

In the matter of:

- 1. Adalah: The Legal Center for Arab Minority Rights in Israel**
- 2. ACRI: The Association for Civil Rights in Israel**
- 3. Qanun (LAW): The Palestinian Society for the Protection of Human Rights and the Environment**
- 4. PHR: Physicians for Human Rights, Israel**
- 5. B'Tselem: The Israel Information Center for Human Rights in the Occupied Territories**
- 6. The Public Committee Against Torture in Israel**
- 7. HaMoked: The Center for the Defence of the Individual**

By Adv. Marwan Dalal and/or Hassan Jabareen and/or Jamil Dakwar and/or Orna Kohn and/or Suhad Bishara and/or Morad el-Sana of Adalah: The Legal Center for Arab Minority Rights in Israel, P.O. Box 510, Shefa'amr 20200, tel: 04 950 1610 fax: 04 950 3140

Petitioners

v.

1. Yitzhak Eitan, IDF Major General, Central Command
2. Shaul Mofaz, IDF Chief of Staff
3. Binyamin Ben-Eliezer, Minister of Defense
4. Ariel Sharon, Prime Minister

All of the above by the State Attorney's Office, 29 Salah-a-Din Street, Jerusalem

Respondents

Petition for an *Order Nisi* and Temporary Injunction

The Honorable Court of Justice is hereby requested to issue a court order against the respondents directing them to come and to explain why they would not refrain from using human beings as "human shields" and/or as hostages, during their military operation in the West Bank.

Request for a Temporary Injunction and an Urgent Hearing

A. The Honorable Court of Justice is hereby requested to issue an injunction that will order the Respondents to abstain from using human beings as "human shields" and/or as hostages, during their military operation in the West Bank, until the final decision is delivered on this petition. The aforementioned use of civilian population is producing irreversible damage, including damage to the lives of the individuals in this population, their bodies and their

dignity. The reasoning for this petition constitutes an unseparated part of this motion for injunction.

B. In addition, the Honorable Court is hereby requested to set an urgent hearing on this petition, since the army is still inside some of the Palestinian cities or their vicinity, and is operating in the West Bank. Furthermore, as is detailed in the factual part of the petition, the army's policy of using human beings during its activities in the West Bank has not yet ceased.

The grounds for the petition are as follows:

"Where there have been violent, systematic human rights abuses, a society simply cannot forget. Such atrocities cannot be swept under the rug. One cannot build a secure and peaceful future upon such a foundation of unacknowledged, unaccounted for human rights violations. Although it may seem as if people do forget on the surface, deep in their psyches, people do not forget easily."

Justice Richard Goldstone, 1997

*Prosecutor, International Criminal Tribunals for the former Yugoslavia and Rwanda;
Justice, Constitutional Court of South Africa*

Introduction

1. The subject of this petition is the use made by the Israeli military of the civilian population for military purposes while conducting military operations in the Occupied Territories. Such use includes using civilians as "human shields," taking civilians as hostages and threatening their families, and wounding them through gun-shooting in order to get information about their relatives. All of this done through coercion, humiliation and inhuman behavior which clearly infringes on [the civilians'] right to life, dignity and freedom from coercion. These acts are grave breaches of the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (1949) ("Geneva Convention (IV)"), as stated in Article 147, and are, therefore, war crimes, as defined by the Statute of the International Criminal Court and the international tribunals that investigated the crimes in the former Yugoslavia and Rwanda.
2. For example, Kamal Tawalbi, 43 years old and father of 14, and his 14-year-old son, were forced by IDF soldiers to stand on a balcony as "human shields." The IDF soldiers further forced the two to stand in front of them, facing the soldiers, while the soldiers used their shoulders to rest their guns while firing. A Human Rights Watch ("HRW") report of 3 May 2002 documented that:

Kamal Tawalbi, a forty-three-year-old father of fourteen children, and his fourteen-year-old son were also taken to the same house and forced to stand facing the Palestinian gunfire. The IDF soldiers also placed them at the windows and forced them to stand in front of the soldiers as the soldiers shot at Palestinian gunmen in the camp:

"They took me and my son. They put me in one corner and [my son] in the other corner [of the balcony]. The soldier put his gun on my shoulder. I was facing the soldier, we were face to face, with my back to the street.

Then he started shooting. This situation lasted for three hours. My son was in the same position-he was facing the soldier, the soldier had his gun on his shoulder, and was shooting."

3. Additionally, on 29 January 2002, an IDF force, having taken Ahmad al-Yas 'Aysh and his brother Hamdi as hostages, shot Ahmad and threatened to shoot Hamdi as means to extract their brother's whereabouts. In another HRW report from 18 April 2002, focusing on the issue of IDF use of Palestinian civilians for military purposes, the report stressed that:

Human Rights Watch considers the seizure and deliberate injury of Ahmad al-Yas Khalil `Aysh, as well as the seizure of Hamdi al-Yas Khalil `Aysh, to constitute hostage-taking, an act absolutely prohibited under IHL [international humanitarian law]. Ahmad `Aysh and Hamdi `Aysh were held under explicit threat, and made to perform the orders of their captors in order to influence the actions of a third party. Ahmad `Aysh was shot, in a further breach of IHL, in order to underscore that threat.

4. The petition is based on the research and findings of local and international human rights organizations, such as HRW, Amnesty International, and B'Tselem. It is also supported by local media reports and documentation of an IDF officer's acknowledgment of an IDF procedure of using civilians for military purposes.

The Factual Background

The Petitioners

5. The petitioners are human rights organizations working to protect these rights in Israel and in the territories occupied in 1967. Petitioner no. 1 is an NGO mainly promoting the rights of the Arab minority in Israel in the legal field. Petitioner no. 2 is an NGO protecting civil rights and human rights in Israel and in the 1967 Occupied Territories. Petitioner no. 3 is an NGO protecting human rights and the environment in the West Bank. Petitioner no. 4 is an NGO promoting medical rights in Israel and in the Occupied Territories. Petitioner no. 5 is an NGO promoting human rights in the Occupied Territories, including documentation of infringements of such rights. Petitioner no. 6 is an NGO promoting the abolition of state violence, including torture. Petitioner no. 7 is an NGO working for the protection of the human rights of residents of the Occupied Territories.

The Use of Palestinians by the IDF for its Military Operations

6. On 18 April 2002, the military correspondent of *Ha'aretz*, Amos Harel, reported on a military policy of using Palestinian civilians by IDF during its military operation. It was reported to be an ongoing policy, aimed at forcing Palestinians to participate in IDF operations, including in house searches and/or moving of suspect objects. The same news item quoted a reserve officer who participated in IDF operations in the Jenin refugee camp during "Operation Defensive Shield," who acknowledged the existence of such a policy. *Ha'aretz's* military reporter informed that:

New evidence received over the last week shows that the IDF continues to execute a policy in the territories under which Palestinian residents are forced to enter houses suspected of being booby-trapped and to search them before IDF soldiers enter. On other occasions, it was reported, Palestinians were ordered to pick up objects that aroused the soldiers' suspicion, in order to allow the opening of roads that had been blocked. Previously, the IDF denied the existence of such a policy. An IDF reserve officer who participated in the operation in the Jenin refugee camp said two days ago that he and his friends ordered Palestinian residents to enter houses in the camp before them. "We suspected that the houses were trapped, because the terrorists left explosives in many apartments. We preferred that the Palestinian inhabitants of these houses enter. They know the house, and it is also reasonable that the explosives wouldn't be operated against them.

Attached is "More Evidence: IDF uses Palestinians to Search Suspect Houses," by Amos Harel, *Ha'aretz*, 18 April 2002, as appendix P/1 to the petition.

7. On 19 April 2002, *Ha'aretz* published Amira Hass' "War over the House," written from within the Jenin refugee camp, based on personal impressions and interviews the reporter conducted with inhabitants of the refugee camp who survived the IDF operation during "Operation Defensive Shield." Ms. Hass reports at least two occasions in which the IDF forced refugee camp inhabitants to participate in military operations. On both occasions the civilians were used as "human shields." The man identified in the report as "A.S." was also shot while forced to participate in an IDF search operation in the refugee camp:

A.S. was wounded participating in an IDF military operation: he was taken out of his home to escort soldiers, march before them, and open doors in the neighborhood for them. A.S. did as instructed, and while at one of the doors, soldiers of another unit arrived. They may have thought he was a "Mukawamin" (the resisters), because no one other than them dared to be in the streets during the first days in which the IDF took control of the camp. He was shot and wounded.

8. Abu-Raed, on the other hand, was saved from bodily injury after he was forced to work with an IDF force in the Jenin refugee camp, and deserted, tied up in one of the houses. In the piece "War over the House," it was reported that:

Abu-Raed, 51 years old, a neighbor, was also recruited, like many others, to perform IDF tasks. For five days he joined the soldiers: during the days he went before them, from door to door, knocking on doors while soldiers are hiding behind him, their guns pointing at the doors and at him. At nights he was with them in the houses they captured. They handcuffed him and two soldiers guarded him, he said. Upon completion of his mission he was told to remain alone in one of the houses, while tanks and bulldozers are operating all around. One of the tanks drove over the house. Abu-Raed jumped into another house, moved on from one demolished house to another, until reaching his own home, which he found partly demolished by three missiles. There were 13 people in the house when it was hit.

Attached is "War on the House," Amira Hass, *Ha'aretz*, 19 April 2002 (Internet version), as appendix P/2. Abu-Raed's detailed testimony appears below.

Human Rights Watch Reports

9. On 3 May 2002, HRW published a report regarding its investigation into events in the Jenin refugee camp beginning 3 April 2002, titled "Jenin: IDF Military Operations." HRW reached the conclusion that IDF committed illegal acts while fighting in the refugee camp, which *prima facie* constitute war crimes. The report also refers to IDF's use of Palestinian civilians, protected under the Geneva Convention (IV) during its military operation, including the use of them as "human shields" against shooting and to search suspect objects. All of this under coercion with the use of arms. In the introduction to the report, HRW states that:¹

Throughout the incursion, IDF soldiers used Palestinian civilians to protect them from danger, deploying them as "human shields" and forcing them to perform dangerous work. Human Rights Watch received many separate and credible testimonies that Palestinians were placed in vulnerable positions to protect IDF soldiers from gunfire or attack. IDF soldiers forced these Palestinians to stand for extended periods in front of exposed IDF positions, or made them accompany the soldiers as they moved from house to house. Kamal Tawalbi, the father of fourteen children, described how soldiers kept him and his fourteen-year-old son for three hours in the line of fire, using his and his son's shoulders to rest their rifles as they fired. IDF soldiers forced a sixty-five-year-old woman was forced [*sic.*] to stand on a rooftop in front of an IDF position in the middle of a helicopter battle.

As in prior IDF operations, soldiers forced Palestinians, sometimes at gunpoint, to accompany IDF troops during their searches of homes, to enter homes, to open doors, and to perform other potentially dangerous tasks. In Jenin, such coerced use of civilians was a widespread practice; in virtually every case in which IDF soldiers entered civilian homes, residents told Human Rights Watch that IDF soldiers were accompanied by Palestinian civilians who were participating under duress. The forced use of civilians during military operations is a serious violation of the laws of war, as it exposes civilians to direct risk of death or serious injury.

Attached is the HRW report of 3 May 2002, "Jenin: IDF Military Operations," as appendix P/3.

10. On 6 April 2002, at approximately 6 am, an IDF force entered the Gharaiab family house. The soldiers forced Imad Gharaiab, 34 years old, and his three brothers to march before them in the house as they were searching it. Later, one of the soldiers struck Imad and threatened to shoot him if he did not reveal where his gun was. Imad replied that he had no gun, and the soldier shot at the television set near Imad. Then the soldiers took Imad and his three brothers, handcuffed, and forced them to march before them on the street when the soldiers were shot at by the resistance in the refugee camp. The four brothers were forced into a big building near their house that was converted into a military stronghold. The four brothers were forced to stand on the balcony, to prevent shooting at soldiers that were inside the house. Imad told HRW that:²

¹ Human Rights Watch, "Jenin: IDF Military Operations," 3 May 2002, p. 4-5

² Ibid, p. 29.

Imad Gharaib, aged thirty-four, was one of the four brothers. On Saturday, April 6, at about 6:00 a.m., a group of thirty to forty IDF soldiers entered the Gharaib family home, and forced the Gharaib brothers to walk in front of them as they searched the home. One of the IDF soldiers abused Imad, beating him with his rifle and threatening to shoot him if he did not reveal where he had hidden his gun (Imad said he does not possess a gun):

"He asked me if I had any guns. I said, "No, I am only here with my family." He started beating me with the back of his gun, hitting me many times, insisting that I had a gun. ... He [then] threatened to shoot me and put the gun to my face. Then he moved the gun a bit and shot the television."

After the soldiers had inspected the home, they tied the men up and, half an hour later, walked them over to a large neighboring house in which the IDF had set up a temporary base; the house was located directly across from the main UNRWA compound. The men were forced to stand outside, facing the Palestinian gunfire:

"They ordered us to walk in front of them.... There was some shooting at the [IDF] soldiers [by Palestinian militants higher up in the camp.] They started pushing us and brought us down to another house. There, they put us on the veranda where we could be seen [by the Palestinian gunmen]. The soldiers were sitting inside the salon. We were facing the shooting, the soldiers did this to protect themselves. We could be clearly seen-if the fighters saw us they would not shoot."

11. Kamal Tawalbi, 43 years old and father of 14, and his 14-year-old son, were forced by soldiers to stand on a balcony in the same building, shielding soldiers. The IDF soldiers further forced the father and son to face to stand in front of them, facing the soldiers, while the soldiers used their shoulders to rest their guns while firing. HRW documented that:³

Kamal Tawalbi, a forty-three-year-old father of fourteen children, and his fourteen-year-old son were also taken to the same house and forced to stand facing the Palestinian gunfire. The IDF soldiers also placed them at the windows and forced them to stand in front of the soldiers as the soldiers shot at Palestinian gunmen in the camp:

"They took me and my son. They put me in one corner and [my son] in the other corner [of the balcony]. The soldier put his gun on my shoulder. I was facing the soldier, we were face to face, with my back to the street. Then he started shooting. This situation lasted for three hours. My son was in the same position-he was facing the soldier, the soldier had his gun on his shoulder, and was shooting."

³ Ibid, p. 29-30.

12. On 4 April 2002, at approximately 4 am, an IDF force arrived at Mr. Faysal Abu-Sariya's house, a 42-year-old teacher. IDF soldiers woke up the family and forced Mr. Abu-Sariya's 12-year-old son to open all the doors to all the closets in the other rooms before entering them. Then Mr. Abu-Sariya was forced to march before the soldiers in the refugee camp, to enter houses and search suspect objects. When Mr. Abu-Sariya left the houses, dogs were sent into them to search them, and only then did the IDF soldiers enter them. Mr. Faysal Abu-Sariya told HRW that:⁴

Abu Sariya went back inside his home, woke up his family and made all of them go to one room. The soldiers then entered, and asked Abu Sariya's twelve-year-old son to enter the various rooms of the house and open all the dressers inside. A soldier set up a position at one window, and then kicked over the television that was in his way. The next morning, the soldiers ordered Abu Sariya to accompany them:

"The next morning they told me to join them. I asked them, "Am I wanted [for arrest]? Are you taking me to jail?" He said he just wanted me to go next door and they would release me. My wife and children were crying, begging them to release me."

For the next two days, Abu Sariya was coerced into accompanying the soldiers, to enter homes even before the IDF soldiers sent in their bomb-sniffing dogs, and to march in front of the soldiers as they moved in the streets of Jenin refugee camp:

"They pointed a house out to me. They said, "Go knock on the door, tell all the people to go in one room, and come back." I knocked on the door and there was no answer. They put a small bomb the size of a pack of cigarettes on the door and opened it. They ordered me to go inside. I checked and found no one inside. Then they asked me to go out and sent in the dog. Then, when the dog came back, they went inside..."

Then we went to another house. Whenever they wanted to move, [a soldier] would grab me by the collar, put me in front of him, and move like this. They used me like this between houses-in case there was some shooting, I would die first.

I asked them, "Please release me, you promised me [to go to] just one house, let me go." At least five times a day I would ask them. They would always say that they would release me once they found a substitute."

13. On 6 April 2002, having been forced for two days to march before the soldiers and provide them with a "human shield," Mr. Abu-Sariya was forced to knock on the door of a house in the refugee camp, while the soldiers hid in a nearby alley. As he was knocking on the door, [members of] another IDF unit shot his leg, wounding him severely. Mr. Abu-Sariya did not receive appropriate treatment from the soldiers who started arguing among themselves.⁵

⁴ Ibid.

⁵ Ibid.

14. On 7 April 2002 at approximately 2 pm, Aziz Taha was seized in his house by [members of] an IDF force. Aziz was forced to march before an IDF force as it was storming into houses, and also as it was being fired at on the streets. Having used him as a "human shield" for 12 hours, IDF soldiers abused him. HRW documented:⁶

Aziz showed Human Rights Watch one alley where he was particularly exposed during a battle:

"He made me walk alone up the alley, to the left. Then as we came around the corner, the soldier hid. Shooting came from above, I don't know who was firing. During this time he made me stand in front of a house, for fifteen minutes the battle was going on and the soldier was hiding."

In Lutfi Badawi's house, again Aziz was made to stand on a terrace, exposed to the north to fire coming from the lower part of the camp near the UNRWA building. "There was shooting, it was coming towards me but I don't know from where."

The entire journey, a mere 500 meters as the crow flies, took Aziz and the soldier twelve hours. When he reached the western edge of the camp with the soldiers, Aziz Taha was forced to take off his clothes and was severely beaten.

"I was in my underwear, nothing else. They put me in a house and let me sit down. They made fun of me, spit on me, and started asking me questions, but when I answered they would just mock me. While I was there, one soldier urinated on me, he cursed at me, but this is nothing, because then he did more. I have nine scars on my legs, so when I stripped they saw them and said you were fighting two months ago, although the scars were much older. They started beating me then with something metal, it was very painful. They also used the plastic ligatures they were using as handcuffs. They [tied a bunch of them together into a whip] and used them to beat me on the soles of my feet."

15. The IDF soldiers used also Mrs. Lutfeiha Abu-Zied, age 62, as a "human shield" during their military operation. On 6 April 2002, on two different occasions, the IDF soldiers forced Mrs. Abu-Zied to open doors in the house next door, before the soldiers entered for a search there, as well as forcing her to walk before them when they left her house.⁷
16. On 5 April 2002, at approximately 4:30 am, an IDF unit forcefully entered the Qataish family home. At the same time, the family was attempting to hide within the house, to protect themselves from the helicopter gunfire, and other fire. The IDF soldiers took Mr. Muhamed Qataish and his brother from the house. A line of soldiers stood behind each of them, with a gun positioned upon each of the brothers' shoulder. The soldiers told the brothers to march, and after each of them, a line of soldiers marched. According to the documentation of HRW:⁸

⁶ Ibid, p. 31-32.

⁷ Ibid, p. 32.

⁸ Ibid, p. 32-33.

Qataish and his brother Khaled thought the soldiers were going to arrest them. To their surprise, the soldiers took them both onto the street, and formed one line of soldiers behind each brother. Qataysh told Human Rights Watch:

"We were lined up along the street, Khaled and myself, each with a line of soldiers behind us. One soldier was resting his M16 on Khaled's right shoulder. I was on Khaled's right. They marched us from the house, along Hawakeen Street, into the middle of the camp, the Hawashin area. They did not say a word. Khaled asked them where we were going. The soldier said, 'If you make any noise, we'll shoot you! It was about 4:30 p.m. There were about twenty to twenty-five soldiers with us.'"

17. The IDF soldiers forced the inhabitants of the Jenin refugee camp, to join the military operation, and carry out dangerous missions. Abu Ra'id, 51 years old, was forced to accompany the IDF while on a military operation in the Jenin camp from 5 April 2002, through 11 April 2002. He was forced to knock on doors, try to forcefully open them, and enter the homes, in search of suspicious objects. Abu Ra'id told HRW:⁹

IDF soldiers forced Ibrahim Abu Ra'id, aged fifty-one, to accompany them for seven days, from Friday, April 5, until Thursday, April 11. Abu Ra'id explained how the soldiers had forced him to do some of the most dangerous work during the operation:

"They took me because I spoke Hebrew. I was with eighteen soldiers. They asked me to walk in front of them [in the streets]. They asked me to knock on the doors because they were afraid of booby-traps. So they would hide behind the walls and make me knock on the door.

They made me knock on the doors. If there was no answer, they gave me a heavy crowbar to break the locks. If I couldn't break the locks, they would explode it. After the explosion, they asked me to go inside first. After I was inside for five minutes, they would come inside. [That way,] in case an explosion happened, only I would be inside.

When I entered inside, they would ask me, "Open this cupboard, open this door, check this room." I would do the inspection for them. They touched nothing, but would order me to do it. Only after I had opened everything did they start searching. ...

I told them that it was too dangerous to do this work. So they kept promising, "OK, just work for us today and we will release you," but they kept making me do this work. They made me do it by force, I had no choice."

18. Mr. Kamal Abu Salim, 55 years old, told HRW about that IDF soldiers coerced him to open shops for them after he fled his house in Hawashin in the early morning hours of 8 April, as the bulldozers were approaching. Mr. Abu Salim also described to HRW the

⁹ Ibid, p. 33-34.

shooting of the soldier against him, and the degradation and threats he was subjected to by the IDF soldiers.¹⁰

Fifty-five year old Kamal Abu Salim was taken to open shops for soldiers after he fled his house in Hawashin in the early morning hours of April 8, as the bulldozers were approaching. The soldiers separated the men of the family out and detained them. "When we left, they took the men and made us take off our clothes, and then threatened to shoot me. We were four, me, my brother, brother in law and 17-year-old son. They made me take off my clothes, and wanted me to show them the chicken shop down the road, they said to enter and open all the doors inside." They walked to the neighboring Abu Nasr district, and although the others were allowed to sit down, Kamal was taken aside to open the shops for the neighbors. He was fired upon by the soldiers. "When I went to do it he started to shoot me, between my legs. He said I was a terrorist, he just wanted to frighten me, I guess.... At the chicken shop, I had to open three doors of three shops there."

19. The HRW report dated 3 May 2002, regarding the use of Palestinians as human shields during the IDF's military operation in the Jenin refugee camp, is not the first HRW report to document illegal and extreme army behavior. On 18 April 2002, HRW published a report titled "In a Dark Hour: the Use of Civilians During IDF Arrest Operations" which is composed entirely of documentation of the use of Palestinian civilians during military operations, including arrest raids, in four separate locations in the West Bank, from the end of 2001 through to the beginning of 2002. The locations are Beit Rimah, (IDF invasion on 24 October 2001), Salfit (IDF invasion on 14 December 2001), Tul Karem (IDF invasion on 21 January 2002) and Artas (IDF invasion on 29 January 2002). These operations aimed to arrest individuals in whom the IDF was interested. HRW draws from its research on the IDF operations to conclude that there is a pattern almost identical in all the invasion and arrest activities.¹¹

The raids followed a consistent pattern. Israeli soldiers, often members of non-uniformed undercover units, entered a village and took up positions between midnight and 2:00 a.m. Infantry and armored forces, including tanks, armored personnel carriers (APCs), and bulldozers, entered at a pre-arranged signal. Attack helicopters provided air cover and the IDF commander announced a curfew...

The doors at which the IDF knocked were generally not those of the "wanted" Palestinians. Instead, the IDF chose others, usually neighbors or relatives of "wanted" individuals, and ordered them, often at gunpoint, to bring those persons to the Israeli forces. In each of the four case studies investigated by Human Rights Watch, the IDF compelled civilians with threats and intimidation to identify the houses of individuals "wanted" for questioning or arrest, and to walk with IDF soldiers, sometimes during live fire exchanges, to knock at the doors of those houses and ask the inhabitants to open the door and come out. The IDF coerced some into providing information about the families of "wanted" Palestinians, exposing those individuals to the potentially lethal accusation of acting as a "collaborator." Others were not just coerced and threatened, but also beaten.

¹⁰ Ibid, p. 34.

¹¹ Human Rights Watch, "In a Dark Hour: The Use of Civilians During IDF Arrest Raids," 18 April 2002, p. 5-6.

Attached is the HRW report dated 18 April 2002, "In a Dark Hour: the Use of Civilians During IDF Arrest Operations" as appendix P/4.

Beit Rimah

20. On 24 October 2001, the IDF invaded Beit Rimah between the hours of 1:30 and 2:00 am. A force of soldiers entered the home of Yusuf A., a 14-year-old high school student. At gunpoint, Yusuf was forced by the soldiers to walk in front of them, and knock on the doors of homes where the IDF suspected there to be individuals whom the IDF was interested in arresting. Yusuf was forced to enter three homes to turn on the lights, and only later did the IDF send in dogs, and then later did soldiers enter. Yusuf told HRW how the IDF soldiers forced him to do this:¹²

Yusuf told Human Rights Watch that he woke up to the sound of knocking at 2:00 a.m. Frightened that the soldiers would shoot at the house, his mother opened the door. First, the soldiers asked if there were any men in the house and departed. But the soldiers returned a few minutes later:

"The soldier told my mother that they wanted to take me for two minutes, and he asked me to wear my shoes. Two soldiers then took me by the shoulder to Abu Zakaria's house, located a few meters away with a field in between. We did not talk on the way. The soldiers had lights fixed to their guns. Then one of them told me to go to one of the soldiers by the house with a light on his gun. I went to that soldier, and he told me to go to another soldier. He asked me about the house's owner. I said it was owned by Abu Zakaria. I saw about fifty soldiers surrounding Abu Zakaria's house. He told me to go to the house and ask all of the men to come out. Abu Zakaria owns three houses, side by side. He asked me to go to the first one. I knocked at the door. They had their guns pointed at my back."

Yusuf knocked at each of the three houses, and asked those inside to come out. Abu Zakaria, his wife, and his son Nizam all came out. Yusuf tried to leave, but was not allowed to do so. "Then I said to the soldier that he had told my mother he needed me for two minutes, and that they had to let me go. But the soldier told me to go to the three houses, open the windows, and turn on the lights." Yusuf entered the houses alone, and followed the soldier's commands. Only then did the IDF send dogs in to search the houses, and finally the soldiers themselves entered.

21. 'Alia, a nurse by profession, wife of Riad Yousuf Ahmad Hajjaj told HRW how a force of the IDF stormed her house at 1:30 am, captured her husband, and made him walk before the IDF soldiers and knock on the houses next door while the IDF was looking to arrest people:¹³

'Alia said she was woken at 1:30 a.m. by the sound of a helicopter firing overhead. Then she heard knocking at the ground-floor door of her house, separated from the main living quarters by a short staircase and interior door.

¹² Ibid, p. 10.

¹³ Ibid, p. 11.

"I'm a nurse, and so I thought wounded people were knocking at my door. My husband went to the interior door. The Israelis were there, shouting. They said they were IDF and to get back from the door, so he came back. Then they knocked down the door and came in. There were about seventeen of them. They broke down the main door and then they started knocking on the interior door. We opened that door and explained we had just woken up. They pulled my husband out with them and I remained with my daughter. They took my husband, and I kept looking out the windows."

Like Yusuf, Hajjaj was made to approach and knock at the houses of "wanted" Palestinians:

"They told my husband to knock at the neighbor's house. The house was empty and my husband told them. They didn't believe him so they threw a teargas grenade into the house. It caught on fire. It was the house of Ahmad al-Rimawi's family, they live in Ramallah. After an hour and a quarter, they said they would take my husband away with them. He asked to return to get his clothes, because he was still in his pajamas and it was cold. They argued for a while, and then he came back. They came in with more than twenty soldiers. They were all over the house."

After Hajjaj had changed his clothes, the soldiers took him and resumed their search.

"They took my husband to go knock on every door in the neighborhood. If they found men they would tie them, cover their eyes, and put them down on the ground. They did this until 6:00 or 7:00 a.m., when they brought him back."

22. During the IDF invasion of Beit Rimah the army destroyed the house of the family of Hana Nimer Ahmad al-Barghouti. The IDF force believed a member of the family, Bilal, to be a suspect in the murder of Rehavam Ze'evi. Earlier, an IDF unit forced another member of the family to search closed packages, beat him up, and left the family locked in the house for many hours, while all this time the IDF was converting the house into a military position before destroying it. Hana al-Barghouti told HRW:¹⁴

Al-Barghouti told Human Rights Watch she was woken by the sound of helicopters and heavy shooting at 2:00 a.m. She woke her six children and immediately took them with her into an internal room without windows, and turned off all the lights. They stayed there, motionless, until she started preparing for morning prayer at 5:30 a.m. Then soldiers apparently detected movement, knocked at the door, and ordered everyone outside.

"They threatened us, saying that if anyone started shooting from inside the house, they would shoot us there. Then the soldiers entered the house and searched everything, alone. Then they took my oldest son to open closed

¹⁴ Ibid, p. 12.

packages for them. They ruined a lot of our clothes by treading on them. They were asking my sons questions, and if they didn't like the answers they would hit them.

"Then they ordered us all into the house. They ordered us into the staircase, we were sitting on the stairs, all together on three steps. Then the soldiers told me to go inside [the kitchen] and bring food for my five-year-old. I went with some soldiers to get some bread and yogurt. There were already sandbags at the house. They were constructing a position at the house. From 5:30 a.m. to 9:00 a.m. they slept all over the house. I had to step over the sleeping soldiers when I needed to go to the bathroom. At 9:30 a.m. they woke up and a new group of soldiers came, interrogators. We stayed in the staircase.

"They started moving explosives and other military things into the house until about 1:00 p.m. A soldier asked me if I was the mother of Bilal. I told him yes. He told me 'We will bring your son to you dead, wrapped in a pig's skin.'"

The al-Barghouti family was finally ordered to leave the house at 2:00 pm, wearing pajamas and carrying the children's schoolbooks. The IDF blew up the house two hours later."

23. HRW has commented on the pattern of the IDF using people's homes for military use by saying, *inter alia*, that:¹⁵

By setting up a military position and quartering soldiers in the al-Barghouti house, the IDF rendered the house a legitimate military target. By preventing the al-Barghouti family from leaving the house, the IDF exposed the family, civilians, to the dangers of a potential attack by armed Palestinians on a legitimate military target.

Salfit

24. During the night of the 14 December 2001, the IDF invaded the town of Salfit, between Ramallah and Nablus, near the settlement of Ariel. The invasion took place at 2:00 am. During the IDF operation there, the army used Palestinian civilians for military purposes, including using them as "human shields" in order to search and check a corpse. These actions were taken, *inter alia*, with the Isleem family. Rizak Isleem is a member of the Palestinian General Intelligence Service. He fired towards the IDF unit that was surrounding his house and was killed by the IDF soon after. Amal, a 32-year-old nurse, the wife of Rizak Isleem's brother, told HRW how the army forced her to check houses in the neighborhood; [forced] the brother of Rizak Isleem to check a corpse while the army was taking photographs of the body; used her husband and his two brothers as "human shields" against shooting, in addition to threats by the army against her and her family members, including her small children:¹⁶

¹⁵ Ibid, p. 13.

¹⁶ Ibid, p. 13-15.

Amal, a thirty-year-old nurse living two houses away, had taken shelter from the shooting with her children and husband in the back room of their house. After the initial shooting subsided, her husband Mustafa opened the back door to look out. In the hours that followed, Amal and her family members were threatened, ill-treated, told they were hostages, forced to search buildings, fired on by armed Palestinians, and used by IDF soldiers to protect themselves from Palestinian fire. Amal told Human Rights Watch:

"When he opened the door he could hear someone shouting 'Leave the house! It's a curfew! Leave the house, all of you! You all must leave the house.' The children were scared. I went out with them and my husband's brother Hassan. We stood at the left-hand side of the yard. We were all scared."

The soldiers ordered Amal's husband to come to them.

"The soldiers shouted at me to follow my husband. So we all did. When my husband reached the soldiers they grabbed him by the neck and pulled him to the ground. They started asking him questions: 'Is it only you in the house? You and your wife and children? Where are your other brothers?' They asked us all our names, including Hassan, and took his identity card. Then they beat my husband with their fists on his chest and back, two of them, on and off for fifteen minutes, asking him questions about Rizq and the other brothers. They ordered me and my children to lie on the grass."

"They shouted at the kids: 'Do not move or we'll shoot you!' They pointed a gun at my son and threatened my husband: 'We will take your wife and children hostage and we will kill them if you do not do what we tell you.' The one who spoke Arabic said this. My husband asked 'Why are you keeping them as hostages? What did we do?' Then they asked him, 'Who shot at us?' My husband said, 'I was at home, you took me from my house. I do not know. What do you want?' They said, 'We want you to go to the six houses and ask everyone in them to come out with their weapons.'"

The soldiers told Amal's husband to go to each house and call everyone by name, but not to knock at the door or enter the buildings.

"First he went to Issam's house, and did as they asked. Issam said, 'I can't come out because I have your brother Ja'afar here, and he's injured.' Then of course my husband entered the house to help his brother. The soldiers called out, 'Mustafa, Mustafa! Come here or you'll lose your family!' When Mustafa saw Ja'afar and his injuries he fell on him and started to cry. I did not see this, but when the soldiers called him and he came back to them it was very clear he had been crying. The soldiers asked, 'Where are your brothers? Why haven't they come out?' and he said, 'You have injured my brother, what have you done?' They said, 'Go back and get them and bring them out or we'll blow all the houses up.'

Mustafa went to the other houses, called out the family members, and, after negotiations with the soldiers, carried out the injured: Ja'afar, Dallal, and Fathi.

Amal and an IDF military doctor treated the three wounded until a military ambulance arrived. Soldiers told Amal to fetch her sister-in-law's identity card from Rizq's house. Amal refused twice, but eventually went to fetch the card. Her request for another woman to accompany her was refused. She was given a flashlight, but told to use it only while in the house. She entered the house, found the identity card, and left in darkness. She gave the card to the soldiers, but was not permitted to leave. At approximately 4:45 a.m., the electricity came back on and the soldiers ordered Amal to enter all the houses, turn on the lights, and open the windows. She refused. The soldiers eventually agreed to let her mother-in-law accompany her.

Amal went first to Ja'afar's house. Then she went to Issam's house to do the same, followed by soldiers at a distance. "Issam's house has three floors," she told Human Rights Watch. "I stepped down the stairs to go to the bottom floor. I put a hand on the cinderblock to steady myself, and found there was blood all around. I said to the old woman 'There is blood here.'"

Amal, thinking the blood was that of her injured brother-in-law Ja'afar, went and opened up the first floor. The soldiers then instructed her to go to the second floor.

"I went up four or five steps, stepping up to the second floor. Then I stumbled on Rizq's body. The second floor was still under construction. There was no light. At first I did not know it was Rizq, I was not sure who it was. The old woman was at the bottom of the stairs. I said to her 'It's Rizq, they've killed Rizq!' She said 'How do you know it's him?' I said 'From his pajamas.'"

After checking his pulse, Amal saw Rizq was dead and began to shout and cry. After the soldiers realized that Rizq was dead they let Amal stop searching and rejoin the others. Her brother-in-law Issam, accompanied by two or three soldiers, was then made to approach Rizq's corpse, check the body, and confirm that his brother was dead. Issam held the body and turned it right and left while the soldiers photographed it and removed Rizq's gun, bullets, identity card, and other items.

By now it was 6:00 a.m. The women and children were told to return to Amal's house while the men stayed with the soldiers in the field. Just after Amal and the others reached her house gunfire broke out. According to Amal,

Palestinian gunmen started shooting at the Israelis. We were in the house and the men were outside. So the soldiers put Mustafa, Hassan, and Issam in front of them to use as shields. The soldiers stepped back, and the brothers were left at the front to protect them from the bullets. I opened the door to see what was going on and the soldiers shot a bullet at the doorframe from outside. The Palestinians fired on the Israelis for about ten minutes. My husband was shouting at the gunmen. 'Isn't it enough what has happened to us? Do you want us to be killed too?'

25. HRW emphasized that there was no justification for the army's behavior described above, not even the shooting of Palestinian resistance against the invading army into Salfit.¹⁷

Professional soldiers engaged in military operations are trained to protect themselves, and are aware that they become legitimate targets during situations of armed conflict. By failing to protect civilians in their control and by seeking protection behind them, the IDF soldiers committed a serious violation of IHL. By firing on IDF soldiers in close proximity to civilians, the Palestinian gunmen recklessly endangered Mustafa, Hassan, and Issam by exposing them to their own fire, and to Israeli return fire. These acts, however, do not excuse the soldiers' actions.

26. Mahmud Ali Ahmad Maraita was forced at gunpoint to walk into a house and check if anyone was inside. This, after he witnessed the forcing of another person, Mansur Abd al-Rahim Maraita, aged 60, to search the same house to see if there was anyone inside. Mahmud told HRW:¹⁸

Mahmud 'Ali Ahmad Maraita was woken by gunfire at 2:30 a.m. Looking from his window, he saw Israeli soldiers with a tank, bulldozer, and three APCs approach his house twenty minutes later.

"They took an old neighbor of almost sixty, Mansur `Abd al-Rahim Maraita, to Fayez's house," Mahmud Maraita told Human Rights Watch. "They told him to knock on the door. He knocked, but no one was home. They shot out the window of the kitchen and threw a burning grenade into the kitchen. After they knew there was no one home they started demolishing the fence. Then the soldiers told Mansur to come to my house, and told me to get out."

Mahmud Maraita was then taken at gunpoint to the same house. The soldiers asked him about the house's owner, Fayez `Abd al Dayan, a member of the Preventive Security Forces and acknowledged Fatah member. One soldier told him to go inside:

"He pointed a gun at me and told me to go inside. I told him there was no one, but he pointed the gun at me so I went inside. I went inside and came out. He asked me if anyone was inside, and I said no. After half an hour they went inside the house, searched it, and vandalized the house. We sat on the street until 6:15 a.m. when they went away. The soldiers did not tell me what they wanted Fayez for."

27. Rima Hassan gave birth to her child six days before the IDF invasion. She told HRW, *inter alia*, how IDF soldiers forced her husband to search for his brother and threatened to kill her husband if she refused to answer their questions. This was in addition to threatening to unleash IDF dogs on her husband:¹⁹

¹⁷ Ibid, p. 15.

¹⁸ Ibid, p. 15.

¹⁹ Ibid, p. 15-16.

Rima Kamal Hassan lived downstairs from her brother-in-law Mahmud, a "wanted" Palestinian. IDF soldiers used a nearby civilian to knock at Hassan's house.

"We just woke up and then the son of the neighbors knocked on our door. He told us that the soldiers wanted the men to come out of the house. First my husband went out. The women stayed inside. Mahmud was not at home. Amjad, the son of the neighbors, came back and asked us to go out. I had given birth only six days before. I knocked at my sister-in-law's and we both went down together. We sat in front of the house, thinking they would only go inside to search it. I had left my newborn baby inside. Then they called us by megaphone in Arabic, saying that whoever stayed in the house would die."

Hassan ran inside, took her children and warm clothes, and returned outside. First the soldiers questioned Hassan's husband. "My husband was handcuffed by his legs and arms, and they covered his eyes," Hassan told Human Rights Watch. "First they asked who his wife was, then they asked 'Abir [Hassan's sister-in-law] about her husband. While they were asking us, they had pointed their guns at my husband and my brother, threatening to shoot them."

Once the soldiers established that Mahmud was not amongst Hassan's family, they coerced Hassan's husband to search for Mahmud: "They also threw teargas inside the house and forced my husband to go inside and look for Mahmud. They kept thinking he was inside." During the course of the evening the soldiers also beat Hassan's husband and threatened to set their dogs onto him. He was released at 8:00 a.m. The soldiers demolished the house shortly afterwards.

28. Safieh 'Abd al-Karim, a 65-year-old widow, was forced by the IDF soldiers who wanted to arrest her son, to search for him in the same house repeatedly while her grandchildren were outside the house in the bitter cold. Mrs. Safieh 'Abd al-Karim told HRW that:²⁰

Safieh Muhammad 'Abd al-Karim, a sixty-five-year-old widow, was at home that night with six children and her grandchildren. Her son, Bilal, was the district general-secretary of Fatah. Bilal escaped to a nearby house soon after the IDF entered Salfit, but was wounded in the raid. IDF soldiers came to 'Abd al-Karim's house shortly afterwards. They brought one of 'Abd al-Karim's neighbors with them to knock at her door. "[O]ne of the neighbors came and told us that the soldiers wanted us to come out one by one. I was the first to go out. The soldiers started yelling in Arabic 'Come here! Come here!'" After the family left the house, the IDF forced 'Abd al-Karim to search for her son.

"One of the soldiers was a doctor, who spoke Arabic just like us. He asked 'Where are the men?' I said there were no men. He said, 'Are you only women?' I said yes. He said, 'But Bilal, I fired at him. Go and bring him to me so I can treat his wound.' We sat out in the street for about an hour. It was very cold. The children were shivering. I asked the captain, 'Please, the children are very cold. They will die from the cold.' The captain kept

²⁰ Ibid, p. 20.

telling me: 'Go into the house and get Bilal and the men.' I kept going inside and coming out and telling him there were no men. He kept sending me back like this, four times. It was dark and I couldn't see well. The children were very cold and were trying to shelter in my arms."

After an hour 'Abd al-Karim's family was allowed to go to a neighbor's house. At 6:00 a.m. the soldiers gave up waiting for Bilal and Yusuf. "They told me, 'Bring Bilal or we will demolish the house.' I told them they were not there. Then they brought the bulldozer and demolished the house. We were inside [the neighbor's house] and didn't see, but we heard the sound, the walls were shaking. We asked if we could take our gold and jewelry out of the house, but they put the gun to my chest and told me to leave. I was not even wearing shoes when I left."

Tul Karem

29. On 21 January 2002, the IDF invaded Tul Karem at approximately 3:00 am. An IDF force invaded the house of Mr. 'Ali Tawfiq al-Shurati in his absence. IDF soldiers converted the house into an army position while leaving the family on the ground floor. When the soldiers left the house they did not bother to let the mother and her sons, left frightened in the ground floor, know that they were leaving. Mr. 'Ali Tawfiq al-Shurati told HRW that:²¹

"I work in Tulkarem city. My house is in the Iqtaba area. I had duty in the city that night. At 3:00 a.m., three Israeli soldiers came and told my wife they were going to search the house. The soldiers locked my family in the ground floor, and searched the other three. My house has four floors in all. They broke down the doors, searched the three floors, and then they left.

At 5:00 a.m. they returned with two tanks and a jeep. My wife called me on the mobile phone and told me what was going on. She said that the soldiers had come with machine guns and put them in the windows of the house. They had sandbagged the windows, and then locked my wife and five children in the ground floor apartment. They said, 'O.K, now you cannot come in or out,' and stayed twenty-four hours. I have five children, aged from four to eighteen years old.

So the next day they left quietly, they didn't say anything and my wife and kids were still shut inside. Because I am an officer I had found out that the Israelis had left the area, and I tried to contact my wife and neighbors. I called my neighbors and they said, 'Yes, they've left, but your wife doesn't know.' So when I was sure I drove home. I arrived at 7:00 a.m. on October 22. I came, unlocked the door, and found my wife and children all collapsed from fear. They were scared because they thought the IDF was still there. I calmed them down. My four-year-old daughter needed medication; she had been under medical treatment. When I released them I went upstairs. Everything was broken, including the furniture. In the bedroom the furniture had been moved around and it had been sandbagged as well. All the clothes had been taken out of their cupboards and bags had been

²¹ Ibid, p. 17.

opened. The drawers had all pulled out of place. All our photos were on the ground."

'Ali al-Shurati said that in addition to the trauma to his wife and children, his house had been pillaged: the soldiers had stolen cash worth approximately \$U.S. 10,000 from his bedroom cupboard.

30. The HRW report indicates further the case of Basam al-Hindi, who was forced by IDF soldiers to walk in front of them and search for his son in a few buildings in Tul Karem,²² and the case of Fuad Sadiq al-Ahali and his son, which includes a description of using a civilian for the purpose of an IDF search, and the humiliation of Mr. al-Ahali and his son in order to obtain information about his other son.²³

Artas

31. On 29 January 2002 the IDF invaded the village of Artas near Bethlehem. The invasion took place between 1:00 and 2:00 am. A unit of soldiers forced a grandmother and her granddaughter to walk in front of them to a house of a man whom the IDF wanted to arrest. The IDF unit did this while outside the houses one could hear gun shots, putting the lives of the grandmother and granddaughter in danger.²⁴ In addition, the IDF shot Ahmad Alias 'Aysh and threatened to shoot his brother Hamdi, after the IDF force took them as hostages so they will tell where their brother [Omar] was. HRW documented that:²⁵

The soldiers took them to an unfinished building some twenty meters from their house, sat them apart, and made them strip to their underwear in the rain. 'Aysh was told to return to the house, go to both floors, and bring out all the young men. 'Aysh replied that the only person on the first floor was his deaf, elderly mother. He went and knocked repeatedly at the first-floor door, with an officer and three soldiers standing some distance behind him. After five minutes, the officer told him to come back quickly. 'Aysh walked back towards the officer, who said:

"You have two minutes, and this will be the last time for you. We want a person called Omar, and this is the car he rides in every day. We want you to go and bring him to us.' He spoke good Arabic, a bit like the Lebanese dialect. He pointed to the car standing beside the house. 'This is his car and he lives here.' I said, 'I don't know. This might not be his car, and he does not live here. He is at a different place every day.' The officer replied, 'If you don't bring him out, something bad will happen.'

So I went back to the house and knocked *hard*, banging until my mother opened. I told the soldiers 'Look, this is the old lady that I told you about.' There were three soldiers about two meters behind me. My mother asked what was going on, and I said, 'These soldiers want Omar. Is he here?' She said 'I don't know.' He used to sleep at his in-laws. That apartment has many rooms and each room is for a different person. Omar lived in the end

²² Ibid, p. 17-18

²³ Ibid, p. 18-19.

²⁴ Ibid, p. 20.

²⁵ Ibid, p. 20-21.

room. So I took my mother out of the house and left the door open so the soldiers could search it. The last word I heard from the soldiers was 'You are a liar.' Then they opened fire on me."

'Aysh was shot once in the thigh. He lay where he fell, without assistance, until after the IDF withdrew. Soldiers prevented attempts by 'Aysh's wife and his neighbor to come to his aid.

'Aysh's brother Hamdi was ordered to return to the house and fetch Omar, "or we will shoot you as we did your brother." Hamdi knocked at the door. According to Omar's wife, who was standing on the other side of the door, Hamdi said, "[t]he officer told me, 'Go to your brother's house and knock at the door. If he does not come out, we will shoot you as we did your brother Ahmad.'" Omar left the house in his slippers, holding up his identity card. The soldiers made Omar take off his shirt and jacket and took him with them as they withdrew to a position near the village mosque, some five hundred meters away.

32. HRW emphasized that, with regard to the behavior of the IDF force against Ahmad and Hamdi, this is an act of hostage-taking, which is totally prohibited under international humanitarian law:²⁶

Human Rights Watch considers the seizure and deliberate injury of Ahmad al-Yas Khalil 'Aysh, as well as the seizure of Hamdi al-Yas Khalil 'Aysh, to constitute hostage-taking, an act absolutely prohibited under IHL. Ahmad 'Aysh and Hamdi 'Aysh were held under explicit threat, and made to perform the orders of their captors in order to influence the actions of a third party. Ahmad 'Aysh was shot, in a further breach of IHL, in order to underscore that threat.

33. At approximately 2:45 am, an IDF force arrived at the house of Salman Daoud Salman Ibrahim. The force was searching for the brother of Salman who had left the village already. Salman described to HRW the abusive treatment inflicted by the IDF soldiers on him and to his other brother for the purpose of getting information about the brother that the army sought to arrest:²⁷

One of the soldiers, maybe an officer, said, 'I want Ahmad.' I said, 'He is working, he is not in the house.' The officer said, 'He is home. Bring him out. Bring him out or we will shoot your brother.' 'No, he is not here. Why do you want to shoot my brother?' 'Go to the house and bring Ahmad back with you.' 'I can not bring him back with me, he is not there.' After that the officer shot two bullets into the wall next to me. He threatened to shoot me. He gave me his mobile and asked me to speak with the intelligence service. The intelligence officer said, 'You have five minutes to bring Ahmad or we will blow up the whole house.' I said 'O.K., blow it up.' 'You will live in a tent,' he said. 'Do what you want,' I replied. He said, 'I want your brother Ahmad.' I answered, 'Whether you want him or not, he is not there.'

²⁶ Ibid, p. 21.

²⁷ Ibid, p. 21-22.

The officer had an M16. He pointed it down to Mahmud, who was lying face down on the road with his face in the water. While the officer was talking to me they would hit Mahmud. A soldier put his knee on Mahmud's chest and beat Mahmud's chest with his fists. They turned him over while I was talking to them. They hit him mostly, they hit me less because they wanted me to go down to the house. The officer wore an iron helmet, he hit me with it when he realized I would not go. Then the officer came and said, 'I will throw this grenade at your house.' My mother and sister were in there. I went and said, 'I need to tell the people inside so they will know.' The officer told me to bring them out. 'Ahmad is in the house,' he said. 'We will destroy the house while Ahmad's there so he will die.'

The Findings of B'Tselem

34. The human rights organization B'Tselem, which deals with the documentation of human rights violations in the territories occupied in 1967, has reported, *inter alia*, the use of the civilian population for military purposes by the IDF. Here are some of the findings of B'Tselem:
35. On 7 April 2002, at about 11:00, a force of six IDF soldiers entered the home of Nabil Nadim Nur el-Din in the old city of Nablus. The soldiers searched the house. After the search, the soldiers asked Mr. Nur el-Din to remove some items from the road outside the house. Mr. Nur el-Din refused. Outside the house there was an exchange of fire. Mr. Nur El-Din told the soldiers: "Even if you shoot me, I will not go out to the street." In response, one of the soldiers pointed his gun at Mr. Nur el-Din's knee and shot it. Afterwards, the soldiers asked Mr. Nur el-Din's son, Ahmad, to remove the items from the road outside the house. Ahmad went out of the house with the soldiers, but managed to run away.

Attached is the Daily Update of B'Tselem, ACRI, HaMoked, and Physicians for Human Rights-Israel (hereafter "Human Rights Organizations") from 10 April 2002 as appendix P/5.

36. On 8 April 2002, at about 13:00, an IDF force entered Al-Beck Mosque in the old city of Nablus. The mosque housed an emergency clinic that was established following the IDF invasion of Nablus. Testimonies gathered by B'Tselem, including a testimony by a physician who was on-site, indicate that the IDF force that entered the mosque was led in front by Palestinian civilians, with IDF soldiers placing their rifles on these civilians' shoulders.

Attached is the press release of B'Tselem as appendix P/6.

37. On 10 April 2002, the IDF shelled a house that stood opposite the house of A.A. in the Hebron area. A.A. is 40 years old. After the shelling, the soldiers entered A.A.'s home, occupied the roof and began to shoot at the house opposite it. As a result of the heavy shooting, that house burst into flames. The soldiers directed a Palestinian man to enter the house, extinguish the fire, and remove a burned corpse that was lying there. The soldiers on the roof of A.A.'s house directed him and his cousin, aged 32, to carry the burned corpse to a distance of about 100 meters. The soldiers returned to A.A.'s home in the afternoon. They searched the house and locked the members of the family in one room. The soldiers ordered A.A. to go out into the street with them. One of the soldiers pointed

his weapon at A.A.'s back and he was forced by the soldiers to walk in front of them and serve as a "human shield." The soldiers ordered A.A. to knock on the doors of houses and order people to come out.

Attached is the Daily Update of the Human Rights Organizations from 11 April 2002, as appendix P/7.

38. During the night between 14 and 15 April 2002, around 1:30 am, soldiers arrived at the house of the head of the Dair el-Gusson municipality, Mr. Jamil Abu-Ali, in Palestinian vehicles. With the soldiers there was a Palestinian man whom they had forced to accompany them to Mr. Abu-Ali's home. The soldiers ordered Mr. Abu-Ali to take them to the homes of cab drivers who had mini-buses. He refused, the soldiers threatened him and forced him to accompany them. Mr. Abu-Ali saw the soldiers knocking on the doors of houses, and asking for the keys of the mini-buses. Afterwards, the soldiers drove away in the mini-buses, leaving Mr. Abu Ali some 700 meters away from his home, during a time at which the IDF had declared a curfew in the area.

Attached is the Daily Briefing of the Human Rights Organizations from 15 April 2002, as appendix P/8.

39. On 15 April 2002, at about 6:00 am, IDF soldiers began to shoot at an apartment building in the town of al-Huda in the region of Bethlehem. The shooting lasted for two hours. Rana Karragia, aged 24, a resident of the building was shot to death, and her 8-month-old baby was injured. At 8:00, the soldiers directed the residents of the building to leave the building. The soldiers detained 10 people, and imprisoned the remaining residents for a full day in a shed some 50 meters from the building. The soldiers continued to shoot towards the building for many hours; they probably thought that it housed armed people. At 22:00 the soldiers searched the building while forcing two of its residents to serve as "human shields."

Attached is the Daily Update of the Human Rights Organizations from 17 April 2002, as appendix P/9.

40. On 16 April 2002, at around 9:45 am, a force of 15 soldiers entered the home of Mr. Afif Sarchan in the Jenin refugee camp. The building housed dozens of people, and many others found refuge in it. The soldiers told the people in the building to lie on the floor. The soldiers forced one of the residents of the building, Mr. Hussein Sarchan, to accompany them while they searched the building. Mr. Sarchan told the B'Tselem investigators that 10 soldiers took him to the top floor of the building and forced him to search the cupboards and the furniture.

Attached is the Daily Update of the Human Rights Organizations from 16 April 2002, as appendix P/10.

41. On 7 April 2002 IDF soldiers entered the home of S. in Bethlehem and arrested him. S. is mentally retarded. The soldiers tied up his hands and took him with them. His wife's attempts to explain her husband's illness, and his need to take specific medications so that his condition doesn't deteriorate, were unsuccessful. She also explained to them that because of his condition he cannot withstand a military interrogation. Forty-eight hours later, S. was returned to his family in an unstable condition. He underwent an

interrogation that included threats, and he did not get the medication he needed. On 16 April, at 11:00 am S. was again taken for interrogation, and was returned the next day. The soldiers ordered him to take his medication, and said they would come back to take him the following day. S. is related to one of the people who is among those under siege in the Church of the Nativity. His interrogators tried to use him to read out a letter written by the soldiers stationed outside the church. On 18 April, he was taken once again for interrogation.

Attached is the Daily Update of the Human Rights Organizations from 19 April 2002, as appendix P/11.

42. On 14 August 2001 in the morning, a force of IDF soldiers entered the home of Mr. Sufian Ali Juarish of Beit Jala. Mr. Juarish told a B'Tselem investigator that the IDF soldiers forced him to stand on the balcony of his brother's apartment, which is one floor higher than his, facing the shooting of armed Palestinians, while the IDF soldiers turned the house into a military post:

"The house is on the second floor. They took me out to the balcony facing Beit Jala and they began to cover the windows with blankets and mattresses which were in the house. They put the blankets on all the windows of the house. I stayed on the balcony all the time and there were two soldiers behind me. At around 10:45, Palestinian fighters started towards the apartment; some of the bullets hit the walls of the apartment around the balcony. One of the soldiers hid behind me and told me that the bullets will hit me and not him. I answered that he was a coward because he was armed and was hiding behind an unarmed person. He pushed me towards the steps nervously. The other soldiers hid behind the steps but both soldiers did not allow me to get down and let me stand there on the steps upstairs and stood behind me. I stood at the entrance door to the balcony."

Attached is the testimony by Mr. Juarish from 4 September 2001, taken by an investigator from B'Tselem, as appendix P/12.

The Report of Amnesty International

43. The Amnesty International report of 12 April 2002, titled "The Heavy Price of Israeli Incursions," mentions the IDF's use of Palestinians as "human shields" during its military operations at the end of February and the beginning of March 2002. The report cites Majdi Shahada, who was forced to serve as a "human shield" for IDF soldiers:²⁸

"The IDF came to the house at 4 am on Thursday [7 March] and collected the family and put us in one room. I have seven children aged between one and seven. They asked what I had on the roof; I said 'Pigeons'. The soldiers came on to the roof, and my neighbour heard them talking and shot and wounded a soldier. The soldiers started shooting and left the roof. One soldier wanted to kill me but the officer told him not to. Then they used me as a shield to go back on the roof and they placed explosives in the pigeon house and destroyed it. The pigeons were killed and the water tank exploded and water came pouring down. The soldiers started shooting in all directions... They made another entrance into my home and

²⁸ Amnesty International, "The Heavy Price of Israeli Incursions," 12 April 2002, p. 11.

told me to go out and then to open the door of the neighbouring home. I couldn't open it so they broke it down. They used me as a shield to open doors to other houses and eventually let me go back home at 8 am."

44. Furthermore, the report mentions the use IDF soldiers made of the residents of a building in the refugee camp of Balata between 28 February 2002 and 4 March 2002. The IDF occupied the building, imprisoned 40 of its residents in one room, and were reported to have forced several men to stand facing the windows of the top floor, which were a target of shooting by the Palestinian resistance in the refugee camp.²⁹

"In a house occupied by Israeli soldiers in Balata camp between 28 February and 4 March, the IDF confined about 40 of the residents to one room and then allegedly told some of the men to stand at windows in the top floor flat, which was frequently being shot at by armed Palestinians."

Attached is the Amnesty International report from 12 April 2002, "The Heavy Price of Israeli Incursions," as appendix P/13.

45. The preliminary findings of Amnesty International's research mission regarding what had happened in the Jenin camp concur with the above. It is noted that the IDF, among other things, used people from the refugee camp as "human shields." According to the international human rights organization, the IDF was using:

"Excessive use of lethal force and using civilians as 'human shields.'"

Attached is the preliminary conclusions of Amnesty International presented on 22 April 2002, as appendix P/14.

46. On 12 April 2002, the International Committee of the Red Cross (hereafter ICRC) condemned the use of the Red Crescent workers as "human shields," in addition to further humiliations perpetrated by IDF soldiers:

"The use of Palestinian Red Crescent medical staff as human shields and the humiliations imposed on them by the Israeli military were also strongly condemned."

Attached is the declaration by the ICRC from 12 April 2002, as appendix P/15.

Approaches to the Authorities

47. On 18 April 2002, the undersigned approached the office of the Attorney General and the Legal Advisor of the Military in the West Bank demanding that the use of civilian Palestinians as human shields be immediately stopped. As of the time of this writing, no response has been received.

Attached is the approach to the State Attorney and to the Legal Advisor of the Military in the West Bank as appendix P/16.

²⁹ Ibid, p. 11 – 12.

48. On 5 September 2001, B'Tselem approached the military concerning the use of Palestinian civilian population as "human shields." The IDF's response was that in the meantime, the IDF captured houses as part of its operation in Beit Jala, protected the residents of those houses, and checked to see afterwards that they were all right.

Attached is B'Tselem's letter to the military from 5 September 2001, as appendix P/17.

Attached is the army's response to B'Tselem's letter from 7 October 2001, as appendix P/18.

49. In short, many sources, including leading human rights organizations, documented the horribly instrumental use made by the IDF of the civilian population for operational goals. This policy is blatantly illegal, and it is a duty to abolish it immediately. It is a policy that risks the life of civilians, violates their dignity, and stands against human morality, and is thus a grave breach of international humanitarian law. This policy is still in effect during the IDF military activities in the Occupied Territories.

The Legal Argument

50. The Petitioners argue that the Respondents' use of Palestinian citizens for military purposes, including their use as "human shields" and/or taking any of them as hostages, is contrary to domestic and international humanitarian law. These actions constitute grave breaches of the Geneva Convention (IV) and therefore constitute war crimes.

Domestic Law

51. In H.C. 393/82, *Jamiyat Eskin Almuallimeen Altauniya Almahduda Almasauliya v. The Commander of the IDF in the West Bank*,³⁰ the Honorable Court established its authority to criticize the army's actions in the Occupied Territories according to domestic administrative law, since "the military commander and those at his command are public servants who fill a public position by law." Therefore, the Honorable Court stated in the same matter, "that every Israeli soldier carries with him in his baggage the rules of international public and customary law, which deal with rules of war, and the fundamental rules of Israeli administrative law."³¹

52. The Petitioners argue that the Respondent's policy of using the civilian population as "human shields" and/or for any other military goal is a blatant violation of the rights to life, dignity and freedom. Article 2 of the Basic Law: Human Dignity and Liberty indicates that:

"There shall be no violation of the life, body or dignity of any person as such."

53. Article 4 of that law indicates the duty to respect the rights to life, body and dignity:

"All persons are entitled to protection of their life, body and dignity."

54. Article 5 of the Basic Law states the basic right for freedom:

³⁰ H.C. 393/82, *Jamiyat Eskin Almuallimeen Altauniya Almahduda Almasauliya v. The Commander of the IDF in the West Bank*, P.D. 37 (4) 785, 809.

³¹ *Ibid*, 810.

"There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise."

55. Article 11 of the Basic Law establishes the subordination of the government authorities as proclaimed by the Basic Law:

"All governmental authorities are bound to respect the rights under this Basic Law."

56. Chief Justice Barak referred to the concept of human dignity in his book on constitutional interpretation, writing:³²

An independent examination of the concept of "human dignity" leads us to the formulation that "human dignity" implies a normative system of principles, freedoms, and values whose central tenet is that human beings are free to develop their bodies and spirits according to their will. At the center of human dignity is the sanctity of human life and freedom. At its basis is the autonomy of individual will, freedom of choice and freedom to act. At the basis of human dignity is a recognition of each person's humanity and value as a person, regardless of his utility for others. Human dignity assumes that persons are free, each is his own end, and not a means to the fulfillment of the goals of others or of the collective. Human dignity assumes tolerance, appreciation, a recognition of the uniqueness of each individual, and each person's freedom to develop his own personality and make decisions concerning his personal fate."

57. The Honorable Court has emphasized on more than one occasion the constitutionality of the rights to life, dignity and liberty, as well as the importance of the Basic Law: Human Dignity and Liberty, which enumerates these rights, on the laws and norms that bind the authorities of the government. In H.C. 6055/95, *Tsemah v. The Minister of Defense*,³³ the Court stated that:

Personal liberty is, based on Article 5 of the Basic Law: Human Dignity and Liberty, a constitutional right. Moreover, personal freedom is a constitutional right of the first degree, and in practice, it is a condition for the realization of other basic rights. The violation of personal freedom, like a stone hitting the water, creates ever-widening circles of violations of other basic rights: not just freedom of movement, but also freedom of expression, privacy, right to property, and other rights.

58. In H.C. 7048/97, *Plonim v. The Minister of Defense*,³⁴ in which the question of the status of Lebanese prisoners who had been taken as hostages was discussed, it was stated that:

The protection of every person's dignity and freedom and the defense of this freedom and dignity are basic constitutional rights in Israel (see Articles 2 and 4 of the Basic Law: Human Dignity and Liberty). Freedom and dignity form the basis of our social order. They are the root of all other basic rights... Therefore,

³² See Aharon Barak, *Interpretation in Law - Volume 3*, (Jerusalem: Nevo Publishing, 1994), p. 319.

³³ H.C. 6055/95, *Tsemah v. the Minister of Defense*, P.D. 53 (5) 241, 261.

³⁴ H.C. 7048/97, *Plonim v. The Minister of Defense*, P.D. 54, (1) 721, 740.

the protection and maintenance of the individual's freedom and dignity is a fundamental value that informs all legislation."

59. In H.C. 5100/94, *The Public Committee against Torture in Israel v. The Government of the State of Israel*,³⁵ which discussed the practices of GSS investigations that included, *inter alia*, torture, the Honorable Court cited the principles of reasonable interrogation. Such interrogation cannot be humiliating, cruel and inhuman.

"Several principles deserve to be pointed out: a reasonable interrogation does not include torture, cruel, inhuman attitudes and humiliating practices involving the person under interrogation. There is a prohibition against 'brutal and inhuman means' during interrogation."

60. Compare the Honorable Court's emphasis on the right to dignity according to the Basic Law: Human Dignity and Liberty in H.C. 6269/99, *Abraham Cohen v. The State of Israel*,³⁶ where it was established that:

The protection of a person's dignity and privacy is an ultimate value which justifies protection against violation not only when the violator intended to reach an illegitimate goal, but also where the realization of that illegitimate goal was very likely, even if it was unwanted.

61. The Petitioners will further argue that according to the Geneva Convention (IV) the Respondents have no power to order or use protected persons as a means in the course of military operation and/or in order to achieve that action. This is a blatant violation of the Basic Law: Human Dignity and Liberty, including a violation of the rights to life, to freedom, to dignity, to physical integrity, as specified in Articles 2 and 5 of the Basic Law. Furthermore, by using the homes of protected civilians, the IDF violates its duty to respect the right to property, which is specified in Article 3 of the Basic Law. In addition, the IDF's conduct as described above is incompatible with the criminal code prohibitions regarding extortion by force and by threat and therefore constitutes a criminal offense according to Articles 427 and 428 of the Penal Law (1977), respectively.
62. Needless to say, it is unnecessary to discuss the proportionality of the actions taken against the civilian population for military purposes by the IDF, since such actions are prohibited *a priori*, regardless of the needs of the military.
63. Thus, the IDF acts in violation of the law and in a way that contradicts its duties according to the Basic Law: Human Dignity and Liberty. The IDF violates the rights for life, dignity and freedom of the civilian population. The use of that population as "human shields" or the taking of hostages is also clearly inhumane conduct. It is a duty to prevent the IDF from continuing to violate the law. More importantly, it is a duty to prevent the IDF from continuing the abuse and inhumane conduct inherent in the use of humans to achieve its military purposes.

International Humanitarian Law

³⁵ H.C. 5100/94, *The Public Committee against Torture in Israel v. The Government of the State of Israel*, P.D. 53 (4) 817, 836.

³⁶ H.C. 6269/99, *Abraham Cohen v. The State of Israel*, P.D. 35 (2) 496, 507.

The Geneva Convention (IV) (1949)

64. The respondents who operate in the Occupied Territories as an occupying power are subject, among other things, to the Geneva Convention (IV). The State of Israel signed the Geneva Conventions, including the Geneva Convention (IV), on 8 December 1949, and ratified them on 6 July 1951.
65. The authorized commentary of the International Committee of the Red Cross by Dr. Jean S. Pictet states that the regulations of the Geneva Conventions commit the state signatories because of the status of human rights, as distinct from the states' national interest.³⁷

"Furthermore, there have been many cases where States at war have contested the legitimacy of the enemy Government and therefore refused to recognize the existence of a state of war. In the same way, the temporary disappearance of sovereign States as a result of annexation or capitulation, has been put forward as a pretext for not observing one or other of the humanitarian Conventions. It was necessary to find a remedy for this state of affairs, and the change which had taken place in the whole conception of such Conventions pointed the same way. They are coming to be regarded less and less as contracts concluded on a basis of reciprocity in the national interests of the parties and more and more as a solemn affirmation of principles respected for their own sake, a series of unconditional engagements on the part of each of the Contracting Parties 'vis-à-vis' the others."

66. According to the Geneva Convention (IV), the civilian population of an occupied territory is a protected population ("protected persons"). The occupying force, i.e., the IDF and its emissaries, are prevented from harming that population. By using Palestinian civilians for military purposes, through coercion, humiliation, bodily harm and hostage-taking, the IDF has gravely breached the Geneva Convention (IV) Articles 27, 28, 31, 32, 33, 34, 51, and 147.
67. Article 27 of the Geneva Convention (IV) proclaims that protected persons deserve dignity, humanity and protection against violence or the threat of violence. The article proclaims, *inter alia*, that:

Art. 27. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

68. The use of civilian population as "human shields," and/or taking of hostages from that population and/or the use of that population for military purposes constitutes inhuman, humiliating conduct, violence and/or threats of violence and is therefore prohibited according to international humanitarian law.

³⁷ Jean S. Pictet (ed.), *Commentary: Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 17-18.

69. Needless to say, the reservation at the end of Article 27, which allows the occupying force to exercise means of security and control, cannot permit the use of protected persons for those purposes. Pictet's commentary clarifies this point, saying that Article 27 is a core article of the Geneva Convention (IV). This article symbolizes a conceptual change in the understanding of international humanitarian law, which recognizes not just the rights of protected persons but also the duty to respect their rights.³⁸

It proclaims the principle of respect for the human person and the inviolable character of the basic rights of individual men and women.

The statement of these principles in an international convention gives them the character of legal obligations and marks an essential stage in the history of international law -- in particular international humanitarian law, which is concerned above all with man as man.

70. The IDF used and uses the civilian Palestinian population as a form of protection against possible activities against it during the invasion of the refugee camps and the cities in the Occupied Territories. The use of human beings as protection against military action constitutes a blatant violation of Article 28 of the Geneva Convention (IV), which states explicitly the prohibition against the use of protected persons as a form of protection:

Art. 28. The presence of a protected person may not be used to render certain points or areas immune from military operations.

71. The authorized commentary of the Geneva Convention (IV) by Pictet not only clarifies the prohibition of using protected persons as "human shields" or for other defensive purposes by the army, but also calls such actions by the army as "cruel and barbaric":³⁹

During the World War I public opinion was shocked by certain instances...of belligerents compelling civilians to remain in places of strategic importance...or to accompany military convoys, or again, to serve as a protective screen for the fighting troops. Such practices, the object of which is to divert enemy fire, have rightly been condemned as cruel and barbaric.

72. The use of pressure on protected persons according to the Geneva Convention (IV) for the purpose of obtaining information constitutes a gross violation of that person's right to be free of pressure as such. The IDF's operations against the civilian population includes the application of pressure for the purpose of obtaining information. This pressure includes the application of force, including shooting or the threat of shooting relatives of persons the IDF wishes to detain. Article 31 of the Geneva Convention (IV) involves a total prohibition on any forceful or other coercion by the occupying force on a protected person, especially as it relates to obtaining information from protected persons:

Art. 31. No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

³⁸ Ibid, p. 201.

³⁹ Ibid, p. 208.

73. The IDF physically hurts the civilian population when it uses it for its military purposes. This damage is often accompanied by a brutality that is prohibited according to international humanitarian law. Article 32 of the Geneva Convention (IV) prohibits the occupying force from physically hurting protected persons in any way. This article prohibits any brutal action towards protected persons on the part of the occupying force or its emissaries:

Art. 32. The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

74. The exercise of violence, brutality and/or threats of violence or brutality over the civilian population on account of actions not performed by it is also a clear violation of international humanitarian law. Article 33 of the Geneva Convention (IV) prohibits the occupying power from punishing protected persons for the actions of others. This article in fact prohibits any form of collective punishment. Article 33 also prohibits any reprisals directed at protected persons, in addition to the prohibition against looting which applies to the soldiers of the occupying force:

Art. 33. No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

75. The IDF does not hesitate to take individuals from the protected population, including taking relatives of people the IDF wanted to arrest as hostages, in order to obtain information for military operations. This act, too, is a grave breach of Article 34 of the Geneva Convention (IV), which totally prohibits hostage-taking by an occupying force.

Art. 34. The taking of hostages is prohibited.

76. The absolute prohibition of hostage-taking includes the detention of protected persons after the assault of the occupying force, and the failure to release them until the person in whom the occupying force is interested is handed over, which is precisely what the IDF soldiers did during their invasions of the Occupied Territories. Pictet explained the scope of the prohibition on taking hostages:⁴⁰

b) Another form of the taking of hostages which is very close to (a) consists of arresting after an attack a certain number of inhabitants of the occupied territory and announcing that they will be kept captive or executed if the guilty are not given up.

⁴⁰ Ibid, p. 230.

77. This is also specified in Article 1(1) of the International Convention against the Taking of Hostages (1979):

"Article 1

Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the 'hostage') in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ('hostage-taking') within the meaning of this Convention."

See also: Orna Ben-Naftali and Sean S. Gleichgevitch, "Missing in Legal Action: Lebanese Hostages in Israel," 41 *Harvard International Law Journal* 185

78. Article 51 of the Geneva Convention (IV) prohibits, *inter alia*, the occupying power from forcing protected persons to serve in the occupying force or to serve as collaborators to it:

Art. 51. The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces.

79. The IDF violated its duty under Article 51 by forcing people to carry out military tasks against their will including searching for suspected items and leading IDF forces at gunpoint, in violation of international humanitarian law. All this, as always, was done in an inhuman and humiliating manner.

80. Article 147 of the Geneva Convention (IV) specifies the grave breaches of this convention, which are generally regarded as war crimes. Article 147 of the convention specifies the prohibition of hostage-taking, deliberately damaging the body or health of protected persons, and forcing a protected person to serve in the occupying force. There can be no dispute as to the fact that the systematic damage done to the civilian population by the IDF, including the use of civilians as "human shields," the taking of hostages, and the use of brutal violence, all of which amount to inhuman treatment of civilians, are violations of Article 147 of the Geneva Convention (IV). Article 147 specifies:

Art. 147. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

81. The Petitioners will argue that the Geneva Convention (IV) constitutes customary law, and the IDF is bound by it as an occupying power in the Occupied Territories. The

position of the International Court of Justice is that the Geneva Conventions of 1949 constitute, together with the Hague Regulations of 1907, customary law:⁴¹

"It is undoubtedly because a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and 'elementary considerations of humanity'... that the Hague and Geneva Conventions have enjoyed a broad accession. Further these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law."

82. This is also the position of Professor M. Cherif Bassiouni, an expert on international law:

"The four Geneva Conventions of 1949 and their two Additional Protocols are the most comprehensive codifications of prohibitions and regulations, and their provisions include the most specific and wide-ranging penal norms. The so-called 'Law of Geneva' overlaps with the so-called 'Law of the Hague', much of the latter having been incorporated into the former. The 'Law of Geneva' has become part of the customary law of armed conflicts."

See: M. Cherif Bassiouni, "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice," 42 *Virginia Journal of International Law* 81, 115-16 (2001).

83. The statutes of the International Criminal Tribunals concerned with the former Yugoslavia (1993) and Rwanda (1995), include, *inter alia*, the violations of the Geneva Conventions as part of the crimes upon which these courts have been authorized to deliberate. Thus, for example, Article 2 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (1993) says explicitly that forcing civilians to serve a hostile force, or taking hostages, are prohibited. All these, *inter alia*, are grave breaches of the Geneva Convention (IV) and therefore the Court is authorized to adjudicate these crimes. A similar point was made, with necessary changes, with respect to Article 4 of the Statute of the International Criminal Tribunal for Rwanda (1994). So, too, in the Statute of the International Criminal Court of 17 July 1998, which will come into effect on 1 July 2002. Article 2 of that statute defines the crimes the court is authorized to adjudicate. The article includes, *inter alia*, war crimes. Article 8 defines war crimes as grave breaches of the Geneva Convention (IV). In its definition it contains, *inter alia*, authorizing the International Criminal Court to adjudicate over the coercion of a person to serve an enemy force and the taking of hostages.

84. Indeed, international humanitarian law is going through far-reaching changes. The Geneva Convention (IV) is a central element in the changes occurring with respect to the authority and influence of that law. From a document that formulates rules only, the Geneva Convention (IV) and humanitarian law in general as well as laws of war, have turned into a founding basis of international tribunals. These tribunals have rendered meaningful the prohibitions and duties placed on states as well as individuals, in time of war and in the context of occupation. The status of the Geneva Convention (IV) cannot be

⁴¹ International Court of Justice, Advisory Opinion: *Legality of the Threat or Use of Nuclear Weapons*, 8 July 1996, para. 79.

shaken before these tribunals, since it defines the scope of their authority as well as the definition of crimes that the tribunals cover.

85. For changes in the international humanitarian law in the past decade, see:

Guenaël Mettraux, "Crimes Against Humanity in the Jurisprudence of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda," 43 *Harvard International Law Journal* 237 (2002).

Daryl A. Mundis, "New Mechanisms for the Enforcement of International Humanitarian Law," 95 *American Journal of International Law* 934 (2001).

Philippe Sands, "Turtles and Torturers: the Transformation of International Law," 33 *International Law and Policy* 527 (2001).

Audrey I. Benison, "War Crimes: A Human Rights Approach to a Humanitarian Law Problem at the International Criminal Court," 88 *Georgetown Law Journal* 141 (1999).

Theodor Meron, "War Crimes Law Comes of Age," 92 *American Journal of International Law* 462 (1998).

Richard Goldstone, Address to the Symposium on Law, War and Human Rights: The Legacy of Nuremberg, 12 *Connecticut Journal of International Law* 277 (1997).

Richard J. Goldstone, "Justice as a Tool for Peace - Making: Truth Commissions and International Criminal Tribunals," 28 *New York University Journal of International Law and Policy* 485 (1996).

Catherine A. MacKinnon, "Crimes of War, Crimes of Peace," 4 *University of California Los Angeles Women's Law Journal* 59 (1993).

Diane F. Orentlicher, "Settling Accounts: The Duty To Prosecute Human Rights Violations of a Prior Regime," 100 *Yale Law Journal* 2537 (1991).

86. For a history of the laws of war as a tool for legitimizing state violence, see:

Chris af Jochnick and Roger Normand, "The Legitimation of Violence: A Critical History of the Laws of War," 35 *Harvard International Law Journal* 49 (1994).

87. Therefore, the Petitioners claim that the provisions in the Geneva Convention (IV) clearly specify the prohibition of the kind of use made by the IDF of the civilian population, and that these provisions now form the firm basis of international law concerning the protection of civilian population which should be adhered to, especially given recent developments in international law.

The Hague Regulations

88. The Hague Regulations Respecting the Laws and Customs of War on Land (1907) are binding since they are part of customary law according to Israeli law as well. Articles 45, 46 and 50 encompass the military actions described above and define them as outside the

law, including laws of war. Article 45 prohibits the occupying power from compelling a person in the occupied territory to swear allegiance to the occupying power:

Art. 45 It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

89. Article 46 of the Hague Regulations specifies the right of the inhabitants of an occupied territory to, *inter alia*, life, dignity and property:

Art. 46 Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected...

90. Article 50 of the Hague Regulations specifies that a person or community cannot be punished for the deeds of others. This is a prohibition on collective punishment in the Hague regulations. Article 50 proclaims that:

Art. 50. No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

Summary

91. The challenge of protecting human rights has received in recent years, along with war crimes and crimes against humanity, a momentum and a hope to do justice for the victims of these crimes. Two international tribunals were established following the crimes perpetrated in former Yugoslavia and in Rwanda. A permanent International Criminal Court has been established, and will begin working in July 2002. International humanitarian law no longer focuses only on states, but also, and perhaps mainly, on the deeds of heads of states and military organizations as individuals. These are people who are at the center of state power and have influence on the lives, freedom and dignity of so many people. Against them is not only domestic law, but also the entire system of international norms and enforcement that are rapidly being formed as long as atrocities against civilian populations occur.

92. These changes could not have taken place without the efforts of people for whom the rights of victims, especially of civilian populations, guide their activities, alongside the international political will. It seems that at least part of the hope and expectation of the scholar Richard Falk regarding the development of protecting human rights in the world of the 21st century is beginning to come to fruition:

"The twenty-first century will also be characterized by the challenge of institutionalizing responsibility for serious abuses of human rights by leaders and others in positions of authority, including those in the private sector. Such an evolution further erodes the Westphalian image of a world of territorial sovereign states by insisting that even adherence to the "superior orders" of the state does not override the most solemn humanitarian obligations of international law."

See: Richard Falk, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World*, (New York: Routledge, 2000) p. 9.

Based on all of the above, therefore, the Honorable Court is requested to issue the orders, requested at the beginning of the petition, as well as make the respondents cover the costs of the trial.

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Counsel for the Petitioners

5 May 2002