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تتمتع بحق بصفة استشارية لدى المجلس الاقتصادي والاجتماعي في الأمم المتحدة

AL-HAQ'S BRIEFING PAPER

FOUR YEARS SINCE THE BEGINNING OF THE INTIFADA: SYSTEMATIC VIOLATIONS OF HUMAN RIGHTS IN THE OCCUPIED PALESTINIAN TERRITORIES

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25 Years Defending Human Rights (1979-2004)

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OVERVIEW

On 29 September 2004- four years since the beginning of the Palestinian *Intifada* - Al-Haq reminds members of the international community that Israeli authorities are continuing their flagrant disregard for international human rights and humanitarian law in the Occupied Palestinian Territories (OPT). As laid out in Article 4(1) of the Fourth Geneva Convention, Palestinian civilians are protected persons, thereby placing a legal obligation on Israel to ensure that their rights under the Convention are upheld at all times. Moreover, the applicability of international humanitarian law during occupation does not preclude the application of international human rights law.¹

Nevertheless, Israeli occupying forces continue to subject the Palestinian civilian population to numerous measures that violate their fundamental rights protected therein, such as extra-judicial killings and targeted assassinations; property destruction; movement restrictions; mass arrests and arbitrary detention; torture and ill-treatment; forced transfer and deportation.

Although these and other human rights violations have been a common feature of the 37-year-long Israeli occupation of the West Bank and Gaza Strip, Al-Haq's documentation indicates that since the beginning of the *Intifada*, they have increased in both scale and intensity. In fact, as this report highlights, Al-Haq's documentation confirms a rapidly deteriorating human rights situation more generally, and points towards the existence of deliberate and consistent policies on the part of Israeli authorities and occupying forces which perpetuate violations of international law. Thus Israeli measures and violations such as the ones detailed above have become the norm rather than the exception, and continue to be perpetrated with full impunity.

The impact that these and other violations have had on the daily lives of approximately 3 million Palestinians in the OPT, including children, has been severe, and have restricted such fundamental rights as their freedom of movement, the right to work and to receive education and medical treatment. Aggravating already existing human, economic, social and political consequences of the Israeli occupation for the Palestinian people, Israeli violations of international law have contributed to the emergence of a humanitarian crisis of rising proportions, including malnutrition and poverty.

In this regard, whilst Israel continues to justify these measures in the name of security and counter-terrorism, voluminous documentation by non-governmental organisations and UN bodies have highlighted that these measures violate the principles of necessity and proportionality, thereby undermining the credibility of this argument. In most cases, such practices have undermined the principle of individual penal responsibility upheld by both international human rights and humanitarian law, and have amounted to measures of collective punishment or measures of intimidation, which are prohibited at all times.²

Below Al-Haq has highlighted several human rights violations of a more systematic nature that have taken place since 2000.

¹ Israel has also acceded to numerous international human rights instruments. As UN treaty monitoring bodies have repeatedly affirmed, constituting the *de facto* authority in the OPT, Israel remains answerable to all of them.

² Article 50 of the Hague Regulations and Article 33 of the Fourth Geneva Convention. The International Committee of the Red Cross (ICRC) has indicated that this prohibition does not apply merely to punishment applied in response to acts committed by individuals, but also to the application of measures of intimidation to forestall acts that may be committed in the future.

Note: Except where otherwise stated the statistics presented cover the four years of the intifada, from 28 September 2000 to 25 September 2004. Statistics regarding the Gaza Strip were provided by Al-Mezan Center for Human Rights.

EXTRA-JUDICIAL KILLINGS AND TARGETED ASSASSINATIONS

At round 1:00 pm, I was standing near al-Hanash Gas Station in al-Hadathiyah neighbourhood, watching the movement of the Israeli occupying forces. . . . The situation was relatively calm with no stone-throwing and no shooting. . . . A group of four to five children were standing on the sidewalk of a small road directly opposite al- 'Adassi Brick Factory where two Israeli "border police" jeeps were located, 130-150 metres away from the children. One of these children was Mu'ayyad Hamdan (9) from the camp, and he stood there facing the Israeli soldiers. When the sound of gunfire was heard, the child Mu'ayyad fell to the ground on his back, bleeding from his head. Then I shouted as loud as I could: "Ambulance! Ambulance!" All the children surrounding him fled the area and while a man standing next to me called Sabr Muhammed Jibrin ran towards the child and carried him in his arms. I called an ambulance, which transferred him to the hospital. Twenty minutes later I learned that the child Mu'ayyad had become a martyr.

Extracts from Al-Haq Affidavit No. 1561/2004
 Given by: Muhammad 'Abd-al-Majid 'Id (Resident of al-Ama'ri Refugee Camp, in al-Bireh district, West Bank)

Deaths			
	West Bank	Gaza Strip	Total
Total	1423	1621	3044
Year 2000	173	123	296
2001	284	243	527
2002	591	471	1062
2003	208	397	605
2004	167	387	554

Age Groups of Deaths			
	West Bank	Gaza Strip	%
TOTAL	1423	1621	100
Less than 12	77	87	5.4
13-17	185	340	17.2
18-25	506	608	36.6
26-35	382	366	24.5
36-50	168	151	10.4
Over 50	96	69	5.4
Unknown	11		0.5

Since the outbreak of the current *Intifada* in September 2000, Israeli occupying forces have resorted to excessive, often lethal, force against unarmed Palestinian civilians thereby resulting in a substantial increase in the number of Palestinians killed or wounded. Since the beginning of the *Intifada*, it is estimated that more than 27,600 Palestinians have been wounded. Approximately 26% of all of these cases resulted from the use of live ammunition, while another 22% were wounded as a result of rubber bullets.³ Both in tactics and levels of force, Israeli troops display an unwarranted use of lethal force and a consistent disregard for the fundamental principles of necessity, proportionality and distinction between civilians and combatants necessary for the protection of the lives and well-being of the Palestinian civilian population. As Al-Haq's documentation points out, such abuse of force has fallen short of the minimum international standards for the safeguarding of

human lives, and have even amounted in several instances to willful killing, a grave breach of the Fourth Geneva Convention

³ Statistics provided by the Palestine Red Crescent Society.

Killings by Geographic Location			
West Bank		Gaza Strip¹	
Nablus	365	Northern Gaza	281
Jenin	296	Gaza	463
Tulkarem	262	Central Deir El Balah	236
Hebron	182	Khan Younis	252
Ramallah	156	Rafah	384
Bethlehem	110		
Jerusalem	40		

Israeli authorities have also stepped up their policy of targeting Palestinian political activists at an alarming rate. Palestinians were targeted indiscriminately not as a result of imminent danger during combat. In the past such extrajudicial executions were carried out using rockets fired from helicopter gunship, sniper fire, planted explosives, missiles fired from tanks and, more recently F-16 fighter jets.

Targeted Assassinations		
	West Bank	Gaza Strip
Year 2000	10	6
2001	51	19
2002	74	34
2003	32	81
2004	39	39
TOTAL	206	179

By denying those targeted their right to due process in accordance with human rights standards, these actions constitute gross violations of both international human rights and humanitarian law. Moreover, they violate the fundamental right to life of all those who are killed or injured by such attacks, protected under international human rights and humanitarian law.⁴

Killings Resulting from		
	West Bank	Gaza Strip
Live bullet	1070	1022
Explosives and small missiles	214	552
Rubber-coated bullets	7	
Inhaling tear gas and other gas	15	4
Other	117	43

Body Parts Sustaining Injuries		
	West Bank	Gaza Strip
Upper body	930	1382
Lower body	210	92
All over body	256	122
Others	27	25

Categories		
	West Bank	Gaza Strip
Targeted assassinations	206	179
Children	262	427
Women	83	96
Death at checkpoints	24	13
Death in custody	86	

⁴ Article 6 of the International Covenant on Civil and Political Rights (ICCPR); Art. 23 of the Hague Regulations, and Common Article 3 of the Fourth Geneva Conventions.

PROPERTY DESTRUCTION, INCLUDING HOUSE DEMOLITIONS

In 2002 my 22-year-old brother Ibrahim was arrested. To date he has not been officially convicted regarding the charges brought against him. Nevertheless on 27 February 2004, and whilst I was on the third floor of my family’s house, a heavy knock on our door at 1:30 am in the morning woke us up. When I looked outside the window, I saw a large number of Israeli soldiers surrounding the house. I told them in Hebrew (which I speak fluently) to wait until I wake up my young children. One of the soldiers demanded that I come down and open the gate immediately. When I did, they pushed me and I fell on the ground. Then they proceeded to the first floor where my wife was sleeping with my daughters. I tried to tell them that my wife was sleeping inside and that they should not go in immediately, but they didn’t listen. My children started crying, and one soldier demanded that we leave the house so they can demolish it. I pleaded with him since my wife had just given birth yesterday, but he said that he must execute a court decision to demolish the house. When I inquired as to the reason, he informed me that it was because my brother is a terrorist. I argued with him that Ibrahim has not been formally convicted yet, but to no avail. We were given 10 minutes to leave the house.....

Extracts from Al-Haq Affidavit No. 1688/2004

Given by: Wa’el ‘Abd-al-Rahman Muhammad Jindiyya (Resident of ‘Ayda Refugee Camp nearby Bethlehem, West Bank)

Since the beginning of the *Intifada*, the destruction of property and house demolitions has been implemented extensively in the OPT (particularly near Israeli settlements and by-pass roads), and have resulted in the deterioration of housing conditions, health and educational services that can be afforded to the Palestinian civilian population. In February-and March

2002, Israel conducted one of the largest scale destructions of civilian property during its military offensives “Operation Defensive Shield” and “Operation Determined Path” in the West Bank. During both incursions, property ranging from civilian homes, educational institutions, hospitals,

House Demolitions by Israeli Military Order (West Bank)	
Total demolition	374
Partial demolition	24
Sealing	2
Total number of Palestinian residents affected	2647
House Demolitions for lack of license (West Bank)	
2004	118
In Jerusalem	50

offices and medical clinics became the target of indiscriminate and disproportionate attacks. Similarly, in May 2004, an Israeli military operation in the Rafah Refugee Camp demolished hundreds of homes, leaving thousands of Palestinians homeless.

In the case of house demolitions, destruction is conducted without prior warning and in the majority of cases without constituting a military necessity.⁵ Furthermore, Al-Haq’s

Property Destruction in the OPT		
	West Bank	Gaza Strip
Total Destruction	2730	2375
Partial Destruction	39964	3519

documentation indicates that some instances of property destruction appear to be reprisals or measures of collective punishment against Palestinian civilians, particularly against family

members of those that have carried out acts against civilian targets in Israel, or persons that

⁵ Under international humanitarian law, the destruction of civilian property, if not justified by military necessity violates Article 53 of the Fourth Geneva Convention that prohibits such destruction except were rendered absolutely necessary by military operations.

pose alleged security risks. Such actions have also breached international human rights instruments, to which Israel is a state party.⁶

MOVEMENT RESTRICTIONS

Atallah lives in the village of Jaba', which is located to the east of Ramallah and Jerusalem. On Saturday, 25 August 2001 at around 3:00 pm, his granddaughter Shams Bsharat who was one year and twelve days old fell from her bed and struck her head. Although there was no bleeding, 'Atallah was worried and therefore left with her by car for the al-Salam Medical Centre, which is located about four kilometres from his home.

When he arrived at the main road that connects the villages of Jaba', Hizma, and al-Ram, and which leads to Jericho, he came upon a checkpoint where people's IDs were being checked and car registration papers were being scrutinised by Israeli occupying forces. Five cars were in line in front of him, so he approached the soldiers and told them that his granddaughter had hit her head, was unconscious, and needed urgent medical attention. The soldiers did not appear to care and told him that he had to wait in line with everyone else. He again tried to explain his situation to them, but the soldiers refused to listen. Twenty-five minutes passed before the soldiers came to inspect his car. The search then took over 40 minutes. During that time Atallah had to wait by the side of the road. He begged the soldiers to come and see the baby. . . but they refused. They only told him that he would be allowed to pass "when the time is right." After one attempt to intervene with the soldiers he returned to his car only to find that Shams had died.

Extracts from Al-Haq Affidavit No. 330/2001.

Given by: Atallah Ibrahim 'Atiyya Bsharat (resident of the village of Jaba', West Bank).

One of the most prominent manifestations of Israeli control over the lives of the Palestinian civilian population in the OPT is the system of restrictions on the freedom of movement. Although implemented since the occupation of the West Bank and Gaza in 1967, with the outbreak of the *Intifada* in 2000, it has developed into one of the most pernicious violation of Palestinians' human rights. As a result, Palestinians are subjected to varying types of closures which prevent them from travelling within the OPT, anywhere outside of the OPT, entering Israel, or moving between the West Bank and Gaza Strip.

Within the OPT, Israeli authorities have imposed a system of blockades, checkpoints and barriers around and between individual towns and villages. Hundreds of barriers throughout the OPT prevent Palestinians from travelling freely even within their own land. Such restrictions have had one of the most devastating impacts on all aspects of Palestinian life, such as access to health and education and have caused unprecedented rates of unemployment. By March 2004, there were approximately 98 roadblocks and 58 checkpoints, 57 of which were permanent.⁷

Total Hours of Curfews Imposed Per Geographic Area (West Bank)*

*statistics from Palestine Red Crescent Society since June 2002

Hebron	5828
Nablus	4804
Tulkarem	4527
Jenin	3766
Bethlehem	2625
Ramallah	2454
Qalqilia	2188

⁶ The right to own property and the prohibition against arbitrary deprivation of this property is enshrined in the Universal Declaration of Human Rights (UDHR), the right to adequate housing under Article 11 of the International Convention on Economic Social and Cultural Rights and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

⁷ United Nations Office for the Coordination of Humanitarian Affairs, <http://www.reliefweb.int/hic-opt/H>

Checkpoints, roadblocks and permit requirements have also impaired the ability of medical personnel to reach hospitals and clinics, in some cases resulting in deaths. Whilst the right to free movement is not absolute under international humanitarian law and can be restricted for security measures, they have to be justified, and “should not affect the fundamental rights of the persons concerned”.⁸

In relation to this, there is no doubt that the construction of the Annexation Wall has aggravated the existing situation. Resulting in the enclosure of Palestinian communities into enclaves, it has resulted in a complex permit system which has severely hindered Palestinians from reaching their agricultural lands, schools, work etc. thereby placing additional restrictions on Palestinians’ right to freedom of movement.

ANNEXATION WALL

I am an inhabitant of the village of al-Yamoun, south of the West Bank of Jenin and which is home to 17, 000 inhabitants. My 14 siblings and mother depend for our livelihood on the produce of our 24 dunum farm. One day we found Israeli tractors had begun working on our land. When we tried to prevent them, border police were ordering us back under the threat of their guns. We found out that 20 dunums were to be confiscated for the building of the Wall. This resulted in a huge sense of loss for my family, especially my 70-year-old mother, who developed diabetes as a result of her grief. Two weeks ago, my brothers and I went to plough the remaining 4 dunums of the land. Shortly afterwards, Israeli border police showed up again demanding to know what our purpose was. When we told them that we had come to take care of the remainder of the land, they ordered us to leave under the threat of their guns. We were forced to leave and since then have lost our main source of livelihood. Now I am forced to work in the village to support myself and my family.

Extract from Al-Haq Affidavit No. 1647/2004

Given by: ‘Adel Mahmoud ‘Ali ‘Abahra (Resident of the village of al-Yamoun nearby the city of Jenin, West Bank)

In June 2002, Israel began the construction of the Annexation Wall. Although justified by Israel as a measure to ensure the security of Israelis inside the *Green Line*,⁹ the fact that the Wall does not follow the route of this line demonstrates that the primary purpose for its construction is in the annexation of large amounts of the OPT to Israel.

Since its construction, Al-Haq's documentation has reflected extensive violations of those rights in those areas where the Annexation Wall's construction has begun. As a result, hundreds of Palestinians have been subjected to violations of such fundamental rights as the right to freedom of movement; to own property and to work, health and education.

As reiterated by the International Court of Justice (ICJ) in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories in July 2004, the construction of the Wall in the OPT and its associated regime are in breach of Israel's human rights treaty obligations,¹⁰ and fundamental provisions of humanitarian law.¹¹ In addition, the Wall's construction is creating facts on the ground that may well become

⁸ ICRC Commentary. Similarly in international human rights law, the ICCPR allows for restrictions on this right by states “as necessary to protect national security, public order, public health or morals...” provided this is proportionate, indiscriminate and in a manner that is consistent with the other rights recognised by the Covenant.

⁹ The *de facto* border between Israel and the OPT

¹⁰ Such as the ICCPR, the ICESCR, and the International Covenant on Child Rights (CRC). See Advisory Opinion on the Legal Consequences of the Wall in the Occupied Palestinian Territories, International Court of Justice, 9 July 2004

¹¹ Including Articles 23(g) and 52 of the Hague Regulations; and Article 27 of the Fourth Geneva Convention.

permanent, which would effectively amount to *de facto* annexation. Although Israel has maintained that restrictions on Palestinian rights have been necessitated by its duty to protect the security of Israelis within the *Green Line*, the ICJ opinion made clear that measures taken in the name of security can not be conducted as an abrogation of the rule of law. In addition, the court reiterated that all High Contracting Parties to the Fourth Geneva Convention must ensure respect by Israeli authorities of the Convention's provisions, and are thereby under an obligation not to recognise the illegal situation resulting from the Wall's construction.

MASS ARRESTS AND ARBITRARY DETENTION

Suddenly I heard loud voices in the building and guessed that the soldiers had attacked it. There was a loud knock on the door. Before I could reach it, they had it open and 15 soldiers came in.....He asked me for my ID, then handcuffed me. I didn't know where the armoured personnel carrier was going. I remained handcuffed and blindfolded with a soldier guarding me. I managed to shift the blindfold a bit and could see part of the building of the Union of Palestinian Agricultural Relief Committee through the window so I could identify that I was being held in a secondary school that the soldiers had taken over and were using as a military post. An hour later the soldiers brought another bunch of prisoners. However the soldiers refused to untie our hands, only allowing one prisoner to be untied. This prisoner then had to unzip the other prisoners' trousers and help them urinate. On 1 April 2002, a covered military vehicle took us to a military camp. When we were taken off the military vehicle we were ordered to line up. From under the blindfold I could see that there were about 100 detainees. The soldiers beat anyone who uttered a word.... Conditions in the camp were exceedingly harsh. Inside the tented prison the tents were not fit for human beings. They offered no protection from the rain and there was nothing to sit on. . . .

On 14 April 2002, a few days after I had been arrested, I was put on trial. After I stated my name the judge delivered his judgment which was three months of administrative detention. The judge then added "so far we have no evidence about you. Therefore we will give the prosecutor a chance to find out if there is any evidence". I was convinced that the trials were no more than a formality. The judges were neither impartial nor just.

Extracts from *Screaming in the Dark*, a report by a member of Al-Haq's staff detailing his detention during the 2002 incursions into Ramallah and break-into the office.

In 2002, Israel conducted mass arrests and detention of Palestinians during its large-scale military offensives in the West Bank from February to June of that year. As Al-Haq has previously noted, the arrests were conducted based on nationality, gender and age and were without substantial evidence. Moreover, the manner and scale of arrests indicated that they were designed as measures to punish and intimidate the Palestinian civilian population, regardless of individual penal responsibility. Human rights organisations estimate that during these two offensives, as many as 8,500 Palestinians were detained. During the incursions,

although some Palestinians were released a few hours after their arrest, hundreds of others were issued with administrative detention orders or held pending trial before a military court.

International humanitarian law affords civilians in occupied territories with general protection against violence of any kind including adverse discrimination; coercion;

Palestinians Detained since 2000*	
*statistics from Addameer	
Palestinians imprisoned	40,000
Palestinian women	300
Current Detainees	
Palestinian prisoners	8000
Palestinian female prisoners	110-115
Prisoners under the age of 16	80
Administrative detainees	760

corporal punishment or torture.¹² Moreover, as an Occupying Power, Israel is obliged to provide detained persons with fundamental guarantees of a fair trial and the rule of law such as access to legal counsel, rules of evidence, reviews and appeals amongst others. Nevertheless, in dealing with the *Intifada*, Israel continues to display a consistent disregard for established minimum standards that protect the fundamental rights of a detainee from the time of his arrest to the conclusion of his trial. Arrests continue to be made on the authority of existing military orders with Israeli military court system failing to meet minimum international standards on the right to a fair and regular trial. Moreover, several human rights organisations, including Al-Haq, continue to report allegations of torture or ill-treatment, and the inadequacy of prison and detention facilities.

TORTURE AND ILL-TREATMENT

On the morning of 10 July 2004, I was heading from al-Ram north of Jerusalem to the latter, passing by what is otherwise known as the al-Ram checkpoint. When the minivan I was in got stopped and searched at the checkpoint, one of the border police demanded that I de-assemble my laptop. I refused and told the soldier to do so himself. He requested a screwdriver, and began to hit the computer several times with it. I told him that what he was doing was illegal, to which he responded that I will be turned back from the checkpoint. I responded angrily that I wanted his name and rank to file a complaint against him if he turns me back. Suddenly, and without prior notice, he attacked me with the screwdriver which hit me directly in my right eyebrow. Then he gave me a blow with the forefront of his head on my nose. When I began to scream, he started beating me, and all this took place inside the van, and in front of the driver. He dragged me out of the van to the courtyard next to the room where the border police were resting next to the checkpoint. While I was pulling out my mobile phone to call an ambulance, I felt a strong push from the front that made me fall on my back. Following that five of the border police began to beat me severely. I heard the first soldier say to me: "do you know now what the law is", and began to call me filthy names.

Extracts of Al-Haq affidavit No. 1935/2004

Given by: Yasin Ibrahim Ahmad Silwadi (Resident of the village of Silwan, nearby Jerusalem, West Bank)

Since the outbreak of the *Intifada*, Al-Haq has documented an increase in the number of cases in which Israeli security forces have regularly resorted to brutality and inhuman and degrading treatment of Palestinian civilians in the OPT, often resulting in physical suffering or severe injuries. Such ill-treatment occurs involving the severe beating, bullying or humiliation of Palestinian civilians of all age groups by Israeli soldiers and border police take place on a daily basis, particularly at checkpoints and during detention.

In this regard, Al-Haq would like to reiterate its belief that the Palestinian prisoners' strike, beginning on 15 August 2004 and representing the largest such protests by Palestinian prisoners since 1967, was indicative of the much larger problem of consistent failure on behalf of Israeli authorities to respect the fundamental rights of Palestinians in their custody. This issue has remained the focus of documentation and repeated interventions by Al-Haq and other human rights organisations for decades. Since the beginning of the current *Intifada*, at least 40,000 Palestinians have been arrested at some point in their lives.

International law has universally upheld the long-standing customary principle against cruel, inhuman or degrading punishment. As an Occupying Power in the West Bank and Gaza Strip, Israel is legally bound to ensure a minimum level of legal protection for the Palestinian civilian population in the OPT under its effective control. In this regard, international humanitarian law entitles civilians in all circumstances to humane treatment and to respect

¹² Articles 27-43 of the Fourth Geneva Convention.

for their person, including their right to enjoy protection from slander, insults and humiliating punishment.¹³

Furthermore, even if measures are allegedly taken for security reasons, they are prohibited from derogating from the fundamental rights of the persons concerned, such as the right to be protected from torture.¹⁴ Moreover cruel treatment is a violation of the laws or customs of war, the prohibition of which is found in Common Article 3 of the Geneva Conventions.

FORCED TRANSFER AND DEPORTATIONS

Israeli authorities continued with their policy of forcible transfer and deportation of Palestinian civilians. In the case of forced transfer, Al-Haq expressed its concern in the past that the practice will become routine, and that “countless more Palestinians will have to undergo the traumatic experience of being displaced under duress”.¹⁵ Since the beginning of the *Intifada*, the forced transfers were increasingly used as a reprisal measure for acts that have allegedly posed security threats, or as part of a policy of collective punishment and measures of intimidation, particularly against family members of those who have committed military acts against civilians in Israel.¹⁶

Forced Transfers and Deportations/ West Bank		
	Forced Transfer	Deportations
Total	46	18
2002	23	
2003	21	
2004	2	

Article 49 the Fourth Geneva Convention, the policy of forced transfer of civilians remains prohibited under international law, “regardless of their motives”. In previous cases, Israel has attempted to invoke “assigned residence”. Nevertheless, the Convention stipulates that an Occupying Power may use assigned residence, and only for imperative reasons of security and as an exceptional measure, which makes this practice invalid and unlawful.¹⁷

In the case of deportations, Israeli authorities have deported Palestinians since it began its occupation of the West Bank and Gaza Strip in 1967. Traditionally, they have claimed that they are permitted by local law, in the form of the Defence Emergency Regulations 1945, nevertheless this practice remains illegal under international law.¹⁸ Since the *Intifada*, Israel deported 18 Palestinians to Europe following more than 35 days of siege by Israeli occupying forces of the Nativity Church in Bethlehem in May 2002.

¹³ Article 27 of the Fourth Geneva Convention.

¹⁴ As Article 32 of the Fourth Convention stipulates, civilians must be treated in a humane manner. Among the acts explicitly prohibited by this article are torture, corporal punishment and any measures of brutality of such character “...as to cause the physical suffering or extermination of protected persons in their hands.” In addition, Article 5 of the UDHR; the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment give meaning to this non-derogable international legal principle.

¹⁵ See Al-Haq *The Forced Transfer of Kifah and Intissar Ajuri*, Ramallah, 2002.

¹⁶ As reiterated by Article 33 of the Fourth Geneva Convention, “no protected person may be punished for an offence he or she has not personally committed”. In this regard it is interesting to note that although the Israeli High Court of Justice noted that a military commander may take into account the consideration of deterring others when making a decision to assign residence. See HCJ 7015/02 *Kifah Mohammed Ahmed Ajuri et. al v. IDF [sic] Commander*.

¹⁷ Furthermore, it remains Al-Haq’s position that the Defence Regulations themselves are unlawful. The fact that these Regulations were revoked by the British prior to leaving Palestine in 1948 and that they have not been used by the Jordanians confirms that they no longer constitute valid law which Israel is entitled to apply in the OPT. See Al-Haq, *Perpetual Emergency: A Legal Analysis of Israel’s Use of the British Defence (Emergency) Regulations, 1945 in the Occupied Territories*, Ramallah, 1989.

¹⁸ *Supra note 9*.

SETTLER VIOLENCE

On Sunday 29 December 2002, my 57-year-old father was complaining of pain in his right arm and in his chest. I immediately took him by car to the nearby village of Beit Rima, which is 5 kilometres away from our village. I arrived at the clinic of the village doctor at 11:50 am. After he had examined him, he requested me to transfer him immediately to the hospital in Ramallah. The village had only one ambulance that was already on its way to pick up a patient and transfer him. I decided therefore to take a cab. When we arrived at the eastern entrance of Ramallah, the driver and me approached the Israeli soldiers at the checkpoint to tell them that our patient was in critical conditions and to request permission to pass. They refused to let us pass, as a result of which the driver decided to take one of the by-pass roads that are designed for the use of the Israeli settlers. On the road we were followed by a white car with Israeli licence plates which made signs to us to stop. When we stopped, an Israeli settler came out pointing a gun at us. We told him that we had a sick person and requested an ambulance. He indicated that we should follow him with our car. When we reached a settlement, he took our IDs and handed them over to the Israeli soldiers at the entrance of the settlement. They searched the car and asked us to stand at the wall. The whole procedure took at least an hour and 15 minutes. After they let us go, it took us 40 minutes to reach the hospital. When I arrived at the emergency section, I was told by the doctors that my father had passed away prior to reaching the hospital.

Extracts from Al-Haq Affidavit No. 1397/2003

Given by: Ramzi Hussein Mahmoud al-Tamimi (Resident of the village of al Nabi Saleh, nearby the city of Hebron, West Bank)

Although the transfer by an Occupying Power of its civilian population into occupied territory is prohibited under international law and amounts to a war crime,¹⁹ to date nearly 400,000 Israeli settlers live in more than 150 settlements throughout the OPT.

Moreover, despite the fact that Israeli military guidelines provide for its law enforcement responsibility within settlements and vis-à-vis settlers, ample evidence indicates that they have failed to meet all the requirements of proper public administration and law enforcement regulations such as non-discrimination, fairness and effective action. Israeli settlers also benefit from extraterritorial status that enables them to be tried under Israeli penal law in Israeli civil courts.²⁰

Documentation by Palestinian and Israeli human rights organisations provide detailed accounts of Israeli law enforcement and military authorities permitting acts of vandalism and violence, including use of lethal force, against the Palestinian residents to continue at will. In many instances, attacks take place under the watch of Israeli security forces who take no real action to protect Palestinian civilians or put an end to the acts of violence when they occur against them.

Moreover, they have demonstrated a consistent failure to initiate thorough, impartial and effective official investigations into allegations of illegal conduct by Israeli settlers, such as attacks on their person, acts of vandalism and destruction of their private property. Even when complaints are filed, the petitioners argue that they are consistently dealt with in a

¹⁹ Article 147 of the Fourth Geneva Convention and Article 85 of the First Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts.

²⁰ B'Tselem, *Tacit Consent: Israeli Policy on Law Enforcement toward Settlers in the Occupied Territories*, March 2001, p. 5.

negligent manner.²¹ Not only is Israel obligated to protect Palestinians from settler violence due to their own Procedures, but international law places the duty upon the Occupying Power to ensure the well-being and protection of the Palestinian civilian population under its control. Failure to hold those who committed violations of international law accountable has perpetuated a culture of impunity amongst Israel settlers.

CONCLUSION

Since the beginning of the *Intifada*, Al-Haq and other human rights organisations, UN independent experts, UN treaty monitoring bodies and the UN General Assembly have all strongly condemned the violations of human rights and fundamental freedoms by Israeli authorities in the OPT, and have warned that the situation is spinning out of control.

Although many of these acts are deemed grave breaches of the Fourth Geneva Convention,²² very few cases of violations by Israeli occupying forces of Palestinians' rights committed have been investigated so far. Although Israel has a duty to ensure that those implicated in the systematic commission of a grave breach of the Fourth Geneva Convention are held accountable, and incidents are brought to the knowledge of military superiors, Al-Haq is particularly concerned that Israeli authorities neglect their duty to prevent the repeated commission of those crimes, or to punish them after they have been committed. The lack of accountability could only encourage soldiers to continue their illegal behaviour. Since the beginning of the Second *Intifada*, only 88 investigations have been opened regarding the death or injury of Palestinians by Israeli occupying forces, and have resulted in no more than 22 indictments.²³

Similarly although since the beginning of the *Intifada*, the Israeli High Court of Justice has considered dozens of petitions related to Israeli military practices in the OPT, focusing on such issues as the forcible transfer of Palestinians from the West Bank and Gaza Strip; the deliberate targeting of medical personnel in the OPT; the use of Palestinian civilians as human shields and the demolition of houses without prior notice,²⁴ an examination of these rulings brings into grave doubt the court's judicial independence and neutrality. It also demonstrates a pattern of interpreting international law to the benefit of the occupying forces and providing a stamp of approval for their actions, whilst systematically denying the rights of Palestinian civilians in the OPT.

In addition, Israeli authorities are denying Palestinians their fundamental rights through the creation of additional facts on the ground, such as the construction and expansion of settlements,²⁵ the development of an extensive network of bypass roads, and the construction of the Annexation Wall, all in violation of international law. Inspired by an underlying strategy of "Bantustanization", they result in the deprivation of thousands of Palestinians of their lands, homes and means of subsistence. As Al-Haq and others have warned in the past, such measures only undermine any existing opportunity for creating a viable, independent Palestinian state, which represents a fundamental right of the Palestinian

²¹ In September 2003, Al-Haq and 12 petitioners from Hebron submitted a petition against Israeli authorities on the grounds that Israeli security forces permit acts of violence against Palestinians in Hebron by Israeli settlers to continue at will. For petition see [Hwww.alhaq.org](http://www.alhaq.org)

²² Grave breaches constitute war crimes and are concerned with individual responsibility for breaches of the laws of war. According to Article 147 of the Fourth Geneva Convention, these include amongst others: willful killing, torture or inhuman treatment and willfully causing great suffering or serious injury to body or health, extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

²³ *Haaretz*, 18 August 2004.

²⁴ For more information see Al-Haq's joint intervention with the Palestinian Centre for Human Rights to the UN Commission on Human Rights, 60th Session, 15 March-23 April 2004, concerning Item 11(d) "Independence of the Judiciary, Administration of Justice and Impunity".

²⁵ Article 49 of the Fourth Geneva Convention prohibits an Occupying Power from either transferring its own population to the occupied territory.

people to self-determination,²⁶ and constitutes a pre-requisite for the achievement of a just and durable solution to the Israeli-Palestinian conflict.

In this regard, Al-Haq is particularly disturbed by the inaction of the international community in response to the further deterioration of the situation in the OPT, to the severe detriment of the Palestinian civilian population and their fundamental rights under international law. Statistics and figures regarding the toll of these violations confirm that the cycle of violence has reached a degree of such magnitude that the intervention of the international community has become an accentuating need. However resolutions and condemnations alone can do nothing to halt grave violations of human rights and humanitarian law taking place in the OPT. On the contrary, unless the International community takes serious and concrete measures to uphold its legal obligations to “respect and ensure respect” for the Fourth Geneva Convention, there will be no foreseeable end for this conflict. International law as a mere concept is not enough if it can not be enforced. With the *Intifada* entering its fifth year, Al-Haq considers it critical for the international community to display a rigorous commitment to settling this conflict in a manner that is consistent with the most fundamental provisions of international human rights and humanitarian law.

As events since the beginning of the current *Intifada* have proven, measures taken by Israel in contravention of its international legal obligations will not enhance its security, and that peace and security cannot be achieved without the protection of human rights and the rule of law at the international level. Peace initiatives that have been developed are likely to fail in providing a blueprint for a just and durable solution to the conflict if they do not take into consideration international law. In this regard, the Second *Intifada* serves as a reminder that there can be no peace in the Middle East without first and foremost ending the Israeli occupation, and implementing International law, including relevant UN resolutions.

As stated by UN Secretary General Kofi Annan in his address to the UN General Assembly on 21 September 2004, all states have a duty to ensure respect for the rule of law. “To do so, we must start from the principle that no one is above the law, and no one should be denied its protection”. In emphasising that legality should not be dictated by the powerful, he stated that:

the victims of violence and injustice are waiting...they notice when we use words to mask inaction. They notice when laws that should protect them are not applied”.²⁷

With this in mind, Al-Haq poses a question to the international community: How much longer must the victims of this conflict wait before their fundamental human rights are upheld?

²⁶ The principle of self-determination of peoples is a fundamental pillar of the UN Charter, and has also been affirmed in Common Article 1 of the ICESCR and ICCPR which state that self determination includes the right to “freely determine their political status and freely pursue their economic, social and cultural development.”. In the past, numerous UN bodies, such as the Commission on Human Rights in Resolution 2003/3, have upheld the right of the Palestinian people to self-determination as inalienable, permanent and unqualified.

²⁷ For full text see [Hhttp://www.un.org/webcast/ga/59/statements/sg-english.pdf](http://www.un.org/webcast/ga/59/statements/sg-english.pdf)H.