to throw the clothes onto the wet and muddy ground, in order to spoil them. Moreover, they took more than 30 of the finest clothes that I had. A few minutes after the attack, an Israeli policeman came to my shop and informed me that my property was in the Kiryat Arba police station. But I couldn't go there because I didn't have a permit to enter that area, and even if I had one, my friends advised me not to go, because settlers would be waiting for me outside

the police station for more abuse. The shop is the only source of income for my family, but it hardly covers its own running costs: electricity, water and telephone. The settlers are turning our lives into hell.'

A second area that has been a particular target for the settlers rage during the recent months of the Al-Aqsa intifada is the strip of beach known as Al Mawasi in Gaza. Surrounded on three sides by the Gush Katif settlements with the other side facing the sea, Al Mawasi is home to around 9,000 Palestinians who have been under a very strict closure since the outbreak of the intifada. On the 15/01/2001 settlers from Gush Katif went on a rampage through the area in revenge for the killing the day before of settler Roni Tzalach.

For over two hours, around 100 settlers descended on Al Mawasi, burning around 7 empty houses, burning and slashing at least 15 plastic greenhouses, throwing stones at houses, breaking windows, burning cars and beating at least one old woman - Magbola an Najar - whose tooth was knocked out by a settler. PHRMG observed that the damage bore the hallmarks of pure opportunistic vandalism. Several houses had bullet holes in their ceilings from the inside, where the rioters had forced their way into the house and fired into the air. Almost nothing was completely destroyed, but a large amount of property had been badly damaged. Repair costs to the greenhouses alone lie at several thousand dollars each, which is far beyond the means of the impoverished farmers in Al Mawasi, especially because the closure prevents them from selling their tomatoes, which instead lie and rot in the now ruined greenhouses.

Huwwara, a village which straddles bypass road 60 between Ramallah and Nablus, has also been particularly badly affected by settler violence during the Al-Aqsa intifada. Because the bypass road runs straight through it, settlers constantly drive through the centre of the village, often throw stones from their cars at Palestinian vehicles travelling in the opposite direction, and sometimes open fire at people they believe to be stone throwing youth on the side of the road. Jihad al-Jawwari, mayor of Huwwara, told the PHRMG:

'On 6/10/2000 settlers burned the inside of the mosque, including several hundred copies of the Koran. The next day there were riots and lots of stone throwing at passing settler cars. As a result, the army imposed a curfew on the whole village, which is still in force and only lifted for a few days here and there. Since the imposition of the curfew, settler attacks have increased. They take advantage of the fact that no Palestinians are around to destroy and steal property. On 5/01/2001 around 50 settlers came down from Yitzhar settlement with a bulldozer. They destroyed two barns of mine, killed 7 sheep and stole the rest. In total, 43 sheep and 5 horses were stolen. A settler I know from Bracha told me later it was in retaliation for the damaging of a water pipe that goes to Yitzhar. Since 28/09/2000 the settlers have also vandalised the petrol station and destroyed tiles outside a tile-shop owned by Mohammed Ahmad Rahman Odeh, for approximately NIS 100,000.'

Both the Israeli army and settlers independently have uprooted thousands of trees since the beginning of the Al-Aqsa intifada. The justification often given is that trees along the side of the road provide cover for stone-throwers. However, in light of all the collective punishment used by the army,⁷³ it seems likely that at least part of the motive for such destruction of orchards is punitive. For example, the approximately 300 trees by the side of the road in the village of Huwwara may or may not have been used as cover by stone throwers and shooters. The settlers claim that they were, the villagers of Huwwara deny this. The Israeli army agreed with the settlers and in

November 2000, the trees were cut down.

Similarly, approximately 1000 trees were cut down by settlers under army protection in the fields of Deir El Hatab, Nablus on the 4/12/2000. On the same day, settlers from Yitzhar cut down 200 trees belonging to Hashem Mufdi Suleiman from the village of 'Einabus between Ramallah and Nablus.

On the 29/10/2000 more than 30 settlers from Shilo entered the fields belonging to the village of Qariot between Ramallah and Nablus and began harvesting the olives belonging to the Palestinian farmers. When the farmers gathered and asked the settlers to leave, the settlers - who were armed - threw stones at the Palestinians, injuring two young men (Mohammed Sadeq 17, and Tareq Sadeq 15). The villagers then called the District Coordination Office, and the Israeli army eventually arrived and escorted the settlers out of the fields.

Apart from olives, clothes in Hebron, and the sheep and horses belonging to the mayor of Huwwara mentioned above, settlers have also stolen approximately NIS 250,000 worth of ceramic tiles, toilets, baths, sinks and Jacuzzis. Amr Awad Amr Al-Diq (52) from Huwwara, owns a shop that sells ceramic tiles and bathroom equipment. On 27/10/2000 sometime between midnight and 0700, settlers presumably from the nearby Yitzhar settlement, took advantage of the curfew on Palestinians imposed at the beginning of October to break into the shop and make off with several carloads of merchandise. The police investigation has yielded no results so far, and Al-Diq's insurance policy does not cover the loss, because they describe it as occurring during war.

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B. Table: Settler violence since 29/9/2000

	Killed (no. of victims) ²⁴	Shot and injured (no. of victims)	Stoned (no. of attacks)	Beaten (no. of victims)	Property Damaged (no. of attacks)
Total	7	67	47	23	48
PHRMG Testimonies	5	39	13	11	20
Other reports	2 B'Tselem 4 (found dead near settlements in unclear circumstances)	26	34	12	28

C. Analysis

The picture that emerges is of a probably small group of settlers repeatedly taking the law into their own hands, and again and again demonstrating a total disrespect for the law and for human rights as they apply to Palestinians. The Israeli law enforcement agencies continue to be disgracefully ineffective when it comes to preventing, investigating and prosecuting crimes by Israeli settlers against Palestinians in the Occupied Territories. One possible factor in this continuing failure is that soldiers, police officers, prosecutors and judges feel varying degrees of sympathy for and

identification with settler offenders, and understanding of their difficult position, and so apply the law more leniently in such cases. Another factor might be that Israeli law enforcement officers agree to some extent with the settlers that they are at war, and in a war defeating the enemy must take precedence over protecting civilians, at least Palestinian civilians.

Settlers, like all human beings, have a right to self-defence. However, of the 7 cases of settlers killing Palestinians during the Al-Aqsa intifada, only one seems to have occurred in self-defence.⁷⁵ In 6 out of 7 cases no violence, and certainly not lethal violence, was warranted. Of those cases where the settlers were in danger, they had put themselves in that situation and could, it appears, have got themselves out of the danger without using violence. The overview of settler violence during the Al-Aqsa intifada provided here suggests that by and large, the settlers do not restrict their use of violence to self-defence, nor, in cases where there was danger to them, do they restrict themselves to the minimum violence necessary to avert that danger.

The settlers themselves argue that all attacks are in retaliation against something, whether recent events or more distant ones. However, this argument is difficult to sustain because even the 'reactions' such as the rampage through Al Mawasi targets far more, and probably different people than those who were involved in the act to which it is responding. Therefore, it is useful to distinguish between excessive force in an immediate reaction to violence and premeditated, pre-planned attacks.

The fact that a significant number of the attacks, especially the attacks against property, but also a large number of the shootings, stonings and beatings appear to have been organised and planned in advance (e.g. the attack on Husan, the periodic rampages through Hebron market, and the stoning of Palestinian cars passing Beitar Illit every Saturday) suggests that these attacks are neither just criminal, nor merely overreactions to the dangerous conditions in which the settlers choose to live. In addition to the motives of retaliation and collective punishment, the evidence of settler violence against Palestinians, especially during the last 5 months, suggests also the motive of nationalist-political hatred towards the Palestinians and a wish to drive them out of (at least) certain areas of the West Bank and Gaza Strip.

This interpretation is backed up by what the settlers themselves say during attacks, and the omnipresent graffiti around settlements in the occupied Territories, e.g. 'Kahane was right', 'Death to the Arabs' and 'Arabs get out'. Attacking farmers harvesting their olives, cutting down trees, stoning Palestinian vehicles and houses under the protection of the army, and without risk of prosecution, are all actions that contribute to an atmosphere of continual harassment and intimidation presumably aimed at either subduing the Palestinians, or encouraging them to leave. Many of the more radical settler leaders profess as part of their ideology an Eretz Israel either emptied of Arabs, or populated only by Arabs willing to live in peace, that is to say, willing to live under occupation.

Insofar as attacks are organised and politically motivated, supported or merely endorsed by various levels of the official settler leadership, these leaders bear direct responsibility for the violence. However, settler organisations such as the Yesha Council, settler rabbis and the Israeli government all bear indirect responsibility for the violence in that they fail to condemn settler attacks or the shamefully light sentences handed down to settlers such Nachum Korman. The level of public incitement by settler leaders is high. The Yesha Council called on 26/02/2001 for the Israeli army to assassinate Arafat.⁷⁶ Previously, in December, the head of Yesha's Council of Rabbis, Rabbi Zalman Melamed called for everything to be done, legal and illegal, 'in order to stop the processes [the peace process, leading to compromise on Jerusalem].'⁷⁷

There are also clearly discernable geographical patterns to the violence. Villages such as Huwwara which lie on main bypass roads are subject to constant harassment. Certain extreme settlements (e.g. Yitzhar, Itamar, Bracha, Hebron/Kiryat Arba, Kfar Tapuach, Beitar Illit and Elon Moreh) seem especially prone to violence. In Hebron, settler attacks are so common that they have become almost routine. The Christian Peacemaker Team in Hebron knows that every Saturday, or every second Saturday, or as soon as the curfew is temporarily lifted, they will need to go down into the market and try to intervene in the settler rampages. Palestinians in Hebron who began by believing in the system, like Naman Shukri Dana, have given up complaining to the police.

In the beginning of the Al-Aqsa intifada, the settler reaction mainly took the form of mass marches, rampages, attacks against houses and villages. Good examples of this were the protest marches through the Palestinian Jerusalem neighborhoods of Sheikh Jarah, Shu'fat and Beit Hanina over the Jewish holiday of Yom Kippur (8-9 October 2000). These were clearly protest actions against the uprising and perhaps the settlers hoped to intimidate the Palestinians into ceasing their protests. By the end of October the general anger against the uprising had abated. Later attacks seem more to have been in retaliation for specific attacks - e.g. Al Mawasi. However, over Purim settlers rampaged again in several cities in the Occupied Territories, causing material damage and assaulting several Palestinians.⁷⁸

The phenomenon of settler patrols, while not new, has become so common during the Al-Aqsa intifada that according to an article in Haaretz the Israeli army is looking for ways to make them official, in recognition that it is unable to stop them.⁷⁹ A senior officer quoted in the article claims that 'There is no reason to fear that these patrols will turn into militias. These people are acting in self-defence.' The officer also argues that the settlers have so far demonstrated restraint.

The PHRMG disagrees vehemently with this assessment. It does not believe that 7 Palestinians killed in 5 months in attacks, 6 of which were not self-defensive is aptly characterised as 'restraint'. It is difficult to know how many of the attacks were carried out by settler security patrols, or members of such patrols. However, Nachum Korman, who killed 11 year old Hilmi Shusha, was the security coordinator of Beitar Illit settlement. It seems likely that the settlements' official and unofficial 'security personnel' have been involved in at least some of the attacks against Palestinians. The PHRMG believes it is extremely dangerous to allow organised groups of armed civilians to provide their own 'security'. It will lead to such groups taking the law into their own hands, and will lend an air of legitimacy to what are, in fact, criminal actions.

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V. Chapter 5: Conclusions and Recommendations

A. Conclusions

Settler violence, an old problem, increased during the first 5 months of the Al-Aqsa intifada, both in seriousness and in quantity. The kinds of attacks ranged from intentional and wanton killing to less serious crimes such as destruction or theft of Palestinian property. The geographical concentration of attacks, among other things, suggests that it is a small number of settlers that commit these crimes.

The leaders of the settler community, such as the members of Yesha, and the leaders

of individual settlements, or regions, bear direct responsibility for the violence insofar as they are directly involved in planning or carrying out attacks against Palestinians. They bear indirect responsibility for other attacks that are encouraged by their incitement, and by the tacit endorsement contained in the almost total lack of condemnation of settler violence. The latter is also true more broadly of the government and political (and religious) leaders in Israel. The fact that no Israeli Prime Minister has condemned the lenient (normally around 6-month community service) sentences given to murderers such as Nachum Korman, Rabbi Moshe Levinger, and Boaz Moscovitz (see Chapters [1](#) and [3](#)) helps to create a culture of acceptance and endorsement of violence against Palestinians. This is unacceptable in a modern, democratic society and must end.

The Israeli government has continued to be totally derelict in its duty to protect Palestinian civilians under its jurisdiction and to arrest, investigate and prosecute Israelis in the Occupied Territories who attack Palestinians. The sad and shameful conclusions of the Karp Commission in 1984 and the B'Tselem report from 1994 have still not been adequately addressed.

The Israeli army still stands by and does nothing while settlers shoot, stone and beat Palestinians. The army still fails to report crimes it has witnessed to the police. The police still fails to accept complaints from Palestinians, or makes it difficult for Palestinians to complain. Further, the police still refuses to act on complaints, or acts only half-heartedly. In short, the Israeli police continue to refuse to take Palestinian complaints seriously. They protect settlers who have committed crimes against Palestinians by not investigating complaints, or by being lax in their investigations.

The Israeli judiciary continues to employ a double standard when it comes to interpreting the law. It judges settlers far more leniently than Palestinians who commit the same crimes. Part of the problem is the continuing system of legal apartheid which exists in the Occupied Territories, the fact that Israelis and Palestinians are tried under different penal codes. However, it is a separate problem that settlers who have killed or injured Palestinians are systematically given sentences far lower than the law allows, and which devalue Palestinian life and send a signal that violence against Palestinians is less serious than violence against Israelis.

The increased presence on roads of settler security patrols is an alarming development which must be halted immediately. The acceptance of private violence is extremely dangerous because of the lack of control over it and the lack of accountability for it. Furthermore, the settler population have not exactly shown themselves to be responsible or restrained when it comes to using force against Palestinians. Should the conflict escalate, and these patrols are allowed to continue to operate as they presently do, then there is every reason to fear that they may become militias roaming through Palestinian areas causing havoc and destruction.

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B. Recommendations

1. To the Israeli Government and Law Enforcement Agencies

The PHRMG calls on the Israeli government, and in particular on its law enforcement agencies, the Israeli army, the Israel Police Department and the Judiciary to abide by international law, domestic Israeli law and human rights standards requiring all people to be equal before the law. It also calls on the Israeli government to observe its duty to protect Palestinians under its jurisdiction from

attacks by settlers, and to do everything legal and possible to discourage settlers from operating their own security patrols.

The PHRMG specifically calls on the Israeli army to begin to intervene against settlers attacking Palestinians and to use all reasonable force to restrain settlers in such circumstances.

The PHRMG further calls on the Israel Police Department to institute a thorough reform of the way complaints against settlers are handled, from the receipt of complaints to the opening and pursuing of investigations.

Finally, the PHRMG calls on the Israeli judiciary to judge offenders according to the same standards regardless of whether they are Israelis or Palestinians, and to strive to express a proper appreciation of the value of life in its judgements.

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2. To the International Community

The PHRMG urges the international community to put pressure on Israel to cease practicing legal apartheid in the Occupied Territories, and to respect the internationally recognised standards of equality before the law, as well as its duty to ensure the safety (of person and property) of Palestinian civilians in areas under its control.

3. To the Palestinian Public

The PHRMG recognizes that the Israeli law enforcement establishment has given the Palestinian public little reason to trust it, or to cooperate with it. However, the PHRMG believes that without sustained and unrelenting pressure from below as well as from above, the drastically needed reform of the Israeli law enforcement system will not take place. Thus, the PHRMG appeals to all Palestinian victims of settler violence to make every effort to complain to the Israeli army and police in order to eliminate the excuse that no complaint has been made.

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1. 7/10/2000 Fahed Mustafa Baker Odeh (23), 17/10/2000 Farid Ashraf Nasrasrah (28), 14/11/2000 Mustafa Mahmoud Musa Alayyan (50), 7/12/2000 Mohammed Jodeh Abu Assi (27), 17/12/2000 Mohammed Hamed Ali Shalash (18), 22/12/2000 Najib Mohammed Qasem Obeido (20), 31/12/2001 Tahrir Suleiman Rezeq (22). Another 4 Palestinians have been killed in suspicious circumstances, but although some evidence points to settlers, there are still too many questions: 12/10/2000 Ibrahim Abdel-Rahman Daoud al-'Olami (25), 30/11/2000 Shadi Ahmed Hassan Za'oul (15), 3/3/2001 Ahmad Hasan Mohammed 'Allan (25), 17/03/2001 Mohammed Ismail Nassar (11). The PHRMG urges the Israeli police to open investigations into these cases immediately.
 2. Peace Now Report, The Occupation during the Oslo Years, December 3, 2000
 3. CPRS, Settlers Poll (2), June 1997
 4. Peace Now Press Release, 28 December, 2000
 5. Geneva Convention IV, Article 49
 6. Peace Now Press Release, 7 Nov. 2000
 7. The Yesha Report, No. 77, Nov-Dec 2000, pp. 7-9, and 15-16
 8. Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, 1995, Article XXXI, 7
 9. Ibid. Article XXXI, 8
 10. Peace Now Press Releases, Oct. and Nov., 2000

11. [Palestinian Centre for Human Rights \(PCHR\), A Comprehensive Survey of Israeli Settlements in the Gaza Strip 1997, p. 7](#)
12. Yediot Aharonot, 19 July 1996
13. Quoted in Allon Groth 'Israeli settlements past, present and future', [Middle East International](#), 10 June 1994
14. See Friedman, Robert, [Zealots for Zion: Inside Israel's West Bank Settlement Movement](#), 1992, Random House
15. Quoted in Shahak, Israel and Mezvinsky, Norton, [Jewish Fundamentalism in Israel](#), 1999, Pluto Press
16. Quoted in PCHR, p. 11
17. For a more detailed account of these events, see Robert I. Friedman, [Zealots for Zion: Inside Israel's West Bank Settlement Movement](#), 1992, Random House
18. Shahak, Israel and Mezvinsky, Norton, [Jewish Fundamentalism in Israel](#), 1999, Pluto Press, pp. 96-112
19. Shahak and Mezvinsky, p. 101
20. Ibid. p.100
21. Ibid. p. 102
22. New York Times, 28/02/1994, p. 1
23. Haaretz 12/03/2001 'Celebrations and a curfew in Hebron', by Amos Harel, Amira Hass and Nadav Shragai
24. Usher, Graham, 'The Fuse Blows in Hebron', [Middle East International](#), 10 January 1997
25. CNN, 2 January, 1997
26. Weisburd, David, [Jewish Settler Violence: Deviance as Social Reaction](#), 1989, Pennsylvania State University Press
27. In discussing the legal situation prior to 1994 this chapter relies heavily on the B'Tselem report [Law Enforcement vis-à-vis Israeli Civilians in the Occupied Territories](#), 1994
28. Knesset Protocol, January 2, 1984, p. 923
29. Article 27, [Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949](#)
30. [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995 – Chapter 2 – Articles X - XIII](#)
31. See [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995 – Annex III: Protocol Concerning Legal Matters, Article I, and Annex I: Protocol Concerning Redeployment and Security Arrangements](#)
32. See the Security Provision Order (Judea and Samaria Region) No. 378, 1970.
33. For legal analyses and further information about the dual system of law operating in the Occupied Territories, see Amnon Rubinstein, [The Constitutional Law of the State of Israel](#), Jerusalem, Vol. 1, 1991, and Eyal Benvenisti, [Legal Dualism: The Absorption of the Occupied Territories into Israel](#), West Bank Data Base Project, Jerusalem Post, 1989.
34. Section 78 of the Security Provisions Order (1970) for Palestinians, section 3 of the Criminal Procedure (Detention and Search) Ordinance [New Version], (1969), and section 6 of the Criminal Procedure (Detention and Arrest) Ordinance [New Version], (1969) for Israelis.
35. Order No. 1391, March 24, 1993, in the West Bank, and Order No. 1903, March 25, 1993, in Gaza for Palestinians. Section 16 of the Criminal Procedure (Detention and Search) Ordinance [New Version], (1969), and Section 10 of the Youth (Prosecution, Punishment and Procedures) Law, (1971) for Israelis.
36. Section 78 b-d, Security Provisions Order for Palestinians. Section 29, Criminal Procedure Law [Consolidated Version], (1982) for Israelis.
37. Amendment 68 to the Security Provisions Order, Order No. 1378 (1992) in the West Bank, and Amendment 70 to the Security Provisions Order, Order No. 1081 (1992) in Gaza for Palestinians. And Sections 17 and 51 of the Criminal Procedure (Detention and Search) Ordinance [New Version], (1969) and Section 10(4) of the Youth (Prosecution, Punishment, and Procedures) Law, (1971) for Israelis.
38. Amendment No. 68 to the Security Provisions Order, Order No. 1378 (1992) in the West Bank, and Amendment No. 70 to the Security Provisions Order, Order No. 1081 (1992) in Gaza for Palestinians. Sections 21a, 53 and 54 of the Criminal Procedure Law [Consolidated Version] (1982) for Israelis.
39. See Section 304 of the (1977) Israeli Penal Code – for Israelis; and Section 3 of the Order Concerning Methods of Punishment (Judea and Samaria) (No. 322) (1969) for Palestinians.
40. See PHRMG report V.4 Issue 2, April 2000 [A State of Denial: Israel's Disregard for Palestinian Victims of Terrorism](#)
41. [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995 – Article II, paragraph 2](#)
42. See B'Tselem [Tacit Consent: Israeli Policy on Law Enforcement toward Settlers in the Occupied Territories](#), Jerusalem, March 2001
43. Ibid. Appendix
44. [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip](#), Annex I: Protocol Concerning Redeployment and Security Arrangements, 28 September 1995 Article XI,

- Paragraph 4 (d)
45. B'Tselem report [Law Enforcement...](#) (1994), p. 37
 46. Quoted in B'Tselem [Law Enforcement...](#), pp. 38-40
 47. *Ibid.* p. 40
 48. e.g. Ma'ariv, November 16, 1993 and Lt. Col. Y. on Israeli Radio's 'This Morning' program, January 7, 1994, 7:06 a.m.
 49. See e.g. 'Missing the action', Haaretz 2/02/2001 which describes 5 soldiers from an Ultra-Orthodox Nahal brigade who were caught throwing stones at Palestinian vehicles near a military base in the West Bank.
 50. See Peace Now press release 22/11/2000 'Hebron Settlers Pressuring IDF to Impose Repressive Apartheid Measures on Local Palestinians.'
 51. Haaretz 28/02/2001 'IDF considers settler patrols'
 52. See Zvi Bar'el 'Kosher Jewish Tanzim', Haaretz 4/03/2001
 53. Karp Commission Report, p. 31
 54. *Ibid.* p. 13
 55. *Ibid.* pp. 19 and 30
 56. B'Tselem [Law Enforcement...](#) (1994), p. 88
 57. Karp Commission Report, p. 25
 58. Haaretz 22/11/2000, 'Police in no Rush to Solve the Incident in Itamar' (Hebrew Edition)
 59. Haaretz 11/03/2001 'Difficulty in Formulating Indictment against Two Settlers' (Hebrew Edition)
 60. PHRMG Testimonies, and Haaretz December 11 and 19, 2000 and January 12, 2001
 61. B'Tselem [Law Enforcement...](#), pp. 90-92
 62. [Hotam](#) (weekly magazine of [Al Hamishmar](#)), April 4, 1991
 63. Crim. App. 175/88, State of Israel v. Ishigayov, Piskei Din 42(2) 361, p. 367
 64. Haaretz January 22, 23 and 24, 2001
 65. Amnesty International Press Release 24 January, 2001
 66. 'Palestinian man gets 17 months for throwing rocks', Haaretz February 6, 2001 – no one was injured in this incident.
 67. Sarah Abde Azeem Hassan (1.5 years old) from Qabalan, Nablus reported killed by a settler on 1/10/2000 was in fact killed in a gun accident in her home. Issam Joudeh Hamad (40) from Umm Safa, Ramallah was reported killed by settlers on 9/10/2000, but the independent international organisation Physicians for Human Rights (PHR) found that he had died in a car accident. See [Investigative Report Pertaining to the Death of Issam Judeh Mustafa Hamed by PHR 2/11/2000](#), on www.phrusa.org/research/forensics/israel/Israel_accident_2.html
 68. In Haaretz 02/01/01 it was reported that the IDF said there were no military patrols in the area at that time.
 69. B'Tselem (1994) [Law Enforcement...](#)
 70. Article 19, UN Universal Declaration of Human Rights.
 71. Haaretz 5/11/2000
 72. See www.womeningreen.org
 73. 'Hebron's nightmare market forces', Haaretz 24/11/2000
 74. See PHRMG report 'Overkill', February 2000
 75. 7/10/2000 Fahed Mustafa Baker Odeh (23), 17/10/2000 Farid Ashraf Nasrasrah (28), 14/11/2000 Mustafa Mahmoud Musa Alayyan (50), 7/12/2000 Mohammed Jodeh Abu Assi (27), 17/12/2000 Mohammed Hamed Ali Shalash (18), 22/12/2000 Najib Mohammed Qasem Obeido (20), 31/12/2001 Tahrir Suleiman Rezeq (22). Another 4 Palestinians have been killed in suspicious circumstances, but although some evidence points to settlers, there are still too many questions: 12/10/2000 Ibrahim Abdel-Rahman Daoud al-'Olami (25), 30/11/2000 Shadi Ahmed Hassan Za'oul (15), 3/3/2001 Ahmad Hasan Mohammed 'Allan (25), 17/03/2001 Mohammed Ismail Nassar (11). The PHRMG urges the Israeli police to open investigations into these cases immediately.
 76. Mohammed Joudy Abu-'Assi (30) who stabbed his Israeli employer and was himself shot by a passing truck driver in Gaza.
 77. Haaretz 27/02/2001 'Yesha tells Sharon to make IDF kill Arafat'
 78. Haaretz 31/12/2000 Editorial 'Of provocation and freedom of speech'
 79. 'Trenches, arrows and Goldstein' by Khaled Amayreh in Al Ahran, 15-21 March, also Haaretz 12/03/2001 'Celebrations and a curfew in Hebron', by Amos Harel, Amira Hass and Nadav Shragai
 80. Haaretz 28/02/2001 'IDF considers settler patrols'

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