

We have Names, We have a Homeland

The National Campaign to Retrieve War Victims and Unravel the Fate of Those Missing



Jerusalem Legal Aid and
Human Rights Center

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We have Names, We have a Homeland

Second edition

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Dedication- First edition

When one's hopes are bitter-sweet...

During the composition of this book, Mohamed Issa Ishqukani (Abu Issa) the father of the late 'Amer Ishqukani (who was killed on may 25, 2002 and whose body remains were detained in Israeli Custody) passed away on October 28 of 2009.

Abu Issa had been present in each of the camping's activities, and for this reason he was chosen by his peers to become one of the campaign's leaders. Indeed, he lived up to the trust. He walked the streets in the protest, raising our banners high and met with international organizations and officials on the campaign's behalf. He raised the cause of the campaign in the quest of retrieving the bodies of the beloved whom had sought to fulfill the dreams of their people. A people tortured by occupation and exile over decades on end.

Abu Issa left this world before fulfilling his own dream; that of retrieving the body of his son, burying his remains, and planting a rose upon the earth that enshrouds him. This father would verse with his beloved 'Amer on each remembrance of his passing through eulogies he would compose and publish in the local presses. Perhaps in that the sought to compensate the placelessness of a grave to visit and nourish the soul of his son with his tears. The following is an excerpt from the eulogy he delivered to his son on 6th solemn occasion of his death;

"the date of your death coincided with the week following the 60th remembrance of Al Nakba, which was continues to be lived by the Palestinian people; as the shock of your absence continues to grieve me. My beloved son, whom is distant yet near, absent yet present, my heart is perplexed by thee and my soul is in mourning. For your love for your homeland was more immense than that for life and its seduction. And in your aftermath there are only tears, logging, and memories of your departure."

We dedicate this book to the soul of Abu Issa and the souls of the mothers and fathers whom departed this world before fulfilling their dreams. For what hope is more bitter than that of burying one's own son?

To all whom we have mentioned and the patient families still waiting, we dedicate this book.

The National Campaign to Retrieve War Victims and Unravel the Fate of Those Missing

Dedications - Second edition

As we approached the very final stage of preparing the second edition of this book/document, we were suddenly shocked by the passing of our colleague Othman Hamdan “Abu Nidal”; a member of the national leaders for our campaign, and the sibling of the martyr Hamdan Hamdan, whose body has been detained since 1974. Prior to Othman’s passing, he completed the writing of a section on the brother of the writer Muhanad Abdul-Hamid, in it he painted a picture of what was stored deep in his subconscious and in his memories; a picture portrayed in the quest and undying dedication to the retrieval of all the martyr’s bodies’ from the racist Israeli regime.

Words can never suffice what we lost with your passing, dear Abu Nidal. Your words will always resonate in our minds, and as we reflect on your words of wisdom; in turn we will reciprocate the impact you left on us inscribed in the following: To the grave we take this oath, that we shall return the body of your brother Hamdan to Arrabah cemetery, where it will lay in peace right next to yours. Your tombs will forever be a reminder to all of us of what a hero we lost, and serve as a moral example to the life of selfless service you both lived in sacrifice for freedom and independence. Your lives will be penciled into a narrative of heroism, and you and your brother will be depicted as the heroes of this story.

Since the publication of the first edition of this book, “we Have Names and We Have a Homeland”, we had lost Ms. Aisha Fayoumi, the mother of martyr Anis Dawlah who passed at age 94, we had also lost Ms. Nazmiya Badran, member of our Campaign’s leadership and mother of martyr Saif Eddine Badran, as we have also lost the member of our Campaign leadership, Atallah AbdelMajid Hasan “Abu Ra’ed” and brother of the missing Mohammad AbdelMajid Hasan. We had also lost the activist Mohammad Hashem Natsheh, father of martyr Nabil Natsheh, the journalist Ali Issa Abu Salem, father of martyr Zainab Abu Salem, and Ms. Badi’ea AbdelMun’em Z’uool, mother of martyr Mohammad Issa Z’uool, and other of the victims’ parents who have passed away without having the chance to witness the return of their beloved son or daughter or to commemorate their memory appropriately by having their remains placed in a coffin, wrapped in their country’s flag at a dignified burial ceremony.

It was a momentous sight, on May 31st of 2012, when 93 awaited Palestinian remains were returned to their families as part of a collective release. The remains of the victims were returned to their eagerly awaiting elderly mothers and fathers, grown sons and daughters, and even grandchildren whom they never got a chance to meet. A military ceremony was held in the deceased's honor prior to their remains being passed to their families for burial.

Many parents and extended families are still waiting for the ability to have a dignified burial service for their deceased. The Campaign, We have Names, We Have a Homeland, vows to continue the struggle until each of the families' dream is realized and they can finally experience closure.

The Campaign has documented the cases of 48 missing persons. For this, we are deeply saddened by the unknown status of their whereabouts. Although some of these missing persons' loved-ones have lost hope of ever obtaining the needed answers or being able to pay tribute to their loss, others still yearn expectantly for this closure. The Jerusalem Legal Aid and Human Rights Center seek the human right of a dignified burial for those Palestinians whose death has been confirmed.

We dedicate this book to: all those whom have experienced the bitter-sweetness of having their loved one's remains returned; all those still patiently awaiting this moment; all those relatives who have passed away before having this simple yet meaningful wish fulfilled; and all those who still do not know the fate of their missing loved ones.

We dedicate this book to all these people, as a pledge of our commitment to assist in their struggle.

We Have Names... We Have a Homeland

Acknowledgment - First edition

The following three factors served to distinct the 'National Campaign for the retrieval of Palestinian & Arab War Victims' Bodies and the Disclosure of the fate of Those Missing'.

First: Its origins which stems from the families, whom likewise steer the campaign.

Second: it is 100% voluntary in nature. The entirety of campaign activities are coordinated by the volunteers, the families, and by the representative of formal and civil society organizations.

Third: It's resulting network of formal, civil society, popular and legal bodies, governors and municipalities, and media agencies.

The above mentioned served to create for us a difficulty in thanking all whom contributed to the success of the Campaign and its publications by name. for in doing so would have involved pages on end. Thus, we would like to extend our gratitude to the families and formal and civil institutions for their support, as well as Center's staff, whom took it upon themselves to compose and develop this book in both languages.

We would like to extend a special thanks to the writers and journalists whom voluntarily composed the stories featured in this book. In this regard, we would like to clarify, that although the stories published under the names of the various authors do not necessarily represent the position of the Jerusalem Legal Aid and Human Rights Center - JLAC, we felt it our moral and national responsibility to bring this cause out from the dark.

The Jerusalem Legal Aid and Human Rights Center - JLAC

Gratitude and Thankfulness - Second edition

**Do not wait.
Make your Rain with your own hands.
Make your Rain.
And knock.
It will be opened to you.**

Poet: Samih al-Qasim

Three years ago, the Campaign's first edition of the book titled "We have Names and We Have a Homeland" was released. This book is the first Palestinian document to address the issue of Palestinian and Arab war victims' remains held by Israel and to describe the deprivation and on-going suffering of the victims' families and loved-ones as they yearn to bury their deceased dignified fashion in accordance to religious beliefs . In addition, the book describes the issue of forcible disappearance and missing persons under shadowy circumstances, as well as the Israeli occupation authorities' refusal to assume their responsibility to revealing these persons' fate.

The original book "We Have Names and We Have a Home Land" grew out of Jeruslaem Legal Aid and Human Rights Center's (JLAC) Campaign efforts to document incidences and build national consensus (in Arabizing and globalizing the cause) towards exposing Israel's violation of the sanctity of death and inflicting collective punishment on victims' families. The Campaign actually paved the way for JLAC's legal success on this issue before the Israeli High Court. Additionally, the book supported the political achievements made by the Palestinian leadership, in terms of being able to negotiate the release of the remains of 93 victims being withheld by Israel (equivalent to 26.5% of the total number of victims' bodies documented by JLAC thus far).

In publishing the second edition of "We Have Names & We Have a Home Land", we hope to further contribute to public opinion and human rights organizations' knowledge of this cause and to further recruit more campaign allies and to ultimately close this tragic file once and for all.

We would like to thank everyone who contributed to the success of our Campaign and its

qualitative achievements. We are grateful to the victims' families whom collectively and patiently struggle and continue to serve as a model of successful popular resistance. Likewise, we extend our thanks to all those who supported our Campaign on an official level; first and foremost, to his Excellency President Mahmoud Abbas, for adopting the Campaign and its objectives, and the significant achievements made. Our thanks also goes to former Prime Minister Dr. Salam Fayyad, who supported our Campaign from its onset, from incurring the cost of publishing the first edition of this book to commissioning the cooperation of relevant ministries (through a decision by the Council of Ministers) in achieving our objectives. In this regard, we would like to highlight the following ministries for their heartfelt cooperation: the Ministry of Detainees and Ex-Detainees Affairs, the Ministry of Foreign Affairs, the Ministry of Justice, the Office of the Government Spokesperson, as well as several municipalities and governor offices.

Moreover, we are grateful for the support of the Palestinian National Council, parliamentary blocs of the Legislative Council, political parties, related organizations and associations along with their volunteers, and local media and satellite channels. Finally, to the Jerusalem Legal Aid and Human Rights Center, we reiterate our sincerest thanks for all their logistical and legal support, as well as the costs it incurred in publishing the second edition of this book. Indeed, this book is the fruit of much labor collectively achieved by the leadership of the Campaign along with an elite group of writers and journalists, who voluntarily wrote and edited the articles featured in this edition (their names are noted by each on their contributions). In this regard we thank the many Campaign volunteers, members, supporters, leadership and governorate committees.

Thank you all for your efforts.

The National Campaign to Retrieve War Victims and Unravel the Fate of Those Missing

We Have Names & We Have a Homeland

Salem Khilleh

Coordinator of The National Campaign to Retrieve War Victims Bodies and Unravel the Fate of Those Missing

Forward- First edition

In the undertaking of this book and the campaign it centers around, a new chapter has been inscribed by the Palestinian people in their resistance of the Israeli occupation, which has persecuted those whom have fought for liberty as well as their families. A resistance of the savage practices of occupation, against its mentality and spirit of vengeance and spite; that are executed not merely upon the living, but span out to encompass the casualties of war long after their death.

Contemporary history does not know of a country, sole of Israel, which is adamant at having the bodies of the dead be punished for perceived crimes or serve the remainder of their sentence, as to extend ones punishment into death. For Israel intentionally seeks to augment the suffering and pain of the deceased's families, through depriving them the human right of burying and paying respect to their loved ones in accordance to human dignity and practices of mankind throughout time and place.

This book serves to catalogue some cases of the deceased and missing persons whose bodies remain withheld in Israeli custody. It features their photos and biographical information and a selection of comprehensive stories, as collected and composed to the best of our ability. Such was undertaken as to bring to light and affirm, that, indeed, behind every number there is a person and a family that grieves at their loss and at being deprived the right of burying them. Regretfully, these are merely samples of such cases and accounts, as prior to the making of this book not all of the cases that exist had been documented (many cases within and beyond Palestine remain unaccounted for the time being).

This new chapter, this new front, that has opened a new door through which to resist the Israeli occupation and its abhorrent and fascist practices goes under the name of 'The National Campaign for the Retrieval of Palestinian and Arab War Victims' Bodies and the Disclosure of the Fate of Those Missing'. This front grows like a snow ball, increasing in size and popular momentum as it breaks through the confines of public knowledge. The national campaign was publicized in May of 2008 and officially launched on August 27, 2008. Shortly thereafter, a decision was taken by the Palestinian Prime Minister's Office that the August 27 of each year shall come to serve as the National day for acknowledging and advocating for this worthy cause.

Lastly, the making of this book and success of this Campaign could not have been possible if not for the efforts made and vital roles played by the families, formal institutions, and civil organizations involved. I, as do all involved, hold to my conviction, that worthy front will bear fruit sooner rather than later.

Tayseer Arouri

Chairman of the Board of Directors

Jerusalem Legal Aid and Human Rights Center

Preface - Second edition

The Palestinian national struggle to retrieve the remains of their fallen brethren held by Israel truly encapsulates the epic plight of the Palestinian people against the Zionist occupation in obtaining their freedom and restoring their fundamental human rights.

The bodies of our fallen heroes who fought for liberating our homeland or those who died while held in Israeli political prison.

Has the history of humanity ever known such brutality as practiced at the hands of Israel, the “oasis of democracy” in the Middle East?

Indeed, this brutality and sadism is the true face of Zionism and the State of occupation.

Emerging in response to this brutal reality is the popular action towards the retrieval of these war victims’ bodies and the many achievements resulting from the National Campaign for the retrieval of victim’s remains; whether withheld by Israel in the cemeteries of numbers, morgues or refrigerators. Thus far, these efforts severed to retrieve nearly a quarter of the number of cases documented. The Campaign couldn’t have succeeded without the help of many involved in these efforts, for example; the popular masses continuous perseverance and determination; the active participation of victims’ parents and families, national bodies and institutions, and media agencies. The Campaign was especially strengthened by the fact that international humanitarian law clearly defends one’s side.

These are lessons learned and mastered from the glorious popular uprising (Intifada) between 1987 and 1991; lessons nearly forgotten, but echoed in the successes of the National Campaign.

Thus far, a solid foundations have been established upon which further achievements of the Campaign will build upon. For we will persist with increased vigor until our objective of retrieving each victims’ remains and revealing the fate of all the missing is realized.

Tayseer Arouri
Chairman of the Board of Directors
Jerusalem Legal Aid and Human Rights Center



Introduction

The report of the United Nations Fact Finding Mission on the Israeli assault against the Gaza Strip, better known as the 'Goldstone Report', came to confirm once more, that Israel is indeed a 'rouge state'. During its assault on the Gaza Strip, it behaved, like always, with neither regard to the rules of combat nor to the characteristics of knights. The present report from the Jerusalem Center for Legal Aid and Human Rights-JLAC adds new evidence supporting the crimes committed by Israel in the Occupied Palestinian Territories. The report addresses a type of crime that is being perpetrated by Israel at a time when the world has purportedly gone beyond the repulsive early 19th century English practice of hanging and then dismembering convicted criminals. Does Israel still live in the same dark ages in concealing these bodies? Such behavior undoubtedly confirms reports accusing Israel of stealing organs from the dead bodies of Palestinians.

International Humanitarian Law, both conventional and customary ("IHL"), has determined that contesting parties in armed conflict, whether international or domestic, must respect the dead whether killed in the battle field or died while in detention. Bodies must be collected, evacuated, buried in properly marked graves and their families must be notified. IHL prohibits the mutilation of dead bodies. The return of dead bodies to the party that they belong to or upon the request of their next of kin is an international obligation duly recognized under international customary law and relevant treaties. The policy underpinning these rules is the natural right of a family to know the fate of its members. Whether someone is alive or not has bearings relating to inheritance and distribution, and the right of the widow to know the fate of her husband so that she can determine if she wants to re-marry or to re-organize her life to raise her children. In addition, there moral and humanitarian concerns which dictate the burial of the dead in accordance with their religious belief. While the US Military Tribunal at Nuremburg stated that robbing a dead body "is and always has been a crime", it may be, by analogy, added that mutilation of dead bodies, concealing the remains, or not returning the same is (in the civilized conscious) a crime as well. It may even be considered a 'war crime' since it is injurious to the individual honor, a crime which may fall under the jurisdiction of the International Criminal Court.

The Geneva Conventions of 1929 and 1949, and the First and Second Protocols attached hereto,

have created a corpus of international jurisprudence which found its way to national legislations in many states. This confirms that respect for dead persons who were killed in a combat situation has become an established international custom that must be upheld with esteem, any views contradicting such an imperative rule notwithstanding. Such a contradictory view runs in fact against human dignity.

The subject matter of this report is to urge Israel to return the remains of Palestinians who died in combat or while in detention to the party they belong to or to their families. Israel must disclose the identity of these dead persons who are buried in the so-called 'Cemeteries of Numbers', where each dead person is identified by a number and the name is concealed. Israel is under an international legal obligation to return their bodies as per Article 17/3 of the First Geneva Convention, Article 120 of the Third Geneva Convention and Article 130 of Forth Geneva Convention. The following sections will discuss what the First and Second Protocols to the Geneva Conventions provide on this subject.

This matter is also an obligation that has been pursued by states. The ashes of 3,500 Japanese soldiers killed during World War II were returned to the Ambassador of Japan in Jakarta in 1991. The 198 Report of the International Committee of the Red Cross stipulated the remains of more than 1,000 soldieries and fighters in Sri Lanka were also exchanged. Many national laws in various countries incorporated into their military manuals the rules of returning mortal remains to the party they belong to or to their families. In 1985, Colombia's Administrative Court held that families must not be denied their legitimate right to claim the body of a relative. Further, the UN General Assembly adopted, on November 6, 1974, a resolution calling upon parties in armed conflicts to help locate and mark graves of those who had fallen in order to facilitate the disinterment and the return of remains, if requested by their families.

As per the body of document, treaties and practices, Israel is under an obligation as dictated by IHL to return the bodies of dead Palestinians to their families and to identify the respective identities of those who are still in the 'Cemeteries of Number', considering that these remains neither threaten 'Israel's security' nor the 'Jewish character' of the state.

Dr. Anis F. Kassim

A Legal Review;

Retrieving Palestinian and Arab War Victims' Remains from Israel's "Cemeteries of Numbers" and Disclosing the Fate of the Missing

Prepared By: Attorney Haitham Al-Khatib

Demanding the Establishment of a DNA Bank; Towards the Identification and the Assurance of the Sound Retrieval of Victims' Remains

For several years, The Jerusalem Legal Aid and Human Rights Center (JLAC) has been legally intervening in the issue of retrieving the bodies or remains of Palestinian and Arab war victims in order for their families and loved ones to be able to fulfill the human right to bury their dead in a decent and appropriate local social and religious traditions. For more than forty years, the families of the deceased have been deprived of death certificates confirming the death of their relatives and have been withheld from information concerning the place of burial; therefore, denying them the right to visit the gravesite and to mourn. Throughout the last decade, the issue of retrieving bodies and remains from Israel has been merged with what had been the separate matter of prisoner swaps and releases. Although Israel has not publically declared this position, it continues to use the issue of detained bodies as a bargaining tool in negotiating prisoner swap.

This paper addresses the detainment of victims' bodies and remains in the Israeli "cemeteries of numbers", among other issues pertaining to the return of the deceased. The paper highlights Israel's negligence and failure to properly document and maintain records of the Palestinian deceased held in Israel. This paper will also present the legal aspects concerning the detainment of bodies, JLAC's related experience in this regard, the complexity in identifying human remains and lessons learned from ongoing scientific testing (i.e. DNA testing).

“Cemeteries of Numbers” and Burial Conditions

According to data from the Israeli army, there are currently two cemeteries in Israel in which the bodies of Palestinian and Arabs are being buried. One such cemetery is located near the Daughters of Jacob Bridge in the Galilee region north of Palestine and the second is one near Adam Bridge in the Jordan Valley region. The first cemetery mentioned contains the remains of victims from the Palestinian northern border region while the second cemetery contains victims from Jordan and the West Bank. Until 2000, there had been a third cemetery in Palestine’s north, however, according to the findings from a special military inquiry committee, the remains of the bodies held in this cemetery were transferred to other cemeteries or were released to their families through prisoner exchange agreements.

According to Israeli official documents released in 2000, the number of bodies buried in the cemetery of the Daughters of Jacob Bridge amounted to 243, with an additional 92 bodies buried in the cemetery located near Adam Bridge (see report of special military inquiry committee assigned by order of the General Staff No. 2.0715, in response to an inquiry concerning the location of the bodies of the deceased Zawahrah and Soboh. Item number 6 of the report addressed the conditions of the cemeteries, the manner in which the bodies were kept, and the means of identifying those particular bodies.)¹. “Cemeteries of numbers” are considered military zones in which civilians do not have access, therefore denying Palestinian and Arab families the right to access their relatives’ graves.

In 2010, a special expert report prepared by Professor Yehuda Hess of the National Center of Forensic Medicine on the exhumation of the remains of Aruri, revealed a series of serious issues with regard to the conditions of the cemeteries. The report presented that some bodies were alarmingly “lost” and a number of graves ended up being empty due to missing remains. In certain cases, even when the remains were found in the graves, they were unable to be identified. The procedure used to identify

¹ The report is available on the following webpage: www.hamoked.org.il/items/7217.pdf

the deceased was to store the remains in plastic bags, labeled with an identification number using a felt-tip pen. Unfortunately, the bags and the labeling had eroded over time. Indeed, many of the numbers featured on the bags were completely illegible. Some bodies and remains were not even placed in bags or identified at all. The layout of the graves also obscured the ability to identify the remains as they are in very close proximity to each other, causing the remains of a body to be found in more than one grave due to the natural movement of earth. In some cases, graves were dug in a single long grave with no soil separating the bodies and remains. With time and soil erosion, bodies shifted, creating what looks to be vacant graves and further complicating identification of remains. The Report found that some graves were identified using numbered plates; however, the plates themselves were not bound to the graves, limiting the reliability of their original placement. Moreover, the Report cited that there were traces of cows' dung in the cemetery near the Daughters of Jacob Bridge. Having animals in the grave yard is not only evidence of negligence and violation of the sanctity of the dead, it proves the accessibility of the gravesites and the potential for the graves, remains and markings to be disrupted and manipulated.



Legal Framework:

The Case of Withholding and Identifying Victims' Remains

This section will present the legal framework that concerns the return of bodies and remains. It is recognized internationally and by the Israeli Supreme Court that the West Bank and the Gaza Strip are under Israeli military control and considered occupied territories and subject to international law. Israel is therefore accountable with regard to its relevant legal responsibilities and consequences², which includes the treatment of withheld bodies and remains.

A. Relevant International Treaties and Conventions:

The Hague Convention of 1907:

The Fourth Hague Convention of 1907 is relevant to laws and customs of war on land in addition to the annexed regulations. The State of Israel did not sign this convention; however, the Convention is binding to all nations, including non-signatory nations³ as it is deemed in International Customary Law.

The First Geneva Convention of 1949:

The First Geneva Convention was signed on August 12, 1949 for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field. The State of Israel has signed this convention and is therefore a party to it⁴.

2 A resolution of the High Court in petition 39382/ in the case of the Teachers' Housing Association versus the military commander, Court Decisions Folder no. (L.Z) (4) 785, pg. 792.

3 See, Robbie Cevall book "The International Law" published by the Hebrew University of Jerusalem, page 428.

4 The Convention is documented in «Kitvei Amana», the official gazette for publishing international conventions signed by Israel, Volume 30, page 387.

Articles (16) and (17) of the First Geneva Convention indicate the measures required by all parties to the conflict in the identification of withheld bodies as well as the exchange of information concerning the deceased and their identities.

Article (16)

Parties to the conflict shall record as soon as possible, in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in their identification. These records should if possible include:

- (a) Designation of the Power on which he depends;
 - (b) Army, regimental, personal or serial number;
 - (c) Surname;
 - (d) First name or names;
 - (e) Date of birth;
 - (f) Any other particulars shown on his identity card or tag;
 - (g) Date and place of capture or death;
 - (h) Particulars concerning wounds or illness, or cause of death.
-
- The above mentioned information should be forwarded as soon as possible to the Information Bureau (described in Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949), which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.
 - Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau half of the double identity tag, last wills or other documents

of importance to the next of kin (i.e. money, articles of an intrinsic or sentimental value, which are found on the dead, etc.). These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased, as well as by a complete list of the parcel's contents.



Article (17)

Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. Half of the double identity tag, or the identity tag itself if it is a single tag, should remain on the body.



Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation, the circumstances and reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of the dead.



They shall further ensure that the deceased are honorably interred, if possible according to the rites of

the religion, to which deceased belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, and properly maintained and marked so that they may always be found. Towards this end, they shall organize at the commencement of hostilities an Official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies (whatever the site of the graves) and the possible transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

As soon as circumstances permit, or at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the second paragraph of Article 16, lists showing the exact locations and markings of the graves, together with particulars of the dead interred therein.⁵

The articles above explicitly emphasize the obligation for an honorable and methodized burial. This duty is not only limited to the actual burial, but also demonstrates the need to preserve the dignity of the deceased after being interred. The exchange of records and data is also obligatory. Unfortunately, the Israeli authorities claim that article (17) does not constitute an obligation to return bodies. Israel has chosen to interpret the law this way as they have not followed their obligations to bury the deceased according to religious beliefs; to meticulously process and maintain identification records nor have they provided the necessary information regarding the deceased to the other party, as guaranteed in the Conventions.

These mentioned articles to the Convention determine the right of the deceased and his dignity. Furthermore, they prohibit the violation of the sanctity of the dead and the grave and require that all necessary measures to ensure the identification of the body and the place of burial are taken.

5 <http://www.icrc.org/ara/resources/documents/misc/7umf63.htm>

The Second Geneva Convention of 1949:

The Second Geneva Convention was signed on August 12, 1949 and relates to the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea. The State of Israel signed this Convention and is one of its parties.⁶ This convention provides for a system similar to the First Convention in all matters related to the obligation of parties to the armed conflict to search, assemble and identify the deceased in addition to providing a dignified burial.

The Third Geneva Convention of 1949:

The Third Geneva Convention was signed on August 12, 1949 and is related to the treatment of prisoners of war. The State of Israel had signed this convention and is a party to it.⁷ This convention also provides for a system similar to the First Convention in all matters related to the obligation of parties to the armed conflict to search, assemble and identify the deceased in addition to providing a dignified burial.

The Fourth Geneva Convention of 1949:

The Fourth Geneva Convention was signed on August 12, 1949 and is related to the protection of civilian persons in time of war. The State of Israel had signed this convention and is a party to it.⁸ The majority of the articles contained in this convention are International Customary Law.⁹ The Convention also stipulates a system similar to the First Geneva Convention in all matters related to obliging parties to the armed conflict to search, assemble and identify the deceased in addition to the need for a dignified burial.

6 The Convention is documented in «Kitvei Amana» reference, Volume 30, page 423.

7 The Convention is documented in «Kitvei Amana» reference, Volume 30, page 453.

8 The Convention is documented in «Kitvei Amana» reference, Volume 30, page 559.

9 See, Robbie Cevall book "The International Law" published by the Hebrew University of Jerusalem, page 428.

The First Additional Protocol to the Geneva Conventions:

The First Additional Protocol to the Geneva Conventions was signed on August 12, 1949 relating to the protection of victims of armed conflicts. Article (34) of the First Additional Protocol states that the remains of persons who have died for reasons related to war, or in detention resulting from war or hostilities, shall be respected, and that the gravesites of all such persons shall also be respected. The second part of the same article states that parties to the conflict shall, as soon as possible and as circumstances allow, conclude an agreement in order to facilitate access to the gravesites by relatives of the deceased. The article also provides for the facilitation of return of remains of the deceased and personal belongings to the home country upon request by the state or by the next of kin.

Although the Additional Protocol is widely considered to be International Customary Law¹⁰ and therefore applicable to all, Israel claims that article (34) of the First Additional Protocol, which clearly states the obligation to return bodies after hostilities, does not pertain to them as Israel is not a signatory.

B. Israeli Law and the Principle of Preserving the Dignity of the Deceased:

The principle of “dignity of the deceased” is the Jerusalem Legal Aid and Human Rights Center’s (JLAC) foundational argument related to the return of remains. As per Israeli court ruling, this dignity implies the full burial of the body in a manner deemed appropriate by the relatives of the deceased. The mentioned court ruling states that autopsies are violation of the dignity of the deceased although they can be necessary in discovering or confirming the facts relevant to the individual’s death. Relevant rulings also mention that the dignity of the deceased is included in the concept of overall human dignity, which is to be enjoyed in life as in death¹¹. In Israeli law,

10 See, Robbie Cevall book “The International Law” published by the Hebrew University of Jerusalem, page 429.

11 See the High Court decision number 612694/ in the case of Giora Sanch against Israel Broadcasting Authority, folder of court decisions (n,c) (3) page 866.

the dignity of the dead extends to include the dignity of cemeteries. The High Court of Israel had included the needs of the deceased's family members, such as the need for the deceased's memory to be respected, as an aspect of dignity of the deceased.¹²

Since the Basic Law of Human Dignity and Liberty in Israel, initiated in 1992, the rights contained therein have gained constitutional standing. Unless amended by law under the conditions specified in Article 8 of the Basic Law designed to "defend human dignity and liberty", these rights cannot be violated. The second article of the Basic Law, entitled: "The Preservation of Life, Body and Dignity" states that: "There shall be no violation of the life, body or dignity of any person as such". Therefore, the dignity of the deceased is considered human dignity and is protected by the Constitution

In Petition number 52/06 (the Case of al-Aqsa Company for Keeping Islamic Shrines against the Museum of Tolerance), the Court examined the case of violating the dignity of the dead according to the constitutional provisions set forth by Article 8 of the Basic Law.

The Israeli court ruled that the principle of dignity of the dead and the defense of that dignity applies to the bodies of Palestinian deceased and buried in the "cemeteries of numbers". The Israeli court addressed returning the body of a Palestinian fighter killed after being tortured during an interrogation by Israeli security forces. In such a case, the Israeli military commander required that the funeral for the fighter take place at night in order to limit exposure of the event as well as participation in the ceremony. The Israeli court acknowledged that the military commander should take into consideration the dignity of the deceased, which includes the dignity of the family members¹³. Another case relevant to the "dignity of the dead" related to victims killed in the military offensive in Jenin Refugee Camp of March 2002. The court once again acknowledged that the principle of the dignity of the deceased is relevant no matter what role the deceased held in the conflict¹⁴.

12 See the High Court decision number 29494/ in the case of Kdescha against Kstenbaum, folder of court decisions number (m, f) (2) page 464.

13 See, decision of the High Court number 393392/ in the case of Mustafa Barakat against the military commander, folder of court decisions (M F) (5) 1, page 464.

14 See, decision of the High Court number 311402/ in the case of Barakah el al against the Secretary of Security, (unpublished yet).

C. Military Orders:

The military order number 38.0109 issued on September 1, 1976 is based on the principles of the First Geneva Convention, mainly on articles 15, 16 and 17 relating to the deceased, their identification and burial. These orders issued by the Army High Command illustrate, in detail, the procedures necessary in gathering and transferring bodies from the battlefield to the gravesite. The orders also illustrate the procedures to be followed in identifying and burying a body. The matter of how to organize a gravesite is also addressed in the orders, as is marking the graves, developing a map as well as identifying and registering the bodies and remains.

Israel claims that the military order number 38.0109 does not apply to the bodies of the deceased killed in fighting actions who are considered “terrorists”. It also claims that the mentioned military order applies only to regular soldiers of the armies of enemy states¹⁵.

A special military committee examined the cases of Zawahrah and Soboh and the conditions of the cemetery where they were buried along with the related military orders concerning the identification of the bodies and mechanisms of burial. In their investigation, the Committee found that some of the order documents were damaged and illegible. Although it was a military committee, it could not obtain the original text of the documents, but the text as amended, since the officers themselves did not keep original copies and did not realize the date of amendment.

The following is a list of Israeli military order relevant to the treatment of bodies and their burial:

- Military Order number 705.1 / April 1971, entitled “infiltrators, citizens and residents of the regions – dead”
- Military Order number 219 / October 1977, entitled “treatment of infiltrators and locals who were killed by our forces in the regions”
- Executive Orders number 2.10 / June 1989, entitled: “the bodies of the terrorists / transfer,

¹⁵ See the report of the Special Military Committee which was assigned by order number 2.0715 of the Forces Command to enquire the location in which the bodies of martyrs, Zawahreh and Soboh were buried and to review the conditions of the cemeteries of numbers as well as the conditions in which bodies are kept in those cemeteries in addition to the means followed for the identification of the body, Item number 77 of the Report.

burial and documentation – executive instructions”.

- Amendment to the aforementioned executive orders 2.10 / May 1992, entitled: “the bodies of terrorists / transfer, burial and documentation”
- Amendment to the aforementioned executive orders 2.10 / May 1995, entitled: “the bodies of terrorists and infiltrators – burial instructions”.
- Military Order number 1/7.430 / March 1995, entitled: “the bodies of terrorists and infiltrators – burial instructions”.
- Amendment to the Military Order number 1/7.430 / August 1997.
- Military Order number 1/0.061 / October 1998, entitled: “the bodies of terrorists and infiltrators – burial instructions”.



D. The Israeli Position Concerning the Returning of Palestinian Bodies:

The Israeli claim concerning the need to withhold the bodies of martyrs is based on two main pretexts:

First Pretext:

The Israeli military views the continued practice of burying the deceased in the “cemetery of numbers” as a **deterrent to** others from carrying out operations against Israel. The deterrent is viewed as direct but it is also indirect, in that such scenarios are not used to provoke sentiments of resistance.

Second Pretext:

The emotive nature of grief can influence funerals to become instigators of confrontation. Israeli authorities have withheld remains in order to prevent direct clashes between the mourners and soldiers. Other responses that the Israelis want to prevent are soldiers and settlers being targeted with stones or Molotov cocktails, Palestinians shooting in the air or at Israeli targets, or nationalism and political incitement by Palestinian political parties. The Israeli authorities also want to avoid encouraging recruitment and support to resistance movements.

The Israeli policy regarding the decision to withhold the bodies of the deceased is not a general policy but is dealt with on a case per case basis. The decision to return a body is taken by the regional military commander after consultation with the military prosecutor. According to Israel, this method ensures a balanced strategy between the rights of the deceased and the deceased’s family on one hand, and the security needs for Israel on the other. It is worth mentioning that the Israeli court had previously approved that the bodies of Palestinian deceased could be returned with conditions, such as, not opening a mourning house, conducting the funeral at night as well as the family needing to cooperate with the Israelis in the planning and conduction of the funeral. Funerals must have limited guests.

Due to events in the past decade, such as the capturing of three Israeli soldiers; Jolfassr and Regib by the Lebanese Hezbollah, as well as Gilad Shalit by Hamas, all transactions between Israeli and Palestine related to return bodies of deceased have been frozen. This position by the Israelis has shifted the consideration that the return of the deceased is dealt with as a matter relating to prisoner exchanges rather than as a legal issue. Due to this pretext, four petitions are pending before the Israeli High Court of Justice and have been adjourned every six months, even though the petitions for the release of remains were submitted years ago. These pending petitions are as follows: Petition number 9025/01 (Awadallah brothers), petition number 8027/05 (Abu Salim), petition number 8086/05 (Masry) and petition number 4118/07 (Hanbali). These petitions only relate to the issue of returning the bodies of deceased and do not address other issues related to the conditions of keeping or identifying the bodies.

With regards to the conditions in which bodies are kept and those of the gravesites, as well as the right to visiting them, JLAC has no knowledge of any antecedent comparable legal proceedings. All previous legal demands pertained solely to the return of the deceased body.

On the 18th of January, 2011, an agreement to exchange prisoners took place between the Hamas movement and the State of Israel. According to this agreement, the Israeli soldier in question was Gilad Shalit. A breakthrough was expected with regard to the issue of returning bodies of the deceased; however, as of yet, this has not been the case.

On January 4, 2012, the Israeli press published that the Shmagar Committee had made recommendations to the Israeli Minister of Defense, Ehud Barak, regarding strict and binding rules to be followed in prisoners exchange agreements. The Committee, chaired by former chief of Justice at the High Court, Meir Shmagar (known for his hardline positions), was commissioned by the Minister of Defense to establish binding standards with regard to prisoner exchanges. This policy came as a result of controversy within the Israeli public regarding the price that was paid for the return of soldier Shalit two years before, as it was viewed that too many Arab and Palestinian

prisoners were exchanged for one soldier. The report, which contained recommendations to transfer the responsibility of managing the negotiations regarding prisoners' exchanges from the Prime Minister's Office to a specific entity at the Ministry of Defense, was presented to the Israeli Minister of Defense. Some of the recommendations regarding proposed standards for prisoner exchange remain confidential. According to Israeli media sources, the Shmagar report recommends adopting standards that do not allow exchanging alive Palestinian prisoners for the bodies of Israeli soldiers, but rather exchanging only the bodies of Palestinians and Arabs. In other words, bodies should be withheld to serve as a bargaining tool in any future negotiations that may occur in which an Israeli soldier is killed and his body captured.

In May 2012, Israel returned 91 bodies to the Palestinian National Authority (after recording a legal precedent with the retrieval of the bodies of martyrs Mashoor Aruri and Hafez Abu Zanat through legal means). The Palestinian National Authority subsequently returned the body of each deceased to his family and held military ceremonies. According to the document of the National Campaign for Retrieving the Bodies of Martyrs and Revealing the Fate of the Missing, there are still at least 288 Palestinian bodies kept at the cemeteries of numbers, waiting to be claimed and to be buried in an appropriate manner. As there are cases that have been pending for up to ten years, JLAC continues to pursue this issue with the aim to reach the largest possible legal achievement, knowing that such cases are being carefully scrutinized by the Israeli Court.

E. The The Legal interventions of the Jerusalem Legal Aid and Human Rights Center and Lessons Learned:

In early 2008, JLAC commenced its work on the retrieval of bodies of Palestinians and Arabs from the mentioned Israeli cemeteries. JLAC initiated with a pilot case in the request for Mashoor Aruri's body. This case and legal study was to break the ice on this frozen file. After initiating

correspondence with the Israelis, JLAC succeeded in establishing a broad popular campaign representing a wide spectrum of the Palestinian society in support of the return of Palestinian bodies and remains. JLAC further issued a list of the names of more than 50 known deceased Palestinians, whose bodies were believed to be in the cemeteries of numbers. Initially, collective letters demanding the retrieval of bodies were directed to the Israeli authorities; however, JLAC modified its strategy after realizing that this method would only lead to accumulating petitions at the Israeli High Court without any action.

The following presents three cases that have been represented by JLAC in the past two years:

The Case of Martyr Mashoor Aruri: Mashoor Taleb Aruri was killed in a resistance operation on May 18, 1976. His body had been withheld at the cemetery of numbers. When JLAC adopted this case, Aruri's father was 85 years old and his mother was 75. On behalf of Aruri's parents, JLAC addressed the Attorney General of the Israeli Government in the West Bank demanding the return of Aruri's remains. As correspondence remained unanswered by the Israeli authority for months, JLAC approached the Israeli High Court with the petition number 8306/09, deliberately demanding the retrieval of Aruri's body by his parents in an attempt to avoid entering into the discussion of an exchange deal for soldier Shalit. JLAC's pilot case was successful and Aruri's body was returned to his parents allowing the father of the deceased to bid his son farewell before passing away.

The petition on behalf the family of the deceased was tailored specifically to the Aruri family circumstances. JLAC emphasized the length of time since Aruri's death, as well as the ongoing suffering of his family, especially that his parents were very old and wished to retrieve the body of their son before they passed away. In addition, JLAC asked that the parents be given permission to visit their son's grave as a temporary solution until the remains were returned. Presenting Aruri's file on compassionate grounds and including multiple demands, prevented Aruri's file from being linked to the Shalit case.

The Israeli High Court dealt with the Aruri case on an individual basis. It gave the Israeli prosecutors

a 20-days period to respond to the petition. This urgency was a welcome response in light of the recent stalemate regarding these files, including four other petitions that had been deferred and used as a tool for the exchange of prisoners. On the December 3, 2009, the prosecution stated its position to return Aruri's body.

The prosecution communiqué is as follows:

1. The main subject of the petition represented by the demand made by the petitioners requesting the issuance of an order against the military commander to retrieve the body of their son Mashoor Aruri is a valid demand until the body is buried by his family.
2. The military commander therefore communicates his readiness and willingness to return the body of the petitioners' son, and thus, there shall be no need to discuss the petition.
3. In the coming days, the lawyer of the petitioners will be informed on the procedure to return the body of the petitioners' son.
4. In these circumstances, the military commander asks the Court to allow him submit an additional communication until 17/12/2009.

After the communiqué above, Aruri's body was exhumed from the cemetery of numbers. The body was examined at the Abu Kabir National Center of Forensic Medicine (Abu Kabir Center) in Israel after obtaining blood samples from the deceased's mother and brother for DNA testing. The family provided the cost of the DNA test to facilitate the process, deterring any pretext for stagnation.

Preliminary tests from the Abu Kabir center revealed that the body recorded by the Israeli military to be Mashoor Aruri was actually someone else. Using the Aruri's family's DNA samples in comparison with the remains found in several graves, Aruri's body was finally located on August 10, 2010. The Israeli authorities transported Aruri's body from the Abu Kabir Center to the family's lawyer in a special ambulance.

Although the return of Aruri's body was ultimately successful, the process was complex due to the difficulty in confirming the identity of the bodies in the Israeli burial site. A dialogue with one of the doctors from the Institute of Forensic Medicine revealed the difficulty in extracting a comparable sample of DNA from the remains, especially when the bodies have been buried for an extended period of time. An additional complexity is that the DNA samples need to be drawn from the biological parents or siblings who share the same parents. In other words, if all first-degree relatives were to die or be unreachable, the body of the deceased in question as well as another relative might need to be exhumed in order to guarantee the success of the matching process. Such a procedure would constitute a significant legal and judicial challenge.

The report from the Abu Kabir Center regarding the Aruri case provided insight of the unacceptable state of the cemeteries.

The following is a translation of some texts contained in this report:

- At 10:20 on the February 24, 2010, we arrived at the cemetery of the enemy's dead, situated near Adam Bridge, in order to open a grave marked with an iron bar and a plate bearing the number 5014. This grave is one among several, separated by 80-120 cm. The graves were marked with bricks and covered with grass. The distance between the graves in a single row is 20-50 cm, while the distance between rows is about 50 cm. The military pointed to the grave we were to open. The body was exhumed using a 1 meter-wide metal front of a bulldozer used to excavate the soil in the area and pile it in one location. On the surface of the soil, at about 50 cm depth, we found a left part of a lower jaw of a human skeleton and bones of a foot palm. At about 1.5 meters depth on the left side of the excavation site, we found a white plastic bag which contained remains of human bones and clothes. Bones were separated by the depth in which they were found.

The report further explains that doctors were unable to extract comparable DNA from the bones of the skeleton, but managed to get the DNA from the teeth.

The first attempt to exhume the body of Mashoor Aruri failed, and the army made a second attempt. On June 2, 2012, in an attempt to find the remains of Aruri, two other bodies were exhumed from the cemetery of numbers near Adam Bridge in the Jordan Valley area. The bodies that were exhumed were marked in graves numbered 5012 – 5015. The first body to be exhumed was marked as number 5014. The DNA obtained from the bones of the skeletons exhumed on the second attempt matched with Aruri's family, confirming the identity of his remains.

After obtaining the matching results from the Institute of Forensic Medicine, the Israeli army tried to evade handing over the body as agreed, claiming that the commander of the General Staff at that time, Gabi Ashkinazi, had assumed the lead of the case and that he was forming a special military committee for further examination. The High Court supported Aruri's family and exercised pressure on the prosecution to immediately return the body.

After the body was handed over, the High Court closed the case.

The Case of Martyr Hafez Abu Zanat:

After successfully retrieving Aruri's remains, JLAC filed another two petitions for the retrieval of the remains of Hafez Abu Zanat and Anis Dawlah. Indeed, JLAC had intentionally only approached the High Court concerning these additional cases once the Aruri case had had completely concluded, in order to avoid any attention of that case being diverted as it had been presented as a special and urgent case

Hafez Abu Zanat was born and resided in Nablus. He was killed in the same operation led by Mashoor Aruri on the May 18, 1976. The case of Abu Zanat was selected for follow-up once the precedence of the Aruri's case had been established. Achieving success in several cases by presenting them on an individual basis would inevitably lead to a change in the intransigent Israeli position regarding its refusal to return the bodies of martyrs in addition to the various impediments it creates to hinder the advance of such cases.

In the case of retrieving the body of Abu Zanat, JLAC filed the petition in the same way it had for the previous cases, by presenting the petition as special and urgent. In this case, the family of the deceased feared that the longer they wait, the less likely it would be to identify the deceased. Timing was of the essence as the father had already died and the mother was a very old. JLAC presented Aruri's forensic report before the court to describe the conditions of the cemetery in order to argue that the standards of the cemetery and the graves did not respect the dignity of the deceased.

The prosecution agreed to return Hafez Abu Zanat's body after its identity had been confirmed by the Abu Kabir Center. It is worth noting that Zanat's body had been previously examined in the search for Aruri's body, as both were buried together.

On October 10, 2011, Zanat's body was handed over at a checkpoint near the town of Jaljuliya. The body was transferred from the Israeli ambulance into Palestine in an isolated crossing area.

The Case of Anis Dawlah:

JLAC presented its third petition, bearing the number (8792 – 10) on behalf of the deceased Anis Dawlah's brother, from Qalqilia. Dawlah died over thirty years ago in Ashkelon prison, during the uprising of Nafha prisoners in the early nineties of the last century. Dawlah had been incarcerated for 13 years and died on August 31, 1980 due to lack of medical attention after the deterioration of his health, resulting from a hunger strike aimed to defend prisoners' rights. Dawlah had died with three other prisoners who were also participating in the strike. Dawlah comrades' remains had been returned to their families at the time of their death, however Dawlah's remains had not and his family did not know of their whereabouts.

The Israeli prosecution did not respond favorably to the Dawlah's case. The prosecution informed the Supreme Court that there was no evidence available regarding the place of burial of his body. The High Court instructed the prosecution do its utmost to find the location of Dawlah's grave

site or any other information related to his burial but the prosecution stated that it was only able to find a forensic report issued by the Abu Kabir Center on the cause of his death.

The Dawlah case portrays additional evidence of the Israeli negligence in the identification and burial process of the deceased. Dawlah's case was not the only case in which a body had been lost. Another such case (petition number **8359/01**¹⁶), was presented by the son of a deceased, in which he demanded the retrieval of his father's remains, who had been killed in the Hebron area on February, 4, 1971. During court deliberations on this case, the Israeli army formed a special inquiry commission in an attempt to find the father's remains since the Israeli army admitted to having killed the father.

The report from the inquiry commission on this case stated that the body had been buried in the "Jacob Daughters" area. However, the location of the body was not found due to a lack of data, records and documents relevant to the burial of bodies before May 1972. It is worth noting that dozens of bodies of Palestinian had died before May 1972 and were buried in the cemetery of numbers



16 See the response of the prosecution on petition number 8539/01 in the case of Abu Meizar against the State of Israel, published on the following web page: www.hamoked.org.il/items/7322.pdf

Although Israel had shown willingness to return the body, they were unable to deliver due to their inability to locate it. It is worth mentioning that the Israeli court refused the exhumation of all unidentified bodies buried in the cemetery of numbers near the “Bridge of Jacob Daughters” It also refused to apply DNA test in an attempt to find the body since **there is no documentation even for the gravesites.**

The report of the aforementioned commission of inquiry confirmed that a special unit in the Israeli police had been responsible for the retention of the bodies, and that this unit no longer exists. Moreover, the Israeli police had destroyed all the documents pertaining to the deceased bodies and gravesites. Today, no evidence is available to infer the burial sites for dozens, and perhaps hundreds of Palestinian bodies.

Anis Dawlah is one of the names on a long list of 84 names of deceased that Israel had informed the Palestinians that it would return as a “good faith” initiative, which was expected to take place in July 2011.

F. DNA Tests for Diagnosis and Identification of Bodies:

The Israeli policy has changed since 2004 in which DNA testing to identify bodies is at the expense of the family. Furthermore, the Israeli have imposed terms with regard to the funeral process, for example the necessity of the family to specify the date and location where the funeral will take place as well as limiting the number of participants in such funerals¹⁷.

It is natural that a deceased family would want to retrieve the remains. Incurring the cost of the DNA test conducted at the Abu Kabir Center should be a requirement for the Israeli government. Additionally, the cost of such test are very high, exceeding 3,000 dollars, and not generally possible for most Palestinian families.

17 Petition number 3007/04 in the case of Moghrabi against the military commander, see the response of the prosecution published on the following web page: www.hamoked.org.il/items/7191.pdf

DNA readings are negatively affected by the passing of time. In first place, the degradation of DNA evidence and the lack of a sufficient quantity of DNA to conduct the test is a challenge. Additionally, the DNA matching process needs a DNA sample from a first-degree relatives which can become difficult to locate in time due to ageing, death or relocation. It is therefore a duty to ensure a timely process in exhuming bodies from the cemeteries of numbers to facilitate the future retrieval of bodies.

It is also worth noting that there are many problems regarding the issue of identifying the deceased and locating places of burial. It became repeatedly clear that the deceased had been buried in a grave that had been dug vertically with no separator between the bodies. By time, and due to rain and slopes, soil erosion occurs inside cemeteries, resulting in vacant graves and cases where some contained the body of a martyr that had been buried in the next grave, in addition to a number of other problems, most importantly that the bodies of martyrs had been buried in plastic bags labeled only with ink, which vanished by time. All these problems confirm the need for making a genetic screening for each martyr before retrieving the body in order to ensure the diagnostic process and to return each martyr to his family.¹⁸

Based on JLAC's experience in this field and in an effort to preserve the rights of the deceased and their families, JLAC have approached the High Court with a petition demanding that the Israeli state establish a DNA bank. The purpose is to keep the DNA samples extracted from the bodies of the deceased in addition to blood and saliva samples drawn from the families of martyrs. This would deter any future pretext concerning the impossibility of applying a genetic test, which would prevent the retrieval of any deceased's body by his family. We are confident that this would take the case of bodies a step forward in an attempt to speed up the retrieval of all bodies and returning them to their families.

18 prepared by Professor Yehuda Hess of the National Center of Forensic Medicine on the exhumation of the remains of Aruri

Although JLAC does indeed defend the return of bodies to their families, it is aware that this kind of demands is considered as a negotiation issue by Israeli authorities and that the Israeli courts may not respond to a satisfactory degree. After all, it is an Israeli court and not an international court. Therefore, JLAC demands that the families of the deceased be allowed to visit the graves of their beloved, in special coordination with the International Committee of the Red Cross or any other relevant international institution.



A photograph of a dry, grassy field with a fence in the foreground and a person sitting on the ground in the background. The scene is captured in a warm, golden light, suggesting late afternoon or early morning. The fence consists of several vertical posts connected by a thin wire. In the background, a person is sitting on the ground, and there are some scattered objects or debris. The overall atmosphere is one of desolation and hardship.

Summary:

Amidst the ups and downs in Israeli-Palestinian relations in the past years, there have been radical changes in Israeli policy where the Israeli high court ruled in favor of returning the remains of Palestinians. Subsequently, 91 Palestinian bodies were returned to the Palestinian National Authority on May 31, 2012 .

Efforts for the return of Palestinian bodies from the cemeteries of numbers should be approached using a wide range of strategies so as not to depend solely on the Israeli courts. Additional efforts could include lobbying and advocacy at a domestic level as well as approaching international bodies for leverage.

JLAC is contributing to the effort by filing a collective case pertaining to the matter of DNA testing. We emphasize the need for conducting genetic testing, not solely as a tool to pressure Israel with regard to their lawful obligations to the Palestinian dead, their graves and record keeping, but also out of our concern for the dignity of the deceased and their families. We call upon the official Palestinian departments to ensure that in the event that additional remains are retrieved that their DNA is approved by the family.

Developments & Achievements

Since the Publication of the First Edition of “We Have Names & We Have a Homeland”

In early 2010, the Campaign issued the first edition of the book, “We Have Names & We Have a Homeland.” This unique book was the first such Palestinian document to address the issue of detained war victims’ bodies and missing persons. The Campaign has since made many significant achievements towards in reaching its objection:

a. Documentation

A total number of 446 war victims and missing persons have been documented (351 and 65 respectively, among which 7 are women). In addition, the unidentified remains of nine¹⁹ war victims received from the Israelis have since been buried in the Ramallah cemetery in which DNA outcomes are pending. After the successful retrieval of 93 war victims’ remains (received between August of 2010 and June of 2012), the total number of documented cases dropped to 288 war victims and 65 missing persons. Individual case file summaries are updated and uploaded on the Campaign’s website (www.makaberalarqam.ps). Information is also featured in the Campaign’s brochure, poster, short film...etc.

An analytical study of documented cases revealed that the majority of war victims (265 persons or 62.9% of those documented) were youth, between the ages of 18-25 years old. The age group between 26- 35 years ranked second at 14.5% of those documented. Those under the age of 18 comprised 14%, and those over 35 years ranked at 9.6% of those documented.

The majority of the documented war victims (65.9%) were killed between 1995 and 2006, particularly during the second Intifada. Ninety-two persons (22.6% of those documented) were killed or became missing between 1967 and 1971. Additionally, 65 war victims were documented during the period between 1972 and 1994 (11.5% of the total).

¹⁹ Additionally, the remains of another person is kept in the Forensic Medicine center in AlQuds University, after DNA testing showed that those are not the remains those of the missing Nasser AlBouz of Nablus city, as Israel had claimed.

b. Establishing an Organized Entity of the Families of the Victims

Since the initial launch of the Campaign, the Jerusalem Legal Aid and Human Rights Center (JLAC), always placed the families of the war victims and the missing persons at the center of its mission. In doing so, JLAC actively sought to safeguard the sustainability of the Campaign, by mitigating the possibility of oppositional third parties, derailing the Campaign from its national, humanitarian and ethical objectives.

Towards this end, JLAC organizes meetings for victims' families involving all the governorates of the West Bank, including the besieged Gaza Strip. More specifically, the meeting served the following purposes:

Mobilizing families, building solidarity, and jointly establishing the Campaign's objectives and forms of public, political, diplomatic, and legal struggles, in addition to establishing JLAC's role in providing logistical support, legal monitoring and follow-up. Electing district-level follow-up committees and members of national-level leadership (whose members reached 31 delegates, representing the various governorates of the oPt), as well as electing the Campaign Coordinator (elected during the first meeting held on August 27, 2008).

The Campaign's leadership renews the membership of the district-level follow-up committees as well as for its own membership, when deemed necessary. Moreover, it holds periodic meetings and issues updates and, when necessary, press releases, following the meeting to announce the results through media outlets. The leadership also executes its decisions in cooperation with the follow-up committees in the various governorates and in partnership with all activists and volunteers in the Campaign.

c. A Public, Political and Diplomatic Struggle

The Campaign continued the creative and diverse implementation of public activities, organizing a series of mass events throughout the governorates of the West Bank including: mass rallies, sit-in protests in front of international organizations headquarters and delivery of memorandums, seminars, organizing symbolic funerals and unveiling memorials in commemoration of fallen victims, publishing victim posters and biographies, commemorating the national day of the Campaign through central events, as well as conducting dozens of radio, television and press interviews.

Moreover, the Campaign submitted memorandums directed to the heads of the International Committee of the Red Cross, the High Commissioner for Human Rights, the Secretary General of the League of Arab States, the Secretary General of the United Nations, the Arab and progressive Israeli members of the Israeli parliament (Knesset), among other regional and international institutions. Each correspondence presented the Campaign's objectives and demands, based on international law. In parallel, the leadership of the Campaign held meetings with the different components of the Palestinian political regime to solicit their political and financial support and their participation in the Campaign's related events and activities.



Establishing a National Consensus

In addition to political, diplomatic and legal activities implemented, the Campaign held mass events which received wide public empathy and were broadly covered in the local media and by

several satellite channels. Such events allowed for the swift construction of national public opinion in support of the Campaign and its objectives. These events targeted both the national populous at large and specific official and civil bodies (previously addressed in correspondences and meetings held with leadership committees). They were held throughout the various Palestinian governorates to solicit the participation of new activists, and to provide a medium to explain the national and humanitarian nature of the Campaign free from partisan considerations.

The Palestinian Leadership Adoption of the Campaign and its Objectives

The quintessence of national consensus was reached when President Mahmoud Abbas declared to adopt the plight of retrieving victims' remains held by the Israelis and to incorporate this Campaign among the Palestinian demands. President Abbas' declaration also served to delegate this demand to official authorities by following-up on this issue with the Israeli side. This commitment has created a positive political and moral momentum within this Campaign, its activists, and those who unite on the issue in solidarity.

Cabinet Adopts the Campaign and Assigns Relevant Ministries in Fulfilling Objectives

On August 3, 2009, the Palestinian Cabinet of Ministers issued a resolution (No. 06-11-13), adopting the Campaign and its objectives. According to this resolution, all relevant official departments and ministries were requested to cooperate with the Campaign in facilitating its work with governmental and international bodies including the United Nations, its agencies and the the United Nations Human Rights Council.

Furthermore, the resolution called for working with human rights and local and foreign media organizations to expose the illegal and unethical policy practiced by Israel. Outreach efforts



were made to governments and organizations mandated with defending human rights to issue memorandums to the Israeli government demanding that it meet its obligations as stipulated by international humanitarian law, the Geneva Conventions, and its annexed protocols.

d. Arabizing and Internationalizing the Cause

The General Secretariat of the League of Arab States adopted the Campaign and its objectives with an official resolution. This resolution designated the 27th of August as the National Arab Day for the retrieval of war victims' remains and the disclosure of the fate of those missing. A series of activities were also implemented in an effort to solicit support from relevant Arab ministerial councils and representatives of the League (in coordination and cooperation with the Council of Arab Ambassadors in different countries). In addition, the League adopted cases on behalf of Arab governments, in which Israel is also withholding remains of victims and soldiers. Lobbying and diplomatic actions were initiated by the League, demanding the release of the war victims' remains to their countries of origin and to their families.

More so, three conferences were held in different regions of the Arab world: Jericho, Palestine (2009), Algeria (2010), and Morocco (June 2011). Conference attendees reaffirmed their commitments to the Campaign and its objectives and established lobbying networks aimed at pressuring the Israeli government to immediately return the war victims' remains to their families.

The Inter-Parliamentary Union and the European Parliamentary Union, as well as other continental and national federations and unions have advocated that the Israeli government return the remains of Palestinian and Arab war victims to their governments and families.

A number of Arab and progressive Israeli members of the Israeli parliament (Knesset) submitted memorandums to the Israeli Minister of "Defense", demanding that the exact number of victims' bodies/remains withheld be provided and that their families be permitted to visit their current graves. The memorandum also called for the government to disclose the truth of whether corpses had been subject to organ theft for use in medical training or experiments.

The World Federation of Trade Unions as well as a number of other trade and professional unions and parties defending human rights denounced the racist actions practiced by the government of Israel. These unions and parties organized solidarity events to support the Campaign and its objectives, while demanding the immediate release of withheld bodies and remains and the disclosure of the fate of those missing.



The administration of the International Committee of the Red Cross (ICRC) has expressed an increasing interest in the Campaign, demonstrated by its demand of the Israeli government to immediately release the withheld bodies and remains of war victims. The ICRC also demanded that the government of Israel reveal the number and names of those deceased and enable their families to visit their graves and be able to fulfill their religious rights. Furthermore, a number of United Nations organizations and bodies (including the High Commissioner for Human Rights and the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories) among other Arab and foreign independent organizations and bodies defending human rights expressed their interest in this cause as well.

e. Legal Efforts

Release of Two Victims' Remains and New Petitions before the Israeli High Court

The Jerusalem Legal Aid and Human Rights Center (JLAC) commenced its legal efforts with communications addressed to the judicial advisor of the Israeli Military. Over 54 correspondences of this nature were sent to the Israeli military, however only a few delayed responses were received. As a result, JLAC's legal department filed a petition before the Israeli High Court demanding the release of Mashour Talab Awad Saleh's remains. Mashour was killed on May 18, 1976 near the village of Jiftlik, along with his two comrades, near an Israeli military camp situated on Palestinian land. The Israeli High Court ruled that the Israeli military command return Mashour's remains to his family for burial. Although the decision was issued in December of 2009, it remained unexecuted until August of 2010.

A month into the delays on the part of the army command, JLAC again went before the Israeli High Court, demanding that it issue an order to the to speed up the fulfillment of the court decision to release Mashour's remains.

In February 2010, in pursuance of this measure, the Israeli army command exhumed Mashour's remains from the cemetery of numbers located near the Daughters of Yaakoub Bridge and conducted "DNA" testing for unequivocal identification. The results of the "DNA" test (conducted by the Israeli Institute of Forensic Medicine in Abu Kabir) confirmed that the remains did not belong to Mashour. Unclear identities of remains are due to the haphazard way in which bodies were buried (in graves being narrow, 80-120 centimeters each, and in close proximity to each other, 20-50 centimeters separating between graves in one row and 50 centimeters between rows) and later exhumed. The grave was opened with a bulldozer (with a one-meter-wide metal front), which made the exhumation of other bodies unavoidable.

Two bodies were exhumed in search of Mashour's remains yet neither were successful. JLAC's legal department demanded that the Israelis repeat the exhumation process and conduct additional "DNA" testing (the cost of which was unjustifiably incurred by the victim's family). The result of the third test was a match. On August 11, 2010, the Israeli authorities released the remains of

Mashour to his family and a dignified funeral service was conducted in accordance with religious traditions.

The release of Mashour's remains served as a legal precedent in the release of Hafiz Abu Zanat's remains in October of 2011. A third case involving the remains of Anis Mahmoud Dawleh (who died while in Israeli detention on August 31, 1980) is still being followed. Army authorities continue to deny any knowledge of the whereabouts of his remains, though he died in their custody and received a documented autopsy at the Israeli Institute of Forensic Medicine in Abu Kabir. JLAC speculates that the Israeli occupation authorities subjected Anis' body to human organ theft.

Release of 91 Victims' Remains: A Quality Achievement

Through its contention waged over political, diplomatic, legal, and media fronts over the past four years, the Campaign succeeded in creating an enabling environment for the Palestinian leadership to demand the release of victims' remains (through political and diplomatic means). The Israeli government agreed to the demand made by President Mahmoud Abbas, resulting in the release of 91 victims' remains on Thursday May 31, 2012. The remains of the deceased were well received at the Palestinian president headquarters. A military ceremony was conducted in the presence of officials with the presence of national and international media outlets. The deceased remains



were later transferred to their home cities, villages and refugee camps, where an official dignified funeral service was conducted in the presence of their loved ones.

Thus far, the total number of released victims' remains at 93, equivalent to 26.5% of the total 350 documented remains still in Israeli custody (excluding those missing).

Tasks Necessary in Closing this Tragic File

Although many qualitative achievements have been made by the Campaign thus far, much work still needs to be done to close this tragic file. The national consensus built through the Campaign's prior efforts needs to be maximized and mobilized with active participation and solidarity on the part of all the parties at play in defending human rights. The violation of the dignity of the dead and the collective punishment of their families and loved ones are manifested by inaction. In order to fully achieve the Campaign's objectives, the following actions items must be realized:

- Maintain the Palestinian national position and efforts regarding the government of Israel's duty to release the remains of the victims still withheld in an organized manner (i.e. identified by real names, dates and locations of death). Otherwise, a Palestinian cemetery of numbers would come to replace that of Israel's, further violating the sanctity of the dead and the continued the suffering of their families.
- Establish a strong stance on the cause of retrieving war victims' remains, particularly concerning the issue of Palestinian political prisoners held in Israeli custody. Demands to release bodies and remains should be done in parallel to the demands to free live prisoners. In this regard, regional and international advocacy efforts should be mobilized to pressure the Israeli government to fulfill its obligations under International Law, the Geneva Conventions of 1949, and its two annexed protocols.
- Reactivate resolutions made by the General Secretariat of the League of Arab Nations and decisions of relevant ministerial councils, as well as decisions by the Arab Council of Ministers of Justice during its legal symposium held on May 19, 2011 (with regards to the discussion

on presenting the cause before judicial, legal and human rights forums and demanding that Israeli officials be held accountable for war crimes).

- Build upon relations established with international institutions and organizations, including the United Nations and the ICRC, towards compounding and mobilizing efforts to demand the Israeli government's immediate release of all Palestinian and Arab war victims' (identified by name and locations and dates of death). Until a full release has been achieved, the following measures will continue to be worked upon:
 - a. A revelation of the total number, location of burial and individual names of all the war victims' bodies held by Israel.
 - b. The allowance of the victims' families to visit current graves sites and to practice religious rights and rituals, under the supervision and organization of the ICRC.
 - c. Continuing legal efforts made by the Jerusalem Legal Aid and Human Rights Center (JLAC), based on its experience and lessons learned in this regard. JLAC filed a petition to the Israeli High Court demanding that the Israeli army establish a DNA bank for victims and their families in order to identify the remains and to return them to their families. It is important that the DNA bank be established promptly as elder first-degree relatives are beginning to pass away.
 - d. Continued efforts aimed at releasing victims' remains, especially those involving first-degree relatives suffering from life-threatening diseases.



