


AL-HAQ Annual Report on Human Rights
in the Occupied Palestinian Territories

1989

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A NATION UNDER SIEGE

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To all victims of torture

*especially those who were martyred
by the "moderate physical pressure"
sanctioned by the Israeli government.*

*It is our individual and collective responsibility
to witness, to act,
so that their sacrifices
will not have been in vain.*

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General Introduction

A Nation Under Siege is al-Haq's second annual report on human rights and the rule of law in the Occupied Palestinian Territories. It covers the period December 1988–December 1989, coinciding with the second year of the Palestinian Uprising.

On 19 December 1989, as this report was being completed, al-Haq learned that Khaled Kamel al-Sheikh 'Ali died under interrogation in Gaza Central Prison. Prison officials declared that Mr. al-Sheikh 'Ali died of heart failure. His family went into shock upon learning of his death, particularly since he had no history of heart trouble. They approached al-Haq for help in contacting an independent pathologist to determine the cause of death. Mr. al-Sheikh 'Ali was 27 years old, married, and the father of a six-week-old child.

On 24 December 1989, an official autopsy was performed on Mr. al-Sheikh 'Ali's body. An independent forensic expert affiliated with the Boston-based Physicians for Human Rights attended as an observer. It was learned that Mr. al-Sheikh 'Ali was killed by a severe blow to the lower abdomen. Previously, few signs of violence had been visible on the body. The autopsy, however, revealed a number of internal bruises as well as "squeeze-type" injuries to the testicles. Mr. al-Sheikh 'Ali's death had nothing to do with his heart. Many Palestinians have died in the custody of the Israeli authorities since 1967. Seventeen other than Mr. al-Sheikh 'Ali have met their death in detention since the current uprising began in December 1987.

In its first annual report, *Punishing a Nation*, al-Haq concluded that "... few of the repressive measures undertaken by the [Israeli] military authorities since December 1987 were without precedent." This year, al-Haq concludes that the systematic human rights violations in the Occupied Territories, in many cases amounting to "grave breaches" of the Fourth Geneva Convention, demonstrate that Palestinians live under a state of lawlessness. The total absence of effective local remedy, discussed at length in this report, has led al-Haq to reiterate its call for international protection.

The torture of Khaled al-Sheikh 'Ali illustrates the concept of lawlessness. For years, Palestinian detainees have been describing methods of torture used in Israeli prisons which appear designed to leave no marks. The Israeli government consistently, and firmly, denied such accusations. It was only in November 1987 that an official inquiry conducted by the Landau Commission established that the General Security Service (the Shin Bet) had been engaging in systematic perjury about its practices for 16 years. Finally, the use of torture in Israel's prisons was formally admitted.

Concerned more with perjury than torture, however, the Commission's forceful

findings resulted in the recommendation that "moderate physical and psychological pressure" be permitted to extract confessions from political detainees. The fact that international legal and human rights standards define the use of any form of physical force against detainees as torture was not considered by the Landau Commission.* As a result, "moderate physical and psychological pressure" is systematically practiced in Israel's prisons and enjoys official sanction. In the case of Khaled al-Sheikh 'Ali, it was powerful enough to cause his death. Torture is a grave breach of the Fourth Geneva Convention.

The sanction of torture is just one among many examples of Israel's disregard of internationally accepted legal norms. Despite the forceful and often eloquent assertions by the Government of Israel that its policy in the Occupied Territories is consistent with international law, the applicability of specific standards to Israeli conduct is, just as forcefully and eloquently, routinely rejected by Israeli officials. In refuting the obligation to respect the Fourth Geneva Convention, for example, the Government of Israel has served notice that it will not permit interference with its agenda for the Occupied Palestinian Territories. Rather, the Government of Israel has established its own standards and insists that only these can serve as a basis for judging its actions. In al-Haq's opinion, this is lawless.

Lawlessness transcends illegality. Black's Law Dictionary defines "lawless" as: "[n]ot subject to law; not controlled by law; not authorized by law; not observing the rules and forms of law." Israel's lawless conduct in the West Bank and Gaza Strip is evident at two levels. The first comprises the deliberate disregard of international legal standards through the introduction of illegal military orders and the sanction of unlawful policies. At the second, even these unacceptable standards are routinely flouted by military government personnel, from soldiers in the street to officials at the highest level. As a result, gross violations of human rights are a staple of daily life for the civilian residents of the Occupied Territories.

That this situation remained unaltered and even deteriorated during the period under review is extensively documented and analyzed in the pages which follow:

Lethal and illegal force continued to be used by Israeli soldiers, settlers, and collaborators, resulting in the killing of at least 379 persons. In violation of fundamental principles of international humanitarian law, medical care was treated as a privilege, with ambulances, doctors, and patients alike routinely obstructed. Prison conditions deteriorated yet further, one indication being the widespread and systematic practice of torture. Thousands of Palestinians remained under detention without charge or trial. Ansar III (Ketziot), the isolated desert prison, was further expanded. In a grave breach of the Fourth Geneva Convention, more Palestinians were deported from their homeland. The demolition and sealing of homes, and the imposition of systematic curfews continued in violation of international bans on collective punishment. New forms of administrative control, such as the magnetic identity card in the Gaza Strip, the green identity card in the Gaza Strip and the West Bank, and travel restrictions throughout the Occupied Territories, were introduced. Moreover, economic rights,

*These standards are contained in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations in February 1984, and other instruments.

religious rights, and the rights of women were systematically violated.

Effective legal recourse to rectify such abuses remained noteworthy for its absence. The official investigation process failed to provide either adequate safeguards or proper accountability. In addition, the Israeli High Court of Justice continued to sanction fundamentally illegal policies. As a result, human rights monitors, including al-Haq staff, were arbitrarily detained, issued with special identity cards restricting their movement, and even, as in the case of al-Haq fieldworker Sha'wan Jabarin, severely tortured. In a related field, official censorship of the media jeopardized its ability to expose violations of human rights. Thus, Palestinians under occupation remained without effective protection from rampant human rights abuses.

The application of protections defined in international law therefore becomes even more urgent. During 1989, several United Nations resolutions condemned Israeli practices in the Occupied Territories and Israeli conduct was further criticized in a series of bilateral diplomatic contacts. In an unprecedented development, foreign consular officials attempted to establish a physical presence in locations where human rights violations were in progress, such as during the six-week siege of Beit Sahour. These efforts, however, fall short of that which is required to effectively protect the civilian population of the Occupied Territories from further abuses.

Therefore, al-Haq is again addressing the community of states, to remind them of their moral and legal obligation under Article 1 of the Fourth Geneva Convention. Article 1 states:

The High Contracting Parties undertake to respect and *ensure respect* for the present Convention under all circumstances. [Emphasis added.]

In al-Haq's opinion, this provision empowers and requires states to take whatever legal measures are required to "ensure respect" for the Convention.

Al-Haq's annual reports examine the status of human rights and the rule of law in the Occupied Palestinian Territories, and seek to provide a record thereof. The production of this report represents a collective effort by al-Haq staff. It is, however, based primarily on documentation compiled by the organization's fieldworkers. The documentation includes sworn affidavits taken from victims of human rights violations, or eyewitnesses thereto; questionnaires on recurring practices such as killings and house demolitions; and written reports on particular events. Affiants are encouraged to make their names available for publication.

The report is divided into three thematic parts. Part One ("Violations") consists of 15 chapters which examine specific human rights practices, and in so doing reveals the extent of lawless conduct on the part of the Israeli authorities. The introduction to Part One provides a summary of the issues addressed and discusses the general trends and patterns observed by al-Haq during 1989.

Part Two ("Accountability"), also summarized in an introduction, comprises three chapters on the absence of effective local remedy. The first deals with official investigations into illegal conduct, the second with repression of the media, and the third with harassment of human rights monitors.

Part Three ("The International Community") addresses the role of the international community in protecting human rights in the Occupied Territories.

Several areas of obvious concern, including violations of land and water rights, are not taken up this year. Furthermore, while Israeli High Court of Justice rulings are discussed in several chapters of the report, the role of the High Court is not examined as such. And finally, the reporting on annexed East Jerusalem and the Gaza Strip is not comprehensive.

In issuing its annual reports, al-Haq hopes that by exposing the fundamental reality of Israeli occupation and reminding the international community of its duties under international law, the violation of the human and national rights of this nation will cease.

Postscript

As this report was nearing final completion in January 1990, al-Haq learned that charges were to be brought against two individuals suspected of involvement in Khaled al-Sheikh 'Ali's death. His was not the only death in detention. Yet, few if any of those involved in such deaths face prosecution.

A Note on the Law

This report discusses human rights in the Occupied Palestinian Territories by reference to legal standards applicable to military (“belligerent”) occupation.¹ These standards are set forth in both international and local (“municipal”) law.

Two types of international law are relevant to this report: international humanitarian law (“the laws of war”) and international human rights law. With respect to the former, a consensus exists among jurists and governments, including that of Israel, that the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land are applicable to the Israeli-occupied Territories.² The vast majority of states also agree that the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 applies to the Occupied Territories. Yet, the Government of Israel has consistently refused to recognize the Convention’s *de jure* applicability to the Occupied Territories.³ Although Israel has stated that it will respect, *de facto*, the humanitarian provisions of the Convention, it has never defined these. Al-Haq is of the view that the Convention, as an integral part of the laws of war, is humanitarian in its entirety.

With regard to human rights law, the Israeli authorities maintain that the Occupied Territories are administered in accordance with the 1950 Agreement on the Importation of Educational, Scientific and Cultural Materials, the 1960 Convention Against Discrimination in Education, and the 1966 International Convention on the Elimination of all Forms of Racial Discrimination.⁴ Israel maintains that other human rights conventions are applicable only in times of peace, a position strongly contested by international commentators.⁵

In the event of a dispute, international law can be interpreted in a variety of ways. Where treaties exist, the applicable law is generally straightforward. In the case of the Fourth Geneva Convention, interpretation is greatly aided by the authoritative commentary of the International Committee of the Red Cross.⁶ Additionally, international law may be construed by applying customary international law, general principles of national and international law, and the decisions of national and international courts.*

The purpose of international law during belligerent occupation is to define and

*As its name suggest, customary law need not be included in a treaty or agreement to be binding. On the contrary, a particular rule or principle not incorporated in a treaty can derive its strength from habitual usage. Evidence of habitual usage can be found, *inter alia*, in existing custom and prior treaties.

regulate an occupant's conduct by imposing specific rights and obligations, while at the same time authorizing or outlawing certain practices. Among the most serious violations are breaches of the Fourth Geneva Convention known as "grave breaches." These are the equivalent of war crimes and carry the same consequences: signatories to the Convention have a duty to search for persons alleged to have committed grave breaches of the Convention and enact special legislation with a view to prosecuting suspects. Grave breaches include the deportation of persons protected by the Convention, "wilful killing," torture or inhuman treatment and, under certain circumstances, destruction of property.¹

The most significant duty imposed by international law on an occupant is specified in Article 43 of the Hague Regulations:

[T]he occupant . . . shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

The phrase "public order and safety" denotes "public order and civil (or public) life."⁷ Furthermore, measures taken by the occupant must be in accordance with the provisions of international law as well as the local law in force on the eve of occupation. By the requirement to "restore and ensure . . . public order and safety," an occupant must apply local law "unless absolutely prevented." If local law is to be amended, this should either be in the legitimate security interests of the occupant or for the benefit of the population under occupation.⁸

Local law in the West Bank and Gaza Strip consists, respectively, of Jordanian and Palestinian law as it existed on the eve of the 1967 occupation. At the time of writing, this law had been amended by nearly 1,300 military orders in the West Bank and nearly 1,000 in the Gaza Strip. Those amendments in accordance with the conditions specified above are valid and legally binding. Those which fail to fulfill these conditions are unlawful and devoid of legitimacy.⁹ In cases where local law conflicts with international law, the occupant "must be deemed entitled to disregard [local law]."¹⁰

The Israeli authorities have claimed that certain laws which were revoked or lapsed into obsolescence prior to the occupation do in fact constitute local law. The 1945 British Defense (Emergency) Regulations are a case in point; although they were revoked by the British Mandatory authorities on the eve of their 1948 departure, and despite never having been invoked by Jordan during its administration of the West Bank, the authorities to this day invoke their sanction to deport Palestinians, demolish homes, and commit other breaches of international law.¹¹

¹See further Chapter Nineteen, "The Role of the International Community."

Endnotes

1. Gerhard von Glahn, *Law Among Nations: An Introduction to International Law*, Fourth Edition (New York: MacMillan, 1981), p. 669.
2. In *Sheikh Sulciman Abu Hilu et al. v. State of Israel et al.* (H.C. 302/72), Israeli High Court Justice Moshe Landau stated, with reference to the Occupied Territories, that the Court will "examine the propriety of an administrative act in the areas of Military Government in the light of customary international law when there is no written Israeli law which applies and, in any case, a clash between the law of nations and the internal law of Israel is not possible." Cited in Esther Cohen, *Human Rights in the Israeli-Occupied Territories, 1967-1982* (Manchester: Melland Schill Fund, 1985), p. 59. According to Cohen (p. 58), the Hague Regulations were recognized by the Israeli High Court as customary law in the 1948 case *Attorney-General of Israel v. Sylvester*. They are not, however, applied to annexed East Jerusalem.
3. Israel's objections are based on the legalistic argument that Article 2 of the Fourth Geneva Convention states that the Convention shall apply to "cases of partial or total occupation of the Territory of a High Contracting Party" and that the Occupied Territories do not fit this description due to the nature of the Jordanian regime in 1949-1967. This interpretation has been rejected by the vast majority of jurists and states. In a 1981 United Nations General Assembly resolution (No. 35/122 A) specifically on the applicability of the Convention to the Occupied Territories, the General Assembly voted 141 in favor to one (Israel) against. Only Guatemala abstained.
4. 1984 Memorandum from the Office of the Legal Advisor to the Israeli Foreign Ministry. Cited in Adam Roberts, "The Israeli-Occupied Territories 1967-1988: The International Legal Framework of a Prolonged Occupation," in Emma Playfair (ed.), *The Administration of Occupied Territories: The Case of the West Bank and Gaza, 1967-1987* (Oxford: Oxford University Press, forthcoming).
5. *Ibid.*
6. Jean S. Pictet (ed.), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958).
7. Gerhard von Glahn, "Obiter Dictum: An Unofficial Expression of Opinion on the VAT Case Judgement," *The Palestine Yearbook of International Law*, Vol. IV (1987/1988), p. 213.
8. Article 64 of the Fourth Geneva Convention is analogous to Article 43 of the Hague Regulations and requires that local law be respected except in certain circumstances.
9. As explained above, Article 43 of the Hague Regulations grants an occupant legislative and executive powers on specific conditions. Where those conditions are ignored or violated, the acts of the occupant fall outside the bounds of its legitimate powers and are, therefore, *ultra vires* and null and void.
10. L. Oppenheim, *International Law: A Treatise*, Vol. II (London: Longman, 1952), p. 446. See also Martha Roadstrum Moffett, *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence Emergency Regulations, 1945, in the Occupied Territories* (Ramallah: Al-Haq, 1989), pp. 37-38.
11. Moffett, *Perpetual Emergency*.

Part I

Violations

Introduction to Part One

During the first year of the popular uprising in the Occupied Palestinian Territories, Israeli human rights violations attracted substantial international criticism. As a consequence, the Government of Israel was faced with a choice: to bring its conduct into conformity with international law, or to deflect criticism by other means.

The record of the second year of the uprising makes clear that the Government of Israel chose the latter option. As its resort to illegal measures intensified, criticism was deflected by official statements intended to reassure the international community and a considerable dose of media censorship. As discussed at length in the chapters which follow, official denials of systematic policies (such as torture) and claims to have abandoned others (such as beatings) often failed to reflect reality.

Part One of this report comprises 15 chapters. They document and analyze a range of human rights violations in terms of universal standards contained in international law. These standards include the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, the 1948 Universal Declaration of Human Rights, and other instruments. Where possible, an attempt has been made to identify military regulations, assess their legal status, and determine the extent to which they are reflected or exceeded in actual practice. Each chapter also attempts to identify and highlight significant differences between the first and second years of the uprising. Although the report is not comprehensive, several subjects not covered in last year's report, such as freedom of religion and women's rights, are accorded individual chapters.

The chapters of Part One, each summarized below, examine abuses of the personal security of Palestinians in the Occupied Territories, attacks on families and individual communities, and the social and economic repression of the population and its infrastructure. A number of these measures, such as the destruction of property, are subject to strict limitations under international law. Others, such as collective punishment, are absolutely prohibited. Yet a third category, including torture and "wilful (intentional and unlawful) killing," constitute "grave breaches" of the Fourth Geneva Convention, war crimes entailing universal criminal liability for those responsible without a statute of limitations. In addition to the above, grave breaches include, but are not limited to, deportation, unlawful confinement, wilful deprivation of a fair and regular trial, and the extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly.

Chapter One ("The Use of Force") begins with an analysis of casualty figures during the second year of the uprising. International standards and Israeli open-fire regulations are carefully reviewed. The chapter examines the use of exploding objects and flares by the military; army brutality in policy and practice; illegal force as a method of crowd control, including the use of tear gas, rubber bullets and steel marbles; lethal force, including the use of indiscriminate force against demonstrations and the use of "plastic bullets"; army raids on towns, villages and refugee camps; and wilful killing and summary execution.

Contrary to official claims that the military abandoned its policy of "force, might, and beatings" in February 1988, it continued through the end of 1989. Meanwhile, regulations governing the use of lethal force were progressively relaxed, with little or no regard for international law. Among the new regulations discussed are those permitting soldiers to fire live ammunition at masked persons with no consideration for the actual threat posed, and those authorizing soldiers (including non-commissioned officers) to fire plastic ammunition in non-life-threatening situations. Al-Haq concludes that fundamental international standards protecting the right to life are being routinely violated. The following consequences are among those detailed:

- (1) Three hundred seventy-nine Palestinians killed by Israeli armed forces, settlers, or collaborators between 9 December 1988 and 5 December 1989. This figure constitutes 48 percent of the 787 Palestinians killed since 9 December 1987.
- (2) Fourteen out of a total of 31 Palestinian killed in October 1989 were masked.
- (3) The shooting of at least 28 people, eight of them fatally, on 16 December 1988 in the West Bank city of Nablus, is provided as a case study. "Black Friday" resulted when Israeli soldiers indiscriminately opened fire on a funeral procession and burial ceremony in violation of open-fire regulations. The initial investigation acquitted the soldiers. Under intense international pressure, a second investigation was initiated. It recommended that four soldiers be brought before a disciplinary hearing.

Furthermore, according to a random sample conducted by al-Haq, 84 percent of those wounded were between 11 and 25 years old.

The chapter also details several cases of what appear to constitute wilful killing, a grave breach of the Fourth Geneva Convention.

Chapter Two ("Medical Care") is devoted to the obstruction of medical care by the authorities. Although the Fourth Geneva Convention accords special status to the sick and wounded, these legal protections have been flagrantly violated by the military government.

Mistreatment of the sick and wounded, the abuse of medical personnel, and attacks on medical facilities are all detailed. Multiple examples are given of the shooting and beating of the injured and official obstruction of efforts to aid the wounded. An issue of particular concern to al-Haq throughout 1989 was the extensive and unjustified delaying of ambulances, in several cases leading to the death of wounded passengers.

Attacks on medical personnel and health facilities violate the right of medical neutrality. Nevertheless, in many examples cited by al-Haq, doctors, nurses, and

ambulance drivers on duty have been shot and beaten. Combined with the practice of arresting Palestinians from hospital wards, including intensive care units, such attacks constitute serious violations of the Fourth Geneva Convention.

The chapter ends with a review of measures taken by the military government to restrict the provision of health services in the Occupied Territories and limit access to Israeli health facilities.

Chapter Three ("Settler Violence") addresses the continued threat posed to the physical safety of Palestinians by Jewish settlers living in the Occupied Territories. Indeed, settler violence has become a permanent feature of everyday life. Al-Haq details violations committed by settlers and concludes that these stem from the failure of successive Israeli governments to hold settlers accountable for their actions.

At least nine Palestinians were killed by settlers during 1989. This brings the total since the beginning of the uprising to at least 25. Four of those killed during 1989 were teenagers as young as 13. The oldest victim was 23. According to al-Haq's documentation, most if not all of these deaths occurred during settler-initiated attacks on Palestinian communities, thus rendering settler claims to have killed Palestinians in self-defense disingenuous.

Chapter Three presents evidence of well-organized settler raids in which Palestinians were killed and wounded, residents indiscriminately assaulted, and property damaged and destroyed.

The chapter also illustrates a continuing pattern of cooperation between settlers and soldiers. It details the state of official investigations into settler violence since the beginning of the uprising. Of 25 killings committed by settlers, 23 were or are being investigated. One file was subsequently closed with no further action taken. Thirteen were completed, and nine are still in progress. In only three of these cases were judicial proceedings initiated, resulting in three charges of manslaughter and none of murder. As of 4 December 1989, only one trial, that of Yisrael Ze'ev, had been completed, resulting in a verdict of guilty and a sentence of three years' imprisonment. The chapter concludes with a case study of settler rampages in Hebron during the period 24 April–22 May 1989.

Chapter Four ("Collaborators") concerns the military government's policy of coopting Palestinian residents of the Occupied Territories as agents of the military authorities and its consequences. During 1989, the authorities appeared to take steps to rebuild the system of informers disrupted in the first year of the uprising. The chapter begins with an analysis of who and what collaborators are, and goes on to detail seven killings attributable to collaborators. In addition, collaborators also gather intelligence about individuals active in the uprising, interrogate detainees in prison, assist the army in carrying out arrests, and terrorize villages by setting up roadblocks, imposing curfews, and beating and killing civilians.

Al-Haq does not condone the killing of collaborators and, as a human rights organization, opposes the death penalty in all circumstances and considers the right to life to be paramount. At the same time, actions taken by or against collaborators in the Occupied Territories must be judged on the basis of the laws of belligerent occupation, in particular Additional Protocol I to the Geneva Conventions. In al-Haq's view, both Israel as an occupying power and the Palestine Liberation Organization (PLO) as a

resistance movement are expected to respect the Protocol.

Since the Israeli authorities exercise *de facto* control over the West Bank and Gaza Strip, however, they are solely accountable for law enforcement in these territories. The PLO, although considered by virtually all Palestinians to be their sole legitimate representative, does not exercise control over local legal institutions such as courts, prisons, and police. There is, therefore, no legal mechanism available to either the PLO, or the Palestinian civilian population, to control and hold to account collaborators and those who attack them. In al-Haq's view, only an entity (governmental or otherwise) which exercises effective law enforcement in territory under its control can be held accountable for human rights violations. The military government has in fact exercised its prerogative as the sole law enforcement power in the Occupied Territories; individuals and groups involved or suspected of involvement in activities against collaborators are arrested and severely punished. For these reasons, this report does not document killings of collaborators.

One of the clearest trends during 1989 was the increase in torture, a grave breach of the Fourth Geneva Convention and a war crime under customary international law. Torture, and the deaths which directly or indirectly result from it, typically occur during interrogation and before the initiation of any judicial proceedings. For this reason, al-Haq has chosen to address these subjects prior to any discussion of the military justice system. Chapter Five ("Torture and Death in Detention") details a range of torture methods documented by al-Haq. These include electric shock, burning, beating, sleep and food deprivation, and forcing detainees to remain in unnatural positions for long periods of time. In al-Haq's view, the increased use of torture reflects a change in official policy. Whereas the military government's previous response to the uprising was characterized by mass arrests and "quick trials," there now appears to be a conscious effort to uproot the rebellion by forcibly extracting relevant information from detainees through unlawful methods.

At least five detainees are known to have died at the hands of their interrogators since the beginning of the uprising. Most recently, on 19 December 1989, Khaled Kamel al-Sheikh 'Ali died during interrogation in Gaza Central Prison from a blow to the abdomen by a "blunt instrument." The autopsy results also revealed a number of other internal bruises.

An appendix to Chapter Five discusses attacks on the personal liberty of detainees, a subject also examined in Chapters Six ("The Military Judicial System") and Seven ("Administrative Detention"). Conditions in prisons and military detention centers, which apparently are not subject to uniform standards, are reviewed. Excessive violence, inadequate medical care, and insufficient food, space, and exercise are among the issues addressed.

At the end of November 1989, some 14,000 residents of the Occupied Territories were in detention, a 40 percent increase over October 1988. Chapter Five also provides a list of detention facilities in the Occupied Territories and Israel, and estimates the number of Palestinians held at each one.

Chapter Six examines the military judicial system, including pre-trial and trial procedures, sentencing, and appeals. The chapter goes on to determine the extent to which basic legal and judicial principles are flouted or ignored altogether. The

report finds that the basic requirements for a fair trial continue to be systematically violated. Currently, some 95 percent of all trials in the Occupied Territories result in convictions. Prior to trial, lengthy periods of time may be spent in detention.

Arrest in the Occupied Territories is still an arbitrary and often violent process. One new development is the so-called "bingo arrest," whereby people are repeatedly arrested because their names appear on official blacklists and are never removed. Al-Haq also examines the principle of personal responsibility, and finds that it has been severely eroded during the uprising: military orders were passed making parents liable for the acts of children aged 12 or less; tenants were made liable for nationalist graffiti on their walls; tax debts were collected from third parties; and third parties, usually family members, were arrested and held "hostage" in lieu of suspects who could not be apprehended by the military.

In mid-January 1989, a policy of stiffer sentencing was announced by the military government. Chapter Six examines the increase in average sentencing for particular offenses. Before the uprising, for example, stone throwing attracted an average sentence of two to three months' imprisonment. Currently, sentences of as high as 12 or 18 months, complemented by fines of NIS 1,000-1,500 (\$US 500-750), are being issued.

The new military appeals court is also discussed. The court was established on 1 April 1989 to hear appeals submitted by both the defense and prosecution. Al-Haq finds that the establishment of the military appeals court is unlikely to remedy any of the key defects in the military judicial system. These include: obtaining Hebrew confessions from Arabic-speaking detainees, often as a result of torture; lengthy isolation of detainees during interrogation; systematic preference of soldiers' testimony over that of detainees; consistent refusal to grant bail; and failure to bring defendants and prosecution witnesses to court, resulting in lengthy delays.

After fully reviewing the judicial procedure, al-Haq concludes that the chances of a detainee receiving a fair trial are made exceedingly slim even before it begins. The wilful deprivation of a fair trial constitutes a grave breach of the Fourth Geneva Convention.

Chapter Seven comprises two sections. The first deals with conditions of detention at Ansar III (Ketziot) in the Negev desert, where many administrative detainees are held. In the second, al-Haq scrutinizes appeal procedures for administrative detainees.

Of the 50,000 Palestinians the Israeli government acknowledges having detained during the uprising, 10,000 were placed under administrative detention (detention without charge or trial, or internment). Al-Haq estimates that during 1989, 4,000 administrative detention orders (including renewals) were issued. Although international law only permits the use of administrative detention as an exceptional measure for "imperative reasons of security," the authorities have resorted to it on a massive scale and in an arbitrary manner. Furthermore, the conditions under which administrative detainees are held in the Occupied Territories and Israel appear to constitute an illegal form of extra-judicial punishment.

The following aspects of detention in Ansar III are addressed in detail: denial of family visits (no such visits have occurred since the camp was established in early 1988); limited access to printed materials and correspondence (banned books include

Shakespeare's *Hamlet* and Tolkien's *Lord of the Rings*); poor living conditions (prisoners continue to live in tents which remain open to the elements during all seasons); excessive use of force against detainees; inadequate medical attention; and restrictions on visits by lawyers. After a full review of these conditions, al-Haq concludes that they can in no way be justified by "security" rationales.

Al-Haq also examines administrative detention procedures, including a military order issued in August 1989 extending the maximum period for which a person may be administratively detained from six months to one year. As before, the initial detention order is indefinitely renewable.

Twenty-six Palestinians were deported from the Occupied Territories in 1989 under the illegal British Defense (Emergency) Regulations. Each of these deportations constitutes a grave breach of the Fourth Geneva Convention and a war crime for which those responsible are prosecutable abroad with no statute of limitations. Chapter Eight ("Deportation") includes a discussion of the United States threat, issued in the wake of the deportation of eight Palestinians on 29 June 1989, that further deportations would damage bilateral relations with Israel. That same month, and despite the apparent recognition in official circles that deportation was an "ineffective" measure, Minister of Defense Yitzhak Rabin called for the curtailing of deportation procedures to allow the authorities to delay appeals until after deportation has taken place. As in previous years, the Israeli High Court did not overturn a single deportation order in 1989.

Also during 1989, the military government continued to use various administrative measures to coerce and punish residents of the Occupied Territories. Examples discussed in Chapter Nine ("Administrative Methods of Control") include the confiscation of identity cards; the issuance of special green identity cards forbidding entry to Israel; and collective restrictions on travel abroad.

Al-Haq documented many cases, summarized in Chapter Nine, in which soldiers confiscated identity cards from individuals in order to compel payment of taxes, restrict movement, or force involuntary actions by third parties. This has occurred despite a military order issued in May 1989 making such practices unlawful. Special identity cards have also been issued, particularly to ex-detainees, which forbid the bearer from entering the Occupied Territories or annexed East Jerusalem. Finally, travel into and out of the Occupied Territories has been made contingent on lengthier bureaucratic procedures and proof of payment of taxes. V469ur towns and villages have been subject to "collective travel restrictions." Residents of Nablus, a city of 100,000, were placed under such restrictions in December 1988 for a period of seven months. Two weeks after the order was lifted, it was reimposed. Often, the excessively bureaucratic procedures imposed upon residents living abroad have resulted in sufficient delay for residency permits to expire, with the result that individuals lose their right of residency in the Occupied Territories.

Chapter Nine provides ample illustration of the system of administrative and bureaucratic harassment in the Occupied Territories, and concludes that these procedures violate international standards. In many cases they are at variance with military orders as well.

More homes were demolished by the military government in 1989 than in many

previous years, including 1988. Two hundred twenty-eight houses were demolished or sealed in 1989 for so-called "security" reasons, as compared with 173 in 1988. An estimated 2,282 persons were made homeless as a result. The houses demolished and sealed during 1989 bring the uprising total to 401, displacing a total of approximately 3,152 persons. Chapter Ten ("House Demolition and Sealing") analyzes these and other statistics.

A number of homes were demolished in 1989 on the pretext that stones had been thrown from their vicinity. And, in an entirely new development, the homes of the families of fugitives were demolished as a pressure tactic. As with deportations, there were calls to curtail administrative procedures, including the suspension of appeals. The High Court responded in July 1989 by ruling that, in certain exceptional cases, houses slated to be demolished could be sealed prior to the conclusion of appeal. Furthermore, the High Court of Justice in 1989 maintained its record of never having overturned a demolition order.

Al-Haq's position on house demolition is consistent with that of the International Committee of the Red Cross and the international community. It maintains that the measure as practiced by the military government in the Occupied Territories constitutes a form of collective punishment and reprisal, both of which are absolutely prohibited under the Fourth Geneva Convention and the Hague Regulations. Furthermore, the unwarranted destruction of property to so great an extent constitutes a grave breach of the Fourth Geneva Convention.

Measures of confinement and isolation continued unabated during 1989. The number of curfews imposed during 1989 remained consistent with that of 1988 at approximately 1,600. In one location, the Shaboura district of Rafah Refugee Camp in the Gaza Strip, residents spent more than 50 percent of 1989 under curfew. A 16-day continuous curfew was imposed on the same location in May 1989. When residents broke the curfew on the 13th day to meet an UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East) food convoy, the army opened fire, killing five and wounding many others. Chapter Eleven ("Curfew and Other Forms of Isolation") discusses how the imposition of curfews continued to affect the civil life and the economy, particularly day workers and those with crops or livestock to tend. Schooling suffered, and medical care was often not accessible. In the Gaza Strip, public life was repeatedly brought to a virtual standstill by curfews. In other regions, prolonged curfews were imposed for unwarranted reasons and often served as a cover for other abuses of human rights. Because of all the above, al-Haq concludes that the policy of systematic curfews constitutes a form of collective punishment and reprisal.

"Closed military areas" were also declared on a widespread basis throughout 1989. The town of Beit Sahour was sealed off from the outside world for a period of nearly two months, while tax officials and soldiers cleared houses of possessions. Settlers were exempted from such measures by the military.

In addition to abuses of the physical integrity of Palestinians and attacks on families and communities, the military government in the Occupied Territories also violated Palestinian economic and social rights during 1989. These abuses are discussed in Chapters Twelve ("Economic and Fiscal Sanctions"), Thirteen ("Education"), and Fourteen ("Religion").

Chapter Twelve begins with a review of external factors which depressed the Palestinian economy in 1989, and goes on to analyze the process by which the military government attempted to further strangle income through attacks on labor, capital, marketing, and financial transfers from abroad. Al-Haq discusses new tax regulations issued during the uprising and analyzes these in terms of international law and actual practice.

The Palestinian economy, already depressed in 1989 due to various factors, was made hostage to the population's acceptance of certain political proposals, including Israeli Prime Minister Yitzhak Shamir's election plan. Thus, in May 1989, workers from the Gaza Strip employed in Israel were ordered back *en masse*. Only those with no "security record" were issued with special magnetic identity cards and allowed into Israel. The political (and to some extent economic) wish of the Israeli government to be rid of Palestinian workers in Israel was frustrated only by the economic impossibility of jettisoning seven percent of the Israeli labor force in one fell swoop.

Tight restrictions were also placed on the amounts of money that could be brought into the Occupied Territories. Similarly, exports to the European Community were disrupted and delayed, and pressure to restrict exports to Israel mounted. Stores of wealth, particularly olive trees and houses, continued to be destroyed by the military for "security" reasons or, alternatively, to facilitate Jewish settlement in the Occupied Territories. The cumulative value of houses totally demolished or sealed since the beginning of the uprising is approximately \$US 17.5 million.

Chapter Twelve analyzes six new military orders concerning taxation. Among these are one which makes the issuance of administrative permits conditional on the payment of tax debts and another which officially sanctions the use of force in tax collection. The chapter notes that two of these orders were issued during the siege of Beit Sahour in September and October 1989 and that local lawyers were not officially notified of their existence until well after the raids had ended. Consequently, the authorities were effectively acting under secret laws.

Al-Haq provides case studies illustrating four characteristics of tax collection which are illegal even under local law as amended by the military government: excessive use of force; excessive assessment; collection of tax debts from third parties; and confiscation of identity cards.

The chapter concludes that current attempts to collect taxes by the authorities fall outside the license granted them under international law and are, consequently, null and void. An appendix reviews the entire tax structure, summarizing amendments to the tax laws since 1967.

During the period covered by this report, all West Bank schools (excluding kindergartens) were ordered closed for a period of at least eight months. Since the beginning of the uprising, these schools have been closed for at least 16 months. Universities and colleges in the Occupied Territories have been closed by the military government throughout the uprising. Approximately 310,000 school pupils and 21,000 university students have been affected.

Chapter Thirteen assesses the extent to which Israeli military closure orders and orders curtailing the academic year comply with the requirements of international law. Al-Haq also analyzes official security rationales. According to the authorities,

"it should be easily understood that the authorities ordered schools closed only when they had become centers of *intifada* violence." However, when confrontations have been at their height (February 1988 and April-May 1989), West Bank schools had already been closed.

Universities were closed not only to students, but also to faculty and administrators. Attempts to organize alternative education programs outside the premises of schools and universities remained outlawed during 1989. School teachers were put on unpaid leave during school closures as of January 1989, although some were later paid 40-50 percent of their salaries. The chapter goes on to describe how some 36 schools were used as detention centers or military bases, during which soldiers took the opportunity to vandalize the premises.

Violations of the right to freely practice religion are reported for the first time by al-Haq. For this reason, abuses which occurred during 1989 as well as 1988 are discussed in Chapter Fourteen. Al-Haq finds that religious rights, protected under international law and nominally recognized under Israeli military legislation, have not been accorded adequate respect by the authorities during the uprising. In particular, mosques have been closed and their loudspeaker systems confiscated as collective punishment for alleged stone throwing from their vicinity. Access to places of worship has been restricted. Mosques and religious practices dependent upon them have been accorded no special privileges. Other religious rites, such as funerals for those killed by the army, have been restricted and at times prevented altogether. The corpses of those killed are often seized by the army and not released until certain conditions, such as restrictions on the number of persons attending the burial, are met by the family of the deceased. In several cases, the military has interned the bodies of persons killed in secret cemeteries located in the Jordan Valley.

Also discussed by al-Haq for the first time are violations of women's rights. Chapter Fifteen ("Women") categorizes these violations into those specifically directed at women (such as sexual harassment) and those which affect women by virtue of their membership in Palestinian society.

According to al-Haq's information, 67 women have been killed by Israeli soldiers since the beginning of the uprising. These killings occurred in a range of situations, including women's marches, the coincidental vicinity of women to demonstrations in progress, and while women were indoors. The report details cases of miscarriage and stillbirth which appear to have been caused by excessive exposure to tear gas. In one incident known to al-Haq, 12 women miscarried in one night after they inhaled tear gas during the same incident.

Women are as a rule sexually harassed and intimidated during detention and interrogation. Ample case studies of these practices are provided. Furthermore, investigations into such cases are wholly inadequate.

Women in need of family reunification permits have also suffered as a result of military legislation. Military orders make it virtually impossible for wives and children resident in Jordan to join husbands resident in the West Bank. A new military order passed in 1989 also makes it virtually impossible for children born of parents who are not both West Bank residents to obtain residency in the Occupied Territories. Finally, women's attempts to organize social, economic, and charitable activities have

been consistently repressed.

The issues summarized above are discussed and analyzed at length by al-Haq in Part One. Only after an examination of the range and extent of human rights violations in the Occupied Territories is it possible to assess the scale of official disregard for the law, and hence make a reasoned judgment concerning the Israeli authorities' intent to abide by fundamental legal standards.

Chapter One

The Use of Force

Introduction

The illegal use of force, whether the unwarranted use of live ammunition, abuse of standard crowd control weapons, or physical brutality, has been the principal method used by the Israeli military to quell the uprising in the Occupied Palestinian Territories. This chapter examines the official Israeli regulations governing the use of force and shows that they fall short of the minimum international standards for the safeguarding of human life. Additionally, documentation collected by al-Haq is provided to show that even these sub-standard regulations are routinely violated, and that the judicial system has failed to hold perpetrators accountable for their actions.

In October 1987, two months before the current uprising in the Occupied Territories erupted, al-Haq issued two documents criticizing the illegal use of live ammunition and the widespread resort to punitive beatings by the security forces.¹ These concerns have remained essentially unchanged during the past two years. Although the number of Palestinians killed and wounded has increased dramatically, the basic problem continues to be that the military authorities consistently disregard the fundamental principles of necessity and proportionality specifically intended to protect the lives and well-being of civilians. Al-Haq has documented the persistent use of excessive, often lethal force by the Israeli military against unarmed Palestinians. This documentation establishes beyond any doubt that the tactics and levels of force used against the population of the Occupied Territories have been more appropriate to the battlefield than to a situation of civil unrest.

Although al-Haq, other Palestinian institutions, Israeli and international human rights organizations, and many others in the international community have repeatedly brought the issue of the illegal use of force by the military government in the Occupied Territories to the attention of the Government of Israel, the latter has yet to bring its practice into line with basic international standards. Rather, as is discussed below, the Israeli authorities have continually relaxed the official regulations governing the use of force over the past several years. This has particularly been the case with regard to live ammunition. During the second year of the uprising, the relaxation

of the official regulations continued unabated, permitting the use of lethal force in a broader set of circumstances than was ever the case previously.

1. Statistics on Casualties

According to information compiled by al-Haq, a total of 787 Palestinians were killed in the Occupied Territories between 9 December 1987 and 9 December 1989.* Three hundred and seventy-nine, or 48 percent, were killed in the period 5 December 1988–5 December 1989; 244 (64 percent) were from the West Bank (including annexed East Jerusalem) and 135 (36 percent) from the Gaza Strip. Three hundred and sixty (95 percent) were male and 19 (five percent) female. Due to technical difficulties posed by the sheer volume of human rights abuses, the late introduction of al-Haq fieldworkers to the Gaza Strip, and the obstruction of its fieldwork by the Israeli authorities,† al-Haq has full documentation on only 281 (74 percent) of the 379 cases recorded during the period 5 December 1988–5 December 1989:

Cause of Death	Number Killed	Percent
Live and Plastic Bullets†	245	87.2
Rubber bullets	3	1.1
Steel Marbles	1	0.3
Tear Gas	11	3.9
Beatings	11	3.9
Other	10	3.6
Total	281	100.0

Compared to the first year of the uprising, the proportion of shooting deaths (there were 249) remained constant at nearly 90 percent, whereas beating deaths more than doubled from 1.4 to 3.9 percent.²

In terms of age, the overwhelming majority of the 249 shooting deaths (84 percent) involved persons between the ages of 11 and 25, with those over the age of 26

*Al-Haq investigates all killings attributable to the Israeli authorities, their agents, and other individuals officially licensed to bear arms. The cited figures do not include (suspected) collaborators killed by Palestinian activists. See further Chapter Four, "Collaborators."

†See further Chapter Eighteen, "Human Rights Monitors."

‡For reasons discussed below, live and plastic bullets are grouped together.

accounting for 14 percent of the total (This table includes shooting deaths only):

Age	Number Killed	Percent
0-10	6	2.4
11-16	57	23.0
17-18	58	23.4
19-25	93	37.4
26-35	20	8.1
36-50	10	4.0
51+	4	1.6
Unknown	1	0.1
Total	249	100.0

The proportion of shooting deaths during 1989 attributable to the military also did not vary significantly when compared to the first year of the uprising. The following table provides a breakdown of perpetrators:

Perpetrator	Number Killed	Percent
Soldiers	216	86.7
Armed Civilians [§]	15	5.6
Settlers	9	4.0
Shin Bet	5	2.0
Collaborators	3	1.2
Unknown	1	0.5
Total	249	100.0

Accurate figures for the wounded do not exist. One reason is that the Israeli authorities prohibit hospitals in Israel and government hospitals in the Occupied Territories from providing information to the public about injuries inflicted by the security forces. Additionally, large numbers of wounded Palestinians have declined hospital treatment out of fear that they will be arrested or otherwise abused as a result. These fears are succinctly expressed in a memo from World Health Organization consultants in the Occupied Territories to their organization's Director General:

We found that it frequently is impossible for medical and paramedical personnel to safeguard the rights of their wounded patients to proper treatment against the military. It is becoming customary for them to drag patients from hospitals, clinics or ambulances for investigation, and even to beat them up.³

Rather, patients have gone through informal channels, such as local physicians or clinics operated by popular committees, to meet their medical needs.[¶] Thus, the available primary data on the wounded concerns only those patients who have sought

[§]This category comprises any person in civilian clothes whose identity could not be determined. Thus, it includes Israeli civilians not resident in the Occupied Territories, security personnel operating under civilian cover, Palestinian collaborators, as well as West Bank and Gaza Strip settlers whose residency in the Occupied Territories could not be established.

[¶]See further Chapter Two, "Medical Care."

treatment through private and UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East) hospitals and clinics, or clinics operated by medical committees which keep statistical records. These patients form only a subgroup of all wounded persons seeking hospital care, and an even smaller subgroup of all injured persons who have sought medical treatment. This, in turn, is itself a subgroup of all persons injured during the uprising.

Because of the absence of accurate primary data and the sheer number of wounded, al-Haq has not attempted to systematically document non-fatal injuries during the uprising. Nevertheless, al-Haq is convinced that the official figure of 8,938 Palestinian wounded is a gross underestimate of the actual number of injured.⁴ Most importantly, the military's statistics for Palestinian casualties (dead and wounded) include only persons who were taken to hospital and officially reported to the military.⁵ Secondly, they "deal solely with casualties incurred in clashes with security forces" and exclude those inflicted by settlers and others not serving in the military.⁶ Additionally, the army excludes those casualties for which it denies responsibility, a category which includes substantial numbers of tear gas and beating injuries.

Further doubt is cast on the credibility of official figures by the military's attempts to politically manipulate the number of casualties. As explained by an Israeli soldier who was stationed in the Gaza Strip:

After soldiers indiscriminately open fire in all directions, they quickly remove themselves from the site and the work of evacuating the casualties to hospital is left to the residents. This arrangement is comfortable for the Israeli army because it makes the Arab hospitals the only source in regard to everything concerned with the number of casualties. Hence, the Israeli army can cast aspersions on the truthfulness of their information. The Israeli army authorities draw their information from the directors of the Arab hospitals, but they disregard the wounded persons who did not have to remain in hospital. A wounded person whose wounds are dressed and is then sent home is not included in Israeli army figures. The day after an incident, the soldiers open the paper and have a good laugh at the announcement made by the Israeli army spokesman. The operational log contains one version and the Israeli army spokesman gives another. This ... is seen as part of the war effort. The incidents at Shaboura camp [described earlier in the article] left 23 people wounded. The Israeli army spokesman reported that three persons were wounded.⁷

Finally, official figures are difficult to take seriously because they often contradict each other. For example, on 8 October 1988, Minister of Defense Yitzhak Rabin stated that 7,000 Palestinians had been wounded since the beginning of the uprising. Six weeks later, official Israeli sources quoted in the *Jerusalem Post* reduced the casualty rate by 50 percent by claiming that there were only 3,503 wounded Palestinians.⁸ At the same time, the official figure of 8,938 injuries cited above would, if accurate, mean that either 7,000 Palestinians were injured in the first ten months of the uprising and only 1,938 during the next 14, or that an average of approximately 372 Palestinians a month were being injured at a time when local press reports indicate at least as many persons were often injured in the course of a single week. Relief agencies directly involved in treating the injured, such as UNRWA, were for their part regularly reporting monthly casualty tolls of at least 1,143 (November 1989) and as high as 2,743

(May 1989) for the Gaza Strip alone. In addition, UNRWA was recording fortnightly tolls of 1,096 (16 April–1 May 1989) and daily tolls comprising only shooting injuries as high as 73 (27 April 1989). These four UNRWA statistics, which exclude the West Bank, by themselves add up to 5,055 Palestinian injuries, or 57 percent of the official figure in a period comprising only ten percent of the first two years of the uprising.⁹

Independent casualty figures, although also difficult to confirm, are in al-Haq's view much more reliable. This is especially the case when statistics originate from hospitals or organizations like UNRWA, which treat many of the wounded and base their reporting on primary data. On the basis of such independent reports, al-Haq estimated that during the first year of the uprising "well over 20,000" Palestinians had been injured.¹⁰ It believes at least as many casualties to have been inflicted this year, accounting for a total figure of not less than 40,000 wounded.¹¹ One indication that this is a reasonable estimate is that UNRWA reported 29,880 Palestinians injured between 9 December 1987 and 30 November 1989 in the Gaza Strip alone.¹² If, assuming this figure is reasonably accurate, the significantly larger population of the West Bank sustained only half the casualty rate of the Gaza Strip, this would already amount to a total of 44,820 wounded.

Al-Haq's own documentation on the wounded comprises a sample of 334 persons injured between January and October 1989. It includes individuals injured by various types of ammunition, such as live, plastic, and rubber bullets. It covers a period of ten months, all geographic areas, age brackets, and demographic groups, and in this regard can be considered representative. The following age distribution for injuries was observed:

Age	Number Wounded	Percent
0-9	8	2.4
10-16	89	26.6
17-18	60	18.0
19-24	101	30.2
25-59	69	20.7
60+	7	2.1
Total	334	100.0

A cumulative average for all age brackets indicates that 84.5 percent of wounds were located in the upper part of the body. While this figure is probably exaggerated due to the small size of the sample, it nevertheless echoes the concerns of medical experts and the human rights community that, contrary to official claims that soldiers aim their fire only at the legs, an unacceptably high proportion of injuries are being inflicted on the upper part of the body.¹³

In violation of open-fire regulations which call upon soldiers to avoid shooting at children and women, al-Haq's sample shows that 29 percent of the wounded were children of 16 years or younger. These include innocent bystanders, children wounded by explosive mines and suspicious objects, as well as children participating in demonstrations. The majority of those wounded, 74.9 percent, were between the ages of ten and 24.

Exact and comprehensive figures on the killing of children during the second year

of the uprising are not available. However, according to B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, 161 children aged 16 or below were killed between December 1987 and October 1989. One hundred and twenty-five were shot dead, 30 were asphyxiated by tear gas, and the remaining six were either beaten to death, run over by military vehicles, or mortally wounded by mines, electrocution, or burns.¹⁴ According to the Palestine Human Rights Information Center in East Jerusalem, 192 children aged 16 or younger were killed between 9 December 1987 and 30 November 1989, of which 136 were shot, 36 asphyxiated, and 20 killed by other means.¹⁵

2. International Standards Governing the Use of Force

Under international law, the basic standards governing the use of force are based on the principles of necessity and proportionality. Their observance is of critical importance in safeguarding the right to life and security of the person. These principles, as well as basic guidelines for the use of force, are codified in the United Nations Code of Conduct for Law Enforcement Officials (UNCCLEO) of 1979, widely accepted as setting out international norms governing the use of force.¹⁶ According to Article 3:

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

In Article 1, the UNCCLEO states that the principles and standards contained in the Code apply to "all those who exercise police powers." The Commentary states:

In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

The UNCCLEO therefore clearly applies to the police powers exercised by the Israeli military, including the dispersal of demonstrations, the making of arrests, and other law enforcement activities.

The Commentary to Article 3 establishes three criteria against which the necessity and proportionality of the use of force can be measured:

- (a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.
- (b) National law ordinarily restricts the use of force by law enforcement officials in accordance with the principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.
- (c) *The use of firearms is considered an extreme measure.* Every effort should be made to exclude the use of firearms, especially against children. In general firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardized the lives of others and less

extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged a report should be made promptly to the competent authorities. [Emphasis added.]

Thus, while existing international standards do not categorically ban the use of force by the Israeli authorities, its use must be restricted to a level that is both necessary and proportionate to the task at hand in order to be lawful. It follows that the use of force for purposes of future deterrence or punishment is illegal under any and all circumstances.

It should be noted that neither the UNCCLEO nor the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War contain any outright prohibitions on the use of force by authorities exercising police powers, but rather establish guidelines and criteria for regulating their conduct. The right of the civilian population to humanitarian protection is thus balanced by the recognized right of the authorities to establish and maintain law and order. Any violation of these standards must also be viewed in this context.

3. Israeli Open-Fire Regulations

Al-Haq believes that there are three separate but related problems concerning the use of force by the Israeli military in the Occupied Territories:

- (1) The existing regulations permit a level of force that is irreconcilable with the principles defined above;
- (2) The regulations are often vague and give soldiers broad discretion, leading to additional violations of the minimum international standards;
- (3) Even when, by the authorities' own admission, these discretionary powers are abused, investigation and prosecution procedures are grossly inadequate and fail to hold soldiers accountable for their actions.

The official regulations governing the use of force by members of the Israeli armed forces in the Occupied Territories are, for "security" reasons, classified information. Al-Haq has repeatedly requested that these regulations be published so they could be reviewed in detail. These requests have all been ignored. Al-Haq continues to believe that the official regulations need to be made public. They function as law, and therefore cannot be kept secret. Not only do the regulations need to be examined in detail in order to determine their legal status, but members of the public should at the very least have the right to know under what circumstances the military is permitted by its own regulations to open fire upon them.

Despite the fact that the official regulations remain classified, sufficient information has been made available through the Israeli press and other sources to provide a reasonable basis for their evaluation.

Prior to 1987, the use of live ammunition to quell demonstrations was not officially sanctioned. In practice, however, Palestinian protesters have been shot and killed with live ammunition since the early years of the occupation. In 1987, the

use of firearms was permitted "as part of the procedure of detention of suspects during disturbances."¹⁷ Since then, these regulations have been continuously relaxed, permitting the use of lethal force in an ever-increasing number of circumstances.

As amended in 1986, the regulations permitted soldiers to open fire if attacked with lethal weapons, faced with imminent danger, or attempting to stop a fleeing suspect. At the time, al-Haq criticized these regulations as being overly broad (particularly concerning the authorities' interpretation of "suspect," discussed below) and leaving too much to the discretion of individual soldiers.

Currently, soldiers may open fire with plastic bullets on persons erecting barricades, burning tires, or fleeing from demonstrations; they may also fire live ammunition at masked persons (those covering their faces so as to protect their identity). Additionally, the authorities have also authorized a number of "military operations," which by definition are not investigated by the authorities and therefore appear to fall beyond the scope of the official regulations altogether. The status of these regulations under international law will be considered in the relevant sections below.

Al-Haq has not been able to obtain information as to what written regulations, if any, govern the use of weapons and ammunition such as tear gas, truncheons, and rubber bullets.* As will be shown below, however, these weapons have been consistently abused, leading to serious injury and even death. In al-Haq's view, either official regulations exist permitting such conduct, or the existing guidelines are sufficiently vague to allow such abuse, or soldiers are routinely permitted to violate the regulations without being held to account.

A. Casualties Caused by Exploding Objects and Flares

Al-Haq has documented a number of cases, mostly involving children and teenagers, in which residents of the Occupied Territories were killed or injured by mines, other exploding objects, or flammable objects.¹⁸ The objects exploded or caught fire either after they were thrown directly at individuals from jeeps or helicopters, or, when located on the ground, they were played with or stepped on.

The majority of incidents occurred in rural areas. Their victims were primarily children tending herds. Al-Haq documented cases in four districts of the West Bank (Bethlehem, Hebron, Jenin and Nablus) over a period of seven months.

The military authorities have claimed that these casualties were caused by airplane flares used to deflect heat-seeking missiles or by unexploded ammunition located on the premises of military training grounds.¹⁹ The official explanation fails to account for injuries caused by objects thrown from jeeps and helicopters, as well as those which did not occur on or near military grounds.

*Federal Laboratories, the U.S. manufacturer of the tear-gas canisters used in the Occupied Territories, prints warnings on each canister that the product should not be used in enclosed areas. This warning was systematically violated by the Israeli military, leading Federal Laboratories to temporarily suspend sales to Israel. See further the section on tear gas in this chapter.

1. Objects Thrown from Jeeps and Helicopters

According to al-Haq's documentation and information obtained from other sources, several individuals have been killed or seriously injured by objects thrown at them from jeeps or helicopters. These objects have either exploded, causing shrapnel wounds, or caught fire, causing severe burns.

Six-year-old Iktimal Dim was killed, and her ten-year-old brother, 'Isam, injured by shrapnel from an exploding device in the village of Tayasir on 13 February 1989. The family reported that they heard the sound of a helicopter followed by an explosion. When they ran outside, they saw both children injured.²⁰

Talal Bisharat, eight, was killed, and 14-year-old Anwar Bisharat seriously wounded on 4 February 1989 by an object thrown at them from a jeep near Tammoun village.²¹ According to Anwar, the children were walking near Tammoun at approximately 2:30 p.m. when a jeep drove by and threw an explosive device at them, showering them with shrapnel.²²

Na'ima 'Abdallah, age 11, also from Tammoun, was injured by shrapnel in her right arm and leg by an exploding object thrown at her from a civilian car.²³ According to press reports, she attempted to run away when she saw the car stop near her. Two men, both bearded and wearing skull-caps, emerged and threw an unidentified explosive object at her, causing shrapnel wounds.²⁴

In a sworn affidavit taken by al-Haq, Najla' Mahmoud Muhammad Bisharat, a 37-year-old resident of al-Nassariyya in the Jenin district, described what happened to her son of eight years, Ma'moun, when they were grazing the family's sheep on 20 January 1989.

[Ma'moun] asked permission to go to the store to buy something for himself. I gave him permission, and encouraged him by watching him leave. When he was ten meters away from me, I saw a small military vehicle passing next to my son. Inside the vehicle there were two soldiers. The car passed dangerously close to my son. I saw that the soldier sitting next to the driver was holding a strange object with his hands, which he then threw at my son. Suddenly, I saw my son put both his hands to his face and begin to scream. I immediately ran towards him and saw that he was on fire as a result of the explosive that was thrown at him. His face was on fire. The flame had turned a black-gray colour and was over three meters high. When I reached him, I began to extinguish the fire with my hands, but it took about two minutes to extinguish the fire. Then, I immediately took my son to the hospital, where he was treated for severe burns on his face and both hands ... It should be pointed out that there were no remnants of the object that caused the burning.

Immediately after the incident, the military vehicle left the scene.²⁵

2. Mines and Explosives

Others have been wounded or killed after stepping on mines or other explosive devices. Such incidents predate the uprising. In 1986, for example, al-Haq repeatedly intervened to compel the Israeli authorities to erect fences and post warning signs at several known mine fields in the Ya'bad area of the Jenin district. In many of the

cases documented during 1989, however, the mines or other devices were not in areas known to have been previously mined and were not located near military training areas.

It is not clear whether these explosions were caused by mines or unexploded ammunition. According to affidavits taken by al-Haq, at approximately 9:30 a.m. on 13 February 1989, four shepherds from Qabatiya were grazing their sheep east of the town. Suddenly, there was an explosion under the feet of one of them, resulting in the severe injury of two shepherds and the death of 15-year-old Amin Abou-al-Rab.²⁶

Immediately after the explosion, a number of soldiers arrived at the scene. Several residents from Qabatiya also arrived to evacuate the wounded. One of the soldiers shouted at them: "Beware of the mines!" Amin's father, Muhammad Amin Muhammad Khalil Abou-al-Rab, and other residents stated to al-Haq that the area in question had been used by them for grazing purposes for the past 21 years without incident, and that it was free of mines.²⁷ The day after the explosion, the authorities claimed that the youths had handled unexploded shells.²⁸

3. Flammable Objects

Several youths have been severely burned after handling devices described as foil-wrapped objects resembling a candy bar. These objects had a piece of string or a spring coming out of them and caught fire when they were either opened or merely handled.

On 24 April 1989, while Ra'ed 'Abd-al-Karim 'Abdallah from the village of Doura near Hebron was grazing his sheep in the Turama region, he found an object resembling a candy bar. A thread was attached to it. Upon pulling the thread, the bar ignited, inflicting third-degree burns to his face and hands.²⁹

A few days later, on 29 April 1989, Khalil 'Id Ibrahim al-Faqir found a similar object in the Khalet al-Daraj region of Yatta (also near Hebron). When he picked it up and began to play with it, the object ignited, burning his face and elbows.³⁰ A similar incident occurred in the same area in June 1989, injuring 11-year-old Hani Salama Shehada al-Makhamra and his ten-year-old sister Hanan.³¹

In a sworn affidavit taken by al-Haq on 25 August 1989, Saleh Tawfiq Saleh Nasasra, a 19-year-old resident of the village of Beit Furik in the Nablus district, stated the following:

At about 10:00 a.m. on Saturday 19 August 1989, I was riding my horse in an area three kilometers away from the village. Upon seeing a strange object on the ground, I stopped the horse and dismounted. The strange object looked like a cylinder 15 centimeters in length and three centimeters in diameter. It was covered with a shiny zinc-like substance. Out of curiosity, I picked it up to see what was inside it. When I removed the shiny cover from it, I saw a light-black substance inside. I realized it was a dangerous thing, but my response was slow. The object exploded in my hands and my body caught fire. I was lucky because I was still holding the horse. The horse was scared by the explosion and forcefully pulled me away from the area. However, this did not prevent me from suffering severe burns to my face, chest, and both hands. The area near the explosion caught fire. The flame had an orange color. I began to extinguish the flames

on my body, and when I finished, I ran towards the village, from where I was transferred to al-Ittihad al-Nisa'i Hospital in Nablus ...³²

4. Inadequate Investigations

After a rash of such incidents in late November 1988, two Israeli Members of Knesset (parliament), Yossi Sarid and Dedi Zucker, submitted questions about four cases of children who had been burned by flammable objects in grazing areas when no demonstration was taking place.³³ An investigation was allegedly launched by the military in response. In February 1989, MK's Sarid and Zucker sent three other letters after a second rash of such incidents. The Central Command of the Israeli military, which includes the entire West Bank, launched a second investigation.

The investigation by the Central Command rejected the claims of many victims that flares or other devices were thrown at them from military or civilian cars. The military spokesperson said that such allegations "should be seen in the context of the fact that children are afraid to tell the truth about playing with forbidden objects that they find."³⁴

The spokesperson added that those killed or injured by shrapnel were playing with stray shells from 52 millimeter cannons. He recommended that information be distributed among the population, particularly children, to warn them against entering firing ranges or picking up flares. He also recommended that flares be improved to decrease the number that misfire. He reiterated the orders regarding the search of training zones after training exercises.³⁵

While the investigation's recommendations speak to a real need created by military negligence in the Occupied Territories, its conclusions contradict the facts documented by al-Haq and other organizations. An investigation conducted by The 21st Year, an Israeli organization, found that two of the objects were dropped from helicopters, three thrown from jeeps, two thrown by foot patrols, one from an Israeli civilian bus, and one from an Israeli civilian car.

The military's categorical dismissal of the children's statements is also clearly inadequate, particularly in view of the fact that al-Haq and other organizations obtained corroboration of their testimony from adult eyewitnesses.

The validity of al-Haq's documentation was also supported by a German journalist, Rivka Bronz, who was herself attacked with an explosive device thrown from a jeep near the village of Tammoun during the period when many such incidents occurred. Ms. Bronz, a correspondent for the German magazine, *Stern*, was travelling from Tammoun to Nablus on 14 February 1989 in a private car with West Bank license plates. In an interview with the Israeli newspaper *Ha'aretz*, Ms. Bronz stated the following:

At approximately 2:30 p.m., while on the way from Tammoun to Nablus ... in a completely quiet place, a military jeep was driving towards us from the direction of Nablus. The driver of the jeep bent down, picked something up, and threw it in the direction of my car. The object fell at a distance of about 20 meters and exploded. The driver of the car in which I was travelling was able to swerve and we were not injured. I tried to see the number of the jeep, but couldn't ...³⁶

Ms. Bronz filed a complaint with the office of the military spokesperson in Jerusalem. The following day, she was summoned for questioning by the military police. According to the military spokesperson, the case of Ms. Bronz is under investigation. The incident, which occurred when similar cases were being recorded in the Tammoun area, lends credibility to the claim that these devices were thrown.

The official investigation referred to above also fails to answer several questions with regard to casualties inflicted by shrapnel. If the claims of the military are true, no explanation was given as to why the military training areas were not clearly marked and located so close to residential areas. Training areas should be fenced off, with danger signs posted in Arabic warning people to stay away. If people are killed or injured because they had no way of knowing that the area is being used as a training ground, the authorities are guilty of criminal negligence and must bring those responsible to trial. But the credibility of the official version is more seriously undermined by the fact that most cases occurred in areas that for many years had served as grazing grounds.

In al-Haq's opinion, the official investigation was not adequate. As with cases involving the use of force in general, al-Haq believes that independent and impartial investigations are necessary for the truth to be revealed.

B. Military Brutality

During the first year of the Palestinian uprising, it was perhaps the military's brutal use of physical force against unarmed, mostly young Palestinians that more than anything else captured the world's attention and caused an international outrage. There was much less press coverage of such incidents in 1989, but al-Haq continues to routinely receive reports of beatings and other forms of assault from locations throughout the Occupied Territories. The applicable legal standards require that any physical force inflicted upon members of the civilian population for purposes of effecting an arrest or dispersing a demonstration be limited to that which is both necessary and proportional to the situation. Force applied in any other situation, save for reasons of self-defense, constitutes a criminal act.³⁷

1. Official Policy

The systematic beating of Palestinian civilians by Israeli soldiers and police gained particular notoriety in 1988, after Defense Minister Rabin announced a policy of "force, might, and beatings" on 18 January 1988.³⁸ After the announcement, a series of incidents that gained international censure prompted Chief of the General Staff Dan Shomron to issue the following statement on 23 February 1988. It clarified allegedly existing orders:

Under no circumstances should force be used as a means of punishment. The use of force is permitted during a violent incident in order to break up a riot, to overcome resistance to legal arrest, and during pursuit after rioters or suspects ... Force is not to be used once the objective has been attained ... In every instance, the use of force must be reasonable, and one should refrain as much

as possible from hitting anyone on the head or on other sensitive parts of the body. No steps should be taken to humiliate or abuse the local population, nor should property be intentionally damaged.³⁹

That same day, according to the *Jerusalem Post*, General Shomron also stated that soldiers should not feel "any moral confusion about their task [of crushing the uprising] . . . which he called a 'national objective' of the highest order."⁴⁰ A day earlier, Israel's Attorney-General, Yosef Harish, stated that

[i]t is forbidden to use force to punish or humiliate. Allowing force to be used for these purposes falls into the category of "patently illegal" orders.⁴¹

Nevertheless, the beatings have continued unabated, indicating either that the above statements were intended for public consumption, or that the Israeli armed forces are incapable of enforcing their own regulations.

As in 1988, most of the cases documented by al-Haq during 1989 involved people being beaten randomly, without any apparent connection to protest activity. Victims were taken from their homes or off the streets and brutally assaulted. Beatings were also typically carried out by groups of soldiers acting in concert rather than individually. Further, in most cases beating incidents took place in situations where the victim offered no resistance. Force was thus not necessary in order to control the situation or facilitate arrest.

In view of these practices, it remains to be established whether or not there is a law, order, or standard that regulates a soldier's use of physical force.

The directives contained in General Shomron's official statement, noted above, require that all force be reasonable and that it never be used against an individual who is in custody and offering no resistance. In practice, however, soldiers have reported receiving orders to beat any Palestinian suspected of being a "disturber of the peace." In two separate trials of members of the Giv'ati Brigade who beat to death two residents of the Gaza Strip, soldiers testified that they had been given orders to beat Palestinians for several minutes, whether or not any resistance was offered.[†] The trials were particularly significant because the soldiers' testimony reflected the Israeli military's determination to suppress the uprising at all costs. The court, in its findings to the first trial (Giv'ati I), issued on 25 May 1989, stated the following:

The question of the orders was constantly present and hovered as part of the defendant's defense in this trial. Not a little attention was dedicated to this issue, which was examined and checked from all sides. It seems at present, after we have heard all of the testimonies, that we can confidently establish that prior to the incident, the defendants, as well as the rest of their comrades in the company and almost certainly the soldiers in the reserve battalion who were employed at the time, were equipped with an order according to which they should beat every disturber of the peace who is caught on his limbs, through the use of the clubs the soldiers were equipped with . . . The defendants constantly claimed that the order given them was unequivocal that in every case in which they must arrest a suspect for disturbing the peace, they must beat him, in the manner described above, hard blows and this is in order to deter him from repeating similar behavior in the future.⁴²

[†]See further Chapter Sixteen, "Investigations."

In other words, the soldiers were given orders to use beatings not only as a means of restraint, which is itself illegal, but also as a form of extra-judicial punishment and a deterrent against future activities. The testimony brought to the fore the discrepancy between Shomron's statement, which clearly prohibits this kind of brutality, and the orders of the commanding officer to beat "every disturber of the peace" It is worth noting that the officer who gave the illegal order has yet to be charged with committing any offense.

The type of brutality under discussion has not been limited to one patrol but, rather, has been documented by al-Haq throughout the Occupied Territories.[†] Similar illegal orders have been issued to other soldiers. For example, in the village of Huwarra near Nablus on 19 and 21 January 1988, soldiers rounded up 20 residents, drove them to a remote area, bound and gagged them, and then deliberately broke their arms and legs.⁴³ It was not until after almost two years elapsed that the Israeli High Court of Justice in December 1989 ruled that the officer who ordered these actions must stand trial in a military court.⁴⁴ In so deciding, the High Court overturned the previous appeals court ruling that relieving the officer of his post was sufficient punishment.

The lack of proper investigations into cases where Palestinians are severely injured or killed as a result of beatings further confirms the fact that beatings are a military policy.[‡] In sum, all the evidence shows that a soldier in the street is not restrained by any internationally accepted standard of conduct or local published regulation as concerns the application of physical force.

It is al-Haq's position that the use of such extreme physical force is in and of itself unreasonable, except in cases of self-defense. The physical force required to restrain an unarmed civilian in the course of arrests, raids on homes, or identity card checks may never include the type of violence (such as blows to the head with blunt instruments) routinely inflicted by Israeli soldiers. Most importantly, the beating of persons already in custody and offering no resistance, a practice which al-Haq continues to document on a widespread basis, is a serious criminal offense under both international and Israeli law.

2. Al-Haq's Documentation

Beatings in the Vicinity of Demonstrations

Individuals caught in the vicinity of demonstrations, whether they are connected to them or not, are often the targets of beatings by soldiers and Border Police. The following case illustrates the unwarranted beating of a suspect offering no resistance to arrest:

At approximately 3:00 p.m. on 30 August 1989, a 16-year-old high school student from the Jabaliya Refugee Camp in the Gaza Strip was walking towards his sister's house in the camp's Block 9. In a sworn statement taken by al-Haq, the affiant, who asked that his name be withheld from publication, gave an account of what happened when he encountered a group of youths being chased by soldiers and began to run away:

[†]See further Appendix 1-A.

[‡]See further Chapter Sixteen, "Investigations."

There were two soldiers in front of me in an alley. I looked back and saw two others, who caught me. A soldier held me by the neck and the other three began to beat me all over with their rifle butts, until I fell to the ground. After that, two of the soldiers dragged me over to where three military vehicles were parked, with about 15 middle-aged soldiers standing around them ... [Three soldiers] took me over to a puddle of dirty water, pushed me down on my back, and then began to take turns jumping on me. Then, they took me to where the vehicles were. One soldier grabbed my right arm, another my left arm, and a third grabbed the back of my head by the hair. An officer, whom I identified from the insignia on his shoulder, began to punch and kick me in the stomach and genitals. Then he pushed me up against a wall, grabbed me by the hair, and banged my head against the wall.

The officer handcuffed me from behind, blindfolded me, and led me to a jeep which was four meters away. He banged my head against the jeep. A soldier searched my pockets, emptied them of coins, and then threw me onto the floor of the jeep. When the jeep began to move, the soldiers who were in the jeep put their feet on me ... Every time a stone hit the vehicle, the soldiers kicked me. When the vehicle stopped, they tried to pull me out. One pulled me by the arm, and while my legs were still in the jeep, another who was in the jeep kicked me in the genitals. They then pulled me down and put me up against what felt like a wall ...

The affiant was handcuffed, blindfolded, and detained, first at Gaza Central Prison and then at the Jabaliya Civil Administration compound until the next morning. During this time, he was beaten further and interrogated. He suffered a broken arm and dislocated elbow. An al-Haq fieldworker also observed marks on the affiant's back from the beatings.⁴⁵

The case of an 85-year-old resident of Abou-Dis in Jerusalem, Ahmad Darwish Husein al-Halabiyya, illustrates that the brutal and indiscriminate nature of the violence used by the military against Palestinian civilians does not exempt even elderly residents. Mr. al-Halabiyya was sitting at home on the evening of 17 May 1989, when he smelled a strong odor of tear gas beginning to waft into his house. He left the house in an attempt to escape the gas, and decided to seek shelter in the local mosque. On the way to the mosque, he saw soldiers beating a group of young men with their fists and truncheons. In a sworn statement taken by al-Haq, Mr. al-Halabiyya describes what happened:

I continued walking, and I saw military vehicles. Inside each were six soldiers. I then heard shots being fired. I fled and stood behind a wall. [From there] I looked out at the street and saw, about ten meters away, eight soldiers running toward me. They shot at me and I felt great pain ... in the right leg as well as other parts of my body. [It appeared that] I had been shot with rubber bullets. [The soldiers] grabbed me and started punching and kicking me. They then kicked me in the stomach, abdomen, and all over my body. At that point, I lost consciousness for about ten minutes.

When I regained consciousness, there were two soldiers standing over me, and they began to beat me with the butts of their rifles. I asked one of them to help me get up, but he refused. The other soldier ordered me to get up on my own. I could not [get up], so the soldier grabbed my left arm and dragged me along the ground for about 20 meters ...

I could hear residents shouting at the soldiers because I was being beaten as I was dragged along. At that point, the soldiers gathered around me. I don't remember how many there were. Then I saw another group of soldiers arriving. People began to come to assist me. Among them were my wife, my son Hasan, and my grandchildren. They were all trying to free me, but the soldiers would not let me go.

I was lying on the ground, and my grandson Muhammad, four years old, grabbed onto my wrist and said, "Come on, Grandfather. Let's go home." A soldier pushed him and hit him in the face. The child drew back, and some young men started throwing stones at the soldiers. They ran after the young men and I was left with two soldiers. One of them stomped on my legs.

Another group of soldiers arrived and came towards me. There was an officer with them, who told them that I was an old man, to which one of them responded that I was stronger than the two of them put together. At that point my son Hasan (age 65) approached the officer. I heard him saying to the soldier, "He's an old man. He needs to be moved from here."

The officer permitted Mr. al-Halabiyya's son and family to help him back toward his house. As they approached the house, however, one of the soldiers who had beaten him ordered him to return to where he had been beaten. By this time, the affiant was in extreme pain from the beatings and rubber bullets. After arguing amongst themselves, and one and a half hours later, the soldiers stopped an Arab-owned car and put Mr. al-Halabiyya in it. The soldiers forbade family members to accompany him in the car and ordered the driver to follow them. Then, according to the affiant:

There was one military vehicle in front of us and two behind us ... After the car had driven about 20 meters, it stopped. A soldier approached the car and blindfolded me with a piece of cloth. Then he tied my wrists together with another piece of cloth and hit me on the head. He ordered the car to drive to the police station [in Abou-Dis] ... When we arrived there, they removed the blindfold. They put me in a small room, where they again blindfolded me and tied my wrists together. The soldier then hit me on the head again. I remained at the police station for two hours. After that, a soldier came back and untied my hands and removed the blindfold ... I was then released.

Mr. al-Halabiyya was taken to al-Maqased Islamic Charitable Hospital in East Jerusalem, where it was discovered that his elbow and leg had been fractured.⁴⁶

The ordeal portrayed above represents senseless physical cruelty in the extreme. The officer involved either had not been instructed as to the law concerning the use of force, or chose to remain passive while soldiers under his command beat an elderly resident for no apparent reason.

Beatings in Custody

In other cases documented by al-Haq, Palestinians have been taken by soldiers when no disturbances of any kind were occurring, led away for "questioning" in a remote area, and severely beaten. Although these individuals are not formally under arrest or detention, the beating of an individual in custody legally constitutes a form of torture.[¶]

[¶]See further Chapter Five, "Torture and Death in Detention."

The following affiant, who asked that his name be withheld from publication, was subjected to a particular form of brutality on the night 6 March 1989. Soldiers took him from his home in the middle of the night and drove him to an isolated area. When they stopped, he was forced out of the car. In the words of the affiant:

[One of the soldiers] then said, "I saw you when you were with four others throwing stones at my car and you broke the window." I said, "I did not throw stones and I don't know what you're talking about." He then began speaking in English and said, "You mother-fucking liar, I'm going to kick your ass if you don't tell the truth." He repeated this several times ... Two of the other soldiers began beating me on my legs and back, one of them using a rifle and the other a club. [The soldier] told me, "You'd better give me the names of the four people who threw stones." He slapped me in the face and pulled me by my jacket towards the army jeep. He threatened to close down my brother's shop and put me in prison for two months. I told him that I had done nothing and knew nothing ...

After half an hour of beating and cursing, one of the soldiers who was watching said, "It seems like he doesn't want to talk. Take him and kill him because he does not want to confess." At this point, [two of the soldiers] took me and walked with me towards the valley ... [When we stopped], they ordered me to kneel on the ground. One of them pulled out a pistol ... The soldier said, "You have only one minute to think before I shoot you: Where were you yesterday at 11:30 a.m.?" ...

After the minute elapsed, the soldier approached me and told me to bow my head forward, at which point I said, "I remember where I was yesterday. I bought rabbits and was building a cage to put them in." He nodded his head and said, sarcastically, "rabbits," and began to kick me ... He said, "That's enough. I want to shoot you," at which point he put the pistol on my forehead ... He then moved the pistol downwards to my mouth, and it touched my lip. The other soldier grabbed me by the hair and pulled me backwards ... He said, "Open your eyes so you can see how you die." He began pulling the trigger little by little until it clicked ... The gun was not loaded. Then the soldier grabbed me from behind by my jacket, and pushed me towards the street, beating and kicking me while we were walking.⁴⁷

(A similar incident said to have occurred on the same evening to another resident of the area was also reported to al-Haq.)

In other cases, individuals have been picked up on the street, apparently at random. On 28 August 1989, Yihiya Ibrahim Ahmad 'Asfour, age 24, was in Jerusalem and on his way to work when he was stopped by Border Police and other police officers driving a blue police van. According to an affidavit taken from Mr. 'Asfour by al-Haq:

A short blond policeman who was driving the van and wearing a police uniform asked me ... in correct Arabic, "Where are you going?" I said, "I'm going to work in Tal Byout [Talpiot]" ... Then I heard someone in the van saying, "Come over to the other side!" ... When I reached the other side, a Border Policeman ... got out and quickly pushed me into the van and said, "Now we'll take you to work!"

Mr. 'Asfour was taken to an isolated area where they forced him out of the van. One of the policemen accused him of throwing stones. The policemen then apparently

decided that the place they were in was not isolated enough, forced him back into the van, drove him to an area of Jerusalem known as al-Za'im Mountain, and again forced him out of the car:

[One of the Border Police] said, "Take everything out of your pockets, put it on the ground, and take off your shoes." I did so, and the soldier who had been sitting in the front seat approached me and ordered me to take off my shirt. I took it off and heard another soldier saying in Hebrew, "We shouldn't have him take off his shirt because the beatings will leave marks on his skin." They ordered me to put my shirt back on, turn towards the wall, and raise my hands. They searched me, and the soldier who had been sitting beside me in the van grabbed me and said to the others in Hebrew, "Watch how I play karate!" He tried to beat me, but I blocked him with my hands. [One of them then] held my hands behind my back, and the other one beat me and kicked me all over. This went on for about 12 minutes.

They stopped beating me and I thought that everything was over. However, one of them turned and punched me in the face, in particular on the left side of my nose, which started to bleed. They stopped beating me and [one of the Border Police] who had not gotten out of the van until that time came and tried to help me by giving me some water in a bucket. The others ordered him not to [give me any water] and he obeyed them.

I heard the soldier who beat me say to the other, "I want to know whether he can identify me." He approached me and said, "We beat you because your friend told us that you had been throwing stones." I answered, "I don't throw stones." He asked, "Do you know us?" I answered, "No." He asked, "Will you try to identify us or complain?" I answered, "No."

Mr. 'Asfour was treated at al-Maqased Hospital for a broken nose.⁴⁸ In al-Haq's view, the above case helps show that, at least in Jerusalem (where Israeli law is in force), soldiers are fully aware that such conduct is illegal and thus attempt to cover it up by committing their crimes in isolated places and intimidating the victims.

Incidents in which children are threatened and brutalized have also been documented by al-Haq. For example, on 17 May 1989, Muhammad Subhi Jayyousi, an 11-year-old from Nablus, was returning from the home of a neighbor when he heard someone call, "Come here!" He looked behind him and saw two soldiers running towards him. The soldiers followed him into his home and dragged him outside. While they were in the house, the soldiers struck his paralyzed father, as well as his mother, brother, and sister. They took him next door to his neighbor's house, where they beat Muhammad and his friend Haytham on their heads and legs. The same soldier then grabbed the two boys by the hair and began banging their heads together and slapping their faces.

The soldiers then accused the boys of having raised a Palestinian flag in a nearby cemetery. The boys, both of whom were barefoot, were dragged across rough ground, put into a military vehicle, and taken to police headquarters. One of the soldiers pointed to the furnace of the compound and said, "We're going to roast you there in the furnace." After that he said, "We're going to hang you," and pointed to a rope hanging from a tree.

The boys were locked up in a large room for three hours and then released.⁴⁹

Brutality Against Persons Holding Green Identity Cards

In February 1989, the Area Commander for the West Bank issued Military Order 1269, requiring certain Palestinians to carry a new, "green" identity card. The cards were issued primarily to persons who had been imprisoned, administratively detained, or detained for shorter periods of time upon their release. Not all persons in these categories have been issued green identity cards, nor has the card been limited to these groups. There are no known criteria for determining who is issued a green identity card.

Bearers of green identity cards are prohibited from entry into Israel and annexed East Jerusalem. Holders of the card have reported severe brutality and harassment by soldiers and Border Police during routine identity checks.*

C. The Abuse of Standard Crowd Control Methods

There are two fundamental issues concerning the illegal use of force by the Israeli military to quell demonstrations in the Occupied Territories. The first is the routine abuse of methods and equipment designed to control crowds with a minimum of force. The second is the consistent resort to lethal force in circumstances where less extreme measures would suffice. In the opinion of al-Haq, both these abuses stem from the failure of the Israeli authorities to adopt appropriate methods of crowd control, such as establishing and training a special force to deal with civil disturbances.

On numerous occasions, confrontations have developed because the authorities consider peaceful protest illegal and send the army to disperse and arrest demonstrators. In anticipation of such clashes, Palestinians erect barricades, burn tires, chant slogans against the occupation, and often throw stones at soldiers who arrive to break up their protest. Molotov cocktails and other weapons have also periodically been used against the armed forces, although such incidents are almost exclusively confined to ambushes and rarely occur in the course of demonstrations.

The erection of barricades to prevent passage of the security forces, stone throwing, and even the use of Molotov cocktails has in fact been a widespread phenomenon throughout the world in times of civil unrest. While other countries have established special forces and adopted measures to restore order without the use of lethal force, the Israeli military government in the Occupied Territories has failed to do so.

There are numerous methods available to the military with which to suppress demonstrations without endangering the lives of either soldiers or demonstrators. Because demonstrators are armed with only stones and other projectiles, the use of plastic shields, water cannons, and the correct use of tear gas and rubber bullets, for instance, would allow the security forces to disperse demonstrators from safe distances.

Water cannons are in fact used by the security forces in both Israel and East Jerusalem. Such vehicles are also manufactured by Israel for export to states such as South

*A legal analysis of the green identity cards as well as case studies of violence against persons carrying them is provided in Chapter Nine, "Administrative Methods of Control."

Africa and South Korea, where they are used to quell demonstrations without resort to lethal force.⁵⁰ Additionally, riot shields, rarely used in the Occupied Territories, would enable soldiers to protect themselves while directly confronting demonstrators. If soldiers used shields, they would feel more secure and thus be less likely to resort to more extreme measures. This is exceedingly important in view of the fact that, although no soldier has been killed in a stone-throwing clash,⁵¹ the authorities routinely justify the resort to lethal force by stating that soldiers opened fire when they felt threatened or endangered by stones. The few legitimate crowd-control weapons that are used by the Israeli military, especially tear gas and rubber bullets, are, as will be shown below, often misused.

1. Tear Gas

Law enforcement officials in most states use tear gas to break up a mass of demonstrators as a prelude to crowd control in large demonstrations. Israeli military personnel, however, regularly discharge tear gas not only to quell demonstrations, but also as a means of punishment and harassment. This was the case throughout the first year of the Palestinian uprising, and al-Haq has continued to document cases of such misuse during the second year. When used improperly, tear gas is a lethal form of ammunition; hence practices such as throwing it into enclosed spaces or aiming it directly at individuals clearly violate the international principles of necessity and proportionality concerning law enforcement conduct.

Two types of tear gas are employed in the Occupied Territories: CN and (since 1988) CS. Both are manufactured by Federal Laboratories of Saltzburg, Pennsylvania (USA). Other types of tear gas are produced in Israel. Federal Laboratories classifies its tear gas as non-lethal, provided that it is used according to instructions. Warnings as to the dangers of improper usage are contained in a handbook provided by the manufacturer and also clearly printed on each tear-gas canister:⁵²

[I]f not used properly ... CAN INDEED CAUSE DEATH ... UNDER NO CIRCUMSTANCES SHOULD GRENADES CARTRIDGES OR PROJECTILES DESIGNED FOR USE IN RIOTS BE USED IN CONFINED AREAS AS SERIOUS INJURY MAY RESULT ... do not throw grenades directly at rioters, but on the ground in front of them. [Emphasis in original.]⁵³

Despite the manufacturer's warnings, al-Haq continues to obtain reports of tear gas being thrown into closed areas such as houses, schools, hospitals, and vehicles. Furthermore, such acts have repeatedly been carried out in the absence of disturbances of any kind, and even during curfew periods. What is more, tear-gas canisters are combustible, and when thrown indoors have caused fires and extensive destruction.

At 7:30 p.m. on 4 April 1989, Anis Nimr Mujahed, a 21-year-old resident of Hebron, was sitting in his grocery store adjacent to his home. The outside door to his home had been closed since noon. In his own words:

I heard shooting which sounded very close. I ran into the house from a door in the grocery store that is connected to my house. After a few minutes, I heard bullets being shot into the grocery store. Members of my family and I stayed in the living room, which is on the second floor of the house. Approximately five minutes later, I heard the sound of glass breaking. Then we smelled tear

gas and ran down to the lower floor of the house. I saw tear gas coming out of one of the rooms of my house that faces the main road. I then realized that the gas canisters had been thrown into my house. After the gas cleared, I saw three tear-gas canisters inside the house. Two of them were round, rubber and about the size of an orange, and the third was aluminum and in the shape of a cylinder. I saw the broken windows and realized that the canisters had been deliberately thrown through the windows. There were holes in the window which directly faces the main street, where the soldiers stood ... [after a few minutes] the soldiers entered the stairway and the basement of the house, and threw another tear-gas canister.⁵⁴

Another example of the wanton manner in which soldiers use tear gas is illustrated in the following affidavit taken by al-Haq from Susan Taleb Ahmad Taleb, a 16-year-old high school student from al-Jalameh in the Jenin district.

At approximately 9:00 a.m. on 3 September 1989, the affiant was sitting in a bus in the Jenin bus station waiting to go back to her village. There were about 50 other school children on the bus at the time. According to her sworn statement:

A large number of soldiers surrounded the bus. While the driver was getting into the bus, one of the soldiers hit him with a truncheon. At the same time, I saw another soldier near the window holding a tear-gas canister. He came closer, and I saw him throw the canister through the bus window. It landed among the students ... I felt nauseous, dizzy, and started coughing ... it became very chaotic [in the bus] and, along with the others, I tried to get out, but some of them fell down and many of them fainted. A lot of people were trying to come into the bus to help us get out. I could see that those students who were in serious condition were taken to the hospital by private cars or by ambulance.

I was taken by a car to my village and treated by a doctor there ... Even now I still feel fatigue and weakness in my muscles.⁵⁵

Exposure to the gas at close range, especially CS gas, can cause serious respiratory damage and death, especially to infants, the elderly, the sick, and particularly those already suffering from respiratory ailments.⁵⁶

For example, on 11 June 1989, Mahmoud Seifallah al-'Arja, a 23-year-old asthma patient, died after inhaling tear gas in Rafah Refugee Camp in the Gaza Strip.⁵⁷ Other deaths after exposure to tear gas include:

- (1) Ahmad Hussein al-Khawaja, age 71, of 'Ayda Refugee Camp in Bethlehem. He died on 14 January 1989, one day after soldiers threw a tear-gas canister near his home after a demonstration;⁵⁸
- (2) Dirin 'Atef al-Skafi, a ten-month-old infant from Hebron, died shortly after exposure to tear gas on 18 July 1989;⁵⁹
- (3) 'Isa Da'oud Hammad Abou-Haniyya, age 42, who had a heart ailment, died on 20 January 1989, a day after large quantities of tear gas were dropped in the vicinity of his home in al-Deheisheh Refugee Camp from an army helicopter;⁶⁰
- (4) Qasem 'Abd-al-Rahman al-Natsha, age 64, died on 7 April 1989, shortly after soldiers fired tear gas into a mosque in Hebron where he was praying.⁶¹

Exposure to tear gas is also suspected of causing miscarriages and intra-uterine fetal death.[†] Although the exact connection between tear gas and such conditions has not been scientifically verified, Ben Alofs, a Dutch medical researcher, has put forth two possible explanations:

- (1) Exposure to tear gas resulting in blood poisoning, depriving the fetus of oxygen;
- (2) Cyanide poisoning after the mother is exposed to high concentrations of CS gas.⁶²

During 1989, al-Haq documented a large number of cases in which pregnant women suffered miscarriages following direct exposure to tear gas, including the following cases:

- (1) Nawal Hussein Muhammad Jabarin, 17, a housewife and resident of Jenin, was in her home on 12 January 1989, when she smelled tear gas and ran up to the roof to escape the fumes. She miscarried three days later.⁶³
- (2) On 17 January 1989, Shafi'a Muhammad 'Abd-al-Rahim Mahmoud, a 25-year-old housewife from Hebron, was shopping on Wadi Tuffah Street in Hebron when she smelled high concentrations of tear gas and tried to escape. She felt that she could not move fast enough and felt pain in her back, stomach, and side. She miscarried three and a half hours later.⁶⁴

2. "Rubber Bullets" and Steel Marbles

The Israeli military has introduced two new forms of rubber bullets since the beginning of the uprising. Like tear gas, rubber bullets are officially designated as non-lethal. The modifications made to rubber bullets and their misuse by the security forces, however, have led to serious injury and even death among Palestinians. All of these bullets are fired 20 at a time from a metal canister attached to an M-16 rifle:

- The original rubber bullet used by the armed forces, by far the most benign, consists of a compressed metal cylinder encased in a layer of tough rubber. Each bullet weighs approximately ten grams. If shot from distances of ten meters or less, these bullets can cause very painful injury and knock an eye out. They have caused death when fired from distances of less than five meters.⁶⁵
- The second type of rubber bullet, reportedly composed of 74 percent metal, causes similar injuries from distances of up to 20 meters.⁶⁶
- The first two types of rubber bullets are now rarely used and have been replaced with a third type. This "improved" rubber bullet was introduced in late 1988. At a range of 30 meters or less, these "improved" rubber bullets are considered fatal. A locally modified version of the rubber bullets used by the British security forces, this third type consists of 95 percent metal with a

[†] See further Chapter Fifteen, "Women."

thin plastic coating.⁶⁷ The Israeli modifications almost doubled the original 11 grams of metal to 20 grams and reduced the thickness of the coating.⁶⁸ These modifications make the Israeli version little more than a thinly-covered steel marble. When shot from relatively close range, it easily penetrates the skull.

Al-Haq has consistently documented cases in which soldiers shoot rubber bullets from exceedingly short ranges and directly at the upper bodies of demonstrators and bystanders. Within an eight-day period (2–10 February) shortly after the new steel marbles were introduced, one hospital, al-Maqased Islamic Charitable Hospital in East Jerusalem, admitted four patients with rubber bullets lodged in their brains. One of the patients, 43-year-old Turkiya Jibril Salibi from Beit Ummar, near Hebron, had four such projectiles removed from her head and neck.⁶⁹ The Palestine Human Rights Information Center in Jerusalem has documented 13 killings caused by these steel marbles.⁷⁰ Eleven of these cases occurred in the Gaza Strip and the other two in the West Bank.

Rana Ribhi al-Masri, a 15-year-old schoolgirl from Nablus, was killed by these “improved” rubber bullets. Amal 'Izzat Muhammad Abou al-Su'ud, 22, witnessed the shooting and described what happened in a sworn affidavit taken by al-Haq:

On Saturday, 7 January 1989, at about 1:30 p.m., while I was at home, I heard shouts from the people of the village. I ran to the veranda and looked at the street parallel to our house. I saw one of my neighbors, Watfa Muhammad Isma'il, crying and saying, “they took Suleiman,” her son. Then I put on my clothes and went into the street. There was no one. I went to the main street of Rafidya and I stood with a crowd of people. Suddenly I saw two soldiers holding a 17-year-old youth, Suleiman Muhammad Hassounah, from our neighborhood. They were beating him with their rifles. From what I could hear, one soldier demanded his identity card. The soldiers kept walking with him until they reached Abou-Salama's shop, where they stopped. They began ordering the women, who had followed them to rescue the young man, to “go away from here.” One of the soldiers pointed his rifle towards us, threatening to shoot, so I ran away with some other girls. While we were running, I heard the sound of a shot. I looked back and saw that one of the girls was on the ground with blood coming out of her head. She was a 15-year-old girl, Rana Ribhi Ahmad al-Masri. I stopped and saw the soldiers running away with the young man they had arrested. It is worth mentioning that the neighborhood was quiet, the women did not throw stones at the soldiers, and the people did not use violence. The army used to come daily in the early morning to the village, shooting tear gas at the houses and beating young men without any reason ... Rana died a week after the incident as a result of the injury. She was visiting her uncle Nawwaf's house in Rafidiya. She was not a resident of the neighborhood.⁷¹

Rana was admitted to al-Maqased Hospital on 7 January 1989 and died on 14 January as a result of her injuries. According to the hospital's medical report, Rana died of extensive injuries to the head caused by a plastic-covered metal bullet.⁷²

D. Lethal Force

As was reported in the statistical section in the Introduction to this chapter, the vast majority of fatalities during the second year of the uprising resulted not from the use of tear gas and rubber bullets, but from the systematic use of live ammunition and plastic bullets by the Israeli military to disperse demonstrators.

1. Lethal Standards: Official Regulations on Opening Fire

In response to a letter of concern sent by Amnesty International to the Government of Israel in the summer of 1982 after 15 Palestinian protesters were shot dead and hundreds wounded by the military, the Israeli authorities stated:

Soldiers are instructed that opening of fire is only permitted after two preliminary steps have been followed and have failed to remove the danger confronting them. The first step is a loud warning in Arabic to the person(s) engaged in life-threatening activity, warning them to stop or they will be shot. The second is to shoot in the air, being sure not to hit anyone. Only where neither of these steps succeeds in extricating the soldiers from danger do the regulations entitle the soldiers to open fire in the direction of the said person. Even then they are required to aim at the legs only, and not to injure bystanders.⁷³

While these procedures appear to conform to international standards, the open-fire regulations as applied by the authorities do not give due consideration to the twin criteria of necessity and proportionality. As will be discussed below, the regulations give soldiers and officers broad powers of discretion in the use of lethal ammunition. The problems raised by this state of affairs have been addressed by, among others, Hebrew University Professor of Law David Kretzmer:

It is permissible to use force in order to protect oneself when one faces a life-threatening situation; but the phrase "life-threatening" must not be allowed to become a formula which exempts a soldier from liability for his actions.

Local residents [of the Occupied Territories] report time and time again of shootings in situations which nobody could regard as life-threatening. The Israeli public may be skeptical about the accuracy of such reports. However, the reports are often corroborated by soldiers who serve in the territories.⁷⁴

2. "Plastic" Bullets: The Relaxation of Official Regulations

In August 1988, the military authorities introduced the "plastic" bullet, and announced their intention to use it on a widespread basis. According to Minister of Defense Yitzhak Rabin:

Our purpose is to increase the number of [wounded] among those who take part in violent activities but not to kill them . . . I am not worried by the increased number of people who got wounded, as long as they were wounded as a result of being involved actively, by instigating, organizing, and taking part in violent activities.⁷⁵

The explicit aim of increasing the number of injuries resulted in the expected increase in the number of casualties. In the first month after the bullet was introduced,

UNRWA reported a six-fold increase in the number of wounded in the Gaza Strip due to the plastic bullets.⁷⁶ This was despite the official claim that only specially-trained officers were permitted to shoot the bullet and then only from a distance of at least 70 meters.

The plastic bullets used by the Israeli military in the Occupied Territories are radically different from the "baton-rounds" used in Northern Ireland and elsewhere.⁷⁷ Rather, they closely resemble standard-issue live bullets. They penetrate the body and appear on X-rays. According to the authorities, the bullet is made of plastic and is non-lethal if used properly.⁷⁸ A number of Palestinian and Israeli experts, however, contest this description, and claim that the bullet contains other materials including metal.⁷⁹ In a written opinion, Dr. Yitzhak Vinograd, an Israeli general surgeon, noted that, from short distances, plastic bullets cause injuries similar to those inflicted by live ammunition:

Shooting from a long range can also be very dangerous ... In my view, the use of plastic bullets has an immediate fatal potential at short range, and from a distance of more than 70 meters there is also the possibility of later fatal complications, several days after the injury, as a result of untreated infection.⁸⁰

By the Israeli military's own admission, 125 Palestinians were killed by plastic bullets by 9 January 1990.⁸¹ Accurate statistics on the exact number of deaths caused by plastic bullets are, however, difficult to establish. The bodies of people killed by the military are often buried before autopsies can be performed, thus making it impossible to determine if the death was caused by plastic or regular bullets. And because of the often indistinguishable wounds caused by the two, many organizations, such as UNRWA, do not distinguish between them in their casualty figures.⁸²

If, as the authorities claim, plastic bullets are indeed non-lethal, the unacceptable number of killings they have caused would at the very least demand a thorough reexamination of current standing orders regarding their use. The authorities, however, have done exactly the opposite. During the second year of the uprising the regulations were relaxed instead of tightened.

In January 1989, the authorities issued new instructions which introduced the following changes:

- (1) Plastic bullets may be shot even in the absence of a life-threatening situation;
- (2) Plastic bullets may be shot at persons erecting barricades or burning tires;
- (3) Non-commissioned officers were permitted to shoot plastic bullets, greatly expanding the number of soldiers with such authorization.⁸³

The use of plastic bullets as a form of extra-judicial punishment, already endorsed by Defense Minister Rabin in August 1988 (see above), was thus substantially increased in scope. Israeli Member of Knesset and Professor of Law Amnon Rubinstein addressed the implications of the new instructions:

Plastic bullets have proven fatal, and the new directives effectively give leeway to kill even in cases where there is no danger to the lives of the security forces. Killing as a punishment, or as deterrence, is illegal, and therefore the new instructions are patently illegal, and according to the law should not be obeyed.⁸⁴

According to the Israeli authorities, the proper use of plastic bullets can be ensured if they are discharged from a distance of at least 70 meters from the intended target, are aimed below the target's knee, and never fired after physical exertion, such as running, has taken place. In addition, according to military Judge Advocate-General Amnon Strashnow, the bullets should only be discharged from a stationary position.⁸⁵ In a report based on the testimony of Israeli officers compiled by the Israeli human rights group B'Tselem, however, a number of issues regarding the military's failure to observe its own regulations were identified:

- (1) Training in the use of plastic bullets does not exceed one minute. It consists of target practice from a range of 70 meters with only three bullets (one round). Furthermore, follow-up training rarely takes place;
- (2) Visual estimation of distances measuring 70 meters is difficult in daytime, and even more difficult at night;
- (3) Because the plastic bullet is lighter and less accurate than the standard live bullet, there is no guarantee that even an experienced sniper can accurately shoot them at a level below the knee;
- (4) It is difficult to determine the age of children from a distance of 70 meters. (Official regulations prohibit the opening of fire against children aged 15 and younger);
- (5) Soldiers opening fire to disperse demonstrators often do so in the context of physical exertion, in direct violation of the above instructions.⁸⁶

Having been informed that plastic bullets are non-lethal,⁸⁷ soldiers have resorted to their use much more freely than would otherwise be the case in non-life-threatening situations, particularly since Minister of Defense Rabin publicly stated that the aim of the bullet's introduction was to increase the number of Palestinian wounded. This trigger-happy behavior caused the former military commander of the West Bank, Major-General Amram Mitzna, to issue directives calling on soldiers to strictly adhere to army regulations concerning the use of plastic bullets.⁸⁸

The problem, however, is not only the failure to conform to the official regulations but, more importantly, the regulations themselves. The following account by an Israeli soldier, whose unit wounded 17 Palestinians with plastic bullets during a tour of duty in the Old City of Nablus, shows that even when standing orders are strictly obeyed, the results remain thoroughly unacceptable under international law:

The orders we were given in this regard were very explicit: every stone-throwing incident must end either in an arrest or in a stone-thrower with a plastic bullet in his leg. At the same time, we must do our best not to kill anyone . . . None of the 17 youths was shot in self-defense; they were all shot as punishment for throwing stones. The moral implications of this fact are there for everyone to reflect on; we did our best to obey orders, kept the city quiet, but in the process we intentionally wounded 17 people who never really endangered us.⁸⁹

The large number of fatalities inflicted by plastic bullets and the clearly illegal instructions governing their use aroused a storm of Palestinian and international protest

and criticism. The matter was eventually taken to the Israeli High Court of Justice. In August 1989, the High Court ruled that the use of plastic bullets was "legal." More importantly:

[T]he Court saw no purpose in examining the [standing] orders in question ... Justice Shamgar ... referred to the [UNCCLEO]. Without considering to what extent this Code was binding, it did not appear to the Court that there was any contradiction between its provision and the principles applied by the army authorities.⁹⁰

Furthermore, in its 1988 annual report, al-Haq called attention to the fact that while the authorities claimed that only commissioned officers were authorized to fire plastic bullets, many soldiers of lower rank had in fact been equipped with them.⁹¹ With the new regulations this practice received official sanction. In al-Haq's view, this constitutes yet another case in which a widespread practice considered illegal even under military regulations becomes official policy.

3. The Use of Indiscriminate Lethal Force Against Demonstrations

Throughout the first year of the uprising, the armed forces continued to use live bullets against protesters with alarming consistency, resulting in thousands of casualties and hundreds of killings. This excessive and indiscriminate use of live ammunition continued into 1989. However, there is a key difference between the two periods. As the army itself stated on numerous occasions, the phenomenon of mass confrontations has largely subsided.⁹² Rather, demonstrations were organized by smaller groups of youths, often numbering no more than 15-25 individuals. Despite this change there was no corresponding reduction in the level of force used by the authorities.

Several human rights organizations have voiced their concern regarding the large number of Palestinian casualties from live ammunition. Amnesty International, for example, expressed its grave concern in a special alert on the excessive use of force by the Israeli military. Amnesty stated:

[S]enior Israeli authorities appear to have been 'condoning if not encouraging' the excessive use of force by soldiers and Border Police knowing it would result in the death or injury of Palestinians.⁹³

The claim is supported by al-Haq's own documentation. In numerous cases, al-Haq has established that soldiers indiscriminately opened fire on demonstrators who were neither throwing stones nor posing a threat to the lives of soldiers.[†]

The standard live bullet in use by the military in the Occupied Territories is the high-velocity bullet. According to Dr. Peter Kandela, a medical practitioner who visited the Occupied Territories during the uprising:

These travel at around 1.2 km/second and inflict their damage through shock wave and cavitation effects, as well as traditional laceration.

Laceration damages vital organs and major blood vessels which have been directly hit. In addition, the shock wave effect, which is similar to that from a

[†]See further Appendices 1-B, 1-C, 1-E, 1-G, and 1-H.

detonated bomb, can result in injury to parts of the body remote from the trajectory of the bullet. Finally cavitation means that when, for example, a muscle is hit, the small blood vessels supplying it are damaged as well as the muscle protein, thereby causing a gradual ischaemia or death of the muscle.

The severity and complexity of injuries resulting from the use of these high velocity bullets would test the resources of the most sophisticated medical units.⁹⁴

According to the open-fire regulations, the use of live ammunition is only permitted against an individual attacker, and all precautions must be taken to see that other individuals are not shot. Yet, al-Haq has documented a consistent pattern where live ammunition and plastic bullets are fired heavily and indiscriminately at demonstrators, often causing multiple casualties. Below are just a few examples of such indiscriminate use of lethal force:

- (1) On 25 January 1989, at least 25 people were wounded by indiscriminate army fire at a funeral procession in the village of Habla near Toulkarem;⁹⁵
- (2) In the Khan Younes Refugee Camp in the Gaza Strip on 4 February 1989, Majed Jawdat Jad-al-Haq, 17, was killed, and at least 20 others, including a representative of the International Committee of the Red Cross, wounded when soldiers indiscriminately opened fire on a funeral procession for 'Ala' 'Abdallah 'Arandas, 15, who had been killed by soldiers earlier the same day in the vicinity of his school;⁹⁶
- (3) In the course of a demonstration in the Sheikh Radwan Housing Project in Gaza City on 18 March 1989, three Palestinians were killed and at least 15 others wounded when soldiers indiscriminately opened fire on demonstrators;⁹⁷
- (4) On 6 May 1989, soldiers in the Gaza Strip shot and killed Muhammad 'Abdallah Zaqqut, 40, a father of eight children, 'Id Salama Abou-Mas'oud, 23, Ra'ed Muhammad Abou-Mu'nis, 22, and wounded at least 143 people in clashes which began when soldiers opened indiscriminate fire on several processions from local mosques to cemeteries. The incidents occurred on the first day of the Muslim 'Id al-Fitr Feast, a day when Muslims traditionally visit cemeteries after prayers to honor the dead.⁹⁸

Case Study: Black Friday in Nablus

Perhaps the most notorious incident involving the use of lethal force against a demonstration or funeral procession took place in Nablus on 16 December 1988. It has since become known as "Black Friday." A total of eight people were killed; five were shot dead that day and three others later died of their wounds. At least 20 others were also wounded.

According to extensive documentation gathered by al-Haq, the events occurred as follows:

At around 7:30 a.m. on Friday 16 December 1988, a large funeral procession for Ashraf al-Haj Da'oud, who had been killed a day earlier, started for the Eastern Cemetery of Nablus from the Ras-al-'Ein neighborhood. Mourners chanted nationalist

slogans and hoisted Palestinian flags. At around 8:00 a.m., an Israeli army patrol arrived at the scene and soldiers opened fire on the mourners. No stones were thrown at the soldiers, and at no time were the soldiers' lives endangered. There was no curfew in effect at the time.

Najeh 'Abdo Hawwash, 45 years old, was watching the funeral procession from the window of his house. The following is his account of what happened after the arrival of the soldiers:

At approximately 8:00 a.m. on Friday 16 December 1988, I looked out the window of my home, which is located in the Ras al-'Ain quarter of Nablus ... I saw a large number of residents carrying a coffin and chanting: "There is no God but Allah and Muhammad is his messenger and the martyr is his beloved." They were proceeding at a normal and calm pace. I continued watching the procession.

Suddenly, I saw six soldiers coming out from the nearby Yasmina quarter of the Old City. I saw one soldier crouch on his knee and aim at the procession. He then began firing well-aimed shots. The other soldiers also began shooting, spraying the procession with rapid automatic gunfire. As they were shooting, they were at a distance of no more than 20 meters from the funeral procession. Yet, the soldiers continued advancing towards the procession, while simultaneously continuing to shoot.

At this moment, as I stood watching the funeral procession, I saw one of the mourners collapse onto the ground. As he fell, he tried to grab an electricity pole. His name was Yasin al-Shaksir. Women ran towards him to give him first aid ...

I saw the shooting continue for approximately half an hour. It is important to note that not one of the mourners had confronted the army. Not one stone was thrown at the soldiers ...⁹⁹

Yasin al-Shaksir died shortly after being taken to the hospital. News of the army attack on the funeral procession quickly spread throughout Nablus and residents began to gather at the Eastern Cemetery to help bury the dead.

In the following excerpts from a sworn affidavit taken by al-Haq, a resident of Nablus explains in his own words what happened at the cemetery:

[My brother and I] went to the cemetery to assist in the digging of graves for the martyrs.

We arrived at the cemetery, where a number of people had assembled and were digging graves. My brother began digging a grave, and when he finished he began digging another grave in case anyone else was killed. I stood opposite him and waited for the body of the victim to arrive. When the body arrived in a hearse, I saw my brother hoist a Palestinian flag and, along with a number of other youths, chant nationalist slogans ...

Suddenly, bullets began to fly everywhere. Except for a few youths, everybody ducked. I immediately looked for the source of the shooting. I saw six soldiers standing on the top of the Shalhub Building, which is close to the cemetery, and saw another soldier standing in one of the windows of the building. The soldier in the window had his gun pointed at us and was firing heavily, moving his gun to and fro so as to hit the largest number of people possible. One of my friends then came to me and told me that my brother had been wounded. I went to

him and saw that he had collapsed onto the ground and was unconscious and bleeding heavily. I and a number of other people immediately put him into a civilian car and took him to al-Ittihad Hospital. The doctors tried to save him but he died the next day ...¹⁰⁰

The initial investigation found that the soldiers "had been in a life-threatening situation" and had "opened fire in accordance with army regulations."¹⁰¹ Due to the large amount of international attention focused on the incident, as well as pressure from Israeli human rights groups, a second investigation was carried out by the Military Police. It took almost one year to complete.

In late November 1989, the military's Judge Advocate-General announced that disciplinary hearings would be held for four of the paratroop officers involved in the "Black Friday" killings. The officers—a battalion commander, two lieutenants, and a second lieutenant—are to be tried before the Paratroop Brigade Commander. They are accused of the illegal use of their weapons, including shooting at close range, shooting live ammunition instead of plastic bullets, shooting directly before firing warning shots in the air, and shooting at fleeing persons.¹⁰²

The "Black Friday" killings and the subsequent investigation illustrate several disturbing trends. The authorities' initial response was the routine and laconic assertion that soldiers opened fire in self-defense. As in almost every other case, investigators did not interview Palestinian eyewitnesses and relied solely on the testimony of the perpetrators.[§]

Moreover, the officers in this case are to be summoned only to a disciplinary hearing, whereas the offenses warrant that they be charged with deliberate and wilful killing, a subject which is further discussed below.

Shooting of Bystanders

Existing regulations state that extreme caution must be taken to ensure that bystanders are not hit. The frequent, excessive use of live ammunition and plastic bullets has on numerous occasions led to casualties among bystanders and passers-by, including young children.[¶]

According to al-Haq's documentation, people have been killed or wounded with plastic, rubber, or live bullets while sitting inside or near their houses, while crossing the street, or while sitting in public places such as cafes.

The following cases documented by al-Haq attest to the dangers of indiscriminate shooting in population centers:

- (1) Yousef Hasan Muhammad Abou-Baker, aged 44, from Ya'bad in the Jenin district, was shot twice in the face with plastic bullets while sitting in a cafe. In a sworn affidavit taken by al-Haq, Mr. Abou-Baker stated:

I was seated and drinking coffee when I heard some residents shout: "The army! The army!" Immediately, the people in the cafe started running away, and at the same time I heard shooting. I felt pain in my head and

[§] See further Chapter Sixteen, "Investigations."

[¶] See further Appendices 1-D, 1-E, and 1-F.

I began to feel dizzy. I also felt blood dripping down my face and saw it covering my shirt and trousers . . . I was taken to Jenin Hospital, where one of the bullets was extracted. It appeared to be a plastic bullet. After half an hour, I was transferred to Rafidiya Hospital in Nablus where the other bullet, also plastic, was extracted . . .¹⁰³

- (2) On 2 September 1989, Muna Ibrahim al-Tammam, age 11, was sitting in her Nablus living room with her mother and two older sisters. A few minutes later, they heard heavy shooting and screams coming from outside. They immediately went to the veranda of their house to watch what was happening. They saw a large number of soldiers encircling the area of the Eastern Cemetery and shooting in all directions. A bullet hit Muna in the chest and another grazed her older sister and left a hole in the wall. Muna was taken to hospital, where she died immediately.¹⁰⁴
- (3) On 27 March 1989, Amjad Hisham Ahmad Mustafa Nassar, four years old, was playing inside the yard of his grandfather's house in the village of Beit Qad near Jenin. His relatives, who were in the yard with him, heard shooting and saw that Amjad had been hit in the chest. They turned and saw an Israeli policeman, who had apparently been stoned while passing through the village and responded with indiscriminate pistol shots. Amjad died moments later.¹⁰⁵

The indiscriminate use of live ammunition, leading to incidents like those described above, is in fact a widespread phenomenon. That such incidents continue to occur indicate a lack of self-control on the part of the military as well as a wanton disregard for human life. This is reflected in the account of an Israeli officer who was stationed in the Gaza Strip. It appeared in the Israeli newspaper *Ha'aretz*:

The Israeli army does not admit that among those killed and wounded there are also innocent people, and it views every elderly person and every infant who is wounded as being responsible for what happened to them . . .

"They go out with their children into the street because they want [their children] to be wounded. That's how they get money from the PLO and the family can get something to eat." I heard the above from one of the officers who serves in the Gaza Strip.

Even if a woman gets hurt while standing next to the sink in her kitchen or an old man sleeping in his bed is hit by a stray bullet, the army does not consider them to be innocent casualties.¹⁰⁶

Rather, wounded persons are routinely arrested or harassed because their injuries are considered proof that they are guilty of wrongdoing.*

4. Excessive Force in the Process of Arrest

Al-Haq and other human rights organizations have in the past repeatedly expressed their concern about the use of excessive force, especially live ammunition, against what Israeli officials term "fleeing suspects."[†] According to al-Haq's information, the

*See further Chapter Two, "Medical Care."

†See further Appendix 1-F.

existing open-fire regulations permit soldiers to shoot at "fleeing suspects" under a broad set of circumstances. As in all cases of shooting, soldiers are required to first issue verbal warnings and fire in the air, after which they may shoot only at the legs of the suspect.

The Shooting of "Fleeing Suspects"

It is a principle common to all legal systems that there can be no suspect without a reasonable belief that a crime has, is being, or is about to be committed. It is also commonly accepted that the crime under suspicion must be of a serious nature (in most cases involving the use of violence against persons or law enforcement officials) if lethal force is to be used to apprehend a fleeing suspect. To be lawful, lethal force must be both necessary and proportionate to the specific circumstances of a particular act.

According to al-Haq's information, the following regulations govern the use of lethal force to apprehend fleeing suspects in the Occupied Territories:

- (1) Soldiers should never open fire unless all other means have been exhausted;
- (2) Opening fire should be carried out, as far as circumstances permit, by officers only;
- (3) In cases where there is no other way to arrest a suspect, the officer should carefully weigh the circumstances of the incident to determine whether or not shooting is necessary;
- (4) Shots are to be aimed at the suspect's legs.

It is al-Haq's understanding that the regulations define "suspect" as any person for whom there is a reasonable basis to assume that they have committed, are committing, are about to commit, or have attempted to commit an act of sabotage or other serious crime. The military government's definition of "serious crime" includes: murder; attempted murder; possession of weapons; membership in an illegal organization or participation in its activities; the throwing of stones in a manner which poses a real danger to a person or vehicle; and causing deliberate damage to property.

In stark contradiction to international norms, the definition of "suspect" is so broad that it openly authorizes members of the security forces to use armed force against persons who pose no threat whatsoever and, according to the applicable international standards, must be apprehended by less extreme methods. This is particularly the case since mere membership or participation in any of the activities of an illegal organization (whether violent or not) suffices to make one a formal suspect.

The authorities define "illegal organization" to include any constituent or support group of the Palestine Liberation Organization (PLO) and Islamic Resistance Movement (Hamas), as well as the popular committees which have proliferated throughout the Occupied Territories during the uprising. Amnesty International, among other organizations, maintains that mere membership in the PLO or any of its affiliated organizations does not constitute evidence of violent activity.¹⁰⁷ Furthermore, an array

of incontrovertibly non-violent activities, such as painting graffiti on walls, raising the Palestinian flag and distributing political leaflets have been used by the authorities as evidence of membership in an illegal organization.¹⁰⁸ And, with regard to the popular committees, many have been exclusively devoted to the provision of educational, medical, agricultural, and other services to their communities.

Since virtually every Palestinian in the Occupied Territories is supportive, if not in one way or another connected to the activities of these groups and organizations, the mere act of fleeing is therefore sufficient to make a Palestinian formally suspect. In this context, any resident of the Occupied Territories fleeing after being ordered to halt is, as a result of the act of fleeing and for no other reason, liable to be shot in accordance with the above regulations.

Under international law, the act of fleeing cannot in and of itself be used to justify shooting to injure or kill, especially if this act is allowed to constitute sufficient proof that a person may be guilty of a serious offense. To shoot someone simply because he or she is running away on the presumption that their act may indicate their commission of a serious offense constitutes the passing of sentence before arrest and is therefore extra-judicial punishment. It totally disregards the reasons for a person's flight and does not require that the commission of any particular action be suspected. In so doing, the twin principles of necessity and proportionality are simply removed from consideration.

The problem of the overly broad application of the open-fire regulations to "fleeing suspects" was clear to many military officials as well even before the uprising. In a 1985 interview, a senior Ministry of Defense official conceded:

When soldiers see someone walking strangely and peering out from behind walls they become suspicious and order the person to stop. Frightened, the person starts to flee so the soldiers open fire which just makes the person keep running.¹⁰⁹

The issue of "fleeing suspects" should also be viewed in the context of the policies of brutality and arbitrary detention which continue unabated in the Occupied Territories. Many youths attempt to escape apprehension by soldiers fearing not only detention, but also physical assault and brutality.

In an alarming development, the regulations governing the use of force to make arrests were amended in 1989 to permit soldiers to shoot plastic bullets to apprehend stone throwers even if an individual had ceased to throw stones. The changes expanded an already unacceptably broad definition of "fleeing suspect." In response to the subsequent international furor, the military Judge Advocate-General, Amnon Strashnow, attempted to clarify what was meant by "fleeing stone thrower:"

It is not allowed to shoot at people who are running away. [Shooting is] [o]nly [permitted] during a demonstration when someone is changing position in order to come back and throw stones. It is forbidden to open fire at people who are escaping, or to shoot people in the back.¹¹⁰

Mr. Strashnow did not state how soldiers could distinguish between stone throwers running away to escape and those running away to change position. Rather than addressing the concerns of the international community, the statement made the new

orders even more vague and at the same time provided individual soldiers in the field with even further discretion.

Moreover, as is discussed below, the term "suspect" was expanded to include anyone wearing a mask or covering their face, irrespective of their activities.

Additionally, it is widely disputed whether it is possible to safely shoot at the legs of a moving target. One forensic authority who warned against such expectations stated the following:

Given a moving target, in a range of seventy-five yards, or less, the target will probably be hit, but not where the gun was aimed. Therefore, the police officer should not think he is going to inflict a non-fatal wound by shooting at an arm or leg. He should fully expect the shot to be fatal.¹¹¹

According to al-Haq's documentation, the military has failed to observe even its own guidelines. Soldiers routinely fail to follow the regulations on verbal warnings and firing into the air before shooting directly at their victims. In other cases they compress the three steps into a single action. In a sworn affidavit taken by al-Haq, Ahmad Yousef Muhammad al-Hinawi, a 19-year-old resident of the Jabaliya Refugee Camp in the Gaza Strip, illustrates how soldiers fail to obey their own regulations and how flight is in and of itself used to justify the opening of fire. In his own words:

At about 10:00 a.m. on 25 May 1989, I went with my friend Khaled Zaki al-'Atawna to the UNRWA al-Fakhoura Elementary and Preparatory School located in the northern section of the camp. We went in order to bring our brothers from school after we heard that soldiers had thrown tear-gas cannisters inside the school ... While we were walking on the street that leads to the school, we saw two soldiers next to the house of Muhammad Nazmi, which is adjacent to the school. [We were afraid of the soldiers so we] ran into the citrus orchards opposite to Muhammad Nazmi's house. While we were running through the orchard, we saw two soldiers in front of us. Immediately, Khaled and I ran in another direction ...

After I escaped from the soldiers, I tried to pass through an opening in the cactus wall which separates one orchard from another.[†] As I was doing so, I heard shooting. I felt myself being hit and fell to the ground. While I was lying on the ground, I saw my friend Khaled also lying on the ground with his face in the dirt. He was totally motionless. Then I saw a number of soldiers surrounding me. I was afraid they were going to kill me. Out of fear of dying, I asked them not to beat me. I remained in the same place, bleeding from my chest with the soldiers standing around me until I lost consciousness. I regained consciousness in the al-Shifa' Hospital. While I was in the hospital, I was told that my friend Khaled had died.¹¹²

Mr. al-Hinawi was shot in the chest, the right side of his torso, and right thigh. As a result, his right leg was paralyzed from the knee down. Khaled al-'Atawna was killed by a bullet through the heart.¹¹³

Despite a clear prohibition on the use of lethal force against a non-suspect attempting to flee a roadblock or checkpoint after being ordered to halt, al-Haq has documented several cases in which soldiers have opened fire at individuals only because they have failed to stop when ordered to do so. Ibrahim Jamil Ragheb al-Souqi,

[†]Palestinian landowners frequently plant cactus along the border of their property instead of building stone walls or erecting fences. As these cactus are fruit-bearing, they serve a dual purpose.

a 22-year-old resident of Jenin, was driving with three friends when they were stopped by Border Police near the UNRWA Girls School located in the vicinity of the Jenin Refugee Camp. In a sworn affidavit taken by al-Haq, Mr. al-Souqi stated the following:

A soldier motioned for us to stop, which we did. He approached our car and demanded to see our identity cards, which we gave him. My friend Khader al-Jazara told the soldier: "I am a citizen of Jordan. I have no identity card. My travel permit is at home." I then saw the soldier motioning to Khader to get out of the car, which he did, and to stand next to the school wall. Next to him stood a soldier who was dark-skinned. While this soldier was talking to the other soldiers, I saw Khader jump over the school wall and run away. Immediately, the dark-skinned soldier drew his gun over the wall and fired several bullets ... I did not know if [Khader] was hit or not.¹¹⁴

Another eyewitness to the incident from whom al-Haq obtained a sworn statement, Muhammad Ibrahim Jaber 'Isa, 53, was walking nearby and, from the other side of the wall, saw Mr. al-Jazara jump over it:

I saw two soldiers running after the fleeing youth and shooting in his direction. The distance between the soldiers and the youth did not exceed 20 meters. Then I noticed the youth slow down. I saw him take a few more steps and then collapse on the ground. At the same time, I saw one of the soldiers, slim and dark-skinned ... approach the young man lying on the ground. When he was about ten meters away from him, I saw him kneel on one leg and aim his gun towards the young man. I heard the firing of some bullets, about five. Immediately after that, I rushed towards the youth and approached his location ... I saw blood covering his back and stomach, and he was bleeding from his neck ...¹¹⁵

Mr. al-Jazara died before he could receive medical attention.

As with other cases involving the illegal use of lethal force, investigations into killings which fit into the above category are grossly inadequate.[§] Al-Haq knows of no case in which a soldier has been charged or tried for violating regulations on the use of lethal force in the process of making an arrest.

The Shooting of Masked Youths

In early July 1989, soldiers in the Gaza Strip were officially authorized to shoot any masked Palestinian in order to apprehend them. The practice received a seal of approval from the Ministry of Justice.¹¹⁶ After a "trial period" of over two months in the Gaza Strip, Chief of the General Staff Dan Shomron announced that the new measure had achieved "good results." The policy was extended to the West Bank.¹¹⁷

The authorization to shoot masked youths stemmed from an amendment to the definition of a "suspect" in the orders governing the use of live ammunition during the arrest process. Previously, only masked individuals armed with knives, axes, metal bars, or other weapons had been considered "suspects." The definition was changed to include unarmed masked individuals. They can be shot with live ammunition irrespective of their activities at the time they are encountered by soldiers.¹¹⁸

[§]See further Chapter Sixteen, "Investigations."

Al-Haq has documented several cases in which masked youths not throwing stones and in no way endangering the lives of soldiers were fired upon with live ammunition and killed. These include Maher AbouQaddama, an 18-year-old resident of al-Brej Refugee Camp in the Gaza Strip, who was shot dead while writing graffiti on a wall in the camp. According to an eyewitness, who asked that his name be withheld from publication:

At about 2:00 p.m. on 4 October 1989, while I was at my bookstore in the main street of al-Brej camp, in the area known as the Main Square, I heard that there were masked youths nearby. I went out of the bookstore and saw three masked persons wearing black uniforms come from the eastern side of the main street. One of them began to write a slogan on a wall: "Hand in hand we will liberate ..." But before he could finish writing "blessed al-Aqsa,"[¶] I heard heavy shooting coming from a white Peugeot 404 bearing Gaza license plates ...¹¹⁹

The affiant reported that the youth was hit by the shots fired from the car. The affiant then saw four persons wearing civilian clothes emerge from the car while a fifth person, who remained behind the steering wheel, spoke into a walkie-talkie. The four who had left the car proceeded to chase the other two masked youths, who fled. The wounded youth attempted to flee towards the central market of the camp. At this point, the four persons who had been chasing the two other youths returned and began to chase the wounded youth, who was limping towards the central market. A second affiant reported what happened next:

While I was leaving the house of a friend ... I heard heavy shooting. Suddenly, I saw a masked person ... leaning on the shoulder of a youth from the camp. They emerged together from a side street. The masked youth was shouting to the other one: "Leave me and run away!" The youth fled and the person with the mask remained, limping slowly.

Suddenly, I saw a man in civilian clothes holding a pistol. He shot at the masked youth, whom I heard scream in pain. He then fell down. I fled into the house of the friend that I had been visiting.

I heard two persons say in Arabic: "Who was with you?" and heard the masked youth moan. Then, he stopped talking. Leaning on a barrel, I began to look over a wall of the house. I saw the two armed men in civilian clothes each grab one of the youth's legs and drag him about 70 meters to the main street near the southern entrance of the market.

I saw two cars approaching. The first was a white Peugeot 404 ... I saw the two [armed] civilians carry the masked youth and throw him in the Peugeot. They jumped into the car and drove west. The next day, I learned from camp residents that the masked youth was Maher Abou-Qaddamah.¹²⁰

The military authorities stated that Maher Abou-Qaddamah was killed during an "encounter" between Israeli troops and masked youths.¹²¹

The authorities have justified the redefinition of "suspect" to include masked youths by claiming that masked activists lead the uprising and carry out actions such as the killing of collaborators.¹²² Yet, soldiers are permitted to act pre-emptively and

[¶] Al-Aqsa mosque in Jerusalem is holy to Muslims and embodies the Arab character of Jerusalem to Palestinians of all faiths. It has been the target of repeated attacks by Jewish extremists.

need not have any evidence that an individual was involved in illegal activity before opening fire: the mere fact that an individual is masked is considered *prima facie* evidence of guilt. As military Judge Advocate-General Amnon Strashnow commented in this regard, “[i]f one of these [masked] youths is walking in the street, I don’t have to wait until I find two alleged ‘collaborators’ murdered in the area the next day.”¹²³

Although the orders still specify that soldiers may only shoot at masked youths’ legs, during October 1989, 14 of the 31 Palestinians killed by Israeli security forces in the Occupied Territories were masked youths.¹²⁴

The use of lethal force on the suspicion that a person may have committed an illegal act in the past or may carry out such an act in the future is totally illegal under the principles of necessity and proportionality described above. Many Palestinians cover their faces while demonstrating, attending funeral processions, writing graffiti on walls, or engaging in similar activities in order to protect their identity and avoid arrest.

By authorizing soldiers to use lethal force against individuals posing no threat to them whatsoever on the mere basis that they are masked, the regulations permit soldiers to assume the role of judge, jury, and executioner. The judicial system’s failure to establish proper investigative procedures, and thus, at the very least, hold soldiers exceeding the bounds of these sub-standard regulations to account, leads many observers as well as soldiers to believe that they enjoy a green light to shoot to kill.

E. Military Raids: Wanton Violence and Destruction

In a pattern which continued throughout 1989, the Israeli military routinely carried out large-scale raids on villages, refugee camps, and towns in the Occupied Territories. Such actions, which usually take place at night, are designed to establish a military presence, remove signs associated with the uprising (such as nationalist graffiti and Palestinian flags), and search for suspected activists. Curfews are often imposed during the raid, after which house-to-house searches are carried out. Alternatively, all male residents are called outside for identity card checks, after which they are ordered to paint over nationalist slogans and take down Palestinian flags. As is discussed below, such raids are often accompanied by wanton violence, humiliation, destruction of property, and spoilage of food supplies. In a number of cases, residents have been wounded or killed when soldiers indiscriminately opened fire and severely beat people.

1. Al-Haq’s Documentation

The following incident illustrates the kind of brutality soldiers often commit while conducting house-to-house searches:

At approximately 10:30 p.m. on 28 May 1989, soldiers raided Block 2 of the Jabaliya Refugee Camp in the Gaza Strip. One resident, who asked that his name be

withheld from publication, gave the following description in a sworn statement taken by al-Haq:

I was sitting at home when I heard someone knocking at the door. I opened the door and saw a number of soldiers and an officer holding a small megaphone in one hand. He asked, "Are you Jamal?" I answered that I was. He then asked for my identity card. When I gave it to him, he announced over the megaphone, in Arabic, "Jamal is screwed. Jamal is a son of bitch." Then, about 12 soldiers entered my house, including the officer who had been holding the megaphone. They entered the bedroom ... and began pulling everything out of the closet ... [One of the soldiers] smashed an electric fan on the ground, scattering its parts all over the room. After that, they went into another room, overturned all the furniture ... and took a large cabinet and dumped it into the yard, smashing doors and sides of the cabinet ... After this, they went into the kitchen. The officer began cutting open bags of sugar with a knife from his pocket. He dumped four bags of sugar in a pile in the middle of the floor, and another soldier took a barrel of flour and dumped it on top of the sugar. When I protested and said, "Why are you mixing the flour and sugar?" he replied, "Eat flour and sugar!" He then poured a bucket of cooking oil on top of the sugar and flour and added a bucket of nails that was sitting in the kitchen [and then added various containers of spices to the pile] ...¹²⁵

The soldiers then ordered everyone in the family to sit in front of the house and cursed the affiant before announcing over the megaphone, "Jamal is a dog and the son of a dog. Jamal is screwed. Jamal is a son of a bitch." The soldiers left the house at approximately 11:00 p.m.¹²⁶

The following affidavit was submitted by Halima Mahmoud Muhammad al-Nasibi, 49, a housewife and resident of Ithna, near Hebron. Mrs. al-Nasibi was at home alone during a curfew when a group of soldiers burst into her house.

The soldiers fanned throughout the house. Fifteen to 30 minutes after they left, I checked the house and found the furniture overturned. In the kitchen, I found that cooking oil had been poured on the floor along with flour and salt. In the bedroom, the clothes were on the ground. Books and papers had also been torn apart and thrown on the floor ...

The soldiers came back again and committed similar raids [in my house] over the following three days ...¹²⁷

In addition to such acts of indiscriminate and unwarranted destruction, al-Haq has documented numerous cases in which individual soldiers have stolen personal possessions such as money or jewelry.

At 4:30 a.m. on Wednesday 31 May 1989, Ghaliya Muhammad Hasan al-Barghouti, 32, a housewife from Beit Rima in the Ramallah district was, along with her four children and sister-in-law, asleep at home in the Mustawsaf quarter of town. She was suddenly awakened by ten armed soldiers, who had entered the house and were asking for her husband, who was away at work at the time.

In a sworn statement taken by al-Haq, Mrs. al-Barghouti described how she and her children were pushed into one room while the soldiers systematically went through the house, smashing mirrors and other glass objects, overturning beds, and pulling clothes from the closets and scattering them on the floor. The furniture in the living

room was knocked over and the upholstery slashed. The pillage and destruction lasted approximately an hour. After the soldiers left, Mrs. al-Barghouti discovered that JD (Jordanian Dinars) 2,400 (approximately \$US 3,400) and a camera had been taken during the raid.¹²⁸

Similarly, the following case illustrates the type of vandalism which is common when soldiers impose curfews and conduct house-to-house searches:

On 24 June 1989, Muntaha Tawfiq Yousef Mas'oud, 28, a housewife from 'Arraba near Jenin, witnessed a raid on her family's home. In a sworn statement taken by al-Haq, she described how, shortly after a curfew was announced at 5:30 p.m., 16 soldiers smashed the outside gate to her home, came inside, and went straight to the closets, in the process strewing possessions everywhere. While the search was in progress, several soldiers harassed and beat members of Mrs. Mas'oud's family, including her elderly father and two younger brothers.

After the soldiers departed, Mrs. Mas'oud checked the house and discovered that two bracelets of twisted 21-karat gold, worth approximately JD 800 (approximately \$US 1,100), were missing from a bedroom which had been searched.¹²⁹

2. The Multiple Killings in Nahhalin

In the early morning of 13 April 1989, approximately 150 Border Police accompanied by a military support unit and armed men in civilian dress raided the village of Nahalin (pop. 3,000) near Bethlehem.* The assault began at approximately 4:30 a.m. while the villagers were proceeding to the village mosque for the Ramadan dawn prayer. The force harassed and provoked villagers, forcibly entered homes, beat men, women and children alike, jeered at the men of the village, and taunted Muslim worshipers. In the ensuing rampage, extensive and indiscriminate use was made of live ammunition. Four young men (Riyad Ghayada, 27; Subhi Shakarna, 23; Muhammad Shakarna, 22; and Fou'ad Najajra, 16) were shot to death and a fifth villager was left brain dead after being shot in the head. At least 30 other villagers were seriously injured by gunfire or beatings, eight of whom were hospitalized in critical condition. Rubber bullets and tear gas were also used.

Al-Haq's investigation of the multiple killings and armed rampage led it to identify the following issues as causes for particular concern:

- (1) The conduct of the armed forces prior to the killings was provocative and abusive in the extreme. In addition, the timing and manner in which the attack was carried out leads al-Haq to believe that what took place was deliberate and not, as the military claimed, an attempt to respond to violence or restore public order;
- (2) The available information indicates that sniper-fire and live ammunition were

*The day after the raid, residents of Nahhalin came to al-Haq's offices and described the brutality and violence which accompanied it. Immediately after verifying the accounts, al-Haq, on 17 April 1989, conducted a press conference in East Jerusalem with the participation of residents of Nahhalin, and issued a Memorandum of Protest and Appeal calling for effective international protection of the civilian Palestinian population under occupation.

used without warning, in a manner indicating no attempt by the army to avoid the loss of life;

- (3) Flagrant disregard was shown by the armed forces for the most basic humanitarian principles, in particular the right of the wounded to medical treatment. Individuals transporting casualties or giving and receiving first-aid were fired upon. Such shooting caused the brain death of one villager engaged in the evacuation of the wounded.

Qamar Muhammad Amin 'Abd-al-Rahman al-Najajra, a 30-year-old housewife from Nahhalin, was in her home at the southern entrance to the village when, at approximately 4:30 a.m. on 13 April 1989, she heard loud knocking at the door and the glass on her veranda being smashed. She opened the door and found four Border Police. She asked them what they were doing. They ordered her to "Shut up" and began to punch her on the shoulders and back. Mrs. al-Najajra suffered particular pain from these beatings as she had recently undergone surgery. The Border Police then began to beat Mrs. al-Najajra's husband, Majed, age 31. About half an hour later, she looked out the window and saw the same men beating a neighbor, 'Abed 'Ali Yasin Sawad, age 20. When she shouted at the soldiers, they shot three bullets in her direction, which hit the kitchen and bedroom windows. In addition, they smashed the windows of her husband's car (a Peugeot 304) with stones and broke the car stereo. The shooting also punctured the water tank located on the roof, cutting off the family's water supply.¹³⁰

In a sworn affidavit taken by al-Haq from 64-year-old Muhammad Ibrahim Ahmad Shakarna, who witnessed the raid, the deliberate disregard for human life, especially that of the wounded, is made clear:

I saw the group of soldiers returning ... They began to forcibly go through houses. I saw them beating one resident, Jamil Abed al-Majid. This group then began to run towards the center of the village. When they reached the center, they began to fire their guns in a massive way ... I then saw [that] a youth, Fou'ad Yousef Najajra, had been hit with a bullet. I went down from my house to assist him. When I arrived, a young woman, Fatma Shakarna, was trying to assist him by lifting him from the ground. However, she herself was hit with a bullet in her shoulder. One of the residents lifted her and put her inside my private car. I had driven for about 70 meters when one soldier fired repeatedly at me from behind. All the windows, back, front and sides, were shattered. I was hit with a number of bullets in the shoulders and head.¹³¹ The person who tried to assist Fatma Kamal Hasan Shakarna was clutching Fatma and sitting in the middle seat ... He was hit with bullets as well. I used my Kufiyya [scarf] to bandage my head and kept on driving until I reached Husein Hospital in Beit-Jala ...¹³²

F. "Wilful Killing" and Summary Execution

The killings and woundings described in the previous sections of this chapter resulted, in the opinion of al-Haq, from a wanton disregard for human life and principles regarding the use of lethal force. In most if not all of these cases, the use of lethal force

was unnecessary and disproportionate to the situation and could have been prevented with proper crowd-control or arrest procedures.[†]

In the following section, al-Haq documents an even more disturbing practice: the apparently deliberate, coldblooded killing of specifically-targetted Palestinian civilians by the Israeli military. Fully aware of the severity of its charges, al-Haq also discusses the legal consequences of its findings.

1. The Applicable Law

Article 147 of the Fourth Geneva Convention classifies wilful killing as a “grave breach” of the Convention, although no specific definition of the former is provided. A definition of wilful killing can, however, be derived from general principles of common law and internationally accepted principles regarding the use of force. Essentially, a killing must be both intentional and unlawful to be wilful.

“Wilful” is synonymous with “intentional.” By reference to principles of criminal law common to most legal systems, an intentional killing is one which is deliberate as opposed to reckless or accidental in nature. Intent is generally difficult to prove. Often, however, it can be inferred from the facts surrounding the case. It is therefore extremely important to examine all the available evidence to determine the presence of intent.

At the same time, not all intentional killings constitute wilful killing. For example, an intentional killing committed in legitimate self-defense would not be unlawful. However, in the context of the use of lethal force by law enforcement officials resulting in death, the criteria of necessity and proportionality effectively determine whether an act is lawful or unlawful. In other words, if the use of lethal force resulting in death was either unnecessary under the circumstances or disproportionate to the threat posed, it constitutes an unlawful killing.[‡]

Repeated claims by military spokespersons that soldiers used lethal force against Palestinians, resulting in death, because they faced a life-threatening situation or were attempting to apprehend a fleeing suspect must therefore be judged with reference to the above criteria. In other words, the resort to lethal force can only be justified in the absence of any alternative and then only if it is proportionate to the threat posed.

More important than the acts of individual soldiers, however, the lawfulness of the official regulations on the use of lethal force must itself be examined by reference to these twin criteria. Thus, even if an act resulting in death is sanctioned by the army’s own regulations, if it violates the applicable international standards on the use of lethal force, it is an unlawful act. If a killing committed by an agent of the state was both intentional and unlawful, it constitutes a wilful killing under the Fourth Geneva Convention.

“Summary (or extra-judicial) execution” falls within the definition of wilful killing. Amnesty International has defined the former as

[†]See further Appendices 1-C, 1-D, 1-E, and 1-F.

[‡]See the introduction to this chapter for a discussion of necessity and proportionality in the context of international standards governing the use of force by law enforcement officials.

unlawful and deliberate killings of persons by reasons of their real or imputed political beliefs or activities, religion, other conscientiously held beliefs, ethnic origin, sex, color or language, carried out by order of a government or with its complicity.¹³³

The argument has been made that the Israeli regulations regarding the use of live ammunition as applied in the Occupied Territories in and of themselves constitute official sanction for extra-judicial execution. A recent report by Amnesty International stated:

Existing guidelines for the use of firearms as well as the pattern of killings and subsequent investigations suggest that the Israeli authorities are effectively condoning, perhaps even encouraging, extra-judicial executions as a means of controlling unrest.¹³⁴

Amnesty called on the Israeli authorities to institute prompt, impartial, and thorough investigations into cases of individuals who have been killed by the military. Foreign Ministry spokesman Yossi Amihud said Amnesty's accusation was "total nonsense and absolutely baseless."¹³⁵

2. Case Studies

The three case studies presented below are meant to illustrate a pattern rather than provide comprehensive and exhaustive information about a practice. In two of these cases the victims were known to and wanted by the authorities in connection with activities related to the uprising. In all of them, soldiers or other armed individuals involved were in a position to apprehend the victim rather than opening fire, and medical treatment was either delayed or denied altogether.

Yaser Abou-Ghosh

On Monday 10 July 1989, men dressed in civilian clothes shot and killed 17-year-old Yaser Muhammad Abou-Ghosh in the center of Ramallah.[§] At the time he was killed, Mr. Abou-Ghosh had been wanted by the military authorities for at least three months. On several occasions, soldiers had raided both his and his brother's house in order to arrest him, and on two previous occasions, when no demonstration was taking place, he had been chased and shot at by Israeli soldiers.

According to eyewitness accounts compiled by al-Haq, the killing of Yaser Abou-Ghosh occurred as follows:

- (1) At approximately 11:30 a.m. on Monday 10 July 1989, Mr. AbouGhosh was walking with some friends near the Hisba, the open air vegetable market of al-Bireh, on the street that separates Ramallah from al-Bireh.
- (2) A white Volkswagen flat-bed van with local (blue) license plates was coming down the same road. When it reached the area where Mr. Abou-Ghosh was walking, it came to a sudden halt. Several witnesses reported that a Palestinian

[§]See further Appendix 1-I.

who is a known collaborator with the Israeli authorities was sitting outside a coffee shop in the same location and gave a hand-signal to the men in the Volkswagen.

- (3) Three men jumped out of the van, while two remained seated in the front. When Mr. Abou-Ghosh saw the men emerge, he and his friends began to run in the direction in which they had been walking. The three men gave chase, firing pistols into the air. The Israeli authorities have claimed that the men who emerged from the car ordered Mr. AbouGhosh to stop, but eyewitnesses contradict this claim.
- (4) Mr. Abou-Ghosh and his friends ran around the corner and up a small side street. The three men followed them, one in front of the other. After the first man turned the corner into the side street, he stopped, aimed, and began firing at Mr. Abou-Ghosh. When he fired, the distance between him and Mr. Abou-Ghosh was at most seven meters. Some witnesses report having heard five shots fired in rapid succession.
- (5) Mr. Abou-Ghosh was struck by several bullets and fell to the ground. His friends continued running and escaped.
- (6) Within seconds, two army jeeps arrived. Soldiers jumped out and ordered local residents and shopkeepers to leave. They set off two sound bombs to scare away bystanders.
- (7) As the soldiers were standing around Mr. Abou-Ghosh, a local doctor, wearing a white doctor's coat and a stethoscope around his neck, approached the soldiers. He identified himself as a doctor and requested permission to see Mr. Abou-Ghosh. The soldiers pushed him away. According to eyewitnesses, the soldiers then picked up Mr. Abou-Ghosh in a rough manner, disregarding his obviously severe medical condition, and dropped him on the floor in the back of one of the jeeps. At that moment, the doctor managed to push past the soldiers and reach the jeep. He placed his hand on Mr. Abou-Ghosh's neck in order to feel his pulse. The doctor stated to al-Haq that he is absolutely certain that at that moment Mr. Abou-Ghosh had a pulse and was still alive.
- (8) While the doctor was still feeling Mr. Abou-Ghosh's pulse, the jeep pulled away. The doctor jumped onto the back of the jeep, trying to hang on, but fell back after a few seconds. He then ran after the jeep for a few meters before giving up.
- (9) The jeep then drove to the Ramallah military headquarters. According to a Palestinian lawyer who was present inside the military headquarters that day, at 12:30 p.m. he heard a car arrive and a voice yell in Arabic: "There is an injured person!" He went outside the building and saw a jeep pull up next to the military court building. Three soldiers got out of the jeep and pulled a person out of the back by his legs. The lawyer saw blood dripping onto the

ground. The soldiers dragged the person into a room after first stopping to unlock the door. After a short while they reemerged, but without the person.

- (10) At 3:30 p.m., the lawyer saw an Israeli ambulance arrive. Two soldiers who were in the area entered the room, and after about half an hour came back out with a body placed on a stretcher and wrapped in a cover, and put the body into the back of the ambulance, which then left. The lawyer emphasizes that at no point that afternoon did he see anyone who looked like a doctor or medic enter the room Mr. Abou-Ghosh was in.

Al-Haq believes that the case of Yaser Abou-Ghosh constitutes a wilful killing for the following reasons:

- (1) From the testimony of eyewitnesses, it appears no attempt was made to arrest Mr. Abou-Ghosh. At the moment that the fatal shots were fired, the assailant was about to catch up with him and could have apprehended him without opening fire. (It should be noted that the men were dressed in civilian clothes and did not identify themselves as law enforcement officials, and there was therefore no legal obligation for Mr. Abou-Ghosh to stop. It should also be emphasized that Mr. Abou-Ghosh was not armed at the time of his death, and in no way posed a physical threat to his attackers).
- (2) All evidence points at open cooperation between the assailants and the army, indicating official complicity, if not involvement, in the killing. Soldiers were present in the immediate vicinity of the killing. In fact, the army had been maintaining a regular presence in the center of Ramallah since the beginning of the uprising, including rooftop sentries who must have been able to see the events from the beginning until the end. Yet, no attempt was made to question, let alone arrest, the perpetrators, who left the scene without being stopped.
- (3) Indications of official involvement in the killing were confirmed by a military spokesperson who was quoted as saying that Mr. Abou-Ghosh was killed by "security forces" after ignoring an order to halt.¹³⁶
- (4) No attempt was made to save Mr. Abou-Ghosh's life after he had fallen to the ground, and a doctor was physically prevented from examining him. Rather than taking Mr. Abou-Ghosh to the nearest hospital, a two-minute drive from the place where he was shot, the soldiers took him to military headquarters. International law is very clear on the right of the wounded to prompt medical care.[†]

Nidal al-Habash

On Monday 9 October 1989, Nidal al-Habash, a 21-year-old student from Nablus, died after being shot, first at close range, and then again while he lay injured on the

[†]See further Chapter Two, "Medical Care."

ground. Al-Haq obtained several sworn affidavits from eyewitnesses who observed the incident from their homes overlooking the scene of the incident.

According to these accounts, Israeli soldiers had dispersed a march in Nablus which included several youths wearing black and red uniforms. Three of the soldiers chased Mr. al-Habash, who was masked, down a side street, where they encircled him. Mr. al-Habash then stopped running, raised his hands above his head, and removed his mask. From a distance of between 10–15 meters, one of the soldiers then pointed his gun at Mr. al-Habash and opened fire. Mr. al-Habash fell to the ground wounded. The same soldier then walked toward the injured youth and shot him three more times while he was lying on the ground.¹³⁷

An ambulance from the Palestinian Red Crescent Society, which is located close to the scene of the shooting, arrived almost immediately. The soldiers, however, obstructed the ambulance for several minutes. After the arrival of two military jeeps and delegates from the International Committee of the Red Cross (ICRC), the ambulance attendants were finally allowed to approach Mr. al-Habash. They examined him briefly, and then covered him with a white sheet.*

General Yitzhak Mordechai, the Central Area Commander, subsequently claimed that soldiers had properly implemented the procedures for apprehending suspects, including the shouting of verbal orders to halt, the firing of warning shots in the air, and shooting at the legs.¹³⁸ All of the eyewitnesses interviewed by al-Haq contradict this claim.

Al-Haq believes that this case constitutes wilful killing, as Nidal al-Habash had stopped running and raised his hands in the air, clearly indicating surrender, prior to being shot. Therefore, it could not have been necessary to use lethal force to apprehend him. Furthermore, he was shot three more times after he was already injured and lying helpless on the ground. Despite the fact that several Palestinian eyewitnesses came forward and made their names and testimony available to journalists, to the best of al-Haq's knowledge none of them has to date been interviewed by the authorities. Nor has the soldier who shot Nidal al-Habash been brought to justice.†

'Atwa Harzallah

'Atwa Lutfi 'Umar Harzallah, age 27, was shot and killed in the village of Deir Ibzi', near Ramallah, on 27 February 1989. According to al-Haq's information, his identity card had been confiscated in August 1988, and he had been wanted by the authorities for several months.

According to al-Haq's information, soldiers had clashed with villagers in Deir Ibzi' earlier on the evening of 27 February 1989, during which a youth from the nearby village of Kufr Ni'ima was injured. At approximately 9:00 p.m., Mr. Harzallah and four other villagers were returning to Deir Ibzi' after taking the wounded youth back to his village. Upon their return, the five were confronted by two soldiers who, apparently waiting for them, had been hiding behind a wall.

*See further Appendix 16-A.

†See further Appendix 16-B.

The soldiers ordered the five villagers to raise their hands above their heads, which they did. One of the soldiers then shined his flash-light on Mr. Harzallah, and another then shot him from a distance of less than five meters.¹³⁹ He was hit twice in the head and once in the right shoulder. The soldiers then ordered the other youths to sit on the ground and told them not to touch Mr. Harzallah. Villagers reported that they were not permitted to take Mr. Harzallah to hospital until the soldiers were sure that he was already dead.¹⁴⁰

Two of the youths who were with Mr. Harzallah at the time he was killed were arrested, interrogated about stone throwing, and briefly questioned about the shooting incident. They reportedly told their interrogators that Mr. Harzallah was shot at close range and had not been throwing stones at that time.¹⁴¹

Israeli military sources contradicted the above account of the killing, stating that a routine patrol on its way to the settlement of Dolev encountered a group of youths attempting to erect a barricade. According to the official version, the patrol was then attacked by a barrage of rocks and, when the soldiers felt their lives to be in danger; opened fire at the rock throwers, killing Mr. Harzallah.¹⁴²

In late April 1989, the Harzallah family's lawyer, Felicia Langer, submitted a complaint to Defense Minister Yitzhak Rabin and Judge Advocate-General Amnon Strashnow. Advocate Langer stated that sufficient and adequate evidence of murder existed to warrant a thorough investigation. Ms. Langer has not received any response to her complaint.

As was the case in 1988, there continue to be allegations in the local and international press about the existence of special army units assigned to assassinate suspected leaders of the uprising.¹⁴³ Whether or not these units exist, the military authorities have admitted responsibility for the above killings. Regardless of the justifications put forward for these shootings, under international law the Israeli authorities are legally responsible for the wrongdoing of their agents.

3. The Legal Consequences of Wilful Killing

The legal consequences of wilful killing, a grave breach under the Fourth Geneva Convention, are threefold:

- (1) State responsibility: Israel is legally responsible for the acts of its agents, and is under corresponding obligations to ensure that its agents adhere to to the Convention and to prosecute those agents who commit grave breaches;
- (2) Individual responsibility: an individual who commits a grave breach is criminally liable for his acts and should be prosecuted accordingly;
- (3) Responsibility of other state signatories to the Convention: all state signatories to the Convention have the right and in fact are under a positive obligation to seek out and prosecute individuals responsible for committing or commissioning grave breaches, wherever the perpetrators be. Article 148 of the Convention states:

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by any other High Contracting Party ...

There is no statute of limitations for grave breaches.[‡]

Summary

As the Palestinian popular uprising enters its third year, deaths and casualties continue to mount as the Israeli authorities remain committed to a military solution.

In their crowd-control tactics, the Israeli military authorities have virtually without exception resorted to the deployment of military combat units and the use of lethal high-velocity ammunition such as live and plastic bullets. Additionally, Israeli soldiers serving in the Occupied Territories have consistently misused (and thus abused) tear gas and "rubber" bullets, in the process applying "non-lethal" ammunition to lethal effect.

Although Israel manufactures anti-riot vehicles for export, the military uses them only in annexed East Jerusalem, and then only occasionally. The almost total reliance of the Israeli army on lethal ammunition, as well as its abuse of other ammunition, is clearly a matter of choice. The authorities have chosen to wantonly disregard human life and in the process deliberately ignored international legal standards governing the use of lethal force.

The legal facade which remains consists of classified regulations designed to exempt the security forces from liability or international sanction for their actions. In the meantime, unacceptable conduct not subject to any standard can continue undeterred.

The results of this policy speak for themselves. Al-Haq's documentation indicates that Israeli soldiers, as a matter of course, have unjustifiably used excessive and lethal force and often done so indiscriminately. The on-going relaxation of already sub-standard regulations has authorized the soldier in the street to exercise wide discretion in using his weapons. This has resulted in more than 700 preventable killings and tens of thousands injured.

The Government of Israel and its military have offered insupportable justifications for their policies. In January 1989, fatalities and injuries among Palestinian children were such that Minister of Arab Affairs Ehud Olmert was prompted to call on the Israeli army to act with self-restraint. Mr. Olmert stated: "If an Arab boy throws a stone and then runs away, I don't think he should be shot."¹⁴⁴

Apparently Mr. Olmert spoke for only a minority of his colleagues. Many more Israeli officials have justified these policies than criticized them. Their statements invariably blamed the victims, their parents, or the PLO for child fatalities. Prime Minister Yitzhak Shamir also expressed his sentiments about the children being killed by his army the day Mr. Olmert spoke: "We hate those PLO people who force us to kill Arab children."¹⁴⁵ Minister of Defense Yitzhak Rabin, according to the *Jerusalem*

[‡]See further Chapter Nineteen, "The Role of the International Community."

Post, for his part stated that "Palestinian children were being used deliberately in the intifada because hurt children made good headlines."¹⁴⁶

A particularly bizarre justification of child casualties was given in part earlier in the chapter, by an officer stationed in the Gaza Strip. It is here reproduced in full:

They carry their babies on their arms and expect that we will be merciful and allow them to riot. A mother like this should stay at home. They go out with their children into the street because they want [their children] to be wounded. That's how they get money from the PLO and the family will have something to eat.¹⁴⁷

Such feeble justifications for rampant brutality become more alarming in view of the fact that Israel's soldiers and leaders are not being held to account for their actions. It is al-Haq's opinion that this lack of accountability forms an essential component in the policy of shoot to wound and kill currently being pursued by units of the Israeli military.

The abuse of lethal force by the Israeli security forces against unarmed Palestinian civilians in the Occupied Territories reveals a cynical and contemptuous disregard for human life. More than a flagrant violation of international law, it constitutes a policy of lawless disregard for the most fundamental human right, the right to life.

Endnotes to Chapter One

1. Al-Haq, "Shooting by the Israeli Armed Forces," 19 October 1987; Al-Haq, "Army Brutality in the West Bank: A Press Briefing," 13 October 1987.
2. Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987–December 1988* (Ramallah: Al-Haq, 1988), p. 11. The proportional rise in beating deaths may be exaggerated because such killings form a higher percentage of fatalities in the Gaza Strip, a region not documented by al-Haq in 1987–1988.
3. "Memo from WHO Consultants in Occupied Territories to WHO Director General." Cited in Database Project on Palestinian Human Rights (DBPPHR), "Uprising Update: June 1, 1989," p. 241.
4. The Jerusalem Media and Communication Center (JMCC), *The Intifada: An Overview, the First Two Years* (Jerusalem: JMCC, 1989), p. 46.
5. B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), "Information Sheet: Update, July 1, 1989," p. 5. This and other factors discussed below also account for the irreconcilable differences between al-Haq and military statistics for the number of fatalities.
6. *Ibid.*
7. Anonymous, "Gaza," *Ha'aretz Weekly Supplement*, 16 June 1989. The writer had been stationed in the Gaza Strip as a reservist. The Shaboura incident, in which five Palestinians were killed, is discussed in Chapter Eleven ("Curfew and Other Forms of Isolation").
8. Al-Haq, *Punishing a Nation*, p. 12.
9. DBPPHR, "Uprising Update: May 1, 1989," p. 149; "Uprising Update: June 1, 1989," p. 206; "Uprising Update: December 1, 1989," p. 510. According to the DBPPHR, "Unofficially, [UNRWA] recommend[s] multiplying the number of wounded from the [West Bank] refugee population, which they estimate to be 800 [for the month of May 1989], by four, which would result in an estimated West Bank casualty toll of 3,200 [for that month]." ("Uprising Update: June 1, 1989," p. 207.) If the estimate is correct, then adding the May 1989 West Bank casualty toll to the figure of 5,055 Gaza Strip injuries in cited in the text would result in 8,255 casualties, 92 percent of the official sum total for the entire uprising.
UNRWA does not use the same method to estimate casualties in the Gaza Strip; the much higher proportion of refugees in the Gaza Strip (at least 70 percent), the demographic group with which UNRWA is in continuous direct contact, allows the organization to assess the situation there much more accurately.
10. Al-Haq, *Punishing a Nation*, p. 12.
11. Because it is not a source of primary data for comprehensive statistics on those wounded during the uprising, al-Haq has only attempted to give a minimum figure as opposed to estimating the total number of casualties. Other sources that have tried to establish the total number of persons wounded, such as DBPPHR and al-Maqased Islamic Charitable Hospital, give much higher estimates. Part of the discrepancy may be accounted for by the fact that al-Haq bases its estimates solely on casualties who have required some form of medical treatment.
12. JMCC, *The Intifada*, p. 7. 17,446 Palestinians (58 percent) were beaten, 6,303 (21 percent) sustained tear-gas related injuries, 4,753 (16 percent) were shot by live or plastic ammunition and 1,378 (5 percent) were shot by rubber or metal bullets.
13. In addition to the many interventions in this regard, one medical practitioner who visited the Occupied Territories during the uprising reports that "[d]octors are reporting that the majority of [bullet] wounds are now affecting the upper half of the body, mainly the head and neck." (Peter Kandela, "Medical Problems of the Intifada," *Arab Affairs* No. 10 (Autumn 1989)).
14. B'Tselem, "Information Sheet: Update, November 1, 1989," p. 2.
15. DBPPHR, "Uprising Update: December 1, 1989," p. 509.

16. The UNCCLEO, adopted by a United Nations General Assembly vote rather than ratification by individual states, is widely considered to be customary international law and therefore binding on Israeli conduct in the Occupied Territories. It was adopted by UN General Assembly Resolution 34/169 (Doc. A/34/36/ (1979)).
17. Meron Benvenisti, *1987 Report: Demographic, Economic, Legal, Social and Political Developments in the West Bank* (Jerusalem: West Bank Data Base Project, 1987), p. 42.
18. The cases documented below were also investigated in detail by the Palestine Human Rights Information Center (PHRIC). For the documentation and conclusions of this investigation see "The War on Shepherds: A DataBase Project Special Report on Recent Deaths and Injuries from Explosive Material" in DBPPHR, "Uprising Update: March 1, 1989," pp. 23-27. "The Shepherds War Continued" in subsequent issues of the "Update" contains additional cases.
19. Hanna Kaldron, "Suspicious Objects," *Ha'aretz Weekly Supplement*, 24 March 1989 (in Hebrew).
20. The 21st Year, "Witness of the Occupation: Working Paper 18," p. 1 (1 March 1989).
21. *Ibid.*
22. Kaldron, "Suspicious Objects."
23. *Ibid.*
24. *Ibid.*
25. Al-Haq Affidavit No. 1597.
26. Al-Haq Affidavit Nos. 1632 and 1634.
27. *Ibid.*
28. Joel Greenberg, "IDF Launches Investigation into West Bank Explosions," *Jerusalem Post*, 15 February 1989.
29. Al-Haq Fieldwork Report, 4 May 1989.
30. *Ibid.*
31. Al-Haq Fieldwork Report, 22 June 1989.
32. Al-Haq Affidavit No. 2031.
33. Kaldron, "Suspicious Objects."
34. Dan Sa'ir, "Children who were Burned and Wounded were Hurt by Stray Air Force Ammunition and Cannon Shells," *Ha'aretz*, 25 June 1989 (in Hebrew).
35. "Flares Left in Training Area Have Led to Wounding of Children in the Territories," *Hadashot*, 25 June 1989 (in Hebrew).
36. Kaldron, "Suspicious Objects."
37. In addition, physical force exercised in self-defence must also be limited to that which is both necessary and proportional to the situation in order to be lawful.
38. Al-Haq, *Punishing a Nation*, p. 19.
39. "Force Should Never be Used a Means of Punishment," *Jerusalem Post*, 24 February 1988. The item contains the text of a letter sent by Chief of the General Staff Dan Shomron to "all IDF commanders in the West Bank and Gaza."
40. Kenneth Kaplan, "Shomron Spells out Guidelines on Force," *Jerusalem Post*, 24 February 1988.
41. Kenneth Kaplan, "Harish: 'Punitive Beatings Illegal', Army to Brief Men on Limits of Force," *Jerusalem Post*, 23 February 1988.
42. Verdict in *Military Prosecutor v. First-Sergeant Adler Yitzhak et al.* (the Giv'ati I trial). *Findings*, paragraph 18 (in Hebrew).
43. Al-Haq, *Punishing a Nation*, p. 21.

44. David Makovsky, "Court Orders IDF to Courtmartial Col. Yehuda Meir," *Jerusalem Post*, 25 December 1989.
45. Al-Haq Affidavit No. 2085.
46. Al-Haq Affidavit No. 1927.
47. Al-Haq Affidavit No. 1667.
48. Al-Haq Affidavit No. 2026.
49. Al-Haq Affidavit No. 1830.
50. Al-Haq does not mean to suggest that the South African and South Korean security forces have refrained from the illegal use of force in other circumstances. It is, however, interesting to note that South Korea ordered the Israeli-made water cannons because these cannons are capable of shooting a well-aimed stream of tear gas mixed with water. The South Korean security forces stated that this method of shooting tear gas would spare bystanders and local residents needless suffering during the pursuit of student demonstrators. These vehicles have a water-carrying capacity of up to eight tons. They can also emit a smokescreen to conceal the whole vehicle. "Armored Vehicles with Water Cannons to South Korea," *Yediot Ahronot*, 30 October 1989 (in Hebrew).
51. The soldier killed in Nablus on 28 February 1989 was killed by a brick dropped from a building, not during a stone-throwing clash.
52. The Federal Laboratories handbook (untitled and undated), distributed by Federal Laboratories.
53. *Ibid.* See also Al-Haq, *Punishing a Nation*, p. 28.
54. Al-Haq Affidavit No. 1740.
55. Al-Haq Affidavit No. 2038.
56. See further Amnesty International, "Israel and the Occupied Territories: the Misuse of Tear Gas by Israeli Army Personnel in the Israeli Occupied Territories," 1 June 1988 (AI Index: MDE/15/26/88).
57. Al-Haq Questionnaire No. 89/00727.
58. Al-Haq Questionnaire No. 89/00042.
59. Al-Haq Questionnaire No. 89/00941.
60. Al-Haq Questionnaire No. 89/00114.
61. Al-Haq Affidavit No. 1741.
62. Ben Alofs, *More Than Tear-Gas: Harassing Agents and Their Use in the Israeli Occupied Territories* (Nijmegen, the Netherlands: De Stempel, 1988), p. 44.
63. Al-Haq Affidavit No. 1595.
64. Al-Haq Affidavit No. 1581.
65. Amiram Cohen, "From Rubber to Plastic," *Al-Hamishmar*, 3 February 1989 (in Hebrew).
66. *Ibid.*
67. *Ibid.*
68. Ron Ben-Ishay, "The Improved Rubber Bullet," *Yediot Ahronot*, 21 January 1989 (in Hebrew).
69. Al-Maqased Islamic Charitable Hospital, "Patients Admitted to al-Maqased Hospital Suffering from Injuries Due to the Uprising (Intifada) During February 1989," File Nos. 57/89, 201/89, 241/89, and 271/89.
70. DBPPHR, "Uprising Update, December 1, 1989." PHRIC's reports, compiled in East Jerusalem, are published by the DBPPHR in Chicago.
71. Al-Haq Affidavit No. 1559.

72. Al-Maqased Islamic Charitable Hospital, "Patients Admitted to al-Maqased Hospital Suffering from Injuries Due to the Uprising (Intifada) During January 1989," File No. 201/89.
73. Amnesty International, "Israel and the Occupied Territories: The Use of Live Ammunition by Members of the Israel Defence Force," 17 June 1988 (AI Index: MDE/15/30/88).
74. David Kretzmer, "Human Rights and the Rule of Law," *Jerusalem Post*, 8 December 1988.
75. Joel Greenberg, "Rabin: More Injuries 'Is Precisely Our Aim'," *Jerusalem Post*, 28 September 1988.
76. Al-Haq, *Punishing a Nation*, p. 16.
77. This is not to suggest that the plastic bullets used in Northern Ireland have not been fatal. Many people have been killed or severely injured due to the misuse of plastic bullets by the British security forces in Northern Ireland.
78. Cohen, "From Rubber to Plastic."
79. B'Tselem, "Information Sheet: Update, June 1, 1989," p. 3.
80. *Ibid.*
81. Joshua Brilliant, "Some Soliders Mix Live and Plastic Bullets," *Jerusalem Post*, 15 January 1990.
82. Interview with Maher Nasser, UNRWA Public Relations Office, 1 December 1989.
83. Joel Greenberg, "Harish Asked to Review IDF Policy in Areas," *Jerusalem Post*, 20 January 1989; Joel Greenberg, "MK Says Orders on Plastic Bullets Illegal', Urges Soldiers to Disobey," *Jerusalem Post*, 22 January 1989; Kenneth Kaplan, "What the Casualty Tolls Really Mean," *Jerusalem Post*, 23 January 1989.
84. Greenberg, "Plastic Bullets 'Illegal'."
85. Oscar Franklin, "Army's Top Legal Officer: Shooting Fleeing Rioters is Out," *Jerusalem Post*, 8 February 1989.
86. B'Tselem, "Information Sheet: Update, June 1, 1989," p. 3.
87. See for example the statement by Rabin cited above. A similar statement was made by Chief of the General Staff Dan Shomron on Israel Television on 25 January 1989.
88. Greenberg, "Plastic Bullets 'Illegal'."
89. Ami Dar, "Shooting and Defecating," *Jerusalem Post*, 21 February 1989.
90. Asher Felix Landau, "Use of Plastic Bullets is Legal," *Jerusalem Post*, 27 September 1989.
91. Al-Haq, *Punishing a Nation*, p. 16.
92. "They're Not Demonstrators," *Jerusalem Post*, 24 March 1989.
93. Amnesty International, "Amnesty International Calls for Judicial Inquiry into 'Wide-Ranging' Rights Abuses by Israeli Forces," 18 April 1989 (AI Index: MDE 15/05/89).
94. Kandela, "Medical Problems of the Intifada," no page indicated.
95. Joel Greenberg, "Villager Shot Dead as IDF Carries Out Searches," *Jerusalem Post*, 27 January 1989.
96. Michal Sela, "Two in Khan Yunis Attack Fatally Shot," *Jerusalem Post*, 5 February 1989, and al-Haq Database Report.
97. Michal Sela, "Troops Kill 3 in Gaza Clashes," *Jerusalem Post*, 19 March 1989, and al-Haq Database Report.
98. Michal Sela and Joel Greenberg, "Areas Violence takes High Toll in Gaza Strip," *Jerusalem Post*, 7 May 1989, and al-Haq Database Report.
99. Al-Haq Affidavit No. 1540.
100. Al-Haq Affidavit No. 1535.

101. Joel Greenberg, "Paratroop Officers to be Tried for Nablus Killings Last Year," *Jerusalem Post*, 30 November 1989.
102. *Ibid.*
103. Al-Haq Affidavit No. 1756.
104. Al-Haq Affidavit No. 2092.
105. Al-Haq Affidavit No. 1720.
106. Anonymous, "Gaza."
107. Amnesty International, "Town Arrest in Israel and the Occupied Territories," p. 5. (AI Index: MDE 15/16/84)
108. It is worth noting in this regard that the Palestinian flag is routinely referred to as "the PLO flag" by Israeli officials.
109. *Jerusalem Post*, 3 October 1985.
110. Joel Greenberg and Michal Sela, "Troops Not Ordered to Shoot Fleeing Rioters, Says IDF Legal Chief," *Jerusalem Post*, January 29, 1989.
111. Coroner's Report in *Jones v. Marshall*, 383 F. Supp. 358 (D. Conn. 1974), *aff'd* 528 F. 2d 132 (2d Cir. 1975), reported in Goldstein, Dershowitz, & Schwartz, *Criminal Law: Theory and Process* 331 (1974), as cited in J. Paul Boutwell, "Use of Deadly Force to Arrest a Fleeing Felon—and III," in James J. Fyfe (ed.), *Readings on Police Use of Deadly Force* (Washington, D.C.: Police Foundation, 1982), p. 84.
112. Al-Haq Affidavit No. 1980.
113. *Ibid.*
114. Al-Haq Affidavit No. 1943.
115. Al-Haq Affidavit No. 1945.
116. *Yediot Ahronot*, 5 July 1989.
117. *Ibid.*
118. Michal Sela and Kenneth Kaplan, "Soldiers May Fire Live Ammo at Unarmed But Masked Suspects," *Jerusalem Post*, 14 September 1989.
119. Al-Haq Affidavit No. 2199.
120. Al-Haq Affidavit No. 2198.
121. Joel Greenberg, "Two Gazans Killed in Clashes with IDF," *Jerusalem Post*, 5 October 1989.
122. Michal Sela, "IDF Cracks Down on Masked Palestinians," *Jerusalem Post*, 11 November 1989.
123. Joel Greenberg, "Soldiers can Shoot at Masked Youths Because They are the Uprising's Core," *Jerusalem Post*, 19 October 1989.
124. *Jerusalem Post*, 1 October–26 October 1989. According to the DBBPHR ("Uprising Update: November 1, 1989"), however, the true figure is 13.
125. Al-Haq Affidavit No. 1969.
126. *Ibid.*
127. Al-Haq Affidavit No. 2054.
128. Al-Haq Affidavit No. 1868.
129. Al-Haq Affidavit No. 1880.
130. Al-Haq Affidavit No. 1782.
131. Al-Haq later learned that Mr. Shakarna was hit by one live bullet in the right shoulder and that his other injuries, including those to his head, were caused by rubber bullets.
132. Al-Haq Affidavit No. 1770.

133. Amnesty International, *Political Killings by Governments* (London: Amnesty International, 1983), p. 5. The United Nations Committee on Crime Prevention and Control in 1988 adopted 20 principles aimed at the effective prevention and investigation of extra-judicial executions. The seriousness with which the international community views such actions by governments was underscored in the first principle:

Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offenses under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offenses. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which the deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

134. "Killings by Israeli forces," *Amnesty International Focus*, 3 January 1990.
135. Joel Greenberg, "Amnesty Fears Executions Used to Control Unrest," *Jerusalem Post*, 3 January 1990.
136. Michal Sela, "3 Palestinians Shot Dead in West Bank," *Jerusalem Post*, 11 July 1989.
137. Al-Haq Affidavit Nos. 2105, 2106, and 2107.
138. Joel Greenberg, "Palestinian Witnesses: Youth Shot After Surrendering," *Jerusalem Post*, 12 October 1989.
139. Al-Haq Fieldwork Report, 10 March 1989.
140. Amnesty International, "Fear of Extrajudicial Execution: Israel and the Occupied Territories: 'Atwah Lutfi 'Umar Hirzallah," 18 May 1989 (AI Index: MDE 15/11/89).
141. *Ibid.*
142. Joel Greenberg, "Territories Paralyzed by Strike: One Killed, 15 Reported Wounded," *Jerusalem Post*, 1 March 1989.
143. See for example; Steve Weizman, "Palestinians say Israel Uses Death Squad Against Arab Activists," *Reuter News Service* (Jerusalem), 23 October 1988.
144. Michal Sela and Oscar Franklin, "Unusual Release of Statistics: IDF: 26 Killed, 492 Wounded in Last 30 Days," *Jerusalem Post*, 17 January 1989.
145. Kenneth Kaplan and Michal Sela, "Rabin: NCOs May be Permitted to Fire Plastic Bullets," *Jerusalem Post*, 18 January 1989.
146. Lea Levavi, "West Bank Schools Closed to Protect Children," *Jerusalem Post*, 7 February 1989.
147. Anonymous, "Gaza."

Appendix 1-A

Brutality Against Minor by Military Officers

Translation of Sworn Affidavit No. 2175 Taken by al-Haq

I the undersigned, Fadi Samih Ma'ay'a, 13 years of age, a resident of Ramallah, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 4:15 a.m. on Saturday 9 December 1989, I was awakened by the sound of the key to the main door of the house falling down. I was sleeping alone in a room on the first floor. I immediately got up, went out of the room, and headed to the main door. Before I reached it, I suddenly noticed two persons in military uniforms surrounding me. One of them grabbed my neck, carried me, threw me onto the bed I was sleeping on, and bound my hands with a necktie that was on a nearby bed. This person was about 1.8 meters tall, white, and blond . . . He was wearing a military uniform and carried a gun approximately half a meter long. I saw three marks and something circular on his lapel. The other person was short, black-haired, dark, and held a gun similar to that of the first. He had a moustache. I saw two marks and something circular on his lapel.

Each was holding a switch-blade about a hand-span long. The blond of higher rank opened the blade and began to first cut my face, then my shoulders, belly, hands, and right leg. On my right leg he carved "9/12" [the date of the anniversary of the uprising]. This lasted about 20 minutes. Meanwhile, the other one was holding his opened blade and searching the room I was in. I then heard him search the other room. My mouth was not gagged; however, out of fear, I was not able to shout. After the carving, the blond one said to the other in Hebrew: "boyna," which means "come here." They began to talk in Hebrew, which I do not understand. They then left. I followed them and saw one of them, whom I could not identify, go into the kitchen, open the refrigerator, and shut it without taking anything from it. He went out of the kitchen. Both of them went towards the main door, shut it without locking it, and then shut the outside gate. I was watching them.

When they were out of sight, I went to the main entrance. My hands were still bound and I was not able to set them free. I saw the key of the main door there. I picked it up and locked the door. Then I went up to the second floor and woke up my family and told them what had happened. It should be noted that blood was dripping from the slashes.

In accordance with all of the above I hereby sign this statement on this date, 10 December 1989.

(Signature of affiant)

(Signature of the affiant's father)

Name available for publication

Appendix 1-B

Killing of a Youth by the Military

Translation of Sworn Affidavit No. 1974 Taken by al-Haq

I the undersigned, Jihad Muhammad As'ad 'Abd-al-Jabbar, 20 years of age, a resident of Beit-Lid in the Toulkarem district and a student at the nursing college in 'Amman, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 8:45 a.m. on Wednesday 19 July 1989, I was at the house of my uncle, Rasem Ahmad Thib, in the middle of the village near the mosque. I then heard the neighbors say that the Israeli military had entered our village of Beit-Lid, which is east of the city of Toulkarem. I decided to go back to my house, which is located about 150 meters away from my uncle's home, out of fear that a curfew might be imposed on the village.

I left my uncle's house accompanied by my youngest brother, Amjad Muhammad As'ad 'Abd-al-Jabbar, and proceeded towards our house. We did not take the main street. Instead, we took a side road through the fields. Several meters away from my uncle's house, we met Rasem "Samir" Subhi al-Akhras, who told my brother that he had been at his aunt's house and had decided to return to his house, which is near ours, when he heard about the arrival of the army. We walked together. Before we reached the main street, Rasem said: "Wait. I want to make sure that there are no soldiers in the street." He walked about five meters ahead and looked down at the street from a high slope. He was standing within my sight and I was watching him. He was holding nothing, neither stones nor any other thing.

Suddenly, I heard two shots and saw Rasem run towards me and shout: "I am wounded, I am wounded." He stopped near me and collapsed. Then I saw two soldiers approach and point their guns at us. I was confused and frightened. I lifted up his clothes to look for the wound. Blood was dripping from the right side of his chest. The soldiers shouted at me in Arabic: "Go home," but I refused, and tried to do something to help Rasem. I approached him and started to shout, so that the neighbors would come and help him, but the soldiers prevented everybody from doing so. One of the soldiers pointed his gun at me and shot two bullets. One of them hit my right shoulder and the other hit my left thigh. When I touched my body, I realized that the bullets were rubber, because I wasn't bleeding.

While I was checking to see if I was wounded, the two soldiers forcefully kicked my leg and hit my hand with their gunbutts. I also saw the soldiers shooting at people who were trying to approach Rasem. I saw a woman wounded in her left wrist; she was bleeding. I was forced to leave the site and go where the women were gathering, and so was not able to see Rasem, who was about 40 meters away from us. After that, a group of women and I went to the area near our house in an attempt to do something to aid Rasem. When we tried to come back, the soldiers prevented us.

At around 1:00 p.m., I was informed by the people of the village that Rasem had passed away, and that his corpse had been transferred to the Abou-Kbir Forensic Institute.

In accordance with all of the above I hereby sign this statement on this date, 3 August 1989.

(Signature)

Name available for publication

Appendix 1-C

Killing of Youth at Close Range by the Military

Translation of Sworn Affidavit No. 1987 Taken by al-Haq

I the undersigned, Sadiqa As'ad Khalil al-Ramini, 65 years of age, a resident of Beit-Lid in the Toulkarem district and a housewife, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At 12:00 noon on 15 June 1989, I, my son Nadi Ahmad 'Atallah, and his cousin, Farouq Mustafa 'Atallah, were at home in Beit-Lid, located south of the city of Toulkarem. While I was on the veranda overlooking the unpaved road that leads from our house to the mosque, I saw a youth running about three meters away. I also saw a soldier running quickly after the youth and pointing his gun at him. The youth was not more than three or four meters away from the soldier.

I then heard the sound of a gunshot, so I quickly went down to the street. I found the youth lying on the ground, crying and bleeding. I approached him, but the soldier prevented me, and said to me, in Arabic, "go away from here," and pointed his gun at me. Another soldier was standing about three meters away from the first. I refused to return home, but the soldier began to shout: "Go away! Go home!" so I went three steps back. At that point, I saw the same soldier who had shot the youth point his gun at the youth's waist and shoot another bullet, and the bleeding youth screamed in pain. I rushed to the youth on the ground. The soldier pointed his gun at me and shouted: "Go home!" so I started to yell: "You killed him! You killed him! He's dead! He's dead!" but none of the neighbors came out of their houses. The youth continued to cry and bleed. At that time, I heard the other soldier say to the one who shot the bullets, in Arabic: "You killed him." He answered: "Let him die." After that, I saw the soldier who shot the bullets raise up the youth's hand and then let it go, so it fell down. At that point, he said to me: "Come and take him now. Is this your son?" Then the two soldiers left the site.

At that time, my son and his cousin carried the wounded youth, who was still screaming, into the house. My son, his cousin, and I took off the wounded youth's clothes. I was able to see the wound in his waist. It was bleeding heavily. Then my son brought his private car and transported the wounded youth to the hospital in Nablus. I learned that he was later transferred to Ramallah Hospital.

I was informed by my son, who carried the youth into the house, that the youth was Ahmad 'Abd-al-Fattah Ghanem. Two days ago, I learned from my son and the residents of the village that Ahmad had died at Ramallah Hospital.

In accordance with all of the above I hereby sign this statement on this date, 3 August 1989.

(Signature)

Name available for publication

Appendix 1-D

Killing of an Elderly Man by the Military

Translation of Sworn Affidavit No. 1752 Taken by al-Haq

I the undersigned, Intisar Ahmad Mahmoud Abou-Sneina, 23 years of age, a resident of Hebron and unemployed, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 2:00 p.m. on Sunday 9 April 1989, while I was at home with my family in the Qaytoun quarter of Hebron, I saw four soldiers enter the courtyard of our house. The soldiers proceeded toward the house of my uncle, which adjoins ours. I went outside to see what was happening and saw the soldiers beating my cousin, Hasan Hmeidan Abou-Sneina, age 18. I asked the soldiers, "why are you beating him?" One of them said to me: "Go back to your home." The soldier then attacked me and struck me on the face with his club. I felt dizzy and rushed into the house.

At this point my father, who is 63 years old, saw me and went outdoors to find out what was happening. He went toward my uncle's house through a corridor connecting the two houses. The soldiers who were standing at the entrance to the corridor stopped him. They began to beat him on his back and chest with their gun-butts and truncheons. Despite this, my father continued trying to enter my uncle's house. One soldier then pushed my cousin into the house and locked the door. The other soldiers, who were outside, again beat my father, this time on his head and his body. They started beating me again as well.

My father then managed to grab a club from one of the soldiers who was beating him. The soldiers tried to retrieve the club. Two of them pushed me away because I was protecting my father, and another pushed him into a garden located at the side of the house, where he fell on his back. My father didn't take the club in order to fight the soldiers, but to stop them from beating us with it. He said to them: "You won't get it until the military governor comes here." The soldiers continued in their attempts to retrieve the club. My father told them: "Get out of the house, and then I will deliver it to you." But they insisted on retrieving it in order to continue beating us with it.

When my father fell on the ground, a soldier shot at the ground between my legs, and threatened to kill me if I didn't get back in the house.

When my father tried to stand up, two soldiers shot at his legs, wounding him. Although he began to bleed, he did not fall down and continued holding the club. A soldier ordered him: "Give us the club!" My father answered: "I won't return it unless you bring a high-ranking officer or the military governor."

At this point I noticed a tattoo on the arm of one of the soldiers who shot my father. The tattoo was in Hebrew, which I can read and write. I took a piece of paper I found lying in the garden, and asked my sister for a pen. I then noted the text of the tattoo: "Temos G 50." While I was writing down these words, the soldiers noticed what I was doing and became very angry. They attacked me and began beating me severely all over my body, but I did not fall to the ground. My father saw them beating me and rushed toward me, trying to protect me with his body. One of the soldiers pushed

him, and he fell on the ground a second time.

My father was still holding the club. He then got up. At this time, three soldiers began shooting at the ground next to a nearby wall in order to frighten me. After that, a soldier again asked my father to return the club, but my father refused and repeated: "After you go out to the street, I will give it back."

A soldier picked up the field radio. I heard him saying, in Hebrew: "Someone has taken away my club and refuses to give it back." I then heard the reply through the radio: "Get it back the same way he took it from you." The soldier asked my father to give him back the club, and my father refused. The soldier attacked my father, but my father pushed him away. One of the soldiers then shot my father, wounding him in the neck. He did not fall to the ground, however, and was still firmly holding the club in his hands. One of the soldiers tried to snatch it from him, but my father did not let go.

After two minutes, another shot was fired at my father, this time at his chest. He fell down. I was holding my father in my arms. I heard him shouting "Allahu Akbar" ("God is great"). Then, my brother, 21 years old, came out and saw my wounded father surrounded by soldiers. My brother tried to ask what was happening, but one of the soldiers shot him from a distance of four meters and injured him in his mouth. My brother shouted "Allahu Akbar," and ran away. I did not see him after that. I focused my attention on my father, who was lying in my arms and wounded in the chest, neck, and legs. Two minutes later, another soldier shot my father and wounded him in the abdomen. I looked toward the soldier, and noticed his features. He was blond, blue-eyed, thin, and short. Then I looked at my father, and saw that he was dead. I shook him, but he did not move. At this point one of the soldiers rushed toward him, snatched the club from his hand, and left. The other soldiers began to kick my father's body to make sure that he was dead.

It should be noted that while my father was lying wounded on the ground, ambulances from the Palestinian Red Crescent Society and 'Aliya Hospital in Hebron arrived, but the soldiers prevented them from helping my father or even from coming close to him. They told the ambulance drivers to leave.

The whole incident lasted about an hour. After my father died, many military personnel came to the area and imposed a curfew. They dragged my father's body from the courtyard to the main street, which is 15 meters away from the house. They left the body lying on the ground. They tried to get me away from the body, and when they failed, began to shoot at the area between my legs in order to frighten me, but I refused to leave my father's body. They then brought a gravel-thrower [a vehicle] and began to spray me with gravel in order to force me to leave my father, but I remained beside him.

A quarter of an hour later, an officer arrived and asked about the incident. I went towards him and said to him, in Arabic: "You should speak with us. Two soldiers killed my father and attacked me . . ." The soldiers did not let me finish and began to push me away from the officer. The officer said nothing, and the soldiers took me to my uncle's house. But, I returned to where the body of my father was lying. I then saw some people wearing civilian clothes. Apparently, they were intelligence agents. They began to survey the area of the incident, and I said to one of them: "This is

what your government does to us." He answered me: "Why did your father go to a house which is not his own." I replied that it was my uncle's house, and that my father was the legal heir to my uncle. But he didn't listen to me, and left the area. After that, six soldiers arrived at our house and began searching it in a provocative manner. They asked about the wounded person, meaning my brother. I informed them that he was in the hospital. Up to this point, my father's body was still lying in the street. It was left there for an hour. Then they took the body in a military vehicle to the military headquarters and then to the Abou-Kbir Forensic Institute. The body was delivered to us after three days, on condition that only eight relatives attend the burial, which was at 4:00 a.m. There were many soldiers present as well. Before they delivered the body, soldiers threw tear gas at our house. Until this day, no officials, either from the government or from the police, have asked me for an affidavit.

I would like to add that a few minutes after the soldiers searched the house, my brother returned from the hospital. When the soldiers saw him, they arrested him. I tried to follow them in order to know where they were taking him. An officer raised a blood-stained knife to my face and pushed me away with it. I told him that if he wanted he could kill me. Later on, a number of soldiers came to the place and began to beat me all over my body. Then they forced me to go to my uncle's house, and threatened that they would shoot me if I left it. At about 4:30 in the afternoon that same day, a Red Cross representative tried to see us, but the soldiers would not let him enter our house. I was also forbidden to talk to him. Then they took me to the Military Governor's headquarters, where I remained until 8:00 p.m., but they never questioned me. I was then released ...

In accordance with all of the above I hereby sign this statement on this date, 17 April 1989.

(Signature)

Name available for publication

Appendix 1-E

Killing of a Youth by the Military

Translation of Sworn Affidavit No. 1960 Taken by al-Haq

I the undersigned, Nafitha Taha 'Id Abou-Sneina, the holder of identity card no. 91408544, 19 years of age, a resident of Hebron and unemployed, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

My house is located near the main Hebron-Yatta road, on Martyr Radwan Street in the Wadi al-Qadi quarter.* The house has two floors and overlooks the main street, which is about 30 meters away. At approximately 8:30 p.m. on the night of 12 July 1989, coinciding with the Muslim feast of al-Adha, I heard the sound of shooting from in front of our house. I did not know the cause or the result of the shooting. About 30 minutes later, while I was watching television, I again heard shooting near our house. I went to the veranda which overlooks the main street, and saw a large number of soldiers on the sidewalk. They were accompanied by military jeeps and a military ambulance. I noticed ten soldiers standing in a semi-circle. The searchlights of the jeeps and the other military vehicles enabled me to see clearly. I looked carefully and saw a person lying on the ground surrounded by soldiers. He was wearing a green shirt, and I assumed that he was an Arab. At that time, I saw a soldier kick him in the side and another one put his hands around his neck. Immediately after that, I saw the youth thrashing with his arms as if to defend himself. After that, one of the soldiers pinned the youth's legs to the ground and another grabbed his neck with both hands. This lasted about five minutes. I then saw the youth's hands go limp. The soldiers left him. One of them turned him over with his leg, so that the youth's face was against the ground. When they felt that he had died, I heard them laugh, and saw one of them signal to the military ambulance, which was approximately ten meters away from them, to approach near them.

A man wearing a white shirt stepped out of the military ambulance and approached the youth, who was lying on the ground. I saw him lift the youth's clothes from his chest and make motions, as if to take something out of his belly. After that, I saw the man wearing a white shirt put something that I think he took out of the youth's belly onto a white piece of cloth in his hand. I do not know what it was. Then the person wearing civilian clothes returned to the ambulance. Two soldiers approached the youth lying on the ground, lifted him by his legs and hands, and forcefully threw him on the floor of the military jeep. During this, one of the soldiers opened fire at the veranda I was looking from. The glass was smashed and the bullets penetrated the house. It was miraculous that I, my mother, and my children, who were all watching from the veranda windows, were not injured. I think that the soldiers stayed for about 15 minutes near our house.

The next day, I learned that the Muhammad Abou-Hamdiya Gheith had been killed. I was informed by his family that he was wearing a green shirt, so I think that he was the person whom I saw lying down on the ground surrounded by the soldiers.

*During the uprising, many streets in the Occupied Territories have been renamed after persons killed by the security forces.

I believe that they killed him, and that they could have saved his life, especially as Muhammad 'Ali Hospital was not more than 100 meters away.

In accordance with all the above I hereby sign this statement on this date, 28 July 1989.

(Signature)

Name available for publication

Appendix 1-F

Killing of a Youth at Close Range After Arrest

Translation of Sworn Affidavit No. 1977 Taken by al-Haq

I the undersigned, 'Itaf 'Abd-al-Qader Muhammad Fayyoumi, 48 years of age, a resident of Qalqiliya and a housewife, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 10:30 a.m. on Wednesday 2 November 1988, my neighbor, Um Ghazi al-Hajjar, informed me that youths were running away from soldiers who were at the entrance of our street . . .

I went inside and closed the door. About five minutes later, I heard someone knock on the door, so I opened it. I saw three soldiers standing there. I asked: "What do you want, Khawaja?"[†] A soldier replied, in Hebrew: "Sheket!" ["Shut up"], and put his finger to his mouth in a gesture indicating his order. The three soldiers then entered the house. Two of them went upstairs, where my married son Kamal lives. He was sitting with his brothers, Muhammad and Jalal, who had gone upstairs to his apartment 15 minutes earlier. Before that, Muhammad and Jalal had been in the ground floor apartment where we live. The third soldier went up four steps and stood looking at me and my husband, 'Abd-al-Qader, who was standing next to me.

Two minutes later I saw my son, Jalal, come downstairs while a soldier was holding him from behind by the collar. I then saw the soldier who was standing on the fourth step point his gun at Jalal and shoot him several times. Jalal fell down onto the bottom step. The soldier then went upstairs, stood over Jalal, pointed his gun at his chest and shot him again. I ran upstairs and threw myself over Jalal, but the soldier began shooting at me and my son, wounding me in the arm. I saw blood dripping heavily from my son's mouth . . .

I started screaming and crying. The soldiers left us and went down the stairs, shooting heavily and indiscriminately. After that, I quickly ran out to the street and began to shout "My son! My son!" My arm was still bleeding. A neighbor bandaged it for me. At this point I began fainting, so I sat down. One of my relatives, Taysir al-Fayyoumi, and my son, Kamal, took my wounded son Jalal out to the street. Taysir brought a car. We put Jalal in the car and got into it. At the entrance to the street, the soldiers stopped us for about two minutes, preventing us from proceeding further. We began to scream and cry, so the soldiers, including the one who shot my son . . . allowed us to go on.

On our way to the hospital, located in Kfar-Saba, a tire was punctured, forcing us to stop. Taysir, who was driving the car, signalled to the passing cars to stop and help us take Jalal to the hospital. Some Israeli civilian cars stopped, but they refused to take him to the hospital when they learned that he had been shot by soldiers.

About 15 minutes later, a Palestinian from Kufr Barra, a village inside the Green Line, stopped and agreed to take us. However, before we left for the hospital, an ambulance arrived and took Jalal to Me'ir Hospital in Kfar Saba, about five kilometers away. The doctors and nurses in the ambulance refused to take me with them. They insisted

[†]A term of salutation used to address foreigners.

that I get out, or they would not take my son. Even though my arm was still bleeding heavily, I got out so that my son would receive first aid quickly.

The driver from Kufr Barra took me to the above-mentioned hospital and I received first aid there. They carried me on a stretcher to a corridor. I stayed there about 30 minutes, after which I was taken to a room. My arm was still bleeding. I remained in the room until 12:30 a.m, when my relatives had paid NIS 450 [approximately \$US 225]. I was then taken to the operating room. They put my arm in a cast.

The next morning, I left the hospital and was told to continue treatment at a West Bank hospital. I was informed by my relatives that Qalqiliya was under curfew, so they took me to their house in the town of Jaljouliya, which lies inside the 1948 Israeli borders. I learned that my son had died the day before. On the same day, I was taken to al-Maqased Hospital in Jerusalem, and two surgical operations were performed on my arm. I stayed in the hospital for two months. My arm remained in the cast for seven months.

It should be noted that my sons gathered 24 bullet casings from the location where my son was shot . . . About 70 days after my son was killed, my husband, my son Kamal, and I were summoned to the military compound in Qalqiliya. We met an officer there, and he took separate affidavits from my husband, my son, and myself concerning the incident.

In accordance with all of the above I hereby sign this statement on this date, 31 July 1989.

(Signature)

Name available for publication

Appendix 1-G

Killing of a Minor by Border Police

Translation of Sworn Affidavit No. 1988 Taken by al-Haq

I the undersigned, [name withheld], 20 years of age, a resident of the village of Balata in the Nablus district and an owner of a chair-making shop, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 4:30 p.m. on Monday 1 August 1989, while I was in my house located across from the eastern section of Balata Refugee Camp, I heard the sound of a gunshot. I was lying in bed, so I got up. I stood in front of the second-floor window and looked out onto the street and the adjacent football field, where the boys usually play. I saw a Border Police vehicle. A soldier jumped out of it and ran towards the playground. I then saw three boys, not more than 13 years old, running. I knew that the soldier was chasing them.

I immediately moved to another room to see what was going on more clearly. When I reached the window on the western side of the house, I saw the same soldier stop, kneel, and point his gun at the boys, who continued to run and were approximately 120 meters away from him. I heard two shots. Immediately, I saw one of the boys collapse, wounded. After that, the military jeep approached the boy who had collapsed, and another soldier got out of it. One of them kicked the boy, apparently to see whether he was wounded or dead. They carried him to the jeep, and drove away. Later, I learned that the boy's name was 'Ala' Musallam al-Nadi, 13 years old, and that death was instantaneous.

It is important to note that the soldiers could have arrested the boy had they wanted to, because he fled into an open area in which there was no place to hide. The killing was not justified at all.

In accordance with all of the above I hereby sign this statement on this date, 6 August 1989.

(Signature)

Name withheld from publication

Appendix 1-H

Killing of a Minor by the Military

Translation of Sworn Affidavit No. 2057 Taken by al-Haq

I the undersigned, Kamal Jamil Mahmoud Hamdan, holder of identity card no. 99301124, 30 years of age, a resident of 'Aqaba village in the Jenin district and a laborer, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 11:30 p.m. on 7 September 1989, while I was in a shop located on the main street of 'Aqaba village, and while scores of male and female students were on their way home after school, I saw two military vehicles moving slowly on the main street in the direction of Zababda village.

I saw one of the vehicles pass close to a youth who was walking on the sidewalk. This youth was my 14-year-old cousin 'Abd-al-Latif al-Haj Qasem. 'Abd-al-Latif jumped over the stone wall of a nearby house. Meanwhile, the military vehicle stopped and about ten soldiers jumped out. I saw one soldier point his rifle at the youth and heard a single shot. Then, the same soldier went closer to the wall and fired another shot. The distance between the vehicle and the youth was not more than 20 meters. When I heard the second shot, I saw the youth fall to the ground. From where I was standing, about 35 meters away, I could see 'Abd-al-Latif bleeding, especially from the abdomen.

A few seconds later I saw Wa'el 'Awad Sa'id, aged 27, who is the owner of the yard in which the incident occurred, come out of his house and approach the injured youth. Meanwhile, I saw a soldier fire two shots at Wa'el. Wa'el backed up a little and threw himself on the ground. I saw blood flowing out of his abdomen. One minute later, about six soldiers tried to approach the two injured youths. At that moment, scores of residents, women, children, and old people gathered near the area where the incident occurred. Stones began flying. I heard gunshots and smelled tear gas, and saw several inhabitants bleeding from gunshot wounds. I also saw many inhabitants, especially young schoolboys and girls, crying, screaming and coughing as a result of the tear gas. During the clashes, I saw residents transport the injured in their cars to hospitals and nearby medical clinics.

At 1:00 p.m., news of the death of 'Abd-al-Latif spread in the village. At 3:00 p.m., I saw large numbers of soldiers patrolling the village. I heard them announce a curfew through their loudspeakers. Half an hour later, from my house, which is close to the area where the incident occurred, I saw groups of soldiers entering the neighboring houses. I saw another group of soldiers leading four youths through the streets and alleys of the village. I saw soldiers tie the youths by their hands to the lampposts in the main streets ...

In accordance with all of the above I hereby sign this statement on this date, 14 September 1989.

(Signature)

Name available for publication

Appendix 1-I

Text of al-Haq Alert on the Summary Execution of Yaser Abou-Ghosh in Ramallah

On Monday 10 July 1989, men dressed in civilian clothes shot and killed 17-year-old Yaser Abou-Ghosh in the center of Ramallah. After extensive interviews with eyewitnesses, al-Haq is convinced that the killing of Yaser Abou-Ghosh was a case of summary, extra-judicial execution by individuals acting on behalf of the Israeli authorities.

Background

Yaser Muhammad Dib Abou-Qteish Abou-Ghosh, 17, was a resident of the village of Beitouniya in the Ramallah district of the Israelioccupied West Bank. At the time he was killed, it appears that the military had been searching for Mr. Abou-Ghosh for at least three months. On several previous occasions, soldiers had come to both his and his brother's house to arrest him, but without success. On 11 April 1989, his brother had been detained for a week in an apparent attempt to pressure Mr. Abou-Ghosh to surrender to the authorities.

Then, on 2 July 1989, while no demonstration was taking place, Mr. Abou-Ghosh was chased through a section Ramallah by a soldier who jumped out of a jeep and shot at him repeatedly. He was not wounded. Four days later, on 6 July 1989, Mr. Abou-Ghosh was again chased through the center of Ramallah, this time by men dressed in civilian clothes. They also shot at him, again without wounding him.

According to media reports published subsequent to the killing, the Israeli authorities accused Mr. Abou-Ghosh of membership in the Popular Front for the Liberation of Palestine, organizing demonstrations, throwing Molotov cocktails, and attacking a collaborator. Mr. Abou-Ghosh was also alleged to have participated in a demonstration in a different area of Ramallah earlier on the day he was killed.

Al-Haq's Documentation

Al-Haq began to document the killing shortly after it took place and continued its investigation during the following days, interviewing at least thirty eyewitnesses and taking statements under oath. From the testimony of these eyewitnesses, a clear and consistent picture emerges; differences of opinion among witnesses relate only to minor details of the event.

Summary of Facts

- (1) At approximately 11:30 a.m. on Monday 10 July 1989, Yaser Abou-Ghosh and some friends were walking on Palestine Street, the main road dividing the twin cities of Ramallah and al-Bira. Palestine Street leads from the central square (al-Manara) of Ramallah to Jerusalem. The youths were walking toward the

central square and were directly across from the Hisba, the open-air vegetable market of al-Bira.

- (2) At that time, a white Volkswagen flat-bed van with West Bank (blue) license plates was driving on Palestine Street in the opposite direction, from the direction of the central square toward Jerusalem. When it reached the area where Mr. Abou-Ghosh and his friends were walking, it braked and came to a sudden halt. It was facing Mr. Abou-Ghosh, who was walking in the direction of the central square. Some witnesses report that a Palestinian who is a known collaborator with the Israeli authorities was sitting outside a coffee shop in the same location and gave a hand signal to the men in the Volkswagen.
- (3) Three men jumped out of the back of the car, while two remained seated in the front.
- (4) When Mr. Abou-Ghosh and his friends saw the men emerge from the Volkswagen, they began to run toward the central square, the same direction in which they had been walking. The three men ran after Mr. Abou-Ghosh, firing pistol shots into the air. (Eyewitnesses later collected 9 millimeter bullet casings, which are typically used in pistols). The Israeli authorities subsequently claimed that the men who emerged from the car ordered Mr. Abou-Ghosh to stop. Eyewitnesses contradict this claim.
- (5) One of the two men who remained in the Volkswagen placed a blue light (like those used by police cars) on the roof of the van.
- (6) After running for about 30 meters, Mr. Abou-Ghosh and his friends reached the corner of a small side street on their left and entered it, thus running away from Palestine Street. His friends ran along the sides of the street, while Mr. Abou-Ghosh was nearer to the middle.
- (7) The three men, one in front of the others, followed the youths. As soon as the first man turned the corner leading into the side street, he stopped, took aim at Mr. Abou-Ghosh, and fired at him. When the bullets were discharged, the distance between the man and Mr. Abou-Ghosh was at most seven meters. Some witnesses report having heard five shots fired in rapid succession.
- (8) Mr. Abou-Ghosh was struck by several bullets. About 20 meters into the side street, he fell to the ground. His friends continued running and managed to escape.
- (9) The three men who had been chasing the youths bent over Mr. Abou-Ghosh. One of them walked back toward the Volkswagen to summon his colleagues. They backed up the van from where it had stopped in Palestine Street toward the corner of the side street, and then turned into the side street and parked close to Mr. Abou-Ghosh.

- (10) Within seconds, two military jeeps arrived. Soldiers jumped out and ordered local residents and shopkeepers to leave. They also set off two "sound bombs" to scare away bystanders.
- (11) As the men stood around Mr. Abou-Ghosh, a local doctor who was wearing a white doctor's coat and a stethoscope around his neck, approached the soldiers. He identified himself as a doctor, and requested permission to see Mr. Abou-Ghosh. The soldiers pushed him away.
- (12) According to eyewitnesses interviewed by al-Haq, the soldiers then lifted Mr. Abou-Ghosh in a rough manner without any regard for his obviously severe medical condition. They dropped him onto the floor in the back of one of the jeeps, with his head and shoulders resting against one of the seats.
- (13) At this point the doctor managed to push past the soldiers and reach the jeep. He placed his hand on Mr. Abou-Ghosh's neck in order to feel his pulse. The doctor is absolutely certain that at that moment Mr. Abou-Ghosh had a pulse and was still alive.
- (14) As the doctor was feeling Mr. Abou-Ghosh's pulse, the jeep began to pull away. The doctor jumped onto the back of the jeep and attempted to hang on, but fell back after a few seconds. He then ran after the jeep for a few meters before giving up. He saw that at that moment, Mr. Abou-Ghosh's head and shoulders fell off the seat so that they were hanging outside the jeep. A soldier subsequently returned Mr. Abou-Ghosh's to his original position. The jeep then turned around the block and, in full view of local residents and shoppers, drove through the center of town, entered Radio Street in Ramallah, and drove towards the Ramallah military headquarters.
- (15) After the jeep carrying Mr. Abou-Ghosh had left, the men in civilian clothes returned to their Volkswagen van and drove away.
- (16) A Palestinian lawyer who was inside the military headquarters that day reported that at 12:30 p.m., he heard a car arrive and a voice yell, in Arabic: "There is an injured person!" The lawyer went outside the building and saw a jeep pull up next to the military court building. Three soldiers got out of the jeep. They pulled a person out of the back of the jeep by his legs. The lawyer saw blood dripping onto the ground. The soldiers dragged the person into a room, after first stopping to unlock the door. Shortly thereafter, the soldiers re-emerged, but without the person. They entered the jeep and drove into the prison compound. After approximately half an hour, the lawyer asked a different soldier what had happened. The soldier replied that the person who had been in the jeep had tried to throw a Molotov cocktail at soldiers.
- (17) At 3:30 p.m., the lawyer saw an Israeli ambulance arrive. Two soldiers who were in the area entered the room, and after approximately half an hour re-emerged with a body wrapped in a cover. They placed the body on a stretcher and put it

into the back of the ambulance, which then left. The lawyer emphasizes that at no point that afternoon did he see anyone who looked like a doctor or a medic.

- (18) Mr. Abou-Ghosh's corpse was returned to his family in Beitouniya at 1:00 a.m. on Wednesday 12 July, approximately 37 hours after he had been shot. Only 15 persons were permitted by the authorities to attend his funeral, which took place under heavy military guard. Relatives of Mr. Abou-Ghosh assert that they could see that an autopsy had been performed on Mr. Abou-Ghosh's corpse. They also saw one bullet wound to the left shoulder and at least two or three bullet wounds to the head. In addition, Mr. Abou-Ghosh's relatives state that his chin showed bruises and that one of his temples was swollen.

Al-Haq's Concerns

- (1) From the testimonies of eyewitnesses it appears that Yaser Abou-Ghosh was killed at a time when no demonstrations were taking place, and that no attempt was made to arrest him. At the moment that the fatal shots were fired, the assailant was about to catch up with Mr. Abou-Ghosh and could have stopped him without opening fire. It should be noted that the men were dressed in civilian clothes and did not identify themselves as law enforcement officials, and Mr. Abou-Ghosh was therefore under no legal obligation to halt. It should also be emphasized that Mr. Abou-Ghosh was not armed at the time of his death and in no way posed a physical threat to his attackers.
- (2) All evidence points at open cooperation between the assailants and the military, indicating official complicity in the killing. Soldiers were present in the immediate vicinity of the killing; in fact, the military has maintained a regular presence in the center of Ramallah since the beginning of the uprising. Soldiers were posted on a roof in the immediate vicinity of the events described here; they must have been able to witness the events from beginning until end. Immediately after the killing, two army jeeps appeared at the site where Mr. Abou-Ghosh had fallen. Yet, no attempt was made to question, let alone arrest the perpetrators, who left the scene without being stopped. Al-Haq has documented numerous other cases during the uprising in which men dressed in civilian clothes arrived in cars bearing local license plates and open fire at Palestinians, on several occasions killing them.

Indications of official complicity in the killing were confirmed by an item in the *Jersusalem Post* of 16 July 1989, in which an Israeli military spokesperson was quoted as saying that Mr. Abou-Ghosh was killed by "security forces" after ignoring an order to halt.

- (3) No attempt was made to save Mr. Abou-Ghosh's life after he collapsed to the ground. A doctor was physically prevented from examining him and soldiers dropped Mr. Abou-Ghosh into the back of a jeep without any regard for his condition. A doctor was able to ascertain that Mr. Abou-Ghosh was still alive after he had been put in the jeep. Rather than taking Mr. Abou-Ghosh to

the nearest hospital, which is approximately a two-minute drive from where he had been shot, the soldiers took him to military headquarters. The doctor who took Mr. Abou-Ghosh's pulse has noted in testimony to al-Haq that (a) soldiers are not necessarily certified medics; (b) seriously injured people should not be moved except on the advice of a doctor; and (c) a seriously injured person should be transported by an ambulance, not a military jeep, and be taken immediately to a hospital, not military headquarters. International law is also very clear on the right of the injured to prompt medical care.

Conclusions

In al-Haq's view, the killing of Yaser Abou-Ghosh in downtown Ramallah on 10 July 1989 was a summary execution, constituting an act of wilful killing, and carried out by individuals acting in cooperation with or on behalf of the Israeli military. Al-Haq takes a very grave view of the above events, especially since it has been documenting a growing number of deliberate killings during the recent period. A pattern of such killings is beginning to emerge.

We note that Article 147 of the 1949 Fourth Geneva Convention classifies wilful killing as a grave breach of the Convention, equivalent to a war crime.

The killing of Yaser Abou-Ghosh was wilful, because (a) it was carried out by agents of the Israeli State; (b) no attempt was made to arrest Mr. Abou-Ghosh; (c) bullets were aimed at Mr. Abou-Ghosh from very close range, with no attempt to shoot at his legs as per Israeli army regulations; and (d) Yaser was denied the medical treatment he urgently needed.

We call upon the Israeli authorities to bring those responsible for the killing of Yaser Abou-Ghosh to justice. Failure to do so will be tantamount to encouraging the commission of further grave breaches. We therefore call upon state signatories to the Fourth Geneva Convention to monitor this case, and, if the Government of Israel fails to prosecute the perpetrators, carry out their obligation under Article 146 of the Convention to bring the perpetrators to justice in their own courts.

To further the cause of justice, al-Haq is prepared to make available any evidence at its disposal and to encourage eyewitnesses to step forward and give testimony.

22 JULY 1989

Chapter Two

Medical Care

Introduction

[T]he injured man began to move slowly ... after he had walked about 20 meters, three or four soldiers came after him and began beating him ... with their clubs and fists and kicking him. They continued to beat him for more than five minutes ... [shortly thereafter] he died.¹

Repeated incidents of shootings, beatings, and the abuse of tear gas by the Israeli military during the current Palestinian uprising have caused the health needs of the civilian population of the Occupied Palestinian Territories to outstrip the available medical services.² Israeli military personnel have beaten wounded Palestinians, delayed ambulances transporting the injured, physically mistreated doctors and other health care professionals, raided medical facilities, and adopted measures which reduce the quality and availability of health services.* In al-Haq's opinion, these abuses illustrate a disregard for the most fundamental humanitarian norms on the part of the military government.³

Israeli officials, including Minister of Justice Dan Meridor, have attempted to justify human rights abuses in the West Bank and Gaza Strip by claiming that Israel is fighting a "war" which warrants "extraordinary measures."⁴ This justification was repeated by Dr. Ram Yishai, President of the Israel Medical Association, in a report to the Secretary of the World Medical Association regarding Israeli violations of medical human rights: "[W]hat is called the dispersal of demonstrations is nothing but a state of war."⁵ Such statements are not only factually incorrect when used to describe the unarmed civil uprising in the Occupied Territories; they also fail to offer a legal justification for Israeli practices.

Even the minimum international standards governing the treatment of wounded combatants and medical personnel in wartime have been violated by the Israeli authorities in their conduct towards Palestinian civilians. International law requires that, in time of war, ambulances and health facilities be free from military attack,

*See further Chapters Five, "Torture and Death in Detention" and Eleven, "Curfew and Other Forms of Isolation."

medical personnel be respected and protected, and wounded combatants be humanely treated and receive prompt access to medical care. Yet, as the incidents described below demonstrate, wounded Palestinian civilians and medical teams providing them with aid have been denied these basic protections. Al-Haq also shows that the abuses of medical human rights which have occurred in the Occupied Territories violate published instructions issued to Israeli soldiers. In September 1989, Israeli Chief of the General Staff Dan Shomron reportedly ordered the distribution of a document to every Israeli soldier which stated the following with regard to medical care:

The movement of ambulances and other medical services is not to be prevented and should not be unnecessarily delayed. The administering of medical care to injured people must not be hindered.⁶

Violations of these instructions and the standards articulated by international humanitarian law have been criticized by numerous local and international humanitarian agencies during the past two years. Despite these complaints, little action (in terms of either investigation or disciplinary action) has been taken by the Israeli authorities to end these abuses.

This chapter begins with an examination of those violations which occur immediately after an individual has been wounded. Subsequent abuses, which take place while the injured are en route to health facilities or inside them, are then discussed. Violations of medical neutrality are also investigated. The purpose of this review is to illustrate systematic patterns of abuse through selected examples rather than to provide an exhaustive list of all violations during 1989.

A. Legal Standards

International humanitarian law establishes minimum standards which are applicable to the conduct of the Israeli military in the Occupied Territories. These norms accord special protection to health facilities, medical personnel, the sick, and the wounded. References to the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War will be supplemented with references to the Regulations annexed to Hague Convention (IV) of 1907.⁷

Provisions of the 1949 First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field are also discussed. In doing so, al-Haq is not suggesting that the First Geneva Convention applies to the current situation in the Occupied Territories. Rather, it is used to illustrate that the Israeli military, in its treatment of injured Palestinian civilians, violates even the protections accorded to wounded combatants in time of war.

B. Obstruction of Medical Treatment

Mistreatment of the injured, including wounded combatants, is a breach of international humanitarian law and absolutely prohibited.⁸ The obstruction of medical aid to the wounded is also prohibited. Pursuant to Article 16 of the Fourth Geneva Convention, the Israeli military has a positive obligation to accord the wounded and

sick "particular protection and respect." These terms are defined by the authoritative ICRC (International Committee of the Red Cross) commentary to the Fourth Geneva Convention:

'[R]espect' means 'to spare, not to attack' whereas 'protect' means 'to come to someone's defense, to give help and support'.⁹

This formulation is repeated with regard to the duty, under Article 12 of the First Geneva Convention, to "protect" and "respect" wounded combatants.¹⁰

In a comparison of the rights of wounded combatants and injured civilians, the commentary to Article 16 of the Fourth Geneva Convention states:

[I]t [is] unlawful to kill, ill-treat or in any way [further] injure an unarmed enemy, while at the same time [there is] ... an obligation to come to his aid and give him any care of which he stands in need. These rules are even more essential when the wounded or sick person is a civilian ...¹¹

Violations of these well-established norms of international law have occurred on a significant scale in the Occupied Territories during 1989. Examples of the deliberate obstruction of medical care and the physical mistreatment of the wounded by Israeli army personnel are provided below.

1. Obstruction of Efforts to Aid the Wounded

The Israeli army has obstructed attempts by medical personnel and others to aid the critically injured. For example, on 10 July 1989, Israeli soldiers prevented Dr. Husni Muhammad Abou-'Awad, who runs a private health clinic in Ramallah, from aiding Yaser Abou-Ghosh, a 17-year-old Palestinian who had been shot several times in the back and head by agents acting on behalf of the Israeli authorities.[†] An engineering office adjacent to Dr. Abou-'Awad's clinic overlooks the location where Mr. Abou-Ghosh was wounded. The following is excerpted from a sworn statement taken from him by al-Haq:

As we approached the crowd of soldiers and passers-by, a soldier came up to me and tried to prevent me from coming any closer. I told him that I was a physician. At the time, I was wearing my medical uniform and had a stethoscope in my hand. I continued to approach, not obeying the soldier. I saw a military jeep. There was a person slumped over the seat in the back. I reached the jeep and climbed in half-way. I put my hand to the wounded persons' throat to see if I could feel his pulse. I felt his pulse, and saw blood on his neck ... [Then] the jeep ... lurched forward quickly ... I ran after the jeep and tried to catch up with it but could not.¹²

Rather than taking Yaser Abou-Ghosh to the nearest hospital, which is approximately a two-minute drive from where he was injured, the soldiers took him to the military compound in Ramallah, which contains no hospital facilities. A lawyer who was present that day at the military court, located in front of the military headquarters, reported the following in an affidavit taken by al-Haq:

At about 12:00 noon ... I was in front of the entrance to the military court ... I heard the sound of a car stopping suddenly. [Then] I heard someone say, "There

[†]See further Chapter One, "The Use of Force" and Appendix 1-I.

is an injured person with them." I went out ... and saw a military jeep about 20 meters away. I saw three soldiers get out and go towards the back of the vehicle and take out a youth [who looked] approximately 20 years old, and carry him in such a manner that his head was down and his feet were up. I could see his blood dripping to the ground. Then I saw them taking him towards a room upstairs. They opened the door and went inside. After a while, they emerged from the room, but the injured person was not with them ...

At approximately 3:30 p.m., I saw a military ambulance, bearing a red Star of David, park at the same place where the above-mentioned military jeep had been parked earlier. I then saw two other soldiers enter the room where the injured person had been taken. After about half an hour, I saw them emerge with a stretcher bearing a body covered with a sheet. I saw them approach the ambulance, put the stretcher inside ... [and] ... drive out of the military compound.¹³

This affidavit, together with the sworn statement taken from Dr. Abou-'Awad, indicates a deliberate denial of medical care. Yaser Abou-Ghosh died the same day.¹⁴

A similar incident occurred on 12 October 1989. That day, Nidal al-Habash, a 21-year-old Palestinian, was shot in the head by Israeli soldiers in Nablus. Eyewitnesses state that a Palestinian Red Crescent Society (PRCS) ambulance promptly arrived at the scene, but was stopped by soldiers at a distance of approximately ten meters from his body. The ambulance was held for five to ten minutes, until a second contingent of Israeli soldiers arrived with a doctor, who took the injured man's pulse and pronounced him dead.¹⁵

Attempts by non-medical personnel to aid the critically injured have also been hampered. On 19 July 1989, for instance, Mu'awiyya Muhammad 'Abd-al-Latif al-Haj Ibrahim, a 45-year-old teacher from the West Bank town of Jenin, was prevented from aiding a seriously injured youth who had collapsed in front of his house. The young man died. Mr. al-Haj reported the following in a sworn affidavit taken by al-Haq:

[A] youth ... fell on the ground about four meters away from me, outside the fence which surrounds my house ... My wife and I rushed towards him ... [at the same time] two soldiers came up to the injured youth. One of the soldiers pointed his rifle at the head of the youth, looked at my wife and I, and yelled, in Arabic: "Enter your house." I told him that the youth was injured and bleeding. One of the soldiers bent over the youth and turned him on his back. They left him like this for 15 minutes. Then, a ... white Volkswagen came and ... carried the injured youth [away]. About a quarter of an hour later, I learned that the youth, Khader al-Jazara, was dead.¹⁶

Israeli soldiers have also obstructed efforts to aid those with non-life threatening wounds. On 9 April 1989, for example, 'Abd-al-Halim Muhammad 'Azmi al-'Weiwi, an ambulance driver with the PRCS in Hebron, reported that Israeli soldiers had prevented him from collecting an elderly man who had been injured in the Qaytoun section of Hebron. In a sworn affidavit, Mr. al-'Weiwi stated:

I went to the area accompanied by a male nurse from the emergency clinic in the [Red Crescent] Society's ambulance ... When I arrived, I noticed an elderly man lying on the ground at the side of the road, and he was bleeding. He was surrounded by soldiers. When I tried to leave the ambulance to go help the

wounded old man, the soldiers, approximately ten of them, began to point their weapons towards the ambulance. One of these soldiers said to us: "If you don't move within a minute I will shoot you." As he spoke these words, in Arabic, the other soldiers began hitting the side and front of the ambulance with their gun-butts.¹⁷

The wounded person did not receive medical attention until approximately one hour later.¹⁸

2. Mistreatment of the Wounded

Wounded Palestinians have had their injuries seriously aggravated when physically attacked by Israeli soldiers. In one incident which occurred on 15 June 1989, Sadiqa As'ad Khalil al-Ramini, a 65-year-old housewife and resident of the village of Beit Lid in the Toulkarem district, saw Israeli soldiers shoot a youth after he had already been shot and injured and was lying on the ground. She recounted the events of that day in a sworn affidavit taken by al-Haq:

I saw [a] youth lying on the ground. He was crying and bleeding. I started to approach him, but a soldier prevented me from doing so, saying, in Arabic: "Get away from here!" and pointing his gun at me ... I backed away ... At that point I saw the ... soldier point his gun at the youth's waist and shoot ... [The bullet hit him in the waist.] The bleeding youth screamed in pain ...¹⁹

The youth, Ahmad 'Abd-al-Fattah Ghanem, died in Ramallah Hospital on 1 August 1989 from the wounds he sustained on 15 June 1989.²⁰

In an earlier incident on 23 March 1989 in the village of Salem in the Nablus district, Fahmi Husein Ishtayya, a 41-year-old construction worker, was brutally beaten by Israeli soldiers after they shot him in the foot. A group of seven soldiers took Mr. Ishtayya to three different locations and beat him at each one before finally transporting him to al-Ittihad al-Nisa'i Hospital in Nablus. The following is an excerpt from Mr. Ishtayya's sworn affidavit, taken by al-Haq:

[T]he soldiers started shooting at me and hit me in the right foot. I fell to the ground. The soldiers approached me and stood on a boulder about two meters high, and began to jump, one after the other, on top of my body. The last one jumped on my head and then fell on my stomach. I heard him say, in Arabic, "I'm amazed he isn't dead yet!"

After that, the ... soldiers dragged me to the center of the village ... [Y]et another soldier charged at me and kicked me in the chest until I vomited blood and fainted. I regained consciousness due to severe pain, and felt a soldier burning my right ear with his cigarette lighter. Another ... began hitting me on the head with his helmet until my nose bled ...²¹

A local doctor intervened and was permitted to examine Mr. Ishtayya. He recommended that Mr. Ishtayya be taken immediately to a hospital.²² However, according to Mr. Ishtayya's affidavit:

The soldiers ignored the doctor's advice. Instead, they blindfolded me, put me on the floor of a military vehicle, and drove me to an isolated area, where they beat me severely as I lay on the floor of the vehicle ...²³

Following this third beating, Mr. Ishtayya was taken to al-Ittihad al-Nisa'i Hospital. In addition to an operation to remove the bullet from his foot, Mr. Ishtayya required abdominal surgery due to the beatings.²⁴

In some cases, the wounded are held in military compounds or prisons after being beaten before being transported to health facilities. For example, on 5 January 1989, Muhammad Mahmoud Yousef 'Abdo, a 24-year-old worker shot in the leg by Israeli soldiers, was beaten by a group of soldiers in al-Shate' Refugee Camp in the Gaza Strip. After being beaten, Mr. 'Abdo was taken to the Israeli military compound in al-Shate' Refugee Camp. In a sworn affidavit taken by al-Haq, Mr. 'Abdo stated:

[The soldiers] punched me in the face, pulled my hair, and hit me with the butts of their guns. When I told one of them I was injured, he told me I was a liar and hit me on my injured leg ... The [other] inhabitants [of the camp] saw the soldiers [and] came to help me, but the soldiers dispersed them by shooting tear gas ... Then the soldiers took me by military jeep to the military post in al-Shate' Refugee Camp, and threw me in the yard ... They did not give me medical treatment.²⁵

Mr. 'Abdo remained in the yard, without receiving medical aid, for approximately 30 minutes until representatives from UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East) and the ICRC, both of which have full-time staff working in the Occupied Territories, successfully intervened and transported him to al-Ahli hospital in Gaza City.²⁶

As demonstrated by the cases in this section, the treatment of wounded Palestinians falls well below the minimum standards defined by humanitarian law. Instead of being accorded "protection" and "respect," injured Palestinians have been attacked and efforts to provide them with medical services have been obstructed.

Human rights organizations and humanitarian agencies, including al-Haq, have protested these violations to the Israeli government. In the case of Yaser Abou-Ghosh, for instance, al-Haq issued a written alert on 22 July 1989, which stated in part:

To further the cause of justice, al-Haq is prepared to make available any evidence at its disposal and to encourage eyewitnesses to step forward and give testimony.²⁷

To date, al-Haq has not been contacted by the Israeli authorities. Moreover, no attempt to investigate the case was made until 27 October 1989, when Dr. Abou-'Awad, whose affidavit is quoted above, was interviewed by the Israeli military police. As of December 1989, the investigation had not been completed and no disciplinary action had been taken by the authorities.[†]

In al-Haq's opinion, the failure of the Israeli authorities to promptly investigate and discipline those responsible for medical human rights violations seriously dilutes any deterrent effect such inquiries may have, and in fact serves to encourage further abuses. The continuing obstruction of medical attention and brutal beatings of the wounded support this conclusion.

[†]See further Chapter Sixteen, "Investigations."

C. The Obstruction of Vehicles Transporting the Wounded

To guarantee the rights of the wounded to "protection and respect," the Fourth Geneva Convention prohibits "interfer[ence] with the running" of vehicles transporting the injured to medical facilities.²⁸ Such vehicles are to be accorded "protection and respect."²⁹

Mobile medical units and vehicles transporting wounded combatants must be "respected and protected."³⁰ Moreover, if such units are captured, the "party to the conflict who captures them shall in all cases ensure the care of the wounded and sick they contain."³¹

These basic norms are repeated in Chief of the General Staff Shomron's September 1989 "Letter to the Soldier," quoted above.

According to al-Haq's documentation, the transport to health facilities of approximately one out of every three persons killed by the Israeli military during 1989 was delayed by Israeli military personnel.³² The interference with the free passage of ambulances was noted as a particular problem in a rare public statement by ICRC President Cornelio Sommaruga:

I pointed out [to the Israeli authorities] the absolute necessity of guaranteeing a better functioning of medical services in the Occupied Territories, particularly in relation to the free passage of ambulances. There have been a number of incidents where this was not the case.³³

At permanent military checkpoints, such as the Erez checkpoint at the entrance to the Gaza Strip, ambulances are routinely stopped. To cite but one example, on 10 June 1989, an ambulance from al-Shifa' Hospital in Gaza City carrying two wounded Palestinians to Tal Hashomer Hospital in Israel was held for 45 minutes at the Erez checkpoint. Sa'id Mahmoud Labad, the father of one of the wounded persons, was accompanying his son Muhammad in the ambulance. In a sworn statement taken by al-Haq, he described the following incidents:

We arrived at the Erez checkpoint ... at about 2:30 p.m. We were stopped by soldiers. One of them took our identity cards and then asked for the identity cards of the wounded youths, Muhammad and Mousa, which we did not have with us. I heard the doctor tell the soldier that he would be able to verify their identity at Tal Hashomer Hospital as soon as we arrived there, but the soldier answered: "I am only following orders." After being delayed at the Erez checkpoint for about 45 minutes, we were allowed to pass at 3:15 p.m. We arrived at Tal Hashomer Hospital at around 4:15 p.m. ... [A] soldier took our identity cards. I noticed that the soldier was recording [my son's] identity card number. He then returned our cards to us ...³⁴

Muhammad Labad died at 9:00 a.m. the following day.³⁵

At permanent checkpoints such as Erez, instructions could be given to soldiers to permit ambulances free passage. Incidents such as the one cited above, however, suggest that the opposite may be true; the soldier's comments indicate that his instructions required him to stop the ambulance and register the names of the wounded. Such instructions would violate the minimum standards of international humanitarian law, as well as the regulations presented in General Shomron's "Letter to the Soldier."

The PRCS, UNRWA, and other humanitarian organizations also report interference with their efforts to transport the wounded. For example, on 16 May 1989, a PRCS ambulance transporting an injured man who had been shot in the head by Israeli soldiers, was stopped three times by separate groups of Israeli soldiers while en route from Hebron to al-Maqased Islamic Charitable Hospital in East Jerusalem. In an affidavit taken by al-Haq, Ismail Ahmad Jaber al-Hroub, a nurse at the PRCS Clinic in Hebron who accompanied the ambulance driver, described what happened after the ambulance picked up the wounded man:

When we got to the Ras al-Jora area of Hebron, I saw dozens of soldiers and settlers standing in the main street preventing vehicles from passing. As we got close to them, they stopped the ambulance and began hitting the side and front of the ambulance with their gun-butts. I saw our driver arguing with one of the soldiers and the settlers. At the time, I was monitoring the [wounded youth's] condition, who was suffering heavy bleeding from his head. After ten minutes, they allowed us to pass.

When we got to the al-Bassa area of Bethlehem, however, [another] group of soldiers stopped us. They inquired about the wounded [youth] and asked where we were going. The driver told them. This went on for five minutes [and then we were allowed to proceed].

As we approached the area around Rachel's Tomb, the ambulance siren was on. A group of soldiers who were blocking the road pointed their weapons at us and so the driver stopped. One of the soldiers took the ambulance ignition keys and the driver's identity card, and ordered the driver out of the ambulance and led him away . . . Three soldiers then got into the ambulance and pointed their guns at me. I tried to tell them that the youth was in critical condition, and that he was bleeding heavily, but they paid no attention. Instead, one of the soldiers removed the bandage from the wounded area, causing the bleeding to increase . . . When I tried to tell him that the bleeding had increased, the soldier told me, in Hebrew, "Sheket" ["shut up"]. They kept us for a quarter of an hour. Then the driver returned and we continued to al-Maqased Hospital.³⁶

According to Nurse al-Hroub, the injured man died on 28 May 1989. Al-Haq also took a sworn statement from the ambulance driver.⁵

Due in part to the shortage in ambulances, a direct result of official delays in providing licenses to new ambulances and to ambulance drivers (see further below), the injured are often forced to depend on private cars for transportation to health care sites. However, attempts by non-medical personnel to carry the wounded are also hampered by the Israeli military. For instance, on 26 January 1989, a private car transporting Muhammad Suleiman Sbatin, a 16-year-old who was shot in the chest and right hand by Israeli soldiers, was stopped by soldiers in the village of Housan in the Bethlehem district. The soldiers confiscated the car and arrested the wounded youth. He was finally taken to an Israeli hospital 45 minutes later.³⁷

The cases referred to in this section, and many similar instances, reflect a wanton disregard for the right of the wounded to medical care set forth in the Fourth Geneva Convention and the official instructions cited above. Furthermore, such actions even

⁵See further Appendix 2-F.

violate the minimum standards for treatment of wounded combatants articulated by the First Geneva Convention.

The Israeli authorities are aware of these violations by the military because numerous complaints have been filed. For example, in October 1989, UNRWA's Commissioner-General stated the following in his report to the Special Political Committee of the United Nations General Assembly:

[A]mbulances are forcibly stopped, drivers and accompanying medical staff are assaulted by military personnel and wounded persons are detained ... The Agency has protested these and other breaches of Israel's legal obligations which threaten the Agency's programs in the occupied territor[ies].³⁸

Continuing abuses of this sort suggest that such complaints are not taken seriously, if not ignored altogether by the Israeli authorities. This is supported by the fact that, to the best of al-Haq's knowledge, the last investigation into the death of an injured person due to the delay of an ambulance was conducted in the case of Sharaf al-Tibi in 1984.³⁹

Despite its failure to act, however, Israel has a positive duty to ensure free passage for ambulances and prompt medical care for the wounded. Its failure to meet either obligation has resulted in serious violations of medical human rights.

D. Violations of the Right to Medical Neutrality

Violations of the right of medical personnel and health facilities to be free from attack, commonly known as the right of medical neutrality, were pervasive during 1989. The violations took the form of beatings and arrests of medical personnel, violent raids on health clinics, continuous military surveillance of hospitals, and military raids on hospitals to arrest the wounded. Examples of these violations are presented below.

1. Assaults on Medical Personnel

In areas under occupation, medical personnel "of all categories" must be allowed to carry on their duties and should be "respected and protected" at all times.⁴⁰ This injunction prohibits attacks and reprisals against "doctors, dentists ... medical orderlies ... nurses ... ambulance drivers, etc." who are providing medical treatment to the population.⁴¹

Similar protections are granted to health personnel attached to armed forces in times of war by Articles 24, 25, and 26 of the First Geneva Convention.

Violations of these principles by the Israeli military were common during 1989. For example, on 18 June 1989, Israeli soldiers shot and fatally wounded an ambulance driver when they opened fire on an ambulance of the al-Rahma Polyclinic (a multi-purpose health facility) administered by the Nablus Patients' Friends Society. During the delay of the ambulance resulting from this attack, the patient being transported, who had been shot in the neck and was bleeding heavily, also died. A nurse with the al-Rahma clinic and a doctor from the PRCS were accompanying the ambulance driver. The nurse, Suleiman Mahmoud al-Rihan, described the incident in a sworn statement taken by al-Haq. The following excerpt from Nurse al-Rihan's affidavit

describes the events which took place after the ambulance picked up the wounded person and was on its way to al-Ittihad al-Nisa'i Hospital in Nablus:

The doctor began to assist me in locating the [youth's] injuries. This was difficult because of all the blood on [his] head and chest. Suddenly, I heard the sound of a bullet hitting the vehicle, so I asked Dr. [name withheld] to lie on the floor and threw myself on top of the wounded youth. [Then I heard] another bullet exploding right next to me. The vehicle came to a sudden halt, and the driver yelled, "I've been shot!" Shooting continued in our direction, and it seemed as if all of the rifle's bullets had been used on us.

After the shooting stopped, I opened the back door and got out of the ambulance. I attempted to reach the driver. Two soldiers standing behind the vehicle pointed their rifles at me. A third soldier was standing near the driver. The two soldiers told me to get into the vehicle or else they would shoot. I said, in Arabic, "The driver is injured and I want to give him first aid." ...

On our way to [the] clinic, Dr. [name withheld] told me that the wounded youth had died. At this point, I moved up to see 'Awni, the driver, and tried to find the location of his injuries so I could give him first aid. I discovered that his injury was in the lower, back part of his torso ...

[The next day I went to see the vehicle.] Two [bullets] had entered the windshield, close together, to the right of the driver's seat; one had hit the right side of the ambulance; one had penetrated the gas tank; one had hit the right rear tire; and two had hit the right side of the back door ...⁴²

The ambulance driver, 'Awni Sawalha, died on 9 July 1989 as a result of the wounds he sustained during the above incident. According to a report from his doctor, a bullet had penetrated his spleen, stomach, and both intestines.⁴³ The PRCS and the Nablus Patients' Friends Society protested this attack in a meeting with the Israeli military governor on 19 June 1989. They reported that they also submitted a petition to the ICRC, in which they called on the Israeli Medical Association to speak out against this action and other abuses against members of the medical profession.⁴⁴

Physicians have also been subject to physical assault by the Israeli military. For instance, on 2 March 1989, Dr. Ibrahim Khalil Mas'oud, a general physician who works at the UNRWA clinic in the al-Rimal quarter of Gaza City, was beaten by a soldier when he tried to stop the beating of children outside the women's section of the clinic. He described the incident in a sworn statement taken by al-Haq:

At 12:00 p.m. ... while I was on duty, I noticed some commotion outside the clinic ... I went outside ... and saw a soldier beating four children, whose ages ranged between eight and ten years, near the women's section of the clinic. The children were crying. When I asked the soldier [what he was doing] he [came towards me] and tried to hit me on the head with his rifle butt, but I protected my head with my hand. My hand was injured as a result ...⁴⁵

In another case, on 20 March 1989, a doctor was "pushed and beaten" by soldiers when he tried to enter a house to aid a wounded person in the Qalandiya Refugee Camp near Jerusalem.⁴⁶ Also, on 3 September 1989, Dr. Ibrahim Abou-Hatab from Balata Refugee Camp in the Nablus district was beaten by Israeli soldiers who stopped his car as he was transporting an injured person to hospital.⁴⁷ (Other examples of the beatings of doctors and nurses are provided below.)

In addition to being the victims of physical abuse, health personnel have also been targeted for arrest and detention:

- (1) Dr. Yousef Ramadan 'Awadallah, one of the three deputy-heads of the Gaza Medical Association, was arrested on 19 June 1989, and placed in administrative detention (detention without charge or trial) for five months. He was imprisoned in the Ansar III Military Detention Center (Ketziot) in the Negev desert. He appealed the detention order on 15 August 1989, and his term was reduced by two months. Dr. 'Awadallah was released on 21 September 1989.⁴⁸
- (2) Dr. Ziyad Suleiman Sha'ath, a pharmacist from Rafah in the Gaza Strip and a member of the Gaza Medical Association, was arrested on 30 March 1989 and served with a six-month administrative detention order, also in Ansar III. His appeal was rejected on 6 June 1989. He was released on 27 September 1989.⁴⁹
- (3) Dr. Fathi al-Haj, a physician from Khan Younes, was arrested on 3 February 1989, and placed under administrative detention in Ansar III for five months. In July, his detention was extended for another four months. His appeal of this extension was rejected on 15 August. He was released on 29 November 1989.⁵⁰

2. Military Raids on Health Facilities

With the exception of Nablus, hospital raids during 1989 in the West Bank generally did not include the beatings, tear gas assaults, and massive paralysis of hospital functioning which characterized such raids during 1988.⁵¹ Instead, in clear violation of the fundamental principles of medical neutrality, there has been a heavy military presence both in and around hospitals, including the positioning of semi-permanent military posts at the entrance to hospital grounds, as exists for example in front of Ramallah Hospital.

It should be noted that this change applies only to West Bank hospitals. Health clinics (smaller health facilities which provide medical care other than hospitalization) continue to be subjected to the violations which occurred in hospitals in 1988. As illustrated by the following review of international humanitarian law, these actions are absolutely prohibited.

The Israeli military is under a positive obligation to "respect and protect" medical facilities.⁵² Under no circumstances are such facilities to be the object of attack.⁵³ In addition, military raids on health clinics and searches of hospitals cannot be justified by the presence of persons wounded by the Israeli military. According to Article 19 of the Fourth Geneva Convention, the protection afforded health facilities can only be derogated if medical installations are used to "commit acts harmful to the enemy." The provision of medical care to the wounded is explicitly excluded from this category.

These basic rules of conduct have been violated by the Israeli military. Israeli soldiers have broken into health clinics; beaten doctors, nurses, and patients; searched and ransacked clinic premises; and arrested people who were under treatment. Hospitals have also been subject to raids by fully-armed Israeli soldiers searching for injured Palestinians. The following cases are among those documented by al-Haq in 1989:

- (1) On 2 March 1989, five Israeli soldiers arrived at the UNRWA clinic in the al-Rimal quarter of Gaza City. According to a physician at the clinic, the soldiers "cursed the male dental assistant, beat the gate guard, beat a female nurse on the head, beat [another] nurse who was protecting a patient, and [beat] a number of patients, including children and old people who were in the clinic that day."⁵⁴
- (2) On 18 March 1989, soldiers surrounded the UNRWA clinic in Jenin Refugee Camp in the West Bank. They entered the clinic, beat one young man, and arrested him. According to medical personnel at the clinic, one of the soldiers used highly abusive language to describe UNRWA. They directed their comments specifically at a foreign woman UN representative. The soldier said, in excellent Arabic: "You, she, and the UN are my buttocks! you assholes, you dogs! ..." ⁵⁵ The soldier continued, stating: "You prostitutes! ... Let her talk to her shit in the UN." He ordered a Palestinian physician to translate to the foreign representative, threatening: "Talk, you asshole! ... Translate, or I shall wipe the floor with you!" ⁵⁶
- (3) On 1 April 1989, seven Israeli soldiers raided a private clinic in Wadi Burqin in the district of Jenin. According to Dr. Muhammad al-Hweiti, who runs the clinic, the soldiers "asked me if I treat [persons injured by the security forces] in the clinic or not. I told him that I treat all patients, regardless of the type of sickness ..." ⁵⁷ The soldiers searched the premises. They also went through drawers and other storage areas, and examined the medical instruments and medicines in the clinic.
- (4) On 13 April 1989, Israeli soldiers entered and searched al-Ma-qased Hospital in East Jerusalem for a person who had been wounded in Nablus. Hospital personnel reported to al-Haq that they told the soldiers that this patient had left the hospital two days earlier. Soldiers remained in the hospital for one and one half hours, waiting for the doctor who had treated the wounded person. ⁵⁸
- (5) On 2 September 1989, Israeli soldiers entered al-Ittihad al-Nisa'i Hospital in Nablus, beat a doctor, a medic and two ambulance drivers, arrested at least one patient (Bassam al-Sadeq, who had been shot in the shoulder by Israeli military personnel), and closed the hospital for three hours. ⁵⁹

In many villages and refugee camps, health clinics provide the only rapidly accessible medical care. There have been incidents in which Israeli soldiers have ordered doctors to leave their clinics to clean road blocks or paint over nationalist slogans written on the walls. One such case occurred on 18 June 1989 in the village of Salem in the district of Nablus. In a sworn statement taken by al-Haq, Dr. Ibrahim Mubarak Sawalha stated the following:

[S]ix soldiers came into the clinic and ... ordered me ... outside. As I started to leave the clinic, a soldier slapped me on the face ... When I reached the veranda, a soldier ordered me to walk towards another group of soldiers who were standing in the main street of the village ... The soldiers ordered me to

remove roadblocks from the street ... When I had finished removing them, I went back to the soldier, who [then] ordered me to paint [over] nationalist slogans on the walls ... As I was painting, I heard a small girl shouting for my help, saying: "Doctor! Come and see my mother!" When I looked in the direction from which the voice came, I realized that the call was coming from the house of 'Abdallah Hamed Karkar. I later found out that the soldiers had raided his house and had severely beaten Sa' diyya [Mr. Karkar's wife] and her daughter. The soldiers did not allow me to leave my place to go to the woman ... Instead, one soldier answered the girl in a loud voice, saying, "The doctor is busy right now."⁶⁰

When the doctor returned to his clinic, he found it had been ransacked by the soldiers. A medical bag was broken, some surgical blades were lost, medical books were destroyed, and a total of NIS 35 (\$US 17.50) were missing.⁶¹

3. Arrest of the Wounded from Hospitals

Many military raids on health facilities are conducted specifically in order to arrest persons injured in clashes with the security forces. The military obtains information regarding the wounded from hospitals and clinics pursuant to regulations issued by the civil administration of the military government on 20 December 1987, which remain in force.⁶² These regulations require hospitals in the Occupied Territories to report the name of any person treated "for wounds or injuries resulting from clashes with the Israel Defense Forces" to the civil administration within 24 hours of the person's arrival at the hospital.⁶³ Such reports should include the "complete name, identification number, sex, age or date of birth, address of the wounded person, the time the person arrived at the hospital, and who accompanied the wounded person."⁶⁴ This information is used by the Israeli military to arrest those it has wounded.⁶⁵

Most persons arrested from hospitals are transferred to prisons. For example, 'Imad 'Abd-al-'Aziz Abou-Hamida, a 17-year-old resident of the 'Ayda Refugee Camp in the Bethlehem district, was shot and wounded in the left leg on 9 June 1989. He was treated at Beit Jala Hospital. On 17 June 1989, eight days after the hospital reported him to the military, Beit Jala Hospital was raided; Mr. Abou-Hamida was arrested and taken to Dhahriyya Military Detention Center.⁶⁶

Moreover, Israeli soldiers are commonly stationed inside and in front of hospitals after confrontations in which Palestinians are injured. In many of these cases, soldiers arrest the wounded immediately after they arrive at the hospital. One such incident occurred in Jenin Hospital on 19 January 1989, following clashes in Jenin earlier that day. Walid Ahmad 'Arda, a 23-year-old resident of 'Arraba, near Jenin, who was shot in the leg by the military, was arrested from the emergency room of Jenin Hospital shortly after he arrived. In a sworn statement taken by al-Haq, Mr. 'Arda described the events following his arrival at the hospital:

I entered the emergency room, where there were several soldiers. I received first-aid treatment. A soldier, who appeared to be an officer, came up to me and spoke in Hebrew. When I did not answer, he spoke in broken Arabic. He asked for my name. Several minutes later, the soldiers carried me and put me in an ambulance that belongs to Jenin Hospital. Soldiers travelled with me ...⁶⁷

Mr. 'Arda was taken to an Israeli hospital in Khdeira, and then to an Israeli hospital in Kfar Saba, where he was examined and treated. The next day, 20 January 1989, at approximately 3:00 a.m., he was taken from the hospital and transported to the detention facility adjacent to the Jenin Military Governor's headquarters.⁶⁸ He was detained there until 26 January 1989.⁶⁹ Upon his release, he was admitted to al-Ittihad al-Nisa'i Hospital in Nablus, where he remained for two days.

The practice of forcibly removing patients from hospitals demonstrates a wanton disregard for the most basic of human rights. This is particularly the case since the wounded are not charged with any offense at the time of their arrest; their only crime is to have been shot or beaten by the Israeli military.

Attacks on health personnel and health facilities, and the forcible removal of the wounded from hospitals, have been criticized by organizations such as the Boston-based Physicians for Human Rights, the AIPPHR, and others. Moreover, specific violations, such as the attack on the Patients' Friends Society's ambulance in June 1989, have been brought to the attention of the Israeli authorities. In that case, the civil administration did begin an investigation. However, the results of this investigation have not been made public, and to the best of al-Haq's knowledge, no action has been taken against the soldiers involved.

The above documentation indicates an extremely hostile attitude towards health personnel and medical facilities. From the beating and arrest of doctors to raids on health clinics and hospitals, it seems that medical workers in the Occupied Territories are viewed by the Israeli military as the "enemy" because they help the wounded. This is unacceptable even in time of war.

E. The Treatment of Palestinian Prisoners in Israeli Hospitals

Pursuant to the United Nations Principles of Medical Ethics (UNPME):⁷⁰

It is a gross contravention of medical ethics ... for health personnel, particularly physicians, to engage actively or passively in acts which constitute ... complicity in ... cruel, inhuman or degrading treatment ...⁷¹

Medical personnel have a duty to protect the "physical and mental health" of prisoners and detainees and provide them with "the same quality and standard of treatment as is afforded to those who are not ... detained."⁷²

Al-Haq has received disturbing reports during 1989 concerning irregular and degrading treatment of Palestinian prisoners in Israeli hospitals. One case concerned al-Haq fieldworker Sha'wan Jabarin, who was hospitalized on 11 October 1989 following his arrest and torture by Israeli Border Police. According to the Legal Advisor to the civil administration, Mr. Jabarin received medical attention at Hadassa-'Ein Karem Hospital. However, on 12 October 1989, inquiries made by the Association for Civil Rights in Israel on al-Haq's behalf revealed that the Hospital had no record of a patient by the name of Sha'wan Jabarin. This is not the first case of this sort which has come to al-Haq's attention. The absence of medical records for a person who received treatment at a hospital after he had been tortured, raises serious questions

regarding possible complicity of Israeli medical and hospital personnel in concealing torture.⁷¹ Moreover, it is now impossible to establish whether Mr. Jabarin received sufficient medical care and what form of follow-up care he should receive. In al-Haq's view, this is a highly irregular and indeed repugnant practice.

A similar case occurred on 30 August 1989. Amin Muhammad Amin, a 21-year-old engineering student at Bir-Zeit University, was taken from Dhahriyya Military Detention Center, where he had been tortured during interrogation, to Beer-Sheva Hospital. In a sworn affidavit taken by al-Haq, Mr. Amin stated the following:

I was admitted to the hospital under a different name . . . I told the doctor about this. He said: "This does not concern me. I treat a person and I don't care for his details . . ." ⁷³

Contrary to the doctor's assertion, the UNPME requires that he address this issue. As a result, the records of Mr. Amin's treatment in the hospital are not accessible for purposes of medical evaluation or followup.

Moreover, persons arrested and transferred to Israeli hospitals are generally kept handcuffed or footcuffed to their hospital beds.⁷⁴ This practice subjects Palestinian prisoners in Israeli hospitals to unnecessary discomfort and humiliation while under the care and custody of medical personnel.

Al-Haq is extremely concerned about the abuses discussed in this section. The extent to which they occur is not clear. However, in light of these reports, it is in al-Haq's view of the utmost importance to reiterate the obligations of medical personnel towards Palestinian prisoners who require medical treatment.

F. Restrictions on Health Care

As an occupying power, Israel has an obligation to maintain health services in the West Bank and Gaza Strip. This requirement is set forth in Article 56 of the Fourth Geneva Convention:

[T]o the fullest extent of the means available to it, the occupying power has the duty of ensuring and maintaining, with the cooperation of local authorities, the medical and hospital establishments and services, public health and hygiene in the Occupied Territory, with particular reference to the adoption and application of the prophylactic and preventative measures necessary to combat the spread of contagious diseases and epidemics.

Instead of "ensuring and maintaining" medical establishments, the military government has adopted policies during the past two years which undermine the infrastructure of public health services in the Occupied Territories.

Prior to the uprising, Palestinian patients requiring sophisticated health services were routinely referred to Israeli hospitals.⁷⁵ During the past two years, increasing numbers of patients have needed specialized care not available in government hospitals in the West Bank or the Gaza Strip. Yet, the Israeli authorities have promulgated regulations which restrict the access of Palestinians to Israeli hospitals.

⁷¹See further Chapter Five, "Torture and Death in Detention."

Doctors in the West Bank report that, in order to refer patients to Israeli hospitals, they must now first obtain permission from the civil administration headquarters located in the Beit El settlement. A similar requirement exists for patients in the Gaza Strip. According to the Association of Israeli and Palestinian Physicians for Human Rights:

For the past year, sending patients to Israeli hospitals has become dependent on factors which are not strictly medical. Civil Administration officers, guided by budget considerations are the decisive factor. Clearly, these officials lack medical training and are not guided by strictly medical considerations.⁷⁶

This change in criteria (if indeed these are the criteria) is of particular importance because the number of hospital days reserved for residents of the Occupied Territories in Israeli hospitals has been drastically reduced. Until late 1987, 2,800 hospital days per month were reserved for residents of the Gaza Strip alone.⁷⁷ The AIPPHR reports that this allocation was reduced during the past year to only 800 hospital days per month.⁷⁸

Moreover, pursuant to regulations enacted in June and July of 1988, the cost of treatment in government hospitals has risen by over 50 percent.⁷⁹ The cost of staying in West Bank government hospitals currently stands at NIS 310 (\$US 155) per night. In addition, health insurance costs more than doubled between early 1988 and June 1989, with rates for a nuclear family rising from NIS 320 (\$US 160) to NIS 646 (\$US 320).⁸⁰

Furthermore, the Israeli authorities have prevented medical associations from building new hospitals, importing medical equipment, and improving existing health services. Efforts to increase the number of working ambulances and to upgrade the ambulance system in the Occupied Territories have been thwarted by the military government. Even before the uprising, there was a shortage of ambulances in both the West Bank and the Gaza Strip.⁸¹ Within the last two years, the civil administration has prevented hospitals and relief agencies from increasing the number of ambulances they operate by restricting access to licenses for ambulance drivers.

During 1988, relief agencies, including the Palestinian Medical Association, the PRCS, and others were verbally informed that, in order to qualify for licences, drivers would have to take and pass a course which is also taken by Israeli ambulance drivers. However, prospective ambulance drivers would have to obtain permission to enroll in the course from the civil administration. To obtain such permission, applicants have to pass an extensive security check. According to one report on this issue, screening includes an examination of the applicant's arrest and detention records, their "political" associations (as defined by the authorities), and their tax records.⁸² As of December 1989, only ten drivers had received licences.

The Israeli authorities have also refused to license ambulances. For instance, during 1989, two ambulances donated to health facilities in the West Bank could not be operated because they lacked license plates. The Israeli authorities have given no explanation for this refusal.

Applications for travel permits in order to receive medical treatment abroad which is not locally available are often denied. In one case handled by al-Haq's legal advice unit, a Palestinian man was denied permission to travel to Jordan in July 1989 to

obtain an operation on his kidneys. The man was originally supposed to have been operated on in Hadassa-'Ein Karem Hospital on 7 July 1989, but was denied admission because the civil administration repeatedly refused to approve his referral form. He subsequently applied for permission to travel to Jordan, but his application was denied due to a collective travel restriction on his village, Mazra'a al-Sharqiyya.⁸³ Al-Haq wrote to the Office of the Legal Advisor protesting this restriction and requesting that he be granted permission to travel on 6 July 1989. Al-Haq is still awaiting a response.

The reduction of available health care, coupled with restrictions on freedom of movement, have contributed to a deterioration of public health in the Occupied Territories. Medical practitioners reported an increase in malnutrition and infectious diseases among children in the occupied West Bank during 1989.⁸⁴ Doctors explain that extended curfews and sieges have made it difficult for families to maintain proper nutrition or access to preventive health care.⁸⁵

Moreover, medical personnel report that, clinically, they have observed an overall rise in the rate of infant mortality in the West Bank during 1988 and 1989.⁸⁶ According to medical practitioners, this may be due to restrictions on movement, which have hampered pre-natal and post-natal care programs.⁸⁷

The measures described above have undermined the medical infra-structure of the Occupied Territories at a time when health facilities are most needed. These practices have been strenuously protested by medical, relief and human rights organizations, including the Union of Palestinian Medical Relief Committees and the the AIPPHR. Due to the efforts of these and other organizations, it appears that 50 percent of the budget for hospitalization in Israel, which was cut in 1988, was reappropriated in 1989.⁸⁸

The military government insists that the reduction in the health services budget, the rise in the cost of health care, and the other measures outlined above are the result of purely budgetary constraints which exist in every society.⁸⁹ Even if such claims are correct, however, such considerations cannot justify the massive restrictions on access to medical care. Children up to the age of three, for example, have compulsory health insurance coverage, but were included in the restrictions on admittance to Israeli hospitals.⁹⁰ In al-Haq's opinion, the collective implementation of these measures demonstrates a wanton disregard for the civilian population's right to health care.

Summary

Few, if any of the provisions of international law pertaining to health care and medical facilities have been heeded by the Israeli authorities in their attempts to suppress the Palestinian uprising in the Occupied Territories. The wounded are beaten; efforts to transport them to health facilities or provide them with on-site medical aid are obstructed; medical personnel are assaulted and detained without charge or trial; health facilities are raided by armed Israeli soldiers; and the health care infrastructure has been undermined. Such practices cannot be reconciled with any legal standards, including the First Geneva Convention, which establishes minimum norms for the treatment of wounded combatants and medical personnel in time of international

armed conflict, when state security is most threatened. Therefore, the attempts cited in the introduction to justify these abuses by claiming that Israel is fighting a "war" are supported by neither the law nor the facts.

In this chapter, al-Haq has used the Fourth Geneva Convention to evaluate medical human rights abuses. Published Israeli army regulations, with the exception of General Shomron's "Letter to the Soldier," could not be obtained by al-Haq. It is clear from the violations described above, however, that the instructions of this letter have not been obeyed. If such practices do not represent a deliberate policy, it is clear that, at the very least, they continue to occur and that disciplinary actions have not been taken against those responsible. In al-Haq's opinion, the failure of the Israeli authorities to hold individual soldiers accountable for committing abuses of medical human rights makes it impossible for Israel to evade official responsibility for the commission of these acts.

The magnitude of medical human rights violations suggests that health care has been targeted by the Israeli occupation authorities. According to the Association of Israeli and Palestinian Physicians for Human Rights: "Medicine has been removed from the status of a basic human right and recruited as a means of punishment."⁹¹

The Fourth Geneva Convention defines state responsibility as encompassing the acts of any soldier acting in an official capacity. According to the authoritative ICRC commentary, this includes any soldier who:

has disregarded the convention's provisions on the orders of or with the approval of his superiors, or has, on the contrary, exceeded his powers but made use of his official standing to carry out the unlawful act.⁹²

This high standard of state responsibility was developed to provide additional safeguards for occupied populations.⁹³ The effectiveness of these safeguards, however, depends on the response of state signatories to the Convention, who have the obligation to "ensure respect" for the provisions of the convention.*

Violations of the medical human rights by the Israeli military in the West Bank and Gaza Strip are international offenses for which the world community has legal standing to intervene.⁹⁴ In al-Haq's opinion, such action is required to protect the fundamental rights of the wounded civilians and medical personnel in the Occupied Territories.

*See further Chapter Nineteen, "The Role of the International Community."

Endnotes to Chapter Two

1. Al-Haq Affidavit No. 1808. The affidavit describes the killing of Riyad Ghayada, 27, during the 13 April 1989 military raid on the West Bank village of Nahhalin, in which four Palestinians were killed, a fifth left brain dead, and many others wounded. See further Chapter One, "The Use of Force."
2. The Union of Palestinian Medical Relief Committees (UPMRC), "The Uprising: Consequences for Health and the Palestinian Response" (August 1988).
3. Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988), Chapter 2, documents such abuses during the first year of the uprising.
4. David Makovsky, "Meridor: Collective Punishment Justified to Suppress Intifada," *Jerusalem Post*, 26 September 1989.
5. Dr. Ram Yishai, "Report to Dr. Andre Wynen, Secretary of the World Medical Association," p. 7 (6 March 1989), cited in The Association of Israeli and Palestinian Physicians For Human Rights (AIPPHR), *Report on the Condition of Health Services in the Gaza Strip* (AIPPHR: Jerusalem, 1989), p. 31. Dr. Yishai was elected Secretary of the World Medical Association in September 1989. In November 1989, he relinquished the presidency of the Israel Medical Association after 18 years in office ("Yishai is Top Doc," *Jerusalem Post*, 20 September 1989).
6. Israeli Chief of the General Staff Dan Shomron, "Letter to the Soldier" (September 1989), cited in correspondence from the U.S. Lawyers' Committee for Human Rights to Colonel Ilan Shiff, Deputy Judge Advocate-General, 4 November 1989.
7. The Hague Regulations are accepted by Israel as customary international law. See *Jamyat Askhan al-Ma'almin vs. The IDF Commander in the Judea and Samaria Region* (H.C. 383/82).
8. Article 16, Fourth Geneva Convention; Article 12, First Geneva Convention.
9. Jean S. Pictet, (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 134. Mr. Pictet quotes the *Dictionary of the French Academy*, using the words "respecter" and "protéger" from the original French version of Article 16 as references for this definition.
10. *Ibid.*, p. 133.
11. *Ibid.*
12. Al-Haq Affidavit No. 1917. Full text reproduced in Appendix 2-A.
13. Al-Haq Affidavit No. 1920. Full text reproduced in Appendix 2-B.
14. Al-Haq, "Alert: Summary Execution in Ramallah" (22 July 1989). The Alert is reproduced in full in Appendix 1-I. See also Chapter One, "The Use of Force."
15. Al-Haq Affidavit Nos. 2105, 2106, and 2107.
16. Al-Haq Affidavit No. 1944.
17. Al-Haq Affidavit No. 1735.
18. *Ibid.*
19. Al-Haq Affidavit No. 1987.
20. *Ibid.*
21. Al-Haq Affidavit No. 1726. Full text reproduced in Appendix 2-C.
22. *Ibid.*
23. *Ibid.*
24. *Ibid.*
25. Al-Haq Affidavit No. 1598.

26. *Ibid.*
27. Al-Haq, "Alert," p. 6.
28. Pictet, *Commentary*, p. 171.
29. Article 21, Fourth Geneva Convention.
30. Article 35, First Geneva Convention.
31. *Ibid.*
32. Al-Haq Database Report.
33. "ICRC President Cornelio Sommaruga: Israeli Government Not Prepared to Abide by Fourth Geneva Convention," *Al-Fajr Jerusalem Palestinian Weekly*, 28 August 1989.
34. Al-Haq Affidavit No. 1937. Full text reproduced in Appendix 2-D.
35. *Ibid.*
36. Al-Haq Affidavit No. 1848. Full text reproduced in Appendix 2-E.
37. Al-Haq Affidavit No. 1650.
38. "Statement of the Commissioner-General of UNRWA to the Special Political Committee of the General Assembly," pp. 4-5 (24 October 1989).
39. Al-Haq, *Punishing a Nation*, pp. 70, 87.
40. Article 56, Fourth Geneva Convention. Article 20 (which provides specific protection to full and part-time hospital employees) and Article 63 (which grants similar protection to employees of relief organizations) are also applicable.
41. Pictet, *Commentary*, p. 314.
42. Al-Haq Affidavit No. 1893. Full text reproduced in Appendix 2-G.
43. Al-Haq Fieldwork Report.
44. Michal Sela, "Shifa' Hospital Chief Fired Over Alleged Fatah Role," *Jerusalem Post*, 20 June 1989.
45. Al-Haq Affidavit No. 1699.
46. Al-Haq Fieldwork Report.
47. Al-Haq Fieldwork Report.
48. The case was reported to al-Haq by Tamar Peleg, Mr. Awadallah's lawyer.
49. *Ibid.*
50. *Ibid.*
51. For a discussion of the situation during the first year of the uprising see Al-Haq, *Punishing a Nation*, pp. 78-80. Although al-Haq is not able to give a comprehensive account of hospital raids in the Gaza Strip, there are several indications that the situation there differs substantially from that of the West Bank. On 24 March 1989, the director of al-Ahli Hospital in Gaza City, Jorgen Rosenthal, sent two letters to the civil administration of the Israeli military government protesting a raid on the hospital in which doctors, nurses, and patients were beaten. In its August 1989 *Report on the Condition of Health Services in the Gaza Strip* (p. 30), the AIPPHR noted that raids on hospitals "are at times accompanied by shooting tear gas into the hospital." Additionally, the military maintains a permanent outpost overlooking the entrance of Shifa' Hospital. Taken together, these facts would seem to indicate that health institutions in the Gaza Strip have been subject to the type of raids experienced in the West Bank during 1988 and to the military surveillance prevalent in the West Bank this year.
52. Article 18, Fourth Geneva Convention.
53. *Ibid.*
54. Al-Haq Affidavit No. 1699.

55. Al-Haq Affidavit No. 1716
56. *Ibid.*
57. Al-Haq Affidavit No. 1716.
58. Al-Haq Fieldwork Report.
59. Michal Sela, "Seven Palestinians Die in Violent Weekend," *Jerusalem Post*, 3 September 1989. Generally speaking, when hospitals are closed no one is permitted to enter, including incoming patients and hospital personnel (Al-Haq, *Punishing a Nation*, pp. 78–80).
60. Al-Haq Affidavit No. 1876.
61. *Ibid.*
62. Civil Administration in Judea and Samaria, Medical Services, Department of Hospital Managements, Circular, 20 December 1987.
63. *Ibid.*
64. *Ibid.*
65. For examples of arrest following reports by hospitals, see Al-Haq, *Punishing a Nation*, pp. 81–82.
66. Al-Haq Fieldwork Report.
67. Al-Haq Affidavit No. 1594.
68. *Ibid.*
69. *Ibid.*
70. The United Nations Principles of Medical Ethics were adopted by the General Assembly on 18 December 1982 and annexed to Resolution 37/194. It specifically encompasses detained persons in situations where "the relationship between doctor and patient is characterized by involuntariness on the part of the patient . . . [where] he is not free in his choice of a doctor."
71. *Ibid.*, Principle 2.
72. *Ibid.*, Principle 1.
73. Al-Haq Affidavit No. 2046.
74. Al-Haq Fieldwork Reports; Al-Haq, *Punishing a Nation*, pp. 81–82.
75. UPMRC, *An Overview of Health Conditions and Services in the Israeli-Occupied Territories* (Jerusalem: UPMRC, 1987), pp. 34–35. The report contains a detailed discussion of health conditions and the structure of medical services in the West Bank and Gaza Strip.
76. AIPPHR, *Report*, p. 11.
77. *Ibid.*
78. *Ibid.*
79. UPMRC, "The Uprising," p. 4.
80. AIPPHR, "Report on the Condition of Health Services," p. 10.
81. Jerry Levin, "The Palestinians' Ambulance Problem: A Health Care Catch Twenty-Two in the West Bank and Gaza," pp. 1–2 (1989, unpublished).
82. *Ibid.* p. 5.
83. Letter from al-Haq to the Legal Advisor's Office, Beit El (al-Haq Reference No. 557).
84. Interview with a senior UPMRC staffmember, December 1989. The interviewee requested anonymity.
85. *Ibid.* See further Chapter Eleven, "Curfew and other Forms of Isolation."
86. *Ibid.* This observation was based on the interviewee's review of files maintained by clinics affiliated with the UPMRC.

87. Interview with an UPMRC medical care practitioner, December 1989. The interviewee requested anonymity.
88. AIPPHR, *Report*, p. 30.
89. Yitzhak Peterburg, "Putting Gaza Health Care Into Context," *Jerusalem Post*, 31 August 1989. Yitzhak Peterburg is chief medical officer of the civil administration in the Gaza Strip.
90. Marcia Kretzmer, "The Politics of Treating Sick Palestinian Children," *Jerusalem Post*, 8 February 1989.
91. AIPPHR, *Report*, p. 29.
92. Pictet, *Commentary*, p. 212.
93. *Ibid.* p. 210.
94. Pictet, *Commentary*, p. 209.

Appendix 2-A

Denial of Medical Care to Yaser Abou-Ghosh

Translation of Sworn Affidavit No. 1917 Taken by al-Haq

I the undersigned, Husni Muhammad 'Abd al-Qader Abou-'Awad, 43 years of age, a resident of Ramallah and a physician, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 11:30 a.m. on Monday 10 July 1989, I was at my clinic in Ramallah, which is located on the second floor of a building on the main Ramallah-Jerusalem road [Palestine Street]. I heard gunshots. My father, who at the time was at my brother's engineering office next door to my clinic, called out to me. I went over to the window, but could see nothing [on the street below] except a crowd of passers-by. I then went to the engineering office where my father was, and from the window could see a person lying on the ground. My father went up to the nurse who works for me and asked her to call an ambulance.

My father and I then went down to the scene of the incident. As we approached the crowd of soldiers and passers-by, a soldier came up to me and tried to prevent me from coming any closer. I told him that I was a physician. At the time, I was wearing my medical uniform and had a stethoscope in my hand. I continued to approach, not obeying the soldier. I saw a military jeep. There was a person slumped over the seat in the back. I reached the jeep and climbed in half-way. I put my hand to the wounded person's throat to see if I could feel his pulse. I felt his pulse, and saw blood on his neck.

While I was still on the jeep, it lurched forward quickly, causing me to stumble and fall down. I could [still] see the wounded person's head hanging out of the jeep, so I called out as loudly as I could and told the soldiers in the jeep to support [the wounded person's] head properly. They did so, placing his head as it had been before. I ran after the jeep and tried to catch up with it but could not. I saw it turning to the right, then it went out of my sight. As a physician, I wish to state the following:

- (1) A military jeep is not an ambulance;
- (2) Soldiers are not physicians;
- (3) Under no circumstance is a person allowed to take an injured person from the scene of an accident unless he is a physician or has medical knowledge;
- (4) The injured person [in this case] should have been taken immediately to the hospital whether or not he was dead, since only hospitals are authorized to pronounce a person dead.

In accordance with all of the above I hereby sign this statement on this date, 23 July 1989.

(Signature)

Name available for publication

Appendix 2-B

Denial of Medical Care to Yaser Abou-Ghosh

Translation of Sworn Affidavit No. 1920 Taken by al-Haq

I the undersigned, [name withheld], a resident of [name withheld] in the Jerusalem district and a lawyer, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At about 12:00 noon on Monday 10 July 1989, I was in front of the entrance to the military court at the military compound in Ramallah. I heard the sound of a car stopping suddenly. I heard someone say: "There is an injured person with them." I went out, stood in front of the entrance where a big crowd of lawyers and residents had gathered, and saw a military jeep about 20 meters away. I saw three soldiers get out and go towards the back of the vehicle and take out a youth [who looked approximately] 20 years old, and carry him away in such a manner that his head was down and his feet were up. I could see his blood dripping to the ground. Then I saw them taking him towards a room upstairs. They opened the door and went inside. After a while, they emerged from the room, but the injured person was not with them.

At this point, I approached the jeep and saw a pool of blood inside. I then followed the tracks of blood from the vehicle to the entrance of the room, which was about ten meters away from the vehicle. Next, I saw the soldiers return to the same vehicle in which they had arrived and drive towards the prison interior. None of the soldiers uttered a word. All this took place in the space of about three minutes.

After about half an hour, I approached a soldier standing in the courtyard to ask him about what had happened. He told me, in broken Arabic, that [the wounded person] had tried to throw a petrol bomb at the Manara [central square] in Ramallah and that a soldier had immediately shot him twice in the head and that that soldier was not one of those who carried the injured person to the room.

At approximately 3:30 p.m., I saw a military ambulance, bearing a red Star of David, park at the same place where the above-mentioned military jeep had been parked earlier. I then saw two other soldiers enter the room where the injured person had been taken. After about half an hour, I saw them emerge with a stretcher bearing a body covered with a sheet. I saw them approach the ambulance, put the stretcher inside, and close the back door to the ambulance. I then saw the ambulance drive out of the military compound. It should be noted that I did not see anybody wearing civilian or medical dress, or anyone whose appearance indicated that they were medical personnel, in either the ambulance or the compound itself.

In accordance with all of the above I hereby sign this statement on this date, 19 July 1989.

(Signature)

Name withheld from publication

Appendix 2-C

Mistreatment of the Wounded

Translation of Sworn Affidavit No. 1726 Taken by al-Haq

I the undersigned, Fahmi Husein Da'oud Ishtayya, 41 years of age, a resident of Salem village in the Nablus district and a worker, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 9:15 a.m. on Thursday 23 March 1989, while I was working at a construction site, some residents informed me that there were soldiers in the area and advised me to leave. I looked around and saw seven soldiers. I immediately began to run away, but the soldiers started shooting at me and hit me in the right foot.

I fell to the ground. The soldiers approached me and stood on a boulder about two meters high, and began to jump, one after the other, on top of my body. The last one jumped on my head, and then fell on my stomach. I heard him say, in Arabic, "I am amazed he isn't dead yet!" After that, the seven soldiers dragged me to the center of the village. As I lay handcuffed on the ground, yet another soldier charged at me and kicked me in the chest until I vomited blood and fainted.

I regained consciousness due to severe pain, and felt a soldier burning my right ear with his cigarette lighter. Another soldier grabbed me by my mustache and yanked at it, pulling out some of the hair. Another began hitting me on the head with his helmet until my nose bled. [A physician], Dr. Hakam Irsheid, came up and treated me. He told the soldiers that both my legs were broken, that my stomach had been perforated, and that I had to be transferred to the hospital.

The soldiers ignored the doctor's advice. Instead, they blindfolded me, put me into a military vehicle and drove me to an isolated area, where they beat me severely as I lay on the floor of the vehicle, until I heard a soldier saying, "Leave him, he is dead." The vehicle then moved toward Nablus, where I found myself in front of al-Ittihad al-Nisa'i Hospital. There, I underwent an operation on my stomach, which had been perforated. Doctors also removed the bullet from my right foot. Even now, I am still bedridden and unable to move because of my bruises. In addition, the soldiers extinguished their cigarettes on my feet. My doctors tell me I was lucky to survive. In accordance with all of the above I hereby sign this statement on this date, 3 April 1989.

(Signature)

Name available for publication

Appendix 2-D

Obstruction of Ambulances at Permanent Checkpoints

Translation of Sworn Affidavit No. 1937 Taken by al-Haq

I the undersigned Sa'id Mahmoud 'Abd-al-Rahman Labad, 45 years of age, a resident of Block Six, Jabaliya Refugee Camp in the Gaza Strip and a grocer, having been warned to state the truth or be subject to criminal liability, hereby state as follows: At approximately 2:00 p.m. on 10 June 1989, I went to al-Shifa' Hospital in Gaza after being told that my son Muhammad was in the operating room. One of the doctors there told me that they were going to transfer Muhammad to Tal Hashomer Hospital in Tel Aviv, but were waiting for an ambulance. After the ambulance arrived, two of the hospital orderlies placed my son on a stretcher and put him in the ambulance. I saw two nurses carrying [another] young man, Mousa Sum'a, into the same ambulance. I got into the ambulance along with the doctor, a nurse, and the driver. We left at 2:15 p.m.

We arrived at the Erez checkpoint, the border between Israel and the Gaza Strip, at about 2:30 p.m. We were stopped by soldiers. One of them took our identity cards and then asked for the identity cards of the wounded youths, Muhammad and Mousa, which we did not have. I heard the doctor telling the soldier that he would be able to verify their identity at Tal Hashomer hospital as soon as we arrived there, but the soldier answered: "I am only following orders." After being delayed at Erez for about 45 minutes, we were allowed to pass at 3:15 p.m.

We arrived at Tal Hashomer Hospital at around 4:15 p.m. The doctor, nurse, driver, and I carried Muhammad and Mousa into the intensive care unit, [where] a soldier took our identity cards. I noticed that the soldier was recording [my son's] name and identity card number. He then returned our cards to us. As I was sitting in the reception area, I heard the Israeli doctor who examined my son . . . say, in Hebrew, "This boy is in [very] poor condition. We cannot do anything for him." Muhammad died at 9:00 a.m [the next day], 11 June 1989.

At about 11:00 a.m. [on 11 June], I left the hospital and got back to Gaza at noon. I went directly to the civil administration headquarters in Jabaliya, where I met an officer known as "Abou-Jamil," whom I had previously met. After he questioned me, he told me to come back in six hours and take possession of my son's corpse. I came back at about 7:00 p.m., [and] "Abou-Jamil" said, "Come back at ten o'clock." At 10:00 p.m., I again returned and waited until 11:00 p.m. Then, "Abou-Jamil" told me that the body had arrived and that I should go home and bring 14 elderly men [to the cemetery for the burial]. I went to the cemetery, and the soldiers gave us the corpse.

At around midnight, after we had buried the body, soldiers came to our house. The officer [with them] told me, "Because of the night curfew, you are not allowed to be out in front of the house." I saw some youths throw stones at the soldiers and the soldiers started shooting. I watched them go into my house and then come out again. The next day, 12 June 1989, at about 6:30 p.m., I saw about 20 military jeeps, a gravel thrower, and a truck carrying soldiers surround the mourners gathered in front of my

house. Orders were broadcast over loudspeaker for people to disperse. One soldier called out to me by name through the loudspeaker. When I got to the soldiers, one of them asked me to erase the slogans and take down the flags and wreaths. After I did this, I saw the gravelthrower over-run the [make-shift] reception area for mourners, damaging chairs, breaking roof-posts, tearing the cloth roofing, and destroying all the electric lamps and wiring.

In accordance with all of the above I hereby sign this statement on this date, 22 June 1989.

(Signature)

Name available for publication

Appendix 2-E

Obstruction of an Ambulance

Translation of Sworn Affidavit No. 1848 Taken by al-Haq

I the undersigned Isma'il Ahmad Jaber al-Hroub, 21 years of age, a resident of the village of Kharas in the Hebron district and a nurse, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 8:30 p.m. on 16 May 1989, 'Imad 'Abd al-'Afou al-Zghayyer was admitted to the emergency room of the Palestinian Red Crescent Society center in Hebron, where I work, with several bullet wounds in his head. [The wounded youth was then placed in] the PRCs ambulance, and I rode in the back as we headed towards al-Maqased Islamic Charitable Hospital in Jerusalem.

When we got to the Ras al-Jora area of Hebron, I saw dozens of soldiers and settlers standing in the main street preventing vehicles from passing. As we got close to them, they stopped the ambulance and began hitting the side and front of the ambulance with their gun-butts. I saw our driver arguing with one of the soldiers and the settlers. At the time, I was monitoring the [wounded youth's] condition, who was suffering heavy bleeding from his head. After ten minutes, they allowed us to pass.

When we got to the al-Bassa area of Bethlehem, however, [another] group of soldiers stopped us. They inquired about the wounded [youth] and asked where we were going. The driver told them. This went on for five minutes [and then we were allowed to proceed].

As we approached the area around Rachel's Tomb, the ambulance siren was on. A group of soldiers who were blocking the road pointed their weapons at us and so the driver stopped. One of the soldiers took the ambulance ignition keys and the driver's identity card, and ordered the driver out of the ambulance and led him away. I could hear the soldiers saying, "Get out, get out."

Three soldiers then got into the ambulance and pointed their guns at me. I tried to tell them that the youth was in critical condition, and that he was bleeding heavily, but they paid no attention. Instead, one of the soldiers removed the bandage from the wounded area, causing the bleeding to increase. (I would like to point out that the bandage helps to decrease the severity of the bleeding). When I tried to explain that the bleeding had increased, the soldier told me, in Hebrew, "Shecket" ["shut up"]. They kept us for a quarter of an hour. Then the driver returned and we continued to al-Maqased Hospital. I was later informed that the wounded [youth] died on 28 May 1989.

In accordance with all of the above I hereby sign this statement on this date, 29 May 1989.

(Signature)

Name available for publication

Appendix 2-F

Obstruction of an Ambulance

Translation of Sworn Affidavit No. 1849 Taken by al-Haq

I the undersigned, 'Abd-al-Halim Muhammad 'Azmi al-'Weiwi, 42 years of age, a resident of Hebron and an ambulance driver, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

I work as an ambulance driver for the Palestinian Red Crescent Society in Hebron. At approximately 8:30 p.m. on 16 May 1989, while I was on duty, my work was obstructed several times.

I drove towards the al-Haras quarter in Hebron to retrieve a wounded person who had been shot during a clash involving soldiers and settlers, and saw a large number of soldiers. One soldier told me that there were no casualties, so I drove back to the clinic's emergency room. Ten minutes later, the wounded youth, 'Imad 'Abd-al-'Afou al-Zghayyar, who had been shot in the head, was brought to the clinic in a private car. I took him by ambulance and headed towards al-Maqased Islamic Charitable Hospital [in Jerusalem]. [As I was passing through] the al-Haras quarter, I was met by scores of settlers and soldiers standing on the main road. Seeing that the ambulance's siren was on, they stopped me, surrounded the vehicle, and began yelling and swearing at me. Some struck at the sides of the vehicle with their rifle-butts. I began yelling at them, saying: "I am carrying a wounded person and his skull is coming apart!" A soldier shouted back at me, and after ten minutes, I managed to make my way past them and continued in the direction of al-Maqased Hospital.

As I got close to the military government headquarters in Bethlehem, a number of soldiers stopped me and asked where I was going and who the wounded person was. I told them. After five minutes, they allowed me to continue.

When I got to the area of Rachel's Tomb, there were four soldiers standing in the middle of the road, pointing their weapons at me. I stopped the ambulance. One of them yelled at me to [get out of the car]. He ordered me to raise my hands [over my head] and led me to a building on the side of the road, shoving me with his rifle-butt. During this time, I was trying to explain that I was transporting a wounded person. But he did not permit me to explain. He took the keys to the ignition and my identity card, and made me wait there for about 15 minutes. Then I heard a voice from the wireless on the roof of the building say: "Shahreiroto." I understood what it meant: "Release him." When I got back to the ambulance, the nurse who was with the wounded youth told me that one of the soldiers had removed the bandage from the youth's head and that three soldiers had climbed into the ambulance and looked at the wounded person.

In accordance with all of the above I hereby sign this statement on this date, 29 May 1989.

(Signature)

Name available for publication

Appendix 2-G

Killing of an Ambulance Driver

Translation of Sworn Affidavit No. 1893 Taken by al-Haq

I the undersigned, Saleh Suleiman Mahmoud Abou al-Rihan, 27 years of age, a resident of the village of Balata in the Nablus district and a nurse at al-Rahma Clinic in Nablus, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 7:50 a.m. on Sunday 18 June 1989, I was on duty as a nurse in the emergency room of al-Rahma Clinic, which is located on Feisal Street in Nablus. The doctor on duty, Khaled Qadri, asked me to go with the ambulance driver to [the] Khallet al-'Amoud [quarter] in Nablus to retrieve a wounded person. My colleague, the driver 'Awni Sawalha, and I went in an ambulance to the above-mentioned place. When we got to one end of the street leading to our destination, we found it blocked with rocks. Upon seeing us, however, the residents of the neighborhood quickly removed the roadblocks so as to facilitate our task. We got over near the wounded person [a youth], and I got out and opened the back door of the ambulance. A number of youths picked up the wounded youth and placed him on the ambulance bed. I quickly climbed into the ambulance, and was about to close the back door when a girl started to climb in as well. I asked her not to, but she told me that she was the sister of the injured boy. I allowed her to accompany us. One of the youths from the crowd [got in and] sat by the driver, and then we left. This all happened in the course of a few seconds.

We quickly headed towards al-Ittihad al-Nisa'i Hospital in Nablus. I [examined the wounded youth], searching for the location of his wounds so as to stop the bleeding. After we had gone a short distance, the driver slowed down and told me that there were rocks blocking the road, and that there were masked youths and soldiers everywhere. I looked out the window and could see a side street, so I told the driver to turn into it. As the driver was about to turn into the street, someone opened the back door, and Dr. [name withheld], a physician with the Palestinian Red Crescent Society in Nablus, climbed in. We drove quickly in the direction of al-Ittihad Hospital.

The doctor began to assist me in locating the [youth's] injuries. This was difficult because of all the blood on [his] head and chest. Suddenly, I heard the sound of a bullet hitting the vehicle, so I asked Dr. [name withheld] to lie on the floor and threw myself on top of the wounded youth. [Then I heard] another bullet exploding right next to me. The vehicle came to a sudden halt, and the driver yelled, "I've been shot!" Shooting continued in our direction, and it seemed as if all of the rifle's bullets had been used on us. After the shooting stopped, I opened the back door and got out of the ambulance. I attempted to reach the driver. Two soldiers standing behind the vehicle pointed their rifles at me. A third soldier was standing near the driver. The two soldiers told me to get into the vehicle or else they would shoot. I said in, Arabic, "The driver is injured and I want to give him first aid." They again threatened to shoot, so I got back in. I told one of the two soldiers that the wounded youth was in critical condition and dying, but he paid no attention to what I was saying. I looked

at the soldier who was standing next to the driver. He had a sign on his shoulder which indicated military rank, but in the midst of all of the confusion, I could not make out its significance. The soldier ordered us to drive on. The youth [who had been sitting in the front seat of the car] moved the driver over, and took his place [at the wheel of the vehicle]. He tried to start the ambulance but at first failed because he did not know how to operate it. After three or four minutes, he managed to get it going. He drove very slowly. I asked him to drive us to al-Rahma Polyclinic so that we could get another driver. On our way to [the] clinic, Dr. [name withheld] told me that the wounded youth had died. At this point, I moved up to see 'Awni, the driver, and tried to find the location of his injuries so I could give him first aid. I discovered that his injury was in the lower, back part of his torso.

When we got to al-Rahma Polyclinic, the doctors and nurses there carried the wounded [driver] 'Awni and the corpse of the martyr to another ambulance and headed towards al-Ittihad Hospital. It was about 8:40 p.m. when I got to the reception area of the clinic. At about 9:15 p.m., two officers from the Red Cross, one of whom was named Philip, came to the clinic and asked me about the incident. I described everything that had happened from the moment we left the clinic to get the wounded youth (I found out later that [his name was] Mahdi Jamous), and about how we had been shot at on our way back to the clinic. They said they would go to the hospital to try to obtain the martyr's corpse. They also said that they would come back the next day, 19 June 1989, to talk to me again.

When I finished work I went home, and came back at 2:00 p.m. the next day. I went over to where the ambulance [in which we had been shot at the day before] was parked. I could see that seven bullets had penetrated the vehicle: two [bullets] had entered the windshield, close together, to the right of the driver's seat; one had hit the right side of the ambulance; one had penetrated the gas tank; one had hit the right rear tire; and two had hit the right side of the back door. My colleagues, ambulance drivers and nurses at both al-Rahma Clinic and the PRCS, informed me that they had gone that morning to the Red Cross office and staged a protest against the [ambulance] shooting. They also told me that an officer from the military government named "Asher" had come [to the demonstration] and told them that if they did not end it [immediately] he would disperse them by force. He told them that he would meet with them at 3:00 p.m. that day at the military government headquarters in Nablus to listen to their demands.

At 3:00 p.m., five employees from the Nablus PRCS came to al-Rahma Clinic in order to go . . . to the meeting with "Asher" at the military government headquarters. There were several from al-Rahma Polyclinic: Mazen Shakhshir (an ambulance driver), Dr. Khaled al-Sharif, Dr. Sadeq Qadri, and myself. A guard accompanied us to "Asher's" office. ["Asher"] apologized for what had happened the day before . . . [and] he asked me: "Did the army ask you to stop?" I said I had not heard anybody tell us to stop. He said: "Are you sure?" I said: "Yes, because I was aiding the wounded youth in the ambulance." He asked: "Did you see soldiers in the street?" I said: "I did not look out the window because I was trying to take care of the wounded youth." At the end of the meeting, the officer told me to accompany him to the place where the [shooting] incident had occurred, so that I could explain to him [exactly] what had

happened.

We discussed our demands with him. We demanded that the army deal with us in our ambulances in the same way it deals with ambulances in Israel; that the soldiers not prevent us from carrying out our duties, and that we be allowed to use our siren when necessary. We also described the type of harassment [from soldiers] we face while attempting to carry out our duties. ["Asher"] said that he would consider our demands.

After the meeting, I went by ambulance with the driver Mazen Shakhshir to the place where the incident had occurred. "Asher" and another officer (who wore insignia indicating his military rank) drove after us. When we arrived at the location of the incident, we stopped the ambulance in the exact place where soldiers had shot at the ambulance the night before. I recounted the details of the shooting and told how the soldiers there had behaved toward us. ["Asher"] found several spent bullet shells about seven meters away from the ambulance. He asked me: "Did you see the soldiers?" I said: "I did not see soldiers until the ambulance stopped after the shots were fired, when I opened the back door to go help the wounded driver. It was then that I saw the soldiers." As I was describing the incident to him, I noticed that there were people standing at their windows, watching. So I told the officer to ask them whether any of them had witnessed the incident. [The officer] asked an elderly man who was watching from the window of a house overlooking the site: "Did you see the shooting at the ambulance yesterday?" He replied, "No, I didn't see anything." He then asked [the same question to] a 20-year-old girl who was watching from another window: "Did you see what happened yesterday?" She replied: "Yes, I saw it from the window." When he asked her whether she had heard the soldiers asking the driver to stop, she said: "No, I only heard shooting." Finally, the officer told me: "We won't know what actually happened until we have questioned 'Awni, the driver."*

In accordance with all the above, I hereby sign this statement on this date, 25 June 1989.

(Signature)

Name available for publication

*'Awni Sawalha, the ambulance driver, died on 9 July 1989 a result of the wounds he sustained during the events described in this affidavit.

Chapter Three

Settler Violence

Introduction

Settler violence has become a permanent feature of everyday life in the Occupied Palestinian Territories. According to al-Haq's documentation, at least nine Palestinians were killed by Jewish settlers during 1989, many times that number wounded, and large amounts of property destroyed, vandalized, or stolen. Al-Haq does not keep comprehensive records on incidents of settler violence, but such acts have become so commonplace that it would be difficult, if not impossible, to estimate their total number. From information gathered by al-Haq's fieldwork unit and press accounts, however, it appears that settler violence peaked during the late spring and early summer of 1989 and then levelled out at a higher intensity relative to the first quarter of the year.

Despite their obligations under international and local law, the Israeli authorities have neither prevented settler attacks on Palestinian individuals and communities, nor effectively intervened to stop such attacks. To the contrary, soldiers have regularly cooperated with settlers engaging in wanton violence against Palestinian residents. Furthermore, the judicial system has failed to hold settlers responsible for their actions. Yet, the authorities consistently present themselves as neutral arbiters between the Palestinian and settler communities. But to Palestinians and settlers alike, and to a considerable segment of the military government as well, the authorities are openly allied to the settlers and therefore a direct party to the conflict.

In al-Haq's opinion, the phenomenon of settler violence is the inevitable consequence, if not the direct result, of conscious policies of successive Israeli governments.¹ The massive violations of Palestinian human and national rights required to maintain and expand settlement have ensured an adversarial relationship between the two communities. In order to keep the balance of power decidedly weighted in the settlers' favor, the military government has armed them and at the very least refrained from interfering with their activities. This official tolerance, in turn, has led to a consistent pattern of lawless behavior on the part of the settlers. In other words, official support for settler violence is structurally rooted and stems from the illegality of the

happened.

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In accordance with all the above, I hereby sign this statement on this date, 25 June 1989.

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*'Awni Sawalha, the ambulance driver, died on 9 July 1989 a result of the wounds he sustained during the events described in this affidavit.

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settlement policy itself.

Jewish settlers have been extensively armed by the military and have official permission to use their weapons. Their leaders have repeatedly asserted that law enforcement falls within this mandate, while Israeli officials, with some notable exceptions, generally state that existing regulations allow settlers to use force only in self-defense.² In order to properly evaluate these conflicting statements, al-Haq has for several years attempted to obtain a copy of the regulations, if any indeed exist, governing the use of firearms by settlers. To date, not one of the organization's enquiries to the military government has met with a response.

The settlers, aided by the absence of official accountability for their actions, have taken advantage of the fact that they are armed by the Israeli authorities to attack Palestinian communities throughout the Occupied Territories. Furthermore, al-Haq's documentation, the records of other human rights organizations, and persistent press reports clearly demonstrate that the settlers have not restricted themselves to "taking the law into their own hands," in the sense of applying measures prescribed by the law without possessing the authorization to do so.³ Nor have they stopped at interpreting the law as they see fit. Rather, their actions have been marked by a total disregard for the law.

A. The Applicable Law

Under international law, the Israeli policy of settlement in the Occupied Territories is itself illegal. Article 49 of the 1949 Fourth Geneva Convention states in pertinent part:

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

The Israeli authorities, however, have engaged in an uninterrupted breach of this stipulation in order to further the policy of settlement in the Occupied Territories.

Secondly, Article 43 of the 1907 Hague Regulations requires the occupant to ensure public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

The military government is therefore under a positive obligation to protect the residents of the Occupied Territories from attack by Jewish settlers. Were such attacks to occur despite the authorities' best efforts to prevent them, the military government would be bound to apprehend the perpetrators and bring them to justice in accordance with the penal codes in force on the eve of the occupation.

Rather than conform to the above stipulations, however, the authorities have effectively removed settler violence from the jurisdiction of local courts. For example, the jurisdiction of Israeli courts has been extended to accompany Jewish settlers wherever they go in the West Bank and Gaza Strip:

The courts in Israel have jurisdiction to adjudicate according to Israeli law a person who is present in Israel, with regard to that person's act or omission that has occurred in the area [i.e. the Occupied Territories] and that would have constituted an offence had it occurred within the area under the jurisdiction of the Israeli courts.⁴

Illegal as this arrangement may be, it in no way absolves the settlers of responsibility for their actions, because the Israeli penal code also contains clear procedures for the prosecution of criminal suspects.

B. Settler Attacks Against Palestinians

During 1989, Israeli settlers engaged in a variety of attacks on Palestinian residents, resulting in the death and injury of many Palestinians as well as extensive property damage.

1. Killings

According to al-Haq's documentation, at least nine Palestinians were killed by settlers during 1989. All were shot to death with live ammunition.⁵ This brings to at least 25 the total number of Palestinians killed by settlers since December 1987. In a further 12 cases, such as the killing of 'Abd-al-'Aziz al-Zabadi, described below, the perpetrators have yet to be identified.⁶ Because the only suspects in the latter incidents are soldiers, settlers, and collaborators, the actual total of Palestinians killed by settlers may therefore be higher.⁷ Additionally, a number of Palestinians have been killed by soldiers in incidents that were clearly provoked by settlers.⁸ Of the nine confirmed fatalities at the hands of settlers, four involved the shooting death of teenagers aged 13, 14, 17 and 17 respectively.⁹ The oldest of the remaining victims, 'Awad Farah 'Amro, 23, was shot through the head on 31 March 1989 in Hebron.¹⁰ Eight were shot at chest level or above, and one in the abdomen.¹¹

Settler claims that they are using lethal force in self-defense against violent attack are disingenuous. Most, if not all of these killings occurred during settler-initiated raids against Palestinian communities. Thus, even if settlers felt compelled to resort to using their weapons as a result of confrontations they themselves provoked, the use of force to pacify resistance to an armed attack hardly qualifies as self-defense. On 30 March 1989, for instance, when "vigilante patrols by settlers in vans with 'press' signs . . . sparked clashes in several villages in the Hebron area," 'Awad Farah 'Amro was mortally wounded on a side street near 'Alia Hospital in Hebron during a "stonethrowing clash" with settler vigilantes "cruising Hebron in a van carrying 'press' signs."¹²

Indeed, most Palestinian deaths at the hands of Jewish settlers resulted from clashes provoked by the settlers themselves. The following affidavit, concerning the shooting death of 'Aziz Khamis 'Arrar, 21, in the village of Qarawat Bani-Zeid near Ramallah, provides a clear illustration of this:

At approximately 9:30 a.m. on 23 June 1989, while I was at home, I heard the sound of heavy gunfire. I estimated it to be coming from the center of the village. I heard the neighbors warn that settlers were raiding the village [so I escaped to a wooded area in the hills located to the northeast of the village]. There, I met with a group of 15 fugitives from the village, including 'Aziz Khamis 'Arrar, aged 21 . . .

I heard the sound of gunfire nearing our hiding-place ... 'Aziz was lying prostrated on the ground at a distance of ten meters away from me. I saw him attempt to stand up. Yet, while he was still squatting with his head and back bent forward, I heard the sound of three shots. 'Aziz was hit by one of them. As a result of the injury he fell backwards on his back. When I saw him fall, I yelled out that "one has fallen," to indicate that there was a casualty, and immediately went to his rescue. I looked at his face and saw that it was covered with blood, and saw blood streaming from his right eye. Three youths lifted 'Aziz up in order to carry him back to the village, but, as they were lifting him up, I saw that he had stopped breathing and moving. The youths who were carrying him said that he had passed away.¹³

The case of 13-year-old Ibtisam 'Abd-al-Rahim Bouziyya, shot twice through the heart and once through the jaw during an indiscriminate shooting spree by settlers in the village of Kifl Hares near Nablus on 29 May 1989, is also demonstrative. On the day of the killing, approximately 30 settlers,¹⁴ in what senior security sources described as "a pre-meditated and well-planned provocation by the settlers,"¹⁵ went on a "methodical and prolonged rampage involving arson and vandalism, without military intervention":

In at least a dozen locations, piles of cut wheat or wood were burned, and virtually every water-tank along the settlers' route was punctured by gunshots. Windows were smashed in at least a dozen homes, including one house with more than 40 broken windowpanes, smashed systematically.

At least three trees had been set on fire. Tyres were shot out or windows smashed in two trucks, a van and a car. A donkey and sheep were shot to death, and settlers pumped bullets into a pile of watermelon on a vendor's stand.

Villagers said about 30 young men who walked into Kifl Hares from a hill nearby had carried a jerrycan of benzine, a fuel spray can, and extra magazines for their M-16 and Uzi guns, ... splitting up and moving through the village along two routes ...

Though settlers fired hundreds of bullets throughout the raid, which lasted about an hour and a half, no soldiers appeared until the attackers had withdrawn, villagers said ...

Settlers involved in the rampage said yesterday they had been surrounded and stoned as soon as they entered the village ... [According to one settler, Gadi Ben Zimra,] "our lives were in actual danger, and according to the law, we are allowed in such situations to shoot to hit. This was not a punitive expedition. Our sole aim was to take a hike." ...

At the ... home of Hamad Shakour, walls were covered with soot, a window frame was charred, and piles of burned clothing and blankets were stacked in the yard. Shakour said a petrol bomb had been thrown through the window of a second story room ...

Eighty-year-old 'Abd-al-Qader Saleh, a bandage on his face, said he was beaten with gun butts, kicked and punched in the face and buttocks ... by settlers ... Then, he said, they took his watch. Ghassan Najji, 16, was shot twice in the abdomen as he delivered food to relatives, villagers said.

In the house of Ma'rouf Isma'il, a bullet had gone through a television set in the living room.¹⁶

The account is continued in a statement taken by al-Haq from Ibtisam's 19-year-old sister, Wisal Bouziyya:

While my family and I were sitting on the porch of our house, we heard residents shouting that settlers were attacking the village. Immediately upon hearing this, we entered the house. I sat in the living room. Ibtisam was sleeping in the adjacent room.

A few minutes later, I heard the sound of gunfire near our house. I could also hear shouting and cursing. Suddenly, Ibtisam rushed out of her room and clasped me, and both of us went towards the door and opened it. Outside, I saw two settlers shooting indiscriminately in all directions. Just as I was going inside, I discovered that Ibtisam had been wounded, because my clothes were soaked in her blood . . . I went into my sister's room and knew that she had been injured through the window, because a bullet had pierced the metal window-shutter and made a large hole in the windowpane . . . I can identify the settler. He tried to kill me as well.¹⁷

After the raid, a large number of Israeli soldiers arrived in the village:

A military vehicle with two soldiers inside it entered the village. The soldiers came to our house and asked for my sister's body. They threatened to take it by force. The soldiers left the village, and an hour later a large military force came and imposed a curfew. We returned to the house and noticed that my sister's body had disappeared. Until the present time we have no idea about the body.¹⁸

By 4 July, the body had still not been returned to the family, although al-Haq has since learned that Ibtisam's corpse was eventually retrieved. Additionally, "some of the evidence at the scene of the crime [had] been obliterated." And, while a "senior police officer" stated that there was enough evidence to charge suspects with arson and malicious damage, he "could not say whether the investigators would recommend that anyone be accused for causing [Ibtisam Bouziyya's] death."¹⁹ In the meantime, all suspects had been released from custody. No further developments have since been reported.

The attack in which Ibtisam Bouziyya was killed was not the first time Kifl Hares had been raided by settlers. Several weeks prior to the killing, a group of settlers invaded the village on the pretext of visiting a religious shrine and, after clashing with residents, set fire to Muslim prayer rugs and tore up several volumes of the Qur'an.²⁰

2. Brutality, Arson, and Vandalism

Further removed from public scrutiny are the much more numerous incidents of settler brutality. Fully-armed settlers are free to assault and terrorize civilian residents of the Occupied Territories with near-total impunity, because the latter possess no means to defend themselves and do not receive effective protection from the authorities.

The attack against Khayriyya Da'oud 'Ali Abou-Yousef, an elderly resident of Halhoul, is a case in point. On 24 July 1989, she was walking near al-Dharwa Mosque in Halhoul when a passing bus full of Jewish settlers came to a sudden halt. Because

Mrs. Abou-Yousef believed respect for her age would keep her out of harm's way, she continued walking. Suddenly, however, she felt a heavy, solid object strike her head and she fell to the ground. A group of settlers then disembarked and began beating and kicking Mrs. Abou-Yousef all over the body, inflicting a gash to her head measuring seven centimeters and causing her to lose consciousness as well as several teeth. After four days in hospital, Mrs. Abou-Yousef was released but could still not move unaided. A subsequent medical examination at the Neurological Department of al-Maqased Hospital revealed her to be suffering from nervous shock.²¹

Although al-Haq was unable to establish why the settler bus came to a halt, the circumstances suggest that stones may have been thrown at it. If this was indeed the case, the assault on Mrs. Abou-Yousef only serves to confirm another persistent pattern documented by al-Haq, in which settlers immediately resort to retribution whenever they are in the least way challenged, and do so irrespective of whether damage or injuries are inflicted or not. More importantly, as has been discussed elsewhere in this chapter and is further documented in the appendix, settlers make no effort to distinguish between those confronting them and others in the vicinity. Rather, they are content to assault any Palestinian, be it through the random shooting of dozens of live bullets, forcing people out of their cars at gunpoint to remove stone barricades, or beating defenseless passers-by.²²

During settler raids the violence is typically more severe than in spontaneous incidents. This is because raids tend to be well organized and typically involve large groups of settlers. The following statement taken by al-Haq from a resident of Sinjil village in the Ramallah District describes an unexceptional case:

At approximately 10:30 a.m. on Monday 29 May 1989, while I was sitting on the veranda of my house facing the main street of Sinjil, I saw a group of approximately 40 armed settlers walking towards our village. I entered the house and closed the door behind me. Soon thereafter, I heard the sounds of gunfire, stones being thrown, and villagers shouting "Allahu Akbar" . . .

An hour later, I again looked out onto the main street and saw a group of six settlers coming towards the house and entering its courtyard. Three of them went to the animal coops, destroyed the fences, and released the animals. I then heard footsteps on the roof of the house, and then sounds of breaking glass. The settlers remained on the roof for about five minutes. When they left our house, they went to our neighbor's threshing floor, which contains oats, beans, and lentils. One of the settlers lit a rag with a match and threw it onto the threshing floor, and soon the fire consumed all the crops. Then the settlers went to the house of Radi 'Abdallah Suleiman 'Ulwan and smashed the windowpanes. The settlers left an hour later . . .²³

3. Destruction of Crops by Settlers

Settler Attacks on Palestinian Crops

During 1989, the burning of crops and destruction of property by soldiers, settlers, and unidentified individuals caused extensive economic losses to the Palestinian community as a whole. When Palestinians have attempted to file official complaints about

such incidents, they were frequently prevented from doing so by the authorities. Al-Haq has documented numerous attacks by Israeli settlers on Palestinian fields and orchards. Such attacks include poisoning grape vines, uprooting trees, and burning wheat fields. Al-Haq has no cumulative data or estimates of the total amount of crop damage resulting from such incidents.

In one case in the Hebron area settlers sprayed pesticides on the grape vines of several Palestinian farmers, leading to the loss of several hundred tons of grapes. It is presented as a case study of what al-Haq has noted to be a widespread phenomenon throughout the Occupied Territories:

At about 1:30 a.m. on the night of 20/21 July 1989, al-Haj Nammour Ahmad Hasan 'Iseila, a 65-year-old landowner and resident of Hebron, was asleep in his home. His house is in the 'Ein Bani-Salem area of Hebron, some 200 meters from the Giv'at Marginai sector of Kiryat Arba' settlement. He was woken up by one of his sons who informed him that there were noises and movements in their vineyards. Mr. 'Iseila's other son, Seif-al-Din, picked up a meat cleaver and went into the vineyard where he found two men. He challenged the two men and was told, in broken Arabic, that it was none of his business and that he would be killed if he did not go back inside. One of the two men carried a pistol with which he threatened Seif-al-Din. The other carried a hand-held chemical sprayer. Seif-al-Din was told to turn off the lights of the house.

The following day, Mr. 'Iseila visited the vineyard and noticed a bitter smell that made him feel nauseous. That evening, some of the leaves began to wither. On Saturday 22 July 1989, Mr. 'Iseila went to report the incident to the local military headquarters. When he tried to explain his situation to a soldier at the entrance of the building, he was prevented from doing so and ordered to leave.²⁴

According to an agricultural expert, the weed killer which had been sprayed upon Mr. 'Iseila's vineyards contained a substance known as "24D," which had been sprayed on the vines affecting the "Campion" region of the vine (the part responsible for transmitting food), which in turn affected the roots. This would lead to the death of the plant within one to two months. According to the expert, there is no substance available locally which is capable of counteracting the weed killer.²⁵ In addition to Mr. 'Iseila's vineyards, those belonging to at least six other farmers were similarly affected.²⁶ The expert estimated that some 400 dunams (approximately 100 acres) with a potential crop of about 600 tons of grapes had been affected in the Halhoul and Hebron areas.²⁷

Sewage from Settlements

A common problem faced by Palestinian population centers is the unrestricted flow of sewage from nearby settlements, causing the destruction of valuable crops and posing a health hazard to residential areas.²⁸ The source of this problem is the failure by the Israeli authorities to fulfill their obligations under local planning laws to ensure the proper maintenance of sewage systems. In years past, al-Haq has documented and/or intervened in several such cases. In 1989, al-Haq intervened in a similar case concerning the village of Beit Sourik near Ramallah, presented here as a case study:

Beit Sourik, which derives its income from the cultivation of fruit trees, chicken husbandry, and other small-scale agricultural activity, is separated by a valley from the Jewish settlement of Giva'at Haradar. The settlement was built in the early 1980's. The land cultivated by the villagers of Beit Sourik extends into the valley separating the village from the settlement and reaches the border of the settlement.

The settlement, perched on a hilltop, is surrounded by a high wall. Through an opening in this wall, the sewage from Giva'at Haradar has for the past year been flowing down the valley for about one kilometer and then spreading into a wider area, where it eventually comes to a halt. Although grass and weeds near the sewage thrive on it, all fruit trees in its path have withered and died. The owners estimate that some 20 percent of all trees in the valley have died as a result of contact with the sewage. In some areas the sewage has flooded the land and then receded, leaving white traces behind. Mosquitoes and flies are often rife in the area. Some areas can no longer be reached because of the sewage, which has affected several landowners.²⁹

Responsibility for the planning of drains and sewage flows rests with the civil administration of the military government, which has a duty under Jordanian law (as amended) to survey and plan land usage with a view, among other things, to preserving agriculture and preventing sewage outflows of the sort described here. Its failure to do so in the case of Beit Sourik indicates a clear dereliction of public duty.³⁰

On 1 December 1989, al-Haq wrote to the Head of the Planning Department of the civil administration, Shlomo Muscovitch, putting him on notice of the health threat posed by the sewage outflow and requesting his intervention. No reply had been received as of 6 February 1990.

C. Cooperation Between Settlers and the Military

Above and beyond the policy of establishing settlements, official encouragement of settler violence ranges from tacit cooperation to active collaboration and takes a variety of forms. The most serious of these, the failure to prosecute perpetrators and thus deter further such acts, is dealt with separately below.

Al-Haq has also documented a consistent pattern in which Israeli soldiers and/or Border Police present during settler attacks on Palestinians either fail to take action to stop the settlers or actively participate in the attack itself.

Fakhri 'Atiyya Sa'id Da'na, a 50-year-old green grocer in Hebron, lives adjacent to the Kiryat Arba' settlement. At approximately 11:30 p.m. on 3 May 1989, he was getting ready for bed when he heard the sounds of shooting and screaming outside his home. In a sworn affidavit taken by al-Haq, Mr. al-Da'na explains what happened:

... I then heard the sound of stone throwing which seemed to make the walls of my house shake. I went to investigate the situation and saw hundreds of settlers throwing stones at my house and the homes of my neighbors. I crawled into the bedroom, where four of my children were sleeping, to try to move them to safety, because stones broke the windows and there was broken glass everywhere. It was a miracle that none of my children were hurt.

I hid with the children in the corridor, which is in the middle of the house, so the stones could not reach us. I then saw, through a window, high flames outside

the house, and I realized that that the wooden boxes which I use for packing vegetables were burning. I have about 1,000 such boxes stored outside my house. Then I heard the sound of glass shattering in the living room. When I opened the door to investigate, I saw burning boards, each four meters in length, being passed through the window in an attempt to burn the house down. I was afraid to go to the window to see exactly who was doing this for fear of being shot. I closed the door to try to stop the thick smoke from entering the rest of the house ...

The situation remained like this with the settlers throwing stones at the house, going away, and then coming back again until 4:30 a.m., at which time I went outside and saw that all of my wooden boxes had been burned. The water tanks on the roof of the house had also been destroyed ...

During the incident I saw a Border Police jeep patrolling the street, but they did not try to stop the settlers. Some of the Border Police were with the settlers while the settlers were attacking my house. I saw this from the window which overlooks the street ... Also, while the wooden boxes were burning, the fire brigade came, but the settlers threw rocks at the fire truck, broke its windows, and prevented them from putting out the fire ...³¹

Mr. Da'na estimates the damage caused by the settlers, including the wooden boxes, water tank, television antenna, living-room furniture and broken windows to total approximately 5,000 Jordanian Dinars (approximately \$US 7,500).

The incident is further described in an affidavit given to al-Haq by Sa'id 'Ali 'Amr, 26, who drove the fire truck:

At approximately 1:00 a.m. on 4 May 1989, my colleagues and I were at the Hebron Municipal Fire Department when the telephone rang. The advisor to the military governor told us that there was a fire burning in the area close to the Kiryat Arba' settlement ...

We asked "Yehuda," the civil administration officer, to provide us with protection before we attempted to extinguish the fire ... He instructed us to go to the Border Police compound to get them to accompany us and protect us from the settlers. When we got to the compound there was a jeep waiting for us. We headed with them towards the fire. Some meters before we arrived at the fire [which we could see was on a pile of wooden boxes near the house of Fakhri Atiyya Da'na], we realized that the Border Police were not with us any longer and that they had left us to face the settlers alone.

We went to the house and started putting out the fire, but one of the settlers present at the scene threw a stone at us, breaking the front windshield of the fire truck. Other settlers then started throwing stones at us to prevent us from extinguishing the fire.

A settler came up to us and asked us for our identity cards. He checked them and gave them back to us. We tried again to put out the flames, but there were scores of angry, armed settlers throwing rocks at us [so we decided to return to the fire station].

We called the municipality and the office of the military governor and told them what had happened to us and how the settlers had broken the front windshield. We asked him to provide us with protection so we can extinguish the fire.

While we were talking to the advisor to the military government, the other telephone rang and we were told that there was another fire burning in the same area. We got back in the truck and tried to go there, but about 20 meters from the place where the fire was, we were stopped by a military officer who told us, in Arabic, "The settlers are crazy. It is better for you to go back." This time we also saw dozens of settlers, with soldiers standing nearby ... The settlers started throwing stones at us and the windshield was smashed in another place. It is important to note that we could see three military vehicles at the scene, but the soldiers did nothing to stop the settlers from attacking us.

We tried to put out the flames anyway ... As we were doing so the [Palestinian] residents who were there came up to us and told us that a fire had been set at the Khaled Ibn al-Walid Mosque which was about 200 meters away, so we headed towards the mosque to extinguish the fire. However, it was difficult for us to get there quickly because the settlers were throwing stones towards us and other residents in the area.

We took the risk and continued to try to get to the mosque. We parked the truck in a place where we thought it would be safe, and tried to put out the fire with our hand-held fire extinguishers, but we could not control the fire because the flames were too intense. The fire had been set on some wooden scaffolding, approximately 20 meters long and 3 meters wide, that was attached to the mosque. We then tried to use the pumps on the truck. During this time we could hear bullets ricochet around us. We then returned to the fire station again.³²

D. Official Investigations into Settler Violence*

Of the 25 killings committed by Jewish settlers since 9 December 1987, 23 were or are being investigated by the authorities.³³ One of these files was subsequently closed with no further action taken. Of the remaining 22 investigations, 13 have been completed while nine are still in progress. Thus far, the authorities have initiated judicial proceedings in only three of these cases (two from 1988 and one from 1989). Nine of the remaining ten files are pending a decision on further action while the status of the tenth, dating from the Beita killings of 6 April 1988, is unclear. Furthermore, in not one of the three cases did the authorities file murder charges. Rather, all three settlers were charged with manslaughter. As of 4 December 1989, only one trial, that of American-born Ira Farkis (a.k.a. Yisrael Ze'ev), had been completed, resulting in a guilty verdict for negligent manslaughter without malicious intent. He received a three-year sentence. In the Pinchas Wallerstein case, dating from 11 January 1988, the trial began in October 1988, was recessed shortly thereafter, and appears not to have been resumed. In the Rabbi Moshe Levinger case, dating from 30 September 1988, the trial was not begun until 3 December 1989 and is still in progress. Finally, despite the severity of their alleged offenses, only Mr. Farkis was remanded in custody until the end of legal proceedings. The others were all released on bail.³⁴

The judicial system has allowed settlers to avail themselves of all types of diver-

*See further Chapter Sixteen, "Investigations."

sionary maneuvers which under different circumstances no Israeli court would permit. The Levinger trial, for instance, did not begin until 15 months after he shot and killed Kayed Hasan Saleh with three pistol shots. At the first court hearing, held on 22 May 1989, the only substantive decisions taken were to postpone the trial at the defendant's request and return his pistol. Speaking to reporters afterwards, a gun-brandishing Rabbi Levinger asserted his innocence by claiming that he had "not had the honor" of killing Mr. Saleh.³⁵

The most notable case to be resolved during 1989 dates from before the uprising. On 10 November 1987, Gaza Strip settler Shimon Yifrah shot and killed Intisar al-'Attar, a teenage girl, inside the courtyard of her school in Deir al-Balah. It took almost two years for judicial proceedings to run their course. Finally, on 23 October 1989, the Beersheba District Court found Mr. Yifrah guilty of negligent manslaughter and imposed a sentence of seven months suspended. In this instance, the State Attorney was apparently so embarrassed by the results of her office's earlier recommendations that an appeal was submitted to the High Court of Justice urging a stiffer sentence.³⁶

Al-Haq had direct experience with the lack of proper investigations in cases of settler violence. On 17 November, two settlers began opening fire indiscriminately just outside the organization's offices, stole a film containing photographs of the incident belonging to one of its employees, shot at him, and wounded another person. Al-Haq submitted a formal complaint to the authorities, calling for a thorough investigation into the incident. Three days after the complaint was filed, and prior to having interviewed any of the Palestinians or al-Haq staff involved (which has yet to occur), the Israeli military spokesperson announced that the settlers had fired in the air after being attacked with stones.³⁷ In its complaint, however, al-Haq cited eye-witness accounts showing that this was not the case and that the settlers' lives were not in danger at the time they opened fire. The claim by the military also does not explain how, if the the settlers only fired into the air, a Palestinian standing on a street corner was wounded in the leg. Additionally, whereas all eyewitnesses clearly saw the settlers drive away unaccompanied while soldiers stood by, the military claimed that the settlers "were immediately taken by an officer for questioning."³⁸ If the settlers were indeed questioned at a later time, no attempt appears to have been made to retrieve the stolen film, a vital piece of evidence.[†]

In cases of settler violence which do not involve death or injury, the holding of an official investigation and judicial proceedings is virtually non-existent. At best, the military government will attempt to settle the matter outside of court. This happened with Jamil Younes 'Abd-al-'Aziz Bashir, a farmer from Deir al-Balah in the Gaza Strip whose greenhouses, occupying two hectares of land, were set on fire and destroyed by settlers on 18 March 1989:

On the morning of 19 March 1989, the military governor, accompanied by seven policemen, came and asked us who had [burned the greenhouses]. We replied that it was "the settlers." The military governor responded: "We don't want problems and publicity. This was a mistake and we will compensate you." [I was] ordered to go to the military governorate at 2:00 p.m. . . . We went, and

[†]See further Appendix 3-A.

the military governor stated: "We don't agree with what happened. We will compensate you for the lost greenhouses." On 21 March 1989, the military governor, accompanied by Israeli and Arab agricultural engineers, brought rolls of nylon as a form of compensation.³⁹

It is not clear why the military government took it upon itself to compensate residents for the actions of what are claimed to be private citizens. Furthermore, no settler was arrested in the case.

E. Case Study: Settler Rampages in Hebron, 24 April–22 May 1989

An idea of the level settler violence has been permitted to reach by the authorities is given by the following al-Haq fieldwork report compiled in Hebron between late April and mid-May 1989. Although the phenomenon of persistent attacks against a single location is in many ways unique to areas lying within the vicinity of Jewish settlements, the issues raised by them are not. Rather, wanton violence and destruction by Jewish settlers, committed with the tacit support or active collaboration of the military, has been a salient feature throughout the Occupied Territories. For this reason the Hebron report serves as a useful case study:

24 April 1989: At approximately 11:00 a.m., the residents of King Feisal Street were surprised by a large number of Jewish settlers marching through the street and damaging the Palestinian-owned cars parked on either side of it. The settlers smashed 32 cars, including a Subaru belonging to Rawhi Abou-Hamad, which cost 600 Jordanian Dinars [approximately US\$ 800] to repair, and an Opel belonging to Muhammad Dohin, which incurred JD 1200 [approximately US\$ 1,600] in damage. The settlers also destroyed the display windows of six shops and attempted to damage goods. They entered a sewing shop in al-Hmeidiya Market and threw the cloth to the ground. One settler took a piece of cloth 15 meters long and fled with it. The store owner attempted to file a complaint, in which he identified the thief, that same day. However, the police declined to record his affidavit.

About 200 settlers participated in this attack. After it was over, the armed forces imposed a curfew on Bab al-Zawiya [the Palestinian neighborhood], and maintained it until 2 May.

2 May 1989: At approximately 11:15 p.m. six settlers from Kiryat Arba' [the settlement located on the outskirts of Hebron] attacked the house of Hazem Bader 'Abd-al-Halim al-Ja'bari, 30, which is at a distance of 50 meters from the settlement and 150 meters from the Border Guard barracks. The settlers smashed the glass of Mr. al-Ja'bari's Peugeot and tried to break its door. (The Israeli police later assessed the damage at JD 600.) Then, the settlers threw stones at the doors and windows of the house. Mr. Ja'bari, his wife and sons began shouting "Allahu Akbar" in order to summon help.

About 15 minutes later, the settlers went to the neighboring houses and began smashing their windows as well as the glass of Palestinian-owned cars. More settlers joined them until the attackers numbered approximately 50 persons. They vandalized the car of Nadi Hassoun al-Ja'bari, 25 years old. When his mother went out of the house, a settler threw a large stone at her, seriously injuring her in the leg. When Nadi came out to see what was happening, the settlers threw a rock at his head. Six stitches were required to close the wound.

At this point, some soldiers arrived in a military jeep and saw what the settlers were doing, but did nothing to stop the settlers. Next, the settlers attacked the house of Muhammad Hilmi al-Bakri, completely destroying its windows. They continued throwing rocks at the house while chanting, "We are the 'Youths of the Uprising' [*Shabab al-Intifada*], not you" and "Get out, you dogs!" As a result of this, residents began to attack the settlers, who responded by firing heavily into the air. The settlers brought a bulldozer and began to demolish a wall and uproot grapevines belonging to 'Ali Musbah al-Ja'bari. Then, cursing heavily, they left. Throughout this period the Border Guards, who were in the street, did not intervene.

- 3 May 1989:** [The arson of Fakhri Da'na's house and the military's obstruction of the attempts to extinguish the fire are detailed in Section C, "Cooperation between settlers and the Israeli military"].
- 7 May 1989:** A group of approximately 50 settlers, accompanied by two military vehicles, attacked Palestinian homes in the al-Baq'a neighborhood near Kiryat Arba' settlement. Five windows were destroyed.
- 9 May 1989:** At approximately 10:45 a.m., about 30 settlers threw stones at Palestinian homes in the Haret al-Sheikh neighborhood, shooting at houses and water tanks situated on their roofs. The residents defended themselves and drove the settlers away. At that point, a Border Guard unit came and began shooting ammunition and teargas grenades at the Palestinian residents while another guarded the settlers and accompanied them to Beit Hadasa settlement in the center of Hebron.
- 10 May 1989:** At approximately 11:30 a.m., five settlers fired from their revolvers at a building in the al-Hmeidiyya Market in King Feisal Street for about 15 minutes. Meanwhile, three soldiers were standing beside them.
- 12 May 1989:** In the evening, scores of settlers attacked Palestinian homes in al-Thawra neighborhood in Halhoul [near Hebron] and fired in the air. When the residents gathered to defend themselves and drive the settlers away, soldiers shot live and rubber bullets at them. It should be noted that there was a military observation post where the settlers parked their cars and attacked the Arab houses.
- 13 May 1989:** Scores of settlers went to the Wadi al-Huriyya neighborhood in Halhoul, shot at water tanks and smashed windows. They also demolished the walls

surrounding homes with a bulldozer they brought with them for this purpose. In the center of Wadi al-Huriyya, the bulldozer encountered a Peugeot bearing local license plates containing five persons. The driver of the bulldozer turned towards the Peugeot, hit it, smashing its roof with the bucket of the bulldozer, and left the site. The residents went out of their houses to aid the wounded, and it appeared that they were soldiers wearing civilian clothes who had commandeered a local car. Eyewitnesses believe that two were killed and three seriously wounded, but this could not be confirmed. A military ambulance arrived and took the injured passengers away. The settlers continued towards al-Hawouz neighborhood and then to 'Ein Sara and Ras al-Jora. In the course of this nine kilometer journey, they attacked Palestinian homes and cursed residents while military vehicles followed behind them.

16 May 1989: At approximately 4:00 p.m., about 400 settlers raided the quarters of Bir Haram, al-Ramah and Ras al-Jora in al-Khalil. They threw stones at the houses and vandalized 13 cars. [A list of 13 names was provided].

The settlers also shot at water tanks and damaged the Palestine Bakery in Ras al-Jora. They attempted to reach Jneid Mosque, but were prevented from doing so by residents. The settlers burned and smashed the glass of Palestinian-owned vehicles, including:

- (1) A 1982 M.A.N. truck owned by Salim Abou-Munshar, completely gutted;
- (2) A Fiat owned by Manna' Fahmi al-Ja'bari, completely gutted;
- (3) A 1988 Volvo truck owned by Ishaq Nu'man al-Ja'bari, shot up and vandalized.

At about 8:00 p.m., approximately 50 settlers entered al-Horas quarter and threw stones and shot at homes. The residents clashed with the settlers and a group of soldiers who were with the settlers fired live and rubber bullets at the residents and seriously wounded 'Imad 'Abd-al-'Afu al-Zghayyar, 18 years old, in the head. His cousin was shot in the hand. Many others were wounded by rubber bullets and treated in the emergency clinic of the Red Crescent Society.

The settlers stopped an ambulance carrying the wounded for a period of 15 minutes and destroyed its windows. While this was happening, the soldiers, who were among the settlers, remained idle. Moreover, as the ambulance was passing the Bethlehem military government compound, scores of soldiers stopped it, ordered its driver out, slapped him, and took his identity card and the ambulance's keys. It was not until 15 minutes later that the ambulance was allowed to proceed to the hospital.

On its way back to Hebron, the ambulance was stopped by soldiers in Halhoul. One of them told the driver, "I advise you not to drive into Hebron, because the settlers will smash the ambulance."

After that, a group of settlers moved to al-Salam Street, shooting at homes and throwing rocks through the windows. As a result, the windows of the house

belonging to Abou-Hasan al-Ju'ba was smashed. At about 12:00 that night, the army imposed a curfew on the quarter. That same night, settlers ploughed through the land of Jamil al-Ramah and uprooted 60 grapevines.

22 May 1989: 'Abd-al-'Aziz al-Zabadi, a 42-year-old wheat-dealer from Hartha village near Hebron was killed when a rock was thrown through his windshield from a passing vehicle. His brother, who was in the car with him, saw the rock being thrown from a white GMC transit, and gave the information to the police. Despite this, the perpetrator(s) escaped and were not apprehended.⁴⁰

Summary

Al-Haq has repeatedly insisted that if regulations exist permitting settlers to carry out security operations, this should be made public by the Israeli authorities. The existence of such regulations would confirm the settlers' status as agents of the state and invalidate the dubious Israeli claim that armed settlers are civilians, with all the implications this entails. Furthermore, it would make the settlers fully accountable to the clear rules of conduct set out for the military in international and, where consistent, local law.

If, however, the military government continues to insist that settlers are not agents of the state and as civilians have no right to "take the law into their own hands,"⁴¹ then it is legally obligated to prosecute settlers who commit criminal acts. Furthermore, the possession of firearms by civilians is not a right but a carefully-restricted and licensed privilege subject to revocation. The essential point is that the authorities cannot continue to have it both ways by arming the settlers while claiming that they are civilians and allowing them to engage in a range of military activities while refusing to enforce any type of standard.

The view that armed settlers in the Israeli-occupied West Bank and Gaza Strip are not entitled to civilian status and participate in the conflict in at least a quasi-official capacity has also been endorsed by a United States court of law:

[Settlers in the West Bank and Gaza Strip] cannot be characterized as mere civilians ... While the settlers may not fit the description of military personnel as it is commonly thought of, it is clear that at a minimum they are willing participants in a civil war or a violent community conflict ...⁴²

Endnotes to Chapter Three

1. Additional information on this subject can be found in Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987–December 1988* (Ramallah: Al-Haq, 1988), pp. 113–132. See also Raja Shehadeh, *Occupier's Law: Israel and the West Bank* (Washington, D.C.: The Institute for Palestine Studies, 1988), which was prepared for al-Haq and contains an extensive legal analysis of settlement and related legislation. For widely available in-depth studies see Geoffrey Aronson, *Creating Facts: Israel, Palestinians & the West Bank* (Washington, D.C.: The Institute for Palestine Studies, 1988); Meron Benvenisti, *The West Bank Data Project: A Survey of Israel's Policies* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1984); Meron Benvenisti and Shlomo Khayat, *The West Bank and Gaza Atlas* (Jerusalem: The West Bank Data Base Project (WBDBP), 1988); Noam Chomsky, *The Fateful Triangle: The United States, Israel & the Palestinians* (Boston: South End Press, 1983), pp. 103–143; Sara Roy, *The Gaza Strip Survey* (Jerusalem: WBDBP, 1986), pp. 134–151; The DataBase Project on Palestinian Human Rights (DBPPHR), *Colonial Pursuits: Settler Violence During the Uprising in the Occupied Territories* (Chicago: DBPPHR, 1989), pp. 1–20; The Palestine Human Rights Campaign (PHRC), *Israeli Settler Violence in the Occupied Territories: 1980–1984* (Chicago: PHRC, 1985), Chapters 1, 3, and 9, as well as the many articles published on the subject in the *Journal of Palestine Studies* and *Middle East Report* (formerly *MERIP Reports*).
2. On 21 April 1989, for example, Uri Ariel, Chairman of the Council of Settlers in Judea, Samaria and Gaza stated that settlers in several locations had organized “rapid intervention units” which “are recognized by the army” and in some cases led by army-appointed “security coordinators.” An unidentified military source responded that the armed forces were “the only organization responsible for security in the territories.” (Joshua Brilliant, “Settler Leader Says IDF Recognizes Paramilitary Units,” *Jerusalem Post*, 21 April 1989.)
3. For one such documented study see DBPPHR, *Colonial Pursuits*.
4. Israeli Emergency Regulations (Judea, Samaria, and Gaza - Adjudication of Offences and Legal Aid, 5727–1967) (as amended), Paragraph 2(a), cited in Eyal Benvenisti, *Legal Dualism: The Absorption of the Occupied Territories into Israel* (Jerusalem: WBDBP, 1989), p. 17. A “person who is present in Israel” is defined as a person “registered in the Population Register” (i.e. an Israeli citizen), and, under a 1988 amendment, a corporation registered or controlled by an entity that is registered in Israel as well.
5. Al-Haq Database Report, 21 November 1989. Al-Haq Database Reports summarize documentation received from the organization’s fieldwork unit.
6. *Ibid.*
7. For instance, the 25 confirmed killings by settlers do not include the case of ‘Abd-al-‘Aziz al-Zabadi, cited above, and that of Khaled Yousif al-Shawish, murdered outside Jaffa Gate in Jerusalem on 10 April 1989 by unidentified assailants who shot him in the neck and back. Responsibility for the latter case was later claimed by an underground organization calling itself the “Sicarii,” widely believed to consist of West Bank settlers.
8. For some of these cases see DBPPHR, *Colonial Pursuits*, pp. 80–81.
9. Al-Haq Questionnaires Nos. 89/00374, 89/00603, 89/01097 and 89/01301.
10. Al-Haq Questionnaire No. 89/00296.
11. Al-Haq Database Report, 21 November 1989.
12. Joel Greenberg, “Police Probe ‘Press’ Gunmen in Hebron Shooting Death,” *Jerusalem Post*, 2 April 1989.
13. Al-Haq Affidavit No. 1887.
14. Joel Greenberg, “A Trail of Destruction,” *Jerusalem Post*, 31 May 1989.
15. Joel Greenberg and Joshua Brilliant, “Settlers Kill Teenage Girl,” *Jerusalem Post*, 30 May 1989.

16. Joel Greenberg, "A Trail of Destruction," *Jerusalem Post*, 31 May 1989.
17. Al-Haq Fieldwork Report. The statement is unclear about when the first shot was fired, and suggests that Ibtisam was first fired upon at the entrance to her house and then again through the window. In the account by Joel Greenberg cited above, Ibtisam's mother states that the first wound was inflicted inside the house.
18. *Ibid.*
19. Joshua Brilliant, "Police 'Wrapping Up' Probes of Kifl Harith Raid, Funeral Melee," *Jerusalem Post*, 5 July 1989.
20. Joel Greenberg and Joshua Brilliant, "Settlers Kill Teenage Girl," *Jerusalem Post*, 30 May 1989.
21. Al-Haq Fieldwork Report with appended medical record.
22. See further Appendix 3-A.
23. Al-Haq Fieldwork Report. The informant requested that their name be withheld from publication.
24. Al-Haq Affidavit No. 1965.
25. Al-Haq Affidavit No. 1964.
26. Al-Haq Affidavit No. 1965. See also Joel Greenberg, "Hebron Farmer: Uniformed Men Poisoned My Crops," *Jerusalem Post*, 27 July 1989.
27. Al-Haq Affidavit No. 1964.
28. See for example Shehadeh, *Occupier's Law*, pp. 190-191.
29. Al-Haq Fieldwork Report. The landowners affected include Ra'ed Ahmad Kandil; Hasan Sa'ed Hasan al-Sheikh; Ahmad 'Abd Khalil Shafiq and 'Abd-al-Rahman 'Isa Samhan.
30. Law No. 79 Concerning the Planning of Cities, Villages and Buildings of 1966. Under Military Order No. 418 of 1971, a number of committees allowing for local participation in the planning process were dismantled and the power of the "Person Responsible" increased.
31. Al-Haq Affidavit No. 1799.
32. Al-Haq Affidavit No. 1842.
33. In a system which does not recognize the principle of accountability and shuns public disclosure about its inner workings, the attempts of human rights organizations to obtain information about how the judicial system responds to crimes committed by settlers and soldiers are generally unsuccessful. Primary data does not exist, as all of al-Haq's correspondence with the military government concerning settler violence and the law elicits evasive responses or no reply at all. In the absence of official information on investigative procedures, the choice becomes one of challenging official claims that all is well by contradicting them with common-sense arguments, or, alternatively, supplementing such contentions with second-hand data provided by individuals and organizations who operate within Israeli society, such as journalists and Israeli human rights groups who have a measure of access to the authorities. Thus, this section is primarily based upon information supplied by the B'Tselem human rights organization and various press accounts.
34. Telephone Interview, B'Tselem, 4 December 1989. Information on the Wallerstein and Farkis cases was obtained from DBPPHR, *Colonial Pursuits*, pp. 27, 32. The DBPPHR report discusses the investigations into a number of cases included in the above account.
35. DBPPHR, *Colonial Pursuits*, p. 36.
36. Michal Sela and Joel Greenberg, "Stiffer Sentence Asked For Settler Who Shot Gaza Strip Girl," *Jerusalem Post*, 24 October 1989.
37. Joel Greenberg, "Rights Group in Ramallah Complains to Police of Rampage by Settlers," *Jerusalem Post*, 29 November 1989.
38. *Ibid.*

39. Al-Haq Affidavit No. 1738.
40. Al-Haq Fieldwork Report.
41. Such statements were made, for instance, by Defense Minister Yitzhak Rabin on 30 May 1989; Attorney-General Yoel Haniel on 23 May 1989; IDF Chief of General Staff Ehud Barak on 14 February 1989, and Foreign Minister Moshe Arens on 23 May 1989 (*Jerusalem Post*).
42. *In Matter of Atta* (unpublished opinion), United States Magistrate (Eastern District, N.Y., 17 June 1988), p. 52.

Appendix 3-A

Text of al-Haq Complaint Concerning Settler Violence in Ramallah

23 November 1989

Ref: 3296

Mr. David Kraus
Police Commissioner
Ministry of Police
Jerusalem

Dear Mr. Kraus,

Re: Shooting of a Palestinian Resident By Israeli Settlers

Al-Haq, the West Bank affiliate of the Geneva-based International Commission of Jurists, is submitting this complaint in order to assist and facilitate the official investigation into the circumstances surrounding the shooting and wounding of Jamal Karam, a 26-year old resident of Ramallah, on Friday 17 November 1989. The individuals responsible for the shooting were identified by the military to al-Haq as being Israeli civilians. It appears from media reports that these individuals were Israeli settlers living in the West Bank.

Al-Haq decided to submit this complaint only after conducting its own investigation, which included the taking of affidavits from numerous individuals, including al-Haq employees, who witnessed the incident itself as well as the events prior to and after the shooting of Mr. Karam. Many of the affiants have requested that their names be kept confidential. If appropriate guarantees can be given that they will be protected from retaliation, however, al-Haq will seek to have these individuals come forward to testify.

Al-Haq feels that an immediate and thorough investigation into the shooting of Mr. Karam is imperative. In addition to the shooting of Mr. Karam, several other actions taken by the settlers, as well as by the military, require investigation. These include:

- a. The beating by the settlers of several Palestinians residents;
- b. The indiscriminate use of live ammunition by the settlers, which endangered the large number of bystanders and passers-by;
- c. The settlers' seizure and theft of an al-Haq employee's film containing photographs of the events, resulting in the probable destruction of evidence;
- d. The failure of the military to prevent the theft of the above-mentioned film by the settlers despite being told that it contained photographs of the settlers shooting at and beating Palestinians;

- e. The failure of the military to respond promptly to the incident despite being explicitly asked to do so by Palestinian residents;
- f. The settlers' assault and shooting at two foreign nationals who intervened to stop the shooting and beating of Palestinians;
- g. The failure of the military to record the name of any of the victims and witnesses, or to summon the police to do so if indeed the incidents did not fall into the jurisdiction of the military; and,
- h. The failure of the military to detain, arrest, disarm, or even attempt to restrain the settlers.

Summary of the Facts

According to al-Haq's information the incidents surrounding the shooting transpired as follows:

1. At approximately 11:30 a.m. on Friday 17 November 1989, a small group of youths set up a barricade, consisting of stones, garbage, and a burning tire, near the Shehadeh Law Offices on Main Street in Ramallah, and began chanting slogans and whistling.
2. According to several affiants, approximately 15 minutes later a white Peugeot 305 (license No. 274-11-81) coming from the direction of Ramallah's old city came to a halt at the intersection of Main St. and Friends St. at a distance of about 65-70 meters from the demonstrators.
3. Two individuals, apparently Israeli settlers, wearing army-style khaki pants but otherwise in civilian clothes, got out of the car and began indiscriminately shooting at the demonstrators.
4. One of the settlers, a dark-haired bearded man of medium height and build wearing a white T-shirt (hereinafter Settler #1), took aim and fired from shoulder height. The other settler, of similar appearance but wearing a maroon sweatshirt (hereinafter Settler #2), shot randomly from his hip. Both of them were armed with what appeared to be Uzi submachine guns.
5. According to several affiants who were watching the demonstration, no stones had been thrown at the car or at the two individuals before they opened fire. These eyewitnesses include al-Haq employees who observed the incident from the balcony of al-Haq's office.
6. Settler #1 grabbed an elderly woman and began to beat her. He kned her in the stomach, threw her on the ground, and kicked her while she was laying there. This incident was photographed by Mr. Marty Rosenbluth, a volunteer researcher at al-Haq.

7. Settler #2 called to a youth who was walking down the street, ordered him to come, and started beating and kicking him. This incident was also photographed by Mr. Rosenbluth.
8. At this point some stones were thrown at the settlers, but landed between 15-20 meters short of where the settlers were standing.
9. Passers-by began shouting at the settlers to stop beating the woman and the youth. Settler #1 ordered a woman who was shouting at him to "Come here, my dear" ("Ta'ali ya habibti"). He then walked towards her, grabbed her arm, and started beating her. He kned her in her chest, punched her, and then started pushing her and yelling at her in Hebrew.
10. A Palestinian couple who had been shopping nearby were stopped by Settler #2 while heading to their car and told not proceed any further. When the husband asked the settler to prove that he was a soldier and thus authorized to prevent them from going where they wanted to go, the settler responded by kicking, punching, beating and cursing him. When the wife attempted to block the settler from kicking her husband, he kned her in the groin and cursed at her in both Hebrew and Arabic. The settler also threatened the couple with his gun by pointing it directly at them in a menacing manner.
11. According to several affiants, during at least part of this period of time there were two army jeeps parked on Main Street at a distance of less than 200 meters away, near Rukab's Ice Cream store, but they did not attempt to intervene. The soldiers in the jeeps had clear line of vision to observe the incidents, and could not but have heard the shooting.
12. A passerby who had witnessed the shooting and beating approached the patrol and asked that instead of sitting where they were, they, the soldiers, should stop the settlers from shooting and beating people. They told her to shut up and go home.
13. At approximately this point, the undersigned, in my capacity as al-Haq's Executive Director, phoned the Legal Advisor to the military government and informed him that two Israeli civilians, apparently settlers, were indiscriminately opening fire on Main Street outside of our office.
14. Also at this point, Mr. Rosenbluth and Mr. Mark Taylor, an employee of Bir Zeit University, descended from the al-Haq office to try to calm the settlers or at least defuse the tension. Mr. Rosenbluth had his camera around his neck.
15. Mr. Rosenbluth, Mr. Taylor and several other individuals, including a priest, approached the settlers to try to speak with them. Mr. Rosenbluth identified himself as an American citizen, and suggested that the settlers get in their car and leave as they were not being threatened. He showed them his passport to confirm that he was a US citizen. Mr. Taylor presented his passport and informed the settlers that he was a Canadian citizen.

16. Settler #1 grabbed Mr. Rosenbluth's camera strap, which was still around his neck, and tried to pull his camera away from him. The other settler took his passport and said to him, in English, "When you give me the film, I'll give you the passport", and walked away with it. Settler #1 continued to try to pull the camera away and threatened Mr. Rosenbluth, Mr. Taylor, the priest, and others with his Uzi, pointing it directly at them from a distance of less than 50 centimeters.
17. Out of concern for his own safety as well as that of others, Mr. Rosenbluth gave his film to the priest who then handed it to the settler. Settler #1, however, continued to try to pull the camera away.
18. The undersigned told the settlers that the military had been called and were on their way.
19. Mr. Taylor then started walking towards the youth who was still lying on the ground. Mr. Rosenbluth followed. They were going to the youth to see if he was injured and required medical attention. The priest and another man also went towards the youth. Mr. Rosenbluth and Mr. Taylor told Settler #1 that they had no right to arrest the boy since they were not soldiers. The priest and the other man tried to pick the boy up, but Settler #1 threatened them to go back by shouting at them and menacing them with his Uzi.
20. At this point Mr. Jamal Karam, who had been driving in his car towards his home (which is located on Main St.) from the direction of Ramallah's old city, was ordered to stop by Settler #2 and told to get out of his car. After Mr. Karam complied, he was ordered by Settler #2 to stand on the corner in front of Italy Furniture Exhibition Store.
21. Settler #1, who at this point was standing with one foot on the back of the youth who was lying on the street, turned towards Mr. Rosenbluth and began to kick at him repeatedly in the leg with well aimed karate-style kicks. Mr. Rosenbluth and Mr. Taylor started to back away from the settler, but the settler continued to kick at them.
22. Since Settler #1 continued to kick them despite the fact that they were backing away, Mr. Taylor then tried to protect Mr. Rosenbluth by blocking the settler's kicks with his hands. The settler then abruptly fired either a single shot or a single burst of automatic gunfire at Mr. Taylor and Mr. Rosenbluth, aiming at their legs but missing Mr. Taylor by only the narrowest of margins. Mr. Rosenbluth and Mr. Taylor continued to back off, but the settler kicked Mr. Rosenbluth again in the leg and also in the hand, forcing him to drop his camera to the ground. He also again kicked Mr. Taylor several times. During this time he also continued to threaten them with his Uzi and to shout at them in Hebrew.
23. At this point some stones were thrown in the direction of the settlers, which according to several eyewitnesses landed at least 20 yards away from where the

- settlers were standing. Both settlers then opened fire indiscriminately in all directions.
24. Settler #1 then turned to Mr. Karam and two other youths who were standing on the street corner, took aim at them at about waist level, lowered his gun, and fired at their legs. Mr. Karam was wounded in the leg. No stones had been thrown from the direction where Mr. Karam was standing.
 25. Mr. Karam, realizing he had been wounded, tried to walk towards his car so he could drive to the hospital. Settler #2, however, blocked his path and told him he should walk to the hospital. Mr. Karam then went into a nearby store to seek shelter.
 26. A few moments later three jeeps arrived. Mr. Rosenbluth and the undersigned walked towards the soldiers. The undersigned asked the first soldier she encountered for the name of the commander in charge so al-Haq could file charges against the settlers.
 27. Mr. Karam then came out of the store and went to his car. A friend then drove him to the hospital.
 28. The settlers at this point were still in possession of their weapons. Within clear view of the soldiers who were present, the settlers continued to threaten and aim their weapons at bystanders. According to several affiants, the settlers also punched a Palestinian lawyer while the soldiers were present.
 29. The soldiers did not arrest the settlers and made no attempt to restrain them in any way. The soldiers also did not confiscate the settlers' weapons despite the fact that they had just been used to commit a crime.
 30. Mr. Rosenbluth told one of the soldiers that they had taken the film from his camera, that the film contained pictures of the settlers beating and shooting at people, and that it could be used as evidence against the settlers. The soldier responded by demanding of Mr. Rosenbluth, "Who told you to take pictures?"
 31. Another bystander asked the soldiers what they were going to do with the settlers and was told that this would be dealt with when the officer arrived.
 32. Mr. Taylor then picked up one of the dozens of spent bullet-cases that was lying on the ground. A soldier came up to Mr. Taylor and ordered him to surrender the shell because it constituted "military evidence".
 33. The settlers got in their car and drove away with the film. The undersigned spoke with an officer who appeared to be in charge and told him that al-Haq wanted to press charges. He responded by stating that he wanted to clear the road of debris first, which he did by ordering passers-by to remove the roadblock and burning tire situated 65-70 meters down the street.

34. After the passers-by finished removing the roadblock, the officer drove (Jeep No. 660034) to where the undersigned and several al-Haq colleagues were waiting. The undersigned asked him the name of the officer responsible for the street at that time and was told that there was only an officer responsible for all of Ramallah, whose name he refused to disclose. The undersigned then asked the officer if the individuals involved in the incident were soldiers, and he responded that they were civilians.
35. The officer also refused to give his own name or disclose the number of his unit. The undersigned and Mr. Rosenbluth wanted to acquire this information because the soldiers had allowed the settlers to leave with the film and did not attempt to restrain them.
36. The officer then stated to the undersigned that a complaint could be filed with the police or the military governor.
37. The undersigned then phoned the legal advisor to the military government and was told to submit my complaint to the police.

The incidents described above raise several questions about the policies and regulations pertaining to the use of live ammunition by Israeli settlers.

Al-Haq requests an immediate and thorough investigation into the incident, including the role of the military, and that those found responsible be brought to justice. All of the individuals named in this document are available if any further information from them is required to assist you in your investigation. As stated above, the other individuals who provided information to al-Haq may also be willing to come forward if appropriate guarantees for their protection from retribution are provided.

We also request a copy of the regulations, if any exist, governing the use of live ammunition by Israeli settlers in the Occupied Territories and the penalties, if any, for violating these regulations. We further request to be informed as to who has jurisdiction to protect Palestinians from attacks by Israeli settlers or other civilians armed by the Israeli authorities.

We look forward to hearing from you at the earliest possible opportunity on all of the above points.

Sincerely,

(Signature)

Mona Rishmawi, Advocate
Executive Director, al-Haq

- c.c.
- Brigadier-General Ahaz Ben Ari, Legal Advisor to the Military Government, Beit El
 - Brigadier General Amnon Strashnow, IDF Judge Advocate-General, Tel Aviv
 - International Committee for the Red Cross, Jerusalem
 - Lawyers' Committee for Human Rights, New York
 - International Commission of Jurists, Geneva
 - U.S. Consul General, Jerusalem
 - Canadian Embassy, Tel Aviv

Chapter Four

Collaborators

Introduction

Since the beginning of the Israeli occupation in 1967, the military government has, through various means, obtained the cooperation of individuals and groups amongst the civilian population of the Occupied Palestinian Territories in order to reinforce its control. The groups and individuals involved, who are commonly referred to as collaborators, act as agents of the Israeli authorities in the West Bank and Gaza Strip in various ways. During the uprising, collaborators have played an increasingly prominent role in Israel's efforts to control the Occupied Territories. In the context of their activities, they have routinely committed serious human rights violations for which they have not been held accountable by the authorities.

The term "collaborator" is itself controversial. Since the military government controls all aspects of life in the Occupied Territories, including health, education, and municipal services, Palestinians are forced, in one way or the other, to interact on an almost daily basis with the Israeli authorities. Many Palestinians, such as teachers and hospital employees, work for the Israeli authorities in order to provide these services, but are not therefore considered "collaborators" by their fellow residents.

A more commonly accepted definition of "collaborator" in the context of the West Bank and Gaza Strip is an individual who supplies information or performs other security-related services for the authorities. It is perhaps useful to distinguish three different categories of Palestinians who fit this description:

- (1) Informers, both in and outside of the prison system. The identity of informers is not always known to the general population, and their allegiance to the authorities is often based on coercion (including blackmail) rather than choice;*
- (2) Middlemen who make a living acting as go-betweens for Palestinians needing permits from the military authorities;

*See further Chapter Five, "Torture and Death in Detention."

- (3) Armed collaborators, who often sell land and wield control through intimidation and violence in their places of residence, in many cases receiving instructions directly from the military or the intelligence services.¹

In this chapter, al-Haq uses the term "collaborator" to refer only to persons who are clearly armed or whose actions against the civilian population appear to be encouraged or at least condoned by the Israeli authorities.[†]

A. Applicable Legal Standards

To the extent that collaborators are armed and trained by the Israeli authorities, and receive the latter's instructions, they are agents of the state. As such, their actions must be considered in light of international legal instruments which guide and limit the actions of an occupying power. Article 29 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War states:

The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

The authoritative International Committee of the Red Cross commentary to the Fourth Geneva Convention states with regard to Article 29:

The term "agent" must be understood as embracing everyone who is in the service of a Contracting Party, no matter in what way or in what capacity ... The nationality of the agents does not affect the issue. That is of particular importance in occupied territories, as it means that the occupying authorities are responsible for acts committed by their locally recruited agents of the nationality of the occupied country. The position is just the same whether the agent has disregarded the Convention's provisions on the orders, or with the approval, of his superiors or has, on the contrary, exceeded his powers, but made use of his official standing to carry out the unlawful act. In both cases the State bears responsibility internationally in accordance with the general principles of law.²

In other words, in those instances where Palestinians collaborating with the Israeli authorities have committed violations of the Convention, the Israeli authorities are not only accountable, but in fact under a positive obligation to investigate and prosecute. As detailed below, the authorities in the Occupied Territories have not fulfilled their duties in this regard.

B. Al-Haq's Position

Since the beginning of the uprising in December 1987, and especially during its second year, an increasing number of alleged collaborators have been attacked and killed. According to Amnesty International, between December 1987 and October 1989, 130

[†]Civilian residents of the Occupied Territories must obtain a license from the authorities to carry arms. In practice, only Israeli settlers and Palestinians cooperating with the authorities are granted such licenses.

individuals suspected of collaboration with the Israeli authorities were killed by other Palestinians.³

Al-Haq does not condone the killing of collaborators and, as a human rights organization, opposes the death penalty, with or without due process, under all circumstances and considers the right to life to be paramount. At the same time, actions taken by or against collaborators in the Occupied Territories must be judged on the basis of the laws of belligerent occupation, in particular Additional Protocol I to the Geneva Conventions. † In al-Haq's view, both Israel as an occupying power and the Palestine Liberation Organization (PLO) as a resistance movement are expected to respect the Protocol.

Since the Israeli authorities exercise *de facto* control over the West Bank and Gaza Strip, however, they are solely accountable for law enforcement in these territories. The PLO, although considered by virtually all Palestinians to be their sole legitimate representative, does not exercise control over local legal institutions such as courts, prisons, and police. There is, therefore, no legal mechanism available to either the PLO, or the Palestinian civilian population, to control and hold to account collaborators and those who attack them. In al-Haq's view, only an entity (governmental or otherwise) which exercises effective law enforcement in territory under its control can be held accountable for human rights violations.⁴ The military government has in fact exercised its prerogative as the sole law enforcement power in the Occupied Territories; individuals and groups involved or suspected of involvement in activities against collaborators are arrested and severely punished.⁵ For these reasons, al-Haq does not document killings of collaborators.

C. Israeli Policy

Until the end of the 1970's, Israeli rule in the Occupied Territories was often exercised through Palestinian *makhateer* (village headmen) appointed by the military

† Additional Protocol I is the accepted international standard regulating attacks on "collaborators" in the Occupied Territories. It supplements the Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts, including the Fourth Geneva Convention, and thus clearly applies to the West Bank and Gaza Strip. Additional Protocol I was neither signed nor ratified by Israel. The PLO, as a resistance movement, has signed it.

The Protocol was drafted to provide additional protection for civilians. Article 48 of the Protocol restricts parties to the conflict to directing their operations "only against military objectives." Article 49 defines "attacks" as "acts of violence against the adversary whether in offense or defense."

⁵Cases in which Palestinians attack either Israeli citizens (soldiers or civilians) or Palestinian collaborators are promptly investigated by the army, and in many cases the suspect's house is demolished or sealed. Al-Haq documented 31 house demolitions during the first year of the uprising and 40 in the second year in which one of the inhabitants was accused of having threatened or attacked (not necessarily killed) a collaborator or his/her property. This is a conservative figure because only about 40 percent of all house demolitions and sealings in 1989 had been documented by al-Haq at the time of writing.

By contrast, attacks on Palestinians by Palestinians armed by the authorities are rarely investigated. Since the beginning of the uprising, not one such case has resulted in formal prosecution. Al-Haq has documented several cases, discussed elsewhere in this chapter, in which soldiers present during attacks by collaborators did not attempt to intervene.

government. The *makhateer* (singular: *moukhtar*) performed many services for the authorities, such as processing applications for administrative permits, for which they often charged unreasonable fees, and assisting the military in making arrests by pointing out the houses of wanted persons and accompanying soldiers inside.⁵

After the 1979 Egyptian-Israeli peace treaty, which committed Israel to implement its "autonomy" proposals in the Occupied Territories, the military government established "village leagues" throughout the West Bank. These groups, consisting mostly of Palestinians with criminal backgrounds, were openly armed by the authorities. Condemned by the general population for their public support of official policies, the village leagues failed to fulfill their envisaged role of a viable political alternative to the PLO.⁶

During the first months of the uprising, the authorities' intelligence network in the Occupied Territories suffered a severe blow; many collaborators recanted in public and vowed to discontinue their activities.⁷ Not all, however, followed suit. According to one collaborator from the town of Qabatiya interviewed by the Israeli newspaper *Hadashot*:

At the beginning of the Intifada, the village elders came to my home and suggested that I should return my weapons [to the authorities] and swear on the Qur'an that I will stop my activities. I took out my shotgun and fired past the *moukhtar's* head. I gave them five minutes to get out of the house.⁸

In the third month of the uprising (February 1988), a five-year-old boy was killed in Qabatiya by a collaborator, Muhammad 'Ayad, who opened fire on a crowd that had come to pressure him to recant.⁹

This network is now being rebuilt by the military and General Security Service (GSS, also known as the Shin Bet), who are arming collaborators who refused to recant and enlisting new recruits among the population.

In prisons and military detention centers, the GSS recruits detainees by offering them early releases if they undertake to supply information about other prisoners while in prison, their neighbors after they are released, or both. In the Ansar III Military Detention Center (Ketziot), an interrogator who goes by the name of "Abou-Rami" is known to offer such deals.[†] He reportedly told one prisoner: "There's a shorter way [to get out of prison] if you and I cooperate. I will talk to the intelligence officer in your area, there will be cooperation between you and him, and you will go home."¹⁰

The GSS also recruits among the general population by offering permits which are usually difficult to obtain, such as travel or family reunification permits, in exchange for assistance in intelligence gathering.* Protection is also offered to criminals in exchange for their cooperation.[†] That the latter tactic can backfire is demonstrated by the case of Muhammad and Mahmoud Halabi, sibling collaborators from the Jabaliya Refugee Camp in the Gaza Strip who moved to Jaffa after they were expelled from the camp by residents. In October 1989, they were accused of killing seven prostitutes

[†]As a rule, Israeli officials adopt colloquial names to hide their identity.

*See further Chapter Nine, "Administrative Methods of Control."

[†]As an informal remuneration, they are often permitted to carry out criminal activities, such as drug-dealing or prostitution, without official interference.

and drug-dealers in Tel Aviv and Jaffa. In the wake of the killings, Israeli Minister of Police Haim Bar-Lev told Israel Radio that Muhammad Halabi had received a residence permit in Israel "because he helped the GSS." Newspapers reported that he had assisted the police in a number of investigations.¹¹

The military court system has made widespread use of collaborators as well. Information supplied by them is routinely employed to convict Palestinians suspected of security offenses. The identity of such collaborators has been protected through the use of "secret evidence." Furthermore, the phenomenon of "secret evidence" has been particularly conspicuous in hearings of deportation, administrative detention, and town arrest orders by military appeals committees and the Israeli High Court of Justice. In 1987, the Landau Commission, established by the Government of Israel to investigate the interrogation practices of the GSS, recommended that the authorities rely on administrative measures, such as administrative detention or deportation, instead of convictions by military courts in cases where it was felt necessary to protect the identity of informers.¹²

D. Official Complicity

The Israeli authorities have condoned, if not actively encouraged, the actions of collaborators in the Occupied Territories. An Israeli official quoted in the *New York Times* acknowledged that, in the Jenin district of the northern West Bank alone, the military had armed and trained dozens of collaborators and enlisted their assistance in carrying out raids and making arrests. According to the official, collaborators were needed for "intelligence cooperation and the supply of data." They also played a role in "helping the army find people to arrest—after all, they lived in the villages, they know the ins and outs and the hiding places."¹³ Military officials have acknowledged that Palestinians killed by other Palestinians are in most cases collaborators; one high-ranking officer told the *Jerusalem Post* that "the assailants usually hit right on target."¹⁴

In order to protect collaborators from attacks during the uprising, the military began supplying them with more weapons. According to the officer quoted in the *New York Times*:

We can't put a jeep with four soldiers to guard each one of them 24 hours a day. We can only give them the minimum ability to defend themselves, and that means weapons.

The officer denied, however, that collaborators were allowed to use their weapons against other Palestinians.¹⁵

During the second year of the uprising, the activities of collaborators has apparently been dramatically increased in scope. Guided by their handlers in the military and the GSS, collaborators have:

- (1) gathered intelligence on activities of the national movement;
- (2) interrogated detainees in prison and military detention centers;
- (3) assisted the military and GSS in carrying out arrests;

- (4) terrorized villages by setting up roadblocks, imposing curfews, physically assaulting, and sometimes killing residents.¹⁶

Examples of these activities are given below.

E. Collaborator Violence

During the second year of the uprising, al-Haq documented killings, brutality, and acts of intimidation by collaborators against Palestinian civilians in the West Bank.[†] Most affidavits taken by al-Haq fieldworkers concern the Jenin district, where collaborators have been particularly active, and, organized into groups, have been compared by journalists to the Israeli-sponsored militias operating in occupied Southern Lebanon.¹⁷ Al-Haq's documentation also establishes that Palestinians attacked or threatened by collaborators almost invariably submitted or attempted to submit complaints to local police stations, and made their names available for publication.

Al-Haq is aware of at least seven killings by collaborators since the beginning of the uprising. Several victims were known to their assailants and deliberately targeted, while the others appear to have been random victims of indiscriminate shooting. The following Palestinians are known to have been killed by collaborators:

- (1) Muhammad Qasem Abou-Zeid, 5, of Qabatiya (Jenin District), 24 February 1988;
- (2) Mahmoud 'Abdallah Hammouda, 67, of al-Qbeiba (Ramallah district), 6 January 1989;
- (3) 'Abd-al-Hafith 'Ali Muhammad Jallad, 72, Toulkarem, 12 April 1989;
- (4) Ziyad Muhammad al-Jawabra, 24, al-'Arroub Refugee Camp (Hebron district), 20 August 1989;
- (5) Mahmoud Beni-'Odah, 22, Tammoun (Jenin district), 1 October 1989;
- (6) Sa'id Fou'ad al-Hleifawi, 16, al-Fawwar Refugee Camp (Nablus district), 9 October 1989;
- (7) Firyal 'Abd-al-Nabi, 35, Nablus, 23 November 1989.

The killing of Ziyad al-Jawabra of al-'Arroub Refugee Camp was described in the following sworn affidavit taken by al-Haq:

At approximately 12:00 noon on Sunday 20 August 1989, I was standing next to my hatchback Peugeot 404 (1973 model) near the Beit Ummar junction [on the Jerusalem-Hebron road]. I was waiting, as I do every day, for a group of teachers from my village, Sourif. They teach in Halhoul and Hebron, and I was waiting in order to take them back to Sourif.

[†]Although the problem of collaborators is as serious in the Gaza Strip as it is in the West Bank, al-Haq's documentation of their practices in the Gaza Strip was limited in 1989.

I saw an olive-green hatchback Volkswagen with yellow [Israeli] license plates driving from the direction of Beit Ummar. It stopped about 20 meters away from me, near some soldiers who were on the roof of a building near the main road. I saw the driver of the Volkswagen and the woman sitting next to him get out. The driver was holding a small pistol and wore short trousers and a sleeveless shirt. I saw the soldier talk to them, but could not tell what they were saying or in which language they were talking.

At that moment, a Volkswagen with blue [West Bank] license plates with Hebron district markings arrived. The car came to a halt because the armed person was standing in the middle of the road. I saw a young man get out of the car and stand about two meters away from the armed person and the woman. He was not holding anything, and I did not see him talk to anyone. He was standing in front of the armed person and looking at him. After a while, the armed person finished talking to the soldiers and immediately thereafter shot the young man. I heard the shots and saw the young man fall. The armed person then allowed the car [with West Bank license plates] to move on. [The driver apparently was still inside.] I think the car drove in the direction of the al-'Arroub Refugee Camp. When the woman saw the young man fall, she let out a loud scream.

Immediately, I and another resident from Sourif called [name withheld], aged 27, headed for the youth who was lying [on the road]. At that moment, I saw the person who had shot him kick him. When we reached the armed person, he pointed to the youth and said to us, in Arabic: "Take him!" When I came closer to the wounded youth, I saw blood dripping heavily from his mouth and nose; he was still moving. Immediately, [name withheld] went and brought his Peugeot, which was parked next to my car. We put the youth in the car and he drove to Hebron.

The armed person got into his car. The woman got in beside him, and they began to follow the car the wounded youth was in. The soldiers stood idle. I did not see them interfere, except when they talked to the armed person.

Until this point, I had thought that the criminal was a settler, but afterwards, I learned from people who were there that he was an Arab from Yatta [south of Hebron] called Muhammad 'Atiyya Abou-Hmeid. I also learned that the wounded person was from al-'Arroub Refugee Camp and was called Ziyad al-Jawabra, and, as I was informed by [name withheld] he passed away before reaching the hospital.

It should be noted that I gave a detailed affidavit to the Hebron police about this incident on 20 and 27 August 1989.¹⁸

On 1 October 1989, a collaborator in the Jenin district village of Tammoun stabbed to death Mahmoud Beni-'Odah, a Palestinian activist wanted by the army since the early months of the uprising. According to villagers, the collaborator, Jihad Mahamid, has not been questioned by the police about the killing and remains in the village, protected by the weapons given to him by the military.¹⁹

Other persons specifically-targeted by collaborators managed to escape unharmed and provide documented accounts. A Palestinian from the village of Silwad in the Ramallah district, who asked that his name be withheld from publication, describes an August 1989 incident in the town of al-Bira in a sworn statement taken by al-Haq:

At approximately 11:30 a.m. on Friday 11 August 1989, while I was at work at

[name of location withheld] on the Ramallah-Jerusalem highway, I heard a loud voice yelling from the direction of the street. I left the office to see what was happening ...

The moment I reached the office door, I looked toward the street and saw a navy-blue Volkswagen "Brazili," which appeared to be a 1973 or 1974 model. The car, which was traveling in the direction of Jerusalem and inside of which I could see several persons, came to a halt directly across the street from me.

At this moment, I saw the driver of the car point at me, and then I saw the person sitting behind the driver stick both his hands out of the window. I saw that he was holding a pistol in his hands and that it was pointed at me. Immediately thereafter, he fired a single shot at me. Then the car sped away toward Jerusalem.

As the car was leaving, I looked at its license plate and saw that it was yellow. I should note here that I have seen this same car on several occasions when it was being driven by Naser Abou-'Arida. Three days after this incident, Fathi Abou-'Arida, who is Naser's brother, came to [my work-place]. I asked him who owned the abovementioned car, and he said that it used to belong to him and his brother, but that it had recently been sold to a person named Muhammad al-Baraghith.²⁰

The affiant was not hit by the bullet. The Abou-'Arida brothers are well-known collaborators from the Ramallah area. Fathi Abou-'Arida was accused by eyewitnesses of having pointed out Yasser Abou-Ghosh, a wanted 17-year-old summarily executed in the center of Ramallah on 10 July 1989, to his assailants.⁵ Muhammad al-Baraghith is a known collaborator from the Hebron area. The affiant told al-Haq that he had never seen the persons who shot at him before, which suggests that this may have been an attempt on his life commissioned by others.²¹

As in the case of the five-year old boy killed by a collaborator in Qabatiya in February 1988, bystanders or passersby have also been injured or killed by collaborators. On 23 November 1989, for example, Firyal 'Abd-al-Nabi, 35 years old and a mother of ten, was shot to death by a collaborator who opened fire in the center of Nablus after his car had been stoned.²² According to relatives, Mrs. 'Abd-al-Nabi was just emerging from the civil administration office in Nablus, where she had applied for a permit to travel to Jordan, when the shooting took place. She was killed instantly. Given that civil administration offices throughout the Occupied Territories are heavily guarded by the Israeli military, it is unlikely that no soldiers witnessed the killing.²³

In al-Haq's view, it is not exceptional that killings such as that of Firyal 'Abd-al-Nabi occur. Collaborators in the Occupied Territories act at will, and do so in the full knowledge that they will not be prosecuted by their superiors. For example, a collaborator interviewed by the Israeli newspaper *Hadashot* made the following statement:

Me, they all know me. They know that I am a wild man and that I won't hesitate to shoot. When I drive from the village to Jenin, I carry an Uzi on my lap. Sometimes I wave it out the window so everybody can see it.

⁵See further Chapter One, "The Use of Force."

tion, pursuing illegal policies and practices for an illegal end—namely, the *de facto* annexation of the Occupied Palestinian Territories, with no regard for the indigenous inhabitants of the land.

There is lawlessness at every level: from the soldier in the street on up to the military administration and the courts, including the Israeli High Court [of Justice] which has sanctioned clearly illegal practices like deportations and house demolitions and routinely defers to the military on all issues related to the occupation.

There is no real accountability. There are no proper channels of complaint and investigation. In cases where abuses are so obvious that an investigation actually takes place and the perpetrators are found guilty, the sentences meted out are so minimal as to constitute a green light to the army to continue its policies without deterrent.

The lack of remedies or redress in local military law makes more urgent the application of the protections defined in international law, namely, the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War of 1949 which is applicable in our case and to which Israel is a signatory state. However, Israel, virtually alone in the community of states, does not recognize this applicability. Thus, left to the devices of Israel's military occupation and legal analysis, the Palestinians under occupation remain without an effective protection from rampant human rights abuse.

Al-Haq turns to the international community for this protection. We intervened time and time again with state signatories to the Fourth Geneva Convention, reminding them of their legal obligation under Article 1 of the Convention which states: "The High Contracting Parties undertake to respect and *ensure respect* for the present convention in all circumstances." [Emphasis added.] This places a legal as well as a moral obligation on states to take whatever legal measures as are required to "ensure respect" for the Convention by Israel in its treatment of the civilians under its control.

Governments must realize that the defense of human rights, the enforcement of international humanitarian law and the process of conflict resolution are inextricably intertwined. Belligerency and conflict inevitably entail the violation of human rights. The struggle for human rights is a struggle for peace. However, the struggle for peace must be predicated on the respect for the democratic exercise of the right of all peoples to self-determination and to live in peace based on justice. The only alternative indeed is the peace of the grave.

The United States government's military and economic support for Israel serve, in practical terms, to encourage human rights abuses in the Occupied Palestinian Territories. Furthermore, the U.S. position in international fora and through the various autonomy schemes and so-called peace plans has served to assist Israel in denying the Palestinians their most fundamental human right: the right to self-determination.

We call upon governments to offer more than just words, more than mere gestures, more than professions of good faith. We call upon governments to make a serious commitment to international law. Unenforceable law is merely ink on paper. If the current Israeli disregard of international conventions and agreements is allowed, serious doubts exist as to the real potential for peace-making in the region.

Part of the reason for this failure is that, to date, we have allowed politicians and

remind them as wielders of power and ultimate protectors of our civilizations, of their obligations to all of us.

Long-term security and peace for all peoples cannot be found if any one of those peoples are denied the right to determine its own future; to decide on their representatives, to benefit from the taxes they pay, to teach what they want to teach, to speak their minds freely without restriction and without fear of punishment or reprisal. Human rights can only be discussed in the context of the right to self-determination.

The experience of history teaches that a people cannot rest until it is free. The Palestinian experience, in spite of 40 years of denial, is no exception. We thank you for this award, primarily, for helping to break this conspiracy of silence.

On 18 October 1988, Ibrahim al-Mtour was seen by other detainees at the Dhahriyyeh military detention center in the West Bank. Blood was flowing from his head and he was heard screaming: "I am Ibrahim al-Mtour. They are beating me to death. Detainees, witness!"

Three days later, Ibrahim was dead. "Suicide," the prison authorities declared. It is our collective duty to answer Ibrahim's call, to witness, to act, so that in the future not only will the Ibrahims of this world be heard and not have to die but so that they will not have to scream at all.

[Atlanta, Georgia; U.S.A.: 9 December 1989]

The *Hadashot* correspondent added:

If there is a traffic jam on the road, he immediately gets out of his car and fires into the air. Who knows what can be lying in store.²⁴

In such circumstances, it is only to be expected that innocent civilians will be shot, wounded, and killed.

F. Case Study: The Jenin District

Collaborators have been particularly active in the Jenin district. Three brothers, 'Ali, 'Omar, and Bassam al-Najjar, have routinely terrorized residents of their town, Ya'bad, and neighboring villages. The brothers al-Najjar were expelled from Ya'bad by its residents in 1988, but returned under military protection on 12 August 1989. Since then, the terror has intensified. Brandishing Uzi submachine-guns, they have erected roadblocks, and indiscriminately cursed, threatened, physically assaulted, beaten, and shot at residents. Throughout, they have been unhindered by their military protectors.

Usama 'Abdallah Muhammad Zeid al-Kilani, an attorney from Ya'bad, described in a sworn affidavit taken by al-Haq how the al-Najjar brothers kidnapped a passenger from his car:

At about 5:00 p.m. on 13 July 1989, I was driving my car from my hometown, Ya'bad, to the nearby village of Barta'a. With me were five residents from Ya'bad, including my 25-year-old cousin 'Omar Mahmoud Zeid al-Kilani. On the way, near the Barta'a intersection, I saw, from afar, a private car parked near the main road. There were several people next to it.

Upon our approach, they stood in the middle of the main road and pointed their guns in the direction of my car. I slowed down, and came to a halt close to where they were. Their car was an old BMW with yellow license plates. There were five civilians. I recognized three of them as collaborators with the authorities who were expelled from Ya'bad several months ago. They are members of the al-Najjar family: Bassam Muhammad Najib al-Najjar, 'Ali al-Najjar, and 'Omar al-Najjar; the three are brothers.

After I stopped, they immediately surrounded my car. I saw 'Ali open the back door of the car. He punched me in the face. I saw him grab my cousin 'Omar al-Kilani by the shoulder and pull him out of the car. Then I saw two of the brother collaborators jump on 'Omar al-Kilani and beat him with a thick rod. In the meantime, I saw some of the collaborators fire into the air. After about three minutes, they ordered me to move my car and leave the area. I did so at gun-point, leaving my cousin 'Omar with them.²⁵

Mr. al-Kilani stated to al-Haq that he then drove back to Ya'bad and, along with a group of villagers, returned to the point where his cousin had been abducted. There was, however, no trace of either his cousin or the collaborators. Mr. al-Kilani then went to the military government headquarters in Jenin, requesting to see the officer in charge. Outside the compound, a person who looked Palestinian told the Israeli guard, in Hebrew, not to let Mr. al-Kilani in. After waiting in vain for half an hour, Mr. al-Kilani left and went to the Jenin police station, where he filed a statement.²⁶ It was later learned that 'Omar al-Kilani was detained with a broken leg in the military

compound in Jenin, and was subsequently placed in administrative detention for six months. In addition to al-Haq's documentation, the above account was corroborated by the Haifa branch of the Association for Civil Rights in Israel.

Another Ya'bad attorney, Mustafa Khaled Mustafa Hamarsha, described in a sworn affidavit taken by al-Haq how he was beaten by two of the al-Najjar brothers and other men near the gate of the civil administration building in Jenin:

At approximately 10:00 a.m. on 24 July 1989, I was passing through the gate of the civil administration building in Jenin. I was there in order to complete some documents for detained clients of mine. Suddenly, I was intercepted by two collaborators. I recognized one of them, 'Ali al-Najjar, whom I know well because he is a resident of my hometown, Ya'bad.

'Ali al-Najjar grabbed me by my collar and said to me: "You'd better come with us, or you'll be beaten." At first I tried to resist, for I saw some soldiers near the gate. I saw one of them trying to approach me and inquire what was going on. I heard him say to me, in Hebrew: "Ma zeh?" which means, "What is this?" But before he could reach me, I saw another soldier signal to him with gestures that made me think he was asking the first soldier not to interfere. My suspicions proved to be correct, because the soldier who had tried to inquire retreated.

'Ali al-Najjar pushed me along for a distance of about five meters and then stopped. Soon thereafter, I saw five or six armed civilians, one of whom I recognized as Bassam al-Najjar, 'Ali's brother. They gathered around me and beat me, slapping and punching me, until Bassam permitted me to leave. I heard him say: "Fuck your whoring sister, get out of here." I did indeed leave and immediately headed for the police station, where I filed a written statement. However, one of the policemen there said to me: "We won't be of any benefit to you." He told me that my problem was one between local residents.²⁷

In the same affidavit, Mr. Hamarsha recounts two other incidents in June and July 1989, in which he and a colleague were beaten and harassed by the same collaborators.

In another incident involving the al-Najjar brothers, Mahmoud Sadeq Muhammad Abou-Baker, 20, was shot on 14 August 1989, two days after the brothers returned to Ya'bad. He believes the assailant was one of them. In a sworn affidavit taken by al-Haq, Mr. Abou-Baker stated that residents attempted to drive out the al-Najjars on 13 August. The al-Najjars were armed, and defended themselves by opening fire on the unarmed crowd. They were accompanied by several others, including a Jewish settler whom Mr. Abou-Baker believes is named "Amnon," a member of the regional settlement council. One boy was injured by a bullet fired from the al-Najjar house that day. On 14 August, villagers again gathered near the al-Najjar house, and again shots were fired. Early that evening, Mr. al-Najjar witnessed about 13 masked men in Ya'bad beat a boy and smash car windows. At 9:00 p.m., residents again went to the al-Najjar house. According to Mr. Abou-Baker:

I was walking in the direction of the al-Najjar residence. I did not see any of the collaborators there, but heard the sound of shots and felt severe pain in my left leg. I felt that it was bleeding. Under heavy gunfire, I ran a short distance until I weakened and fell to the ground. Some youths approached me and carried me on their shoulders to a local doctor. The doctor gave me first-aid and confirmed that I had been struck by a bullet which pierced through the upper-front part of my left thigh.²⁸

Elsewhere in the Jenin district, on 5 July 1989, 'Aref Farid Saleh al-Mughayer, a land surveyor from 'Arraba village, was assaulted by a collaborator in Jenin who smashed the windshield of his car, injuring his eight-year old son in the head.²⁹ On 20 February 1989, Nafe' Jaber, a collaborator in the town of Jenin, threw a tear-gas canister into the home of his neighbor, Qasem Muhammad Salim 'Aqel, a 45-year-old worker. According to a sworn affidavit taken by al-Haq from Mr. 'Aqel, he was forced to leave his house for the night because of the gas. In the meantime, Mr. Jaber and other collaborators, including Dr. Ahmad Steitiya, the head of the Jenin Health Department, rampaged through the neighborhood, smashing windshields, discharging teargas canisters, and firing shots at the windows of several homes. The next day, Mr. 'Aqel and several neighbors went to the police to submit a complaint. They found Nafe' Jaber at the police station, who told them:

You can make your complaints to the police and the [military] governor, but I am going to the intelligence officer. You will see who is going to win.³⁰

In September 1989, the *New York Times* reported that the authorities had organized bands of collaborators in the Jenin area into "loose militias . . . bolstering the army's effort[s] to quash the Palestinian uprising." The newspaper also quoted Bassam al-Najjar denying that he assaulted other Palestinians:

We only follow instructions given to us by our commanders in the army and GSS.³¹

Summary

In making the above statement, Mr. al-Najjar pinpointed those who bear ultimate responsibility for the actions of collaborators: the officials who arm them, send them into the field (with or without specific instructions), and allow them to terrorize the population. Indeed, official claims that human rights violations by collaborators are only "internal, local conflicts" cannot obscure the fact that the military government is using collaborators as yet another extra-judicial weapon to suppress the Palestinian uprising in the Occupied Territories.

For reasons related to the difficulty of obtaining proper documentation, this chapter has not addressed Israel's methods of recruiting collaborators.[¶] However, Article 51 of the Fourth Geneva Convention states in pertinent part:

The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

Article 147 of the Convention defines "compelling a protected person to serve in the forces of a hostile Power" as a "grave breach," the Convention's equivalent of a war crime.*

[¶]See further Chapter Nine, "Administrative Methods of Control."

*See further Chapter Nineteen, "The Role of the International Community."

Endnotes to Chapter Four

1. Zvi Gilat, "The Collaborators' Magnificent Careers," *Hadashot*, 28 July 1989 (in Hebrew, translated by Israel Shahak), identifies the following categories of collaborators: (1) armed collaborators protected by the army; (2) unarmed collaborators protected by armed collaborators; and (3) prisoners who have turned informers (unarmed and protected by armed collaborators).
2. Jean S. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), pp. 211-212.
3. "The Killing of Alleged 'Collaborators'," *Amnesty International Newsletter* Vol. XX, No. 1 (January 1990), p. 5.
4. It should be noted that human rights are generally defined as claims of an individual against the State. See for example Carnston, *What are Human Rights?* (1973), p. 65. Amnesty International takes the same position as al-Haq. (Amnesty International, *Amnesty International Report: 1989* (London: Amnesty International, 1989), pp. 10-11.)
5. During the first years of the occupation, the military government dismissed most of the *makhateer* appointed during Jordanian rule and to a large extent replaced them with individuals closely linked to the authorities. Many Israeli-appointed *makhateer* were corrupt and often demanded exorbitant fees for their services.
6. For an analysis of the rise and decline of the village leagues, see Salim Tamari, "Israel's Search for a Native Pillar: The Village Leagues," in Naseer Aruri (ed.), *Occupation: Israel Over Palestine* (Belmont, MA: Association of Arab-American University Graduates, 1983), pp. 377-390.
7. See for example, George Moffett, "Israel's Informer Web Unravels: Uprising-Inspired Nationalism, and Threats of Reprisal, Shrink Arab Willingness to Swap Information for Israeli Favors," *Christian Science Monitor*, 27 October 1988.
8. Gilat, "The Collaborators."
9. In response, the enraged crowd killed 'Ayyad and strung his body from a lamp post. In its own response, the military laid siege to the town for 41 days, demolished three houses completely and partially destroyed a fourth, and clamped an unofficial collective travel ban on Qabatiya's residents for over a year (Al-Haq, *Punishing A Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988, pp. 195-196).
10. Moffett, "Israel's Informer Web Unravels." The prisoner in question, who asked that his name be withheld from publication, was also interviewed by al-Haq.
11. Andy Goldberg, "Dangerous Felon Sought in T.A. Mass Murder Case," *Jerusalem Post*, 23 October 1989. Collaborators can become a liability to the authorities in other ways as well: on 12 October 1989, a GSS agent reportedly told Jamal Muhammad 'Abd-al-'Ati, a resident of al-Shate' Refugee Camp in the Gaza Strip, that the latter could obtain a travel permit if he agreed to collaborate. When Mr. 'Abd-al-'Ati declined the offer, the GSS agent tore up his application form. The next day, Mr. 'Abd-al-'Ati drove his car into a military vehicle, seriously injuring a soldier and an intelligence agent, reportedly the same man who had earlier refused to grant him a travel permit. Jamal 'Abd-al-'Ati was later found dead in his prison cell in the interrogation wing of Gaza Central Prison. (See further Chapter 5, "Torture and Death in Detention.")
12. "Report of the Commission of Inquiry into the Methods of Interrogation of the General Security Service in Regard to Hostile Terrorist Activity" (30 October 1987), Paras. 4.15 and 4.16 (in Hebrew).
13. Sabra Chartrand, "Israelis Training Groups of Arabs To Halt Uprising," *New York Times*, 24 September 1989. One collaborator quoted in *Hadashot*, who was carrying a pistol, an Uzi sub-machinegun, and a two-way radio, stated that he began his activities in 1979. He said: "The

veterans enjoy a certain advantage ... If your car is torched, they [the Israeli authorities] immediately give you a new one. They are not cheap when it comes to us." (Gilat, "The Collaborators.") Palestinians are not allowed to carry weapons or possess two-way radios without permission from the military authorities. In practice, only collaborators have been granted such permission.

14. Michal Sela, "Gazans Shun 'Collaborators'," *Jerusalem Post*, 5 May 1989.
15. Chartrand, "Israelis Training Groups of Arabs."
16. Moreover, collaborators have continued to play a role as middlemen, but at a higher rate of profit. One collaborator from Qabatiya interviewed by *Hadashot* concerning his role in obtaining travel permits for residents of his town stated:

Even before [the Intifada] I used to make these kinds of arrangements ... but now it is more expensive ... Whoever needs me ... knows how to sneak over to my place under cover of darkness. And those who need me know how to get a hold of me and that it will cost them plenty of money. [Gilat, "The Collaborators."]
17. See Gilat, "The Collaborators," and Chartrand, "Israelis Training Groups of Arabs."
18. Al-Haq Affidavit No. 2025.
19. Al-Haq Fieldwork Report.
20. Al-Haq Affidavit No. 2019.
21. Interview with the affiant, Ramallah, August 1989.
22. The collaborator in question was reportedly Sadeq Billeh from al-Funduq village in the Toulkarem district.
23. Interview with relatives of Firyal 'Abd-al-Nabi, Ramallah, 24 November 1989. See also Joel Greenberg and Michal Sela, "Three Die in Day of Violence in Nablus Area," *Jerusalem Post*, 24 November 1989.
24. Gilat, "The Collaborators."
25. Al-Haq Affidavit No. 1946.
26. Al-Haq Affidavit No. 1946.
27. Al-Haq Affidavit No. 1986.
28. Al-Haq Affidavit No. 2008.
29. Al-Haq Affidavit No. 1938.
30. Al-Haq Affidavit Nos. 1660 and 1659.
31. Chartrand, "Israelis Training Groups of Arabs."

Chapter Five

Torture and Death in Detention

Introduction

Even before the popular uprising in the Occupied Palestinian Territories commenced in December 1987, sub-standard prison conditions, torture, and death in detention were issues of grave concern to al-Haq.¹ During the first year of the uprising, al-Haq reported an enormous increase in the number of detainees, resulting in serious problems which stemmed from the inadequacy of existing facilities;² Conditions in prisons and military detention centers are generally characterized by severe overcrowding, insufficient and poor quality food, and inadequate medical services. Moreover, detainees are routinely subjected to the use of excessive force in the form of beatings, tear-gassing in enclosed areas, and, in some cases, the use of live ammunition. The number of Palestinians detained during 1989 increased yet further, exacerbating these problems.*

Reports of the treatment of prisoners indicate that torture has reached levels unparalleled during the 1980's. Death in detention remained a grave concern as well: nine Palestinians died in custody during 1989, bringing the total number of such deaths during the past two years to at least 18. Al-Haq has chosen to address these violations before discussing the military judicial system because, for Palestinian detainees, they typically occur during interrogation and before any judicial proceedings are initiated.†

*See further Appendix 5-A and Chapter Seven, "Administrative Detention."

†It should also be noted that the military courts routinely convict detainees on the basis of coerced confessions, which under recognized international legal standards are inadmissible as evidence. See further Chapter Six, "The Military Judicial System."

1. Estimated Number of Detainees During 1989

During the uprising, the Israeli military government in the Occupied Territories has systematically employed detention and imprisonment as a measure of control and punishment.¹ At least 50,000 Palestinians have been detained since 7 December 1987.² This figure represents roughly 16 percent of the entire male population of the West Bank and Gaza Strip between the ages of 14 and 55,³ the demographic group which comprises the vast majority of detainees.

Al-Haq estimates that at least 14,000 Palestinians were being held in Israeli prisons and military detention centers at the end of November 1989. Approximately 9,000 were held in military detention centers, with the remaining 5,000 held in prisons. This represents a 40 percent increase over al-Haq's calculation of the total number of detainees incarcerated at the end of October 1988, estimated at between 9-10,000 Palestinians.⁵

Al-Haq believes its estimates for 1988 and 1989 to be conservative. The calculations do not include all persons detained in police stations, schools, and other so-called "lock-up" facilities (discussed below). Furthermore, as al-Haq noted in 1988, there are no reliable official figures; due to the number of detainees and temporary holding sites, the authorities are themselves having difficulty keeping accurate records.⁶ It is also in the clear interest of the authorities to underestimate the total number of detainees. Yet, current official figures reflect a marked increase over al-Haq's 1988 estimates. On 14 December 1989, for example, Minister of Justice Dan Meridor stated that 13,000 Palestinians were being detained.⁷

To put the above figures into context, the latest official population figures available (1986) for the Occupied Territories indicate a total male population of approximately 690,000, of whom 313,000 were between the age of 14 and 55.⁸ As noted above, it is primarily males in this age bracket who are detained in prisons and military detention centers. Thus, the actual number of persons currently in detention (14,000) represents approximately 4.5 percent of the total number of persons who, by virtue of their age and sex, are most likely to be detained. By way of comparison, out of a total African population of 24 million in South Africa, no more than 5,000 (.02 percent) are currently detained for security offenses against the apartheid regime.⁸

2. Types of Detention Facilities in the Occupied Territories and Israel

Detainees are held in a variety of facilities in both the Occupied Territories and Israel. These include conventional prisons; military detention centers; military government compounds, which comprise many of the "lock-ups"; police stations; and other temporary holding facilities, such as schools occupied by the military. As discussed below, these facilities are governed by different regulations.

¹Detention is used to denote any form of involuntary custody, while imprisonment refers specifically to detention after conviction. Furthermore, prisons are under the authority of the Israel Prison Services Authority and military detention centers are directly administered by the Israeli military. This does not mean, however, that there are no prisoners in military detention centers or vice-versa.

At least five military detention centers have been opened during the past two years:

- (1) 'Anata (Anatot), in the Jerusalem district of the West Bank;
- (2) Ansar III (Ketziot), in the Negev desert inside Israel (opened 18 March 1988);⁵
- (3) Ansar IV (Khan Younes), in the town of Khan Younes in the Gaza Strip (opened June 1989);
- (4) Dhahiriyya, in the village of Dhahiriyya in the Hebron district of the West Bank (opened 21 December 1987);
- (5) Megiddo, located inside Israel in the town of Megiddo (opened 31 May 1988).

In addition, the 'Ofer military detention center, located in the village of Bitouniya in the Ramallah district, was reopened in 1988 after a period of disuse.

Press reports indicate the existence of plans to expand existing facilities or establish new ones in 1990 in order to accommodate an expected further increase in the number of detainees. Such plans have been reported in connection with the al-Ramla, Nablus, and Ashkelon prisons, as well as the Ansar II (Katiba) Military Detention Center in the Gaza Strip and Ansar III.⁹

Concerning the number of persons detained in military detention centers and prisons, al-Haq has figures only for some of the principal facilities:

Prisons

Prisons in Israel and the Occupied Territories are under the ultimate authority of the Israel Prison Services Authority (the "Prison Authority"). The figures below represent al-Haq's estimate of the number of prisoners in each location at the end of November 1989:

- (1) West Bank: Hebron (440), Jenin (300), Jnaid (820), Nablus (520), and Ramallah (200);
- (2) Gaza Strip: Gaza City (700);

⁵See further Chapter Seven, "Administrative Detention." "Ansar" (Arabic for "partisans") refers to the detention camp established by the Israeli military near the South Lebanese village of Ansar a few weeks after the beginning of the July 1982 Invasion of Lebanon. Approximately 10,000 people were held there in tents surrounded by barbed wire under substandard and dehumanizing conditions. In addition to guerillas and political activists, detainees included civil servants, UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East) employees, teachers, doctors, nurses, and others. The notoriously poor conditions at Ansar, especially the use of torture, attracted widespread international attention. Ansar was officially closed on 24 November 1983 and all its inmates released as a result of a prisoner exchange between the Government of Israel and the Palestine Liberation Organization. In the Occupied Territories, the name has come to be used for military detention centers which, like the original Ansar in South Lebanon, are locations for the imprisonment of large numbers of Palestinians under dehumanizing conditions designed to break the spirit of the detainees.

- (3) Israel: Ashkelon (580), al-Ramla (150-200), the Russian Compound/al-Moscobiyya (100-120),[¶] and Shatta (130).

Military Detention Centers

Military detention centers are under the authority of the Israeli military. The figures below represent numbers of inmates at the end of November 1989:

- (1) West Bank: 'Anata (450), Dhahiriyya (510), al-Far'a (790), 'Ofer (440), and Toulkarem (150);
- (2) Gaza Strip: Ansar II (1,070) and Ansar IV (150);
- (3) Israel: Ansar III (4,290) and Megiddo (1,480).

Other Facilities

Israeli military buildings are used as holding facilities in Hebron (the Khashabiyya), East Jerusalem (Qishla), Nablus (the Tannakiyya), and approximately ten other locations in the Occupied Territories.¹⁰ According to Israeli military officials, these facilities are intended as initial places of detention before transfer to a prison or military detention center.

Police stations in the West Bank exist in Bethlehem, Hebron, Jenin, Jericho, Nablus, Ramallah, and Toulkarem.¹¹ Schools in the West Bank and Gaza Strip have also been used as temporary holding facilities during periods of collective or individual school closures.*

Because of the relatively short duration of detention in such facilities (according to al-Haq's information it may range from a few hours to several weeks), it is not possible to estimate the number of detainees held in them.

A. Torture

Methods of interrogation during the second year of the uprising underwent substantial changes. In particular, the General Security Service (GSS, or Shin Bet), Israeli soldiers, and prison guards resorted to increasingly brutal methods of extracting information. In al-Haq's view, many of these methods incontrovertibly amount to torture.

Torture is defined in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or

[¶]The Russian Compound, commonly referred to as "al-Moscobiyya," is a detention center in West Jerusalem administered by the police. Unlike those listed below, it is not a military detention center. For that reason, the Russian Compound is listed with prisons.

*See further Chapter Thirteen, "Education."

coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent or incidental to, lawful sanctions.¹²

Before the uprising began, the use of torture by the Israeli authorities in the Occupied Territories was noted and condemned by an increasing number of organizations and personalities concerned with human rights.¹³ It was dealt with only briefly in al-Haq's 1988 annual report, *Punishing a Nation*.¹⁴ In light of the notable increase in reliable reports of torture (especially during interrogation) in the past year, however, the need for a separate discussion of the subject became pressing.

1. The Detection and Investigation of Torture

The practice of torture is difficult to establish because independent monitors such as al-Haq are denied access to conclusive physical evidence and official revelations, and must rely primarily on sworn statements taken after the fact. There are, however, important exceptions to this general rule which allow human rights organizations to corroborate their documentation.

The Official Concealment of Torture

The physical detection of torture is obstructed by the Israeli authorities in a number of ways:

- (1) Torture takes place in an atmosphere of complete secrecy and isolation. It is difficult to obtain enough and accurate information about the interrogators involved. The victim is hooded much of the time, and interrogators routinely use code names. The only witnesses are usually the victims themselves, who the authorities claim are interested in falsely accusing Israel of torture and discrediting their own confessions as coerced.
- (2) It is generally impossible for lawyers or doctors to visit a detainee during the period of interrogation. Military Order No. 1220, issued in early 1988, permits the prison commander, "if he sees that this is necessary for the security of the Area, or if it is in the interests of interrogation,"¹⁵ to issue a written order preventing a lawyer from meeting a detainee for a period of 15 days. This authority is routinely exercised, not by the prison commander, but by the very person in charge of the interrogation. This effectively ensures the isolation of the detainee and the secrecy of the interrogation.
- (3) The interrogation wings of detention facilities are under the control of the GSS. The ICRC (International Committee of the Red Cross), and even prison commanders, are not permitted to enter such sections.
- (4) Torturers use methods designed either to leave no visible physical evidence of their activity, or only lesions which heal before a detainee is taken before a

military judge or seen by a lawyer,[†] or contusions that cannot unequivocally be determined to have been caused by torture. Judges before whom obviously battered prisoners appear, do not record the fact in the protocol unless vigorously pressed by the defense counsel. Military court judges often take the position that their job is restricted to extending the period of detention and that complaints about torture should be addressed, separately, to other authorities.

- (5) The detainee is brought to court, or is released (and is thus able to make contact with the outside world), only after the marks and signs of torture have disappeared.
- (6) Hospital records for torture victims frequently appear not to exist.[‡] There is, indeed, serious cause for believing that coordination between the GSS, the military authorities, and Israeli hospitals contributes to the concealment of torture. Amin Muhammad Yousef Amin, 22, for example, was taken to hospital on 30 August 1989 for treatment of wounds sustained under torture. According to a sworn affidavit taken from him by al-Haq:

I should mention that I was admitted to hospital [an Israeli hospital in Beer-Sheba] under a different name. I learned this from the nurse and a policeman, who told me: "If the doctor asks you about your name, answer him by saying: 'as written in front of you.'" The policeman mentioned the name. I do not remember what it was, but I am sure that it was not my own. The name was written, in Hebrew, on a document which I believe was an admission form. I do not read Hebrew, but I recognize Hebrew writing. When I told the doctor that I was admitted under a name which is not mine, he answered: "This does not concern me, I am treating a person and I don't care about his details."¹⁶

According to the authorities' records, Mr. Amin was in al-Ramla Prison on 30 August 1989. And, according to the records of Beer-Sheba Hospital, no one by the name of Amin Muhammad Amin was admitted for treatment that day. Thus, on the basis of official documentation, Mr. Amin was never admitted to hospital for treatment of his torture wounds.[‡]

When Mr. Amin was released from al-Ramla Prison, the prison authorities gave him a form which stated that he had been there between 15 August 1989 and 15 September 1989. In fact, he arrived at al-Ramla Prison on 4 September 1989.¹⁷

In another case, al-Haq fieldworker Sha'wan Jabarin was arrested on 10 October 1989 and harshly beaten by soldiers. He was subsequently taken to Hadasa-'Ein Karem Hospital. According to Mr. Jabarin:

[T]hey told me that I had to go to hospital. At 5:00 p.m., they took me to 'Ein Karem [Hadasa] Hospital in an army ambulance. There, I was

[†]Under Article 78 of Military Order 378, a detainee must be brought before a judge no later than 18 days after arrest.

[‡]See further Chapter Two, "Medical Care."

[§]See further Appendix 5-C.

thoroughly examined and X-rayed. They recorded that I had not sustained any broken bones, and that I had received punches only.

In spite of the medical examination, there is no mention in Hadasa Hospital's records of a patient admitted under the name of Sha'wan Jabarin.¹⁸

- (7) Although many residents of the Occupied Territories have been tortured, this is not reflected in the number of complaints and suits filed for damages and compensation. The bias of the judicial system, and its tendency to dismiss Palestinian testimony in favor of that offered by Israeli officials, combines with a fear of retaliation to inhibit most Palestinians from seeking redress through the judicial system.

Investigation and Sanction: The Landau Commission

On 31 May 1987, the Government of Israel established a commission of inquiry, chaired by High Court Justice Moshe Landau, to investigate GSS interrogation methods with regard to "hostile terrorist activities and court testimony regarding those interrogations."¹⁹ The Commission was established against the background of the "Nafsu Case" and the "Bus 300 Affair," which prompted widespread Israeli and international criticism about the operational methods of the GSS.[¶]

With the exception of a secret appendix, the Landau Commission Report was published on 30 October 1987.²⁰ It found that the GSS had, since 1971, systematically given false testimony under oath with the aim of concealing methods of interrogation and facilitating the conviction of accused persons. According to the Report:

[Interrogators] favored the principle of absolute secrecy to the duty of telling the absolute truth, and from the witnesses' stand they denied using any physical pressure on the accused. In other words, they lied . . .²¹ The practice of perjury continued until 1986. The GSS allowed itself to systematically and continuously violate the law by permitting and encouraging perjury in courts . . .²²

The Report unequivocally condemned perjury, but recognized that the GSS was faced with a dilemma resulting from the tension between the need to coerce information from suspects and the constraints of legally permitted methods of interrogation.

[¶] Izzat Nafsu, a Circassian officer in the Israeli army, was arrested in 1980 and, in 1982, sentenced by a military court to 18 years' imprisonment for espionage on behalf of Syria. Nafsu claimed that his confession was extracted under duress, but the GSS officers denied this under oath. After Mr. Nafsu's appeal of first instance was rejected, he appealed to the Israeli High Court of Justice, which, in May 1987, ruled that his sentence should be reduced to 24 months and that his rank should be reduced from Captain to Sergeant. During the High Court hearing, it emerged that the interrogators had given false testimony during the case.

In the April 1984 "Bus 300 Affair," two Palestinian residents of the Gaza Strip hijacked an Israeli bus and ordered it to drive toward the Israeli-Egyptian border. An Israeli commando force intercepted and raided the bus, and, it was officially announced, killed the hijackers in an exchange of fire during the attack. Subsequently, however, photographs taken at the scene revealed the hijackers to be alive and in the custody of the authorities after the conclusion of the attack. It later transpired that they had been summarily executed. A committee was formed to investigate the matter. During the investigation, it became apparent that there were plans, involving senior GSS officials, to disrupt the work of the committee.

The Report went on to make certain general propositions which are worth quoting at length:

We must be extremely strict in regard to this issue, lest the legal framework be torn asunder by excess as every interrogator takes the law into his own hands and is unchecked in coercing suspects. So it is that the image of the state as a state governed by law and in which civil rights are protected, can be severely damaged. If such a situation were allowed to transpire, [the state] would come to resemble those regimes in which the security apparatuses are unchecked in their reign over the state.

In order to prevent this, certain measures are necessary. First, a prohibition against the excessive use of pressure against suspects; it should be forbidden to employ pressure which reaches the level of physical torture or the maltreatment of the suspect, or injury to his dignity, which robs him of his humanity.

Second, the use of measures which are less severe must be employed in a reasonable manner, taking account of the degree of expected danger, in accordance with the information at the disposal of the interrogator.

Third, the methods of physical and psychological pressure which the interrogator has been sanctioned to employ should be defined and restricted in advance, by way of clear guidelines which oblige the interrogator.

Fourth, strict supervision must be carried out to ensure that the guidelines given to GSS interrogators are being respected.

Fifth, any deviation from what is permitted, must be met with a severe response from the interrogator's superior. He must not hesitate to employ disciplinary punishment, and, in serious cases, to bring the interrogator who has deviated [from the guidelines] to trial on criminal charges.²³

The Landau Commission attempted to resolve the dilemma confronting GSS interrogators by legitimizing the use of "moderate physical and psychological pressure" during interrogation.²⁴ According to the report:

The interrogation of individuals who are accused of carrying out terrorist activities won't be successful and fruitful without using pressure in order to overcome their will, their refusal to reveal information, and their fear of the organization [to which they belong] in case they reveal information.²⁵

The results and recommendations of the Landau Commission Report were officially endorsed by the Israeli parliament.²⁶

Official Policy

Given the concealment of torture, discussion of official policy concerning its use is, ultimately, based on conjecture. Nevertheless, it is clear that during the first year of the uprising, the authorities reacted with short-term measures to suppress what was explicitly perceived as a short-term phenomenon. Thus, thousands of Palestinians were detained without charge or convicted after "quick trials" based on soldiers' testimony rather than systematically interrogated to reveal information. Although these detainees were subjected to severe ill-treatment and even torture once in custody, physical abuse during 1987-1988 was more a method of punishment than it was a means of extracting information.²⁷

As the uprising entered its second year, however, more far-reaching responses were sought. In particular, it seems that the reconstruction and improvement of intelligence became a prerequisite, and the extraction of information from detainees a priority, for striking at the roots of the uprising. The increased use of torture during the second year of the uprising would appear to indicate a change in official assessments of the uprising and of the role of interrogation and detention in suppressing it. The recommendation of the Landau Commission that interrogators be strictly controlled and directed by their superiors lends credibility to this hypothesis.

2. Methods of Torture

According to al-Haq's documentation, methods of interrogation used against Palestinian detainees from the Occupied Territories include both psychological and physical torture. The beating of sensitive organs, choking, and the pulling of hair off the body, for example, are clearly means of physical torture. Prolonged solitary confinement, subjecting a detainee to noise, screams, and threats against his family, or keeping him in conditions of filth for periods which may exceed one month, on the other hand, are more psychological in form. Often, however, it is difficult to distinguish between the two. For example, the most common method of torture, *al-Shabeh* (forcing a person to stand, hooded and handcuffed, for long periods of time, while depriving him of food or sleep), contains both physical and psychological elements. Similarly, if starvation begins as a psychological tool, with the passage of time it becomes equally a physical one.

In addition to torture by interrogators, detainees are frequently subjected to abuse at the hands of soldiers and military police. This includes beatings with hands, fists, truncheons, and boots.

Torture and interrogation are generally most intensive during the first several days after arrest. The detainee is subjected to severe physical and psychological pressure, and is usually deprived of food, sleep, and basic hygiene, resulting in lice and general discomfort. Moreover, detainees are often forced to stand for protracted periods of time.²⁸ Under such conditions, many detainees sign confessions, typically in Hebrew, simply in order to put an end to the process.

Al-Haq's documentation on torture, which includes sworn affidavits taken from victims and their lawyers, covers a cross-section of geographical regions and detention facilities, including Dhahiriyya (Hebron district), al-Far'a (Nablus district), Toulkarem, Petah Tikva (Israel), the Russian Compound (West Jerusalem), Ansar II (Gaza City), and Nablus, Jenin, Ramallah and Hebron prisons. The methods of torture discussed below have been documented by al-Haq in dozens of cases over the past several years. The particular examples presented are based on nine case files. Each victim provided information in the form of affidavits which were taken independently of other victims, thus reducing the risk of exaggeration or fabrication and allowing for cross-verification. Other supplementary evidence, such as medical reports and photographs, is available from al-Haq.

None of the practices examined below is unique. Furthermore, they are presented in order of incidence as opposed to gravity. It should also be noted that more than

one of the following methods of torture can be inflicted upon one person. Indeed, one affiant was subjected to almost all of these methods.*

***Al-Shabeh*:** The hands of the detainee are tied in front or behind his body with plastic or metal cuffs. He is blindfolded, or, alternatively, his head is covered down to the neck by one or more cloth sacks, with only a slit left open for him to breathe. The detainee is forced to continuously stand in a yard, open to the elements, for a period of several days. Sometimes his hands may be tied behind him to a pole or fixed pipe. During this period, the detainee is taken for interrogation several hours every day. He is given a few minutes each day to eat and go to the toilet.

Yaser Ibrahim Mousa 'Abd-al-Karim al-Mtour, 21, was interrogated for five continuous weeks in Ramallah and Hebron prisons and the Russian Compound. He was then released without charge. While in Hebron Prison:

One morning, a guard led me and tied me by the hands (which were handcuffed behind my back) to a pipe which was fixed on the wall, and left me standing. I was unable to sit down for a continuous period of 24 hours. I felt sharp pain in my knees and shoulders.²⁹

Food Deprivation: During the first days of interrogation, detainees are generally deprived of adequate food. This may involve total or partial deprivation of food; meals may be limited to one a day or withheld altogether. In several cases, detainees are deprived of a meal until the third day of detention. When a detainee is undergoing *al-Shabeh*, he is permitted only a few minutes to eat. Often, meals served during *al-Shabeh* are of poor quality and small quantity. While eating, a detainee's hands may be untied or tied in front of his body.

Riyad Muhammad 'Ali Bdeir, 42, was interrogated and tortured for 33 days in Tulkarem Prison and then released without charge.[†] In a sworn affidavit taken from him by al-Haq, Mr. Bdeir stated:

[The warden] untied my hands, placed them in front of me, and then handcuffed me again. He put food in front of me. It consisted of three pieces of sliced bread, a little bit of *labana*, [a yogurt extract], and a glass of water, even though 40 hours had passed during which I had not been provided with any food or water.³⁰

Sleep Deprivation and Restriction of Toilet Facilities: Detainees subjected to *al-Shabeh* during interrogation naturally tend not to sleep much. Yet, when they do attempt to sleep, even if only for a few minutes, they are prevented from doing so, particularly during the first week of detention. After the first week, detainees are usually allowed to get some sleep, but not enough to provide adequate rest. In most cases, the detainee is punished through the deprivation of natural and sufficient sleep throughout the interrogation period, which in many cases may last more than one month.

*See further Appendix 5-B.

†See further Appendix 5-B.

In addition, detainees may be prevented from access to toilet facilities while under interrogation. Because of this, some detainees have been left with no option but to urinate or defecate on their clothes. A 19-year-old detainee, who requested that his name be withheld from publication, was interrogated and tortured for 20 days in the Russian Compound and Dhahiriyya Military Detention Center, and subsequently released without charge. In a sworn affidavit taken by al-Haq, he stated the following:

In the two days during which I was tied up [in the Russian Compound], they prevented me from going to the toilet, and did not give me drinking water or cigarettes, so I used to urinate in my clothes.³¹

Beating: Beatings in detention are carried out with clubs, fists, and boots. Although they can be directed at all parts of the body, beatings tend to concentrate on sensitive organs such as the genitals, stomach, larynx, and head. The head may be banged against a wall or floor. Beatings may last until the detainee loses consciousness.

Al-Haq fieldworker Sha'wan Jabarin, 29, was tortured by soldiers in the military government compound in Hebron prior to receiving a one-year administrative detention order:

They forced me to enter a bathroom. They closed the door. One soldier entered with me and another remained outside. He forced me to lie on the floor and stepped on my head, chest and hands. He then hung on to something above him and began to jump on me. This lasted for ten minutes, during which I felt that I was dying. I was left lying on the floor while my mouth bled. Then, the soldiers removed my blindfold and cut the plastic handcuffs. I tried to stand up, but one of the soldiers used his rifle to push me back down to the floor. They forced me and some of the other detainees to enter the covered yard. Blood was flowing from my nose, back, shoulders, and chest, from all parts of my body.³²

According to Riyadh Bdeir (quoted above): “[in one session] they added a new means of torture, namely, beating me on the testicles. After two days of torture my testicles swelled to three times their usual size.”³³

The experience of Amin Amin` (see above) in Dhahiriyya Military Detention Center is also revealing in this respect:

[The interrogator] ordered me to sit on the floor. He then stood on my handcuffs and, supporting himself with his hands on my shoulders, began to rock himself right and left. After five minutes, he ordered me to lie on my back. He opened my legs, and “Yoni”[†] began to press with his knees on my genitals. This lasted for five minutes. Meanwhile, other interrogators were kicking me in the chest and stomach. Next, I saw, from under the sack [on my head], that they had brought a little chunk of wood. It was about two centimeters long, and square-shaped. “Yoni” began to hit me on the head with it.³⁴

[†] “Yoni” is the code name of an interrogator recognized by Mr. Amin during his interrogation and torture. The name was mentioned more than once in his affidavit.

“The Cupboard”: Detainees are put in a small space, one meter by one meter, which is very dark and almost completely closed. Air comes in only through a thin opening under the door. The detainee is tied up, his head is covered with a sack, and locked into “the cupboard” for a number of days. During this period, he is subjected to disturbing voices and the sounds of screams.

Suffocation: Interrogators apply pressure with one or both hands to the windpipe so that the detainee can no longer breathe. Detainees may lose consciousness as a result. Amin Amin describes how he was suffocated in Dhahiriyya Military Detention Center:

[The interrogators] continued to beat me on the genitals and chest. I felt hands choking me and my legs became weak. Then they hit me again on the genitals.

Next, my shirt was suddenly opened and both [interrogators] began to pull hair off my chest. I continued to be kicked and choked. I began to lose consciousness. I began to lose track of what was happening to me or around me. I don't know how long I was unconscious, but I woke up to a blow to my head, near my left ear, and heard a voice telling me to stand up. I could not. At this point two hands raised me by the ears and stood me up. Then one of them—whom I could not make out—took me outside, after banging my head against the wall.³⁵

Another method of suffocation involves placing sacks on the detainee's head and pressing them against the nose and mouth to prevent him from breathing. With reference to Toulkarem Prison, Riyad Bdeir stated:

“Abou-Mousa” [the interrogator] returned and took me to the head of the interrogation team's room. With him were three other interrogators. After a barrage of curses and obscenities he said, “This is your night. Either you confess or you die.”

He then put a sack on my head which was different from the first one. This was a plastic bag, black and very strong, with a thread in its opening. He pulled the thread around my neck, closing the bag completely. He then seated me on a high chair, and bound my hands behind my back with two pairs of iron handcuffs, pulling them as tight as possible. He then bound my legs with another pair of iron cuffs, also tightening them to the limit.

He then started to punch me above the eyes, like a boxer, while another interrogator started hitting me with karate swings to the abdomen, waist, and testicles, pushing me backwards while my legs were fixed to the chair. They continued like this until the upper part of my body fell backwards.

At this point the interrogator told me, “You are now hanging in front of me like a slaughtered animal.”

While I was in this position, with my head hanging down, one of them began to suffocate me by pressing the bag to my nose and mouth. I could not breathe . . . In spite of my screams, he did not remove his hands. I then lost consciousness. When I regained consciousness they were splashing water on my face.³⁶

It should be noted that, in 1987, 'Awad Hamdan was suffocated to death while in detention. The case is further discussed below.

Falaga: The detainee is handcuffed and hooded, and laid on the ground. His feet are raised and the soles are whipped dozens of times with a stick or plastic hose until, as happens in most cases, the detainee loses consciousness. The bottom of the detainee's feet become swollen and blackened. He may not be able to walk normally for weeks as a result. Amin Amin was subjected to *Falaga* in Dhahiriyya:

[T]hey threw me on the floor. "Yoni" said: "This time we shall try the "Syrian *Falaga*." He brought a short plank with a rope [attached to the plank at both ends]. He placed my feet under the rope [so that they were between the rope and the plank]. He began to twist the plank, [causing the rope to coil around it] squeezing my legs between the rope and the plank [thus immobilizing them]. Then I saw "Eli" and "Emi" hold the *falaga*, while "Yoni" began to hit me [on the soles of the feet] with a black plastic hose. He said: "You should count." I counted 57 blows. Then I started to lose consciousness. At this point they stopped.

Pulling Hair Off the Body: While Riyad Bdeir was under interrogation in Toulkarem Prison:

I was taken to the interrogation room where there was an interrogator who introduced himself as "Captain Fakhri." He started off by using obscene words, cursing, spitting in my face, and yanking my beard very hard. Sometimes my hair would come out in his hand . . . [At one point] the interrogator went crazy. He grabbed me by the beard and dragged me across the floor.³⁷

Electric Shocks: Al-Haq has received reports of the use of electric shock torture from Dhahiriyya Military Detention Center. Electric shocks are administered while the detainee is blindfolded or hooded. The victim, therefore, cannot see the tools used, or the way the shocks are administered. Al-Haq therefore does not know the precise voltage used, or whether it is derived from a battery or fixed source inside the interrogation room. With reference to Dhahiriyya, Amin Amin states:

[The interrogator] tied the handcuffs more strongly. The sacks were on my head. I felt the presence of others, or maybe one other person. "Eli" and his colleague began to kick me in the stomach. When I doubled up with pain, they climbed on chairs and began to jump on me and elbow me in the kidneys. I then felt a solid object being placed between my fingers. My body shivered, and I felt burning in the fingers of both hands. I became dizzy and fell to the floor.³⁸

The 19-year-old affiant quoted above, made the following statement to al-Haq regarding Dhahiriyya:

In the morning a soldier took me to the intelligence officer, who introduced himself as "Abou-Jabal." He asked me to confess. I told him, "I have nothing to say." He pulled off my shirt, handcuffed my hands behind my

back, put an electric wire on my back, and put a sack over my head. I was standing against the wall. After a few moments, he asked me to ... confess. I refused. He switched on the electricity. I shook violently and banged against the wall and then the floor. I remained lying on the floor and began screaming. He continued kicking me with his feet. I felt very exhausted. My voice changed and I was shaking.

I was then taken to the cell. "Abou-Jabal" continued interrogating me in the same manner for seven days.³⁹

Burnings: Victims are burned with lit cigarettes. Al-Haq fieldworker Sha'wan Jabarin stated:

[T]he soldiers then took me to a covered yard and forced me to sit on the damp ground. Then, they burned my ears and hands using cigarettes. One of the soldiers stuffed my mouth with a piece of cloth to prevent me from screaming.⁴⁰

Jihad Ghazi Muhammad 'Awad, 21, was detained at al-Far'a Military Detention Center for several days. He was not interrogated. He states:

Two prison guards attacked me and began to beat me. But I immediately fell unconscious as a result of a blow to my ear. I got up in the morning and noticed that I was severely burnt in the back of my left leg. I stayed where I was until the afternoon. Then I was taken to a cell where I saw that my leg was very dirty, swollen and burnt.⁴¹

Mr. 'Awad was admitted to hospital, where his burns were found to be third degree. He was under treatment for a whole month.

Miscellaneous Methods: In Toulkarem Prison, handcuffed and hooded detainees are forced to sit on a solid tapered plastic box for hours. This can cause bleeding from the buttocks. Riyad Bdeir states: "[The interrogator] ordered me to sit down. I sat on a [tapered] solid plastic box ("arkaz" in Hebrew), which had a base with sharp protrusions. I remained in this position for at least two hours." This method was repeated with Mr. Bdeir more than once. He adds: "I found bloodstains on my underwear because my buttocks had bled as a result of sitting for long periods on the plastic box, which had sharp protrusions."⁴²

Elsewhere, detainees are forced to squat on their heels, stand up, and squat again hundreds of times in a row. According to a sworn affidavit taken from an ex-detainee from Jenin Prison, who asked that his name be withheld from publication:

[One interrogator] ordered me to squat on my heels and stand up again, like a sports exercise. When I told him that I was tired, he hit me and forced me to continue the "exercise" hundreds of times. During this, I was kicked, especially on the genitals.⁴³

The same affiant stated that the interrogator

put my hands, which were handcuffed, around the back of a chair. Meanwhile my head was covered with a thick sack. I sensed the interrogator behind me. He put his foot on the chain of the handcuffs and pressed with all his weight on my hands, which felt like they had ceased to be a part of my body.⁴⁴

Finally, detainees may be struck about the head and jaws or slapped on both ears simultaneously, causing severe pain. Khaled Muhammad Mustafa Barakat, 22, was detained for 62 days in al-Far'a Prison before being released without charge:

[T]he interrogator, who introduced himself as "Azmi," used a triangular shaped ruler covered with a layer of plastic to beat me on my head and jaws while I was tied up. I felt severe pain and felt stunned . . . He also forcefully slapped me on my ears with both hands, causing severe pain in my ears and dizziness.⁴⁵

Those subjected to interrogation and torture are often released without charge, trial, or even a court appearance. In addition, torture appears to be used as a means of intimidating selected people in order to make an example out of them. As well as facilitating the extraction of information, therefore, torture is a means of instilling fear into Palestinian society with a view to enhancing control.

3. Torturers and Their Victims

Torture is physically administered by members of the General Security Service (GSS), police interrogators, soldiers, military police, Border Police, and Palestinian collaborators. The latter work under the supervision of the GSS.

Collaborators are often placed in cells along with detainees to obtain confessions and sow discord among under the guise of ordinary conversation between inmates. Where simple duplicity has failed, physical pressure may be used. Yaser al-Mtour, 21, states with respect to Ramallah Prison:

There were about 11 persons in the room. At first they welcomed me and brought me tea and coffee. After about an hour, two persons approached me and asked me to write a paper on my activities. They said this was a tradition. They asked me to mention the organization to which I belong. When I failed to cooperate with them, saying that I did not belong to any organization and was innocent, they began to punch, kick, and knee me all over my body. They put a piece of cloth soaked in salt water into my mouth . . . This lasted for two hours.⁴⁶

Collaborators employed in the Russian Compound in West Jerusalem have used far harsher methods. Twenty-two-year-old Ibrahim Habash, a Bir-Zeit University student who was arrested on 28 August 1989 and is still under arrest, was tortured by collaborators.⁵ According to his lawyer, Attorney Leah Tsemel, six persons were involved in torturing him for a period of 24 hours. His clothes were removed and he was beaten with shoes and clubs. He was punched and burned with cigarettes, given

⁵See further Appendix 5-D.

a cold shower, and then had his head and face covered with a large quantity of foam. During this process, Mr. Habash lost consciousness. When his lawyer visited him two weeks later, she saw burns on his body. During his torture, Mr. Habash screamed, unheeded, for the guard.⁴⁷

The information available to al-Haq suggests that torture in the Occupied Territories does not discriminate between men, women, and children.[¶] Baha'i 'Omar Younes Jamjoum, 13, was detained in a police station in East Jerusalem:

[T]he intelligence officers took off my trousers and underwear. They tied my penis with a piece of thread attached to a club, and tightened the thread by pulling the club. The interrogator kicked me in the genitals. At the same time, they swore at me obscenely and cursed my father and mother. They continued pulling my penis like this for 15 minutes. Then an intelligence officer threateningly raised his gun to my face, because I said nothing.⁴⁸

Torture is absolutely prohibited under international law and human rights instruments.⁴⁹ Furthermore, it constitutes an international crime and, along with "inhuman treatment," is a "grave breach" of the Fourth Geneva Convention.*

The practice of torture in the Occupied Territories has been reported for years. Moreover, In 1987, the Landau Commission, established by the Government of Israel, determined that GSS personnel had consistently lied about the methods they used in interrogation. The Commission stopped short of using the word "torture," however, and instead proposed certain guidelines, the details of which were kept secret, to regulate the use of "moderate physical and psychological pressure."⁵⁰

In light of the increase in methods of interrogation which clearly amount to torture during the second year of the uprising, one of the following propositions must be correct: either the guidelines proposed by the Government of Israel for the conduct of interrogation sanction torture, or they are being systematically violated and those responsible are not being held accountable.[†] In either case, the Landau Commission's concern that "the image of the [Israeli] state as a state governed by law ... can be severely damaged," is fully justified by the facts.⁵¹

B. Death in Detention

As al-Haq reported in its 1988 annual report, *Punishing a Nation*, the first year of the uprising was marked by a dramatic increase in the number of deaths in detention as compared with previous years. Whereas, for example, one person is known to have died in detention in 1987, al-Haq recorded at least nine cases of Palestinians who died while in Israeli custody in 1988. This trend continued in the second year of the uprising. At least nine more Palestinian detainees have met their death in detention since 9 December 1988:

- (1) 'Abdallah Ibrahim Abou-Mabrouqa, shot to death by the deputy commander of Ansar II Military Detention Center in Gaza City on 12 December 1988; Israeli

[¶] See further Chapter Fifteen, "Women."

* See further Chapter Nineteen, "The Role of the International Community."

[†] See further Chapter Sixteen, "Investigations."

Member of Knesset (parliament) Dedi Zucker stated, in a letter to Minister of Defense Yitzhak Rabin, that Mr. Abou-Mahrouqa may have been shot after he was already wounded and no longer presented a danger to prison guards;⁵²

- (2) Nidal Zuhdi al-Tirawi, shot and killed in Megiddo Military Detention Center on 8 February 1989; his death certificate, signed by a Dr. Muralee Dharan, gives "gun-shot wound" and "internal bleeding" as the cause of death;⁵³
- (3) Mahmoud al-Masri, who died of an untreated perforated ulcer during interrogation in Gaza Central Prison on 6 March 1989 (discussed below);
- (4) Naser Shamali, who died after beatings by soldiers at Ansar II in Gaza City on 21 or 22 April 1989;
- (5) Muhammad 'Isa al-Fuqaha', who died, apparently of dehydration, following a hunger strike in Megiddo on 16 May 1989;
- (6) 'Omar al-Qasem, the longest-serving Palestinian political prisoner, who died in the Assaf Harofeh Prison Hospital on 4 June 1989, following a protracted illness; the authorities refused to release him on medical grounds, and there are questions concerning the treatment he did or did not receive;⁵⁴
- (7) Muhammad Rifa'i, who died in the Ansar III (Ketziot) Military Detention Center in the Negev desert, apparently of heart disease, on 10 August 1989. A person in Mr. Rifa'i's condition should not have been detained in the harsh conditions of the Negev desert;
- (8) Jamal Muhammad 'Abd-al-'Ati Abou-Sharkh, who was found dead in his cell in the interrogation wing of the Gaza Central Prison on 3 December 1989, an alleged suicide (discussed below);
- (9) Khaled Kamel al-Sheikh 'Ali, who died in the interrogation wing of the Gaza Central Prison on 19 December 1989. The results of an autopsy, performed at the Abou-Kbir Forensic Institute by Dr. Yehuda Hiss and Dr. Michael Baden, revealed that Mr. al-Sheikh 'Ali died from internal bleeding caused by blows to the abdominal area. (discussed below).⁵⁵

Three of these deaths, namely those of al-Masri (3), Shamali (4), and 'Ali (9), appear to be clear cases of death as a direct or indirect result of torture. In a fourth case, that of Abou-Sharkh (8), torture has been alleged. In addition, investigations into several earlier cases of death in detention have, during 1989, revealed new evidence of torture, and are therefore discussed here:

- (1) 'Awad Hamdan, who died in Jenin Prison on 21 July 1987, a few months before the uprising;
- (2) 'Ata 'Ayyad, who died in the Dhahiriyya Military Detention Center on 14 August 1988;

(3) Ibrahim al-Mtour, who died in Dhahiriyya on 21 October 1988.

Al-Haq's documentation is in general primarily based on sworn affidavits taken from victims or eyewitnesses to torture. In several cases where detainees died as a result of what appears *prima facie* to be torture, reports of investigations carried out by the Israeli Police (in cases where the GSS or the Prisons Service are implicated) or military police (in cases where the military is involved) were also obtained. This section presents six case studies which were chosen by al-Haq because of the unusual insights they provide into the violent methods of interrogation employed by prison guards and the GSS in Israeli detention facilities. This has been made possible primarily through documents submitted to the Israeli High Court of Justice, which reviewed four of the cases in 1989.

1. The Case of 'Awad Hamdan

'Awad Hamdan, a Palestinian from the village of Rummana near Toulkarem, died in Jenin prison on 21 July 1987, two days after his arrest by the military. On different occasions, his death has been officially attributed to different causes, including a heart attack, a snake bite, pneumonia, and suffocation.[†] The case was taken to the Israeli High Court of Justice by Advocate Felicia Langer.

In February 1988, the State Attorney reported to the High Court that the Israeli Government Legal Advisor had concluded that "the death of the deceased was apparently caused by negligence." He ordered that "the relevant General Security Service man be brought to trial for the crime of causing death by negligence . . ." ⁵⁶ The authorities have not yet made public their conclusions as to the exact cause of death.

In March 1988, Minister of Defense Yitzhak Rabin submitted the following statement to the High Court:

By the authority vested in me by Paragraph 44 of the Law of Evidence (new version), 1971, I hereby express the opinion that presenting the evidence . . . on the matter of the investigation methods of the General Security Service is liable to harm national security.⁵⁷

The High Court accepted Mr. Rabin's argument, but held that the medical findings in the case should be disclosed to the petitioners.⁵⁸ Thus, in September 1988, the State Attorney informed the High Court that 'Awad Hamdan died of "asphyxia due to suffocation," adding that the binding conclusions on the cause of death would be made by the court hearing the case against the GSS operative.⁵⁹

In a new petition to the High Court in the fall of 1988, Advocate Langer, citing the autopsy report as referring to bruises found on the body of the deceased "which looked like beating marks," requested to be informed, *inter alia*, why the authorities were refusing to provide "information regarding the circumstances of the death of the deceased . . . during his detention in the Jenin prison on 21.7.⁶⁰ , as a result of strangulation . . ." ⁶¹ The High Court agreed, but ruled that only the lawyer and the family of 'Awad Hamdan could be informed of the exact circumstances of the death.

[†]See further Chapter Sixteen, "Investigations."

In September 1989, the Magistrate's Court hearing the case against the (anonymous) GSS operative, *in camera*, acquitted the defendant because it had not been proven beyond reasonable doubt that suffocation was indeed the cause of death.⁶²

Based on available evidence in the 'Awad Hamdan case, al-Haq strongly believes that the detainee was beaten by his interrogators while handcuffed and hooded, and that he then suffocated. Suffocation could have resulted either from strangulation or hooding. Neither scenario supports the contention of "negligence" on the part of the GSS. The exact circumstances of death, however, will not be known. In the interest of "national security," publication of the findings of the investigation into the circumstances of 'Awad Hamdan's death has been barred, as this would disclose the GSS's interrogation methods. Al-Haq maintains that methods of interrogation which cause the death of a detainee are illegal, should be publicly disclosed, and outlawed.

2. The Case of 'Ata 'Ayyad

'Ata Yousef 'Ayyad, 21, a resident of the Qalandiya Refugee Camp in the Ramallah district, was arrested by the military on 23 June 1988 and taken to the Dhahiriyya Military Detention Center. On 14 August, before a lawyer, relative, or even a delegate of the ICRC had been permitted to see him, he was, according to the military, found hanging in his prison cell. His body was returned to his family in the middle of the night and buried in great haste under heavy guard. The family did not receive the opportunity to view the body or to clean and bury it in accordance with religious custom. Suspicion into the circumstances of Mr. 'Ayyad's death was reinforced by the fact that the official investigation had still not yielded any results by December 1989, a full 16 months later.

In August 1989, the 'Ayyad family's lawyer, Advocate Ahlam Haddad, appealed to the High Court of Justice after all other means of recourse failed to produce any results. In her petition, Advocate Haddad relied primarily on two statements taken by Advocate Leah Tsemel in 'Atlit prison from detainees who had been with Mr. 'Ayyad in Dhahiriyya until shortly before his death. One of the witnesses, Nafez Sharif Noubani, recounted that, as part of his duties as a kitchen worker in Dhahiriyya, he regularly saw Mr. 'Ayyad in July. According to Mr. Noubani, Mr. 'Ayyad

would shout all the time. Day and night I remember he would shout, beating on the door. We would hear shouts and knocking, and in the night I heard his shouts . . . I myself repeatedly heard him say: "They beat me on the head! They beat me on the head!" There was a tall, swarthy captain.⁵ He was very tall. He was religious and wore a skullcap. He would say to me: "We do not make problems except for those who cause us problems. You hear the one shouting inside? We beat him, and if you make problems we will beat you too, but you are all right."⁶³

In a second affidavit, Mahdi 'Abd-al-Qader Ghazawna states that on three separate occasions in Dhahiriyya, he sat close to Mr. 'Ayyad, hands tied and blindfolded, and spoke with him:

⁵Palestinian detainees as a matter of routine are ordered to address all military personnel in detention facilities, including privates, as "captain." The "captain" referred to by the affiant is therefore quite likely to be a soldier of lower rank.

When we spoke, he told me that he was accused of demonstrations, throwing a Molotov cocktail at a collaborator, and beating collaborators. This is what I remember. He told me that they used electricity from a battery on him and that he had confessed . . .

[On a separate occasion, 'Ata 'Ayyad told me that] the GSS man who was interrogating him punched him, and that 'Ata 'Ayyad bit him in the leg. As a result of this, the bitten interrogator beat him with a stick on his head and all over his body. They bound him hand and foot and gave him an injection . . .

[After a short absence from the area where 'Ata 'Ayyad was held] I heard him shouting and mumbling for about an hour and then he fell silent. I asked him: "Ata, what happened?" He replied that he was going out of his mind. I asked him why. He said that they had taken him to interrogation and given him another injection. Thereafter, I was put back in the rooms. I never heard of him again.⁶⁴

In mid-December 1989, the case was still in its initial stages in the Israeli High Court.

3. The Case of Ibrahim al-Mtour

Ibrahim al-Mtour, 31, a resident of Sa'ir near Hebron, was arrested by the army on 8 July 1988 and taken to the Dhahiriyya Military Detention Center. He was later transferred to the 'Ofer Military Detention Center near Bitouniya in the Ramallah district. On 12 October, Mr. al-Mtour was seen by his family when he appeared in the Ramallah military court; the trial was not completed at that time. His family again saw him during a prison visit at 'Ofer the next day; he appeared physically fit and made no complaints of physical abuse. On 18 October 1988, he was again taken to Dhahiriyya. On 21 October, so the military claims, Mr. al-Mtour was found hanging in his cell.

In this case as well, other detainees have given sworn statements on the circumstances of death. Fearing official retribution, however, none were willing to sign their names or make them available for publication.⁶⁵ The family's lawyer, Advocate Felicia Langer, used testimony from anonymous detainees in the High Court. In a report on the case written by her, it is stated, *inter alia*:

The deceased was brought to Dhahiriyya in a bus, alone, on 18 October at 4:00 p.m. or around that time. The detainees saw him taken off the vehicle with blood flowing from his head, especially behind his ear. Upon arriving at Dhahiriyya the deceased shouted: "Allahu Akbar" [God is greater] and, "I am Ibrahim al-Mtour, they are beating me to death, detainees, witness!"

He was placed in a solitary cell and none of the detainees saw him again, but his shouts were heard for some time. Two days later his shouts were silenced and the detainees feared that he was no longer among the living.⁶⁶

There is also additional documentation in the case of Ibrahim al-Mtour: the authorities released a detailed report prepared by the Military Police following an investigation into the circumstances of the death, and there is also an autopsy report. The report of the Military Police states, *inter alia*:

- (1) Upon arrival in Dhahiriyya from 'Ofer, an army medic "detected an open wound on [Mr. al-Mtour's] skull. The head was bleeding and was bandaged by the examining medic." According to a soldier who was on the bus that transferred al-Mtour from 'Ofer to Dhahiriyya, "the detainee ran wild and incited the other detainees . . . therefore [the soldiers] needed to use force to calm him." (Note that Advocate Langer stated, above, that Mr. al-Mtour had been the only detainee on the bus).
- (2) According to a report written by the Commander of Dhahiriyya, Major Rashti Menashe, the detainee "rioted in an unreasonable manner . . . and this despite his being bound hand and foot . . . He continued to riot and we could not restrain him by any means." There was therefore a need for "very strong intervention due to his raging." A report written by the Deputy Commander of Dhahiriyya, Major Shafir, states that much force was used against the detainee upon his arrival, and that he was given a valium injection to calm him down.
- (3) On 19 October:

[T]he detainee began to riot and shout in an attempt to arouse the other detainees. In the afternoon Major Rashti employed teargas from a personal bottle against him, and when he continued to rage, Major Rashti ordered the doctor to give him an injection of tranquilizers after which he calmed down. That same night, Major Rashti replaced the plastic handcuffs on the detainee's hands with steel handcuffs, with his hands cuffed behind his back. During that day he was on hunger strike: he drank but did not eat.
- (4) On 20 October, "Major Rashti broke the cuffs and exchanged them for steel handcuffs which tied his hands in front." That evening, the detainee "agreed to eat after being threatened that he would be fed through a tube. When he agreed, a mattress and blanket were brought into his cell and he received five cigarettes."
- (5) On the morning of 21 October, the detainee was seen by several soldiers, the last time at 8:45 a.m. Major Rashti saw the detainee at 9:30 a.m. He "removed the blanket and found that the handcuffs were whole." In addition, "at the 9:30 checking the blanket was still whole."
- (6) At 10:25 a.m., the detainee was discovered hanging from a pipe in the cell by an army corporal.⁶⁷

The autopsy report prepared by Dr. Bertholun Levi, pathologist at the L. Greenberg Institute of Forensic Medicine (Abou-Kbir) in Tel Aviv, describes numerous abrasions apparently caused by beatings.⁶⁸ An expert opinion, which took into consideration the first autopsy report and the findings of the Military Police, was issued by Dr. Derrick Pounder, the pathologist acting on behalf of the al-Mtour family, after a second autopsy was performed on the body in July of 1989.[¶] Dr. Pounder confirmed that the deceased showed several injuries when he was taken off the bus upon

[¶]See further Appendix 5-E.

arrival at Dhahiriyya on 18 October, and stated that the most "prominent injury to the body" not described by the medic who saw the deceased on 18 October was "a bruise 14 x 9 cm on the left side of the upper back ... contiguous with a 10 x 8 cm bruise on the back of the left arm." In Dr. Pounder's opinion:

[T]his injury would have occurred most likely on the 19th or 20th of October when the decedent was bound hand and foot in his cell and when there is a record of the use of tear gas against him. The character and location of the bruise in itself strongly suggests a blow rather than a fall ... In addition two abrasions to the right upper arm are described in the autopsy report as 'fresh' and clearly have been inflicted later than 18 October.⁶⁹

Dr. Pounder's conclusion in the al-Mtour case is as follows:

It is my view that the prolonged and violent use of restraints, tear-gassing in a cell when already in restraints, probable physical assault when already in restraints, the administration of drugs, the probable deprivation of sleep, the isolation from other detainees, and the likely lack of facilities for personal hygiene, taken together constitute *prima facie* evidence of cruel, inhuman and degrading treatment.

Further:

I consider it possible that the abuse to which the prisoner was submitted might have induced him to take his own life as the only means of escape ... If the decedent did indeed take his own life, then, on the evidence available, I would regard the death as an 'aggravated suicide' precipitated by physical and mental abuse.

Finally:

Whereas the balance of evidence favors a determination of 'aggravated suicide' it would be rash, given the inadequacy of the original investigation, to exclude the possibility of homicide.⁷⁰

Although there is *prima facie* evidence of death as a result of torture in the case of Ibrahim al-Mtour, the insufficiency of evidence available, and the refusal of the Israeli High Court to order a thorough investigation into the circumstances of death, have enabled the authorities to declare it a suicide and protect those responsible from prosecution.*

4. The Case of Mahmoud al-Masri

Mahmoud al-Masri, 27, a resident of Rafah in the Gaza Strip, died in the interrogation section of Gaza Central Prison on 6 March 1989, three days after his arrest by the military. The next day, the Israeli authorities declared that Mr. al-Masri had died of a perforated ulcer.⁷¹ The *Jerusalem Post* claimed that, according to the findings of the autopsy, carried out on 7 March, "[n]o signs of violence or torture were found [on the body]."⁷² The autopsy report was not immediately available.

Attorney Felicia Langer petitioned the High Court of Justice on behalf of Mr. al-Masri's family on 17 March 1989. She requested to be informed, *inter alia*, why the

*See further Chapter Sixteen, "Investigations."

authorities had not released the autopsy report. On 22 March, the autopsy findings were made available. Contrary to claims made by the Israeli authorities, the autopsy report listed 24 bruises and abrasions on the body of the deceased.⁷³ According to Dr. Derrick Pounder, who assisted Advocate Langer in this case as well, these injuries

represent the result of blunt force trauma ... The color of the bruises indicates that they were all recent and had been sustained no more than three days prior to death ... the great majority of the injuries were definitely sustained during the detention in the GSS interrogation wing ...⁷⁴

On the basis of the pathological evidence made available to him by the authorities, Dr. Pounder concurred with the findings of the Abou-Kbir Institute of Forensic Medicine, which carried out the official autopsy, that Mr. al-Masri died as a result of the perforation of a chronic peptic ulcer of the stomach. However, Dr. Pounder refuted official suggestions that Mr. al-Masri had died of a natural illness.⁷⁵ He concluded:

The symptoms of a stomach ulcer can be exacerbated by prolonged psychological and/or physical stress ... In the case of al-Masri, the psychological stress of sudden imprisonment followed by intense interrogation ... with the associated physical violence (as evidenced by the injuries to the body) undoubtedly precipitated the perforation of the previously existing stomach ulcer.⁷⁶

The case was still pending in December 1989.[†]

5. The Case of Jamal 'Abd-al-'Ati

Although no incontrovertible evidence of torture had been unearthed in this case by December 1989, the circumstances of the death, an alleged suicide, create serious cause for concern.

Jamal Muhammad 'Abd-al-'Ati, 23, a resident of al-Shate' Refugee Camp in the Gaza Strip, was being kept in isolation in the interrogation wing of Gaza Central Prison. His interrogation had apparently been completed over a month earlier, suggesting that his transfer from the regular cells to the interrogation wing was a form of punishment. The reasons for the transfer and subsequent punishment are clarified by the circumstances surrounding his detention:

Mr. 'Abd-al-'Ati was an engineering student who returned from university in West Germany in 1988 due to a lack of funds to continue his studies. He worked for a year in the Gaza Strip and, having decided to look for work in Saudi Arabia, applied for an exit permit on 2 October 1989. Mr. 'Abd-al-'Ati's family reports that when he presented himself to the GSS officer responsible for travel permits on 12 October, the officer invited him to collaborate with the authorities. When Mr. 'Abd-al-'Ati refused, the officer tore up his application form, telling him: "You will not get it; you are not going to leave."

The next day, 13 October 1989, Mr. 'Abd-al-'Ati drove his car into a parked military vehicle, injuring a soldier and a GSS agent, who was reportedly the same officer who had refused his application for a travel permit the day before.[‡] Mr. 'Abd-al-'Ati was immediately shot and wounded by other soldiers, and, after surgery in

[†] See further Chapter Sixteen, "Investigations."

[‡] According to press reports, the soldier was lightly injured and the GSS agent had to have his legs amputated.

Shifa' Hospital, was detained and transferred to the al-Ramla Prison Hospital. Mr. 'Abd-al-'Ati's family saw him there on 3 November. They say he was recuperating well from his injuries; he told them that his interrogation had been completed. He also told them that his detention had been extended for another three months.

Shortly thereafter, Mr. 'Abd-al-'Ati was transferred to Ashkelon Prison. His family visited him there on 9 November. He appeared to be in good physical condition and also in good spirits. A few days later he was taken to Gaza Central Prison, and placed in the interrogation wing. According to Mr. 'Abd-al-'Ati's lawyer, Advocate Raji Sourani, an ICRC delegate saw him there on 27 November and reported that he was in excellent condition and had asked to see his lawyer. On 29 November, the army demolished the 'Abd-al-'Ati family home in al-Shate' Refugee Camp as punishment for his action in October.

All efforts by Mr. 'Abd-al-'Ati's lawyer and his assistants to see their client in Gaza Central Prison were in vain. On one occasion, on the morning of 3 December 1989, Advocate Jamal Sousi of Raji Sourani's office was told that the GSS had prohibited Mr. 'Abd-al-'Ati from receiving visitors. The next day, 4 December 1989, the family was informed by the authorities that Mr. 'Abd-al-'Ati had been found hanging in his cell. The death was officially declared to be a suicide.

Mr. 'Abd-al-'Ati's brother, Bashir, was told by an Israeli officer that Jamal 'Abd-al-'Ati had done "something others had not done," and that, therefore, "he deserved it." On 11 December, an autopsy was carried out at the Abou-Kbir in the presence of a Danish pathologist whose visit had been arranged on request of the family. The results of the autopsy were not yet available as this report went to press.⁷⁷

The death of Jamal 'Abd-al-'Ati is of extreme concern to al-Haq because it occurred while he was in isolation and apparently under interrogation as well. The fact that his lawyer was not permitted to see him also raises suspicion. Finally, the fact that Mr. 'Abd-al-'Ati died while in the hands of colleagues of the GSS agent whose severe injuries he caused suggests a motive.

Even if the death of Mr. 'Abd-al-'Ati was a suicide and not a homicide at the hands of his interrogators, it remains to be explained why a person who, according to his family was of sound mind, would opt to kill himself. Given the recent increase in alleged suicides in detention (six since the beginning of the uprising), a serious investigation into prison conditions, especially those prevailing in interrogation wings controlled by the GSS, is imperative.

The death of Jamal 'Abd-al-'Ati is currently being pursued by the family's lawyers.

6. The Case of Khaled al-Sheikh 'Ali

Khaled Kamel al-Sheikh 'Ali, 27, was arrested from his home in the al-Rimal district of Gaza City on the evening of 7 December 1989. His younger brother Naser, 19, and his father, Kamel, were also arrested that night.[§] 12 days later, while in the interrogation

[§] According to information given to al-Haq on 20 December 1989 by Advocate Tamar Peleg, one of the lawyers for the family of the deceased, Khaled al-Sheikh 'Ali's father and brother were informed by the authorities that they had been detained in order to pressure him to make a confession. In prison, Kamel al-Sheikh 'Ali, the father, was forced to confront his son and ask him where he had

wing of Gaza Central Prison, Mr. al-Sheikh 'Ali was dead. At approximately 8.00 p.m. the following day, 20 December 1989, Advocate Muhammad Abou Sha'ban, representing the family of the deceased, was informed by the Office of the Legal Advisor to the civil administration in the Gaza Strip that Mr. al-Sheikh 'Ali had apparently died of a "heart attack."

Unconvinced by this explanation, the family requested that an independent forensic pathologist attend the autopsy on their behalf. To this end, Advocate Abou-Sha'ban contacted al-Haq. Al-Haq contacted the Boston-based Physicians for Human Rights, and the two organizations arranged for Dr. Michael Baden to attend the autopsy on behalf of the al-Sheikh 'Ali family.

The autopsy was conducted on 24 December 1989 at the Abou-Kbir Institute by Dr. Yehuda Hiss with the assistance of Dr. Baden. It conclusively refuted the allegation that Mr. al-Sheikh 'Ali died of a heart attack. The preliminary results established that his death was an unnatural one resulting from massive internal bleeding caused by blows to the abdominal area. According to these findings, the blows in question required substantial broad/blunt force, and could not have been inadvertent or self-inflicted.[¶]

Other findings in the al-Sheikh 'Ali case also have extremely serious implications. In particular, the external marks visible on the body were not as noticeable as would ordinarily be expected from blows causing such damage, giving cause for concern that the individual(s) who inflicted them may have been trained not to leave marks.

Prior to the autopsy, Dr. Baden contacted both Dr. Yehuda Hiss and the Israeli military spokesperson to request that he be given as full an account as possible of the circumstances of death, and that he be allowed to visit Gaza Central Prison, including the cell where Mr. al-Sheikh 'Ali died.⁷⁸ When it became apparent during the autopsy that death had been caused by blows inflicted by a person other than the deceased, Dr. Hiss immediately contacted State Prosecutor Dorit Beinisch to convey this finding. He then made arrangements for himself and Dr. Baden to visit Gaza Central Prison and interview the officials allegedly involved in the death.

The visit to the prison lasted approximately two hours, during which interviews were conducted with approximately five persons who had interrogated the deceased. All the interviewees denied that force had been used against Mr. al-Sheikh 'Ali. Their accounts were irreconcilable with the findings of the autopsy.

This was the first case during the uprising in which a pathologist representing the family of a Palestinian who died in detention was permitted to visit the scene of death. Moreover, both he and the forensic pathologist conducting the autopsy were permitted to interview those who allegedly interrogated the deceased shortly before his death.

According to media reports, the investigation into the conduct of two GSS officers has been completed, and charges are being filed against them for their involvement in the killing of Mr. al-Sheikh 'Ali.⁷⁹

hidden weapons which he allegedly possessed. According to Kamel al-Sheikh 'Ali, his son replied that he had no knowledge of any weapons and that someone had made a false confession against him.

[¶]See further Appendix 16-C.

The significance of the al-Sheikh 'Ali case is that the official explanation of death was indisputably shown to be a lie; that the interrogators involved in the killing lied to the forensic pathologists in their accounts of what transpired the night of Mr. al-Sheikh 'Ali's death; and, above all, that it was established that death resulted from blows inflicted during interrogation. It remains to be seen whether charges will be filed commensurate with the crime and whether conviction, if indeed there is any, will reflect the gravity of the offense. Past experience, notably the "Giv'ati Trial,"* gives grounds for nothing by skepticism.

The al-Sheikh 'Ali case is not unique; on the contrary, it is part of a pattern of deaths in Israeli detention facilities during the past two years which appear to have been caused by torture. The inadequacy of official investigations into such deaths, a subject discussed at greater length elsewhere in this report, points equally at a pattern of official concealment and cover-up. This does little to deter further acts of violence against detainees, but rather serves to encourage them.

Summary

In contravention of international law and recognized minimum standards, Palestinians detained by the Israeli military during 1989 have been subject to severe ill-treatment. The majority of those detained have been held in military detention centers. So far as methods of interrogation are concerned, guidelines do exist, but they are classified. Consequently, it is clear that either such guidelines are being correctly followed by interrogators, in which case the guidelines themselves sanction torture; or they are being ignored, in which case the official failure to enforce the law and prohibit torture becomes overwhelmingly apparent. This is even more clear when it is noted that torture during interrogation has probably accounted for at least five deaths in detention during the uprising.

The prevalence of torture in the Occupied Territories, and the deaths that have occurred as a result, have not given rise to any concrete response from the international community. It is too early to ascertain whether independent supervision of autopsies, and the performance of second autopsies by independent pathologists, will succeed in deterring would-be killers in Israeli detention facilities. However, it is clear that without closer international supervision and inspection of conditions of detention, especially during interrogation, Palestinians will continue, with real justification, to fear for their lives.

*See further Chapter Sixteen, "Investigations."

Endnotes to Chapter Five

1. For a synopsis of these concerns, see Al-Haq, *Punishing a Nation: Human Rights Violations During The Palestinian Uprising, December 1987–December 1988* (Ramallah: Al-Haq, 1988), pp. 239–250. For specific case studies see Al-Haq, *A Report on the Treatment of Security Prisoners at the West Bank Prison of al-Fara'a* (Ramallah: Al-Haq, 1984); Al-Haq, *Jnaid: The New Israeli Prison in Nablus—An Appraisal* (Ramallah: Al-Haq, 1984); Al-Haq, *Torture and Intimidation in the West Bank: The Case of al-Fara'a Prison* (Ramallah: Al-Haq/International Commission of Jurists, 1984); Emma Playfair, *Administrative Detention in the Occupied West Bank* (Ramallah: Al-Haq, 1986), pp. 26–32.
2. Al-Haq, *Punishing a Nation*, pp. 242–252.
3. Joshua Brilliant, "Meridor: Anti-Intifada Measures Have Hit Palestinians," *Jerusalem Post*, 15 December 1989. The figure was provided by Minister of Justice Dan Meridor.
4. This figure is derived from population estimates made by the Israeli Central Bureau of Statistics. See Central Bureau of Statistics, *Statistical Abstract of Israel*, 1988 (Jerusalem: Israel Government Press, 1988), p. 753 (Table XXVII/46).
5. Al-Haq, *Punishing a Nation*, p. 242.
6. *Ibid.*
7. Brilliant, "Meridor."
8. *Statistical Abstract of Israel*, 1988, p. 753.
9. Interview with Advocate 'Issa Mousa, attorney of the Reverend Allen Boesak, September 1989.
10. *Al-Sha'b*, 5 April 1989 (in Arabic), cited in "More Prisons," *Al-Fajr Jerusalem Palestinian Weekly*, 10 April 1989; Michal Sela, "Ketziot Expanded to Hold 1,200 More," *Jerusalem Post*, 8 September 1989.
11. Uzi Benziman, "Hatred In Detention," *Ha'aretz*, 15 September 1989 (in Hebrew).
12. Al-Haq, *Punishing a Nation*, p. 244.
13. The Convention was adopted by United Nations General Assembly Resolution 39/46 of 10 December 1975.
14. See "Report of the United Nations Special Committee To Investigate Israeli Practices Affecting Human Rights of the Population of the Occupied Territories" (1970 and 1971); Amnesty International, "Report on the Treatment of Certain Prisoners Under Interrogation in Israel" (1970); Memorandum to the United Nations Security Council (8 June 1970); annual Amnesty International Reports (1977–1980, 1982–1986 and 1988); Amnesty International, *Torture in the Eighties*. (1984), pp. 233–236; Al-Haq, "Torture and Intimidation in the West Bank: The Case of Al-Far'a Prison." (Ramallah: Al-Haq/ICJ, 1985).
15. Al-Haq, *Punishing a Nation*, Chapter 6.
16. Military Order No. 1220 Concerning Security Instructions (Amendment No. 53).
17. Al-Haq Affidavit No. 2046.
18. *Ibid.* Mr. Amin was arrested on 1 August 1989 and detained in Dhahiriyya Military Detention Center before being taken to al-Ramla Prison. He was released on 19 September 1989.
19. Enquiries were made to Hadasa Hospital on al-Haq's behalf in this regard by the Association for Civil Rights in Israel.
20. Paragraph 1 of "Report of the Commission of Inquiry into the Methods of Interrogation of the General Security Service in Regard to Hostile Terrorist Activity" ("The Landau Commission Report"). The inquiry was opened under Article 1 of the 1968 Commission of Inquiry Law.

21. Few Israeli institutions or personalities expressed concern over the issue of torture in Israeli prisons and detention centers before the Landau Commission. This was addressed by the Israeli League for Human and Civil Rights in a press conference held on 26 March 1984. In addition, a number of Israeli lawyers submitted an appeal to the Israeli High Court of Justice requesting the court to issue "an order nisi against the military area commander requesting him to give reasons why he did not prevent those under his command from beating and torturing detainees in Al-Far'a, and [explaining] why it is not obligatory to put those responsible for torture to trial" (H.C. 355/84).
22. Landau Commission Report, Para. 2.27.
23. *Ibid.*, Para. 2.23.
24. *Ibid.*, Para. 3.16.
25. *Ibid.*, "Conclusions".
26. *Ibid.*, Para. 4.6.
27. On 8 November 1987, the Landau Commission Report was discussed in the Israeli Knesset (Parliament), which adopted the Commission's findings and recommendations and asked the government to act accordingly (Asher Wallfish, "Cabinet to Set Up Watchdog Group Over Shin Bet," *Jerusalem Post*, 9 November 1987).
28. Al-Haq, *Punishing a Nation*, pp. 233-234.
29. See for example al-Haq Affidavit No. 2104.
30. Al-Haq Affidavit No. 2101.
31. Al-Haq Affidavit No. 2100. Full text reproduced as Appendix 5-B.
32. Al-Haq Affidavit No. 2104.
33. Al-Haq Affidavit No. 2099. The affidavit was taken for al-Haq by Advocate Leah Tsemel.
34. Al-Haq Affidavit No. 2100.
35. Al-Haq Affidavit No. 2046.
36. *Ibid.*
37. Al-Haq Affidavit No. 2100.
38. *Ibid.*
39. Al-Haq Affidavit No. 2046.
40. Al-Haq Affidavit No. 2104.
41. Al-Haq Affidavit No. 2099.
42. Al-Haq Affidavit No. 1804.
43. Al-Haq Affidavit No. 2100.
44. Al-Haq Affidavit No. 2102.
45. *Ibid.*
46. Al-Haq Affidavit No. 2103.
47. Al-Haq Affidavit No. 2101.
48. Public Relations Department, Bir-Zeit University, "Press Release: Bir-Zeit University Student Tortured by *Asafir*" ["Stool-Pigeons"], (1 November 1989). Information in the Press Release was obtained from a complaint filed on Mr. Habash's behalf by Advocate Lea Tsemel. The complaint is reproduced as Appendix 5-D.
49. Al-Haq Affidavit No. 1929.

50. Article 5 of the 1948 Universal Declaration of Human Rights, Article 7 of the 1966 International Covenant on Civil and Political Rights, as well as Article 3 of the 1950 European Covenant for the Protection of Human Rights, all contain similar wording forbidding "torture or ... cruel, inhuman or degrading treatment or punishment." (UDHR). Common Article 3 of the 1949 Geneva Conventions explicitly forbids "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture."

Of greater importance are the stipulations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by UN General Assembly resolution 39/46 on 10 December 1984. Article 4 of the Convention states:

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

These same principles were confirmed in Article 7 of the above-mentioned Declaration against Torture.

51. Landau Commission Report, "Conclusions."
52. *Ibid.*, Para. 3.16.
53. Letter from MK Dedi Zucker to Minister of Defense Yitzhak Rabin, 7 March 1989 (Ref. no. 2243). See also Michal Sela, "No Steps Against Officer Who Shot Detainee," *Jerusalem Post*, 12 June 1989.
54. Death certificate of Nidal Zuhdi al-Tirawi, signed 9 January 1989.
55. In this regard, it is interesting to compare the medical standards which Israel demanded be applied by the United States in the case of Anne Henderson-Pollard with those it deemed satisfactory for 'Omar al-Qasem.
56. Dr. Hiss is the chief pathologist at the Abou-Kbir Forensic Institute. Dr. Baden, the former New York City Chief Medical Examiner, is currently Co-Director of the Forensic Sciences Unit of the New York State Police. He participated in the autopsy at the request of Mr. 'Ali's family.
57. "Statement to the Court" by Respondents (the Minister of Defense and the Minister of Police), in H.C. 711/87, 22 February 1988.
58. "Certificate Concerning Classified Evidence," signed by Minister of Defense, Yitzhak Rabin, and submitted in H.C. 711/87, 14 March 1988.
59. "Verdict," in H.C. 711/87, 7 September 1988.
60. "Statement by the State Attorney," submitted by the Respondents (the Minister of Defense and the Minister of Police) in H.C. 711/87, 18 September 1988.
61. "Appeal," in H.C. 674/88, signed by attorney Felicia Langer on behalf of the family of 'Awad Hamdan (undated).
62. Michal Sela, "GSS Interrogator Acquitted in Detainee's Death," *Jerusalem Post*, 24 September 1989.
63. Statement signed by Nafez Sharif Fawzi Noubani in the presence of Advocate Lea Tsemel in 'Atlit Prison, 18 August 1988.
64. Statement signed by Mahdi 'Abd-al-Qader Ghazawna in front of Advocate Lea Tsemel in 'Atlit Prison, 17 August 1988.
65. Statement of anonymous detainee taken by Advocate Felicia Langer in her office on 20 December 1988. Submitted to the High Court of Justice in H.C. 810/88.
66. Felicia Langer, *The Death of Ibrahim al-Mtour, or: The Closed File That Remains Open*. (Tel Aviv: Israeli League for Human and Civil Rights, 1989). Parts I and II of this report were also published in *Al-Fajr Jerusalem Palestinian Weekly*, 20 and 27 November 1989.

67. Excerpts from a report prepared by Military Attorney Lieutenant-Colonel Rachel Dolev in IMP file 672/88, signed 2 March 1989, and submitted to the High Court of Justice in H.C. 810/88.
68. "Opinion of Specialist," signed by Dr. Bertholun Levi and dated 25 October 1988, submitted to the High Court of Justice in H.C. 810/88.
69. Derrick J. Pounder, "Death of Ibrahim al-Mtour," opinion submitted to the Israeli High Court in H.C. 810/88, 12 April 1989. Full text reproduced in Appendix 5-E.
70. *Ibid.*
71. Mary Curtis, "Israel: Detainee Died From Ulcer," *Boston Globe*, 8 March 1989.
72. Michael Rotem, "Prisoner's Death Investigated in Secrecy," *Jerusalem Post*, 8 March 1989.
73. "Expert Opinion," autopsy report written and signed by Dr. I. Hiss of the L. Greenberg Institute of Forensic Medicine, Tel Aviv, submitted in H.C. 241/89, 8 March 1989.
74. "Death of Mahmoud Yousef Al-Masri," expert opinion submitted by Dr. Derrick Pounder in H.C. 241/89, 30 June 1989.
75. See, "Announcement by the Representative of the Attorney-General," a document submitted by the State Attorney in H.C. 241/89, June 1989.
76. Pounder, "Death of Mahmoud Yousef Al-Masri."
77. Details of this case were obtained during an interview with Advocate Raji Sourani, Tel Aviv, 11 December 1989.
78. The day the autopsy was conducted, Dr. Hiss translated for Dr. Baden the findings of the initial investigation by the authorities as they had been given to him on 21 December 1989. He did so in the presence of the family's lawyers and a representative from al-Haq. These findings, reproduced here as read aloud by Dr. Hiss, are of considerable interest, as much for what they omit as for what they state:
 - (i) The deceased had been arrested for interrogation because of suspicion that he was involved in "security" offenses, on 7 December 1989.
 - (ii) During his interrogation, Khaled al-Sheikh 'Ali admitted that he possessed weapons and ammunition, and directed the interrogators to the place where he had hidden them, near his house.
 - (iii) Since his arrest, and up until 19 December 1989, al-Sheikh 'Ali was hardly interrogated at all except for some brief conversations which were intended to clarify some points of the confession which he made on 14 December 1989 in which he told of subversive activity which included possession of these weapons.
 - (iv) On 19 December 1989, he was interrogated again; during this interrogation, after he was presented with several findings linked with the interrogation, including depositions from his accomplices, he admitted possession of weapons. This was around 7:15 p.m. The interrogators decided to let him sit in a corridor in order to consult among themselves in regard to the continuing interrogation.
 - (v) At this time, the interrogators asked him to get up. He did so, but sat down again almost immediately, saying he was dizzy. He asked for, and was given, a glass of water, and again complained that he was not feeling well. And then he dropped off his chair onto the floor.
 - (vi) Al-Sheikh 'Ali was then examined by one of the interrogators, who found that he showed no signs of life—he had no pulse, and he was not breathing. Mouth-to-mouth resuscitation was started, and chest compression. At this stage the paramedic was called to the scene, and also a doctor.
 - (vii) The investigator said that after a few minutes of resuscitation al-Sheikh 'Ali showed some signs of life and when the paramedic arrived he took over the resuscitation, but could not revive him. The same thing happened when the doctor arrived at around 8:00 p.m.
 - (viii) Because there was some classified material in the interrogation room, on the desk and wall, it was decided to transport the body to a nearby room. This was done before the paramedic arrived. According to the interrogators, when the body was transported from one room to another, al-Sheikh 'Ali's body was knocked; this was said to explain an injury to his temple.

(ix) The doctor who tried to resuscitate al-Sheikh 'Ali treated him for around 35 minutes; Khaled al-Sheikh 'Ali was declared dead at about 8:35 p.m. A death certificate was signed, and the body was transferred to the Abou-Kbir Institute.

79. Reported on Israel Television News Arabic Service at 7:30 p.m. on 8 January 1990.

Appendix 5-A

Conditions in Prisons and Military Detention Centers

Major differences exist in this respect between the various prisons and military detention centers in the Occupied Territories and Israel. (The detention of residents of the Occupied Territories in Israel is itself a violation of international law.)* From the available evidence, it appears to al-Haq that military detention centers, which house the majority of detainees, are virtually unregulated by any common standards. The Israeli High Court of Justice has rejected the contention that the United Nations Standard Minimum Rules for the Treatment of Prisoners are binding on Israel,¹ and these have not been replaced with a suitable alternative. Rather, the quality of life in each military detention center is determined primarily by its individual commander, who issues his own regulations with respect to books, newspapers, radio, exercise periods, the quantity and quality of food, the frequency of visits by lawyers and family members, and all other matters pertaining to the life of detainees which fall under his authority.

The result is that different military detention centers acquire different reputations. Several, such as Ansar II, Dhahiriyya, and Megiddo, are known for their cruelty or harsh conditions. Ansar IV was off limits to lawyers and even the ICRC (International Committee of the Red Cross) until mid-November 1989.² According to press reports issued in early November, detainees at Ansar IV were "held in tents equipped with 25 mattresses each for 60 people."³ At least one released detainee reported that he had seen "soldiers beating teenagers and . . . no one had stopped them."⁴ Although such conditions are continually challenged by a combination of internal struggles (hunger strikes, confrontations) and external factors (public pressure, legal action), this has resulted only in periodic alterations of conditions.⁵

There also do not appear to be minimum standards which regulate conditions in facilities where detainees are kept for shorter periods, or are considered to be "in transition." Conditions in lock-ups tend to be poor and unpredictable. In a letter to government ministers reported in the *Jerusalem Post*, Israeli Member of Knesset (parliament) Dedi Zucker described lock-ups as "a no-man's land . . . [where] detainees are left to the caprice of the soldiers, who have no qualifications to serve as wardens." Mr. Zucker added that detainees are frequently beaten.⁶

As opposed to military detention centers, prisons, which are administered by the Israel Prison Services Authority, appear to have fairly uniform conditions and regulations with respect to family and lawyer visits, daily exercise, quantity and quality of food, canteen privileges, books, newspapers, radio, activities, and complaint procedures. However, this distinction should not be taken to mean that conditions in prisons are necessarily better. Although prisons are in principle more consistently regulated than military detention centers, some prisons appear not to enforce the Prison Authority's regulations or, alternatively, have been designed as centers of punishment with special rules. The Nitzan compound in al-Ramla Prison, where, in August 1989,

*See further Chapter Seven, "Administrative Detention." Chapter Seven also includes a discussion of conditions at Ansar III, which is not addressed here.

the Prison Authority began housing those suspected or convicted of particularly serious offenses, is a good example. Nitzan is intended as a place where prisoners are deprived of "privileges" extended to detainees elsewhere.⁷ As discussed below, prisoners in Nitzan are subject to severe restrictions which include limitations on exercise, family visits, reading material, and numerous other basic rights.

Despite the differences described above, certain problems are common to most military detention centers and prisons. The following issues feature regularly among detainees' complaints:

Physical Facilities

Physical facilities in prisons, military detention centers, and lock-ups range from tents (Ramallah), to converted stables (al-Far'a), to converted barracks ('Anata), to buildings. Overcrowding is a constant feature in all of these facilities. For instance, according to prisoner reports from the Khashabiyya lock up in Hebron in October 1989, 72 people were being held in an area of 28 square meters.⁸ There are also persistent reports of overcrowding. For example, in Dhahiriyya Military Detention Center during July 1989, prisoners reported that there were between 18-20 persons detained in a room which was approximately four meters long and four meters wide.

Converted stables in which detainees may be kept at al-Far'a measure three meters wide, four metres long, and three-and-a-half meters high. There is a metal door and the windows are covered with metal sheets. In summer, the room is hot, damp, and smells of rotten eggs. Groups of 15 detainees may be kept in this condition for several weeks at a time without either soap or towels.

Each tent at al-Far'a houses some 30 detainees. Soap and towels are provided. There is a toilet in the tents consisting of a barrel sunk into the ground and surrounded by zinc boards.⁹ Cells at al-Far'a include rooms measuring one-and-a-half meters long and one meter wide, in which three or more detainees may be held. A bucket is provided to each cell for detainees to urinate. They may use a proper toilet twice a day.¹⁰

In Megiddo Military Detention Center, there are five sections with tents. Each tent houses approximately 30 detainees. The floors are covered with a ten centimeter thick wooden board, on which thin sponge mattresses are placed. During winter, detainees are provided with five to seven blankets each, although the tents leak when it rains. There is soap. Towels, however, are scarce, and hot water was not provided until at least June 1989.¹¹ In Dhahiriyya Military Detention Center, some detainees are kept in tents erected on uncovered earth. Detainees are given four blankets (in spring), a mattress three to four centimeters thick, a shirt, and trousers. Baths are permitted once a week. As a result of the extremely poor conditions at Dhahiriyya, the Association for Civil Rights in Israel (ACRI) petitioned the Israeli High Court of Justice to order its closure. Three High Court judges visited the facility, but found no cause to order its closure.¹²

By way of comparison, and in order to establish that proper planning and regulation is not beyond the authorities' capabilities when they so choose, each detainee at 'Atlit Prison has a towel, soap, plate, cup, and spoon. Baths are permitted twice

weekly and there is hot water.

Medical Treatment

Detainees report that medical care in military detention centers and prisons is cursory at best, and that medical personnel in such facilities treat almost every malady they encounter with an over-the-counter pain killer (Acamol) tablets. Moreover, detainees note that they are not referred to hospitals unless they are in critical condition and their fellow detainees threaten or implement some form of protest action. In addition, al-Haq has documented cases where sick detainees appear to have been deliberately denied medical care, or where a prison doctor's own directives for treatment or referral to hospital are not followed.

All detention facilities have at least one paramedical person available, and are periodically visited by a physician. The possibility also exists for transfer to a prison hospital in al-Ramla, or to other specialized hospitals, under guard. This theoretical possibility is commonly used to deny applications for bail on medical grounds, and judges often satisfy themselves with inserting a written recommendation to have the detainee examined by a prison doctor. For example, on 27 November 1989, Military Judge Azickson, sitting in the Ramallah Military Court, denied a request for bail made on medical grounds by claiming that prisoners get even better treatment in prison than outside because, he asserted, they are referred to the best possible hospitals if the need for hospitalization arises.¹³ According to al-Haq's documentation, this claim is not supported by the facts:

- (1) Terry Boullata, 22, a resident of Jerusalem and a fieldworker with the Palestine Human Rights Information Center (PHRIC), suffers from a complicated case of severe liver dysfunction which developed during a spell in prison in late 1987.¹⁴ She was undergoing treatment and medical tests when she was arrested on the night of 14 November 1988. That same day, Ms. Boullata had been released from hospital for three days of home-rest pending the results of a liver biopsy. Despite the presentation of her medical report and the intervention of the ICRC, Ms. Boullata was interrogated and placed in a stand-up closet (known as "the coffin"), until she collapsed and had to be hospitalized. Subsequently, she was subjected to a painful series of releases, rearrests, denials of bail, and hospital admissions. On 8 March 1989, a military court panel of three judges ordered her detained in Tel Mond Prison until the end of her trial despite a medical report from her doctor that she requires on-going medical supervision and further tests. Only at the culmination of an international campaign which included the personal intervention of the wife of former French Prime Minister Pierre Mendes-France was Ms. Boullata released in order to obtain medical treatment in France.¹⁵
- (2) Muhammad Jubran, 42, a resident of Jerusalem, had severe arthritis requiring a bilateral hip replacement when he was arrested on 28 May 1989. He was scheduled for a second operation to replace his hip joint in September 1989. At a hearing on 27 June 1989, his lawyer presented detailed medical testimony

indicating that Mr. Jubran was 100 percent incapacitated, could not cope with incarceration, and was in urgent need of hospitalization. The lawyer requested that Mr. Jubran at least be moved to a prison hospital. The request was denied. In a subsequent affidavit taken by al-Haq from a fellow prisoner, it was clear that Mr. Jubran was suffering great pain, could not move without support from others, needed assistance to go to the bathroom or wash, and that he had been subjected to lengthy and painful interrogation.

- (3) Yousef Hamlawi, 30, a resident of al-Rimal district of Gaza City, was suffering from a cervical spine disorder at the time he was arrested in January 1986. As of July 1989, he was incarcerated in Ashkelon Prison. His head is permanently twisted towards one shoulder and he is reported to complain of headaches and pain in the left arm, which is no longer functional. According to Amnesty International, as of July 1989, medical treatment was limited to pain control, and a CAT-scan recommended by doctors who saw Mr. Hamlawi had not been carried out.¹⁶

In addition, al-Haq has documented cases during 1989, discussed in the chapter, in which detainees with health problems died in detention, apparently due to the lack of prompt and adequate medical attention.

The Use of Force: The Case of Megiddo

According to al-Haq's information, scores of incidents involving the excessive use of force occurred in several military detention centers during 1989, particularly in Ansar II, Ansar III, and Megiddo.

Megiddo Military Detention Center was opened on 31 May 1988. By October of that year, there were approximately 680 detainees being held there. By February 1989, this figure had risen to approximately 1,700. The current figure is 1,480. Most of these are pretrial detainees charged with uprising-related security offenses. During 1989, several incidents occurred at Megiddo in which the military authorities used excessive and sometimes lethal force to quell non-violent hunger strikes and other protests. The following are only examples of the excessive use of tear gas and other force to control detainees at Megiddo:

- (1) On 8 February 1989, guards opened fire on detainees, killing one and wounding at least 19 others. According to reports, prisoners protested after visits were cancelled.¹⁷ The next day detainees went on hunger strike. During this strike, the authorities used "massive amounts of tear-gas" to quell reported "riots."¹⁸ Following the incident, all family visits were canceled until mid-March. Subsequently, the authorities proposed certain conditions restricting family visits (for example, restricting the definition of "family" to parents and siblings).
- (2) On 13 June 1989, detainees submitted a list of demands to the prison authorities.¹⁹ Detainees were ordered out of their tents for a prisoner count. (The process of counting usually occurs inside the tents.) The detainees refused. As a result, tear-gas canisters were fired into Section Four. When detainees in

Sections Three, Six, and Seven protested in solidarity, tear gas was fired into those sections as well. A number of detainees inhaled excessive amounts of tear gas or were hit directly by canisters and injured. A water cannon was also used.²⁰ So much tear gas was fired that, according to press reports, members of a kibbutz situated three kilometers away from Megiddo were affected.²¹

- (3) On 30 June 1989, at about 8:30 a.m., a fire broke out in one of Megiddo's sections. When about 250 detainees came out of their tents into the open yard of their section, they were ordered back inside. When the detainees refused, prison personnel shot tear gas and "sound bombs" at them. Subsequently, two detainees were beaten by soldiers in front of other detainees.²²

Quantity and Quality of Food

Prisoners report that there is insufficient food in prisons and military detention centers. In al-Far'a Military Detention Center, breakfast consists of one egg and one-eighth of a carton of yogurt; as an alternative to yogurt, a small plate of sesame-seed paste (tehina) or beans may be brought. Dinner, at mid-day, consists of macaroni, rice, or black bread; a tiny piece of canned meat; and watery soup. Supper is the same as breakfast; occasionally, the egg is replaced by sardines.²³ In the Russian Compound Police Station, a typical breakfast consists of one egg, a cup of tea, two or three pieces of bread, and, occasionally, butter and jam. Dinner, at midday, consists of watery soup, mashed potatoes, occasionally cauliflower, and chicken once a week. Supper is the same as breakfast.

By way of comparison, food in prisons is generally better than in military detention centers. Breakfast in Jneid Prison, for example, consists of one egg (or beans), one cup of coffee or tea, onions or turnips, and a loaf of bread to last the day. Dinner consists of one bowl of rice for every two people, canned meat or dried turkey, and an occasional orange, or, occasionally, potato with dried beans or noodles with meat as above, and one or two bananas. Supper in the evening consists of chicken once a week, two pieces of falafel twice a week, with yogurt, onions or turnips, and tea. Food in 'Anata Prison is generally described as good.

Access to Family and Lawyers

Each facility has its own rules for family and lawyer visits, which may also vary from time to time. The usual family visit is about 30 minutes, and is conducted across a space with one or two barriers of wire mesh separating prisoners from their family. Detainees and their visitors have to shout to be heard over the conversations of others. Family members have to wait long hours before seeing detainees, often with no facilities available, and may be subjected to humiliating treatment as they wait. Visits for one family, or for an entire group or detention center, may sometimes be cancelled without reason. Visitors have reportedly been fired upon and wounded at several detention centers, including Ansar II and Megiddo.²⁴

Lawyers also complain of lengthy waits and intricate procedures before they can see their clients, despite prior coordination. One lawyer complained that he was

routinely kept waiting for four hours every time he visited Megiddo, and, once inside, was only allowed to see some of his clients and was limited to five minutes for each client, within earshot of a guard.²⁵ Similar complaints were made by lawyers visiting clients in Dhahiriyya and al-Far'a. At some facilities, better conditions were arrived at in coordination with the Arab Lawyers Committee after repeated complaints.[†]

Some facilities, or sections in facilities, such as the "tents" in Ramallah and Nablus, as well as interrogation sections, continue to be inaccessible to attorneys. In short, visitation rights are regarded as privileges (which may be withdrawn on a particular pretext) rather than rights.

Exercise

The length and conditions of daily exercise are often an issue. Detainees view this as a basic right, while authorities often treat it as a privilege to be withdrawn from an individual or group as punishment. This is less of an issue for prisoners kept in tents, who are "outside" for all practical purposes; yet for prisoners kept in crowded cells inside buildings, this is a pressing need. In Megiddo, there is a yard measuring 15 meters by 50 meters in front of each section (containing roughly 200–250 detainees). In 'Atlit Prison, the yard consists of a 15 meter-long corridor without a ceiling in which detainees may walk for half-an-hour each day. In al-Far'a there are no exercise facilities at all.

Books, Newspapers, Radio, and Games

Prisons (as opposed to military detention centers) often have a library run by the prisoners, but most detention centers lack books, and, where books exist, prisoners complain of the lack of variety. Writing materials are also carefully rationed. Newspapers are not always available, and access to radio and outside news is eagerly sought. Chess, backgammon, and other games are sometimes available through the ICRC. The authorities treat all the above as "privileges," and frequently punish the detainees by removing them. In some prisons, or sections of prisons, these items are forbidden entirely.

The Case of Nitzan Prison Compound

As stated above, since August 1989, the Nitzan Compound in al-Ramla Prison has been used to detain persons accused or convicted of serious offenses. Examples of such offenses include the killing or attempted killing of Israelis or agents of the Israeli authorities. Conditions in Nitzan are extremely poor:

- (1) Daily exercise is only allowed if prisoners agree to be handcuffed and foot-chained during that period as well. Since the prisoners refuse this treatment, they have had no exercise since the section was opened;

[†]See further Chapter Six, "The Military Judicial System."

- (2) Prisoners are kept two to a cell, with poor lighting and air circulation. Neither prisoner may leave the cell for any reason whatsoever unless handcuffed and foot-chained;
- (3) Detainees are constantly humiliated, insulted, and inhumanely treated, and there is an expressed readiness to tear-gas inmates at the slightest excuse;²⁶
- (4) Detainees are allowed one visit per two months, convicted prisoners one visit per month, to which they must go handcuffed (behind their back) and in foot-chains;
- (5) Detainees meet their attorneys under the same conditions, and through two sets of wire mesh, and within earshot of a guard. (A lawyer who raised the issue of confidentiality was told to accept these conditions or not visit at all);²⁷
- (6) No radio, books, newspapers, or writing materials are allowed, although copies of the Qur'an were recently permitted;
- (7) Each prisoner is allowed four cigarettes a day, but no lighter, and must plead with a guard to light his cigarettes.

References

1. The UN Standard Minimum Rules for the Treatment of Prisoners were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 30 August 1955 and approved by United Nations Economic and Social Council Resolution 663 C(XXIV) of 31 July 1957.
2. Interviews with detainees released from Ansar IV.
3. Michal Sela, "Army Reportedly Opens 'Ansar IV'," *Jerusalem Post*, 7 November 1989.
4. *Ibid.*
5. For a detailed example see Al-Haq, *Dhahiriyya: Center For Punishment* (Ramallah: Al-Haq, 1988).
6. Michal Sela, "MK Zucker: Palestinians in IDF Lock-Ups are Frequently Beaten," *Jerusalem Post*, 16 August 1989.
7. "The Cancellation of 'Privileges' for Prisoners Who Carried Out 'Terrible Deeds of Murder'," *Al-Sounara*, 7 September 1989 (in Arabic).
8. Uzi Benziman, "Bingo in the Chicken Coop," *Ha'aretz*, 15 September 1989 (translated in *Al-Fajr Jerusalem Palestinian Weekly*, 2 October 1989).
9. Al-Haq Affidavit No. 1723.
10. Al-Haq Affidavit No. 1721.
11. *Ibid.* In June 1989, reports suggested that hot water and lighted tents, as well as a number of other improvements, had been introduced ("Lawyers Say New Detention Camp in Jerusalem Area is Overcrowded," *Al-Fajr Jerusalem Palestinian Weekly*, 12 June 1989).
12. Oz Frankel, "IDF Thins Out Prison Before Justices' Visit," *Jerusalem Post*, 4 November 1989.
13. Case recorded for al-Haq by Advocate Jonathan Kuttab.
14. According to Dr. Seiger, the liver specialist from Hadasa-'Ein Karem Hospital who examined her, Ms. Boullata was suffering from severe cholestasis, erythema nodosum, a skin erythema, inflammatory bowel disease, sarcoidosis, and chronic active hepatitis.
15. Case recorded by the Palestine Human Rights Information Center, Jerusalem.

16. Amnesty International, "Medical Concern: Three Palestinian Prisoners (Israel/Occupied Territories)," 6 July 1989 (AI Index: MDE 15/25/89).
17. "Inmate Killed As Palestinian Prisoners Riot," *Jerusalem Post*, 9 February 1989.
18. "Prisoners Riot Again," *Jerusalem Post*, 10 February 1989.
19. The demands included: transferring sentenced prisoners to central prisons; better treatment of the sick; allowing the ICRC to bring underwear for the sick; improving the food; allowing two family visits per month; allowing visits between sections; allowing radio and lights in the tents; allowing families to bring sport shoes for detainees; repairing tents still torn from the events of 8 February 1989; ceasing physical abuse at the hands of soldiers; allowing detainees to buy from the prison canteen; increasing cigarette allowances from eight to ten cigarettes a day; allowing lawyers to give cigarettes to detainees; and restricting meetings between detainees and the prison authorities to meetings with the "shawish" (prisoner representative).
20. Al-Haq Fieldwork Report.
21. "Tear Gas Cloud Reaches Neighboring Kibbutz," *Jerusalem Post*, 14 June 1989.
22. Al-Haq Fieldwork Report.
23. Al-Haq Fieldwork Report.
24. Michal Sela, "Clashes in Gaza Leave Four Dead," *Jerusalem Post*, 18 June 1989.
25. Letter from Advocate Jonathan Kuttab to the Commander of Megiddo Military Detention Center, 24 November 1988.
26. Al-Haq Fieldwork Report.
27. *Ibid.*

Appendix 5-B

Torture of Riyad Bdeir

Translation of Sworn Affidavit No. 2100 Taken by al-Haq

I the undersigned, Riyad Muhammad 'Ali Bdeir, 42 years of age, a resident of the town of Toulkarem and a teacher by profession, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 11:00 p.m. on Sunday 9 July 1989, I awoke to the sound of heavy banging on the front door of my house. My home is located on the main street of Toulkarem, about 50 meters west of the Toulkarem military government compound. I looked from the balcony and saw that a large number of soldiers and Border Police had surrounded the house on all sides. I saw "Rami," an intelligence officer, along with four other soldiers, on the outside stairs. They were shouting: "Open the door!" The shouting was followed by obscenities. "Rami" is the officer in charge of Toulkarem, whom I know from previous arrests. Because the street was well-lit, I . . . recognized some of them. I came down from the third floor to open the door. They were still banging on the door with their fists, boots, and gun-butts. When I opened the door, the officer asked for my identity card. I didn't have it with me because I was wearing my pyjamas, and so I went upstairs to get it. The officer and four other soldiers came with me. I gave them my identity card, changed my clothes, and went with them to the Toulkarem military government compound.

I was taken to a shed which, although not more than seven meters long and three meters wide, contained over 80 detainees. I was kept there until the next morning. Just before breakfast, the shed door was opened and an officer entered. He was wearing three gold leaves (to indicate his rank) on his shoulder. He called out two names. One of them was mine. He took us to the prison administration building, where our personal belongings were taken from us. Each of us was given a form which contained our detainee numbers. Mine was 2042. After this, the officer took us to the north-east wing of the military government building. We did not know where we were going. When we asked the officer, he told us that we were going to be interrogated. We came to a door, where the officer knocked. A soldier opened, and the two of them spoke to each other in Hebrew. At this point, the soldier handcuffed us and put foul-smelling sacks over our heads. Because of the sack, I could no longer tell where I was. One of them led me for a short distance and then ordered me to sit down. I sat on a [tapered] solid plastic box ("arkaz" in Hebrew) which had a base with sharp protrusions. I remained in this position for at least two hours.

Then, a hand suddenly grabbed the sack on my head, held it tight to my neck, lifted me up, and ordered me to walk. I was led to an unknown place. On the way, more than one door was opened. When we arrived at our destination, I was seated on a chair and the sack was lifted from my head. I found myself in a room in front of a man in his 30's, who introduced himself as an intelligence interrogation officer. He asked me for some personal information and recorded the answers on a piece of paper in front of him. He asked for my name, age, place of work, social status, and the size of my family. He then told me why I was there: "our state charges you with four counts:

membership in the Islamic Jihad Organization, recruiting, possession of arms, and carrying out armed operations." I denied all these charges, which are baseless, and challenged him to bring me one shred of evidence. He did not.

The interrogator told me that I had been implicated by the confessions of others. I denied this, and asked to hear any of the confessions or meet any of the accusers. But this was to no avail. The interrogator uttered several obscenities, and spat in my face several times. He grabbed my head and pulled the hair in my beard, telling me to confess. This continued at intervals. Sometimes he left me in the room and went out. This continued until after the afternoon prayer.*

The interrogator then re-entered the room and asked me if I wanted to confess. When I told him that I had nothing to confess, he replied, "you will confess." He then approached me and put another pair of iron handcuffs on my hands and tied my hands behind my back. Thus, I was tied by two pairs of handcuffs, one pair on the wrists and the other below the elbows. He tied them as tightly as possible. He also bound my legs with iron cuffs as tightly as possible. I was sitting on a tall chair, with its back to my side, so that I couldn't lean on it. He began punching me very hard above the eyes, and hit me with karate chops on the stomach, waist, and neck. When he tired from beating me so hard he left the room.

After a quarter of an hour, another interrogator entered. He introduced himself as "Captain Abou-Mousa." He picked up where the first interrogator had left off, beating me in the same way, at intervals, until after [about 8:30 p.m.]. Then, he put a sack on my head and freed one of my hands. With the cuffs attached to my other hand, he led me somewhere else, opening several doors on the way. I was then seated on a chair.

The door was closed. Using the wall next to me, I was able to lift the bag a little bit and see that I was in a very small cell, about 170 cm. long and 70 cm. wide. It was very dark and had no ventilation except for a very small opening under the door. I stayed there until at least [8:00 a.m.]. Then, still hooded, I was led away and seated on a plastic box. I knew that I had been taken to the yard. During the day it is subject to the burning sun and at night it is cold.

On Tuesday, 11 July 1989, at about [7:00 p.m.], the sack was lifted from my head. The person who lifted it was one of the soldiers in charge of the yard. He untied my hands, placed them in front of me, and then handcuffed me again. He put food in front of me. It consisted of three pieces of sliced bread, a little bit of *labana* [a yogurt extract], and a glass of water, even though 40 hours had passed during which I had not been provided with any food or water.

Before eating, I asked the warden for permission to use the toilet. Interrogation officers do not permit a detainee to go the toilet, eat, drink, or pray while in their custody. I was allowed to go to the toilet. I was then returned to my seat and ate my food. When I finished, the soldier tied my hands behind my back again, and put the sack over my head.

*In the Arabic original, the affiant approximates time by reference to the "dawn call to prayer," the "sunset call to prayer" and the "evening call to prayer." In the English translation the dawn call to prayer is fixed at about 4:00 a.m., the afternoon call to prayer at about 3:30 p.m., the sunset call to prayer at about 7:00 p.m., and the evening call to prayer at about 8:30 p.m.

In the middle of the night, I was again taken to the interrogation room. The interrogator used the same methods on me, but added a new one, namely, banging my head against a hanging board. That was after he had lifted the sack off my head. He also kept yanking the hair on my head and beard. This continued for about two hours. After that, he put the sack back over my head, and led me, violently, to another place. I realized this was an Arab-style toilet, over which a chair had been placed. I was kept there until [well after 4:00 a.m.]. Then, one of them opened the toilet door and led me to the yard, where he seated me on the plastic box. I was kept there for the whole of Wednesday 12 July 1989.

Before supper, I was taken to the interrogation room where there was an interrogator who introduced himself as "Captain Fakhri." He started off by using obscene words, cursing, spitting in my face, and yanking my beard very hard. Sometimes my hair would come out in his hand. He repeated what the previous interrogators had said, and confronted me with the same charges. I denied it all. Then he took me to a cell, where I stayed until shortly before [12:00 noon] on Thursday, 13 July 1989.

Next, I was taken to the yard, where I remained hooded and with my hands tied behind my back until Friday morning. I was then taken to the shed, which is a prefabricated structure measuring about two meters long, less than two meters wide, and with no ventilation except for little holes in the ceiling. In it was a plastic barrel to serve as a toilet . . . and a gallon of water. There were three detainees in the shed. I stayed there Friday and Saturday. On Friday afternoon, the soldiers in charge of the yard took us to the washrooms and gave us five minutes to have a bath and wash our clothes. I found bloodstains on my underwear, because my buttocks had bled as a result of sitting for long periods on the plastic box which had sharp protrusions. Since we had no other clothes, we used to put our clothes on while still wet after washing them.

On the morning of Sunday, 16 July 1989, a new "journey of torture" began. They took me out of the shed, to the interrogation room, and then to the yard. This was repeated throughout the week. However, this time they added a new means of torture, namely, beating me on the testicles. After two days of torture my testicles swelled to three times their usual size. They continued to take me from the interrogation room to the yard, with my hands tied behind my back and my head covered with the foul-smelling sack, all week long.

On Friday morning, I was taken to the shed, where I stayed until Sunday morning. On the morning of Sunday, 23 July 1989, they took me to the yard for a period of time. I was then taken to the interrogation room, where I found an officer who introduced himself as the head of the interrogation team. After a torrent of insults, and after he cursed my religion, mocked my piety, and yanked my beard, he threatened to bring my wife and do with her as he pleased. After a session of beating and torture, I was taken, hooded and with my hands tied behind my back, out to the yard under the burning heat of the sun. The sack was removed only when I ate or went to the toilet. My hands were always tied, even when I ate; they would just tie my hands in front of me.

That night, they took me to the interrogation room. One of the interrogators told me, "We've brought your wife. She's in the next room." Indeed, I could hear the voice

of a woman, but it was barely audible because the room was tightly closed. They began to threaten me: if I didn't confess, they would do whatever they pleased with my wife. I told them, "Do whatever you like, I have nothing to say. I only complain to Allah. He is capable of extracting revenge from you." After about two hours of threats and physical and psychological torture, during which they showered me with insults and cursed my religion and God, they took me to a cell, where I stayed until Monday afternoon, 24 July 1989. I was then taken to the yard, where I stayed until the morning of Wednesday, 26 July 1989.

Then, while still tied up, I was taken to the Nablus military court, where the judge extended my detention for a further 15 days. I was returned to the interrogation section of Toulkarem prison and put in the yard.

On Thursday, 27 July 1989, they took me once again to the interrogation room, where I was seen by "Abou-Mousa," as he called himself. He began cursing, and said, "it seems you are not possessive of your wife, since you haven't confessed. So, we've brought your eldest daughter (she is 15 years old) and shall do whatever we want with her if you don't confess," In other words, they would have sex with her . . . After a while I heard the voice of a girl in the next room screaming, "Daddy! Daddy!" But I could not identify the voice and continued to deny the charges.

At this point the interrogator began to kick and punch me, and curse me, my religion, and my God. He threatened to rape me if I did not confess. He pulled down my underpants, but, after repeated threats, changed his mind. He then left me in the room on my own. I was seething with rage as a result of what they had done. For the record, I would like to mention that, when I was released, I found out that neither my wife nor my daughter had ever been brought to the interrogation section: it was part of their psychological warfare.

"Abou-Mousa" returned and took me to the head of the interrogation team's room. With him were three other interrogators. After a barrage of curses and obscenities he said, "This is your night. Either you confess or you die." He then put a sack on my head which was different from the first one. This was a plastic bag, black and very strong, with a thread in its opening. He pulled the thread around my neck, closing the bag completely. He then seated me on a high chair, and bound my hands behind my back with two pairs of iron handcuffs, pulling them as tight as possible. He then bound my legs with another pair of iron cuffs, also tightening them to the limit. He then began to punch me above my eyes, like a boxer, while another interrogator started hitting me with karate swings to the abdomen, waist, and testicles, pushing me backwards while my legs were fixed to the chair. They continued like that until the upper part of my body fell backwards. At this point the interrogator told me, "You are now hanging in front of me like a slaughtered animal."

While I was in this position, with my head hanging down, one of them began to suffocate me by pressing the bag to my nose and mouth. I could not breathe . . . In spite of my screams, he did not remove his hands. I then lost consciousness. When I regained consciousness they were splashing water on my face. Then they raised my body and seated me again. They said, "You must confess now." I said that I had nothing to confess to. They repeated the process for a second time, and then a third. They showered me with more obscenities, cursed my religion and God, mocked . . . my

beard, and competed in spitting in my face. Then, with my hands still bound, they took me to a cell. I stayed there until Friday morning, 28 July 1989. Then, one of them removed the handcuffs and took me to the shed. The handcuffs had left marks on my hands similar to the marks of a whip. My hands were swollen and numb, and remained that way for several days. My left hand, from the wrist to the tips of my fingers, is still semi-numb, even though more than two months have already passed. I don't know how long this will go on for.

I stayed in the shed for the rest of Friday and all of Saturday. I used to be very happy in the shed because it was the only place where I could pray. They prevented me from praying in the interrogation rooms and the yard. Yet, I used to pray by moving my head and body without letting them notice. On the morning of Sunday, 30 July 1989, I was taken to the yard with a sack over my head and my hands tied behind my back. Two hours later, I was taken to the room of the head of the interrogation team, who told me that there were people who had implicated me in many [illegal activities] in their confessions, and that they were all in Jenin Prison. He gave me two options: either I collaborate with them, or they would send me to Jenin Prison to face those who had implicated me. If I chose the latter, they said, I would have to pay a big price because the charges against me were very serious. I instantly answered that his first proposal was ridiculous, and that he should never think that I would agree . . . He became furious, spat several times in my face, punched me, beat me violently on the testicles, cursed me, and then dragged me violently to the yard, where I had to sit on the plastic box, day and night.

I stayed on the box until Wednesday morning, 2 August 1989. On the previous day, Tuesday, the ICRC representative visited the prison. They did not permit me to see him, but gave me the things that my wife had sent to me with the ICRC representative. I think they did not allow me to meet him because of the clear signs of torture on my face, hands, legs, and testicles.

On Wednesday, just before noon, I was taken in a rough manner to the room of the head of the interrogation team. The interrogator began by cursing me. Then he said: "You sat on the plastic box in the yard for 16 days, yet you did not confess. Aren't you a human being? How can you bear to sit that long? This is your last chance. Either you confess, or I send you immediately to Jenin Prison." I asked him to send me immediately and without further delay. The interrogator went crazy. He grabbed me by the beard and dragged me across the floor. He kicked me and stepped on my head, chest, and stomach. Then he threw me into a dark cell where I was kept until [about 3:30 p.m.].

Next, a tall, thin officer came for me while I was still tied up outside the interrogation section. There was a Border Police vehicle waiting for me. They put me in the car while I was still tied up, and drove to Jenin Prison. There were four Border Policemen in the car. Three of them kept cursing me. When we arrived at Jenin Prison, and immediately after dealing with administrative matters, they took me to the interrogation section. A sack, like the one in Toulkarem Prison, was put on my head, and my hands were tied behind my back. As I entered one of the interrogation rooms, an interrogator greeted me with threats and insults. He kept me sitting in the interrogation room until [about 8:30]. Then he took me to a room which, according

to him, was a room for prisoners [under the supervision of the Prisons Authority]. He told me that I would stay there until they called for me. I stayed there all night and until the afternoon of Thursday, 3 August 1989. There were about 15 prisoners in the room. I found out later that they were collaborators. But they neither hurt me nor asked me to write anything, because their leader was sure that I had nothing to tell them.

I was then transferred, along with four other detainees, to a shed which measured just over two square meters. We spent the night sitting. On the morning of Friday, 4 August 1989, I was taken from the shed to the interrogation room, where an interrogator told me that they were going to administer a polygraph [lie-detector] test on Sunday, 6 August 1989. Then they took me to a toilet which is used for solitary confinement. I stayed there for two nights, after which I was moved to another shed. On Monday, they took me for the polygraph. They tested me three times, after which I was taken to the shed, where I was kept until the evening of Wednesday 9 August 1989. I was released at supper time.

In accordance with all of the above I hereby sign this statement on this date, 30 September 1989.

(Signature)

Name available for publication

Appendix 5-C

Torture of Amin Amin

Text of al-Haq Alert Issued on 16 September 1989[†]

On 1 August 1989, Amin Muhammad Yousif Amin, a twenty-one year old student at Birzeit University in the Israeli-occupied West Bank, was arrested by the Israeli military. After being held in Ramallah prison for 4 days, he was transferred to the Dhahariyya Military Detention Center, where he was interrogated for twenty-four days. Following his interrogation, Mr. Amin was hospitalized. In a sworn statement given while he was in Ayalon prison hospital on 6 September, Mr. Amin states that he was tortured during the interrogation. In addition, Mr. Amin had been recovering from infectious hepatitis at the time of his arrest.

Al-Haq is seriously concerned about Amin Amin's condition, given his illness and the fact that he has been tortured. Torture is absolutely prohibited by Article 32 of the Fourth Geneva Convention and by customary humanitarian law. Despite this prohibition, however, this is not the first case of torture of Palestinians in Israeli prisons which has come to our attention. In November 1987, the Landau Commission, which was charged by the Israeli authorities with investigating reported abuses by the GSS (the Israeli secret service), found that Palestinian political prisoners were systematically subjected to what the report terms "criminal assault, blackmail and threats" in the course of interrogation. Such practices constitute torture under international law. Al-Haq demands an immediate end to the torture and mistreatment of Palestinian prisoners. Furthermore, al-Haq calls for an investigation into the case of Amin Amin and for legal proceedings to be instituted against the interrogators involved.

It is absolutely essential that Mr. Amin receive proper medical treatment for his illness immediately. Infectious hepatitis causes extreme physical exhaustion and can leave those afflicted with it vulnerable to other diseases. Since Mr. Amin was repeatedly tortured while he was already seriously ill, it is imperative that he be examined by an independent medical expert who can evaluate his present condition, and be granted full access to any medical treatment he may need.

Al-Haq's Documentation

The following information was gathered from Amin Amin's sworn statement taken in the al-Ramla Prison Hospital on 6 September 1989 (two days after he was transferred from Dhahariyya Military Detention Center to the hospital), and from an affidavit taken by al-Haq from Mr. Amin's father, Muhammad Yousif Hassan Amin, following the latter's visit to his son on 8 September 1989 in Ayalon Prison in the al-Ramla Prison complex. (Please note that there may be some confusion regarding the dates of some of the events which occurred during Mr. Amin's interrogation due to the irregular hours at which he was interrogated, the fact that he was unconscious at

[†]The Alert was published prior to Mr. Amin's release from detention. Its substance, however, was confirmed in an affidavit subsequently taken from him by al-Haq, excerpts of which are included in the chapter.

various times, and the length of the period of interrogation.) Information regarding Mr. Amin's medical history and the circumstances prior to his arrest was obtained from interviews with members of the Amin family and from Mr. Amin's medical records.

Summary of the Facts

- (1) On 1 August 1989, Amin Muhammad Yousif Amin, a resident of Ramallah and a second-year engineering student at Birzeit University (West Bank identity card number 958815144), was arrested by plain-clothes security officers in Ramallah. He had been wanted for questioning by the Israeli military for several months prior to his arrest. He was taken to Ramallah Prison and held in the tents there for 4 days. During this time Mr. Amin was seen by a member of his family and a friend, who reported that he seemed in good physical and moral condition.

Mr. Amin has a history of liver disease and was recovering from infectious hepatitis when he was arrested. The treatment for this illness consists of a nutritious, low fat diet, vitamin B complex, and rest. We cannot ascertain at this time whether or not Mr. Amin has completely recovered. According to medical experts, if he has not recovered, beatings in the area of his liver (enlarged by the illness) can readily lead to internal bleeding and therefore would be life threatening.

- (2) On 5 August, Mr. Amin was transferred to Dhahariyya Military Detention Center and placed under interrogation. A team of five Israeli security personnel interrogated him almost continuously for the following 24 days. Mr. Amin's interrogators identified themselves to him as "Eli", "Ami", "Yoni", "Jacki" and "Ofar".
- (3) According to Mr. Amin's affidavit, during the first day of his detention at Dhahariyya his hands were tied behind his back, two burlap sacks were placed over his head, and he was left standing outside from approximately 9:00 a.m. until 11:00 p.m. During that time he was brought inside and interrogated once and beaten twice by his interrogators. At approximately 11:00 p.m., he was taken to a solitary cell inside Dhahariyya.
- (4) The following day the interrogation continued. Mr. Amin stated that he was not accused of any specific action, but rather was subjected to general accusations. During this interrogation, conducted by "Ami", "Yoni", and "Ofar", Mr. Amin was beaten on his chest and stomach and his head was banged against a wall. Then his hands were tied with an electrical wire and a shock was administered, and he fainted. When he regained consciousness, one interrogator stepped onto his upper chest and neck and he fainted again.
- (5) On the third day of interrogation, Mr. Amin was again hooded and hand-cuffed and placed outside from the morning until about 10:00 p.m., when he was taken inside to an interrogation room. There he was beaten and kicked in the stomach

by "Yoni". According to Mr. Amin's affidavit, during the next two days, 9 and 10 August, he was held outside in the prison yard until late at night and then brought inside and interrogated and beaten.

- (6) On the following two days, 11 and 12 August, Mr. Amin was placed in a small cell (2 meters long and 1 meter wide). There was no mattress in the cell, and Mr. Amin could not sleep because someone banged on the door every few minutes. At the end of the second day he was removed from the cell.
- (7) The following six days Mr. Amin was again hand-cuffed and hooded with two bags over his head. During this period his interrogators repeatedly demanded that he confess to vague accusations such as unspecified activities in the uprising and participation in "disturbances". Mr. Amin refused and with each negative response was subjected to further torture. Most of these interrogations took place with Mr. Amin lying on his back. The worst torture during this period appeared to be conducted by "Ami", who kept his boot pressed on Amin's shoulder and, when Mr. Amin denied their accusations, would apply greater and greater pressure.
- (8) In the early hours of 22 August, Mr. Amin began to suffer from extreme physical exhaustion, and several times asked to see a doctor, a request refused by the interrogators. At approximately 4 a.m. "Ami" and "Ofer" took him to an interrogation room and beat him with their hands and kicked him, while he was hand-cuffed and hooded, for approximately 15 minutes until he lost consciousness. He was dragged outside to the yard and left for a few minutes, then dragged back into the interrogation room. "Ami", "Ofer" and "Yoni", who continued the interrogation, demanded that he confess to participating in demonstrations and to membership in the "Action Front" ("Jabhat al-Amal", a mass movement in the West Bank which the Israeli authorities allege is affiliated with the Popular Front for the Liberation of Palestine). When Mr. Amin refused to confess, "Yoni" brought a stick 15 centimeters long and began to beat Amin on his head. Then Mr. Amin's legs were pinned down and "Ami" beat him with the stick on the soles of his feet (a type of torture known as "Falaqa") while "Ofer" beat him on various other parts of his body. This continued until Mr. Amin fainted.
- (9) When Mr. Amin regained consciousness, he told his interrogators that he would confess. At that point the hood and hand-cuffs were removed. Mr. Amin states in his affidavit that his hands were shivering from pain and when he looked at them they were blue. Mr. Amin was then asked to sign an undertaking that he would sign a formal confession the next day that he had participated in demonstrations and that he was a member of the "Action Front".
- (10) Mr. Amin then asked to see a doctor but once again the interrogators refused. One of the interrogators said that he "would not send for a doctor until he saw Mr. Amin dying". At that time he felt severe pains in the area of his liver.

- (11) After a short period the interrogation resumed with the interrogators requesting that Mr. Amin supply them with details concerning his alleged activities. Mr. Amin was again beaten all over his body.
- (12) Five days later, on 27 August, Mr. Amin was brought back to the interrogation room by "Ami". Mr. Amin states that at that time his health was very bad and he was in a lot of pain in various parts of his body. "Ami" demanded that Amin confess to a series of actions including throwing molotov cocktails. Mr. Amin refused and stated that he had done nothing. At that time he recanted his previous confession, stating that he had only signed the undertaking to stop the torture.
- (13) On 28 and 29 August, the interrogation and torture intensified. Mr. Amin was hand-cuffed, hit on various parts of his body, and beaten again on the soles of his feet. Then "Ofer" jumped repeatedly on Mr. Amin's chest, until Mr. Amin started throwing up and finally lost consciousness. He regained consciousness when his interrogators poured water over him. Then he was taken to a doctor who checked his urine and transferred him to Beer-Sheva Hospital. According to Mr. Amin's affidavit, the doctor there said that Mr. Amin should be taken to the Ayalon Hospital in the al-Ramla Prison complex and be permitted to rest. However, instead of taking him to the hospital, Mr. Amin was returned to his cell for 5 days.
- (14) On 4 September, the military authorities transferred Mr. Amin to Ayalon Hospital.
- (15) On 6 September, Mr. Amin's lawyer, 'Abed 'Asali, met with him in the prison hospital.
- (16) On 8 September, 9 days after the interrogation had ended, Mr. Amin was visited in Ayalon by his father and other members of his family. His father states in a sworn affidavit taken by al-Haq that when he saw Mr. Amin, Amin's face was swollen, he had two black eyes, the soles of his feet were badly bruised, and he had bruises on his lower back in the area of his kidneys. Furthermore, according to Mr. Amin's father, Amin's hands were bruised and when he asked him to make a fist with his left hand, Mr. Amin could only close the hand with the help of his right hand, and then he could not relax his fingers. Amin also complained of pain in his ears and genitals.
- (17) As of 15 September, Mr. Amin was still in the Ayalon Prison Hospital.

Call for Immediate Intervention

In view of the gravity of Amin Amin's condition, al-Haq calls on local and international human rights and medical organizations to intervene immediately on Mr. Amin's behalf.

Appendix 5-D

Torture of Ibrahim al-Habash by Collaborators Text of Complaint Filed by Advocate Lea Tsemel

To:
Minister of Police
Ministry of Police
Jerusalem

The Association for Civil Rights In Israel
Jerusalem

20.10.89

Re: Torture by collaborators on behalf of the Shin Bet of Ibrahim Faik Habash, a detainee held in the Russian Compound in Jerusalem.

The establishment of "collaborators" (called 'asafir') has long become institutionalized among the interrogation methods employed by the General Security [Shin Bet] and for some time there has been no denial of its existence, rather the opposite.

However, there is no doubt that the existence of such an establishment can remain within the framework of the law only if the collaborators do not employ any form of violence against detainees subject to their mercy.

My above-mentioned client, a student at Bir-Zeit university, has been held in detention from 28.8.89.

When I visited him at the Russian Compound on 20.10.89 he described to me the course of his time among collaborators on Yom Kippur (according to his understanding) at the Russian Compound.

Captain Haim, a Shin Bet man, told my client that his interrogation was over and that my client would be transferred to a regular cell in which there were 6 men. When he wanted to sit in the cell close to the door—in order to call a guard when necessary—they forced him to sit in the middle of the room. They asked him to participate in what they called a "cell meeting" and he refused. Later they asked him to confess to his deeds. He refused to this, as well. They told him that the last person who has resisted them, "Doctor", was beaten and agreed to confess 15 minutes later.

The main speaker caught him immediately, then two others, and he struggled with them to avoid their grasp. All six joined together against him and dragged him to a back cell in the corner of the detention cell, into a small room. (It should be noted that the room in which he was held was "L" shaped, at the end of which are two small rooms).

A mop was brought and he was beaten on his head, legs and back for a very lengthy period.

The description of the assailants:

1. Fat, unshaved, aged about 22;

2. Tall, handsome, with a long beard, aged about 25;
3. Red-haired with small eyes, aged about 25;
4. Thin, very tall, aged about 29, presented himself as being in charge;
5. Thin, medium height, aged about 19;
6. Short, limping, with a black beard.

All save for the first two participated in his beating. The latter held him at first and participated in his beating later on. He was also beaten with their shoes all over his body. At a certain stage of the beatings they stripped him naked and beat him with a club on his back and buttocks for a long time. They caused him burns with cigarettes on the soles of his bare feet and on the back of his legs (I myself saw dry burn signs during my visit).

While he was naked they told him that they want to wash him and poured cold water on him. They also soaped his head with a large amount of soap. When he was faint, they dressed him, covered him with a blanket and left him.

At a time my client estimates as around midnight, they entered the small cell he was in and without a word hailed blows on him with plastic shoes they held in their hands. When they saw that his condition was very bad, they dragged him to a sink, placed his head under the faucet and poured cold water on him so that he regained consciousness.

Later they threw him on a stone bed with a mattress on it and continued to beat him on his back and chest with fists and a mop.

He was also beaten on his face and his left eye became very swollen.

He was left to lie until the morning.

In the morning he found that he cannot see through his swollen eye. They tried to get him up and when they found that he could not move, they slapped him to make him get up. They saw that his body was covered with beating marks and that his eye was swollen and started to massage the injured places with great force in order to dissolve the hemorrhages.

They brought him food from a store of food which was there, but he did not eat.

They stripped him again during the day and poured gallons of cold water over him and massaged the marks on his body. The massaging was done with great force and was intended to hurt as much as to remove the evidence of the beatings. Throughout the painful "massage" they demanded once more that he confess.

Towards what my client estimates as 6:30 pm (they wore watches, he did not), they started to wonder aloud how is it that the policeman doesn't arrive and said amongst themselves that the policeman promised to come earlier.

Finally a policeman arrived, took them out of the room and my client was left in the room alone.

The next morning my client was brought before Captain Roni, a Shin Bet man, and the latter, upon seeing him, told him "Do you play karate?". Roni clearly saw the injury on my client's eye.

The same day my client was taken in a "posta" car to Hebron prison. In Hebron he was placed in a cell with 12 prisoners who indeed tried to urge him to speak, but did not harm him physically. A day or two later he was returned to the Russian Compound and up to the moment of writing these lines he is held in the Shin Bet solitary cells [zinok] at the Russian Compound.

I hereby approach the Minister of Police as the main addressee, as it is inconceivable that a detainee in a police installation be at the mercy of torturers, even torturers on behalf of others. The police authorities are responsible for caring for those between the walls of the detention center and not to abandon detainees to be plundered, even by instructions of the Shin Bet, and to deliberately prevent any supervision by a policeman over what is happening in the cells.

I have no doubt that removing policemen from the area was done in collaboration with, and under the instruction of, the Shin Bet and the full autonomy which the Shin Bet has in the police detention installations is well known. However, the police cannot avoid full responsibility for the welfare of a detainee.

I request to know in detail:

1. Was a record made of my client's transfer to the certain cell (which is located at the end of the hall, outside the Shin Bet wing) and a record of the cell's inhabitants. I request to be presented with this record.
2. What are the standing instructions—if they exist—in regard to Shin Bet instructions which contradict the standing instructions in detention centers and how are such decisions taken.
3. The full names of the people whose description appears above, so that my client will be able to submit a personal complaint against them.
4. What does the Hon. Minister intend to do following this complaint.

Respectfully,

(Signature)

L. Tsemel, Advocate

Appendix 5-E

Death in Detention of Ibrahim al-Mtour Text of Autopsy Report by Dr. Derrick Pounder[†]

Sources of Information Upon Which this Report is Based

1. Autopsy Report File No. 1306/603/88 of the L. Greenberg Institute of Forensic Medicine, Tel Aviv, on "Ibrahim Yaber Yusef Mohamed Almaturi" dated October 25, 1988 under the name of Dr. B. Levi. The document comprises four typed pages.
2. A restricted document of the Military Judiciary Central Command, Reference (912) 63-88, dated March 2 1989 re: J'lem and Judea and Samaria Region IMP file 672/88 regarding death by hanging of Ibrahim Yassr Mohammad Al Mator I.D. 998306732—Dvir (Daharia) Imprisonment Installation. The document is of nine pages and under the name of Rachel Dolev, Lieutenant-Colonel, Military Attorney.
3. A Toxicology Report file No. 3439/88/T of the L. Greenberg Institute of Forensic Medicine, Tel Aviv, referring to "Ibrahim Yaber Yusef Mohamed" Post Mortem No. 1306/603/88. The document is of two pages under the name Dr. George Tajar and dated November 8, 1988.
4. A review of autopsy photographs and a discussion of the contents of the autopsy report with Dr. Levi and Dr. Hiss at the L. Greenberg Institute of Forensic Medicine, Tel Aviv, on the morning of Wednesday, April 5, 1989.
5. Personal observations at the exhumation and re-examination of the body of Ibrahim al-Mattur conducted by Dr. Hiss on the night of Wednesday, April 5, to Thursday, April 6, 1989 at Sa'ir and the L. Greenberg Institute of Forensic Medicine, Tel Aviv.

The following documents have also been reviewed for the preparation of this report. Whereas the contents of these documents have been carefully considered, no allegations as to facts contained therein have formed the basis for any opinions given in this report.

6. A letter of five pages dated 26.10.88 from Felicia Langer, Advocate to the Minister of Defence, the Government Legal Advisor, and the Legal Advisor for Judeah and Samaria.
7. An opinion on the original autopsy report dated 29 December 1988 and prepared by Dr. Robert H. Kirschner of Chicago. The opinion is of three pages.
8. An Expert Opinion of three pages No. 1/m/89 dated 10.1.89 under the name of Dr. I. His [sic] of the Forensic Medicine Institute Tel Aviv.

[†]This is a verbatim replica of the original. It was retyped by al-Haq for publication purposes. Dr. Pounder's signature appears at the bottom of every page in the original.

15. A horizontal groove over the lower third of the right calf.
16. Extensive red bruising beneath the skin of the entire right half of the scalp.

The report notes that the bruising to the left shoulder and the left arm (6. above) are contiguous giving the impression that both were caused by the same blow.

Injuries to both arms and the right leg (12, 13 and 15 above) are considered consistent with the use of shackles.

There were no fractures of bones or trauma to the internal organs.

The stomach was empty.

The cause the death is given as mechanical asphyxiation by hanging.

Abstracted Toxicological Findings (From Document No. 3 Above)

Morphine was detected in the bile at a concentration of 0.001 mg%. Morphine was not detected in the blood. Benzodiazepines are listed amongst the test substances, but no comment appears alongside.

Abstracted Summary of Circumstances of Death (From Document No. 2 Above)

The deceased was arrested on July 20th 1988.

From the time of his arrest until October 18th 1988 he had been held at both Dvir Imprisonment Installation and at "Ofer" Installation.

On October 18th 1988 he was transferred from "Ofer" Installation to Dvir Imprisonment Installation (Daharia).

On October 21st 1988 at around 10.25 hours he was found dead in cell No. 11 of Dvir Imprisonment Installation.

During the period he stayed at "Ofer" Installation he was said not to have been beaten by anyone.

On transfer from the bus to Dvir Installation he became riotous and incited the other detainees. He kicked a corporal who required hospitalisation.

Force was used to restrain him. This included the use of clubs. The MP Commander at the Installation, Major Rashti, was told of these events, and as a result, personally received the detainee into the Installation.

Major Rashti handcuffed him with the hands behind the back and bound his legs "because he had great physical strength". Major Rashti ordered that he be held in cell No. 11, which is situated some distance from the other detainees.

Before he was taken to the cell Major Rashti personally assured that the cell was empty of any object.

At around this time he was given an injection of valium "to calm him".

A paramedic examined him on October 18th and found a bleeding wound of the head which was bandaged, scratches on the back, two black eyes, and swelling of the nose.

Despite being bound hand and foot, he continued to resist and to incite the other detainees. He would not accept discipline, was uncooperative, and commenced a hunger strike.

The following day, Wednesday, October 19th, he continued to shout and attempt to arouse the other detainees.

On the afternoon of October 19th Major Rashti used against him tear gas from a personal cannister.

When the tear gas failed to subdue the detainee, Major Rashti "ordered" Dr. Adir Aoral to give an injection of tranquillisers. An injection of 10 mgs of valium was given, "after which he calmed down".

On the night of Wednesday, October 19th Major Rashti changed the plastic cuffs on the detainee's hands to steel handcuffs, but with the hands still cuffed behind the back.

Throughout Wednesday, October 19th, he remained on hunger strike, drinking, but not eating.

The following day, Thursday, October 20th, he complained to Major Rashti that the handcuffs were cutting off the circulation in his hands and Major Rashti broke the cuffs and exchanged them for steel handcuffs which bound the hands in front..

On the evening of October 20th he was threatened with forced feeding by a tube and agreed to end his hunger strike.

Following his agreeing to end the hunger strike, a mattress and a blanket were provided in his cell and he was given five cigarettes.

A detainee in cell No. 8, who worked in the kitchen, helped al-Mattur eat because his hands were bound in handcuffs. At this time he noticed a smell of gas in the cell.

During Wednesday, October 19th and Thursday, October 20th, Major Rashti had visited him every 20 minutes to half an hour "until the small hours of the night".

On Friday, October 21st breakfast was brought at 7.00 a.m., but the food tray was untouched when removed at 8.00 a.m.

He was seen by a guard to be lying in his bed at around 8.30 to 8.45 a.m.

Major Rashti visited the cell twice that morning, the second occasion being at 9.30 a.m.

Major Rashti left the Installation at around 10.00 a.m.

At 10.25 a.m. a guard found the deceased hanging in his cell.

At 10.27 a.m. Dr. Adir Aoral was called to the cell. He estimated that al-Mattur had died about an hour or an hour-and-half previously.

Al-Mattur was found hanging from a vertical drainage pipe in one corner of the room.

The ligature was a strip of fabric from a woollen blanket.

The ligature was tied to the pipe at a height of 130 cm, but fibres of the fabric were found on the pipe at a height of 180 cm.

The deceased was not suspended off the ground but kneeling with his face towards one wall.

Iron handcuffs bound the hands in front and the legs were in plastic shackles.

A blanket in the cell was missing a strip of fabric.

Other than the deceased and the woollen blanket, there was nothing in the cell.

Al-Mattur was considered a dangerous detainee and was watched closely.

The Deputy-Commander of the Installation considered that his aggression was outwardly directly and therefore suicide was not expected.

Officials at "Ofer" Installation claim he was transferred at his own request and for his own safety because other detainees suspected him of collaborating.

The Deputy-Commander of Dvir Installation thought it possible that the story about collaboration had been fabricated in order to justify a transfer from the "Ofer" Installation.

Two guards state that at Dvir on October 18th al-Mattur shouted that he wanted to die.

The Deputy-Commander of the Installation stated that no suicidal intentions had been reported to him and Major Rashti had commented that there were no problems with the prisoner.

A detainee from cell No. 12 said he heard al-Mattur shouting that he wanted to return to the tents at "Ofer" Installation. He did not hear al-Mattur shout that he wanted to die.

Relatives of the deceased state that he had been detained previously, was not afraid of detention, and never spoke about suicide.

Cell No. 11 was so situated that any MP could take the keys to the cell and enter it without being seen from the place where the desk Sergeant sat.

No guard recalled hearing the deceased shouting on the morning of his death.

Following an autopsy at the Institute of Forensic Medicine at Tel Aviv the body was buried at night in the village of Sa'ir.

Relatives of the deceased present at the burial noticed that there were stitches behind the ear, blood in the hair and on the nose, and that the right arm, which was tattooed, appeared broken. There were other injuries to the body, including the back.

Military Attorney, Lieutenant-Colonel Rachel Dolev concluded that evidence of violence on the body resulted from either (a) the reasonable force used to overcome resistance to arrest by the decedent at Dvir Installation on Tuesday, October 18th, or (b) the autopsy carried out on the body. Stitches behind the ear were inserted at the time of autopsy. The possibility of a fracture of the right forearm was rejected because (a) the tattoo described by the relatives as being on the fractured arm was recorded in the autopsy as being on the left arm, and (b) the pathologist's statement that no bones were fractured was accepted.

Discussions with Dr. Levi and Dr. Hiss

During these discussions which took place on the morning of Wednesday, 5th April 1989 at the L. Greenberg Institute of Forensic Medicine, Tel Aviv, there was available the original Hebrew transcription of the autopsy report together with thirteen colour photographs taken at the time of autopsy. Also available was an English translation of the autopsy report as provided to myself by Attorney Felicia Langer.

All injuries were reviewed systematically with reference to the original Hebrew and English translation of the autopsy report as well as the photographs.

In response to specific questions from myself I was informed that:

1. It was not known why the legs were flexed in rigor mortis at the time of autopsy. It was not known how the body was transported to the Forensic Medicine In-

stitute at Tel Aviv and whether the means of transportation was the cause of the flexion of the legs. There was no dependent lividity of the legs.

2. Although there was no description in the autopsy report of the nose being swollen, nevertheless in the photographs taken at the time of autopsy, the nose appeared swollen.
3. There was extensive haemorrhage beneath the scalp on the right side of the head, but there was no visible injury on the scalp surface. In particular there was no laceration of the scalp.
4. The bruise to the left iliac crest (left lower abdominal wall) appeared definitely older than the bruise to the upper left back and left arm. The bruise to the left back and left arm appeared a purple colour. Dr. Levi was of the opinion that it was approximately 24–48 hours old, but possibly less than 24 hours old.
5. The bruise on the left side of the lower back was not visible on the skin surface, but was revealed when an incision was made.
6. The abrasions to the right and left shoulders were to the tops of the shoulders and not to the backs of the shoulders. Consequently, these injuries were not consistent with restraint by pinning against a rough surface, such as the ground.
7. The abrasions to the arms and leg, which suggested shackle marks, were two to three days old.

I agreed with Dr. Levi and Dr. Hiss that a photograph of the ligature mark to the back of the neck clearly shows the red stripe immediately above the ligature mark as described in the autopsy report.

The above comments are based upon handwritten notes taken at the time of these discussions.

Findings at the Exhumation and Re-examination of the Body

I was present with Dr. Hiss at the exhumation of the body at the village of Sa'ir on the night of Wednesday, 5th April to Thursday, 6th April 1989. The exhumation commenced at approximately 22.10 hours and was completed at approximately 02.00 hours. The body was transported to the Institute of Forensic Medicine at Tel Aviv where I was present when Dr. Hiss performed a second autopsy examination commencing at 04.20 hours and finishing at 05.45 hours.

I have no reason to believe that there was any unauthorised interference of the body during the course of the exhumation or autopsy procedure.

I am satisfied beyond all reasonable doubt that the body examined was that of Ibrahim al-Mattur because of the presence on the body of two features described in the original autopsy report and documented by photography. These features were (a) a tattoo on the left forearm of a pistol firing a bullet, and (b) evidence of extensive haemorrhage beneath the scalp on the entire right side of the head.

Present throughout the autopsy examination were Dr. Hiss, Dr. Levi, an autopsy technician, and the author of this report. Present at the commencement of the examination were the Military Attorney, Major Rachel Toren and the Military Photographer and an armed soldier.

The Military Photographer made a video record of the autopsy and both Dr. Hiss and the author of this report took 35 mm photographs.

The following comments are made on the basis of notes dictated at the time of the exhumation and the autopsy examination.

The body was remarkably well preserved. The body was intact and all the soft tissues of the arms and legs were preserved. The facial skin, scalp and head hair were intact, but dried and stretched over the bone. All the soft tissues of the neck had been destroyed by post mortem changes. The skin was markedly discoloured so as to obscure completely any pre-existing bruises or abrasions.

There was a tattoo on the right forearm which had not been described or photographed at the time of the first autopsy.

Dr. Hiss dissected and exposed the bones of both forearms. The bones were intact with no evidence of fractures.

At my request, Dr. Hiss also dissected and exposed the bones of both upper arms. These were intact with no evidence of fracture.

Dr. Hiss declined my request that the bones of the hands be dissected and exposed. The request was denied on the grounds that such a dissection would disturb the bones and interfere with a subsequent X-ray examination.

At this juncture in the autopsy procedure the Military Attorney, Major Rachel Toren, the soldier, and Military Photographer left and did not return.

At my request the head hair was removed to expose the scalp. Discolouration and drying of the scalp made it impossible to determine whether there had been a pre-existing abrasion. There was no evidence of a pre-existing laceration.

At my request the scalp incision from the original autopsy was re-opened. This incision had been stitched following the original autopsy and the stitches extended behind each ear. The autopsy assistant, rather than Dr. Hiss, re-opened the scalp by making a fresh incision, rather than opening the stitches as I requested. This procedure was performed with more haste and less care than might reasonably be expected. It was not possible to determine whether a pre-existing laceration of the scalp had been incorporated into the original autopsy incision. On reflecting the scalp there was prominent blood staining of the entire surface of the skull on the right side as described in the first autopsy report. There was no fracture of the vault of the skull. The skull had been opened and the brain removed at the original autopsy. There was no fracture of the base of the skull which was relatively thin for an adult male. Dura mater was present in the middle and posterior cranial fossae and showed no evidence of adherent blood.

At my request Dr. Hiss exposed the bones of the nose which showed no evidence of fracture and no evidence of staining from pre-existing haemorrhage.

At my request the sutured incision to the torso was re-opened. The internal organs has been destroyed by post mortem change and were no longer identifiable. There was no evidence of injury to the inner surface of the chest wall and no fractures of

the collar bones, ribs or breast bone.

At my request Dr. Hiss opened the scrotum which had been severely affected by changes of decomposition. The testes could not be identified within the scrotum.

Following this dissection of the body, X-rays were taken of both upper arms, both forearms, and both hands. The X-rays disclosed no evidence of fractures. No further X-rays of the body were taken.

No further dissection of the body was undertaken.

Comments and Opinions

1. At exhumation the body was found to be far better preserved than had been anticipated. The body was intact. The skin was almost entirely intact but discoloured and the arms and legs were fully fleshed. The internal organs had been destroyed.
2. At the second autopsy the Director of the Institute of Forensic Medicine focused on the bones of the arms, which were exposed as well as X-rayed. The bones of the arms were shown not to be fractured, in accord with the description in the first autopsy report, and contrary to the claims of the family. A request by the writer to expose the bones of the hands was declined, but the hands were X-rayed and no fractures were disclosed.
3. The second autopsy examination was otherwise somewhat cursory. There was no meaningful attempt to organise the conduct of the autopsy so as to systematically address all the issues raised by the family, their Attorney or Dr. Kirschner, except when specific and direct requests were made by the writer.
4. The day prior to the second autopsy examination, the writer had made the Director of the Institute aware of the existence of an official document providing background information on the circumstances of the death (document No. 2 above). The Institute Director stated that he had not been aware of, and had not read, the document concerned.
5. At both the first and second autopsies, it appears that the investigating pathologists elected not to request detailed information concerning the circumstances of the death. Neither, it appears, did the responsible authorities volunteer to provide this information to the pathologists concerned. I am reliably informed that such an arrangement exists with regard to all potentially contentious deaths occurring in the Israeli occupied West Bank and Gaza. The justification offered is that information on the circumstances might prejudice the pathologist conducting the autopsy. This approach is contrary to commonly accepted international standards of practice in forensic pathology. Limiting background information available to the pathologist at the time of autopsy denies the pathologist the opportunity to fulfill his professional obligations, to direct the investigation so as to address specific issues, to expose inconsistencies between the alleged circumstances and the autopsy findings, and to suggest further avenues of investigation. This administrative practice effectively minimises the value of the autopsy in

the investigation of these deaths and maximises the possibility that criminal or civil wrongdoing will pass undetected.

6. At the second autopsy X-rays were taken of both arms and hands. No other X-rays of the body were taken. I note that in his expert opinion to the High Court (document 8) the Institute Director stated that the second autopsy would include "X-rays of the entire skeleton".
7. The report of the first autopsy contains three minor errors of omission. These were firstly, swelling of the nose which is present in an autopsy photograph and was documented by a paramedic at Dvir Installation; secondly, a tattoo on the right forearm which was described by relatives of the deceased and identified at the second autopsy; and thirdly, tattoos on the left hand which appear in an autopsy photograph but not in the protocol itself. These omissions are not sufficiently serious to lead me to doubt the substantive factual content of the autopsy report. There is no information available to me which would lead me to doubt that the autopsy report is other than a true and substantially accurate factual record of the results of the examination.
8. The first autopsy report provides evidence in support of asphyxiation as the mechanism of death. This evidence comprises the presence of pinpoint haemorrhages over the whites of the eyes and a light blue discolouration of the face. These findings are characteristic of an asphyxial type death, but are not absolutely diagnostic.
9. There is an unequivocal ligature mark on the neck. I concur with the opinion given by Dr. Hiss that the red band above this ligature mark can reasonably be interpreted as a vital reaction with the inference that the ligature was applied during life.
10. Taken together these two findings (evidence of asphyxiation and of ligature application during life) are sufficient evidence to support a diagnosis of asphyxiation due to ligature pressure on the neck. The absence of any other trauma sufficient to account for death and the absence of any toxicological finding sufficient to account for death (but see below) strengthens this diagnosis.
11. There are two mechanisms by which the ligature pressure to the neck might have been applied: firstly, by the body weight of the victim against a fixed ligature, i.e. by hanging, and secondly, by pressure applied by another individual, i.e. ligature strangulation. The ligature mark to the neck, which is well documented by photography and description, is more in keeping with hanging than strangulation, although strangulation cannot be excluded. The circumstances of discovery of the body, in as far as a description is available, is consistent with the location and direction of the ligature mark described at autopsy. Taken together the autopsy evidence and scene of death evidence strengthen the diagnosis of hanging.

12. Integration of information obtained from the scene of death with the autopsy findings is essential in the investigation and evaluation of a death of this type. The original investigation was fundamentally flawed in that the pathologist did not view the scene of death, or have available to him photographs and diagrams of the scene, or have detailed information concerning the scene. The pathologist was told only that the decedent was found hanging in a cell. Neither was the ligature made available at the time of autopsy for comparison and correlation with the ligature mark on the neck. This latter error was so basic an omission as to raise a serious doubt about the experience and competence of the scene of death investigators. The pathologist, who is a professional of considerable experience, should have insisted that the ligature was produced and that detailed information on the scene of death was provided.
13. There is no physical evidence to indicate ligature strangulation followed by suspension of the body to mimic hanging, but neither is there physical evidence to exclude this possibility. In this death, the possibility of ligature strangulation followed by suspension can only be properly evaluated on the basis of a comprehensive investigation of the scene and circumstances of death taken in conjunction with the autopsy data.
14. It is not possible to determine from the physical alone evidence [sic] whether the decedent hung himself or was hung by others. In this case, a determination as to whether the death was a suicidal hanging or a homicidal hanging can only be made on the basis of a comprehensive investigation into the circumstances and scene of the death taken in conjunction with the autopsy data.
15. I note that on the morning of October 21st the decedent was found hanging with his hands cuffed in front of him. This is clearly of importance since it would have been impossible for the decedent to have hanged himself in the manner in which he was found if his hands were cuffed behind his back. It is recorded that the hands were cuffed behind the back on the 18th of October at the time of the decedents [sic] arrival at Dvir Installation. It is stated that Major Rashti replaced the handcuffs and bound the hands in front on October 20th, but no specific corroboration of this statement, from witnesses other than Major Rashti, is presented in the document prepared by Lieutenant-Colonel Dolev. I also note that the detainee in cell No. 8, who worked in the kitchen, helped al-Mattur eat because his hands were bound in handcuffs. This event most likely occurred on the evening of Thursday, October 20th, because al-Mattur was on hunger strike until that time. The event must have occurred after tear gas was used on Wednesday, October 19th, since the detainee witness recalls the smell of gas in the cell. The record does not state whether the witness recalled or was specifically asked whether the hands were cuffed in front or behind the body at that time.
16. Described at the first autopsy and confirmed at the second autopsy was the presence of extensive bruising beneath the scalp on the right side of the head. At

the first autopsy this bruising appeared "red", suggesting that it was relatively fresh. At the first autopsy microscopic studies were not performed on this bruise and consequently it is not possible to be sure when, during the three day period at Dvir, this injury occurred. It is possible that the injury occurred a short time before death. The location and extent of the bruise is more in keeping with a blow or series of blows rather than a fall or series of falls. The force of impact may have been sufficient to render the decedent unconscious without producing an injury to the brain of sufficient severity to be recognised at autopsy with the naked eye.

17. The toxicology report appended to the autopsy report gives no indication that an analysis was made for the presence of benzodiazepines despite the fact that there is an admission that the decedent was given injections of Valium (a trade name for the benzodiazepine drug "diazepam") on at least two occasions. Valium is a sedative which would reduce the capacity of an individual to resist a physical assault.
18. The toxicology report appended to the autopsy report records the presence of morphine in the bile but not in the blood indicating that at some time during the previous few days the decedent had received an opiate. In the information provided there is no record of the administration of such a drug, an omission which requires explanation. The most common medical indication for such a drug is pain relief.
19. It is stated that the decedent was not beaten at "Ofer" Installation. The autopsy results tend to corroborate this statement. There is only one injury to the body, a yellowing bruise to the left lower abdomen, which may have occurred prior to the decedents [sic] arrival at Dvir Installation. The appearance of the bruise is also consistent with infliction on the day of arrival at Dvir Installation.
20. On arrival at Dvir Installation violence, including blows from clubs, was used to overcome the decedent's resistance. A paramedic later noted abrasions to the forehead, swelling of the nose, and bruising of the eyes. The autopsy report and photographs also record these injuries and their appearance is consistent with having occurred three days prior to death, i.e. on arrival at Dvir Installation on 18 October.
21. Lieutenant-Colonel Rachel Dolev, Military Attorney, concluded from the investigation that signs of violence on the deceased's body at the time of burial were either the result of the autopsy examination or reasonable [sic] force used to restrain him when he was dragged from the bus to the Daharia (Dvir) Installation on the day that he was transferred there, namely 18th October. This conclusion is open to challenge. At the first autopsy the most prominent injury to the body was a bruise 14 x 9 cm on the left side of the upper back and this was contiguous with a 10 x 8 cm bruise on the back of the left arm. This injury was not described by the paramedic who examined al-Mattur on 18 October

although scratches to the back were described, indicating that the back was examined. Dr. Levi stated to me his opinion, with which I concur, that this injury was produced most likely between 24 and 48 hours prior to death and possibly within 24 hours of death. Thus, this injury would have occurred most likely on the 19th or possibly the 20th of October when the decedent was bound hand and foot in his cell and when there is a record of the use of tear gas against him. The character and location of the bruise in itself strongly suggests a blow rather than a fall. I also note that the cell was empty of any protruding object to fall against. In addition two abrasions to the right upper arm are described in the autopsy report as "fresh" and clearly have been inflicted later than 18th October.

22. Following arrival at Dvir, on 18 October, the deceased's hands were cuffed behind his back and his legs were bound by Major Rashti, the Installation Commander. On the 20th October, the handcuffs were broken and exchanged for steel handcuffs following his complaining that they cut off the circulation to his hands. The autopsy disclosed evidence of cuffing of the hands and binding of the legs. The injuries are consistent in appearance with having occurred [sic] during this time, i.e. two to three days prior to death. The cuff mark to the left wrist is a severe abrasion which would have been associated with considerable pain and discomfort.
23. I note that on October 19, while his hands were cuffed behind his back and his legs bound and while he was being held in an otherwise empty cell, the decedent was exposed to tear gas from a personal cannister of the Installation Commander, Major Rashti.
24. I further note that following the use of tear gas described above, Major Rashti "ordered" Dr. Adir Aoral to give the decedent an injection of tranquillisers. The doctor complied with this order and gave 10 mg of Valium. I view this action of the doctor as, *prima facie*, a serious breach of medical ethics, namely breach of Principle 5 of the "Principles of Medical Ethics" (United Nations 1982) and Article 2 of "The Declaration of Tokyo" (World Medical Association 1975)—see appendix.
25. I note that the decedent was on hunger strike and was threatened with forced feeding by a tube. I also note that on the nights of October 18 and 19 the decedent was held in an empty cell with neither mattress nor blankets.
26. It is my view that the prolonged and violent use of restraints, tear gasing in a cell when already in restraints, probable physical assault when already in restraints, the administration of drugs, the probable deprivation of sleep, the isolation from other detainees, and the likely lack of facilities for personal hygiene, taken together constitute *prima facie* evidence of cruel, inhuman and degrading treatment.
27. I consider it possible that the abuse to which the prisoner was submitted might have induced him to take his own life as the only means of escape. I can find

in the record provided no other reason why the prisoner might wish to take his own life and, in particular, I can find no indication that the prisoner was other than of sound mind. If the decedent did indeed take his own life, then, on the evidence available, I would regard the death as an "aggravated suicide" precipitated [sic] by physical and mental abuse.

28. Whereas the balance of evidence favours a determination of "aggravated suicide" it would be rash, given the inadequacy of the original investigation, to exclude the possibility of homicide. I note that the abuse of the decedent was personally directed by Major Rashti, the Installation Commander, and that Major Rashti was the last person to see the victim alive at 9.30 a.m., and that the Installation Doctor was of the opinion that death occurred about 9.00 to 9.30 a.m. However, I do recognise that estimations of time of death are notoriously inaccurate.

Conclusion

Ibrahim al-Mattur was found dead at about 10.25 hours on Friday, October 21st 1988 in cell No. 11 in Dvir Imprisonment Installation (Daharia).

I conclude that the cause of death was asphyxiation due to ligature pressure on the neck. It is my opinion that more likely than not the mechanism of death was hanging. I consider that, for the three days prior to his death, the decedent was subjected to treatment which was *prima facie*, cruel, inhuman and degrading. I consider it possible that the decedent took his own life to escape this abuse. If such was the case, I would regard the death as an "aggravated suicide". On the information available, the possibility of homicide cannot be excluded. I consider the initial investigation of the death to have been inadequate and the information presently available to me to be incomplete.

Attested on Soul and Conscience

(Signature)

DERRICK J. POUNDER
MB, ChB, FRCPA, FFPATH RCPI,
FCAP, MRCPath

Appendix

1. Principle 5 of the "Principles of Medical Ethics" (United Nations 1982) states "it is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health, or the safety of the prisoner or detainee himself, or his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health". Principle 6 of the same document states "there may be no derogation [sic] from the

foregoing principles on any grounds whatsoever, including public emergency". Principle 3 of the same document states "it is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees, the purpose of which is not solely to evaluate, protect, or improve, their physical and mental health".

2. Article 2 of the "Declaration of Tokyo" (World Medical Association 1975) states "the doctor shall not provide any premises, instruments, substances, or knowledge to facilitate the practice of torture, or other forms of cruel, inhuman and degrading treatment, or to diminish the ability of the victim to resist such treatment". This document further states "for the purpose of this declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone, or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason".

Recommendations for Further Action

Attention: Amnesty International, Physicians for Human Rights, American Academy for the Advancement of Science, CCFS.

1. Attorney Felicia Langer should be supported in her endeavours to pursue the investigation of this case as a test case because: (a) the abuse of the prisoner is well documented in official government records, and the abuser is the Installation Commander who therefore bears both administrative and personal responsibility; and (b) there is documentation of unethical practices by the Installation Doctor and there is a suspicion that this is a widespread problem.
2. The death should be classified, on the information presently available, as an "aggravated suicide".
3. After weighing the legal and other implications, consideration should be given to publicly naming Major Rashti, the Installation Commander, as the individual bearing administrative, personal, and moral responsibility for the death.
4. All the case information should be forwarded to the appropriate Israeli Medical Authorities with a view to initiating disciplinary proceedings against Dr. Adir Aoral for what appear to be serious breaches of ethical standards.
5. Consideration should be given to investigating the role of physicians in imprisonment installations in the Israeli Occupied West Bank and Gaza Strip.

remind them as wielders of power and ultimate protectors of our civilizations, of their obligations to all of us.

Long-term security and peace for all peoples cannot be found if any one of those peoples are denied the right to determine its own future; to decide on their representatives, to benefit from the taxes they pay, to teach what they want to teach, to speak their minds freely without restriction and without fear of punishment or reprisal. Human rights can only be discussed in the context of the right to self-determination.

The experience of history teaches that a people cannot rest until it is free. The Palestinian experience, in spite of 40 years of denial, is no exception. We thank you for this award, primarily, for helping to break this conspiracy of silence.

On 18 October 1988, Ibrahim al-Mtour was seen by other detainees at the Dhahriyyeh military detention center in the West Bank. Blood was flowing from his head and he was heard screaming: "I am Ibrahim al-Mtour. They are beating me to death. Detainees, witness!"

Three days later, Ibrahim was dead. "Suicide," the prison authorities declared. It is our collective duty to answer Ibrahim's call, to witness, to act, so that in the future not only will the Ibrahims of this world be heard and not have to die but so that they will not have to scream at all.

[Atlanta, Georgia; U.S.A.: 9 December 1989]

Chapter Six

The Military Judicial System

Introduction

The arrest, charge, and conviction of Palestinians for “security” offenses (which are nowhere defined, but include stone throwing and the violation of tax laws) has been an integral component of the Israeli authorities’ response to the uprising. Thousands of arrests have been made on the authority of existing military orders, and new security legislation has created legal responsibility for acts or omissions where none existed before. In the process, established minimum standards protecting the fundamental rights of a detainee from the time of arrest to the conclusion of trial continued to be systematically flouted by the Israeli authorities during 1989. Physical abuse during arrest, extended pre-trial detention, restricted access to legal counsel, frequent postponement of trial, and other practices remained widespread. In this chapter al-Haq documents these and other problems in the military judicial system in the Occupied Palestinian Territories, analyzes them in the context of international law, and considers Israeli claims to have improved the operation of the military judicial system in important respects.¹

The military judicial system, already stretched beyond capacity, continued to deteriorate during 1989 as additional thousands of Palestinians were arrested and detained.* Since the beginning of the uprising in December 1987, no efforts have been made to adapt it to the changing circumstances. To the contrary, the military judicial system has been actively deployed by the Israeli authorities as a weapon with which to combat the uprising.² The result has been the introduction of new measures which caused a significant deterioration in the protection of a detainee’s rights. In particular, there has been an official policy of increasingly higher sentences for uprising-related offenses such as stone throwing, and parents have been made liable for the acts of children below the age of criminal responsibility. It has become clear that the military judicial system is operating at the expense of the fundamental rights of the detainee. The net result is that any Palestinian charged with a security offense

*See further Chapter Five, “Torture and Death in Detention.”

can, irrespective of the circumstances of his case, his guilt or innocence, realistically expect to spend at least five months in jail.

This chapter examines the state of the military judicial system in the Occupied Territories since December 1987, with particular emphasis on the past year.³ It begins with a general overview of the military judicial system in the Occupied Territories and then investigates its shortcomings in further detail. One section examines how basic procedural safeguards have been systematically denied so that, by the time most Palestinian accused of security offenses get to trial, they have already lost any chance of the "fair and regular trial" prescribed by international humanitarian and human rights law. A second section considers the systematic violation of principles so fundamental to the concept of justice, such as "innocent until proven guilty" and "personal responsibility," that no credible system can operate without them. Evidence is provided that the military judicial system is not only guilty of illegal practices itself, but also sanctions the lawless conduct of officials when it is in fact legally bound to hold them accountable for their actions.[†]

This chapter is limited to a discussion of the military courts and related security legislation, although in practice the military judicial system is much wider in scope. Clearly, for example, it includes the quasi-judicial Objections Committee (a military appeals tribunal which has been given much of the jurisdiction previously retained by the local courts). The Israeli High Court of Justice must also be considered part of the military judicial system of the Occupied Territories but, while specific High Court judgments are noted, a full review of its impact on the military judicial system in the Occupied Territories is beyond the scope of this chapter. Finally, extra-judicial punishments, such as administrative detention, deportation, and house demolition, are separately addressed elsewhere in this report.

A. Overview of the Military Judicial System

1. Legislative and Court Structure

International law is the prevailing legislative norm against which the administration of law and the court system in an occupied territory should be judged. It mandates that the local law in force on the eve of occupation must remain in force except under extraordinary circumstances.⁴ Thus, Israel is not entitled to change the law of the Occupied Territories "unless absolutely prevented" from doing so for reasons of public order and safety, or for the security needs of the occupying power.⁵

Legislation

In the West Bank, security legislation is primarily concentrated in Military Order (M.O.) No. 378 of 1970 (as amended) and the 1945 British Defense (Emergency) Regulations. An unnumbered order similar to M.O. 378 exists in the Gaza Strip.

[†]See further Chapter Sixteen, "Investigations."

M.O. 378 created a number of security offenses, establishes procedural rules for the operation of military courts, and outlines the rights of a detainee suspected of committing a "security" offense from the time of arrest to the conclusion of trial. The Defense (Emergency) Regulations, which were revoked by the British Mandatory authorities on the eve of their departure in May 1948, but revived by the Israeli authorities in 1967, created other security offenses.⁶

Court Structure

Under international law, an occupier has the right to establish "non-political military courts" in order to try cases arising out of legislation introduced by the occupier.⁷

The military courts in the Occupied Territories were established in 1967 and are currently regulated by M.O. 378 (as amended) in the West Bank, and the corresponding order in the Gaza Strip. These courts have exclusive jurisdiction over all security offenses. Contrary to international law, the military courts also have concurrent jurisdiction with local criminal courts over all criminal offenses.⁸ The decision as to what constitutes security is taken by the military.⁹

Until 1989, defendants had no right to appeal a conviction by a military court. The only procedure available was to petition the Area Commander or a military commander. Since 1 April 1989, however, a military appeals court has been operating in the Occupied Territories.¹⁰ Established by M.O. 1265, only defendants convicted by a three-judge panel have a guaranteed right of appeal; other defendants (the vast majority) need official permission to do so. This can either be given in the body of the original judgment or by the president of the military appeals court.¹¹

Although the military appeals court was heralded as "one of the military legal apparatus's finest hours" by its newly-appointed President, Colonel Uri Shoham,¹² many defense lawyers have expressed skepticism about the efficacy of an appeals court within the existing military court system. As one lawyer explained:

The problems of the military courts are structural . . . e.g., isolation of detainees during interrogation, obtaining confessions in Hebrew under coercion and torture, almost total reliance on signed confessions, systematic acceptance of any soldier or settler's testimony and its preference over [that of] any number of Palestinian witnesses, as well as policies of refusal to release on bail, and the failure to bring defendants or prosecution witnesses to court. All of [these] are endemic problems in the system which are not open to correction or improvement by a military appeals court.¹³

Although it is too early to give a full assessment of the effect of the military appeals court on the military judicial system in the Occupied Territories, it is notable that not only the defense, but also the prosecution have the right to appeal a verdict.

2. The Military Judicial System During the Uprising

Official Policy

A number of official statements made during 1989 indicate that the military judicial system is serving a two-pronged function in Israel's strategy to suppress the uprising:

- (1) Military legislation and the military courts, acting on the basis of prevention through deterrence, are seen as a method to control the phenomenon of stone throwing;
- (2) The simultaneous detention of thousands of Palestinians for months at a time is seen as a method of reducing the level of unrest and frequency of demonstrations.

Thus, in mid-January 1989, the Israeli authorities repeated their assertion that stone throwing was the most serious problem confronting the military during the uprising and accounted for up to 90 percent of all "violent incidents" in the Occupied Territories.¹⁴ In response, a package of measures was introduced to deter Palestinians from participating in such incidents:

- (1) M.O. 1235, issued on 29 April 1988, requires parents to assume legal responsibility for the acts of their children under the age of 12, or else face fines or imprisonment (see further below).
- (2) M.O. 1260, issued on 6 November 1988, imposes third-party responsibility for security offenses. It requires tenants to remove political slogans found on the property occupied if such slogans were intended to influence public opinion and harmfully affect security and public order (see further below).
- (3) In mid-January 1989, a more severe sentencing policy was announced and immediately implemented (see further below).

Yet, on 14 July 1989, the former Area Commander of the West Bank, General 'Amram Mitzna', publicly admitted that measures of deterrence such as those described above had failed to restore Israeli control over the Palestinian population:

The penalty of imprisonment no longer deters ... Therefore, I do not want imprisonment as a punishment. Its only purpose lies in that when [Palestinians] are in prison they are not in the field.¹⁵

With respect to mass detention, Minister of Justice Dan Meridor announced during a 14 December 1989 meeting with Gaza Strip settlers that over 50,000 Palestinians had been arrested since the beginning of the uprising and that 13,000 of them were in detention as he was speaking.¹⁶ The military spokesperson gave the following figures to the Israeli Information Center for Human Rights in the Occupied Territories (B'Tselem) on 28 November 1989:¹⁷ approximately 17,000 Palestinians had been indicted on charges of disturbing the peace alone, of whom about 10,000 had been "accused [sic—convicted]" and 400 acquitted.¹⁸

The Increased Workload

The increase in the number of arrests has had inevitable repercussions on the functioning of the military judicial system. The military courts are expected to hear hundreds of cases every day. On 26 March 1989, for example, a register on the door of the Ramallah military court indicated that, on that day alone, one judge (Josef Shapira) was to hear 22 files for Mention, 9 requests for release on bail, and 82 files for

evidence. The list for the following day indicated that the same judge was expected to hear 67 files for Mention, 2 for bail, and 73 for evidence. In 14 cases, a star next to the file number indicated that the file of the Court could not be found.¹⁹

The complaints of defense lawyers about difficult working conditions and the pressures placed on their clients to plead guilty have met with official responses which range from denials that any problems exist under the circumstances to acknowledgements qualified by claims of satisfactory remedy. Any outstanding issues, according to these statements, are being adequately dealt with. On 3 January 1989, for example, the military spokesperson stated that the military courts function "properly and reasonably under current conditions."²⁰ Yet, two weeks later, military Judge Advocate-General Amnon Strashnow admitted that conditions in the military courts were difficult due, *inter alia*, to the large number of cases and the shortage of suitable premises.²¹ A more confident note was again being struck in August 1989; according to a statement issued by Mr. Strashnow's office, there had been "enormous improvements" in the military courts:

The number of prosecutors and judges have been doubled, the number of court cases held has increased, and the working conditions of attorneys have been improved beyond recognition.²²

In addition, the number of military courts has also increased. Permanently situated in Ramallah, Nablus, and Gaza City, these courts now also operate in Jenin, Toulkarem, and Hebron. In December 1989, the courts in both Jenin and Hebron began to operate on a daily basis, each with a court secretary. The Toulkarem court operates only on an "as-needed" basis.²³

However, although the number of military courts and personnel has been increased during the uprising, this has not addressed the most serious problems concerning their daily operation. Trials continue to be routinely postponed due to the failure of witnesses for the prosecution to appear, the failure to bring defendants to court, the failure of the judge to turn up, or the misplacement of court or prosecution files. Furthermore, defense lawyers, many of whom have had to hire assistants to cope with the drastically increased workload, are still not informed of the dates of hearings for extensions of detention, and locating their clients continues to be a time-consuming process often obstructed by late or false information given by the relevant authorities.

The Lawyers' Strike

In protest at the conditions under which they are forced to operate, lawyers in the Occupied Territories have on several occasions boycotted the military courts. In the Gaza Strip, lawyers also boycotted the civilian courts.²⁴ West Bank lawyers refused to appear in the military courts for a period of ten weeks, from early January to mid-March 1989. After listing 22 grievances,[†] the lawyers concluded that they found themselves "unable to serve [their] clients with professional honesty and integrity."²⁵

During the strike, the Arab Lawyers' Committee held a number of meetings with the relevant Israeli authorities, including the then-President of the military courts in the West Bank, the then-Legal Advisor to the military government in the West

[†]See further Appendix 6-A.

Bank, David Yahav, and the military Judge Advocate-General, Amnon Strashnow (who has overall responsibility for the operation of the military courts). At a meeting towards the end of February 1989, at which Amnon Strashnow, David Yahav, and a representative of the Military Police were present, Mr. Strashnow reportedly accepted the legitimacy of the lawyers' demands and undertook the following:

- (1) Lawyers' visits: a committee would be formed comprising three lawyers, the Legal Advisor, and a representative of the Military Police in order to solve problems concerning lawyers' visits at the Dhahiriyya, al-Far'a and Megiddo military detention centers;
- (2) Detainees' rights on arrest: Mr. Strashnow asked the Legal Advisor, David Yahav, to issue instructions to soldiers concerning the rights of a detainee on arrest;
- (3) Extension of detention hearings: the Legal Advisor was to ensure that judges and lawyers were always informed of the date of a hearing for the extension of detention;
- (4) Bail and sentencing: the lawyers' complaints concerning punishment policy and bail would be discussed at a meeting between Mr. Strashnow and the military prosecutors; there was a suggestion that bail might be granted for offenses less serious than stone throwing, such as the raising of Palestinian flags, erecting roadblocks, and the like.²⁶

The failure of the relevant authorities to make the promised improvements led to a second boycott of the military courts, this time for one month beginning on 20 July.⁵ The Arab Lawyers' Committee stated their position as follows:

[A]lthough more than four months have passed since we returned to work, we have found that matters have deteriorated rather than improved. Indeed, the situation worsened even though we maintained contacts with the authorities, and repeatedly warned of the consequences of continuing to ignore the deteriorating conditions in the military courts and detention facilities.²⁷

Whereas considerable resources have been expended in arresting, detaining, and convicting Palestinians, little has been done, despite repeated promises, to tackle the mayhem in the operation of the military courts. These issues are now examined in detail.

B. Denial of Essential Procedural Safeguards

The right to a fair and regular trial is central to international law. As the authoritative commentary to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War makes clear, a fair and regular trial encompasses the protection of a detainee's rights from the time of arrest to the conclusion of trial.²⁸ A trial can be neither fair nor regular if:

⁵See further Appendix 6-B.

- (1) The defendant signs a confession under duress, or in a language which he cannot understand;
- (2) The defendant is effectively prevented from challenging the admissibility of that confession;
- (3) The defendant has not had adequate access to legal counsel before trial;
- (4) The defendant is held in pre-trial detention for so long that it serves his interest to plead guilty and thereby obtain his immediate release on the basis of time already served, and becomes illogical for him to maintain his innocence and remain in custody until the completion of legal proceedings.

The sanctity of the right to a fair and regular trial is emphasized in the Fourth Geneva Convention, which in Article 147 defines the wilful deprivation thereof as a "grave breach."[†]

This section examines how essential procedural safeguards guaranteed to detainees by international law have been violated by the Israeli authorities to so great an extent that a detainee appearing before the military courts is, in practice, deprived of the right to a fair and regular trial.

1. Arrest Procedure

M.O. 378 permits any soldier to arrest any resident of the Occupied Territories suspected of any security offense without a warrant.

In the event of a suspect resisting arrest, international law permits law enforcement officials to use only such force as is "reasonably necessary" to effect the arrest.²⁹ Furthermore, a letter circulated in September 1989 by Israeli Chief of the General Staff Dan Shomron to soldiers in the field stated the following:

Force must not be used after the objective has been attained, for example, after a violent demonstration has been dispersed, or after a suspect has been detained and is not resisting . . .

Only reasonable force must be used. As much as possible, blows to the head or to other sensitive parts of the body should be avoided. Under no circumstances is force to be used to deliberately inflict injuries, like the breaking of bones.³⁰

In practice, however, both international law and General Shomron's instructions are systematically ignored. The arrest of Palestinians in the Occupied Territories is routinely accompanied by physical assault and other forms of ill-treatment or torture.

Ill-treatment on Arrest

In the Occupied Territories, Palestinians are routinely assaulted during arrest, when in transit to a detention facility, and then again upon arrival. This practice is widespread and consistent. For example, beatings are an integral component of arrests made after demonstrations. They occur under all circumstances, including arrests made at

[†]See further Chapter Nineteen, "The Role of the International Community."

a person's home, and irrespective of the age of the arrestee. Typically, these assaults are not in response to any resistance against arrest, nor do they appear to be aimed at deterring such resistance. Rather, they are a means of intimidating the population. The following examples documented by al-Haq are representative of the phenomenon of ill-treatment on arrest and detention.*

Al-Haq fieldworker Sha'wan Jabarin, arrested from his home on 10 October 1989, was severely beaten, punched, and otherwise ill-treated on the way to the police lock-up (al-Khashabiyya) in Hebron while handcuffed and blindfolded. When he attempted to file a complaint at al-Khashabiyya, he was told that further complaints would lead him to the interrogation area. Ten minutes later, Mr. Jabarin, again blindfolded and handcuffed, was forced into a bathroom and made to lie down on the floor. A soldier then repeatedly jumped on Mr. Jabarin's head, hands, and chest for a period of ten minutes. Mr. Jabarin was also burnt with lit cigarettes on his right ear and right arm. Bleeding profusely, he was later seen by a prison doctor who, refusing to take responsibility for Mr. Jabarin's health, insisted that the latter be sent to Hadassah-'Ein-Karem Hospital for tests.³¹ Marks from the beating were still clearly visible 16 days later.

The Embassy of the State of Israel in the United States issued a public statement concerning the torture of Mr. Jabarin on 25 October 1989. The statement asserted that only "reasonable force" was used to force Mr. Jabarin into a cell, because he was resisting arrest. The statement did not explain how burning Mr. Jabarin with lit cigarettes and repeatedly jumping on him while he was blindfolded and handcuffed constituted "reasonable force." Furthermore, several eyewitnesses have confirmed to al-Haq that Mr. Jabarin was not resisting arrest when taken from his home to the waiting vehicle. In addition, in a letter of 27 October 1989 to former United States President Jimmy Carter (who had intervened on Mr. Jabarin's behalf) Minister of Defense Yitzhak Rabin stated: "As to the beating of the man, it was only moderate enough to convince him to accept detention."[†]

In another example, on 1 May 1989, an al-Haq fieldworker witnessed the arrest and beating of 24-year-old 'Isa Ahmad 'Abd-al-Ghaffar in al-Dheisha Refugee Camp near Bethlehem. Mr. 'Abd-al-Ghaffar had been wanted for several months by the authorities, and was arrested in the camp after soldiers chased him. The al-Haq fieldworker saw about 30 soldiers surround Mr. 'Abd-al-Ghaffar and then kick and beat him with fists and gun-butts. When Mr. 'Abd-al-Ghaffar's family attempted to intervene, they were physically prevented from doing so by soldiers. After the assault he was taken away by the soldiers.³²

Even young children are beaten upon arrest. For example, 11-year-old Muhammad 'Aziz Ya'qoub 'Oda from al-Dheisha Refugee Camp was arrested on the afternoon of 25 March 1989, while playing at his home. His mother saw him being dragged by the hair and beaten with a gun-butt before being pushed inside a military jeep. She insisted on accompanying him, and when they arrived at the Bethlehem military compound she saw him being beaten again and head-butted by soldiers wearing helmets.³³

*See further Chapters One, "The Use of Force" and Five, "Torture and Death in Detention."

†See further Chapter Eighteen, "Human Rights Monitors."

Based on its extensive documentation of incidents such as the above, al-Haq is certain, and deeply concerned, that the instructions given to soldiers by their Chief of the General Staff, quoted above, are being systematically ignored. Moreover, these violations are apparently occurring with the approval of senior officers; despite the repeated use of levels of force which clearly fall outside the realm of "reasonable force" both during and immediately after arrest, soldiers are rarely brought to trial for offenses such as causing grievous bodily harm, criminal assault, or battery.[‡]

Mass Arrests

Arbitrary arrest or detention is clearly prohibited under international law.³⁴ Yet, in violation of this prohibition, mass arbitrary arrests continue to occur in the Occupied Territories. They are generally made in the immediate aftermath of a particular incident. Typically, all bystanders are arrested and detained for hours or days.

On 12 October 1989, for example, a "Captain Mufid" from the civil administration of the military government in Ramallah informed al-Haq Executive Director Mona Rishmawi that he had personally arrested ten people from the vicinity of the Lutheran Church that afternoon in order "to teach the people of Ramallah a lesson."[§] At least one of those arrested was forced to stand next to nationalist slogans painted on a wall outside his home, where photographs were taken. "Captain Mufid" explained to Ms. Rishmawi that he had ordered all residents of Ramallah to clear their walls of political graffiti, and that he hoped the arrest of these people would teach those who refused to obey his orders a lesson.³⁵

In another case, on 14 August 1989, after a "Molotov cocktail" was thrown at a tax patrol in the center of Ramallah, approximately 40 persons who happened to be in the vicinity of the incident were immediately arrested.[¶] The circumstances surrounding these and other incidents of mass, arbitrary arrest indicate that the purpose of such arrests is not to apprehend suspects but to punish the population who happened to be in the area at the time.

"Bingo Arrests"

Another form of arbitrary arrest which has occurred on a widespread basis throughout the Occupied Territories since the Spring of 1989 is the so-called "bingo arrest." Since about March 1989, al-Haq has been receiving numerous reports of persons who have been stopped, usually at military checkpoints, and arrested after their identity card number has been checked. Detention in these cases usually lasts several days; the detainee is not interrogated and released without charge. Numerous arrests are carried out in this fashion, and those affected are often been beaten during their detention. Such unwarranted and unjustifiable arrests are illegal.

[‡]See further Chapter Sixteen, "Investigations."

[§]Soldiers and military government officials routinely adopt codenames to prevent their identification.

[¶]A number of shops in the area were also closed for several weeks; see further Chapter Twelve, "Economic and Fiscal Sanctions."

It is not clear whether this pattern of repeated arrest and short-term detention was originally intended as a policy of deliberate harassment or whether it resulted from the authorities' failure to remove the names of people no longer wanted by the military from their computer. However, if someone is arrested once due to a mistake, the authorities must take responsibility from the moment they are aware of the mistake to ensure it does not happen again. Not doing so turns an initial mistake into a continuing policy of harassment.

Lack of Official Notification

According to Principle 10 of the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment:

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

This internationally recognized principle was affirmed in a recent case before the Israeli High Court of Justice, where it was held that:

It is proper to ensure ... that a detainee be given on his detention an accurate and detailed statement of the reasons for his arrest.³⁶

In practice, however, reasons for arrest are almost never given at the time of arrest. In January 1989, defense lawyers in the West Bank cited this as one of the reasons for their boycott of the military courts.³⁷

With regard to notification of charges, Article 71 of the Fourth Geneva Convention states:

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them.

In practice, however:

- (1) Charges against a detainee are routinely issued only several weeks after interrogation has ended;
- (2) Charge sheets usually contain imprecise details of the offense the detainee is alleged to have committed;
- (3) Charge sheets are written in Hebrew; they are usually not translated.

According to one defense lawyer, charges are frequently based only on information obtained during interrogation, when the detainee is routinely subjected to ill-treatment or torture.* In addition, detainees have reported being asked to "choose" from a list of offenses to which they will plead guilty; the lack of detail found in many charge sheets supports this allegation.³⁸

Failure to adhere to the procedural rules materially jeopardizes a detainee's chances of a fair and regular trial. If neither the defendant nor his lawyer are informed of the charges until six weeks after arrest, effective preparation of a defense is rendered impossible during this period. Additionally, it is difficult for a lawyer to challenge the status and legality of a detention if the basis for an arrest is not known.

*See further Chapter Five, "Torture and Death in Detention."

2. Extended Pre-trial Detention

Extension of Detention Hearings

Principle 11 of the UN Body of Principles states:

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

Furthermore, in a recent landmark case decided by the European Court of Human Rights concerning detention in Northern Ireland (where emergency legislation is also in force), the Court ruled that the period of four days and six hours after arrest which elapsed before one of the applicants was brought before a judge breached the requirement of the European Convention on Human Rights that all detainees "shall be brought promptly" before a judge or other judicial officer.³⁹

In stark contrast to these widely accepted international standards, under M.O. 378 a detainee may be (and usually is) held for up to 18 days before being brought before a judge, and may be held for up to six months and 18 days without charge.

The nature of the hearing itself is also regulated by international law. The Amnesty International commentary to the UN Body of Principles states that, in order for the requirements of Principle 11 to be fulfilled, "specific, detailed and individualised reasons for arrest" must be provided; the hearing must comprise a "genuine and searching review" involving the "active participation of the detainee or his counsel"; and the hearing must be "aimed at determining whether there is sufficient evidence of the specific allegations to justify arrest and detention."⁴⁰

In practice, hearings for extension of detention usually take place in the facility where the detainee is being held.[†] Lawyers are often not notified of the date in advance, even if they have informed the authorities beforehand, in writing, that they represent the defendant in question. In such cases, hearings take place without the presence of a lawyer. In any case, if the defendant has not confessed under interrogation before his hearing, he will not be allowed to communicate with his lawyer. As many as 150 or 200 such cases are heard by a single judge at Dhahiriyya Military Detention Center in the course of one day.

The police representative at the hearing must show the judge some evidence connecting the accused to the offense. This is often communicated to the judge in a handwritten note which is not put in the file nor shown to the defense lawyer, but retrieved by the interrogator. Almost invariably, the hearing results in detention being extended for a slightly shorter time than requested by the police, for example, 45 days instead of 60. Requests for extension of detention are almost never refused.

[†]Dhahiriyya Military Detention Center is the main initial holding facility for detainees from the southern region of the West Bank; until recently hearings were regularly held there on Tuesdays; currently, hearings are held on unspecified days, and defense lawyers are not informed of the date.

Moreover, the conduct of the hearing itself suggests that its purpose is to fulfil the technical requirement of bringing a detainee before a judge rather than to seriously investigate the basis and need for continued detention.

The hearing is sometimes used by the judge to obtain an admission of guilt from the detainee; if this happens, it is recorded as a judicial admission, and the protocol of the hearing is introduced as evidence during trial. It becomes extremely difficult to challenge in court thereafter. It should be remembered that, in many cases, no lawyer is present at these hearings.

For example, in the case of Muhammad 'Abdallah 'Abd-al-Rahman Salhiyya, the protocol of the hearing for his extension of detention records him as having made a particular statement during the hearing. Mr. Salhiyya subsequently informed his lawyer that, not only did he not make the statement recorded, but a number of statements that he had made at the hearing were omitted from the protocol. In these other statements, he had completely denied any knowledge of the person in whose killing he was alleged to have participated. His lawyer was not present at the hearing.⁴¹

Denial of Bail

Although international law does not guarantee the right to bail, it does affirm that detainees should be brought to trial "as rapidly as possible".⁴² Where it regularly takes four or six months for a defendant to be tried for stone throwing, the practice of refusing to release detainees on bail in the great majority of cases has the effect that innocent and guilty alike receive the same punishment. In these circumstances, the current policy of denial of bail is contrary to the "aims and objects" of the Fourth Geneva Convention and contravenes its spirit.⁴³ Furthermore, Principle 38 of the UN Body of Principles specifically states:

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Both before and during the uprising, bail has been routinely denied to Palestinian defendants accused of security offenses.⁴⁴ In a recent case before the Israeli High Court of Justice, it was held that, under Israeli law, stone throwing is a serious offense requiring the detention of suspects until the end of all legal proceedings.⁴⁵ This decision was repeatedly cited thereafter in the military courts as justification for refusing to grant release on bail.

Defense lawyers state that a detainee will only be released on bail if he has already been detained for a period approximating the sentence he is likely to receive for the offense if he pleads guilty, or where the offense is such that a prison sentence would not be requested by the prosecution in any case. Even where bail is granted, the court often demands payment of a sum which is more than the defendant's family can afford.⁴⁶ A cash payment is normally required to gain release of the defendant; if he is acquitted the bail money should, in theory, be returned to him.

In practice, however, once paid, bail money is virtually impossible to retrieve. If the defendant is subsequently found guilty, a fine is usually imposed which is equal to or greater than the bail money. If innocent, intervention with the authorities elicits

no response. For example, Saleh and Ahmad Idris from Hebron were both arrested on 27 April 1987 and subsequently charged with disturbing the peace.⁴⁷ They had been arrested during the Ramadan fast in 1987 while riding in a truck with a group of about ten people singing religious songs. Soldiers at a checkpoint stopped them, beat them, and accused them of singing nationalist songs. They were both released after payment of NIS 1,000 [\$US 500] each as bail. After a number of court sessions, the prosecution agreed that there was no basis to the charges against them, and the file was closed. Despite intervention by their lawyer, neither has received a refund of the bail money to date, a full two and a half years after their arrest.[†]

A policy of denying hearings for bail altogether began in the West Bank in September 1989. No official announcement was made to this effect; rather, lawyers learned of the new policy through an announcement posted on a noticeboard in the courts. Bail applications are now considered in private by a judge, with neither the defendant nor his lawyer present. The lawyer must submit a written application to the court stating the grounds for his request for bail. The request is supposed to be returned to the lawyer after two or three days with the judge's written approval or denial. In practice, however, requests are often not returned at all, and, when they are, are almost always denied.

Depriving the lawyer and defendant of the right to appear at a bail hearing is particularly serious because applications for *habeas corpus* are not heard by the military courts and bail hearings were in the past used by lawyers as an opportunity to see their clients and check on their safety.⁴⁸ The loss of this opportunity thus further erodes the security of the detainee.

3. Incommunicado Detention

A detainee is most vulnerable when denied any contact with the outside world during the initial period of detention, and particularly so if this isolation coincides with interrogation. In recent months al-Haq has received an increasing number of reports about torture during interrogation.[§] Consequently, the law and practice regulating this initial period of detention is particularly important.

Restrictions on Access to Legal Counsel

International law protects the fundamental right of a detainee to see his lawyer. Article 72 of the Fourth Geneva Convention requires that a detainee

be assisted by a qualified advocate or counsel of [his] own choice, who shall be able to visit [him] freely and shall enjoy the necessary facilities available for preparing the defense.⁴⁹

Principle 18 of the UN Body of Principles also states:

The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with

[†]See further Appendix 6-C.

[§]See further Chapter Five, "Torture and Death in Detention."

his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

Principle 15 of the UN Body of Principles emphasizes that, irrespective of the circumstances of a particular case, a delay such as that mentioned in Principle 18 may not be for "more than a matter of days."

In the Amnesty International commentary to the UN Body of Principles, the importance of this right is emphasized in the following terms:

Prompt and regular access to legal counsel is a right fundamental to the entire protective framework of the Body of Principles, because in many cases only a counsel who has contact with the detained or imprisoned person will be in a position to assess whether rights have been infringed and to seek remedial action.⁵⁰

M.O. 1220, issued in March 1988, makes provision for a detainee to be denied access to a lawyer for an initial 15-day period renewable up to a total of 90 days.⁵¹ In so doing, it violates the requirement under international law that detainees be afforded prompt access to legal counsel.[¶] Consultation with a lawyer after the expiration of 15 days, let alone 90 days, cannot under any circumstances be considered prompt access.

In practice, even those limited rights safeguarded by M.O. 1220 are regularly violated. Indeed, a full year after M.O. 1220 was issued, the officials responsible for giving lawyers access to their clients appeared to not even be aware of its existence. On 15 March 1989, for example, Advocate Muhammad Na'amna attempted to see a client, 'Imad al-Suluh, who had been arrested on 20 February 1989 and was being held in Ramallah Prison. Advocate Na'amna was denied permission to do so. He explained that the prison authorities were obliged to let him see his client unless they presented him with a written order forbidding him from doing so. The officer in charge of registering prisoners left, and returned after a few minutes; he told Advocate Na'amna that although the latter's understanding of the law was correct, he would still not be permitted to see his client, who was still under interrogation. Advocate Na'amna was told to return the next day, which he did. Only then was he permitted to see his client.

This incident is not atypical; those in command are either simply unaware of their duties under military orders, or, if actually aware, refuse to abide by them.⁵² Lawyers are obliged to fight for their rights and those of their clients at all times, even where those rights are guaranteed in military orders.

As a general rule, lawyers are only permitted to see their clients after interrogation has been completed. In practice, this usually means 15–30 days after arrest. Since most complaints of ill-treatment and torture received by al-Haq indicate that such abuse occurs during interrogation, the denial of the right to see a lawyer until the expiration of interrogation seriously prejudices the health and safety of the defendant.

At times, lawyers have been denied access to certain detention facilities altogether. For example, lawyers were not allowed to visit the Ansar IV Military Detention Center

[¶]See further Appendix 6-D.

in Khan Younes from the time it was opened in early 1989 until the last week of November 1989.⁵³ Lawyers are also regularly denied access to detainees held in the tents of Ramallah and Nablus prisons.

In Ramallah and Hebron prisons, lawyers are forbidden from visiting their clients on days when relatives or the ICRC (International Committee of the Red Cross) are also visiting. In Ramallah Prison this means lawyers cannot visit on Wednesdays or Thursdays because of family visits, as well as Fridays and Saturdays when no visits whatsoever are permitted. If a defendant is detained in a facility inside Israel (such as Megiddo Military Detention Center), a lawyer must obtain written permission to visit him, a cumbersome procedure which can take days.⁵⁴ In Dhahiriyya Military Detention Center, where lawyers were previously able to visit detainees without an appointment on Sundays, Wednesdays, and Thursdays, it has since November 1989 been necessary to make an appointment. Lawyers are given a visitation date ranging from one week to 20 days after the request is made.⁵⁵

One lawyer described visits to his clients as "a journey of humiliation" for both his client and himself.⁵⁶ When visits do take place, lawyers are usually compelled to wait for an hour or more before gaining entry to the prison, and then again, sometimes for several hours, until the clients they have requested to see are brought. Prisoners are often brought in groups of 10–15, and lawyers are given a very limited amount of time, sometimes no more than 15–20 minutes, to see all of them.

Al-Haq Executive Director Advocate Mona Rishmawi describes one such visit to Dhahiriyya Military Detention Center on 5 October 1989. After the lawyers had waited about one hour at the gate, they were allowed into the compound, where they had to wait another two hours before the detainees they had requested to see were brought in groups. Lawyers were given 20 minutes to talk to their clients. Some had six or seven brought to them, while others had none. There was not enough space for all the detainees and lawyers to sit, and no time to deal with each case separately.⁵⁷

At Ansar III (Ketziot) Military Detention Center in the Negev desert, conditions for lawyers' visits have significantly deteriorated. These visits have always had a particular importance because, apart from ICRC delegates, lawyers are the detainee's only medium of contact with the outside world. Family visits have not been allowed under regular visiting procedures since Ansar III was established in March 1988.*

Lawyers visiting Ansar III now have their cars thoroughly searched before they enter the area; this can include the removal of all hub caps. The prison commander, David Tsemah, allows only 90–120 detainees to be visited each day. Each lawyer is only permitted one visit a month, during which he is allowed to see, in theory, only 18 clients. In practice, however, it is very rare that lawyers see every client. Lawyers from the Gaza Strip are only permitted to visit before 1:00 p.m., and West Bank lawyers have the afternoon session, from 3:00–6:00 p.m. Lawyers are now separated from their clients by two wire-mesh fences about 60–70cm apart. The area is very noisy because there are four or five lawyers trying to see their clients at the same time. Problems of prolonged delays and detainees not being brought, which characterize lawyers' visits to other detention centers, occur in Ansar III as well.⁵⁸

*See further Chapter Seven, "Administrative Detention."

The conditions are such that a lawyer simply does not have adequate time and facilities to prepare the defense of his client.

Restrictions on Access to Relatives

International law requires that a detained person be able to inform his family of the place of his detention promptly after arrest.⁵⁹ Israeli military orders stipulate that, in "ordinary cases," the next of kin shall be informed "without delay" of a person's arrest and his whereabouts. However, in cases where the detainee is suspected of committing a security offense, this information may be delayed for up to 12 days.⁶⁰

In practice, notification of families of the whereabouts of an arrested person continues to be a major problem. Locating a detainee is still a haphazard affair. As one Palestinian lawyer explained:

The primary source of information concerning the location of detainees continues to be word-of-mouth from people released, or from those who saw someone on a visit and send word that so-and-so is in prison.⁶¹

The primary method of locating detainees is by contacting detention facilities (and sometimes receiving false information) or the office of the Legal Advisor to the military government. According to defense lawyers, it takes, on average, between one and seven days to locate a detainee. Officials refuse to answer inquiries unless the detainee's identity card number is provided; since identity cards are in the possession of the detainee, family members may not know the number, thus further prolonging the location of detainees. The problem is most acute in military detention centers and temporary detention facilities.

The Association for Civil Rights in Israel recently petitioned the Israeli High Court of Justice to compel the military to notify families of the arrest of a relative and the place of detention.⁶² The application was dismissed because the military announced that it had issued instructions for all detainees to be issued with postcards to communicate with their families, and that daily lists of new arrivals in detention facilities would be published by the civil administration.[†] However, in the High Court's ruling, issued on 21 November 1989, it warned of the possibility that the new procedures might not be effective.⁶³ Both defense lawyers and relatives continue to complain that the problems have not been resolved since this judgment.

Visits by the ICRC

Under the terms of the bilateral agreement between the ICRC and the Government of Israel, the Israeli authorities are committed to notify the ICRC of a detainee's whereabouts within 12 days of arrest, and to permit an ICRC delegate to visit a detainee within 14 days of arrest. At the beginning of the uprising, serious problems in the implementation of this agreement led to a rare public protest by the ICRC.⁶⁴ Since then, several improvements have been made, although other problems persist.

Currently, the major problem is that the ICRC is denied access to certain types of facilities, notably police lock-ups and other temporary detention facilities. At the

[†]See further Appendix 6-E.

same time, much of the worst abuse reported to al-Haq occurs in such centers. For example, the al-Khashabiya lock-up in Hebron, where al-Haq fieldworker Sha'wan Jabarin was severely tortured, is one facility where the ICRC has no right of access. In another highly-publicized case, Khaled Kamel al-Sheikh 'Ali was killed by blows to the abdominal area on 19 December 1989 while in the interrogation wing of Gaza Central Prison. There too, ICRC delegates are denied access.[†] Abuse in places where there is no independent supervision is thus a practical reality and may well be encouraged precisely by the lack of outside monitoring.

4. Court Hearings

International law provides a number of safeguards protecting the rights of a defendant during a court hearing. These are set forth in Article 72 of the Fourth Geneva Convention and further detailed in Article 14 of the International Covenant on Civil and Political Rights. Yet, despite official claims that the military court system is now operating reasonably and that many of the problems described below have been redressed,⁶⁵ the legal safeguards continue to be all but ignored by the military judicial system in the Occupied Territories.

“Quick Trials”

Both before and during the uprising, the authorities have periodically held so-called “quick trials”. In such trials, a charge sheet is drawn up within 24–48 hours of arrest and the defendant is usually brought to court within three to four days. There is usually no interrogation and hence no confession. The prosecution rests on the eye-witness testimony of a soldier who states that he saw the defendant commit a certain offense, such as throwing stones, at a particular time and place.⁶⁶ The defendant usually has no opportunity to contact relatives or his lawyer beforehand and arrives to court unrepresented. He may then choose a lawyer who happens to be present in court, or, alternatively, go unrepresented.

The majority of “quick trials” involve stone throwing, an offense punishable with up to 20 years imprisonment if the stone was thrown at a moving vehicle with intent to injure.⁶⁷ The potential severity of the sentence, and the fact that, in practice, most convictions for stone throwing result in sentences of between five and 24 months (see below), make the need for a lawyer to have adequate time and facilities to prepare the defense all the more important.

Trials on the Evidence

When a hearing on the evidence is scheduled to take place, there is a high probability that the hearing will actually be postponed. This can be due to a number of reasons, including that the defendant has not been brought to court, that the prosecution witness (usually a reserve soldier) has not turned up, or that the file of the court or the prosecution has been lost. Sometimes even the judge does not appear. On occasions,

[†]See further Chapter Five, “Torture and Death in Detention” and Appendix 16-A.

defense lawyers are not present because they have not been previously informed of the hearing. On other occasions defense lawyers will request a postponement because they have had insufficient time to study the file or charge sheet. This request is almost always granted unless the prosecution witness is present. Each postponement is for an average of one to two months; if a defendant pleads not guilty throughout his trial he can expect as many as five to ten postponements.

The great majority of trials are based on confessions, either from the accused himself or from another person implicating the accused. Confessions are written in Hebrew by a police officer, and detainees are asked to sign them, even if, like most Palestinians, they do not understand it. If a defendant wishes to retract a confession (for example, on the grounds that it was made under duress), a "mini-trial" must be held to challenge its admissibility. Defense lawyers state that they only succeed in getting a confession declared inadmissible in exceptional cases.⁶⁸ If a full trial does take place, the testimony of soldiers is routinely preferred over that of Palestinian witnesses, including the defendant. All indications are that defense witnesses are simply not taken seriously by the military courts.⁶⁹

Throughout the proceedings, lawyers attempt to arrange deals with the prosecution to ensure lighter sentences for their clients. This occurs inside the courtroom even while cases are being heard, and contributes to the atmosphere of mayhem not found in the regular courts. Armed soldiers frequently order members of the defendants' families to keep quiet, and themselves stroll in and out of the courtroom at will. The military prosecutor is in uniform, and usually armed.⁷⁰ This atmosphere reinforces the impression that military courts are not independent, judicial arenas in which justice is conducted, but showrooms where a formula, devoid of substantive content, is paraded to impress observers.

Interpretation for the defendant (and the lawyer if he does not speak Hebrew) is provided, but is rough and lacking in detail. As Advocate Raji Sourani from Gaza City explained:

If you have spent time and effort making a speech to the judge trying to articulate your client's case in the most persuasive fashion, it is wholly unacceptable to have your efforts rendered into a brief and crude summary in translation by a young soldier.⁷¹

Advocate Sourani summed up the daily operation of the military courts as follows: "The Jabaliya vegetable market is more organized."⁷²

Sentencing

The sentencing of Palestinians convicted of security offenses has become markedly more severe in 1989. Furthermore, the establishment of the military appeals court on 1 April 1989 does not appear to have affected this trend.

In mid-January 1989, it was announced that the Ministry of Defense was promoting a new, more severe punishment policy "in the hope of quelling the disturbances."⁷³ Its effects have been noticeable. Before the uprising, stone throwing would typically receive a sentence of two to three months. Since January 1989, sentences of 12-18

months plus fines of NIS 1,000–1,500 (\$US 500–750) have frequently been imposed for stone throwing.

For example, 16-year-old Hani Suleiman from Gaza City received a one-year actual and four-year suspended sentence from the Gaza military court on 23 January 1989. Judge David Frankel was reported to have stated at the trial that, since stone throwing is intended to injure and even kill people, he did “not accept the claim that a stone-thrower should get a lighter punishment than someone who uses live arms.”⁷⁴

Military court judges have also played a part in the increase in excessive sentencing. Because plea-bargaining is a routine procedure in the courts, judges are frequently asked to accept a bargain struck between defense and prosecution lawyers. In recent months, however, there has been an increasing tendency for judges to refuse to honour such bargains and impose their own, markedly higher, sentence instead.

A comparative review of sentencing ranges before and during the uprising for some of the most common offenses in the military courts is instructive.⁷⁵

Offense	1987 Sentence	1989 Sentence
Stone-throwing	2–3 months	5–24 months, plus suspended sentence, and fine of NIS 600–1500
Molotov cocktail (without causing injury)	2.5–3 years	4–7 years
Molotov cocktail (causing injury)	5–6 years	7–10 years
Membership of popular committee	(Offense created in August 1988)	1 year

Although it is still too early to judge the effect of the military appeals court, one lawyer expressed his fears thus:

The single most obvious effect of the military appeals court [has been] to set the standard for punishment at a higher level . . . This takes care of the arbitrary fluctuations in punishment, but, unfortunately, it will raise the level of punishment, which is what happened in Israel and has already happened in the West Bank.⁷⁶

Most West Bank lawyers initially boycotted the operation of the appeals court because of the concerns outlined above.⁷⁷ Of the cases which have been appealed in the West Bank to date, an estimated 70 percent of appeals have been filed by the prosecution.⁷⁸

Harsh sentencing of Palestinians is highlighted by the leniency of sentences given to soldiers convicted of “uprising-related” offenses. To date, the highest sentence imposed on any soldier for an offense resulting in the death or injury of a Palestinian during the uprising has been two years for the May 1988 shooting death of two Palestinians in Bani Na'im. The soldier was convicted of causing death in aggravated

circumstances and is currently appealing the sentence.⁷⁹ Another soldier received an 18-month sentence for shooting dead a Palestinian from point-blank range after the victim had fallen to the ground.⁸⁰ This sentence is equivalent to many which have been imposed on Palestinians for stone throwing without causing injury. Most soldiers are not even brought to trial.[§]

5. Grave Breaches

International law contains basic safeguards designed to protect the rights of a detainee to a "fair and regular trial" from the moment of arrest to the conclusion of trial. Such safeguards are particularly important if the detaining authority is an agency of a military government controlling an occupied population by armed force. Israeli officials in the West Bank and Gaza Strip, it must be emphasized, are not law enforcement officials operating within the mandate of a government elected by its citizens. On the contrary, the Israeli military government controls the Palestinian population of the Occupied Territories by armed force, and its fundamental interest is to maintain control. Consequently, the potential risk to a Palestinian detainee when in the hands of Israeli law enforcement officials is self-evident. In practice these safeguards are systematically violated, rendering the chances of a fair and regular trial in the military court impossible.

Beatings on arrest and under interrogation create an atmosphere of repression and intimidation calculated to deter and to extract obedience and confessions. Obstruction of access to the outside world in the initial stages of detention continues the process of intimidation, and emphasizes the powerlessness of the detainee once arrested. The trials themselves fall below acceptable standards, in particular because they almost never take into account the violations of a detainee's pre-trial rights. In so doing, they effectively sanction such violations and lend support to the "rule of lawlessness."

Article 147 of the Fourth Geneva Convention defines the "wilful deprivation" of a fair and regular trial as a grave breach of the Convention. In al-Haq's view, the military courts, in failing to correct or take account of the abuses of a detainee's rights before trial, and the Israeli authorities, in failing to resolve the most pressing procedural problems from the time of arrest to the conclusion of trial over the past two years, are engaging in the wilful deprivation of the defendant's right to a fair and regular trial in the military courts. The Government of Israel must therefore be held accountable for being in grave breach of its obligations under international law.[¶]

C. Fundamental Principles of Justice

A system of justice is built upon a number of fundamental precepts, and its procedures and practices must reflect such precepts if it is to be credible. International law supports this thesis; the Fourth Geneva Convention states that military courts

[§]See further Chapter Sixteen, "Investigations."

[¶]See further Chapter Nineteen, "The Role of the International Community."

established by the occupier can only apply laws which are in accordance with general principles of law.⁸¹ In the military judicial system in the Occupied Territories, a number of these fundamental precepts have been canceled through the implementation of military legislation and the daily practices of the relevant authorities.

Above all, the requirement of "due process," which underlies all modern conceptions of justice,⁸² has been consistently ignored throughout the Israeli occupation. In particular, a large number of matters which previously came within the jurisdiction of local civilian courts have been removed from the judicial process, and are now dealt with by an appointed Objections Committee which does not adhere to the rules of evidence and procedure applied by the local courts. The Objections Committee is currently the only forum available for Palestinians to challenge administrative decisions by the military such as land confiscation, deportation, and tax matters. It should be noted that many of the most serious human rights violations carried out as a matter of policy, such as land confiscation, deportation, house demolition and administrative detention, are implemented under administrative rather than judicial authority.

The procedural safeguards denied to Palestinians arrested in the Occupied Territories described above amount to a wilful deprivation of the right to a fair and regular trial. Many of the issues discussed were issues of due process and need not be repeated. However, it is important to again note three particular issues which, over the past two years, have further eroded the right to due process:

- (1) M.O. 1263, which renders certain offenses punishable by administrative rather than judicial fines;*
- (2) The right of a defendant to appear before a judge during an application for bail has been removed;
- (3) "Quick trials" have deprived hundreds of defendants of the right to due process.

This section examines the law and practice relating to two other fundamental principles of justice in further detail: "Innocent until proven guilty" and "Personal responsibility."

1. Innocent Until Proven Guilty⁸³

According to official Israeli figures, at least 95 percent of all Palestinians brought to trial in the military courts in the Occupied Territories are convicted.⁸⁴ Defense lawyers put the true figure at 97–99 percent. Almost all of these convictions appear to be based on confessions. This raises serious questions as to why so few people arrested and charged with an offense are acquitted.

Yaron Rabinowitz, formerly Chief Military Prosecutor in the Gaza Strip and a Jerusalem lawyer who has also defended residents of the Occupied Territories, made the following comment:

*See further Chapter Twelve, "Economic and Fiscal Sanctions."

As someone who is very familiar with both sides of the story, as a prosecutor and a lawyer, I find difficulty remembering one person accused of terrorist activity [sic] who was acquitted. There are almost no such instances. Every person who is accused is found guilty. Sometimes on the basis of criteria which no Israeli court of law would accept. In 99% of the cases the accused come to court with a signed confession of guilt. That's suspicious. What's more, it's disturbing.⁸⁵

Al-Haq has identified four systematic practices during detention and trial which illustrate how pressure is put on defendants to plead guilty:

- (1) Ill-treatment and torture under interrogation;
- (2) Extended pre-trial detention;
- (3) Pressure by judges on defendants to plead guilty;
- (4) The routine preference by judges of the testimony of soldiers over that of Palestinians.

(1) is dealt with at length elsewhere in this report and (4) has been discussed above.[†] This section will therefore deal only with the other two points: extended pre-trial detention, and pressure by judges on defendants to plead guilty.

Defendants are regularly detained until the end of all legal proceedings largely as a result of two factors: the ease with which extensions of detention are granted when requested, and the official policy of refusal to release on bail.

Because bail is routinely denied, the postponements of court hearings, a regular feature of military court trials in the Occupied Territories, increase pressure on defendants to plead guilty in order to secure an early release. Postponements are usually for between one and two months, and since the defendant is kept in detention in the interim, there is a strong incentive to plead guilty and receive sentence straight away. If the defendant has already been detained for a period close to the expected sentence, the pressure is even greater. In addition, the physical conditions in which pre-trial detainees are held are considerably more severe than those for convicted prisoners, which contributes to the pressure.[‡]

The phenomenon of extended pre-trial detention is widespread. In May 1989, after visiting Toulkarem detention center, Member of Knesset (parliament) Dedi Zucker reportedly wrote Defense Minister Rabin complaining that half the Palestinians in that facility had been held for over six months pending trial, while some of the detainees had been held for "intolerable" periods of up to 13 months pending completion of their trial.⁸⁶

The Arab Lawyers Committee explained the consequences for detainees in the Press Release announcing their first boycott of the military courts:

It does not pay to plead "not guilty" before a military court. If a lawyer wants the evidence in a case to be heard, the majority of prosecution witnesses never appear at the appointed time. These witnesses are generally policemen, or

[†] See further Chapter Five, "Torture and Death in Detention," and Appendices 5-B, 5-C, 5-D, 5-E, and 6-A.

[‡] See further Appendix 5-A.

soldiers, and their failure to appear will routinely result in the postponement of the trial at a time when the defendant is still in prison.

Citing these postponements, the policy of refusal to release a detainee on bail, and the harsh sentence defendants who plead not guilty eventually receive, the statement includes:

This leads to a situation where pleading not guilty is neither useful nor preferable . . . We, as lawyers, are left feeling that the entire judicial process is deliberately intended to put pressure on an individual to confess, and enter a "guilty" plea, and that the whole structure operates not in order to achieve justice, but that it operates inefficiently, as an apparatus to end trials and close files.⁸⁷

Judges pressure defendants into pleading guilty by stating that, if they do so, they will receive a lesser sentence than if found guilty after a full trial.⁸⁸ Muhammad Jamna, a Jerusalem lawyer, explained that virtually every client he represents is subjected to such pressure before the trial or hearing is complete.⁸⁹ It is also common practice for a sentence to be increased in proportion to the number of hearings in the case. If, for example, a defendant pleads not guilty at the first hearing, but decides to plead guilty at the second, an extra month will usually be added to the sentence he would have received had he pleaded guilty at the first hearing.

In sum, because of the delays which now characterize the operation of the military courts, for many defendants a guilty plea will result in an earlier release than would a maintenance of their innocence until the end of their trial. Thus, even detainees who do not confess under interrogation almost always do so after having been detained for several months.

Personal Responsibility

Throughout the occupation, the principle of personal responsibility has been persistently flouted by the use of collective punishments. For example, prolonged curfews, school closures, house demolitions, and collective travel restrictions have all been routinely used to punish an entire community for the alleged or merely suspected acts of an individual(s).

During the uprising the use of collective punishments has substantially increased, and is discussed in more detail elsewhere in this report. This section examines how the principle of personal responsibility has been eroded within the military judicial system itself.

Since the beginning of the uprising the Israeli authorities have introduced new military orders and practices designed to impose legal responsibility for the acts and omissions of third parties. This is in clear contravention of the fundamental principle of personal responsibility enshrined in Article 33 of the Fourth Geneva Convention: "No protected person may be punished for an offense he or she has not personally committed."⁹⁰ Similarly, according to Article 50 of the 1907 Hague Regulations:

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

Responsibility of Parents for the Acts of Minors

M.O. 1235, issued on 29 April 1988, and amended by M.O.'s 1256 and 1275, imposes legal responsibility on parents for the acts of their children who are below the age of criminal responsibility (12 years in the Occupied Territories). Under this law, if the Legal Advisor or any military prosecutor has *prima facie* evidence that a child committed an offense which threatened security, he can order the parent to pay a sum of money up to and including the maximum fine payable for commission of that offense as a guarantee of his child's good behaviour. If, at the end of the year, the child has not re-offended, the parent may ask for his money back. If the child commits a further offense within one year the parent forfeits the money, unless he can prove before a military court that he did everything possible to prevent the child from re-offending. M.O. 1256 gave the parent the right to appeal this decision before a one-judge military court. Five lawyers petitioned the High Court of Justice in August 1988 questioning the legality of this new order under international law.⁹¹ The case has not yet been concluded.

The use of a law to impose legal responsibility on (a) someone other than the person who committed an offense, and (b) for someone who in any case is too young to bear legal responsibility, is unacceptable. This order has nonetheless been used extensively in both the West Bank and Gaza Strip.⁹² The following cases illustrate the ways in which this order has been used, often causing severe financial hardship to families.

In a number of cases, either the child or the parent has been imprisoned until the sum of money demanded is paid. Ibtisam Isma'il 'Abd-al-Fattah 'Arafah, a housewife from 'Askar Refugee Camp in Nablus, had to pay NIS 1,500 [\$US 750] after her son, Zuheir, aged 14, was arrested and accused of throwing stones at soldiers. Zuhair was detained for several days while his parents tried to raise the money.⁹³

In the case of Maher 'Abdallah al-Qassas, a 12-year-old boy from al-Dheisha Refugee Camp, who was arrested and accused of throwing stones on 19 August 1988, his mother Rahma was detained from 20–22 August in the Moscobiyya Detention Center in Jerusalem until her family paid the NIS 500 demanded under M.O. 1235.⁹⁴

As yet, al-Haq is unaware of any case where the money paid has been recovered at the end of the one-year period. In the case of Maher 'Abdallah al-Qassas, mentioned above, his mother went to the civil administration in Bethlehem at the expiration of one year asking for her money to be returned. Each time she was delayed and told to return within a few days. An undated letter was sent by the military governor's office informing her that he had instructed the civil administration to return the money. To date the money has not been returned. Her son, Maher, has been accused of throwing stones again, and this time payment of NIS 1,500 has been demanded. Maher denies the charge, and says he has eyewitnesses to prove he was elsewhere at the time.

In another case known to al-Haq, a woman from al-Dheisha Refugee Camp was arrested in place of her two children after she refused to pay a guarantee for them. She was held from 14–22 September 1988, until her lawyer, Usama Halabi, went to the High Court of Justice asking for *habeas corpus*. Later that day, 22 September 1988, she was taken to the military court in Ramallah and charged with refusing to

pay the sum of money demanded. Her lawyer challenged this again in the High Court. On 12 March 1989, he received a letter from the Legal Advisor's office informing him that the file had been closed.⁹⁵

Responsibility for Graffiti on Walls

M.O. 1260 was introduced in November 1988, making it obligatory for tenants to remove any slogans or other political graffiti from their land irrespective of who wrote it. A few examples illustrate how this order has been used.

In the above-mentioned case concerning the arrest of ten people in Ramallah at approximately 4.30 p.m. on 12 October 1989 by a "Captain Mufid," Mr. Ishaq al-Sakakini, in his late fifties, was one of those arrested. When al-Haq Executive Director Mona Rishmawi spoke to "Captain Mufid" that evening, he informed her that he had made the arrests because he wanted "to teach the people of Ramallah a lesson."⁹⁶ Ms. Rishmawi later pointed out to the Legal Advisor of the military government that it was unacceptable to hold people collectively accountable for offenses which it is not even alleged they are responsible for.

Judges have adopted varying approaches to this law. Some take the view that no "criminal intent" is required, and others hold that there must be some *mens rea* ("state of mind"). The following is one of those rare cases ending in an acquittal; charges were eventually dropped because it could not be shown that the defendants had any "criminal intent":

Hani Ilyas Kheer of Beit Sahour was arrested from his house, along with two others, in the early morning of 2 May 1989. Soldiers forced them to stand next to the wall on which nationalist slogans commemorating Labor Day were painted. The men offered to paint over the slogans, but the soldiers refused the offer and instead took photographs of them standing next to the wall. Their lawyer eventually succeeded in convincing the prosecution in the Ramallah military court to agree to an acquittal, arguing that it could not be proved that they had known the slogans were present on the wall, and that they had even offered to paint over them. Charges were dropped on the basis that no criminal intent could be shown as it could not be proved that the defendants were even aware of the graffiti on their walls at the time of their arrest, and they had, in any case, offered to paint over them. The prosecution also stated that the four days the men had already spent in detention were sufficient.⁹⁷

M.O. 1260 has thus been used in the Occupied Territories as a means of placing criminal responsibility on whomever represents the most convenient target for the soldier in the street.

"Hostage-taking"

The principle of personal responsibility has been further disregarded by the practice of "hostage-taking." When soldiers enter a house to arrest a fugitive, it is commonplace for another member of the family, usually the father or the brother, to be arrested as an incentive to the fugitive to give himself up. This practice is widespread and continuing. The practical, if not legal, effect of this is to again impose legal responsibility on third

parties. The following representative example illustrates the pattern.

Muhammad Ibrahim Yasin al-Masri, 58, from 'Askar Refugee Camp in Nablus, was arrested on 14 August 1989. The arrest occurred at around midnight, when a number of soldiers headed by intelligence officer "Abou-Shawqi" came to his home asking for his son Qasem. When Muhammad explained that he did not know where Qasem was, "Abou-Shawqi" told Muhammad al-Masri that they would arrest him and detain him until his son surrendered. Muhammad's nephew, Ziyad Muhammad Ahmad Farwani, was also arrested that night, for the same purpose.⁹⁸

Taxation

Israeli amendments to Jordanian tax law have imposed legal responsibility on residents for the non-payment of taxes by relatives, associates, and friends.[§]

In summary, denial of the most basic principles of justice to Palestinians in the Occupied Territories has been a consistent feature of the Israeli authorities' response to the uprising. The effect is to erode confidence in the integrity of the whole military judicial system, and to put into question the basic purpose for which the law is used: to render true justice as claimed by numerous official statements, or, as conclusively demonstrated by the facts, simply to detain and/or convict Palestinians as the need arises.

Summary

This chapter examined how the basic rights of Palestinians in the Occupied Territories charged with security offenses are being consistently violated. In grave breach of the Fourth Geneva Convention, rights of the detainee which are integral to a fair and regular trial are systematically ignored.

Further, even fundamental principles of justice are routinely flouted, both through the use of illegal military orders and the daily practices of law enforcement officials. In particular, Palestinians are not considered innocent until proven guilty; on the contrary, unless they can prove their innocence beyond all reasonable doubt, they will almost certainly be convicted.

In light of this, it can only be concluded that the object of the military judicial system as it currently functions is not to render justice, but to lend an aura of respectability to what is no more than another military effort to suppress the uprising. Law and the legal system have thus been used to promote lawlessness rather than the rule of law in the administration of the Occupied Territories during the uprising.

[§] See further Chapter Twelve, "Economic and Fiscal Sanctions."

Endnotes to Chapter Six

1. The relevant international standards concerning the administration of justice in occupied territory primarily comprise the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land (the "Hague Regulations") and the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Reference is also made to other international law instruments, including the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment and the 1966 United Nations International Covenant on Civil and Political Rights.
2. In the meantime, debate in Israel has focused on means to make the military judicial system more effective in pursuing its assigned role rather than the legality of the various methods employed. See for example, Dvorah Getzler, "Meridor Scores Those who see Legal Process as Stumbling-block," *Jerusalem Post*, 19 July 1989; Asher Wallfish, "Shahal Resists Rabin Call for Harsher Measures in Areas," *Jerusalem Post*, 2 July 1989.
3. This chapter was drafted before the publication of a report on the military courts by B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), and only several references to it have been made. On most issues, however, the B'Tselem report reaches conclusions as disturbing as those reached by al-Haq. (B'Tselem, *The Military Judicial System in the West Bank* [Jerusalem: B'Tselem, 1989]).
4. The law in force on the eve of occupation is in this case 1967 Jordanian law in the West Bank and Palestinian law in the Gaza Strip. Articles 64-76 of the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War set out in some detail the rights and duties of an occupier concerning the administration of justice. According to Article 64 of the Convention:

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

5. Article 43, Hague Regulations; Article 64, Fourth Geneva Convention. According to Article 65 of the Fourth Geneva Convention:

The penal provisions enacted by an Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. *The effect of these penal provisions shall not be retroactive.* [emphasis added.]

6. Martha Moffett, *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories* (Ramallah: Al-Haq, 1989), p. 11.
7. Article 66 of the Fourth Geneva Convention states:

In case of a breach of the penal provisions promulgated by it in virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted, non-political courts, on condition that the said courts sit in the occupied country ...

8. *Ibid.* Thus, for example, failure to submit regular returns to the tax authorities is an offense tried before military courts.
9. See for example Raja Shehadeh, *Occupier's Law: Israel and the West Bank* (Washington D.C.: Institute of Palestine Studies, 1988), p. 85.

10. "High Court Recommends Appeal of Rulings by IDF Tribunals in Areas," *Jerusalem Post*, 8 February 1988. In 1985, Advocate Darwish Naser petitioned the High Court of Justice seeking an order compelling the Minister of Defense to establish an appeals court. The decision of the High Court was not given until 1988. It recommended that there be appeals of hearings by military tribunals in the Occupied Territories, although it found that there were no grounds to order the establishment of such a court.
11. Article 10, Military Order 1265. Issued on 1 January 1989, the order states that the appeal court is usually comprised of three judges, at least two of whom must be legally qualified; under certain circumstances a five-judge panel will sit.
12. Oz Frankel, "Appeals Court Fills Void in Areas," *Jerusalem Post*, 7 April 1989.
13. Interview with Advocate Jonathan Kuttab, Jerusalem, 10 November 1989.
14. Joel Greenberg, "Rabin: Areas Should Elect Representatives to Talk Peace," *Jerusalem Post*, 20 January 1989.
15. Avi Benayahu, *Al-Hamishmar*, 14 July 1989. Cited in Israel Government Press Office, "Selections from the Hebrew Press: Weekly Op-Ed Survey, 14-20.7.89" (20 July 1989).
16. Joshua Brilliant, "Meridor: Anti-intifada Measures Have Hit Palestinians," *Jerusalem Post*, 15 December 1989.
17. B'Tselem, *The Military Judicial System*, p. 53.
18. Al-Haq contacted the military spokesperson's office in early January 1990 to update these figures, but was initially told that the information would not be provided to al-Haq. However, the figures were eventually supplied on 17 January 1990. According to these figures, as of 16 January 1990, 9,095 people were in detention, of whom 1,084 were administrative detainees. Trials had been completed in 3,861 of the remaining 8,011 cases and, in 2,678 cases, trials had begun but had not been completed. Al-Haq also requested figures for the number of detainees who had been held for over six months, one year, and eighteen months without completion of their trial; these figures were not available.
19. Al-Haq Files.
20. Andy Court, "Arab Lawyers Extend Trial Boycott," *Jerusalem Post*, 3 January 1989.
21. Oscar Franklin, "Stone-throwers to Face Tougher Punishment—But Swifter Justice," *Jerusalem Post*, 18 January 1989.
22. Sabra Chartrand, "Palestinians' Lawyers to End Army-Court Boycott," *New York Times*, 19 August 1989.
23. Two full-time career military officers sit in each of the three permanent military courts. One acts as Chief Judge and the other as Chief Military Prosecutor. Other sitting judges are reserve soldiers. Courts may be composed of either one judge who must be legally qualified (although he may be a civil lawyer and not experienced in criminal matters), or three judges of whom at least one must have legal qualifications. One-judge courts only have competence to hear cases where the maximum sentence permitted by law does not exceed five years.
24. Interview with Advocate Younes al-Jarou, Gaza City, 13 March 1989. The strike in the Gaza Strip began in December 1987. In November 1988, a number of military court lawyers decided to resume work in the military courts, and visiting their clients, at the requests of detainees and their families.
25. Arab Lawyers Committee, "Press Release," 1 January 1989. Full text reproduced in Appendix 6-A.
26. Interview with Advocate Bahij al-Tamimi, former head of the Arab Lawyers Committee, Jerusalem, 7 March 1989.
27. Arab Lawyers Committee, "Press Release," 20 July 1989. Full text reproduced in Appendix 6-B.
28. Jean Pictet (ed.), *Commentary: IV Geneva Convention* (Geneva: International Committee of the Red Cross, 1958), pp. 353-354 (commentary to Article 71). The Commentary notes:

The inclusion in the Convention of the express rule that no sentence may be pronounced by the competent courts of the Occupying Power except after "a regular trial" introduces into the law of war a fundamental notion of justice as it is understood in all civilized countries.

The safeguards provided in the Articles dealing with penal legislation, which we have just discussed, and those prescribed elsewhere, particularly in Article 32, which prohibits torture and all other forms of brutality, obviously represent conditions which must be fulfilled if a trial is to be regular; but there are other rules relating to penal procedure which are not expressly laid down in the Convention, but must nevertheless be respected as they follow logically from its provisions. One is the principle that any accused person is presumed to be innocent until he is proved guilty. This essential rule remains fully valid in occupied territory.

The idea of a regular trial is so important that it also finds expression, as has been seen, in Article 3, which prohibits at all times and in all cases whatsoever "the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples", and in Article 147, where the fact of wilfully depriving a protected person of "the rights of fair and regular trial prescribed in the present Convention" is included among the grave breaches listed in that Article which call for the severest penalties . . .

29. Article 3, United Nations Code of Conduct for Law Enforcement Officials (emphasis added). The UNCCLEO was adopted by United Nations General Assembly Resolution 34/169 of 17 December 1979.
30. "Force Should Never be Used as a Means of Punishment," *Jerusalem Post*, 24 February 1988. The item contains the text of a letter sent by Chief of the General Staff Dan Shomron to "all IDF commanders in the West Bank and Gaza."
31. Al-Haq Affidavit No. 2099.
32. Al-Haq Questionnaire, 1 May 1989.
33. Al-Haq Affidavit No. 1708.
34. Article 9(1) of the International Covenant on Civil and Political Rights states that "[n]o one shall be subjected to arbitrary arrest or detention."
35. Al-Haq Affidavit No. 2158.
36. H.C. 726/88.
37. Arab Lawyers Committee, "Press Release," 1 January 1989.
38. Interview with Advocate Jonathan Kuttab, Ramallah, 11 January 1990.
39. Judgement of the European Court of Human Rights, *Case of Brogan and Others* (10/1987/133/184-187), 29 November 1988.
40. Amnesty International, "A Guide to the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment," (AI Index: IOR 52/04/89), p. 4.
41. File No. 4610/88. Mr. Salhiyya's lawyer was Advocate Jonathan Kuttab.
42. Article 71, Fourth Geneva Convention.
43. It should be noted that Article 9(3) of the ICCPR states that "it shall not be the general rule that persons awaiting trial shall be detained in custody."
44. See for example Lawyers Committee for Human Rights, *Boycott of the Military Courts by West Bank and Israeli Lawyers* (New York: LCHR, 1989), p. 26. The LCHR cites a statement by Advocate Avigdor Feldman 1988 that "granting bail is very, very rare in the military courts . . . this was the case before the uprising began and it's true now."
45. H.C. No. 24/88.
46. Arab Lawyers Committee, "Press Release," 1 January 1989.
47. File number 122/88 before the Ramallah military court.

48. Paul Hunt, *Justice? The Military Court System in the Israeli-Occupied Territories* (Ramallah: Al-Haq/Gaza Centre for Rights and Law, 1987), p. 17.
49. Article 72, Fourth Geneva Convention.
50. Amnesty International, "UN Body of Principles," p. 4.
51. Articles 78C and 78D, M.O. 1220.
52. LCHR, *Boycott of the Military Courts*, p. 23.
53. Michal Sela, "Lawyers Are Permitted to Visit Clients in Khan Yunis Jail," *Jerusalem Post*, 26 November 1989.
54. Arab Lawyers Committee, "Press Release," 1 January 1989.
55. Interview with Advocate Ahmad Sayaad, Ramallah, 21 December 1989.
56. Interview with Advocate Muhammad Na'amna, Jerusalem, 14 November 1989.
57. Al-Haq Files.
58. Interview with Advocate Tamar Pelleg of the Association for Civil Rights in Israel, Tel Aviv, 2 October 1989.
59. Principle 16, UN Body of Principles.
60. Article 78D(b)6, M.O. 1220.
61. Interview with Advocate Jonathan Kuttab, Jerusalem, 10 November 1989.
62. H.C. 670/89.
63. Joel Greenberg, "High Court Backs Up Palestinians on IDF Failure to Notify of Arrests," *Jerusalem Post*, 23 November 1989.
64. *Jerusalem Post*, 27 May 1988.
65. Court, "Arab Lawyers Extend Trial Boycott"; Chartrand, "Palestinians' Lawyers to end Army-Court Boycott."
66. Interview with Advocate Muhammad Na'amna, Jerusalem, 14 November 1989.
67. Article 53A, M.O. 378 (as amended).
68. "It can not be over-emphasized that only extremely rarely does the defense ever win a 'mini-trial'. Almost invariably the court decides the confession was given voluntarily and therefore is admissible." (Hunt, *Justice*, p. 29).
69. *Ibid.*, p. 37.
70. *Ibid.*, p. 24.
71. Interview with Advocate Raji Sourani, Gaza City, 4 March 1989.
72. *Ibid.*
73. Oscar Franklin and Michal Sela, "IDF: 26 Killed, 492 Wounded in Last 30 Days," *Jerusalem Post*, 17 January 1989.
74. Joel Greenberg, Michal Sela, "Youth Killed During Areas Strike," *Jerusalem Post*, 25 January 1989.
75. The figures supplied are based on interviews with a number of defense lawyers.
76. Interview with Advocate Jonathan Kuttab, Jerusalem, 10 November 1989.
77. According to statistics presented by military Judge Advocate-General Amnon Strashnow on 18 October 1989, a total of 78 appeals had been lodged with the appeals court. Only 25 cases had been heard, out of which 15 defense appeals and 7 prosecution appeals had been accepted. This figure includes statistics from the Gaza Strip, where lawyers have been appearing before the court since its inception. See Joel Greenberg, "Soldiers Can Shoot at Masked Youths Because They're the Uprising's Core," *Jerusalem Post*, 19 October 1989.
78. Interview with Advocate Ahmad Sayaad, Ramallah, 21 December 1989.

79. Kenneth Kaplan, "OC Mordechai Ppostpones Imprisonment of Reservist," *Jerusalem Post*, 23 October 1989.
80. Kenneth Kaplan, "Soldier Sentenced to 18 Months for Killing Biddu Stone-thrower," *Jerusalem Post*, 16 December 1988.
81. Article 67, Fourth Geneva Convention.
82. See for example Paul Sieghart, *The International Law of Human Rights* (Oxford: Clarendon Press, 1983), p. 271:

In reaffirming Magna Carta in 1354, King Edward III undertook that no man, of whatever estate or condition, should be harmed except *per due process de ley*. From that beginning, through Coke, Maison, and many others, there grew the great modern edifice of 'due process of law', now enshrined in many national constitutions. [emphasis added.]
83. This principle is so universally accepted it does not need elaboration here. See Article 11 of The Universal Declaration of Human Rights, Article 14(2) of the International Covenant on Civil and Political Rights, and Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms for further details.
84. See Oscar Franklin, "Army's Top Legal Officer: Shooting Fleeing Rioters is Out," *Jerusalem Post*, 8 February 1989.
85. LCHR, *Boycott of the Military Courts*, p. 7.
86. Joel Greenberg, "IDF Destroys Five Homes of Suspected Killers of 'Collaborators'," *Jerusalem Post*, 4 May 1989.
87. Arab Lawyers Committee, "Press Release," 1 January 1989.
88. Jordan J. Paust, Gerhard von Glahn, and Gunter Woratsch, *Inquiry Into the Israeli Military Court System in the Occupied West Bank and Gaza: Report of a Mission* (Geneva: International Commission of Jurists, 1989), p. 45. This report, like that of B'Tselem, was not available at the time of writing.
89. Interview with Advocate Muhammad Na'amna, Jerusalem, 14 November 1989.
90. According to Pictet, *Commentary*: "The first paragraph embodies in international law one of the general principles of domestic law, i.e. that penal liability is personal in character." In addition, the commentary to Article 67 states that the "general principles of law" referred to in Article 67, "include the rule concerning the personal nature of punishments, under which nobody may be punished for an offence committed by someone else."
91. H.C. 591/88.
92. At a hearing on 11 October 1989 the lawyer for the respondents informed the court that these orders had been used 707 times in Gaza and 200 times in the West Bank, and that in no case had a parent had the sum of money confiscated at the end of the year. In the West Bank only seven appeals had been made, and the maximum period during which payment was delayed by a parent was 20 days.
93. Al-Haq Affidavit No. 2011.
94. Interview with Advocate Usama Halabi, Jerusalem, 10 November 1989.
95. File No. 667/88.
96. Al-Haq Affidavit No. 2158.
97. File No. 2262/88.
98. Al-Haq Affidavit No. 2018; see also Al-Haq Affidavit No. 2016.

Appendix 6-A

Arab Lawyers Committee Press Release: 1 January 1989

On 14 May 1988, we, the lawyers who practice in the military courts in the Occupied Territories, addressed ourselves to all the relevant military authorities and institutions, and to the Israel Bar Association, and warned them that we may be unable to continue to serve our clients before these courts.

In that appeal, we detailed our complaints about the shortcomings and obstacles that faced us in our work. Not only were most of our complaints ignored and not dealt with, but new measures were taken that further complicated and frustrated our work. Our professional duties today are characterized by frustration, and we find ourselves unable to serve our clients with professional honesty and integrity as our position requires.

We have also received information that the military is preparing to implement a number of major changes affecting the rights of our clients and their trials in the near future. We have already been informed about new "Commanders' Orders" which are apparently intended to regulate trial procedures and places of detention, as well as the times of trials. Each new order that has been brought to our attention has invariably led to a deterioration in the situation. One example is the new order to routinely adjourn trials for a minimum period of three months at each adjournment, during which time the client remains in detention. Another example is the massive transfer of detainees awaiting trial to Ansar III before they are brought to trial.

In light of these new procedures, most of which we remain unaware of, and because of the present difficult conditions and the professionally insulting and humiliating situation which we have experienced to date, we find ourselves forced to reevaluate the situation and reconsider whether or not to continue our professional work.

We have thus been compelled to cancel all appearances before the military courts in the Occupied Territories for one month as of 3 January 1989.

This decision is intended to allow each one of us to carry out the necessary preparations to take seriously his/her professional responsibilities. In addition, this decision comes as a last alarm that we hope will break through the walls of unconcern and the obstacles of bureaucracy, since we failed in all our efforts to bring written and verbal complaints to the relevant authorities and have met only with frustration in all our appeals to the heads of the military judicial establishment.

We hereby also ask our colleagues, members of the Israel Bar Association, to respect our decision, and to show their collegiality with us, a sense of responsibility towards our clients, and respect for our professional attempt to improve the situation in the military courts, by likewise refraining from appearing in those courts during that month.

The following complaints affect or pertain to each and every aspect of our professional work and to all the contacts we have with the military authorities.

The military authorities have invested tremendous time, energy, resources, manpower, and creativity in suppressing the uprising. In contrast, they have showed such a lack of concern or resourcefulness in dealing with the rights of detainees and with

justice, that we can only see the resulting injustice as a deliberate policy and an additional element in oppressing the population. This misuse of the military judicial apparatus is precisely our complaint:

Arrest: Whenever an arrest is made in the Occupied Territories, the detainee is never informed about the reason for his arrest. Moreover, a person detained administratively [without charge or trial], or a candidate for deportation, is never informed of the fact upon his arrest. Neither is he personally given the arrest order, the deportation order, or any warrant for the arrest. If arrested outside his home, the family is never informed. All this contravenes the correct procedures concerning detention, which are known and accepted throughout the world; further, it is contrary to a decision of the Israeli High Court of Justice.

Search: Not only do soldiers never produce a search warrant, or indicate that they need one, they do not even bother to ensure that there are witnesses to the search, nor do they prepare a protocol listing the objects confiscated during the search. In cases when such a protocol is later made, a copy is not left with the house-owner. In addition, searches are accompanied by an inordinate amount of violence, including massive destruction of property.

Hostages: If the person sought is not at home when a raid is made, members of his family are arrested and held as hostages until that person arrives. On other occasions, the identity cards of family members are confiscated until the wanted person is found.

The Location of Detainees: Despite the passage of an entire year since the beginning of the uprising, we attorneys still face major difficulties in locating detainees and finding out where they are held. Our offices continue to serve as missing persons' bureaus.

Failure to Announce of Extension of Detention: Despite the efforts of lawyers to inform both the police and the military prosecution of the fact that they represent certain detainees, the authorities routinely fail to inform lawyers of the dates of hearings for the extension of detention for their clients. Part of these hearings take place without the presence of the lawyer. The same is true of hearings for the extension of detention until the end of all legal proceedings (open-ended detentions), which also take place in the absence of a lawyer. Surprisingly, these hearings are regularly held in the prison compound itself and not in open court as required by law.

Extension of Detention in Prison or Detention Camps: The hearing to extend detention is often held in the prison or the prison camp itself, sometimes inside the Shin Bet [interrogation] sections, with as many as 100-150 or more hearings held in the same prison camp in a single day. These take place without allowing the detainee the opportunity to speak, and either without the presence of his attorney, or after a lengthy and almost useless struggle by the attorney to attempt to be present at the time of the hearing. At times this

extension of detention occurs in the absence of the detainee himself. In rare cases, we have found detainees for whom no arrest order exists at all.

Request for Release on Bail: This is another institution that is, in practice, not functioning at all. Such hearings are not held within a reasonable period of time, and there is little effort to ensure the presence of the detainee at such a hearing.

Lawyers' Visits: The law permits the meeting of a detainee with his lawyer to be refused for a limited period. In practice, however, the lawyer can be arbitrarily prevented from meeting his client even beyond this period; even when the Shin Bet interrogators are no longer interested in preventing the meeting, a lawyer must go through an extensive bureaucratic process to get specific permission for a meeting which should be granted as a matter of right. A large number of detainees who are residents of the Occupied Territories, are taken for interrogation to the detention centers of the Shin Bet in Jerusalem, Petah Tikva or al-Jalameh, and in these detention centers a lawyer is not allowed to make an appointment to see his client. The lawyer must instead go to the main interrogation center, for example in Bethlehem or Nablus, to obtain a written order to see his client, inside Israel.

However, even after obtaining permission, the visit of the lawyer in a military camp is itself a scandal and apparently depends on the good will of the soldier who is doing a "favor" to the lawyer if he agrees to let him see his client. The visit only occurs after a mandatory wait of many hours, and the lawyer is permitted to see only about a quarter of the number of clients that he wishes to visit. He is sometimes ordered to limit himself to two or three minutes to each detainee.

Soldiers generally do not respect the right of the detainee to see his lawyer in private, nor do they respect the confidentiality of the discussions.

Despite the fact that there are six working days in the week, lawyers are not allowed to see their clients on all of these days. Lawyers are routinely prohibited from visiting their clients on days when families visit, or when the ICRC delegates visit; this is totally unjustified. By contrast, in Israeli jails, despite weekly family visits, lawyers can visit their clients on any working day.

Family Visits: All our efforts to improve conditions for visits of the families of our clients have met with failure. The relatives of the detainees, including children and the elderly, stand in front of the gates of the detention centers without any attention being paid to their human and physical needs during the long hours of waiting for visits which may or may not materialize. Frequently, the authorities prohibit all relatives from visiting detainees, a form of continuous and collective punishment that is unjustified, in particular since the location of the detention centers is determined without taking into consideration where the detainee's family lives.

Release on Bail: At a time when there is a liberalization of this policy in Israel in the Occupied Territories the policy is becoming increasingly harsh and more cruel, to the extent that there is an almost total violation of this right. Requests for release on bail are systematically denied, without discrimination and without taking into consideration purely legal factors.

In practice, before a person is released on bail he must have been detained for many months, and should have had a number of hearings of his case in court where prosecution witnesses failed to appear. Even then, the court must be convinced that the detainee has already spent a longer period in detention than he would have been sentenced to if he had actually been convicted.

On some of the rare occasions when release on bail is granted, the court mandates an amount of cash to be paid as bail which is more than the family can afford to pay, and thus effectively prohibits the release of this person. The legal principle that a person is innocent until proven guilty has already been systematically annulled before the military courts.

Presenting of Charge Sheets: Many detainees are held for a long time after completion of the interrogation without being presented with a charge sheet, thus prolonging the trial proceedings. Many detainees from the Occupied Territories who are kept in detention centers inside Israel are also prevented from receiving family visits during this period.

Coordination of Trial Dates: The policy of coordinating dates of trials with attorneys has become a thing of the past in some courts, and the lawyer often finds that his client has been brought to court without his knowledge. Another example of the total disrespect shown to lawyers is the fact that all trials are scheduled to begin at the earliest possible hours in the morning, although the trials do not actually start for an hour or two after the scheduled time, which is an unjustifiable waste of the lawyers' time.

In addition, there is a policy of refusing to fix a trial date for any prisoner held in Dhahiriyya Military Detention Center, irrespective of the length of his detention. Only after he has been transferred to another prison will the Secretariat of the military court consider fixing a trial date for him.

Bringing Detainees to Court: Our clients are brought to court under difficult and humiliating conditions. They constantly complain to us about the humiliating behavior and beatings they endure on their way to and from the courtroom. The harassment continues even when the detainees are brought to court. They are placed in small, overcrowded, dark and dirty rooms (some of them are even placed in the latrines) until they are called to trial. In most of these rooms there are no seats, and detainees are kept there for a long time without food. Others are kept blindfolded and handcuffed, with their heads bowed, and spend the whole day in the same buses which brought them to court. Thus, the day when a detainee is brought to trial is a day of particular hardship. No one pays any attention to the cleanliness of the latrines used by the detainees and,

as a result, the latrines are dirty and stink. Many complaints are heard about the behavior of the guards (both policemen and soldiers) towards the detainees, their families and lawyers.

Failure to Bring Detainees to Court: Many work days are wasted because detainees are not brought to court on the dates set for their trial. Many female detainees have not been brought to trial for more than six months. Many detainees are not brought to trial because they have been sent to different detention centers, with no logic or rationale. Consequently, detainees stay in detention for lengthy periods before the trial is completed. This creates pressure on lawyers to bring their clients' suffering to an end, by getting their clients to confess to the charges, and to close files even in the absence of a client and without giving him or her the chance of a fair trial.

It should be noted that the authorities can be extremely efficient, and that they fulfill their duties promptly, whenever they wish to bring a detainee to court in order to extend his detention, but not whenever it is in his interest to be brought to trial.

Complaints About Torture During Detention: Complaints we have made about this matter are not investigated seriously and thoroughly, and in most cases we receive no reply whatsoever to our complaints from the authorities.

Forcing Defendants to Confess to Charges: It does not pay to plead "not guilty" before a military court. If a lawyer wants the evidence in a case to be heard, the majority of prosecution witnesses never appear at the appointed time. These witnesses are generally policemen, or soldiers, and their failure to appear will routinely result in the postponement of the trial at a time when the defendant is still in prison. Repeated decisions to keep postponing a trial due to the absence of prosecution witnesses, or the failure to bring the detainee to court, when combined with the present policy of refusal to release a detainee on bail, leads to court proceedings being prolonged for excessive periods of time, sometimes over a year. The detainee stays in detention for a period that can be longer than the time he would have served if he had pleaded guilty to the offence with which he was charged.

Where we succeed in hearing a case through to the end, the chances that the defendant will be found innocent are very slim, and the punishment that a defendant who pleaded not guilty will get, can be double (or more) the punishment he would have received if he had pleaded guilty. This leads to a situation where pleading not guilty is neither useful nor preferable.

We, as lawyers, are left feeling that the entire judicial process is deliberately intended to put pressure on an individual to confess, and enter a "guilty" plea, and that the whole structure operates not in order to achieve justice, but that it operates inefficiently, as an apparatus to end trials and close files.

Extent of Punishment: We are not the first to say that there are two separate legal systems operating in the area, and that there are two different methods

for the punishment, interrogation and release of detainees. The first imposes harsher punishments and applies to Arabs, and the second, opposite policy is applied to Jews, even when both individuals are accused of the same offence.

There is clearly a policy of punishment, which is periodically made harsher. This policy is recommended by the military government, requested by the public prosecution, and applied by the military courts themselves.

Further, there have been an increased number of cases where the judge refuses to honour a "plea-bargain" between the prosecution and defence lawyers. In each case, the substitute punishment is harsher than the one agreed to.

Conditions of Detention: Despite all our efforts to assist our clients we have not been able to improve the conditions of imprisonment in the different prisons, detention centers and prison camps. A large number of detainees and prisoners continue to live in tents in the bitter cold, and suffer from poor nutrition and humiliating treatment, as well as being deliberately isolated from the outside world. They are not given access to newspapers, books, radio or television. Medical treatment is unacceptable and far below the necessary standards. Care for the detainee is also non-existent. Daily, we fail to meet the expectations of our clients in relation to a few, moderate improvements in their conditions of detention.

Beatings and Shootings: We have been totally unable to influence the military authorities and make them act according to the law in confrontations with civilians in the Occupied Territories, whether their acts are deliberate or accidental. We find our hands totally tied in facing the phenomenon of beatings, and the wounding and killing of civilians by soldiers.

The punishments that were imposed on soldiers who have assaulted civilians in the Occupied Territories have been laughable, and make it very difficult for us to carry out our duty in service of the law.

House Demolition and Collective Punishment: The authorities continue to use administrative punishments against individuals without giving them the natural right to be heard. This prevents us from carrying out our duty, and from giving either legal assistance or advice to our clients. This limits our legal role to a very narrow number of cases, in which our assistance is, in any case, futile.

Administrative Detentions: In addition to existing criticisms of the legality and morality of administrative detention, we, as lawyers, find it difficult not to rebel against the continuation of the imposition of "a state of emergency," and against the rules of appeal which make a mockery out of the principles of justice. After each appeal, we find ourselves guilty of deception, as we pretend to go through with a ritual that appears to be legal but which has nothing to do with the principles of justice. In so doing, we find that we are deceiving our clients by giving them false hopes. Even the recommendations of the High Court with respect to the procedures of hearing an appeal are not being followed.

Treatment of Daily and Routine Matters: Every appeal we make on behalf of our clients to obtain the most basic rights such as permission to leave the country, family reunification, the right to enter the Occupied Territories, to obtain a license, and other routine matters, is unjustifiably delayed. In most cases, we receive arbitrary, negative replies from the authorities.

We are open to any serious suggestion that would ensure that our complaints are properly addressed, and that our professional working conditions are altered to achieve effective justice.

We continue to hope that these matters can be reformed, or improved, as quickly as possible, so that we will be able to return to our jobs, and to continue to fulfil our professional duties as best as we are able.

The Lawyers Operating in the Military Courts.

Appendix 6-B

Arab Lawyers Committee Press Release: 20 July 1989

We, the lawyers, declared, on 2 January 1989, our decision to stop appearing before Israeli military courts in the Occupied West Bank, for the reasons issued in a detailed memorandum sent to the Minister of Defense, the Judge Advocate-General, the Legal Advisor, the President of the military courts, the Israeli Bar Association, the Law and Constitution Committee in the Knesset, and local, Israeli, and international associations concerned with human rights issues.

As a result of promises made by the occupation authorities, and the statements made by the Judge Advocate-General, Amnon Strashnow, the then-President of military courts, Dani Goteh, and the then-Legal Advisor, David Yahav, which recognized the legitimacy of our demands, we suspended our previous decision to stop appearing before military the courts on 15 March 1989, as a goodwill gesture, to give the authorities time to implement their pledges.

However, although more than four months have passed since our return to work, we have found that matters have deteriorated rather than improved; indeed, the situation worsened even though we maintained contacts with the authorities, and repeatedly warned of the consequences of continuing to ignore the deteriorating conditions in the military courts and detention facilities.

Strashnow, at the time, pledged the following:

To instruct the legal advisor to issue clear instructions safeguarding the basic rights of a detainee from the time he is detained, whether from home or from anywhere else, and the need to inform families of the place and reasons for an arrest.

He also pledged to inform lawyers of the time and place of remand hearings before they take place.

However, none of this was implemented. On the contrary, despite the fact that lawyers made inquiries with the police, the prosecutor's office and detention facilities, no information was provided. The situation remains the same to date, and most remand hearings take place without the presence of lawyers. This continues to happen despite the fact that remanding detainees in prison is a clear violation of the law. Remand hearings usually take place en masse, with hundreds of detainees being remanded in one day.

Strashnow also pledged to cancel all measures which disrupt lawyers' visits to their clients. However, we were surprised to discover that more obstacles had been introduced, further obstructing lawyers' visits. These measures include compelling detainees to undress for searches before they are allowed to see their lawyers—a measure which violates human dignity and our religious beliefs. To make matters worse, prison directors (especially the Commander of the Ansar III Military Detention Center, Tsemah) arrogantly told lawyers, when complaining about such a practice, that "God created humans naked." He even threw away a memorandum we sent him, in which we demanded respect for detainees' rights.

Furthermore, Strashnow pledged to issue clear instructions that lawyers should be respected in court sessions and outside; however, lawyers were subjected to the

following measures:

1. Attorney Muhammad Shadid was administratively detained for six months;
2. Soldiers physically attacked lawyers Muhammad al-Halabi, Ahmad Nimer, Lou'ai Hamarsha and Usama al-Kilani;
3. Attorney Ibrahim al-Barghouthi was detained from his home at 1:00 a.m. on the pretext that he refused to paint over wall graffiti;
4. Attorney 'Awni al-Barbarawi was held from the Ramallah military court;
5. On several occasions detention facilities were declared closed military areas, and lawyers visiting clients were ordered to leave;
6. Military judges repeatedly insulted, verbally abused and threatened lawyers during court proceedings;
7. Violation of the sanctity of Palestinian (civilian court) judges' homes, and physical assaults on these judges;

The military prosecutor also promised to deal with many matters, but failed to do so, so that we still suffer from:

- A. Disrespect of the principle of one punishment for the same charges. The same judge, in the same court and on the same day, may give a different sentence to different people accused of the same offense; this reinforces our belief that sentencing is governed by a policy intended to drive a wedge between detainees and their lawyers.
- B. The difficulty in getting the cooperation of the court secretariat to obtain charge sheets, set dates for court hearings, or discuss any other matter. Lawyers have been repeatedly thrown out of court secretariats, and there is no sign that efforts to improve the situation are being made.
- C. The court secretariats changes the dates of court hearings without coordinating with lawyers.
- D. The secretary of the military courts, and his deputy, act as judges in cases where three judges are required; they usually leave after a court hearing starts, and return just before a verdict is given, in order to sign the verdict.
- E. A continued failure to bring large numbers of detainees to court on trial or remand dates. In some detention facilities, no detainees have been brought to courts for months.
- F. The loss of many court files, minutes of court hearings, verdicts and even receipts for the release of detainees on bail.

- G. The frequent unavailability of charge sheets in Arabic, and the failure to provide detainees with these charge sheets. In general, no translators are available in the offices of military prosecutors, and there is a severe shortage of translators in court; those available are not competent translators.
- H. The frequent barring of families of detainees from entering courtrooms to attend hearings. In many cases families are barred from visiting their sons in detention facilities.
- I. The continued attacks, resulting in injury, and the sometimes deliberate killing of detainees, as well as the physical attacks on family members of detainees during visits and trials.
- J. Lawyers being prevented from visiting their clients long after they are detained, in addition to failing to hold bail hearings. Detainees are also often transferred from one detention facility to another, to hinder their being brought to court, and thus prevent their families and lawyers from seeing them.

As a result of the abovementioned, and due to the failure to heed our demands, and the continued deterioration of the situation, at a time of suppression and violation of human rights—including mass arrests, expulsions, house demolitions—we decided to refrain from appearing before military courts from July 20 till August 20. We appeal to all legal institutions, and those concerned with human rights, to adopt our stand and intervene with the occupation authorities to accede to our demands immediately.

The Arab Lawyers Committee
Jerusalem, 20 July 1989

Appendix 6-C

Refusal to Return Bail Money

Legal Advisor
Military Government

April 3, 1989.

Subject: Retrieval of Bail Money
File Number 122/88

1. In File number 122/88 before the Military Court in Ramallah, my clients Sala Muhammad Mousa Idris and Ahmad 'Abd-al-Mu'iz I'ed Husein Idris, both from Hebron were charged on 27 April 1988 with disturbance of the peace.
2. Several court sessions were heard during which it was determined that there [was] no basis for the charges against them.
3. In Bet Sheen 801/88, filed on 8 June 1988, both had been released on bail whereby each of them deposited NIS 1000 [\$US 500] in the treasury of the court pending the outcome of the trial.
4. After several sessions, the file was closed, and no further prosecution [was] carried out in it, and the file was sent to the archives.
5. Because of administrative proceeding involving a new prosecutor, the prosecutor requested some time before the file [was] officially closed and the bail money returned. Over six months have passed now and no procedures took place, and the file has been sent to the archives for storage.
6. For this reason, my client[s] now [want] to retrieve the bail money.

I would appreciate it if you would inform the relevant authorities to give back the said sum of NIS 2000 and mail it to my above address as soon as possible.

Yours faithfully,

(Signature)
Jonathan Kuttab

cc. Military Prosecutor.
Secretariat of the Military Court.

Appendix 6-D

Military Order 1220 (West Bank)

ISRAEL DEFENSE FORCE

Order No. 1220

Order Concerning Security Instructions (Amendment No. 53) [Unofficial translation]

By the powers vested in me as Commander of the Israel Defence Force [IDF] in the area, I hereby order the following:

1. Addition of clause 7a.

In the Order Concerning Security Instructions (Judea and Samaria) (no. 378), 1970 (hereafter "the main order"), the following shall appear after clause 7:

"Independency 7a.

On matters of jurisdiction there is no authority over the person who has judicial authority other than the authority of the law and the security legislation."

2. Addition of clause 53b.

The following shall appear in the main order after clause 53:

"Arson 53b.

[clause omitted]

3. Addition of clauses 78a.-78d.

The following shall appear in the main order after clause 78:

"Informing of arrest 78a.

- (a) For the purposes of this section, "prison installment" shall be as defined in the Order Concerning Operation of a Prison Installment (West Bank Area) (No. 29), 1967.
- (b) If a person is arrested, his next of kin shall be informed, without delay, of his arrest and his whereabouts, unless the detainee requests that nobody be informed.
- (c) At the detainee's request, a lawyer specified by him shall also be informed as stated in sub-clause (b) above.

- (d) If a person is arrested and taken to a prison installment, the commander of the installment shall inform him, upon his arrival at the installment, of his rights as stated in sub-clauses (b) and (c)

Meeting a lawyer 78b.

- (a) A detainee is entitled to see a lawyer and receive his advice.
- (b) The detainee's meeting with the lawyer shall be private and shall be conducted under conditions which ensure that the conversation is confidential, but in a manner enabling supervision of the detainee's movements and behavior.
- (c) If a detainee requests to see a lawyer, or if a lawyer named by a person closely connected to the detainee requests to meet the detainee, the commander of the prison installment shall enable this as quickly as possible.
- (d) If the detainee is undergoing investigation or other actions pertaining to investigation, and a police officer of the rank of captain is of the opinion that interrupting the proceedings may impede the investigation, he is authorized to instruct, by a detailed written decision, that the detainee's meeting with the lawyer be postponed for a few hours, and the same applies if the meeting is liable to foil or complicate the arrest of further suspects in the case.
- (e) In spite of that stated in sub-clause (c), a police officer of the rank of superintendent is entitled to instruct, by a written detailed decision, that the detainee not be allowed to see a lawyer for a period not exceeding 96 hours after the time of arrest, if he is certain that this is necessary in order to maintain local security or for the protection of human lives or for preventing an offense with a sentence of more than three years.
- (f) Sub-clauses (c) to (e) and clauses 78 (a), (c) and (d) do not apply in the case of a detainee as defined in para. 78c.

The lawyer's meeting with the detainee as stated shall be in accordance with the contents of clause 78c. below.

Meeting a lawyer in the case of a person suspected of an offense according to the addition, 78c.

- (a) In this paragraph: "detainee"—a detainee suspected of committing an offense according to the law or the security legislation listed in the addition; also a detainee arrested in accordance with the Order Concerning Penal Measures (Judea and Samaria) (No. 322), 1969, and suspected of committing an offense that, if committed in the area, would be an offense against the law or the security legislation listed in the addition.
"head of the investigation"—one of the following:

1. A police officer of the rank of superintendent.
2. The head of an investigation team of the General Security Services.
3. An IDF officer authorized for the position by the Commander of IDF forces in the area.

“confirming authority”—one of the following:

1. A police officer of the rank of superintendent.
 2. The head of the Investigations Department in the General Security Services.
 3. An IDF officer of the rank of lieutenant colonel who has been authorized for the position by the Commander of IDF forces in the area.
- (b) If the detainee requests to meet a lawyer or a lawyer appointed by a person closely connected to the detainee requests to meet the detainee, the head of the investigation shall allow the meeting to take place unless he sees fit to postpone it as stated in sub-clause (c) below.
- (c) 1. The head of the investigation is entitled to instruct, by a written decision, that a detainee’s meeting with a lawyer not be permitted for a period or periods not exceeding a total of 15 days after the day of the arrest, if he is of the opinion that this is necessary for reasons of local security or if the good of the investigation demands it.
2. A confirming authority is entitled, in a written decision, to instruct that a detainee’s meeting with a lawyer not be permitted for an additional period or additional periods not exceeding a total of 15 days, if it is certain that this is necessary for reasons of local security or if the good of the investigation demands it.
- (d) In spite of the decision in accordance with sub-clause (c), the head of the investigation shall allow the detainee to meet a lawyer if the investigation has been concluded.

Delaying an announcement of the arrest 78d.

- (a) 1. In spite of that stated in clause 78a. and in sub-clause (a) to (e) of clause 78b., a judge is entitled to permit that an announcement of a person’s arrest not to be made in the case of a person suspected of an offense with a sentence of more than three years, or that the announcement be made only to a person of his decision, or that the detainee not be allowed to meet a lawyer if he is certain that reasons of local security or the interests of the investigation demand that the arrest be kept secret.

2. Authorization in accordance with sub-clause (a) 1 shall be for a period not exceeding 96 hours. This may be extended periodically as long as the total of periods does not exceed 8 days.
- (b)
1. If the head of the investigation team of the General Security Services is of the opinion that the interests of the investigation demand it, he is entitled to instruct that an announcement of the detainee's arrest be delayed as stated in clause 78c. for a period not exceeding 24 hours from the time of arrest.
 2. If a person has been arrested as stated in clause 78c., a judge is entitled to permit that an announcement of his arrest not be made or that it be made only to a person of his decision, or that the detainee not be allowed to meet a lawyer, if he is certain that the local security interests or the interests of the investigation demand this.
 3. On the matter of meeting a lawyer, authorization in accordance with sub-clause (b) 2 shall be for a period or periods not exceeding a total of 30 days, but that stated in this sub-clause is not intended to detract from the authority stated in clause 78c., and the days for which the meeting is delayed in accordance with clause 78c. shall not be included in the 30 days stated in this sub-clause.
 4. The president of the court or a vice-president is entitled to extend the period stated in sub-clause 3 for an additional period or periods not exceeding a total of 30 days, if the Commander of IDF forces in the area has given written confirmation that special local security considerations demand this.
 5. If a charge sheet has been presented to the military court, the authorization stated in sub-clauses (b) 3 and (b) 4 shall be seen as void as of the time at which the charge sheet is presented.
 6. On the matter of announcing the detainee's arrest, authorization as stated in sub-clause (b) 2 shall be for a period or periods not exceeding a total of 12 days. The period for which announcement of the detainee's arrest has been delayed in accordance with sub-clause (b) 1, shall be included in the 12 days stated in this sub-clause.
- (c) A request according to this clause shall be dealt with in the presence of one party only and a military prosecutor or a policeman of the rank of inspector shall appear on behalf of the petitioner."

4. Addition of an appendix to the main order

At the end of the main order, the following shall appear:

“Appendix”
(Clause 78c.)

1. Order Concerning Security Instructions (Judea and Samaria) (No. 378), 1970.
2. Order Concerning Prohibition of Subversive Activities and Hostile Propaganda (West Bank Area) (no. 101), 1967.

Appendix 6-E

Statement from the Office of the State Attorney to the Israeli High Court of Justice Concerning the Notification of Families After an Arrest

In the Supreme Court sitting as a High Court of Justice

HCJ 670/89

Set: 21.9.89

Mousa, Muhammad 'Oda et al

by The Association for Civil Rights
Adv. Dan Simon
9 Diskin Street, Jerusalem

LITIGANTS

vs.

1. Commander of IDF Forces
Area of Judea and Samaria
Central Regional Command
2. Commander of IDF Forces in the Gaza Strip
Southern Regional Command, IDF

by State Attorney's Office
Ministry of Justice, Jerusalem.

RESPONDENTS

Notice on Behalf of the Representative of the Government's Legal Advisor

1. This litigation has two purposes: specifically, that the place of detention of litigants 1-3 be announced; and, in general, that an announcement be made concerning the detention, and place of detention, of detainees from the areas of Judea, Samaria and the Gaza Strip.
2. A notice concerning the place of detention of the family members of the litigants was given to their representative, Adv. Dan Simon, on 30 August 1989, and thus the specific aspect of the litigation was dealt with.

The following response is therefore directed at the general face of the litigation, and, because of the principles involved, we have decided that it is worthwhile to present the following points.

3. *In clause 78 A (b) of the Order concerning Security Instructions [M.O. 378] the following directive is set forth:-*

If a person is detained, information about his detention and his whereabouts is to be given without delay to a person close to him—unless the detainee requested that no announcement be made. (Henceforth, “the Order”.)

This directive was issued by the military commander, in the Order, in February 1988, taking into account the needs of the local population. Yet, the military authorities were aware of the problems which such a directive poses to the entire system.

This is particularly so in light of the uprising, when, as a result of the increase in acts of violence and rioting in the areas, the number of detainees has increased substantially and it has been necessary to place detainees in various detention centers, and there has been a lot of moving [detainees] around between these centers.

All the above increased the difficulties of how to institute and apply the directives of the Order.

4. *In spite of the serious situation in the field, and notwithstanding the objective difficulties in applying the directives of the Order precisely, procedural instructions were issued to each of the areas, concerning “a notification to families of detainees and the Red Cross of their detention.”*

The principal points of these instructions were as follows:

- (a) A system of reporting between the various detention facilities, and a control center in which information concerning detentions and the movement of detainees between various detention facilities is collected.

The control center was made responsible for giving a daily report with a list of detainees, to, among others, the military governors in the district of the Civil Administration.

- (b) A procedure was established whereby every [detainee] will be given postcards, so that he can write to his family and inform them of his whereabouts.
- (c) Moreover, in practice, daily lists of detainees held in detention facilities in the various districts were published by the Civil Administration, at the same time.

The military authorities have improved the methods of informing families about detention, and the movement of detainees between the various detention facilities; since, amongst other reasons, they were aware of difficulties which had sometimes occurred in tracing detainees.

5. *Now, changes have been introduced to the procedural instructions, which respond to claims such as the one in this litigation (especially in relation to the claim in clause 14). These are the main points:*

- (a) *Sending postcards*—when a detainee is being registered in detention or prison facilities, he will fill out a special postcard which includes a notice of his detention, the detention facility, his date of absorption in the facility, and the name and address of the person to whom the detainee wishes the card to be sent.

Every day, these cards will be transferred from the detention facility to the local post office, which will ensure their distribution in the area.

- (b) *Transferring the lists of detainees from the detention facilities*

1. The commander of the detention facility is responsible for transferring a list of detainees in the facility, and of those who have been transferred to other facilities that same day, to the officer of the Civil Administration in the district in which the facility is located, each day. The list will identify the facility to which they have been transferred.
2. If there is a detainee from another district on the list, this should be noted, and his name should be reported to the officer of that district, who will then include his name and whereabouts in the daily list published by him.
3. *In the Gaza Strip area*—lists from the detention facilities will be transferred daily to the Civil Administration, detailing the names of the detainees who were absorbed, and those transferred to another facility, as well as those released. These lists will be exhibited in all the offices of the Civil Administration.
From the prison facility of Ketziot—report lists will be likewise be transferred to the Civil Administration.
4. A list of names in Arabic of those detainees held in the detention facility will be posted on the notice board of the district at all times, as well as a list in which notification of the transfer of detainees from one detention facility to another over the past seven days is given.
5. The lists will be posted in a protected place where they cannot be torn down and the public will have access to them at all times.
6. Residents who cannot locate their relatives in the lists will fill in a form with the full details of the missing relative. The officer of the Civil Administration will carry out the necessary investigation for them to locate the detainee and will contact the family at the earliest opportunity.

- (c) The control center will continue to collect reports and data concerning the lists of prisoners in various prison facilities.
- (d) *Publication*—the district governors will bring to the attention of the residents the existence of these notifications of detention by postcards, and the lists, as well as the place where these will be published for inspection, and the possibility of contacting the Civil Administration officer to locate a relative who does not appear in the lists.

- (e) *Extraordinary cases*—(e.g., when a detainee needs special medicine), notification by telephone will be made to a detainee's family or to another person close to him concerning the detention and whereabouts of the detainee.
- (f) *Inspection*—Within one month from the date of publication of the procedure, an inspection control body will be established in order to check how the instructions are being carried out in the field; it will deliver its findings to the commanding officer, within two months of its establishment.
6. *Conclusion*—the military authorities recognize the need to notify families concerning detention and the location of a detainee, and the object is efficiently to follow the instructions in the order accordingly.
- Considering the prevailing circumstances in the region, the changes in the procedural instructions, which will be put into practice within about two weeks, contain what is needed to make the procedures more efficient, so that the fact of detention and the location of the detainee will be known to the family at the first opportunity.
7. Thus, this is seen as answering the general arguments in the litigation, and the honorable court is asked to reject it.

Today the [no date indicated] of September 1989

(Signature)
Nili Arad

Director of the High Court of Justice section in the State Attorney's Office

Chapter Seven

Administrative Detention

Introduction

Administrative detention, also known as internment, is the imprisonment of individuals without charge or trial by administrative rather than judicial procedure. The Israeli military government in the Occupied Palestinian Territories has greatly increased its use of this measure during the uprising. Of the 50,000 Palestinians whom the Israeli authorities acknowledge having arrested since 9 December 1987, 10,000 have been placed under administrative detention.¹ By contrast, a much smaller number of Palestinians, roughly 316, were administratively detained by the Israeli authorities between August 1985 and 9 December 1987.² During 1989 alone, al-Haq estimates that 4,000 administrative detention orders (including renewals) were issued. Prior to August 1989, the majority of these orders were for a period of six months, and could be renewed indefinitely. Since that time, pursuant to a new Israeli military order, administrative detention orders can be for an initial period of up to one year, also subject to indefinite renewals. In at least two cases since the beginning of the uprising, detention orders have been renewed for five consecutive terms.

The vast majority of administrative detainees are held in the Ansar III (Ketziot) Military Detention Center located in the Negev desert. Various factors, particularly Ansar III's geographical location, have created some of the harshest conditions under which Palestinian are currently detained. These conditions have been widely criticized by both local and international human rights organizations.³ Such organizations, including al-Haq, have repeatedly stated that administrative detention as practiced by Israel violates international law.⁴

The nature of administrative detention under international law should be clarified from the outset. Pursuant to the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, it may not be used as a means of punishment and must only serve as an exceptional measure taken for "imperative reasons of security."⁵ Moreover, persons must be imprisoned "within the frontiers of the occupied country itself,"⁶ and during detention the occupying power must "ensure support of [the person] and his dependents."⁷ In addition, according to the funda-

mental humanitarian principles governing administrative detention, those detained without charge or trial are to receive greater privileges than ordinary prisoners.

The Israeli authorities justify their administrative detention policy on security grounds.⁸ In a written statement issued by the Israeli Ministry of Justice on 9 June 1989, the authorities asserted that administrative detention was used only against "those whose activities are considered hostile and constitute a continuous threat to security and public safety."⁹ As demonstrated in this chapter, this rationale cannot justify the administrative detention of thousands of Palestinians under the extremely harsh conditions which prevail in Ansar III.

Al-Haq has in the past extensively reported on the legal status of administrative detention and conditions at Ansar III; most recently, these issues were presented in our 1988 annual report.¹⁰ This chapter is therefore intended primarily as an update to previous reports.

A. Ansar III (Ketziot) Military Detention Center

Ansar III was established on 18 March 1988, approximately four months after the beginning of the Palestinian uprising. It is located outside the Occupied Territories in a closed military zone in the Negev desert, not far from the Egyptian border. It was originally intended exclusively for administrative detainees, but since December 1988, it has housed other categories of Palestinian prisoners as well. According to al-Haq's information, there were approximately 4,290 detainees in Ansar III at the end of November 1989, roughly 1,720 of whom were administratively detained.¹¹ The detention center is now being expanded with an additional section to accommodate the increasing number of detainees.¹² Due to its location, and the extremely harsh conditions under which detainees are held, al-Haq has closely monitored Ansar III since its establishment. Al-Haq has also obtained routine and detailed information from inside Ansar III; since it was first established, at least one al-Haq staff member has been administratively detained there at any one time. Two al-Haq fieldworkers remained there as of December 1989.

The location of the detention center has, from the beginning, raised serious concerns. Al-Haq and a number of other organizations, including the ICRC (International Committee of the Red Cross)¹³ and the United States-based Lawyers Committee for Human Rights (LCHR),¹⁴ take the position that the location of Ansar III outside the Occupied Territories constitutes a violation of Article 76 of the Fourth Geneva Convention. According to this article:

Protected persons accused of offenses shall be *detained in the occupied territory* ... [emphasis added.]

Furthermore, according to Article 49 of the Convention:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, *regardless of their motive.* [emphasis added.]¹⁵

Additionally, Ansar III's location inside a closed military zone near the Egyptian border, a strategic location which is heavily militarized, contradicts Article 83 of the Fourth Geneva Convention:

The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war.

Despite these unambiguous provisions, on 14 August 1988, the Israeli High Court of Justice rejected an appeal by detainees at Ansar III concerning the illegality of imprisonment outside the Occupied Territories. In its decision, the High Court stated:

- (1) The petitioners' detention in Israel is permitted by internal Israeli legislation, and therefore there is no need to refer to international law.
- (2) The Fourth Geneva Convention, is an [international] convention which is not enforceable in [Israeli domestic] court[s] because it does not constitute internal law.¹⁶

This analysis ignores Israel's legal obligation, as both a state signatory to the Fourth Geneva Convention and an occupying power, to abide by the Convention. The imprisonment of Palestinians outside the Occupied Territories is governed by international humanitarian law (the laws of war and belligerent occupation) regardless of the provisions of domestic Israeli law. The applicability of the Fourth Geneva Convention to the Israeli-occupied Territories and their Palestinian inhabitants, is universally recognized.* The failure of the Israeli High Court to enforce this Convention leaves Palestinian administrative detainees, illegally held outside of the Occupied Territories, without legal recourse.

Almost immediately after its establishment, Ansar III gained notoriety as a detention center where conditions of internment were so harsh as to constitute a form of punishment in and of themselves. The following sections describe these conditions and present the grievances regularly raised by detainees.

1. Isolation

Due to the location of Ansar III, detainees have very little contact with the outside world. Their physical isolation is compounded by a lack family visits, restrictions on lawyers' visits, and limitations on access to books, printed material and the media.

Denial of Family Visits

No family visits have taken place at Ansar III since its establishment because of the severe preconditions imposed on such visits by the Israeli authorities. The authorities claim that because Ansar III is located in a closed military zone, special permits must be obtained from the civil administration of the military government in order to visit the facility. The acquisition of such permits is, in turn, conditioned upon a number of factors, including proof of payment of taxes. No permissible security rationale can justify such a requirement. It is important to note that this requirement has been imposed at a time when Palestinians have decided to boycott payment of taxes to the

*See further "Introduction to Part One."

Israeli occupation forces as a form of civil disobedience.[†] Furthermore, permits are not given to former detainees.¹⁷ These restrictions have not been imposed on family visits to other prisons and detention centers.

Shortly after Ansar III was opened, the ICRC announced that it was unwilling to make arrangements for family visits there, apparently in protest over the severe restrictions placed on these visits.¹⁸ Similarly, the detainees themselves decided that, in view of the preconditions imposed, they would not receive family visits. In addition, although families generally have not submitted applications to visit their relatives in Ansar III, the few that have done so have not been granted permits.¹⁹

In November 1988, the Israeli Judge Advocate General's office told the Lawyers Committee for Human Rights that the Israeli authorities were negotiating with the ICRC regarding family visits to Ansar III.²⁰ However, at the time of writing, no agreement with the ICRC had been announced, and there still had been no family visits despite the fact that some detainees have been incarcerated there since it first opened nearly 20 months ago.

Pursuant to Article 116 of the Fourth Geneva Convention, persons detained without charge or trial must be permitted:

[T]o receive visitors, especially near relatives, at regular intervals and as frequently as possible.

In al-Haq's opinion, the preconditions imposed on family visits by the Israeli authorities violate this provision. By insisting on these preconditions, the authorities have illegally obstructed contact between administrative detainees and their relatives.

Limitations on Access to Printed Material and Correspondence

During 1989, detainees' access to reading material continued to be severely restricted by the authorities at Ansar III. According to detainees, the administration did not permit books brought to the camp by the ICRC to be distributed. Similarly, in October 1989, attorney Tamar Peleg of the Association for Civil Rights in Israel reported that officials at Ansar III refused to distribute books she had brought for detainees on the pretext that they were banned. These works included: Shakespeare's *Hamlet*, *Cancer Ward* by Alexander Solzhenitsyn, *The Sea-Wolf* by Jack London, *Lord of the Rings* by J.R.R. Tolkien, and *Constitutional Law* by Israeli Member of Knesset (parliament) Amnon Rubinstein.²¹

In late October 1989, this policy was slightly relaxed and the prison administration began allowing an average of 30 books per week (brought to the detention center by the ICRC) to enter each sub-unit, which houses approximately 250 detainees. However, even under these improved conditions, there are still more restrictions on printed material at Ansar III than in other prisons. For example, in Megiddo Military Detention Center regulations pertaining to books and printed material are more liberal.²² The list of permitted reading materials at Megiddo includes approximately 1,000 books, while a similar list at Ansar III consists of only 26 titles.²³ These facts indicate that the restrictions on possession of books in Ansar III do not result solely

[†]See further Chapter Twelve, "Economic and Fiscal Sanctions."

from security concerns. It is unlikely that the security requirements in Megiddo, where the vast majority of prisoners are not administrative detainees, would be so much less stringent than those in Ansar III. Moreover, as noted above, administrative detainees, because they are detained without charge or trial are to be granted greater privileges than other detainees.²⁴

In addition to the restrictions on books, access to newspapers and other printed material is also limited. Three newspapers are permitted in Ansar III: *Al-Quds* Arabic daily, *Ha'aretz* Hebrew daily, and the daily English-language *Jerusalem Post*. According to al-Haq's documentation, *Al-Quds* is generally distributed one week after publication, while the other two papers are normally delayed for one to two days. No magazines are permitted. Furthermore, detainees are not allowed to have their own radios, but are usually obliged to hear whatever radio transmissions are broadcast over the loudspeakers at the whim of the authorities. Even this is often denied, together with access to the written press, as a means of collective punishment. Similarly, books, games, pens, and paper have also been withdrawn as a collective punishment. In some cases, these items are returned only after repeated protests by the detainees, which sometimes take the form of hunger strikes.²⁵

Detainees also report that letters from family and friends often never reach them, or that, if they are delivered, they arrive several months after they were sent. For example, the family of one al-Haq fieldworker sent ten letters to him at Ansar III during a three month period in 1989. At the time of his release, he had not yet received a single one of them.²⁶ Letters from detainees to their families are similarly delayed. According to al-Haq's documentation, it usually takes more than one and a half months for letters from Ansar III to reach their destination. For instance, in one case a letter sent on 5 November 1989 from Ansar III was not delivered until 10 January 1990. In this case, the detainee was released before his family received the letter.²⁷

News of the world outside Ansar III is particularly important for detainees since they do not receive family or other social visits. The importance of such communication is compounded by the fact that administrative detention orders can be renewed indefinitely, and therefore detainees can never know how long they will be imprisoned. The restrictions described above violate Article 90 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which states:

An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

In addition, restrictions on access to books and writing materials are indirectly prohibited by Article 94 of the Fourth Geneva Convention which states:

[A]ll possible facilities shall be granted to internees to continue their studies or to take up new subjects.

The policies pursued with regard to reading and writing materials in Ansar III clearly make it impossible for detainees to enjoy this right.

2. Inadequacy of Facilities

Accommodation

Ansar III is composed of four major sections, each with approximately 55 tents, surrounded by fences, watch towers, and barbed wire, and guarded by fully-armed soldiers. Each section is divided into five sub-sections. Since December 1989, each sub-section has consisted of 11 tents and has housed approximately 250 detainees. The tents at Ansar III do not provide adequate protection from the extremes of the climate in the Negev desert. During the summer, particularly the months of June and July, daytime temperatures range from 38 to 40 degrees centigrade, while nighttime temperatures are between three and zero degrees centigrade. In the winter, the nights are extremely cold, with temperatures below zero degrees centigrade. During the day the winter weather is moderate, with a temperature range between 18 and 20 degrees centigrade. However, because it rains during the winter months in the desert, detainees report that the days are generally damp and unpleasant.

The heat of the summer, dust, sandstorms, and the dry weather, together with the cold and damp of the winter, create extremely harsh living conditions. Detainees are not allowed to close their tents (during either summer or winter) to protect themselves from the extremes of the climate from approximately 6:00 a.m. until the time of the last prisoner count, usually between 9:00–10:00 p.m.

Currently, there are approximately 24–28 detainees in each tent. There are no lights of any sort inside the tents. Detainees sleep on thin mattresses, three to five centimeters high, which are placed on raised wooden platforms, approximately ten centimeters off the ground. Blankets are supplied, but generally they are dirty and prisoners report that there are not enough of them to keep out the cold at night.

Prisoners in "Section 7" (one of the four major sections which houses Palestinian administrative detainees from the Gaza Strip) report that, during the winter, their mattresses are often wet from the rainwater that collects on the floor of the tent. Moreover, detainees in this section report that many of the tents are old and riddled with holes, so that during the winter months rain leaks into the tents.²⁸

Detainees in all sections of the prison report a serious problem with insect and rodent infestation in and around the tents. According to prisoners, rats, mice, snakes, scorpions, spiders, biting flies, and mosquitoes are common.

The housing facilities in Ansar III, in particular the use of temporary shelters such as tents, violate Article 85 of the Fourth Geneva Convention. This issue is specifically addressed in the authoritative ICRC commentary to the Fourth Geneva Convention:

Could the [words] "building or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigors of the climate" be taken to mean camps made up of tents? This practice is allowed in the case of prisoners of war where the Detaining Powers follow the same procedure for their own troops ... The same latitude, however, *could hardly be granted with regard to civilian internees* and it seems clear that "building or quarters" must be taken to mean structures of a permanent character.²⁹
[emphasis added.]

Therefore, as early as 1958 (when the commentary was published), the housing of

administrative detainees in tents was considered a violation of the Fourth Geneva Convention.

Water and Sanitation

In general, water supplies at Ansar III improved during 1989, although significant difficulties remained. According to prisoners, in three of the four sections of Ansar III, shortages of drinking water were no longer a persistent problem.³⁰ However, drinking water shortages remained a problem for the over 1,200 detainees in Section A (the fourth major section of the detention camp), particularly during the summer of 1989.

In addition, detainees reported that the Ansar III administration limited access to water following confrontations as a form of collective punishment, particularly during the months of August, September, October, and November 1989. On these occasions, water was turned off for between two to six hours.³¹ Restrictions on access to water as a punitive measure is a serious violation of the fundamental principles which regulate the treatment of all prisoners.³²

Moreover, according to al-Haq's information, during October and the first half of November 1989, water supplies were severely limited throughout the detention center. Detainees reported that in this period the water system was turned on for approximately two hours per day only, and on some days it was turned off altogether. On these days, water tanks were brought to the various sections and each tent was permitted between one to two gallons of water per day. According to prisoners, during this period they did not have enough water to meet their basic needs for drinking and personal hygiene. Detainees reported that prison authorities attributed this shortage to the construction of a new section of the detention center (Section D) which has not yet been opened.³³ However, it is unlikely that construction problems alone would so seriously disrupt water supplies for as long as one and a half months. Even if construction problems were indeed the source of the difficulty, pursuant to Article 89 of the Fourth Geneva Convention, prison authorities have the obligation to ensure that sufficient quantities of water are available at all times.

Sanitary conveniences such as toilet and bathing facilities remain substandard. The toilets in two major sections are outhouses which have an interconnected sewage system which is open for approximately five meters (an obvious health hazard) before it leads into a pipe underground. According to detainees the open sewer is particularly problematic when there is insufficient water to wash the sewage into the underground pipe. In those circumstances, the sewage remains stagnant and attracts flies, mosquitoes, and other insects.³⁴

In other sections, toilets are merely pits in the ground which lack a proper drainage system, and as a result fill up quickly. These "toilets" also attract insects, particularly flies and mosquitoes. Moreover, in all sections of the detention center there are not enough bathroom facilities for the number of prisoners. In December 1989, prisoners reported that there were only eight toilets for one sub-section which housed approximately 250 people.³⁵ In addition, because detainees are not allowed to leave their tents at night, they are forced to use a bucket inside the tent in the evenings.

According to detainees, there are not enough shower facilities either. In one sub-

section, there were six showers, again for roughly 250 detainees. Detainees report that they have a hot shower only once every 20 days, due to the shortage of both showers and hot water.³⁶

Pursuant to Article 85 of the Fourth Geneva Convention persons detained without charge or trial must have access:

day and night [to] sanitary conveniences which conform to the rules of hygiene, and are constantly maintained in a state of cleanliness.

In al-Haq's opinion, toilet facilities at Ansar III fail to meet these minimum standards.

3. The Use of Force

There are no published guidelines in Ansar III setting forth either the relationship between detainees and guards or defining prohibited acts and the corresponding punishment. According to detainees, they may be subject to punishment at any time for activities they had not realized were prohibited, since such actions may be so defined on the spot by individual guards or officers.

This problem is exacerbated by the frequent changing of the military unit charged with guarding the detention center. The new unit generally cancels all previous verbal agreements between the detainees and the outgoing unit relating to matters of acceptable and prohibited behavior. As each new unit takes up its tasks, it often adopts new and harsher measures, which increase tensions between guards and detainees and create an atmosphere where confrontations are more frequent. Detainees assert that such confrontations are constantly occurring for the simplest reasons.

For example, on 15 October 1989, some of the detainees in subsections four and five of Section C began singing (detainees often sing in celebration of the impending release of fellow inmates). This was viewed as a disturbance and guards shot tear gas into the two subsections. Detainees in other sections began to shout and whistle. Shortly thereafter, the administration announced a prisoner count,¹ upon which the detainees sat in the yards of the sections, outside the tent, as is the procedure. It was 9:00 p.m. The count was completed but the detainees were not permitted to return to their tents. Instead, they were ordered to remain seated on the ground. During that time, soldiers searched sub-section four and then sub-section three for four hours, scattering the detainees' clothes and blankets, throwing water, and smearing trash and toothpaste on their clothes and bedding. Despite the extremely cold night temperatures in the desert, the detainees were kept seated outside until 5:00 a.m., at which point seven prisoners were led to punishment cells and beaten.³⁷

Apparently, there are no restrictions on the type of force which can be used against detainees. Armed guards in Ansar III have shot tear gas, rubber and plastic bullets, and, at times, even live ammunition at prisoners. The following are some examples of the use of force at Ansar III:

- (1) On 2 January 1989, six detainees were brought to the clinic for treatment following tear-gas inhalation after guards shot tear gas inside the tents.

¹Prisoner counts are usually taken three times a day. Officers, guarded by soldiers, enter the sections and count the detainees. Prisoner counts are often used as a control measure after confrontations.

- (2) On 8 January, two detainees were seriously injured after guards shot live ammunition and plastic bullets at the detainees.
- (3) On 9 March 1989, ten detainees were wounded, and two had to be transferred to Soroka Hospital in Beer Sheba, after guards shot tear gas and rubber bullets at detainees in a number of sections in the detention center.³⁸

In al-Haq's opinion the use of live ammunition, plastic bullets, and tear gas (inside closed areas), against unarmed detainees is unjustifiable and represents excessive force regardless of the circumstances. (This is particularly true where there is no threat to the lives of the soldiers, and physical barriers, such as exist at Ansar III, keep detainees confined.) The employment of such force has an enormous impact on detainees, particularly because the open fire regulations and other guidelines are not communicated to prisoners as a matter of policy. According to al-Haq's information, prison officials have stated that the prisoners' knowledge of such guidelines would encourage them to test the limits of permissible behavior.³⁹ However, as a result of this policy, detainees report that they feel that their lives are constantly endangered. This uncertainty exacts an immense psychological toll and results in a constant state of tension at Ansar III. Al-Haq believes that the withholding of open fire regulations from detainees (particularly as regards the use of live ammunition) is not only unacceptable, but increases the possibility that prisoners will be seriously wounded or killed.

4. Inadequate Medical Care

Medical care in Ansar III continues to be inadequate. There is one doctor for each section of over 1,100 detainees. Treatment in most cases is limited to distributing Aspirin or pain killers. Those who suffer extremely serious health problems are eventually referred to hospital. Even then, however, they do not necessarily receive sufficient medical treatment.

For instance, Badran Jaber, whose detention order was renewed for five consecutive terms, suffered an apparent heart attack on 30 June 1989, following which his health deteriorated. On 20 July 1989, he was taken to Barzalai Hospital in Ashkelon, but returned to Ansar III that same day despite the recommendation of physicians that he be kept under observation for further diagnosis. Al-Haq then learned that during September 1989, Mr. Jaber suffered a second heart attack and was transported to Soroka Hospital in Beer Sheba, where it was again recommended that he be hospitalized. He was taken back to the detention center the same night. On 23 September, al-Haq intervened with the Israeli authorities on behalf of Mr. Jaber, but to date no response has been received.

In another example, Hisham al-Majdalawi, also detained at Ansar III, suffers from a thyroid disorder marked by a goiter. Amnesty International reported on 6 July 1989 that a specialist who saw him at Barzalai Hospital in Ashkelon on 1 June 1989 recommended that he be immediately hospitalized. However, Mr. al-Majdalawi was taken back to the detention center and remained in Ansar III throughout the month of June without receiving adequate medical attention.⁴⁰

According to detainees, they are often not given medicine brought to them by their lawyers. For example, Jamal al-Barghouti, an administrative detainee at Ansar III who has a severe case of asthma, does not always receive medicine brought to him by his lawyer.⁴¹ In another example, al-Haq fieldworker Sha'wan Jabarin (currently serving a one-year administrative detention order in Ansar III), reported that he does not regularly receive heart medication brought him by his lawyer for his heart condition.⁴² Similarly, vitamins and flu medicine brought to al-Haq fieldworker Iyad al-Haddad (issued with a six-month administrative detention order on 7 July 1989) in early September 1989, never reached him.⁴³

The failure of the Israeli authorities to ensure that detainees at Ansar III receive adequate medical care violates Article 91 of the Fourth Geneva Convention, which guarantees the right of detainees to obtain the medical attention they require: detainees suffering from serious diseases, or whose situation requires special care, surgery, or hospital facilities, must be referred to a proper institution to receive the necessary care "not inferior to that provided for the general population." Furthermore, "Internees shall for preference have the attention of medical personnel of their own nationality."

These rights are also affirmed by Principles 24, 25, and 26 of the UN Body of Principles and Article 22 of the UN Standard Minimum Rules for the Treatment of Prisoners.

5. Lawyers' Visits

Lawyers are allowed access to their clients in Ansar III only once a month, and then only if they coordinate their visit at least one week in advance with the administration. At that time, lawyers must also submit a list of clients they wish to see. Each lawyer may, theoretically, interview 18 clients during each visit. But according to lawyers, this does not happen. They are not allowed to see their clients upon arrival, but have to wait for several hours. In the interim they are frisked and their bags are searched by prison authorities. No visits are allowed after dark, which further limits the time allowed for lawyers' visits, particularly for attorneys from the West Bank, who are not permitted to see their clients until afternoon.⁴⁴

The administration brings detainees to meet their lawyers in groups of approximately four or five clients per lawyer at one time. Each group is generally allowed 15 minutes. Under these circumstances, lawyers are not able to see all of the detainees for whom they submitted a formal visitation request. In addition, lawyers report that, often, some of those they had request to see are not brought to the visitation area.⁴⁵

Since August 1989, lawyers and their clients are separated by two wire mesh fences approximately a half meter apart. Lawyers and detainees report that the spaces in the two wire mesh fences are of different sizes, obscuring visual contact. Attorneys are asked to sit in chairs placed roughly one meter from the fence on their side, putting a one-and-a-half-meter distance between them and their clients. During the visit, four soldiers are generally stationed between one to two meters from the lawyer, although sometimes they stand closer.⁴⁶ Thus, they are able to hear the discussion between the attorney and his client, a violation of Principle 18(4) of the UN Body of Principles, which states:

Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

Furthermore, Principle 18 refers to other aspects of visitation rights which contradict the procedures in force in Ansar III:

A detained or imprisoned person has the right to be visited by and to consult and communicate without delay or censorship and in full confidentiality, with his legal counsel ... [and also] ... A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.

6. The Lack of Legal Remedy

The Israeli High Court of Justice acknowledged the seriousness of the conditions in Ansar III in its ruling of 14 August 1988, mentioned above. At that time, the court recommended improvements in the conditions of detention in Ansar III and suggested that a permanent advisory committee be established to oversee these conditions:

Our suggestion is that the respondent [the government] consider the appointment of a permanent advisory committee which shall carry out regular supervision and shall recall and consult with the respondent on the matter of conditions of imprisonment in the prison camp of Ketziot.⁴⁷

A committee was established. However, while some improvements have been made, conditions of detention in Ansar III have not materially changed.

The overall policy at Ansar III seriously contradicts the fundamental humanitarian principle governing administrative detention: individuals who have neither been charged nor tried for an offense are to be afforded better treatment than ordinary prisoners. Instead of receiving greater privileges, administrative detainees at Ansar III are in many ways subject to harsher treatment by the Israeli authorities. The fact that detainees are forced to live in inadequate housing in the desert, in almost complete isolation itself renders conditions at Ansar III well below the minimum standards for any detention center.

Furthermore, the detention facility's administration has continued to use excessive force against those detained in Ansar III. The authorities responsible failed to properly investigate incidents when excessive force was used, and also failed to take the necessary steps to prevent a repetition of such incidents. For example, on 16 August 1988 two detainees were shot dead. According to eyewitnesses, one of them, As'ad al-Shawwa from Gaza City, was shot through the heart from a distance of 30 meters by the commander of Ansar III, Colonel David Tsemah, when he refused to enter his tent.⁴⁸ Twenty detainees were wounded in this incident as well. At the time, the authorities announced that an investigation would be conducted; indeed, the military court in Jaffa held several hearings on the issue and detainees were among the witnesses.

Yet, Colonel Daniel Peled, the investigating judge in the case, recommended to the chief military prosecutor that the investigation file be closed. Colonel Peled's conclusions were based on his impressions that the soldiers' lives were in danger, that it was not possible to determine the source of fire, and that, in sum, the shootings were justified. Nevertheless, he recommended compensation for the families of those

killed.⁴⁹ Al-Haq immediately wrote to the General Military Prosecutor to enq about the case. No response has yet been received.

In the opinion of al-Haq, the failure of the Israeli authorities to take pro disciplinary action against those who employed lethal force against detainees o August 1988 has created an atmosphere conducive to the continuing use of exces force. Moreover, as discussed above, neither the guidelines for the use of deadly f nor the rules of conduct are known to the detainees. In our view, these factors combined to create a potentially explosive situation at Ansar III.

B. Review Procedures

The Israeli authorities assert that administrative detention is not an arbitrary t of detention, in part because administrative detention orders are subject to rev In 1986, al-Haq argued that the existing review procedures were inadequate.⁵⁰ S that time, review procedures have been further limited. The most recent of t changes are presented here along with an overview of the review process.

Prior to the uprising, only the Area Commander of the West Bank or Gaza S had the authority to issue administrative detention orders. These orders were a matically reviewed by a military objections committee composed of three judge: 1988, Military Order (M.O.) 1229 and other military orders effected a major ch in review procedures. (These orders also gave lower-ranking Israeli military comr ders the authority to issue administrative detention orders.) Furthermore, in c to ease the burden on the military judicial system, M.O. 1236 (also issued in 1 canceled automatic reviews of these orders. Appeals are now brought before a s judge and are dependent upon the initiative of individual detainees.

The most important development in the policy of administrative detention in was M.O. 1281, issued on 10 August 1989.⁵¹ This order increased the maximum of an individual administrative detention order from six months to one year.[§] one-year term (as was the case with terms of six months) can be renewed indefin Pursuant to M.O. 1281, all administrative detention orders—whether or not the renewed—must be reexamined “at the earliest possible opportunity” after six mo have elapsed since either the issuance of the original order or the previous review.

It is important to note that M.O. 1281 does not specify a time limit for second review; it simply states that it should take place “at the earliest pos opportunity.” Therefore, detainees cannot object to the delay of the review ever is not carried out until considerably after six months have elapsed. An examinatio these procedures reveals that they are seriously insufficient and violate the mini standards articulated by international law.

1. The Initiation of Review

Due to obstacles faced by lawyers filing appeals (which according to procedure veloped during the uprising may only be filed with the office of the military J

[§]See further appendix 7-A.

Advocate-General in Tel Aviv) attorneys decided approximately one year ago to set up a coordinating office. This office has a dual function: to schedule lawyers' visits to Ansar III with prison officials, and to file appeals in Tel Aviv. The coordinating office has no official powers; it simply contacts the Israeli authorities on behalf of the attorneys and transmits messages to lawyers. However, attorneys report that the Israeli authorities have improperly relied on this office to fulfill official functions. This practice has had negative consequences for the appeals process.⁵² For example, the administration of the detention center contacts the office and verbally informs office personnel of a date. No formal written notice of the date of review hearings is issued by the Israeli authorities. The lack of such notice facilitates error. For instance, in several cases the wrong lawyer has been contacted, while the one retained by the client was not informed. In other cases, lawyers have only been informed two to three days in advance of the date of a review hearing and have had prior commitments including other court dates.⁵³ On other occasions, a lawyer informed of a hearing date may travel to Ansar III (where review hearings are held), only to find that he or she has no hearing scheduled for that date.

In addition, the failure to provide proper notice forces defense attorneys to either cancel previous appointments or to insist on timely notification and postpone the session. However, according to lawyers, this latter option is fraught with difficulties: it can only be taken with the hope that another date will be set soon and that the client will be properly notified of this change.

Review hearings are generally not scheduled by the Israeli authorities until two weeks to several months after the appeal is filed with the Judge Advocate-General by the coordinating office. For example, in the case of Yousef Mahmoud As'ad from Qalandiya Refugee Camp, his lawyers, Jonathan Kuttab and Ahmad Sayyad, filed the appeal on his behalf on 17 August 1989. The hearing was set for 15 November 1989, approximately three months later.⁵⁴ These same lawyers also filed an appeal for Mr. Taher al-Sinnawi from al-'Eizariyya on 21 September 1989. By late November 1989, the hearing date still had not been set.⁵⁵

In other cases, according to lawyers, delays are caused by the fact that the last case scheduled for any given day is often not heard and rescheduled for a date three to four weeks later. The length of this delay is due in part to the fact that each lawyer may only be assigned one hearing date per month.⁵⁶ In al-Haq's opinion, the delays in setting hearing dates violate the requirement set forth in the Fourth Geneva Convention that administrative detention orders be reviewed promptly.⁵⁷

Inadequate administrative procedures for review hearings have a number of adverse consequences for detainees and for the lawyer-client relationship. The detainee brought to the hearing is told that his lawyer did not come; he is not told his lawyer was not informed of the hearing.⁵⁸ The prisoner is also informed that he can ask to be represented by any of the other lawyers present that day.⁵⁹ However, these lawyers are not familiar with the detainee's case, and have not had any time to prepare. Only a thorough understanding of this situation prevents conflicts between lawyers regarding "client snatching," since it is technically unethical for one lawyer to represent a client who already has retained another attorney.

2. The Review Procedures

As the hearing begins, the lawyer is given a typewritten page detailing what is called the "open evidence."[¶] Such evidence includes a record of all previous arrests, irrespective of their outcome. According to attorneys, review officers consider previous arrests as evidence indicating the reasonableness of an administrative detention order.⁶⁰

This one-page review of "open evidence" also includes a brief summary of notes and observations concerning information written in a secret file. For example, in the case of one individual detained on 31 August 1989 pursuant to a six-month administrative detention order, these notes read as follows:

- (a) May 1989: member in the "Strike Forces" in Jalazon [Refugee] Camp, participated in disturbing the public order and writing slogans and incitement against agents of the authorities.
- (b) May 1989: member in the "Strike Forces" in Jalazon [Refugee] Camp, participated in disturbing the public order, wrote slogans, raised the [PLO] organization's flag, erected stone barricades, threw stones.
- (c) May 1989: member in the "Popular Army," participated in acts preventing persons from working in Israel and the cars that transported them.
- (d) May 1989: participated in a march by the "Popular Army" in Jalazon [Refugee Camp].
- (e) July 1989: activity in disturbing the public order including erected stone barricades, throwing stones, and writing slogans.

The lawyer is then permitted to question a representative of the General Security Service (GSS), but not under oath, with respect to the open evidence. In the above example, the intelligence officer refused to give specific dates of alleged offenses, and refused to state what slogans, where or with what they were allegedly written. He also refused to explain the difference between the "Popular Army" and "Strike Forces" or to give the general source of his information (collaborator, GSS agent, a filed complaint, observation by a soldier, etc.).⁶¹

According to lawyers, this case is representative. The officials of the GSS generally answer lawyers' questions either by saying that the answer to the lawyer's question is not in the file in hand, or that it cannot be revealed for "security" reasons.⁶²

When this questioning is finished, the lawyer and his client are dismissed and the review officer examines the secret file. In the vast majority of cases, review officers state that, for security reasons, the defense attorney may not see any of the information in the secret file. The lawyer may then ask his client to testify under oath and to submit to questioning by the review officer and the prosecution regarding the accusations against him.

Since there are no charges with specific dates, places, or other details, it is almost impossible to refute the allegations through the presentation of alibi or other witnesses. Moreover, attempts to present witnesses for the defense are further complicated by the fact that review hearings take place at Ansar III. As noted above, it is located in a closed military zone and formal permission is required to enter the

[¶]See further Appendix 7-B.

area. Attorneys who have petitioned the review officer for such permission report that it has been denied. For example, in February 1989, attorney Jonathan Kuttab requested permission to present evidence at a review session through witnesses. His request was denied. The review officer justified his refusal on the grounds that the session was not taking place in a court as such, and that there was no need for witnesses in the normal sense of the word because the hearing was to discuss the basis of a purely administrative decision.⁶³ The judge added that there was no claim that the detainee was guilty of any specific security offense; rather, the issue in the case was the possibility of danger to security if he was released.⁶⁴

Under these circumstances, the arguments forwarded by lawyers are generally as follows:

- (1) Most lawyers first begin by expressing their inability to rebut the unspecified allegations;
- (2) They then attempt to challenge the credibility of the information in the secret file and the authorities' failure to present charge sheets through normal procedure. Lawyers report that the review officer generally responds that the reasons for this order are secret and the information may not be divulged;
- (3) Finally, attorneys put forth an explanation of the detainee's personal and familial obligations as well as his health condition in an attempt to mitigate the severity of the order.

The review officer then makes his decision. Typically, the detention order is confirmed. In some cases the period of detention is reduced; however, reasons are not usually given for the reduction. Under the best of circumstances, the period is reduced to the point where detention ends on the day of the appellate hearing and a release order is issued. However, al-Haq estimates that this occurs in less than five percent of all cases.⁶⁵ Such cases are considered brilliant successes. Even in these instances, due in part to delays in setting appellate hearings, the detainee would have already spent a considerable time in detention.⁶⁶ Al-Haq knows of only two cases in which the judge declared the order to be invalid or unjustified in its entirety.⁶⁷

3. Inadequate Official Rationale

The Israeli authorities have repeatedly claimed that administrative detention procedures are legally sufficient. To further clarify the system of review utilized by the Israeli authorities, it is useful to examine an official statement regarding administrative detention issued by the Israeli Ministry of Justice on 5 June 1989:

- (1) The Israeli authorities claim that the review process is sufficient because:

At the hearing before the appeals judge, the detainee and his lawyer may respond to the charges, call witnesses and ask questions regarding the security information.

However, as illustrated above, the detainee and his lawyer are not able to effectively respond to unspecified charges or to call witnesses.

- (2) The authorities also insist that the “secret” evidence is corroborated:

[Israeli] army legal counsel confirm that the information on which the order is based has been corroborated by at least two independent and reliable sources.

As illustrated by the above discussion, it is impossible to verify the independence of the sources or their reliability, since these are “secret.”

- (3) The authorities also justify the reliance on secret evidence:

Unfortunately, the use of secret evidence is necessitated by imperative reasons of State security and public safety.

Such explanations cannot, under any circumstances, justify a refusal to permit the thousands of individuals detained without charge or trial access to information essential to a rebuttal and a meaningful review of their extra-judicial detention.

- (4) The authorities claim that detainees do not take advantage of the available procedural “safeguards”:

However, many detainees do not appeal, basing their decision on political reasoning.

This allegation is unsupported by 1989 estimates which indicate that more than 90 percent of detainees requested that their administrative detention orders be reviewed.⁶⁸ At the same time, many detainees and lawyers view these hearings as sub-standard and ineffective for all of the reasons outlined above.⁶⁹

In the final analysis, the use of secret evidence, coupled with arbitrary judicial procedures, leaves those detained without charge or trial with no effective legal safeguards. Under these circumstances, administrative detention is prohibited by international law.⁷⁰

Summary

It is highly questionable whether “imperative reasons of security” demand that thousands of persons be detained without charge, trial, or the right to have their detention adequately reviewed by an impartial body. With so many Palestinians having been administratively detained during the past 24 months, and approximately 1,720 currently interned, it appears that the Israeli authorities have used this measure indiscriminately, and made little attempt to have their practices in this area conform with international law. This is even more clear when one examines the conditions in which the vast majority of administrative detainees are held.

Isolation and tension are the central features of life at Ansar III. In the middle of the desert, far from families and friends, detainees are effectively kept in physical isolation while being restricted in their access to the outside world through the media.

This isolation has been compounded by the increasing use of Ansar III as a place of permanent, rather than temporary, internment through renewals of detention orders and the issuance of orders for longer periods of time. In al-Haq's view, the only way to break this isolation is to close the detention center. Al-Haq has repeatedly expressed this view in the past; here we once again reiterate our call for the closure of Ansar III.

Until this is achieved, an interim solution is needed to alleviate the tension in which inmates at the detention center continue to live. The shooting deaths of detainees, which occurred on 16 August 1988, for which no disciplinary action has been taken, has shown that lethal force may be used with impunity at Ansar III. Furthermore, the absence of clearly published guidelines for the behavior of detainees and wardens enhances the insecurity under which thousands of inmates have been forced to live, in some cases for as long as two years. The efforts of human rights and humanitarian organizations to force the authorities to rectify this situation and to abide by internationally recognized minimum standards have failed. In al-Haq's view, the only realistic and available option left to safeguard the security of the prisoners is to establish a permanent ICRC presence in Ansar III. Such a permanent outpost is within the legal mandate of the ICRC and could effectively diffuse the potentially dangerous situation which exists at the detention camp until it is closed.

Endnotes to Chapter Seven

1. This figure was reported to the local press by Brigadier-General Amnon Straschnow, the Judge Advocate-General of the Israeli military, and was broadcast on Israel Television on 18 December 1989. For more information on the total number of detainees see Chapter Five, "Torture and Death in Detention."
2. Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988), p. 148.
3. See for example Lawyers Committee For Human Rights, *Detention of Human Rights Workers and Lawyers From the West Bank and Gaza and Conditions Of Detention at Ketziot* (New York: LCHR, 1988), pp. 65-96.
4. *Ibid.* See also Al-Haq, *Ansar 3: A Case For Closure* (Ramallah: Al-Haq, 1988).
5. Article 78, Fourth Geneva Convention. (Emphasis added.)
6. Jean S. Pictet, (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 368.
7. Article 39, Fourth Geneva Convention. The obligations articulated by this article are also specifically referred to in Article 78.
8. Al-Haq, *Punishing a Nation*, p. 148.
9. Public letter issued on 5 June 1989, by the Israeli Ministry of Justice, signed by Tamar Gaulan, Director, Human Rights and International Relations Department. Ministry of Justice File No. 164.1-339 to 549.
10. Al-Haq, *Punishing a Nation*, pp. 147-152, 244-245; Al-Haq, *Ansar 3*; Emma Playfair, *Administrative Detention in the Occupied West Bank* (Ramallah: Al-Haq, 1986).
11. Nearly all administrative detainees are held in Ansar III. Al-Haq also estimates that of the total prison population of Ansar III quoted above, roughly 1,460 detainees are from the West Bank and 2,830 are from the Gaza Strip. According to a delegation from the Lawyers Committee for Human Rights, which visited the detention center in September 1989, 4,272 detainees were reported by the prison authorities to be in Ansar III at that time, of whom 1,685 were administratively detained, 1,848 sentenced to varying prison terms, and the remainder awaiting trial.
12. Michal Sela, "Ketziot Expanded to Hold 1,200 More," *Jerusalem Post*, 8 September 1989.
13. ICRC, "Press Release No. 1581," 18 August 1988.
14. LCHR's position is detailed in a letter on Ansar III sent by the Committee to Israeli Minister of Defense Yitzhak Rabin on 28 March 1989.
15. Article 49, Fourth Geneva Convention.
16. H.C. 353/88, pp. 5-6 (in Hebrew).
17. *Jerusalem Post*, 27 May 1988.
18. Al-Haq, *Ansar 3*, p. 12.
19. *Ibid.*
20. LCHR, Letter to Defense Minister Yitzhak Rabin, 28 March 1989, p. 7.
21. Joel Greenberg, "Hamlet Kept Out of Prison," *Jerusalem Post*, 17 October 1989.
22. Al-Haq documentation.
23. *Al-Quds*, 30 October 1989 (in Arabic).
24. Section IV of the Fourth Geneva Convention, "Regulations for the Treatment of Internees," includes a series of provisions which articulate the minimum standards for the conditions of confinement of administrative detainees.

25. Al-Haq Fieldwork Report.
26. Al-Haq Fieldwork Report.
27. Al-Haq Fieldwork Report.
28. Al-Haq Fieldwork Report.
29. Pictet, *Commentary*, p. 386.
30. For a discussion of drinking water shortages during 1988, see Al-Haq, *Ansar 3*, pp. 10-11.
31. Al-Haq Fieldwork Report.
32. See The UN Standard Minimum Rules for the Treatment of Prisoners.
33. Al-Haq Fieldwork Report.
34. Al-Haq Fieldwork Report.
35. Al-Haq Fieldwork Report.
36. Al-Haq Fieldwork Report.
37. Al-Haq Fieldwork Report.
38. Al-Haq files.
39. Al-Haq, "Escalating Tensions at Ansar III Demand Immediate Action," 24 February 1989.
40. Amnesty International, "Medical Concern: Three Palestinian Prisoners: Israel/Occupied Territories," 6 July 1989. (AI Index: MDE 15/25/89).
41. Al-Haq Fieldwork Report.
42. Al-Haq Fieldwork Report.
43. Al-Haq Fieldwork Report.
44. West Bank lawyers report that visits often do not begin until as late as 3:00 p.m.
45. Interviews with defense lawyers.
46. Reported to al-Haq by defense lawyers al-Haq staff detained in Ansar III.
47. H.C. 353/88, p. 23.
48. Al-Haq Affidavit No. 1839.
49. *Jerusalem Post*, 9 November 1989.
50. Playfair, *Administrative Detention In the Occupied West Bank*, pp. 18-26.

51. The main purpose of M.O. 1281 seems to be to increase the psychological impact of administrative detention on the Palestinian population. First, this order does not reduce the pressure on the military judicial system. Persons administratively detained for one year will still appear before a judge twice: once on appeal (if one is made), and once for judicial review six months after the date of the order or the date of judgment on the appeal (as stipulated by M.O. 1281). Conversely, someone detained pursuant to a six-month administrative detention order will appear only once before a judge in the appeals hearing, if an appeal is presented. If this detention order is renewed for an additional six months, then the person would have the right to appeal the renewal order. Thus, one would appear before a judge on the average of once every six months regardless of whether he was handed a one-year detention order or a six-month order which was later renewed.

Second, M.O. 1281 does not enable the Israeli authorities to detain persons for a longer period of time than before. Indefinite administrative detention was already possible in accordance with existing military legislation, which allows for indefinite renewal. Thus, if the authorities intend to keep someone in administrative detention for two years, they can do so through four consecutive six-month detention orders, without recourse to M.O. 1281.

Third, despite M.O. 1281, according to al-Haq's documentation the majority of administrative detention orders issued since August 1989 have been for six months or less. Only approximately 25 orders have made use of the provisions of M.O. 1281 which permit detention for longer periods.

Therefore, in al-Haq's opinion the main purpose of M.O. 1281 is to frighten the population through seemingly harsh measures rather than to create any real change in administrative detention procedures.

52. Interviews with lawyers who regularly represent administrative detainees in review sessions.
53. *Ibid.*
54. Interview with Advocate Jonathan Kuttab, November 1989.
55. *Ibid.*
56. Interviews with defense lawyers.
57. Article 78, Fourth Geneva Convention.
58. Al-Haq Fieldwork Report.
59. *Ibid.*
60. Interviews with lawyers practicing in review sessions.
61. Interview with the case lawyer.
62. Interviews with defense lawyers.
63. Reported to al-Haq by Advocate Jonathan Kuttab.
64. *Ibid.*
65. This estimate was reported by several different lawyers interviewed by al-Haq.
66. Reported to al-Haq by attorneys who regularly represent clients at review hearings.
67. These cases were reported to al-Haq by Advocate Tamar Peleg.
68. This estimate is derived from al-Haq documentation and lawyers' estimates.
69. This point is evidenced by repeated lawyers' strikes in the Occupied Territories. One of the reasons stated for these actions was the inability of attorneys to effectively represent their clients in the Israeli military court system. For more on this issue, see Chapter Six, "The Military Judicial System."
70. Articles 43 and 78, Fourth Geneva Convention. See also Principle 11 of the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, published by Amnesty International in August of 1989, which provides that:

a person shall not be kept in detention without being given an *effective* opportunity to be heard *promptly* by a judicial [officer] or other authority. [emphasis added.]

These principles are considered applicable at all times and in all circumstances, including states of emergency.

Appendix 7-A

Military Order No. 1281

ISRAEL DEFENSE FORCES

Order No. 1281

Order Regarding Administrative Detention (Temporary Instructions)
(Amendment No. 4)
[Unofficial translation]

By the powers vested in me as Regional Commander of the Israel Defense Forces, and in the belief that because of the special circumstances prevailing in the region, such action is necessary to the maintenance of public order and regional security, I hereby order, as temporary instructions, the following:

1. Amendment to Article 1 of the Order

In the Order Regarding Administrative Detention (Temporary Instructions) (Judea and Samaria) (No. 1299), 1988, (hereinafter: "the original order"), in Article 1, sections (a) and (b), in place of the words "not to exceed six months," shall be stated: "not to exceed twelve months."

2. Article 5A:

Following Article 5 of the original order, Article 5A shall be added, stating as follows:

"Periodic Examination"

5A. If a detention order has been issued in accordance with Articles 1(a) or (b) specifying a detention period of more than six months, a judge shall review the matter of the detention as soon as possible after six months have passed since the day of the issuing of the detention order or the day of its renewal, or, if an appeal has been presented, as soon as possible at the end of six months from the day on which the decision on the appeal was granted by the judge, whichever is later, or within a shorter period determined by a judge in his decision, as long as the detainee has not been released.

3. Amendment to Article 6 of the Order

In Article 6 of the original order, in sections (a) and (c), in place of the words "Articles 4 and 5," shall be stated: "Articles 4, 5, and 5A."

4. Validity

This Order shall be valid as of the day on which it is signed.

5. Title

This order shall be called "Order Concerning Administrative Detention (Temporary Instruction) (Amendment No. 4) (Judea and Samaria), (No. 1281), 1989."

10 August 1989

(Signature)

Brigadier General Yitzhak Mordachai
Commander of I.D.F. Forces in Judea and Samaria.

Appendix 7-B

Open Evidence Presented in an Appeal Against an Administrative Detention Order

OPEN INFORMATION: ADMINISTRATIVE DETENTION REVIEW SESSION

Appeal Number*:

Name*:

ID card number*:

Place of residence: JERICHO

Date of birth: 1968

1. Background

- (a) Previous arrests: 24.5.1988-1.7.1988
- (b) Sentencing:
- (c) Restriction order:
- (d) Administrative detention order: arrested 25.8.1989

2. Revealed background material

- (a) December 1988: distributed leaflets of the Popular Committees in Jericho.
- (b) March 1989: participated in disturbances of the peace in Jericho.
- (c) July 1989: distributed leaflets of the Popular Committees in Jericho.

There is secret material in the file.

*Withheld from Publication

Chapter Eight

Deportation

Introduction

Twenty-six Palestinians were deported from their homeland in 1989.* Nine of these had exhausted the appeals procedure to the Israeli High Court of Justice, while the others, stating their lack of confidence in the Israeli judicial system, abandoned their appeals before the end of the proceedings. Although no new deportation orders have been issued since August 1988, a growing chorus of voices inside and outside the Government of Israel has been calling for more deportations and a shortening of appeal procedures.

Also seen in 1989 was the summary expulsion of Palestinians, particularly women, who were denied residency permits after applying for family reunification but remained with their families in the Occupied Palestinian Territories.†

A. Policy of Deportation

In a June 1989 review of Israel's strategy for suppressing the uprising, Minister of Defense Yitzhak Rabin declared, *inter alia*, that "10 months is too long a time to wait between issuing a deportation order and actual deportation."¹ The statement came on the heels of a proposal, expressed in a letter to Minister of Justice Dan Meridor, to devise a "legal solution" permitting the deportation within 72 hours to one week of "central figures taking part in incitement, organization, and participation in violence."² Palestinians deported under the proposed regulations would be permitted to appeal the orders from outside the country.

This proposal implicitly reaffirmed the value of deportations to the Israeli authorities. Yet the idea that deportations were a useful method of combatting the uprising had already been discredited by Mr. Rabin six months earlier, in January 1989, when

*See further Appendix 8-A.

†See further Chapter Fifteen, "Women."

he declared that deportations had "been found to be ineffective in the battle against the 13 1/2 month-old intifada."³

This apparent contradiction between the recognized failure of the policy of deportations as a deterrent, and the desire to continue and even expand its use, may perhaps be explained by reference to the domestic Israeli political arena, in which the military's inability to crush the uprising is greeted by calls from the right-wing parties, and in particular from their vocal vanguard, the settlers, for ever harsher punitive measures.⁴ For example, the leader of the right-wing Tehiya Party suggested "transferring" an entire Palestinian refugee camp to Lebanon as a way to end the uprising.⁵ Cabinet members of the National Religious Party reportedly proposed speeding up deportation proceedings, deporting any Palestinian from the Occupied Territories who is sentenced to more than a year's imprisonment, and deporting second offenders.⁶ On 31 August 1989, Israel's Minister of Industry and Trade, Ariel Sharon, called for the deportation of "intifada leaders," stating:

Perhaps someone thinks they should be left alone for future negotiations. Perhaps someone harbours mistaken hopes that there is a difference between the PLO here and the PLO in Tunis. There is no chance of any political process as long as they are within Israel's borders, and not under lock and key.⁷

Closer to the center of power, Israel's Deputy Foreign Minister, Binyamin Netanyahu, reportedly criticized the government (of which he is a member) for having failed to politically exploit opportune situations to carry out a large-scale deportation of Palestinians. But, as he added to his audience of Israeli university students on 16 November 1989, "I still believe that there are opportunities to expel many people."⁸

Those setting policy in the Occupied Territories have used the right-wing's exhortations as justification for a further relaxation of existing legal constraints, which are, however, already sufficiently flexible and sweeping in character to allow for punishments that are clearly forbidden by international law.

B. Deportations and the Law

Deportations are carried out by the Israeli authorities on the basis of the 1945 Defense (Emergency) Regulations issued under the British Mandate. The Area Commander (Southern Command for the Gaza Strip and Central Command for the West Bank) signs a deportation order by virtue of powers vested in him by Articles 108 and 112 of the Regulations. Under Article 108, the Commander may issue a restriction, detention or deportation order if he

is of opinion that it is necessary or expedient to make the order for securing the public safety, the defence of Palestine, the maintenance of public order or the suppression of mutiny, rebellion or riot.

Under Article 112, the Area Commander may order a person deported from the area indefinitely.⁹

A person served with a deportation order is detained until the deportation is carried out. Under procedures instituted in the 1970s (after more than a thousand Palestinians had already been deported under the Regulations without any form of

due process), a person can appeal a deportation order to a military advisory committee and, if the order is confirmed by the Committee, to the Israeli High Court of Justice. Both bodies are empowered only to determine if the order was implemented in a procedurally correct manner and whether the Area Commander acted in "good faith." No formal charges are made against the deportee, and, as a rule, evidence is kept secret.[†] The Advisory Committee, which is appointed by the Area Commander who orders the deportation, can only issue a non-binding recommendation to the Commander.¹⁰ The High Court of Justice, by contrast, has the authority to overturn a deportation order, but has never done so.

The Israeli authorities defend their deportation policy by claiming that deportations are permitted by local law, i.e., the Defense (Emergency) Regulations, and that the particular type of deportations carried out by Israel are not prohibited by international law (in this case the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949). These claims are considered below.¹¹

In al-Haq's view, there are no provisions in existing local law that allow deportations. The Jordanian Constitution of 1952 explicitly bars deportations. The British Defense (Emergency) Regulations, on the other hand, although permitting deportations, were revoked by the British Mandatory authorities on the eve of their May 1948 departure from Palestine and were not used by Jordan during its rule of the West Bank from 1948 to 1967. The Israeli authorities, however, revived the Regulations in 1967 through two "Interpretation Orders." The Defense Regulations, thus, do not constitute valid law in the West Bank and, for similar reasons, nor in the Gaza Strip.¹²

As for international law, two main legal instruments are applicable to Israel's occupation of the West Bank and Gaza Strip: the Regulations annexed to the Hague Convention (IV) of 1907 and the Fourth Geneva Convention of 1949. The Hague Regulations do not mention deportations. The reason for this, according to Georg Schwarzenberger, is that to those drafting the Regulations, "[t]o raise the issue of the illegality of the deportation of the population of occupied territories was . . . unnecessary; the illegality was taken for granted."¹³ The Fourth Geneva Convention, however, is unambiguous and not subject to misinterpretation on the issue of deportations. Under Article 49:

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

According to the official ICRC Commentary to the Convention, this prohibition is "absolute and allows of no exceptions."¹⁴ Nevertheless, the Israeli High Court of Justice has argued, in H.C. 785/87 (*Afu et al. v. the IDF Commander in the West Bank*), that the expulsion of individuals for "security" reasons is not prohibited by the Geneva Convention, since the "legislative purpose" of Article 49 was to prevent the type of mass deportations as carried out by the Nazis during the Second World War. However, such an interpretation of Article 49, which subverts it in content as

[†]Evidence is kept secret by virtue of Article 44 of the Evidence Law (New Version) 1971. In deportation cases, the Minister of Defense submits a document to the Court and, citing "reasons of security," states that disclosure of the evidence may reveal intelligence sources.

well as spirit, conflicts with the absolute character of the article.

In addition to the unequivocal prohibition contained in Article 49, Article 147 of the Fourth Geneva Convention defines deportation as a "grave breach" of the Convention. Grave breaches of the Convention are equivalent to war crimes. Indeed, deportation is declared a "war crime" and a "crime against humanity" in the 1945 Charter of the Nuremberg Tribunal, which is accepted by Israel as declaratory of customary international law and as such binding on Israel.[§]

In al-Haq's view, therefore, the deportation of Palestinian residents of the West Bank and Gaza Strip cannot be justified under international law under any circumstances whatsoever, and Israel is guilty of a grave breach of the Fourth Geneva Convention when it does deport Palestinians.

C. The Role of the High Court of Justice

Since the mid-1970s, when Palestinians were given the opportunity to appeal deportation orders to the Israeli High Court of Justice, the Court has not overturned a single deportation order. To the contrary, the Court, using a number of arguments, has consistently confirmed the Area Commander's license to deport persons from the Occupied Territories. In 1989, the High Court of Justice considered four different appeals brought by nine Palestinians served with deportation orders by the military authorities. Three of these are discussed here.

In H.C. 814/88 (*Nasrallah and Hamdallah v. IDF Commander in the West Bank*), familiar arguments were presented both by the petitioners and the respondent. In his ruling of 21 June 1989, the presiding judge, Justice Gabriel Bach, who is considered one of the Court's more liberal judges, dismissed the petitioners' recourse to Article 49 of the Geneva Convention. According to Justice Bach, although deportation does constitute a violation of Article 49,[¶] the Convention in his view is not part of international customary law and Israel is therefore not bound by it. Instead, he argued, it was:

better ... [to] concentrate on the question whether the respondent, on the basis of the evidence brought before him, was empowered to reach the conclusion that there is a justification and a need to issue the deportation orders against the petitioners, and whether this decision was made in good faith on the basis of relevant and reasonable considerations only.¹⁵

The three-judge panel therefore studied both the classified and open materials in the case of the two petitioners, focusing on the following points:

- (1) The number and reliability of sources that informed the respondent's decision;
- (2) Whether the classified information was consistent and unequivocal;
- (3) Whether lesser sanctions had been considered, obviating the urgent need for deportation.

[§]See further Chapter Nineteen, "The Role of the International Community."

[¶]This was Justice Bach's minority opinion in H.C. 785/88, and he repeats this position here.

The Court concluded that:

[T]he respondent and the Advisory Committee acted legally and in good faith, and their considerations were neither unreasonable nor illogical. They had at their disposal dozens of sources of information that were independent of one another, and the evidence submitted criss-cross, supporting its parts, and creates, in its accumulative weight a uniform and consistent picture.¹⁶

One of the petitioners, Taysir Nasrallah, reportedly did not deny that he headed the Shabiba organization in the Balata Refugee Camp where he lives. The Shabiba organization is a grass-roots organization that was active in the Occupied Territories for some ten years before being outlawed by the military authorities in March 1988.¹⁷ According to the Court, the evidence showed that Nasrallah had "organized riots" in Balata, and that he had "continued his activities" following imprisonment.

The petitioners had no access to this "evidence," however, and, because they could thus not exercise their right to defend themselves, were forced to trust in the "good faith" of the Court in its examination of the classified materials which served as the basis for the Military Commander's decision to issue the deportation orders. Not surprisingly, given the limited scope of its authority and past precedent, the Court endorsed the two orders.

In H.C. 765/88 (*Bilal Shakhshir v. the IDF Commander in the West Bank*), any remaining traces of due process disappeared. Meir Shamgar, the President of the High Court of Justice and one of the principal architects of Israel's legal justification for its 22-year military occupation, gave the decision. Justice Shamgar used four-fifths of his written decision to describe the "evidence" submitted by the Advisory Committee and the respondent, and devoted the rest of the decision to refusing to indulge in legal arguments, citing relevant precedents. The petitioner's arguments are referred to only in passing. Concerning the petitioner's request to the Advisory Committee to summon the Area Commander, the Prison Commander, General Security Service (GSS, or Shin Bet) interrogators and court officers, Justice Shamgar approvingly cites the Committee's refusal which reads, in the case of the GSS interrogators:

The petitioners' representatives requested to summon all the GSS interrogators who had ever interrogated the four petitioners.* On this matter it seems to us that this "general" invitation is nothing but an attempt to bother and draw out the discussions of the Committee, and is not relevant at all to the issuing of the deportation orders.¹⁸

Deprived of evidence on the basis of which he could perhaps defend himself, and not permitted to question those who are responsible for issuing the deportation orders, Bilal Shakhshir was left at the mercy of the Court. The Court confirmed the deportation order on 28 June 1989.

In H.C. 792/88 (*Muhammad Mtour et al. v. the IDF Commander in the West Bank*), the petitioners introduced a novel argument in the proceedings. Usually in deportation cases, petitioners have the choice either to ask the three-judge panel to examine the classified information and use this as a basis for their ruling, or to

*Originally there were four petitioners. In the case of one, Sarhan Dweikat, the military advisory committee recommended against expulsion, and the order was converted to an administrative detention order. Two of the three remaining petitioners withdrew their appeals to the High Court shortly after initiating proceedings.

ask another judge to determine whether any of the classified information should not be made available to the petitioners.[†] In this case, the petitioners decided not to utilize these options. Instead they argued that since deportation is a violation of the basic human right to physical freedom and freedom of movement, the burden of proof is reversed and it is the respondent who must prove that he acted "legally and in a reasonable manner." How—so the argument continues—can the Court decide that this is so if it has been denied access to the classified evidence by the Minister of Defense? If, in addition, there is nothing in the open evidence to warrant the petitioners' deportation, the Court must rule in favor of the petitioners.¹⁹

The decision by Justice Bach, who presided in H.C. 792/88, is interesting on this point:

There is no doubt that the deportation of a person from the land of his residency is a very serious sanction, which damages a basic freedom of every citizen and resident. The issuing of such an order is allowed by the law only when the issuing authority is convinced that this is necessary for binding security reasons. In order to become convinced, it is essential that reliable and weighty material be brought before the authority so empowered.

This material must be considered with all gravity by the Commander who issues the order, and also by the Advisory Committee whose task it is again to reflect on the way discretion has been used by the respondent. When litigation is submitted to the High Court of Justice concerning a deportation order, the judges of the Court will examine whether, as concerns the decision of the respondent and the opinion of the Advisory Committee, they acted according to the aforesaid directives.

In so far as the evidence in the hands of the two above-mentioned elements is submitted to this Court for study, the judges may examine its content and significance. But when the secret materials are not submitted to the High Court of Justice due to the submission of a confidentiality document by the Minister of Defense, then this is not sufficient to cancel the deportation order by the Court, even if the Court supposes that the public material does not contain enough to justify the deportation of the petitioner.

It is desirable for the sake of doing justice that in a case like this, the judges of the Court will be given the opportunity to study the secret material, either by means of an appropriate amendment of the law or by means of an agreement of the parties to the judges' proposal to study that material, digressing by consent from the evidence laws. It is the petitioner's right not to permit this procedure, but in this case it will be more difficult for him to move the Court to determine that the respondent's decision was given without a sufficient basis of evidence.²⁰

In other words, despite the fact that deportation is a violation of a basic human right, the burden of proof is on the deportee, and when the latter, in his effort to prove that the Area Commander has no evidence for his decision, is barred from viewing material declared classified for "security reasons" by the Minister of Defense, he has no other

[†]This supposedly is a concession by the Court to the petitioners: because they cannot see the evidence themselves by order of the Minister of Defense, petitioners have the option to ask the Court to examine this evidence in the petitioners' absence. This procedure is not part of the law but according to Justice Bach in H.C. 792/88, it also "does not contradict the law, as it is generally known that with the agreement of both parties a digression from the evidence laws is permissible."

option but to place his trust in the Court. In H.C. 792/88, the Court proceeded to examine the secret evidence in the case of Muhammad al-Mtour only, since the Court had rejected the request of the other three petitioners that their counsel be present when the classified evidence was examined. Interestingly, the Court toyed with the idea of recommending that al-Mtour be put on trial, given the "severe and convincing" nature of the evidence against him. However, they concluded that they were

finally ... convinced ... that the conclusion of the respondent according to which the most beneficial way to deal with the great security threat deriving from this petitioner is only by granting the deportation order ... is based on considerations made in good faith and which do not suffer from unreasonableness.²¹

The Court confirmed the deportation orders on 24 August 1989, a year and one week after they had been issued.

It is clear from the rulings of the High Court of Justice in 1989 that Palestinians' claims that appealing to the High Court of Justice is pointless are well-grounded. Having decided on all the major legal issues (like the status of the Fourth Geneva Convention, and the intent of Article 49) in earlier decisions, the Court is left to fill minor loopholes discovered by Palestinians and their counsel whose only goal is categorised as an "attempt to bother" in pursuit of their basic right to defend themselves and stay in their homeland.

Deportations having been settled from a legal perspective in the Israeli High Court of Justice, the issue reverts to the political realm from where it originally emerged. In the absence of any convincing signs from the Israeli authorities that the policy of deportations has been abandoned, notwithstanding the lull in the issuing of new orders for over a year, Palestinians have no source of protection other than the international community.

D. International Actions Against Deportations

The position of the international community on deportations has also been unambiguous. United Nations Secretary-General Javier Perez de Cuellar issued a statement following the deportation of eight Palestinians to Lebanon in June 1989, in which he declared that the expulsions were "a clear violation of the Fourth Geneva Convention and of Lebanese sovereignty." The United Nations Security Council had earlier condemned deportations by Israel in Resolutions 607 and 608 of January 1988.[†] Similarly, the International Committee of the Red Cross (ICRC) has held: "Such expulsions are in violation of Article 49 of the Fourth Geneva Convention." The European Community declared in a demarche to the Israeli authorities in January 1988 that the deportation of four Palestinians at the time constituted "a clear breach of Article 49" of the Fourth Geneva Convention.²² The Government of the United States has also stated in the past that it views deportations as a violation of Article 49.²³ Yet,

[†]The U.S. government persistently vetoed UN Security Council Resolutions on deportations but abstained on such resolutions after January 1988.

these protests have had no noticeable effect as they were simply ignored by the Israeli authorities.

Yet, deportations apparently constitute the only example in which international action has yielded results. Since the explicit threat of damage to bilateral relations issued to Israel by the Government of the United States on 23 August 1988 if Israel were to continue to expel Palestinians,²⁴ no new deportations have been ordered, although Palestinians who had already received an order were indeed deported in 1989.

At the same time, this is not an undivided success. What is significant about the U.S. intervention is that U.S. officials did not use international law as a basis for their intervention. Although the U.S. government has acknowledged that deportations violate the Fourth Geneva Convention, and although it has asserted the applicability of the Convention to Israel's occupation of the West Bank and Gaza Strip, whenever it has criticized Israel's deportation policy it has done so using political arguments, referring to international law only as an additional, and subordinate, basis for criticism. For example, following the expulsion of eight Palestinians from their homeland on 29 June 1989 a State Department spokesperson declared that the U.S. government was "strongly opposed to deportations," adding that deportations are:

harmful at any time and particularly right now, when we are seeking international and Palestinian support for Israel's election proposal. Our efforts are geared to convincing Palestinians on [sic] the need to move into a dialogue with Israel and begin the process of elections and negotiations that will lead to a comprehensive resolution of the conflict.²⁵

In al-Haq's view, resort to political, rather than legal arguments provides an arbitrary basis for stopping violations of human rights. There is no guarantee that such arguments will be used consistently or are guided, as they should be, by principles of universal applicability. There is therefore a real danger inherent in their use of a selective favoring of allies over foes, or criticizing some violations while letting others pass, regardless of legal standards.

Summary

Deportation of Palestinians from their homeland is a violation of international law and basic human rights. It is also an arbitrary policy since deportees are selected by the GSS which, under the current quasijudicial review, is not accountable for its actions, although the policy itself is decided at the highest governmental level. Deportees face unspecified general accusations based on classified evidence, are not permitted to question those involved in deciding their fate, and in the end are simply and unceremoniously turned out into alien, and sometimes hostile, territory.

Deportation of Palestinian individuals clearly has wide ramifications for Palestinian society. Those deported often constitute the society's most prominent elements. Among the 26 deported in 1989, for example, were three university or college lecturers, five trade unionists, at least two journalists, and several student leaders. Deportation, in effect, means the decapitation of the society's *de facto* leadership. In addition, it frequently entails either the separation or exile of entire families. Sometimes spouses

are barred from travel, as in the case of Amal Wahdan, whose husband, Muhammad al-Labadi, was deported in June 1989; at other times they are allowed to leave the country only if they agree to sign an undertaking not to return for a certain period, for example three years, as in the case of Siham Barghouti whose husband, 'Ali Abou-Hilal, was deported in January 1986. Under such conditions, their departure from their homeland also amounts to a *de facto* deportation.

Although no new deportation orders have been issued since August 1988, the policy remains in force and, as we have shown above, there are increasing calls for more deportations and a speeding up of the deportation process. In recent administrative detention cases it transpired that the authorities may have encouraged Palestinians to accept exile over prison,²⁶ while official rumors of a "waiting list" of Palestinians the authorities intend to deport have also been circulating. In November 1989, Advocate Lea Tsemel negotiated an arrangement with the military authorities after she had been notified that two of her clients, Badran Jaber and 'Abd-al-'Alim Da'na, faced an (unusual) order deporting them for a period of two years. According to the agreement, the two men, both of whom had already been in administrative detention since 1988, would not be deported but be given a one-year administrative detention order to be served in Jneid Prison near Nablus rather than in Ansar III.²⁷

In the absence of concerted international action against Israel's illegal deportation policy, the military authorities still can and very well may expel more alleged "inciters" and "leaders of the uprising" as soon as the political climate is opportune.

Endnotes to Chapter Eight

1. Asher Wallfish, "Rabin Wants to Exploit Law Against Intifada Activists," *Jerusalem Post*, 28 June 1989.
2. Kenneth Kaplan and David Makovsky, "Rabin Seeks 'Legal Solution' to Use Harsher Measures to Quell Intifada," *Jerusalem Post*, 21 June 1989.
3. Kenneth Kaplan, "The Military Has Exhausted Its Ideas," *Jerusalem Post*, 25 January 1989.
4. A parallel with 1985, when Mr. Rabin introduced an "Iron Fist" policy in the wake of settlers' vociferous calls for more severe measures, is highly instructive. See Joost R. Hiltermann, *Israel's Deportation Policy in the Occupied West Bank and Gaza*, second edition (Ramallah: Al-Haq, 1988).
5. Tehiya leader Yuval Ne'eman quoted in Lea Lavavi, "'How to End the Intifada'," *Jerusalem Post*, 25 June 1989.
6. Michal Yudelman, "NRP Ministers to Propose Harsh Measures to Crush the Intifada," *Jerusalem Post*, 12 July 1989.
7. Michal Yudelman, "Sharon: Deport Intifada's Leaders." *Jerusalem Post*, 1 September 1989.
8. *Jerusalem Post*, 19 November 1989.
9. Government of Palestine, *The Defense (Emergency) Regulations, 1945*, as amended until 2 March 1947. (Jerusalem: Government Printing Press, 1945).
10. A military advisory committee has twice advised against the deportation of a Palestinian. In September 1985, the Committee recommended that Khalil Abou-Zayyad not be deported, and in the event he was deported for a period of three years; he returned to the Occupied Territories in September 1988. In the fall of 1988, the Committee suggested likewise that Sarhan Dweikat from Balata Refugee Camp in the Nablus district not be deported; Dweikat's deportation order was subsequently converted to a six-month administrative detention order by the Area Commander.
11. For a fuller discussion of these issues, see Hiltermann, *Israel's Deportation Policy*.
12. See Martha Roadstrum Moffett, *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories* (Ramallah: Al-Haq, 1989).
13. Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals, Vol. II: The Law of Armed Conflict*. (London: Stevens & Sons Ltd., 1968), p. 227. Note also that the Hague Regulations were drafted prior to the Second World War.
14. Jean S. Pictet, (ed.) *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. (Geneva: International Committee of the Red Cross, 1958), p. 279.
15. H.C. 814/88, *Taysir Nasrallah and 'Akef Hamdallah v. the IDF Commander in the West Bank, 21 June 1989* (in Hebrew).
16. *Ibid.*
17. See further Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988), Chapter 9.
18. H.C. 765/88, *Bilal Shakhshir v. the IDF Commander in the West Bank, 28 June 1989*. Emphasis added (in Hebrew).
19. H.C. 792/88, *Muhammad Mtour, 'Oda Ma'ali, Taysir 'Arouri and Majed al-Labadi v. the IDF Commander in the West Bank, 24 August 1989* (in Hebrew).
20. *Ibid.*
21. *Ibid.*

22. The demarche was referred to in an EC statement condemning eight deportations in April 1988. "Statement by the Twelve on Israeli Practices in the Occupied Territories," Bonn, 15 April 1988.
23. U.S. Ambassador to the United Nations Thomas Pickering said on 6 July 1989, for example: "We are opposed to the practice of deportations as a violation of Article 49 of the Fourth Geneva Convention." See Walter Ruby, "Security Council raps deportations by Israel." *Jerusalem Post*, 7 July 1989.
24. *Jerusalem Post*, 24 August 1988.
25. "Israel Expels Eight Palestinians to Lebanon," *Al-Fajr Jerusalem Palestinian Weekly*, 3 July 1989.
26. Palestinian and Israeli lawyers have referred to statements by prisoners that they had been approached by a high-ranking Israeli officer who had made them such an offer. See also "Military tells Palestinians they can choose exile instead of prison," *Al-Fajr Jerusalem Palestinian Weekly*, 27 November 1989. This is not a new policy; in the past Palestinians have in fact been deported in lieu of a shortening of their jail sentences.
27. Telephone interview with staff of Advocate Lea Tsemel, 13 December 1989.

Appendix 8-A

Palestinians Ordered Expelled from the Occupied Territories
5 December 1988-5 December 1989

No.	Name	Residence	Order	APP	Date
1	Hani Haloub	Toulkarem	DER	W	1/01/89
2	'Uthman Da'oud	Qalqiliya	DER	W	1/01/89
3	'Abd-al-Hamid al-Baba	al-Am'ari	DER	W	1/01/89
4	Jamal Faraj	Dheisha	DER	W	1/01/89
5	Yousef 'Oda	Balata Cp	DER	W	1/01/89
6	'Isam Daba'i	Nablus	DER	W	1/01/89
7	Mas'oud Z'eiter	Nablus	DER	W	1/01/89
8	Sa'id Husein Baraka	Bani Suhayla	DER	W	1/01/89
9	Fathi Mustafa Hajjaj	Jabaliya	DER	W	1/01/89
10	'Abdallah 'Ayyad Abou-Samhadana	Gaza City	DER	W	1/01/89
11	'Ayyash Abou-Sa'da	Jabaliya	DER	W	1/01/89
12	Rizeq al-Bayyari	Gaza City	DER	W	1/01/89
13	'Abd-al-Min'em Abou-'Ataya	Gaza City	DER	W	1/01/89
14	Muhammad al-Labadi	Abou-Dis	DER	Y	29/06/89
15	Radwan Ziyada	Hebron	DER	Y	29/06/89
16	Taysir Nasrallah	Balata Cp	DER	Y	29/06/89
17	'Akef al-Hamdallah	'Anabta	DER	Y	29/06/89
18	Riyad Wajih 'Ajjour	Gaza City	DER	Y	29/06/89
19	Muhammad al-Mdawwakh	Gaza City	DER	Y	29/06/89
20	Nabil Tammous	Gaza City	DER	Y	29/06/89
21	'Ata Abou-Karsh	Shate' Cp	DER	Y	29/06/89
22	Taysir al-'Arouri	al-Bira	DER	Y	27/08/89
23	Majed al-Labadi	Abou-Dis	DER	Y	27/08/89
24	Muhammad al-Mtour	Al-Bira	DER	Y	27/08/89
25	Bilal Shakhshir	Nablus	DER	Y	27/08/89
26	'Oda Yousef Ma'ali	Kufr Ni'ma	DER	Y	27/08/89

Source: Al-Haq

Abbreviations:

- Order** Regulation on authority of which deportation order was served.
DER Deportation order issued by virtue of the 1945 British Defense (Emergency) Regulations.
APP Status of appeal to High Court of Justice.
Y Deportee appealed to the High Court.
W Deportee appealed to the High Court but withdrew appeal before High Court ruling.
Date Date on which person was deported.

Chapter Nine

Administrative Methods of Control

Introduction

Control of the local population is a critical factor in the maintenance of a military occupation. Ultimately, of course, an occupation depends on military force; however, other methods, including administrative and bureaucratic measures of control, are often equally effective in regulating daily life. Since the beginning of the occupation in June 1967, the Israeli military government has applied a wide range of such measures to institutionalize its control over the population of the Occupied Palestinian Territories.

This chapter will analyze the general phenomenon of administrative control in the West Bank and Gaza Strip through a discussion of two of its pillars; identity cards and restrictions on travel.¹ Both measures impose limitations on the freedom of movement inside as well as outside of the Occupied Territories. Furthermore, these measures have been applied selectively against individuals as well as indiscriminately against groups of people or entire communities.

A. Identity Cards

All Palestinian residents of the Occupied Territories over the age of 16 are required by military order to carry an identity card.² This card must be presented "upon the request of any soldier on duty or to any other soldier so authorised."³

The identity card is required for virtually all bureaucratic procedures, including registration for matriculation (*tawjihi*) examinations and applications for a driver's license, marriage contract, birth certificate or family reunification permit. It also provides proof of legal residency in the Occupied Territories.⁴ Furthermore, if a Palestinian from the Occupied Territories wishes to travel abroad, an identity card is required

in order to obtain permission to do so. The importance of the identity card to the military government as an instrument of control is paramount; it enables the authorities to give each and every resident a number which is then stored on a central computer.⁵

It is not the issuance of identity cards itself which is disturbing; many constitutional states ruled by democratically-elected governments also require citizens to carry some form of identification. Yet, there is an important difference between a requirement imposed by a constitutional authority accountable to an independent judiciary and a free electorate and one imposed by a military occupier accountable only to itself which rules by force of arms. In practice, the requirement that all Palestinians in the Occupied Territories carry identity cards has been exploited and abused for purposes of extra-judicial punishment. Identity cards have been used to control the population by, *inter alia*, coercing people to carry out orders on threat of confiscation of the card, controlling the population growth of the West Bank and Gaza Strip,* restricting the movement of Palestinians into, out of, and within the Occupied Territories, and harassing persons for unsubstantiated reasons of security.

1. Confiscation of Identity Cards

Applicable Military Regulations

The confiscation of identity cards without provision of a temporary substitute document is frequently used by soldiers to compel Palestinians to fulfil arbitrary orders. This is made possible because it is an offense, punishable with up to one year's imprisonment, for a Palestinian to be found without an identity card.⁶ Without the card, a person is also liable to be harassed and/or arrested at military checkpoints or by soldiers in the street. Consequently, confiscation of an identity card effectively places a person under house arrest.

In response to a petition by the Association for Civil Rights in Israel to the Israeli High Court of Justice,⁷ Military Order 1276 was issued on 24 May 1989 in the West Bank (an identical military order was also issued on 25 May 1989 in the Gaza Strip), which stated that identity cards could only be confiscated under the following circumstances:[†]

- (1) In order to ensure the implementation of an order given to the same person in accordance with paras. 88(b) [removal of roadblocks] or 91(a) [removal of graffiti/flags] of this order.
- (2) In order to ensure the appearance of the same person in a place and at a time specified in an order issued by one of the IDF authorities or a person acting on the behalf of such an authority ...⁸

M.O. 1276 reiterates the requirement for a receipt to be issued.⁹ Furthermore, in a statement given to the High Court on 23 June 1989 by the State Attorney, it was explicitly stated that:

[W]hen the identity card is removed in order to ensure presentation, the card will be returned immediately upon presentation, and its return will not be made

*See further Chapter Fifteen, "Women."

†See further Appendix 9-A.

conditional upon the performance of any other action whatsoever, such as payment of tax, or anything similar.¹⁰

Practice

The confiscation of identity cards, and the failure of soldiers and other law enforcement officials to provide temporary substitute documents has long been a routine practice.¹ As far back as 1985, al-Haq intervened with the Israeli authorities about this practice. On 21 June 1985, it received a response from the office of the Legal Advisor to the civil administration of the military government of the West Bank, in which the following undertaking was made:

[S]oldiers will be given orders to give receipts; i.e., substitute documents for all those whose identity cards are to be confiscated.¹¹

In practice, however, receipts are frequently not given.¹² In one example before the uprising, the identity card of Mahmoud Sayyad was confiscated on 7 June 1987 by after he was asked by a soldier to paint over nationalist graffiti on a wall. The soldier failed to provide Mr. Sayyad with a substitute document for his card. When al-Haq intervened on Mr. Sayyad's behalf, the authorities advised Mr. Sayyad to inform the police that his identity card had been "lost" and then apply to the Population Registration Department for a replacement.

Al-Haq's documentation shows that not only has the arbitrary confiscation of identity cards continued, but that it has in fact increased considerably during the uprising. The issuance of M.O. 1276 appears to have had little effect, as the confiscation of identity cards in situations other than those permitted by the order continues to be a widespread practice.

In the majority of cases where an identity card is confiscated, it is a means of compelling the performance of an act. In such cases, confiscation is usually temporary; once the act is completed the soldier returns the card. However, in a number of such cases, the card is not returned upon completion of the act, and the bearer must go through extended administrative procedures to repossess his card.¹³

According to al-Haq's documentation, the measure has been used in the following circumstances (all examples occurred after M.O. 1276 was issued):

- (1) **To Coerce Relatives:** In such cases, which contradict the absolute prohibition against collective punishment enshrined in Article 33 of the 1949 Fourth Geneva Convention Relative to the Protection of the Civilian Persons in Time of War,¹⁴ persons are effectively held responsible for an alleged offense by a third party.⁵ Typically, the object of such action is to force a family member of the person in question to surrender to the authorities or make outstanding tax payments.

For example, in September 1989, Bader Khaled was stopped by soldiers on his way home from work. His identity card was checked and then confiscated. He was given a receipt, valid until 29 September 1989, on which was written the

¹Even in cases where a temporary substitute document is issued, it is written in Hebrew, a language most Palestinians do not understand.

⁵See further Chapter Six, "The Military Judicial System."

amounts NIS 505.90 (\$US 253) and NIS 594.76 (\$US 295), the sums allegedly owed to the Health Insurance Department by Mr. Khaled's two brothers. To date, Mr. Khaled's identity card has not been returned and he has not been able to get his substitute document renewed either.¹⁵

- (2) **To Compel Outstanding Payments:** From the beginning of the uprising, Palestinians in the Occupied Territories have boycotted payment of taxes as a method of disengagement from the military government. In response, the authorities created a range of new measures, including confiscation of identity cards, to compel payment. Currently, it is standard practice at military checkpoints for a person's identity card number to be checked to see if he (or a relative) owes taxes. If payments are found outstanding, the identity card is confiscated and the bearer is given a bill to be paid by a specific date.[¶]
- (3) **To Compel Performance of Guard Duty:** In a number of cases, Palestinians have had their identity cards confiscated in order to force them to ensure that no stone throwing, flag raising, or erection of barricades takes place in a particular location. The soldiers usually leave the area in question and state that they will return after a specific period of time.

For example, at 12:00 noon on 8 August 1989, Firas Taher Husein Hijaz, a 19-year-old student from 'Anabta in the Toulkarem district, was stopped by three soldiers on his way back from school. He was asked for his identity card, which was then confiscated, and was ordered to guard the main street from stone throwers from 7:00 p.m. until 1:00 a.m. When he refused to do so, Mr. Ahmad was not given a substitute document and neither did he get his identity card back.¹⁶

- (4) **To Compel the Removal of Visible Signs of the Uprising:** This practice has become part of daily routine during the uprising; when soldiers notice a Palestinian flag, burning tyre, nationalist graffiti, or barricade, they stop the nearest Palestinian male(s) (and sometimes female), confiscate his/her identity card, and order them to remove the barricade or flag, extinguish the burning tyre, or paint over nationalist graffiti. In at least one case documented by al-Haq, a person ordered to remove objects such as tin-cans hanging from high-tension electricity wires died as a result of electrocution.¹⁷

In other cases, the confiscation of identity cards is used to compel performance of acts falling outside those permitted under M.O. 1276. For example, on 25 December 1989, it was reported in the press that identity cards had been confiscated from four elderly residents of the Gaza Strip to compel them to cut down fruit trees which had allegedly been used as cover for stone-throwers.¹⁸

- (5) **To maintain Control Over Former Detainees:** On arrest, a person's identity card is, along with his other personal belongings, taken by the authorities. When a detainee is released, he is usually given a substitute document valid for 48 hours

[¶]See further Chapter Twelve, "Economic and Fiscal Sanctions."

in lieu of his identity card. When this period expires, the bearer is obliged to go to the regional offices of the civil administration to regain his identity card. He is often made to wait all day, and then told to return the next day. This procedure can last for weeks. Sometimes, the person is simply given a substitute document (usually valid for a period of days) which he is obliged to renew each time it expires until his original identity card is returned.

For example, Mahmoud Mustafa, a resident of the village of Deir al-Soudan near Ramallah, was released from prison on 26 September 1989 and given a receipt validated for a 48-hour period in lieu of his identity card. On the morning of 28 September 1989 he went to the civil administration, where he was made to wait, until 5:00 p.m., without being given permission to enter. This pattern continued for one week. Mr. Mustafa was eventually able to renew his receipt until 3 December 1989, but at the time of writing had not yet regained his identity card.¹⁹

- (6) Arbitrary Harassment: The following cases illustrate how identity cards are sometimes confiscated for no apparent reason other than harassment.

At around 3:00 pm on 11 October 1989, Bishara 'Issa Elias Kheir, 24, a resident of Beit Sahour in the Bethlehem district, was stopped at a military checkpoint. His identity card was confiscated by a soldier who told him that he was wanted by the authorities. Another military jeep arrived. An officer stepped out, checked the identity card, and told the soldier that Mr. Kheir was not wanted. The first soldier then tore up Mr. Kheir's identity card, saying to the officer that this would cause problems for Mr. Kheir. Mr. Kheir was subsequently blindfolded, handcuffed, and beaten; he was then transferred to the military government compound in Bethlehem, where he was detained for five days.²⁰

In another case, Yousef 'Abd-al-Latif of Ramallah was stopped at a military checkpoint in Ramallah on 26 November 1989 and had his identity card confiscated because his brother allegedly owed NIS 815 (\$US 407) in income tax. He was given a substitute document validated for one day, which he renewed the following day for a further two days. When Mr. 'Abd-al-Latif attempted to renew the substitute document again on 30 November 1989, a "Captain Mufid" told him that he would not renew the document so that Mr. 'Abd-al-Latif would be harassed by soldiers.²¹

The effect of such confiscations can be serious. For example, Jamal 'Ali, a resident of Ramallah, was stopped at a military checkpoint on 7 November 1989 while on his way home from surgery at al-Maqased Islamic Charitable Hospital in annexed East Jerusalem. His identity card was confiscated because his brother allegedly owed money to the Health Insurance Department. Mr. 'Ali was due to have a check-up at al-Maqased Hospital on 21 November 1989. He repeatedly attempted to request the return of his identity card at the civil administration, but was either refused entry or denied a renewal of his substitute document. Consequently, when the time came for his check-up, he was

unable to go to the hospital in Jerusalem.²²

2. Special Identity Cards

Since February 1989, distinctive identity cards have, pursuant to a new military order, been issued to certain residents of the Occupied Territories in place of their ordinary ones.²³ These cards, which have the same number as the original card, are distinguished by their green jacket and forbid the bearer from entering Israel or annexed East Jerusalem.²⁴ A green identity card is usually valid for six months and is renewable.

Military Order No. 5 declares the West Bank a closed military area,²⁵ but a subsequent military order (General Exit Permit No. 5) gave residents of the West Bank a "general exit permit," enabling them to enter Israel without obtaining special permits to do so.²⁶ A green identity card suspends this general exit permit for the bearer.

According to al-Haq's documentation, green identity cards have primarily been issued to former administrative detainees and ex-prisoners convicted by a military court.²⁷ However, they have also been issued to people who have been detained without charge and then released.²⁸ The effect has been to again punish those who have already been detained on the basis of their previous punishment.

In al-Haq's view, three unacceptable consequences result from the issuance of green identity cards. Firstly, it is an invitation to harassment. The practice of identifying certain residents as "security" risks by marking their identity card with special signs has been used for many years, and the issuing of separate and easily distinguishable cards is essentially an extension of this practice. Al-Haq has documented a number of cases in which the bearers of green identity cards were harassed:*

On 5 September 1989, Elias Da'oud Ya'qoub Basil, 24, a resident of Bethlehem, was given a green identity card after having been administratively detained for six months. That same day, on his way back from the civil administration, five Border Police stopped him and demanded to see his identity card. One of the Border Police commented that Mr. Basil was an "important terrorist" and held a green identity card. Mr. Basil was then beaten, kicked in the stomach, and punched in the face for about ten minutes by all five of them, after which his identity card was returned and he was released. He collapsed, unconscious, before he reached his house.²⁹

In another case, on 16 July 1989, Nidal Fawzi Ahmad Abou-Duqqa, 25, from Jenin, was visiting his brother in Jenin when seven soldiers forced their way into the house, ordered them to freeze, and searched the house. The soldiers ordered Mr. Abou-Duqqa's brother to show his hands to see if there was any dust (from stones) on them; then they took Mr. Abou-Duqqa outside and asked to see his identity card. When he showed them his card and they saw that it was green, they commented that he had been in prison, and he was then beaten with rifle butts. The soldiers forced him to walk and beat him as he did so; when he fell over, soldiers continued to beat and kick him until he lost consciousness. Water was thrown onto his face until he came round, and the beating continued for another five minutes.³⁰

*See further Chapter Eighteen, "Human Rights Monitors."

In a third case of harassment for no apparent reason other than that the victim had a green identity card, Mr. 'Abd-al-Karim Mustafa Khalil Ighbariyya, 26, from Jenin Refugee Camp, was stopped in his car by soldiers on 3 October 1989, and asked for his identity card:

When I handed it to him, I saw the excitement on their faces and heard one of them saying, in Hebrew, "Yarok! Yarok! [green]" which means green.³¹

Mr. Ighbariyya explained that he had just been to the the doctor's and was going to the pharmacy to buy medicine for his son, Islam; one of the soldiers asked him to explain why he had a green identity card, and why he had been imprisoned. He told them that he had been administratively detained for six months, and released on 1 August 1989. He was forced to get out of the car, leaving his wife and son behind, taken to an isolated location, and beaten and kicked for about seven minutes; his identity card was then returned to him and he was told to leave.[†]

The second consequence of green identity cards is that Palestinians who work in Israel are liable to lose their jobs as a result of the prohibition on entering Israel. Since the beginning of the occupation in 1967, it has been an official Israeli policy to stifle the development of the Palestinian economy and encourage residents of the Occupied Territories to take low-paying, menial jobs inside the Israel. This policy has succeeded to the extent that, in 1989, over 50 percent of the labor force of the West Bank and Gaza Strip worked inside Israel.[‡] The practice of issuing green cards can thus have serious economic consequences for a large proportion of the population of the Occupied Territories.

In addition, since East Jerusalem was annexed to Israel in 1967, a green identity card also prevents the bearer from travelling through Jerusalem from one region of the West Bank to another. For example, Ahmad Muhammad 'Abd-al-Rahim Jaradat, an al-Haq fieldworker in the Bethlehem district, was issued a green identity card after being released from Ansar III Military Detention Center on 6 July 1989 after serving a two-month administrative detention order. Since his release, he has effectively been prevented from coming to the al-Haq offices because the only alternate to the main route from Bethlehem to Ramallah via Jerusalem is an extremely circuitous and time-consuming journey via Jericho in the Jordan valley.[§]

Mr. Rafiq Younes Muhammad Mara'ba, 27, a journalist from the village of Ras-Tira near Qalqiliya, was issued a green identity card in May 1989 after spending nine months under administrative detention. On 15 August 1989, while on his way home from his office in Qalqiliya, Mr. Mara'ba was stopped by soldiers at a permanent checkpoint on the road between Ras-Tira and Qalqiliya. The road runs close to, and parallel with, the "Green Line," but is within the borders of the West Bank. Mr. Mara'ba was asked for his identity card, and had to wait for about ten minutes while the number was checked. His card was then returned to him, but he was told not to take that road again on pain of arrest. Since then, he has been obliged to take a circuitous route to work.³²

[†] See further Appendix 9-B.

[‡] See further Chapter Twelve, "Economic and Fiscal Sanctions."

[§] See further Chapter Eighteen, "Human Rights Monitors."

A third consequence of green identity cards is that it prevents bearers from receiving medical treatment when the appropriate facilities are not available in the Occupied Territories.

3. Magnetic Permits for Gaza Strip Workers

In mid-May 1989, Minister of Defense Yitzhak Rabin announced that all Gaza Strip workers who work in Israel would be required to carry a special magnetic identity card in addition to their ordinary identity card to enter Israel. This new card was only to be issued to Palestinians with a "clean" security record.[¶]

B. Travel Restrictions

For Palestinian residents of the Occupied Territories, foreign travel is a privilege and not a right.³³ Since the beginning of the occupation, the Israeli authorities have placed restrictions on Palestinians wishing to travel abroad. During the uprising, new restrictions have been introduced: individuals are subject to lengthier application procedures, and permission to leave has been made dependent on factors other than security reasons, such as payment of taxes. In addition, there has been an increasing use of collective travel restrictions, whereby all the residents of a particular village or town are forbidden from travelling abroad for a (usually indefinite) period of time.

Travel outside the Occupied Territories has particular importance for many Palestinians because of family ties, economic links, educational needs, and many other reasons related to the demographic dispersal of the Palestinian people and the underdevelopment and isolation of the Occupied Territories. Nearly every Palestinian resident of the West Bank and Gaza Strip has a relative or family member in Jordan and/or other Arab states. Palestinians also have strong economic links with the Arab world; many Palestinians work there, particularly in the Gulf States, due to the lack of opportunities in the Occupied Territories resulting from Israeli restrictions on agriculture, business, and industry. The extent of these economic ties can be seen by the fact that income earned abroad accounts for nearly one-third of total GNP in the Occupied Territories.*

Further, since all universities in the West Bank and Gaza Strip have been closed by the Israeli authorities since the beginning of the uprising, students who wish to continue (or begin) their higher education must do so abroad.[†] Inadequate medical facilities in the Occupied Territories are another incentive for Palestinians to travel abroad. And, Palestinians Muslims also travel to the cities of Mecca and Medina in Saudi Arabia to participate in the annual Muslim pilgrimage or visit the holy places there.

[¶]See further Chapter Twelve, "Economic and Fiscal Sanctions."

*See further Chapter Twelve, "Economic and Fiscal Sanctions."

[†]Palestinian undergraduates from the Occupied Territories are not permitted to enroll in Israeli universities; there is a quota for Arab students but it includes only those resident inside the 1948 borders.

1. Applicable Law and Military Regulations

Under the law of belligerent occupation, an occupied population does not have the absolute right to leave the occupied country.³⁴ It is up to the occupying power to decide whether the departure of an individual is "contrary to the national interests of the State."³⁵ In 1967, the West Bank was declared a closed military area and anyone who wished to leave was required to obtain a permit from the military to do so.³⁶ In 1971, General Exit Permit No. 5 was issued, allowing most Palestinians living in the Occupied Territories to enter Israel subject to certain restrictions: for example, remaining in Israel between 1:00–5:00 a.m. is still prohibited without a special permit. Travel outside of Israel has since 1967 been made conditional on the acquisition of a travel permit. Issuance of such a permit depends, "in normal times," on security clearance.³⁷

The Israeli High Court of Justice has on a number of occasions considered the question of when a person may be restricted from foreign travel for security reasons. In *Dahar v. Minister of the Interior* (H.C. 448/85), the High Court considered the question of the conflict between individual freedom of movement and considerations of state security. Justice Bach gave a separate concurring opinion in which he stated that:

An apprehension justifying a prohibition of departure from the State must be based on an assessment according to which a real danger exists that the person's travel abroad might cause substantial harm to State security. If defined in a negative sense, the expression of "serious apprehension" means that a slight, marginal, remote or theoretical apprehension does not justify the issuance of an order under Regulation 6, prohibiting departure from the State.³⁸

From al-Haq's experience, decisions concerning travel restrictions are often arbitrary, and, as illustrated below, apparently guided by considerations other than security, such as the payment of taxes or health insurance. There is no formal appeal procedure against such a decision. If a lawyer or organization pursues a case on behalf of an individual and seeks review, the case is simply re-submitted to the General Security Service (GSS, or Shin Bet) for another security check.³⁹

2. Mandatory Procedures

Any resident of the Occupied Territories who wishes to leave the Occupied Territories for a destination other than Israel must obtain a special permit from the military authorities to do so. An exit permit is required for overland travel across the Damia or Allenby Bridges to Jordan or through the Rafah crossing to Egypt, and a *laissez-passer* is required for flights from Ben-Gurion Airport.

The bureaucratic procedures involved in obtaining such permits are lengthy and usually take weeks to complete. Before permission is given, a person must obtain a *bara'at dhimma* ("certificate of exoneration") from the civil administration providing clearance from a number of departments including the Income Tax Department, the Customs and Excise Department, the Police, the Village Leagues,⁴⁰ the municipality, and the *Moukhtar* (appointed village headman).⁴¹ The procedure is designed to ensure that a person has paid all taxes and is not a security threat.⁴²

Exit permits are usually valid for 36 months; they can be renewed for a further three years by relatives in the Occupied Territories. At the end of these six years, the individual must return to the Occupied Territories and apply for a new permit or lose his right of residency. When leaving, the individual is required to hand in his identity card at the Bridge or Rafah; he can only regain it by returning his exit permit before it expires. However, on many occasions, after relatives submit an application for a new exit permit, the process is delayed by the authorities until the permit expires, and thus the person loses the right of residency in the Occupied Territories.

A *laissez-passer*, which includes a return visa valid for one year, is also given in exchange for the identity card, which is handed to the civil administration. At the end of one year, a *laissez-passer* may be renewed at an Israeli Consulate abroad.⁴³ In some cases, and without stating reasons, Israeli Consulates refuse to renew the *laissez-passer* without stating the legal consequences of its refusal. This obliges the individual to return to the Occupied Territories in order to maintain their right of residency. There have also been cases where consulates have confiscated the documents presented to them in support of an application for a new *laissez-passer*.⁴⁴

3. Individual Restrictions on Travel

Refusal to grant permission to travel abroad occurs either when an application for an exit permit or *laissez-passer* is refused by the authorities, or when an individual goes to the point of exit with an approved permit and is nevertheless turned away by the Israeli authorities. The different types of restrictions and obstacles placed in the way of those wishing to travel, which also existed before the uprising, are detailed below.[†]

Denial for "Security" Reasons⁴⁵

Permission to travel has regularly been refused for ex-detainees and others for reasons of security.⁴⁶ For example, Samiha Khalil, President of In'ash al-Ustra charitable society (Family Rehabilitation Society) in al-Bira has been refused permission to travel abroad since 1982; even after her son suffered health complications after a car accident, she was denied permission to travel to Jordan to visit him in March 1987. The office of the Legal Advisor to the civil administration identified Ms. Khalil as "one of the main and extreme activists" in the West Bank, and as being "identified with an illegal organization." The reason given for refusing her permission to travel was "the fear that her exit will be used to promote the interests of the enemy organisation which she serves."⁴⁷ Al-Haq intervened several times on behalf of Ms. Khalil, requesting that either she be allowed to visit her children or that her children be allowed to visit her. These interventions did not succeed.

On 25 June 1989, al-Haq intervened with the Legal Advisor's office because al-Haq Fieldwork Coordinator Khaled Muhammad Khaled al-Batrawi had been denied permission to travel to France to attend a human rights conference organized by the International Federation of Human Rights. Mr. al-Batrawi was eventually given

[†]In a number of cases, individuals are refused permission to travel but informed that the decision will be reversed if they agree to collaborate with the authorities.

permission to travel, but by that time it was too late for him to attend the conference. The arbitrary nature of the travel restrictions was exposed when Mr. al-Batrawi was allowed to leave to travel to England four months later.

Undertakings

Individuals wishing to leave the Occupied Territories may be asked to sign an undertaking before they leave, stating that they agree to leave for a specified period of time (usually between one and three years), and not return until the end of this period. In some cases, people feel obliged to sign the undertaking since this is the only way they can go abroad to continue their education or find work. In effect, such undertakings constitute a short-term deportation order.

Particular problems arise when a person is asked to sign an undertaking of more than three years. The individual concerned then risks losing his right of residency; if his family is unable to get his exit permit renewed, he is barred by the undertaking from returning to the Occupied Territories to do so himself until after the permit has expired. He thus loses any chance of regaining his identity card, which is his proof of residency.

4. Additional Restrictions on Travel During the Uprising

The Israeli authorities have prevented greater numbers of people from travelling abroad during the uprising than before; in particular, the use of travel restriction as a punishment has become much more evident. For example, individuals are regularly denied permission to travel if either they or a relative owe taxes or health insurance payments.

In one such incident, Fayez Mahmoud Mousa opened a health insurance account in April 1987 and closed it on 15 August 1987. When his sister applied for an exit permit to travel to Jordan in July 1989, she was informed by the Israeli authorities that she would not be allowed to travel until her brother, Mr. Mousa, paid NIS 753 (\$US 376) which was alleged to be owing to his health insurance account. The receipts stating the closure of the account were not taken into consideration by the authorities.⁴⁸

The weakness of the argument that individuals are restricted from travel only for security reasons is illustrated by the fact that in some 65–70 percent of cases concerning travel restrictions in which al-Haq intervenes, a positive response is received. This indicates that the initial restriction was either based on a mistaken assessment of the security risk or was simply the result of arbitrary harassment. In a significant number of cases, however, even after the necessary permits to travel are obtained from the Legal Advisor, individuals are refused permission to leave at the point of exit. This is at best bureaucratic bungling on a large scale; at worst, it is deliberate harassment.

5. Collective Travel Restrictions

Since the beginning of the occupation, the Israeli authorities have been using collective travel restriction orders to prevent residents of a whole village, refugee camp, or town

from travelling abroad. During the uprising, this practice continued and increased. Although no written order is ever presented to residents informing them of a collective travel restriction order, this information is given to people who go to the Bridge with all the necessary permits but are turned back.

International law, in particular Article 33 of the Fourth Geneva Convention, explicitly prohibits the use of collective punishment. Measures such as travel restrictions placed on all residents of a certain area (or, as sometimes happens, all males falling into a certain age category) cannot be justified on a security pretext and clearly fall into the category of illegal collective punishment. The arbitrary and punitive nature of this measure is further revealed by the fact that some Palestinians who have been refused permission to travel due to a collective travel restriction order sometimes go to collaborators for help, and upon payment of a considerable sum of money usually obtain permission to travel.

Such collective travel restriction orders have usually been imposed in two situations: firstly, when a specific incident has taken place, and secondly, where the imposition of a collective travel restriction order on a village, refugee camp, or town is seen as a way to punish and perhaps deter residents for acts allegedly committed against the Israeli authorities over a period of time.⁴⁹

The first situation is exemplified by the much-publicized April 1988 Beita incident, in which two Palestinian men and an Israeli girl were shot dead by an armed Jewish settler during a provocative hike by settlers. The residents of Beita were thereafter prevented from travelling abroad for over one year. Al-Haq intervened with the office of the Legal Advisor on behalf of 13 residents of Beita on 14 February 1989, and only received a response from the Legal Advisor's office nearly three months later, on 4 May 1989, stating that the collective travel restriction order had been lifted. The residents who suffered from this restriction were primarily people living and working in Arab countries such as Kuwait, Saudi Arabia, Syria, and Jordan who had come to visit their families and help with the olive harvest. Due to their involuntary prolonged absence from their jobs, they risked dismissal.

Similarly, the residents of Ramallah were collectively restricted from travel after a "Molotov cocktail" was thrown at tax collectors on 14 August 1989. Mr. Ahmad Sayegh, a resident of Ramallah, applied in March 1989 for a one-month exit permit to travel to Saudi Arabia to work. His application was rejected with no reason stated. After intervention by al-Haq, the office of the Legal Advisor responded on 3 September 1989 that the travel restriction imposed on Mr. Sayegh had been lifted. Nonetheless, when Mr. Sayegh tried to leave on 17 September 1989, he was turned back at the Bridge. When he showed the letter of approval from the Legal Advisor's Office, he was told by the Bridge authorities that the letter meant "nothing" and was "nonsense." Mr. Sayegh was subsequently informed by the office of the Legal Advisor that he was prevented from travelling because all male residents of Ramallah under 40 were under a collective travel restriction order "since the last incident there."⁵⁰

Nablus is an example of the second situation. The largest city in the West Bank, with over 100,000 residents, it has been subjected to a range of collective punishments during the uprising. Prolonged curfews, house demolitions and extended travel restriction orders have all been utilized by the Israeli authorities. The residents of

Nablus were placed under a collective travel restriction order on 14 December 1988,⁵¹ the order was not lifted for seven months, and was then swiftly reimposed two weeks later on 4 August 1989.⁵²

Newspaper reports indicate that more than 20 villages, refugee camps, and towns have been placed under collective travel restriction orders during the uprising. These orders were imposed for periods ranging from a matter of weeks to two years.⁵

A recent attempt by the Association for Civil Rights in Israel to challenge the legality of collective travel restriction orders in the Israeli High Court of Justice, failed.⁵³ A matter of days before the petition was heard on 22 October 1989, the restriction orders on the villages mentioned in the petition (Kufr Malek and Qabatiya) were cynically lifted, even though both had been in place for over one year. At the hearing itself the military was given 30 days to "show cause" why such measures were necessary. No further hearing has since taken place, and the case has been postponed without a definite date being fixed for the next hearing.

Summary

The bureaucratic and administrative measures of control used in the Occupied Territories complement other methods used by the Israeli military authorities. Such measures are intended to tighten Israeli control over the Palestinian population by creating dependence on the Israeli authorities in all aspects of daily life. They have been utilized in an arbitrary and unlawful manner as forms of extra-judicial punishment and harassment, rather than as genuine responses to legitimate security needs.

While restrictions on movement through the confiscation of identity cards and restrictions on travel may appear on the surface to be benign when compared with measures such as house demolitions, deportations or even killings, in reality these restrictions have a pervasive and insidious influence on Palestinian society, affecting tens of thousands of people. Moreover, there is no due process and little or no effective appeal against these measures.

Efforts in 1989 to resort to the Israeli High Court of Justice on both these issues have been less than satisfactory; in the case of the confiscation of identity cards, the practice continues, virtually unabated, despite a High Court ruling and new military order closely circumscribing the circumstances in which such confiscation is legal. In the case of collective travel restrictions, the residents of at least two villages remain under collective travel restriction orders. Moreover, although the villages mentioned in the petition to the High Court have had the restriction order lifted, no undertaking was made by the authorities to desist from such orders in the future, and the High Court failed to declare such collective measures illegal.

⁵See further Appendix 9-C.

Endnotes to Chapter Nine

1. Many of the examples given in this chapter are based on cases handled by the Legal Advice Program at al-Haq. To date, al-Haq was not handled cases from the Gaza Strip and cases described are therefore almost exclusively from the West Bank. Furthermore, the names of clients have been changed to preserve confidentiality.
2. Article 2 of Military Order (M.O.) No. 297 (Order Concerning Identity Cards and Population Registration) of 1969 was amended by M.O. 1232 of 29 March 1988 to compel all residents of the Occupied Territories to apply for an identity card at the age of 16. Previously, only males had been compelled to do so.
3. Article 4, M.O. 297.
4. The legal status of Palestinians in the Occupied Territories is similar to that of resident aliens in the United States, with the important difference that a resident alien qualifies for full American citizenship after a period of five years. See Raja Shehadeh, *Occupier's Law: Israel and the West Bank*, revised edition (Washington, D.C.: Institute for Palestine Studies, 1988), p. 115.
5. According to Meron Benvenisti, *The West Bank Data Base Project: 1987 Report* (Jerusalem: WDBDP, 1987), p. 35:

By pressing a key on a computer terminal, any civil administration official can gain access to name-lists of "positives" and "hostiles", and decide on the fate of their applications, from car licensing to water quotas, import permits and travel documents. "Black Lists" have for a long time been an important element of the "reward and punishment" system. The Data Bank might, however, develop into a sinister 'big brother' control apparatus in the hands of an administration that already possess absolute power and is free of any checks and balances . . . The computerization project, if allowed to attain its stated goals, may prove to be a mile-stone in the institutionalization of the ultimate police-state in the territories.

The quotation refers to a specific project to computerize all civilian administration functions and all information pertaining to the population.

6. Article 21, M.O. 297.
7. H.C. 278/89, *Zavan Yehiya Yousef Halil et al. v. IDF commander for the West Bank* (in Hebrew).
8. Para 1(a), M.O. 1276 (Order Concerning Security Instructions), amendment 59.
9. Article 91C (b), M.O. 1276. See further Appendix 9-A.
10. H.C. 278/89, "Verdict" (in Hebrew).
11. Letter reference number 32/0 (732).
12. In a number of cases where substitute documents have been issued (usually for a period of 24 or 48 hours), when the bearer has tried to have the document renewed on its expiry, he has been refused entry to the civil administration building where such procedures take place. Instead, the soldier at the entrance writes a new expiration date on the substitute document over the previous date. It is not unusual for persons holding such documents to be subsequently accused by other soldiers patrolling the streets of forging the document.
13. In al-Haq's experience, it is almost always the identity cards of men which are confiscated; in the vast majority of families, since it is the men who are the breadwinners, the confiscation of their identity cards poses a potential threat to the whole family.
14. Article 33 of the Fourth Geneva Convention states: "No protected person may be punished for an offence he or she has not personally committed . . ."
15. Al-Haq Files. See also Al-Haq Affidavit No. 1864.
16. Al-Haq Affidavit No. 2000.
17. Al-Haq Affidavit No. 1248.

18. According to Michal Sela, "Palestinians Report 25 Wounded in Scattered Clashes in Territories," *Jerusalem Post*, 25 December 1989:

Troops ordered the trees cut along the Khan Yunis-Gaza road and told the Palestinians that unless they uprooted the trees, they would have to pay for a tractor, dispatched by the military authorities, to destroy the trees.
19. Al-Haq Files.
20. Al-Haq Affidavit No. 2129.
21. Al-Haq Files. Al-Haq intervened with the office of the Legal Advisor to the civil administration in Ramallah, and was informed that Mr. 'Abd-al-Latif should go to the civil administration, where either his identity card would be returned or his substitute document would be renewed.
22. Al-Haq Files.
23. M.O. 1269 (Order Concerning Identity Cards and Population Registration), Amendment No. 21 to M.O. 297, issued 26 February 1989.
24. West Bank identity cards ordinarily have orange jackets, Jerusalem residents carry blue cards, and residents of the Gaza Strip carry red ones.
25. Raja Shehadeh and Jonathan Kuttab, *The West Bank and The Rule of Law* (Geneva: International Commission of Jurists, 1980), p. 72.
26. *Israel Yearbook of Human Rights*, Vol. 1. (1971), p. 440.
27. The procedure for issuing a green card is as follows: released detainees are ordered to go to the civil administration to retrieve their identity cards; once at the civil administration, they are asked to sign an undertaking "not to resume any activity threatening the security of the State of Israel or the IDF." Those who refuse to sign because of the implicit confession to the commission of illegal acts in the past are often issued with green identity cards.
28. For example, Husein Khatib, a resident of Ramallah, was arrested on 9 March 1989 and detained for four days in Ramallah Prison. He was then transferred to al-Dhahiriyya Military Detention Center, where he was held for another week, and then released. He was neither interrogated nor charged. Yet, upon his release, he was issued a green identity card despite the fact that he also had no previous record of arrest, charge, trial, or even administrative detention.
29. Al-Haq Affidavit No. 2109.
30. Al-Haq Affidavit No. 1939. That night Mr. Abou-Duqqa went to the Jenin Hospital, where X-rays established that he had a broken rib.
31. Al-Haq Affidavit No. 2098.
32. Al-Haq Affidavit No. 2001
33. M.O. 5.
34. Article 48, Fourth Geneva Convention.
35. Article 35, Fourth Geneva Convention.
36. M.O. 5.
37. H.C. 660/89, *Wajiha Suleiman Mahmoud Hamayel, et al. v. IDF Commander of the West Bank*, "Statement by the Representative of the Attorney General". Between 1980 and 1986, 300,000-350,000 Palestinians left the Occupied Territories over the Jordan River bridges; in the first six months of 1987, an estimated 100,000 residents left. (Petition from the Association for Civil Rights in Israel to the High Court of Justice, p. 11, citing the Central Bureau of Statistics, Vol. 18(1), 1988, p. 2.)
38. H.C. 448/85, as summarized in the *Israeli Yearbook of Human Rights*, Vol. 17 (1987), p. 304. The applicant in this case was an Israeli citizen, not a resident of the Occupied Territories, but the case concerned "security" issues and was therefore referred to in the ACRI petition to the High Court (H.C. 660/89).

39. Shehadeh, *Occupier's Law*, p. 228.
40. The Village Leagues were established by M.O. 752 of 1978. Their membership is armed and paid by the military government. Their role has been described by official Israeli sources as an alternative Palestinian leadership to the Palestine Liberation Organization. Many applications for permits and licenses require the approval of the local branch of the Village League. See further Chapter Four, "Collaborators" and references provided; *In Their Own Words: Human Rights Violations in the West Bank* (Geneva: World Council of Churches, 1983), pp. 21-30; Shehadeh, *Occupier's Law*, pp. 174-182.
41. Women are only required to get four stamps.
42. B'Tselem, "Information Sheet Update: 1 November 1989."
43. Although the laissez-passer is valid for one year, if the person returns to the Occupied Territories before this period expires and tries to leave again within the one-year period, he must apply for a new laissez-passer.
44. Al-Haq Files.
45. In H.C. 660/89, "Letter from Malchiel Balas, Senior Deputy to the State Attorney," dated 14 October 1989, Para. 4, the military stated that permission to travel is "in normal times" granted after a security check has been carried out.
46. Sometimes a person is denied permission to travel because a relative is wanted by the authorities or serving a prison sentence.
47. Letter dated 15 April 1987 (ref. 576), from Gita Gofer, Legal Director in the office of the civil administration in Beit-El, in reply to a letter of 27 March 1987 from al-Haq protesting the refusal of the authorities to allow Ms. Khalil to leave (al-Haq ref. 941).
48. Al-Haq Files.
49. In a different type of case, a collective travel restriction order was imposed on the village of Beit Sourik in the Ramallah district because it did not have a *Moukhtar* (appointed village headman). Sami 'Oda, a resident of Beit Sourik, attempted to travel in December 1988, but was informed that he could not do so since his village did not have a *Moukhtar*, who normally stamps exit permits. Mr. 'Oda had previously been allowed to travel in October 1988, even though his village had been without a *Moukhtar* since 1982.
50. Al-Haq Files.
51. *Al-Sha'ab*, 15 December 1988 (in Arabic).
52. *Al-Quds*, 4 August 1989 (in Arabic).
53. H.C. 660/89.

Appendix 9-A

Military Order No. 1276

ISRAEL DEFENSE FORCES

Order No. 1276

Order Concerning Security Instructions (Amendment No. 59) [Unofficial translation]

By the powers vested in me as Area Commander of the IDF, and being of the opinion that doing so is necessary to maintain the security and regular administration in the area, I hereby order the following:

1. Addition of Para. 91C.

In the Order Concerning Security Instructions (Judea and Samaria) (No. 378), 1970, after Para 91B, the following shall appear:

“Temporary removal of identity cards:

91C: (a) A soldier is authorized to take any person's identity card (hereafter, “the card”) if he is of the opinion that doing so is necessary for one of the following reasons:

1. In order to ensure the implementation of an order given to the same person in accordance with Paras 88B or 91A of this order.
2. In order to ensure the appearance of the same person in a place and at a time specified in an order issued by one of the IDF authorities or a person acting on the behalf of such an authority, in accordance with Para 78A.

(b) If a soldier takes a card as stated in sub-section (a), he shall supply the person from whom he took the card with a substitute document.

- (c) 1. In the substitute document as stated in sub-section (b), the soldier shall record the following information: the name of the person whose card has been taken, the region in which he lives, his identity card number, the date on which the card was taken, the reason for its being taken, the place and date at which the person may receive the card which was taken, the period of validity of the substitute document, and the name and rank of the soldier who took the card.
2. The substitute document shall be valid for 96 hours as of the time at which the card is taken, unless a shorter period is specified on the substitute document as stated in sub-section (c)(1), and for this period the substitute document

shall be considered an identity card for the purposes of any law and security legislation.

- (d) 1. A card taken as stated in sub-section (a)(2) shall be returned to the person from whom it was taken immediately following the completion of the implementation of the order given to the same person; however, the soldier is authorized to order a person whose card has been taken as stated to report at a time and place which he shall determine and record in the substitute document as stated in sub-section (c)(1) in order that he may receive the card which was taken and as long as the stated date is within the period for which the substitute document is valid.
2. A card taken as stated in sub-section (a)(2) shall be returned to the person from whom it was taken immediately following his appearance as stated.
- (e) Any person who violates any of the instructions of this paragraph or any instruction given according to it, shall be charged with an offense against this order."
- (f) For the purposes of this paragraph, "identity card" is as defined in the Order Concerning Identity Cards and Population Registration (Judea and Samaria)(No. 297), 1969.

2. Validity:

This order shall be valid as of the day on which it is signed.

3. Title:

This order shall be entitled "Order Concerning Security Instructions (Amendment No. 59) (Judea and Samaria) (No. 1276), 1989."

24 May 1989

(Signature)

Brigadier-General 'Amram Mitzna'
Area Commander of the IDF, Judea and Samaria Region

Appendix 9-B

Harassment of Bearer of Green Identity Card

Translation of Sworn Affidavit No. 2098 Taken by al-Haq

I the undersigned, 'Abd-al-Karim Mustafa Khalil Ighbariyya, 26 years of age, a resident of Jenin Refugee Camp and a driver, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 4:00 p.m. on 3 October 1989, while I was driving my Mercedes car, accompanied by my wife and child, Islam, aged eight months, I saw four soldiers on the main road in Jenin, near the Cairo-Amman Bank. As I approached them, they signalled to me to stop. I did so, and one of them walked up to my window and asked me (in Arabic) for my identity card.

When I handed it to him, I saw the excitement on their faces and heard one of them saying, in Hebrew, "Yarok! Yarok! [green]". I felt that something was about to happen to me because I hold a green identity card. I quickly told the soldiers that I had just come from the doctor's clinic where I had taken my son, Islam, for treatment, and that I was going to a pharmacy to buy medicine. I handed them the prescription as I was talking.

After I finished speaking, one of the soldiers said, in Arabic: "We want you to tell us about your green identity card, and why you were imprisoned." I told them that I had been administratively detained for six months, without charge, and that I was released on 1 August 1989. They ordered me to get out of the car and took me out of sight of my car, wife, and son. Near the public market, I was pushed into a corner, out of sight of people and passers-by. The soldiers surrounded me and started beating me with their rifle butts all over my body; they also kicked me and hit me on my chest and face. After about seven minutes of continuous beating, they returned my identity card and ordered me to leave. I saw one of them hitting the back of my car as I was trying to leave.

A week after this incident, in the evening, after sunset prayers, I was at my neighbors' house when I heard knocks on the door. After a few moments, I saw four soldiers forcibly enter the house. Initially, I heard one of them asking my neighbor for his children and he pointed at them. As for me, they asked for my identity card. When I gave it to them they immediately started beating me with their rifle butts, and one of them was saying "Yarok!" They took me outside and threw me on the ground, stepped on my body with their boots, and kicked my legs and arms. Two minutes later I got up; the beating and kicking continued.

After we had gone about 30 meters, they gave me back my identity card and ordered me to leave. As I started to leave, I saw one of them pick up a big stone, weighing about 10-15 kgms, with both hands. He walked towards me, and when he was about two meters away, he threw it at me. Fortunately, I was watching out.

It is worth mentioning that two similar incidents happened to me in September of this year, when I was beaten by soldiers because I was holding a green identity card.

In accordance with all of the above I hereby sign this statement on this date, 16
October 1989

(Signature)

Name available for publication

Appendix 9-C

Partial List of 1989 Collective Travel Restrictions

Location	Length of Order	Source
Sayda (Toulkarem)	10 months	<i>Al-Fajr</i> 13 November 1989
Kufr 'Abboush (Toulkarem)	3 months	<i>Al-Quds</i> 17 October 1989
'Askar (Nablus)	7 months	<i>Al-Fajr</i> 16 October 1989
Kufr Qalil (Nablus)	7 months	<i>Al-Quds</i> 27 September 1989
'Arraba (Jenin)	3 months	<i>Al-Fajr</i> 25 September 1989
Tammoun (Nablus)	18 months	<i>Al-Quds</i> 17 September 1989
Kufr Thulth (Toulkarem)	19 months	<i>Al-Quds</i> 12 September 1989
Qalqiliya	1 month	<i>Al-Quds</i> 29 July 1989
Balata Camp (Nablus)	20 months	<i>Al-Quds</i> 20 May 1989
Til (Nablus)	8 months	<i>Al-Quds</i> 13 May 1989
Kufr Malek (Ramallah)	12 months	<i>Al-Quds</i> 10 April 1989
Beit Fourik (Nablus)	5 months	<i>Al-Quds</i> 5 April 1989
Jenin Camp	4 months	<i>Al-Sha'ab</i> 15 December 198

Chapter Ten

House Demolition and Sealing

Introduction

The demolition and sealing of houses for “security” reasons, one of the harshest tactics used by the Israeli military government in the Occupied Palestinian Territories, increased substantially during the second year of the uprising. An unprecedented 228 homes were dynamited, razed to the ground by bulldozers, welded shut, or bricked up by the military on orders of the respective Area Commanders of the West Bank and Gaza Strip. Such actions are based on emergency legislation revoked more than 40 years ago.

Typically, large numbers of soldiers raid a village, refugee camp, or town neighborhood, impose a curfew, serve notice on a family that their house will be demolished, give them between half an hour and an hour to remove their belongings, disconnect electricity and water mains, lay the charges, and blow up the house. There are no charges, no trial, and no effective appeal. Thus, house demolitions are extra-judicial and implemented in flagrant violation of international law and the most fundamental principles of justice.

Furthermore, during the second year of the uprising the few existing procedural constraints on house demolitions have been further relaxed, enabling the military to demolish the homes of those suspected of having thrown stones and the homes of persons wanted by the authorities. Additionally, the threat of demolition became a widely-used means of intimidating families with a relative wanted by the military. Although the Israeli High Court of Justice ruled that the Area Commander should allow homeowners time to appeal a demolition order to the Court, in practice this holds little promise: not once in its history has the High Court of Justice overturned a demolition or sealing order.¹

A. Policy and Law

In justifying demolitions and sealings, the Israeli authorities have relied on pragmatic arguments concerning the deterrent nature of house demolition and legal arguments. Both are of highly questionable merit.

1. "Deterrence" as Rationale

The military authorities have repeatedly justified demolitions as having a powerful deterrent effect. They have, however, never presented convincing evidence for this claim. In November 1988, for example, Chief of the General Staff General Dan Shomron declared: "I believe that demolitions create a not inconsiderable deterrent."² Yet, his statement completely disregarded overwhelming indications that, despite the demolition and sealing of at least 125 homes during the previous 11 months, the uprising was, according to most assessments, intensifying rather than abating. The deterrence argument ignores another reality as well; it is common knowledge that the uprising was in no inconsiderable part a reaction to Israel's "Iron Fist" policy. Announced in August 1985 by Minister of Defense Yitzhak Rabin, this policy sanctioned, among other extra-judicial punitive measures, the large-scale demolition of homes.

As early as 1987, al-Haq contested the "deterrence" argument, stating that it had evidence of:

- (1) "Many instances in which following the demolition of a home, others in the same area and even members of the same family have been convicted of offences similar in nature and gravity to those in response to which the house was demolished";
- (2) "Many villages and quarters where the Israeli authorities have repeatedly considered it necessary to demolish houses throughout the period of occupation";
- (3) A doubling of armed attacks in 1985-1986 concurrent with the intensification of house demolitions and sealings that year.³

These arguments have been further strengthened by developments during the uprising.

In January 1989, tougher measures were introduced to put an end to stone throwing, referred to as "the most troublesome phenomenon" and "the core of violent activity" by West Bank Area Commander 'Amram Mitzna'.⁴ One of these measures, announced by Defense Minister Rabin, was house demolitions.⁵ On the day of the announcement, three houses were demolished and two sealed in the town of Qalqilya because some of their inhabitants had been suspected of throwing stones which allegedly injured three Israelis riding in one car. "The aim," General Mitzna' declared, "is to catch the stonethrower and to make him pay a price that will make him reconsider."⁶ Following the action in Qalqilya, the military reportedly distributed leaflets warning residents that the home of anyone throwing stones would be demolished.⁷

After January 1989, several houses were demolished or sealed on the pretext that stones had been thrown either by a tenant or from its vicinity. For example, two houses were demolished and two sealed in al-'Eizariyya, near Jerusalem, on 25 May

1989, because four inhabitants were said to have thrown stones at a passing car driven by a settler, causing it to crash and injuring four passengers.⁸ On 12 June, soldiers sealed the house of a family in the 'Askar Refugee Camp, "because a stone was thrown from the roof."* No evidence was presented for the allegation, and no one living in the house was arrested.⁹

Threats of demolition were also used by soldiers demolishing two houses in Nablus on 7 March 1989, one week after extensive damage had been caused to other homes in the wake of the demolition of the "upper floor" of the building from which a stone had been dropped, killing an Israeli soldier. In a sworn affidavit taken by al-Haq, Jihad al-Zagha refers to the impending demolition of the house of his neighbor, Nayef al-Na'nish:†

The family began removing its possessions from the house. The soldiers started throwing the belongings down the stairs. Nayef's wife, Khadija, asked us to help them carry out the furniture, because she was worried due to the improper behavior of the soldiers. So, we began to help the Na'nish family.

Meanwhile, the soldiers cursed us, using obscenities such as: "Your sister's cunt!" "We want to demolish Nablus," "Curse Nablus, we will turn it into a paved road." One of the soldiers said to me: "Your sister is a whore," "We want to finish you off," "I am going to fuck your sister!" And "Damn the pimps of your sisters." They also cursed Nayef's wife, calling her a "prostitute, whore, and harlot." A soldier hit her with his club near her left eye. She swore back at them. They also hit my brother, 'Abd-al-Naser, with a bucket; my mother with a gun-butt; our neighbor, Um Naser Masruji, with a gun-butt; and they swore at her using obscene words.

After evacuating Nayef's house, the soldiers told us and the other families to leave our homes as well because they wanted to demolish the al-Na'nish house. I asked one of the officers: "Will our house be affected as a result of the demolition"? He said, "Yes." I told him: "Instead of using explosives and harming the adjacent houses, why don't you use axes?" I was worried about my house and those of the neighbors. He said: "This is a collective punishment." Then he added: "Shut up, fucker, your turn is coming." I said: "Why? We have not done anything." He said: "You, the residents of al-Qasaba [the Old City] shall all die, because you want to kill us." My wife told them: "Shame on you." One of the soldiers then threw a stone at her foot, which immediately began to bleed.¹⁰

One may suppose that deterrence was also the motive behind the demolition, one week later, of the homes of four Palestinians who were wanted by the Israeli authorities. On 16 March 1989, the military destroyed five houses in the village of Burqin, near Jenin, and one house in the Jabaliya Refugee Camp in the Gaza Strip. According to the authorities, the men from Burqin had been wanted for months on suspicion of having killed a Palestinian collaborator.‡ The owner of the Jabaliya home, Advocate Ibrahim Abou-Murr, was wanted by the authorities on suspicion of having organized an armed cell.¹¹ Although in past incidents most demolitions have

*See further Appendix 10-A.

†See further Appendix 10-B.

‡See further Appendix 10-C.

taken place before formal charges were brought against the suspect, and in some cases after the suspect was killed or had fled the country,¹² these were the first demolitions of the homes of "fugitives."¹³

The phenomenon of large numbers of "fugitives" in the Occupied Territories is, with the exception of the Gaza Strip in the immediate aftermath of the 1967 war, unique to the uprising. A number of methods, designed to link material costs to continued resistance and thus to "deter," have been employed by the military to pressure the families of these "fugitives" to convince them to surrender. One of these has been the threat of house demolition, and for any threat to be effective, it must be carried out at least once or twice. It is in this context that the Burqin and Jabaliya demolitions must be seen. Following these demolitions, threats of similar demolitions, as well as sealings, were reported by families of other "fugitives."¹⁴ Several other houses were demolished or sealed at later times, presumably to keep the "deterrent effect" alive.¹⁵

Apparently, threats of demolition did not in the end have the desired deterrent effect. In the first week of June 1989, four and a half months and more than 100 demolished and sealed homes later, the Israeli press reported that Mr. Rabin had asked Israel's legal authorities to

devise the legal means to implement several new punitive measures to help the IDF and the security services deal more effectively with continued violence in the West Bank and Gaza.

One of these means was the suspension of the right, to the degree that it could be said to have previously existed, to appeal house demolition and sealing orders.¹⁶ Mr. Rabin reasoned as follows:

Deportations and demolitions are required in order to pinpoint the penalties and avoid collective penalties. The number of firebomb assaults went down markedly after we started demolishing the assailants' houses ... And it's not just punishment which counts: It's the timing too.¹⁷

In other words, the much-vaunted deterrent effect stemming from punitive actions was mitigated by cumbersome judicial procedures. To restore the deterrent effect, procedures must be tailored to "cut corners," by "exhausting the legal avenues which are already available under the Emergency Regulations."¹⁸ And, indeed, the relevant article of the 1945 Defense (Emergency) Regulations is sufficiently vague to give military commanders latitude in their actions (see further below).

However, the premise of Mr. Rabin's assertion that house demolitions ever had a deterrent effect is, as argued above, false.[§] The only possible rationale for demolition remains collective punishment. The Defense Minister's denial that house demolition constitutes collective punishment merits little further comment: when an entire family is punished for the merely suspected deeds of one of its members through the destruction of its house, and no other members are accused of any offenses against the law,

[§]Mr. Rabin's assertion that the number of "firebomb-assaults" went down after the army began demolishing the homes of those throwing firebombs does not prove the effectiveness of demolition as a deterrent, as there are a host of other reasons which may have caused a fall-off in firebomb attacks at the time. In order to establish credibly the deterrent effect on firebomb attacks, it would be necessary to examine the longterm effect of demolition in isolation from other measures. As discussed above, no such evidence has ever been presented by the authorities.

there can be little doubt that the punishment is a collective one, primarily affecting people whose only crime is to be related to a person suspected of an offense. The punishment of individuals for an action for which they are not personally responsible is properly termed collective punishment. The Israeli High Court of Justice, though rejecting this point, implicitly acknowledged its validity in its ruling in *Daghlas vs. the Military Commander of the West Bank* (H.C. 698/85) in March 1986, when it stated that the suspect "should know that his criminal acts will not only hurt him, but are apt to cause great suffering to his family."¹⁹

In al-Haq's view, the Israeli military has demolished houses for "security" reasons in the Occupied Territories not because of the measure's supposed deterrent effect, but as a methodical reprisal against individuals and their families. The demolition of homes of suspects who have already been killed by the military, or who have not been tried, convicted, or even arrested, reinforces the conclusion that demolitions are an extra-judicial form of reprisal.

2. Legal Arguments

The above discussion of the deterrent effect of demolitions should not detract from the far more important question as to whether demolitions are permitted under international law. According to the Israeli authorities, demolitions are permitted under Article 119 of the British Defense (Emergency) Regulations of 1945 which, in their view, constitute local law. Under Article 119(1), a military commander may order:

[T]he forfeiture of any house, structure or land from which he has reason to suspect that any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown, or of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, *any offence against these regulations involving violence or intimidation or any Military Court offence*; and when any house, structure or land is forfeited as aforesaid, the Military Commander may destroy the house or structure or anything growing on the land.²⁰ [emphasis added.]

As is clear from the text of Article 119, and given the sweeping nature of existing military legislation, very little need happen before a military commander can order the destruction of a house. There is no automatic review of the commander's decision; he does not have to submit proof of the allegations. Furthermore, if a person has the opportunity to appeal the order to the High Court of Justice, the merits of the case are not considered; the Court merely examines whether the commander acted in "good faith" and according to the powers vested in him.

In al-Haq's view, Israel's policy of demolishing and sealing houses in the Occupied Territories is illegal for the following reasons:

- (1) The 1945 Defense (Emergency) Regulations no longer constitute valid law, the British government having revoked the Regulations on the eve of their departure from Palestine in May 1948. The Regulations were artificially revived by the Israeli authorities in 1967.²¹

- (2) Destruction of property in occupied territories is forbidden under Article 53 of the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, unless "rendered absolutely necessary by military operations." Even the military authorities have not claimed that house demolitions are absolutely necessary for military operations.²²
- (3) As argued above, house demolitions and sealings constitute collective punishment. Collective punishment is explicitly prohibited by Article 50 of the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and Article 33 of the Fourth Geneva Convention.
- (4) In the absence of precise charges, open evidence, or the opportunity for homeowners to effectively challenge a demolition or sealing order in front of a proper court of law, house demolitions and sealings constitute extra-judicial punishment, and as such are prohibited under Article 10 of the Universal Declaration of Human Rights (UDHR).
- (5) As argued above, house demolitions and sealings constitute reprisals, which are expressly outlawed in occupied territories under Article 33 of the Fourth Geneva Convention.
- (6) House demolitions and sealings constitute arbitrary interference in home and property, which is outlawed under Articles 12 and 17(2) of the UDHR.

Despite the clear illegality of the measure, the Israeli authorities have resorted to it throughout the occupation, and have indeed stepped up house demolitions and sealings during the second year of the uprising.²³

B. Practice

During the second year of the uprising (9 December 1988–9 December 1989) at least 228 homes were demolished or sealed by the military government in the Occupied Territories.²⁴ Since the beginning of the uprising, a minimum of 401 houses have been demolished or sealed for alleged security reasons. This does not include an estimated 522 houses that have been demolished for lack of a building permit, which are not discussed here.²⁵ In other words, some 923 houses have been demolished or sealed in total by the military authorities since December 1987.

According to al-Haq's documentation, the following trends characterized the second year of the uprising (Period I = 9 December 1987–8 December 1988; Period II = 9 December 1988–9 December 1989):

- (1) Whereas in Period I some 173 houses were demolished or sealed, a total of 228 houses were demolished or sealed in Period II. This constitutes an increase of 31.8 percent. Demolitions increased by 3.2 percent, and sealings rose by 98 percent;

- (2) Of the 228 houses demolished or sealed in Period II, 100 (43.9 percent) were totally demolished; 27 (11.8 percent) were partially demolished; 73 (32 percent) were totally sealed; and 28 (12.3 percent) were partially sealed;
- (3) An estimated total of 2,282 persons were left homeless by the demolition or sealing of these 228 houses. Three thousand one hundred fifty-two persons in total have been left homeless by this policy since the beginning of the uprising. If one includes the 522 houses demolished for lack of a building permit, the total number of persons displaced since the beginning of the uprising approximates 7,725. Al-Haq has no knowledge of any Palestinians receiving permission from the military authorities to either re-build or re-open their house;
- (4) Whereas in Period I an average of 14 houses were demolished or sealed per month, the average in Period II rose to 19 homes per month;
- (5) Whereas in Period I, total and partial sealings constituted 29.5 percent of all demolitions and sealings, this figure rose to 44.3 percent in Period II;
- (6) Of the approximately 369 persons whose alleged offenses were used as pretexts for the house demolitions and sealings since the beginning of the uprising, only six (1.6 percent) had been sentenced at the time of the demolition or sealing. Of the remaining 363 persons, 305 were under interrogation or awaiting trial, 49 had not yet been arrested, six were deported, and three had been killed at the time of the demolition or sealing.
- (7) If we include the 522 houses demolished as "illegal structures," and if we accept local engineers' estimates that the average cost of building a house is at least JD 15,000, then the value of all houses totally demolished or sealed since the beginning of the uprising amounts to at least JD 12.49 million (\$US 17.49 million).²⁶

On the basis of al-Haq's data, the following conclusions can be drawn:

- (1) The authorities increased the use of house demolitions and sealings during the second year of the uprising.
- (2) A greater proportion of houses demolished during the second year of the uprising were in the Gaza Strip, although in both years more homes were demolished and sealed in the West Bank in absolute terms.
- (3) As in past years, in almost all cases the military authorities demolished or sealed houses before a person who was alleged to have committed a security offense had been brought to trial.

Other trends common throughout the occupation also continued or became more pronounced. For example, most demolitions are accompanied by military brutality. The violence directed against residents of the Old City of Nablus described above is only one example. In another incident, an affiant reports on the sealing of a house in the 'Askar Refugee Camp near Nablus:

My husband, children and myself began moving the contents of our house down to the first floor. Meanwhile the soldiers were watching and laughing. When my 11-year-old daughter stopped because she became very tired, a soldier hit her with both his hands, knocking her to the floor.²⁷

Similarly, soldiers beat residents during a number of demolitions in the village of Burqin near Jenin. According to one affiant:

At about 5:00 [p.m.] I saw soldiers near my uncle's house, which is about 20 meters from where I was. I heard one of the soldiers say: "Evacuate the house." I rushed to my uncle's house. Near there, three soldiers caught me and began beating me with their truncheons and gun-butts, concentrating on my waist and joints. During the assault, I saw my mother coming toward me. When she tried to free me, they hit her with their clubs. The beating lasted for about five minutes. Then they took my identity card and permitted me to help evacuate the furniture from the houses of my uncle and his two sons.²⁸

Typically, children, the elderly, and the infirm bear the brunt of the violence and tension surrounding house demolitions and sealings. In the case of the Burqin demolitions referred to above, an old man died hours after the demolition of the home he had been living in for 35 years.[¶] In some cases, pregnant women have been beaten or caused to fall, resulting in miscarriage. Fathiyya Abou-Jaber gives the following account of what happened as residents removed their belongings from a home about to be sealed in 'Askar Refugee Camp:

When we were about to finish our work, I stood at the top of the stairs. I felt bitter and was very tired, for I was two months pregnant. I told the soldiers: "May God humiliate you the same way you have humiliated us." A soldier began to yell at me and pointed his gun at me as if he was going to shoot. As a result of the fright, I fell on the stairs and lost consciousness. I regained consciousness to find myself in hospital, where I was informed that I had lost my fetus as a result of the fall.²⁹

Similarly, Maryam Farajallah, a resident of Ithna in the Hebron district, reports that when she started yelling at soldiers who were about to demolish her house, one of the soldiers hit her in her stomach. "I felt severe pain, and after some hours I miscarried. I had been pregnant for three months."³⁰

Damage to adjacent buildings as a result of demolitions has become a common phenomenon during the uprising. The damage caused to neighboring houses in the Old City of Nablus in March 1989 has been mentioned above. In another example, 18 houses sustained damage following the demolition of two other houses in the al-'Arroub Refugee Camp near Hebron on 15 May 1989. Residents told al-Haq that they had been informed by soldiers that there was no need to remove the furniture from their (adjacent) houses, since the blast would be limited to the two marked for demolition. However, not only were 18 houses damaged, furniture inside was damaged as well.³¹

The military has also demolished fences, greenhouses, and other structures, usually on the pretext that stones had been thrown from their vicinity.³² On other occasions, houses have been damaged without an order during military raids on villages. In one

[¶] See further Appendix 10-C.

incident at Talluza near Nablus on 4 September 1989, the military was reported to have damaged nine homes.³³

From the patterns prevalent during the past year, and indeed the entire period of the uprising, it becomes clear that the house demolition and sealing policy of the military government has nothing to do with either "security," "deterrence," or "law," and has everything to do with punishment and reprisal. As such, the policy is blatantly illegal. Despite its illegality, however, appeals against demolition and sealing orders to the Israeli High Court of Justice have not provided an effective remedy.

C. The Role of the High Court of Justice

Since 1967, the Israeli High Court of Justice has not once overturned a house demolition or sealing order issued by the Area Commanders of the West Bank and Gaza Strip. Indeed, in a March 1986 ruling the Court strongly endorsed the Area Commander's power to order the demolition or sealing of any house, arguing that the purpose of Article 119 of the Defense (Emergency) Regulations is to "achieve a deterrent effect" and that

such an effect should naturally apply not only to the terrorist himself, but to those surrounding him and certainly to family members living with him . . . He should know that his criminal acts will not only hurt him, but are apt to cause great suffering to his family.³⁴

The legality of Article 119 under international law, or even its validity under local law, was not called into question; the Court simply referred to earlier rulings on these issues.

Given the Court's position, Palestinians have had little prospect of reversing a demolition or sealing order. Many have appealed such orders nevertheless, because appeals postpone the demolition and, even if futile, at least provide additional time during which the family has a chance to absorb reality and begin moving its possessions. Additionally, there have been a few cases in which the authorities have canceled a demolition or sealing order before the Court issued a ruling on the matter. These have been instances where residents succeeded in organizing an effective public campaign against an abysmally weak case by the military and the military feared a "bad" precedent in the High Court of Justice.³⁵ These, however, are rare exceptions.

The year 1989 did not bring about any significant changes in this situation. A number of appeals were brought to the High Court of Justice concerning individual houses, and all were rejected by the Court. In March 1989, for example, the Court turned down an appeal by the family of an individual from the village of Beit Iba near Nablus who was suspected of security offenses; the family had asked that only the suspect's room be demolished rather than the whole house. On 21 March, the military destroyed the entire home.³⁶ On 11 May 1989, the Court upheld an Area Commander's right to demolish the homes of persons suspected of throwing Molotov cocktails in cases where no injury or damage was caused.³⁷ On 2 August 1989, the Court ruled that the military authorities can demolish a house even if the occupant is only a tenant and not the owner. Otherwise, the Court reasoned, the Defense (Emergency) Regulations would lose their deterrent effect.³⁸

The only noteworthy development concerning the High Court of Justice's position on house demolitions in 1989 concerned a 1988 petition submitted to the Court by the Association for Civil Rights in Israel (ACRI). ACRI had earlier appealed on behalf of the village of Beita, where, in April 1988, some 14 houses were demolished by the military following a clash between villagers and armed settlers during which one of the settlers killed two Palestinians as well as one of his own companions. The Court ruled after the incident that the military could not demolish any more houses in the village without first allowing homeowners at least 48 hours to appeal the order. In August 1988, ACRI sought to extend this ruling to the rest of the Occupied Territories.

The military authorities opposed this but, apparently fearing a negative Court ruling, proposed that homeowners be given time to appeal the order unless it was an "exceptional case," that is, where the alleged offense had resulted in death or injury, or where the Area Commander estimated that a "speedy act of deterrence" was required.³⁹ ACRI did not accept this proposal, and continued to pursue the appeal. At one point during the proceedings, the Court suggested that the military be allowed to seal a house but at the same time be prevented from irreversibly demolishing it pending the outcome of an appeal; this proposition was accepted by ACRI but rejected by Defense Minister Rabin.

The High Court finally ruled on the matter on 30 July 1989.⁴⁰ In its ruling, the Court reiterated the position it had taken earlier that the Defense Regulations constitute local law and are therefore valid in the Occupied Territories. The Court also stated that it accepted that "fair principles" required that

a person who is to be subjected to a severe injury to person or property should be given advance notice of this and be granted the opportunity to raise questions concerning the matter. This principle should be applied even when the law permits action on the spot, for example immediate confiscation of property.

However, the Court then hedged this concession by referring to

circumstances of military operations in which the matter of judicial control is incompatible with the condition of the time and place or with the character of the circumstances, ... circumstances in which the military authority sees an operational need to act immediately.

Such circumstances included, for example, when removing an obstacle, overcoming resistance, or immediately reacting to an attack on the military or civilians. Therefore, the Court declared, ways had to be found to permit the appeal of an order before it is carried out without prejudicing the military's operations under the abovementioned circumstances. In conclusion, the Court ruled that:

- (1) Persons subject to a demolition order should have the opportunity to choose a lawyer and turn to the Area Commander before the order is carried out, and, if they so wish, appeal to the Court within a given time period, except in cases stated above;
- (2) A Court hearing would take place as a matter of priority, if the authorities so wished;

- (3) In undefined "urgent" cases, the authorities could seal a house rather than demolish it, thus postponing the demolition until after the Court hears the case.⁴¹

Immediately following the High Court decision, Defense Minister Rabin declared: "If the High Court of Justice has decided that we cannot demolish the homes of murderers, then we will seal them."⁴²

In al-Haq's view, the High Court ruling offers, if anything, a palliative rather than a cure. Although it is theoretically possible that the number of house demolitions will decline because an Area Commander would use stricter criteria in order to avoid a Court hearing or too many Court hearings,⁴³ the likelihood is that the number will not decline because:

- (1) Many Palestinians forego the option of appealing, seeing no utility in doing so;
- (2) The current pattern, as indicated above, is one of increasingly severe punishments, so that any decline in the number of demolitions will be relative and not absolute.

In al-Haq's view, the palliative is likely to be so minimal as to be marginal at best. It should be stressed, in conclusion, that whatever temporary relief the High Court of Justice may have offered in its ruling, the fact remains that it has once again endorsed a policy that is clearly illegal under international law.

Indeed, the number of demolitions has hardly declined since the Court's ruling on 30 July 1989. By 30 November 1989, at least 16 additional houses were demolished, 19 sealed, and another 27 ordered demolished.⁴⁴ Al-Haq is only aware of one occasion since the High Court decision in which the army sealed homes pending a Court ruling on demolition orders. This was after demolition orders were issued against four homes in Jericho on 7 November 1989.⁴⁵

More seriously, however, in November 1989 it became clear that the wording of the High Court of Justice ruling was sufficiently vague for the military authorities to demolish houses despite an appeal to the Area Commander: On 29 November, the military demolished the home of Jamal Muhammad 'Abd-al-'Ati in al-Shate' Refugee Camp. The demolition order had been issued on 26 November, and Abd-al-'Ati's lawyer, Raji Sourani, appealed the order that same day, well within the 48 hours specified by the High Court of Justice ruling. As of 11 December, Advocate Sourani had not even received a reply to his appeal, let alone the opportunity to appeal the demolition order to the High Court of Justice, but the 'Abd-al-'Ati home already lay in ruins. On 7 December, the military demolished five more homes in the Gaza Strip, again ignoring written appeals by Advocate Sourani.⁴⁶

Al-Haq therefore here reiterates the position it took in 1987, namely that the High Court of Justice, because it has ruled the demolition and sealing of houses legal over and again:

[I]n practice does not provide an effective forum for review against demolitions, nor does it act as a realistic restraint on the powers of the military authorities. The High Court of Justice now offers, at best, only an opportunity to delay the immediate execution of the order.⁴⁷

D. A Grave Breach

In the absence of effective domestic remedies to house demolitions and sealings, it is incumbent on state signatories of the Fourth Geneva Convention to carry out their obligations under the Convention. These obligations are twofold:*

- (1) Under common Article 1 of the Geneva Conventions, state signatories have a duty not only to respect but to “ensure respect” of the Conventions. This means that third-party governments have a duty to intervene with the Israeli authorities when the latter are in clear violation of the Convention, as is the case with house demolitions and sealings, which violate Articles 33 and 53 of the Convention.
- (2) State signatories to the Fourth Geneva Convention have a positive duty under Article 146 to

search for persons alleged to have committed, or to have ordered to be committed ... grave breaches, and shall bring such persons, regardless of their nationality, before [their] own courts.

Grave breaches of the Convention are listed in Article 147, and include the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” In al-Haq’s opinion, the policy of house demolitions in the Occupied Territories is a clear form of extensive and unlawful destruction ordered by clearly identifiable military officers acting under the authority of the Minister of Defense; it thus clearly constitutes a grave breach of the Convention. State signatories therefore have a positive duty to seek out those who have ordered demolitions of homes, and those who have carried them out, and to prosecute them before their own courts.

However, despite these provisions requiring states to take action in response to grave breaches to the Convention, house demolitions in the Occupied Territories have elicited little more than routine denunciations in international forums, as for example the United Nations General Assembly. Significantly, the United States, which pronounced on the issue of deportations and has threatened damage to bilateral relations if the Israeli authorities continue to order the expulsion of Palestinians, has remained largely silent on the issue of house demolitions, except for the occasional statement that such measures are “unhelpful” in moving forward the “peace process.”

Palestinians whose homes have been demolished or ordered demolished can thus expect no effective remedies, not even from governments who, although they may have condemned the practice; have done little to actively enforce the Fourth Geneva Convention in the Occupied Territories despite an unequivocal legal obligation to do so.

*See further Chapter Nineteen, “The Role of the International Community.”

Summary

The number of houses demolished and sealed by the military authorities for "security" reasons has increased during the second year of the uprising. The few existing constraints on house demolition were relaxed, thereby enabling the Israeli authorities to demolish the homes of those merely suspected of stone-throwing and of those wanted by the military. In total, at least 228 homes were demolished or sealed for security reasons from 9 December 1988 until 9 December 1989.

The military authorities' repeated justification for house demolitions and sealings (that they have a powerful deterrent effect) has never been supported by convincing evidence. In al-Haq's view, house demolition is not used as a measure for its deterrent effect, but as an extra-judicial reprisal against individuals and their families.

In addition, the claim of the Israeli military authorities' that demolitions are legal is unfounded. Rather, the policy contradicts the unambiguous provisions of international law. Yet, since the beginning of the occupation, the Israeli High Court of Justice has deprived residents of effective local remedy by not once overturning a house demolition or sealing order.

House demolitions as practiced in the Occupied Territories are a grave breach of the Fourth Geneva Convention. Consequently, signatories to the Convention have an obligation to seek out and prosecute those alleged to have committed or ordered to be committed such crimes.

Endnotes to Chapter Ten

1. However, see endnote 35 for a case in which the High Court ordered a house sealed rather than demolished.
2. Asher Wallfish, "Shomron: Demolitions are Short-term Deterrent," *Jerusalem Post*, 9 November 1988. For an earlier such statement by former West Bank Area Commander 'Amram Mitzna', see Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988), p. 159.
3. Emma Playfair, *Demolition and Sealing of Houses as a Punitive Measure in the Israeli-occupied West Bank* (Ramallah: Al-Haq, 1987), pp. 21-22.
4. Michal Sela, "Three More Die as Result of Intifada Violence," *Jerusalem Post*, 18 January 1989.
5. Mr. Rabin mentioned sanctions including "those measures allowed in accordance with the [Defense (Emergency) Regulations], including the destruction of property." (Kenneth Kaplan and Michal Sela, "Rabin: NCOs May Be Permitted to Fire Plastic Bullets," *Jerusalem Post*, 18 January 1989.)
6. *Ibid.*
7. *Ibid.*
8. Joshua Brilliant, "Arab Houses Demolished Near Jerusalem," *Jerusalem Post*, 26 May 1989.
9. Al-Haq Affidavit No. 1873.
10. Al-Haq Affidavit No. 1653.
11. Joel Greenberg and Michal Sela, "IDF Demolishes Homes of Four Fugitive Palestinians," *Jerusalem Post*, 17 March 1989.
12. Playfair, *Demolition and Sealing of Houses*, p. 3.
13. According to Joel Greenberg, "Palestinians Want Those Who Demolish Homes Prosecuted," *Jerusalem Post*, 23 March 1989, the families' lawyer, Advocate Felicia Langer, commented as follows:

Until now the authorities had argued that homes demolished . . . were those of detainees who had confessed to charges . . . In this case there are no detainees, nor those who have confessed, but rather families who have become hostage to the authorities, as a means of pressuring them to turn in their sons.
14. Al-Haq Files.
15. For example, the home of Muhammad Shaker of 'Ein 'Arik village, who was wanted by the military, and the home of Mustafa 'Omar of Toulkarem, whose son 'Amer was wanted, were sealed by the military on 29 August 1989. (*Jerusalem Post*, 30 August 1989.) The families had been told on 3 July 1989 that their homes would be demolished if their sons would not turn surrender, and the military carried out at least five raids on the Shaker house before the demolition. (Al-Haq Fieldwork Report, July 1989.) In another example, on 4 October 1989, the army demolished the home of Nimer 'Anani, who was wanted, in Ithna. (*Al-Fajr*, 5 October 1989 [in Arabic].)
16. Kenneth Kaplan and David Makovsky, "Rabin Seeks 'Legal Solution' to Use Harsher Measures to Quell the Intifada," *Jerusalem Post*, 21 June 1989. Until June 1989, homeowners theoretically had the option to appeal demolition orders to the Israeli High Court. In practice, however, most demolition orders had been served at the time of the demolition after the military had already imposed a curfew on the area, making it impossible for the homeowner to contact a lawyer and obtain a temporary injunction from the High Court of Justice.
17. Asher Wallfish, "Rabin Wants to Exploit Law Against Intifada Activists," *Jerusalem Post*, 28 June 1989.
18. *Ibid.*

19. H.C. 698/85. For a full translation of the decision, see Playfair, *Demolition and Sealing of Houses*, pp. 37-41.
20. Article 119(1), Defense (Emergency) Regulations.
21. For a full discussion see Martha Roadstrum Moffett, *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories* (Ramallah: Al-Haq, 1989).
22. Playfair, pp. 11-13.
23. According to B'Tselem (The Israeli Information Center on Human Rights in the Occupied Territories), *The Demolition and Sealing of Houses As a Punitive Measure In the West Bank and the Gaza Strip During the Intifada* (Jerusalem: B'Tselem, 1989), pp. 7-9, house demolitions are "legal" because:

- (1) The Defense (Emergency) Regulations are still in force in the West Bank and Gaza Strip;
- (2) International law permits the demolition of houses by the Israeli military.

The B'Tselem report did not discuss the widely-accepted refutations of these claims. Furthermore, B'Tselem also appeared to accept:

- (1) The contention that the validity of the Fourth Geneva Convention in the Occupied Territories is genuinely debatable;
- (2) The declaration by the Government of Israel that it respects, de facto, the humanitarian provisions of the Convention;
- (3) The claim by the Israeli High Court that house demolition does not constitute collective punishment.

The report makes no reference to the only legal study of the subject, the 1987 al-Haq report written by Emma Playfair (cited above), which treats the various legal issues and arguments at length and refutes the military's assertions that house demolitions constitute an effective deterrent.

24. This figure is based on al-Haq's documentation. The figure for houses demolished and sealed during the second year of the uprising cannot, however, be considered comprehensive for the following reasons:
 - (1) Most al-Haq fieldworkers were in administrative detention in 1988 and began covering 1988 only after their release;
 - (2) The substantial increase in demolitions in 1989;
 - (3) The fact that al-Haq had only one fieldworker in the Gaza Strip in 1989;
 - (4) The fact that al-Haq still doesn't have sufficient fieldworkers to document the full range of human rights abuses during the uprising, and has therefore focused on killings and brutality rather than on house demolitions and sealings.
25. Al-Haq does not document house demolitions for permit reasons. The figure for houses demolished for permit reasons was provided by the Center for Engineering and Planning in Ramallah. The Center reports that 225 houses were demolished in 1988 and 267 houses between 1 January-30 November 1989. The figure, which the Center considers conservative, was derived from reports in the local press. Houses are built without permits in the Occupied Territories because:
 - (1) The period required for processing planning applications is so long as to force commencement of illegal construction given existing population growth rates;
 - (2) Very few permits are actually granted when homeowners do wait for the final decision on their applications.

- (a) Partially demolished and partially sealed houses have been excluded from the calculation. The total number of houses therefore includes 401 houses demolished as "illegal structures" and 311 houses totally demolished or sealed for "security" reasons since the beginning of the uprising. The exchange rate used is JD 1 = \$US 1.4. See further Chapter Twelve, "Economic and Fiscal Sanctions."
26. Al-Haq Affidavit No. 1873. Full text reproduced in Appendix 10-A.
 27. Al-Haq Affidavit No. 1679. Full text reproduced in Appendix 10-C.
 28. Al-Haq Affidavit No. 1873.
 29. Al-Haq Affidavit No. 1715.
 30. Report to al-Haq by residents of al-'Arroub Refugee Camp.
 31. For example, in September 1989 the military demolished fences of a preparatory school in al-Shate' Refugee Camp in the Gaza Strip and greenhouses in the village of Deir Nitham near Ramallah. (*Al-Quds*, 26 September 1989; *Al-Fajr*, 23 September 1989).
 32. Michal Sela, "Two Die in Territories," *Jerusalem Post*, 6 September 1989.
 33. H.C. 698/85.
 34. The case of five total and partial sealing orders issued against residents in the town of Beit Sahour in 1986 is one example. The homeowners appealed the orders to the High Court, and after a long public campaign and several postponements of the Court hearing, the military canceled the orders.
 35. According to Michal Sela and Joel Greenberg, "Parts of Gaza Under Curfew; IDF Hunts Missing Weapons," *Jerusalem Post*, 22 March 1989, the person had been arrested "on suspicion of belonging to a local group which hurled petrol bombs at soldiers and carried out arson attacks against Palestinians allegedly cooperating with the security forces."
 36. *Jerusalem Post*, 12 May 1989.
 37. "High Court Says Security Forces May Destroy House Rented By Offender," *Jerusalem Post*, 3 August 1989. In this particular incident, the Court, citing special circumstances, ordered the Area Commander to seal rather than demolish the house.
 38. Ron Jourard, "Demolitions and the Courts," *Jerusalem Post*, 8 August 1988.
 39. H.C. 358/88, *ACRI et al. vs. The Commanders of the Central and Southern Areas*.
 40. *Ibid.*
 41. "High Court Ruling on House Demolitions Has Nothing New." *Al-Fajr Jerusalem Palestinian Weekly*, 7 August 1989, quoting the Israeli newspaper *Al-Hamishmar* of 31 July 1989.
 42. This argument was made by ACRI Director Joshua Schoffman after the High Court decision. See David Makovsky, "High Court Restricts IDF Authority on Home Demolitions; Allows Appeals," *Jerusalem Post*, 31 July 1989.
 43. This is a conservative figure based on clippings from two daily papers rather than al-Haq documentation.
 44. Joel Greenberg, "Kalkilya Teenager Killed During Heavy Clashes," *Jerusalem Post*, 8 November 1989.
 45. Interview with Advocate Raji Sourani, Tel Aviv, 11 December 1989. The case of Jamal Abd-al-'Ati is especially interesting because he was found dead in his cell in the interrogation wing of Gaza Prison four days after the demolition. See further Chapter Five, "Torture and Death in Detention."
 46. Playfair, *Demolition and Sealing of Houses*, p. 30.

Appendix 10-A

Sealing of a House

Translation of Sworn Affidavit No. 1873 Taken by al-Haq

I the undersigned, Fathiyya Ahmad 'Awad Ishteivi Abou-Jaber, 33 years of age, a resident of 'Askar Refugee Camp in the Nablus district and a housewife, having been warned to state the truth or be subject to criminal liability, hereby state as follows: At about 5:00 a.m. on Tuesday 12 June 1989, I woke up to the sound of heavy knocking on the door of my house. All other members of my family, including my 43-year-old husband, woke up too. My husband immediately went down to the first floor and I followed him. He asked from behind the door who was knocking. A voice answered from outside: "Open. Army." My husband opened the door. Immediately, about 20 soldiers rushed inside toward the second floor where we live, while large numbers of soldiers in military vehicles stood outside. My husband approached an officer and asked what is happening. The officer answered in weak Arabic: "I have an order to seal the house and demolish it because a stone was thrown from the roof." Then I heard a soldier telling the officer: "They don't have grown-up boys. Why do you want to seal the house?" The officer replied to him furiously: "You shut up." He then told us: "You have to evacuate the house within half an hour." But another officer gave us an extra half an hour. My husband, children, and myself began moving the contents of our house down to the first floor. Meanwhile, the soldiers were watching and laughing. When my 11-year-old daughter, 'Aysha, stopped because she became very tired, a soldier hit her with both his hands, knocking her to the floor.

When we were about to finish our work, I stood at the top of the stairs. I felt bitter and was very tired, for I was two months pregnant. I told the soldiers: "May God humiliate you the same way you have humiliated us." A soldier began to yell at me and pointed his gun at me as if he was going to shoot. As a result of the fright, I fell on the stairs and lost consciousness. I regained consciousness to find myself in hospital, where I was informed that I had lost my fetus as a result of the fall.

It is worth mentioning that none of my family is imprisoned, and that the only accusation against us was that a stone had been thrown from the rooftop of our house. Even this might be incorrect . . .

In accordance with all of the above I hereby sign this statement on this date, 25 June 1989.

(Signature)

Name available for publication.

Appendix 10-B

Demolition of al-Na'nish's House on 7 March 1989

Translation of Sworn Affidavit No. 1653 Taken by al-Haq

I the undersigned Jihad Hamdi Badawi al-Zagha, 27 years of age, a resident of the Old City (al-Qasaba) of Nablus and a construction worker, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 3:30 a.m. On 7 March 1989, a curfew, announced over the loudspeakers on the mosque minarets, was imposed on all parts of Nablus. At about 6:30 a.m. soldiers arrived and banged on the door. Our neighbor, Nayef al-Na'nish, opened the main door which leads to the houses of four families: those of 'Abd-al-Naser Hamdi al-Zagha; Hamdi Badawi Mas'oud al-Zagha; Nayef al-Na'nish; and the Abou-Zant family. When Nayef al-Na'nish opened the door, an officer asked for his name. He answered: "My name is Nayef." The officer told him: "There is an order to demolish your house and you have to evacuate the house."

The family began removing its possession from the house. The soldiers started throwing the belongings down the stairs. Nayef's wife, Khadija, asked us to help them carry out the furniture, because she was worried due to the improper behavior of the soldiers. So, we began to help the Na'nish family.

Meanwhile, the soldiers cursed us, using obscenities such as: "Your sister's cunt!" "We want to demolish Nablus," "Curse Nablus, we will turn it into a paved road." One of the soldiers said to me: "Your sister is a whore," "We want to finish you off," "I am going to fuck your sister!" And "Damn the pimps of your sisters." They also cursed Nayef's wife, calling her a "prostitute, whore, and harlot." A soldier hit her with his club near her left eye. She swore back at them. They also hit my brother, 'Abd-al-Naser, with a bucket; my mother with a gun-butt; our neighbor, Um Naser Masruji, with a gun-butt; and they swore at her using obscene words.

After evacuating Nayef's house, the soldiers told us and the other families to leave our homes as well because they wanted to demolish the al-Na'nish house. I asked one of the officers: "Will our house be affected as a result of the demolition?" He said, "Yes." I told him: "Instead of using explosives and harming the adjacent houses, why don't you use axes?" I was worried about my house and those of the neighbors. He said: "This is a collective punishment." Then he added: "Shut up, fucker, your turn is coming." I said: "Why? We have not done anything." He said: "You, the residents of al-Qasaba [the Old City] shall all die, because you want to kill us." My wife told them: "Shame on you." One of the soldiers then threw a stone at her foot, which immediately began to bleed. We gathered in the street upon the soldiers' orders. They then ordered us to leave and get into some houses in the nearby quarters. So, we did.

At about 11:00 a.m. we heard an explosion that came from the al-Na'nish family's house, which the soldiers had demolished. At about 1:00 p.m., the soldiers allowed us to return to our houses. On our way back the soldiers swore at us using obscene words. When we reached our houses we discovered that they were cracked due to the power of the explosion, and that stones had been blown into the houses. The soldiers told us:

"Congratulations. We hope that we'll demolish a house every day." When I checked my house, which is formed of two rooms, a kitchen, and toilet facilities, I discovered that it had been cracked. While we were checking our houses, engineers and other employees of the municipality came, and told us to evacuate the house from fear that it might collapse on us. The stones had broken a large stereo and a small TV set. According to my brother's wife, a golden necklace worth 250 Jordanian dinars [appr. \$US 310] and a pair of bracelets worth JD 350 [\$US 440] had disappeared from my brother's house. My family consists of nine members: my father Hamdi, my brother Yusri, my sister Lubna, my brother Iyad, my wife Fatima, and my children Fares, Yusra and Fida'. The other families whose houses were affected are: the Abou-Zant family, the family of 'Abd-al-Naser Hamdi al-Zagha, and the al-Bizra family. These houses were completely damaged and were all evacuated, from fear of collapsing. In accordance with all of the above I hereby sign this statement on this date, 10 March 1989.

(Signature)

Name available for publication

Appendix 10-C

Demolition of Houses in Burqin

Translation of Sworn Affidavit No. 1679 Taken by al-Haq

I the undersigned, Waddah Subhi Muhammad al-Haj Yasin Subuh, 33 years of age, a resident of the village of Burqin in the Jenin district and a farmer, having been warned to state the truth or be subject to criminal liability, hereby state as follows: At approximately 3:00 p.m. on 16 March 1989, while I was at home in Burqin, I heard loudspeakers announcing a curfew. I went to the balcony and saw scores of soldiers and a number of military vehicles driving through the streets and alleys of the village. At about 5:00 [p.m.] I saw soldiers near my uncle's house, which is about 20 meters from where I was. I heard one of the soldiers say: "Evacuate the house." I rushed to my uncle's house. Near there, three soldiers caught me and began beating me with their truncheons and gun-butts, concentrating on my waist and joints. During the assault, I saw my mother coming toward me. When she tried to free me, they hit her with their clubs. The beating lasted for about five minutes. Then they took my identity card and permitted me to help evacuate the furniture from the houses of my uncle and his two sons.

During the evacuation I carried Tawfiq Muhammad 'Aqel, 80 years old, who was in the house that was to be demolished. I carried him in my arms and tried to take him away from the scene. Soldiers stopped me near the yard of the house. I saw two of them carry the old man and put him down on the ground about 150 meters away from the house, although it was very cold. At about 6:30 I heard the soldiers order residents, through the loudspeakers, to go to a distance of 400 meters [from the site of the demolition]. Then I heard the sound of explosions.

After the soldiers left the village at about 11:00 [p.m.], I found out that the houses which had been blown up belonged to Husein Yasin, his brother Lafi, and their father. In addition, they blew up the houses of Muhammad Massad and Fawzi Massad. We did not know why the houses were blown up. All that we knew was that they demolished the houses because the sons of those who owned the houses were wanted by the military. In the morning, people discovered that the old man Tawfiq had passed away. Finally, it is worth noting that the electricity has been cut since 8:00 p.m. on 16 March 1989, and has still not been restored.

In accordance with all of the above I hereby sign this statement on this date, 17 March 1989.

(Signature)

Name available for publication

NB: Tawfiq Muhammad 'Aqel, the 80-year-old man who died, had been living with the Yasin family, who had been taking care of him, for the past 35 years.

Chapter Eleven

Curfew and Other Forms of Isolation

Introduction

A variety of practices come under the rubric of isolation, including curfew, closure, siege, and the disruption of utilities. This chapter discusses the methods employed by the Israeli military government to fragment individual communities and divide society as a whole in the Occupied Palestinian Territories. Curfews are dealt with most extensively, because their total disruption of civil life and facilitation of widespread human rights abuses throughout the West Bank and Gaza Strip constitute the quantitative and qualitative bulk of violations under discussion. At the same time, it should be noted that other, less visible forms of isolation which have caused equally serious harm to Palestinian society, such as the separation of the Occupied Territories from the Arab World, are not dealt with in this chapter.

A. Curfew

The imposition of a curfew is in theory an extraordinary and temporary measure, deriving its legitimacy from the even more severe disruption of civil life and order which would ensue in its absence. This is particularly the case with regard to round-the-clock curfews, which suspend civil life altogether and bring it to a complete halt. International law requires the occupant to carefully balance security interests with humanitarian safeguards. Curfews may not be used as a measure of punishment or reprisal. Furthermore, they may not be illegally administered as a method of control on the pretext that more extreme violations of human rights are the only alternative. The occupant may establish its control only within the limits prescribed by international law. To do otherwise indicates a failure of the paramount duty to

ensure the maintenance of public order and civil life.*

In its 1988 annual report, al-Haq examined Israel's use of curfews in the Occupied Territories between 1967-1988 and concluded that the human rights issues raised during the first year of the uprising by the policy of curfews had in fact been on the agenda for at least a decade:

The use of curfews [in the Occupied Territories] has become particularly widespread since the late 1970s ... [T]here has ... been a consistent pattern of extending curfews well beyond any period which could legitimately be justified as security related. Furthermore, the armed forces have taken measures against the captive population [during curfews] which clearly exceed their security interests.¹

Additionally, Israel's systematic resort to curfews during the first year of the uprising was found to involve "clear and repeated breaches of international law and humanitarian standards." Al-Haq concluded that there was "every indication and every reason to believe that the situation will deteriorate yet further."²

1. The Pattern of Curfews During the Second Year of the Uprising

The available statistics provide a clear indication of the persistent and unwarranted use of curfews by the Israeli authorities in the Occupied Territories during the second year of the Palestinian uprising. Al-Haq estimates that during the first nine months of 1989 alone, the military imposed a minimum of 1,200 curfews of which at least 213 were prolonged, that is, in force 24 hours a day for a period of at least four days.³ Extrapolating from these figures, al-Haq estimates that during the period 9 December 1988-8 December 1989, the Israeli authorities imposed not less than 1,600 curfews, of which at least 285 were prolonged.⁴

If all the individual days various locations in the Occupied Territories spent under 24-hour curfew between 1 January and 30 September 1989 are added up, the sum comes to 2,349 days. This means, in effect, that residents of the Occupied Territories spent a cumulative period of approximately six years and five months under 24-hour curfew in the space of nine months. The corresponding figure for prolonged curfews (which account for the vast majority of curfew days) is four years and three months.

Compared to the first year of the uprising, the total number of curfews remained constant, while the incidence of prolonged curfews decreased marginally.⁵ Nevertheless, the number of persons who spent time under prolonged curfew at some point during the year remained constant at slightly over 1,000,000 people, or approximately 60 percent of the total population of the Occupied Territories. There were only two positive changes of any significance during 1988-1989. One was the decreasing frequency of prolonged curfews lasting over 20 days. Whereas during 1987-1988 the military imposed seven curfews of between 20 and 24 days, four of between 25 and 30 days, and one of 40 days, this year the longest curfew was 22 days and only one curfew of 20 days was recorded. Secondly, while al-Haq estimated that four locations spent more than 50 percent of the first year of the uprising under curfew, this appears

*See further Appendix 11-C.

to have been the case in only one location (the Shaboura district of Rafah Refugee Camp in the Gaza Strip) during 1989.⁶ From a human rights perspective, however, the continued imposition of three-week curfews and the confinement of 25,000 people to their homes for over half the year is hardly an improvement. Rather, the general trends observed during 1987–1988 continued unabated, and in some cases even intensified.

The incidence of prolonged curfews, for instance, remained intolerably high during 1989. Of the 213 such measures documented by al-Haq during the first nine months of the year, 105 lasted between four and five days, 61 between six and nine days, 32 from ten to 14 days, 13 from 15 to 19 days, and two remained in force for at least 20 days. On average, 66,200 people a day had been under curfew for at least four days (this figure reached a high of 156,000 for the month of May 1989), while the daily total exceeded 500,000 people on nine occasions and surpassed 700,000 seven times. On only 17 percent of these days (47 of 273) had no location been under curfew for four days or longer. If all 24-hour curfews are counted (there were 676), only two days (.7 percent) were recorded during which no location was under curfew (12 July and 26 September 1989). An average of 169,000 people a day, at least ten percent of the total population, in an average of eight locations were under 24-hour curfew during the first nine months of 1989, while this figure rises to 218,000 people in ten locations if only the first six months are counted and peaked at 364,500 people in 18 locations for May 1989. The daily total exceeded 700,000 people on 24 occasions, 900,000 people five times, and reached a high of 983,500 people in 23 locations (one of these being the entire Gaza Strip) on 16 April 1989.⁷ It should be noted that night and short-term curfews are not included in the above calculations.

Clearly, there is no legitimate security justification for this state of affairs. Even if one does not accept the premise that curfew regulations should serve only an immediate purpose, the intensity of the policy is astounding by any standard. It is simply untenable that hundreds of professionally-trained soldiers require such long periods of time so often to implement basic security measures in population centers of relatively modest size. Furthermore, there has been no identifiable correlation between the severity of disturbances and the incidence or duration of curfews.

More revealing is that the authorities have repeatedly described curfews as an efficient method of collective punishment and an effective means of pressure against the population of the Occupied Territories.⁸ This, along with public threats to punish the population of the Occupied Territories if it refuses to accede to the Israeli election scheme proposed by Prime Minister Yitzhak Shamir, more accurately reveals the true purpose of the authorities' actions.⁹ Furthermore, on those few occasions when Israeli officials, such as Minister of Justice Dan Meridor, have been sensitive to the need to develop a security-related argument for the massive use of curfew regulations, they have conceded that curfews constitute collective punishment but defended their use on the grounds that the uprising is a "war" in which "greater deterrence . . . even if it involves . . . curfews" is required.¹⁰ Yet, even if one were to accept the Justice Minister's characterization of events in the Occupied Territories, the measures are still without legal foundation. International law banned collective punishment under

any and all circumstances,[†] and in doing so was largely motivated by the abuse of this practice precisely during times of armed conflict.

The sections which follow examine the impact of curfews on the civilian population in terms of the suspension of normal life, the obstruction of humanitarian relief, and the violence commonly inflicted upon the population in the form of beatings, vandalism, and harassment.

2. The Disruption of Orderly Civil Life

A high-ranking military source said the [curfew] was meant as a message to the residents of the Gaza Strip. "The Gaza population should know that we—and not some leaflet—decide when and how life is to be disrupted."¹¹

The Gaza Strip

Even under the best of circumstances, a curfew will disrupt the lives of people who are not themselves subject to the measure, whether this is because they cannot get to work, schoolteachers are absent, or the local hospital is inaccessible during a medical emergency. For those actually under curfew, civil life simply comes to a complete halt as every person in the given community is confined to their home. It is therefore noteworthy that more than 55 percent of all curfews occurred in the Gaza Strip. Because this region is of such small size and has one of the highest population densities in the world,¹² curfews have affected services, communications, and the economy both within the affected population centers and in neighboring communities more seriously than would otherwise be the case.

According to al-Haq's documentation, during the first six months of 1989 alone the Gaza Strip in its entirety was placed under a round-the-clock curfew on seven separate occasions for a total of 23 days, including periods of five and an unprecedented eight consecutive days.¹³ To ensure that no resident of the Gaza Strip could avoid the measure during the latter instance, the authorities on 16 May 1989 issued orders to all Gaza workers in Israel to immediately return to their homes or face arrest.¹⁴ Furthermore, the entire Gaza Strip has been under an 8:00 p.m. to 4:00 a.m. night curfew since 13 May 1989. (The previous night curfew, in force from 10:00 and then 9:00 p.m. to 3:00 a.m., was lifted on 17 February 1989 after 332 consecutive impositions.)

Of particular concern to al-Haq has been the subjection of the Gaza Strip refugee camps to one of the most severe curfew regimes in recorded history. On 11 occasions between January and June 1989, all eight refugee camps in the Gaza Strip were simultaneously under round-the-clock curfews for a sum total of 33 days. This means, in effect, that the approximately 261,000 residents under discussion spent about one out of every five days under curfew. Yet, these statistics pale by comparison when the days each individual refugee camp spent under curfew are added together. By 30 September 1989, the eight refugee camps and three of the housing projects which are almost exclusively inhabited by former refugee camp residents had been under

[†]See further Appendix 11-C.

24-hour curfew for a total of 831 days, or 35 percent of all curfew days imposed throughout the Occupied Territories during this period. Of these 831 days, 591, or 70 percent, were spent under prolonged curfew. The figures for individual refugee camps are no less shocking. Nuseirat Refugee Camp (pop. 30,000) was under 24-hour curfew for a total of 84 (out of 273) days, 69 of them prolonged; al-Shate' Refugee Camp (pop. 44,000) 82 days, 70 of them prolonged; Jabaliya Refugee Camp (pop. 55,000) 89 days, 58 prolonged; and the Shaboura district (pop. 25,000) of Rafah Refugee Camp a record 124 days, 83 prolonged. While the Israeli authorities complain that they are continually being judged by a higher standard, there has been no international outcry about any of the above practices, which are of extraordinary severity. Rather, it has become so commonplace for the 261,000 Palestinians in Gaza's eight refugee camps to be cut off from the outside world and sealed inside their homes that the world has long ceased to take note.

The policy of curfews in the Gaza Strip has caused widespread damage to economic, social, psychological, medical, and educational life. These aspects will be surveyed in order to explain the reality of the curfew policy's effect on daily life:

(1) The Economy

Workers A high percentage of the Gaza Strip's labor force is composed of individuals who live in the Gaza Strip but travel daily to work inside Israel. The vast majority of these workers earn their wages on a daily rather than a monthly basis. This means that if they cannot get to work because of a curfew, they forfeit their wages and receive no compensation. A significant number of workers have lost their jobs as a result of repeated and prolonged absences, and the level of unemployment has increased as a result. This pattern has had a particularly serious impact on residents of the refugee camps, who are disproportionately represented in the above-mentioned migrant labor force, have a greater need for their wages, and yet have suffered the largest decrease in their income levels because of continuous curfews.

Commercial Institutions By confining store-owners and their customers to their homes, curfews bring commercial activity to a complete halt. The policy has also seriously disrupted commerce in areas not under curfew. Gaza City, for example, is the commercial center of the Strip, and particularly so for the underdeveloped refugee camps. It is not often under curfew when compared to the camps and residential quarters of the city. Yet, it has been directly affected by the curfew policy because the number of clients it services has decreased drastically. On many days, the number of residents serviced by the commercial sector of Gaza City solely from within its environs is reduced from over 200,000 to under 70,000 because of simultaneous curfews on al-Shate' Refugee Camp, the housing projects, and the most populous quarters of the city.

Agriculture Prolonged curfews have a disastrous effect on agriculture because farmers cannot tend to their crops and as a result may lose them in their entirety. Curfews interfere with the entire agricultural cycle. Planting, irrigation and pest-control, harvesting, as well as transport and marketing have been critically delayed or prevented altogether because of curfews, and the financial losses are impossible to estimate. Instability in the market for agricultural produce has also been created. Curfews affect the care of livestock as well, which cannot be properly fed, grazed, or otherwise attended to. As a result, many animals have died.

(2) Social and Psychological Problems

Family Life The average nuclear family in the Gaza Strip consists of eight persons, inhabits 70 square meters, and has one breadwinner. Refugee families are larger, and minors constitute well over 50 percent of the population. The breadwinner and those of school age are accustomed to spending their days away from home, leaving the rest of the household much less cramped. When families are forcibly confined to their homes for extended periods of time, tension, frustration, and depression are often the result. The living quarters become overcrowded, the children restless and unmanageable, requiring constant attention, and breadwinners and housewives, unable to fulfill their family obligations, develop feelings of inferiority and uselessness. People become irritable and short-tempered, making the situation difficult and unpleasant. Because the source of their problems, the military, is beyond their reach, people begin to take their aggressions out on one another. The situation tends to become appreciably worse with the passage of time, especially when hunger forms an additional problem.

Social Life One never knows when a curfew is going to be imposed or how long it will last. Even when there are no plans for a visit or excursion, one must first calculate which locations are and are not under curfew before going anywhere. Finally, every evening there is a night curfew, which makes family visits and other social gatherings during these times impossible.

Religious Life The authorities frustrate the observance of religious holidays and prevent their celebration by deliberately imposing widespread curfews, often on the entire Gaza Strip. The burial of persons killed by the military as a rule takes place under curfew so that the authorities can restrict the number of persons participating in the funeral and prevent any kind of procession.

(3) Education

During curfews, schools are closed and teachers and students cannot attend classes. Repeated and prolonged absences from school have caused a marked deterioration of academic standards. While not the only factor, curfews played

an important role in the decline of exam results. The highest tawjihi (matriculation exam) scores as well as the average scores have declined significantly since the beginning of the uprising. Additionally, curfews on one location have a compounded effect, because the teachers and students who are not under curfew cannot attend classes in a school building that is, and vice-versa.

(4) Nutrition and Medical Care

Often, prolonged curfews are not lifted even temporarily to allow people to obtain food supplies and medical care. When exceptions are made, it is usually only for women. Any person caught outside of their homes, even if for the above reasons, is arrested, particularly young men. Women, children and the elderly are simply beaten and their households punished. During raids and searches carried out against households, soldiers often destroy food supplies.

Additionally, there are the measures practiced by the military during curfew, such as ordering large groups of people outdoors at night or in the cold to lecture them or forcing them to paint over graffiti and remove Palestinian flags. These harassments are often accompanied by physical abuse and humiliation of residents by the soldiers. This happened, for instance, after the killings in the Sheikh Radwan Housing Project on 18 March 1989, in which three Palestinians were shot dead and at least 12 wounded by indiscriminate gunfire. Instead of arresting the soldiers responsible for these crimes, the authorities imposed a curfew and the following day forced people out of their homes and began beating them. As a result more than 150 people were wounded and later had to be transferred to hospitals for medical treatment. The curfew was maintained for 18 consecutive days. Another widespread practice during curfews is that soldiers raid houses, allegedly to carry out searches, and in the process vandalize furniture and solar heating panels and also damage water tanks.

Finally, it should be mentioned that the demolition of homes also takes place during curfew in order to limit or prohibit altogether the assistance of neighbors in removing furniture and other items from the home before it is destroyed.

The use of curfews in the Gaza Strip decreased significantly after the Area Commander of the Gaza Strip, Yitzhak Mordechai, reportedly a strong advocate of the measure, was transferred to the West Bank in August 1989. At the same time, General Mordechai was not a lone practitioner and the abuse of curfew regulations in the Gaza Strip has far from ceased. Furthermore, there has been no official renunciation or reevaluation of the earlier policy. In view of these facts, al-Haq can only conclude that the reprieve is limited and temporary in nature and could come to an end at any time. There being no effective checks or balances of any sort on the military government, no legal recourse is available to the Gaza Strip's 650,000-700,000 residents if and when this occurs.

The West Bank

While not to as great an extent as in the Gaza Strip, the military government's curfew policy has also seriously disrupted civil life in the West Bank. This has particularly been the case when major cities such as Nablus, a regional hub for dozens of surrounding towns, villages, and camps, are subjected to curfews. According to al-Haq's documentation, the cities of Nablus (pop. 100,000+) and Toulkarem (pop. 30,000) were, on average, under 24-hour curfew every seventh day, with prolonged curfews lasting ten and 12 days each recorded in Nablus as well. The city of Jenin (pop. 28,000), which since August 1989 has been under a 4:00 p.m. to 4:00 a.m. night curfew, was under 24-hour curfew approximately one out of every ten days. A second pattern, in which the life of a community is deliberately disrupted through the repeated imposition of unpredictable shorter curfews on a daily basis, is illustrated by the case of Dheisha Refugee Camp. (The randomly-imposed daily curfews on Dheisha, which began in early September 1989, continued unabated as this report went to press in mid-February 1990.)

As in the Gaza Strip, several locations in the West Bank have been singled out for repeated prolonged curfews. Toulkarem Refugee Camp spent 96 days (35 percent) of the first nine months of 1989 under prolonged curfew, more than any other location in the Occupied Territories. Close behind was the nearby Nour Shams Refugee Camp (30 percent), which endured curfews of 20, 15, 13 (twice), 12 and ten consecutive days. In contrast to the Gaza Strip, the West Bank has seen an intensification of the curfew policy during the last quarter of 1989. And in both cases, total disregard of the obligation to maintain orderly life and the prohibition on the use of curfews as an instrument of collective punishment continue to be the operative principles in military government policy.

3. Obstruction of Humanitarian Relief

One of al-Haq's primary concerns during the first year of the uprising was the Israeli authorities' systematic obstruction of humanitarian relief during prolonged curfews. These violations took several forms. Initially, the authorities restricted access to relief supplies by providing residents with a reprieve of only one hour a day to obtain basic necessities. During the remaining 23 hours, effective house arrest prevented people from replenishing their stocks while the exclusion of relief agencies ensured that essential items could not be distributed. According to Maher Naser, Assistant Public Information Officer at UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East):

The lifting of curfews for one hour every 24 hours is not enough for people to buy food [and obtain other necessities]. In some camps only women are allowed to leave the camps. In others no one is allowed to go out of the camp during this hour. Take Jabaliya Refugee Camp as an example. There are 52,000 refugees living there. No one could believe it possible that in one hour all these people could buy what they need.¹⁵

Since that time, however, it has been the norm that curfews are lifted only once every three or four days or, as was the case with the blanket curfews on the Gaza

Strip discussed above, not at all. At the same time, it has become exceedingly rare for the authorities to grant any residents permission to leave during the reprieve, if one is indeed provided, or to allow supplies to enter. The result of these practices has been the creation of severe shortages of food, milk for infants, medical supplies, and other essential items.

Obstruction of Food Distribution

As the following affiant makes clear, a curfew need not be prolonged to cause a shortage in basic necessities:

At approximately 4:00 a.m. on 9 March 1989, I awakened to the sounds of loudspeakers announcing the imposition of a curfew on the residents of Jenin Refugee Camp, which houses approximately 9,000 people. The announcement of a curfew was accompanied by the sounds of gunfire. I stood on the balcony of my house, which is located on a hill, and saw military vehicles patrolling the streets of the camp. At approximately 10:00 a.m. that same day I heard loudspeakers announce the imposition of a curfew on the residents of the city of Jenin. I heard the following: "You are forbidden to leave your homes, you manyouk [butt-fuckers]. Anyone violating this order will be shot." On the second and third days of the curfew, several elderly women, who are our neighbours, came to our house. I listened to their conversations with my mother and heard them complain about an increasing shortage of food, especially vegetables and dairy products ...¹⁶

Prolonged curfews make the above problems more severe. On 15 September 1989, for example, the Israeli authorities imposed a five-day curfew on the village of Battir near Bethlehem. During this time, the armed forces did not lift the curfew once, which led to a food crisis, and the electricity supply and telephone lines were severed as well. Households whose bathroom facilities are located in outhouses (still a phenomenon in many villages) were forced to endure the filth and stench of makeshift toilets. This was complemented by the harassment and abuse of the villagers. Many were beaten and tear-gassed during raids on houses, homes were vandalized, and 30 trees owned by Muhammad Mahmoud 'Atwa were uprooted.¹⁷ Similarly, in April, the authorities imposed an uninterrupted eight-day curfew on the town of Qabatiya near Jenin, and severed the water and electricity supply as well.¹⁸ The following affiant described the situation:

During this period my family and I suffered from a severe shortage of food supplies. We ran out of vegetables, meat, and dairy products, particularly milk which was required by my daughters Linda (one and a half years) and Bayan (three months). One day my brother attempted to obtain a carton of milk for his son of four months, but was prevented from doing so [by the military] despite the extreme need of his child for the milk ...¹⁹

Another affiant details the situation during a ten-day curfew on Battir which had been lifted only shortly before:

We suffered throughout from a shortage of supplies, especially milk for the infants, vegetables, flour, cooking gas and kerosene ... My family consists of eight persons and among them is an infant of 50 days ... The curfew was only lifted once for two hours on the eighth day.²⁰

Shortages intensify as curfews get longer. During 1989, al-Haq was particularly concerned about the welfare of remote villages caught unprepared by prolonged curfews and large cities which endured repeated protracted curfews without a reprieve of any sort. In Nablus, to give but one example, a curfew was simultaneously imposed on the city itself, the three surrounding refugee camps ('Ein Beit-al-Ma', 'Askar, and Balata) and the neighboring villages of Beit Wazan and Jneid (a total population of approximately 130,000) from 2 to 12 September without a single break. Several hours after the curfew was finally lifted, it was reimposed and maintained without interruption for an additional four days.²¹

That security interests play no identifiable role in such practices and defer to a deliberate policy of depriving residents of necessary food supplies has also been confirmed by military personnel directly involved in its implementation. One soldier who participated in the near-starvation of Qabatiya residents during an earlier curfew felt sufficiently immune from prosecution to make the following confession:

Qabatiya is a town under curfew, but it's more like a siege. We patrol all day, making sure nobody comes out of his house ... The battalion commander tells us that they remain under curfew until they are "broken" ...

I chase down a side road after a nine year old who had spotted a piece of bread in the gutter ... Anyone caught outside during the day is ordered to the [military base] where he is left unceremoniously in the boiling sun ... [O]ld men ... trying to sneak into the fields at night to save two kilos of rotting peppers ... [are] sent to Jenin for correction ... As we reach the end of a night-patrol (the patrols to ensure that nobody tries to rescue their dying crops), we spy a family bringing in a bucket of tomatoes ... We corner them. All are told to report to the commanding officer. They tell us they have no food, are simply starving to death and have no choice. At which point the old woman, 90 years old, falls to her knees ... [and says]... "We really needed tomatoes" ...

Patrolling in the fields we spot a young boy coming out of the orchard ... [H]e throws his hands up and says, "Don't shoot me." His identity card [i.e. birth certificate] shows him to be nine-years-old ... "I'm hungry and came to collect apples."

[We] went chasing old women and children in the fields with the officers. Unbelievable to see 70-year-old men living in the fields in order to pick a few tomatoes.²²

The most serious incident of this kind during the uprising took place in the Shaboura district of Rafah Refugee Camp. On 2 May 1989, the military imposed a curfew on its 25,000 residents. For the next 16 days the curfew was uninterruptedly maintained while at the same time no distribution of supplies by relief organizations was permitted. On the afternoon of 19 May, an UNRWA convoy carrying 250 tons of flour, cooking gas, and other basic necessities was denied entry to the camp by the civil administration of the military government. In response, residents broke the curfew to demand that the convoy be allowed in to distribute the supplies. Soldiers opened fire on the hungry demonstrators, killing five of them.²³ Nathmi Mousa Abou-Khatla, a 12-year-old pupil, was hit in the abdomen by two bullets from a distance of 15 meters; Shafiq Hmeidan Abou-Louli, a 22-year-old student, was shot four times in the neck and chest; 'Id Hamdan Abou-Sha'ar, a 31-year-old driver and father of two

girls, was killed by two bullets in the neck which were discharged from a distance of approximately 100 meters; Ahmad 'Abd-al-Salam Abou-'Arram, a 34-year-old worker and father of six, was shot in the neck and chest; and Fatima Ahmad al-Hamayda, a 50-year-old housewife and mother of seven, was mortally wounded by a single bullet to the chest. When a teacher of Nathmi's attempted to administer first-aid, he was assaulted and beaten by troops, and a number of other people were wounded as well. Despite the killings and food deprivation, the curfew continued until 22 May. The corpses, which were seized by the army, had yet to be returned for proper burial when al-Haq fieldworkers visited the camp on 24 May.²⁴

According to a military spokesperson, the killings in Shaboura resulted when "a patrol . . . was attacked with rocks and sharp objects. The forces found it necessary to shoot plastic bullets."²⁵ Yet, according to al-Haq's documentation, all five were killed by live bullets. The army also appears to have opened fire indiscriminately; five people were killed by 11 bullets and, in addition to the wounded, Shaboura residents reported to al-Haq that many other shots had been fired which missed their targets. Regarding the habitual assertion that soldiers only open fire when left with no other option, in Shaboura a large group of soldiers shot at random from various distances. Had their lives truly been endangered by "rocks and sharp objects," random gunfire would hardly have been the appropriate response. In fact, no soldiers were injured in the incident. The military spokesperson did not state whether an investigation was being conducted, and the events in Shaboura have not been officially addressed since.

Two weeks after the Shaboura killings, the military government imposed an uninterrupted eight-day curfew on the entire Gaza Strip, the longest since 1967. During this period, there were widespread reports of acute hunger, especially in the refugee camps. Responding to the emergency, Palestinian villagers in the Galilee and Israeli peace activists collected "tons of food."²⁶ When the curfew was lifted on 11 June, a truck convoy was organized to take the supplies to the Gaza Strip. The army, however, prevented the convoy from passing through the Erez checkpoint by declaring the entire Gaza Strip a closed military area. The authorities added that, in any case, the population of the Gaza Strip had sufficient supplies of food.²⁷

Obstruction of Medical Care

Since 1967, the Israeli authorities have failed to institute procedures to deal with medical emergencies during curfews despite their widespread use of the measure. The result of this official neglect has been that people requiring medical attention or hospitalization during curfews have no guaranteed access to health services and must attempt to obtain them at their own risk. This means that residents are placed at the whim of local officers or the next patrol to enter the neighborhood.

The first and most serious problem in such situations consists of venturing outdoors when standing orders are often to shoot curfew violators (particularly young men) on sight. For this reason alone, most people prefer to endure medical problems which do not require immediate attention. Secondly, those who do leave their homes and succeed in making contact with the authorities must then expend critical time convincing soldiers that they are faced with an actual emergency. If the soldiers in

question agree to expedite matters, several additional problems remain. Pharmacies are under curfew, and, in most cases, doctors are as well. Even if doctors possess curfew passes, they often encounter delays at checkpoints and at times are prevented altogether from arriving at the scene. Ambulances, if permitted entry to the curfewed area, must also receive authorization to pass through a series of checkpoints before being allowed to collect patients. The process is repeated as the ambulance is leaving the area under curfew.[†]

With so many obstacles and risks of outright obstruction, it should come as no surprise that the provision of adequate medical care during curfew has become a virtual contradiction in terms. Some of the issues involved are addressed in the following affidavit taken from Fakhri Shafe' Sha'lan Nazzal, a resident of Qabatiya:

At approximately 4:00 a.m. on 9 August 1989, I woke up to the sounds of loudspeakers announcing: "Residents of Qabatiya! A curfew has been imposed on you and anyone who violates it will be shot." I also heard the sound of vehicles driving around town and at intervals I heard the sounds of gunfire . . . [During the next several days] the situation remained unchanged and I would continue to hear the sounds of gunfire and loudspeakers. I often saw groups of soldiers raiding houses in the neighborhood and on several occasions heard the screams of my neighbors during the raids. After the curfew had been in force for a few days, my family and I began to suffer from a shortage of food, particularly vegetables, meat, and milk for the children. In addition, we had the problem of my 75-year-old father, who had been suffering from blood clots in his arms and legs since three years previously.

At approximately 2:00 p.m. on 21 August 1989, I heard the sound of an engine. I went to stand behind the window and waved down the military jeep which was passing my house . . . When the jeep stopped, I went out of the house and approached it. Three soldiers were inside. I talked to one of them, who appeared to be an officer, in Arabic. I told him that my father was screaming in pain and that he was dying. I told the soldier that two local doctors had visited my home to examine my father and that they had found it a matter of urgency that he be taken to hospital or a specialist. I asked the same soldier (whom I think was an officer) for permission to take my father to hospital.

Before I could finish, the soldier interrupted me and said, "Who allowed the doctors to come to your house? Don't you know that there is a curfew?" I told him that the doctors had obtained curfew passes from the authorities. The soldiers ordered me to go home, and one of them said that he would arrange for an ambulance to come.

The ambulance never arrived. At about 9:00 p.m. that same night, my father died. We buried him that night. The next day, 22 August 1989 at around 10:30 a.m., the curfew was lifted.²⁸

Obstruction of Relief Agencies

As early as January 1988, UNRWA identified the imposition of curfews as "the primary obstacle" facing the organization's food, medical, education, and child nutrition relief programs.²⁹ The situation persisted and was further institutionalized in 1989.

[†]See further Chapter Two, "Medical Care."

According to the existing agreement between the government and the UNRWA, UNRWA identification cards are supposed to entitle its personnel to carry out relief operations during curfews. In practice, however, special curfew passes must be obtained from the military authorities, and the authorities have been very selective in granting them. All foreign UNRWA employees, who constitute only a small minority (approximately 50 persons) of its total staff, have been given curfew passes after waiting periods of one to four weeks. At the same time, the procedure for obtaining such passes for Palestinian employees is rather different. In the Gaza Strip, for example, only 150-200 out of 500 UNRWA applications for local staff members were accepted. The passes are only valid for several months and must then be renewed, which involves "varying degrees of difficulty."³⁰

Curfew passes given to UNRWA Area Officers are valid only in the area under the direct authority of the issuing commander. This means, for example, that an UNRWA Area Officer for the northern region of the West Bank must obtain separate curfew passes from the military governors of Nablus, Jenin, and Toulkarem. Other UNRWA employees, if they obtain such documents at all, have their validity restricted to a particular camp or district. In the Gaza Strip, passes are valid only for a particular refugee camp. Given the unprecedented incidence of curfews in the region, this presents an additional obstacle to UNRWA staff who do not live where they work. In the West Bank, applications submitted by the organization's (Palestinian) Assistant Refugee Affairs Officers were twice collectively refused during 1989. Instead of processing the applications, the military told the UNRWA personnel to apply for local curfew passes from the military government headquarters in their respective regions. According to UNRWA:

Applications can only be made after a curfew begins and it is a highly inefficient system. Applications take at least 24 hours to process and must be submitted to the local military governorate, which may be some distance away. Also, such applications are not always approved. UNRWA medical staff, for instance, are sometimes denied curfew passes. The combined effect of these measures has been to reduce our personnel during curfew to a skeleton staff.³¹

Even the limited operations of the skeleton staff are obstructed. According to UNRWA, applications to distribute food relief on the ninth day of a curfew (when emergency distribution efforts begin) are often rejected without explanation and not reconsidered until at least the fifteenth day. And because residents are prevented from leaving the camps during reprieve,³² all medical cases must be handled by understaffed and under-equipped UNRWA outpatient clinics within a limited period of time.

The obstruction of UNRWA services, which in effect takes place every time a curfew is imposed, is not devoid of its long-term effects either:

In the last 20 years, preventive health care has been instrumental in reducing the infant mortality rate among the Palestinian refugee population. This has been achieved mainly through a program of immunization and inoculation of infants and a supplementary meal program presently provided to all children under the age of 10. During curfews, the entire program is canceled. You can't, for instance, feed a child today the meal he was supposed to receive last week. The effectiveness of the program is being jeopardized.³³

In addition, social workers making assessments for the UNRWA's Relief Welfare Program, which provides monthly rations to needy families who have no source of income, are faced with serious delays in the application process. The admission of families to the program is critical to the maintenance of basic nutritional standards. Rations are determined on the basis of minimum daily calorie intake requirements.

It should also be pointed out that even with a curfew pass, employees have no access at all to locations which have simultaneously been declared closed military areas. And, at the beginning of 1990, the military authorities recalled all curfew passes issued during 1989. As of this writing, UNRWA employees had yet to receive new ones from the authorities.

It is more difficult to obtain information about the obstruction of the activities of the International Committee of the Red Cross (ICRC) in the Occupied Territories. Under the terms of its bilateral treaty with Israel (and in accordance with a long-standing policy), the ICRC undertook to refrain from public statements about Israeli conduct in locations to which it has privileged access (such as prisons and locations under curfew). Thus, the ICRC issues statements only in the most extraordinary of circumstances, such as after the multiple killings by Israeli security forces in the village of Nahhalin on 13 April 1989.⁵ Israeli officials routinely cite the silence of the ICRC to support their claims that no substantive human rights violations occur in the Occupied Territories.

4. Violence During Curfews

According to al-Haq's documentation, at least 24 people were shot dead during curfews in 1989.³⁴ These included ten children aged 16 or below; among them were a 11-year-old girl from Nablus shot through the heart inside her home,³⁵ a nine-year-old boy killed while playing on the roof of his house in Toulkarem Refugee Camp,³⁶ and a seven-year-old boy who was fired upon from a distance of ten meters in Jabaliya Refugee Camp.³⁷ In April 1989, two children from Dheisha Refugee Camp near Bethlehem were killed on successive days while the camp was under curfew.³⁸ Many more were wounded by gunfire during curfews.

The pattern of wanton and rampant brutality during curfew observed in 1987 and 1988 continued unabated during 1989. The reasons for this are clear: By imposing curfew, the authorities are able to seal off a given community from the outside world (journalists are only allowed in with army escort and human rights monitors not allowed at all), and at the same time fragment it internally so that individual households are left to face the might of the Israeli military on their own. This is illustrated by the following affidavit:

At approximately 10:00 a.m. on 14 April 1989, I was inside my house in the eastern quarter of Qabatiya in the district of Jenin, where a curfew had been in force since 5:00 p.m. on 9 April 1989. All of a sudden, I saw approximately 20 soldiers surround the house from all directions and saw about seven of them enter the courtyard. At first my older brother spoke with them in English. They ordered my brothers and cousin to stand aside with their hands raised in the air.

⁵ See further Chapter One, "The Use of Force."

I was astonished by this and attempted to intervene. During this, they beat me with their truncheons and ordered me to stand against the wall with my hands raised as well. They beat me for a period of not less than ten minutes. They then entered the house.

From where I was standing, I could see them vandalize the contents of the rooms and heard the sound of glass being broken. I saw one of the soldiers take a knife from his pocket and approach my nine-month-old nephew Muhammad Mahmoud, who was sleeping on the floor. I saw the soldier hold the knife to the infant's neck and could hear my 60-year-old mother and 22-year-old sister-in-law plead with the soldier, who left the room. I saw one of the soldiers cut the clothesline and approach my brother 'Omar, aged 20, and my cousin Riyad Nafe', 18, and tie their hands behind their backs with the clothesline. Before the soldiers left, they beat my mother and my sister-in-law and beat me on the face and head with their truncheons. They then left, taking 'Omar and Riyad with them, who are still detained at this time.

That same day, I went to the [camp's] boys' secondary school to get a permit to go to the hospital or one of the local doctors, as my mouth and gums were bleeding heavily and I felt that some of my teeth had been broken. My request was denied and I was ordered to return home.

At approximately 6:00 a.m. on 17 April 1989, the curfew was lifted. I immediately went to see a dentist, who confirmed that two of my teeth had indeed been broken and a third knocked out of its place. The dentist informed me that I would require oral surgery.³⁹

Al-Haq has also extensively documented the deliberate discharge of tear-gas canisters inside homes during curfews. This has been a particularly alarming practice because residents under curfew are often ordered to keep their doors and windows shut and forbidden from going onto their roofs or into the courtyards of their homes. Several miscarriages were documented as a result.⁴⁰ The following affidavit provides a graphic description of the wanton nature of such conduct:

At approximately 12:00 noon on 2 April 1989, while a curfew was in force in my village of Battir [near Bethlehem], I was inside the house of one of my relatives which is close to my own house. From the window, I saw a heavy cloud resembling that of tear gas emanating from my house.

I immediately went to my house to see what was happening. I saw a number of residents of the neighborhood attempting to save my father, Ahmad 'Abed Qattoush, who is 53 years old, blind, and has a heart disease. I noticed that he had collapsed onto the floor and was not breathing. I could hear him gasping for air. Because the village was under curfew and all of the residents' cars had been impounded by the armed forces the previous day (1 April), we had to administer first aid on the spot. I and some other residents attempted to revive my father, and this continued for an hour, after which he regained consciousness.

Additionally, several other members of my family lost consciousness as a result of the tear gas, particularly the young children. Among them were Fadiya Wahid Qattoush, eight years old. I saw the remains of three tear-gas grenades inside my house. One was rubber and shaped like a ball and the other two were metal and shaped like missiles. I also saw the Border Police who shot the tear gas leaving the scene. Most of the soldiers who were in the village during the four-day curfew were Border Police.⁴¹

According to al-Haq's documentation, the beating, degradation, destruction, vandalism, confiscation, and theft which the Israeli military routinely engages in reaches a high point during periods of curfew. The same holds true for mass roundups and other forms of collective punishment. It is therefore clear that the authorities are exploiting the sequestration of individuals, families, and entire communities to carry out human rights abuses of the worst sort. In many cases it appears that the rationale behind curfews has been little more than to facilitate house-to-house terrorization. The means in which this is implemented include physical assault, vandalism, and intimidation.[¶]

5. The Isolation of Jerusalem

During 1989, the army imposed an increasing number of curfews within the municipal boundaries of annexed East Jerusalem. These were enforced with the same severity and brutality as elsewhere. As in other locations in the Occupied Territories, security was not the primary motivation behind the policy. In one case, that of a five-day curfew on the district of al-'Eisawiyya shortly after the February 1989 municipal elections, journalists noted:

Villagers [of 'Eisawiyya] have a strong feeling that the curfew ... is punishment for the boycott of municipal elections⁴² ... Many residents ... are convinced that Mayor Teddy Kollek and his Arab Affairs advisors wanted to take revenge for the way the village received Kollek [shortly before the elections] ... Almost no one showed up for the ceremony, except for one Israeli-appointed Mukhtar and hordes of children who stood beside Kollek flashing nationalistic "V" signs as the world media recorded the event.⁴³

In other cases, curfews in Jerusalem have been exploited by the authorities to facilitate what passes for tax collection in the Occupied Territories. In fact, the security forces were criticized for doing so by none other than Teddy Kollek, the Israeli mayor of the annexed city.⁴⁴ The following affidavit elaborates upon this practice:

At approximately 9:30 a.m. on Saturday 14 January 1989, while the [Jerusalem] neighborhood of Silwan [where I live] was under curfew, I was inside my home. The house was raided by a group of men belonging to the police, intelligence, Border Police, [and taxation department].

The policeman overturned the chessboard which I and my younger sister had been playing on and asked me, "Where are the youths?" I told him that no men were home except for me and my brother. He then asked me if I had ever been arrested before and I replied that I had not. He then asked for our identity cards and ordered my brother and I to stand in the far corner of the room.

At the same time, the group began dispersing throughout the house and carried out a detailed search of the premises. Several of them began eating our fruit and overturning the furniture. The intelligence officer asked me if I had any Palestinian flags, and I denied that I did. He then told the tax collector, in Hebrew, to "go ahead."

The tax collector asked me when I had bought the color television and I responded that it had been purchased two years ago. He then asked if I paid

[¶]See further Chapter One, "The Use of Force."

television tax to which I answered that I do not. He pointed to another member of the group and ordered him to go to the television set and throw off the items on top of it. He said "Philips. A very good brand." I asked him how much television tax I had to pay so as to prevent it from being confiscated. He answered that I would have to pay NIS 2,300 [\$US 1,650]. He then sarcastically asked me if I was going to pay the amount ... and threatened me with his truncheon as well ...⁴⁵

Because East Jerusalem is the most heavily settler-populated region of the Occupied Territories, it has at times been difficult for the Israeli authorities to shield Jewish settlers from repressive measures intended for Palestinian residents. In the case of the August 1989 curfew in the mixed neighborhood of al-Tour, however, the obstacle was surmounted by imposing a segregated curfew; the Palestinian section was placed under curfew while the Jewish sector was not, and Palestinians living in the Jewish section were told to remain indoors while Jews were left free to travel throughout al-Tour.⁴⁶

B. Closed Military Areas

According to Article 90 ("Closed Areas") of Military Order (M.O.) 378 (as amended):

- (a) A military commander is entitled to declare any area or place closed (hereafter: "closed area").
- (b) If an area or place has been closed as stated in sub-clause (a), a military commander is entitled to determine that one of the following instructions apply to it:
 1. No person shall enter the closed area;
 2. No person shall leave the closed area;
 3. No person shall enter and stay in the closed area;
 4. No person shall enter and leave the closed area.
- (c) A military commander is entitled, by a personal or general permit, to exempt a person from the instructions of the declaration concerning the closing of an area or place as stated in this clause.
- (d) If a person violates the instructions of a declaration concerning the closure of an area or place, according to which entrance to or lingering in the area is forbidden, or the conditions of a permit granted in accordance with this clause, any soldier or policeman shall be entitled to remove him from the closed area. This sub-clause shall not apply to permanent residents in a closed area.
- (e) If a person violates the instructions of a declaration concerning closure of an area or a place according to which leaving the closed place is forbidden, or a condition of a permit in accordance with this clause, any soldier or a policeman shall be entitled to arrest him and bring him to the closed area.

- (f) If a person violates the instructions of a declaration concerning the closure of an area or place at a condition of a permit granted in accordance with this clause, or if a person disrupts a soldier or policeman carrying out their job in accordance with this clause or under it, he shall be charged with an offense against this order.

And according to Article 94 ("Burden of Proof"):

A person charged with an offense against a security legislation has to prove that his case was covered by an exemption, permit or justification as claimed by him, or that he has any [required] license, permit, agreement or authorization in his possession.⁴⁷

As with curfews, the authority to declare a "closed area" was devolved in January 1988 to the senior officer present.

Due to the frequency with which closures have been imposed, their exact number is impossible to determine. But, according to al-Haq's information, they are used on a much larger scale than curfews and reach into the thousands. Several reasons account for this:

- (1) The tendency to declare any area under curfew a closed military area;
- (2) The routine practice of declaring any area where disturbances or visible human rights violations of any sort occur a closed military area;
- (3) The practice of declaring any area where journalists are present a closed military area;
- (4) The outfitting of soldiers with ready-to-use closed military area forms;
- (5) The increasing frequency with which areas are declared closed by oral rather than written order.⁴⁸

One of the primary purposes of the closure policy has been to prevent journalistic coverage of the Occupied Territories.* But there are also several other, equally serious issues at stake. One of these is the arbitrary and repeated disruption of orderly civil life. In Ramallah and Nablus, for example, the authorities have repeatedly closed the cities to residents of the surrounding camps and villages on Fridays and Saturdays the traditional shopping days for Palestinian workers. And on a number of occasions the entire West Bank or Gaza Strip or the Occupied Territories as a whole have been sealed from the outside world by closure orders, with no one allowed in or out.

Al-Haq has also documented the effects of prolonged closure orders. Prolonged closure resembles a military siege. While residents are free to move within the closed military area, nothing is allowed in or out. Furthermore, it often sets the stage for further human rights violations. A fieldwork report from the village of Beita describes conditions during prolonged closure:

*See further Chapter Seventeen, "The Media."

At approximately 5:00 a.m. on Thursday 11 May 1989, a large number of soldiers raided the village of Beita. They forced residents to erase nationalist graffiti and take down the Palestinian flags. The residents confronted the army with stones and several youths were wounded, some of them seriously.

The wounded youths were:

- (1) Muhammad Na'im Matar Abou-Mazen, shot in the thigh.
- (2) Nu'man Hamayel, seriously wounded by three bullets in the thigh, shoulder and back.
- (3) Najah Muhammad Dweikat, shot in the arm.

All were taken to al-Ittihad al-Nisa'i Hospital in Nablus.

On Saturday 13 May 1989, soldiers again raided the village and chased the youths in the mountains. The youths threw stones at the soldiers. Mufid Hamed Hamayel was wounded in the thigh and hospitalized at al-Ittihad. The soldiers also entered the mosque and confiscated its loudspeakers.

On Monday 15 May 1989, a large number of settlers from the Gush Emunim movement approached the village on the pretext of holding a picnic. They provoked the farmers so a large number of the villagers chased them away. The settlers shot at the people, but nobody was wounded. The army came, dispersed the villagers and took the settlers with them.

On Wednesday, 17 May 1989, a large number of Israeli soldiers parachuted from helicopters at midnight and besieged the village. The next morning, these soldiers as well as 15 vehicles full of other soldiers, raided the village. They searched houses and arrested dozens of youths. They led the youths outside the village, handcuffed them and confiscated their identity cards, then beat them so severely that marks were left on the bodies of some of them:

- (1) Salim Hilal Abou-Mazen (contusions in the face and bleeding);
- (2) 'Amer Husein Abou-Mazen (contusions in his hand and pain in his back);
- (3) 'Imad 'Adnan Qamaq (bleeding in the nose and swellings in the face);
- (4) Lutfi Ghazi Darwish (contusions all over his body, especially his legs).

Beita was under siege for ten days. During that time, the military authorities prevented anyone from bringing food supplies to the village.⁴⁹

In another example, the authorities imposed a six-week closure on the town of Beit Sahour near Bethlehem during the months of September and October 1989. During the siege, imposed to break a tax boycott and forcibly collect outstanding debts, the armed forces also prevented a delegation of European consular officials from entering the town.

According to UNRWA, curfew passes do not entitle the bearer access to closed areas and separate permits, which may or may not be granted, must be obtained.⁵⁰ As with curfew passes, this is in direct violation of the 1967 treaty between UNRWA and the Government of Israel, in which the latter undertook to respect UNRWA's immunity and refrain from interfering in its relief activities.

In the opinion of al-Haq, the military closure of an area for unstated or illegitimate security reasons constitutes collective punishment and as such is in clear violation of

international law. Additionally, as the case of Beit Sahour makes clear, closure is often used to exclude influential eyewitnesses from areas where premeditated abuses of international law and human rights are being perpetrated.

The following case of a prolonged military closure involving agricultural workers from the village of Tammoun also illustrates how communities situated close to Jewish settlements are often the most vulnerable to official policies of collective punishment:

When a settler was killed on 7 November 1988 by a Palestinian from the village of Tammoun, located near Jericho (the killer was himself immediately shot dead by a soldier),⁵¹ dozens of homes in Jiftlek, where the Palestinian had been working, were razed to the ground by the military. Jiftlek is in the center of a prime agricultural area. It is also an area where agricultural exports to Europe (primarily tomatoes and eggplant) are grown. The night the settler was killed, the whole area of Jiftlek was declared a closed military area. Previously, during the growing season (September-May), tenant farmers and sharecroppers from Tammoun who rented land in Jiftlek would sleep in Jiftlek with their families, who worked with them. The result of closing the area at night was that non-residents of Jiftlek were forced to leave. For those living in Tammoun, this meant paying a daily bus fare of NIS 3 [\$US 1.50] each way and losing at least two hours in travelling time per day. For example, Khaled 'Abd-al-'Aziz Abou-Jilda, 19, is one of a family of five who made the journey each day in order to work an area of 25 dunums planted with squash, tomatoes, peppers, eggplants, and beans. Their total bus fare was NIS 30 [\$US 15] per day, a small fortune for some of the poorest families in the West Bank.⁵² The family of Husein 'Abdallah Ibn 'Oda, 40 years old, numbers eight persons. As a result of the closure they paid a daily busfare of NIS 48 [\$US 24]. The protests lodged by local farmers with the military government in Jericho received no reply. From May to September 1989, no agricultural activity took place in the Jiftlek area. It remains to be seen whether local farmers are to be permitted to earn a livelihood or not in the present season.⁵³

C. Sealings

One of the most graphic practices employed by the authorities to isolate the population of the Occupied Territories consists of physically sealing off entire streets, neighborhoods, villages, and refugee camps for various periods of time so as to make them virtually inaccessible and disrupt orderly traffic routes. In villages, this can be accomplished by simply placing large boulders or earthen barriers in the middle of access road(s) leading to them. In most cases, this makes motorized traffic impossible. In towns and cities, individual streets have been sealed off with boulders, barriers, cement-filled barrels, and/or barbed wire, while in a number of cases, such as in the town of Qalqiliya, entire quarters have been sealed off from main thoroughfares with rows of cement-filled barrels.

The policy is most severely enforced against the refugee camps. In most camps, all but one or all entrances have been sealed with cement-filled barrels, leaving only a small opening and making the camp inaccessible to traffic. In other cases, such

as Dheisha, Toulkarem, and Nour Shams refugee camps, high wire fences or, as in Qalandiya Refugee Camp near Jerusalem, concrete walls have been erected as well to seal off the camp from main roads. The practice has directly affected the civilian population concerned, which must often make long and cumbersome detours for even the most menial errand. More seriously, ambulance traffic has been significantly delayed by such measures.

Fifteen of the seventeen entrances to Dheisha Refugee Camp (pop. approx. 7,000), and all paved entrances have been sealed off since late August 1989, forcing camp residents to take long, circuitous routes to reach the main Jerusalem-Bethlehem highway. In addition, economic activity has virtually come to a halt, as 35 shops on the camp's main street have been forced to close due to their inaccessibility. What is more, the military authorities have constructed an 18-meter-high metal fence around the camp, creating what residents describe as prison-like conditions.⁵⁴

While the practice of sealings clearly constitutes collective punishment, in some cases it has also been deliberately implemented to endanger people's well-being. The most pointed example in this regard concerns the village of Turmus'ayya, near Nablus. After Najeh Jamil Hijaz was shot dead there by a settler in March 1988, the armed forces sealed the main access road with boulders and left residents with only one access road, which led straight past the neighboring Jewish settlement.

D. Severance of Utilities

The Israeli authorities have routinely engaged in severing water and electricity supplies to locations in the Occupied Territories on various pretexts. Sometimes, such actions are so unmistakably taken to collectively punish the civilian population that no explanation is offered at all.

Most often, the authorities state that utilities are disconnected because of non-payment of outstanding bills. However, as in other countries, Palestinians subscribe to their water and electricity supply on an individual rather than communal basis. Thus, to collectively sever these utilities without prior measures of individual notification and disconnect debtors and non-debtors alike, is a clearly illegal practice. Cases of the prolonged severance of utilities have also taken place. In the village of Qabatiya, for example, the electricity supply was cut on 25 February 1988 (after a collaborator was killed and hung from an electricity pole) and not reconnected until 10 March 1989. The effects of prolonged utility cuts are recounted in this June 1989 al-Haq field-work report:

The 2,000 residents of al-Zababda village near Jenin have been without water for more than three months. They normally consume about 180 cubic meters of water a day.

According to Hani Jamil, the secretary of the village council, the problem began on 27 March 1989 when the Israeli Water Company, Mekorot, severed the water supply because residents had not paid their debts to the company. Hani Jamil says that the village council had paid all the outstanding debts during the last week but that the Water Company did not resume pumping water to the village. He adds that the interest on the debts amounted to 800 Shekels [\$US 400].

During the period of the water cut, the residents depended on water tanks and agricultural cisterns for their supply. Such water, however, is neither disinfected nor suitable for drinking and has caused skin disease and other symptoms such as vomiting and diarrhea. During the cut residents had been forced to pay NIS 8 [\$US 4] per cubic meter of water. They are looking forward to a solution because the measure has affected their entire livelihoods. Residents hope that the water supply will be restored quickly, especially since the summer is coming.

E. Interference with Communications

The authorities continue to interfere with telecommunications. From 16 March 1988 until 9 April 1989, all international telecommunications with the Occupied Territories (except annexed East Jerusalem) were severed by military order. The official justification for this measure was that it would prevent coordination between the exile and resident branches of the Palestine Liberation Organization (PLO). Such an argument, however, ignores the fact that many PLO activists live in East Jerusalem or Israel, and that those who do reside in Nablus, Hebron, and Gaza are in close proximity to the former areas and have easy access to their telecommunications. Rather, al-Haq viewed the measure as yet another attempt to restrict the flow of information, particularly concerning human rights violations, to the outside world:

To the extent that quick communication of imminent violations is the most effective means at our disposal ... [al-Haq] has been deprived of this tool ... The cutting of [international] telephone links is also affecting a large portion of the population with family members [abroad], who ... need to be in contact with their relatives to assure them about their safety and wellbeing.⁵⁵

Local telecommunications have been severed as well, at times for prolonged periods. In October 1989, all telephone lines in Ramallah and Bethlehem were disconnected for six days and one week, respectively, a period which coincided with a general strike called by the United National Leadership of the Uprising. The military denied that it had anything to do with the severance:

"This is the first time since 1967 that phone links here have been disconnected for an entire week," said Bethlehem Mayor Elias Freij, who added that he had been unable to obtain an explanation for the move. The IDF yesterday would not confirm or explain the measure. An IDF spokesman said he had no knowledge of phones being disconnected ... A Civil Administration spokesman also declined to comment, referring queries to the IDF spokesman.⁵⁶

An affiant, however, reported otherwise:

At approximately 11:00 a.m. on Thursday 5 October 1989 [the first day of the extended general strike], I picked up the telephone receiver in my apartment to make a phone call but the telephone line was disconnected. I was surprised by this as I had paid my telephone bill that same morning, one day before it was due, and suspected that, as on a number of previous occasions, the armed forces had disconnected the telephone lines in Ramallah.

I therefore went to the Ramallah offices of the Bezek telephone company to inquire about the reason for the disconnection of my telephone. I arrived at the Bezek office at approximately 11:45 a.m., and asked the receptionist, a young

man standing inside the gate, whether there were any working telephone lines in Ramallah, to which he answered that there were not. I then asked him when they had been disconnected, and he replied that they had been disconnected the previous evening. Finally, I asked him whether the lines had been cut by the authorities. He responded: "Yes, the authorities."⁵⁷

F. Jamming of Radio Broadcasts

Throughout the year, the Israeli authorities continued to jam the broadcasts of the Syrian-based "al-Quds Arab Palestinian Radio" operated by the Popular Front for the Liberation of Palestine-General Command, which carries detailed and up-to-the-minute reports about events in the Occupied Territories. The authorities have claimed that al-Quds Radio incites residents of the Occupied Territories to violence. The military government, however, has in effect contradicted official justifications by selectively restoring access to al-Quds broadcasts: when the PFLP-GC, currently not a constituent member of the PLO, periodically escalates its attacks against the latter's search for a diplomatic resolution to the Palestine conflict and openly calls upon residents to engage in armed violence, its broadcasts are easily accessible because they are seen by the authorities as creating divisions within Palestinian society. When al-Quds Radio refrains from such attacks and simply reports events in the Occupied Territories, it is jammed.

Summary

Isolation has become a fact of daily life for the civilian residents of the Occupied Territories. It is being applied in an arbitrary and wanton manner on a massive scale with no regard for legal norms and humanitarian standards. When security pretexts are offered, they are usually just that—pretexts—intended to obfuscate motives of pressure and punishment which lie at the heart of Israeli policy in the West Bank and Gaza Strip. The practices discussed in this chapter have entailed grave consequences for Palestinian society. More importantly, the impact of such policies increases over time. The level of repression need not necessarily be increased in order to have a more injurious effect; this can be guaranteed simply by its perpetuation. Because Israel's policies of isolation are in such direct violation of international law and are being imposed in such a clearly lawless manner, it is high time the international community acted to prevent further abuses and end the forced sequestration of entire communities.

Endnotes to Chapter Eleven

1. Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987–December 1988* (Ramallah: Al-Haq, 1988), pp. 181–182. See pp. 177–194 and related appendices for a full discussion of curfews during 1967–1988.

2. *Ibid.*, p. 193.

3. This and subsequent figures are derived from a daily register of curfews in force in the Occupied Territories between 1 January and 30 September 1989. Complete figures for the period 1 October–9 December 1989 were unavailable at the time of writing. The list, *Curfews Imposed By The Israeli Armed Forces In The Occupied Territories, 1989*, was compiled by al-Haq researchers and relies on fieldwork and cross-referenced media reports. Because al-Haq's work is not oriented toward the compilation of comprehensive statistics, a number of the organization's fieldworkers have been under administrative detention or town arrest during the past year, and al-Haq fieldworkers are often themselves under curfew, the documentation was in many cases obtained from press reports. The newspapers consulted include the Arabic-language dailies *al-Fajr*, *al-Sha'b*, *al-Quds*, the English-language daily *Jerusalem Post*, the Arabic weeklies *al-Bayader al-Siyasi* and *al-Tali'a*, and *al-Fajr Jerusalem Palestinian Weekly*. Official statements in the press consistently formed the basis for verification, and similar reports broadcast on radio or television were also sometimes used.

The figures supplied are best seen as conservatively accurate. Because the sheer volume of curfews imposed has made it impossible to arrive at figures entirely beyond reproach, every effort was made not to record a curfew unless it was mentioned by at least two sources. This means, for instance, that a number of curfews which could not be verified were simply not recorded, while others may have been noted as ending earlier than they actually did. Additionally, a number of cases were discovered in which a curfew's duration was properly noted but the beginning and end dates were off by one or two days. Thus, while the register used for this chapter may contain additional inaccuracies, al-Haq is convinced that exact figures, were they available, would not only reinforce its findings but show them to be understated.

Furthermore, only curfews of one day or longer were included in the al-Haq register. The total figure of 1,200 curfews was therefore not actually recorded. Rather, it was arrived at by adding the total number of registered curfews (676), total number of Gaza Strip night curfews (189), estimated minimum number of night curfews in the West Bank (150), and the estimated minimum number of other curfews which lasted less than one day (185). The figure of 213 prolonged curfews is, however, fully documented.

4. In 1987–1988, al-Haq defined a prolonged curfew as a round-the-clock curfew in force for at least four consecutive days. To adjust for the possibility that a curfew may have been imposed late on the first day and/or lifted early on the last day, the first date on which a curfew was in force was not counted. (It is often impossible to establish at precisely which hour a curfew was imposed or lifted.) Thus, a number of prolonged curfews were recorded as having been three days long, which was established as the threshold for a prolonged curfew (Al-Haq, *Punishing a Nation*, p. 177.)

In 1989, the date on which a curfew was imposed was counted but the date on which it was lifted was not, so that only curfews lasting at least four consecutive days and including at least three consecutive 24-hour periods under curfew were registered as prolonged curfews. As a result of this adjustment, the threshold for a prolonged curfew this year was raised to four days and no prolonged curfews of three days were recorded.

As an example, if Nablus was under 24-hour curfew from 12:00 p.m. on 10 January until 12:00 p.m. on 13 January in 1988, it would have been recorded as a three-day prolonged curfew (10 January was not counted to remove the margin of error, but 11, 12, and 13 January were counted). The same curfew in 1989, however, would not be registered as a prolonged curfew (10, 11, and 12 January would be counted but 13 January would not to remove the margin of error). The curfew would have to last until at least 12:00 a.m. on 14 January to qualify as a four-day prolonged curfew.

5. The number of prolonged curfews did indeed decrease from 400 for 1987–1988 to 285 in 1988–1989 (a change of 29%), but several factors must be taken into account before concluding

that a significant change has taken place. The 1988–1989 figure is extrapolated from the figure of 213, which covers the period 1 January–30 September 1989 and does not include within its parameters either the first or second anniversaries of the uprising (9 December), the anniversary of the Palestinian Declaration of Independence (15 November), the International Day of Solidarity with the Palestinian People (29 November), or the cluster of Jewish Holy Days which this year fell in October. All these occasions are traditionally times of increased use of prolonged curfews. Secondly, the period from which the figure of 285 was extrapolated included two months (February and August) during which the incidence of prolonged curfews was abnormally low. And finally, the adjusted definition of prolonged curfew (see endnote 4, above) accounts for some of the divergence as well. When all these factors are taken into account, it becomes clear that one cannot simply compare the raw data. Rather, the actual change is much less significant than appearances indicate, and most probably only marginal.

6. For the 1987–1988 figures cited, see Al-Haq, *Punishing a Nation*, p. 186.
7. Because the Gaza Strip contains 25 separate localities, one could argue that 47 locations were actually under curfew on 16 April 1989.
8. For a series of official pronouncements on the subject made during the early months of the uprising, see Al-Haq, *Punishing a Nation*, p. 193.
9. Joel Brinkley, "Israel Says Army Will Get Tougher If Palestinians Reject Offer of Vote," *New York Times*, 16 May 1989.
10. David Makovsky, "Meridor: Collective Punishment Justified to Suppress Intifada," *Jerusalem Post*, 26 September 1989.
11. Michal Sela and Joel Greenberg, "Gazans Barred: IDF Says Workers Must Go Home," *Jerusalem Post*, 16 May 1989.
12. Although no reliable population census has been taken in the Gaza Strip since 1967, the population density in Gaza is conventionally believed to approximate 4,000 inhabitants per square kilometer.
13. According to al-Haq's documentation, six persons, four of them under the age of 18, were shot dead by the military during various incidents in the latter instance.
14. "IDF Crackdown in Territories: Police Order Gazans to Return to Strip," *Jerusalem Post*, 17 May 1989.
15. "UN Spokesman Maher Nasser: Curfews Obstruct UNRWA Mission in Camps," *Al-Fajr Jerusalem Palestinian Weekly*, 24 January 1988.
16. Al-Haq Affidavit No. 1665
17. Al-Haq Questionnaire.
18. Al-Haq Questionnaire.
19. Al-Haq Affidavit No. 1760.
20. Al-Haq Affidavit No. 1746.
21. Al-Haq Questionnaire No. 29/89.
22. Joel Greenberg, "A Soldier's Diary," *Jerusalem Post*, 16 September 1988. The soldier in question is Jonathan Kestenbaum, an immigrant from England who may still be carrying British citizenship. Greenberg also reports that during the curfew

[p]ersons were prevented from standing on porches, hanging laundry on roofs or breathing fresh air in the courtyard of their homes. Electricity was cut off. All cars and tractors in the town were impounded and held at the local school, which became an army barracks. Outsiders, especially journalists, were banned.

According to al-Haq's documentation, these practices, which were the norm during prolonged curfews in 1988, remained commonplace throughout 1989.

23. Michal Sela and Joel Greenberg, "Six Gazans Shot and Killed After Stonings," *Jerusalem Post*, 21 May 1989. One resident is quoted as saying that "[p]eople went out to the street because they were hungry. When you see your children cry of hunger, will you cry with them or go out of the house?"

24. Al-Haq Questionnaire Nos. 89/00585, 89/00726, 89/00572, 89/00574, and 89/00573.
25. Sela and Greenberg, "Six Gazans Shot and Killed After Stonings."
26. "Soldiers Bar Food Convoy Entry into Gaza," *Jerusalem Post*, 12 June 1989.
27. *Ibid.* Additionally, the military did not interfere when gangs of Jewish settlers blocked the road to Erez with their cars. Soldiers only intervened after fistfights erupted.
28. Al-Haq Affidavit No. 2030.
29. "UN Spokesman Maher Naser."
30. Interview with UNRWA Public Relations Officer Maher Naser, Ramallah, 26 October 1989. The information on which this discussion is based was provided by Mr. Naser.
31. *Ibid.*
32. The rules are sometimes modified in exceptional circumstances. Maher Naser reported one case from 1988 in which a woman in labor pains attempting to leave Khan Younes Refugee Camp under UNRWA escort was delayed until a military medic arrived to confirm that her labor pains were genuine.
33. Interview with Maher Naser, Ramallah, 26 October 1989.
34. Al-Haq Questionnaires.
35. Al-Haq Questionnaire 89/01178 (Muna Ibrahim Fathallah Tammam).
36. Al-Haq Fieldwork Questionnaire No. 89/00736 (Samir Muhammad Mahmoud Mir'i).
37. Al-Haq Questionnaire No. 89/00938 (Shadi Ziyad Rabah 'Awad).
38. Al-Haq Questionnaires 89/00443 and 89/00445 (Naser Ibrahim al-Qassas, 16, and Rafida Khalil Abou-Laban, 14).
39. Al-Haq Affidavit No. 1761.
40. See, for instance, al-Haq Affidavits Nos. 1691 and 1751, and Chapter One, "The Use of Force."
41. Al-Haq Affidavit No. 1751.
42. Sami 'Aboudi, "Issawiyeh, A Vibrant Section, Now Looks Dead, Except for Curfew," *Al-Fajr Jerusalem Palestinian Weekly*, 13 March 1989.
43. Andy Court, "Issawiya Curfew Lifted After Five Days," *Jerusalem Post*, 14 March 1989.
44. David Makowsky, "Curfew Extended," *Jerusalem Post*, 26 July 1989.
45. Al-Haq Affidavit No. 1588. The television was confiscated. In a number of other affidavits taken in Silwan after the curfew was lifted, residents who could not afford the exorbitant television tax were told that if they did not produce payment within a specified number of days their television would be sold at a public auction.
46. Nurit Wargaft, "A Curfew on Residents, Not on an Area," *Kol Ha'ir*, 28 July 1989 (translated in *Al-Fajr Jerusalem Palestinian Weekly*, 28 August 1989).
47. This translation of Article 94 differs slightly from that included in Al-Haq, *Punishing a Nation*. This is because the military government does not provide English translations of its legislation, and in lieu of an official version al-Haq periodically reviews its own translations.
48. *Ibid.*
49. Al-Haq Fieldwork Report.
50. Interview with Maher Naser, Ramallah, 13 January 1990.
51. The incident is discussed Al-Haq *Punishing a Nation*, p. 120.
52. Although the Jordan Valley is a fertile area, the system of land ownership is such that the income of tenant farmers and sharecroppers is exceedingly low.
53. Al-Haq Fieldwork Report.
54. Al-Haq Fieldworker Report.

55. Al-Haq, "Human Rights Violations is Bound to Increase With Severance of International Communications," 18 March 1988.
56. Joel Greenberg, "Telephones Silenced in Ramallah, Bethlehem," *Jerusalem Post*, 11 October 1989.
57. Al-Haq Affidavit No. 2069.

Appendix 11-A

Prolonged Curfews January–September 1989 by Month

Gaza Strip

Length	J	F	M	A	M	J	J	A	S	Total
4-5	5	2	11	18	17	18	–	2	–	73
6-9	3	5	3	6	19	5	2	1	–	41
10-14	1	–	2	3	–	2	–	–	–	8
15-19	–	–	–	2	4	–	–	–	–	6
< 20	–	–	–	–	–	–	–	–	–	0
Total	9	7	16	29	40	25	2	3	0	131

West Bank

Length	J	F	M	A	M	J	J	A	S	Total
4-5	2	1	4	3	13	2	1	5	2	33
6-9	4	–	2	1	5	–	1	1	3	17
10-14	1	1	6	1	–	5	1	2	6	23
15-19	–	–	–	–	2	–	1	1	3	7
< 20	–	–	–	–	2	–	–	–	–	2
Total	7	2	12	5	22	7	4	9	14	82

Total

Length	J	F	M	A	M	J	J	A	S	Total
4-5	7	2	15	21	30	20	1	7	2	105
6-9	7	5	5	7	24	5	2	3	3	61
10-14	2	2	8	4	–	7	1	2	6	32
15-19	–	–	–	2	6	–	1	1	3	13
< 20	–	–	–	–	2	–	–	–	–	2
Total	16	9	28	34	62	32	6	12	14	213

Appendix 11-B

Sample al-Haq Monthly Report on Curfews

Curfews Imposed by the Israeli Armed Forces During 1989 Summary for the Month of: MAY

Please note:

1 curfew = 1 location under continuous curfew irrespective of duration (i.e. a 14 day curfew on Nablus = 1 curfew).

1 curfew day = 1 location under curfew for 1 day (i.e. a 14 day curfew on Nablus = 14 curfew days).

Prolonged curfew = a curfew lasting at least 4 days.

Curfew days are recorded in the month during which they were imposed. The curfew itself is recorded only in the month in which it is lifted. Additionally only curfews of one day or longer are recorded in this summary, and it should be noted that night curfews and other curfews of a shorter period are routinely imposed.

Finally, check any apparent discrepancies carefully. Many may result because a location is also part of a larger one (i.e. the Shaboura district is a section of Rafah refugee camp) and there are no double counts. In other cases, the Gaza Strip, for instance, has 25 locations and thus a blanket curfew there lasting one day is equal to 25 curfew days.

Curfews This Month (May 1989)

	Total	Gaza Strip	West Bank
# of Curfews	138	76	62
# of Curfew Days	579	348	231
# of Locations	69	25	44
# of People Affected	1,025,500	700,000	325,500
# of Prolonged Curfews	62	40	22
# of Prolonged Curfew Days	426	257	169
# of Locations	43	25	18
# of People Affected	937,000	700,000	237,000

Longest curfew this month: 22 days (5-27 May)

Location(s): 'Anabta [West Bank]

Population: 6,000

Most curfew days this month: 22 days

Location(s): Nuseirat camp, Shaboura district [Gaza Strip]; 'Anabta, Nour Shams refugee camp [West Bank]

Population: 30,000; 25,000, 6,000; 5,000 respectively

% of this month under curfew: 71%

of other locations under curfew 50% or more this month: 7

Toulkarem refugee camp: 68% (21 days) [West Bank]

Thinnaba: 61% (19 days) [West Bank]

Al-Maghazi refugee camp: 61% (19 days) [Gaza Strip]

Breij refugee camp: 58% (18 days) [Gaza Strip]

Jabaliya refugee camp: 52% (16 days) [Gaza Strip]

Khan Younes refugee camp: 52% (16 days) [Gaza Strip]

Sheikh Radwan housing project: 52% (16 days) [Gaza Strip]

Total population of the above: 212,000

Most prolonged curfew days this month: 22 days

Location(s): Nuseirat refugee camp [Gaza Strip] 'Anabta and Nour Shams refugee camp [West Bank]

Population: 30,000; 6,000; 5,000 respectively

% of this month under prolonged curfew: 71%

Other locations under prolonged curfew 50% or more this month:

Toulkarem refugee camp: 68% (21 days) [West Bank]

Shaboura district/Rafah refugee camp: 65% (20 days) [Gaza Strip]

Thinnaba: 58% (18 days) [West Bank]

Breij camp: 52% (16 days) [Gaza Strip]

Al-Maghazi camp: 52% (16 days) [Gaza Strip]

Total population of the above: 110,000

Curfews 1989 to Date (1 January-31 May 1989)

	Total	Gaza Strip	West Bank
# of Curfews	470	286	184
# of Curfew Days	1,553	975	578
# of Locations	94	25	70
# of People Affected	1,146,500	700,000	446,500
# of Prolonged Curfews	149	101	48
# of Prolonged Curfew Days	989	631	358
# of Locations	50	25	25
# of People Affected	971,000	700,000	271,000

Longest curfew 1989 to date: 22 days (5-27 May)

Location(s): 'Anabta [West Bank]

Population: 6,000

Most curfew days 1989 to date: 90

Location: Shaboura district/Rafah refugee camp [Gaza Strip]

Population: 25,000

of days in 1989 to date: 151

% of 1989 under curfew to date: 60%

of other locations under curfew 50% or more of 1989 to date: 0

Total population of the above: 25,000

Most prolonged curfew days 1989 to date: 64

Location: Shaboura district/Rafah refugee camp [Gaza Strip]

Population: 25,000

% of 1989 under prolonged curfew to date: 42%

Other locations < 25% prolonged curfew 1989 to date: 10

Al-Shate' (Beach) refugee camp: 38% (58 days) [Gaza Strip]

Nuseirat refugee camp: 35% (53 days) [Gaza Strip]

Al-Maghazi refugee camp: 34% (52 days) [Gaza Strip]

Breij refugee camp: 33% (50 days) [Gaza Strip]

Sheikh Radwan housing project: 32% (49 days) [Gaza Strip]

Jabaliya refugee camp: 32% (48 days) [Gaza Strip]

Nour Shams refugee camp: 32% (48 days) [West Bank]

Deir al-Balah refugee camp: 30% (45 days) [Gaza Strip]

Toulkarem refugee camp: 28% (43 days) [West Bank]

Rafah refugee camp: 26% (40 days) [Gaza Strip]

Total population of the above: 223,000

Total Curfews This Month for the Gaza Strip

Location	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Entire Gaza Strip	10	3	5	1	15	5	33%	700,000
All Gaza Camps	12	3	7	1	25	7	28%	261,000
Al-Amal Hp	13	4	5	1	33	12	36%	15,000
Beit Hanoun	14	3	13	2	39	26	67%	13,000
Beit Lahia HP	15	4	8	1	55	29	53%	10,000
Breij Camp	18	2	16	1	59	50	85%	19,000
Deir Al-Balah Camp	13	2	13	2	57	45	79%	10,000
Jabaliya	13	3	8	1	23	8	35%	10,000
Jabaliya Camp	16	4	9	1	65	48	74%	55,000
Khan Younes Camp	16	3	13	2	54	35	65%	37,000
Al-Maghazi Camp	19	3	16	2	58	52	90%	12,000
(*)Nuseirat Camp	22	2	22	2	63	53	84%	30,000
Rafah	13	2	13	2	21	13	62%	30,000
Rafah Camp	13	2	13	2	65	40	62%	52,000
Sabra	12	4	5	1	28	3	46%	15,000
Shaja'iyya	11	2	11	2	23	15	65%	40,000
Shaboura/Rafah Camp	20	3	20	2	90	64	71%	25,000
Al-Shate' Camp	15	1	15	1	67	58	87%	44,000
Sheikh Radwan HP	16	2	15	1	62	49	79%	10,000
Total	348	76	257	40	931	622	67%	700,000

- (A) # of days under curfew this month
 (B) # of curfews this month
 (C) # of days under prolonged curfew this month
 (D) # of prolonged curfews this month
 (E) # of days under curfew 1989 to date
 (F) # of days under prolonged curfew 1989 to date
 (G) (F) as a percentage of (E)
 (H) Population
 (+) Curfew continued from last month
 (*) Curfew continued into next month

Note: this chart and the following page only those locations which were under curfew this month.

Total Curfews This Month for the West Bank

Location	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Abou-Dis	2	1	-	-	2	-	-	3,000
Abou-Shkheidem	1	1	-	-	1	-	-	1,000
'Ayda Camp	5	1	5	1	9	5	56%	2,500
'Anabta	22	1	22	1	25	22	88%	6,000
'Arraba	1	1	-	-	4	-	-	6,000
'Askar Camp	8	3	5	1	16	5	31%	9,000
'Azza Camp	3	2	-	-	6	-	-	1,000
'Azzoun 'Atma	3	1	-	-	3	-	-	500
Balata Camp	6	2	5	1	17	8	47%	13,000
Battir	1	1	-	-	5	4	80%	2,500
Beita	1	1	-	-	1	-	-	5,000
Beit Rima	1	1	-	-	1	-	-	1,000
Beit Oula	1	1	-	-	1	-	-	4,000
Beit Wazan	10	2	10	2	22	20	91%	1,000
Deir Ballut	3	1	-	-	3	-	-	2,000
Dheisha Camp	6	2	5	1	17	11	65%	7,000
'Ein Beit-Al-Ma' Camp	6	2	5	1	19	15	79%	4,000
'Ein Yabroud	8	1	8	1	9	8	89%	500
'Eizariyya	1	1	-	-	2	-	-	6,000
Habla	1	1	-	-	5	-	-	3,000
(+)Hebron Center	1	1	-	-	5	-	-	5,000
Ithna	5	1	5	1	5	5	100%	7,500
Jab'a	3	1	-	-	3	-	-	4,500
Jamma'in	3	1	-	-	3	-	-	3,000
Jenin	9	2	6	1	21	12	57%	28,000
Jenin camp	8	2	5	1	20	11	55%	8,000
Jneid	6	2	5	1	18	15	83%	500
Al-Khader	3	2	-	-	3	-	-	2,500
Kifl Hareth	1	1	-	-	1	-	-	1,500
Nablus	6	2	5	1	21	19	90%	100,000
Nouba	1	1	-	-	1	-	-	4,500
(*)Nour Shams Camp	22	1	22	1	55	48	87%	5,000
Qarawa Bani-Zeid	1	1	-	-	1	-	-	1,500
Sa'ir	2	1	-	-	2	-	-	8,500
Salfit	2	1	-	-	5	-	-	5,000
Al-Sheyukh	2	1	-	-	2	-	-	4,000
Shweika	12	2	12	2	20	12	60%	2,000
Talfit	1	1	-	-	1	-	-	1,500
(+/*)Thinnaba	19	3	18	2	42	29	69%	3,000
Til	1	1	-	-	1	-	-	2,500
Toulkarem	8	3	5	1	33	16	48%	30,000
(+/*)Toulkarem Camp	21	2	21	2	54	43	80%	10,000
Ya'bad	3	1	-	-	4	-	-	9,000
Zeita	1	1	-	-	2	-	-	500
Total	231	62	169	22	490	304	62%	325,500

Note: see key on preceding page.

Totals This Month by Day

Day	(A)	(B)	(C)	(D)
01/05/89	4	48.0	2	13.0
02/05/89	6	100.0	2	13.0
03/05/89	6	90.0	2	13.0
04/05/89	6	90.0	2	13.0
05/05/89	8	127.0	3	18.0
06/05/89	30(*)	564.0	3	18.0
07/05/89	29(*)	563.0	3	18.0
08/05/89	41(+)	929.0	8	127.0
09/05/89	44(+)	939.5	31(*)	563.0
10/05/89	44(+)	939.5	31(*)	563.0
11/05/89	28(+)	711.5	27(+)	711.0
12/05/89	28(+)	711.5	28(+)	711.5
13/05/89	11	213.5	8	170.5
14/05/89	8	125.5	7	160.5
15/05/89	39(+)	866.5	7	160.5
16/05/89	36(+)	746.5	8	170.5
17/05/89	35(+)	749.5	7	125.0
18/05/89	22	358.5	17	326.0
19/05/89	38(+)	765.5	17	326.0
20/05/89	33(+)	739.0	16	325.0
21/05/89	11	90.0	8	77.0
22/05/89	8	82.0	4	44.5
23/05/89	9	123.0	4	44.5
24/05/89	7	75.5	1	6.0
25/05/89	11	159.0	2	36.0
26/05/89	6	126.0	2	36.0
27/05/89	4	77.0	1	30.0
28/05/89	2	32.0	-	-
29/05/89	4	36.0	-	-
30/05/89	5	55.5	1	20.0
31/05/89	7	69.0	-	-
Averages	18	364.5	8	156.0

- (A) # of locations under curfew
 (B) Total population under curfew (in thousands)
 (C) # of locations under prolonged curfew
 (D) Total population under prolonged curfew (in thousands)
 (*) Includes all Gaza camps
 (+) Includes entire Gaza Strip

Note: in this section prolonged curfews are not registered until they are into their fourth day.

Appendix 11-C

Curfew Regulations Under International Law

The international law of occupation makes no explicit mention of curfew regulations. Yet, as is generally the case with specific practices which are neither sanctioned nor prohibited by international law, a consensus exists that the occupying power is entitled to use these practices only if sufficiently compelling security reasons exist and then only if its application of the measure does not violate fundamental humanitarian safeguards or unjustifiably disrupt orderly civil life. If the occupant fails to meet either of the above conditions, its actions cannot be considered lawful. Additionally, as with any derogation of fundamental rights (in this case the freedom of movement), the burden of proof as to the lawfulness of such derogation rests firmly with the authorities.

The Balance Between Security and Civil Life

The above interpretation is based upon basic principles enshrined in the international law of occupation and widely agreed upon by legal experts. Most important among these is that the occupant's actions must strike a careful balance between its right to maintain order and its obligation to preserve the welfare of the civilian population. If the occupying power determines its conduct according to one of these criteria to the detriment of the other, or fails to take the paramount question of balance into consideration altogether, its actions are illegal.

The balance argument is in large part derived from Article 43 of the Regulations annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land of 1907, which states that:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety [*l'ordre et la vie publics* in the binding French original], while respecting, unless absolutely prevented, the laws in force in the country.

Stated otherwise, the occupant has not only the right, but in fact an absolute duty to take those measures required to ensure public order and safety. Furthermore, the text of Article 43 (and this is particularly evident in the French original) makes clear that "public order and safety" cannot be narrowly defined as referring exclusively to those aspects of public life involving the security forces. On the contrary, the Article's foremost intention is the maintenance of orderly civil life in all its aspects, which cannot but include the rights of the occupied population. To subordinate the welfare of the civilian residents to the security interests of the occupant, particularly if on the pretext of restoring public order and safety, would therefore be an outright violation of international law. Finally, a pervasive and systematic disregard for the welfare of the local population constitutes a state of lawlessness.

Humanitarian Safeguards: Restrictions and Prohibitions

Respect for the balance between security interests and the rights of the civilian population is not, however, the only criterion according to which the legality of curfew regulations are to be judged. The international law of occupation imposes a series of restrictions and prohibitions upon the conduct of an occupant which must be observed at all times. If the occupant violates any of these humanitarian safeguards, it has committed a breach of international law.

The most important restriction relevant to this discussion concerns collective punishments. According to Article 50 of the Hague Regulations:

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.

Article 33 of the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War expands upon the Hague Regulations and makes the prohibition on such measures explicit:

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

The authoritative ICRC (International Committee of the Red Cross) Commentary to the Convention (p. 225) defines collective punishment as "penalties of any kind inflicted on persons or entire groups of persons . . . for acts that these persons have not committed," and rules out the punishment of an entire community on the basis of "passive responsibility."

The Convention uses equally precise language to restrict or prohibit the occupant from interfering with humanitarian services required by the civilian population. These are of particular interest given the underdeveloped socioeconomic infrastructure in the Occupied Territories and the large refugee population, especially in the Gaza Strip, which is heavily dependent on services provided by UNRWA.

Articles 55–57 and 58–63 of the Fourth Geneva Convention concern the mandatory provision of basic necessities to the civilian population. In effect, the occupant is bound by three sets of obligations:

- (1) to ensure the normal supply and facilitate the distribution of food-stuffs, medical supplies, and other essential items, and to ensure the normal functioning of medical personnel, services, and institutions;
- (2) to supplement the provision and distribution of the above goods and services, and the maintenance of the above institutions, if they are inadequate;
- (3) to refrain from interference in any of the above, especially with respect to relief consignments.

Article 59 stipulates that if the civilian population is

inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at

its disposal. Such schemes ... shall consist, in particular, of the provision of consignments of food-stuffs, medical supplies, and clothing.

And according to Article 60:

The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory.

The ICRC Commentary (p. 323) adds that "divert' must be understood in its broadest sense, as covering a change of destination of any kind."

Of related interest are Article 50 of the Convention, which compels the occupant to "facilitate the proper working conditions of all institutions devoted to the care and education of children," as well the customary international law prohibitions against brutality, humiliation, and degrading treatment of any sort.

Thus, curfew regulations are from the outset subject to strict limitations. First, they must be imposed for legitimate reasons of security. Secondly, even if this criterion is met, the measure may not be employed wantonly and any decision to use it must take the interests of the occupied population fully into account. And finally, the use of curfew regulations as a punitive measure, including their imposition in order to facilitate human rights abuses, or their enforcement in such a way as to deny civilian residents basic humanitarian services and unjustifiably disrupt civil life, is absolutely prohibited by the international law of occupation.

Appendix 11-D

Israeli Military Legislation Concerning Curfew

According to Article 89 ("Curfew") of Military Order (M.O.) No. 378 ("Order Concerning Security Regulations") of 1 May 1970:

A military commander is entitled to demand, in an order, that every person within an area specified in the order remain within their homes for the duration of time specified in the order. Any person found outside of his house within the said area during the time stated without a written permit issued by or on behalf of the military commander, shall be charged with an offense against this order.

In January 1988, an amendment to M.O. 378 authorized the "senior officer present" the power to impose curfews. M.O. 378 applies only in the West Bank. Similar legislation exists in the Gaza Strip. In annexed East Jerusalem, curfews are imposed on the authority of Article 124 of the Defense (Emergency) Regulations of 1945.

As is clear from the text, M.O. 378 grants the officer responsible unrestricted powers to impose curfews. Under Article 89, he is left free to decide when, why, where, and for how long to use the measure, and is under no obligation to justify his decision.

Yet, as the following affidavit (No. 2304) taken from al-Haq volunteer Marc Stephens illustrates, the military authorities habitually disregard even the minimum stipulations they themselves have nominally elected to observe:

At approximately 12:00 noon on Wednesday, 15 November 1989, while I was inside my house in the town of al-Bira, I heard the sounds of a person shouting through a megaphone. In order to see and hear what was occurring more clearly, I went to my front porch, from where I could see a large military vehicle approaching from a distance of approximately 100 meters. I could also hear the voice of a soldier in the vehicle announce the following through a loudspeaker: "Residents of al-Bira! A curfew has been imposed on you and you are forbidden to leave your homes." The soldier, who was speaking in Arabic, which I understand, made no mention of the duration of the curfew.

I reentered my house and consulted a copy of Military Order (M.O.) 378 which happened to be in my possession. Article 89 of this Order, entitled "Curfew", stipulates that the area over which it is imposed, and the duration, must be specified. The latter condition had not been fulfilled by the soldiers.

I therefore went out to my garden, accompanied by Ms. Candy Whittome, and beckoned the military vehicle to approach the front gate. The vehicle arrived, and at this point Ms. Whittome asked the soldier in the passenger seat how long the curfew would last. The soldier replied that he did not know. I responded by informing the soldier that it was a requirement under Article 89 of M.O. 378 that the duration of a curfew be specified and that this had not been done. I read out the full text of Article 89 to the soldiers in slow, clear English and then explained that in the absence of a specific duration, the curfew order was illegal and therefore null and void.

At this point, one of the soldiers, rifle in hand, jumped out of the back of the vehicle and said in English: "Are you trying to make us change our rules?" Ms. Whittome replied, "No, we are only trying to make you observe your own rules!"

Then the soldier in the passenger seat said: "This is all very well, but this is a curfew. I don't know how long it is for and you must go inside!"

Unsatisfied with the soldiers' response, I asked whether I might at least know the name of the officer who had issued the curfew order. The soldier replied that he didn't know the name of the officer and that, in any case, "his name is a secret." I then asked: "You mean that if I want to register a complaint about this order I cannot know the name of the person responsible?" "That's right," answered the soldier.

Having exhausted the possibilities of remedying the situation with Israeli military legislation, Ms. Whittome and I returned indoors.

It is, in fact, exceedingly rare, and al-Haq knows of no instances, in which a curfew in the Occupied Territories has been imposed for a specified period of time. Rather, the norm has been that curfews are imposed either "until further notice" or in the fashion quoted above. Often, as was the case in Ramallah on 16 November 1989 (the day after a curfew had been imposed to prevent celebrations of the Palestinian Declaration of Independence), the military simply fails to formally lift its curfew. Residents must then decide for themselves whether to venture outdoors because the curfew appears to have been lifted (but risk death if it is still in effect) or lose another day's income by remaining at home fearing the unknown despite their conviction that the curfew has come to an end.

Indeed, violating a curfew can entail serious consequences. Article 92 ("General Sentence") of M.O. 378 imposes prison sentences of five years, stiff fines, or both upon offenders of the above statute, while Article 94 ("Burden of Proof") compels alleged offenders, and not the authorities, to prove their case. Practically speaking, however, such penalties are rarely if ever imposed. Although curfew violators have been prosecuted by the military authorities, the norm has been that they are arbitrarily fined on the spot, beaten or otherwise degraded, or shot.

Appendix 11-E

Sealing of Access Road to Jifna and Jalazon Camp

Text of Intervention Sent by al-Haq

Mr. Ahaz Ben-'Ari
The Legal Advisor to the Military Government
Beit El

Dear Mr. Ben-'Ari,

On Friday 14 September 1989, the armed forces sealed the access road which leads from the main Ramallah-Nablus artery to the Jalazon Refugee Camp and the village of Jifna. The road was sealed with a sand barrier and is no longer accessible to motor vehicles. This has created difficulties for the residents of Jalazon and Jifna, because before the sealing it was the only access road which serviced the two centers from the route most frequently travelled by public vehicles leaving from Ramallah.

Due to the action by the armed forces, there is currently no direct access from Ramallah to either Jalazon or Jifna by public transportation. The alternate routes which are available have either ceased to be travelled by public transportation due to the time-consuming delays and arbitrary harassment frequently experienced at the permanent military checkpoint on the Ramallah-Nablus road, or, alternatively, require long detours which are more costly both financially and in terms of time.

Al-Haq has several concerns with regard to the sealing. According to our information, it was carried out without any prior notification of the affected residents. Furthermore, the residents were also not informed as to the reason for the sealing, nor were they told how long this state of affairs would last.

Al-Haq would therefore like to know why and upon what legal basis, if any, this action was taken by the armed forces, and for how long the measure will remain in effect. At present, the sealing of the street clearly appears to be an arbitrary restriction of the freedom of movement of approximately 6,000 persons, and an act of collective punishment as well. As you are well aware, collective punishment is clearly prohibited by Article 33 of the Fourth Geneva Conventions of 1949 and Article 50 of the Hague Regulations of 1907. Therefore, al-Haq urges the immediate removal of the sand barrier if no legal basis for such an action exists.

Sincerely,

(Signature)

Mona Rishmawi
Executive Director

Chapter Twelve

Economic and Fiscal Sanctions

Introduction

On 15 May 1989, shortly before Minister of Defense Yitzhak Rabin barred all male residents of the Gaza Strip between the ages of 16 and 60 from entering Israel without a magnetized permit, a high-ranking military official declared that “[t]he Gaza population should know that we—and not some leaflet—decide when and how life is to be disrupted.”¹ Two days later, however, Mr. Rabin asserted that:

We have taken several measures to make it clear to the Palestinians and to everyone else, that we distinguish between those Palestinians who would like to continue their lives in a normal way regardless of what political views or political aspirations they may have and those who participate in violence.²

By October 1989, such distinctions were once again blurred as Mr. Rabin was issuing unconcealed threats against participants in a non-violent boycott of taxes in the West Bank town of Beit Sahour; he vowed to “teach them a lesson” which would include, if necessary, a two-month curfew imposed around the clock.³

These and other statements by Israeli officials during 1989 showed such sentiments to be very much within the mainstream. Indeed, after two years of the uprising, the Israeli military government in the Occupied Palestinian Territories continues to view the reassertion of absolute control over the civilian population as its prime objective. One method of achieving this control has been to make the normal conduct of economic life conditional upon acquiescence to the authority of the military government and the broader political initiatives of the Government of Israel.⁴

During 1989 there have been few significant changes in the types of punitive economic sanctions implemented in the Occupied Territories,⁵ although in important respects routine practice continued to be codified into official policy.⁶ Rather, the principal difference in 1989 has been the relatively greater damage the same measures have caused due to the markedly weaker state of the Palestinian economy; in addi-

tion to the cumulative damage inflicted by Israeli measures, the local economy also absorbed setbacks which were not necessarily related to the uprising.

Although the overall state of the economy of the Occupied Territories has not yet been scientifically assessed, it is clear that it has been seriously undermined by the following factors:

Fall in Value of the Jordanian Dinar: In October 1988, the Jordanian Dinar (JD) was floated against the United States Dollar (\$US) by the Government of Jordan. It immediately lost value. Downward pressure was exacerbated by panic selling which, in turn, is likely to have generated new inflationary pressures.⁷ Whereas before the fall the JD was worth approximately 5.0 New Israeli Shekels (NIS), by mid-March 1989 it had temporarily stabilized at around NIS 3.30 (buying rate) and NIS 3.20 (selling rate). By late July 1989 it was worth only NIS 2.0 (average rate). The current rate is approximately NIS 2.8=JD 1. The JD is legal tender in the West Bank and the currency in which many persons throughout the Occupied Territories receive their income in the form of salaries and rent payments. Additionally, most major financial and commercial transactions in the Occupied Territories are conducted in JDs;

Frost in the Jordan Valley: The first frost in 50 years left entire fields of vegetables in the West Bank withered in the space of days;

Withdrawal of Preferential Access for Palestinian Goods by the Government of Jordan: From December 1988 to April 1989, Jordan treated West Bank products "like those from any other Arab country" and subsequently banned imports of West Bank olive oil;⁸

Slowdown in the Israeli Economy: Despite a predicted annual growth rate of 4.6 percent at the beginning of 1988, Gross Domestic Product in Israel grew by only 1 percent. This was caused primarily by the Palestinian boycott of Israeli goods and periodic withdrawal of labor as well as indirect effects associated with the uprising. Further causes included bad weather and shrinking domestic markets. Inevitably, this had a serious effect on the economy of the Occupied Territories;⁹

Increasing Unemployment: Increasing unemployment in both Israel and the Occupied Territories was coupled with a growing tendency by Jewish employers to dismiss Palestinian workers first and, in other cases, to replace them with Jewish workers;¹⁰

Disruption of Work Through Strikes: General and commercial strikes in the Occupied Territories continued to be widespread in 1989, averaging at least one a week;

Restructuring of Palestinian Production for Local Markets: This has been one consequence of the boycott of Israeli goods. It did result in considerable benefits to certain sectors of the Palestinian economy, such as milk, egg, and paper production,¹¹ and according to some commentators made up for about ten percent of the losses incurred during the uprising. Nevertheless, local economists

estimate that family incomes and economic activity dropped by about 40–50 percent in 1988 when compared with 1987 levels;¹²

Conversion of Savings in the Occupied Territories: This has amounted to roughly \$US 225 million during the uprising as families seek to withstand the pressures of falling incomes.¹³ The long-term consequences for future investment in the Occupied Territories as savings are depleted and so-called “safe investments” destroyed are very serious;

Declining Labor Productivity as a Result of Human Rights Violations:

Labor productivity is negatively affected by killings and injuries, mass detentions, prolonged curfews,* denial of work and/or exit permits, and other human rights violations. Furthermore, time spent rebuilding demolished homes and replanting damaged crops (where permitted) or caring for others is often time away from economically productive activities. The economic “opportunity cost” of human rights violations is, therefore, a substantial part of the overall cost to the Palestinian economy attributable to the Israeli occupation.

It is against this background of severe economic depression that the punitive economic measures imposed during 1989 must be seen. In addition, historical factors, particularly Israel’s comprehensive control over Palestinian land, labor, capital, and internal and external markets have enhanced the effect of such sanctions.¹⁴

Since 1967, the main innovation introduced by Israel in the sphere of economic controls has been the regulation of capital inputs through an elaborate system of permits. As early as 1967, the import, export, and internal transportation of all goods within the West Bank was made contingent upon the permit system. Restrictions were introduced controlling agriculture; military orders required permits for the transport of any agricultural good as well as the registration of all tractors, diggers, cranes, compressors, ditchers, and other construction vehicles. No tractor could be brought into the West Bank without the prior approval of the authorities. The planting of specific fruit trees and vegetables was similarly restricted. Other orders regulated currency transactions and money markets.¹⁵

Complementary restrictions on industrial development meant that industry in 1966 contributed more to the Gross National Product of the the Occupied Territories than it does today.¹⁶ Tight restrictions on building in the Occupied Territories has stunted the growth of the construction industry.¹⁷ Overall, while industry more or less maintained the proportion of the labor force it employed, agriculture’s share shrank from 44 percent in 1969 to roughly 20 percent in 1987.¹⁸

The decline of agriculture is, in turn, directly related to the process of land acquisition by the Israeli authorities. Currently, at least 40 percent of all land (and 52 percent of all cultivable land) in the West Bank is in Israeli hands, much of it confiscated on spurious legal pretexts.¹⁹ Forty percent of the fertile Jordan valley is Israeli-controlled. Thirty-four percent of the total area of the Gaza Strip has been taken over as well. Settlements covering at least 170,000 dunums of mostly fertile

*See further Chapter Eleven, “Curfew and Other Forms of Isolation.”

land have been developed in the West Bank, linked by highways that skirt neighboring Palestinian villages. These settlements also consume disproportionate quantities of West Bank water supplies. In 1977–1978, 17 settlement wells in the Jordan valley pumped 14.1 million cubic meters (mcm) of water while the 106 Palestinian wells in the same region were permitted to pump only 12.1 mcm. Many Palestinian villages in the Jordan valley are consequently short of water. Meanwhile, military orders were passed connecting the water grid to the Israeli grid and Jewish settlements to the Israeli electricity grid, further entrenching Israeli control and *de facto* annexation.²⁰

The brisk pace of land alienation and other economic restrictions by the authorities have caused a constant growth in the wage labor force dependent on the Israeli economy. The number of workers dependent on the Israeli economy has grown dramatically: in 1970 about 13 percent of the labor force (excluding those working illegally) worked in Israel. By 1983, this figure had grown to more than 50 percent.²¹

The Israeli authorities have a clear legal duty to exercise extensive control over the economy of the Occupied Territories, but must do so in order to ensure the welfare of the local population and safeguard security.²² Despite this, the military government and its civil administration have used their control over the economy to pursue the specifically military goal of crushing the uprising through the use of collective punishments.²³ Not only is this an abuse of the above-mentioned duty, but it is also in breach of the absolute prohibition against collective punishments contained in the Regulations annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.²⁴ The following discussion therefore focuses on restrictions on labor, capital, marketing, and financial transfers, as well as fiscal sanctions.

A. Restrictions on Wage Labor

Since the beginning of the uprising, Palestinians from the Occupied Territories employed in Israel have encountered a range of officially-imposed economic restrictions combined with severe discrimination on the part of employers and local authorities. This year, the Israeli government has proposed or implemented several new plans to force Palestinian workers from the Occupied Territories out of the Israeli job market altogether. Although such official proposals have been made in the past, to al-Haq's knowledge this is the first time they have actually been implemented.

1. Official Measures

Official restrictions affecting workers in the Gaza Strip began on 24 February 1989, when the authorities made it a condition of entering Israel that cars obtain special stickers first. Only drivers with a "clean record" were eligible for the sticker. Given the popular nature of the uprising, most residents of the Gaza Strip were thus potentially barred from entering Israel. As the then Area Commander of the Gaza Strip, Yitzhak Mordechai, put it, "I don't want to punish anyone, but to grant those who deserve it

the privilege of working in Israel.”²⁵

On 15 May 1989, Defense Minister Yitzhak Rabin issued a barely concealed threat against Palestinians from the Occupied Territories that “if now as seems likely, they still oppose” [Israel’s elections plan] Israel would reduce its “dependence on their labor in Israel and take other economic steps against them.”²⁶

The next day, the authorities ordered all Gaza Strip workers employed in Israel to leave their jobs and return home immediately or face arrest.²⁷ Simultaneously, the entire Gaza Strip, with a population of approximately 700,000, was placed under a blanket curfew.

On 17 May 1989, Mr. Rabin announced that all workers from the Gaza Strip would henceforth require special permits to enter Israel. He added that the government intended to extend such restrictions to the West Bank in the near future. The measure, Mr. Rabin stated, would increase “security” as well as enable the authorities to regulate the influx of migrant workers from the Occupied Territories who do not possess the necessary certification from the Labor Ministry.²⁸

During a prolonged blanket curfew on the entire Gaza Strip, the armed forces on 6 June 1989 began instituting the new permit system in the villages of Beit Lahiya and Beit Hanoun. One Palestinian was killed and several wounded during protests against “Operation Plastic Card.”²⁹

The new permits, which supplement rather than replace the identification papers all male Gaza Strip residents over the age of 16 are already obliged to carry, consist of plastic cards with the worker’s photo on the front and a magnetic strip on the back. Designed to be read by computers connected to a centralized information system maintained by the security services, they allow the army to monitor and thus maintain a strict control over the movements of workers into and out of the Gaza Strip.³⁰ Most importantly, according to security sources the new cards were “one of a series of measures aimed at tying the individual to the central authority.”³¹

Workers are required to pay a fee to obtain their new permits, and a portion of the funds are reportedly used to finance the installation of special shatterproof windows on cars belonging to Jewish settlers.³² This fee was initially NIS 20 but was increased to NIS 80 after the deadline for registering for the new cards expired on 18 August.³³ According to statements issued by Mr. Rabin and other members of the defense establishment, the acquisition of a magnetized permit, like the special stickers discussed above, is a privilege which will only be granted to Palestinians with a “clean” security record.³⁴ Under the new plan tens of thousands of Gaza Strip residents are therefore potentially ineligible for employment in Israel. Similarly, the fact that many trade union leaders have been put under administrative detention during the uprising will effectively bar key figures from employment in Israel.[†]

Soon after the new magnetic identity cards were announced, the Labor Ministry announced that it was revealing plans to replace West Bank and Gaza Strip Palestinians employed in Israel with Jewish workers. Almost immediately after workers from the Gaza Strip were forced to return home in mid-May, Israeli Jews (and in some cases Palestinians holding Israeli citizenship) were brought in to replace them. For

[†] See further Appendix 12-A.

example, according to the Employment Service, 500 Israelis quickly took over jobs once held by Gaza Strip workers in the Tel Aviv area.³⁵ The government's efforts to replace Palestinians with Jewish workers have, however, been largely unsuccessful. The low level and poor conditions of jobs traditionally performed by Palestinians in Israel have proved to be a disincentive to the Jewish labor force. According to the Director of the Labor Ministry's Manpower Planning Authority, David Katz, "if the Palestinian workers were suddenly to disappear overnight, the economy would find itself in chaos, short of 7 percent of its workforce."³⁶

As a result, a series of ministry-level inquiries have been established to examine the prospects of stimulating substitution of Jewish for Palestinian labor. The Labor Ministry, for example, revealed soon after its initial announcements, that a special committee had in fact been established to examine the economic, legal, and political consequences of barring Palestinian workers from employment in Israel. As most Palestinian workers employed in Israel work in the construction industry, several of the schemes currently being proposed by the Labor Ministry have been focused on the building industry. The Labor Ministry, along with the Histadrut-affiliated Building Workers Union, is currently working on a proposal which would give Jewish building apprentices full unemployment benefits for one year in addition to their salaries to try to increase the number of Jewish workers working in the trade.³⁷ The Housing Ministry is also working on a similar proposal which would offer monthly wage supplements, a one-time grant of NIS 15,000 (about \$US 7,500), and legislation mandating a minimum number of such subsidized workers per construction site.³⁸

The new measures introduced by the authorities contradict claims made by Israel in its official response to the 1989 ILO (International Labor Organization) Director-General's report that the military government protects the rights of West Bank and Gaza Strip workers to seek employment. In its response, the Israeli government in fact criticized the leadership of the uprising for allegedly pressuring Palestinian workers not to seek employment in Israel, "since freedom to work represents one of the fundamental principles of the ILO."³⁹

The fact that the Israeli government's threat to deprive tens of thousands of Palestinians of the right to earn a living was explicitly linked by Defense Minister Rabin to the Israeli-sponsored elections plan for the Occupied Territories belies the Israeli claim, also made in response to the ILO report, that "the government of Israel has never used workers' rights and the working conditions of the Palestinian inhabitants of Judea, Samaria, and the Gaza District as a political tool."⁴⁰

2. Harassment by Employers and Local Authorities

Following the government's lead, employers and other bodies have also attempted to reduce their reliance on Palestinian labor from the Occupied Territories. Apart from countless workdays lost as a result of curfews and general strikes, workers from the Occupied Territories have been threatened, and in some cases even dismissed, by their employers for failing to report for work. The 500 Gaza Strip workers referred to above were replaced while under a punitive curfew. In another case, 25 workers from the West Bank, employed at a metal factory in Tel Aviv owned by the Histadrut's KOOR

Industries, were sent letters threatening them with dismissal "without compensation" if their general strike-related absences from work continued.⁴¹ Under Israeli law, workers who are dismissed are entitled to receive one month's salary for every year that they have worked as compensation.⁴² However, despite the effective impossibility of travelling on general strike days (there is no transportation on such days) employers claim that workers have in fact voluntarily quit work.

Other industries are also reducing the number of jobs available to Palestinians. In mid-July, the Israeli Association of Petroleum Station Owners announced that it was dismissing 2,000 Palestinian workers and looking for Jewish applicants to take their places.⁴³ The owners announced that they would pay Jewish workers 25 percent more than they were paying Palestinians for doing the same job. The firings were initiated by the chairman of the Histadrut's Trade Union Branch, Haim Haberfeld, who also proposed that the government subsidize the owners by paying Jewish workers NIS 400 in unemployment benefits on top of their wages as an incentive to take jobs currently held by workers from the Occupied Territories.⁴⁴

The active role of the Histadrut in displacing Palestinian workers is particularly disturbing in light of the fact that these workers pay one percent of their monthly wages to the Histadrut as a representation fee. In exchange for this fee the Histadrut, even though it prevents their full membership, is supposed to protect the interests of these workers. Yet, on 16 May 1989, Histadrut General Secretary Israel Kessar called upon all sectors of the economy to cease relying on workers from the Occupied Territories and urged a return to "Avodah Ivrit" ("Hebrew Work," the battlecry for an exclusively Jewish workforce.) In light of this statement, and the active participation of the Histadrut in the abovementioned proposals, it is difficult to see how the Histadrut can be said to represent the interests of Palestinian workers.

Israeli local authorities have also contributed to the persecution of Palestinian workers. Soon after the announcement of the new magnetized permits, the mayor of Petah Tikva, Giora Lev, announced a plan to bar Palestinian workers from moving freely through his town. Mr. Lev proposed the construction of a special terminal on the outskirts of Petah Tikva where Palestinian workers would be required to wait upon arrival until their employers pick them up and drive them directly to their work sites. The employers would then be required to transport the workers directly back to the compound after work. After Mr. Lev's proposal was approved by the city council, land was donated for the site by a local businessman and preliminary construction completed.⁴⁵

Official measures against Palestinian workers from the Occupied Territories working in Israel are perhaps the clearest indication of official perceptions regarding the uprising and how best to deal with it. It is clear from official statements and official policies that the issue is control. On the one hand, the military government is being confronted with a loss of authority which threatens its very *raison d'être*. On the other hand, it evidently feels bound by very little in the way of legal, humanitarian, or economic considerations in its attempts to regain control. Such double standards have come to characterize the official response to the uprising in its second year.

B. Restrictions on Capital

The second main resource which has been targetted by the authorities during the uprising has been capital. In 1986, Gross Domestic Capital Formation reached \$US 500 million, pushing up investment rates to one-third of 1986 GDP. Although investment in the Occupied Territories (and thus capital formation) has largely been fueled by non-domestic sources of income (see further below), capital stocks remain a key mechanism of storing wealth in the Occupied Territories.⁴⁶

The examples given below concern both productive and unproductive capital. Since 1967, the bulk of domestic investment in the Occupied Territories has consisted of residential construction. Between 1980 and 1983, it constituted 85 percent of total investment.⁴⁷ The prominence of the residential construction sector is, in significant part, due to the poor investment prospects in more productive sectors and restrictions on the money market, and also a means of protecting income from the effects of inflation generated in Israel and transferred to the Occupied Territories.⁴⁸ So far as productive capital is concerned, some of the most widespread restrictions are those affecting olive trees. The Gazan fishing industry is discussed as an example of a capital resource of importance to a particular community which has been systematically stunted during the uprising.

1. Demolition of Houses

Since the beginning of the uprising, about 522 houses have been demolished in the Occupied Territories on the pretext that their owners lack building permits and are therefore illegal structures.⁴⁹ Houses are frequently built without permits because the period required for processing planning applications is so long as to force commencement of illegal construction. There is no legal obligation to offer compensation for such demolitions. In addition, some 311 houses have been demolished or totally sealed for "security reasons."[†] The total number of houses whose value has been totally lost to their owners since the beginning of the uprising is therefore 833.

According to local engineers, the average cost of building a house is at least JD 15,000. Consequently, the value of houses demolished during the uprising amounts to at least JD 12.5 million or \$US 17.5 million.⁵⁰ Combined with the depletion of private savings during the uprising as families struggle to resist the effects of falling incomes, the consequences of house demolition for future investment in the Occupied Territories is very serious.

2. Uprooting Olive Trees

A form of destruction of capital which has been common for years is the uprooting of fruit- and olive-bearing trees in the vicinity of stone-throwing areas. Olives and olive oil constitute a principal source of income for Palestinian residents of the Occupied Territories. On average, income from olive oil constitutes approximately one-third of total agricultural income or roughly five percent of the GNP of the Occupied

[†]See further Chapter Ten, "Demolition and Sealing of Houses."

Territories. Nearly 40 percent of all cultivable land in the West Bank is planted with olive trees. Last year, olive farmers and olive-press owners withstood official bans on collecting their harvests and unprecedented taxes imposed during the time-critical harvest to produce a record crop.⁵¹ The resulting surplus (about a third of total oil production), was intended for the Jordanian market. When the Jordanian government banned further imports this year, prices in the Occupied Territories fell, causing hardship for olive cultivators.

This year, against a background of real hardship for olive cultivators, thousands of trees have continued to be uprooted. The practice shows no sign of abating. Uprooting of trees is officially justified as a "security" measure. In practice it is a form of collective punishment. Unattended by any form of due process, the only crime committed by the landowner is to have had the misfortune of owning land which is alleged to have been used, by others, for illegal purposes, primarily stone throwing. Furthermore, the measure does not solve the problem of hideouts for stonethrowers because, for every tree cut down, there are ten thousand others capable of performing the same function. As a form of extensive property destruction unjustified by military necessity, it also constitutes a grave breach of the Fourth Geneva Convention.⁵

One example documented by al-Haq graphically illustrates this practice.⁵² At approximately 9:30 a.m. on 1 February 1989, Mr. 'Abdallah [real name withheld] realized that a bulldozer and four military vehicles carrying soldiers had entered his field. He went out to the bulldozer, which had begun to uproot his olive trees. Mr. 'Abdallah asked why his trees were being uprooted. He was told that an Israeli vehicle had been hit with a "Molotov" thrown from the area. Mr. 'Abdallah asked to see a written order authorizing the destruction. He was shown nothing and instead ordered to leave the area. One soldier threw stones and cursed at him. Ninety trees were cut, the stone wall adjoining the field destroyed, and the rubble mixed in with the earth. Mr. 'Abdallah's cousin then went to the military government and asked why the trees had been cut down. According to an officer, a petrol bomb had been thrown at an Israeli vehicle, killing a child and wounding three persons. The officer told Mr. 'Abdallah that he had ordered about 45 trees to be cut down, not uprooted.⁵³

Olive trees are uprooted by the tens of thousands each year without compensation. Even when precipitated by killings as in the above case, this cannot justify the random punishment of innocent third parties. Only where there is no element of punishment, and then only in cases where a specific military necessity is genuinely served, could olive trees be justifiably uprooted in this manner.

3. The Gaza Strip Fishing Industry

The Gaza Strip fishing industry employs approximately 1,000 fishermen during the peak fishing season of early May to mid-June. Before the Camp David Accords were signed in 1979, fishing contributed nearly seven percent of total agricultural output in the Gaza Strip. Subsequently, when fishing zones were extensively cut to accommodate Egyptian demands, this proportion fell to under two percent where it has, on average,

⁵See further Chapter Nineteen, "The Role of the International Community."

since remained.⁵⁴ Despite these statistics, fishing is of disproportionate importance for the residents of the al-Shate' (Beach) Refugee Camp situated on the Gaza shoreline where 90 percent of all Gaza Strip fishermen live. The fact that al-Shate' camp has been placed under curfew so frequently and for such extended periods of time has also negatively affected fishermen.[¶]

In early 1989, new bureaucratic controls were introduced by the authorities, the most significant of which required every fisherman to obtain a permit before putting to sea. Anyone regarded as a "security threat" or who fails to pay all his taxes is denied a permit.⁵⁵

During the peak season in early May, a ban was placed on all fishing for a period of 45 days.⁵⁶ The ban affected not just fishing yields, but resulted in damage to several hundred boats which dried out in the hot weather, and loss of profits for an ice-making factory built for the Gaza Association of Fishermen in 1982 by the United Nations Development Project (UNDP). The result of these measures has been a further decline in the economic fortunes of Gaza Strip fishermen to the extent that a commercial port that had been planned by UNDP has had to be shelved.⁵⁷

C. Restrictions on Marketing

In addition to measures directed at the productive sector of the economy, the authorities have aimed to restrict the distribution and marketing of products both internally and abroad. So far as internal distribution is concerned the restrictions include a complex system of permits regulating the transfer of goods from region to region within the Occupied Territories. Such permits require the specification of the day of transportation, type and quantity of produce, destination, and so forth. Failure to comply with these specifications, for whatever reason, may result in confiscation of the goods and fines.⁵⁸ During the uprising, punitive restrictions on outlets for products have increased, affecting markets in Europe as well as local outlets.

1. Disruption of Exports

On 28 October 1986, the Council of Ministers of the European Community (EC) passed regulations providing for direct and preferential trade between Palestinians in the Occupied Territories and the EC. On 7 December 1987, Israel agreed to facilitate the regulations. Finally, on 10 October 1988, the Israeli Inter-Ministerial Committee—on behalf of the Israeli government—signed an agreement with the Agricultural Cooperative Union and the Benevolent Society of Gaza—on behalf of Palestinian farmers—providing for direct export of goods from the Occupied Territories to the EC. This agreement was signed just days before the European Parliament ratified trade protocols with Israel, something it had previously refused to do. Although estimates of the export potential of the Occupied Territories—and indeed the economic desirability of such exports—differ, according to the president of the Gaza

[¶]See further Chapter Eleven, "Curfew and Other Forms of Isolation."

Citrus Exporters' Association, Mansour al-Shawwa, "Exports to Western Europe are our hope, after the shrinking of the Arab markets."⁵⁹

Pursuant to a commercial protocol signed by Gaza Strip citrus growers and Cool Fresh—T. Port Company, a Dutch company designated by Israel which provided for the export of 16,000 tons of citrus fruit, 1,100 tons (75,000 boxes) of grapefruit were shipped to The Netherlands at the beginning of December 1988, arriving in Rotterdam on 19 December 1988. This proved to be too late to catch the Christmas market: instead of selling the grapefruit at the expected price of 17 guilders (about \$US 7.50) per box, one-third of it was sold at 13.5 guilders (\$US 6.00) per box and the rest put into cold storage at a monthly cost of \$US 0.50 per box. It is not clear exactly what losses were incurred by Gaza Strip growers, but according to the chairman of the Federation of Citrus Growers, Hashem al-Shawwa, at least one-third of the expected revenue from the deal was lost. Other than commercial mistakes, reasons for the loss cited by Mr. al-Shawwa include inspection of about 20 percent of the cargo (at a cost of NIS 3.00 per box), more extensive than usual security inspections (and redundant in the case of exports abroad via the Israeli monopoly Agrexco), which wasted time and led to the destruction of part of the cargo. As a result of this first experience, the group of six citrus growers, which originally aimed to export collectively, split up with the intention of conducting future exports individually.

In January 1989, the West Bank Association of Agricultural Cooperatives exported eggplants to Marseilles, France, aboard an Agrexco ship. However, again the venture was a failure: "When the 40-tonne consignment arrived at its destination, it was found that 80 percent of the high-value winter vegetable had been spoiled, through being stored on board ship at the wrong temperature."⁶⁰

Recently, a shipment of 1,100 tons of citrus destined for Europe was also delayed at Ashdod port due to excessive inspection. Teams of Border Police and regular police "tore apart fruit cartons, threw grapefruit on the floor and scattered paper in which some of the fruit had been wrapped." The method of examination was described as "unacceptable" by the EC Ambassador to Israel, Gwyn Morgan, who lodged a complaint with the Israeli Foreign Ministry.⁶¹

Exports to Israel from the Occupied Territories have been the subject of increasing pressure from within Israel throughout 1989. Exports to Israel in 1987 from the Occupied Territories amounted to \$US 305 million as opposed to about \$US 1 billion worth of goods moving in the opposite direction.⁶² Due to the boycott of Israeli goods during the uprising, the value of goods imported from Israel to the Occupied Territories has fallen. In the first three months of 1989, only \$US 174 million worth of Israeli goods were imported, whereas in the last quarter of 1987, \$US 240 million worth of goods were imported.⁶³ This has led to calls to boycott Palestinian goods entering Israel from the Occupied Territories either by imposing tougher quality controls or by requiring Arabic writing to be shown on Palestinian products to enable easy identification.⁶⁴ The Histadrut, amongst others, recently warned that cheap Palestinian-manufactured plastics, clothing, food, metal furniture, and shoes were threatening Israeli industries.⁶⁵

Palestinian products from the Occupied Territories have always been subject to unfair restrictions vis-a-vis Israeli products entering the West Bank and Gaza Strip.

Such restrictions are based on measures introduced in the early years of the occupation and have contributed to the distortion of local markets. For example, tomatoes have rarely been allowed into Israel:

The policy of the Vegetable Marketing Board has been not to permit any imports from the Occupied Territories unless special permits are provided by the Agriculture Ministry and the Treasury.⁶⁶

Only where the Israeli economy has failed to meet domestic demand for tomatoes have products from the Occupied Territories been allowed in.⁶⁷ By contrast, Israeli products have for years flooded markets in the Occupied Territories.⁶⁸ Now that this exploitative trading relationship has been challenged as part of the uprising, it is to be expected that in the near future comprehensive Israeli retaliatory boycotts of Palestinian goods will occur.

2. Shop Closures

Shops and markets have continued to be closed by the military for extended periods of time in response to incidents of stone- or "Molotov"-throwing in their general vicinity. In addition to economic damage, such closures can cause serious health and safety hazards as foods and other materials are left untreated in shops for many weeks, resulting in putrefaction and the risk of disease.

On 20 April 1989, at around 10:30 p.m., soldiers welded shut 24 shops in al-Shaja'iyya Street, near the crossroad with East street in Gaza City. Owners consequently had no time to remove their stock. On 22 April 1989, Muhammad 'Abdallah Salem Hallas, 42 years old, and the owner of one of the affected shops, went with a fellow store owner to submit a complaint to the military government. He was informed that the reason for the closure was that youths throw stones at Israeli military and civilian vehicles that pass along al-Shaja'iyya Street. Mr. Hallas submitted that the shop owners were not responsible for the actions of the youths and that their shops represented their source of income. In a further written submission to the military government, the store owners again complained about the closure. These complaints were rejected and the stores remained closed for at least two months.⁶⁹

On 14 August 1989, almost all the shops on Palestine street in Ramallah were closed by the army after a "Molotov cocktail" was thrown at a vehicle carrying four tax officials, one of whom later died of his injuries. Immediately, some 40 persons were arrested. Many of the shops were situated more than 150 meters from where the incident had occurred. Nevertheless, the majority of the shops remained closed for a period of some 36 days, causing substantial economic loss to the shop owners. In addition, several of the shops contained meat, vegetables, and dairy products which rapidly putrefied, posing a potential health hazard and causing noxious smells in the neighborhood. One shop which sold gas canisters was prevented from carrying out necessary day-to-day maintenance. Al-Haq intervened with the Legal Advisor to the civil administration. Somewhat unusually, al-Haq received a phone call from the Legal Advisor guaranteeing that the shops would be permitted to open as from the following day. All shops duly opened on 19 September 1989.⁷⁰

Al-Haq has documented multiple examples of this practice, all of which display a complete lack of regard for the principle of personal responsibility. The following are some examples aside from those regularly witnessed by al-Haq staff in Ramallah:

- (1) During the night of 8 May 1989, al-Andalos market in Hebron was closed off by the military for at least eight days because stones had been thrown from the area. Some 85 families are dependent on 72 shops operating in the market.⁷¹
- (2) On 22 June 1989, soldiers in Hebron closed 21 shops operating from the municipality building on the pretext that stones had been thrown from the area.⁷²
- (3) On 24 June 1989, 800 shops were closed down by soldiers at Bab al-Zawiya in Shallala street in Hebron after stones were thrown from the area.⁷³
- (4) On 27 September 1989, the Jenin market was ordered closed by the military authorities for three days on the basis that stones had been thrown from the area. A military patrol announced through a loudspeaker that the market would be closed every time a stone was thrown in the vicinity.⁷⁴

Indiscriminate closures of this nature are one of the most common forms of collective economic punishments used by the authorities. Al-Haq has ample documentation testifying to its damaging effects and widespread use. In addition, local markets in virtually every town and village in the Occupied Territories have been subject to disruption and vandalism by soldiers. The following are a representative sample from al-Haq's files:

- (1) On 17 March 1989, soldiers in Nablus threw oranges and vegetables from vegetable carts at passers-by.⁷⁵
- (2) At approximately 10:00 a.m. on 19 March 1989, a group of about eight soldiers overturned fruit and vegetable carts in Jenin.⁷⁶
- (3) On 12 April 1989, soldiers in the Jenin district town of Ya'abad broke the petrol pump in a garage belonging to Jihad Hamarsha.⁷⁷
- (4) On 30 April 1989, near Damascus Gate in East Jerusalem, police chased merchants and threw their produce on the ground.⁷⁸
- (5) On 2 May 1989, police chased stall owners, merchants, and farmers in East Jerusalem, threw vegetables on the ground, and trod over them.⁷⁹
- (6) On 14 and 16 May 1989, soldiers overturned vegetable carts in the Jenin market; this provoked a demonstration.
- (7) On 29 May 1989, at about 10:00 a.m., about ten soldiers overturned merchants' vegetable carts in the Jenin market.

D. Restrictions on Money Transfers from Abroad

Since the beginning of the uprising, existing military legislation has been periodically amended to reduce the amounts of money that may be brought into the Occupied Territories without a special permit from the authorities.⁸⁰ Similarly, British Mandatory law has been amended in Israel as well in order to stem an alleged flow of "intifada funds" to residents of the Occupied Territories through Palestinian Non-Governmental Organizations (NGOs) in Israel and East Jerusalem.⁸¹

Sums of money that may be brought into the West Bank without a permit are restricted by Military Order (M.O.) 973 (as amended). No distinction is made between earnings derived from trade, work abroad, etc., and foreign aid and other money transfers. The present limitations specified by M.O. 973 are as follows:

- (1) Anyone over 16 years old who is a resident of the West Bank or any other area administered by the military may bring into the West Bank no more than JD 200 (\$US 280) at a time. The maximum that an individual may bring over a period of two months is JD 400. However, if the person enters the West Bank from Jordan over the Allenby or Adam Bridges or from Egypt through Rafah he may bring a sum not exceeding JD 500 if he obtains a special permit;
- (2) No truck driver entering the West Bank with a truck over the Allenby or Adam bridges may bring more than JD 150 (\$US 210) at a time;
- (3) Citizens of Israel and residents of East Jerusalem may not bring into the West Bank more than JD 400 per two months;
- (4) Residents of a "hostile state" (Palestinian expatriates in the Arab world) may not bring in more than JD 400 to the West Bank at a time.

Where, however, the new restrictions have had negative repercussions for the Israeli economy, permits have been granted for larger sums. Thus, on occasions, when restrictions on importing money have meant that Palestinian businessmen have been unable to pay debts to Israeli businessmen, the authorities have permitted the importation of larger sums than usual.⁸²

The proposed restrictions on bringing money into the Occupied Territories via Israel are contained in the form of an amendment to the Prevention of Terrorism Ordinance, 1948.⁸³ Under the amendment, "anyone who receives or brings into the country any property knowing that it originated from a terrorist organization, whether the property was intended to be used by him personally or by someone else" is guilty of an offense.⁸⁴ Also, any property may be seized on suspicion that it derives directly or indirectly from a hostile source. Whereas under the 1948 Law it was an offense to give "money or money's worth for the benefit of a terrorist organization," the emphasis in the proposed new law is firmly on the source of funds, irrespective of the use to which they may be put. Normal rules of evidence may be suspended at the court's discretion.⁸⁵

Although the new law in Israel does not add substantially to the restrictions already placed on Palestinians in the Occupied Territories, it is effectively a doublecheck

against the possibility of money entering the West Bank through Israel. However, the real cost of the law, if passed, will be the endangerment of NGOs undertaking the only significant developmental work currently occurring in the Palestinian community inside Israel.⁸⁶

The restriction on money from abroad affects both transfer payments from abroad (including international aid and money sent by relatives living abroad) and factor income (income earned abroad by residents of the Occupied Territories from work, rent, interest, and profits on property and investments). Combined transfer payments and factor income in 1984 constituted 34 percent of all income and other money at the disposal of residents of the Occupied Territories (Net National Disposable Income, or NNDI).⁸⁷ Some of this money, particularly the five percent of NNDI comprising net transfers from abroad, supports vital developmental and relief work at the grassroots level. These are precisely the organizations that have provided much needed medical, agricultural, educational and other services throughout the uprising and which have consequently been targeted by the authorities in a variety of ways.⁸⁸ However, the main losers from tougher restrictions on external income sources will be ordinary families who depend on money sent home by relatives working abroad. When these measures are seen in conjunction with restrictions on workers from the Occupied Territories who work in Israel (who have consistently earned about 75 percent of all factor payments to the Occupied Territories from abroad), it is clear that the intention of official economic policy is the strangulation of the uprising through the severing of all sources of income available to Palestinians in the Occupied Territories.

E. Taxation and the Civil Administration

During the uprising, the continued viability of the economic relationship between Israel and the Occupied Territories has been challenged by Palestinians as never before. Since mid-1988, the more visible and "media-friendly" incidents of demonstrations and official violence have lost priority in international news coverage. As a less visible power struggle based on economics and fiscal issues has, at least partially, taken its place, so the tax boycott and the consequent crackdown by the authorities emerged as the latest indicator of the way things are developing in the uprising as a whole.

The authorities have consistently maintained that collection of taxes is conducted in accordance with the law. Thus the Income Tax Commissioner of Israel has stated:

Tax collection in the Occupied Territories conforms to international treaties and the tax laws in force in Jordan and Egypt in 1967, and all monies raised there are used to finance the activities of the Civil Administration, to support schools, hospitals, and municipal services.⁸⁹

Rejecting these claims, the United National Leadership of the Uprising in February 1988 called upon residents of the Occupied Territories to prepare to boycott taxes. From then on, the boycott of taxes has been a significant part of the uprising and a central issue in the struggle for control. The town of Beit Sahour in the Bethlehem district of the West Bank is one which has consistently refused to pay taxes to the Israeli authorities throughout the uprising. In July 1988, the town was raided by tax

officials, leading residents to hand in their identity cards. On 21 September 1989, the town was declared a closed military area and for the next six weeks was subjected to massive and often violent tax raids where property was seized from houses and shops.⁹⁰ Virtually everything which occurred during the raids in Beit Sahour, however, has occurred hundreds of times all over the West Bank in other, less publicized tax raids.

The residents of Beit Sahour outlined their motivation for boycotting taxes as follows:

Why do we not pay our taxes? First, the military authority does not represent us, and we did not invite them to come to our land . . . No taxation without representation. Second, the collected taxes are used to increase the harsh measures against our people. Must we pay for the bullets that kill our children? Or for the growing number of prisons? Or for the expenses of the occupying army?⁹¹

In al-Haq's view, the tax boycott is firmly grounded in law. Under the Hague Regulations of 1907, which according to the Israeli High Court of Justice is binding on Israel, an occupier's license to collect taxes is subject to two conditions:

- (1) All revenue collected must return to the occupied land to defray the cost of its (civil) administration.
- (2) Revenue must be levied in accordance with the rules of international law.

The latter instruct the occupier to obey the local law in force but allow its amendment in certain circumstances. However, if these conditions are violated in a sufficiently serious manner, then all attempts to collect taxes are *ultra vires* ("beyond the powers [vested]") and therefore null and void.⁹²

Both these conditions have been comprehensively violated by the Israeli authorities. Consequently, it is al-Haq's view that, while the military government and its civil administration are still obliged to maintain services, they have lost the legal right to finance them from locally collected revenue.*

The response of the authorities to the boycott was twofold. Firstly, services were cut on the pretext of declining government revenues. This policy, however, had unexpected results. According to a report published by the Israeli State Comptroller, as reported in the 29 May 1989 edition of the *Jerusalem Post*:

The decline in Civil Administration tax revenues during the intifada led to budget cuts and a reduction in health and welfare services to Palestinians. Yet the Civil Administration had no idea what effect such a reduction would have on the attitude of Palestinians to the Civil Administration and on their links to it.

Less unclear from the point of view of the authorities was the need to step up the enforcement of tax payments. Most of the measures adopted in this respect during the uprising are not new (see further below). Nevertheless, several new military orders have been issued as a result of the tax boycott, of which six are of particular significance. These orders violate basic principles of due process and are intended to increase revenue collection when legally the authorities have lost the right to do so.

*See further Appendix 12-B.

The first military order, M.O. 1249 of 17 August 1988, was called "Order Regarding Payment of a Special Fee (Vehicles) (Temporary Instructions)." It was effective for one year from 19 September 1988, after which it was renewed by M.O. 1273 and extended to 31 March 1990. The order requires that all cars, tractors, buses, taxis, and motorcycles pay a special fee not later than the date on which their license plates required renewal. The total revenue obtainable from the new tax, per annum, is approximately \$US 23 million in the West Bank.⁹³

The second military order of significance, "Instructions Concerning the Collection of Government Monies," was issued on 2 November 1988 as an addendum to M.O. 113. The order amended the 1952 Jordanian Law for the Collection of Government Monies which is the principal local law governing collection of tax debts. Procedures designed to protect tax debtors have been whittled away in a number of ways since 1967.[†] The 1988 set of Instructions, mentioned above, contributes to the process in the following ways:

- (1) It gave the Collection Officer authority to order a tax debtor to open any place or building thought to contain movable property without a court order;⁹⁴
- (2) It gave the Collection Officer the authority to overcome any "resistance" (undefined) by "force" (undefined) without a court order.

The third and most significant order, M.O. 1262, was issued on 17 December 1988. It was called "Order Concerning the Collection of Monies (Enabling Authority) (Temporary Instructions)." The order made the issuance of licenses and permits (required by law for most day-to-day activities, especially economic activities) dependent on proof of prior payment of all outstanding tax debts. The permits that may be withheld pending proof of payment of taxes under M.O. 1262 concern: leaving the West Bank; press and advertizing; labor; trade and industry; accountancy; surveying; insurance; mining and stonequarrying; urban, rural and buildings planning; antiquities; tourism; telephones; construction of factories; vehicle licenses; drivers' licenses and registration of vehicles; transfer of money into the area; registration of trade names; trade marks; transfer of goods; currency control; and vehicle license plates.

M.O. 1262 effectively made the pursuance of economic activity of any significance dependent on a prior statement of political intent: the recognition of the civil administration's right to administer the West Bank. The order is an example of last year's policy becoming this year's military law. Prior to the issuance of M.O. 1262, al-Haq documented several cases where economic activity was halted by the authorities until taxes had been paid. This occurred, for example, during the olive harvest in 1988. Also in 1988, stone quarriers in Qabatiya were refused export permits until they had paid their taxes.⁹⁵

Al-Haq has documented several examples of the use of M.O. 1262 during 1989. On 1 March 1989, for example, the civil administration wrote to 'Omar Mahmoud Darwish of the Darwish Tourism Agency in Ramallah requiring that he obtain clearance from, *inter alia*, the income tax and value-added tax (VAT) departments before attempting to renew his tourism license for the period 1989-1990. In another letter,

[†]See further Appendix 12-B.

the official Judea and Samaria Tourism Agency required a guarantee of NIS 39,450 (roughly \$US 13,000) as a condition for the issue of a license.⁹⁶ Similarly, accountants in Ramallah were told to obtain prior proof of payment of all taxes before requesting a permit from the authorities.⁹⁷

M.O. 1263 (“Order Concerning Administrative Offenses”) was issued at the same time as M.O. 1262. Under M.O. 1263, the Head of the civil administration and the Legal Advisor are authorized to appoint “inspectors” and “registrars” with the power to impose fines for a range of offenses under military orders as well as the 1964 Income Tax Law. Fines imposed may be up to twice as high as those contained in M.O. 845, which sets the level of fines in the West Bank. If the person so fined asks to be tried by a court of law, and is convicted, the court may only reduce the fine “in special circumstances,” even though it may be twice the fine that could have been imposed by the court after due consideration of all the evidence.

Finally, two important orders were issued in September and October 1989, at the time of the massive tax raids in the town of Beit Sahour. The first, M.O. 1285, issued on 13 September 1989, allows a Collection Officer who deems it necessary, to ignore the provisions of the 1952 Law with respect to prior notification and the giving of receipts for cash money seized. Instead, property may be attached by means of a temporary attachment order, which after a period of ten days may result in confiscation of the property if debts have not been satisfied. The property may be seized whether in the hands of the debtor or of a third party. M.O. 1287, issued on 12 October 1989, states that it is no longer necessary to privately notify a debtor of tax outstanding.⁹⁸ Rather, the debtor’s name and the amount outstanding can be published in the press. After a period of 15 days from publication has elapsed, attachment may take place.

It should be pointed out that, as is always the case, al-Haq and local lawyers did not receive copies of M.O. 1285 and M.O. 1287 until they had been in effect for over two months. Throughout the raids on Beit Sahour, therefore, the authorities were relying on what were effectively secret laws. Al-Haq and other Palestinian lawyers were advising individuals while completely unaware that important aspects of military law had been amended. Moreover, these and other military orders contain translation and typesetting errors which render them either incomprehensible, illegible, or simply wrong. The official Arabic translation of M.O. 1286, for example, refers to a figure of two percent as interest in the definition of “cost-of-living differences.” The original Hebrew specifies eight percent.⁹⁹

Apart from new military tax legislation, al-Haq has documented four main patterns of illegal tax collection which have been common throughout the uprising. These comprise excessive and arbitrary assessments; violence and intimidation; collection of debts from third parties; and confiscation of identity cards. Most of these practices are illegal not only under international law and local Jordanian law, but also under Israeli military orders. When such measures—for example, confiscation of identity cards—have been challenged in the Israeli High Court and found to be illegal, this has made little, if any difference in practice. As such, they indicate the powerlessness of law and legal institutions like the Israeli High Court in controlling Israeli military personnel in the Occupied Territories. The following examples illustrate practices as they have occurred this year.

1. Excessive and Arbitrary Assessments

One of the most common practices during the uprising has been the abuse by the 'Person Responsible' of his powers of discretion under Article 86 of the illegal VAT Regulations of 1985. Under this article, the Person Responsible has the right to determine the VAT payable by a person in the event that no periodic return has been filed. The assessment of the Person Responsible is not subject to appeal. However, generally, the tax debtor is given 30 days to submit a periodic return, in the event of which the assessment of the Person Responsible lapses and a proper assessment must be made. This is then subject to the rules concerning contestation and appeal in Articles 93 and 94 of the Regulations. If no returns are filed within the 30 days, then the estimated assessment of the Person Responsible will stand. Although failure to keep books correctly has always occurred on a wide scale in the Occupied Territories, the authorities have clearly used this failure to demand wholly unrealistic sums of money from individuals during the uprising.

Concerning the registration of property attached for non-payment of taxes, this is a legal obligation under the military "Instructions" issued in 1988 (see above.) Under these instructions a certificate of attachment must be given to the tax debtor or to an adult living with him/her or placed in a public place where the debtor will see it. Although for the most part the authorities have complied with this regulation, al-Haq has documented several examples where none, or only part of the property attached has been registered in a proper certificate. The following examples are representative.

- (1) Mr. Muhammad (real name withheld) runs a small garage in Ramallah. He has always paid his taxes. In April 1989, the authorities sent him demands for value-added tax (VAT), based on Article 86 of the 1985 VAT Regulations, for two consecutive monthly payments amounting to NIS 1,560 (\$US 780) and NIS 2,080 (\$US 1,040) respectively. The average tax he had paid for the previous ten months was NIS 80 (\$US 40). Thus the amount that Mr. Muhammad was asked to pay for the second month was 26 times the usual amount. The reason for the authorities' use of Article 86 was that Mr. Muhammad had failed to submit periodic returns. However, the authorities themselves confiscated his books shortly after he finished paying off his previous tax bills. In effect, the tax authorities had deprived him of the means of filing his returns, and then, on the basis that he had not done so, 'assessed' his tax under Article 86.¹⁰⁰
- (2) 'Afif Muhammad Saleh, a blacksmith from the village of Silwad in the Ramallah district, was assessed by the authorities, on the basis of Article 86, for the sum of NIS 30,000 (\$US 15,000) and given a limit of 30 days for payment or presentation of his tax returns. Between 1976 and 1986, Mr. Saleh's main source of income was an Opel automobile which he operated as a taxi. He subsequently started work as a blacksmith. Since 1988, the workshop has been closed. Even allowing for the assessment of tax as far back as 1984 (under Article 89 of the 1985 VAT Regulations), it seems most unlikely that such a sum could possibly reflect a reasonable assessment of tax owing.¹⁰¹
- (3) Nichola Michael Saleh Qanawati, 41, owner of the Three Arches Company in

Bethlehem, stopped paying taxes in March 1988. In November 1988, he was assessed for the period March-November 1988 at a rate of NIS 800 per month. In January 1989, he was assessed at NIS 250,000 for the previous nine months, i.e., an average of almost NIS 30,000 per month, or nearly 40 times the previous amounts he was asked to pay.¹⁰²

- (4) On 10 September 1989, Mikha'il Qumsiyya was driving into Beit Sahour. He was stopped by soldiers, ordered out, and told that he had to pay taxes. Soldiers drove the car away and gave no receipt for it. One and a half months later, Mr. Qumsiyya had yet to receive a receipt or his car back.¹⁰³

2. Violence and Intimidation

Intimidation of one sort or another has been entirely unexceptional throughout 1988 and 1989 during tax raids by the authorities.[†] Al-Haq has ample documentation to this effect in its files.¹⁰⁴

Under Article 8(f) of the 1952 Law for the Collection of Government Monies (the main Jordanian tax debt enforcement law), the Collection Officer may be authorized to enter premises by force if necessary. Instructions to this effect were indeed issued in 1988. During the uprising the license to use force has been abused. In addition, Article 8(f) of the 1952 Law stipulates that forcible entry of property shall only occur during the day. The 1988 Instructions do not attempt to amend this particular stipulation. However, there have been many instances where homes have been illegally raided in the middle of the night for tax-related purposes. Other military orders grant customs and VAT officials military powers to search premises at any time. However, the total disregard for humanitarian standards displayed by these orders renders their amendment of the Jordanian law invalid.

On 21 September 1989, Naser Muti' Jabr Abou-'Eita and his father, Muti', were standing outside the building where Naser lives in Beit Sahour. At approximately 8:30 a.m., a large group of soldiers and tax officials arrived. Naser and his father were taken to the ground floor of the building and beaten and kicked while being asked questions such as "where is your factory?" and "where is your sewing shop?" They were then arrested, handcuffed and blindfolded, and taken to the temporary military installation in Beit Sahour. Once there, they were again kicked and beaten, this time with clubs and pieces of hosepipe, and ordered to pay their taxes. Naser was then taken back to his house to collect the keys to his shop, a video store which has been out of operation since 1984. When Naser asked that he not be taken to his house because the sight of his swollen eyes would cause problems when the neighbors saw him, the soldier accompanying him replied, "We want problems!"

Meanwhile, back at Naser's house, soldiers were busy removing possessions. When his mother protested that the television did not belong to them, she was sprayed in the face with a noxious substance from an aerosol can by an official dressed in civilian clothes. She was then hit hard in the face by a tax official and collapsed onto the sofa, where she was subsequently pummelled by three soldiers and tax officials using

[†]See further Appendices 12-C, 12-D, and 12-E.

rifle butts. At one point one of them was heard to say: "She isn't dead yet!" A tax official then put the end of his revolver into her mouth. When the wives of Naser and his brother Ayman attempted to intervene, the soldiers shoved them onto the sofa and beat them. The mother subsequently required hospitalization.

Naser and his brother Ayman were taken to the video store. Stones were thrown at the soldiers and tax officials accompanying them. Every time a stone was thrown, Ayman was beaten by a soldier. Some 90 minutes later both brothers were taken back to the military encampment. There, they were shown a large club and told that it had been found in the shop and that Naser stood accused of beating a soldier with it. When Naser protested his innocence, his brother was accused. When Ayman denied the charge as well, the charge was transferred to his father. A soldier was brought in, introduced as the one who had been assaulted with the club, and was asked if the father was indeed the man responsible for the offense. The soldier affirmed that he was. The father was then told that his identity card (which had been taken from him by a soldier, earlier that day), was lost. He was issued with a temporary paper.

On 27 September 1989, al-Haq delivered an account of the above case and others to consuls-general in Jerusalem, requesting that they personally intervene with the authorities. On 3 October 1989, a number of Palestinian figures also approached the consuls-general and requested that they intervene in accordance with their obligations under Article 1 of the Fourth Geneva Convention of 1949.⁵ A press conference was planned for that same day in the National Palace Hotel in East Jerusalem by the same individuals. However, the area was closed off by the army and the conference banned.¹⁰⁵ When seven consuls attempted to visit Beit Sahour on 7 October 1989, they were banned by an officer in the area. The British Consul was later threatened with legal action for his attempts to investigate reports of human rights abuses in Beit Sahour and elsewhere while the areas concerned were closed off by the military.¹⁰⁶

3. Third Party Liability for Tax Debts

A common occurrence during the uprising has been the penalization of third parties for the non-payment of taxes by their relatives, friends, or employers. Such practices are among the most strikingly lawless patterns of tax collection in the West Bank, although they are by no means exceptional and show no signs of abating.

Although there is no sound basis in international law for holding third parties accountable for the tax debts of others, Israeli military legislation provides for certain circumstances in which this may be done. The 1985 VAT Regulations, as amended, provide that the tax liability of a member of a "small company"—defined as a company controlled by five members or less—shall automatically be the joint liability of his spouse, brother, sister, parent, grandparent, son or daughter, or their spouses.¹⁰⁷

When combined with M.O. 1262 (see above), it is clear that the authorities have allowed for the possibility of withholding a permit from the relative of a tax debtor since the relative is deemed to be liable as well. This is exactly what has occurred in several cases documented by al-Haq:

⁵See further Chapter Nineteen, "The Role of the International Community."

- (1) On 13 February 1989, Nabil Isa Khalil Qassis, a Bir-Zeit university lecturer and Vice President of Academic Affairs, went to the Bethlehem civil administration Car Registration Office in order to change his license plates in accordance with the requirements of the recently issued M.O. 1249. Having paid NIS 30 for a new plate and NIS 812 (\$US 406) as 'Special Payment' required under the order, Mr. Qassis was told that he would not be given a new plate until his father had provided the tax authorities with various documents concerning sales in his travel agency. This was despite the fact that Mr. Qassis has no material interest of any kind in his father's business. Mr. Qassis' car was nominally attached but he was given permission to drive it.¹⁰⁸
- (2) At approximately 9:00 a.m. on 16 May 1989, 'Adnan Wisam 'Abd-al-'Aziz 'Abdallah, 19, a student from the village of 'Ein Yabroud in the Ramallah district, was arrested near his house. He was taken to the local secondary boys school with a large number of other villagers. After his identity card had been confiscated, he was put in a military bus with some 50 others and taken to the military government compound in Ramallah. At about 5:00 p.m. he was summoned to the office of a "Captain Adam." "Captain Adam" told Mr. 'Abdallah that his father owed tax on his shop and that he wanted him to pay it. Mr. 'Abdallah replied that his father was not in the country. "Captain Adam" replied that in that case Mr. 'Abdallah would have to pay the tax himself. Mr. 'Abdallah was then cursed and punched twice in the stomach. He was then given a receipt instead of his regular identity card. The receipt was valid till 8:00 a.m. the following day. Mr. 'Abdallah was therefore forced to return to the civil administration office in Ramallah the next day. He waited there until 3:00 p.m., when he was finally summoned to "Captain Adam's" office. He was asked if he was now prepared to pay his father's taxes. Mr. 'Abdallah said that he had not paid his father's taxes. "Captain Adam" replied that Mr. 'Abdallah would not be able to obtain any permits or services from the military government until he paid. Mr. 'Abdallah's temporary identity papers were renewed for another 24 hours, thus forcing him to return the next day.

This situation continued until 21 May 1989. That day there was a general strike called by the United National Leadership of the Uprising and consequently no transport. Mr. 'Abdallah therefore had to walk seven kilometers to Ramallah, where he waited from 8:00 a.m. to 4:00 p.m. He was then summoned to "Captain Adam's" office where he was blindfolded and his hands bound with plastic handcuffs. He was taken in a car to the Ramallah tax office. After an interview with a tax officer who told him to pay his father's taxes, Mr. 'Abdallah was given another temporary identity pass valid for four days. He did not return to the civil administration again. Mr. 'Abdallah's case was taken up by al-Haq and the Association for Civil Rights in Israel. His case was one of several presented in an application to the High Court of Justice for the return of confiscated identity cards. Mr. 'Abdallah's identity card was returned and he has not been held responsible for his father's taxes since then.¹⁰⁹ The treatment of Mr. 'Abdallah cannot be justified even under military law, since the case involved income tax, not VAT.

4. Confiscation of Identity Cards

Throughout the uprising identity cards have been seized as a way of forcing people to pay taxes. Under military law, every resident of the West Bank, 16 years old and over, is obliged to carry an identity card at all times. Failure to do so constitutes an offense.¹¹⁰

In a recent military order, (M.O. 1276), the situations in which identity cards may legitimately be seized are specified. The order was explained in a statement to the Israeli High Court of Justice by the State Attorney on 23 June 1989. Concerning the seizure of identity cards to pressure tax debtors, the statement of the Attorney General was quite specific:

When the identity card is removed in order to ensure presentation, the card will be returned *immediately* upon presentation, and its return will not be made conditional upon the performance of any further action whatsoever, such as payment of tax, or anything similar. [Emphasis in original.]¹¹¹

Despite this clear statement, identity cards have continued to be seized or torn up in order to force payment of taxes.

In early August 1989, the house of Kamal Abou Sa'ida, a resident of Beit Sahour, was raided at about midnight. He was arrested and taken to the military headquarters in Bethlehem. He underwent six days of interrogation concerning tax questions. On or about 1 September 1989, Mr. Abou Sa'ida's identity card was seized. For the next 20 days he was forced to return to the military headquarters in Bethlehem to obtain 24 hour passes.¹¹²

On 11 October 1989, during the siege of Beit Sahour, Bishara 'Isa Kheir, whose house was repeatedly raided by tax officials, had his identity card torn in half by a soldier who declared: "Look, now you've got a problem!"

More recently, cases have been documented by al-Haq of confiscation of identity cards for non-payment of health insurance. Quite apart from the illegality of seizing identity cards in these circumstances, the practice of holding someone responsible for non-payment of health insurance indicates a transformation of insurance payments from a voluntary commitment to a legal obligation in the nature of a tax.¶

Summary

As a recent report of the United Nations Conference on Trade and Development stated,

While power over economic management has been assumed by the Israeli authorities, they have not fulfilled the concomitant responsibilities.¹¹³

The above survey of economic measures affecting the Palestinian population of the Occupied Territories points to one conclusion in particular. This is that official economic policy in the Occupied Territories is aimed at comprehensively constricting all sources of income available to the Palestinian population with the object of re-asserting control. Although this policy has had to accommodate certain pressure groups

¶ See further Chapter Nine, "Administrative Methods of Control."

from within Israel, this has not acted as much of a brake on its basic thrust. In fact, in certain respects, such as restricting workers from entering Israel and boycotting Palestinian goods in Israel, official policy in the Occupied Territories has coincided with the economic interests of powerful lobbies within Israel.

The Palestinians' attempts to break the mold of years of economic exploitation are meeting with a barrage of reprisals aimed at Palestinian factors of production, marketing outlets, and foreign sources of income. Although the authorities' response has often been quite strikingly couched in legalisms, this is not, and cannot be, a substitute for policy and action which is genuinely inspired by internationally recognized norms of justice.

The reality is that principles of international law have been eroded in a bewildering flurry of illegal military orders. These have in turn selectively been ignored on the ground, and when the Israeli High Court has stepped in to review the propriety of such deviations, its judgments have not received due respect. Military "laws" have not been published for months after they have come into effect; the annual budget of the Occupied Territories has not been published in 22 years of occupation.

None of this should cause surprise. So far as the Israeli authorities are concerned, attention to law and human rights is an irrelevant luxury. Indeed, with an underlying policy of *de facto* annexation, the priorities of the authorities can never be those of the people they control by force. Both share the perception that the government is the enemy of the people and vice-versa. This fundamental premise explains the "us and them" approach embodied in the use of collective punishments. The Israeli Minister of Justice, Dan Meridor, for one, has publicly recommended their use, stating that they were necessary because Israel is in a "war" and fighting for a "moral cause" that it must win.¹¹⁴ He did so despite the fact that virtually no practice is more clearly and absolutely prohibited under international law. The fact that it was precisely in order to prevent such excesses that the laws of war were drafted demonstrates the effective uselessness of legal guidelines when left to the discretion of an occupier with a "moral" agenda.

Endnotes to Chapter Twelve

1. Michal Sela and Joel Greenberg, "Gazans Barred: IDF Says Workers Must Go Home," *Jerusalem Post*, 16 May 1989.
2. Asher Wallfish, Menachem Shalev, Yoram Kessel, "Rabin On New Policy: We'll Decide Who Leaves Strip: Gazans Need Permits to Enter Israel," *Jerusalem Post*, 18 May 1989.
3. Sami Aboudi, "Beit Sahour Draws Concern As Rabin Threatens Town," *Al-Fajr*, 16 October 1989. Shortly thereafter, the military distributed a leaflet to the residents of Beit Sahour in which it warned that: "You stand alone facing the security forces who will not leave the town until their mission [of collecting all debts] is complete." (Joel Greenberg, "End Tax Revolt' IDF Leaflet Warns Beit Sahour Residents," *Jerusalem Post*, 20 October 1989.)
4. In tandem with these objectives there has also been growing official concern over the consequences of the deteriorating economic situation in the Occupied Territories. Questions have been raised as to whether it was indeed having the intended suppressive effect on the uprising or in fact achieving the opposite. Chief of the General Staff Dan Shomron, for example, warned the Foreign Affairs and Defense Committee of the Israeli Knesset (parliament) that "[w]e should not bring the Arabs to the point where they have nothing to lose." (Asher Wallfish, Joel Greenberg, Jeff Black, Joshua Brilliant, and David Makovsky, "IDF Crackdown in Territories: Police Order Gazans to Return to Strip," *Jerusalem Post*, 17 May 1989; Yehuda Litani, "Fears that Decline in Economy Could Fuel Intifada," *Jerusalem Post*, 12 February 1989.) Furthermore, as Israeli policies in the Occupied Territories began to have serious repercussions upon the Israeli economy, they were, on occasion, modified. This was the case, for example, with the proposed total banning of Gaza Strip workers from jobs in Israel.
5. For documentation on economic sanctions during the first year of the uprising see Al-Haq, *Punishing a Nation: Human Rights Violations During the Uprising, December 1987—December 1988* (Ramallah: Al-Haq, 1988), pp. 271-295.
6. In the case of tax collection, for example, a number of measures routinely practiced by the military during the first year of the uprising were codified in 1988-1989. Military Order (M.O.) 1262 (Order Concerning the Collection of Monies) (Enabling Authority) (Temporary Instructions) of 17 December 1988, to give but one example, linked the issue of obtaining permits from the civil administration to prior proof of payment of taxes. Such developments occurred despite the fact that the infrastructure of economic control was largely established immediately after the occupation began in 1967. (See for example Raja Shehadeh, "Legal and Institutional Constraints to Industrial Development in Palestinian Occupied Territories," unpublished paper prepared for the United Nations Industrial Development Organization, 1989.)
7. According to the Israeli Central Bureau of Statistics, inflation in the West Bank fell to 8.7 percent in 1989. This compares with 16.3 percent in Israel in 1988 and 13 percent in the West Bank in 1987. The lower inflation rate is almost certainly due to a fall-off in demand, especially for high-priced Israeli luxury goods. (Avi Temkin, "Inflation Lower in the Areas," *Jerusalem Post*, 22 November 1989.)
8. Joel Greenberg, "Jordan Boycotts Olive Oil and Produce from West Bank," *Jerusalem Post*, 13 December 1988. Reuters, "Jordan Lifts Ban on West Bank Olive Oil," *Jerusalem Post*, 6 April 1989.
9. Avi Temkin, "GDP Grows Only 1 percent for 1988," *Jerusalem Post*, 30 December 1988; Litani, "Fears."
10. *Ibid.*
11. Yet, for example, although the boycott on Israeli-produced milk has made local milk production profitable, the average price of a dairy cow (\$US 1,500-2,000) puts their large scale acquisition beyond the reach of most Palestinians. In addition, in response to falling sales, the Israeli Milk Council lobbied Israeli farmers to refrain from selling dairy cows to Palestinians. ("Israeli Milk Producers Upset at Palestinian Boycott, Self-Reliance," *Al-Fajr Jerusalem Palestinian Weekly*, 6 March 1989.)

12. Jackson Diehl, "Groundwork is Laid For a Palestinian Economy," *International Herald Tribune*, 7 September 1989.
13. Secretariat of the United Nations Conference on Travel and Development, *Recent Economic Developments in the Occupied Palestinian Territories, With Special Reference to the External Trade Sector* (Geneva: UNCTAD, 1988), p. 1 (Reference No. TD/B/1183/Corr. 1); Alistair Lyon, "Belt Tightening in Jordan," *Jerusalem Post*, 14 December 1988.
14. This in turn is largely a consequence of patterns of dispossession and economic disenfranchisement whose origins lie in the Ottoman and British Mandatory eras. Although events of significance to the contemporary Palestinian economy occurred as early as the mid-19th century, it was in the interwar period (1918-1939) that an advanced and highly-subsidized Jewish economy decisively displaced an underdeveloped Palestinian one, encouraging the growth of a landless Palestinian wage labor force dependent upon those Jewish industries which hired Arab workers. See Roberta L. Coles, "Economic Development in the Occupied Territories," *American-Arab Affairs* No. 25 (Summer 1988), pp. 76-78; Michael Ionides, "Zionists and the Land," in Walid Khalidi (ed.), *From Haven to Conquest: Readings in Zionism and the Palestine Problem Until 1948* (Washington, D.C.: The Institute for Palestine Studies, 1987), pp. 260-264.

Under Jordanian rule the West Bank economy suffered further, declining from a position of economic preponderance over the East Bank to one of subservience. In this period, a "brain drain" developed as well; Palestinians left the country to seek their fortunes elsewhere, sending remittances and thus beginning the dependency on outside funds which accounts for roughly one-third of GNP in the Occupied Territories today. (Coles, "Economic Development," pp. 78-79.)

15. Al-Haq documentation; Shehadeh, "Legal and Institutional Constraints," pp. 3-5, 10-12.
16. Coles, "Economic Development," p. 78.
17. *Ibid.*, pp. 83-83.
18. *Ibid.* 1987 figures obtained from *Statistical Abstract of Israel*, 1988.
19. Coles, "Economic Development," p. 79; Raja Shehadeh, *Occupier's Law: Israel and the West Bank*, revised edition (Washington: Institute for Palestine Studies, 1989) pp. 15-50.
20. Coles, "Economic Development," pp. 80-81. Excessive use of water results in salination of water supplies, restricting the crops that can be grown to low-value tomatoes, eggplants, and the like, while in the Gaza Strip it has resulted in the deterioration of citrus crops.
21. *Ibid.*, pp. 83-84.
22. See Article 43 of the Regulation annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land of 1907.
23. In the broader context, the civil administration of the military government administers a number of matters regulated by military orders. These are listed in Military Order (M.O.) 947. The civil administration's primary economic function is to implement two of the fundamental policy goals of the occupation:

- (1) Ensuring that the supply of goods and labor from the Occupied Territories to Israel is regulated in accordance with the economic requirements of the latter;
- (2) The maintenance and development of Jewish settlements.

Thus, the flow of labor to Israel from the Occupied Territories is regulated by the civil administration in such a way as to provide Israeli industries and services with the requisite amount of labor. The classification of vegetables, fruit, and other produce under military orders which are permitted to be grown and exported to Israel ensures that they do not compete with Israeli products, while limitless quantities of the latter are allowed to flood markets in the Occupied Territories. (Coles, *Economic Development*, pp. 81-82.)

Although Jewish settlements are subject to Israeli law, military orders ensure, for example, that the provision of electricity, has been removed from the concession of the Palestinian

- Jerusalem Electricity Company (which supplies the rest of the West Bank) and granted to the main Israeli supplier of electricity based in Israel. Similarly, the planning department of the civil administration ensures that the main highways in the West Bank connect settlements and not Palestinian towns and villages, and that Palestinian construction does not conflict with official planning arrangements. (Shehadeh, *Occupier's Law*, pp. 50–57.)
24. Article 50, Hague Regulations; Article 33, Fourth Geneva Convention.
 25. *Jerusalem Post*, 11 July 1989. Cited in Joost R. Hiltermann, "Worker's Rights During the Uprising," *Journal of Palestine Studies*, Vol. XIX No. 1 (Autumn 1989), p. 83.
 26. Joel Brinkley, "Israel Says Army Will Get Tougher If Palestinians Reject Offer of Vote," *New York Times*, 16 May 1989.
 27. Glenn Frankel, "Israel Orders Workers Back to Gaza Strip," *Washington Post*, 17 May 1989.
 28. Asher Wallfish, Menachem Shalev and Yoram Kessel, "Gazans Need Permits to Enter Israel," *Jerusalem Post*, 18 May 1989. In the event, the requirement was extended to all male residents of the Gaza Strip between the ages of 16 and 60.
 29. Hiltermann, "Worker's Rights," p. 86.
 30. Michal Sela and Joel Greenberg, "Operation Plastic Card Begins Today in Gaza Strip," *Jerusalem Post*, 6 June 1989.
 31. *Jerusalem Post*, 4 September 1989.
 32. Michal Sela, "Hi-Tech Takes Role in Gaza ID Cards," *Jerusalem Post*, 13 June 1989.
 33. Michal Sela, "'War of Attrition' Over Magnetic Cards in Gaza Strip," *Jerusalem Post*, 2 August 1989.
 34. Yehuda Litani, "Legalising Aggression," *Jerusalem Post*, 26 May 1989; Michal Sela and Joel Greenberg, "'Operation Plastic Card'."
 35. Asher Wallfish et al., "Gazans Need Permits to Enter Israel," *Jerusalem Post*, 18 May 1989.
 36. Jeff Black, "Economy Would Find Itself in Chaos," *Jerusalem Post*, 19 May 1989.
 37. David Rosenberg, "Labour Market," *Jerusalem Post*, 1 August 1989.
 38. David Rosenberg, "Plan Seeks to Lure Jews Into Construction Trade," *Jerusalem Post*, 15 November 1989.
 39. International Labor Organization, *Report of the Director-General: Appendices*, Vol. 2 (Geneva: International Labour Office, 1989), p. 73. In fact the United National Leadership of the Uprising, after making veiled suggestions to this effect early in the uprising, has since refrained from such calls.
 40. *Ibid.*, p. 72.
 41. Letter from employer to workers obtained by al-Haq.
 42. Article 12 (a), Severance Pay Law, State of Israel, 1963.
 43. Andy Goldberg, "Unemployed Apply for 2000 Petrol-Station Jobs," *Jerusalem Post*, 26 July 1989.
 44. *Yediot Ahronot*, 30 August 1989 (in Hebrew).
 45. Andy Goldberg, "Off-Limits, Petah Tikva Compound Will Keep Workers From Areas Off the Street," *Jerusalem Post*, 31 May 1989.
 46. UNCTAD, *Recent Economic Developments*, pp. 8–9.
 47. *Ibid.*, para. 32.
 48. *Ibid.*, para. 22.
 49. Figures supplied by the Centre for Engineering and Planning, al-Birch.
 50. Exchange rate used: JD 1=\$US 1.4.
 51. Al-Haq, *Punishing a Nation*, pp. 283–287.

52. Al-Haq has documented dozens of similar incidents in this and previous year.
53. Al-Haq Affidavit No. 1636. See also *Bitter Harvest: Israeli Sanctions Against Palestinian Agriculture During the Uprising, December 1987-March 1989* (Jerusalem: The Jerusalem Media and Communication Center, 1989), p. 10.
54. Sara Roy, "The Gaza Strip: A Case of Economic De-Development," *Journal of Palestinian Studies* Volume XVII, No. 1 (Autumn 1987), p. 63.
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57. Telephone interview with UNDP, 19 November 1989.
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59. Michal Sela, "Gaza Citrus Exporters Complain of 'Sabotage' at Ashdod Port," *Jerusalem Post*, 23 November 1989.
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62. Khalil Touma, "Fight Escalates to Choke Palestinian Industry in Areas," *Al-Fajr*, 20 November 1989.
63. Avi Temkin, "Sharon Says Defence Ministry Ignoring His Call for Halt to Imports from Areas," *Jerusalem Post*, 27 September 1989.
64. See for example the statements of Michael Strauss, Head of the Food Division at the Israel Manufacturers' Association, reported in "Palestinian Goods: Foodstuffs," *Jerusalem Post*, 8 May 1989.
65. Jeff Black, "Histadrut Warns," *Jerusalem Post*, 30 October 1989.
66. "West Bank Tomatoes to be Allowed into Israel," *Jerusalem Post*, 20 February 1989.
67. *Ibid.*
68. Coles, "Economic Development," p. 82.
69. Al-Haq Affidavit No. 1936.
70. Al-Haq Fieldwork Report.
71. Al-Haq Questionnaire, 18 May 1989.
72. Al-Haq Questionnaire, 28 June 1989.
73. Al-Haq Questionnaire.
74. Al-Haq Questionnaire, 28 September 1989.
75. Al-Haq Questionnaire, 18 March 1989.
76. Al-Haq Questionnaire, 19 March 1989.
77. Al-Haq Fieldwork Report.
78. Al-Haq Questionnaire, 30 April 1989.
79. Al-Haq Questionnaire, 2 May 1989.
80. Al-Haq, *Punishing a Nation*, pp. 277-279.
81. Document entitled: "Statement of N.G.O.s at a Press Conference Held on 26 June 1989 Regarding the Proposed Amendment to the Prevention of Terrorism Ordinance 1948." (Al-Haq files.) See also Ministry of Justice statement to the Constitution, Law and Justice Knesset Committee on 16 July 1989, p. 50: "The negative activities and influence of terrorist organizations within the State of Israel and within the territories of Judea, Samaria and Gaza depend on their capacity and ability to establish for themselves an economic infrastructure."

82. Joshua Brilliant, "Local Sales Slow: Politics Slows Kibbutz Industry Export Drive," *Jerusalem Post*, 16 January 1989.
83. Amendment No. 3 to the Prevention of Terrorism Ordinance, 1948. The proposed amendment is still at committee stage in the Knesset awaiting a second and third reading before it becomes law. Justice Minister Dan Meridor was quoted by the *Kol Ha'ir* newspaper on 21 July 1989, as saying: "If I know that this organization [presumably the PLO] donates money to nurseries in order that in future these children will go out and riot, should I be naive and close my eyes?"
84. Proposed amendment to Article 4 of the Ordinance.
85. Proposed Article 6F.
86. Human Rights Association, "Israel Introduces Draconian Measures Against Palestinians Within the Green Line," (Nazareth: Undated Document).
87. UNCTAD, *The Palestinian Financial Sector Under Israeli-Occupation*, 8 July 1987 (UNCTAD/ST/SEU/3), p. 157.
88. See Al-Haq, *Punishing a Nation*, Chapter 9.
89. *Jerusalem Post*, 15 September 1989.
90. The most recent tax raids in Beit Sahour began when large numbers of soldiers accompanied by tax officials started raiding the town early on the morning of 21 September 1989. Subsequently, dozens of homes and shops were broken into by the military. According to al-Haq's documentation, numerous residents, particularly women, were physically assaulted. In addition, large quantities of furniture, household equipment, stereos, televisions, toys, food, and alcohol were seized and removed by the military and tax collectors.
91. "A Call from Beit Sahour," distributed at a press conference held in Beit Sahour on 26 September 1989.
92. For a full discussion of the legal aspects of taxation see Marc Stephens, *Taxation in the Occupied West Bank, 1967-1989* (Ramallah: Al-Haq, 1990).
93. Stephens, *Taxation*.
94. Instructions Concerning the Collection of Government Money, Article 3.
95. Al-Haq, *Punishing a Nation*, p. 281.
96. Al-Haq files.
97. Al-Haq files.
98. Order concerning Collection of Taxes (Enabling Authority) (Temporary Instructions) (Amendment No. 2).
99. A case study of the quality of official translations is contained in Jonathan Kuttab and Raja Shehadeh, *Civilian Administration in the Occupied West Bank: Analysis of Israeli Military Government Order No. 947* (Ramallah: Al-Haq, 1982), pp. 59-63.
100. Al-Haq Fieldwork Report.
101. Al-Haq Fieldwork Report.
102. Al-Haq Affidavit No. 1596.
103. Al-Haq Fieldwork Report.
104. See also Stephens, *Taxation*.
105. Joel Greenberg, "Bid to Block Press Conference on West Bank Tax Revolt: Part of East Jerusalem Declared Military Zone," *Jerusalem Post*, 4 October 1989.
106. Joel Greenberg, "Consuls on Fact Finding Mission Barred From Site of Tax Revolt," *Jerusalem Post*, 8 October 1989.
107. Article 119 of the 1985 Regulations, as amended, by Amendment No. 9 of March 1987.

108. Al-Haq Fieldwork Report.
109. Al-Haq Affidavit No. 1864.
110. M.O. 297 ("Order Regarding Identity Cards and Registration of Population"), 1969.
111. H.C. 278/89.
112. Al-Haq Fieldwork Report.
113. UNCTAD, *Recent Economic Developments*, p. 1.
114. David Makovsky, "Meridor: Collective Punishment Justified To Suppress Intifada," *Jerusalem Post*, 26 September 1989.

Appendix 12-A

Violations of Trade Union Rights*

During the past year, dozens of trade union activists have been placed under administrative detention, five trade union leaders have been deported and, in early 1989, at least 26 trade union offices remained closed under orders issued in 1988.

General Rights and Principles

The right of workers to join trade unions is protected by several international conventions including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and International Labor Organization (ILO) Convention 87: Freedom of Association and Protection of the Right to Organize. The drafters of the ICESCR and the ICCPR emphasized that the right to form and join trade unions was both a political and an economic right and thus needed to be included in both covenants.¹

The ILO Freedom of Association Committee has stated that "a genuinely free trade union movement can develop only under a regime which guarantees fundamental human rights." The Committee therefore "considered it appropriate to emphasize the importance to be attached to the fundamental principles enunciated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, considering that their infringement can adversely affect the free exercise of trade union rights."²

The International Labor Conference, in its "Resolution Concerning Trade Union Rights and Their Relation to Civil Liberties," stated that "the absence of these civil liberties removes all meaning from the concept of trade union rights."³ The Conference emphasized the following civil liberties, as defined in the Universal Declaration of Human Rights, as essential to the normal exercise of trade union rights:

- (1) The right to freedom and security of person and freedom from arbitrary arrest and detention;
- (2) Freedom of expression and in particular freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers;
- (3) Freedom of assembly;
- (4) The right to a fair trial by an independent and impartial tribunal;
- (5) The right to protection of the property of trade union organization.⁴

*For an in-depth analysis of this subject see *Testimony of al-Haq before the Generalized System of Trade Preferences Sub-Committee* (Ramallah: Al-Haq, 1988).

In al-Haq's opinion, the constant and widespread violation of principles of due process, as exhibited by the use of administrative detention, deportation, and closure of trade union offices, has facilitated and promoted the abuse of trade union rights in the Occupied Territories. Without due process, trade unionists have no protection against measures taken by the authorities to suppress *bona fide* trade union activities.

Administrative Detention

In 1989, dozens of trade union leaders and activists were arrested and subsequently detained without charge or trial. Such detention seriously interferes with the ability of unions to function effectively. According to al-Haq's documentation, at least 40 trade union leaders have been put under administrative detention.⁵

The ILO Freedom of Association Committee has vigorously opposed the use of detention without charge or trial:

Anyone who is arrested should be informed, at the time of his arrest, of the reasons for his arrest and should be promptly notified of any charges brought against him.⁶

The Committee has further stated that the use of preventive detention should be limited "to very short periods of time intended solely to facilitate the course of a judicial inquiry."⁷

More generally the Committee has ruled that in cases involving the arrest, detention, or sentencing of a trade union official, individuals have the right to be presumed innocent until proven guilty and that it is "incumbent upon the government to show that the measures it had taken were in no way occasioned by the trade union activities of the individual concerned."⁸

As discussed elsewhere in this report,[†] there are no formal charges attached to administrative detention orders. Rather, the authorities use general allegations that the individuals are a threat to security or public order. It was precisely to protect unionists from the use of detention without trial on such pretexts that the ILO

emphasized the importance which it has attached to the principle of prompt and fair trial by an independent and impartial judiciary in all cases in which trade unionists are charged with political or criminal offenses which the government considers have no relation to their trade union activity."⁹

Deportation

Between the 1985 and 1988 (inclusive), three trade union leaders were deported by the Israeli authorities. In 1989 alone, five union leaders were deported pursuant to expulsion orders issued in 1988. They are:

- (1) Radwan Ziyada, a member of the Executive Committee of the General Federation of Trade Unions;
- (2) Muhammad al-Labadi, Deputy General Secretary of the Workers Unity Bloc;

[†]See further Chapter Seven, "Administrative Detention."

- (3) Majed al-Labadi, Treasurer of the Printers Union in Jerusalem;
- (4) 'Odah Ma'ali, a member of the Executive Council of the Jerusalem Hotel and Restaurant Workers Union;
- (5) Jamal Farraj, an official in the Construction and General Institutions Workers Union in Bethlehem.

It is rare that any evidence is made public in cases of deportation.[†] The limited documents available, however, often show that deportation orders are at least in part motivated by trade union activity. "Evidence" released during the recent appeals by four union activists included accusations such as "attended Ramadan party in the Printers Union," "active in committee to coordinate reunification of unions," "participated in event of workers' union," "participated in election of workers' union at al-Najah University," and "was the most outstanding activist in the trade union."¹⁰

International criticism of Israel's deportation policy in general need not be elaborated here. As it relates to trade union and workers' rights, however, Israel's deportation policy has been criticized by the ILO. The Freedom of Association Committee ruled that the "forced exile of trade unionists . . . is an infringement of freedom of association in that it weakens the trade union movement by depriving it of its leaders."¹¹

Closure of Trade Union Offices: Local and International Law

As stated above, at least 26 trade union offices in the West Bank remained closed at the beginning of the year under administrative orders issued by the military.

On Tuesday 23 August 1988, for example, the Israeli military authorities closed the offices of the General Federation of Trade Unions in Nablus for a period of two years. Six unions which have offices in the same building were also affected by the closure since the order bars anyone from entering the premises.

Most West Bank workers are employed either in workplaces employing five or fewer employees or in Israel. The union office is frequently the only place they can go if they need help or assistance from the union, unlike in Europe and the United States, where unions often have officials in the workplace itself. When the offices are closed, the unions also lose access to their files and documents, making their work more difficult.

Jordanian Labor Law does not contain provisions for the temporary closure of union offices as either a form of punishment or for violation of labor laws. While the law does provide for the dissolution of unions which carry out work in contravention of laws regarding public order, provision is made for a court hearing and appeal against such charges.

Article 4 of ILO Convention No. 87 states that "Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority." The Committee has explained the necessity of this prohibition by stating that "dissolution by virtue of administrative powers does not ensure the right of defence which

[†]See further Chapter Eight, "Deportation."

normal judicial procedure alone can guarantee and which the Committee considers essential."¹²

Even with due process, the Committee has held:

In view of the serious consequences which dissolution of a union involves for the occupational representation of workers, the Committee has considered that it would appear preferable, in the interest of labor relations, if such action were to be taken only as a last resort, and after exhausting other possibilities with less serious effects for the organization as a whole."¹³

The actions of an Occupying Power must be balanced by two paramount considerations, neither of which can be pursued to the exclusion of the other. These are the security of the occupying forces and the interests of the local population. In closing unions altogether, the Israeli authorities justify their actions by the former, but totally omit consideration of the latter. It is inconsistent with the promotion of respect for human rights to ignore the balance imposed by international conventions, especially when it results, as in this case, in excessively severe restrictions on workers' rights.

Summary

Al-Haq believes that the ILO Freedom of Association Conventions were designed to protect workers precisely against the broad administrative powers described above. The ILO has upheld the principle of due process as essential to the exercise of the right to organize. It therefore falls upon the military government to show that its measures are in no way occasioned by the trade union activities of the individual concerned.

Thus, by its excessive use of administrative measures, including administrative detention, town arrest, closure of union offices, deportation, and interference with union elections, the Israeli authorities have clearly violated the right to organize as guaranteed by the ILO.

References

1. M.J. Bossuyt, *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights* (Dordrecht: Martinus Nijhoff Publishers, 1987), p. 426.
2. *Freedom of Association: Digest of Decisions of the Freedom of Association Committee of the Governing Body of the International Labour Organisation* (Geneva: ILO, 1985), Para. 68.
3. *Ibid.*, Para. 72.
4. International Labour Conference, *Resolutions Concerning Trade Union Rights and Their Relation to Civil Liberties* (Geneva: ILO, 1970), p. 700. The resolutions were adopted at the Conference's 54th session.
5. This figure comprises only members of the executive councils of the different federations and of local union executive committees.
6. International Labour Conference, *Resolutions*, p. 706.
7. *Ibid.*, p. 707.
8. *Ibid.*, p. 706.
9. *Ibid.*, p. 700.

10. Files of Majed al-Labadi *et al.*
11. *251st Report of the Committee on Freedom of Association* (Geneva: ILO, 1988), Appendix III, Para. 9 and Annex 1.
12. *Freedom of Association*, Para. 490.
13. *Ibid.*, Para. 486.

Appendix 12-B

Summary of Arguments Concerning the Tax Boycott*

International Law

International law grants an occupier the license to raise revenue provided that two conditions are met:

- (1) Taxes should be assessed, collected, and created in accordance with the terms of the 1907 Hague Regulations. In other words, taxes should be collected in accordance with the laws in force on the eve of the occupation with a view to ensuring public order and safety. The laws in force on the eve of the occupation may only be changed in certain circumstances.

As regards changes other than in the incidence and assessment of tax (changes in the procedure of collecting taxes and/or the introduction of new taxes), the occupier should respect the laws in force "unless absolutely prevented" from doing so by the duty to restore and ensure public order and safety. Even if "duty" is interpreted as "need," as the Israeli High Court of Justice has done, the occupier must first exhaust alternative sources of revenue before changing the local law as a result of a fall-off in revenue. Alternative sources of revenue consist of excess revenue from existing taxes; higher rates of existing taxes, and the collection of money contributions.

As regards the assessment and incidence of tax, an occupier is bound to carry on "as far as possible" in accordance with the local law on the eve of the occupation. Any changes should be in the interests of the security of the occupier or in the interests of the local inhabitants.

As regards municipal taxes, the occupier may not collect these unless they were formerly collected by the ousted power for the benefit of the state rather than for redistribution at the local level. Where municipalities are appointed by the occupier, they effectively cease to be local and relinquish the right to levy municipal taxes.

- (2) Revenue collected should be returned to the occupied territory to "defray the costs of the administration" of those territories. Although some commentators argue that an occupier is entitled to keep excess revenue, this seems implausible. However, even if such a right exists, it is subject to the condition that administration of the occupied territory should first adequately be provided for.

Failure to comply with these two conditions may render the imposition of some or all taxes by an occupier *ultra vires* ("beyond the powers [vested]"). This, in turn, may mean that such fiscal measures are without effect and therefore null and void.

*For an in-depth discussion and analysis of tax laws in the West Bank see Marc Stephens, *Taxation in the Occupied West Bank, 1967-1989* (Ramallah: Al-Haq, 1990).

Amendments to West Bank Local Law, 1967–1989

Revenue-Increasing Measures Taxation on the individual has increased greatly since 1967. This is due to a ten percent increase in tax rates compounded by the drastic narrowing of brackets. Thus, a person earning an income of JD 1,000 per month paid 6.8 percent of his income in income tax in 1967; in 1989 he paid 38.7 percent.

The effect of inflation has lowered the level of income at which a taxpayer pays the top rate of tax in 1967 prices from JD 9,000 to JD 1.5. Adjustments in the exchange rates between the Shekel (in which tax has been paid since 1973) and the Dinar (legal tender in the West Bank) have not compensated for this.

At a macroeconomic level, the excessive burden of tax on the individual, particularly at the lower income levels, has been compounded by increasing the taxable range of incomes. Income tax constitutes 5.63 percent of GNP in the West Bank. This is higher than the top of the range for most Less Developed Economies, which range between two and five percent.

Prior to 1967, the structure of appeal courts as regards tax matters comprised an 'Income Tax Court of Appeal' and the supreme court, the Court of Cassation. In 1967 and then in 1970, these courts were abolished and replaced with a 'Military Objections Committee' which was only invested with power to make recommendations to the Area Commander.

Prior to 1967, income tax other than that deducted at source was assessed annually and in arrears. In 1978, such assessments were made monthly and based on the income tax assessed the previous year, irrespective of the current year's income.

Prior to 1967, 50 percent of the amount assessed or estimated pending resolution of review by the Income Tax Court of Appeal was payable in two installments, the first 30 days from the final notice of payment and the second three months later. In 1978, any amount not disputed had to be paid within 15 days of the date of assessment. This applies whether the tax is deductible at source or not.

Prior to 1967, tax not deductible at source which was finally determined by the Income Tax Court of Appeal was payable within 30 days of the decision of the Court. In 1981, the period for paying such tax was reduced to 15 days.

Prior to 1967, following settlement of a preliminary objection against an assessment of the Assessing Officer (of tax deductible at source) to the tax department, the tax payer had 30 days to pay. In 1986, this period was reduced to seven days.

Prior to 1967, collection of customs and excise duties was regarded as a civilian matter. In 1969 extensive military powers were vested in the hands of customs and excise officials.

Prior to 1967, there was no provision for the attachment of the property of third parties. In 1983, property formerly belonging to the tax debtor which had passed into the hands of a third party became subject to attachment within three months of the transfer.

Prior to 1967, no specific sanction existed in the law for the use of force in collecting taxes. In 1988, the use of force to break into premises as well as quelling any resistance to the collection of taxes was made the prerogative of the Assessing Officer without

the obligation of prior sanction by a court of law.

Prior to 1967, banks were not involved in the process of attaching property. In 1988, they were empowered to do so.

Prior to 1967, the Assessing Officer could ask the 'competent authorities' to delay the departure of a person from the country in certain circumstances. In 1978 and then 1988, these powers were increased, first to allow the Assessing Officer to obtain an order from a 'special court' to delay the person's departure and attach his property, and then to allow the Assessing Officer to take these measures without obtaining prior authorisation. Thus the safeguards surrounding the attachment of property previously contained in the 1952 law have effectively been circumvented.

Article 116(A) (as amended) of the 1985 VAT Regulations introduced a new basis for collecting VAT. Previously, VAT was collected through an amendment to Jordanian law (see further below).

Prior to 1967, no power existed to make payment of all taxes by an individual and/or group a precondition for the issue of a range of wholly unrelated permits. In 1988, such powers were introduced.

Prior to 1967, delay in payment of taxes for a period of one year would result in a penalty of approximately 15 percent of the unpaid sum. In 1979, this amount was increased to approximately 35 percent.

Prior to 1967 there was no authority to fine persons administratively for tax offenses. In 1988, such powers were introduced.

In 1989, many of the procedures for notification and registration of attached property were abolished. Individual notification of tax debts was replaced by public warnings via the press.

In 1988, a new tax on vehicles was introduced. The reasons given for the introduction of the tax was the fall-off in revenue in the West Bank.

Measures Introduced "For the Benefit of the Economy" In 1976, value-added tax (VAT) was introduced in the Occupied Territories for the first time. The law was later codified in a set of Regulations in 1985. The official justification for the tax was that it was in the interests of the local inhabitants; however, it is clear that the introduction of VAT was not in the local inhabitants' interests. In fact, it was introduced as part of a wider policy encouraging economic dependency of the Occupied Territories on Israel.

New customs and excise duties have also been periodically introduced. Designed with Israeli businesses in mind, they are often wholly inappropriate to the Occupied Territories.

Tax Exemption for Jewish Settlers Israeli citizens and companies registered in Israel but operating in the West Bank have effectively been exempted from the assessment of tax under the 1964 Jordanian law. They have been assessed under Israeli law instead and pay taxes to the Government of Israel.

Legal Status of Amendments to the Local Law

The only justification for the introduction of revenue-increasing measures would be if there was in fact a shortage of revenue. On 15 September 1989, the *Jerusalem Post* quoted the Income Tax Commissioner of Israel as follows: "all taxes collected from the Arabs in the West Bank and Gaza Strip remain in the territories; not one agora is transferred to Israel."

This claim cannot be accepted for two reasons. Firstly, no budget has ever been published for the Occupied Territories. And secondly, an array of independent studies indicate that a substantial surplus accrues directly to the Government of Israel in the form of VAT and custom payments on imports to the Occupied Territories and income tax paid by residents of the Occupied Territories who work in Israel.

The budget of the Occupied Territories has in fact for 22 years been an official secret. On 24 November 1987, Advocate Raja Shehadeh, co-director of al-Haq, sent letters to the Civil Administrator and the Legal Advisor at Beit Il requesting a copy of the budget for the West Bank or, failing this, information about where it might be obtained. No reply was received. And in September 1988, when al-Haq again requested to see a copy of the budget, it was told by the public relations officer at Beit Il that it was a "matter of security" and not publicly available.

Publication of a budget is a feature of all democratic systems. Under Jordanian law, binding on the military authorities in the West Bank, publication of the budget is a requirement. Under Article 111 of the Jordanian Constitution: "Taxes shall not be imposed other than in a law ..." Under Article 112 (6) of the Constitution: "All expected state revenue and expenditure, for every fiscal year, shall attain the status of law by virtue of the Public Budget Law ..." And, under Article 115 of the Constitution: "No amount of revenue accruing to the Treasury shall be spent for any purpose except by virtue of a law." Finally, under Article 93 (2) of the Constitution:

[A] law shall become valid after promulgation by the king and the passage of 30 days after its publication in the Official Gazette unless otherwise expressly stipulated [that the period of 30 days should be greater or less].

All laws were thus published in the Official Gazette until 1967, when the Gazette, pursuant to M.O. 161, was replaced by the following alternatives: an announcement on the radio, publication in the law courts, publication in the offices of the Area Commander, or publication in municipal offices.

Additional safeguards had been built into the Jordanian Constitution as well. Thus, under Article 112:

- (1) The draft of the public budget will be presented to the Upper House one month before the start of the fiscal year for consideration according to the provisions of the public constitution.
- (2) A vote will be taken on the budget section by section.
- (3) No transfer of investment shall be made from one department to another except as provided for in a law.

Concerning the accumulation of budgetary surpluses, the Constitution is quite specific. Under Article 111, the government "shall not exceed the need of the State for revenue ..."

Quite apart from the question of a budgetary surplus, non-publication of the budget for a period of 22 years (and despite regular requests to see it) is itself sufficiently fundamental a breach to render the license to collect taxes null and void. However, in addition, it is indicative of extreme bad faith on the part of the authorities that the budget remains a classified document.

There have been many reports indicating the existence of a large budget surplus accruing to the Israeli authorities. The United Nations Conference for Trade and Development found that, in 1984, approximately \$US 150 million accrued to the authorities as profit.[†] The West Bank Data Base Project has published figures showing a surplus of \$US 80 million for the year 1986.[‡] These profits accrue from VAT and customs duties paid on imports to the Territories as well as income tax paid by Palestinian residents of the Territories working in Israel and can be seen, for example, in the net excess of estimated revenues over transfer payments to the Territories.

The weight of evidence conclusively refutes official claims concerning their use of revenues collected from the Occupied Territories. Furthermore, such figures as have been announced by the authorities from time to time contradict each other, thereby further reducing official explanations to the level of the absurd.

The conclusion to be drawn from the above summary is, in conjunction with the documentation offered in the chapter, inescapable. The authorities have regularly, fundamentally, and wilfully flouted the terms upon which their license to raise revenue is conditioned. Attempts to continue raising revenue in these circumstances are quite simply legally groundless and therefore legitimately resisted by Palestinians.

[†]UNCTAD, *The Palestinian Financial Sector*, p. 101.

[‡]Meron Benvenisti, *1987 Report: Demographic, Economic, Legal, Social and Political Developments in the West Bank* (Jerusalem: WBDBP, 1987), p. 30. See also Roy, "The Gaza Strip: A Case of Economic De-development," pp. 79-81; Dr. Ataf Alawna, "Israel's Direct and Indirect Benefits from the West Bank and Gaza Strip," *Al-Katib*, October 1988, p. 63. (In Arabic); International Centre for Peace in the Middle East, *Research on Human Rights in the Occupied Territories 1979-1983* (Tel Aviv: ICPME, 1985), pp. 75-77, 94-95.

Appendix 12-C

Case Study of Violence During Tax Raid

At 9:00 a.m. on 19 September 1989, soldiers arrived at the shop of George Beshara Mas'ad in the town of Beit Sahour in the Bethlehem district of the West Bank. They arrested his son, Beshara, and informed him that he would remain in their custody until his father paid his taxes.

At 2:30 p.m., a large group of soldiers went to Mr. George Mas'ad's house. Finding themselves unable to force their way indoors, the soldiers went upstairs to the house of his brother, Elias Beshara Mas'ad, where they were let in by the latter's mother and wife. When Mr. Mas'ad's mother, Mrs. Rugina Hannouna, a woman in her late 60's, protested that this was not George's house but rather that of his brother Elias, she was shoved to the ground by a soldier. She immediately suffered what her doctor later described as a stress-induced "heart blockage." When Elias' wife attempted to call a doctor, a soldier ripped the telephone cord out of the wall. Both women were subsequently locked into a room by the soldiers while sofas, carpets, a stereo, a television, and a guitar were removed from the house.

A military doctor was finally called by a soldier. He stated that Mrs. Hannouna had suffered a minor heart attack, yet failed to call an ambulance. Only after the soldiers had left was Elias' wife able to summon an ambulance. Mrs. Hannouna was immediately admitted to the intensive care unit of al-Maqassed Islamic Charitable Hospital in East Jerusalem.

[Source: Al-Haq Fieldwork Report]

Appendix 12-D

Case Study of Violence During Tax Raid

At 2:45 a.m. on Wednesday, 24 May 1989, 'Adnan Muhiyi-al-Din 'Abd-al-Latif al-Sheikh Qasem, 29, a carpenter, and resident of al-Am'ari Refugee Camp in the Ramallah district, was asleep in his home with his wife and children. He was awoken by the sound of banging on the door. He stayed in bed for about two minutes out of fear. Four soldiers burst into the room. One of the soldiers grabbed him by the vest and pulled him off the bed. When Mr. Qasem asked to put his pyjamas on, his request was refused. The soldiers began to beat him in the area of his crotch. They continued to kick and punch him for about five minutes.

The soldiers took Mr. Qasem to his brother's room and pushed him so hard that he broke the wardrobe. By then there were about 30 soldiers in the house picking up furniture and utensils and throwing them about. The soldiers asked Mr. Qasem about a neighbour, Nader Ibrahim 'Anabi. He denied any knowledge of him. Again he was kicked about the pelvis and beaten with a club on the head and forearms. The soldiers subsequently left.

At approximately 5:30 a.m., another group of six soldiers and tax officials came to the house. Mr. Qasem was ordered to go to the local school. There were some 150 people sitting on the ground, their heads bowed and hands bound. People were being divided up into groups. There were three officials dressed in civilian clothes, whom Mr. Qasem recognised as officials from the customs and VAT department of the civil administration. He was then taken to the Ramallah tax office, where he was ordered to pay a total of NIS 2,900 (\$US 1,450) in tax and an NIS 1,000 (\$US 500) fine. His identity papers were confiscated and he was told to return daily to the office to renew his temporary pass.

He returned the following day and was questioned by a "Captain Jed'on." Mr. Qasem said he did not have the means to pay the taxes. He was slapped several times in the face by "Jed'on" and ordered to leave.

[Source: Al-Haq Affidavit No. 1837]

Appendix 12-E

Case Study of Theft During Tax Raid

At 9:00 a.m. on 22 October 1989, seven soldiers, two tax officials and six other members of the civil administration entered the Kokaly household in Beit Sahour. No one in the Kokaly family has any tax liability:

- (1) Mr. Kokaly, 63, has not worked for 15 years due to a myocardial infarction of the heart, and has been a recipient of health insurance payments;
- (2) Mrs. Kokaly, 56, does not earn a wage;
- (3) Of their three sons, one is a student, one works for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and therefore has no tax liability, and the third has been abroad since 1982;
- (4) The Kokaly's only daughter is married and does not live in Beit Sahour.

The family is dependent on the tax-exempt income of their son employed by UNRWA. There has therefore been no tax outstanding on the family for many years.

The tax officials said they had a search warrant but failed to produce it. They began a tour of the house by going into each room, apparently in order to assess the property in the house. Finally, they entered a room where the Kokaly family keeps its library. They asked why such books were kept in the house. Mrs. Kokaly replied that it was none of their business. The soldiers then began to throw the books onto the floor. One soldier opened a book and expressed interest in taking it home to read.

A tax official searched Mrs. Kokaly's purse. He then took her identity card and asked about her husband. She explained her husband's condition and showed the official a health report to the same effect. The official dismissed the report and Mrs. Kokaly's explanation as false and irrelevant. One of Mrs. Kokaly's sons protested that the family did not owe any taxes. A tax official replied: "As from today you do."

On a table in one of the bedrooms, soldiers saw educational certificates belonging to one of Mrs. Kokaly's sons. A soldier asked, "Why do you bother to study?" Mrs. Kokaly replied that this was none of the soldier's business. The soldiers strewed clothes and possessions all over the floor. In another bedroom, the drawer of a chest of drawers was broken when the soldiers pulled it out. An electric heater that had been on a shelf was thrown to the ground, causing it to break as well.

The tax officials proceeded to search various rooms in the house. In the kitchen, goods were taken from a cupboard but not returned. A tax official then opened the refrigerator which held meat, fish, dairy products, food for Mrs. Kokaly's four-month-old grand-daughter Nadin, and a cake. The official looked at the cake and said: "I like cake." He then crammed a fist into the cake, ate a mouthful, and destroyed the rest of the it with his hand. The officer then took out a small can of corn which was used to supplement the baby's diet. Mrs. Kokaly explained this to the officer, who replied that he didn't care. He tipped the contents onto the floor and ground it with

his heel. The officer then stated: "If you want food for your baby, get it from your neighbours!"

[Source: Al-Haq Fieldwork Report]

Chapter Thirteen

Education

Introduction

All schools in the Israeli-occupied West Bank (with the exception of annexed East Jerusalem) have been closed by order of the military government for at least 16 of the past 23 months, including eight months during 1989. All universities and other post-secondary institutions in the Occupied Palestinian Territories, ordered closed during the beginning of the uprising, remained closed throughout 1989.

Following local and international pressure, the Israeli authorities permitted West Bank schools to reopen in July 1989. Even then, however, education did not return to normal, as many schools were closed on an individual basis. Then, on 12 November 1989, Yitzhak Mordechai, the Area Commander of the West Bank, issued an order ending the 1988–1989 school year less than four months after all school-aged children had returned to classes.¹ At the time of this writing, all West Bank schools are again closed by military order and not scheduled to reopen until 10 January 1990.

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which operates elementary and preparatory schools for Palestinian refugee children, announced at the end of November 1989, that the premature end of the academic year in the West Bank had prevented it from completing the curriculum for the 1988–1989 school year, and that it would therefore reopen its schools on 11 December.² It later reversed this decision, stating:

UNRWA has been advised by the Civil Administration [of the Israeli military government] that schools in the West Bank will be kept closed—if necessary by force—until January 10 ... UNRWA has decided not to attempt to reopen its schools ... in order not to compromise the safety of 33,000 Palestine Refugee school children.³

Throughout the year, universities attempted to compensate for long-term closure by holding classes off campus. As al-Haq reported last year, these “make-up” classes have also been prohibited. However, during 1989, more such classes took place than during the first year of the uprising. In recent months, university closures have been criticized by the international community, particularly by the European states.⁴ De-

spite these protests, the closure of all post-secondary institutions was on 13 December 1989 extended for another three months.

The Israeli authorities have implemented these and other restrictions on academic activity through abuse of their legislative powers. Official Israeli actions pertaining to education in 1989 have included the illegal and arbitrary use of military orders to amend the minimum length of the school year; the issuance of oral school closure orders without reference to legal authority; and the outlawing of academic endeavors, such as alternative education programs, on the basis of security regulations which do not relate, either explicitly or implicitly, to such activities.

With long-term school closures in the West Bank, the shutting of individual schools in East Jerusalem and the Gaza Strip, the ban of off-campus classes, military raids on schools, and the occupation and subsequent destruction of school property, the military government has disregarded its binding obligations under both local and international law. These measures—especially the long-term closure of West Bank schools and all Palestinian universities—have had a critical impact on the population in the Occupied Territories due to the particular importance of education in Palestinian society.⁵

A. The Closure of Educational Institutions

All academic institutions in the West Bank were shut for eight months during 1989, suspending the education of approximately 310,000 school pupils and 21,000 university and community college students. The education of Palestinians living in East Jerusalem and the Gaza Strip was also severely disrupted by the closure of individual schools. In addition, throughout the Occupied Territories, additional school days were lost due to the imposition of prolonged curfews.*

1. Official Pretexts

During 1989, the Israeli authorities continued to offer “security” as the pretext for both school closures and the ban on alternative education programs. On 1 December 1989, for example, the *Jerusalem Post* reported that the Israeli Ministry of Justice put forth the following rationale for school closures in its report, “Children as Participants in the Intifada”:

[I]t should be easily understood that the authorities ordered schools closed only when they had become centers of intifada violence ...⁶

Schools in the Occupied Territories have been shut by collective closure orders as well as by military directives issued to individual schools. Educational institutions have also been closed indirectly, through the use of prolonged curfews. The manner in which these measures have been implemented disprove the Israeli security rationale.

*See further Chapter Eleven, “Curfew and Other Forms of Isolation.”

The Collective Closure of Schools

The shortening of the school year by military order coupled with long-term school closures has now seriously disrupted three school years:[†]

- (1) The 1987–1988 school year was interrupted by a three-and-a-half-month closure (3 February–21 May 1988) and subsequently shortened by four months pursuant to military order;⁷
- (2) The 1988–1989 school year did not begin until December 1988, due to closures by the Israeli military. Since that time, elementary, preparatory, and secondary students have had, at most, four months of classes. Pursuant to a recent military order, this period must be considered a full school year;
- (3) The 1989–1990 school year has yet to begin because of school closures. (The Israeli authorities have stated that the 1989–1990 school year will begin on 10 January 1990.)⁸

As was true during the 1987–1988 school year, these measures do not reflect a concern for security. Rather, the breadth of these measures suggests that the Israeli authorities have closed schools as a form of collective punishment. For example, closure orders were not issued solely to schools where alleged disturbances took place. Rather, all 1,194 West Bank schools have been repeatedly closed without regard for activities at any specific location.

Even schools in remote or isolated areas, where the military's presence is occasional and of short duration, were included in the collective closure orders issued by the Israeli authorities. In areas such as these, schools cannot be said to threaten Israeli security because there is no regular army presence. Yet, schools in these locales were not exempted from school closure orders.

On other occasions during the past year, the authorities selected and closed specific schools, illustrating that this measure can be limited when the authorities choose to do so. Therefore, the decision to shut schools in all locations for eight months during the past year reflects an intent to affect the whole population.

In addition, military orders closing schools made few distinctions on the basis of grade level. Elementary, preparatory, and secondary schools alike were subject to lengthy closures. Even kindergartens were not completely exempted. The military authorities have not offered evidence for their claim that the opening of schools contributes to increased demonstrations. In fact, schools were closed during April and May 1989, a period in which confrontations between the Israeli army and Palestinian civilians reached among the highest levels recorded since the beginning of the uprising.⁹ Similarly, in 1988, schools were also closed during the massive demonstrations of February 1988. In fact the closure of West Bank schools for 16 of the last 23 months have produced no noticeable effect on the level of protest.

Furthermore, the inconsistencies in the justification offered for school closures are highlighted by differences between the treatment of education in the Gaza Strip and in

[†]See further Appendix 13-A.

the West Bank. In the Gaza Strip, comprehensive closure orders shutting all schools for prolonged periods have not been issued, despite the fact that there are at least as many confrontations there between school-aged children and the military as there are in the West Bank.

Similarly, the shortening of the school year cannot be explained by security concerns. When schools were opened in July 1989, the civil administration reported attendance rates of 90 to 95 percent.¹⁰ According to teachers, students were in classes during school hours.¹¹ Furthermore, The United National Leadership of the Uprising was reported to have called on students to attend classes and study diligently.¹² Yet the school year was cut short in November as all West Bank schools were again closed.

The redefinition of the school year bears no relationship to Israeli security. The effect of treating four months as a full academic year, combined with prolonged school closings, is to penalize the community as a whole by making it almost impossible to maintain academic standards.

The Closure of Individual Schools

During the 1988–1989 school year, individual schools in the West Bank (including annexed East Jerusalem) and the Gaza Strip have been ordered shut for periods of time ranging from one day to one month to “indefinitely.” These closures also cannot be adequately explained by security concerns.

Due in part to the failure of the Israeli authorities to distinguish between actions which occur on and off school grounds, the individual closure of schools appears to be a form of collective punishment for the participation of individual youths in a range of protest activities, many of which cannot be described as threatening Israeli security. For instance, on 22 February 1989, four schools in Gaza City were “indefinitely” closed. According to the *Jerusalem Post*, the official explanation for this closure was that “children had blocked streets with stones and tree branches and taunted military patrols who drove past them.”¹³ One of the schools, the Falastin Secondary Boys’ School, serves over 1,000 students. The other schools (the Ibn-Sina Secondary Boys’ School, the Ibn-Sina Preparatory Boys’ school, and the UNRWA Salah-al-Din Preparatory School) have 400, 600, and 450 students respectively. There was no allegation that all or even most of these 2,450 students participated in the activities described above, which furthermore took place outside of school grounds.

In other instances, particular schools appear to have been closed because students participated in non-violent protest such as the general strikes called by the United National Leadership of the Uprising. On 16 August 1989, for example, the military governor of the Toulkarem district issued an order closing the al-Salam Preparatory Boys’ School, attended by 600 pupils. The day before the closure, 15 August, was a general strike; only three students attended the school and no clashes between students and Israeli soldiers had been reported. The next day the school was shut for three days.¹⁴

Moreover, when protests take place on school property, the Israeli authorities again make no effort to distinguish between individual and collective acts. For example, the UNRWA preparatory school in the Gaza Strip town of Khan Younes was closed

between 18 February and 4 April 1989 because of allegations of stone throwing in the general vicinity of the school.¹⁵ There was no suggestion that all students participated in disturbances. Yet, the closure prevented all 850 students served by the school from attending classes for 45 days. School administrators, teachers and the whole student body were held responsible for the alleged actions of a few.

Thus, in these and similar cases, school closures represent a clear example of collective punishment, rather than a "necessary" measure to protect legitimate security interests.

Indirect School Closure Through Curfews

The massive imposition of curfews has seriously disrupted education in the Occupied Territories.[†] All schools in areas under curfew are effectively closed without the need for a specific closure order.

The effect of curfews on education is illustrated by the incidents preceding final examinations in the Gaza Strip on 11 June 1989. The entire Gaza Strip was under curfew from 3 June until the morning of 11 June. Final examinations were given later that day. The curfew remained in place, however, on Jabaliya Refugee Camp (which has an estimated population of 55,000), preventing students from the camp from taking their examinations.¹⁶

2. The Closure of Post-Secondary Institutions

All Palestinian universities, training colleges, and other institutions of higher learning have been closed since 3 February 1988.¹⁷ Thus, residents of the Occupied Territories have been denied access to post-secondary education for the better part of three academic years; the 1987-1988, 1988-1989, and 1989-1990 school years have been either severely curtailed or totally lost due to the on-going blanket closure of post-secondary institutions.

On 17 May 1988, a spokesperson for the civil administration announced that "Universities, which have traditionally been a hotbed of anti-Israeli protest, will remain closed."¹⁸ The facts of university closures, as with the shutting of schools, contradict the official Israeli explanation for this measure. The closure of universities, for example, has not just meant the end to classes on campus. Rather all university facilities, including libraries, laboratories, and even private offices have been closed off from use, even by individual professors and campus administrators. Clearly, such actions cannot be explained by "security."

Moreover, the implication that institutions of higher learning contributed to "anti-Israeli protests" during the current period simply contradicts the reality that all of them have been closed throughout the uprising. The breadth and duration of these closures indicate that this measure, like prolonged school closures, is a form of collective punishment intended to pressure the population into quiescence.

[†]See further Chapter Eleven, "Curfew and Other Forms of Isolation."

3. The Ban on Alternative Education

Under no circumstances can you teach, in houses or anywhere else. If we find anyone teaching, or any students carrying books we will take appropriate measures against them.¹⁹

This statement was made by "Major Michá," Deputy Director of the West Bank civil administration, to Albert Aghazarian, Director of Public Relations for Bir-Zeit University, on 24 April 1989. It exemplifies a policy which most clearly discredits the security rationale offered for the repression of educational activities.

Over the past two years, some teachers have given classes to small groups of students at various off-campus locations.²⁰ Others have prepared home-instruction booklets for distribution to students, in an attempt to off-set the consequences of long-term school and university closures. These efforts have been outlawed, and described as a "threat" to Israeli security.

For example, the Israeli Ministry of Foreign Affairs informed UNRWA on 28 March 1989 that, due to reasons of "military security," the Israeli authorities would not permit UNRWA to distribute learning material to first, second, and third graders for home-study.²¹ These materials included home-instruction booklets in math, science, religion, and Arabic. UNRWA teachers had planned to distribute them from house to house, so that students could study under the tutelage of older siblings or parents. According to Rolf van Uye, a United Nations official:

The idea was to circumvent the Israeli accusation that if you get the kids together in one place that they will start trouble ... It is so ridiculous, they are making education of even little children into a crime.²²

Earlier attempts by teachers to distribute homework packets for home-study, in October 1988, were also prohibited. Khalil Mahshi, the director of the private Friends Boys' School in Ramallah was called into the Ramallah military headquarters after he began distributing homestudy assignments prepared by teachers at the school. He reported that he was ordered to stop distributing assignments and that the military authorities:

[S]aid that the object is to get life back to normal and they have to use this pressure for parents to understand what they are missing. They said that by helping these parents, I was hindering their efforts to get life back to normal.²³

Make-up classes for students of all ages have been declared illegal and raided by the Israeli military. In some instances, students and teachers have been arrested. The following are representative examples:

- (1) On 29 March 1989, Israeli police interrogated the headmaster of St. George's School in East Jerusalem (a private school run by the Anglican church) regarding the use of the school's facilities by faculty and students from Bir-Zeit University. On 30 March 1989, the headmaster received an order that students from Bir-Zeit University, or from anywhere else in the West Bank, were prohibited from using his premises.²⁴
- (2) On 19 April 1989, Israeli police in East Jerusalem reported that they had "uncovered a network of illegal classes" held by Bir-Zeit and Bethlehem Universities

at private high schools in East Jerusalem.²⁵ According to Israeli police, classes had been held at the Frere School, St. George's School, and the al-Nizamiyya School four days a week for several hours, serving a total of 300 students. The principals of these schools were warned to stop the classes.²⁶

- (3) On 24 April 1989, according to Bir-Zeit University, "Major Micha" the Deputy Director of the West Bank civil administration, arrived at the building of the Ramallah YMCA, where Bir-Zeit University has temporarily relocated its academic department offices. "Major Micha" and another soldier searched the premises. A Bir-Zeit University academic affairs advisor who accompanied the soldiers reported that the only question asked was, "Where are the classrooms?"²⁷ Major Micha then went to the offices of Bir-Zeit's Board of Trustees (which is located nearby), and spoke with Albert Aghazarian, Director of Public Relations, warning the university against continuing make-up classes.²⁸
- (4) On 1 September 1989, the Israeli military authorities barred three private schools in Beit Sahour from holding additional classes for their primary and secondary students on Fridays and Sundays.²⁹

The alternative education programs and make-up classes described above do not pose a threat to Israeli security under any reasonable definition of the term. It is clear from the prohibition of these programs that education has been targeted as a form of punishing the Palestinian population living under Israeli occupation. The restrictions on all forms of education have had enormous affect on Palestinians in the Occupied Territories. These effects are described in the following section.

B. The Effects of the Restrictions on Education

1. Impact on Students and Academic Standards

The closure of educational institutions has had a number of serious consequences for the local community. The most serious of these has been the erosion of academic standards. Prolonged and repeated school closures—together with the promotion of students who have not completed the full course of study for a given grade level—have created a whole generation of students whose education is incomplete. A child who was in the first grade in 1987 will now enter the third grade without ever having the opportunity to finish the material from the previous two years. This has devastating consequences for the entire school system. In describing this situation one Palestinian educator stated: "The whole academic process is being destroyed, and we are going to suffer for 10 to 15 years."³⁰

Palestinian educators report that increasing numbers of children in the six to eight-year-old age range are either illiterate or reverting to illiteracy.³¹ Illiteracy has not been a significant problem amongst young children in Palestinian society during recent history. Teachers in the West Bank attribute the emergence of this problem to long-term school closures which have destroyed all continuity in the education process

during the past two years, and to the promotion of students to higher levels who have yet to master the rudiments of reading and writing.³²

When schools reopened in July 1989, after a six-month closure, one Palestinian elementary school teacher reported:

Even my best students were visibly affected by the closure. They had forgotten much of what they learned, ... while many of my average and weak students were no longer literate in any meaningful way.³³

According to elementary school teachers, these serious academic difficulties are compounded by the need to reacclimatize children to the regime of regular classes following each protracted school closure.³⁴ The director of a private Catholic school described this issue as follows:

It took at least the first month after schools were opened [in July 1989] just to rebuild the attention span of young students and teach them again to sit still for long periods.³⁵

Extended school closures also pose serious difficulties for matriculating secondary school students. Because the 1988-1989 school year was at best four months long, graduating seniors were not able to cover enough of the materials which appeared on the matriculation ("tawjihi") examinations given between 26 November and 14 December 1989. These scores are the basis of admission to universities in the Occupied Territories and throughout the Middle East. Teachers fear that, as a result, the scores of Palestinian students graduating from high schools in the occupied West Bank will no longer be able to compete. These problems were described by one West Bank teacher in an interview with al-Quds newspaper:

A tawjihi student faces great problems because he or she did not finish the eleventh grade properly and now has the problem of preparing for the high school graduating exams. Concerned parties have been trying to ease the situation for these students by allowing them to choose a number of [exam] questions in each subject. This of course means that the student who has covered all the material will have a wider selection of questions. Still, the result will be a lower academic level. In turn, this means that the students will enter universities at a lower academic level, which will negatively affect our universities by forcing them to eventually lower their academic standards ... the prolonged school closures will cause the quality of our academic process to further deteriorate.³⁶

In addition, the extended closure of universities in the Occupied Territories prevents graduating seniors from pursuing post-graduate education. Bir-Zeit University reports that another effect of the closure has been to contribute to the number of registered students attempting to transfer to universities abroad to complete their degrees. However, such students are frequently barred from traveling overseas.³

The effect of the closure of colleges and universities has been eased somewhat for those post-secondary students able to take make-up classes. However, these students report that without libraries, laboratories, and other university facilities, they are not able to obtain the quality of education previously available.

³See further Chapter Nine, "Administrative Methods of Control."

2. Impact on Educators and Researchers

During 1989, educators throughout the West Bank were confronted by what one teacher described as:

the almost impossible task of teaching material from an entire school year in half the time to students who had been out of classes for at least seven months ...³⁷

In November 1989, after the announcement of the end of the school year, a private school teacher in Ramallah noted:

Some material was finished but a lot wasn't. The short opening period didn't give teachers or students a chance to breathe ...³⁸

In addition to these obstacles while schools were open, educators in government schools were subject to a number of repressive measures during the period of school closure. One of these was the reduction and/or cancellation of salaries for government school employees. On 20 January 1989, the military authorities issued an order placing all government school employees, including approximately 9,000 public school teachers, on "unpaid leave" as long as schools remained closed.³⁹ Later, 40-50 percent of the salaries of some teachers was reinstated.⁴⁰

Moreover, teachers and other government school employees have been subject to dismissal or suspension from their jobs if arrested by the military. The General Committee of Teachers in the Government Schools in the West Bank, a West Bank teachers group, reported in January 1989 that at least 26 government schoolteachers had been suspended or fired after being arrested.⁴¹ In many of these cases, the teachers concerned were administratively detained without charge or trial.[¶]

This measure has been challenged by teachers' groups. The General Committee of Government Teachers included this issue in a petition filed in March 1989 with the Israeli High Court of Justice. As of January 1990, the Committee's petition had not been considered by the Court.

University faculty and researchers have also been greatly affected. Since no academic pursuits of any kind have been permitted on university campuses during the 22 months of closure, approximately 2,500 university faculty and researchers have been denied access to their laboratories and offices.⁴² Other university facilities such as libraries are also closed to use. In sum, these measures have severely hindered, and in many cases prevented professors, lecturers, and researchers from carrying on their work.

3. Impact on Educational Institutions

Long-term school closures have wide-ranging effects on all Palestinian educational institutions in the occupied West Bank. For government schools, continued closures have resulted in an enormous strain on the educational infrastructure. Approximately 30,000 children reach school-age each year. When the 1989-1990 school year begins, all those first grade students who did not pass the previous year due to extended school

[¶]See further Chapter Seven, "Administrative Detention."

closures (some teachers reported that approximately 20–30 percent of the student body failed) will be added to this number.⁴³ Government school teachers warn that the school system does not have the resources—either human or physical—to absorb such an increase in the number of students. Government schools are already overcrowded. In January 1989, the General Committee of Government Teachers reported an average class size of 37 pupils. It added: “[M]any classrooms have about 45 students . . . we need 2,180 additional classrooms to reach an average of 30 students in each room.”⁴⁴

Educators point out that the strain on the government school system would have been much greater had the 1987–1988 and 1988–1989 school years not been cut short by the Israeli authorities. Under those circumstances, there would have been at least a 100 percent increase in the size of the first grade. However, even with the arbitrary termination of the school year, this problem has not been avoided completely due to the high failure rate noted above.

Prolonged school closures have created other difficulties for private schools. The economic stability of many of these schools has been seriously threatened. For private schools major expenses, such as teachers’ salaries and rent, have continued, while income in the form of tuition payments have ceased during closures. Private school administrators explain that they must continue to pay their teachers if they wish to have a staff when schools are allowed to open. Moreover, private school enrollment has dropped dramatically during the past two years. With prolonged school closures in the West Bank, some parents who live near Jerusalem and have the means, have preferred to send their children to schools in Jerusalem. Consequently, even when schools are open, tuition income has been less than prior to the beginning of long-term school closures in February 1988.

Universities have also been confronted with financial crisis. Not having received tuition fees for most of the period of closure, many universities and post-secondary institutions (most of which are private) have reported a critical shortage of funds. In addition, the authorities have continued to claim large amounts of taxes from universities. For example, in January 1989, Bir-Zeit University reported that the Israeli authorities demanded that the University pay roughly NIS 5.3 million (\$US 2.65 million) in “back taxes.”⁴⁵ According to the University, it “paid full taxes, including income tax for its employees for the years in question . . .” and for that reason it was “. . . convinced that the order [was] punitive.”⁴⁶

Further, long-term closures have resulted in the deterioration of some university facilities. For example, Bir-Zeit University reports that it has had serious maintenance problems with microfilms (which need to be stored at a constant temperature below 21 degrees centigrade); periodicals (currently stacked on the library floor, “unbound, unclassified and subject to damage”); and laboratory equipment (particularly vacuum equipment for physics laboratories which requires regular maintenance).⁴⁷

C. Legal Status of Closure Orders

Education is a basic right which the Palestinian population living under Israeli military occupation must be allowed to enjoy. The right to education is protected by

both Jordanian Education Law No. 16 of 1964, which constitutes local law in the West Bank, and by numerous international laws.⁴⁸ Article 50 of the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, for example, states that an occupier must "facilitate the proper working of all institutions devoted to the care and education of children."

Instead of fulfilling this obligation, the Israeli military authorities, as discussed below, have unlawfully restricted education through the misuse of various legal provisions.

1. The Illegality of Military Orders Closing Schools

Lack of Judicial Authority in Military Directives

School closure orders are issued by the respective Area Commanders of the West Bank and the Gaza Strip as military directives. As such, they are neither laws nor amendments to existing law. Thus, they should normally state their judicial basis.

Despite this requirement, many of the military directives closing schools in the West Bank have been issued orally through the media without specifying a judicial basis. For example, on 20 January 1989, the Palestinian public (including teachers and administrators) were informed via the media that all West Bank schools had been closed "until further notice."⁴⁹ No judicial authority was cited.

In June 1989, the *Jerusalem Post* reported a further extension of this closure order: "West Bank military authorities yesterday extended the school closure for another month."⁵⁰ (A similar report was issued on the Arabic language news on Israel Television at 7:00 p.m. on 18 June 1989.)

These directives, as well as many others closing schools without reference to any judicial authority, are illegal on a *prima facie* basis and consequently non-binding.

Lack of Judicial Basis for Long-Term School Closures in Military Order 378

Even when closure orders cite a judicial authority, the provisions referred to do not provide a lawful basis for the shutting of schools for extended periods of time. The Israeli military relied on Article 91(a)(2) of Military Order (M.O.) 378 on 8 March 1988 and 17 March 1989, when written closure orders referring to legal authority were issued to primary and secondary schools.* M.O. 378 91(a)(2) permits the closure of "places" by the commander of a given area, if he "considers it necessary for maintaining regular administration, public order, and the safety of the IDF forces."⁵¹ Pursuant to customary international law this provision, and other security regulations, may not be used for actions such as the prolonged closure of schools.

Israel's right to act in the name of security is limited by its obligation to ensure the well-being of the Palestinian population. This obligation includes facilitating the provision of basic services such as education. This duty, also referred to as the obligation to protect "*la vie publique*" is articulated in Article 43 of the Regulations annexed to the Hague Convention (IV) Regarding the Law and Customs of War on Land of 1907. Article 43 states:

*See further Appendix 13-C.

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.⁵²

That the security measures must be balanced by the obligation to ensure "*la vie publique*" has been acknowledged by the Israeli High Court of Justice. In *The Christian Society for the Holy Places v. The Minister of Defense et. al.*, the High Court stated:

The occupant is entitled to impose its authority on the population of the territory ... But alongside the right of the occupant is its duty to be concerned with the welfare of the population.⁵³

The fact that there are limitations on Israel's right to enact security measures was also addressed by Meir Shamgar, the current President of the Israeli High Court. According to Justice Shamgar:

The rights of the belligerent administrator are not absolute. Restrictions and limitations have been imposed by customary international law ...⁵⁴

These limitations stem from the relationship between Israel's rights as an occupying power and its duties vis-a-vis the Palestinian population: security concerns cannot negate the obligation to maintain public well-being.⁵⁵ In developing its policy towards educational institutions therefore, the Israeli military must take the Palestinian community's fundamental right to education into consideration and circumscribe its actions accordingly.

Far from adhering to these principles, the Israeli military authorities have implemented a policy towards West Bank schools which ignores the Palestinian population's right to education. By shutting all Palestinian educational institutions for prolonged periods of time—a measure which defies the concept of a balance of interest—Israel has exceeded its authority to act in the name of security.

Furthermore, the Israeli High Court has repeatedly acknowledged that actions by the Israeli military in the occupied West Bank and Gaza Strip which violate the standards provided by customary international law are illegal under Israeli law.⁵⁶ Therefore, even under Israeli law, M.O. 378 cannot be used to implement the long-term closure of schools.

Violation of Local Law

The 17 March 1989 school closure order violates local laws in force in the West Bank. These comprise the Jordanian laws in force on the eve of the occupation and those Israeli military orders issued in compliance with international customary law. Jordanian Education Law No. 16 of 1964 clearly states that education is compulsory for the first nine years.⁵⁷ Moreover, it specifies the minimum number of school days which must be available to all primary and secondary students, including those for whom education is no longer mandatory.⁵⁸ Thus, the obligation to provide compulsory education and to make education generally available beyond the compulsory level is clearly articulated in local law. The Israeli military authorities have not amended

these provisions. Therefore, pursuant to Article 43 of the Hague Regulations, they have a legal obligation to respect Education Law No. 16.

The General Committee of Teachers of Government Schools in the West Bank filed a complaint with the Israeli High Court in March 1989 challenging the closure of schools and other related issues.⁵⁹ However, the Israeli High Court repeatedly postponed hearing this case and eventually dismissed it during a period in which schools were open, on the grounds that the closure of schools was no longer an issue.

2. The Arbitrary Reduction of the School Year

In violation of its duty as an occupier to respect local law, on 11 November 1988, and again on 12 November 1989, the military government issued military orders arbitrarily reducing the length of the academic year in the West Bank.⁶⁰ According to Jordanian law, the school year must be comprised of at least 170 school days.⁶¹ Pursuant to Article 43 of the Hague Regulations, an occupier may only deviate from local law in order to preserve the well-being of the local population or for legitimate reasons of security. These military orders meet neither of these restrictions.

The "Order Regarding Educational Matters," issued on 12 November 1989, declares:

In spite of the provisions of [Law] No. 16 for the year 1964, we recognize the educational period between December 1988 and November 1989 as a full school year.[†]

By virtue of this order, the education officer of the civil administration in the West Bank may also develop special rules to set the dates for final examinations and to replace those examinations with "estimation of final marks."⁶²

This military order clearly violates Article 43 of the Hague Regulations. The detrimental effects of this order on the entire education system of the West Bank has already been discussed at length. Moreover, school years of a normal length, and actual rather than "estimated" examination results, do not threaten Israeli "security" under any definition of the term. Thus, neither security concerns nor the welfare of the occupied civilian population required the shortening of the school year in the West Bank to four months.

Moreover, this written order was issued after the Israeli military authorities instructed school administrators in the West Bank to begin final examinations and other preparations for the end of the school year.⁶³ Examinations in the government schools, for example, began on 4 November 1989, over a week before the order was issued.⁶⁴ Furthermore, this order was also applied to non-governmental schools in excess of the power of the officer in charge of education, who, under local law, cannot set the end of the school year or school vacations for private and UNRWA educational institutions.⁶⁵ In al-Haq's view, this order was issued in an attempt, after the fact, to give the appearance of legality to a clearly unlawful measure.

[†]See further Appendix 13-C.

3. The Ban on Alternative Education Programs

No military order or security regulation specifically outlaws alternative education programs.⁶⁶ Rather, the Israeli military authorities have interpreted a military order issued on 18 August 1988 prohibiting "popular committees" as providing a basis for the ban on make-up classes and related academic activities. The popular committees were established throughout the Occupied Territories during the first months of the uprising in significant part to provide social services, including neighborhood teaching.

The banning order was issued by a decree of the Minister of Defense, Yitzhak Rabin, and cited Article 84(1)(b) of the British Defense (Emergency) Regulations of 1945 as its judicial basis. The order states:

[A]ny group of people or organization called "popular committee" or ("National Committee") or "strike forces" or "popular defense groups" or "defense group" and other committees connected with them, or working with them, or supporting them, by whatever name from time to time ... is an illegal organization.⁶⁷

As is clear from the text of this order, no mention is made of teaching make-up classes or similar activities by universities or teachers who have no relationship with popular committees. Yet, as shown above, students and teachers in make-up classes have been arrested, and educational institutions have been subject to searches and raids by the Israeli military. The repressive measures against such alternative education programs, therefore, have been implemented without legal authority, and as such constitute an illegitimate exercise of military power.

Furthermore, the decree banning popular committees is itself unlawful. The authority for this ban, according to the order, is attributed to the British Defense (Emergency) Regulations, which do not constitute valid local law in the Occupied Territories.⁶⁸

D. Military Occupation and Destruction of School Property

The occupation of schools by Israeli troops has been a common occurrence during the uprising. Al-Haq estimates that during 1989 at least 36 schools were occupied for use by the Israeli military as either make-shift detention centers or temporary military bases or both.⁶⁹ Among the schools occupied were the following:

- (1) Shweika Secondary Girls' School in the village of Shweika in the district of Toulkarem (10 February–15 February 1989);
- (2) Al-Husein Ibn-Ali Secondary School in Hebron (7 February–21 February);
- (3) Qabatiya Secondary Boys' School, in the town of Qabatiya in the Jenin district (23 March–18 July 1989; 9 August–22 August 1989);
- (4) Ya'bad Secondary School in the village of Ya'bad in the Jenin District (3 June 1989–26 June 1989);

- (5) Thinnaba Secondary School in the village of Thinnaba in the Toulkarem district (2 July-4 July 1989).

To the best of al-Haq's knowledge, the Israeli authorities have not offered a specific rationale for such actions.

Al-Haq has documented cases of military vandalism of occupied schools as well.[†] These schools included the 'Anabta public school complex (which houses an elementary, preparatory, and secondary school), the Huwwara Secondary Boys' School in the village of Huwwara in the Nablus district, and others.⁷⁰ Al-Haq fieldworkers found broken windows, desks, chairs, closets, and laboratory equipment; doors pulled off their hinges; large holes dug as garbage pits in the front yards; books ripped up; and school papers dumped in heaps outside the school building.

Moreover, al-Haq found human excrement with used toilet paper inside school buildings, where apparently the floors of rooms and hallways had been extensively used as toilets despite the fact that bathroom facilities were available. For example, in the 'Anabta school complex, hallways and rooms were used as toilets, as well as the floor of the school's bathroom facilities. The toilets, located in separate stalls, were found clean and apparently unused.⁷¹ In addition, several school administrators have reported to al-Haq that following the occupation of schools by the Israeli military, books and sports equipment have been missing.⁷²

The occupation of schools and the destruction of school property are clear violations of international humanitarian law. Article 56 of the Hague Regulations expressly prohibits "all seizure of, destruction or willful damage [of] institutions dedicated to . . . education."⁷³ This is a minimum standard which must be accommodated irrespective of the circumstances. Therefore, security needs do not excuse the breach of this provision.

E. Military Raids on Schools

Security is also relied upon to justify military raids on schools, particularly the use of tear gas inside school buildings. On this issue, the Israeli Ministry of Justice reportedly stated that tear gas is fired into "... schools . . . in an effort to force rioters out of buildings where they have hidden after violently attacking IDF soldiers."⁷⁴

Between 23 July and 15 November 1989, when West Bank schools were open, al-Haq received numerous reports concerning Israeli military harassment of school children and attacks on schools with tear gas and rubber bullets.[§] In some cases schools were quiet when these attacks occurred. For example, according to Muhammad Samih Mas'ad, the principal of the UNRWA elementary school in Jenin Refugee Camp, his school has been subject to unprovoked harassment and attack by Israeli soldiers on at least two occasions. The first of these occurred at 10:00 a.m. on 8 August 1989, during the morning recesses. According to a sworn statement taken from Mr. Mas'ad by al-Haq:

[†]See further Appendix 13-E.

[§]See further Appendix 13-G.

[W]hile I was standing with the other teachers among the pupils in the courtyard of the UNRWA Schools in Jenin Refugee Camp, I saw a Border Police vehicle stopping behind the wall of our school. I saw three [Border Police] jump out of the jeep and climb the wall of the school. They sat on the edge of the wall with their faces toward the pupils. The pupils began to whistle and shout. Then the soldiers ordered me and some of my fellow teachers to approach them. One of the soldiers spoke to us in good Arabic. He said: "If any boy shouts or throws stones, I will open his ass and fuck him." He repeated these obscene words several times. Then he said to us: "Next time I will call you there." He said this while pointing with his finger towards the nearby Military Governor's building in Jenin.⁷⁵

The soldiers left shortly thereafter. The second incident occurred two days later on 10 August 1989. On that date five students were injured by rubber bullets shot by Israeli soldiers into the school yard:

[D]uring the recess period, I noticed a military jeep stop behind the wall of the school, and I saw a soldier pointing his gun toward the pupils who were at that time in the courtyard. Soon I heard the sound of shooting and at the same time, I saw . . . that one boy had fallen on the ground. I walked towards that boy and found that he had been shot in the leg with a rubber bullet. Then I noticed that another boy was shot in his hand [also by a rubber bullet] and was told that three other boys were wounded in their hands and legs, again by rubber bullets. A few minutes later, I walked toward the main gate when I saw that the soldiers were trying to jump over it. I opened the gate for them and told them that I was shocked at their behavior. However, they did not listen to me

. . .⁷⁶

According to Mr. Mas'ad, the military remained on the school premises for another 15 minutes. They entered the school building, cursed the teachers and students, and broke a desk. They did not arrest any of the students.⁷⁷

There have also been cases where schools have been tear-gassed in confrontations which erupted during search and arrest operations by the Israeli military in a particular town or village. For example, on 22 July 1989, tear gas was shot into the Beit Fajjar girls' school near Bethlehem during a clash between the Israeli army and village residents after the military entered the village. Twenty school girls were later treated for tear-gas inhalation.⁷⁸

In other cases, military raids on schools have followed demonstrations outside school grounds. The use of force in these instances is often excessive in proportion to the activities taking place.[¶] For instance, at approximately 7:30 a.m. on 2 January 1989, soldiers shot rubber bullets and tear gas at the Shu'fat Preparatory Girls' School in East Jerusalem, after a demonstration by some of the students which had taken place off school grounds had dispersed. The demonstration broke up when the students were confronted by soldiers and some students returned to the school. No arrests were made at the school.⁷⁹ In a sworn affidavit taken by al-Haq, a student reported:

The policemen and borderguards shot rubber bullets and tear-gas canisters at the school. The tear-gas canisters came through the window, so I and other

[¶]See further Chapter One, "The Use of Force."

students in the classroom could not breathe. We could not sit in the classroom because of the tear gas, so we moved to the corridor and then to other rooms, but the tear gas spread everywhere.⁸⁰

On the same date, following the same demonstration, soldiers broke into the Shu'fat Secondary Boys' School, beat a large number of the students, and arrested approximately 15 boys. The following is an account by one of the students at the school:

[P]olicemen and soldiers entered the school. They went into the classrooms and beat me and other students with their hands and clubs. They chose approximately 50 students, including me, and took us to a store room, pushed us in and beat us again there. Following that, 15 students were chosen from the group, accused of throwing stones and arrested.⁸¹

The facts of these cases indicate that military raids on schools, including the use of tear gas inside of school buildings, was not necessary for the maintenance of public order. In these, and other cases, tear gas has been shot into schools after protesters have dispersed. The use of tear gas and rubber bullets against the whole student body, as well as faculty, constitutes collective punishment. It should be noted that manufacturers instructions warn that the use of tear gas in confined areas can be fatal.⁸²

Military raids on schools are regulated by general principles of international humanitarian law which restrict the use of force against civilian objects. At the heart of these principles is the rule that the amount of force used should be in proportion to the incidents taking place. The indiscriminate use of tear gas and rubber bullets against school children who were not engaged in any activity or against an entire student body after a demonstration had been dispersed, cannot be justified on the basis of this rule. Similarly, deadly force—of any sort—cannot be used to repel force which is non-life threatening.

Summary

The repression of education by the Israeli military authorities has been widely criticized by the international community. In May 1989, for example, the European Community called on the Israeli government to reopen schools.* In his address to the American-Israel Public Affairs Committee of 22 May 1989, the United States' Secretary of State, James A. Baker III, also urged the Government of Israel to reopen schools. It appears that these and other protests helped to bring about the reopening of West Bank schools in July of this year. However, as shown above, schools were once again ordered closed in November, and the 1988-1989 school year was reduced to approximately four months. Palestinian post-secondary institutions remained closed throughout the year despite urgings on the part of the European Community that they be reopened.

The prolonged closure of Palestinian educational institutions disregards Israel's legal obligation to make education available to the Palestinian population living under

*See further Appendix 13-D.

its occupation. The restrictions on education force the conclusion that the goal of these measures is to regain control over the civilian population through collective punishments which deny Palestinian children and young adults the right to learn.

Education has long been considered a fundamental right, essential for the development of all societies. The Universal Declaration of Human Rights states in Article 26(1):

Everyone has the right to education . . . Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.⁸³

Al-Haq has been deeply concerned about the implications of long-term school closures and shortened school years. The repression of schooling by the Israeli authorities is emptying the right to education of all real meaning. Furthermore, the failure of the Israeli High Court of Justice to consider the issue of long-term school closures leaves Palestinians in the Occupied Territories without local recourse.

The international community has shown its concern regarding the principle of education. This principle is not served by the opening of schools under pressure and their renewed closure soon thereafter. Nor is it served by creating an exception to the legal definition of a "school year." Given this response to international criticism by the Government of Israel, it is clear that international protest must be more sustained and comprehensive to safeguard the basic right of Palestinians under occupation to an education.

Endnotes to Chapter Thirteen

1. The school and university closures cited in this chapter were documented by al-Haq fieldworkers, whose information was supplemented by reports in the Palestinian and Israeli press.
2. Joel Greenberg, "Confrontation Looms Between UNRWA and Civil Administration," *Jerusalem Post*, 30 November 1989.
3. Joel Greenberg, Michal Sela, "Stone Throwing Leads To 2 Killings in Areas," *Jerusalem Post*, 11 December 1989.
4. See for example "European Community Statement on the Situation of Schools and Universities in the Occupied Territories," 6 October 1989, cited in *al-Fajr Jerusalem Palestinian Weekly*, 16 October 1989.
5. The repression of academic activity has met with widespread public opposition from the Palestinian community. Student groups, parents, and teachers have all issued statements demanding the reopening of schools. See for example the editorial "Open Schools and Institutions of Higher Education," *Al-Quds*, 2 July 1989; Lara Abou-Shibaya, "An Open Letter to Israeli Students," *al-Fajr Jerusalem Palestinian Weekly*, 10 July 1989; Council For Higher Education, "Urgent Message From Palestinian Universities," 22 September 1988.
6. David Horowitz, "PLO, Islamic Extremists Blamed For Deaths of Rioting Children," *Jerusalem Post*, 1 December 1989. Several months earlier, Minister of Defense Yitzhak Rabin described schools as "rallying points for incitement and violence." See Marcia Kretzmer, "Rabin: 'Hostile Elements' Keep West Bank Schools closed," *Jerusalem Post*, 17 May 1989.
7. For an examination of school closures during the 1987-1988 academic year, see Al-Haq, *Israel's War Against Education in the Occupied West Bank: A Penalty for the Future* (Ramallah: Al-Haq, 1988); Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988), pp. 295-317; The Jerusalem Media and Communication Centre, *Palestinian Education: A Threat to Israel's Security? The Israeli Policy of School Closures in the Occupied West Bank and Gaza Strip, December 1987-January 1989* (Jerusalem: JMCC, 1989).
8. Khalil Touma, "Israel Cuts Palestinian School Year Short," *al-Fajr Palestinian Weekly*, 6 November 1989.
9. Al-Haq Database Report.
10. Joel Greenberg, "All Goes Smoothly as Schools Reopen in West Bank," *Jerusalem Post*, 23 July 1989.
11. Interviews with government school teachers in the West Bank, August 1989.
12. Joel Greenberg, "Intifada Leaders Call Week-Long Strike," *Jerusalem Post*, 17 August 1989.
13. Joel Greenberg, "Palestinians Say Civilians Shot 4," *Jerusalem Post*, 24 February 1989.
14. Al-Haq Fieldwork Report.
15. *Al-Quds*, 5 April 1989 (in Arabic).
16. Al-Haq Fieldwork Report.
17. Five of the six major universities in the Occupied Territories (Bir-Zeit University, al-Najah National University, Hebron University, al-Quds (Jerusalem) University and the Islamic University in Gaza) were closed in January 1988, and therefore were already shut at the time the collective closure order was issued. The sixth, Bethlehem University, had been closed in October 1987. It opened for one day in February 1988 and was then reclosed. Thus, by 3 February 1988, every university, community college and vocational training institution in the Occupied Territories was closed "until further notice."

Closure orders were renewed on a monthly basis until August 1988, when all colleges and universities were informed (via the press) of an extension of their closure until 1 October 1988 and thereafter "until further notice." On 30 September 1988 this order was extended to 15 November. When the military government announced that it would begin reopening schools

- on 1 December 1988, it specifically excluded universities, stating that they would remain closed for the foreseeable future. All post-secondary institutions in the Occupied Territories (with the exception of those in East Jerusalem) have remained shut since that time.
18. Joel Greenberg and Bradley Burston, "West Bank Schools to Reopen," *Jerusalem Post*, 18 May 1988.
 19. Bir-Zeit University Public Relations Office, *The Criminalization of Education: Academic Freedom and Human Rights at Bir-Zeit University During The Palestinian Uprising* (Ramallah: Bir-Zeit University, 1989), p. 15.
 20. Interviews with teachers and students.
 21. Joel Greenberg, "UNRWA Teaching Programs Barred In W. Bank," *Jerusalem Post*, 30 March 1989; "Israel Blocks UNRWA Education Effort," *Al-Fajr Jerusalem Palestinian Weekly*, 3 April 1989.
 22. Joel Brinkley, "For West Bank Arabs, Education Has Been Deemed a Criminal Act," *New York Times*, 8 May 1989.
 23. Glenn Frankel, "Long Recess for West Bank Schools," *Washington Post*, 22 November 1988.
 24. Bir-Zeit University, *The Criminalization of Education*, pp. 14-15.
 25. Joel Greenberg, "Police Break Up 'Illegal' Studies," *Jerusalem Post*, 19 April 1989.
 26. *Ibid.*
 27. Bir-Zeit University, *The Criminalization of Education*, p. 15.
 28. *Ibid.*
 29. *Al-Sha'b*, 2 September 1989 (in Arabic).
 30. Brinkley, "For West Bank Arabs."
 31. Interviews with West Bank school teachers and administrators.
 32. *Ibid.*
 33. Interview with UNRWA elementary school teacher.
 34. Interviews with West Bank elementary school teachers.
 35. Interview with director of a private Catholic school.
 36. "In Dialogue with *al-Quds*: Khalil Mahshi, Principal of the Friends Boys' School, Ramallah." *al-Quds*, 7 August 1989 (in Arabic).
 37. Interview with West Bank preparatory school teacher.
 38. *Al-Fajr Jerusalem Palestinian Weekly*, 6 November 1989.
 39. The General Committee of Teachers in the Government Schools in the West Bank (GCTGSWB), "Memorandum Concerning the Educational Situation in the Government Schools in the West Bank, 1988-1989," p. 3.
 40. Marcia Kretzmer, "West Bank Schools: A Battle of Wills," *Jerusalem Post*, 14 June 1989.
 41. GCTGSWB, "Memorandum," p. 2.
 42. Bir-Zeit University, *The Criminalization of Education*.
 43. Interviews with school teachers and administrators.
 44. GCTGSWB, "Memorandum," p. 1.
 45. Bir-Zeit University, "Emergency Briefing Paper, Taxation As Punishment: The Case of Bir-Zeit University," (January 1989), p. 1.
 46. *Ibid.*
 47. Bir-Zeit University, *The Criminalization of Education*, pp. 19-34.
 48. For an in-depth discussion of the relevant local and international laws protecting education see Al-Haq *Punishing a Nation*, pp. 301-306.

49. Al-Haq, "The Order Closing All Educational Institutions Until Further Notice is Illegal and Should be Revoked," 23 January 1989.
50. *Jerusalem Post*, 19 June 1989.
51. Article 91(a)(2), M.O. 378.
52. Article 43, Hague Regulations.
53. *The Christian Society for the Holy Places vs. The Minister of Defense et. al.* (H.C. 337/71), p. 8 (in Hebrew).
54. Meir Shamgar, *Military Government in the Territories Administered by Israel, 1967-1980* (Jerusalem: The Hebrew University Press, 1982), p. 28.
55. *Ibid.*
56. This principle was clearly articulated by Israel High Court Justice Moshe Landau in *Hila vs. The Government of Israel* (H.C. 302/72):

[T]his court will examine the legality of administrative activities in the territory under the military government in accordance with customary international law . . .
57. Articles 10-12, Jordanian Education Law No. 16.
58. *Ibid.*, Article 112. See further Al-Haq, *Punishing A Nation*, pp. 302-304.
59. GCTGSWB, "A Letter To Public Opinion," 25 June 1989.
60. These were M.O. 1258 ("Order Regarding Education Stipulations, Scholastic Year 5748") (Temporary Instructions), issued 11 November 1988, and "Order Regarding Educational Matters, School year 1988/1989" (unnumbered), issued 12 November 1989.
61. Article 112, Education Law No. 16.
62. *Ibid.* Article 2 (2).
63. *Al-Fajr Jerusalem Palestinian Weekly*, 6 November 1989.
64. *Ibid.*; Interviews with West Bank teachers.
65. Jordanian Education Law No. 16.
66. Although the Israeli authorities have not raised this issue, the ban on the administration of educational institutions, included in the March 1989 school closure order, might be interpreted as prohibiting alternative education programs, although it does not specifically refer to educational activities off school grounds. However, the distribution of homework, the teaching of make-up classes, as well as other alternative education programs can be carried out without "administering" an educational institution. Furthermore, the prohibition against administering schools and universities was issued on the basis of M.O. 378, which, for the reasons enumerated above, cannot be used to prohibit the administration of schools and universities during prolonged closures.
67. Order Regarding Illegal Organizations, issued 18 August 1988.
68. Martha Roadstrum Moffett, *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories* (Ramallah: Al-Haq, 1989).
69. Al-Haq Questionnaires and Fieldwork Reports.
70. Al-Haq Fieldwork Reports.
71. Al-Haq Fieldwork Report, 16 July 1989. The Israeli military evacuated from the school on 14 July 1989.
72. Al-Haq Affidavit No. 1913. Full text reproduced in Appendix 13-E.
73. Article 56, Hague Regulations.
74. David Horowitz, "PLO, Islamic Extremists Blamed For Deaths of Rioting Children," *Jerusalem Post*, 1 December 1989.

75. Al-Haq Affidavit No. 2028.
76. *Ibid.*
77. *Ibid.*
78. Al-Haq Fieldwork Report.
79. Al-Haq Affidavit No. 1599.
80. *Ibid.*
81. Al-Haq Fieldwork Report.
82. Al-Haq, *Punishing a Nation*, pp. 27-31.
83. Article 26(1), UDHR.

Appendix 13-A

School Closures: The 1988–1989 Academic Year

The West Bank

- 1 September 1988:** The military government announced that West Bank schools would remain closed until 1 October 1989. Pursuant to this announcement, all West Bank schools, including kindergartens, were not permitted to begin the 1988–1989 school year. The Israeli military authorities had previously, on 21 July 1988, ordered schools to end their second semester and register grades, although the 1987–1988 school year had not yet been completed.¹ At that time the Israeli authorities gave 18 September 1988 as the reopening date.
- 30 September 1988:** The order closing all West Bank schools was extended. The new opening date was set for 15 November 1989. An exception was made for kindergartens, but all other schools remained closed.
- 15 November 1988:** The Israeli military authorities extended the closure of all schools except kindergartens until 1 December.
- 1 December 1988:** Elementary students in the West Bank were permitted to resume classes. By that time these students, aged six through 12, had been out of school for at least four and a half months. Moreover, prior to this period of closure, elementary students had only had 47 days in school.²
- 11 December 1988:** West Bank preparatory schools were reopened by the Israeli military authorities. However, a number of schools could not reopen due to curfews in their area. For example, both Balata Refugee Camp in the Nablus district and the village of Kufr Ni'mah in the Ramallah district continued to be under curfew on this date.³
- 18 December 1988:** Secondary students returned to school to begin the 1988–1989 school year. Again, curfews meant that many schools could not resume classes. The entire city of Nablus, for example, was under curfew on 18 December 1988.⁴
- 30 December 1988:** Less than two weeks after all students were back in school, the military government ordered all West Bank schools, including kindergartens, closed for one week beginning 31 December 1988. This closure order was extended on 5 January 1989 until 10 January 1989.
- 20 January 1989:** All West Bank schools were ordered closed “until further notice.” By 19 January 1989, according to a civil administration spokeswoman, 89 schools in the West Bank had been individually closed.⁵ A press release issued by al-Haq on 23 January 1989 noted that “the closure of all schools on January 20, 1989 for an unspecified period suggests that the civil administration of the Israeli military government has no intention of reopening West Bank schools in the near future.”⁶ The order closing schools was renewed on a monthly basis

until July 1989, when the Israeli authorities announced that they would begin a scheduled reopening of schools in the West Bank.

- 22 July 1989:** After a seven-month closure, elementary school students and students preparing for their matriculation (“*tawjihi*”) examinations were permitted to resume the 1988–1989 school year.
- 2 August 1989:** Preparatory schools were reopened permitting approximately 69,000 students aged 12–15 at 324 schools to resume classes.
- 30 August 1989:** The last pre-matriculation secondary school students, aged 15–17, were permitted to go back to school. All students were back in school.
- 1 September 1989:** By this date, 23 West Bank schools had been individually closed by the Israeli military authorities since schools were reopened in July 1989.⁷
- 5 October 1989:** Eighteen schools in Nablus were closed for one day. According to the *Jerusalem Post* this action was one of several taken by the Israeli army “in preemptive moves aimed at blocking unrest.”⁸
- 14 November 1989:** All schools were ordered to end the 1988–1989 school year by this date pursuant to a military order issued on 30 October 1989. At the time the order was issued 25 schools were already closed by the military.

East Jerusalem*

- 4 September 1988:** Kindergartens, first, and second grades began the 1988–1989 school year. The opening of all other government school classes was postponed. (Private schools were not included in the order postponing the start of the school year. They opened during the second week of September.)
- 19 September 1988:** Third-graders were permitted to begin classes in the government schools in East Jerusalem.
- 27 September 1988:** Classes opened for children in the fourth grade in government schools.
- 5 October 1988:** The students in the fifth and sixth grades, as well as those in preparatory and secondary schools, were permitted to begin the 1988–1989 school year.
- 30 October 1988:** All government schools in East Jerusalem were closed by military order. They remained shut until 3 November 1988.
- 12 November 1988:** All government schools were re-closed until 19 November.

*Both the East Jerusalem and the following Gaza Strip chronologies are intended to provide an indication of school closures and are not comprehensive.

3 January 1989: The Israeli authorities closed al-Rashidiyya Secondary Boys' School, one of the largest secondary schools in East Jerusalem. The school reopened on 23 March 1989, after three and a half months of closure.

17 January 1989: The Dar al-Aytam al-Islamiyya school was closed for one month. This school has been subject to repeated closures. The longest of these was for four months ending 2 July 1989.

24 January 1989: The Shu'fat Preparatory Girls' School and the Shu'fat Secondary Boys' School were closed for two weeks beginning on this date.

15 February 1989: The Frere preparatory and secondary schools (private Catholic schools in the Old City in East Jerusalem) were closed until 22 February after a Palestinian flag was raised from the roof of one of the school buildings.

6 March 1989: The Shu'fat boys' and girls' government schools for students, at all levels (elementary, preparatory, and secondary), were issued "indefinite" closure orders halting the education of the over 1,000 pupils who attend these two schools. The Jerusalem municipality was reported by the *Jerusalem Post* to have said the schools were closed because students "actively participated in disturbances and disrupted studies in the school."⁹ The schools were reopened in stages: first through fourth graders went back to school on 10 April 1989; fifth- and sixth-graders, preparatory students and secondary students went back to school on 16 May 1989, following a closure of 70 days.¹⁰

19 April 1989: The Fata al-Laji'a schools (both A and B) were ordered shut for one month. They reopened on 20 May 1989.

June 1989: All Jerusalem schools held final exams and went on recess.

Gaza Strip

1 September 1988: Gaza UNRWA, government, and private elementary schools and kindergartens began the school year. The Israeli military postponed the opening of preparatory and secondary schools.

20 September 1988: All preparatory schools in Gaza were permitted to reopen.

11 October 1988: Secondary schools in the Gaza Strip reopened. These schools were originally scheduled to open on 1 October, pursuant to the September order postponing the beginning of the school year. The reopening date was postponed on 1 October 1988.

30 October 1988: According to the local press at least eight Gaza schools were closed during the last week of October. These included two elementary schools (boys' and girls') in Rafah, three UNRWA schools in Khan Younes, and three other boys' schools in Gaza City.¹¹

- 12 November 1988:** All schools in the Gaza Strip were closed for five days due to a comprehensive curfew imposed on the Gaza Strip between 12 and 16 November 1988.
- 1 December 1988:** The military authorities ordered the Beit Hanoun Secondary Boys' School closed for an "indefinite" period beginning on this date.
- 13 December 1988:** The entire Gaza Strip was placed under curfew preventing Gaza's approximately 175,856 students from attending school.
- 11 January 1989:** The Education Officer in the Gaza Strip announced that the Israeli Civil Administration would shortly reopen eight out of nine schools which had been closed by the authorities for an "indefinite" period.
- 16 January 1989:** *Al-Sha'b* newspaper reported that on this date the head of the Civil Administration in Gaza threatened to close all Gaza schools until the end of the academic year if students "organize any further demonstrations."¹²
- 5 February 1989:** Al-Rafiden Girls' Secondary School was ordered shut for an indefinite period of time. On this date at least two other Gaza Strip schools remained closed.
- 18 February 1989:** The Israeli authorities shut the Khan Younes UNRWA preparatory school "until further notice." The school was not reopened until 4 April 1989.
- 19 February 1989:** The boys' and girls' preparatory schools in Beit Hanoun were closed on 19 February, also for an "indefinite" period of time. They were reopened on 7 April 1989.
- 22 February 1989:** The Falastin Secondary Boys' School in Gaza City, the Ibn Sina Secondary Boys School, and the Salah-al-Din UNWRA Preparatory School were all closed "until further notice." They were not reopened until 4 April 1989.
- 21 March 1989:** The Rafah Secondary Girls' School was closed for an "indefinite" period of time. At that time, at least 12 other Gaza Strip schools were closed "until further notice." Eight of these schools are public schools and five are administered by UNRWA.
- 15 April 1989:** The entire Gaza Strip was again under curfew, halting classes in the more than 250 schools in the Gaza Strip for two days.
- 20 April 1989:** In Gaza City, al-Furat Preparatory Boys' School and al-Furat Secondary Boys' School were both shut by military order. They were reopened for two days on 2 May 1989 and then re-closed.
- 31 May 1989:** The Khawla al-Azwar Girls' Elementary School was closed until further notice. During April and May at least 13 schools in the Gaza Strip were closed for varying periods of time.

3 June 1989: The entire Gaza Strip was placed under curfew until 11 June. Final examinations for the school year were given later that day.

References

1. Al-Haq, *Punishing a Nation*, p. 311.
2. JMCC, *Palestinian Education*, p. 6.
3. Joel Greenberg, "Three Soldiers, 20 Palestinians Injured," *Jerusalem Post*, 12 December 1988.
4. Joshua Brilliant, Joel Greenberg, "3 Killed in Areas Clashes," *Jerusalem Post*, 19 December 1988.
5. Michal Sela, Joel Greenberg, "One Dead, 34 Injured in Areas Clashes," *Jerusalem Post*, 20 January 1989.
6. Al-Haq, "The Order."
7. Al-Haq Fieldwork Reports and information culled from the local Arabic and English-language press. On 9 September 1989, the Jerusalem Media and Communication Center reported that 27 schools in the West Bank had been closed. See JMCC, "Weekly Report: 3 September-9 September 1989," p. 4.
8. Joel Greenberg, "Youth Killed in West Bank, 'Collaborator' Slain in Gaza," *Jerusalem Post*, 6 October 1989.
9. Joel Greenberg, "Seven Palestinians Wounded As Army Combs Nablus Casbah," *Jerusalem Post*, 6 March 1989.
10. *Al-Quds*, 16 May 1989 (in Arabic).
11. JMCC, "Weekly Report: 23 October-30 October 1988," p. 4.
12. *Al-Sha'b*, 17 January 1989, cited in JMCC, "Weekly Report: 16 January-22 January 1989," p. 4.

Appendix 13-B

Military Closure Order of 17 March 1989

[Unofficial Translation]

In accordance with the authorities vested in me by clause 91(A)(2) of the Order Concerning Security Instructions (Judea and Samaria) [M.O. 378 of 1970], and whereas I believe that the order is necessary for maintaining discipline and order, and in order to maintain the safety of the IDF, I therefore order the closure of all educational institutions in Judea and Samaria. This order will apply to all government, private, and UNRWA schools and universities with effect from 20 March 1989 until 19 April 1989.

Supervisors of these institutions should keep them closed and not administer them during the abovementioned period.

This order does not apply to kindergartens.

(Signature)

SGD. Kabi Offir
Military Commander Judea and Samaria Districts

17 March, 1989.

Appendix 13-C

Military Order Concerning Education of 12 November 1989 [Unofficial Translation]

ISRAEL DEFENSE FORCES

Order Regarding Educational Matters

In accordance with the authority vested in me in my capacity as the Commanding Officer in the Area and in accordance with the special circumstances prevailing in the area, and whereas education has not been operating regularly, and for the interest of the local residents, and in order to secure discipline and order in the area, I hereby order the following:

School year 1988/1989

1. In spite of the provisions of Law No. 16 for the year 1964, we recognize the educational period between December 1988 and November 1989 as a full school year.

Special Authority

2. (a) The Education Officer in the Military can specify the following matters related to education in the school year 1988/89.
 1. Fixing the date for final examinations and even the semester examinations.
 2. Substituting examinations by estimation of final marks.
- (b) All instructions mentioned in (a) above may be general or specific to some schools.

Publication

3. All instructions in section (2) above are published according to the discretion of the Education Officer.

Date of Enforcement

4. This order will be put into force as of the date of its signature.

Title

5. The title of this order is "Order Regarding Educational Matters" (School year 1988/89) (Temporary Instructions) (Judea and Samaria).

(Signature)

General Yitzhak Mordachai
Officer in Charge of the Central Command, 12 November 1989.

Appendix 13-D

European Political Cooperation: Press Release

Statement by the Twelve [Member States of the European Community] on the Closing of UNRWA Schools in the West Bank:

The Twelve express their serious concern about the persistent decision of the Israeli authorities of keeping schools closed in the West Bank, including the UNRWA schools. The Twelve consider that this measure, which is contrary to the basic right to education, threatens the future of a whole generation of young Palestinians and contributes to increase the level of tension in the Occupied Territories, thus obstructing the task of building confidence which, in the view of the Twelve, is essential if the peace process is to prosper. The Twelve, therefore, call again upon the Israeli authorities to reconsider their policy urgently.

(Madrid, 31 May 1989)

Appendix 13-E

Vandalism of School Premises by Military

Translation of Sworn Affidavit No. 1913 Taken by al-Haq

I the undersigned, Muhammad 'Ali Saleh Ayyoub, 27 years of age, a resident of 'Askar Refugee Camp in the Nablus district and an employee of al-Haq, having been warned to state the truth or be subject to criminal liability, hereby state as follows:-

On 8 July 1989, I went to Huwwara village near Nablus to visit the boys' secondary school which had been occupied by Israeli soldiers for more than twenty days, since the beginning of June. This is not the first time that the school has been occupied by the Israeli army: it has been taken over several times in the past. The purpose of my visit was to have a close look at the damage and destruction wreaked by Israeli soldiers on the school.

I arrived at the school at around 9:30 a.m. . . . The first thing I noticed was that the main iron gate of the school was off its hinges, and had been thrown aside by the wall of the school . . . I walked toward the school building which consists of three floors. There are twenty rooms in the building, in addition to a room for sports equipment and a large laboratory. There is also an asphalt courtyard and several small, unpaved courtyards, and a toilet. I took a quick look at these, and then went up the stairs to the first floor, where I met one of the school officials who preferred not to give his name. I asked this official to accompany me around the school so I could have a look. He led me to the roof of the school. There I saw a large number of broken desks and bulletin boards that had been destroyed. These bulletin boards were supposed to be on the ground floor. I was told that a large number of these desks had been collected from the courtyard where they [had landed after being] thrown from the roof of the building.

We then went down to the third floor, where . . . all the windows in the classrooms were smashed or broken, and the walls stained with tea, coffee, and chocolates. I went into the library which was on the third floor, and saw a number of workers trying to clean the broken glass and replace it with new glass. I saw a number of torn books; some of the volumes' covers were displaced. The principal of the school told me that a large number of library volumes, such as the Encyclopedia of Human Anatomy, were missing. In addition to this, several shelves in the library which had been designated for a scientific encyclopedia were completely empty, and I was told that two new tables and a number of chairs had gone as well. As I looked to discover how the soldiers could have got into the library, I noticed that the lock of the library door was missing. As I was leaving the library and going down the stairs to the second floor, I noticed that the plant pots had been scattered near the stairs, with nothing in them except earth.

The situation on the second floor was similar to that on the third floor; the windows were either broken or smashed, and many of the iron doors were broken. The walls were stained with different kinds of liquids. The administration office was on this floor according to what I was told . . . I noticed that the room had been raided by the soldiers, and that as a result its locks had been destroyed. As I entered the room,

I was shocked by the stench emanating from it. When I looked down at the floor of the room, I noticed a load of dirt and the remains of excrement scattered all over the area since the room had not yet been cleaned. Some fine paintings had been thrown onto the floor. As I looked at the shelves, I noticed that a number of sports trophies were there, but that their bases had been destroyed. These trophies are very special since they are considered an object of pride by both the teachers and the students. The telephone set and two couches were missing from the room.

I quickly left the administration room and went to the ground floor. There I noticed that several trees in the courtyards had been cut down, and in other areas the branches of trees had been cut as well. I went round the school courtyard and noticed that the wooden boards of the basketball yard had been partly destroyed: the poles and volleyball net had been thrown into the dirt, and I noticed a large pit in the school courtyard. There were heaps of rotting rubbish consisting of the remnants of food, cans, and Hebrew newspapers; in addition, excrement was scattered all round the back of the school area, [constituting] a health hazard. I went to the sports room, and noticed that it had been raided. It was hard to believe that this was a sports room after seeing its condition. They had opened the wooden cupboards, and emptied them completely, in addition to which a number of fine sports drawings had been destroyed leaving only small bits intact. The floor of the room was covered with broken glass. The school official informed me that a large number of balls and other sports equipment were missing, including sportswear and shoes. In addition, a number of rackets had been smashed. After my visit to the sports room, I asked the official to take me to see the laboratory, but he told me that he had ordered that the laboratory doors and windows be welded shut because the doors and windows had been destroyed, and he was fearful of a further raid by the Israeli soldiers . . . He informed me that a great deal of damage had occurred in the laboratory, which he estimated at JD 3,000 [\$US 4,200] because the equipment in this laboratory was the newest of all in the Nablus region.

Before I finished my visit, and while I was walking toward the gate, I noticed that most of the water pipes were broken and that the top of the water pump had been destroyed as well and, according to the official, was not operating. Beside the gate of the school, I saw a small room which . . . I was told was the cafeteria. I walked toward it, and saw that the door was [broken]. As I entered the room I was met with the same stench, the smell of the excrement which was all over the place. In addition, the remnants of food, Israeli cans, and Hebrew papers and magazines were thrown on a table in this room . . .

My visit was two weeks after the . . . [soldiers] had left the school, so that the school administration had done a lot of maintenance and cleaning-up in many areas of the school. Still, a lot of money and work is needed to prepare the school so as to be ready to accept pupils and become a decent and healthy educational center.

In accordance with all the above I hereby sign this statement on this date, 8 July 1989.

(Signature)

Name available for publication.

Appendix 13-F

Military Raid on a School

Translation of Sworn Affidavit No. 1999 Taken by al-Haq

I the undersigned, 'Abd-al-Karim Ahmad 'Abd-al-Karim Kana'an, 37 years of age, a resident of Toulkarem, and a fieldworker with al-Haq, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 10:05 a.m. on 7 August 1989, I was driving my private car near the southern entrance of Toulkarem city. I was accompanied by Ibrahim Shafiq Khader, aged about 32 years old. We were coming back from the village of Far'on, and, near al-Salam Preparatory School, I saw a Border Police patrol stop near the western wall of the school close to the school gate. I noticed five or six soldiers standing behind the wall and directing their weapons toward the school. A few moments after I had passed them, I heard a loud explosion. I guessed that someone had been injured, and that something was going on in the area. I stopped my car about a hundred meters from the school in a spot where I could see everything, and when I looked toward the school, I saw a huge cloud of smoke spreading inside it while the pupils and the teachers were still inside too. The explosion was repeated, and a big cloud of smoke filled the playground of the school after each explosion. I saw the soldiers running all around the walls of the school and aim their weapons towards it. Then I heard the sound of gunfire.

About ten minutes later I saw a number of people coming out of the school, and they stopped a private car which was heading down that street. Then the private car went towards the city. I saw then that a number of women were walking near the wall of the school and, by chance, I saw another Border Police vehicle reach the area. The vehicle soon stopped, soldiers jumped out, and rushed at the women, who ran towards their houses. I later saw an ambulance drive towards the school and park next to it. At that point, I decided to approach closer and pass by the school. So I took a look at it, but didn't see anyone in there as all the pupils and their teachers were in the classrooms, and the soldiers were standing in the main street beside the school. They stood a short distance away from the school, while another two soldiers ran around in the nearby fields.

I left the school and drove to the government hospital in Toulkarem. When I arrived at the hospital, I entered the clinic where I saw the doctors and a nurse were busy resuscitating a child. I asked about the cause of his injury, and they told me that the child had fainted as he had inhaled tear gas which was thrown at al-Salam Preparatory School earlier that day. About five minutes later, the boy's mother came to the hospital, and I learned that the boy's name was Muhammad 'Abd-al-Rahim al-Jallad, 13, and that he was in the first grade at ... The doctors then reassured the boy's mother about his condition, telling her that it was necessary to move the boy to his home in order to change his clothes which smelled strongly of tear gas. I took the child in my car to his home which was in the middle of the city, near the water tank ...

In accordance with all the above I hereby sign this statement on this date 9 August 1989.

(Signature)

Name available for publication

Chapter Fourteen

Religion

Introduction

The freedom to hold and practice religious beliefs is universally considered a fundamental human right. Article 18 of the Universal Declaration of Human Rights states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹

This chapter examines the record of the Israeli authorities in the Occupied Palestinian Territories during the second year of the uprising with respect to this basic right. Reference will also be made to the first year of the uprising because al-Haq did not examine the subject of religion in its 1988 annual report.²

Most of the cases documented by al-Haq and reported in this chapter are of violations against Muslim rather than Christian Palestinians. The reason for this is simply that the vast majority of Palestinians living in the Occupied Territories are Muslims.³ Additionally, Christian holy sites located within the Occupied Territories enjoy a modicum of protection due to the fact that they are of special importance to the international Christian community and are regularly visited by large numbers of pilgrims and tourists.

A. Obstruction and Harassment of Worship

During the uprising, the Israeli authorities have stressed the care taken by the military in entering and searching mosques. According to the *Jerusalem Post*, military officials have stated that:

The IDF very rarely searches mosques and weighs each decision to enter and search a mosque very carefully ... Only the most senior authorities can order a search. Once the decision is taken, an IDF representative enters the building together with representatives of the Civil Administration and of the mosque itself.⁴

In fact, al-Haq has documented a number of raids on mosques and harassment of worshipers which do not appear to be guided by these principles. The details of these incidents have been confirmed by reports compiled by the *Awqaf* (singular: *Waqf*, the charitable bodies that administer the property of the Islamic Trust in the West Bank and Gaza Strip). For example, on 18 March 1989, Fawwaz Muhammad Najib, 19, and his father, Muhammad Rabah Najib, 65, residents of the Sheikh Radwan district of Gaza City, were praying inside Sheikh Radwan Mosque. In a sworn affidavit taken by al-Haq, Muhammad Najib states:

[M]y son Fawwaz and I went to the mosque for the noon prayers. At approximately 12:00 noon, while I was inside the mosque, and before the prayers had started, I heard youths saying that there were soldiers present in front of the mosque. The worshipers paid no attention to them. The prayers started, and we performed the first prostration. My son Fawwaz was standing in the row behind me during the prayers. After we had bowed down and raised our heads, I saw a number of soldiers standing at the windows. They started shooting over the heads of the worshipers. People shouted "Allahu Akbar" ["God is greater"]. The soldiers wounded a number of youths who got up in panic.

Among those who were injured was my son Fawwaz. I only realized that my son had been injured after he was taken to hospital. I went to the hospital and was informed there that my son had been martyred.⁵

Another worshiper, Majdi Hasan Muhammad al-Ghourani, a 19-year-old high school student, was also killed in the same incident by soldiers while inside the mosque.⁶

Again, on 18 September 1989, 'Amer Ahmad Mansour was reportedly shot dead in Sheikh Zakariya Mosque in Gaza City by soldiers who later alleged that the cars they were riding in had been stoned. According to an eyewitness, Mr. Mansour was shot in the head inside the mosque while performing ablutions before the evening prayers.⁷

Similar incidents also occurred during 1988. On 16 January 1988, demonstrations erupted outside al-Aqsa Mosque in Jerusalem after Friday prayers.* Police and soldiers shot tear gas inside the mosque and attacked those who were at the site with clubs.⁸ And on the night of 12 May 1988, "[o]fficers entered the Temple Mount area and dispersed rioters with rubber bullets."⁹ That night, special prayers were performed commemorating the Muslim holiday of Leilat al-Qadr.¹⁰ The Church of the Holy Sepulcher was also reportedly the scene of similar police action. According to the *Jerusalem Post*, on 31 January 1988, at about 11:00 a.m., a peaceful march that was supposed to start at the Church of the Holy Sepulcher in Jerusalem, after the morning service, and head toward the Greek Orthodox patriarchate, was attacked by soldiers throwing tear-gas grenades outside the church. Witnesses added that policemen wielding clubs pushed and hit those present in the area, amongst whom were many women.¹¹

In addition to military raids, mosques have been prevented from operating through closure and the confiscation of their sound-systems. The Fourth Geneva Convention makes it clear that:

*Al-Aqsa Mosque in annexed East Jerusalem is the third holiest site in Islam after the cities of Mecca and Medina in Saudi Arabia.

The occupying power shall permit ministers of religion to give spiritual assistance to the members of their religious communities.

In reference to this article, the authoritative ICRC commentary on the Geneva Conventions states:

This is a fitting addition to the earlier provisions dealing with food, health, and hygiene; the spiritual needs of the population are taken into consideration in the same way as the material needs.¹²

However, as of 4 November 1989, 14 mosques in the Gaza Strip had been closed during the year by the Israeli authorities for periods of a minimum of seven days to a maximum of at least six and a half months.¹ The following example is typical: on 1 October 1989, the doors of al-Thafer Dimri Mosque in Gaza City, which serves at least 200 worshipers, were welded shut by soldiers;¹³ as of 4 November 1989, it was still closed. The closure has particularly affected a number of elderly people living near the mosque who are physically unable to get to another mosque due to the large distance they would need to travel.¹⁴ According to *Al-Quds* newspaper, the authorities had closed the mosque on the basis that stones were thrown from it.¹⁵

The closure of mosques is frequently justified on the grounds that stones have been thrown from the vicinity of the mosque. The civil administrator of the military government in the Gaza Strip, Arye Shiffman, reportedly told Muslim clerics in the Gaza Strip that "any mosque becoming a refuge for stone throwers would be closed."¹⁶ In al-Haq's view, such drastic measures are unwarranted and constitute collective punishment. It is perhaps indicative of the authorities' sensitivity to possible criticism that, in general, mosques are closed by oral rather than written orders issued by the military governor.¹⁷

In addition, the Awqaf estimate that about 80 percent of the mosque speaker-systems in the Gaza Strip have been confiscated at different times. Most of these systems were returned by the beginning of the Muslim month of Ramadan. As of 4 November 1989, however, seven loudspeakers had not yet been returned. The confiscation of mosque sound-systems by the military is also a common occurrence in the West Bank.¹⁸

For example, on 18 August 1989, at around 2:15 p.m., a group of about 30 soldiers headed towards one of the mosques in Ramallah and tried to break in through the door. According to a sworn affidavit taken by al-Haq, the soldiers were asked why they were trying to get into the mosque. The two soldiers who responded gave differing reasons: one said that there was a youngster who had thrown stones hiding inside the mosque; the other said that the clergyman of the mosque had given an inflammatory speech during the service. According to the statement, three of the soldiers then entered the mosque through a back entrance. Ten minutes later the witness saw them take the loudspeakers, the amplifier, a tape recorder, and some cassettes, and hand them to the soldiers outside. Then they left, taking with them the mosques' recording equipment.¹⁹

In addition to the abovementioned violations, access to holy places has often been blocked, especially during religious feasts, by the placing of checkpoints on roads

¹See further Appendix 14-A.

leading to villages and cities, and sometimes near the entrances to places of worship themselves. Furthermore, on several occasions soldiers have vandalized holy sites and property. Military Order (M.O.) No. 327, issued in the West Bank in April 1969, states:

Holy places shall be protected from any desecration or any other damage and from anything that might impede the free access of religious followers to their holy places or which might offend their sentiments towards these places.[†]

However, on 14 April 1989, the second Friday during the month of Ramadan, only 7,000 worshipers, instead of an anticipated 35,000, were allowed into al-Aqsa Mosque for prayers.²⁰ This measure was part of a policy announced by the Israeli authorities to "bar some Palestinians from praying at the mosque in Jerusalem."²¹ Similarly, on 2 May 1989, the military sent back many Palestinians who had come to al-Aqsa from all over the Occupied Territories to attend special prayers marking the revelation of the Qur'an to the Prophet Muhammad.²²

Similar restrictions occurred in the first year of the uprising during the holy month of Ramadan, when thousands of worshipers were turned back. On 13 May 1988, the last Friday of Ramadan, for example, only a limited number of worshipers were allowed to enter al-Aqsa instead of the 100,000 people that attended the same occasion in 1987.²³

On 27 April 1989, heads of Christian local churches issued a statement expressing their concern over the grave situation in the Occupied Territories. Concerning religion, they stated: "We demand that the authorities respect the right of believers to enjoy free access to all places of worship on the Holy Days of all religions."²⁴

Besides raiding and closing off mosques, Israeli soldiers have also vandalized the interiors of holy places. For example, on 27 March 1989, the *Jerusalem Post* reported that "a Golani Brigade soldier has been sentenced to 21 days in jail for daubing graffiti inside a mosque . . . at Kufr Salem, near Nablus, and painting over Koranic verses."²⁵ Again, on 5 June 1989, *Al-Fajr Jerusalem Palestinian Weekly* reported that: "The Israeli press reported May 28 that Israeli soldiers enforcing a curfew on the West Bank village of Deir Ballout, in the Tulkarm area, used pages of the Quran as toilet paper." An Israeli army spokesperson confirmed this but added that the soldiers did not know they were using the Qur'an.²⁶ The *Jerusalem Post* reported on 17 June 1989 that troops entered the Muslim shrine in Kufr al-Dik near Ramallah, during "a routine activity in the village," which was part of a military raid on several villages in the West Bank, and set fire to nine copies of the Qur'an.²⁷

In addition to soldiers, Israeli settlers have also attacked and vandalized places of worship. Such attacks by non-military, armed persons are absolutely unlawful. They have been launched in particular against the al-Ibrahimi Mosque in Hebron, as well as al-Aqsa in Jerusalem, both of which carry special religious and historical significance to both Muslims and Jews. In an incident on 18 July 1989, reported in the *Jerusalem Post*, West Bank settlers "burst into one of the halls at the Cave of Machpela in Hebron, threw aside Muslim prayer rugs and danced until troops forced them out . . ."²⁸ The Cave of Machpela, known as al-Ibrahimi Mosque, is used by

[†]See further Appendix 14-C.

both Jews and Muslims under elaborate sharing arrangements.

On 12 May 1989, a group of settlers attacked the mosque in the village of 'Abwein in the Ramallah district. According to Rabiha Yousef Suhweil, 54, a housewife and resident of the village, at about 9:30 a.m., while she was in her home located about 100 meters from the mosque, she heard a noise in the street and then saw about 15 to 20 persons dressed in civilian clothes and "kippas," carrying guns. She saw one of them draw the Star of David on the wall opposite her home. She then saw all of them pick up stones, run towards the mosque and throw them at the mosque, hitting its windows. She then heard shooting. After that she saw them come out of the door of the mosque and head toward the street that leads to the village of Jaljuliya.²⁹

B. The Disruption of Burial Rites

It has been a common practice during the uprising for the military to seize the bodies of persons it has killed on the pretext that this is necessary for a proper investigation of the death.[§] The return of the body is almost always made conditional on the family's acquiescence to certain restrictions, such as limiting the number of those attending the funeral to 15 people or less, and burying the body immediately upon its receipt. The body is usually returned after sunset. The practice of seizing bodies, and delaying the burial until after sunset, violates basic tenets of Islam concerning burial of the dead, which require that a deceased be buried before sundown. Generally, a curfew is imposed on the area at the time of the funeral and a heavy military force is present at and around the cemetery during the burial. Al-Haq estimates that this was the case in at least 70 percent of the burials of people killed during the first two years of the uprising. In addition, the house where the family and mourners are gathered is often raided by soldiers, who engage in vandalism and harass those present.

Al-Haq has also received reports of cases in which the authorities have seized the bodies of the deceased and buried them in a secret cemetery, near Jericho. The requisite prayers and religious rituals on the body are not performed, and nor are families informed of the burial or its location.

For example, at approximately 7:00 p.m. on 29 December 1987, Mustafa 'Isa Mustafa al-Bik from Jabaliya Refugee Camp in the Gaza Strip, died in Beer Sheva hospital where he had spent eight days receiving treatment after being shot in the head by soldiers. His body was immediately seized by the army and transferred to the Abou-Kbir Forensic Institute. At around midnight on 1 January 1988, the authorities agreed to return the body on condition that no more than 14 persons attend the burial. A large number of soldiers were present at the cemetery at the time of the burial.³⁰

On 19 March 1989, Nu'man Taha Muhammad Jaradat died in Rambam hospital in Haifa after being shot twice in the head by soldiers. After his father, Taha Muhammad 'Abed Jaradat, a 50-year-old driver and a resident of al-Sila al-Harithiyya in the district of Jenin, learned that his son had died, he requested that he might take the

[§]See further Chapter Sixteen, "Investigations."

body away. According to a sworn affidavit taken from Mr. Jaradat by al-Haq:[¶]

I requested those in charge of the hospital to give me the body but they refused, stating that they had not received permission from the police to do so. At about 6:00 p.m., I saw an ambulance which I later learned had been sent by the police. After the car had left the hospital, I was informed that my son's body had been transferred to the Abou-Kbir Forensic Institute. After that I returned back home.³¹

At 5:00 a.m. the next morning, a curfew was imposed on the village. On the morning of 21 March 1989, two days after his son's death, Mr. Jaradat went out to the street and spoke with a patrol officer; he told him that the family had not yet been given the body. The officer ordered Mr. Jaradat not to violate the curfew and await for a reply from the military government.

An hour later, Mr. Jaradat, accompanied by the head of the village council and his deputy, went to the Jenin police station demanding his son's body. He met with the military governor, who informed him that he would do his best to deliver the body to him. At about 4:00 p.m. that same day, Mr. Jaradat went to the Abou-Kbir Forensic Institute. He saw the body of his son, which bore the scars of an autopsy. He took the body in an ambulance to the village.

About 17 kilometers outside of Jenin, however, the ambulance was stopped by a military vehicle. It was redirected to the local military headquarters, where Mr. Jaradat was ordered to bring a Sheikh (Muslim clergyman) and a maximum of seven members of the deceased's family to perform prayers on the body at the military headquarters. Finally, at about 11:00 p.m., the body was allowed back to the village where it was interred in the presence of a large military detachment.³²

Another family from Jabaliya, that of Muhammad Ahmad Hasan Abou-Naser, underwent an even more traumatic ordeal when their son was killed on 28 July 1989. The body was immediately seized by the military. The family did not know where the body was, and were not even certain that their son had died. That same night, an intelligence officer in Jabaliya informed the family that their son had died, but his body was not given to the family. On the basis of this, the family decided to postpone receiving guests for the purpose of accepting condolences, in accordance with religious rituals and local customs, until they received the body. Mr. Abou-Naser's body was buried in the secret cemetery near Jericho by the military, without the presence of any family member.³³

The Abou-Naser family demanded that the body be exhumed so that they could identify it and bury it properly in accordance with religious requirements. After an appeal to the Israeli High Court of Justice, the family's lawyer, on 8 November 1989, obtained an order that the body be exhumed, that an autopsy be performed, and that the body then be returned to the family for burial. After the autopsy, a headless body was brought to the family to be buried at midnight. The family refused to bury it, not certain that it was their son's. After the intervention of the family's lawyer with the office of the Legal Advisor in Gaza, on 23 November 1989, the body was brought a second time for identification by the family, this time with the head sewn

[¶]See further Appendix 14-D.

on. At about 1:30 a.m. that night, the body was brought for burial, but neither the deceased's mother, wife, or any other women were allowed to attend the burial. The burial took place in a cemetery in Jabaliya that was not of the family's choosing.³⁴

Visiting the graves of those killed by the military on the first day of major feasts is also a religious duty in Islam. The Israeli military, however, has frequently imposed curfews over large areas of the West Bank and Gaza Strip during the first days of religious feasts.* For example, 13 July 1989 marked the first day of the Islamic feast of al-Adha. On that day a curfew was imposed on Nablus city and all its refugee camps, Jenin, Toulkarem Refugee Camp, Thinnaba village, and al-'Azza Refugee Camp near Bethlehem (a total population of approximately 175,000).³⁵ Not only did this curfew prevent relatives of the deceased from performing the religious duty of visiting their graves, they were also denied access to mosques for prayers marking the holiday.

Harassment of those mourning the loss of friends and relatives has also included violent raids of the deceased's house. (Consolation of the families of the dead for a period of three days after the death is a duty in Islam, as well as a tradition among Palestinians of all faiths.) The following is a representative example:

On 13 February 1989, the military raided the house of the deceased Amin Abou-al-Rab, who had been killed earlier that day in the village of Qabatiya, near Jenin. According to Wijdan Muhammad Abou-al-Rab, a 35-year-old housewife who was present during the raid, dozens of women and children were in the house when about 15 soldiers surrounded it an hour after declaring a curfew on the town. The soldiers ordered the mourners to leave the house. A soldier pointed his weapon towards the women and children and another threw tear gas canisters at them. Mrs. Abou-al-Rab and many others, including pregnant women, began to choke from the gas and some of them had to be treated in the hospital and clinics for excessive exposure.³⁶

Summary

Before the current Palestinian uprising, Israel was repeatedly condemned by the majority of members states of the United Nations for its disregard of the religious rights of the inhabitants of the Occupied Territories.³⁷ According to al-Haq's information, such violations appear to have increased in the wake of the uprising, and particularly during the last year. M.O. 327, mentioned above, clearly states:

Holy places shall be protected from any desecration or any other damage and from anything that might impede the free access of religious followers to their holy places or which might offend their sentiments towards these places.

The order further states that it is "[T]he duty of the competent authority ... to ensure the safeguarding of holy places ..."

The practices described above, however, demonstrate that the military authorities have not accorded holy places, and the sanctity of religion as a whole, the special respect and protection required under international and local law. Official statements regulating the conduct of the military vis-a-vis holy places appear, in practice, to have been ignored.

*See further Chapter Eleven, "Curfew and Other Forms Of Isolation".

Endnotes to Chapter Fourteen

1. These same protections, although expressed in somewhat different terms, are found in Article 18(1) of the International Covenant on Civil and Political Rights which was adopted by the General Assembly of the United Nations in 1976.
2. Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988).
3. According to figures obtained from the Christian Information Center in Jerusalem, Palestinian Christians constitute only about 2 percent of the population in the West Bank and Gaza, although the proportion of Christians living in the West Bank is considerably higher.
4. Kenneth Kaplan, "Weapons Cache Found in Gaza Mosque," *Jerusalem Post*, 24 August 1988.
5. Al-Haq Affidavit No. 1763.
6. Al-Haq Questionnaire No. 386/89.
7. Michal Sela, "Man Killed in Gaza; Security Prisoner Strangled by Cell Mates," *Jerusalem Post*, 20 September 1989. See also "UNRWA Says Army Using More Firearms," *Al-Fajr Jerusalem Palestinian Weekly*, 9 October 1989, and Al-Haq Fieldwork Report.
8. Andy Court, "Film Footage Seems to Show Tear-Gas in al-Aksa Mosque," *Jerusalem Post*, 24 January 1988. Although Israeli authorities at first denied that tear gas had been fired inside the mosque, on 24 January 1988, the *Jerusalem Post* reported that:

A Canadian Broadcasting Corporation television crew photographed Israeli policemen throwing what appeared to be tear-gas grenades into Jerusalem's Al-Aqsa Mosque during riots there last Friday.

Television pictures did indeed show what appeared to be tear-gas grenades being thrown into the mosque.
9. Andy Court, "Moslems March on Temple Mount," *Jerusalem Post*, 13 May 1988.
10. The occasion commemorates the revelation of the Qur'an to the prophet Muhammed.
11. Andy Court, "Christian Arab Protest Outside Church of Holy Sepulcher Ends in Tear Gas, Arrest of Marchers," *Jerusalem Post*, 1 February 1988. According to an al-Haq Fieldwork Report, early in June 1988, soldiers came to the Latin church (the Roman Catholic church) of Beit Sahour to remove a Palestinian flag hoisted on the church tower. They shot two tear-gas bombs outside the church and then smashed the church's newly-constructed wooden gate. Three nuns and a priest were inside the church at the time. The soldiers entered the church with their guns and clubs and headed toward the roof to remove the flag.
12. Jean S. Pictet (ed.), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 318.
13. Al-Thafer Dimri is one of the oldest mosques in the Gaza Strip, having been constructed during the twelfth century, and contains a special section for women.
14. Al-Haq Fieldwork Report.
15. "Closure of a Mosque in al-Shaja'iyya Quarter," *Al-Quds*, 2 October 1989 (in Arabic).
16. Joel Greenberg and Michal Sela, "Eleven-Year-Old Tulkarem Boy Killed in Stormy Day of Clashes with Rioters," *Jerusalem Post*, 23 March 1989.
17. Al-Haq Fieldwork Report. Usually, mosques are reopened through negotiations between the Awqaf and the civil administration.
18. In Islam, Muslims are required to pray five times a day at specific times that change every day. Worshipers know the right timing through the call to prayer from the loudspeaker of the local mosque. Praying can be performed at home or in the mosque with other worshipers, but praying in a group is preferable from a religious point of view.
19. Al-Haq Affidavit No. 2034. Full text reproduced in Appendix 14-B.

20. Ramadan is a month-long period of fasting that is a duty in Islam. These 30 days of fasting are considered the most significant days in the Muslim calendar, during which people come from all over the Occupied Territories to pray in Al-Aqsa Mosque.
21. Said al-Ghazali, "Israel Announces Strict Measures in al-Aqsa Mosque Area," *Al-Fajr Jerusalem Palestinian Weekly*, 17 April 1989. Mr. Al-Ghazali reports that Sheikh Muhammad Al-Jamal, deputy to the head of the Islamic Higher Council, protested that such measures were an absolute violation of the freedom of religion.
22. "Popular Intifada Concludes 17 Months," *Al-Fajr Jerusalem Palestinian Weekly*, 8 May 1989.
23. Andy Court, "Police, Moslems Face Off on Temple Mount," *Jerusalem Post*, 15 May 1988.
24. Statement made by the heads of the Christian communities in Jerusalem on 27 April 1989. The statement was signed by the Greek Orthodox Patriarch, Latin Patriarch, Armenian Patriarch, Custos of the Holy Land, Coptic Archbishop, Syrian Archbishop, Anglican Bishop, and the Lutheran Bishop.
25. Joel Greenberg and Michal Sela, "Old Man Found Battered to Death in West Bank Village," *Jerusalem Post*, 27 March 1989.
26. "Council Condemns Army Desecration of the Holy Qoran," *Al-Fajr Jerusalem Palestinian Weekly*, 5 June 1989.
27. Michal Sela, "Clashes in Gaza Leave Four Dead," *Jerusalem Post*, 18 June 1989.
28. Joshua Brilliant, "Shout Arabs Out, Attack Soldier; Settlers Cause Fracas at Machpela Cave," *Jerusalem Post*, 18 June 1989.
29. Al-Haq Affidavit No. 1791.
30. Al-Haq Affidavit No. 1603.
31. Al-Haq Affidavit No. 1701.
32. *Ibid.* Full text reproduced in Appendix 14-D.
33. There have been cases reported in which the bodies of Palestinians killed were never returned to the family but buried in a secret cemetery in the Jordan Valley. Little is known about the cemetery as it located in a closed military zone.
34. "Sanabel Weekly Report," 9 November 1989, 27 November 1989.
35. Al-Haq Fieldwork Report.
36. Al-Haq Affidavit No. 1633.
37. Many of the United Nations resolutions relating to Palestine and the Arab-Israeli conflict underscore the importance of safeguarding religious freedoms in the Occupied Territories. The consensus in votes taken between 1982 and 1986 on resolutions in the United Nations General Assembly and the Commission on Human Rights reflects the status of religious freedoms as an international norm. Furthermore, the voting on these resolutions reflects a recognition by the majority of member states in the United Nations that the violation of this right is particularly flagrant in the Occupied Territories. For example the Commission on Human Rights' Resolution No. 1984/1 A, B of 20 February 1984 states in pertinent part:

[7.] Strongly condemns ...

- (d) The arming of settlers in the occupied territories to strike at Muslim and Christian religious and holy places; ...
- (j) The interference with religious freedoms and practices as well as with family rights and customs;

Twenty-nine states voted in favor, only one against, and 11 abstained.

In the period between 1982 and 1986, the General Assembly adopted a number of resolutions similar in content to that of the Commission on Human Rights. The pattern of voting reflected that, with the exception of Israel and the United States, the number of states supporting such resolutions averaged between 109 and 116 states, and the number of abstentions between 21 and 34.

Appendix 14-A

Partial List of Mosques Closed During 1989

Mosques	Location	Date of closure	Date of reopening
al-Farouq	Rafah	29/5/89	12/6/89
Abou-Baker al-Sidiq	Gaza/al-Nasr	28/4/89	14/5/89
al-Islah	al-Shuja'iyya	28/4/89	not known
al-Nasr	Gaza/al-Nasr	28/4/89	still closed*
Mu'askar al-Brej	al-Brej	28/4/89	not known
Mu'askar al-Nuseirat	al-Nuseirat	28/4/89	14/5/89
al-'Omari al-Kabir	Gaza	28/4/89	5/5/89
Khan Younes al-Kabir	Khan Younes	28/4/89	5/5/89
al-Maghazi	al-Maghazi	28/4/89	5/5/89
al-Farouq	Rafah	13/9/89	still closed*
al-Sheikh Zakariya	Gaza	20/9/89	still closed*
al-Thafer Dimri	Gaza	30/9/89	still closed*
Bilal	Khan Younes	20/10/89	still closed*
Bani Suhayyla	Bani Suhayyla	21/10/89	still closed*

* As of 4 November 1989.

Appendix 14-B

Raid on Mosque

Translation of Affidavit No. 2034 Taken by al-haq

I the undersigned, [name withheld], 60 years of age, a resident of Ramallah, having been warned to state the truth or be subject to criminal liability, hereby states as follows:

At approximately 2:15 p.m. on Friday, 18 August 1989, I left my house, which is near the mosque in the old city, to go to the mosque to perform ablution and the afternoon prayers. I saw about 30 soldiers near my house and around the mosque. They had a white Suzuki car with them. I think that it was the tax officials' car which I had seen before.

I approached near the soldiers, and saw them going into the mosque courtyard; four of them were kicking the front door of the mosque with their boots. At this point I spoke to the soldiers and asked why they entered the mosque. One of them said that a youth had thrown a stone, escaped into the mosque, and closed the door behind him. Another soldier said that the Sheikhs [clergymen] of the mosque had given an inflammatory speech and they wanted to get into the mosque.

After 15 minutes, they were able to open the back door of the mosque. I saw three of them enter it with military uniforms and holding their weapons. After about ten minutes, I saw the three of them bring things from inside the mosque and give them to other soldiers who were outside. They took out the loudspeakers, the amplifier, the recorder, and some cassettes. After this, I saw them leave the mosque. One of them said to me that the Sheikh of the mosque must go to the military compound to meet "Captain Muslih" on the following Sunday, and then they left. This lasted about 30 minutes; they left at about 2:45 p.m.

There were no clashes in the area that day. I was there all the day and it was very normal.

In accordance with all of the above I hereby sign this statement on this date, 18 August 1989.

(Signature)

Name withheld from publication

Appendix 14-C

Military Order No. 327 Regarding Holy Places

ISRAEL DEFENCE FORCES

Order No. 327

Order Regarding the Safeguarding of Holy Places [Unofficial translation]

In accordance with my authority as the commander of the area, I hereby order the following:

Definition

1. In this order, "the competent authority" [shall refer to] whoever is appointed by me to be the competent authority for the purpose of this order.

Safeguarding of Holy Places

2. Holy places shall be protected from any desecration or any other damage and from anything that might impede the free access of religious followers to their holy places or which might offend their sentiments towards these places.

The Duty of the Competent Authority

3. The duty of the competent authority is to ensure the safeguarding of holy places as set forth [above] in paragraph 2, and is entitled to take any necessary measures for this purpose including:
 - (1) The posting of regulations as to [proper] conduct inside holy places;
 - (2) The posting of guards at holy places;

Violations

4.
 - (1) Any person who desecrates a holy place or otherwise causes damage to it shall be punished with seven years imprisonment.
 - (2) Anyone doing anything which might impede the free access of religious worshipers to their holy sites or offend their sentiments towards these places shall be punished with five years imprisonment.
 - (3) Anyone who violates the regulations as to conduct [inside holy places] as mandated by the competent authority or who does not abide by valid instructions given by a guard shall be punished with two years imprisonment.

Evidence

5. Any certificate signed by the relevant authority which states that a specific area is a holy place shall constitute conclusive evidence that the area is a holy place.

Maintenance of Prior Enactments

6. This order shall serve as a supplement to all laws and security legislation and shall not detract from them.

Revocation

7. The Order Regarding the Safeguarding of Holy Places (Judea and Samaria) (No. 66)—1967 is revoked.

Validity

8. This order shall take effect on 1 August 1969.

Title

9. This order shall be called "Order Regarding the Safeguarding of Holy Places" (Judea and Samaria) (No. 327)—1969

June 12, 1969

(Signature)

Rafael Vardi—Major General
Area Commander
Judea and Samaria

Appendix 14-D

Obstruction of Burial

Translation of Sworn Affidavit No. 1701 Taken by al-Haq

I the undersigned, Taha Muhammad 'Abed Jaradat, 50 years of age, a resident of al-Sila al-Harithiyya in the Jenin district and a driver, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 11:00 a.m. on 19 March 1989, while I was returning home to al-Sila al-Harithiyya, I saw five military vehicles and two Israeli civilian cars leaving the village. When I arrived at home . . . It looked as if something had happened. Several minutes afterwards, my sister told me that my 17-year old son, Nu'man, had been wounded with two bullets in his head and had been taken to Jenin Governmental Hospital.

As quickly as I could, I went to Jenin Hospital, but on the way, I learned that Nu'man's wound had been serious and so he had been transferred to Rambam Hospital in Haifa. I continued to Haifa, 52 kilometers away from Jenin. I went to the emergency room and was informed by some residents that my son had been martyred ten minutes after his arrival to Rambam Hospital. I requested those in charge of the hospital to give me the body but they refused, stating that they had not received permission from the police to do so. At about 6:00 p.m., I saw an ambulance which I later learned had been sent by the police. After the car had left the hospital, I was informed that my son's body had been transferred to the Abou-Kbir Forensic Institute. After that I returned back home.

The next morning, at around 5:00 a.m. on 20 March 1989, I heard soldiers announce through their loudspeakers, "A curfew is imposed. Anybody leaving his house or looking out of his window will be shot." On the morning of 21 March 1989, I went out of my house and talked to a patrol officer about my son. He told me not to violate the curfew and to wait for news from the military compound. After about an hour, I went out in the company of the head of the village council and his deputy to the Jenin police compound and asked for a permit to get the body. They told me that I had to sign a waiver to permit an autopsy on the body, otherwise they would get it from the High Court; I signed the permit. After about an hour, I went to the military compound, and after waiting for an hour, I met the military governor who promised to do his best to give me the body.

At about 4:00 p.m., the head of the village council, his deputy, a policeman and I went to the Abou-Kbir Forensic Institute in an ambulance. When we arrived there I went to the refrigerator where they keep the bodies and saw my son. His head was wrapped with muslin. I lifted the clothes from his chest and saw an incision beginning from under his neck and ending at his belly. We put the body in the ambulance and left. Near Megiddo crossroads, 17 kilometers away from Jenin, a military vehicle stopped us and led us to the military compound. There, they ordered us to bring a Sheikh and seven of the martyr's relatives to pray on the body in the military compound. We did. At 11:00 p.m. we, in the company of the deputy of Jenin military governor and some soldiers, took the corpse back to al-Sila al-Harithiyya and buried him in the

village cemetery which was besieged by dozens of soldiers. At about 12:00 midnight, the burial was over.

At about 9:30 a.m. on 22 March 1989, the curfew was lifted and electricity was returned. Later on, I learned through the media that the Israeli military had formed a committee to investigate the killing of my son, Nu'man, and the 11-year old child, Samir Muhammad Sami al-'Arouri. The village residents confirmed the news, and said that the military governor had come to the site and investigated the incident, on the day Nu'man was martyred. It is worth mentioning that the soldier was more than 200 meters away from Samir and Nu'man when he shot them dead.

In accordance with all of the above I hereby sign this statement on this date, 25 March 1989.

(Signature)

Name available for publication

Chapter Fifteen

Women

Introduction

The rights of women, like the rights of all other sectors of Palestinian society, have been consistently violated by the Israeli military occupation.* This chapter discusses Israeli practices and human rights violations affecting Palestinian women in the Occupied Palestinian Territories during the second year of the Palestinian uprising, with references to the first year of the uprising when relevant.

Some of the violations discussed below are specific to women, such as miscarriages due to tear gas, sexual harassment, and the expulsion of women who do not have residency permits. Others of these violations are not exclusive to women, but are shared with other sectors of Palestinian society. Based on al-Haq's documentation, it is clear that, although the Israeli military occupation has harassed women for their active role in the uprising, most human rights violations against women have not taken place when women were participating in demonstrations or other forms of direct protest. Rather, women have been killed, injured, or beaten in their own homes, often while attempting to protect male members of their families from physical assault and/or arbitrary arrest by the military.

International humanitarian law provides special and preferential protection for women.¹ In more than one of its provisions, the 1949 Fourth Geneva Convention Relative to the Protection of Civilians in Time of War provides women with protections relating to their dignity, physical safety, pregnancy, and childbirth. As discussed below, Israeli harassment of women in the Occupied Territories violates these international standards in several respects, as well as also violating Israeli military regulations and instructions regarding the treatment of women by soldiers.

*The scope of this chapter is limited to violations of women's rights by the Israeli military authorities; social problems related to violations of women's rights within the domestic and public sphere will not be dealt with. Where appropriate, human rights violations relating to female minors will also be dealt with.

A. The Use of Force

Many of the incidents in which women were killed and injured since the beginning of the Palestinian uprising have been caused by the indiscriminate use of force by the Israeli military authorities. This section discusses casualties among Palestinian women that resulted from the use of lethal ammunition, the abuse of non-lethal ammunition, and beatings.

1. Opening Fire: Deaths and Injuries

According to al-Haq's information, 67 Palestinian women have been killed by Israeli soldiers since the beginning of the uprising. Al-Haq has documented 46 of these cases (33 from the West Bank and 13 from the Gaza Strip). Sixty-one percent of these killings were in the ten to 30 age group. The causes of death in the cases documented by al-Haq were as follows:

Live ammunition	28
Tear gas	11
Rubber bullets	2
Plastic bullets	1
Other causes ²	4
Total	46

According to al-Haq's information, the official open-fire regulation prohibit the shooting of women and children under the age of 14.[†] In practice, however, a different picture emerges; as this chapter demonstrates, in a significant number of cases soldiers do not abide by these regulations.

From al-Haq's documentation, it appears that opening fire on women takes place in two situations: first, while women are participating in demonstrations, marches and other forms of protests, and second, when women are not in direct confrontation with the military. Most cases documented by al-Haq fall in the second category. In both situations, however, the explanations given by the Israeli military fail to justify their use of lethal weapons. The force used has been strikingly disproportionate to the threat, if any, which was posed.

Shooting During Protests

The Israeli military authorities claim that protests carried out by Palestinians during the uprising, such as stone throwing and demonstrations, are violent acts and not "ordinary" civil protests. They have specifically stated that incidents of stone throwing involving women are also to be considered as serious and violent acts. In February 1989, Israeli Chief of the General Staff Dan Shomron told the Steering Committee of the Prime Minister's Conference on Jewish Solidarity with Israel the following:

[†]See further Chapter One, "The Use of Force."

Women and children throwing stones or bottles at Israeli troops in the territories should not be classed as demonstrators ... This does not in any way resemble a student demonstration, or one of ordinary citizens. It is a violent, a very violent campaign or attack with weapons that are almost as dangerous as guns or bombs.³

In line with this approach, the routine and laconic explanation given by the Israeli military authorities after virtually all incidents of killing or injury of Palestinians during protests is that soldiers were in life-threatening situations and were therefore obliged to open fire. Al-Haq's documentation, however, shows that in few, if any, of the incidents in which soldiers used lethal force against women, were their lives in danger.

Israeli troops have opened fire on women participating in peaceful marches and protests which could not be classified as violent or life-endangering. On 8 March every year, International Women's Day, Palestinian women stage peaceful marches all over the Occupied Territories to protest the Israeli occupation; on a number of these occasions, soldiers have resorted to excessive force and women have been injured, beaten, and arrested. For example, a 14-year-old girl from the village of Housan in the Bethlehem district stated in a sworn affidavit taken by al-Haq and signed in the presence of her parents that she was in a women's march in her village on 8 March 1988. As they were about to reach the center of the village, a force of almost 50 soldiers entered the village and started to fire tear gas, rubber bullets, and live ammunition. Six villagers were injured, including the girl, who was shot by soldiers from a distance of approximately 200 meters.⁴

The Shooting of Bystanders and Indiscriminate Force

In most of the cases documented by al-Haq, incidents of killings and injuries among women occurred when soldiers opened fire indiscriminately at Palestinian civilians during demonstrations or other forms of confrontation with soldiers. Palestinian women and girls have been shot and in some cases killed when they were by chance passing through an area where such confrontations were taking place, mostly when close to their own homes. In a sworn affidavit taken by al-Haq, Iman 'Izzat Muhammad Abou-Sultan, a 17-year-old resident of al-Shate' (Beach) Refugee Camp in the Gaza Strip, stated the following:

On 10 January 1989, at about 3 p.m., I went with my 12-year-old sister Hanada to the pharmacy to buy some medicine for my father. I saw a crowd of youths who then began running away. Then soldiers appeared and began to shoot in all directions. I looked at my sister to escape with her, but found her lying on the ground with her face covered with blood. I began screaming; ten soldiers were coming towards me. Two of them carried my sister inside a military jeep, and one soldier hit me and prevented me from riding with them. The jeep left after ten minutes ... I went directly to al-Shifa Hospital and saw my sister lying in the reception. One of the doctors told my father that my sister's condition was critical, and that they were going to take her to an Israeli hospital. They took her to Tal-Hashomer Hospital in Tel-Aviv, 80 kilometers away from Gaza. I then went home. Four days later, I found out that she had died. This was on 14

January 1989, and she was buried on 15 January 1989 in the camp's cemetery at 1:30 a.m. . . .⁵

In another sworn affidavit, Ghazala Ahmad 'Abed 'Oda, 45 years old, a housewife and resident of Bethlehem, stated the following:

On Friday, 16 June 1989, at about 9:00 a.m., after I had finished buying some fruit and vegetables for my children at the old Bethlehem market near Nativity Street, I was about to leave the market when I heard two shots. I felt that some strange object had entered into my left eye. I put my hand over my eye and screamed: "I am injured! I am injured!" Blood covered my hands and clothes. A crowd gathered around me and carried me for a distance of 20 meters. They put me in a civilian car which took me to Beit Jala Government Hospital, which is almost three kilometers away from the location of the incident. I was admitted to the emergency room where doctors gave me first-aid. After five minutes, I was transferred by ambulance to the optical hospital in Sheikh Jarrah, which is 15 minutes away. They examined me and took me to the operating room. I found out from the doctors that a bullet had hit me in my left eye, and that they had removed my eye in the operation. I am still receiving treatment.⁶

Another clear case of indiscriminate shooting is that of Rana Ribhi Ahmad al-Masri, a 15-year-old girl who was shot dead on 7 January 1989, in the Rafidiya neighborhood of Nablus while visiting her aunt.[†]

Other women and girls have been killed or injured inside their homes, as was the case in the killing of Muna Ibrahim al-Tammam, 11 years old, from Nablus on 2 September 1989. In a sworn affidavit to al-Haq, her mother, Hala Amin Fathallah, describes the incident:

At about 11:00 a.m. on Saturday, 2 September 1989, soldiers imposed a curfew on the city after the killing of two of its residents. I and my daughters Salam, 18 years old, and Iman, 20 years old, were sitting in the bedroom. Meanwhile we heard heavy shooting and cries as the whole city was protesting illegal Israeli practices. My 11-year-old daughter Muna Ibrahim al-Tammam returned from school. The four of us stood at the door of the bedroom. Iman and Salam stood at the balcony of the bedroom, while Muna and I were leaning against the door behind my daughters. Muna was standing to my left side. The bedroom overlooks the main street and the eastern cemetery. I saw a large number of soldiers besieging the area and shooting in all directions. Suddenly, I heard an explosion near me. I looked and was shocked when I saw Muna bleeding severely from her chest. After the first bullet, I heard the sound of another one. This second bullet hit Iman's dress and then made a hole in the wall. Muna was immediately taken to the hospital, but she died and was immediately buried . . .⁷

Some of the most aggressive uses of force against women documented by al-Haq occurred during military raids on villages and refugee camps. In the process of protecting members of their families, especially male youths, women have been shot and injured with both rubber bullets and live ammunition. Fatima Sami Muhammad Isa Srouji, for example, was shot with two live bullets in her thigh when trying to protect her brother-in-law from soldiers. In a sworn affidavit taken by al-Haq, she states that soldiers raided their home in Balata Refugee Camp on 27 June 1989, smashed their furniture, and then

[†]See further Chapter One, "The Use of Force."

... searched the rooms and ordered 'Abd-al-Rahman and Suleiman to get out of the house. Suleiman was able to run away and I followed him to make sure that he was safe. When I returned I saw one of the soldiers force 'Abd-al-Rahman to kneel while pointing his gun towards him. I stood between them. The soldier told me: "Move or I will shoot." I refused and told him that he could do so if he wished. He warned me again but I refused, so he directly fired at me and hit me with two bullets in both upper parts of my legs ...⁸

'Abd-al-Rahman's mother, Mariyam Muhammad 'Isa Srouji, 60, was shot and injured in the leg ten minutes later when she tried to rescue her son from the soldiers after they had taken him from the house.⁹

In this case, it is absolutely clear that soldiers resorted to lethal force when they were not in a life-endangering situation. 'Abd-al-Rahman was already in their custody. In al-Haq's view, even if soldiers claim that the two women were obstructing them from carrying out their arrest, they could have resorted to less radical measures to restrain them.

On the streets, too, women have been attacked by soldiers while trying to protect men from brutality and arrest.⁵ In a sworn affidavit, Fatima Raja Mahmoud Abou-Dihmaz, aged 65, from the town of Qabatiya in the Jenin district, states that a jeep drove over her foot and that soldiers shot and wounded at least three other women as they were trying to rescue two youths who were being beaten by a group of six soldiers on 21 December 1988.¹⁰

2. Brutality

Women have also been beaten by soldiers, not only at the time of demonstrations and/or marches, but also after they had already been arrested and force was no longer needed to control the situation. In a sworn affidavit given to al-Haq, Manal Jamal Jiryas Ghanem, 22 years old, from the town of Beit Sahour, states the following:

On 8 March 1989, at about 3:30 p.m., while women were participating in a peaceful march on the occasion of International Women's Day, 15 Border Police attacked the women, beat them with their clubs, and chased after them in the area of Wadi' Abou-Sa'da, a neighborhood in Beit Sahour. At that time I was at my uncle's house, Sami Ghanem, near Wadi' Abou-Sa'da where the events occurred. I saw the soldiers shooting tear gas at the women and several women were choking. I saw from the window two soldiers dragging along my 21-year-old cousin Iman Sami Ghanem. I went to rescue her from the soldiers. I came close to one of them and asked him why they were arresting my cousin. One of them hit me on my legs with his club and cursed me with obscene words. He took me to the military jeep and together with my cousin and Rana al-Atrash they took us to "al-Bassa," the military government building in Bethlehem ...¹¹

Women have also been beaten by soldiers inside their homes while carrying out household activities. In a sworn affidavit taken by al-Haq, Khawla Ahmad 'Awad Salatna, 15 years old, from the village of Jaba' in the Jenin district, explains how she was beaten:

⁵See further Appendix 15-B

On 24 June 1989, at about 4:00 a.m., I was awakened to the sound of loud-speakers saying "Inhabitants of Jaba', you are under curfew and the area is surrounded by troops." ... At 1:00 p.m., when I was at the entrance of my house, I felt somebody grabbing me by the hair from behind. There were seven soldiers around me. I screamed, but two of them started to punch and kick me. They hit me with their fists on my chest and shoulder. I fell to the ground, and one of them stepped twice on my wrist with his heavy combat boots. So I screamed like mad. Then one of them ordered me in Arabic to get up and then they left. By 2:00 p.m., after it had quieted down, I was taken to the village doctor, then to the al-Ittihad al-Nisa'i Hospital in Nablus, 24 kilometers away from the village. I stayed there 24 hours and received the necessary treatment. X-rays showed that I had two fractures in my arm ...¹²

Women have been beaten regardless of their age or health situation. Fifty-year-old Zeinab 'Abd-al-Rahman 'Oda al-Khatib, for example, was brutally beaten by soldiers who raided her house in Balata Refugee Camp on 24 October 1988. She was hospitalized for treatment of a wound to the head and a broken leg.¹³

Neither have pregnant women been spared; in her sixth month of pregnancy, Rasmiya Sa'id Mustafa Lahlouh, aged 34 and a resident of Jenin Refugee Camp, was beaten by soldiers during a raid on her house on 10 November 1988. She saw soldiers beating her sick husband and her children and begged them to stop. Instead, they began to push her and hit her in the stomach with their clubs. When she fell to the ground she told them that she was pregnant. But they continued to beat her on the head.¹⁴

As was the case with women killed or injured with live ammunition, women have also been beaten by soldiers when trying to protect members of their family. In a sworn affidavit, Fayza Moustafa Muhammad Saleh, 43, and a resident of Jenin Refugee Camp, states:

On 21 March 1989, at about 3:30 p.m., when I was visiting my mother-in-law on the occasion of Mother's Day, one of my children suddenly came in and told me that soldiers had raided my house located on the west side of the camp, and beaten the children and broken the furniture. My husband and I quickly ran to the house ... One soldier was beating my children with a leather belt. He was beating Tha'er, 5, Aliya, 3, Khadija, 8, Yasmin, 9, Filistin, 11, Nathmiyya, 13, and Sabrin, 16. He was gathering them in a corner of the room and beating them while they were shaking with fear. I screamed at the soldier and pushed him away. One of them hit me with his gun-butt on my waist, and another one kicked me below my belly, and they said "You whore ..." I could tell from their accent that they were Druze. After three minutes, two of them grabbed Sabrin and took her outside. I followed them, but they beat me with their rifles and kicked me until I fell to the ground. They put Sabrin in a military jeep and left ...¹⁵

Al-Haq is aware of at least one case in which a woman lost her life while trying to protect youths in her neighborhood. Sabiha Darwish Saleh Hashash, a mother of eight and resident of Balata Refugee Camp, was beaten to death by soldiers when she attempted to rescue a youth from the hands of soldiers on 18 January 1988.¹⁶

3. Misuse of Tear Gas and Miscarriages

Use of Tear Gas in Confined Places

Al-Haq has documented cases where soldiers have fired tear-gas grenades in densely-populated areas and inside confined places, particularly in schools and homes.[¶] Reports by physicians have shown that excessive exposure to tear gas constitutes a potentially lethal health hazard, especially in confined spaces.¹⁷ Women, children and the elderly, who are most often in homes and schools, have been the main victims of this illegal practice.

On 1 April 1989, soldiers raided homes and confiscated cars during a curfew in the village of Battir in the Bethlehem district. One of the women in the village, Khawla Usama Ahmad Abou-Harthiyya, 20, stated that soldiers harassed her mother-in-law. She tried to protect her and to stop a soldier from spraying tear gas at her:

Then he threatened me with a gas canister. He grabbed my hand until I was inside my house. He then threw a gas-canister in the shape of a rubber ball into the house and closed the door. I tried to catch it, but it was moving in circles. At this point the house was filled with gas and I could not see. The windows and doors were closed. I began looking for my 20-month-old daughter Jihan and my seven-month-old daughter Rawan. After three minutes I was able to reach Rawan in her bed. She was all in tears and unable to breathe ...¹⁸

In other cases, the abuse of tear gas has caused loss of consciousness. For example, Fatima Muhammad Salem al-Karaba, 50, a resident of the village of Ein Arik, states:

On 1 July 1989, at 3:00 p.m., while I was at home, a neighbor called me and told me that my son, who was visiting relatives, was being arrested by soldiers. I hurried towards our relatives' house which is 80 meters away. When I got there I saw four military jeeps and about ten soldiers. Five of them were holding my son Diyab Hashem 'Abed Diyab, who is 15, and kicking him. One of my relatives, Husniyyah Hasan Yihiya 'Abd-al-Qader, was trying to release him. I also got involved and did the same. A soldier pushed me and I fell three meters away. When I got up I begged the soldiers and said: "May God keep you, please release my son." The soldier who had pushed me took a tube from his pocket and sprayed gas in my face and eyes. I had difficulty breathing. My face started to burn and tears came pouring out of my eyes. I was sprayed with gas for about ten seconds. I then lost consciousness and woke up to find myself in Ramallah Hospital with oxygen in my nose and a glucose injection in my hand. I stayed there until 9:00 p.m. I went home and found out that my son had been released. However, I am still staying in bed [3 July 1989] since I feel tired, I am bleeding, my throat is sore and I have a severe headache.¹⁹

The illegal use of tear gas can also be fatal. In 11 cases documented by al-Haq during the uprising, it has caused death. Al-Haq's documentation shows that the second highest percentage of deaths among women after live ammunition was due to tear gas asphyxiation. (Twenty-four percent of documented cases of killings among women.) In general, according to al-Haq's documentation, most of the killings due to tear gas were among infants and the elderly. The following are two representative examples:

[¶]See further Chapters One, "The Use of Force," and Thirteen, "Education."

- (1) On 24 July 1988, soldiers fired tear-gas canisters in front of the house of Sabha 'Abdallah Ibrahim Saba'na, a 70-year-old woman from Qabatiya. Directly after the penetration of the gas into her house, Mrs. Saba'na, who is also blind, developed breathing problems. She died the following morning.²⁰
- (2) Dirin 'Atef Ahmad al-Skafi, a ten-month-old baby from Hebron, died only a few hours after inhaling tear gas. On 18 July 1989, tear-gas canisters were fired in front of the family's house; the baby, who was at that time sleeping in her bed, suffered severe breathing difficulties and died that same day.²¹

Miscarriages Due to Tear Gas

Among the most specific health-related problems among women due to the inhalation of tear gas are miscarriages and still births. It is generally acknowledged that it is difficult, from a medical point of view, to prove that exposure to tear gas has been the direct cause of fetal deaths or miscarriages. This is because other factors might also be responsible, such as the drastic increase in tension and stress at times of army brutality. A number of factors suggest, however, that exposure to tear gas has resulted in miscarriages in the Occupied Territories:

- (1) All miscarriages documented by al-Haq happened to women who confirmed to us that they had been exposed to tear gas from several hours to a few days prior to their miscarriage;
- (2) In none of the cases documented by al-Haq did women have problems during earlier pregnancies. Additionally, these women had no health complications related to their pregnancies prior to the inhalation of tear gas;
- (3) Most importantly, however, are the cases in which more than one woman miscarried at the same time after inhaling tear gas in one location. For example, 12 women miscarried during a single night after inhalation of tear gas following army raids on a number of refugee camps in the Gaza Strip on 8 March 1988. Five of the women were from al-Shate' Refugee Camp, and all five gave birth to dead fetuses.²²

Although tear-gas related miscarriages were less discussed by the media during the second year of the Palestinian uprising, the phenomenon has not disappeared. Pregnant women are vulnerable to the inhalation of tear gas no matter what precautions they may have taken. In a sworn affidavit, In'am Muhammad Mustafa Khamaysa, 18, from Jenin, states:

On 30 January 1989, at about 12:00 noon, I was with the rest of my family in my house in the eastern quarter of Jenin when I heard gunshots and voices of demonstrators. I saw youths throwing stones at a military post which was at the rooftop of a neighboring house about 50 meters away. Soldiers shot live bullets and tear gas from the rooftop. Suddenly I saw the soldiers firing tear gas in the direction of my house. One gas canister fell in the courtyard of the house. I felt sick and began coughing. Tears started pouring out of my eyes, my back stiffened, and both my joints and body weakened. After a few moments,

I felt pain at the bottom of my belly, then I started bleeding and the fetus left my body. I was four months pregnant . . .²³

A few women have had more than one miscarriage since the beginning of the uprising.* Hadiya Muhammad 'Awwad Suleiman, a 30-year-old resident of Jenin Refugee Camp. Ms. Suleiman, had a miscarriage in April 1988 and another on 12 December 1988 due to the inhalation of tear gas.²⁴

B. Sexual Harassment

Article 27 of the Fourth Geneva Convention provides special protections to women:

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 . . . Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Despite such provisions in international law, al-Haq has documented numerous cases in which Palestinian women have been subjected to sexual harassment and intimidation by soldiers. This harassment takes the form of humiliating and degrading practices, such as the use of obscene language, exposure of genitals in front of women, urinating on women, molestation, and attempted rape.

Sexual harassment, insults and intimidation are a part of daily life for many women, as the perpetrators usually are soldiers manning lookout posts on the roofs of Palestinian homes or driving in jeeps through villages and camps, shouting curses through loudspeakers. Such behavior is provocative in the extreme, and may prompt demonstrations or stone throwing. Such was the case in Nahhalin prior to the raid on that village on 13 April 1989, when soldiers attacked the villagers in the early hours of the morning, killing five and injuring scores.[†] For at least one week prior to this raid, soldiers drove through the village daily, insulting the villagers and shouting abusive sexual epithets at women.

The following are representative examples of sexual harassment to which women have been subjected since the beginning of the uprising:

1. Use of Obscene Language

Examples of this are provided throughout the report. To give but one additional sample, on 30 March 1989, while the town of Jenin was under curfew, soldiers raided the house of Siham 'Ali Abou-Hanana, 47, yelling obscenities at her and her daughter. In the words of Mrs. Abou-Hanana:

[O]ne of [the soldiers] beat me with his club on all parts of my body, particularly on my joints, while others were telling me "prostitute, whore, we will fuck you and your daughters," etc. . . .²⁵

*See further Appendix 15-A.

†See further Chapter One, "The Use of Force."

2. Exhibitionism

Al-Haq has documented a number of cases in which soldiers have exposed their genitals to women. In other incidents, soldiers have urinated on women, as the following examples illustrate:

- (1) On 21 December 1988, soldiers who were attempting to disperse a women's demonstration exposed their sexual organs in front of women in the main street of the town of Qabatiya, near the mosque.²⁶
- (2) On 28 October 1988, soldiers raided the house of Rabiha Mahmoud al-Hamami, 41, in Nablus. In a sworn affidavit taken by al-Haq she states:

As they were about to leave the house, while they were close to the main entrance, four of the soldiers turned towards us and started to open their zippers and took out their sexual organs, held them in their hands, and began to brandish them in front of our eyes while laughing and cursing us, in particular me and my daughters ...²⁷

- (3) After the killing of a resident in 'Askar Refugee Camp on 26 March 1988, a confrontation took place between camp residents and soldiers. During this confrontation, Yusra Nabil Karim al-Salman, 26, tried with the help of other women to rescue a youth:

[S]oldiers began cursing us using obscene words such as: "You pimp, you whore, you butt-fucker," and I saw one soldier take off his trousers and brandish his sexual organ, and then he pulled his pants up again. After approximately 15 minutes, the soldiers returned and one of them held his truncheon near his penis, moved it, and cursed the women ...²⁸

- (4) On 21 October 1988, soldiers standing on a lookout post on the roof of a house in Qabatiya urinated on the head of Amina al-Haj 'Abd-al-Rahman, a 60-year-old woman who lived in the house and who was carrying out household activities in the front yard.²⁹ According to al-Haq's information, this particular practice has been perpetrated almost exclusively on women.

3. Attempted Rape

There have been several cases of attempted rape documented by al-Haq. On 27 September 1988, a 44-year-old woman became the victim of one such attempt. A soldier knocked at her door in a refugee camp, ordered her out, took her to another room, and attempted to rape her. The following is an excerpt from her sworn affidavit taken by al-Haq:[†]

I went out to the other room, and [the soldier] followed me alone, for I did not see other soldiers. When I entered the room and I did not find my husband, I asked the soldier, "Where is my husband?" He said, "In the army jeep." He then went towards the door and closed it, and came in my direction. He asked me to keep silent and warned me that he would make trouble for me if I said

[†]See further Appendix 15-C.

anything. I stood in the room trembling with fear. He threw his weapon aside, he took off his shirt, came close to me and pushed me on to the chair, and threw his shirt to the floor. He attacked me, holding me tightly and tried to take off my clothes by force. I became very frightened because I realized what he was trying to do. Then I saw him take out his sexual organ. He ordered me: "Suck." I said, "For God's sake, you are like my son. Don't you have sons, daughters and sisters?" He said, "Hold my penis and play with it." Then he came closer and tried to put his penis near my mouth. I saw him ejaculating on my pyjamas and on his trousers. Then he beat me with his hand on all parts of my body, and left the room after putting on his shirt ...³⁰

In this case the family submitted a complaint to the military authorities. The authorities initially used "Sulha," a traditional method of reconciliation where respected male members from each family in a dispute attempt to come to an agreement acceptable to all. In al-Haq's view, the use of "Sulha" was totally inappropriate because "Sulha" is a community method of reconciliation, not applicable to the unlawful acts of an occupier. The family were later told that if charges were to be pressed against the soldier, the woman involved would have to give testimony; she was unwilling to do this because of fears of an adverse reaction from her community.

In general, incidents of unlawful behavior by soldiers not resulting in death, such as sexual harassment and intimidation, are only investigated when a complaint is submitted to the Israeli military authorities. However, in cases of sexual harassment and attempted rape, women usually prefer not to complain, since doing so may place them in an awkward situation within their own community.

In any case, official investigations carried out by the Israeli military authorities are flawed and rarely result in appropriate disciplinary or court proceedings against the individuals involved in unlawful acts. There is no reason to believe that investigations into harassment of women would be any different. Even when court proceedings do take place, the sentences imposed after a conviction are excessively lenient. The failure of the investigation system to adequately examine these particular complaints, in effect gives a green light to soldiers to act in a similarly unlawful and unacceptable way in the future.⁵

C. Detention of Women

1. Women's Prisons and Detention Centers

Before the uprising, Palestinian women detainees were held in the Neve Tirtza Prison, which is part of the Ramla Prison complex. Their numbers rarely exceeded more than 20 or 30 at any one time, and they were all women who had been convicted of "security" offenses. Since the beginning of the uprising, there has been a dramatic increase in the number of women detainees. Although exact figures are difficult to obtain, estimates for the first year of the uprising suggest that some 1,000 women have been detained, many for short periods without trial.³¹

⁵See further Chapter Sixteen, "Investigations."

During the second year of the uprising, there continues to be a high turnover of women political prisoners. Some women are charged and imprisoned, others are placed in administrative detention. Most, however, are either released on bail awaiting their trials, or released without further judicial proceedings a few days after their arrest.

The high turnover of women detainees seems to be attributable to the limited capacity of women's prisons and detention centers. The only conventional prison currently in use for women is Tel Mond (Hasharon) Prison, which has a maximum capacity of 40 prisoners.[¶] Women are also held in detention centers which are also used as conventional prisons. These are:

- (1) Moscobiyya Detention Center (the "Russian Compound"), in West Jerusalem;
- (2) Abou-Kabir Detention Center, in Tel Aviv;
- (3) Jalama (Kishon) Detention Center, near Haifa.

All four above-mentioned prisons and detention centers are located in Israel, that is, outside the Occupied Territories. This is in clear violation of international law. According to Article 76 of the Fourth Geneva Convention:

Protected persons accused of offenses shall be detained in the occupied country, and if convicted they shall serve their sentences therein.

2. Arrest and Interrogation of Women*

Since the beginning of the uprising, arrests have been used as a form of punishment and intimidation. Like men, Palestinian women who have been arrested are not necessarily suspects who are held in custody with a view to questioning and possible prosecution. In the majority of cases, the women are released without charge. Among those arrested are women activists, minors, mothers, pregnant women, and elderly women. Once arrested, women, like men, are rarely presented with a warrant or told the reason for their arrest. This is true even when the person is placed in administrative detention and an order has already been issued.

Arbitrary Arrests

Al-Haq has documented dozens of cases which indicate that women have been arrested when there was no evidence at all linking them to a violation of the law; for example, while they were passing an area where demonstrations were taking place, or when soldiers entered their homes in search of persons accused of demonstrating or throwing stones. Maysa Yousef Khader Roubi, a 16-year-old resident of Shu'fat Refugee Camp near Jerusalem, was arrested on 15 October 1988, as she returned home from school and happened to pass an area where a demonstration was taking

[¶]Since August 1988, Neve Titza Prison, formerly a conventional prison for Palestinian political prisoners, was closed. It is currently holds common-law prisoners.

*In this section some of the data presented was provided by the Women's Organization for Political Prisoners, a group of Israeli women who began working on issues concerning women political prisoners in May 1988. The organization visits prisons and provides first-hand information on general conditions and individual prisoners.

place. At the Moscobiyya Detention Center, she was later charged with participating in the demonstration.³² In another incident, 18-year-old Nadiya Ahmad Muhammad 'Ali, who lives in the same camp, describes how she was arrested:

At approximately 12:00 noon on 15 December 1988, while I was standing in front of my house with my mother and a number of other people watching a demonstration in the camp about 100 meters away from our house, an army jeep which was passing by our house stopped, and a soldier called me over. I was scared, and did not go in his direction but rather escaped towards the valley. He chased me and fired rubber bullets at me. He then caught up with me and grabbed me by my hair. He twisted my right hand and pushed it behind my back. I was barefoot. I yelled at him, saying that I had not done anything. But he told me that I had thrown stones at the car and ordered me to climb barefoot into the military jeep . . .³³

Nadiya was then taken to the Moscobiyya Detention Center (see further below).

Arbitrary arrests of Palestinian women usually take place during military raids. These raids invariably take place after a curfew has been imposed or the area has been surrounded and sealed off by soldiers. Soldiers break into homes, carry out searches, vandalize property, and beat residents inside their homes. In a sworn affidavit, Fayza 'Omar 'Abd-al-Majed Darwish, a 35-year-old resident of the village of al-'Eisawiyya near Jerusalem, describes how her house was raided and her 18-year-old daughter Samar arrested by soldiers:

On 8 March 1989, at about 10:00 a.m., while our village was under curfew and my family and I, with the exception of my husband, were sitting inside our house, four armed policemen violently broke into the house. They immediately began to shout at us . . . A policeman went into the children's room and began beating Mou'awiya, who is six, Jawad, nine, and Rima, eight. They grabbed my 15-year-old daughter, Sina, by her hair. A policeman pulled my little child Marwa who was crawling on the floor and threw her on a chair. Another policeman hit Samar with his club on her legs. Together with Samar's aunt I tried to prevent them from pulling Samar's hair, but they pushed us to the floor and one of them hit me with his rifle on my right eye. They also hit our relative Khadija Darwish. One of them told my daughter Samar that she had to come [with them] out of the house because she was under arrest, but she refused. Then they cursed us and sprayed us with tear gas. As we got tired as a result of the gas, they were able to arrest Samar. The policeman grabbed her by her hair and raised a knife at my son Murad and said: "I will slaughter you if you approach." They pulled her onto the floor and took her out and then dragged her down the stairs. She was barefoot and in her pyjamas. While they were dragging her, a policeman was kicking her on her buttocks and on her private parts . . .³⁴

Samar was released without charge from the Moscobiyya Detention Center after being detained for three days.

Women have also been arrested while they were protecting members of their family. Twenty-two-year old Asmahan Shihda Hasan al-Zalabani from Shu'fat Refugee Camp was arrested on 24 December 1988, after she tried to go to the rescue of her mother, Yusra al-Zalabani, who is 48. Yusra was being beaten by members of the Border Police and by policemen who had come to the camp.³⁵ In another incident, two women from Toulkarem Refugee Camp, Ni'ma Jabarin, 40, who has five children aged between two

and twelve years old, and Subhiyya Zeidan, who is 50 and has three disabled children, were arrested on 14 June 1989, as they tried to keep Subhiyya's son out of the hands of soldiers who were putting out their cigarettes in his face.³⁶

Women Held Hostage

Women have been taken into custody and held with the threat that they will not be released until a member of their family who is wanted by the military has turned himself in. Fatima Saleh, for example, a 24-year-old resident of Jabaliya Refugee Camp, was held hostage in the Ashkelon Detention Center from 26 August 1989 until 10 September 1989 without charge because the army was looking for her husband. After her release Fatima was ordered to appear at military headquarters each day and wait there all day long.³⁷

On 25 September 1989, in an interview with the Jamous family in Nablus, al-Haq was informed that all members of the family had been taken hostage for a period of between one and four days in August because Ayman Shafiq Jamous was wanted by the military.³⁸ The house of the Jamous family was raided on 13 August 1989, at about 1:00 a.m., by soldiers who said they were looking for Ayman. When they did not find him, they arrested his mother, who is 46, his father, 54, and his two sisters, Maha, 25, and May, 16, as well as two of Ayman's brothers. That same night, the house of his married sister Majida was also raided, and she too was arrested. In addition, in a separate raid, the military arrested Ayman's fiancée, 21-year-old Khawla Feisal 'Alawi, and her father. All were held at the military headquarters in Nablus until the next day, except for Maha and Khawla, who were kept in custody for four consecutive days.

Abuse En Route to Prison

From the moment of arrest, and while still on their way to the nearest military headquarters or detention center, women have been beaten on all parts of their body, kicked, insulted, and humiliated. This physical and psychological abuse takes place while they are handcuffed, blindfolded, and under the military's complete control. Asmahan Shihda Hasan al-Zalabani, mentioned above, was arrested on 24 December 1988, after trying to rescue her mother from soldiers who were beating her. She states the following regarding the treatment she received on the way to Moscobiyya:

A number of Border Police came and began to beat me with their clubs on all parts of my body. They then dragged me by my hair over the ground. It was cold and raining. They took me to the road that runs near the UNRWA office in the camp. I saw a large number of cars that belong to the police and Border Police. In that location they started kicking me and beating me with their clubs while I was lying on the ground. I saw a large number of youths who had also been arrested. I saw them being beaten. My brother Bajes was among them. When they discovered that he was my brother, they began to beat us more. They then placed me and my sister (who was also beaten and had her arm broken at the wrist) in a police bus and we were taken to the Moscobiyya. There were five policemen in the bus, and they beat us with their clubs, and whenever we spoke a word they would beat us again and use obscene words . . .³⁹

In another sworn affidavit, 16-year-old Maysa Yousef Khader Roubi, also referred to above, states the following concerning the circumstances of her arrest on 15 October 1988:

I was near my school. There two policemen arrested me. They pushed me to the ground. Then they carried me and threw me inside the car. I fell down on my left ear and felt great pain. After two minutes they brought another girl named Nadiya Ahmad. We sat facing each other. Near each one of us sat a policewoman. The policewoman began to hit me with her club on my knees. As the car was driving they continued beating us with their clubs on all parts of our bodies. I got bruises on my head and arm. When we arrived at the Moscobiyya, they handcuffed me and put iron cuffs on my ankles. They ordered me to sit in the yard. I was surrounded by a number of policemen and two policewomen. They used obscene language with me and they hit me on my face and all parts of my body with their hands and clubs ...⁴⁰

Torture During Interrogation[†]

Palestinian women have been subjected to physical, psychological, and sexual abuse during interrogation, irrespective of their age or physical health. Common forms of abuse include beatings on all parts of the body, but especially on the head and stomach; being put in a difficult physical position for long periods of time with the head covered by a wet and dirty bag; and being locked inside a "coffin," a cell of 80 by 60 centimeters and 1.7 meters high, with concrete walls and a steel door. Maysa Roubi continues her affidavit by describing her interrogation:

Then they carried us and sat us down on a small wall with small protruding iron pieces. We sat for half-an-hour. Then three interrogators came and took me to a room. Six policemen, two policewomen, and two intelligence officers came to the room. They began to ask me if I had thrown stones at policemen and if I had put up roadblocks. The interrogator said that there was a police eyewitness. I told him that the policeman was a liar. He then hit me with a radio on my left eye. I felt at once that it began to swell. He told me that I should confess and tell him who else had participated in throwing stones. I said: "I don't know." The interrogator, who was called "Aziz," was tall, fat and had a dark complexion; he ordered me to stand up and began to beat me on my stomach and back with his hands. They continued interrogating me for about three hours during which the interrogators and the policemen participated in beating me. Then the interrogator gave me a description of somebody who had thrown stones at the policemen, and asked if I knew him. When I told him that I didn't, he pulled my hair and hit me hard towards the wall ...⁴¹

Raja' Nathmi Mousa al-Ghoul, an 18-year-old woman from Jenin Refugee Camp, was arrested on 13 April 1989, as she was traveling to Jordan across the Damiya Bridge. During her interrogation at al-Jalama Detention Center, she was beaten, threatened with rape, and put in an awkward position, known as "al-Shabeh," for long periods of time:

[The interrogator] accused me of taking letters from my cousin to "hostile organizations abroad." Questions continued without a break for no less than seven

[†]See further Chapter Five, "Torture and Death in Detention."

hours, during which I suffered severe stomach pains. During this period the interrogator used obscene words ... Then he approached me and grabbed me strongly from below my arms, which made me get up out of pain. Then he threw me heavily on a chair ... On the morning of the next day, they gave me my breakfast. Then I was taken for another round of questioning. There were four interrogators. They told me that my relatives have implicated me in their confessions and that it was useless to deny the charges. After two hours, a policewoman took me, seated me on a chair, hand cuffed me, and put a bag over my head. She then ordered me to stand up and raise my arms. I felt that she tied the handcuffs to something that was hanging down from the wall. So I was forced to stand still. I learned later that this method is called "al-Shabeh." After two hours they took me back for interrogation. This process continued for 14 days. Every time they repeated the same thing. They used to tie me up, the "al-Shabeh" way, for a certain time each day ...⁴²

In another sworn affidavit, a woman who prefers to remain anonymous further describes "al-Shabeh":

When I reached the military headquarters, a bag was put over my head and I was taken down a lot of stairs ... There I was handcuffed with my arms behind my back ... Then I was ordered to stand on a chair for about 48 hours ... While in this awkward position, they came every now and then and beat me with their clubs and hands. They also showered me with very hot water and directly after that with very cold water. Urine was thrown in my face three times. The interrogation lasted for six days, and on the last day they forced me to sit as if praying [on the knees] with my hands tied behind my back for about six hours, after which I was taken to al-Jalama Detention Center.⁴³

Torture during interrogation has caused women to bleed, lose consciousness and sometimes require hospitalization. A good example is the case of Terry Bullata, 22, from Jerusalem. Ms. Bullata, an employee of the Palestine Human Rights Information Center and a Bir-Zeit University student, developed severe health problems in January 1988 after a two-month period of imprisonment. She was arrested again on 14 November 1988, while still under medical treatment. Despite the intervention of the Red Cross and medical reports indicating that she was still under medical supervision due to a liver dysfunction, Ms. Bullata was interrogated and put in the "coffin" until she collapsed and lost consciousness. The next day her health had further deteriorated and she was taken to Hadasa-'Ein Karem Hospital.⁴⁴

Another example of the torture of a person in poor health is that of Amna Darwish, a 28-year-old resident of Doura in the Hebron district. Ms. Darwish, who suffers from epilepsy and rheumatism, was arrested on 26 December 1988, and underwent a month of interrogation at the Moscobiyya Detention Center during which she was tortured. On 1 January 1989, Amna's head was covered with a sack, her hands were tied behind her back and she was forced to stand while tied to a steel rod for long hours. As reported by the Women's Organization for Political Prisoners, the result was that her hands started to shake and she was unable to walk.⁴⁵

On that same day her sister, Houriyya Darwish, was also brought to the Moscobiyya Detention Center. Houriyya, who at time of her arrest was pregnant and suffering from renal colic and anemia, was threatened with rape and beaten until she

finally collapsed and demanded hospitalization.⁴⁶

In a sworn affidavit given to al-Haq, Asmahan al-Zalabani, whose case we referred to above, mentions the severe beatings to which she and other political prisoners were subjected:

[W]hile at the doctor's office, a policeman hit me with his elbow in my stomach and I vomited blood ... When we arrived at the reception, a policewoman handcuffed me and put iron cuffs around my ankles. Then she called a number of guards who began to beat me and to beat another woman prisoner named Nadiya Muhammad 'Ali on all parts of our bodies. Nadiya lost consciousness and I vomited blood ...⁴⁷

Sexual Harassment During Interrogation

In addition to physical abuse, women detainees are subjected to sexual harassment and intimidation, beginning at the time of arrest and then throughout their interrogation. This includes sexual insults, threats of rape, and sexual molestation. Such practices are specifically prohibited by Article 27 of the Fourth Geneva Convention and Article 46 of the 1907 Hague Regulations.

As illustrated by the cases presented below, these international legal provisions have often been ignored by the Israeli military authorities. The following are but a few examples of these illegal practices:

A 27-year-old woman from Jerusalem was arrested on 21 March 1989. Immediately following her arrest and while still in the street the following took place:

Soldiers and policemen insulted me with obscene words; they said to me: "Prostitute, whore, you are under arrest," and threatened me with rape. I was handcuffed and a policewoman came close to me, slapped me in my face, pulled me strongly by my hand and tore the front part of my shirt. Then she told me in Hebrew (I know the language) and in Arabic that she would let everyone see my body and sexually harass me ...⁴⁸

A 16-year-old girl was arrested on 3 March 1989. While still in the police van, she was ordered to open her legs and was beaten on her genitals. Afterwards she was also threatened with being raped with a stick.⁴⁹ On a later occasion, while she was still in detention, she was slapped by a policewoman in her face, and a female guard ripped off her trousers while a policeman spilled ice cream on her legs.⁵⁰

Threats of rape during interrogation are commonplace. In a sworn affidavit to al-Haq, Raja' Nathmi al-Ghoul, referred to above, states:

Then he threw me roughly on a chair. Five interrogators surrounded me. Officer "Elias" pointed to one of them who was tall and a bit fat, and said: "If you do not confess, I shall make him have sex with you ..."⁵¹

In a similar incident, Nadiya Ahmad 'Ali, also mentioned above, was threatened with rape during interrogation. In a sworn affidavit she refers to one of her interrogators:

I realized that I was in an interrogation room. I knew from the conversation between him and the soldiers that he was called Abou-Rami; he was blond, average height and weight. He continued interrogating me about throwing stones

... He did not beat me but he swore at me using obscene language and threatened me with rape if I didn't confess.⁵²

It should be emphasized that threat of rape during interrogation is commonplace. Having been threatened with rape, a number of women signed a confession. In al-Haq's view, such confessions were extracted under physical and psychological pressure and are therefore illegal and inadmissible as evidence in court. Houriyya Darwish, for example, who was pregnant at the time of her interrogation and who felt that she was about to have a miscarriage, signed a confession after being severely beaten and threatened with rape. The most striking example, however, is that of a minor, 'Ulla Ghazali, a 13-year-old girl from Jerusalem. 'Ulla was arrested at home at midnight on 23 April 1989, and was threatened with rape the night before her scheduled appearance in court. Under the threat of rape, 'Ulla broke down and signed a confession. According to her statement to al-Haq:

I was seated in a military car with soldiers and an officer who was called "Mustafa." As we reached the Moscobiyya, Officer Mustafa took me to a room with a bed and shouted at me that he would rape me in that bed if I did not confess. I begged him not to do so. He then took me to another room. In that other room a soldier was lying on a bed. He then started questioning me and accused me of writing slogans on the wall. When I denied these accusations, he ordered me to sit on a chair close to the bed where the soldier was lying and told me that he was going to take a picture of me with the soldier. When I refused, he gave me a strong push towards the soldier and I was about to fall over him, but I didn't fall because I quickly leaned on the wall. Beside Officer Mustafa and the soldier lying on the bed, there was another soldier and another interrogator; they all started to laugh at me and use sexual and insulting words. Then I was taken back to the first room and the officer who previously interrogated me threatened me once more with rape if I didn't confess. He threatened me with rape several times. Meanwhile, he was moving the lower part of his body in a "sexual manner," and tried to come close to me, caress me, and move his body with mine. I was scared of being raped and therefore I confessed.⁵³

While sexual harassment of women is repugnant in all cultures, such actions have a particular impact in Palestinian society, given the existing cultural norms. The Israeli occupation authorities, being well aware of traditional sexual mores in Palestinian society, apparently employ sexual harassment as a means of intimidating women, in an attempt to equate arrest with the violation of female honor. Successful though this policy may have been in the past, it has now backfired. The concept of women's "honor" has changed and developed to accommodate the realities of occupation. Currently, the imprisonment of women (and the fact that this may well include sexual harassment), no longer brings shame on the family. On the contrary, it is often viewed as an honor.⁵⁴

Administrative Detention

Since December 1987, 19 Palestinian women have been placed in administrative detention without charge or trial.[†] Five of these women were detained during the second year of the uprising.

[†]See further Chapter Seven, "Administrative Detention."

One woman has been administratively detained twice: Husniyya 'Abd-al-Qader, a 36-year-old activist with the the Association of Women's Committees for Social Work, from Balata Refugee Camp near Nablus, was arrested on 27 April 1988, and that same day issued with a six-month administrative detention order. She was rearrested on 19 October 1989, and given a second six-month administrative detention order. The Israeli authorities insist on separating administrative detainees from other political prisoners. Because Husniyya was the only administrative detainee at the time of her second arrest, she may have to spend it in solitary confinement.

3. Prison Conditions

Among the many problems women face in prison, two stand out in particular:

- (1) Collective punishments;
- (2) Harassment and intimidation by Israeli common-law prisoners.

Collective Punishment

Women in Tel Mond prison, the only conventional prison for women, have on repeated occasions been subjected to collective punishment. For the slightest reason (singing patriotic songs, for example), women will be deprived of the privileges they have acquired during a long struggle with the prison administration.

Collective punishment in prisons usually lasts for months, during which women detainees are deprived of family visits, newspapers and books to read, their needle work and other handicrafts, and their radio sets and television.

One example of this policy is the collective punishment imposed on women political prisoners after the events of 20 May 1989.⁵⁵ A Palestinian suspected by other prisoners of collaborating with the prison authorities, Nadiya Abou-al-Haj, was transferred from Nablus prison to Tel Mond. While political prisoners were having their lunch, Nadiya, according to prisoners' accounts, started to pour food over her head, cut herself with a razor blade and shouted for help, accusing the political prisoners of attacking her. Immediately, the prison guards ordered the detainees to go back to their cells. For the following three and a half months, family visits were prohibited, two political prisoners (Rula Dahho and 'Itaf E'leiyyan) were kept in solitary confinement, and all books and newspapers, as well as radios, televisions, handicrafts, and embroideries, were confiscated. Moreover, political prisoners were not allowed to have their meals together in the dining room and were confined to their cells. During their breaks, they were also divided into different categories (minors, administrative detainees, those sentenced and those awaiting trial) and the time given for these breaks was shortened. The prison administration reportedly did not conduct an investigation into the incident, and according to the prisoners, no one was questioned.

In some cases, collective punishment takes the form of physical abuse and torture. In a sworn affidavit taken by al-Haq, Maysa Yousef Khader Roubi, whose case has been referred to above, recounts one of her experiences at the Moscobiyya Detention Center:

One day we were singing national songs. Policemen and Border Police violently raided our cell. They yelled at us, then they pulled us by our hair and arms and took us to the yard where they tied our legs and hung us upside down with chains attached to an iron door. That was at night. They kept us hanging for three hours. They then untied us and put us in a small room of two by two meters. Policemen then beat us with their clubs and rifles. It was very cold. We were five girls, all of us from Jerusalem ...⁵⁶

Harassment by Israeli Common-Law Prisoners

The laws of belligerent occupation grant specific rights to prisoners from occupied territories. According to Article 82 of the Fourth Geneva Convention:

The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, language and customs ...

Article 84 of the same convention provides for separate internment:

Internees shall be accommodated and administered separately from prisoners of war and from persons deprived of liberty for any other reason.

In practice, however, the authorities have violated international law in this respect, as the following examples illustrate.

Harassment and intimidation of Palestinian political prisoners by Israeli common-law prisoners in women's detention centers continued during the second year of the uprising. While the problem was partially resolved after a three-month strike at the Neve Tirtza women's prison in May-July 1988 (the Palestinian political prisoners were transferred from Neve Tirtza to Tel Mond), it continues in detention centers in which political prisoners are kept in cells together with Israeli criminal prisoners, including drug addicts. At al-Jalama Detention Center, for example, Raja' Nathmi Mousa al-Ghoul was held in the same cell with Israeli criminal prisoners for three consecutive months, according to a sworn affidavit taken from her by al-Haq after her release:

After 40 days in solitary confinement, they transferred me to a room with ten Israeli criminal prisoners. I stayed with them for about three months during which I was pressured. They were trouble-makers: besides their continuous shouting and fighting for the slightest reason, they engaged in immoral practices; they used to have sex with each other in front of everyone in the room. Whenever I was writing or doing anything they would inform the prison guards, who would come and search me ...⁵⁷

In another sworn affidavit, Iman Muhammad Ahmad Sabbagh, a 19-year-old resident of Jenin Refugee Camp, who was arrested with her sister Muna on 10 December 1988, and held at al-Jalama Detention Center, describes what happened to her there:

There were twelve detainees in the room. Three of them were Lebanese who told me they belonged to "Hizbullah," and the rest were Israeli criminal prisoners convicted of prostitution and drug addiction ... They used to treat us badly and speak to us in obscene language. Many times they tried to attack us, and they smoked marijuana openly in the room. They treated us badly and made us tense. For example, they used to prevent us from moving or doing anything, such as washing our clothes, on Saturdays ...⁵⁸

Prison authorities have at times placed Israeli criminal prisoners in the cells of Palestinian political prisoners, apparently in order to harass them. In a sworn affidavit, Maysa Yousef Khader Roubi, who was imprisoned at the Moscobiya Detention Center states:

That same night they brought eight Israeli criminal prisoners into our cell. A number of them took razor blades out of their mouths and threatened to cut us. After two hours [prison guards] came and took them out of the cell ...⁵⁹

D. The Expulsion of Women

The deportation of Palestinian activists under the British Defense (Emergency) Regulations has received wide publicity and drawn the condemnation of the international community.⁵ A lesser known form of expulsion, however, is the expulsion of persons whose repeated requests to the military authorities to be given a residence permit have been turned down. This usually involves spouses and children of Palestinian residents who, although they are in the majority of cases also Palestinians, do not have an identity card because they grew up in Jordan or elsewhere. Applications for family reunification are rejected by the military authorities as a matter of routine, unless the applicant is willing to pay a bribe or collaborate. As a result, many non-residents have entered the area on visitor's permits and decided to remain indefinitely in order to stay with their families. In 1989, more than 100 non-resident women who overstayed their visitor's permit were forcibly expelled to Jordan with their children.

During a meeting between the Association for Civil Rights in Israel (ACRI) and Minister of Defense Yitzhak Rabin concerning family reunification in the Occupied Territories in February 1988, Rabin asserted: "Events in Judea and Samaria prevent us from solving this issue."⁶⁰ Difficulties in obtaining family reunification permits, however, do not constitute a new problem which emerged only as a result of events taking place in the Occupied Territories during the uprising. It has roots in the beginning of the Israeli occupation of the West Bank and Gaza Strip in 1967. Following the occupation of these territories by the Israeli military, many families found themselves divided: part of the family within the occupied area, and part outside. In September 1967, a census was conducted in the West Bank and Gaza Strip, and those who were counted, registered, and over the age of 16, were issued with identity cards. Children under 16 years were registered on their parent's identity cards. Only those with identity cards or registered on them were considered legal residents.

At the end of the fighting in 1967, the military authorities allowed the reunification of some families who, according to the criteria applied by the military, had been divided as a result of the war. In the first years of occupation, the ICRC reported that of 140,000 such requests made, only 19,000 were granted. By the mid-1970s, the military authorities decided that the conditions permitting the reunification of families no longer existed and reduced the number of family reunifications severely. They were more drastically still in recent years, apparently in order to help slow the increase in the Palestinian population of the Occupied Territories.

⁵See further Chapter Eight, "Deportations."

Women married to Palestinian residents of the Occupied Territories are generally allowed to visit their husbands on a one-month visitor's permit which can be extended at the authorities' discretion for a maximum of three months. On the expiration of the permit they have to leave the country. Until recently, women placed in this position were allowed to leave and return immediately. Currently, however, they have been required to remain outside for at least three months before being allowed another visit. The expense of maintaining regular contact in this way is prohibitive; women are not only separated from their husbands and children for a period of three months, but the family has to maintain two homes and the cost of travel itself is high. These women also cannot hold down a job. Most families are unable to bear this expense, and, even if they are, the psychological cost to the family of such an unsettled life is immeasurable.

Women who at first appear to be "illegally" staying in the Occupied Territories are ordinary women who wish to practice the right of any person to marry and live a family life in their own homeland. For the Israeli military authorities, however, obtaining family reunification in such cases is not a right but a privilege which is to be granted at their own discretion.

There are no published regulations governing family reunification as distinct from other applications for permanent residency. It takes place within the ordinary framework of those applying for permanent residency. An application for family reunification in cases of women married to Palestinian residents of the Occupied Territories is in effect an application submitted to the military authorities by the husbands of these women. A military committee sits irregularly and decides on the applications. There is no hearing on the application and the applicant is not given an opportunity to present or argue the case. It is not generally known by the Palestinian population on what criteria the decisions are based, or indeed by whom they are considered.

Al-Haq has intervened with the Israeli military authorities in a number of cases for family reunification, but has been in almost all of them totally unsuccessful. In a recent intervention on behalf of a Palestinian resident who requested a residency permit for his wife, the request was denied because, according to the military authorities, it did not fall in the category of "exceptional cases granted by the law for family reunification."⁶¹

In its ruling in Case No. 263/85, the Israeli High Court of Justice stated that family reunification will be granted only in exceptional humanitarian cases or when it is in the security, political, economic, or other interests of the authorities. "Humanitarian" is not defined; it is hard to imagine what could be more humanitarian than that husband, wife and children be allowed to live together.⁶²

Expulsions have mostly occurred during punitive military raids on villages and refugee camps. During these raids, residents are forced to remove slogans and Palestinian flags; soldiers may arrest wanted persons, enforce the payment of taxes, and demolish a number of unlicensed houses. In addition, the army checks identity cards, and it has become increasingly common to order women without residency permits to pack their belongings in minutes, and to put them in a taxi to the border crossing with Jordan. These women are made to pay the taxi drivers for the ride, and must pay a fine of NIS 150 (\$US 75) for having overstayed their visitor's permits.⁶³

For example, the army raided the village of Beit Rima in the Ramallah district on 1 June 1989.⁶⁴ A curfew was imposed on the village, homes were raided, male members of families were rounded up, youths were arrested, people were forced to paint over slogans on the walls, taxes were collected, and three women were expelled.⁶⁵ Similarly, eight women were expelled after a raid on the village of Shuqba on 13 June 1989.⁶⁶

On 3 September 1989, the army raided the village of Biddo, in the Ramallah district, and deported three women. One of them was Ra'eqa 'Abd-al-Karim Hamdan al-Dali, 24, the wife of Yousef Husein Hamdan al-Dali. Three soldiers raided their house at about 5:00 a.m., accompanied by a woman soldier, Captain Aharona. Ra'eqa was told that her visitor's permit had expired and that she was staying in the country illegally. Her husband had previously applied for family reunification twice, but his application was rejected both times.⁶⁷

According to information received by al-Haq through its Legal Advice Program, these expulsions have been combined with a number of other illegal practices by the military authorities, including the following:

- (1) Newborn children of mothers without residency are not registered on their father's identity cards and are not considered residents of the Occupied Territories. Although born within the Occupied Territories, they are considered foreigners and have therefore been expelled with their mothers.

On 19 September 1987, the Israeli military authorities in the West Bank issued Military Order No. 1208, in which only children born to a mother who is a resident of the Occupied Territories can be registered. Previously, however, children born in the Occupied Territories were registered on the identity card of one parent even if the parent was a non-resident.

Procedures for obtaining birth certificates are long, and chances of obtaining them are minimal. Since the maximum period of time permitted for non-residents to stay in the Occupied Territories on a visitor's permit is three months, women giving birth in the Occupied Territories during this period are obliged either to leave the country on time, leaving their breast-feeding children who have not yet been granted birth certificates behind, or to overstay their visitor's permits.

- (2) Children registered on their father's identity cards, who are thus considered residents, are usually prevented from returning to the Occupied Territories after leaving with their expelled mothers. Since their names are also registered on their mother's visitor's permit, when the mother leaves, the children must also leave. The mere fact that they are registered on their father's identity cards does not give the children automatic right to reenter the West Bank.

In addition to the above practices, al-Haq is aware of the following specific problems which have arisen in connection with this issue:

- (1) In one case documented by al-Haq, a husband applied for a visitor's permit for his expelled wife. Although the wife had spent three months outside the Occupied Territories after her expulsion and the husband's request for a visitor's

permit had been approved, she was prevented from reentering the Occupied Territories and was turned back at the border after an Israeli official tore up her visitor's permit.⁶⁸

- (2) A woman who had been leaving the country each time her visitor's permit expired was on one occasion prevented from leaving the country due to a collective travel restriction imposed on her West Bank village. After some time, she was expelled from the Occupied Territories due to her "illegal" stay. Her husband applied for a visitor's permit for her, but he was not successful. He then applied for a travel permit for himself to go visit his wife, but this request was also rejected by the military authorities.⁶⁹

The refusal to allow families to unite violates the basic right of the family to protection and respect, guaranteed in the Universal Declaration of Human Rights of 1948 and in the Hague Regulations and Fourth Geneva Convention. In many cases it also violates the right of every person to leave and return to his homeland, similarly protected in the Universal Declaration of Human Rights and other instruments.

E. Suppression of Women's Organizational Activities

The violations of women's rights discussed above, some of which were common before the uprising, have made the need for effective protection more urgent. During the last decade, women's organizations have been established in the Occupied Territories to provide a framework for women's activities and develop strategies aimed at the protection of women's rights. Two types of women's organizations have emerged in the Occupied Territories: charitable organizations providing services to members of Palestinian society, particularly women; and mass-based women's committees which aim to mobilize women socially, politically, and economically, while providing them with needed services.

The military authorities were unable to block the emergence of organized women's activity. Instead they have harassed women's committees and women activists with a view to disrupting their work, much as they have tried to obstruct the work of other grass-roots organizations like trade unions. Committee centers, kindergartens and cooperatives have been raided, accompanied by confiscation of publications and harassment of committee members. Women activists have been detained (some have been placed in administrative detention), while others have been placed under house- or town-arrest, or have been prevented from traveling.

1. In'ash al-Usra

The Family Rehabilitation Society (In'ash al-Usra) in al-Bira is a Palestinian women's organization founded in 1965 and registered under Jordanian law as a charitable organization. The basic aims of the organization include raising women's social, economic, cultural, and educational standards, assisting needy Palestinian families, promoting

and developing handicrafts and rural industries, and preserving Palestinian heritage and folklore. It is one of the largest and most active of all women's charitable organizations in the Occupied Territories, serving thousands of women and their families, and has been harassed by the Israeli military authorities on a number of occasions.

As noted in al-Haq's 1988 annual report, the military raided the Society's premises on 20 June 1988, and ordered the organization partially closed for a period of two years. The authorities claimed that materials confiscated at the time of the raid, including files and video cassettes, were "inciting" in nature.⁷⁰

The closure of In'ash al-Usra's main building (the orphanage and day-care center remained open) has prevented the Society from functioning properly and has also obstructed the Society's charitable services. The Society challenged the case in the Israeli High Court of Justice. In its ruling, on 11 October 1989, nearly a year and a half after the closure, the High Court decided that:

- (1) The intent of the law used to close the Society is to "warn," not to punish, and closing the Society for two years was a punishment rather than a warning or "preventive action";
- (2) Although the army claimed to have evidence of illegal activity in the Society (which was not presented to the Court), the documents supplied by In'ash al-Usra demonstrated that it "conducts intensive educational and social activity," not warranting its closure for such a long period;
- (3) There are two types of organizations in the Occupied Territories: those whose "dominant aim" is "the organization of riots and other hostile activity"; and educational establishments which may be "exploited for aims that might harm security and public order" in the area. Organizations of the second type should not be closed down without periodic review;
- (4) Since this is the first time that the organization has been closed, the "closure for two years seems unreasonably long."

Regarding point (2) above, the Court added:

One of the basic motives which should direct the policy of a government in an administered territory is the desire to allow, to the extent possible, the regular continuation of normal life. The existence of institutions for educational and charitable purposes for the advancement of which this association was founded, naturally contributes to achieving this aim. Thus, to the contrary, the closure of such establishments which have existed and operated for a long time may cause negative response and an intensification of tensions which do not help maintain normal life at all.⁷¹

The Court decided, on the basis of the above arguments, to "declare that the closure order against the Society should have been limited to a period of one year." However, the Court decided to permit the order to remain valid until 31 December 1989, "considering the security situation prevailing at the moment in the areas of Judea and Samaria."⁷²

In al-Haq's view, the decision reflects, once again, the High Court's unwillingness to effectively or even seriously challenge orders issued by the military in the Occupied Territories. The Court admitted not hearing the evidence which the military claimed to have in its possession, and argued that despite the right of Palestinians under international law to carry out organized educational and charitable activities, the army may act against such activities, first preventively and then punitively, if it believes that the organizations serve as covers for activities that are hostile to the occupation. If indeed illegal activities take place, the army has the option of bringing those suspected of illegal activity to court, or to ban the organization if its very aims are deemed illegal under applicable law. However, to close a building as an administrative (and therefore extra-judicial) punishment, for whatever period of time and without presenting any evidence in a court of law, constitutes a violation of Palestinians' right to assembly as well as a violation of due process.⁷³

In addition, after the partial closure of the Society in June 1988, Samiha Khalil, president of the Society, was summoned for interrogation on more than one occasion, and on 6 October 1988 she was formally charged with incitement, support for the Palestine Liberation Organization, and possession and distribution of "hostile material."[¶] The case was still pending at the time of writing.

Prior to the uprising, Samiha Khalil had been interrogated on a number of occasions, and since 1982 she has been prevented from traveling abroad to see her children; her children in turn have not been allowed to visit her.⁷⁴

2. Women's Committees

Women's committees have struggled to obtain equal rights and opportunities for women in the Occupied Territories. Their activities include literacy and vocational training, cultural activities, health programs, child care, and productive cooperatives.

Army raids have been carried out on offices, kindergartens and cooperatives of the various women's committees; property and documents have been confiscated, and members have been harassed, intimidated, and detained. The following are a few representative examples:

- (1) In the course of a military raid on the village of al-'Ouja in the Jordan valley in May 1988, soldiers raided the center of the Union of Working Women's Committees in the village and arrested two of its active members.⁷⁵
- (2) In June 1989, the offices of the Union of Working Women's Committees in al-Bira were raided twice. During the first raid, the committee's library and publications were confiscated, and 14 women were detained and interrogated until late at night. On the second occasion, members of the committee's food cooperative were present in the office, and one woman was questioned.⁷⁶
- (3) On 7 July 1988, the day-care center of the Palestinian Federation of Women's Action Committees in Beit Hanina, a suburb of Jerusalem, was raided by Shin

[¶]See further Appendix 15-D.

Bet agents and Border Police, who frightened the children and arrested four members of the staff.⁷⁷

- (4) On 2 March 1989, soldiers raided both the kindergarten and the offices of the Union of Palestinian Women's Committees, and confiscated some of their publications.⁷⁸
- (5) During a curfew on the village of Beit Dajan in the Nablus district, in September 1989, soldiers raided the sewing cooperative of the Union of Working Women's Committees, confiscating three sewing machines and two tables and damaging the remaining tables.⁷⁹
- (6) On 31 August 1989, soldiers raided the biscuit and dairy factory of the Palestinian Federation of Women's Action Committees in the village of 'Abasan in the Gaza Strip. During the raid, the military governor of Khan Younes opened yogurt boxes which were in the refrigerator and damaged them. A member of the dairy cooperative tried to stop him, telling him that only workers in the factory were allowed to open the refrigerator. He replied: "This is my place. I can do whatever I wish and no one can stop me." Afterwards, the soldier went to the biscuit factory, disconnected the electricity, ordered the women to leave the factory and assaulted Tahani Abou-Daqqqa, a member of the biscuit cooperative.⁸⁰
- (7) The kindergarten of the Union of Palestinian Women's Committees in Haret al-Yasmina, in Nablus, has been raided five times during the uprising, most recently on 5 July 1989. In addition, soldiers manning a lookout post on the roof of the kindergarten have been using the toilets in the kindergarten. This scared the children so much that the committee decided to close the place.⁸¹

Individual activists have also been harassed and intimidated by the army. Most importantly, of the 19 Palestinian women who have been administratively detained since the beginning of the uprising, 17 are activists and leading figures in the Women's Committees.

Summary

As we have attempted to show above, Palestinian women in the Occupied Territories have suffered violations of their rights which are specific to their sex, as well as violations as members of the Palestinian community as a whole. These violations include:

- (1) The illegal and indiscriminate use of lethal force by the Israeli military authorities, resulting in deaths or injuries among Palestinian women. Cases documented by al-Haq indicate that Israeli soldiers have opened fire on Palestinian women when they were not in life-threatening situations, and in most cases when these women were not in direct confrontation with the soldiers.

- (2) The deliberate abuse of non-lethal weapons such as tear gas by the Israeli military, resulting in suffocation, health problems, and miscarriages among Palestinian women. Israeli soldiers have consistently used tear-gas grenades in densely populated areas and inside confined places; women, children, and the elderly who are most often in these locations have been the main victims of this illegal and inhuman practice.
- (3) In the process of protecting members of their family from physical assault and arbitrary arrests during military raids, Palestinian women including the elderly and pregnant women, have been subjected to soldiers' brutality.
- (4) In the course of military raids on Palestinian homes, women were also subjected to sexual harassment and intimidation by soldiers. These humiliating and degrading practices included the use of obscene language, exposure, urinating on women, molestation and attempted rape.
- (5) Women have also been subjected to arrest, interrogation and torture inside Israeli prisons. Women arrested are not necessarily suspects held in custody with a view to questioning and possible prosecution. In the majority of cases women are released without charge. Some are taken as hostages for male members of their families who are wanted by the authorities. Others are administratively detained for six months without charge or trial. Those who are accused of specific offenses are subjected to physical, psychological, and sexual abuse during interrogation.
- (6) Expulsion of women who are married to Palestinians but have no residency, has been one of the most outstanding problems which Palestinian women have faced during the second year of the Palestinian uprising. The Israeli military authorities consistently create obstacles to obtaining residency, and applications for family reunification are rejected by the military authorities as a matter of routine.
- (7) Women's organizational activities have also been disrupted by the harassment of women's committees and charitable organizations by the Israeli military authorities. Women's centers, kindergartens and cooperatives have been raided, their publications confiscated and committee members harassed.

In al-Haq's view, the Israeli military authorities have not respected the fundamental rights of all Palestinian civilians in the Occupied Territories regardless of their sex; it is therefore no surprise that they have ignored the additional protections accorded to women under international law.

Endnotes to Chapter Fifteen

1. Francoise Krill, *The Protection of Women in International Humanitarian Law* (Geneva: Extract of the International Review of the Red Cross, 1985), pp. 3-15.
2. Other causes include deaths from explosive objects or beatings.
3. "They're not Demonstrators: Stones are Dangerous Weapons in Very Violent Form of Attack, While Responses are Limited," *Jerusalem Post*, 24 March 1989.
4. Al-Haq Affidavit No. 1275.
5. Al-Haq Affidavit No. 1623.
6. Al-Haq Affidavit No. 1884.
7. Al-Haq Affidavit No. 2092.
8. Al-Haq Affidavit No. 1907.
9. Al-Haq Affidavit No. 1908.
10. Al-Haq Affidavit No. 1530.
11. Al-Haq Affidavit No. 1703.
12. Al-Haq Affidavit No. 1882.
13. Al-Haq Fieldwork Report.
14. Al-Haq Affidavit No. 1579.
15. Al-Haq Affidavit No. 1702.
16. Al-Haq Questionnaire No. 88/1100.
17. Physicians for Human Rights, *The Casualties of Conflict: Medical Care and Human Rights in the West Bank and Gaza Strip*. (Boston: PHR, 1988), p. 18.
18. Al-Haq Affidavit No. 1750.
19. Al-Haq Affidavit No. 1904.
20. Al-Haq Affidavit No. 1561.
21. Al-Haq Questionnaire No. 89/00941.
22. Ben Alocs, *More Than Tear Gas: Harassing Agents and Their Use in the Occupied Territories*. (Nijmegen: De Stempel, 1988), pp. 38, 58.
23. Al-Haq Affidavit No. 1655.
24. Al-Haq Affidavit No. 1503.
25. Al-Haq Affidavit No. 1717.
26. Al-Haq Fieldwork Report.
27. Al-Haq Affidavit No. 1458.
28. Al-Haq Affidavit No. 1560.
29. Al-Haq's Fieldwork Report.
30. Al-Haq Affidavit No. 1558.
31. Palestine Human Rights Information Center (PHRIC), "Case Study on Terry Bullata" (undated document).
32. Al-Haq Affidavit No. 1618.
33. Al-Haq Affidavit No. 1529.
34. Al-Haq Affidavit No. 1673.
35. Al-Haq Affidavit No. 1617.
36. Women's Organization For Political Prisoners (WOPP), "Newsletter: June 1989," p. 2.

58. Al-Haq Affidavit No. 1556.
59. Al-Haq Affidavit No. 1618.
60. "In Taxis Up To The Bridge," *Ha'aretz Supplement*, 10 November 1989 (in Hebrew).
61. Al-Haq Files.
62. Al-Haq has documented dozens of cases of Palestinians forced to apply repeatedly for family reunification. Each application carries a fee of NIS 180 (\$US 90). When the application is rejected, the response is always short and no reason for the rejection is given. Moreover, applicants whose applications are refused must wait one year before applying again.
63. *Ha'aretz Weekly Supplement*, 10 November 1989 (in Hebrew). For more details on the impact of these expulsions on Palestinian families, see Union Of Women's Working Committees, "Al-Tarida," September 1989 (in Arabic).
64. Most expulsions were from the Ramallah district.
65. "Israelis Carry Out Mass Expulsions Of Non-Residents," *Sanabel Press Briefing*, 16 June 1989. Sanabel Press Services have also issued a list with names of women expelled since 14 August 1989.
66. *Ibid.*
67. Al-Haq Fieldwork Report.
68. Al-Haq Files.
69. *Ibid.*
70. Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988), pp. 328-329.
71. HC 660/88, *Society of In'ash al-Usra et al. v. the IDF Commander in the West Bank*, 11 October 1989 (in Hebrew).
72. *Ibid.*
73. Al-Haq, *Punishing A Nation*, pp. 323-5.
74. Interview with Samiha Khalil, al-Bira, 22 September 1989.
75. Information provided by the Union of Working Women's Committees.
76. *Ibid.*
77. Information provided by the Union of Palestinian Women's Committees.
78. Information provided by the Union of Palestinian Women's Committees.
79. Information provided by the Union of Working Women's Committees.
80. Information provided by the Palestinian Federation of Women's Action Committees.
81. Information provided by the Union of Palestinian Women's Committees.

Appendix 15-A

Miscarriage After Exposure to Tear Gas

Translation of Sworn Affidavit No. 1503 Taken by al-Haq

I the undersigned, Hadiya Muhammad 'Awwad Suleiman, 30 years of age, a resident of Jenin Refugee Camp and a housewife, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

On the morning of Saturday 10 December 1988, while I was doing housework at my home in the center of Jenin Refugee Camp, there were demonstrations between youths and soldiers. I heard gunshots and smelled tear gas since the area I live in is often a site of demonstrations. At about 10:00 a.m., a tear-gas canister fell at the doorstep of my house. The gas spread like fog throughout the house, which was closed except for a space around the door which is covered with bars. This hole is the only place from which air can enter the house. Those who were in the house, including myself, began to choke, sniff, and felt a burning in the throat and lungs. I also felt severe dizziness and my eyes began to water. The entire house was full of gas. I remained dizzy for more than 15 minutes. After this, I saw the tear-gas canister, which was cylindrical in shape.

I remained ill until I miscarried at approximately 3:30 a.m. on 12 December 1988. I had been pregnant for more than five months. It is worth mentioning that I had previously miscarried in April 1988, also after inhaling tear gas. The first time more than seven tear-gas canisters fell around my house, when I was six months pregnant. In accordance with all of the above, I hereby sign this statement on this date, 13 December 1988.

(Signature)

Name available for publication

Appendix 15-B

Use of Live Ammunition by Israeli Soldiers

Translation of Sworn Affidavit No. 1530 Taken by al-Haq

I the undersigned, Fatima Raja Mahmoud Abou Dihmaz, 65 years of age, a resident of Qabatiya in the district of Jenin and a housewife, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 9:00 a.m. on 21 December 1988, I was at my house in Haret Kmeil, Qabatiya, when I heard the sound of shouts and shooting near my house. I went out and headed towards the source of the commotion. About 30 meters away from my house, I saw a parked military vehicle. There was nobody in it. Near the military vehicle I saw more than six soldiers holding two youths.

Several of the soldiers were pushing, kicking, and hitting the youths with the butts of their rifles. A number of women nearby were making attempts to rescue them. I headed towards them and tried with the other women to rescue them. We got hold of the youths and tried to drag them away. At the same time, the soldiers were pulling them from the other side. Meanwhile, one of the soldiers got into the military vehicle and drove at full speed. The car struck me. I felt pain because the vehicle had driven over my foot. Immediately I fell to the ground. I saw one of the soldiers shooting at the women who had succeeded in freeing the youths. After some seconds, the soldiers left the site.

I checked whether or not the women were harmed, and I discovered that 'Ayesha 'Abdallah's had been wounded in the right arm by a bullet. I also saw Kheiriyya Husein 'Awad Abou-Zeid fall down. There was blood on her legs. Later on, I was informed that she had been wounded by bullet fragments. I also saw blood flowing from the left foot of Nabiha Saleh after she had been wounded by bullet fragments. As for myself, I went to a local homeopath who treated me. He ascertained that a bone in my foot was broken, and advised me to go to a hospital. I have been bedridden until the present time and unable to walk.

In accordance with all of the above I hereby sign this statement on this date, 3 January 1989.

(Signature)

Name available for publication

Appendix 15-C

Attempted Rape

Translation of Sworn Affidavit No. 1558 Taken by al-Haq

I the undersigned, [name withheld], 44 years of age, a resident of [name of location withheld] and a housewife, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At approximately 9:00 p.m. on Tuesday 27 September 1988, while the refugee camp where I live was under curfew, my children and I were sleeping in one room, and my husband in another. Our house consists of two separate rooms.

I woke up to what seemed to be a sound at the door. I thought I was imagining it and I did not get out of bed. But the handle of the door kept moving, so I got up and asked who was there. The answer came: "It's me. Open the door, I am your husband." I did not open the door because it was not my husband's voice, for I know his voice well. After a few seconds I opened a small window in the door to see what was happening. I saw a soldier standing in front of the house near the door, and although it was very dark, I could see his features. He was blond, tall and well-built. I instantly asked: "What do you want?" He said, "Open the door." I asked, "Where is my husband?" He replied: "In his room." So I opened the door because I believed him.

When he saw my 21-year-old daughter he said: "I want her," and I said, "Don't you fear God? She is a visitor from 'Amman." My daughter is married and she lives in 'Amman; she had come to visit us. He said: "Then you come." I went out to the other room, and he followed me, alone. When I entered the room and I did not find my husband, I asked the soldier, "Where is my husband?" He said, "In the army jeep." He then went towards the door and closed it, and came in my direction. He asked me to keep silent and warned me that he would make trouble for me if I said anything. I stood in the room trembling with fear. He threw his weapon aside, he took off his shirt, came close to me and pushed me on to the chair, and threw his shirt to the floor. He attacked me, holding me tightly, and tried to take off my clothes by force. I became very frightened because I realized what he was trying to do. Then I saw him take out his sexual organ. He ordered me: "Suck." I said, "For God's sake, you are like my son. Don't you have sons, daughters and sisters?" He said, "Hold my penis and play with it." Then he came closer and tried to put his penis near my mouth. I saw him ejaculating on my pyjamas and on his trousers. Then he beat me with his hand on all parts of my body, and left the room after putting on his shirt.

I can't tell how long this took, for I was in a state of shock. I got up after he left and went to the other room. I was very exhausted and felt dizzy and lost consciousness. I woke up after my husband had been released and returned; I told him about the incident. In the morning I left the camp with my daughters in spite of the curfew and stayed with my relatives outside the camp.

On 30 September 1988, my husband went to the Ramallah Police Station to file a complaint against the soldier. He saw "Captain Ziyad," who asked to see me after he heard the story. I went with my husband to the police station, and gave

a statement and handed over my pyjamas. Captain Ziyad transferred me to Sheikh Jarrah Police Station in Jerusalem and told me to see the person in charge whose name is Ziyad Khouri. My husband went first, I can't remember on which day exactly. My husband told me that Ziyad Khouri lined up eight soldiers in front of him and asked him to identify the soldier. My husband was able to identify him. Then Ziyad Khouri summoned me to the police station and brought the soldier whom my husband identified. Ziyad asked me if that was the soldier who attacked me. After looking carefully at him, I said that he was the person. Ziyad told me that the soldier is a Druze and his name is Na'im. After some days, Captain Ziad called one of the *makhateer* (headmen) of the camp and told him that the family of the soldier wanted to come and make "Sulha," a traditional reconciliation with us in the camp. The *mukhtar* told us to go and meet Captain Ziyad in the Ramallah Police Station.

When we went, Captain Ziyad informed my husband about the procedures to be followed for reconciliation. On another day Captain Ziyad and the *mukhtar* agreed on the date on which notables from the family of the soldier would come for reconciliation. During this period, a great number of soldiers came to our house, and a photographer and the commander of the central area, according to how he was introduced to us. I explained to them what happened, and the soldiers interrogated me. The day on which the soldier's family were supposed to come, a demonstration took place in the camp and the soldiers fired gun shots and tear gas. So the soldier's family went to the Ramallah Police Station instead, and a number of notables from the camp went to the police station and they met with the soldier's brother and another member of his family. We dropped the complaint against the soldier out of fear that the soldier might attack my sons or kill me. I remember that on 16 December 1988, I was summoned with my husband to the police station in Sheikh Jarrah, and Ziad Khoury informed me that the soldier would face military trial and that I have to go to testify in court. I refused and dropped the complaint. It is worth noting that the soldier who attacked me speaks Arabic fluently.

In accordance with all of the above I hereby sign this statement on this date, 17 January 1989.

(Signature)

Name withheld from publication

Appendix 15-D

Summary of Charge Sheet of Samiha Khalil

Military Court
Ramallah

Court Case No.	4640/88
Prosecution File No.	122/88
Police File No.	1271/88

The Military Prosecutor vs Samiha Yousef Khalil
Identity card No. 969585520, born 1923, resident of al-Bira

The above-mentioned defendant is accused of committing the following illegal acts:

- I. Incitement in violation of Article 7 of the Military Order Prohibiting Incitement and Hostile Propoganda (No. 101) of 1967 and Article 14 (a) of the Order Concerning the Principle of Criminal Liability (No. 225) of 1968. In violation of these two articles the defendant attempted to influence public opinion in such a way as to threaten the public peace and public opinion through committing the following illegal acts:

Item One:

Under the cover of her activity as the president of "In'ash al-Usra" the defendant expressed her support for a hostile organization through conducting festivities in which small flags of the Palestine Liberation Organization [PLO] were raised, used the "V" sign in solidarity with the PLO, and gave a speech in which she affirmed the importance of the Society of In'ash el-Usra as an institution tied to the PLO, expressing the hope of establishing a Palestinian state on Palestinian land.

Item Two:

As part of her activity as the head of the Society of In'ash el-Usra, the above-mentioned accused participated in writing a book published by the Society entitled: *The Intifada*. In the introduction of the book, it has been affirmed that the purpose of publishing this book was to support the establishment of a Palestinian State on the land of the State of Israel, through expressing support for the PLO. The writings of the accused in this book include clear statements of praise for the violent activities undertaken by participants in the *Intifada*. The book also includes inciting and offensive statements by the accused as well as slogans and poetry by others.

Item Three:

The Society, while the above-mentioned accused was head of it, issued, in or around June 1988, a publication under the title: *In'ash el-Usra Society and the Intifada*. The publication encourages the violent activity of the *Intifada* and glorifies the *Intifada's* activities and assistance given to it. The

publication also shows the role played by the Society during the *Intifada* and the assistance it provided for the *Intifada*.

Item Four:

In her capacity as President of the Society, in or around June 1988, the above-mentioned accused gave an interview to *al-Bayader al-Siyasi* magazine, in which she rejected a political solution and affirmed the necessity of rebellion against the authorities and the continuation of violent activity. The accused referred to the need for the Executive Committee of the PLO to take a decision regarding the establishment of a Palestinian State on Palestinian land.

Item Five:

The Society issued on or around June 1988, a publication entitled: *International Year of the Child 1975*, edited by the Society. The booklet is crowned by the colours of the PLO and includes a map of Palestine. The booklet also includes slogans and rhymes of establishing a Palestinian State on all the land of the State of Israel.

Item Six:

On or around February 1988, a letter signed by the accused and other women of different societies was sent to the Mufti of Jerusalem. In this letter the accused expressed support for the PLO and sympathy with the nationalist goals of the organization. The letter also includes a call for the continuation of the *Intifada* until victory.

Item Seven:

In her capacity as President of the Society, the above-mentioned defendant attempted, in or around March 1988, to influence public opinion in such a way as to threaten public peace and order. The statements of the accused on the occasion of the International Women's Day regarding the role of Palestinian women in the *Intifada* were published. These statements, which were sent to *al-Sha'ab* newspaper for the purpose of wide dissemination, encouraged the activities of the *Intifada* for the purpose of establishing a Palestinian state and expressed support for the PLO.

Item Eight:

The above-mentioned accused wrote, in or around 1988, a poem entitled *On The Occasion of the Palestinian Intifada 1987/1988*. In this poem the accused expressed her support for violent struggle. Several copies of this poem were printed and reference was made to the intention of including it in a book on the *Intifada* to be prepared by the Society.

Item Nine:

In her capacity as President of the Society, the above-mentioned accused wrote letters in or around 1988 to families of the deceased during the *Intifada*. In her letters she advocates the continuation of the armed struggle, referring to the goal of establishing a Palestinian state and expressing her support for the PLO.

Item Ten:

In or around June 1988, the above-mentioned accused put at the disposal of the Society's members four video tapes, as follows:

- (a) A tape entitled *The Armed Revolutionary* which is anti-semitic and includes praise for terrorist organizations.
- (b) A tape entitled *The Wild Violent Blossom* which includes a detailed description of the preparation of an explosive charge.
- (c) A tape for the Palestinian *al-'Ashiqin Troupe* which includes inciteful songs and the PLO flags as background.
- (d) A tape entitled *The Closing Ceremonies* which includes inciting speeches of the accused and other women.

II. Possession and Distribution of Hostile Material, in violation of Regulation 85(i) of the Defence (Emergency) Regulations of 1945. In violation of this article the above-mentioned accused had in her possession in the offices of the Society the following hostile material:

- (a) An issue of *al-Hurriya* magazine, known for its support for the Democratic Front for the Liberation of Palestine.
- (b) Booklets containing cards with unknown signatures. The booklets are filled with inciteful materials in support of violent activities.
- (c) A poem entitled *The Angry*, which praises violent struggle. Attached to it are pictures of persons holding stones, sling-shots and PLO flags.
- (d) A poem entitled *Towards Freedom*, which condemns "criminal acts" committed by the Israeli authorities and calls for violent struggle against the Israeli authorities.
- (e) The PLO flag attached to the private correspondence files of the Society.

This charge sheet was issued by the Military Prosecutor, Asher Axelrod, on 6 October 1988, and presented to Ramallah Military Court on 19 October 1988

Part II

Accountability

Introduction to Part Two

Part One of this report illustrated the nature and scope of Israeli human rights violations in the Occupied Palestinian Territories during 1989. Part Two examines the local remedies available to victims of such violations. Since the effectiveness of a local remedy will to a considerable extent depend on the ease of access to relevant information, this point is also addressed. It is approached from the perspective of the media as well as that of local human rights organizations, both of which depend on accurate documentation.

In a democratic society it could reasonably be expected that persistent, well-documented, and highly publicized allegations of systematic human rights violations would bring into action an impartial and effective investigative mechanism. International law requires similar standards to be observed during belligerent occupation. Chapter Sixteen ("Investigations") demonstrated that, in contravention of such laws, in many instances in the Occupied Territories such investigations do not even take place. When they have occurred, they have been totally inadequate. This has been due to structural defects as much as to improper practice.

Neither is recourse to the Israeli High Court of Justice an effective option for Palestinians in the Occupied Territories. In the majority of cases, the High Court conceals its failure to impartially examine and effectively challenge the legality of measures implemented by the military government with vague and unspecified references to "security."

In the absence of official remedies, the next option is to seek independent remedies. In particular, publicizing illegal practices, whether through the local or foreign press, or through human rights and other pressure groups, is an essential element of any attempt to investigate and prevent further such violations. Without the information to prove the existence of human rights violations, no remedy can even be sought.

However, as Chapter Seventeen ("The Media") makes clear, the increasing restrictions imposed on journalists in the Occupied Territories during the past year have placed reporters and photographers in the unenviable position of either breaking the law or failing to fulfil their professional duties.

Similarly, as discussed in Chapter Eighteen ("Human Rights Monitors"), local human rights organizations, including al-Haq, have been seriously hindered in their documentation of illegal practices through the extra-judicial harassment of either individual staffmembers or the organization as a whole.

Chapter Sixteen

Investigations

Introduction

The substantive protection of human rights requires the thorough, impartial, and effective official investigation of allegations of unlawful behavior by agents of the state. Throughout the 22 years of the Israeli military occupation of the Occupied Palestinian Territories, it has been claimed that the principle of accountability is applied to Israel's actions.¹ Moreover, it has been repeatedly asserted that the Israeli authorities are acting according to the "rule of law."² Consistent with this approach, in 1989, as in 1988, the authorities have characterized acts of unlawful behavior by its agents as aberrations from the norm which are thoroughly investigated and dealt with accordingly.³ This chapter analyzes the actual practice and consequences of the investigation process in the West Bank and Gaza Strip.

The process as a whole cannot be understood through a compartmental analysis of the relevant procedures, particularly in an occupation where there is an inherent conflict of interest between occupier and occupied. In this chapter, therefore, the investigation process is placed firmly within the context of the current situation in the Occupied Territories. Firstly, an analysis of the "Giv'ati Trial" is presented as a case study to highlight the inadequacies of official investigations. The second section considers the theoretical importance of such investigations and looks at relevant international guidelines. Next, the investigative procedures currently in force are analysed in terms of both their structure and their actual operation. Lastly, al-Haq takes a detailed look at problems surrounding autopsies. Representative examples are used throughout to illustrate the points addressed.

This chapter includes discussion of unlawful actions which can be considered to be sanctioned—formally or informally—by the Government of Israel. For reasons detailed elsewhere in this report, this is taken to include the acts of soldiers, Border Police, police, and collaborators. At the same time, this chapter concentrates largely, although not exclusively, on the military investigation process. This is both for reasons of space and because the great majority of killings of Palestinians during the uprising have been by soldiers. In some places, however, cases involving the acts of settlers

against Palestinians have been included to illustrate the point that the problem being discussed is not confined to military investigations.

In the context of the Occupied Territories, accountability means that the State of Israel has a responsibility under Article 29 of the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War to ensure that unlawful conduct by individuals acting on its behalf is punished accordingly. The State of Israel has an additional duty to ensure that its agents are properly instructed about their rights and duties.⁴ Thus, both the State of Israel and the offending agent bear legal responsibility for unlawful acts. Both the State of Israel and the offending agent also bear legal responsibility for acts committed pursuant to illegal "superior orders."⁵

On the whole, the outcome of official investigations into illegal conduct by agents of the state during the uprising has been deeply discouraging. As explained below, a number of inadequacies are inherent and structural, while others arise in actual practice. In particular, systematic bias by military investigators and official secrecy remained fundamental obstacles to fair and public accountability during 1989. Other problems, including the routine failure to interview Palestinian eyewitnesses and the denial of information to families and lawyers, have likewise continued. Some progress was, however, achieved during 1989 with respect to the right of families to obtain information about the death of a relative and to be represented at official autopsies. In one case, the family representative of a person who died under interrogation was permitted to visit the scene of death.

Many of the problems noted in this chapter were highlighted in a letter sent by Member of Knesset (parliament) Dedi Zucker to Minister of Defense Yitzhak Rabin on 5 November 1989, in which the former asked for a public response to his questions.⁶ In his reply, Mr. Rabin stated that each case was treated "thoroughly and seriously," and that "despite the objective difficulties which stand in the way of the investigation and prosecuting procedures . . . the procedures fulfil their purpose."⁷

Among the most serious problems encountered by al-Haq in its attempts to monitor official investigations has been the difficulty in obtaining information about the process itself and the results of specific investigations. This lack of openness helps explain why official investigations are, in general, not considered credible by many independent observers. One consequence of this state of affairs is that discussion in this chapter of the internal mechanisms of the investigation process is largely derived from press reports and recent interviews with Israeli officials conducted by the United States-based Lawyers Committee for Human Rights.

A. The Giv'ati Trial

On the afternoon of 22 August 1988, Hani al-Shami, a 42-year-old resident of the Jabaliya Refugee Camp in the Gaza Strip, was beaten so severely by soldiers that he died early the following morning.⁸ There had been a demonstration in the camp that afternoon, and soldiers chasing stone-throwers had entered the house of Mr. al-Shami after two boys identified as stone-throwers by the commander of a Giv'ati unit had run into the house. Mr. al-Shami tried to prevent the soldiers from entering his house by leaning against the door, but the soldiers forced their way in. The women

in the family were taken to a separate room while soldiers brutally beat Mr. al-Shami and his sons for 10–20 minutes. The beatings included the use of rifle butts and the handle of a broomstick, and one soldier jumped from a bed onto Mr. al-Shami. After the beatings, Mr. al-Shami and his eldest son were taken to the military compound in Jabaliya Refugee Camp, where they were apparently beaten again by unidentified soldiers. Mr. al-Shami was found dead that night at approximately 1:00 a.m. The court noted the testimony of the pathologist who performed the autopsy:

[D]uring the time [the pathologist] has been working in his profession as a forensic physician, he has never, save for one similar case, discovered such severe injuries on a human body as those he found on the deceased's body.⁹

Four soldiers from the elite Giv'ati Brigade were charged with the manslaughter of Mr. al-Shami. Their defense was twofold:

- (1) It could not be established that it was the blows inflicted by the defendants which had caused death; the medical evidence tended to show that it was the subsequent beatings in the Jabaliya military compound which actually caused the death of Mr. al-Shami;
- (2) In any case, the defendants had merely been following orders from their superiors to administer "deterrent" beatings to Palestinians after arrest.

A doctor was also charged with causing death by negligence. He had been present at the Jabaliya military compound that night, and had examined the deceased shortly after he was brought into the post because he saw blood coming from his mouth, but his brief examination apparently revealed nothing serious.

The trial lasted seven months; all five defendants were acquitted of the original charges. The four Giv'ati soldiers were convicted of assaulting a person in their custody and given sentences ranging from six to nine months. They also obtained an early release; three of them received outright pardons after pressure to this effect was exerted by Minister of Defense Rabin.¹⁰ The doctor was acquitted altogether.

This highly publicized Giv'ati Trial revealed many of the flaws in the investigation process discussed. The following points are particularly noteworthy:

- (1) The investigation was seriously flawed by an incomplete autopsy as well as inadequate efforts to trace the other soldiers who allegedly beat Mr. al-Shami at the Jabaliya military compound that night.
- (2) Although the court ruled that the orders to beat were "manifestly illegal," it did not apportion blame for the issuing of such orders.
- (3) An alternative charge of intentionally causing injury was considered and rejected by the court. Yet it is inexplicable how the severe and ultimately fatal assaults could not have been intended to cause severe injury.
- (4) The excessively light sentencing and early release of the defendants raises fundamental questions about the willingness of the Israeli authorities to uphold the rule of law and ensure that criminal conduct by their agents is punished in a manner commensurate with the gravity of the offense.

1. The Investigation

The official investigation into the killing of Hani al-Shami was itself a subject of criticism by the military court in the Giv'ati Trial verdict.

At least three of the four investigators who gave evidence at the trial were reserve soldiers. It transpired that the officer in charge of the investigation during its initial stages, Sergeant-Major Rea Wien from Beer-Sheba, was in fact unauthorized to lead it. According to the testimony of Sergeant-Major Wien, the investigation should have been conducted by an officer of higher rank.¹¹ The Giv'ati Trial verdict specifically noted that:

The investigation in this case was incomplete and not sufficiently professional . . .

[I]t is not difficult to see that the investigation was not thorough and omitted an important component regarding time and place in understanding the events and examining those responsible for the deceased's death.¹²

In particular, the investigation had failed to make serious efforts to identify the soldiers on duty that night at the Jabaliya military compound and was unable to identify any of the individuals who participated in the second (and allegedly fatal) beatings.¹³

Furthermore, the court noted that the autopsy had not been conducted thoroughly:

[U]nfortunately, in this case no histological examination was conducted, which could have decided the argument as to the important question of how much time had passed from the time the deceased's bones were broken and his death.¹⁴

However, rather than attempting to rectify the shortcomings it identified in the original investigation, the military court stated the following:

We find it hard to believe that now, after such a long period has passed since the incident, it is possible to renew the investigation and find those guilty of assaulting the deceased and the other detainees at the post.¹⁵

Advocate Avigdor Feldman sharply criticized the military court's conclusions about the investigation:

Since the "incident" occurred, only nine months have passed, and the case is a murder case or at least manslaughter. Can anyone imagine the police informing the family of a murdered man: "We're very sorry, but nine months have passed since the murder and there is no longer any chance of finding the murderer, and for this reason we won't continue our investigation." Murder investigations can go on for dozens of years. Nine months in an investigation like this is a very short period.¹⁶

During the trial itself, the military's Judge Advocate-General, Amnon Strashnow, went even further than the court in urging an end to the investigation:

I believe and I am convinced that the results of the investigation accurately reflect what happened.¹⁷

Three months later, and shortly after the court verdict, Judge Advocate-General Strashnow changed his mind. For reasons which remain unclear, he decided to reopen the investigation to determine how Mr. al-Shami's death was caused and whether or not officers had issued "manifestly illegal orders."¹⁸

2. Responsibility for “Manifestly Illegal Orders”

It was accepted by the military court in the Giv’ati Trial that:

The defendants ... were equipped with an order according to which they should beat every disturber of the peace who is caught on his limbs ... with a prohibition against injuring sensitive areas such as the sexual organs, the stomach and the head ...

[T]he briefings given the soldiers by their commanders did not restrict the use of violence to a situation in which a suspect resists his arrest. They were led to understand that in any case, that suspect should be beaten forcefully.¹⁹

After extensive deliberation, the court decided that these orders were “manifestly illegal” and therefore should have been disobeyed.

However, the verdict determined that Colonel Meiron Keren, the brigade commander of the northern district of the Gaza Strip who issued the orders, had only stated that people should be beaten after arrest. He had not, the court found, specifically stated that people should also be beaten if they did not resist arrest. He had not addressed this particular issue because the possibility that someone might not resist arrest had allegedly failed to occur to him. As the court noted:

The [written] orders ... allowed use of violence against the suspect during pursuit. Apprehension seems to have been understood as part of that pursuit and in any case as part of the violent event which has not ended yet and therefore it is permitted to beat the suspect even after apprehension ... [I]f the act of apprehension is still part of the violent event, and there is a prohibition to continue and beat that person from the moment he is handcuffed, the question of what is the period of time between these two stages arises by itself.²⁰

More junior officers had interpreted Colonel Keren’s orders to mean that any “disturber of the peace” should be beaten on arrest regardless of whether he had resisted arrest or not. The court concluded that:

[T]his is the mistake which Colonel Keren was almost certainly caught by and due to which he made a mistake and misled those subordinate to him.²¹

It should be noted that this explanation effectively exonerated all concerned from responsibility for issuing what the court confirmed were “manifestly illegal” orders.

Two days after the court verdict, a military spokesperson announced that the commander of the four Giv’ati soldiers would not be prosecuted.²² The following day, it was announced that the military officers responsible for issuing the unclear and illegal orders to the soldiers might “face disciplinary action or even court-martial.”²³ However, it was reported that it had already been decided that the Giv’ati brigade commander would not be dismissed because his troops were under the authority of a regional military commander.²⁴ Clearly, such an announcement seriously prejudices the conduct and outcome of an investigation.

To date, it is still not clear whether or not Colonel Keren is going to stand trial.

3. The Conviction

The court determined that it could not be shown that the defendants had caused the death of Mr. al-Shami and that the charge of manslaughter had therefore not

been proved. In such cases, however, a military court has the power to substitute a different charge, and indeed, the court did so, convicting the defendants of beating a person in their custody. Pursuant to Article 65 of the 1955 Military Justice Law:

[A] soldier who strikes or otherwise maltreats a person committed to his custody ... is liable to imprisonment for a term of three years.²⁵

The court also considered and rejected a conviction for the charge of intentionally causing injury;²⁶ it found that in their execution of orders to beat people severely enough to deter them from disturbing the peace (which according to the orders could include the breaking of bones), the defendants did not intend to cause severe injury to the deceased. The court concluded:

[A]t most we can find in [the defendant's testimonies] confirmation that [the defendants] anticipated that as the result of their conduct the deceased will be caused disability, for example, his legs be broken or perhaps he will also be caused severe harm.²⁷

4. The Sentence and Pardon

Three of the defendants received sentences of nine months actual imprisonment and nine-months suspended, and the fourth was given a six-month actual and six-month suspended sentence.

The fourth defendant was released two weeks prior to the conclusion of his sentence. The other three were also released early; on 29 September 1989, after pressure from Defense Minister Rabin, Major-General Matan Vilna'i, the Gaza Strip Area Commander, reduced their sentences from nine to six months.²⁸ Mr. Rabin had publicly stated that an "injustice" had been done to the soldiers, on the basis that junior soldiers should not take all the blame for what had happened.²⁹

There are two serious flaws in Mr. Rabin's logic. Firstly, the orders to beat were found by the military court to be "manifestly illegal," and therefore, under both Israeli and international law, the soldiers had an absolute duty to disobey them irrespective of the responsibility of additional parties. Secondly, while Mr. Rabin implies that those who issue manifestly illegal orders will be held accountable, past experience leads al-Haq to conclude that either Colonel Keren will not stand trial or will receive only a suspended or otherwise excessively light sentence.

It is also questionable whether full responsibility should indeed rest with Colonel Keren. The court attempted to distinguish between what it saw as the legal written orders concerning beating on arrest and the manifestly illegal verbal orders.³⁰ However, it is at least arguable that whoever issued the original written order is accountable for the interpretation which Colonel Keren gave it, since the order was apparently sufficiently vague to permit such an interpretation.³¹

During the Giv'ati Trial, many of the defects at the various levels of the investigation process were publicly exposed. Perhaps for this reason, the entire episode does nothing to convince an observer that a serious effort is being made to punish those responsible for committing illegal acts and issuing illegal orders. Of equal importance, the Giv'ati Trial verdict did nothing to deter others from repeating such crimes. Yet, by the mere fact that the case went to trial, it remains one of the most successful of its kind.

B. Applicable Guidelines

1. The Importance of Investigations

A state which proclaims its unreserved adherence to the "rule of law" may legitimately be judged by the extent to which it observes those standards in trying circumstances. Consequently, when allegations of unlawful behavior by agents of that state arise, the integrity of its declared principles may be evaluated by reference to the manner in which it investigates and allocates responsibility for such conduct. Indeed, without adequate investigations there can be no public and proper accountability, without which the concept of the "rule of law" and the effective protection of human rights becomes a mockery.

For an investigation process to be credible, it must not only adhere to certain minimum standards of impartiality, independence and openness, but must also be effective. In other words, after a thorough investigation, there must, where appropriate, be a proper trial (and reasonable sentence if the defendant is convicted), and if necessary, action must be taken to stop unlawful behavior from becoming the norm and forming policy; this might include, notably, the clarification or withdrawal of vague or illegal orders. Only if this is done will soldiers be persuaded to change their behavior, thus making the whole investigation process effective.

A failure to live up to these standards has several effects; firstly, an individual who has committed a criminal offense goes unpunished for his crime. Secondly, a failure to adequately investigate and prosecute implicates the state itself in the unlawful act of one or more of its agents. Finally, it effectively gives the green light to others to commit further criminal acts.

2. International Standards

The international community has recognized, and recently focused, on the central importance of thorough and impartial investigations in the protection of human rights. In his 1987 report, the United Nations Special Rapporteur on Summary or Arbitrary Executions showed how a failure by states to adequately investigate allegations of excessive force by law enforcement officials is used to conceal their complicity:

[W]here death was caused by the police, the army or other law enforcement agencies or persons acting under their protection, such [official] investigations have been the exception rather than the rule. Governments have been noticeably reluctant to carry out investigations in such circumstances, despite the availability of witnesses, and to punish the offenders . . . This has been due either to lack of the political will or the capacity to investigate such deaths, or to the fact that such deaths have been carried out pursuant to the policy of the Government or with its express or implied permission or approval.³²

A number of international legal instruments are relevant to investigations. Firstly, the notion of state responsibility for the acts of its agents is fundamental. This principle is reiterated in Article 29 of the Fourth Geneva Convention as follows:

The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual

responsibility which may be incurred.

The Convention explicitly states that this responsibility entails that all State Parties search for and prosecute persons who are alleged to have committed or ordered the commission of "grave breaches" of the Convention and take the necessary measures for the suppression of all acts in violation of the Convention.³³ It should be noted that state responsibility is not avoided if an agent exceeds his authority, for example by issuing unlawful orders or disobeys lawful ones.³⁴

Of particular importance is the duty of the occupying power to report to the Protecting Power on the death or serious injury of any "internee." Reporting should include the statements of any witnesses.³⁵ In al-Haq's opinion, in the absence of a Protecting Power, such reports should be transmitted to competent agents of international protection such as consulates or embassies.

Although no binding international legal principles exist concerning the nature of investigations, some useful guidelines were enumerated in the 1988 report of the UN Special Rapporteur on Summary or Arbitrary Executions. These guidelines were intended to include the minimum elements required of an investigation:

- (a) **Promptness:** the investigation should be carried out immediately following the discovery of such a death;
- (b) **Impartiality:** the investigation should be carried out by a person or persons or an authority whose impartiality is guaranteed and protected;
- (c) **Thoroughness:** the investigation should include an adequate autopsy, collection and analysis of evidence, and statements from witnesses, hence the person(s) or authority investigating should be given the necessary powers, assistance and logistic support;
- (d) **Protection:** complainants, witnesses and persons investigating and their families should be given effective protection from violence or any form of threats;
- (e) **Representation of the family of the victim:** the family of the victim and its legal counsel should be able to participate in the investigatory proceedings and have access to substantive information at various stages of the investigation;
- (f) **Publication of the findings:** the methods and findings of the investigation should be made public;
- (g) **Independent commission of inquiry:** in cases in which the normal investigatory procedure is inadequate, an independent commission of inquiry or similar procedure should be secured. Such a commission should have the necessary authority and powers to carry out impartial and effective investigations.³⁶

These guidelines, although designed specifically for the investigation of summary or arbitrary killings, are a helpful standard by which to assess any official investigation of a criminal offense where there is suspicion of involvement of agents of the state. They will be referred to throughout this chapter, where appropriate.

C. Bias and Secrecy in Military Investigation Procedures

1. Bias

When an Israeli soldier is alleged to have committed an unlawful act in the Occupied Territories, he may, under certain circumstances, be subjected to an internal military investigation. The investigation is undertaken by the Military Police, Criminal Investigation Department (CID, a branch of the military), and the final report is issued by the local military Judge Advocate under the supervision of the military's highest legal officer, the Judge Advocate-General. This investigation can lead to the recommendation of disciplinary proceedings or a court-martial. Thus, the process of the investigation is from beginning to end an internal military affair.³⁷

Clearly, the investigators are not independent from the people they are investigating. The requirement of impartiality stated in the UN Special Rapporteur's guidelines is therefore, on the face of it, in jeopardy. This is not, however, just a theoretical problem. On the day al-Haq released its 1988 annual report, David Kretzmer, who teaches constitutional law at the Hebrew University, reported that:

A soldier who recently returned from service in the West Bank told me how military police sent to investigate shootings advised the investigatees on the phrases they should use in order to ensure that the file would be closed.³⁸

More recently, in late April 1989, the family of 'Atwah Harzallah demanded an investigation into his killing by soldiers at Deir Ibzi' on 27 February 1989. The demand came in the wake of reports from a soldier that a brigade commander had admitted that Mr. Harzallah had been shot from a distance of two meters while unarmed and empty-handed.³⁹ Mr. Harzallah and four other young men were returning from Kufr Ni'mah, where they had taken a friend for hospital treatment after he had been shot by a plastic bullet following a demonstration in Deir Ibzi'. They were stopped by two soldiers, who had been hiding behind a wall, and who ordered the group to raise their hands. The soldiers then shined a flashlight on each of them. When it was Mr. Harzallah's turn, one soldier held the light on him, and the other shot Hirzallah in the head and shoulder, three times, from a distance of only several meters.*

The admission by the brigade commander was allegedly made in a briefing by the commander to reservists who had asked what support the military would give them if they were involved in an incident resulting in Palestinian casualties:

The brigade commander cited [Mr. Harzallah's death] saying he told Military Police investigators that Harzallah had been wanted by the Shin Bet. "This eased the investigation" the commander said, adding that the inquiry subsequently found that the soldiers had followed orders.⁴⁰

In addition, there are cases where pressure has reportedly been placed on the Judge Advocate-General's Office by the Chief of the General Staff of the Israeli military so as to ensure a lesser punishment for military personnel alleged to have committed unlawful acts (see further below).

*See further Chapter One, "The Use of Force."

2. Secrecy

The stipulation by the UN Special Rapporteur that the methods and findings of investigations should be made public is also ignored in the Occupied Territories. Military investigations are conducted in secret and the results are rarely made public. In al-Haq's experience, it is highly exceptional, rather than routine, for even the main findings of an investigation report to be communicated to the lawyer representing the family in the case.

It can therefore be stated that even if accountability does exist, the public (and in particular the Palestinian population of the Occupied Territories) have no way of knowing this. Hence, the burden of proof must lie with the authorities to provide convincing evidence that investigations are thorough, impartial, and effective. In al-Haq's view, in cases where investigations have been completed, the authorities have offered no such evidence. The following section illustrates this point by analyzing how the investigation process has worked in practice during the uprising. Some of the examples used date back to 1988 because investigations tend to take many months to complete.

D. Initiation of an Investigation

1. Applicable Guidelines

According to statements made by Israeli officials, all cases of death where there is any suspicion of involvement by an Israeli soldier are automatically investigated.⁴¹ Such investigations are carried out by the Israeli Military Police, Criminal Investigation Department (CID). Where a settler or member of the Border Police is suspected of involvement, the investigation is carried out by the Israeli National Police. Cases of injury not resulting in death are investigated only upon submission of a complaint. Any person or interested party is permitted to submit this complaint,

2. Practice

Investigations into Deaths: "Military Operations"

According to al-Haq's information, not every fatality in which the military is involved is investigated. A senior military source informed al-Haq in mid-September 1989 that "military operations" are not investigated, unless the results are unexpected. It is unclear what constitutes a "military operation," but in the case of 'Amer Kalbouni and Ayman Jamous, killed in a military raid on the house in which they were staying in Nablus in the early hours of 2 September 1989, al-Haq was informed that this was a "military operation." The two had been wanted by the Israeli authorities for some time, and after the raid Israeli sources stated that weapons, including a sword, hand grenade, hatchet, and ammunition, had been found in the house.⁴² However, at no time was it asserted that there had been an armed confrontation; on the contrary, according to al-Haq's information, the military burst into the house and opened fire without warning.

In circumstances like these, there is no automatic investigation. The soldiers who participated in the operation are instead subjected to "extensive debriefings."⁴³ The justification given to al-Haq was that when a "military operation" takes place, the situation is analagous to a "state of war" in which it cannot reasonably be expected that every killing will be investigated. Only if the killing is *unexpected* will an investigation be started. It is thus within the military's discretion to term an incident a "military operation" and thus remove it altogether from the purview of the CID. The potential for abuse is obvious. Without an investigation, there can be no assessment of whether an action was lawful or not. Furthermore, premeditated and clearly unlawful killings, such as wilful killings, can be defined as "military operations" before the fact and thus escape scrutiny.

Investigations into Other Cases of Death

In al-Haq's experience, even though it is claimed that investigations into killings other than those which result from "military operations" are mandatory, investigations are sometimes initiated only if and when the family of the victim and their lawyer ask for one. This raises two concerns:

- (1) It is apparently not the case that an investigation is automatically initiated after an incident resulting in death;
- (2) The principle of promptness in an investigation, identified by the UN Special Rapporteur as an essential requirement, is violated. This is important because witnesses move away and forget details. Reliable information, particularly that which relates to the scene of the incident, needs to be properly assessed at the earliest possible opportunity.

Furthermore, according to a recent statement by the military spokesperson, no investigation had been initiated by the CID in 17 of the 102 cases of killings of children (aged up to 16) in the Occupied Territories between December 1987 and August 1989 in which the military accepted that there was at least suspicion of involvement by the security forces.⁴⁴ No explanation was given for this apparent violation of official procedure on death investigations. This figure of around 17 percent of cases where an investigation is not automatically started, which is contrary to the announced policy of the military authorities, is deeply disturbing.

It can, of course, be difficult to know whether or not an investigation has been started. However, there are two important indicators:

- (1) Whether or not an official investigation is announced;
- (2) Whether Palestinian eyewitnesses have been interviewed.

In the case of Yaser Abou-Ghosh, killed by security officers dressed in civilian clothes in Ramallah on 10 July 1989,[†] no official announcement of an investigation

[†] See further Chapter One, "The Use of Force."

into the killing was reported until two weeks after the incident.⁴⁵ In the days following the killing, Israeli military spokesmen said that Mr. Abou-Ghosh had been killed by "security forces" after ignoring an order to halt.⁴⁶ On 22 June 1989, al-Haq released an alert on the killing of Mr. Abou-Ghosh after interviewing approximately thirty witnesses.[†] When the alert was released, the authorities had failed to contact any of these witnesses. It appears that an investigation was only started after the family's lawyer intervened with the authorities, demanding an investigation of the circumstances of the killing.⁴⁷

Even the official announcement of an investigation is no guarantee that it is actually taking place. For example, Salem Isma'il Mubarak was shot in the head by Border Police on 30 March 1989. Critically wounded, he died one week later. There had been a demonstration in the town of Beit Sahour, and Border Police had hidden in the nearby fields, where Mr. Mubarak was ploughing. When firing started, Mr. Mubarak dived to the ground to take cover, but as the jeeps began to leave Mr. Mubarak returned to his plough and was shot.⁴⁸ Four months later the *Jerusalem Post* noted:

Accounts of the incident were reported in the press at the time, but an inquiry was ordered only last month following publication of a special report in the *Ha'aretz* daily which revealed that neither the army nor the police were investigating the case despite statements by both that inquiries were underway.⁴⁹

Investigations into Other Human Rights Violations

As noted above, in cases where allegedly unlawful behavior does not result in death, no investigation is initiated unless a complaint is received. This precondition must be viewed in the context of the situation in the Occupied Territories. Quite simply, it is frequently physically impossible to submit a complaint to the relevant authority, or to get an acknowledgement that it has been received and an investigation is under way.

The experience of Palestinians who have tried to file complaints against the unlawful actions of settlers, collaborators, police, soldiers, or Border Police in the Occupied Territories ranges from a simple refusal on the part of the authorities to accept the complaint, to physical intimidation (up to and including the most severe beatings), to the threat of filing charges against those who submit a complaint.⁵⁰

These difficulties in filing complaints have characterized the investigations system for many years. The problem was officially recognized in the 1982 Karp Report, submitted by Israeli Deputy Attorney General Yehudit Karp, about settler violence in the West Bank. It concluded:

[P]olice activity to maintain public order and [ensure] the inhabitants' welfare in Judea and Samaria ... focuses on investigating in the wake of complaints. Incidents of lawbreaking when no complaints were lodged are not investigated ...

The material submitted to the Inquiry Team clearly indicates that local residents refrain from complaining ... one may conclude with a large measure of confidence that criminal occurrences take place in the area ... which are not investigated ...

[†]See further Appendix 1-J.

The potential reasons for this absence of complaints may range from fatalism and a natural tendency not to complain, to a lack of desire to come in contact with the authorities, to fear resulting from a threat or fear of an act of revenge, to drawing conclusions from a lack of results in previous complaints to the police or from police refusal to handle complaints . . .

The real situation points to a vicious circle in which occurrences aren't investigated for lack of complaint, while complaints aren't submitted because of a lack of proper investigation. The rule of law and public order surely do not come out the winners in this matter.⁵¹

The Israeli High Court of Justice has also stated its dissatisfaction with the requirement that complaints be submitted before investigations are initiated. In the case of *Zaloum, Dandis and Hanini v. the Military Commander of Judea and Samaria and the Military Commander of Hebron* (also known as the "Beit Hadassa Case"),⁵² the Court held that:

There is no doubt that the main function of the ruler in an administered territory is to maintain law and order. He must do so even in the absence of any complaints from the local residents.⁵³

It was only in February 1988, after intervention by the Association for Civil Rights in Israel, that the Legal Advisor for the civil administration of the military government in the West Bank agreed to direct the police to receive complaints against the military.⁵⁴ Up until this time the police would not accept complaints, and Palestinians were thus effectively prevented from submitting complaints against the military.⁵⁵ In 1989, soldiers at the gate often hindered or prevented the access of people trying to enter Ramallah Police Station. At the time of writing al-Haq is not aware of an improvement in the situation regarding submission of complaints.

The following cases illustrate the near impossibility for Palestinians of obtaining legal remedies for unlawful acts committed by Israelis in the Occupied Territories due to the difficulties of submitting a complaint and getting it acted upon.

In a very recent case, al-Haq fieldworker Sha'wan Jabarin tried three times on 10 October 1989 to submit an official complaint to policemen present in the "Khashabiya" lock-up in Hebron after he had been severely beaten, punched, and otherwise ill-treated after his arrest that day.⁵ The officials concerned refused to accept the complaint each time, and instead threatened Mr. Jabarin with being taken to the interrogation area if he wished to complain. Shortly afterwards, and apparently in reaction to his insistent and repeated attempts to submit a complaint, Mr. Jabarin was beaten even more severely, with a soldier jumping on his head, chest, and hands repeatedly for ten minutes while Mr. Jabarin was lying handcuffed and blindfolded on the floor.⁵⁶

On 19 July 1989, two settlers broke into the property of Nmour Ahmad Hasan I'seila, a landowner from Hebron, and sprayed his vine trees with a substance which caused the trees to wither within a few days.[¶] When he tried to submit a complaint at the military governor's center, a soldier at the entrance refused to listen to his story and turned him away without letting him submit his complaint.⁵⁷

⁵See further Chapter Eighteen, "Human Rights Monitors."

[¶]See further Chapter Three, "Settler Violence."

If a complaint is submitted, or if evidence is given against soldiers or settlers, there is a considerable risk of punitive action being taken against the complainant or witness. The recommendation of the UN Special Rapporteur that protection be given to complainants and witnesses, is thus of particular relevance to the Occupied Territories.⁵⁸

For example, as long as ten years ago, Mr. Jabarin was arrested and interrogated for 18 days on two occasions exclusively in connection to testimony he gave in court concerning his witnessing of the shooting deaths of two Palestinians in Hebron, on 15 September 1979, by a settler and a soldier. Notably, during one of the interrogations, pressure was placed on him not to testify, and his interrogators suggested that Mr. Jabarin had himself participated in the demonstrations surrounding the killings.⁵⁹

In another case, Hasan 'Abd-al-Rahman Hasan Saleh, 22, from 'Aroua near Ramallah, was beaten and partially buried alive by soldiers during a raid on his village on 18 May 1988.⁶⁰ His family subsequently filed a complaint against the military, and an investigation was initiated. On 9 July 1988, the military again raided the village and singled out Mr. Saleh for a particularly savage beating, including beating him on the head with a rock. His skull was fractured, and he had to undergo emergency brain surgery at Ramallah Hospital. The soldiers who beat Mr. Saleh said to him: "You are Hasan 'Abd-al Rahman, this is all we need to know."⁶¹

The significance of the difficulties of making an effective complaint should not be minimized. The most perfect procedural system for investigating alleged criminal offenses is useless if the complaints on which such investigations are based cannot be made.

E. The Conduct of Investigations

1. Applicable Guidelines

The procedure for a military investigation is as follows: after a shooting death, an "operational report" is prepared by the local military unit within a few days and sent to the "upper echelons" of the Israeli military. CID investigators are also notified; they open a file and begin to collect evidence on the incident.⁶² At this stage, CID investigators visit the scene of the incident, and interview eyewitnesses and soldiers. Based on this initial investigation, they prepare a brief preliminary report, in the form of a letter, which is sent to the military Judge Advocate-General's unit. The letter has no legal weight; it merely summarizes the circumstances of the death in a general fashion.

The Judge Advocate-General's unit may then work directly with investigators on the case; as additional evidence is collected, a draft final report is written. This is reviewed both by the Judge Advocate-General's office and the local Judge Advocate responsible for the area in which the death occurred. It is the responsibility of both of these units to analyze the evidence from a legal perspective since the CID investigators may not be lawyers. The local Judge Advocate is responsible for issuing the final report with the input and oversight of the Judge Advocate-General's office. He also

decides what action to recommend. The possible recommendations which can be made are to close the file, to ask the CID to gather more evidence, or to initiate disciplinary proceedings or a military court trial.

In cases involving complex legal or factual questions, the recommendation may be the appointment of an "investigating judge." This is a very senior investigator, who is able to interview witnesses in a prosecutorial format. His decision to prosecute a soldier or officer is binding and cannot be overruled by the military prosecutor or Chief of Staff. It is not clear whether his decision not to prosecute is similarly binding.

2. Practice

Where unlawful acts are allegedly committed by agents of a state, it is a well-recognized phenomenon that there is a tendency for states to fail to investigate or to investigate such cases inadequately. In his 1987 report, the UN Special Rapporteur on Summary or Arbitrary Executions noted:

In cases of death caused by excessive or illegal use of force by law enforcement officials or by the military authorities during arrest or detention, the explanation often given by the authorities concerned was that the criminal suspects were shot while trying to escape or when resisting arrest, or in armed clashes in which law enforcement officials acted in self-defense, or that persons in the custody of the police or military authorities committed suicide or died of a sudden illness. Such explanations were often accepted without further investigation even when they were not supported by evidence, including autopsy reports. In cases where there was an investigation, it was often carried out by the authorities to whom those alleged to be responsible for such deaths were answerable.⁶³

In the case of Israel's attitude towards investigating alleged abuses of its law enforcement personnel in the Occupied Territories, the main problem is the conduct of the investigation itself. This gives serious cause for concern about the lack of good faith of the investigating team, and the supervisory bodies involved. A number of issues can be identified as being of particular importance:

- (1) Conduct of official autopsies
- (2) Failure to interview Palestinian eyewitnesses
- (3) Obstruction of access to relevant information
- (4) Pre-empting the results of an investigation
- (5) Delays in concluding the investigation
- (6) Results of the investigation

Conduct of Autopsies

The inadequacy of the investigation process is perhaps most clearly shown in cases involving death, including death in detention.* Although families gained the right to

*See further Chapter Five, "Torture and Death in Detention."

send a medical representative to the official autopsy and obtained better access to the results of such an autopsy in 1989, few investigations resulted in the prosecution of suspects. This may be attributed in part to weaknesses in the process of investigation, in particular the failure to link medical findings to evidence concerning the circumstances of death, and in part to a lack of independence on the part of the investigating authorities, who have exhibited bias in favor of the suspects in several of the cases documented by al-Haq (see further below).

Failure to Interview Palestinian Eyewitnesses

In al-Haq's experience, as a general rule Palestinian eyewitnesses to an incident are not questioned during the official investigation. Only in exceptional cases which have attracted media attention, or gone to the High Court of Justice is an effort made to contact Palestinian witnesses.⁶⁴

The Israeli authorities justify this failure by stating that Palestinians are reluctant to give evidence, and are afraid of being considered collaborators. For this reason, they say, interviews with Palestinians are arranged in "neutral" areas, so witnesses will not be viewed as collaborating with the military authorities by other Palestinians.⁶⁵

In al-Haq's experience, over the past ten years Palestinians have provided information concerning incidents they have witnessed in thousands of cases. Further, they have been prepared to go to the High Court of Justice to seek remedies, but the cumulative experience of the past twenty-two years of occupation has been deeply discouraging, and has shown that it is simply not worth complaining. Indeed, it can be dangerous to do so, because of the risk of reprisals from the authorities, as the incidents cited above illustrate. It is worth noting that even in cases where al-Haq has intervened with the authorities and stated that it has relevant information, no requests for such information have ever been received.

In any case, an unwillingness on the part of Palestinians to give evidence to the authorities could never be a justification for failing to take all necessary steps to conduct a prompt, thorough, and impartial investigation. The failure to even attempt to obtain all the available evidence is clearly prejudicial to the outcome of any proceedings; effectively only one side is heard, and a side which has an obvious interest in the outcome of the investigation. The requirement of thoroughness listed by the UN Special Rapporteur is simply being ignored. This is highlighted by the fact that even where witnesses state their willingness to give evidence, they may not be questioned.

For example, in the recent, well-documented, and highly publicized shooting death of Nidal al-Habash in Nablus on 9 October 1989,[†] a witness who had a full view of the whole incident was not questioned during the preliminary investigation, despite openly stating her willingness to give evidence. According to affidavits from eyewitnesses, Mr. al-Habash was shot while he was standing with his hands raised, and was then shot again after he had fallen to the ground.⁶⁶ Asma' al-Masri witnessed the incident, and her story was published in newspapers the following day. The Lawyers Committee for Human Rights formally notified the Israeli authorities of Ms. al-Masri's willingness to testify in a letter to the Deputy Judge Avocate-General on 4 November 1989. On 9 November, an article in the *Jerusalem Post* stated:

[†]See further Chapter One, "The Use of Force."

[Asma' al-Masri] was not questioned by the IDF. A top officer in Nablus has confirmed that no local witnesses were questioned.⁶⁷

Preempting Investigation Results

In a number of incidents involving Israeli soldiers, and settlers which have resulted in Palestinian deaths, senior Israeli officials have publicly stated their version of events before the official investigation is completed. This version has tended to exonerate the implicated parties of any blame. The issuance of public statements from senior officials during the course of an investigation can only serve to prejudice the independence and impartiality of the result.

For example, a few days after the killing of Nidal al-Habash in Nablus on 9 October 1989 (see above), West Bank Area Commander Yitzhak Mordechai said that soldiers had acted properly and followed correct procedures for apprehending suspects during the incident.⁶⁸

In the case of the killing of eight Palestinians in Nablus on 16 December 1988, the investigating officer publicized his preliminary findings less than ten days after the incident:

There were no aberrations in the Nablus incident ... There is no truth to the statements that Israeli army soldiers attacked a funeral procession and indiscriminately fired live ammunition. They only fired when their lives were endangered.⁶⁹

Al-Haq has sworn statements from eyewitnesses contradicting this version of events.[†] Moreover, at least one Palestinian was killed during this incident by a soldier shooting from inside a nearby building.⁷⁰

On Friday, 17 November 1989, two settlers fired indiscriminately at Palestinians in the main street of Ramallah, injuring Jamal Karam, 26, in the leg. Al-Haq submitted a complaint to the Ministry of Police in Jerusalem a few days later, and emphasized that it had sworn affidavits from eyewitnesses detailing what happened during the incident.[‡] The case was reported in the *Jerusalem Post* of 29 November 1989, in which a "spokesman for the Judea District Police" was reported as saying that the incident was under investigation. It should be noted that the same report stated the Israeli military's version of events, that the settlers had "blundered" into the center of Ramallah, where they came across a roadblock, and were then attacked by stones so they fired shots in the air. This "official" version of events has been given without any attempt by the military (who were only indirectly involved), or the Police (who are supposed to be conducting the investigation), to inquire further of al-Haq about the information it has on the incident. Thus, the Israeli military had already given a version of events totally supportive of the settlers (and contradictory to al-Haq's information) while the investigation was underway.⁷¹

[†] See further Chapter One, "The Use of Force."

[‡] See further Appendix 3-A.

Obstruction of Access to Relevant Information

According to the Judge Advocate-General's office, in military investigations, evidence or other information obtained by lawyers for the families of shooting victims will be accepted and read by the Judge Advocate-General's unit. The information is then passed on to the CID investigators. Requests by lawyers for information in investigation files will be accepted, and all testimony and evidence will be provided except for that which is classified for security reasons or correspondence between the CID and the Office of the Judge Advocate-General.⁷²

In practice, the authorities' unique access to information relevant to an investigation has been seriously abused; it has been used to obstruct the access of lawyers and families of victims to discover the true circumstances of a killing or other incident. This is directly contrary to the requirement suggested by the UN Special Rapporteur that the family and lawyer be able to participate in the investigatory proceedings and have access to substantive information at various stages of the proceedings.

In particular, lawyers who have tried to find out the status of an investigation have been delayed for excessively long periods of time before receiving an answer; in some cases, no satisfactory reply has ever been given. This effectively prevents a lawyer from submitting evidence to the CID to assist with an investigation, and consequently seriously detracts from the quality of that investigation. Further, lawyers and families of people who have been killed are also prevented from having adequate access to information concerning the results of an investigation, in particular copies of the autopsy report and the investigation report. The following cases illustrate these points.

In the case of 'Ata 'Ayyad, who died in Dhahiriyya detention center on 14 August 1988, the family had not been able to obtain access to the autopsy report or the final investigation report 16 months after his death, despite repeated interventions by their lawyer, Advocate Ahlam Haddad. She made several written requests to the authorities in 1988 and 1989 asking for access to these reports, only to be told, on 7 June 1989, that "the military investigation into the matter has not yet been concluded."⁷³ Advocate Haddad appealed to the High Court of Justice in August 1989, requesting to be given all information pertaining to the death, a serious investigation into the death, and permission for a forensic expert appointed by the family to conduct a second autopsy on the body. On 7 November 1989, the High Court held a session, and scheduled a further hearing for 6 December 1989.[¶]

In another case, Jiryas Yousef Qunqar was shot to death by Nissim Daham, a soldier, on 24 July 1988 in the town of Beit Jala in the Bethlehem district. The lawyer for the family, Usama Halabi, only discovered the name of the soldier involved, the charges pressed against him, and the eventual sentence (a three-months suspended sentence), from press reports, despite his repeated efforts to contact the investigating authorities about this case (see further below).⁷⁴

The problem is not confined to Israeli military investigations; the following cases illustrate a similar prevailing attitude in police investigations into incidents concerning

[¶]See further Chapter Five, "Torture and Death in Detention."

settlers:*

Ibrahim 'Isa Ghanem, a U.S. citizen, was brutally beaten by settlers on 20 January 1988 in al-Ram, near Jerusalem. He filed a complaint on 24 February 1988, and to date, despite repeated interventions by his lawyer, Advocate Jonathan Kuttab, neither he, nor Mr. Kuttab, have been informed of the status of the investigation. Indeed, only one letter has been received by Mr. Kuttab, a one-sentence letter from the Claims Unit, Ministry of Defense, written on 7 December 1988, requesting to know whether the advocate was a member of the Israeli Bar.⁷⁵

In another case, Advocate Jonathan Kuttab is currently still seeking to ascertain the names of a number of settlers who kidnapped and beat his client, 'Abdallah Khalil Isma'il Daghash, on 26 September 1985. Mr. Daghash identified one of the settlers as Me'ir Cohen, and took the license numbers of the two cars involved. However, despite numerous letters and interventions by Mr. Kuttab to discover the names and addresses of the settlers involved so that he might at least file a civil claim for damages in the Israeli courts, this information has been denied him. Mr. Kuttab was informed that a decision had been taken not to prosecute the settlers involved due to there being "insufficient evidence."⁷⁶

In 1989, al-Haq had some success in individual cases in obtaining copies of autopsy reports, but as a general rule the reports are not sent to the families or lawyers, but are transmitted to whoever commissioned them, e.g., the Military Police, and are not made public. In al-Haq's experience, they can be obtained only by application to the High Court of Justice or through public pressure.

Delays in Concluding Investigations

The failure to complete an investigation within a reasonable period of time seriously prejudices the effectiveness of an investigation. In al-Haq's experience, the conclusion of a military investigation can take many months.⁷⁷ Such delays in bringing those responsible to justice, instead of promptly penalising unlawful behavior in the military, encourages further such acts in the interim period. In addition, in some cases the investigation process is so slow that the conclusions may prove difficult to challenge once they are made public, since by then the body of the deceased will be in such an advanced stage of decomposition as to prohibit a meaningful second autopsy.

Even in cases attracting much publicity, the investigation may take an excessively long time. In the case of the shooting deaths of two administrative detainees at Ansar 3 in August 1988 (see below), an investigating judge, Colonel Motti Peled, was finally appointed to look into the events after the file had been returned to Military Police investigators three times by the Judge Advocate-General.⁷⁸ The result of the investigation was not announced until 8 November 1989, almost 15 months after the incident. It was decided not to prosecute.⁷⁹

*See further Chapter Three, "Settler Violence."

Results of Investigations

The failure to publish the full conclusions of investigations complicates any reasoned assessment of the adequacy of an investigation. Moreover, many of the results of investigations call into question the credibility of the official investigation process. This applies to both military and police investigations. In al-Haq's view, due to these factors, there is serious reason to doubt the credibility of such investigations. In the words of a reserve duty battalion commander in Nablus to his unit, after an investigation had been conducted in his unit: "they've come to close files, not to probe."⁸⁰

Indeed, many files are closed due to "insufficient evidence"; in light of the failure to approach Palestinian eyewitnesses mentioned above this can be seen as an indictment of the lack of thoroughness of the investigation itself. In addition, al-Haq is aware of a number of cases in which strong *prima facie* evidence exists implicating Israeli military personnel but where no criminal charges have been brought as a result of the investigation. The following are representative examples of such cases:

- (1) The killing of two Palestinians in Ansar III on 16 August 1988. According to sworn eyewitness accounts, Camp Commander David Tsemah himself was directly responsible for at least one of the two killings. There had been disturbances in the camp that day after administrative detainees had refused to do work for the soldiers when ordered to do so, since it is contrary to the Fourth Geneva Convention to compel administrative detainees to do "forced labor." Detainees were forced to sit outside their tents for a period of time in the intense heat. A demonstration erupted with detainees throwing tin trays, stones, and other objects at the guards, who initially responded with tear gas and rubber bullets, but then began to use live ammunition. At some stage Commander Tsemah arrived on the scene and threatened to shoot any detainee who was out of the tent. One of the detainees, As'ad al-Shawwa, stood opposite Commander Tsemah at a distance of about 30 meters, and said words to the effect of "OK, shoot me," whereupon Commander Tsemah grabbed an M-16 rifle from a nearby soldier and fatally shot Mr. al-Shawwa in the chest.⁸¹
- (2) The case of Ibrahim al-Mtour, who died in detention on 21 October 1988 (see further below).

The problem is also apparent in police investigations; for example, the kidnapping and beating of Mr. 'Abdallah Daghash on 26 September 1985 (see above). The file was apparently closed on the basis of there being insufficient evidence, despite the fact that the victim had identified one of his assailants, and had noted the license numbers of the cars of the assailants.

F. Trials and Disciplinary Hearings

The proceedings initiated as a result of the recommendation of the investigation report, in either a disciplinary hearing or a court-martial, are the most visible test of

the state's determination to curb unlawful behavior on the part of its agents. If investigation reports which recommend prosecution routinely end with an acquittal, or conviction with an excessively lenient sentence, the integrity and independence of the whole investigation process is open to question.

This section demonstrates that the cases which have come before military courts have routinely resulted either in acquittals or convictions with excessively lenient sentences. At the same time, a number of cases have ended in disciplinary hearings where there appears to have been sufficient *prima facie* evidence to hold a military court trial.

The decision whether to recommend prosecution in a military court, or merely a disciplinary hearing, is part of the final investigation report. Press reports indicate that this decision may in practice be taken at the highest levels of the military, particularly in sensitive cases.

The jurisdiction and powers of each tribunal are substantially different. Disciplinary hearings have limited jurisdiction and powers of punishment. They can hear offenses against military law only (e.g., misuse of weapon, or exceeding authority).⁸² They are conducted by the commanding officer of the soldier concerned, and may be held on the spot, after the incident. The rules of evidence do not apply.

As punishment, disciplinary hearings can impose a range of penalties according to the offense and the rank of the person appearing before them. These penalties include a severe reprimand, admonition, fines, lock-up, grounding to the base, and demotion by one rank. An officer of the rank of lieutenant colonel or above may not be sentenced to time in the lock-up or grounding to the base. Demotion is not allowed for any rank of officer.⁸³

Military offenses which are also crimes must not be brought to a disciplinary hearing. Military courts for soldiers hear either offenses under the 1955 Military Justice Law or the ordinary Penal Code. They have their own rules of evidence and procedure.⁸⁴

1. Disciplinary Hearings

According to official figures reported in the press, disciplinary hearings have been held for some 500–600 soldiers for “intifada-related” offenses since the beginning of the uprising in December 1987. The sentences ranged from a reprimand to 35 days in prison.⁸⁵

On at least two occasions in cases where a Palestinian was killed or severely injured as a direct result of the actions of the Israeli military, disciplinary hearings have been held in preference to military court trials. For example, Colonel X (his name was withheld from publication by the Israeli authorities) was given a severe reprimand at a disciplinary hearing in August 1988 after being found guilty of illegal use of his weapon. The details of the incident were as follows:

'Abd-al-Mahdi Ziyadat was in the village of Bani Ne'im, near Hebron, on 4 April 1988, when disturbances broke out. The Colonel chased Mr. Ziyadat and subsequently shot and killed him.⁸⁶ In reply to a letter from the family's lawyer, Advocate Darwish Naser, the Judge Advocate-General stated on 8 September 1988 in a letter to Advocate

Naser that no charges concerning the death of Mr. Ziyadat were brought since no legal connection between the shots fired and the death of Mr. Ziyadat could be established; he also stressed that the burial of Mr. Ziyadat's body by his family took place before an autopsy could be performed.⁸⁷

Judge Advocate-General Strashnow had recommended that the Colonel be court-martialled, but he was overruled by the Chief of the General Staff, Dan Shomron, who stated that the officer had done "good work" in the past and therefore should face the less severe disciplinary hearing. The Colonel was also dismissed from his command.⁸⁸

In another case, a senior-ranking military officer, Lieutenant-Colonel Yehuda Meir, appeared before a disciplinary hearing accused of "exceeding his authority" (the lightest offense possible in a disciplinary hearing), after an investigation found that in January 1988, he had ordered soldiers to beat a number of Palestinians from Huwwara and Beita until their arms and legs were broken. He had overridden the objections of other officers that such orders were immoral, and his orders were duly carried out. The investigation (instituted four and a half months after the incident, only after a complaint from the International Committee of the Red Cross was received) ascertained the following:

Some forty regular soldiers and seven officers went to the village [of Huwwara]. One of the officers gave the list of wanted people to the village Mukhtar. The Mukhtar made sure that the wanted people reported, and they showed no resistance to their arrest. The detainees' hands were tied behind their backs.

The soldiers and the detainees went by bus to an orange grove near the village where they led the detainees off the bus and into a field. The soldiers gagged the detainees' mouths with strips of cloth so that they would not shout. The bus driver revved the engine so that the noise would drown out the sounds coming out from the field.

The soldiers carried out their instructions and beat the detainees severely with the intention of breaking their arms and legs.⁸⁹

An agreement was reached between Judge Advocate-General Amnon Strashnow, Chief of the General Staff Dan Shomron, and Lieutenant-Colonel Meir, whereby the latter would stand before a disciplinary trial, end his service in the military at once, and retain his rights to a military pension instead of appearing before a military court. The highest "sentence" which could be imposed for "exceeding authority" was a severe reprimand. A criminal trial on charges of causing intentional injury carries a maximum of 20 years imprisonment. The disciplinary hearing was held on 9 May 1989; Lieutenant-Colonel Meir was convicted of exceeding his authority, and given a severe reprimand.

The Association for Civil Rights in Israel (ACRI) petitioned the High Court of Justice on 28 May 1989 demanding that Lieutenant-Colonel Meir be compelled to stand trial before a military court on charges of causing intentional injury.⁹⁰ In a letter to Eli Natan of ACRI concerning the case, dated 11 May 1989, Judge Advocate-General Strashnow stated that the reasons for preferring a disciplinary trial were threefold:

- a. The fact that the events in question took place at the first half of January 1988, over a year ago and at the beginning of the uprising and only a few days after it was decided to use force in dealing with agitators and rioters,

with the aim of calming things down in the face of the severe wave of riots that broke out in the territories at the time.

- b. The uncertainty and vague situation prevailing at the time in all matters concerning the manner of use of force and operation.
- c. The Chief of Staff's decision, which was made with my agreement, that due to his behavior in the above case the officer would terminate his job and in fact end his active service in the IDF.⁹¹

In its petition to the High Court, ACRI responded to the arguments contained in this letter, stating their disagreement with these considerations. Firstly, they commented that it was irrelevant to take into account how long ago the incident had taken place, since it was well within the ten-year statute of limitations. They pointed out that in a very similar case where charges had been brought in a military court, the incident had taken place only two weeks after the incident in question in this case.⁹²

Secondly, they condemned the second explanation as "outrageous," asking how anyone could claim that a lieutenant-colonel could have the slightest doubt as to the illegality of such orders, especially when recent military court verdicts had stressed that such orders should be recognized as manifestly illegal, and therefore must not be obeyed by even the most junior private.⁹³

In conclusion, ACRI noted that the third reason given for preferring a disciplinary hearing—that this, combined with discharge from the army, was sufficient punishment—effectively discriminated between senior officers and low-ranking soldiers. They noted that in similar circumstances a junior officer would have been sent to a military court trial and told that he "should have thought of the consequences at the time of his action."⁹⁴

Al-Haq endorses the points raised by ACRI, and has similar concerns about the injustice of an arrangement between a senior officer and the Chief of the General Staff which ensures that the officer effectively escapes meaningful punishment for his unlawful actions.

In an unprecedented decision by the High Court of Justice, delivered on 24 December 1989, Judge Advocate-General Straschnow was ordered to retract his earlier decision and to press charges against Lieutenant-Colonel Meir.⁹⁵ However, in the verdict of the High Court, two of the judges made it clear that they could have been persuaded that losing his command might have been sufficient punishment for Lieutenant-Colonel Meir, but as the military had failed to act decisively they were in favor of charges being brought.⁹⁶ According to press reports, this is the first time the High Court has overruled a decision of the military Judge Advocate-General and ordered the military to open legal proceedings against a soldier.⁹⁷

2. Military Court Trials

According to official figures, since the beginning of the uprising 72 members of the Israeli military have been tried in a military court, out of which a total of 63 have been convicted.⁹⁸ The highest sentences by far have gone to soldiers convicted of robbery and looting.⁹⁹ Of the twelve indictments issued against thirteen members of the military who have been charged with manslaughter or homicide through negligence, four

cases resulted in conviction and immediate imprisonment. The sentences ranged from two years to three months; this latter sentence was reduced to two and a half months by the Regional Commander. Of 35 soldiers and officers charged with beating, wounding, assault, or brutality, 19 have been given prison sentences ranging from one to nine months.¹⁰⁰

The following table shows the six heaviest sentences imposed on soldiers for "intifada-related" offenses.

Charge	Sentence	After Appeal
1. 10 counts of robbery and looting ¹⁰¹	4.5 yrs, plus 1.5 yrs suspended sentence	3 yrs+9 mths, plus 2 yrs+3 mths suspended sentence
2. 10 counts of robbery and looting ¹⁰²	3.5 yrs, plus 0.5 yrs suspended sentence	2 yrs+10 mths, plus 2 yrs+2 mths suspended sentence
3. 10 counts of robbery and looting ¹⁰³	2.5 yrs, plus 1.5 yrs suspended sentence	1 yr+11 mths plus 2 yrs+1 mth suspended sentence
4. Causing death by negligence ¹⁰⁴	2 yrs, plus 1 yr suspended sentence	Currently on appeal
5. Manslaughter ¹⁰⁵	18mths, plus 18mths suspended sentence	
6. Manslaughter ¹⁰⁶	1yr	

The following examples (neither of which are represented in the table above), graphically illustrate that even where an investigation ends "satisfactorily" by recommending a court-martial, the outcome, especially in cases resulting in death, cannot be relied on to reflect the severity of the offense.

The Case of 'Awad Hamdan

In the case of 'Awad Hamdan, who died in Jenin Prison on 21 July 1987, the investigation did not lead to a conviction of the person responsible for the death. The young man's family was originally told that he had died of a heart attack; they were then informed that he had been bitten by a snake.¹⁰⁷ Then an autopsy yielded "an unusual form of pneumonia" as the cause of death.¹⁰⁸ This explanation was retracted by the respondents following an appeal to the High Court by the family's lawyer, Felicia Langer. With the first autopsy report set aside as incorrect, the State presented a new declaration, signed by the head of the Abou-Kbir Forensic Institute, in the High Court, providing no conclusions, but merely a description of the medical findings.¹⁰⁹ Advocate Langer was later informed that, according to the new autopsy findings, Mr. Hamdan had died of "asphyxia: due to suffocation."¹¹⁰ As a result of the investigation, a General Security Service (GSS, or Shin Bet) agent was brought to trial, behind closed doors, for the crime of having "caused death by negligence."¹¹¹

Following a second petition in the case, the High Court decided on 7 September 1988 that Advocate Langer should be informed of the exact cause of death, i.e., how Mr. Hamdan had suffocated; however, she was forbidden under oath to disclose this information to anyone else, lest GSS interrogation methods become known publicly.¹¹² Subsequently, she was allowed to inform Mr. Hamdan's family of the circumstances of their son's death; the family in turn were forbidden to reveal this information to others.

Then, on 21 September 1989, the GSS agent charged with causing "death through negligence" was acquitted by the Jerusalem Magistrate's Court on the basis that it had not been proven beyond a reasonable doubt that Mr. Hamdan had died of suffocation.¹¹³ Advocate Langer subsequently reopened the case, requesting to be informed how this verdict had been reached and, if Mr. Hamdan had not died of suffocation, how he had died. Thus, after more than two years, the case is still pending.

The Case of Jiryas Yousef Qunqar

In this case, a soldier was convicted of causing death by negligence. According to the verdict of the court, which sharply contradicts evidence collected by al-Haq, the soldier was chasing a Palestinian after a demonstration, and while climbing over a stone wall, his gun accidentally discharged, killing Mr. Qunqar. The court found that the soldier was negligent in locking the safety catch onto "automatic," and that he should have thought of the potential risk of tripping while chasing someone, and so removed his finger from the trigger while running. Failure to do so, according to the court, had been negligent.

However, the soldier was not given a custodial sentence. He was awarded a four-month suspended sentence, the judge taking into consideration the "positive character" of the soldier, the fact that he was 35 years old, married and "the father of two little children," the special circumstances of the incident, and the duties of the Israeli military at the time.¹¹⁴

G. Autopsies†

One of the areas in which al-Haq achieved a measure of success in 1989 has been the investigation of deaths in cases where official involvement is suspected and the authorities hold the body of the deceased, and, in particular, cases where deaths occurred in detention. In its 1988 annual report al-Haq noted:

Independent investigation into the cause of ... deaths has been made impossible by the authorities' refusal in many cases to make public the results of the official investigations (including autopsy reports), and by their refusal to allow independent forensic experts either to be present at the official autopsies or to conduct second autopsies on behalf of the families of the deceased.¹¹⁵

†See further Chapter Five, "Torture and Death in Detention."

In 1989, al-Haq in some cases succeeded in gaining access to the results of investigations, obtaining permission for a representative of the family to observe an autopsy and, in one case, to conduct an independent autopsy. Further, the precedent was set in December 1989 for the forensic pathologist attending the autopsy on behalf of the family to visit the scene of death. Ironically, however, these successes, though significant in their own right, have also highlighted the more serious underlying problems that remain with regard to investigations into deaths.

Until April 1989, the practice in Israel regarding autopsies of Palestinians who appeared to have been killed by Israeli law enforcement officials, was that they would take place before the family had a chance to appeal to the authorities or a court to delay the autopsy until such time as a representative of the family could be present, or even (in the case of deaths in detention) before the family had been informed of the death. In many cases, the only formal notification of death a family receives from the authorities occurs when the military arrives at the family home with the body. Invariably, the body is turned over to the family in the middle of the night, to be buried immediately by only a handful of the nearest relatives in the presence of the military. Such procedures have not allowed for a proper and independent investigation into the circumstances and causes of death.

Al-Haq has made efforts during the past two years to induce the authorities to release the relevant information in cases of death where the involvement of law enforcement officials is suspected. Al-Haq's aim has been, in the first instance, to gain the right for relatives of the deceased to send a representative of their choice to attend the autopsy and to obtain, within a reasonable amount of time, the results of both the autopsy and the investigation into the circumstances of death; and, in the second instance, to discourage excessive use of force by the army and GSS through threat of legal prosecution. Al-Haq's method in accomplishing these aims was to challenge the authorities' findings with expert opinions. This was done by inviting forensic experts from abroad to lend their knowledge and experience in cases of death handled by local lawyers. The results of these efforts have been mixed.

1. Obtaining Access to Investigation Results

The first step of the strategy was to gain access to the results of internal investigations, including autopsy reports. The general trend has been and continues to be that it is very difficult to obtain this information as a matter of routine procedure, as the case of 'Ata 'Ayyad, in which no report had been made available to the family a full 16 months after the death, demonstrates.[†] Yet this is the area where the authorities have proved most forthcoming, but only when pushed to provide the information through appeals to the High Court of Justice.

The main, precedent-setting case in this regard is the case of Ibrahim al-Mtour of Sa'ir, who died in the Dhahiriyya Military Detention Center on 21 October 1988, an alleged suicide by hanging. The family appealed to the High Court through their attorney, Felicia Langer, on 30 November, to obtain a copy of the autopsy report and

[†]See further Chapter Five, "Torture and Death in Detention."

receive permission for exhumation, after Ms. Langer's direct request to the authorities had failed to yield the desired result. The authorities only promised that Advocate Langer would be shown (rather than given) the autopsy report. The High Court session was on 8 December 1988, and on 16 December Advocate Langer received a copy of the autopsy report, which cited "mechanical asphyxiation by hanging" as the cause of the detainee's death.

The importance of having access to the autopsy report became clear shortly thereafter. Ms. Langer asked al-Haq to obtain an expert opinion on the quality of the report, and for this purpose al-Haq sent the report to Dr. Robert Kirschner, a forensic pathologist in Chicago who is on the board of Physicians for Human Rights in Boston. In his opinion, signed on 29 December, Dr. Kirschner states, *inter alia*, that "the most likely cause of death is asphyxiation," as stated in the autopsy report, but that "the more important issue is to determine the circumstances under which death occurred." According to Dr. Kirschner:

A proper forensic autopsy of a victim of ligature asphyxiation requires that the alleged ligature be produced to determine if it matches the pattern injury of the neck. Yet, there is no evidence that the ligature in this case was ever examined by the pathologist.

Dr. Kirschner also stated that "[a]n exhumation autopsy at this time would be most useful in determining whether or not skeletal injuries are present," since there had been allegations by the family that the detainee's hand had been broken.¹¹⁶

Thus, an expert analysis of an autopsy report opened the door to a request by Advocate Langer to the authorities for:

- (1) Access to the results of the official investigation into the circumstances of death;
- (2) Exhumation of the body and a second autopsy in the presence of a representative of the family.

In the event, both requests were fulfilled. The investigation report was particularly revelatory of conditions in the Dhahiriyya Military Detention Center and the circumstances of Ibrahim al-Mtour's death.

Success in the al-Mtour case laid the groundwork for similar successes in subsequent cases. In March 1989, following the death of Mahmoud al-Masri in Gaza Central Prison on 6 March, Advocate Langer obtained a copy of the autopsy report within two weeks. This allowed for a speedier evaluation of the findings, which then served to strengthen the attorney's request for a forensic pathologist of the family's choosing to examine the stomach of the deceased (who was said to have died of a perforated ulcer). In the case of Amjad Jibril, who died of a gunshot wound in al-Bira on 16 August 1989, the autopsy report was made available to a doctor acting on behalf of the victim's family within only a few days.

2. Gaining the Right of Exhumation and Second Autopsy

Assessments of autopsy reports and investigations into the circumstances of death proved the main stepping-stones for requests to perform a second autopsy following exhumation of the deceased. In response to Dr. Kirschner's opinion on the autopsy

report in the case of Ibrahim al-Mtour, cited above, the director of the Israeli Institute of Forensic Medicine, Dr. Yehuda Hiss, stated in an opinion submitted to the High Court of Justice (H.C. 810/88):

In order to prevent any doubts whatsoever regarding the reliability of the report and end the affair of the 'speculations' as quickly as possible, I hereby suggest: "to exhume the body and perform another autopsy at the Institute of Forensic Medicine in Abou-Kbir. . . to be performed in the presence of a forensic examiner or other doctor on behalf of the family of the deceased."¹¹⁷

And indeed, on 26 March 1989, the High Court ruled:

After we reviewed all the claims of the parties and all the medical reports, we decided that, in the special circumstances in the case in front of us of death by hanging of a detainee whose hands and legs were tied, and taking into consideration the affidavit of family members who testified that his hand was broken, it is worth carrying out another autopsy on the body by Dr. Hiss in the presence of a pathologist on behalf of the petitioners. Therefore we order that the body be exhumed from the grave and that a pathological autopsy be carried out as mentioned.¹¹⁸

The exhumation took place on 5 April, in the presence of Dr. Derrick J. Pounder, head of the Department of Forensic Medicine at the University of Dundee in Scotland, whose visit had been arranged, at the request of Advocate Langer, through al-Haq. The visit was sponsored by the American Association for the Advancement of Science, who financed the trip, and Physicians for Human Rights. Subsequently, Dr. Hiss of the Forensic Institute at Abou-Kbir conducted a second autopsy, again in the presence of Dr. Pounder. This was the first time that an exhumation and second autopsy of a Palestinian were carried out by the Israeli authorities. Dr. Pounder modified Dr. Levy's conclusion as to the cause of death in a significant way: he states in his opinion, signed 12 April, that the cause of death was "asphyxiation due to ligature pressure on the neck," thus suggesting possible means of death alternative to suicide by hanging.¹¹⁹

During the same visit in April, Dr. Pounder was given access to the stomach and other relevant materials in the case of Mahmoud al-Masri. In both the al-Mtour and al-Masri cases, Dr. Pounder wrote lengthy opinions summarizing his findings and drawing important conclusions concerning both these cases in particular and the quality of Israeli investigations into deaths generally on the basis of his findings in these two cases.[§]

3. Gaining the Right to Perform an Independent Autopsy

On the basis of the precedents in the above two cases, a significant further success was obtained in August 1989. In the case of Amjad Jibril, a 15-year-old from al-Bira who was shot and killed on 16 August and was buried before an autopsy could have been carried out, the authorities exhumed the body (on 19 August) and transported it to the Forensic Institute at Abou-Kbir. The family immediately contacted al-Haq, which in turn contacted the Israeli authorities via the United States Consulate in

[§]See further Appendix 5-E.

Jerusalem, since Amjad was a U.S. citizen. Through the Consulate, al-Haq received assurances that the family would be allowed to send a representative to the autopsy, and that no autopsy would be held until the representative's arrival. Al-Haq then contacted Dr. Pounder, who declared his readiness to travel immediately to act on behalf of the Jibril family.

Despite these assurances received via the U.S. Consulate, the autopsy was conducted in the morning of 20 August while Dr. Pounder was still in Scotland. Further negotiations took place, and the authorities finally consented to Dr. Pounder conducting a second autopsy on the body. The family's lawyer, Lea Tsemel, went to the High Court on 21 August to request:

- (1) That Dr. Pounder be allowed to carry out an autopsy;
- (2) That the body not be reburied until after the autopsy;
- (3) That Dr. Pounder be given a copy of the report of the first autopsy;
- (4) That the authorities make available to the family the findings of the investigation into the circumstances of Amjad Jibril's death.¹²⁰

Dr. Pounder arrived in the early hours of 22 August and later that day contacted the Abou-Kbir Institute in order to obtain a copy of the autopsy report and gain access to other materials, including the boy's clothes and any tissues, X-rays, photographs and toxicological tests taken during the original autopsy. The Institute's director, Dr. Hiss, was not forthcoming in this regard, and only after further negotiations involving al-Haq, the U.S. Consulate, and the Israeli authorities was an agreement reached and were Dr. Pounder's requests fully satisfied. On 23 August, Dr. Pounder carried out an autopsy on the body of Amjad Jibril at the Abou-Kbir Institute, with Dr. Hiss observing. This was the first and so far only autopsy of a Palestinian carried out by a forensic pathologist representing the family in Israel and the Occupied Territories that al-Haq is aware of.

4. Gaining the Right to Be Represented at Autopsies

From this success it was only a small step to gaining the right for a family to send a doctor of their choice to observe the official autopsy of a person killed in unclear circumstances. Apparently, the protection of this basic right, which exists in Israeli law but in practice has been ignored, was not worth the trouble that is incurred by having to accede to exhumations and repeat autopsies in the presence of foreign doctors. Although the authorities' apparent newly-found willingness to permit families of persons killed during the uprising to exercise this right has not yet been tested in any systematic manner, four recent cases serves to illustrate that the consistent pressures of the past year have begun to pay off.

On 2 September 1989, two Palestinians were killed (and three others injured) during a military raid on a house in the city of Nablus. The army immediately removed the bodies of those killed, Ayman Jamous and 'Amer Kalbounah, and buried them in a special cemetery in the Jordan Valley whose exact location is secret but

which is reserved for those said to have been killed in what are referred to as "military operations" by the authorities. Because the circumstances of the deaths of the two men were highly suspicious, the two families applied to the authorities to have an autopsy carried out in the presence of a doctor of their choice. The bodies were exhumed and transferred to the Abou-Kbir Institute where an autopsy was conducted by Dr. Hiss in the presence of Dr. Hatem Abou-Ghazalah, a Palestinian doctor from Nablus. The military authorities then permitted the bodies to be reburied in Nablus.

Similarly, the body of Muhammad Abou-al-Nasr, who was killed by the Israeli army in a special operation on 28 June 1989, was exhumed from the secret cemetery in the Jordan Valley following an appeal to the High Court of Justice in November and examined by Dr. Hiss of the Abou-Kbir Institute in the presence of a Palestinian doctor from Nablus on 8 November. The body was then handed over to the family by the army, without its head, however, due to an apparent miscommunication between the military and the Abou-Kbir Institute. The family refused to accept the headless corpse, doubting its authenticity. The complete remains were finally laid to rest in the Gaza Strip on 24 November. It is to be hoped that the embarrassment resulting from this case may discourage the military from burying bodies of Palestinians in secret cemeteries in the future.¹²¹

In a case in early December 1989, the authorities agreed to delay the autopsy of a person found dead in his prison cell until a pathologist acting on behalf of the deceased's family could be present. The body of Jamal 'Abd-al-'Ati, whom the authorities claim hanged himself in his cell in the interrogation wing of Gaza Central Prison on 3 December, was kept on ice in the Abou-Kbir Institute for almost eight days until a Danish pathologist, Dr. Jorgen Thomsen, arrived. The autopsy took place on 11 December, in the presence of Dr. Thomsen whose trip was sponsored by al-Haq, Physicians for Human Rights, and the Committee of Concerned Forensic Scientists, which is based in Copenhagen.

After the death of Khaled Kamel al-Sheikh 'Ali (allegedly of a "heart attack"), also in the interrogation section of Gaza Prison, on 19 December 1989, just two and a half weeks later, the authorities informed the lawyer of the deceased's family, Muhammad Abou-Sha'ban, that they would delay the autopsy so that a pathologist of the family's choosing could be found. However, the previous willingness to cooperate in this matter was somewhat diminished in this case as the authorities initially gave the lawyer a deadline of only some 24 hours after the death to provide the name of the pathologist who would attend; this period was later extended for a further 12 and then 24 hours, by which time the lawyer, through al-Haq and the Physicians for Human Rights, had been able to find a pathologist who could attend. The autopsy took place on 24 December 1989, and was performed by Dr. Hiss of the Abou-Kbir Institute with the assistance of Dr. Michael Baden, former Chief Medical Examiner for New York City, and currently co-director of the Forensic Sciences Unit of New York State Police.¶

¶See further Appendix 16-C.

5. Gaining the Right to Visit the Scene of Death

Until the most recent case of death in detention, the forensic pathologist representing the family at the autopsy had been denied permission to visit the scene of death. Moreover, in al-Haq's experience, it appears that the Israeli forensic pathologist officially conducting the autopsy did not visit the scene either. The precedent for such a visit was set in the case of Khaled Kamel al-Sheikh 'Ali.

Dr. Michael Baden, the forensic pathologist attending the autopsy on behalf of the family, contacted the Israeli military spokesperson and Dr. Hiss, Director of the Abou-Kbir Institute, on 23 December, requesting that he be permitted to visit the scene of death. According to Dr. Baden, when the results became clear during the autopsy, Dr. Hiss began making telephone calls to arrange for himself and Dr. Baden to visit Gaza Central Prison. After a number of such calls, permission was apparently granted, and Dr. Hiss and Dr. Baden were allowed to visit that same afternoon. During their visit, they also interviewed about five GS interrogators, all of whom had participated in interrogating Mr. al-Sheikh 'Ali.

The importance of this precedent-setting visit to Gaza Central Prison, and the interrogation rooms there (where even ICRC delegates are forbidden from visiting), can hardly be over-emphasized. For the first time, the results of the autopsy could be analyzed in relation to the additional information gained by the pathologists through visiting the prison, and interviewing the interrogators. It enabled the results of the autopsy to be far more conclusive than in any of the previous cases; this was partly a reflection of the nature of the case itself, but also partly because by visiting the prison and interviewing the interrogators, all other possible explanations for the death were ruled out.

6. Outstanding Problems

As al-Haq has become acutely aware over the past two years, no conclusions can be obtained in investigating deaths on the basis of medical findings alone. The truthfulness of this assertion is acknowledged by the Israeli authorities who, in most cases of which al-Haq is aware, have carried out autopsies in tandem with investigations into the circumstances of death when requested to do so by lawyers acting on behalf of the families of the victims. Referring to the al-Mtour case but making a general point, Dr. Pounder has said:

At both the first and second autopsies, it appears that the investigating pathologists elected not to request detailed information concerning the circumstances of the death. Neither, it appears, did the responsible authorities volunteer to provide this information to the pathologists concerned. I am reliably informed that such an arrangement exists with regard to all potentially contentious deaths occurring in the Israeli occupied West Bank and Gaza. The justification offered is that information on the circumstances might prejudice the pathologist conducting the autopsy. This approach is contrary to commonly accepted international standards of practice in forensic pathology. Limiting background information available to the pathologist at the time of autopsy denies the pathologist the opportunity to fulfill his professional obligations, to direct the investigation so as to address specific issues, to expose inconsistencies between the alleged

circumstances and the autopsy findings, and to suggest further avenues of investigation. This administrative practice effectively minimises the value of the autopsy in the investigation of these deaths and maximises the possibility that criminal or civil wrongdoing will pass undetected.¹²²

What Dr. Pounder's findings in the al-Mtour and al-Masri cases have demonstrated is that, although the authorities carry out both types of investigations, no direct link is usually made between the two. The utility of such investigations is therefore severely compromised. To offer one example, in the case of Ibrahim al-Mtour, the pathologist who carried out the autopsy, Dr. Bertholun Levy, had no access to the results of the investigation into the circumstances of the death at the time of the autopsy, nor did he apparently ask for these. Moreover, Dr. Levy did not actually see important evidence in the case, for instance the ligature with which Mr. al-Mtour was said to have hanged himself. After much pressure from the side of Advocate Langer, it finally transpired that the piece of cloth in question had been "lost," as had the mattress from which the cloth had been torn.¹²³ The pathologist in the al-Mtour case also did not see the cell in which al-Mtour was said to have hanged himself. In the words of Dr. Pounder:

The original investigation was fundamentally flawed in that the pathologist did not view the scene of death, or have available to him photographs and diagrams of the scene, or have detailed information concerning the scene. The pathologist was told only that the decedent was found hanging in a cell. Neither was the ligature made available at the time of autopsy for comparison and correlation with the ligature mark on the neck. This latter error was so basic an omission as to raise a serious doubt about the experience and competence of the scene of death investigators. The pathologist, who is a professional of considerable experience, should have insisted that the ligature was produced and that detailed information on the scene of death was provided.¹²⁴

Similarly, in the al-Masri case, the Israeli pathologist who carried out the autopsy, Dr. Hiss, had no access to the results of the investigation into the circumstances of the death at the time of the autopsy. He was therefore able to conclude that Mr. al-Masri had died a "natural death," while the evidence, when the various strands of investigation are pieced together, presents a rather different picture: Mr. al-Masri had been severely beaten by GSS agents during his interrogation, and suffered a perforated ulcer which was then initially not recognized and, once recognized, not treated by the prison medic present in the interrogation wing of the prison.¹²⁵ An analysis of the possible relationship between severe physical abuse and the perforation of an existing ulcer would have been most instructive; its omission seriously devalues the official findings in the case. While it is clear beyond a shadow of a doubt from the autopsy (as confirmed by Dr. Pounder) that Mr. al-Masri died of an untreated perforated ulcer, it is not clear, due to lack of sufficient investigation and, most importantly, correlation and analysis of the findings, what caused the ulcer to suddenly burst.

The importance of such omissions is that families do not find out how their relatives have died, and that those responsible for the death are not brought to justice. In the case of Mr. al-Mtour, the High Court rejected the appeal by Advocate Langer (Case H.C. 335/89), stating:

In the absence of any sign or claim as to the existence of any evidence or claim which may shed new light on the case, and after it has transpired that there is

no basis for the claim concerning fractures in the arms, there is no justification for a further investigation.

This ruling was made despite overwhelming evidence, disclosed by Military Police investigators, that Mr. al-Mtour was severely abused while in solitary confinement and on hunger strike in the Dhahiriyya Military Detention Center.

That being the case, Advocate Langer concludes, it appears that “[i]ndeed, not only was justice not seen to have been done, justice was not done at all.”¹²⁶

In al-Haq’s view, that conclusion pertaining to the al-Mtour case can be extended to other cases of deaths, particularly deaths in detention, because it aptly describes what in essence is at fault with Israel’s system of investigating such deaths.

It remains to be seen whether the case of Khaled Kamel al-Sheikh ’Ali represents a change of attitude on the part of the Israeli authorities with regard to the conduct of official autopsies and investigations into deaths in detention. From past experience, it must be feared that the valuable precedents set in this case may ultimately be rendered ineffective by an unwillingness to complete the investigation thoroughly, or by carelessness in the preparation of the prosecution case, or by a failure by the military court to act independently and impartially, and thus allow those who killed Mr. al-Sheikh ’Ali to escape appropriate punishment for their crime.

Summary

The failure to punish adequately or effectively those who commit illegal acts, and, in particular, the failure to hold responsible those who order the commission of such illegal acts, exemplified in the Giv’ati Trial, has led to the current situation where soldiers and officers are secure in the knowledge that such actions are effectively condoned at the highest echelons and will be treated accordingly. As one Israeli lawyer stated:

The Giv’ati episode reveals that today illegality in the territories is total.¹²⁷

The military investigation process, from beginning to end, reflects a complete unwillingness to deal with daily incidents of lawlessness occurring in the Occupied Territories. Structurally, the system has inherent defects: it is not independent from the people it is investigating, investigations are conducted in secret, and the results are not made public. On a practical level, the procedure completely fails to operate in a reasonable manner. Excessive delays in the investigation process, failure to hear all sides to the story, and obstruction of access to information concerning the circumstances of an incident, are just some of the defects in the process. When a case comes to trial, the military courts have shown that they cannot be relied upon to act independently. Many of these problems are also found in police investigations.

In summary, the Palestinian population of the Occupied Territories cannot be expected to have any faith in an investigation system which has repeatedly and consistently shown itself to be so flawed. The consequence of having no “effective local remedies” is dismal in any situation; for an occupied population governed by the military force of an occupier, it is frightening, and is the most potent symbol of their

powerlessness. In these circumstances, independent human rights monitoring and international protection is the only available remedy.*

*See further Chapter Nineteen, "The Role of the International Community."

Endnotes to Chapter Sixteen

1. According to Justice Meir Shamgar, current President of the Israel High Court of Justice:

The [Israel High] Court has reviewed the legality and validity of administrative acts in the territories according to customary international law (which in certain situations introduces local law, according to Article 43 of the Hague Regulations) and in as far as the behavior of Israeli officials is concerned also according to the appropriate norms of administrative law applying to the situation under consideration.

(Meir Shamgar, "Legal Concepts and Problems of the Israeli Military Government—The Initial Stage," in Meir Shamgar (ed.), *Military Government in the Territories Administered by Israel, 1967-1980* [Jerusalem: Hebrew University and the Harry Sacher Institute for Legislative Research and Comparative Law, 1982], p. 47.)

2. See for example the following statement by the Israel National Section of the International Commission of Jurists:

The system of legal checks and balances built into the Israeli administration in the Region [sic], with the supervisory functions performed by the Israeli High Court of Justice ensure the maintenance of the Rule of Law as laid down by international law and by the liberal norms of the Israeli legal system.

(The Rule of Law in the Areas Administered by Israel [Tel Aviv: Israel National Section of the International Commission of Jurists, 1981], p. 99.)

3. Marcia Kretzmer, "Rabin: 'Only 22 Minors Killed in Intifada'," *Jerusalem Post*, 23 February 1989.
4. Jean Pictet (ed.), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), pp. 209-213 (commentary to Article 29).
5. Article 8, The Charter of the International Military Tribunal appended to The London Agreement of 8 August 1945.
6. Letter from MK Dedi Zucker to Minister of Defense Yizhak Rabin, 5 November 1989. Ref. No. 2901.
7. Michal Sela, "Rabin: IDF Legal System Applies Equally," *Jerusalem Post*, 26 December 1989.
8. Unless otherwise stated, the information in this section is taken from an unofficial translation of the verdict in *Military Prosecutor v. Yitzhak, Ron, Ariyeh, Yitzhak, and David* ("Giv'ati Trial Verdict"), Regional Military Court, Southern Judicial District, File DR 248/88.
9. *Ibid.*, p. 55.
10. Kenneth Kaplan, "Giv'ati Men Freed, but Barred from Returning to Brigade," *Jerusalem Post*, 2 October 1989.
11. Giv'ati Trial Verdict, p. 35.
12. *Ibid.*, p. 148-149.
13. *Ibid.*, pp. 9-10.
14. *Ibid.*, p. 56.
15. *Ibid.*, p. 149.
16. Avigdor Feldman, "They Called Up Justice for Reserve Duty," *Hadashot*, 2 June 1989. Cited in *Al-Fajr Jerusalem Palestinian Weekly*, 12 June 1989.
17. "Strashnow: No Reason to Reopen Inquiry in Givati Case," *Jerusalem Post*, 24 March 1989. Strashnow's assessment was given in an affidavit to the High Court of Justice after he had been ordered by the Court to show cause why the investigation should not be completed.
18. Andy Goldberg, "Strashnow to Re-open Inquiry into Death of Gaza Man," *Jerusalem Post*, 18 June 1989.
19. Giv'ati Trial Verdict, pp. 125-126.

20. *Ibid.*, p. 129.
21. *Ibid.*
22. "No Prosecution," *Jerusalem Post*, 28 May 1989.
23. "IDF Officers May be Disciplined for Unclear and Illegal Orders," *Jerusalem Post*, 29 May 1989.
24. *Ibid.*
25. *Laws of the State of Israel*, Vol. 9, 1954/55. (Authorized translation from the Hebrew prepared by the Israeli Ministry of Justice.)
26. According to Article 329, Penal Law of 1977:

A person who does one of the following with intent to disable, disfigure or do grievous harm to another or to resist or prevent the lawful arrest or detention of himself or another is liable to imprisonment for twenty years:

 - (1) unlawfully wounds or does grievous harm to a person; ...
27. Giv'ati Trial Verdict, p. 136.
28. Kenneth Kaplan, "Giv'ati Men Freed."
29. *Ibid.*
30. According to the court, the written orders were "the Chief of Staff's directives in 'a letter to commanders' of February 1988, the list of the Operations Branch, the list of operational orders for the Gaza Strip area and the list of operational instructions issued by ... Colonel Meiron Keren." (Giv'ati Trial Verdict, p. 126.)
31. See also Yehuda Melzer, "Read Something Not Analytical," *Hadashot*, 6 October 1989, cited in *Al-Fajr Jerusalem Palestinian Weekly*, 16 October 1989.
32. "Report of the Special Rapporteur on Summary or Arbitrary Executions," United Nations Document No. E/CN.4/1987/20, Para. 174.
33. Article 146, Fourth Geneva Convention.
34. Pictet, *Commentary*, pp. 209-213.
35. Article 131, Fourth Geneva Convention.
36. "Report of the Special Rapporteur on Summary or Arbitrary Executions," UN Document No. E/CN.4/1988/22, Para. 194. (Emphasis added.)
37. The above information was obtained by staffmembers of the Lawyers Committee for Human Rights (LCHR) in interviews with representatives from the Judge Advocate-General's Office, 20 July and 28 September 1989.
38. David Kretzmer, "Human Rights and the Rule of Law," *Jerusalem Post*, 8 December 1988.
39. Joel Greenberg, "Family Accuses IDF of 'Murder'," *Jerusalem Post*, 28 April 1989.
40. Joel Greenberg, "Family Accuses IDF of 'Murder'."
41. Interviews with the Office of the Judge Advocate-General by the LCHR, 20 July and 28 September 1989.
42. Michal Sela, "Seven Palestinians Die in Violent Weekend," *Jerusalem Post*, 3 September 1989.
43. Although no automatic investigation appears to have been initiated in this case, Advocate Lea Tsemel (the lawyer in the case), formally requested that there be an investigation into the shooting. She was subsequently informed by the authorities that she would be notified of the results of the investigation. Telephone interview with Lea Tsemel, December 1989.
44. B'Tselem, "Information Sheet: Update, November 1, 1989," p. 12.
45. Joel Greenberg, "Two Border Policemen Charged with Killing," *Jerusalem Post*, 25 July 1989.
46. David Horovitz, "UK Papers: Intifada Activist Assassinated," *Jerusalem Post*, 16 July 1989.

47. The lawyer for the family, Advocate Felicia Langer, wrote to the military authorities on 26 July 1989, asking for an investigation into the incident; she did not receive a reply to her letter until three months later on 27 October 1989, when she was informed that a Military Police investigation was underway. Telephone interview with Felicia Langer, 14 December 1989.
48. Uzi Benziman, "Death Behind the Plough," *Ha'aretz*, 16 June 1989; *Ha'aretz*, 26 June 1989 (in Hebrew).
49. Joel Greenberg, *op. cit.*, *Jerusalem Post*, 25 July 1989.
50. Al-Haq Executive Director Mona Rishmawi filed a complaint about the hooding of a prisoner in Ramallah Prison which she witnessed on 27 July 1987. On 18 November 1987, the Deputy Commander of the Ramallah Prison submitted a complaint against Ms. Rishmawi, and threatened to file charges against her.
51. *Re: Investigation of Suspicions Against Israelis in Judea and Samaria* (the Karp Report), Concluding Section, Paras. B and C. Reprinted in *The Palestine Yearbook of International Law*, Vol. 1, 1984.
52. H.C. 72/86.
53. H.C. 175/81.
54. Jonathan Karp, "Police Await New Directive on Complaints Against Soldiers," *Jerusalem Post*, 29 February 1988.
55. *Ibid.*
56. Al-Haq Affidavit No. 2099.
57. Al-Haq Affidavit No. 1965.
58. See also the recommendation that all Palestinians be automatically granted amnesty and protection when testifying in an investigation. (5 November 1989 letter from MK Dedi Zucker to Defense Minister Rabin.)
59. Statement given to al-Haq by Mr. Jabarin; information in al-Haq's files.
60. Al-Haq, *Punishing a Nation*, pp. 63-66.
61. *Ibid.*
62. Information for this section is derived from the interviews conducted by the LCHR with representatives of the Office of the Judge Advocate-General, July and September 1989.
63. UN Doc., E/CN.4/1987/20, Para. 176.
64. See also Dan Sagir, "Criminal Investigation Division Probes," *Ha'aretz*, 5 February 1989. Cited in Israel Government Press Office, "Selections from the Hebrew Press: 89.02.23." Mr. Sagir states:

It emerges from an examination conducted by this reporter that only in isolated cases, mainly those which reached the High Court or the press, did the CID approach Arab eyewitnesses of its own initiative.
65. LCHR interview with the Office of the Judge Advocate-General, 20 July 1989.
66. Al-Haq Affidavits Nos. 2105, 2106, 2107.
67. Joel Greenberg, "Police Inquiries Quicker, More Thorough Than IDF's," *Jerusalem Post*, 9 November 1989. See also the letter from MK Dedi Zucker to Defense Minister Rabin, 5 November 1989.
68. Joel Greenberg, "Palestinian Witnesses: Youth Shot After Surrendering," *Jerusalem Post*, 12 October 1989.
69. Yizhar Be'er, "Death in Nablus," *Kol Ha'ir*, 30 December 1989. Cited in *Al-Fajr Jerusalem Palestinian Weekly*, 9 January 1989.

70. Al-Haq Affidavit No. 1535. It has recently been announced that four officers involved in the incident are to be sent to disciplinary hearings for illegal use of their weapons, including shooting at short range, shooting live ammunition instead of plastic bullets, and firing at fleeing persons. (Joel Greenberg, "Paratroop Officers to be Tried for Nablus Killings Last Year," *Jerusalem Post*, 29 November 1989.)
71. Joel Greenberg, "Rights Group in Ramallah Complains to Police of Rampage by Settlers," *Jerusalem Post*, 29 November 1989.
72. LCHR interview with Office of the Judge Advocate-General, 28 September 1989.
73. Correspondence between Captain Mica Zouaretz of the Office of the Judge Attorney-General's and Advocate Ahlam S. Haddad, 7 June 1989.
74. Human Rights Association, *Army Investigations: A Burial of the Truth*, (Nazareth: HRA, 1989) p. 4.
75. File No. 702036/88/G at the Defense Ministry, Unit of Insurance and Claims.
76. File No. 1248/85 at Ramallah Police Station.
77. Joel Greenberg, "Police Inquiries Quicker, More Thorough than IDF's," *Jerusalem Post*, 9 November 1989. MK Dedi Zucker stated that 85 percent of Military Police investigations are completed within six months; however, he said that of the remainder, some of the investigations had taken "intolerably long" periods of time. (Joel Greenberg, "Zucker Chides Rabin Over Non-punishment of Officers," *Jerusalem Post*, 8 November 1989.)
78. *Ha'aretz*, 30 March 1989. Cited in Government Press Office, "Selections from the Hebrew Press: 30 March 1989."
79. Michal Sela, "IDF Will Not File Charges in Case of Ketziot Killing," *Jerusalem Post*, 9 November 1989.
80. Sagir, "Criminal Investigation Division Probes."
81. Al-Haq Affidavit No. 1839; Joel Greenberg, "'Ketziot Prisoner Deliberately Shot by Senior IDF Officer'," *Jerusalem Post*, 21 August 1988; Michal Sela, "Under Critical Eyes at Ansar 3," *Jerusalem Post*, 23 July 1989.
82. Article 136, Military Justice Law, 1955. Cited in *Laws of the State of Israel*, Vol. 9, 1954/55; authorised translation from the Hebrew, prepared by the Ministry of Justice.
83. *Ibid.*
84. See Articles 476-488, Military Justice Law.
85. Joel Greenberg, "Four Soldiers Jailed for Killings During Intifada," *Jerusalem Post*, 27 November 1989.
86. See Kenneth Kaplan, "Brigade Commander Suspended for Killing Demonstrator in Areas," *Jerusalem Post*, 17 August 1988.
87. LCHR interview with Darwish Naser, on 22 September 1988 by the Lawyers Committee for Human Rights; copy of letter in al-Haq's files.
88. Kaplan, "Brigade Commander Suspended."
89. *Soutan et. al. vs. The Chief Military Attorney, Col. Yehuda Meir* (H.C. 425/89).
90. A hearing was held on 7 November 1989; see also "IDF Legal Chief Decided 'In All Innocence' Not to Court-Martial Colonel," *Jerusalem Post*, 8 November 1989.
91. Letter dated 11 May 1989 from Brigadier-General Amnon Straschnow to Eli Natan from the Association for Civil Rights in Israel; attached to the petition from the Association for Civil Rights in Israel in H.C., 425/89.
92. *Ibid.*, Para. 31.
93. *Ibid.*, Para. 32.
94. *Ibid.*, Para. 33.

95. David Makovsky, "Court orders IDF to courtmartial Col. Yehuda Meir," *Jerusalem Post*, 25 December 1989.
96. *Ibid.*
97. *Ibid.*
98. B'tselem, "Information Sheet," p. 4.
99. *Ibid.*, p. 10.
100. *Ibid.*, pp. 5-6.
101. *Ibid.*, p. 10.
102. *Ibid.*, p. 10.
103. *Ibid.*, p. 10.
104. Reservist Sgt. Ilan Arev was convicted after admitting in his testimony that he had knelt and taken aim before firing and killing two Palestinians in Bani Ne'im, near Hebron, in May 1988. See "Two Years for Killing Stone-Throwers," *Jerusalem Post*, 16 October 1989.
105. Private Eli Yedid, convicted of firing rubber bullets at a range of 20 cm and killing Abou-'Awad Yousef Ibrahim, a resident of Biddu village.
106. Private Turai Tamir Ya'acov was convicted of killing Touqan Nuseiba, after shooting him in the stomach at point-blank range. He was released after serving six months of his sentence, on the recommendation of a committee appointed to consider reducing his sentence. See *Jerusalem Post*, 2 June 1988.
107. *Jerusalem Post*, 29 July 1987.
108. *Jerusalem Post*, 12 November 1987.
109. The head of the Abou-Kbir Forensic Institute at the time, Dr. Morris Rogev, states: "I wish to make it clear that my declaration includes all the medical findings made on the body and does not constitute any conclusion on the basis of these findings or an opinion as to the cause of death." (Declaration signed by Dr. Morris Rogev and dated 9 March 1988).
110. Statement by the State Attorney, signed 18 September 1988, and presented to Advocate Langer in the High Court in HC 711/87.
111. Statement by an official in the State Attorney's office, signed 10 March 1988, and presented to Advocate Langer in the High Court in HC 711/87.
112. Verdict by the High Court in *Hamdan and Hamdan vs. The Minister of Defence and the Minister of Police*, HC 711/87, on 7 September 1988, taking into account a statement signed by Defense Minister Yitzhak Rabin on 14 March 1988, in which the Minister asserts that disclosure of the information concerning GSS investigation methods would harm "national security." It is al-Haq's position that such interrogation methods, if they lead to the death of a detainee, should indeed be disclosed so that they can be discontinued, constituting as they do illegal practices of interrogation.
113. *Ha'aretz*, 24 September 1989 (in Hebrew).
114. According to al-Haq's information the verdict bears filing code no: 17/89/MR.
115. Al-Haq, *Punishing A Nation*, p. 245.
116. Correspondence of Dr. Robert H. Kirschner to al-Haq, 29 December 1988.
117. Copy of statement in al-Haq files.
118. Ruling in *Al-Matur vs. Minister of Defence, Commander of the IDF forces in Judea and Samaria*, H.C. 810/88, 26 March 1989.
119. "Death of Ibrahim Al-Mattur," opinion written and signed by Dr. Derrick J. Pounder. Full text reproduced in Appendix 5-E.
120. Appeal in *Watak Odeh Jibril al-Tawil vs. Commander of IDF forces in Judea and Samaria*, H.C. 694/89, submitted on 21 August 1989.

121. Information obtained from Advocate Felicia Langer, November 1989.
122. Pounder, "Death of Ibrahim Al-Mattur."
123. In a signed opinion submitted to the High Court of Justice by the respondents, Dr. Yehuda Hiss stated: "The noose on which the deceased was found hanging ... was lost during the resuscitation attempts or his transfer from the scene of the event to the Institute." Opinion dated 22 June 1989.
124. Pounder, "Death of Ibrahim Al-Mattur."
125. The medic was reported to have been convicted for negligence in the case sometime in November 1989. Michal Sela, "Rafah Man's Family Seeks Probe of Shin Bet Man Over His Death," *Jerusalem Post*, 29 November 1989.
126. Felicia Langer, *The Death of Ibrahim al-Umtour, or: The Closed File That Remains Open*. (Tel Aviv: Presented Israeli League for Human and Civil Rights, 1989). (In Hebrew).
127. Feldman, "They Called Up Justice."

Appendix 16-A

Letter from the Lawyers Committee for Human Rights to the Israeli Military Concerning the Investigation into the Shooting Death of Nidal al-Habash

November 4, 1989

Colonel Ilan Shiff,
Deputy Judge Advocate General
Israel Defence Forces
6 David Elizar Street
Hakiryia, Tel Aviv
Israel

Dear Colonel Shiff:

[Paragraph omitted]

I am also writing about the shooting death of Nidal Habash, 21, in Nablus on October 9, 1989. The fact that Habash was shot by an IDF soldier is not in dispute, but the circumstances of his death are in sharp dispute, as you may already know.

The office of the IDF Commander of the Central Command, Gen. Yitzhak Mordechai, stated after soldiers were debriefed by senior officers "that soldiers had acted properly and followed the procedure for apprehending suspects" in the shooting of Habash (Jerusalem Post, October 12, 1989).

Nablus residents who claim to have witnessed the fatal shooting allege that Nidal Habash was shot at close range by a soldier while he was stopped with his hands raised, not while he was fleeing or presenting any danger to the life of the soldier. The accounts of two eyewitnesses, Asma al-Masri and Basima Seif, were described in the Jerusalem Post of October 12, 1989.

On November 1, 1989, I interviewed Asma al-Masri in her apartment in the Zafer al-Masri building in Nablus, which overlooks the scene of Habash's fatal shooting. Following is her account.:

On October 9, 1989, Asma al-Masri was in a neighbor's apartment in the building in which she lives with her husband and two children. At approximately 4:00-4:30 pm, she heard gunfire. She went to the balcony of the apartment and saw two youths running up a street. One of the youths turned to the right into a smaller street and reappeared in an open lot adjacent to a house. Three soldiers were in various positions near the youth when he reappeared.

The youth stopped running and put his hands up, "not too high—" about mid-shoulder level, al-Masri said.

One of the soldiers then shot the youth from a distance of 10 to 15 meters. "The boy went down on his back and did not move," she said. "I saw no movement at all—I'm not a doctor, but I think he was already dead."

The same soldier then walked slowly toward the youth. "He aimed and shot three more times, aiming his gun down at the boy," al-Masri said, using her pointed finger to indicate what she saw.

Asma al-Masri and other residents of the building began calling from their balconies to a Red Crescent clinic, which is located across the road from their apartment building. The clinic has an ambulance.

Salah al-Masri, Asma's husband, did not see the shooting of Nidal Habash. He told me, however, that he witnessed what occurred after the shooting, from a different balcony of the building:

I saw soldiers around the boy. There were three soldiers, and they were about two to three meters from him. They were looking at him but didn't touch him. People on the balconies were crying for the ambulance to come. The ambulance was stopped for 10 minutes at the corner of the street. Some girls were walking up the road (to the left of where the incident occurred) and the soldiers fired a tear gas bomb at them.

Asma al-Masri said she saw the following:

The Red Crescent ambulance was stopped by a soldier at the corner of the street for about 5 or 10 minutes. The ambulance was only about 10 meters from the boy. Soon a lot of soldiers and jeeps came and then I saw a doctor take the boy's pulse. Before that, not one of the soldiers went to the boy to see if he was alive or dead.

This case is of interest to the Lawyers Committee because it touches on a number of issues that we have raised with you ... this year:

1. Cooperation of Palestinian Eyewitnesses to Shooting Deaths by Soldiers

At a meeting on July 20, 1989 with Lawyers Committee representative J. David Jacobs, a New York attorney, you said that the Israel Defence Forces (IDF) does not wait for a complaint to initiate an investigation of a shooting death of a Palestinian by a soldier, but that an investigation is begun automatically. You said that investigators from the Criminal Investigation Unit of the Military Police go to the area where the incident took place and interview both suspects and eyewitnesses, but that investigations are not as thorough as the IDF would like because Palestinian eyewitnesses refuse to come forward. When I met with you on September 28, 1989, you reiterated this point and said that Palestinians do not want to cooperate with Criminal Investigation Unit investigators and that therefore "most of the witnesses are soldiers."

When Gregory Wallace, Kim Treiger and I met with you again in October, you said that the Criminal Investigation Unit interviews every soldier involved in the death of a Palestinian and that "every material eyewitness that we know about is investigated by the Military Police." When asked how quickly investigators interview eyewitnesses, Col. Horn said, "Immediately ... within the first three or four days."

When I met with Asma al-Masri and her husband on November 1, 1989, they told me that they had not yet been contacted by Military Police investigators to give testimony about the Habash shooting that occurred on October 9th.

The Lawyers Committee is interested in receiving the following information from your office:

- * Have investigators from the Criminal Investigation Unit of the Military Police contacted Asma al-Masri to arrange an interview?
- * If not, why not? Asma al-Masri is willing to cooperate with the investigation of the Habash shooting death. She told me on November 1, 1989: "Of course I'd give testimony. I saw it. I saw everything that happened, right in front of me."
- * Have other Palestinian eyewitnesses been identified by Military Police investigators? If so, how many of these have been summoned, to date, to give testimony? How many have given testimony to date?

2. Autopsy of Shooting Death Victims

You have discussed with us that one of the problems in the investigation of Palestinian shooting deaths involving IDF soldiers is that the bodies of victims are often not available for examination by forensic pathologists at the Leopold Greenberg Institute ("Abu Khabir"), the Israeli Ministry of Health facility that conducts all autopsies on residents of Israel and the occupied territories. The Lawyers Committee is aware that the bodies of shooting victims have been taken from hospitals and immediately buried by family members or local youths, preventing autopsies from being conducted.

We are therefore particularly concerned about the policy in effect regarding the autopsy of bodies of shooting victims that are in the custody of the military authorities. In the Habash case, we are interested in receiving the following information from your office:

- * It is our understanding from interviews with eyewitnesses that the scene of Habash's shooting death was secured within minutes by a large contingent of IDF soldiers. Where was the body taken when it was removed from the scene?
- * Was the body sent to Abu Khabir for an autopsy?
- * If not, why not?

3. Provision of Emergency Medical Care to Shooting Victims

At least two eyewitnesses to the events after the shooting of Nidal Habash allege that a Red Crescent ambulance was not permitted immediate access to the wounded man. IDF Chief of Staff General Dan Shomron's September 1989 "Letter to the Soldier"—which you said has been distributed to every soldier and is to be kept in his possession at all times—states:

The movement of ambulances and other medical services is not to be prevented and should not be unnecessarily delayed. The administering of medical care to injured people must not be hindered.

The Lawyers Committee would like to receive the following information:

- * Was Nidal Habash provided with immediate medical care after he was shot?

- * Was a Red Crescent ambulance at the scene of the shooting?
- * If it was, was there a delay in allowing medical personnel from the ambulance to examine Nidal Habash? If so, what were the reasons?

[Paragraph omitted]

Thank you for your attention to this matter, and I hope to hear from you at your earliest convenience.

Sincerely,

(Signature)

Virginia N. Sherry

cc: IDF Chief of General Staff, Dan Shomron
Brig. Gen. Shalom Ben-Moshe, Commander of the Military Police, IDF
Dr. Yehuda Hiss, Director, Abu Khabir Forensic Institute

Appendix 16-B

Reply from the Military to Appendix 16-A

ISRAEL DEFENCE FORCES

CHIEF MILITARY PROSECUTION

6th December 1989

our ref: 245-3997

Virginia N. Sherry. Adv.
Lawyers Committee for Human Rights
330 Seventh Avenue 10th Floor N
New York, NY 10001

Dear Adv. Sherry,

1. I wish to inform you that the circumstances of Nidal Habash's death have been investigated since October 9th, the date of the tragic occurrence.
2. We received a preliminary CID report concerning this incident, the investigation being ongoing. As we mentioned in our meetings with you and with David Jacobs, said reports—which are issued within a very short period from the occurrence—do not reveal all of its relevant circumstances.
3. (a) As far as we know, Asma al Masri was not interviewed by the investigators, since they have no objective method to find out who was an eyewitness—especially since she saw the occurrence from her apartment [sic].
(b) Your letter provides a perfect example to what we said in the meeting with you: knowing that there is an eyewitness, we referred your letter to the CID, requesting her immediate questioning. Moreover, we asked for testimony from the other eyewitness you mentioned, and drew the CID's attention to the article published in the Jerusalem Post.
(c) It must be noted that the period of "first three to four days" mentioned on page 3 of your letter, refers to interviewing the soldiers. Usually, testimony by local eyewitnesses is given in neutral areas—thereby lengthening the process by more than a few days.
4. According to the Preliminary Report, Habash's body was buried on the day of his death and was not operated on in the Institute of Forensic Medicine. We asked to find out why it was not operated upon. We presume that the reason for this is that the soldier who shot him was identified.
5. We also requested the CID to elaborate on the medical care provided to Habash—since we cannot provide a reply to your questions (sec. 3, p. 4) on the basis of the information included in the Preliminary Report.

Sincerely,

(Signature)

Yuval Horn Lt.
Chief Military Prosecutor's Assistant

Appendix 16-C

Preliminary Autopsy Findings: Khaled al-Sheikh 'Ali*

Cause of death

1. The autopsy showed that al-Sheikh 'Ali died from internal bleeding, due to blows to the abdominal area which occurred shortly before death, and certainly during his detention. There was no disease; he did not die of natural causes.
2. As a result of a strong trauma there was a tearing of the "mesentery," causing al-Sheikh 'Ali to bleed internally; this was what caused his death. [The mesentery is a thin fold which supplies blood vessels to the intestines; to tear it requires a lot of broad/blunt force, for example, a fist or a foot. Such an injury is not predictable: death would be inadvertent and unexpected. It is not a reliable way to kill a person. There was no neck injury, and no trace of electric shocks.] That kind of tearing would cause very acute pain.
3. There were additional injuries on the chest, back and legs which were not prominent from the outside (and some were not visible externally at all), but these did not contribute to his death. There were also injuries to the testes ["squeeze"-type haemorrhages in the testes]. There was no evidence of burns or old injuries apart from some on the chest which seemed a bit old. There were no fractures.
4. These other injuries were caused by a blunt instrument, e.g., a stick, foot, or fist. The time from the injuries to the death was probably less than one-two hours and could have been 10-15 minutes.
5. There were also marks on his sides below the rib-cage on the left-hand side, and on the right-hand side just above the navel; these were "punctive" marks which could have been made with fingers. But the mesentery injury had to be done by fixing and compressing it, so a fist is more likely for this.
6. He had marks on his wrists from handcuffs; we were told at Gaza Prison that he had been handcuffed with metal "Hiatt" handcuffs. There was crusting on the back of the ankles which could have been evidence of old ties; these were one-two weeks old. We were advised his ankles had not been 'cuffed.

*The following is an edited summary of findings of the autopsy performed on Khaled Kame! al-Sheikh 'Ali, on 24 December 1989, by Dr. Yehuda Hiss and Dr. Michael Baden at the Abou-Kbir Forensic Institute. It was presented to al-Haq on 25 December 1989 by Dr. Baden. Where appropriate, remarks made by Dr. Baden in a briefing to al-Haq early on 25 December 1989, at the American Colony Hotel in Jerusalem, have been inserted in brackets.

Mr. al-Sheikh 'Ali, 27, was arrested on 7 December 1989. He died in the interrogation section of Gaza Central Prison at around 8:30 p.m. on 19 December 1989. He had not been seen by his lawyer or a delegate from the ICRC before his death. Dr. Baden, the former Chief Medical Examiner of New York City, is currently Co-director of the Forensic Sciences Unit of the New York State Police.

7. It could be that the blows were intentionally inflicted so as not to leave marks, and that the person was trained not to leave marks. It is necessary to see whether there is a pattern of such cases to determine this. It's not difficult to inflict injuries without bruises; for example, if the injuries are inflicted through clothing there could be deep injuries without superficial ones. However, normally with injuries of this magnitude there would be bruises. It would make sense that the other injuries would have occurred before the fatal injury although it is not possible to say this from the autopsy. Such blows could be administered to a seated person.

Visit to Gaza Central Prison

8. The night before the autopsy I called Dr. Hiss and said I wanted to visit Gaza Prison. I also requested this from the IDF spokesperson. Dr. Hiss made some telephone calls during the autopsy and did get authority for us to visit. It was valuable to go down and see the geography.
9. The autopsy took nearly six hours. Dr. Hiss did an excellent autopsy and was very professional throughout.[†] Immediately afterwards, Dr. Hiss and myself visited Gaza Prison. Persons dressed in plain clothes met us there and took us to the alleged interrogation room where the deceased collapsed, and to the room where he was transferred by a paramedic after he collapsed. We spoke to about five people who identified themselves as being involved in the questioning.[‡] They would not give their names saying that this would be contrary to policy. They did, however, explain exactly who did what. According to what we were told, on the evening of 19 December, one person brought al-Sheikh 'Ali in to the interrogation room, spoke to him and left. Then others came in and spoke to him. When he collapsed, two others were called and later a doctor and paramedic also responded and went to the room where the deceased allegedly collapsed.
10. The alleged interrogators said they started the questioning around 7–7.15 p.m. (on 19 December 1989), and that al-Sheikh 'Ali collapsed around 7.50 p.m. The doctor arrived there shortly after 8 p.m. and tried to resuscitate him; al-Sheikh 'Ali was pronounced dead at around 8.30 p.m. It is possible to conclude that the injuries were not inflicted earlier than the admitted interrogation.
11. All the alleged interrogators claimed that they did not inflict blows; this is inconsistent with the autopsy findings. They did not claim that al-Sheikh 'Ali was in any signs of distress. They were not aware of the autopsy findings when we went to the prison. I was told second-hand that they thought he had died from a heart attack.

[†]This morning, Dr. Hiss faxed his report to State Prosecutor Dorit Beinisch. We still need results of tests to determine more closely the time of the injuries. We also need the results of toxicological tests to see if drugs were used. These tests should be completed in 3–4 weeks.

[‡]The interrogators spoke partly with a translator, and partly in English. When I spoke in English they responded in English. Otherwise, Dr. Hiss translated.

12. The interrogation room was an office-type room (approximately 4m.x5m.) with table, desk, chairs and word-processor. We were shown where the deceased had been standing and sitting. There were two tiny windows which let in light but had opaque glass so you could not see through.
13. Prior to his interrogation we were told that al-Sheikh 'Ali was in a cell with two other people. He was then brought to a 'holding' corridor. Guards reviewed the prisoners periodically. He was then brought into another corridor with chairs and then to the investigation room. The paramedic took him to another room [after he had collapsed].
14. My interpretation is that the fatal injury occurred during the interrogation. Death usually occurs within 1/2 hour-1 hour with such an injury; the person would show symptoms during this period. Since the deceased was apparently in good condition when he was taken into the interrogation room it is unlikely he was injured beforehand.
15. It is possible to save a life after such an injury if a person is taken to hospital soon enough. A lot depends on how quickly someone bleeds. It's important to see when al-Sheikh 'Ali got sick—if he got sick in ten minutes and died, there's less that could be done than if he'd been sick for an hour. The symptoms of this injury are not easy to read. They would be similar to the symptoms of appendicitis, e.g., stiffening of the belly, and blood count dropping; a doctor in a hospital should be able to diagnose it pretty quickly. For a lay person it could seem that a person had 'flu, an ulcer, food-poisoning, haemorrhage or injuries to the abdomen, muscle injury.
16. By the time the doctor got there, he was dead. The chronology was that al-Sheikh 'Ali got up, said he felt dizzy, sat down and collapsed.

Conclusion

17. It is prudent that as independent a body as possible be set up to review all cases of death in detention and the injured living.

25 December 1989

[N.B. At a subsequent press briefing given to journalists later that day, Dr. Baden made it clear that the blows which caused death could not have been inadvertently inflicted, nor could they have been self-inflicted.]

Chapter Seventeen

The Media

Introduction

In March 1989, Chief of the General Staff Dan Shomron asserted that:

From the beginning, the military allowed media representatives to enter the territories, and the media are a very effective tool in the hands of the sponsors of the intifada. But we want to show that we are not like some other countries in the world . . . We want them to see what happens. And despite all the difficulties, we let the media talk to the people in the territories.¹

The above statement expresses an image of Israel which has been repeatedly questioned by journalists, reporters, and others during the uprising. Indeed, many media representatives have complained, often in the form of protests uniting a number of different news agencies, of measures which, directly or indirectly, have severely compromised their ability to perform effectively as journalists.

Dean Reynolds, the chief correspondent for ABC (American Broadcasting Corporation) Television in Israel and the Occupied Palestinian Territories, describes the majority of measures taken by the military government to restrict news coverage as “before-the-fact” censorship; measures are designed to prevent or discourage journalists from gaining access to information and events as opposed to prohibiting the dissemination of recorded facts.² According to al-Haq’s information, “before-the-fact” censorship in the Israeli-occupied West Bank and Gaza Strip takes many forms, including:

- (1) Excessive resort to military closure, often with the apparent aim of preventing external monitoring of events, particularly by the press;
- (2) Physically assaulting members of the press corps;
- (3) Detention of journalists;
- (4) Abuse of the journalist’s profession by the authorities, either through the impersonation of journalists (usually in order to arrest Palestinians) or through the

confiscation of film from journalists in order to identify particular individuals, with the result that journalists are regarded with suspicion by Palestinians;

- (5) Restricting journalistic access to Palestinian sources of information through the closure of Palestinian press offices and the confiscation of materials from journalists' mail boxes in the Beit Agron Government Press Office.

The authorities also employ "after-the-fact" censorship, including the requirement that publications be submitted to an official government censor and the destruction or confiscation of cameras and film by soldiers and other officials.

Preventing the reasonable dissemination of information is itself a breach of a fundamental human right. Article 19 of the Universal Declaration of Human Rights states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and *to seek, receive and impart information and ideas through any media and regardless of frontiers.* [Emphasis added.]

Freedom of expression is also protected by the International Covenant on Civil and Political Rights. The Covenant, however, also makes allowance for restrictions of the right to freedom of expression where provided by law and where necessary for the protection of national security or public order.³

Israel generally refers to unspecified and ill-defined "security concerns," without further elaboration or explanation, to justify its policy of controlling the flow of information to the outside world.⁴ In addition to this, the media has been accused by the authorities of being the cause of disturbances in the Occupied Territories. On 28 February 1988, for example, Israel's Minister of Labor, Moshe Katsav, stated: "I came to the conclusion after 80 days of riots that the presence of the media causes the riots."⁵

While the concept of censorship, as it is traditionally understood denotes a "review of publications . . . for the purpose of prohibiting the publication, distribution, or production of material deemed objectionable . . .,"⁶ the scope of Israeli censorship in the Occupied Territories extends far beyond an official "review" of publications. Rather, the restrictions imposed on journalists attempting to cover events in the West Bank and Gaza Strip amount to a policy that effectively prevents them from functioning as journalists. Furthermore, where restrictions of the press are based on military orders and emergency legislation, it is, at best, highly questionable whether such "laws" are in conformity with international law.

The second, and, in a functional sense, more important reason for the necessity of freedom of expression is its role in the effective protection of human rights. As with properly conducted official investigations, a free and vigorous press can play a vital role in the monitoring and investigation of human rights violations. Indeed, the press, together with human rights monitors, form potentially the most important investigative agencies in the Occupied Territories, in particular through their role in motivating further investigation and protective intervention on the part of the international community.⁷

The international community itself also has an interest in ensuring the free flow of information from the Occupied Territories if it is to be successful in carrying out its duties vis-a-vis the population of the West Bank and Gaza Strip. Interference in the work of the press, like the ineffectiveness of official investigations, is therefore a cause for grave concern.*

A. "Before the Fact" Censorship

As stated above, many official policies directed at members of the local and foreign press can best be described as "before-the-fact" censorship. In other words, the authorities' emphasis is on preventing journalists from gaining access to information, rather than the more visible prevention of its distribution to the local and international public. A brief review of the range of mechanisms by which "before-the-fact" censorship is achieved by the authorities is presented below.

1. Barring Access to Events: Military Closure

During 1989, the military authorities have routinely prevented reporting on events by physically blocking access to areas declared "closed military zones." In such cases, journalists are not allowed to enter unless escorted by military personnel. The widespread imposition of curfews has, likewise, barred the press from entering areas.†

On 22 June 1989, the Government Press Office issued a written statement concerning foreign photographers in the West Bank and the Gaza Strip. The statement was presented to Foreign Press Association in Israel (FPA) Chairman Robert Slater by Yoram Ettinger, the director of the Government Press Office:

There has recently been an increase in incidents in which IDF soldiers have reported the presence of photographers and TV cameramen among groups of rioters, and at times even near the leading instigators ... This is especially grave when it occurs after the area has been declared, by law, a closed military zone ... The defence establishment wishes to make clear that it will view with severity any additional attempt by media representatives to disobey an order declaring certain areas to be closed military zones, and that anyone disobeying such an order will be punished with the full severity of the law ...⁸

That same day, the FPA responded to Ettinger as follows:

The best way to resolve these problems is not by warning us of future punishment, but by opening the territories to free and unhindered press coverage ...⁹

The imposition of curfews and closed military zones has been an Israeli military policy since the beginning of the occupation in 1967. After the uprising began in 1987, the isolation continued, although on a dramatically increased scale.¹⁰ In addition, the authority to impose curfew or closure orders has during the uprising devolved to junior officers; whereas in the past only the Area Commander had the authority to impose a

*See further Chapter Nineteen, "The Role of the International Community."

†See further Chapter Eleven, "Curfew and other Forms of Isolation."

curfew or declare a closed military zone, on 1 January 1988 the authority to issue such orders was vested in the "senior officer present."¹¹ Furthermore, pre-approved, blank closure orders are suspected of having been distributed en masse to the rank-and-file.

A photographer with the foreign press, who requested that his name be withheld, expressed the kind of frustration felt by members of the press with the arbitrariness of closure orders:

Things are more difficult this year [1989] than they were last year. Many more areas have been closed this year, and the closures take place arbitrarily. There is no need for an officer to close the area: a soldier can do it. Soldiers always have written orders with them, and all they do is write down the date. This is a policy of discrimination against the press. They do not want pictures to be published in the outside world so as not to destroy the image of "democratic Israel." The case of Beit Sahour is a good example. That town was closed off for the last two months.¹²

In fact, all journalists interviewed by al-Haq for the purpose of this report agreed that the situation had deteriorated further in 1989. FPA Chairman Robert Slater commented that, in his view, the Israeli authorities have implemented a policy to stop the work of journalists through a systematic practice of military closure.¹³ Thomas Hays, an American journalist working on a documentary about the uprising during 1989, stated that, in his experience, soldiers often declare any area where journalists are present a "closed military zone."¹⁴ According to Dean Reynolds of ABC:

The situation this year is much more difficult than it was last year: It appears that the Israeli army has instructed the troops to keep the press out at all costs. We have tapes of the army reacting to the press before they react to the demonstrations.¹⁵

'Ali Qa'dan, a Palestinian journalist with ABC, summed up the dilemma that journalists face as follows:

The Israelis want the press to get the facts from them, not from the other side. They do not regard us as journalists, a neutral side trying to show the facts. We are left with two choices: Either to violate their regulations and get ourselves into trouble, or to stand back and do nothing ...¹⁶

2. Physical Violence and Harassment of Journalists

Shortly before his retirement, the then-military spokesperson, Brigadier-General Ephraim Lapid, stated:

An example of the kind of work I am proud of is the training video we produced for all soldiers about to serve in the territories. They are shown how to approach the media and the importance of dealing with media representatives successfully.¹⁷

Yet in August 1989, the Jerusalem Media and Communication Center reported that by January 1989 the FPA had already received information of over 150 incidents of assault, threats, and other forms of harassment against foreign journalists by government officials, police, Border Police, soldiers, settlers, and Israeli civilians.¹⁸ In fact, all foreign news offices had reported incidents in which their correspondents were harassed.

Al-Haq has also continued to document reports of physical violence directed by soldiers at members of the press corps. The following chronological list of examples indicates the nature, although not the scope, of these attacks:

- (1) On 23 February 1989, Mark Taylor, a Canadian journalist, was taking pictures in Ramallah of soldiers who had opened fire after their jeep was stoned. A soldier fired a tear-gas canister at him as he ducked into a doorway.¹⁹
- (2) On 27 March 1989, a Palestinian journalist, Hasan Ibrahim Jibril, 28, of al-Shate' Refugee Camp in the Gaza Strip, was accompanying a Belgian film crew in the camp when the group was stopped by an army patrol. The soldiers took Jibril into an alleyway and beat him severely. Even after he showed the soldiers his press card, they continued to beat him. Jibril attempted to escape from the soldiers, and was then shot in the back with two bullets (one plastic and the other live).²⁰
- (3) On 1 May 1989, Maher Shalabi, a Visnews network cameraman, was shot in the chest with a plastic-coated metal bullet while he was filming in Ramallah.²¹
- (4) On 27 May 1989, Samir Rantisi, an NBC News cameraman, was physically assaulted and beaten by soldiers while filming in Ramallah.²²
- (5) On 3 June 1989, dozens of settlers from the Ariel settlement reportedly attacked two journalists and a newspaper photographer. At the time, the three journalists were awaiting the start of a "Peace Now" demonstration. Oron Meiri of *Hadashot*, and Eitan Levin and Yossi Eiloni of *Ma'ariv*, were sitting in a car at the entrance to Ariel. They were surrounded by several dozen settlers. The car window was hit with a flagpole. When Eiloni left the car, he was hit over the head with a rifle butt. Meiri observed that the policemen present at the scene did not intervene. The incident was filmed by an NBC television crew.²³
- (6) On 15 June 1989, Shlomo Franco, an ABC television cameraman, was hit above the left eye with fragments from a plastic bullet fired at him by Israeli soldiers dispersing Palestinian demonstrators in Ramallah. When ABC complained to the authorities about the incident, they responded only that Franco had been shot while soldiers were attempting to arrest him.²⁴
- (7) On 3 November 1989, a Canadian TV journalist, Jean Francois Le Pen, the head of the CBC Middle East desk, was shot with a rubber bullet by Israeli soldiers in Rafah in the Gaza Strip. At the time, the area was neither under curfew nor designated a closed military area.²⁵

3. The Arrest and Detention of Journalists

In its 1988 annual report, al-Haq reported that at least 20 Palestinian journalists and correspondents from the Occupied Territories had been placed under administrative detention, including such well-known journalists as Radwan Abou-'Ayyash, the head of the Arab Journalists' Association in East Jerusalem, Salah al-Zuhayka, the

editor of the daily *al-Sha'ab*, and Sam'an Khouri, a part-time reporter with Agence France-Presse and a member of the administrative committee of the Arab Journalists' Association.²⁶

During 1989, journalists have continued to be arrested and detained, often for just long enough to prevent incriminating pictures from being taken. The following examples are representative:

- (1) On 9 January 1989, Amir Weinberg, an Israeli journalist, was covering events in the Gaza Strip for his newspaper, *Yediot Ahronot*. Mr. Weinberg and his wife were driving to Bani Suhaila near Khan Younes, where a demonstration was taking place. Driving toward the government military compound in Khan Younes, Weinberg spotted Israeli soldiers severely beating a Palestinian detainee with their rifle butts and photographed the scene with a spare camera he had with him. A soldier opened the photographer's car door, pulled him from the car, tore his camera from its strap, and threw it to a soldier beside him. According to the *Jerusalem Post*, the soldiers then dragged Mr. Weinberg along the pavement for 30 meters, holding his arms behind his back and striking and kicking him repeatedly. Weinberg was then detained for five hours.²⁷
- (2) On 6 June 1989, Ali Qa'dan, quoted above, was arrested and held for two hours at a police station. Qa'dan had been covering the funeral of the longest-serving Palestinian political prisoner, 'Omar al-Qasem, in East Jerusalem. At one point, Mr. Qa'dan saw a group of Border Police in a police van arresting a young man who appeared to be bleeding. Mr. Qa'dan walked towards the van to see what was happening. The Border Police pushed him inside the van and forced him to sit. He was grabbed by the neck and turned towards the bleeding young man. Whenever Mr. Qa'dan attempted to tell the soldiers he was a journalist, he was told to "shut-up" and cursed. Mr. Qa'dan was released after ABC contacted the authorities.²⁸

4. Restricting Access to Palestinian Sources of Information

During the first year of the uprising, the authorities closed down a number of Palestinian press agencies, often justifying the closures by stating that the offices were merely front organizations for the Palestine Liberation Organization (PLO).²⁹ Rarely, if ever, is evidence produced in support of such allegations.³⁰

The practice of closing down press offices without any semblance of due process continued during 1989. Thus, on 14 June 1989, the authorities closed down the Holy Land Press Office in Jerusalem, headed by Dr. Seri Nuseiba. The day after the closure order was issued, two dozen police officers raided the office, confiscated several boxes of files, welded the door shut, and announced that the office would remain closed for "up to two years."³¹

Police spokesperson Uzi Sandori declared that the office was suspected of being used for "activities that undermine security and disturb public order,"³² and yet no evidence was offered indicating that it had been misused. Following the closure order, the U.S. State Department publicly criticized Israel for the action. Spokeswoman

Margaret Tutweiler stated, "If Mr. Nuseiba is believed to have engaged in illegal activities, he should be afforded an appropriate, open judicial proceeding."³³

Other agencies, ordered closed in 1988, remained closed for much of 1989. The Palestine Press Service (PPS) in East Jerusalem, the largest of these agencies, was ordered closed for six months by former West Bank Area Commander 'Amram Mitzna' on 31 March 1988. No reason was given for the order, which was based on the British Defense (Emergency) Regulations of 1945. The order was renewed for another year on 30 September 1988 and then again on 30 September 1989 for another six months.

Before it was closed, the PPS was a key source of information for the foreign press about daily events in the Occupied Territories. Its staff assisted foreign journalists by processing information and otherwise facilitating press coverage of local events. In addition, the *al-Haya* information and publishing office was closed for one year on 28 August 1988.³⁴

Another serious stricture applied during the uprising to the flow of information emanating from Palestinian sources has been the curtailment and confiscation of Palestinian-produced materials distributed to journalists in the Government Press Office in Beit Agron. Thus, on 10 April 1988, Yoram Ettinger, the director of the Government Press Office, banned Palestinian sources from depositing and distributing materials in foreign journalists' mailboxes in Beit Agron.³⁵ The rationale for the measure, according to Mr. Ettinger, was as follows:

Someone who wants to cut down a tree has no right to contend that he also wants to enjoy that tree's shade. If a certain body constitutes a "front" for the PLO, whose very existence depends on the elimination of Israel, I would find it inconceivable to make it easier for that same body—even if it calls itself "press" or "public relations"—to disseminate the PLO's doctrine; certainly not under the aegis of a government body, like the office I head.³⁶

Following protests from the FPA, however, the measure was suspended.

Nevertheless, on several subsequent occasions al-Haq distributed material to GPO mailboxes which was later found to have been removed. The distribution of press releases and other kinds of reports is central to al-Haq's work as a human rights organization. The confiscated publications included four press releases and a report about conditions at Ansar III (Ketziot) Military Detention Center, copies of which had been placed, in brown envelopes, in over 100 journalists' boxes on 17 August 1988. On 18 August 1988, al-Haq received reports that a number of journalists did not find these envelopes in their boxes. The next day, not one of the envelopes was still in a box, even where it was apparent that a box had not been cleared out for days.

Al-Haq wrote to Mr. Ettinger complaining about the removal of the material, but received no response.

5. Impersonation of Journalists and Confiscation of Film

Abuse of the journalistic profession as a means of furthering certain aims of the authorities has taken two principal forms:

- (1) The impersonation of journalists by Israeli agents in order to gain entrance to villages and refugee camps and carry out arrests;
- (2) The confiscation of film from journalists in order to identify suspects with a view to arresting them. While this phenomenon reached its height during the first year of the uprising, incidents continued to occur in 1989.

Impersonation of journalists has resulted in a loss of confidence between journalists covering the Occupied Territories and local residents. An American photographer, who asked that his name be withheld from publication, stated:

The impersonation of foreign journalists affects my work a lot as a journalist; it made things more dangerous for us. We feel the distrust from the Palestinian population. They suspect us of being policemen, or collaborating with the police, and if not, we are suspected of giving our film to the Shin Bet.³⁷

The first example case of impersonation occurred in June 1988, when, according to press reports and ABC staff, members of the General Security Service (GSS, or Shin Bet), pretending to be ABC news personnel, entered the West Bank village of Salfit. They told residents that they wanted to film a young man, Nizar Dakdouk, standing amid the rubble of his home, which had been demolished earlier after allegations that he had thrown a petrol bomb. The "journalists" promptly arrested the youth.³⁸ The authorities later confirmed his arrest. Following the incident, ABC sent a written protest to the Prime Minister's office and requested an investigation. Avi Pazner, Media and Communications Advisor to Prime Minister Yitzhak Shamir, wrote a letter to ABC denying that Israeli security agents ever pose as members of the foreign press and stating that the story was without foundation.³⁹

On 23 April 1989, two Israeli policemen in civilian dress drove a rented car bearing a hand-written "Press" sticker into the Wadi-al-Joz neighborhood of East Jerusalem. They arrested a 16-year-old resident, Samar Salludi. The policemen were photographed, first while they sat in the car, and later as they were arresting Ms. Salludi, by journalists from Visnews Television and Zoom 77. One of the police officer's gun holster and handcuffs were visible as he returned to the car. Following the incident, foreign journalists expressed their indignation, and the FPA wrote a complaint to Israeli Police Inspector-General David Kraus urging that a full investigation be carried out. Jerusalem police spokesperson Uzi Sandori claimed that the men had acted on their own initiative and not at the direction of their superiors.⁴⁰ Later on, an internal investigation exonerated the two policemen. The police only recommended that a third policeman involved, who had been in uniform when the incident took place, should be disciplined for using excessive force in hitting Ms. Salludi with his club.⁴¹

The Foreign Press Association stated that it:

deplores such an impersonation of journalists as an act that places us at great personal risk. It conveys to those we are trying to cover that we, the real journalists may well be police agents.

Police Inspector-General David Kraus later told journalists that he would forbid the police from using press insignia on their cars without his personal approval. He added that such incidents could be allowed, but only in very special circumstances.⁴²

In addition to soldiers and police, Israeli settlers, especially militant Kach party activists, are known to have used press insignia on their cars and vans. On 30 March 1988, American and a French television crews filmed Kach members driving around Hebron in a van bearing a "Press" sign. A Palestinian youth, 'Awad 'Amer, 24, from Hebron, was shot in the head and later died. A police spokesperson said that a statement had been taken from a Palestinian who had observed the shooting. Palestinian sources said that 'Amer had been shot by settlers near 'Alia hospital.⁴³

The second method in which the journalist's profession has been abused by the authorities for their own ends concerns incidents in which journalists have been ordered to hand over their film. Israeli security personnel have then reportedly used the film to identify demonstrators and other suspects. Journalists and photographers are thus severely discouraged from filming demonstrations or disturbances out of fear of revealing the identity of participants in such incidents.

On 24 February 1988, for example, soldiers confiscated video film from a team of CNN photographers in the village of Qabatiya, near Jenin. The tape reportedly contained footage of an incident in which a collaborator was killed. The film was never returned to CNN despite its protests, and following the incident, on 11 May 1989, a military court charged 95 Qabatiya residents of involvement in the killing of the collaborator.

Reuters Chief Photographer Jim Hollander was ordered to hand over his film to soldiers on several occasions during the uprising, even though he states that he was not filming in a closed military zone on any of these occasions.⁴⁴

In March 1988, photographers from Reuters, *Time*, and *Newsweek* were physically attacked by Israeli soldiers, who ordered them to leave and confiscated their film. The photographers were filming an incident in Bethlehem in which an Israeli soldier was killed. Later on, the Israeli High Court of Justice upheld the legality of the confiscation, ruling only that the film had to be returned to the photographers once the authorities had had an opportunity to duplicate it.⁴⁵

B. "After-the-Fact" Censorship

Traditional forms of censorship, that is to say, preventing the media from publishing or otherwise disseminating information already in its possession, have been widely employed by Israel against members of the press, especially the Palestinian press, for many years. Such practices have continued in 1989.⁴⁶ In addition to actually prohibiting or otherwise preventing a news item from being circulated, the military has resorted to such practices as smashing journalists' cameras and destroying film.

1. Direct Censorship

The Israeli authorities openly admit to a policy of direct censorship of the press for reasons of "security." According to military spokesperson Lapid:

Israel is the only democracy to employ a permanent censor who must approve all security-related media reports ... His job is to prevent the publication of information that could harm the country's security.⁴⁷

Since the beginning of the military occupation in 1967, the military censor has had the responsibility of reviewing all written materials contained in any Palestinian document and all information intended for Palestinian consumption in the Occupied Territories.⁴⁸

In theory, Palestinian, Israeli, and foreign journalists are subject to the same rules of censorship, all based on the 1945 Defense (Emergency) Regulations. In fact, however, the rules are far from uniform. The Israeli press participates in a process of self-censorship through what is known as the "Editors' Committee."⁴⁹ Those Israeli newspapers which are not members of the Editors Committee, however, are required to submit all copy to the censor prior to distribution.⁵⁰

Foreign journalists face heavier restrictions than Israeli journalists and have, on occasion, been threatened with sanctions for not submitting an article for censorship. On 25 June 1989, for example, the Israeli Ministry of Interior contacted Reuters Bureau Chief Paul Taylor and warned him that his residency permit and work visa would be revoked if Reuters again violated the military censorship regulations during the following 12 months. The Ministry cited two reports published by Reuters, one about an Israeli operation along the northern border in which the military captured two Palestinian guerrillas and another on two Israeli clandestine units reportedly involved in carrying out summary executions in the Occupied Territories, which had not been submitted to the censor prior to publication.⁵¹

Restrictions on the Palestinian press are the most severe. All copy must be submitted to the censor's prior to publication as no self-censorship arrangement is permitted.⁵² A photographer who works with a foreign press agency stated that of his agency's three subscribers in Israel and the Occupied Territories (two Israeli newspapers and *al-Quds* Arabic newspaper), only the Israeli papers were able to freely publish all the photographs that they obtain from the agency. *Al-Quds* newspaper, by contrast, is required to send all its photographs to the censor prior to publication.⁵³

An example of the extent to which the Palestinian press is censored is represented by al-Haq's acceptance speech for the Carter-Menil Human Rights Award, given in Atlanta, Georgia (USA) on 9 December 1989. The speech was attended by former President Jimmy Carter, leaders of the American human rights community, and heard by the American public-at-large on television. Copies in both English and Arabic were distributed by al-Haq to the local press. Israeli papers freely reprinted such parts of the speech as they wished immediately after its distribution. Three Palestinian papers, *al-Quds*, *al-Sha'ab*, and *al-Fajr*, however, were prohibited by the military censor from citing the speech at all, although once the text of the speech had appeared in the Israeli press, Palestinian newspapers were informed that they could reprint excerpts of whatever had appeared in the Israeli papers. (The text of the speech is reproduced as the Conclusion to this report.) On several occasions, press releases issued by al-Haq and distributed to local newspapers were also censored.

2. The Destruction and Confiscation of Cameras and Film

Another form of "after-the-fact" censorship comprises the not uncommon practice of destroying or confiscating journalists' cameras and films. The following examples are

representative of such incidents:

- (1) On 30 May 1988, Jim Hollander, a Reuters Chief Photographer, had his camera smashed by an Israeli soldier in the West Bank town of Beit Sahour. Hollander subsequently filed a complaint against the soldier, and in November 1988, was awarded damages totaling NIS 2,000. The sum has yet to be received by Reuters. According to Mr. Hollander, this was the first case of its kind in which a journalist was successful.⁵⁴
- (2) On 1 April 1989, 15 soldiers and officers raided the house of Taher Shreitah, 28, a journalist from the Gaza Strip working with Reuters, CBS, and the *Jerusalem Post*. According to Mr. Shreitah, "One of them pushed his rifle into my stomach as they all asked repeatedly why I work with journalists."⁵⁵ Then, on 13 October 1989, soldiers confiscated video cassettes and a telephone notebook from Mr. Shreitah.⁵⁶
- (3) On 23 September 1989, a car belonging to Qasem 'Izzat, a correspondent for the Associated Press (AP) and the World Television Network (WTN), was confiscated by soldiers. The car was returned to him after he informed WTN about the incident.⁵⁷ On the morning of 10 October 1989, a group of soldiers came to Mr. 'Izzat's home and asked him to bring his car and follow them to the civil administration office in Gaza. When he refused, he was threatened with arrest. The soldiers then took his identity card and confiscated his car. They were returned to him the following day, but only after the intervention of WTN and his lawyer.⁵⁸ On 16 November 1989, Mr. 'Izzat's home was again raided by Israeli soldiers, who confiscated several pieces of office equipment, including a facsimile machine, a computer, a typewriter, cassettes, several press reports, three telephone notebooks, and other reports and leaflets. Mr. 'Izzat was also summoned to the civil administration. A few days later, the confiscated materials, with the exception of the facsimile machine and the computer, were returned.⁵⁹
- (4) In October 1989, two Dutch journalists were detained by the military in Rafah Refugee Camp in the Gaza Strip. Their film was confiscated on the basis that they were filming in a closed military area.⁶⁰

Summary

The West Bank and Gaza Strip are two of the few areas in the world which are currently under belligerent military occupation. As the human rights situation continues to deteriorate, the Israeli authorities routinely attempt to avoid accountability for their abuses by offering wholly unconvincing justifications for their conduct unsupported by the findings of either independent or internal investigations. In such a situation, it is imperative that the media be present to record what the military denies or refuses to acknowledge as having occurred. In the words of 'Ali Qa'dan of ABC television:

The camera is the key ... Without the presence of the camera [at] the scene, the Israelis can say whatever they want. In an incident on 5 November 1989, outside

Bethlehem, Israeli soldiers shot a 15-year-old boy in the back. We saw them, but did not have our cameras with us at the time. The following day, Israel Television reported that the boy was masked, which is completely untrue.⁶¹

Journalists claim that the authorities have pursued a policy of restricting the flow of information concerning human rights violations by imposing a combination of "before-the-fact" and "after-the-fact" censorship. The examination of Israeli measures conducted in this chapter indicates that such claims are wholly justified.

Endnotes to Chapter Seventeen

1. "They are not Demonstrators," *Jerusalem Post*, 24 March 1989.
2. Interview with Dean Reynolds, Chief Correspondent of ABC News in Israel and the Occupied Territories, Jerusalem, 8 November 1989.
3. The ICCPR states in pertinent part:
 - (1) Everyone shall have the right to hold opinions without interference.
 - (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
 - (3) The exercise of the right provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (l'ordre public), or of public health or morals.
4. Other measures which have been taken by the Israeli authorities on security grounds include prohibitions on the planting of azelias and the picking of wild thyme; the closure of charitable organizations; the denial of licenses for the establishment of a YWCA and a needlework cooperative supported by the Mennonite Central Committee; the banning of clothing which contains the colors of the Palestinian flag; and the refusal to permit the operation of stoplights within any Palestinian municipality in the Occupied Territories.
5. Committee to Protect Journalists, *Backgrounder*, No. 3 (23 May 1988), p. 2.
6. *Black's Law Dictionary* (Saint Paul: West Publishing Company, 1979), p. 203. (Emphasis added.)
7. The past two years have witnessed the arrival of large numbers of foreign journalists to cover the Palestinian uprising. They work in a variety of media including the written press, radio, and television. The group is comprised of 200-300 permanently-based journalists employed by 80-100 foreign press agencies with offices in Jerusalem and Tel Aviv. In addition, a constantly varying number of visiting journalists has since declined to an average of approximately 300 at any given time.

A number of Palestinians also work with the foreign media. This group includes full-time and part-time journalists, photographers, employees of press agencies, and others. Their work consists of actual reporting, providing information and technical support, translation services, and arranging local contacts. It is perhaps because of this latter function that press restrictions have been enforced with much more severity against Palestinians working with the foreign media than against foreign journalists. (Statistics obtained from telephone interview with Robert Slater, Chairman of the Foreign Press Association (FPA), 10 November 1989.)
8. State of Israel Government Press Office (GPO), "Ettinger Statement on Photographers in Judea, Samaria and Gaza," 22 June 1989.
9. FPA, "Public Statement," 22 June 1989.
10. Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987-December 1988* (Ramallah: Al-Haq, 1988), pp. 181-186, 194-196.
11. *Ibid.*, pp. 193-194.
12. Interview with the photographer (name withheld), Jerusalem, 7 November 1989.
13. Telephone interview with FPA Chairman Robert Slater, 11 November 1989.
14. Interview with Thomas Hays, Ramallah, 15 November 1989.
15. Interview with Dean Reynolds, Jerusalem, 11 November 1989.
16. Interview with 'Ali Qa'dan, Jerusalem, 8 November 1989.

17. Ephraim Lapid, "Reliability is the Key," *IDF Journal* (Fall 1989), p. 64.
18. The Jerusalem Media and Communication Centre (JMCC), *Reporting Harassment: Israeli Restrictions of Press Freedom In the West Bank and Gaza Strip* (Jerusalem: JMCC, 1989), pp. 35-36.
19. Al-Haq Affidavit No. 1956.
20. "Troops Shoot Gaza Journalist," *Al-Fajr Jerusalem Palestinian Weekly*, 3 April 1989.
21. JMCC, *Reporting Harassment*, p. 23.
22. *Ibid.*
23. GPO, "Selections from the Hebrew Press: Daily Press Survey," No. 61, 4 June 1989. The *Jerusalem Post* later reported that two Ariel settlers suspected of involvement in the assault were released on bail of approximately NIS 2,000 (\$US 1,000) each. A third suspect, aged 17, was also released. See "Ariel Suspects Freed," *Jerusalem Post*, 19 June 1989.
24. Robert Rees, "Plastic Bullet Fragments Hit Newsmen," *Jerusalem Post*, 16 June 1989. In an earlier incident in the village of Beit Safafa, Franco was shot above the right eye with a rubber bullet. (Interview with Dean Reynolds, ABC television, Jerusalem, 8 November 1989.)
25. Asher Wallfish, "Issue of Shot Journalist Settled, Says Rabin," *Jerusalem Post*, 15 November 1989.
26. Al-Haq, *Punishing a Nation*, pp. 198-202.
27. Bradley Burston, "Photographer Said Beaten by IDF," *Jerusalem Post*, 10 January 1989.
28. Interview with 'Ali Qa'dan, Jerusalem, 8 November 1989.
29. JMCC, *Reporting Harassment*, p. 3.
30. Al-Haq, *Punishing a Nation*, pp. 199-200.
31. Three weeks before the closure, an English-language weekly report on developments in the West Bank produced by the Holy Land Press Office was banned after allegations that "it was being used as a means for keeping a public record on the local population's compliance with orders circulated in PLO flyers, and for openly voicing encouragement for the violent activities of instigators and PLO activists." The publication, known as "Monday Report," had been distributed to foreign correspondents and diplomats. Israel Ministry of Foreign Affairs, "Hiding Behind the Facade of Journalism," June 1989.
32. David Makovsky, "Police Shut Nusseibeh's Office as 'Planning Centre of Intifada'," *The Jerusalem Post*, 16 June 1989.
33. Michal Sela, "Clashes in Gaza Leave Four Dead," *Jerusalem Post*, 18 June 1989.
34. For a list of press offices closed during 1988 see Al-Haq *Punishing a Nation*, p. 199.
35. *Index on Censorship*, Vol. 17 No. 6 (June 1988), p. 37.
36. GPO, "GPO Director on Relations with the Media," in *From the Electronic Media*, 19 May 1988.
37. Interview with the photographer, Jerusalem, 7 November 1989. The photographer continues:

For the month following the impersonation of journalists our job was very difficult. Wherever we go, the Palestinian youths check our press credentials, other journalists were frisked by the Palestinians. An incident took place in Bethlehem two months ago when one boy was shot, and five others were injured by soldiers posing as tourists with cameras. This incident made my job more dangerous; two or three days after the incident, I was stopped by Palestinian youths who checked my Arab Journalists' Association press card [most foreign journalists who had not already done so applied for AJA press cards after the impersonation in order to facilitate their work among the Palestinian community]. I was also frisked for the first time. A week after the incident, a TV crew in Bethlehem was stoned and one journalist was injured in the nose.
38. Interview with Dean Reynolds, Jerusalem, 8 November 1989.

39. Wolf Blitzer and Menachem Shalev, "ABC Rejects Shamir's Denial of Shin Bet Impersonation Story," *Jerusalem Post*, 13 July 1989.
40. Andy Court, "Policemen Caught on Film Impersonating Journalists," *Jerusalem Post*, 24 March 1989.
41. Robert Rees, "No Wrongdoing by Police who Impersonated Journalists," *Jerusalem Post*, 31 March 1989.
42. Andy Court, Menachem Shalev, and Asher Wallfish, "'No More Unmarked Cars with 'Press' Signs in Windows'," *Jerusalem Post*, 29 March 1989.
43. Joel Greenberg, "Police Probe 'Press' Gunmen in Hebron Shooting Death," *Jerusalem Post*, 2 April 1989.
44. Interview with Jim Hollander, Reuters Chief Photographer, Jerusalem, 7 November 1989.
45. Committee to Protect Journalists (CPJ), "Israel Gets Tough with Journalists," *CPJ Update* (May/June 1988), p. 6.
46. For an in-depth analysis of the censorship of the Palestinian press see CPJ/Article 19, *Journalism Under Occupation: Israel's Regulation of the Palestinian Press* (New York: CPJ/Article 19, 1988), particularly pp. 51-108.
47. Lapid, "Reliability is the Key," p. 63.
48. The rights and duties of the military censor are based on the Defense (Emergency) Regulations of 1945, which were revoked by the British authorities at the termination of the Mandate in May 1948, and hence are no longer valid under local law. Israel's continued application of many of their provisions are therefore a violation of international law. For a legal analysis of Israel's application of the Defense (Emergency) Regulations see Martha Roadstrum Moffett, *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories*. (Ramallah: al-Haq, 1989).
49. The Editors Committee is a committee composed of most major Israeli newspaper editors and representatives of the Israeli Broadcasting Authority. The committee was founded in 1949, at which time it agreed to submit all material on "security" issues to the censor for prior approval. (GPO, "IDF Spokesman Lapid's Address to the Conference on Free Speech and National Security," 24 December 1987.)
50. Barbara Koepfel, *The Press in the Middle East* (Washington: Middle East Research and Information Project, undated).
51. Telephone interview with Paul Taylor, Reuters Bureau Chief, 6 December 1989.
52. Koepfel, *The Press*.
53. Interview with the photographer, on 7 November 1989. The interview requested that their name be withheld from publication.
54. Interview with Jim Hollander, Jerusalem, 7 November 1989.
55. Michal Sela, "Gaza Man 'Harassed for Working with Journalists'," *Jerusalem Post*, 2 April 1989.
56. Telephone interview with FPA Chairman Robert Slater, 11 November 1989.
57. Al-Haq Affidavit No. 2168.
58. Al-Haq Affidavit No. 2167.
59. Al-Haq Fieldwork Report No. 89/27.
60. *An-Nahar*, cited in *Al-Fajr Jerusalem Palestinian Weekly*, 30 October 1989.
61. Interview with 'Ali Qa'dan, Jerusalem, 8 November 1989. Under the current official open-fire regulations, masked youths may be shot at with live ammunition. See further Chapter One, "The Use of Force."

Chapter Eighteen

Human Rights Monitors

Introduction

The Israeli authorities routinely assert that they thoroughly investigate allegations of human rights violations by soldiers in the Occupied Palestinian Territories. However, if investigations are carried out at all, they rarely lead to the prosecution of offenders. Even when they do so, if there is a conviction, light sentences are imposed, and those convicted may still be pardoned, as happened in the Giv'ati Trial.* This being the case, independent human rights monitoring becomes imperative. It alone can start the process of bringing pressure to bear on the authorities to investigate all reports of human rights violations, to ensure that such investigations are adequate, and to end abuses.

There are a number of agencies equipped to fulfill such a task. The international community of states constitutes one such body.† Locally, both the media and human rights organizations have a role to play. Media coverage of Israel's repression of the uprising has declined dramatically during 1989, however, both because of waning public interest and restrictions on journalism by the military authorities.‡ Given the quantum increase in repression since the beginning of the uprising and the resultant systematic violations of human rights, human rights organizations have assumed a crucial function of exposing and investigating abuses, pursuing local remedies, and intervening with human rights organizations and governments abroad in an effort to seek international protection for the civilian population. While they have carried out this task to the best of their abilities, this effort should not be seen as a substitute for active direct monitoring by states themselves.

Two Palestinian organizations, al-Haq in Ramallah and the Palestine Human Rights Information Center (PHRIC) in East Jerusalem, systematically collect information on human rights violations in the Occupied Territories and perform other human rights work. The activities of both these organizations has expanded in scope

*See further Chapter Sixteen, "Investigations."

†See further Chapter Nineteen, "The Role of the International Community."

‡See further Chapter Seventeen, "The Media."

during the past two years, and more fieldworkers have been added to their staff. Their work has exposed many clear violations of international law by the Israeli military, as well as vigilante actions by settlers. Both organizations published major reports on human rights violations during the first year of the uprising.¹

The Israeli authorities have not undertaken direct actions against human rights monitoring by these two institutions. Under the military law enforced by Israel, organizations can be shut down without any form of due process, and indeed many Palestinian organizations have been closed by military order since the beginning of the uprising.² The fact that the army has refrained from closing down either al-Haq or the PHRIC is not because it takes a benevolent view of human rights work in the Occupied Territories. Rather, it is due to the protection that has been provided by strong international support for the work of Palestinian human rights monitors in recent years, especially since 1988.

This does not mean that the military authorities have permitted al-Haq and the PHRIC to operate untrammled. It simply means that they have had to employ different tactics which are less obviously aimed against human rights work and are therefore not automatically subject to public scrutiny. Thus, indirect measures have been taken to disrupt the normal work of Palestinian human rights monitors. Aside from a number of harassments, described below, the major instrument of disruption has been the arrest and detention of fieldworkers on which local organizations rely for their information. At least nine al-Haq and PHRIC fieldworkers and two of their researchers have spent time in administrative detention since the beginning of the uprising. Presumably the military authorities' objective is to interrupt the flow of information, to deter Palestinian monitors from carrying out their work, and to deter the population from raising complaints and providing information. If this indeed is the authorities' aim, and in the continuing absence of specific charges against human rights monitors substantiated by open evidence in a court of law, such actions are clearly illegal under international law.

This chapter only discusses those human rights monitors who have not been charged or tried with specific offenses. No al-Haq staff members have been charged with specific offenses, nor tried, during their employment for al-Haq. To the contrary, only general and unsubstantiated accusations have been made. Al-Haq takes the position that unless its staff members are charged and tried in accordance with the principles of the rule of law, their detention is a result of their human rights work.

A. Administrative Detention and Short-Term Arrest

Al-Haq's 1988 annual report, *Punishing a Nation*, was dedicated to five fieldworkers and one researcher who were placed in administrative detention in 1987 and 1988.³ During the past year, as well, fieldworkers of al-Haq and the PHRIC have been detained without charge and trial. We note the following cases of fieldworkers detained in 1989, while updating the cases of fieldworkers detained in 1987 and 1988:

- (1) Ghazi Shashtari (al-Haq fieldworker in the Nablus district): Detained in December 1987, released on 19 December 1988 following two consecutive six-month terms in administrative detention spent mostly in Jneid Prison and Ansar III. Mr. Shashtari was an Amnesty International "Prisoner of Conscience" during his detention.
- (2) Sha'wan Jabarin (al-Haq fieldworker in the Hebron district): Detained in March 1988, released on 8 December 1988 after nine months (consecutive six- and three-month terms) in administrative detention, spent mostly in Ansar III. Mr. Jabarin was rearrested on 10 October 1989 and given a one-year administrative detention order (see further below).
- (3) Zahi Jaradat (al-Haq fieldworker in the Hebron district): Detained in March 1988, released on 7 March 1989 following two consecutive six-month terms in administrative detention, spent mostly in Ansar III. Mr. Jaradat was an Amnesty International "Prisoner of Conscience" during his detention.
- (4) Iyad Haddad (al-Haq fieldworker in the Ramallah district): Detained in October 1988, released on 5 April 1989 after nearly six months in administrative detention, spent in Ansar III. Mr. Haddad was rearrested on 3 July 1989 and placed in administrative detention for six months. His "appeal" was rejected by a military review judge on 4 October.⁴
- (5) Rizeq Shqeir (al-Haq senior researcher): Detained in November 1988, released on 30 March 1989 following four and a half months in administrative detention, spent in Ansar III. His original order of six months was reduced by two months following appeal.
- (6) 'Abd-al-Karim Kan'an (al-Haq fieldworker in the Toulkarem district): Detained in November 1988, released on 18 May 1989 after six months in detention, spent in Ansar III (see further below).
- (7) Mahmoud al-Baba (PHRIC office employee and part-time field assistant from al-Am'ari Refugee Camp in the Ramallah district): Detained on 24 May 1989, released on 23 August after three months in administrative detention, spent in Ansar III.
- (8) Ahmad Jaradat (al-Haq fieldworker in the Bethlehem district): Detained in May 1989, released after a little over two months on 6 July 1989, spent in Ansar III.

In addition, one PHRIC fieldworker in the Gaza Strip, As'ad Younes from Rafah Refugee Camp, was being held at press time, his status unknown. According to the PHRIC, "[s]everal other field assistants have been detained for varying periods and released without charges. Others have been called for interrogation and released the same day." The PHRIC also reports that a number of its staff, including fieldworkers, have been imprisoned on political charges.⁵

Two cases merit particular attention, illustrating, as they do, both the brutality and lack of due process which have characterized Israel's response to the uprising.

These (representative) cases show that Israel is prepared to take the same repressive measures against human rights monitors as against other parts of the population, regardless of the special protection due to human rights monitors because of the nature of their work.

1. 'Abd-al-Karim Kan'an

'Abd-al-Karim Kan'an is al-Haq's fieldworker in the Toulkarem district. He was arrested on 19 November 1988 as he was asleep at the house of al-Haq researcher Rizeq Shqeir, after attending a wedding party in Jerusalem. The military had apparently come for Mr. Shqeir but, finding both men, arrested both. Mr. Shqeir was held without questioning for more than two weeks, and was then issued a six-month administrative detention order. The circumstances of Mr. Kan'an's detention differ considerably: Mr. Kan'an was arrested by chance that night, taken to the Ramallah Prison, where his identity card was checked, and was about to be released when the officer in charge decided to keep him in detention. The officer who arrested him had already told him when Mr. Kan'an protested his arbitrary arrest: "One bird in the hand is better than ten in the tree!" Mr. Kan'an was subsequently transferred to Dhahiriyya Military Detention Center and issued a six-month administrative detention order two days after his arrest, almost two weeks before Mr. Shqeir who had been specifically sought by the army which had come to his house to arrest him. Both Mr. Shqeir and Mr. Kan'an were later transferred to Ansar III.

Al-Haq intervened with the Israeli authorities on the issue of the detention of the two men on 24 November, at which time their whereabouts and legal status were not yet known. In the wake of this intervention, other human rights organizations also wrote letters to the authorities. In reply to one such letter, an official of Israel's Foreign Ministry claimed that:

[I]t is not the practice of Israel to arbitrarily carry out arrests without the existence of evidence attesting to involvement in acts of violence or incitement thereto. Clearly neither Mr. Shqeir nor Mr. Kan'an were arrested for their being officers of al-Haq which ... functions freely, as do other such bodies, as long as they are not involved in violence or do not act as fronts for the various terror organizations.⁶

The official then went on to accuse the two men, without providing any evidence, of being "longstanding and senior activists" in the Democratic Front for the Liberation of Palestine.

In a comment on this letter, al-Haq noted that in the absence of specific charges (since all accusations cited by the authorities were chargeable offenses) and concrete evidence, it appeared that the two men had been detained for their human rights work. Mr. Kan'an's detention in particular appeared arbitrary and unrelated to any offenses he might have committed, since his presence in the house of Mr. Shqeir was coincidental, and he had not been wanted by the authorities previously. In al-Haq's words: "It seems, therefore, that the authorities, once they had Mr. Kan'an in their hands anyway, thought it convenient to re-detain him, underlining once more the sheer arbitrariness of the process of arrest and detention" during the uprising.⁷

Mr. Kan'an appealed the detention order, and appeared before a military appeals judge in Ansar III on 8 March 1989. No evidence was presented by the authorities during the appeal, and a request by the International Commission of Jurists (ICJ) in Geneva to send an observer to the session was denied by the IDF Judge Advocate-General. A witness brought by attorney Tamar Peleg of the Association for Civil Rights in Israel did testify on Mr. Kan'an's behalf. The appeal was rejected. In a request for urgent action, al-Haq stated:

The absence of concrete charges or evidence against Mr. Kan'an gives al-Haq no reason *not* to believe that he is being detained for his work for al-Haq, precisely because his imprisonment hampers our ability to monitor and prevent human rights abuses. The facts of his case (the circumstances preceding and surrounding his arrest, the informal nature of the allegations, etc.), as well as the authorities' refusal to allow an independent ICJ observer to attend the appeal session, reinforce this belief. It is also important to note that Mr. Kan'an is one of six al-Haq staff members who have been administratively detained at Ketziot since the beginning of the current Palestinian uprising. We at al-Haq firmly believe that continuing detention of our staff and the continuing failure of the Israeli authorities to state charges or disclose evidence in each individual case are strong indications that the detentions are aimed not so much at the individuals concerned as at disrupting the work of al-Haq as a human rights organization during this crucial period.⁸

2. Sha'wan Jabarin

The second case, involving Sha'wan Jabarin, al-Haq fieldworker in the Hebron district, is especially egregious. Having spent nine months in administrative detention during the uprising, Mr. Jabarin was rearrested on 10 October 1989. Within days, al-Haq received reports from released detainees that Mr. Jabarin had been severely beaten by soldiers at the police lock-up in Hebron, and that he had been hospitalized as a result. These accounts were later confirmed by the military authorities.⁹ In a sworn statement given in front of his lawyer, attorney Lea Tsemel, Mr. Jabarin later stated that following his arrest on 10 October, soldiers in the car that was taking him to the Hebron lock-up had beaten him and squeezed his testicles. Later, in the lock-up, he made clear that he was a fieldworker for al-Haq, and produced his al-Haq identity card to prove it. He then attempted to submit a complaint about the beating, but in vain, and was in fact beaten again. In addition, a soldier burned him with a cigarette on his ear and hand, and later a soldier jumped on him for ten minutes, so much so, Mr. Jabarin states, that "I felt I was going to die." He was then taken to Hadassa-'Ein Karem Hospital after an army doctor at the lock-up declared that he would not take responsibility for Mr. Jabarin's condition. At the hospital he was given a medical check-up,⁵ and returned to prison that same evening.¹⁰ Interestingly, Hadasa Hospital has no record of a person with the name Sha'wan Jabarin.¹¹

The Israeli authorities have claimed that Mr. Jabarin "resisted arrest" and that therefore "it was necessary to use reasonable force to put him in jail."¹² Al-Haq, in rejecting this claim, stated that:

⁵See further Appendix 18-A.

- (1) "Mr. Jabarin was blindfolded and according to eyewitnesses was not resisting arrest when taken from his house to the car. In addition, he was blindfolded and handcuffed at the time he was beaten."
- (2) More importantly, in al-Haq's view, jumping on a person for ten minutes, burning him with a cigarette, and squeezing his testicles cannot be considered "reasonable force."¹³ In a letter to former U.S. President Jimmy Carter,[†] Defense Minister Yitzhak Rabin reviewed Mr. Jabarin's case and concluded:

As to the beating of the man, it was only moderate enough to convince him to accept detention.¹⁴

On 22 October, Mr. Jabarin was issued a one-year administrative detention order.

Mr. Jabarin's case attracted unprecedented international attention, both in the U.S. and Europe. Former U.S. president Jimmy Carter intervened directly with the Israeli authorities, as did the British government. Amnesty International issued an "Urgent Action Alert," expressing concern at al-Haq's claim that Mr. Jabarin had been tortured. Other human rights organizations wrote letters to the Israeli authorities. *New York Times* columnist Anthony Lewis devoted two Sunday columns to Mr. Jabarin's case.¹⁵ And on 23 November 1989, the European Parliament adopted a resolution on the torture and detention of Mr. Jabarin,* calling on the Israeli authorities to "review the case of Sha'wan Jabarin with a view to his immediate release," and deploring "Israel's use of administrative detention to imprison people without trial as an attack on basic human rights."¹⁶

Three weeks after his arrest, Mr. Jabarin's wife gave birth to Muntaser, the couple's first child. Mr. Jabarin will not be able to see the child for at least one year, because, despite the international interventions on his behalf, his one-year administrative detention order was confirmed on appeal by a military officer in a quasi-judicial hearing on 4 December, and no family visits are allowed in Ansar III, where Mr. Jabarin is imprisoned for the duration of the order.

B. Restrictions on Movement and Beatings by Soldiers

Al-Haq and PHRIC fieldworkers have been subjected to a number of harassments following their release from administrative detention, usually involving restrictions on their movement. Palestinian detainees released from administrative detention do not immediately receive their identity cards, but are given a temporary receipt that must be renewed every few days at the military headquarters in their area of residence. In the past, their identity cards would be returned to them after several fruitless visits to military headquarters. After March 1989, however, a number of ex-detainees

[†]See further Appendix 18-B.

*See further Appendix 18-C.

were given so-called "green" identity cards instead of their regular cards, restricting them from entering Israel for a renewable period of six months. Holders of either temporary or green identity cards have at times been harassed, beaten, or detained at military checkpoints.[†] In al-Haq's view, the issuing of green identity cards to released prisoners, and the consequent harassments, as described below, constitute a second, extra-judicial punishment of persons who have not been formally charged with any offense to begin with.

Al-Haq fieldworkers Zahi Jaradat, 'Abd-al-Karim Kan'an and Ahmad Jaradat, and PHRIC fieldworker 'Adli Yazouri, were all given green identity cards after their release from administrative detention in 1989. In the cases of Zahi Jaradat, a fieldworker in the Hebron district, and Ahmad Jaradat, fieldworker in the Bethlehem district, this meant that they could no longer come to al-Haq's office in Ramallah, because in order to do so they would have to pass through East Jerusalem (illegally annexed by Israel in 1967), unless they were to take an extremely circuitous and time-consuming route via Jericho in the Jordan Valley. This made close communication and coordination between al-Haq and its fieldworkers in the southern part of the West Bank very difficult. Zahi Jaradat received his regular identity card back after six months, but meanwhile he had been placed under town arrest in his village of Sa'ir for six months. According to the town arrest order, he had to report daily to the police station in Hebron. The order expired on 17 October 1989.

Having a green identity card may pose physical danger to the holder; soldiers at roadblocks have beaten ex-detainees on more than one occasion once they saw the green identity card. In the case of al-Haq's fieldworkers, possession of an al-Haq employment identification card may not offer any concrete protection against such abuse, and it may even be dangerous to show it to soldiers. This became clear when al-Haq fieldworker Ahmad Jaradat was beaten by soldiers at an army roadblock near the town of Halhoul in September 1989 after the soldiers, who had already taken notice of his possessing a green identity card and accused him of being a "criminal," discovered that he worked for a Palestinian human rights organization. Ahmad Jaradat has stated in a sworn testimony that, while he was sitting in a car, one of the soldiers told him, after having seen his al-Haq identity card, "This means that you publish information against us." After Ahmad Jaradat attempted to explain to the soldier about the card and al-Haq's work,[‡] the soldier swore at him, while another soldier punched him on his shoulder and head, hit him with a stick, and tried to pull him out of the car by his hair.¹⁷

Similarly, al-Haq fieldworker in the Gaza Strip, Yousef Abou-al-Jidyan from Jabaliya Refugee Camp, was punched and kicked by soldiers on 23 March 1989, apparently for failing to remove a trash container from a street in the Tuffah neighborhood in Gaza City, despite his attempt to do so, and despite the fact that he showed the soldiers a card indicating that he works for al-Haq.¹⁸ In June 1989, Mr. Abou-al-Jidyan was refused permission by the military authorities to enter the West Bank. The refusal meant that Mr. Abou-al-Jidyan could not travel to al-Haq's office in Ramallah.

[†]See further Chapter Nine, "Administrative Methods of Control."

[‡]See further Appendix 18-D.

Al-Haq fieldworker Ghazi Shashtari from Nablus suffered a different form of harassment after his release from administrative detention in December 1988. Sometime in the spring of 1989, his name was entered on a list of persons "wanted" by the military. On five separate occasions, Mr. Shashtari was arrested by soldiers who checked his name against a list they were carrying. On each occasion, Mr. Shashtari was released, without charge, after a few hours or days, without explanation. Repeated requests by Mr. Shashtari to see the officer of the Shin Bet responsible for the area where he lived, so that his name would be removed from the "wanted" list, were ignored. In addition to al-Haq, both the Association for Civil Rights in Israel and the U.S.-based Lawyers Committee for Human Rights intervened on Mr. Shashtari's behalf.[§]

Al-Haq researcher Rizeq Shqeir was given a temporary receipt in lieu of his identity card upon his release from administrative detention in March 1989. Despite requests by Mr. Shqeir's lawyer and the Association for Civil Rights in Israel, Mr. Shqeir did not get his identity card back, and at one point was told that his card had been "lost." Eventually, he was given a new card.¹⁹

C. Other Forms of Harassment

In addition to the detention of, and attacks on, persons active in human rights work, other practices and conditions have made effective human rights monitoring and intervention difficult. The following obstructions of human rights work, documented by al-Haq since its foundation ten years ago, are among the most typical and significant:

Entry by Soldiers into al-Haq Premises: On 1 December 1989, as this report was being prepared for publication, two soldiers forced their way into the office in the evening, without a search warrant, apparently to find out who was present and what was taking place inside at that late hour. They left after a brief search. The army had been entering houses in Ramallah for a week, especially if they saw lights shining inside after a certain hour in the evening.

Accusations Against al-Haq by Ranking Israeli Officials: For example, the Israeli ambassador to the U.S., Moshe Arad, declared in a letter to Senator Mark Hatfield dated 11 July 1988 that al-Haq staff members "are supporters of 'Fateh' and other factions of the PLO terrorist organization." No evidence for the charge was offered.

Severance of International Telecommunications: In March 1988, the military authorities cut all telephone (and therefore telex and fax) lines between the Occupied Territories and the rest of the world. The Israeli High Court of Justice upheld the order in the fall of 1988. In December 1988, international lines were restored. Local lines are cut frequently, in particular if a town is under curfew. Lines between Ramallah and Jerusalem are often cut for a few days at a time.

[§]See further Appendices 18-E and 18-F.

Censorship of al-Haq Materials: On many occasions in the past, al-Haq public announcements and press releases submitted to the local press have been cut by the military censor.[†] This has hampered al-Haq's efforts in the field of human rights education. Moreover, there is strong evidence that in-coming and out-going mail, as well as telephone, telex, and facsimile transmissions are monitored by the military as a matter of routine. Sometimes items are missing from mail that has been opened and stamped by the censor.

Confiscation of al-Haq Materials: "Know-Your-Rights" pamphlets published by al-Haq have been taken during military raids on trade union offices. Soldiers at roadblocks have also confiscated al-Haq documents, and not returned them to the organization. During a raid on fieldworker Sha'wan Jabarin's house in the village of Sa'ir on 4 October 1989, soldiers confiscated a number of al-Haq affidavits, questionnaires, and photographs, which also have not been returned to the organization.*

D. Protection of Human Rights Monitors

On 1 September 1988, the United Nations Subcommission on the Prevention of Discrimination and Protection of Minorities adopted a resolution which called for

effective measures of protection for those working to promote and protect the human rights of others, as well as complainants and witnesses, and those who are threatened with violations of their own human rights, particularly intimidation or threats to life or limb.²⁰

The Lawyers Committee for Human Rights in New York has noted with regard to the administrative detention of lawyers and human rights monitors in the Occupied Territories:

Whatever justification there may be for the use of this exceptional power in the broader range of cases, the roles of lawyers and human rights workers are so critical in the protection of human rights that the Lawyers Committee believes, in the cases of these two groups, that administrative detention should be used only on the basis of specific and public charges of unlawful activity supported by disclosed evidence.²¹

New safeguards to protect human rights monitors are currently being devised on an international level. The need is urgent, as the case of al-Haq fieldworker Sha'wan Jabarin demonstrates. Despite massive action by governments, international human rights organizations and prominent individuals on his behalf, Mr. Jabarin was issued a one-year administrative detention order even *after* the Israeli authorities admitted that he had been beaten, and *after* it became clear that in fact he had been tortured so seriously that an Israeli prison doctor advised that he be sent to hospital.

So far, the Israeli authorities have made no public undertaking that they will permit unrestricted human rights monitoring in the Occupied Territories. In a letter

[†]See further Chapter Seventeen "The Media."

*See further Appendix 18-G.

to the Secretary-General of the International Commission of Jurists on 30 December 1988, quoted above, an official at the Israeli Ministry of Foreign Affairs stated that al-Haq "functions freely, as do other such bodies, as long as they are not involved in violence or do not act as fronts for the various terror organizations."²² Since the authorities have closed down many Palestinian organizations during the past two years, and indeed throughout the period of occupation, on exactly those accusations without, however, presenting any evidence, the official's statement offers little comfort.

As the above account of obstructions placed in the way of human rights monitors demonstrates, the need for the international community to continue and, indeed, increase its efforts to guarantee the safety, and ability to work freely, of those involved in the protection of human rights is paramount.

Summary

At the end of 1989, Palestinian human rights monitors remain essentially without protection against action by the Israeli military. Despite the great measure of support al-Haq enjoys in the international community, this support was not sufficient to prevent further attacks against al-Haq and its work, the torture and detention of Sha'wan Jabarin being a case in point. This being so, the community of states should act to obtain guarantees from the Israeli authorities that human rights monitors, performing a crucial task in the Occupied Territories, will not be obstructed and will not be harmed.

Endnotes to Chapter Eighteen

1. Al-Haq, *Punishing a Nation: Human Rights Violations During the Palestinian Uprising, December 1987–December 1988* (Ramallah: Al-Haq, 1988); The DataBase Project on Palestinian Human Rights, *Uprising in Palestine: The First Year: Documentation on Human Rights and the Palestinian Uprising, December 1987 to December 1988* (Chicago: DBPPHR, 1989). PHRIC reports are published by DBPPHR.
2. Al-Haq's, *Punishing a Nation*, Chapter 9.
3. In addition to al-Haq's staffmembers, three PHRIC fieldworkers served six-month administrative detention orders in 1988.
4. The only (informal) accusations that were made public were that Mr. Haddad was a member of a "popular committee" and of "the popular army," and that he had renewed his activities since his previous detention. No evidence was disclosed to him or his lawyer.
5. PHRIC, "Field Workers and Staff Imprisoned During the Uprising," 14 October 1989.
6. Letter from Alan Baker, Deputy Legal Adviser at the Israeli Ministry of Foreign Affairs, to Niall MacDermot, Secretary-General of the International Commission of Jurists in Geneva, 30 December 1988.
7. Al-Haq letter to the Secretary-General of the International Commission of Jurists in Geneva, 24 January 1989.
8. Al-Haq, "Request for Urgent Action," March 1989.
9. Al-Haq, "Alert: Urgent Action Requested: Al-Haq Fieldworker Sha'wan Jabarin Hospitalized Following Beating in Detention," 12 October 1989; Al-Haq, "Update on Alert: 'Al-Haq Fieldworker Sha'wan Jabarin Beaten While in Custody'," 13 October 1989.
10. "Affidavit of Sha'wan Jabarin," in Al-Haq, "Update to Alert: Sha'wan Jabarin," 21 October 1989.
11. Al-Haq, "Update On Alert," 13 October 1989.
12. "Sha'wan Jabarin," statement released by the Embassy of the State of Israel in Washington D.C., 25 October 1989.
13. Al-Haq, "Update No. 3 on Alert: Al-Haq Fieldworker Sha'wan Jabarin One Year Administrative Detention," 30 October 1989.
14. Letter of Defense Minister Yitzhak Rabin to President Jimmy Carter, 27 October 1989.
15. Anthony Lewis, "'You Are a Dog,'" *New York Times*, 22 October 1989; Anthony Lewis, "Self-Inflicted Wound," *New York Times*, 18 November 1989.
16. European Parliament Resolution "On the torture and detention of a human rights fieldworker in Hebron, West Bank." (Doc. B 3-552/89), adopted on 23 November 1989.
17. Al-Haq Affidavit No. 2067.
18. Al-Haq Affidavit No. 1700.
19. Mr. Shqeir also had an experience similar to Mr. Shashtari's, mentioned above, in October 1988 when he was arrested after his name turned up on a list carried by soldiers raiding his home village, Kufr Thulth. He did not appear to be "wanted," however; he was not asked any questions, and was released after a few hours.
20. Resolution 1988/38, 36th meeting of the Subcommission on the Prevention of Discrimination and Protection of Minorities, 1 September 1988. Cited in Lawyers Committee for Human Rights, *An Examination of the Detention of Human Rights Workers and Lawyers from the West Bank and Gaza, and Conditions of Detention at Ketziot* (New York: LCHR, 1988), p. 12.
21. *Ibid.*, p. 11.
22. Letter from Alan Baker, *op. cit.*

Appendix 18-A

Translation of Sworn Affidavit of al-Haq Fieldworker Sha'wan Jabarin Taken by Advocate Lea Tsemel

I the undersigned, Sha'wan Rateb 'Abdallah Jabarin, having been warned to state the truth or face the criminal prosecution specified by the law if I do not, hereby declare as follows:

1. I am 29 years old, married, and work as a fieldworker at al-Haq.
2. At 12:00 noon on 10 October 1989, while I was asleep at my house in Sa'ir, my wife informed me that armed persons were present around the house. Two persons dressed in civilian attire on the upper part of their body and military pants, entered the house. They pointed their weapons, which appeared to be M-16's, at me and told me to move. One of them forbade me to get dressed, used his weapon to push me towards the corner, turned my head around, and blindfolded me with the handkerchief of my wife. I was then put inside a vehicle.
3. I heard screams coming from the house. Inside the vehicle, there was another detainee, and I was made to sit on the floor of the vehicle while my hands were tied behind my back with plastic handcuffs. During the trip in the vehicle I was beaten on my head by hands and was punched in the stomach. Later, I felt that my testicles were being squeezed, which was painful. I heard one soldier state: "This is also a human being." Another soldier whispered in my ear: "You are a dog." The trip continued in this way until we arrived at the building of the military governate in Hebron.
4. The moment the vehicle arrived at the military government compound in Hebron, my blindfold was removed and I was able to see that I was inside an Arab Mercedes. I was taken outside of the vehicle and left in the yard.
5. A person, apparently from the General Security Service (Shabak) issued orders for me to be brought to the police. He asked me whether I had fixed my house. The question was asked because one week earlier, the army raided my house while I was absent and ripped the iron door and two windows from their hinges, broke the mirrors in my bedroom, took out all the clothes and put them in the hall, dispersing them on the floor, and took with them about 70 photographs I had taken for my work. They also took affidavits that I had taken for al-Haq. Those who had raided my house were military personnel along with "Captain Nur" and "Captain Sharif."
6. I refused to answer his question about whether or not I had fixed my house. He issued orders for me to be taken to the police.
7. On the way, I saw three soldiers, one of whom was unshaven. One of these soldiers whispered into my ear: "You are a dog." They added, in a short while, "We will break him down. This is difficult, so we will take him to interrogation."

8. I was taken to the police. An Arab policeman stood at the entrance. They made me stand, and ordered me to spread my legs. I refused to do this, at which point they began punching me in the stomach. The Arab policeman stood and watched. The policeman told them to take me to an empty office.
9. Inside the office, I was beaten from all directions. I screamed, at which point the Arab policeman came. I saw him silently standing. After a while, they took me to a Jewish policeman dressed in civilian clothes. He took my identity card and registered my name while they were standing. I told the policeman that I demand from him to file a complaint against those standing next to me because they had beaten me. The policeman told me, no, it is not necessary. I told him that I am presenting an official demand. The policeman replied to me that I would find a policeman when I go to the General Security Service (Shabak) and could tell him this.
10. A Jewish police officer arrived. He told me to shut up. I again demanded to file a complaint and the officer again told me to shut up.
11. The policeman who refused to take my complaint was dressed in civilian clothes. He filled out a detention order for 96 hours.
12. The soldier who was with me said that Claude said that "This one should go for interrogation." The policeman said, "Now I will call up Sharif." He called up Sharif, and Sharif told him, "This one [is] administrative."
13. After this, the soldiers took me to a covered yard. I was made to sit on wet ground. I was burned with a cigarette on my ear and hand. One soldier put a piece of cloth inside my mouth to prevent me from screaming.
14. They made me enter a bathroom. They closed the door. One soldier entered the bathroom with me while another stayed outside. He made me lie down on the tiles, and stepped on my head, my chest, and my hands. [Advocate Tsemel notes here that his head was still visibly swollen.] The soldier grabbed onto something located above him, and began to jump onto me. This went on for approximately ten minutes, and I felt I was going to die.
15. After this, I was left lying on the floor. Blood was dripping from my mouth. The soldiers removed the blindfold from my eyes and cut off the plastic handcuffs. I tried to stand up but was shoved to the ground by a soldier using his rifle. They made me and several other youths enter the covered yard. Blood was dripping from my back, face, nose, shoulder, chest, from all over my body.
16. Fifteen minutes later, a soldier arrived and called for me. They took me to a physician. The physician injected me with glucose and made me lie down on a mattress and said, "This one has been hit on the head, he cannot breathe, he must be hospitalized, I'm not ready to bear the responsibility."

17. Then, a Shabak man who saw me at the beginning entered and asked me "What happened to you?" I told him that I had been beaten and that he surely knows about this.
18. They told me that I must go to the hospital. At 5:00 p.m. they took me in a military ambulance to Hadassah-'Ein Karem Hospital, where I was given a checkup and an X-ray. They wrote down that I have no fractured bones, only blows. I remained at Hadassah until 10:30 p.m. and was then taken back to the covered yard in the Hebron military government compound.
19. The next morning, I was transferred to Dhahiriyya Military Detention Center.
20. When they took me from the covered yard, a soldier told me in Arabic, "come here, I want to stick this truncheon up your ass." He told me I was Bingo, super-Bingo, an "Aluf" [Hebrew word denoting either "major-general" or "champion"].
21. After this, I was taken in a vehicle, my eyes were blindfolded, my wrists were tightly handcuffed, and I was made to lie on the floor of the bus. I was beaten on the head by their hands. I told them that I have a heart problem, but they cursed me in Arabic, "Your sister's pussy." The beating continued until we reached Dahariya. They told me, "This one needs a bullet in the head."
22. At Dhahiriyya, I told them that I cannot breathe. They told me that they do not have any medication for that.
23. This affidavit was given in order to be made available to any institution.
24. I hereby sign this affidavit, and this is my signature, and the contents of this affidavit are true.

(Signature)

Sha'wan Jabarin

Note: I, Advocate Lea Tsemel, hereby certify that on 18 October 1989 Mr. Sha'wan Jabarin appeared before me in the Dhahiriyya Military Detention Center and was identified to me by a prison warden, and after I warned him that he must state the truth or face criminal prosecution, confirmed to me the correctness of his above-mentioned affidavit and signed it in my presence.

(Signature)

Lea Tsemel

[Translated from the Hebrew by al-Haq]

Appendix 18-B

Defense Minister Rabin's Reply to President Carter's Letter of Inquiry Concerning Sha'wan Jabarin

Tel-Aviv, 27 October 1989.

The Hon. President Jimmy Carter
Carter Center of Emory University
One Copenhill
Atlanta, GA 30307
U.S.A.

Dear Mr. President,

I acknowledge with thanks the receipt of your address to me dated October 17, 1989, regarding the case of Sha'wan Rateb Abdallah Jabarin.

During the investigation, led by the relevant authorities, it was revealed that this administrative detainee was wanted previously by the Israeli Security Services.

On October 10, 1989, Jabarin was arrested in Hebron and taken into a one-year administrative detention. Reasonable pressure was put on him after he refused to enter into the prison cell. He started complaining about vomiting and loss of consciousness. The doctor in the Hebron prison sent Jabarin to the "Hadassa" Hospital where all the tests confirmed that he was medically in a good condition. The wounds on his body consisted of a slight graze above his chest and a slight bruise above his eye. No evidence of any broken bone was found and the detainee was released on the very same day for a seven day rest.

On October 11, 1989, Jabarin was examined by another doctor on his arrival at Dahariya. Except for the symptoms found at the "Hadasa" Hospital, no new ones were found.

Four days later, on October 15, the detainee complained once again, but this time of palpitations and once again, a doctor in Dhahiriyya examined him, this time prescribing medication against blood pressure.

An additional test showed a normal pulse and a good blood pressure. Jabarin's heart and lungs were also completely clear and the doctor concluded that the patient was in no need of medical treatment.

Further to my personal request, the detainee was reexamined on October 23, 1989. This additional examination showed Jabarin's physical condition to be absolutely normal.

As I write this letter, Jabarin's medical condition is satisfactory, he is serving a one-year administrative detention in Dahariya.

He was examined by three separate doctors, and not one of them found a sufficiently good reason to hospitalize him.

As to the beating of the man, it was only moderate enough to convince him to accept detention.

I hope that you will find my explanations satisfactory.

Please accept my personal warmest regards,
Yours Sincerely,

Y. Rabin
Minister of Defence.

Appendix 18-C

Resolution of the European Parliament

The European Parliament

- A. Concerned by the reports from Amnesty International and other organizations that Sha'wan Rateb Abdullah Jabarin, a human rights fieldworker for al-Haq, the West Bank affiliate of the International Commission of Jurists, has been arrested and beaten by members of the Israeli security forces.
- B. Whereas there is evidence that on 11 October 1989 he was severely beaten at a police detention centre by members of the security forces until he lost consciousness, despite an unsuccessful attempt to intervene by an army doctor.
- C. Whereas Sha'wan Jabarin was subsequently served with an administrative detention order for one year but that Amnesty International and other organizations fear the action may have been taken as a reaction to his human rights work.
- D. Whereas over 1000 Palestinians are still in detention.
- E. Whereas most detainees are kept under harsh conditions at the Ketsiot Detention Centre, in tents which provide little protection, with inadequate medical services, restrictions on family visits and the arbitrary use of various punishments.
- F. Whereas automatic judicial review by a military court of administrative detention was suspended in March 1988.
 1. Calls on the Israeli authorities to review the case of Sha'wan Jabarin with a view to his immediate release.
 2. Deplores Israel's use of administrative detention to imprison people without trial as an attack on basic human rights.
 3. Urges the governments of all Member States individually and the Council of Ministers jointly to call on Israel to ensure that:
 - (a) Administrative detention is only used in exceptional circumstances where the activities of a detainee can be shown conclusively to pose an extreme and imminent threat to security.
 - (b) All detainees are given clear reasons for their detention, including specific details.
 - (c) All detainees have the right to appear before a court, with legal assistance, within hours or days of arrest.
 - (d) Evidence is made fully available to detainees and their legal representatives.

(e) Detainees are given the opportunity to challenge the factual basis of their detention order.

4. Instructs its President to forward this resolution to the Government of Israel, to the Commission and to the governments of the Member States:

[Adopted: 23 November 1989]

Appendix 18-D

Harassment of al-Haq Fieldworker Ahmad Jaradat

Translation of Sworn Affidavit No. 2067 Taken by al-Haq

I the undersigned, Ahmad Muhammad 'Abd-al-Rahim Jaradat, 28 years of age, a resident of the village of Sa'ir in the Hebron district and an employee at al-Haq, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

At about 4:50 p.m. on 29 September 1989, as I was returning from the village of Battir in the Bethlehem district to Sa'ir, where I live, soldiers at a checkpoint set up near the settlement of Kfar Etzion, exactly at the turn-off to the settlement of Efrat south of Bethlehem, stopped me. One of the soldiers ordered the passengers of the Peugeot 504 Hatchback, owned by a resident of Halhoul, of the Aqel family, to get out. He checked our identity cards and held them next to a list of names and identity card numbers that he had with him. Then he approached us, gave the others their identity cards back, but kept mine. He began asking me what the green identity card was all about, and I answered him. The car driver was translating since he spoke Hebrew well, as I discovered. He asked me questions about the period of my detention, the reasons for it, as well as where I had served it. Later on, I learned from the driver that he had asked him where he had picked me up, and that he had answered, in the Bethlehem district. This took about ten minutes. Then the car continued on its way towards Hebron, after the soldiers had thoroughly searched it.

At the entrance to the town of Halhoul, the two other passengers got out, and I stayed alone with the driver. When we got to the al-Tharwa neighborhood, a suburb of Halhoul, exactly near the new mosque, we saw five soldiers standing on the pavement, two on the right and three on the left. The two on the right signalled to us to stop, and one ordered the driver to switch off the car engine. The driver did indeed turn off the engine. The two soldiers came up to the driver, and one of them slapped him on the back with his hand.

They started to search the car . . . After completing their search, they asked for our identity cards, which we gave to them. There was a tall, blond, blue-eyed, long-haired . . . soldier standing next to the seat where I was sitting. I heard him call to the other soldier, in English: "A criminal." The other soldier quickly turned to him with a list of identity card numbers in his hand. I could see it well. He checked my identity card number and then started talking to the blond soldier about the meaning of the green identity card, also in English. He took the slip with the issuance order out of the identity card, as well as the al-Haq identity card. At this point, he started asking me about the al-Haq identity card, and I told him that it was my employment card. We were speaking in English since he did not speak Arabic, as he told me. The blond soldier said to me, "This means that you publish information against us." I told him no, that we conduct research about the residents' lives. Frowning and shouting, he told me, "This is a fucking paper." I said to him, "It is not as you say." I was talking to him without being aware of the other soldier, who forcefully punched me on the shoulder, and then another time on my cheek with his right hand.

I raised my hand in a gesture, saying that he did not have the right to [beat me], and then he lightly hit my right hand with a stick that he had in his hand. I was inside the car and he was outside, so he could not raise the stick very high. Then he grabbed me by my hair and began to pull me . . . forcefully [toward the car], and tried to hit my head against the lower edge of the car door. I resisted, and so this added to the severity of his pulling my hair and caused me more pain.

About 13 minutes later, we left the checkpoint when they ordered us to. While [the soldiers were] talking to me, the driver had been standing next to the pavement, guarded by a third soldier. He told me [later] on the way that they had asked him about his relation with me, and he had said that there was none, but that he had only given me a ride from the Bethlehem district.

In accordance with all of the above I hereby sign this statement on this date, 30 September 1989.

(Signature)

Name available for publication

Appendix 18-E

Harassment of al-Haq Fieldworker Ghazi Shashtari Translation of Sworn Affidavit No. 1666 Taken by al-Haq

I the undersigned, Ghazi Shashtari, 29 years of age, a resident of Nablus and a fieldworker at al-Haq, having been warned to state the truth or be subject to criminal liability, hereby state as follows:

On 8 March 1989, I went ... to my father's house, which is located on Ras al-'Ein Street, to visit my brother Zaher, who had [just been released the day before] after having spent a year in administrative detention. After I had visited him ... I started out for [the village of] Huwwara ... I took my nephew 'Afif, who is three years old, with me.

On my way back from Huwwara, a friend of mine ... Ayman al-Shafi'i stopped me on 'Amman Street and asked me to give him and a neighbor a ride to [my parents' house] in Ras al-'Ein.

When we got close to my parents' house, we saw soldiers in the street. They asked us to stop, turn off the engine and get out of the car. We did, and they then asked for our identity cards. After we had given them our identity cards, they talked over the radio. After a few minutes, the soldiers began shouting in my face and at Ayman, and ordered us to stand with our faces turned toward the wall and our hands up [and] hit us on the head ...

I told them: "I have my [young] nephew in the car and he is going to be frightened. Let me go to him and take care of him." They refused, shouted in my face, and said: "You are going with us." I said, "Why?" And they said, "You are wanted." I asked them to let me take my nephew home first, but they refused. After an argument, they allowed me to send him [home] with a woman [who was standing in the area]. I asked the woman, whom I didn't know, to take him to my parents' house ...

After we had stood for a while with our faces turned toward the wall and our hands up, I was told by the commander to go with him to my house for a search. They ordered us to climb into the military vehicle and we headed toward my father's house. [When we got there] they searched the house in a reckless manner: they took all the clothes out of the wardrobes and entered rooms, not allowing anyone to enter ... When they were finished, they asked my brothers Zaher and Maher for their identity cards. I told them that Zaher had been released the day before and that he had a paper from the prison administration to prove this. They nevertheless insisted on taking him, [saying] that he was wanted.

They took us, and headed toward the military headquarters in Nablus. It was 8:30 a.m. Ayman, my brother Zaher, and I were put into a [locked] cell [containing] 18 other persons, [including an elderly man ... all of whom had been there for two or three days] ... I checked the cell and saw three wooden benches, a sink and a toilet which was not fit for use.

Half an hour later, an intelligence officer by the name of "Koby" came in. He was the [same] one who had arrested me from my home on 19 December 1987 [and] placed me under administrative detention. I told him that my name was Ghazi Shashtari

and that I had been brought in by the soldiers . . . He then asked me whether I was planning to file a human rights complaint and [asked], "How is human rights going?" and "Do you still work in the field of human rights?" I told him, "Yes." He said: "We're going to find out whether the organization is legal or not." . . . After a while, he came back and asked for my friend Ayman, and took him with him. [Ayman was released ten minutes later.]

When "Koby" returned, I asked him: "Why am I here? I want to go home." He answered: "I am not responsible for your neighborhood. Commander "Yoni" is responsible." I asked, "Where is he?" And he said, "He is not here." As I was talking with him, "Yoni" came in and "Koby" told him, "Ghazi Shashtari is here." ("Yoni" had come with "Koby" on the day I [was arrested in December 1987] . . . [He asked me how long I had been out of] prison . . . and then released my brother Zaher and told me that he would be back in a few minutes.

I stayed waiting until 3:15 p.m., when a guard called me and took me to "Yoni's" room. When I saw "Yoni," I asked him why he had held me up until then, to which he replied that he had been busy. He asked me to sit down . . . and asked me about my work. I told him about the work at al-Haq, and he asked me about the political situation and the Popular Front [for the Liberation of Palestine]. I told him that I had no relationship with the Popular Front or any other organization, and that I had never been arrested on accusation of membership in the Popular Front or any Palestinian faction.

He also asked me why I had been arrested. So I answered: "You arrested me many times. In 1977 I was sentenced four months for participating in a demonstration. However, I had not participated in any demonstration, and I was convicted on the basis of a soldier's testimony. The other times you arrested me without giving a reason." . . .

["Yoni"] told me to leave and come back on 12 March 1989. I told him that soldiers at the checkpoints still had my name and that this was causing serious problems for me, as [they] were [continually harassing me and treating me in a humiliating manner every time they detained me]. He told me that he would release me if the soldiers [ever] brought me there [again]. I asked him to remove my name from the computer so that the soldiers would cease to harass me. He said that his commander had put my name on the list, and that he was the one who wanted me. He also told me that when I come back on 12 March 1989, I was to meet with that commander. I again asked to have my name removed, and said that I would come in any time he wanted, [reminding him] that he knew my address. But he refused and took down al-Haq's phone number, gave me back my identity card, and told me to go home.

The next day, 9 March, soldiers came to the building where my parents live and told residents to [paint over] slogans written on the walls. They asked for the identity cards of the residents of the building. When they saw my identity card, they [looked and] found my name on a list they had with them. [The soldier] . . . who had arrested me the day before was among them. So I told the commander that I had been at the intelligence service office the day before and that this soldier could testify to this and [to the fact] that they had released me and [not accused me of anything]. [I told him] that. . . I was supposed to go back to the military headquarters two days later, and

that he could ask [the soldier from the day before who was present], or communicate by radio with Captain "Yoni."

They searched the house and confiscated a first-aid book published by the Palestinian Red Crescent Society and a book of cartoons by the artist Naji al-'Ali. Two hours later, they gave us back our identity card cards.

On 12 March 1989, I went to the military headquarters at 10:00 a.m. as Captain "Yoni" had requested. When he saw me, he asked me to return at 11:00 a.m. or 1:00 p.m. because his commander who wanted to see me was not there. I came back at 11:30 and waited until 1:00. When Captain "Yoni" came, he told me that he [the commander] was busy and that I could go home, and that he would call me when he needed me.

In accordance with all of the above I hereby sign this statement on this date, 14 March 1989.

(Signature)

Name available for publication

Appendix 18-F

Al-Haq Fieldwork Report Harassment of Human Rights Monitors

Al-Haq Fieldworker Ghazi Shashtari

- (1) On Thursday, 8 June 1989, Ghazi Shashtari was traveling by taxi from Nablus to al-Haq in Ramallah. At 10:15 a.m., the taxi was stopped at an army check-point several kilometers [south] of the village of Huwwara. The soldiers at the checkpoint took the passengers' identity cards and checked them against a list they were carrying. Then they approached Ghazi, ordered him out of the taxi, and made him sit on a stone next to the road. After a while an officer came to him; Ghazi told him that he in fact was not wanted, but the officer put him in a jeep and took him to the army camp near Huwwara. There, he was made to sit again on a rock and ordered to remove his shirt. His shirt was then used as a blindfold and his hands were tied behind his back.

After about 15 minutes, the blindfold was removed and Ghazi was put in a jeep and taken to the military headquarters in Nablus . . . Ghazi asked to see the officer of the Shin Bet responsible for his neighborhood to have his name removed from the list, but the military officer refused to hear his request and ordered him out.

- (2) Two days later, on Saturday, 10 June 1989, Ghazi was in the central square of Nablus at 9:00 a.m. He had made an appointment to meet with another one of al-Haq's fieldworkers, but when the latter failed to appear, [told] a local merchant that he would leave for half an hour and return at 9:30. Ghazi then saw a friend who drives a local taxi, and decided to go along with him as he dropped off a customer, a woman living in the Rafidiya neighborhood of Nablus.

The taxi carrying these three persons was stopped at an army check-point at Rafidiya shortly after 9:00. The passengers were asked to produce their identity cards, which were checked against a list. Ghazi was ordered out of the taxi. Ghazi then argued with the soldiers, saying that he was not wanted, that he was being stopped, detained and then released all the time, but the soldiers paid no attention to him and put him into their jeep and blindfolded him. At the time, Ghazi was carrying al-Haq documents.

Ghazi was taken to military headquarters in Nablus. No Shin Bet personnel were present because it was Saturday. Ghazi was therefore placed in a cell with about ten others, including three children under the age of ten. Ghazi was forced to stay overnight. There were no beds in the cell, so he slept on the floor.

At 1:00 p.m. the next day, Sunday, an officer of the Shin Bet came, gave him back his identity card and told him to go home. Ghazi asked to talk to the officer's commanding officer (specifically to Major "Da'oud" or to Captain "Yoni"), but these officers were supposedly not there and the request was refused.

- (3) Various Nablus residents have informed Ghazi that when they have been detained or arrested, Israeli security personnel have advised them to "go to Ghazi to raise a complaint . . . through al-Haq."

Harassment of Al-Haq Researcher Rizeq Shqeir

Similarly, acts of harassment by the military were directed against al-Haq researcher Rizeq Shqeir in October 1988. On 17 October, when Rizeq was in his home village of Kufr Thulth, soldiers detained him for several hours . . .

Two days later, on October 19, two army jeeps came to the village. They stopped people in the street, including Rizeq. They checked his identity card against a list they carried with them; Rizeq showed them the slip that showed he had been arrested and released two days before. The soldiers then phoned their commanding officer for advice, who told them to bring him in for questioning. Rizeq was then placed in a jeep and taken to a military camp in Qalqiliya. After about three hours, an officer came who asked him some questions and then handed his identity card back and told him to go home. Rizeq asked the officer to remove his name from the listed of wanted persons, and that if in fact there was evidence against him of wrongdoing, that he be charged. The officer told him that he knew nothing about this but that in any case, Rizeq "had a record."

Appendix 18-G

Fieldwork Report from Sha'wan Jabarin

I the undersigned, Sha'wan Rateb 'Abdallah Jabarin, a fieldworker at al-Haq, and a resident of the village of Sa'ir in the Hebron district, hereby state as follows:

At about 4:30 a.m. on 4 October 1989, I was awakened by the sound of loudspeakers declaring a curfew in the village [i.e. Sa'ir]. At sunrise, it appeared that the roads in the village were crowded with soldiers and that they were breaking into houses looking for youths. I was not at my home at that time, as I had [slept at another home in the village that night].

At about 9:30 a.m., after the curfew had been lifted and the soldiers had left the village, I went home. I found scores of residents near my home, so I realized that something had happened there. When I asked what the matter was, it appeared that the soldiers had raided the house and broken the furniture. I went into the house and found that its main entrance, an iron door, had been smashed and its locks broken. I also saw that the window on the east side of the house near the main entrance had been thrown on the ground and the glass completely smashed. I entered the bedroom and discovered that the mirror, one and a half meters long and one meter wide, had been completely smashed. I also discovered that the furniture, as well as papers and books in the salon, had been thrown on the floor.

When I saw this, I asked one of the neighbors what had happened. He told me that at about 6:00 [that morning], he had seen a group of soldiers, about 15 of them, accompanied by two intelligence officers surrounding the house. [According to the neighbor]: some of [the soldiers] were carrying steel crowbars and axes. They started to hit the door and break the glass. This person tried to approach the intelligence officer to tell him to wait so that he could go and get the key. The officer, "Major Nour," answered that there was no need for the key, and that the soldiers would open the door. They continued to smash the main door and the window for about 30 minutes. Then they entered the house and began throwing the furniture on the floor. This neighbor told me that the intelligence officer had asked him about the owner of the house and that he had answered that he did not know him. The officer said to him: "Are you afraid of Sha'wan? We know that he has been living at home for a while."

[The neighbor] told me that the soldiers and the intelligence officers stayed at the house for about one and a half hours, and that they left carrying a plastic bag full of objects—he thought they were papers—in their hands ... I remembered that completed al-Haq "questionnaires" [containing information that I had collected in my capacity] as a field-worker ... [I searched for] the papers; it appeared that they were not there, so I realized that they had been taken. There had been seven questionnaires related to houses demolished for being unlicensed, and questionnaires related to wounded persons and houses sealed for security reasons, as well as affidavits concerning the beating and wounding of residents, supported by about 70 color photographs of the demolished houses, wounded people, and families from the sealed houses. What reinforced me in my conviction that they had been confiscated, in addition to the fact

that I could not find them, was that this person, my neighbor, had entered the house while the soldiers were searching it on orders of the intelligence officers and had heard "Major Nour" say in Arabic: "Ali Ibrahim, Yatta." This name was one of the names written on the house demolition questionnaires.

I would like to point out that this was not the first raid on my house. It was preceded by a raid of my house in Hebron on 25 May 1989. They broke down the door of the house by force and confiscated several photographs of me and my wife, personal letters, as well as some papers of al-Haq.

The raid caused an estimated NIS 250 [approximately \$US 125] in damage.

7 October 1989

(Signature)

Name available for publication

Part III

**The International
Community**

Chapter Nineteen

The Role of the International Community

Introduction

Part One of this report has detailed the scope and severity of the illegal practices carried out by the Occupant and its agents. Part Two has taken note of the clear negligence of the Occupant in enforcing even those laws and regulations which it has itself issued to repress or prevent certain excesses by its military and civilian agents. Part Two has also taken note of the inadequacy of official investigations, as well as actions taken by the Occupant which have seriously hobbled the monitoring and reporting of human rights violations by international and local news media and independent human rights observers.

To this must be added the explicit refusal of the occupying authorities to be bound by the applicable international humanitarian law, and the unavailability of any remedy or protection from the Occupant's judiciary. In this regard, the Government of Israel's consistent refusal to even acknowledge the applicability of the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War to the Occupied Palestinian Territories poses a direct challenge to the Convention itself, and to the states which have signed the Convention and thereby undertaken to ensure Israel's respect as a co-signatory.

Israel is not, of course, the first or the only country to provoke international censure and condemnation for severe abuses of the human rights under its authority. However, Israel's 22 year occupation is one of the extremely rare cases in which states within the international community have taken on a direct role and duty to actively protect basic human rights outside their own national borders when international censure and condemnation prove ineffective.

The Occupied Territories are governed by the laws of war which specifically recognize the role of third party states in protecting a civilian population against violations by an occupying power. The Fourth Geneva Convention, in particular, contains sev-

eral articles specifically placing responsibility on states not party to the conflict for the satisfaction and enforcement of its provisions.

Pending a resolution of the conflict, that responsibility continues to rest with the international community of states to extend some degree of international protection to the Palestinian population, all other means of restraint and deterrence being absent.

A. Responsibilities of Third Party States

1. Article 1 of the Fourth Geneva Convention

As was stated above, the law of belligerent occupation sets forth mandatory rules governing the conduct of Israel as an occupying power. Adequately observed and enforced, they offer an important although minimum degree of protection of basic human rights of civilians living in occupied territories.

In addition, they place important restraints and disincentives in the way of an occupying power intent on an agenda of annexation and appropriation by rendering that agenda illegal in its own right, and by limiting the scope and nature of actions which an occupant may take against the population of occupied territories.

The Geneva Conventions of 1949 were drawn up at a time of increased determination on the part of the international community of states to see the precepts of the laws of war clarified and, above all, observed. Common Article 1 of the 1949 Geneva Conventions reflects this determination:

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

This article imposes two duties: the duty on states to ensure that they and their agents respect the Conventions, and the "inter-state" duty to ensure that other state signatories also respect them.¹ This duty amounts to an ongoing charge upon the High Contracting Parties to see that the provisions of the Conventions are enforced wherever and whenever they apply. In the case of a breach of the Fourth Geneva Convention by the occupying power, High Contracting Parties must use lawful means at their disposal to bring the offending state into compliance with the Convention in order to ensure that protected persons (i.e., those protected by the Convention)² actually receive the benefits of the protections set out in the Convention. Jean Pictet, editor of the authoritative International Committee of the Red Cross (ICRC) commentary to the Fourth Geneva Convention, observed, after consideration of the context and content of Article 1:

[I]t is clear that Article 1 is no mere empty form of words, but has been deliberately invested with imperative force.³

This direct duty on the part of all High Contracting Parties towards the protected population of occupied territory is what distinguishes the position of the international community of states from the position it has generally sought to adopt vis-a-vis human rights violations that occur within the sovereign territory of another state. In one sense, human rights violations are never entirely an internal affair. Article 55(c) of

the Charter of the United Nations states that the United Nations should promote universal respect for, and observance of, human rights and fundamental freedoms for all. However, when it comes to taking concrete measures with regard to human rights violations, states are, in general, justifiably wary of accusations of actual "interference in the domestic affairs" of another state.

There are, of course, exceptions with regard to certain specified crimes against human rights. The system of apartheid has aroused such universal repulsion that apartheid has been made the subject of a special convention, mandating specific action by state signatories.⁴ The Genocide Convention is another instrument mandating specific action by states without the requirement of a situation of international conflict.⁵ The special rules governing such crimes arise from their being considered international crimes and war crimes, and thus subject to universal jurisdiction. Consequently, persons involved in such crimes may be prosecuted in any state regardless of their nationality, or where their crimes occurred. In other words, like war crimes (and "grave breaches" of the Geneva Conventions), genocide and apartheid are held to be crimes of such gravity that perpetration thereof affects the whole of humanity. U.S. law also gives U.S. courts jurisdiction to hear civil actions by non-U.S. nationals against other non-U.S. nationals in certain circumstances.⁶

Israeli violations in the Occupied Territories are subject to the laws of war, and in accordance with the special provisions for enforcement in those laws, each state signatory to the Fourth Geneva Convention has the legal duty to ensure respect by Israel, the occupying power, for the provisions of the Convention in the Occupied Territories, pending an end to the occupation.

2. Protecting Powers and the ICRC

When the Fourth Geneva Convention was drawn up and presented to the international community of states in 1949, a clear role was envisaged for the international community. Article 9 of the Convention states:

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict . . .

The provision above is in the imperative form and, as Pictet observes,

The whole Convention shows that it was intended to exclude any possibility of the protected persons not having the benefit of a Protecting Power or a substitute for such a Power.⁷

The institution of Protecting Powers in a situation of international conflict is derived from customary international practice, where the Protecting Power is recognized as a neutral state appointed by a state party to the conflict to safeguard its interests, and the interests of its citizens, in relation to an opposing state party to the conflict, provided of course that the opposing state party accepts the appointment.⁸ When carrying out their functions under the Fourth Geneva Convention, Protecting Powers act as the representatives of all the High Contracting Parties to the Convention to

safeguard the rights and interests of persons protected by the Convention.⁹ Under the Fourth Geneva Convention, the appointment of a Protecting Power in the case of occupation is mandatory, although states party to the conflict retain the right to reject, in good faith, unsuitable appointees. According to Pictet:

[T]he Protecting Power in carrying out each of its tasks under the Convention will, in so far as it is itself a party to the Convention, be under the additional obligation of exercising a degree of supervision based not on the mandate it has received from the Power of origin, but on a higher mandate given to the Protecting Powers in general by the whole of the States party to the Convention.¹⁰

More specific tasks assigned to the Protecting Power by the Fourth Geneva Convention include visiting protected persons wherever they are, particularly in places of internment and detention,¹¹ the supervision of food and medical supplies for the population in occupied territory,¹² and supervision of penal procedure to which protected persons are subject.¹³

In recognition of the difficulties that may arise because of the ultimate dependence of the mechanism of Protecting Powers on the agreement of the belligerent parties, the Fourth Geneva Convention provides for a substitute for the Protecting Power to be entrusted with the powers and duties of the Protecting Power under the Convention, in the form of

an international organisation which offers all guarantees of impartiality and efficacy.¹⁴

When there is no Protecting Power, and no substitute in the form of an impartial organization, the occupying power is obliged, under Article 11, to request a neutral state or an impartial organization to undertake the functions performed under the Convention by a Protecting Power. In cases where even this is not possible, the occupying power is obliged to request or to accept

the offer of the services of a humanitarian organisation, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.¹⁵

It is clear that the intention of the drafters of the Convention, and of the state signatories which ratified it, was that the protected population of occupied territory should never be without the formal presence of the Protecting Power to supervise observance of the Convention as a representative of the High Contracting Parties as a whole. At the very least, if the Protecting Powers system failed, the protected population was to benefit from the formal presence of an organization such as the ICRC, carrying out, in an official capacity, the humanitarian functions of the Protecting Powers.¹⁶

In the case of the Occupied Territories, no Protecting Power has been appointed. None of the states party to the 1967 war, including Israel, made approaches to neutral states with a view to appointing such a Protecting Power. In addition, Israel as an occupying power failed to request a neutral state or an impartial organization to act as Protecting Power under the Convention. In 1968, the United Nations General

Assembly established the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (UNSCOP). The General Assembly requested Israel to cooperate with this committee, but Israel has refused.¹⁷ In 1972, Israel also refused to accept the formal offer made by the ICRC to act as official substitute for a Protecting Power. All attempts to implement the system of the Protecting Power or its substitute have thus failed.¹⁸

Whatever the reasons are for Israel's rejection of the institution of the Protecting Power, it does not even recognize the applicability of the Fourth Geneva Convention to the territories it occupied in 1967. Israel therefore tolerates the presence of the ICRC but does not accord it the status of an organization discharging the humanitarian functions of a Protecting Power in accordance with Article 11. The ICRC cannot, and does not, perform the general monitoring and supervising functions of a Protecting Power, as noted in the following statement in the ICRC annual review of 1970 with regard to its role in the Occupied Territories:

[T]he functions of scrutiny entrusted to Protecting Powers or their substitutes by the Geneva Conventions have not been, in the Middle East conflict, entrusted to the ICRC. Its action in this conflict is based on contractual provisions setting out explicitly some of its particular duties as well as on the general article (Article ... 10) which recognizes its right to take action with respect to humanitarian activities other than those explicitly provided for.¹⁹

Furthermore, the ICRC can only address matters which the Israeli authorities themselves define as "humanitarian," as opposed to matters described by Israel as "political." In those matters on which it can address the occupant, the ICRC has to respect the limits set by Israel.

The ICRC is also unable to act as an effective monitor of violations on behalf of the High Contracting Parties due to its self-enforced policy of confidentiality. In the case of the Occupied Territories, the ICRC does not, and cannot, disclose to High Contracting Parties detailed information about human rights violations. This constraint must be seen as hampering any efforts to monitor observance of the Convention, and the fact that it has been tolerated by Israel's co-signatories to the Fourth Geneva Convention represents a signal failure by High Contracting Parties in this very immediate area of ensuring respect.

There is thus no question that the ICRC can relieve state signatories to the Fourth Geneva Convention of their own duties under that law. In the 1981 International Review of the Red Cross, it was stated:

[I]t is the states which are responsible for the respect of international law and more particularly, of the treaties binding upon them. The Geneva Conventions of 1949 even expressly require states not only to respect them but to ensure respect for them. The ICRC is not superior to the Contracting Parties and cannot assume a judicial power which has not been given to it, and which moreover, it has never wished to possess.²⁰

The ICRC has made clear in other conflicts the legal duty of all state signatories to the 1949 Geneva Conventions to ensure that these Conventions are observed, notably during the course of the Iran-Iraq war.²¹ It is therefore surprising, although irrelevant

from a legal point of view, that the ICRC has made no such public appeal to state signatories in response to Israel's 22-year-old occupation of the West Bank and Gaza Strip. The danger clearly inherent in such a situation is that the ICRC's silence may be interpreted as tacit approval of Israel's policy. In such an event the continued presence of the ICRC might become counterproductive. On the other hand, the High Contracting Parties have failed to demand from the ICRC or even to indicate their readiness to support efforts by the ICRC to respond to violations of the Fourth Geneva Convention in the manner required as a substitute for a Protecting Power. The role of the ICRC, in short, has been significantly circumscribed and limited to petitioning the occupant, rather than ensuring respect. Recently, the ICRC has issued a clear statement emphasizing the role of the state signatories—as distinct from that of the ICRC—in ensuring respect, and asserting that primary responsibility lies with the state signatories. The following statements are taken from a letter written by the ICRC, in October 1989, to the conveners of a symposium held in London on the subject of enforcement of international law in the Occupied Territories:

The ICRC considers it vital that the States party to the Geneva Conventions take all possible steps to ensure respect for that body of law, the purpose of which is to lessen the suffering of people affected by armed conflict. It is moreover a legal obligation for them to do so because, in becoming party to the Geneva Conventions, those States have undertaken not only to respect the said Conventions themselves, but also to ensure respect for them by other states in all circumstances. This is the tenor of Article 1 common to the four Conventions.

As regards the territories occupied by Israel, the situation there does present problems of grave humanitarian concern which have been the subject of numerous representations by the ICRC, and which were discussed by ICRC President Sommaruga with Israeli government authorities during his recent visit to that country.

Whilst the question of respect for the IV Geneva Convention in the occupied territories evidently comes within the competence of the ICRC, under Article 1 common to the four Conventions it is also, as explained above, a matter of direct responsibility for states. The ICRC cannot but encourage them to make every effort to ensure that international humanitarian law is duly respected.²²
[Emphasis in original.]

As noted in this letter, the direct responsibility for ensuring that Israel respect the Fourth Geneva Convention lies with other High Contracting Parties to that Convention. No Protecting Power has been appointed to represent the High Contracting Parties in discharging supervisory functions under the Convention, nor has any official substitute been recognized. State signatories thus remain under the immediate obligation to bring Israel into compliance with its duties under international law.

3. The Asymmetrical Dimension of Belligerent Occupation

Although Article 1 is common to the four Conventions of 1949, it may well be the case that the inter-state duty to ensure respect will need to be invoked more in the case of the Fourth Geneva Convention than with regard to the categories of persons

covered in the other three Conventions. In the case of prisoners of war, sick and injured combatants, etc., there is a definite and immediate interest for both or all parties to a conflict in applying the provisions of the Conventions. In a situation of belligerent occupation, on the other hand, the element of reciprocity or reciprocal treatment is lacking.

As contrasted with the relationship between two opposing states at war, the relationship between an occupying military power and an occupied civilian population is fundamentally asymmetrical. In the event of a breach by the occupying power, the occupied population has no obvious sanctions to wield against the occupant to force cessation of illegal actions. The ongoing and active role of the international community of states, in their role as state signatories to the Convention, is therefore vital since it counter-balances the power of the occupying power vis-a-vis the civilian population of occupied territories.

B. Preferred Methods of International Protection

Since 1967, High Contracting Parties, whether individually or collectively, have, on the whole, restricted their attempts to ensure Israel's respect for the Fourth Geneva Convention to public criticism, communications through the normal diplomatic channels, and support for resolutions at the United Nations. It is clear that none of these measures has succeeded in achieving acceptable standards of behavior by Israel. There are also considerable obstacles to the implementation of another forum, namely, the International Court of Justice, resorted to by states with regard to other conflicts.

1. Criticism and Diplomatic Representations

In the latter years of the occupation, and particularly since the start of the uprising, criticism by other states of Israel's policies and practices in the Occupied Territories has been at times trenchant and widespread.²³ Israel's response tends to be angry and dismissive, with little or no effect upon the practices criticized. An exception to this is perhaps to be seen in the cancellation, at least officially, of the government's "beatings policy" one month after it was announced, in January 1988, after the international outcry which greeted the policy's introduction and, particularly, the filming of the policy being implemented.²⁴

Generally, the only interventions which had some effect were those which implicated Israel's own material interests. In view of the major significance of Israel's external relations to the preservation and advancement of its economic and security-related interests, the Israeli government has shown considerable sensitivity to, and awareness of, the leverage available to its major trading partners and foreign funders, should they decide that Israel's continued violations of the Fourth Geneva Convention are indeed intolerable. The Israeli response to U.S. criticism of its deportation policy is a case in point. During the first months of the uprising, as during years before, the Israeli authorities deported Palestinians from the Occupied Territories in clear violation of Article 49 of the Fourth Geneva Convention, and in the face of criticism

both from individual states and from the United Nations. During the course of 1988, in particular, various resolutions and representations were made calling on Israel to cease this policy and allow the return of the deportees.²⁵ Israel paid no heed until August 1988, when the United States accompanied its demand for a halt to deportations with a clear threat to bilateral relations.²⁶ Although those already served with deportation orders were expelled nevertheless, there have been no new deportation orders issued since that time.*

However, although in this case the United States intervention appears to have been temporarily effective, the form in which it was made, and the background against which it came, forces the conclusion that it was a "one-off" action that cannot be relied upon to provide a precedent for consistent enforcement of the law on the subject of deportation. The United States used political arguments to justify its intervention, skirting the issue of international law.²⁷ In the case of other equally serious breaches of the law by Israel, the silence from the United States has been deafening.

It is perhaps inevitable that international political and economic interests often color official views on issues related to international law. However, in cases where states have accepted an absolute responsibility to ensure respect for international law, such as the laws of war, narrow national interests may not compromise that legal duty. Indeed, the Fourth Geneva Convention obligates state signatories to make provision within their own national legal systems to carry out the prosecution of individuals, of whatever nationality, who have committed acts defined by the Convention as "grave breaches." Deportation of protected persons is one violation identified as a grave breach.

Failure to recognize and act upon these duties as and when required by law results in an absence of consistent enforcement: recently there have been calls in the Israeli government for increased use of deportation and, indeed, for legislation to expedite the process of deportation. Officials in the Israeli military and legal establishment are, in short, seeking to make it quicker and easier for Israel to break the law. Furthermore, there are serious grounds for concern that despite the current moratorium on issuing new deportation orders, apparently inspired by the U.S. intervention referred to above, a list of individuals targeted for deportation is being compiled.

2. The United Nations

The General Assembly and the Security Council

The United Nations is the obvious forum in which High Contracting Parties who are members of the United Nations seek to persuade Israel, also a High Contracting Party and a member of the United Nations, to abide by its duties under the Fourth Geneva Convention. The huge number of debates and resolutions on this issue, including frequent reiteration by the United Nations General Assembly of the duties imposed on High Contracting Parties by Article 1, testify to the fact that states have indeed attempted to use the United Nations as a forum to obtain compliance by Israel. In a resolution adopted in 1988, for example, the General Assembly called upon

*See further Chapter Eight, "Deportation."

... all the High Contracting Parties to the Convention to take appropriate measures to ensure respect by Israel, the occupying Power, for the Convention in all circumstances in conformity with their obligation under Article 1 thereof.²⁸

Israel, however, is extremely unresponsive to the consensus of world opinion as expressed by the General Assembly. This is also evidenced by its refusal to cooperate with UNSCOP, established by the General Assembly in 1968. To make matters worse, the General Assembly's insistence on the duties of High Contracting Parties has not been reflected in the law-making resolutions of the United Nations Security Council. The Security Council has, for its part, rarely made reference to Article 1.²⁹

In January 1988, at the beginning of the uprising, the United Nations Secretariat-General sent Marrack Goulding, Under-Secretary for Special Political Affairs, on a formal visit to the Occupied Territories. In his report, submitted to the Security Council by the Secretary-General, Goulding included among his recommendations the suggestion

that the Security Council should consider making a solemn appeal to all the High Contracting Parties to the Fourth Geneva Convention that have diplomatic relations with Israel, drawing their attention to their obligations under Article 1 of the Convention to "... ensure respect for the present Convention in all circumstances" and urging them to use all means at their disposal to persuade the Government of Israel to change its position as regards the applicability of the Convention.³⁰

Whether the Security Council considered this proposed initiative or not, it has not been translated into action. Attempts by High Contracting Parties to obtain Israel's compliance with the Convention through supporting resolutions at the United Nations have been consistently frustrated by the paralysis of the Security Council, primarily as a result of the use of its veto by the United States. A recent example of this is the U.S. veto of a Security Council resolution deploring Israeli actions in Beit Sahour and demanding the return of property confiscated during the tax raids.³¹ The use of the veto destroyed the potential protection that could have been afforded the residents of that town by denying them the law-making force of a Security Council Resolution on which could be based future claims for restoration or reparation. In such use of the veto, the United States is in itself arguably violating its independent legal duty to ensure Israel's respect for the Convention.

In cases such as this, where members of the United Nations are prevented from carrying out their duty under the UN Charter to preserve international peace and security through the Security Council, there are other mechanisms they may choose to utilize, when and where this seems appropriate.³² However, pending the utilization and positive outcome of such measures, so long as the High Contracting Parties to the Fourth Geneva Convention continue to be unable to discharge their duty to ensure Israel's respect through the various forums of the United Nations, the duty remains on them to seek other, effective ways of securing Israel's compliance through unilateral or multilateral initiatives.

The International Court of Justice

The International Court of Justice (ICJ) is another obvious United Nations forum through which High Contracting Parties could seek to enforce Israel's respect for the Fourth Geneva Convention. However, High Contracting Parties are denied the option of instituting international judicial proceedings against Israel for breaches of the Convention as a result of Israel's reservations restricting the compulsory jurisdiction of the ICJ. These reservations preclude proceedings against Israel before the ICJ on any matter arising from belligerent occupation.

Nevertheless, useful examples of what the ICJ considers to be legitimate interstate action in the event of a state being found in breach of international duties are to be found in its Namibia Advisory Opinion of 1971. As the Court found with regard to South Africa's actions in Namibia, many of Israel's actions in the Occupied Territories are null and void and, therefore, give rise to similar duties of non-recognition.³³

The possibility of judicial proceedings against Israel in the ICJ for breaches of the Fourth Geneva Convention may become a viable option if current discussions about the scope of states' reservations to its jurisdiction result in the removal of such obstacles. Meanwhile, as in the case of Namibia, it is possible for an advisory opinion to be sought from the ICJ, without the need for Israel to agree to such a process. Article 92(1) of the charter of the United Nations provides that, "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question." An advisory opinion might have the effect of bringing in the weight of the primary judicial organ of the United Nations behind the statements of the General Assembly and Security Council.

Given the near consensus that exists in the General Assembly on issues related to international humanitarian law in the Occupied Territories, as reflected by previous voting patterns, it is unlikely that a request for an advisory opinion would fail to obtain the necessary majority.

3. The Duty to Seek Other Methods of Ensuring Respect

Israel's general unresponsiveness to criticism and demands from the international community of states, whether individually or through the United Nations, and its refusal to recognize the jurisdiction of the ICJ, has meant that states have not succeeded through these standard means in discharging their duties towards the protected Palestinian population of the Occupied Territories. The demonstrable inefficacy of past efforts to ensure Israel's respect should now stimulate other High Contracting Parties to the Fourth Geneva Convention to examine other legal options for ensuring respect that might prove more effective in bringing Israel's behavior into compliance with international law. Under Article 1, High Contracting Parties have not undertaken to attempt to ensure respect, but to *ensure* respect. Their responsibility is not over until respect is, in fact, ensured, and the provisions of the Convention enforced: until such time, they remain under a duty to seek effective measures by which this may be achieved.

This is indeed the significance of Article 1. By charging states directly with an

obligation to ensure respect, it in effect creates a mandate for any High Contracting Power to take whatever action is necessary, within the limits of lawfulness of state action, to ensure respect by another state that is in breach of the Convention. The significance of this is that it facilitates (by mandating) the decision for a state which is not party to the conflict, to take measures to protect a population which could not otherwise make direct demands on it, since they have no obvious connection to that state. In law, however, the connection is clear and a decision to take such action is not one that should properly give rise to political controversy: such a decision is based on the independent legal duty of that state to take effective action to afford the protections guaranteed by the Fourth Geneva Convention to the persons to whom it applies.

C. Mandatory Measures of International Protection

1. Repression of Grave Breaches of the Convention

In addition to the Article 1 duty to ensure respect, the Geneva Conventions place specific duties upon the High Contracting Parties with regard to the repression of certain violations of the Conventions identified as grave breaches. In the Fourth Geneva Convention, Article 146 deals with the repression of those violations listed in Article 147 as grave breaches.

The difference for an individual between committing grave breaches and other violations of the Convention is that commission of a grave breach entails individual criminal responsibility for an international crime. The difference for a state is that while it retains a direct duty to repress all breaches of the Convention and thus to ensure respect, in the case of a grave breach being committed, it is under a duty to utilize a mandatory and specified mechanism to repress such breaches, that is, to seek out and prosecute the perpetrators.³⁴

This difference is made clear in Article 146 of the Fourth Geneva Convention. With regard to the repression of violations not constituting grave breaches, the duty is non-specific:

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

This clause clearly supports the Article 1 duty to ensure respect. The state signatories, however, retain the right to select from among the legal means at their disposal those which they consider most likely to be effective in ensuring respect by the offending state.

With regard to violations of the Conventions constituting grave breaches, Article 146 sets out the specific duty of penal sanctions:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be com-

mitted, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Pictet identified "three essential obligations laid upon each Contracting Party" by this Article: to enact special legislation, to search for persons alleged to have committed grave breaches, and to bring such persons to trial in its own courts or to hand them over for trial to another High Contracting Party concerned.³⁵

Although the term is not used in the Geneva Conventions, grave breaches are what are known in customary law as war crimes. They bear the same consequences (individual criminal liability and universal jurisdiction for prosecution without a statute of limitations) as the war crimes defined in the Nuremberg Charter of the International Military Tribunal. In many cases, the grave breaches listed in the Geneva Conventions coincide with the war crimes defined by the Charter.³⁶ Professor Ian Brownlie has observed in this regard that:

The [Geneva] Conventions avoid the term "war crimes" in relation to grave breaches, but there can be no doubt that the latter constitute war crimes and are concerned with individual responsibility for breaches of the laws of war. The ambiguity is to be explained by a desire to emphasise the obligations of the contracting states to suppress and punish the acts prohibited.³⁷

The duty upon High Contracting Parties to enact special legislation in their domestic laws for the punishment of grave breaches would seem to spring from two considerations: firstly, although nobody doubted the need to punish those who committed war crimes during World War II, there was dissatisfaction in some quarters at the way this was implemented in the Nuremberg and Tokyo Tribunals.³⁸ Secondly, despite what may be seen as a clear need, there is no international criminal court that can prosecute those accused of war crimes.³⁹ States ratifying the Geneva Conventions of 1949 in the aftermath of World War II thus took upon themselves the absolute and unilateral duty of passing suitable legislation and using it to prosecute those accused of grave breaches of the Conventions, whatever the nationality of those persons and wherever they committed their crimes.

The existence of universal jurisdiction to try the perpetrators of war crimes, or grave breaches, springs from recognition of the severity of those crimes. Grave breaches take place in times of war or belligerent occupation when the domestic legal system is incapable of inhibiting persons from committing such crimes; that is, in a situation where the perpetrators feel they can act without fearing retribution through the courts in the country where they commit those crimes and, similarly, do not feel vulnerable to prosecution by their own national legislature, for whatever reason.

The international community, therefore, attempts to combat such practices by denying their perpetrators any form of protection against prosecution (for example, protection gained by claiming immunity from the jurisdiction of courts in a country of which those accused are not nationals). Universal jurisdiction for these crimes undermines the capacity of a government, in time of war, to instruct its agents to carry out such actions through insisting on the individual criminal liability of those agents, whether or not they were acting under orders. As noted in a judgment of the Nuremberg Tribunal:

[I]ndividuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state, if the state in authorizing action moves outside its competence under international law.⁴⁰

Should a government in time of war or occupation either order the perpetration of grave breaches or prove lax in preventing and punishing such crimes by its nationals, the other states of the international community, are bound, as High Contracting Parties to the Geneva Conventions, to redress this situation by themselves bringing the perpetrators to justice. The severity of grave breaches is such that their prohibition cannot be left hostage to the policy of a given government at a given time, or to the capacity or will of a government to control and discipline its agents.

In brief, the aim of the duty on each High Contracting Party to bring to trial those accused of grave breaches has been summarized as

protecting the minimum standard of treatment due to human beings in the worst circumstances; that is, the minimum degree of humanity, to be perpetually protected against the attacks made on it for "reasons of state" and military necessity.⁴¹

In addition, the intention of Article 146 is clear from the term "repression"; the aim is not merely to punish, but to deter further grave breaches through punishment. This includes the deterrence of those tempted to commit grave breaches in one conflict through the punishment of those who committed grave breaches in another and, more immediately, the deterrence of those engaged in the ongoing perpetration of grave breaches in one conflict through the prosecution and punishment of their compatriots for identical and ongoing crimes.

It is this more immediate aspect of deterrence that pertains to the grave breaches of the Fourth Geneva Convention being committed by the Israel authorities in the Occupied Territories. A cursory reading of Article 147 of the Convention, which lists those violations constituting grave breaches, brings to mind immediately many of the practices and policies documented in this report:

Grave breaches ... shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully 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 wilfully 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.

A brief examination of these categories of offenses is warranted here in order to establish that in several cases, Israeli policies and practices clearly constitute grave breaches of the Fourth Geneva Convention, and that in others there is sufficient evidence that a grave breach has been committed to warrant further investigation of the practice or policy. The examples mentioned here are by no means exhaustive.

Wilful Killing†

In the first chapter of this report, it is established that the wilful killing of Palestinians, protected persons under the terms of the Convention, is not simply a matter for which individual soldiers bear responsibility, but directly implicates the state of Israel as well through the doctrine of state responsibility. At the time of the wilful killing of Yasser Abu-Ghosh, al-Haq noted that failure to bring those responsible to justice would be tantamount to encouraging the commission of further grave breaches.⁴² Wilful killing, which comprises intentional and unlawful killing, has been documented by al-Haq in at least three cases during 1989: the killing of 'Atwah Harzallah, on 27 February 1989, the killing of Yaser Abou-Ghosh on 10 July 1989, and the killing of Nidal al-Habash, on 9 October 1989.

Torture, Inhuman Treatment, and Wilfully Causing Great Suffering or Serious Injury to Body or Health‡

These three categories are taken together here for purposes of convenience, due to the legalistic problems encountered by some in defining, for example, "torture" or "inhuman treatment." In the ICRC Commentary, for example, torture is taken to mean:

the infliction of suffering on a person to obtain from that person, or from another person, confessions or information.⁴³

However, the Convention against Torture and Other Cruel and Inhuman Treatment or Punishment defines torture as the intentional infliction of "severe pain or suffering, whether physical or mental," by an official or official agent, for purposes other than just the extraction of information, including punishment, intimidation and coercion. Thus, Amnesty International identified the treatment to which al-Haq's fieldworker, Sha'wan Jabarin, was subjected in October 1989 as "torture," although it was by no means clear that information was the object.⁴⁴ The definitions adopted in the Commentary might have placed Sha'wan's case in the category of "wilfully causing great suffering" which is defined as suffering inflicted without the ends in view

† See further Chapter One, "The Use of Force."

‡ See further Chapter Five, "Torture and Death in Detention."

for which torture is inflicted.⁴⁵ Whatever definition is accepted, there are plenty of examples in this report, and elsewhere, of actions which come into these categories.⁴⁶

Under the terms of Article 146, of course, not only the individuals who commit these actions are liable for prosecution. The 1988 Report of the National Lawyers Guild noted with regard to the report of the Landau Commission and the beatings policy that:

The [Israeli] cabinet has endorsed the principal unlawful measures undertaken by the IDF. By endorsing the Landau Commission report, it has authorized force that constitutes torture or cruel or inhuman treatment against detainees. The cabinet also authorized beatings as punishment, which are unlawful for the same reason. Thus, for a variety of acts, the government leadership of Israel is individually liable for the commission of war crimes.⁴⁷

Unlawful Deportation or Transfer of a Protected Person[§]

Israel's deportation policy is, *per se*, a grave breach of the Fourth Geneva Convention. It is also one where at least some of those who must be prosecuted by the High Contracting Parties are clearly identifiable, since there is a clear chain of responsibility linking the Area Commander, who issues the deportation order, and the Defense Minister, who is directly responsible for policy in the Occupied Territories, with the soldiers who carry out the order.

Unlawful Confinement[¶]

The confinement of Palestinian prisoners in the Ansar III (Ketziot) Military Detention Center in the Negev desert may constitute a grave breach. The camp is outside the Occupied Territories and thus constitutes unlawful confinement since it is a violation of Article 76 of the Convention. There may also be cause for considering confinement in this and other prisons a grave breach due to the conditions in which Palestinians are held and the treatment to which they are subjected, both of which violate the rules on legal confinement of protected persons. In addition, administrative detention, or "internment" as it is termed in the Convention, may constitute a grave breach if the authority to impose it has been abused. The ICRC Commentary notes in this regard that:

obviously ... internment for no particular reason, especially in occupied territory, could come within the definition of this breach.⁴⁸

Israel's massive and arbitrary use of administrative detention, stretching as it does well beyond the bounds of "imperative reasons of security,"⁴⁹ should undoubtedly be scrutinized for instances of "unlawful confinement."

[§]See further Chapter Eight, "Deportation."

[¶]See further Chapter Seven, "Administrative Detention."

Wilfully Depriving a Protected Person of the Rights of Fair and Regular Trial Prescribed in the Present Convention*

The right to a fair and regular trial includes a number of essential safeguards of the rights of the detainee from the moment of arrest. Violation of these safeguards effectively renders a "fair and regular trial" impossible. During the uprising, many of these essential safeguards of detainees' rights have been routinely violated both by law enforcement officials and by the military courts themselves. For example, detainees are regularly beaten on arrest, ill-treated and tortured under interrogation, denied access to their lawyer for excessively long periods, not provided with adequate opportunities to prepare their defense, made to sign confessions in a language which they do not understand, held without appearing before a judge or other judicial authority for unacceptably long periods of time, and held in prison until the end of all legal proceedings in almost all cases. In such circumstances, the integrity of the trial is prejudiced even before it has begun.

The failure of the Israeli authorities to correct such fundamental problems (despite promises to do so) over the past two years, and the failure of the military courts themselves to correct or take account of these issues, amounts to "wilful deprivation" of the right to a "fair and regular trial."

The Extensive Destruction and Appropriation of Property not Justified by Military Necessity and Carried out Unlawfully and Wantonly†

Israel's settlement policy, which involves the illegal appropriation of massive areas of publicly and privately owned land for the use of Israeli civilian settlers, constitutes a grave breach of the Convention. It is, moreover, a grave breach that has been publicly espoused by successive Israeli governments and set out for the High Contracting Parties to see in a series of plans. The grave breach has been furthered by subsidization from the Israeli state budget. Public announcements are made every time a new grave breach in this category is committed, that is, every time a new settlement is established. The revival of the infamous "Road Plan No. 50" in recent months is also a case of Israel announcing its intent to commit a grave breach, since the road plan itself is illegal under national and international law, and will involve destruction and damage on a huge scale.⁵⁰

If the interpretation given in the Commentary of this category of offense is to be accepted, Israel's policy of house demolition also constitutes a grave breach. The Commentary notes that this category of offense refers to breaches of Article 53 of the Convention, which forbids the destruction of public and private property, except where such destruction is rendered absolutely necessary by military operations; the only rider added by the Commentary is that:

to constitute a grave breach, such destruction and appropriation must be extensive: an isolated incident would not be enough.⁵¹

*See further Chapter Six, "The Military Judicial System."

†See further Chapters Ten, "House Demolition and Sealing" and Twelve, "Economic and Fiscal Sanctions."

Israel's policy of punitive house demolition, as detailed in this report, is another example of a grave breach where responsibility can be traced directly and unambiguously to those responsible for policy in the Occupied Territories.

As noted above, this brief examination of some of Israel's practices and policies in light of Article 147 is not intended to be exhaustive.⁵² However, it does provide an indication of the extent to which grave breaches of the Fourth Geneva Convention are being committed in the Occupied Territories, their perpetrators, and the policy-makers ultimately behind many of them.

As a High Contracting Power to the Convention, Israel itself is, of course, under the duty to prosecute those of its leaders and agents committing grave breaches. However, since Israel continues to deny the applicability of the Convention to the Occupied Territories, there is no possibility that it will bring those responsible for grave breaches to justice under Article 146 of the Convention. Nor are Israel's own investigations an adequate alternative.[†] It is therefore imperative that other High Contracting Parties discharge their own duties in this respect. As noted by the Israeli court in *Attorney-General of the Government of Israel v. Adolf Eichman*:

[T]he obligation of High Contracting Parties in the Geneva Conventions to track down war criminals is one from which none may withdraw, including neutral parties.⁵³

In 1958, the Commentary of the ICRC noted that:

This Article [146] is the cornerstone of the system used for the repression of breaches of the Convention.⁵⁴

No High Contracting Party has yet attempted to discharge its duty to utilize the mechanism provided for in Article 146 to repress grave breaches of the Fourth Geneva Convention being carried out by Israel and its agents against the protected Palestinian population of the Occupied Territories. This failure has continued over more than 22 years of occupation, despite clear evidence of grave breaches and often *prima facie* evidence against those responsible. The failure continues despite specific calls by some of the protected population for action under the terms of Article 146.⁵⁵

Some of the High Contracting Parties to the Fourth Geneva Convention have fulfilled the first of the three duties which they undertook in Article 146, i.e., the issuing of penal legislation to repress grave breaches. The second and third undertakings oblige all High Contracting Parties to search for persons alleged to have committed grave breaches, and either to bring them to trial in their own courts, or to hand them over to another High Contracting Party. The discharging of these undertakings is not optional: grave breaches are the one area of the Convention where the High Contracting Parties are bound to implement a specified measure of ensuring respect. Failing to do so removes the "cornerstone of the system" of international protection of the population of occupied territories, and provides no deterrence for those Israelis currently engaged in grave breaches, or for those who will undoubtedly commit them in the future unless given real reason to think again.

[†]See further Chapter Sixteen, "Investigations."

2. The Assertion of Consular Jurisdiction

In the absence of a Protecting Power, or a formal substitute appointed as provided for in the Convention, the High Contracting Parties themselves retain the duty, individually and jointly, to ensure that the conduct of the occupant is supervised, or kept under review; that violations are detected; and that the well-being of the protected persons is adequately monitored. Traditionally, states conduct their non-ambassadorial business through their consular representatives. The scope of these duties has also traditionally included reporting on conditions and developments within the area to which they are assigned. In view of this, al-Haq has called upon High Contracting Parties with a consular presence in East Jerusalem to undertake through their consular officials specific actions in response to certain serious ongoing violations and breaches of the Convention. Article 143 of the Convention provides that:

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure . . .

Indeed, consuls-general of the High Contracting Parties have, during the course of 1989, attempted to enter closed areas in order to monitor conditions of protected persons, and visited scenes of suspected wilful killings.

The supervisory functions of the Protecting Power are clearly envisaged in the Convention as being a key factor in encouraging adherence to its terms by the occupying power. In the absence of a Protecting Power, and taking into account the incapacity of the ICRC to monitor and investigate violations on behalf of the state signatories, the consular representatives of High Contracting Parties have a clear mandate to undertake these functions in the Occupied Territories. The protection of the civilian population under the Convention requires the presence of what Pictet calls "qualified witnesses."⁵⁶ Israel's refusal to recognize the applicability of the Convention, or the status of the West Bank and Gaza Strip as occupied, and its failure to implement the Protecting Power mechanism, should not be permitted by High Contracting Parties to deny the civilian population the protection of the Fourth Geneva Convention. Through their consular officials, the High Contracting Parties command the means to exercise their jurisdiction. The law requires Israel, as the occupying power, to permit observation and investigation by the High Contracting Parties or their duty-appointed delegate. The only exception to this may take the form of a temporary refusal for "reasons of imperative military necessity," in accordance with Article 143.

In cases where, in accordance with Article 143, "reasons of imperative military necessity" are cited to justify what can only be a temporary refusal to allow a visit by a representative of the Protecting Power, or in this case a consul-general, the ICRC Commentary notes that the representative

will be able to carry out supervision *a posteriori*, by checking afterwards whether the prohibition of visits has been used by the Detaining Power [i.e., the occupying power] to violate the Convention or if, on the contrary, the temporary prohibition has not been prejudicial to the protected persons. In any case, it is not in the interests of the Detaining Power to misuse this reservation, because it would very soon be suspected of deliberately wishing to violate the Convention by taking advantage of the absence of qualified witnesses ...⁵⁷

On 6 October 1989, following an appeal by prominent Palestinians for intervention in accordance with the Article 1 duty to ensure respect for the Fourth Geneva Convention,⁵⁸ the consuls of Belgium, Britain, France, Greece, Italy, Spain and Sweden set out on a fact-finding visit to the town of Beit Sahour. The visit was prevented when they were turned back at a roadblock by an Israeli officer who stated that Beit Sahour had been declared a closed area "for operational reasons."⁵⁹

From the evidence collected by al-Haq of events in Beit Sahour during the time it remained a closed military area, it is clear that the Israeli authorities indeed took advantage of the absence of qualified witnesses to carry out a series of violations of the Fourth Geneva Convention. Under such circumstances, it is imperative for High Contracting Parties to mandate their consular representatives to proceed with their own fact-finding visits and determine their response to the events that have taken place. For the High Contracting Parties have, in this situation, another duty to fulfil: when their monitoring efforts reveal violations which the occupant itself fails to repress and punish, they have the duty of investigating them. This duty arises not only from their general undertaking to ensure respect, but also because of the specific duty to initiate criminal proceedings against the commission of a grave breach.

Tolerance of attempts by the Israeli military authorities to obstruct or interdict such monitoring and investigation by the representatives of other High Contracting Parties not only deprives the Palestinian population of the protections guaranteed by the High Contracting Parties, but also constitutes a dereliction by the High Contracting Parties of their own independent legal duties.⁶⁰

D. The Need for International Protection

The nature and extent of the illegal policies and practices described in this report are themselves sufficient to mandate new and expanded measures by the High Contracting Parties to extend international protection to the Palestinian population of the Occupied Territories, in accordance with their duty under Article 1. It remains to be pointed out that there is an instrumental dimension to the laws of war in view of which the duty to ensure respect falls well within the accepted understanding of the utility of the laws of war to constrain the actions of belligerents, and to facilitate the processes of dispute settlement.

The utilitarian dimension of the laws of war arises from recognition of the basic principle that the more destruction and suffering inflicted by belligerents during the course of a conflict, the harder the prospects for reconciliation and accommodation become. Unregulated or under-regulated conflicts progressively diminish the capa-

bilities of the parties to such a conflict to contemplate any political settlement.⁶¹ In instituting the Conventions, the international community has recognized that the direct and indirect costs of such conflicts, to both humanity and states, is unacceptable. International humanitarian law is intended to reduce the damage that may legitimately be done to persons, especially civilians or those placed *hors de combat*, such as prisoners of war, or property, in order to strengthen the prospects for effecting a settlement between the parties.

Summary

In the case of belligerent occupation, the laws of war place prohibitions upon the occupying power that are intended to deny it the option, in itself illegal, of acquiring *de facto* sovereignty (as opposed to temporary administrative authority which is conceded the occupant by the laws of war) over the occupied territory by means of force. Thus the occupying power is forbidden to pursue policies that facilitate *de facto* annexation, such as appropriation of land and natural resources, or that affect the demographic character of the occupied territories, such as deportation of protected persons and the transfer into occupied territories of civilian nationals of the occupying power.

Since 1967, the international community of states has been calling upon Israel to withdraw from the Occupied Territories in the context of a just settlement to the conflict. At the same time, little has been done on the ground to convince Israel that it does not indeed have the option of perpetuating its hold on these territories. The Fourth Geneva Convention's prohibition of annexation, settlement and deportation has been ignored by Israel, along with the prohibition of such repressive policies that Israel uses to control the population that legitimately resists this annexationist agenda.

Were the High Contracting Parties to begin to actively ensure that Israel respect the provisions of the Fourth Geneva Convention, by which it is bound, they would reduce the feasibility, both actual and perceived, of Israel's perpetuating the subjugation of an otherwise unprotected civilian population and the suppression of its right to self-determination, through a regime imposed and sustained by force of arms.

To recognize this utilitarian dimension of the laws of war is to recognize how commitment by third party states to enforcing those laws can be absolutely critical in moving Israel to choose a course of accommodation. The extension of effective international protection to the Palestinians of the Occupied Territories against Israeli violations of international law would be a major factor in convincing Israel that it must indeed accommodate a just settlement.

In brief: any durable settlement relies on a *de facto* situation in which international law is respected, international agreements are enforced, and third party guarantors can be relied upon to perform their role effectively. The will to seek accommodation presupposes confidence that, having forsworn conquest and coercion, reparations and concessions can establish peace. However, this in turn presupposes confidence that international guarantees and the restoration of the rule of law can make peace durable.

To satisfy this precondition, and to enhance the perceived feasibility of achieving a durable settlement, third party states must start by demonstrating their practical commitment to enforcing the body of law that already applies.

Endnotes to Chapter Nineteen

1. The 1929 Geneva Conventions of 1929, had only required the High Contracting Parties to "respect" the Conventions in all circumstances. For an examination of the basis for, and implications of, the added phrase "and to ensure respect" contained in the 1949 Conventions, see Marc Stephens, *The Enforcement of International Law in the Israeli-Occupied Territories* (Ramallah: Al-Haq, 1989); National Lawyers Guild (NLG), *International Human Rights Law and Israel's Efforts to Suppress the Palestinian Uprising* (New York: NLG, 1989), p. 88, where the NLG confirms that:

At present, 165 states are signatories of the 1949 Convention and are therefore required to use their best efforts to keep Israel from violating it.

2. Article 4 of the Convention states that:

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals . . .

3. Jean Pictet (ed.), *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 17.
4. International Convention on the Suppression and Punishment of the Crime of Apartheid, 1976. (The Convention was signed by over 90 states.) The Apartheid Convention is not restricted territorially to South Africa, and in the view of John Quigley, Professor of International Law at Ohio State University, a number of Israel's actions constitute acts of apartheid under the terms of the Convention, both in the Occupied Territories and within Israel's 1948 borders with regard to the Palestinian population there. See John Quigley, "The International Crimes of Israeli Officials," *The Link*, Vol. 22, No. 4, 1989.
5. The Convention on the Prevention and Punishment of the Crime of Genocide, 1948. Following the 1982 Israeli invasion of Lebanon, the Commission of Enquiry set up to investigate Israeli violations of international law included among its recommendations

that a competent international body be designed or established to clarify the conception of genocide in relation to Israeli policies and practices towards the Palestinian people.

(Israel in Lebanon: The Report of the International Commission to Enquire into Reported Violations of International Law by Israel during its Invasion of Lebanon. (London: 1983), p. 193.

6. The Alien Torts Act of 1789 contains the following statement:

[W]e hold that deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties. Thus, whenever an alleged torturer is found and served with process by an alien within our borders, paragraph 1350 provides federal jurisdiction.

The principle enunciated in the Alien Torts Act has been much restricted through decisions of the U.S. Supreme Court, most notably using the "act of state doctrine." Nevertheless, the possibility of using this act does remain at least a theoretical possibility with respect to Israel.

7. Pictet, *Commentary*, p. 9. Pictet also notes (p. 92) that:

By making a duty of what formerly was merely the optional exercise of a right [to appoint a Protecting Power], article 8 reinforces the supervision over the correct application of the Convention, and consequently increases the Convention's effectiveness.

8. See *ibid.*, pp. 81-86, for a history of international practice regarding Protecting Powers. Pictet notes (p. 83) that during World War II, particular difficulty was faced with regard to the acceptance of Protecting Powers in occupied territory. See p. 87 for the procedure under customary law for appointing Protecting Powers.
9. *Ibid.*, p. 88.
10. *Ibid.*, p. 568.

11. Article 143, Fourth Geneva Convention.
12. *Ibid.*, Article 55.
13. *Ibid.*, Article 71.
14. *Ibid.*, Article 11. Pictet (p. 106) notes that the substitute may be already in existence, or specially created for the purpose; it may be specified or general, official or private, national or international; the essential point is that it must be impartial.
15. Article 11, Fourth Geneva Convention. Pictet (p. 110) notes that no time limit is given in the article for the appointment of the various forms of substitute for the Protecting Powers, but notes that the time limit should not exceed two months.
16. Pictet, *Commentary*, p. 109, notes in this regard that:

a humanitarian organisation cannot be expected to fulfil all the functions incumbent on a Protecting Power by virtue of that Convention.
17. Don Betz, *The Intifada, the United Nations and the Non-Governmental Organizations* (Geneva: International Coordinating Committee on the Question of Palestine, 1989), p. 87.
18. ICRC, *ICRC Annual Report, 1972*, pp. 69–70. The ICRC made the same formal presentation to Egypt, Jordan, Lebanon and Syria, none of whom gave affirmative responses.
19. *International Review of the Red Cross*, Vol. 10, 1970, p. 429.
20. "Action by the ICRC in the Event of Breaches of International Humanitarian Law," *International Review of the Red Cross* No. 221, 1981, p. 77 *et seq.*
21. On at least three separate occasions the ICRC specifically and publicly called upon state signatories to fulfil their legal obligation to ensure respect by Iran and Iraq for the Conventions. Appeals were made on 7 May 1983, 10 February 1984 and 23 November 1984. (Stephens, *The Enforcement of International Law*, pp. 15–16.)
22. Letter of 18 October 1989 from ICRC (Geneva) to Sir Dennis Walters MP and Mr. Ernie Ross MP. Cited in *The Enforcement of Human Rights in the Israeli-Occupied West Bank and Gaza: Report of the Working Symposium*. (London: Labour Middle East Council and Conservative Middle East Council, 1989.)
23. See, for example, the collection of statements made by British Foreign Office representatives presented to the London Symposium by Sir Dennis Walters and reproduced in *The Enforcement of Human Rights*.
24. Al-Haq's, *Punishing a Nation, Human Rights Violations During The Palestinian Uprising, December 1987–December 1988*, p. 19. Both that report and this one show that the beatings policy continues in all but name.
25. For example, UN Security Council Resolutions 607 and 608 of January 1988, and *demarches* by the European Community in the spring and summer of that year.
26. *Jerusalem Post*, 24 August 1988; Al-Haq, *Punishing a Nation*, p. 144.
27. This tends to be a feature of such U.S. criticism of Israel as does occur.
28. Resolution A/Res/43/21 of 8 November 1988. For further examples see Stephens, *The Enforcement of International Law*, p. 12.
29. One oblique example is Security Council Resolution 469/1981, deploring the actions of Israel in the Occupied Territories, while

recalling the Fourth Geneva Convention of 1949 and in particular Article 1. (*Ibid.*, pp. 13–14.)
30. Report submitted to the Security Council by the Secretary-General of the UN in accordance with Res. 605/1987:5/19443, 21 January 1988. Stephens, *The Enforcement of International Law*, pp. 14–15 and fn. 21.
31. *Jerusalem Post*, 8 November 1989. The vote was 14:1. For details of the raids in Beit Sahour, see further Chapter Twelve, "Economic and Fiscal Sanctions."

32. For example, the "Uniting for Peace Resolution" (No. 377 A (v)), or the taking of judicial action against those states that consistently block the endeavors of others to discharge their obligations under the Charter. See Stephens, *The Enforcement of International Law*, pp. 37-43, for further examination of these options. See also Francis Boyle, "Create the State of Palestine!" *American-Arab Affairs* No. 25 (September 1988), pp. 86-105; Professor Boyle's article analyzes the Namibian precedent at the UN, and discusses in detail the mechanisms available, through the forums of the UN, for the Palestinians to realize their right to self-determination.
33. Stephens, *The Enforcement of International Law*, pp. 44-45.
34. See in general on this subject Quigley, "The International Crimes of Israeli Officials."
35. Pictet, *Commentary*, p. 590.
36. The Charter of the International Military Tribunal annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, signed on 8 August 1945, defines war crimes as:

violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation of slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.
37. Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 1982), p. 563.
38. See Pictet, *Commentary*, p. 584.
39. *Ibid*, p. 589, writing in 1958, observed:

There seems to be very little chance, because of the widespread opposition encountered, of the United Nations setting up an international criminal court in the near future.

Discussion on the establishment of such a court continues, but with no result to date. See Quigley, "The International Crimes of Israeli Officials."
40. Brownlie, *Principles*, p. 566.
41. Jacques Verhaegen, "Legal Obstacles to Prosecution of Breaches of Humanitarian Law," *International Review of the Red Cross* No. 261 (1987), p. 608.
42. Al-Haq, "Alert: Summary Execution in Ramallah," 22 July 1989, reproduced as Appendix 1-H; Al-Haq, "Memorandum of Protest and Appeal Re: Grave Breaches of the IV Geneva Convention," 15 April 1989, issued after the multiple killings at the West Bank village of Nahalin.
43. *Ibid.*, p. 598.
44. Amnesty International "Urgent Action Alert," 13 October 1989. See further Chapter Eighteen, "Human Rights Monitors."
45. Pictet, *Commentary*, p. 599.
46. See, for example, Chapter Five, "Torture and Death in Detention" and related appendices.
47. NLG, *International Human Rights Law*, p. 88 and Quigley, "The International Crimes of Israeli Officials," also identified the beatings policy as "inhuman treatment," and therefore a grave breach.
48. Pictet, *Commentary*, p. 599.
49. Article 78, Fourth Geneva Convention.
50. See in this regard, Aziz, Fuad, and Raja Shehadeh, *Israeli Proposed Road Plan for the West Bank: A Question for the International Court of Justice* (Ramallah: Al-Haq, 1984). Implementation of the plan was temporarily halted after the outcry that accompanied publication of the plan.

51. Pictet, *Commentary*, p. 601.
52. The UN Commission for Human Rights, in a resolution entitled "Question of Violations of Human Rights in Occupied Palestine," 17 February 1989, cited in Quigley, "The International Crimes of Israeli Officials," had the following to say on Israeli violations:

Israeli violations of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, applicable to the Palestinian population and territories under Israeli occupation, including the physical and psychological torture of Palestinian detainees and their subjection to improper and inhuman treatment, the imposition of collective punishment on towns, villages and camps, and the administrative detention of thousands of Palestinians for example in the "Ansar 3" concentration camp in the Negev, the deportation and expulsion of Palestinian citizens by force, the confiscation of their property, raiding and demolition of their houses, and the annexation of Jerusalem, all constitute war crimes under international law.
53. Cited in Stephens, *The Enforcement of International Law*, p. 28.
54. Pictet, *Commentary*, p. 590.
55. See for example Al-Haq, "Alert: Summary Execution in Ramallah," and Al-Haq, "Memorandum of Protest and Appeal."
56. Pictet, *Commentary*, p. 577.
57. *Ibid.*
58. In addition, al-Haq stated, in its Press Release No. 31, 28 September 1989, as follows:

Al-Haq yesterday alerted the consular representatives of the state signatories to the IV Geneva Convention to the events currently occurring in Beit Sahour ... Al-Haq has urged the consuls to visit Beit Sahour and intervene with the Israeli military and tax authorities there, in order to provide a measure of physical protection for the inhabitants of the town, in accordance with their duties under Article 1 of the IV Geneva Convention.
59. *Jerusalem Post*, 8 October 1989.
60. In this regard, it is interesting to note that the Israeli ambassador in London submitted a formal complaint, in October 1989, against the British Consul in East Jerusalem, Ivan Callan. The protest followed Mr. Callan's visits to Nablus and Beit Sahour when the towns were under curfew, and his calling for an investigation into the killing of Nidal al-Habash by soldiers in Nablus. The *Jerusalem Post* (17 October 1989), which interviewed the consul, reported that it understood that he had not been asked to turn back on either visit, and that in the case of the Nablus shooting, he had himself heard eyewitness testimony contradicting the accounts of the Israeli army.
61. Adam Roberts, "The Israeli-Occupied Territories 1967-1988: The International Legal Framework of a Prolonged Occupation," in Emma Playfair (ed.), *International Law and the Administration of Occupied Territories: the West Bank and Gaza, 1967-1987* (Oxford: Oxford University Press, forthcoming).

tion, pursuing illegal policies and practices for an illegal end—namely, the *de facto* annexation of the Occupied Palestinian Territories, with no regard for the indigenous inhabitants of the land.

There is lawlessness at every level: from the soldier in the street on up to the military administration and the courts, including the Israeli High Court [of Justice] which has sanctioned clearly illegal practices like deportations and house demolitions and routinely defers to the military on all issues related to the occupation.

There is no real accountability. There are no proper channels of complaint and investigation. In cases where abuses are so obvious that an investigation actually takes place and the perpetrators are found guilty, the sentences meted out are so minimal as to constitute a green light to the army to continue its policies without deterrent.

The lack of remedies or redress in local military law makes more urgent the application of the protections defined in international law, namely, the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War of 1949 which is applicable in our case and to which Israel is a signatory state. However, Israel, virtually alone in the community of states, does not recognize this applicability. Thus, left to the devices of Israel's military occupation and legal analysis, the Palestinians under occupation remain without an effective protection from rampant human rights abuse.

Al-Haq turns to the international community for this protection. We intervened time and time again with state signatories to the Fourth Geneva Convention, reminding them of their legal obligation under Article 1 of the Convention which states: "The High Contracting Parties undertake to respect and *ensure respect* for the present convention in all circumstances." [Emphasis added.] This places a legal as well as a moral obligation on states to take whatever legal measures as are required to "ensure respect" for the Convention by Israel in its treatment of the civilians under its control.

Governments must realize that the defense of human rights, the enforcement of international humanitarian law and the process of conflict resolution are inextricably intertwined. Belligerency and conflict inevitably entail the violation of human rights. The struggle for human rights is a struggle for peace. However, the struggle for peace must be predicated on the respect for the democratic exercise of the right of all peoples to self-determination and to live in peace based on justice. The only alternative indeed is the peace of the grave.

The United States government's military and economic support for Israel serve, in practical terms, to encourage human rights abuses in the Occupied Palestinian Territories. Furthermore, the U.S. position in international fora and through the various autonomy schemes and so-called peace plans has served to assist Israel in denying the Palestinians their most fundamental human right: the right to self-determination.

We call upon governments to offer more than just words, more than mere gestures, more than professions of good faith. We call upon governments to make a serious commitment to international law. Unenforceable law is merely ink on paper. If the current Israeli disregard of international conventions and agreements is allowed, serious doubts exist as to the real potential for peace-making in the region.

Part of the reason for this failure is that, to date, we have allowed politicians and

remind them as wielders of power and ultimate protectors of our civilizations, of their obligations to all of us.

Long-term security and peace for all peoples cannot be found if any one of those peoples are denied the right to determine its own future; to decide on their representatives, to benefit from the taxes they pay, to teach what they want to teach, to speak their minds freely without restriction and without fear of punishment or reprisal. Human rights can only be discussed in the context of the right to self-determination.

The experience of history teaches that a people cannot rest until it is free. The Palestinian experience, in spite of 40 years of denial, is no exception. We thank you for this award, primarily, for helping to break this conspiracy of silence.

On 18 October 1988, Ibrahim al-Mtour was seen by other detainees at the Dhahriyyeh military detention center in the West Bank. Blood was flowing from his head and he was heard screaming: "I am Ibrahim al-Mtour. They are beating me to death. Detainees, witness!"

Three days later, Ibrahim was dead. "Suicide," the prison authorities declared. It is our collective duty to answer Ibrahim's call, to witness, to act, so that in the future not only will the Ibrahims of this world be heard and not have to die but so that they will not have to scream at all.

[Atlanta, Georgia; U.S.A.: 9 December 1989]

Conclusion

Al-Haq Acceptance Speech for the 1989 Carter-Menil Human Rights Award

On 10 October 1989, our colleague at al-Haq, fieldworker Sha'wan Jabarin, was taken from his home by soldiers in civilian clothes and tortured on the way to the police station. Once there, he declared to the police that he worked for a human rights organization. He said that torture is illegal, and that he wanted to submit a complaint. The response was only to beat him more severely. Sha'wan was so badly beaten that he had to be taken to a hospital.

When word of this reached al-Haq, we called the Legal Advisor to the military government in the West Bank. He admitted that he already knew but could do nothing about it.

The interventions on behalf of Sha'wan by al-Haq and the international human rights community, including President Carter's, failed. And what was the official response? In Defense Minister Rabin's answer to President Carter, interestingly enough publicized by Rabin's office, he states (and I quote): "... as to the beating of the man, it was only moderate enough to convince him to accept detention." Sha'wan was handed a one-year administrative detention order, the longest possible period for one order. Sha'wan was not interrogated, he was not charged, he was not tried in a court of law. He is currently serving his term, along with 4,500 other Palestinians, in the isolated Ketziot Military Detention Center, under the harsh conditions of the Negev desert, where no family visits are allowed. Sha'wan will not meet his first-born child until he is one year old.

Since 1948, the Palestinian people have endured the hardship and indignity of exile and waited for the community of states to guarantee them their right to return to their homes. More injustice was done since 1967. For the last 22 years, Palestinians in the Gaza Strip and the West Bank—including East Jerusalem—have endured a military occupation which manipulated the administrative and legal structures leading to political oppression and economic exploitation. The fundamental rights taken for granted by other nations have been denied to us, most importantly, the right to self-determination.

The rule of law has been absent. From the first day of occupation the military commanders of the West Bank and Gaza regions issued a proclamation which con-

centrated the legislative, executive, and judicial functions of government in the hands of one person: the military commander.

Then the military began to legislate. More than 1,290 military orders have been passed in the West Bank, and nearly 1,000 in the Gaza Strip, amending local law beyond recognition. These orders give sweeping powers to the military and touch every aspect of our lives: economy, transportation, infrastructure, planning, development and organizational activity, education, health, censorship of all media of communication, culture and the arts. Everything we do, everything we teach, everything we think is strictly controlled at every turn.

During these 22 years, Palestinians watched as more than 52 percent of their land was taken away from them. Illegal settlements have been established throughout the area. These settlements are inhabited by Israeli civilians who are armed and do not hesitate to use those arms without even the basic controls and restrictions placed on a regular army.

Since its establishment in 1979, al-Haq has documented the full range of human rights abuses resulting from Israeli measures and policies. These include deprivation of life, beatings, expulsions, the demolition and sealing of houses, mass arrests, administrative detention without charge or trial, town arrests, long-term closure of institutions, maltreatment and torture at times leading to death, travel restriction, denial of family reunification, and collective economic punishments.

On the eve of celebrating the 41st anniversary of the adoption of the Universal Declaration of Human Rights we can state, with confidence, that the Israeli occupation violates, as a matter of course, every article of the Universal Declaration of Human Rights except one: the article banning slavery.

Given this situation, the Palestinian popular uprising which today enters its third year, should have come as no surprise. The *Intifada*, or the "shaking off," is an expression of collective anger and frustration; a reaction to 20 years of expropriation, denial, and oppression. People from all walks of life are involved, participating in a variety of acts of civil disobedience including strikes, a boycott of Israeli products, and a tax revolt, in addition to the demonstrations that have been so widely screened during the first year. Our *Intifada* is an optimistic and unified call for freedom.

The authorities' response to the uprising has been consistent with their policies of the previous 20 years—out of all proportion to accepted legal standards and norms. The stone was met with a bullet. Strikes were met with arrests. The tax boycott—and the story of Beit Sahour was only one example—was met with officially sanctioned vandalism.

We thank you for this award, for its recognition of the gravity of the human rights situation in the Occupied Palestinian Territories. It is our hope that this step will be the first of many, along the path towards a lasting and just solution in our region.

Since its establishment in 1979, al-Haq has sought answers to questions that no one was yet willing to ask: what are the standards of this occupation and how does it measure up to international criteria in practice? From the beginning, our role has been to monitor, to understand the situation, and to inform.

In pursuing its militaristic and brutal policies, Israel has violated international law and thrown its standards out of the window. This is a manifestly illegal occupa-

tion, pursuing illegal policies and practices for an illegal end—namely, the *de facto* annexation of the Occupied Palestinian Territories, with no regard for the indigenous inhabitants of the land.

There is lawlessness at every level: from the soldier in the street on up to the military administration and the courts, including the Israeli High Court [of Justice] which has sanctioned clearly illegal practices like deportations and house demolitions and routinely defers to the military on all issues related to the occupation.

There is no real accountability. There are no proper channels of complaint and investigation. In cases where abuses are so obvious that an investigation actually takes place and the perpetrators are found guilty, the sentences meted out are so minimal as to constitute a green light to the army to continue its policies without deterrent.

The lack of remedies or redress in local military law makes more urgent the application of the protections defined in international law, namely, the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War of 1949 which is applicable in our case and to which Israel is a signatory state. However, Israel, virtually alone in the community of states, does not recognize this applicability. Thus, left to the devices of Israel's military occupation and legal analysis, the Palestinians under occupation remain without an effective protection from rampant human rights abuse.

Al-Haq turns to the international community for this protection. We intervened time and time again with state signatories to the Fourth Geneva Convention, reminding them of their legal obligation under Article 1 of the Convention which states: "The High Contracting Parties undertake to respect and *ensure respect* for the present convention in all circumstances." [Emphasis added.] This places a legal as well as a moral obligation on states to take whatever legal measures as are required to "ensure respect" for the Convention by Israel in its treatment of the civilians under its control.

Governments must realize that the defense of human rights, the enforcement of international humanitarian law and the process of conflict resolution are inextricably intertwined. Belligerency and conflict inevitably entail the violation of human rights. The struggle for human rights is a struggle for peace. However, the struggle for peace must be predicated on the respect for the democratic exercise of the right of all peoples to self-determination and to live in peace based on justice. The only alternative indeed is the peace of the grave.

The United States government's military and economic support for Israel serve, in practical terms, to encourage human rights abuses in the Occupied Palestinian Territories. Furthermore, the U.S. position in international fora and through the various autonomy schemes and so-called peace plans has served to assist Israel in denying the Palestinians their most fundamental human right: the right to self-determination.

We call upon governments to offer more than just words, more than mere gestures, more than professions of good faith. We call upon governments to make a serious commitment to international law. Unenforceable law is merely ink on paper. If the current Israeli disregard of international conventions and agreements is allowed, serious doubts exist as to the real potential for peace-making in the region.

Part of the reason for this failure is that, to date, we have allowed politicians and