



**AL-HAQ**  
**25 Years Defending**  
**Human Rights**  
**(1979-2004)**



UN Commission on Human Rights  
60<sup>th</sup> Session  
15 March - 23 April 2004

**ITEM 11(d): INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,  
AND IMPUNITY**

**Written Intervention Jointly Submitted by Al-Haq and the Palestinian Centre  
for Human Rights**

*1 February 2004*

Al-Haq and the Palestinian Centre for Human Rights (PCHR) are gravely concerned by the ongoing failure of the Israeli High Court of Justice to uphold respect for rule of law by Israeli occupying forces in the West Bank, including Jerusalem, and the Gaza Strip. This includes in relation to Israel's international legal obligations as both a state party to international human rights and humanitarian treaty law, and in respect of international customary law. From the beginning of the occupation in 1967 to date, the Court has considered hundreds of petitions related to Israeli military practices in the Occupied Palestinian Territories (OPT). These petitions have focused on such issues as the use of force, access to humanitarian aid, land confiscation, settlements, deportation and forcible transfer of Palestinians, house demolitions, administrative detention, and the annexation of Jerusalem. An overview of rulings by the Court on such issues during the current *intifada* brings into grave doubt the independence and neutrality of the Court. This overview demonstrates a pattern of interpreting international law to the benefit of the occupying forces whilst systematically denying the rights of Palestinian civilians in the OPT.

**Forcible Transfer of Palestinians from the West Bank to the Gaza Strip**

In H CJ 7015/02 *Ajouri v Military Commander of the West Bank*, the High Court of Justice was asked to rule on the legality of the forcible transfer of West Bank Palestinians to the Gaza Strip, an act which is in breach of Article 49 of the Fourth Geneva Convention. Those individuals who had received transfer orders were alleged to have been involved in terrorist activities, as they were relatives of individuals who allegedly committed attacks against Israeli targets. The Court held that the State of Israel acted solely within the framework of Article 78 of the Convention, thus permitting, for imperative reasons of security, the "assigned residence" of some Palestinians. The Court stated that it "did not see any reason to examine the scope of application of Article 49." It should be noted that in 2003, at least 20 Palestinians have been forcibly transferred from the West Bank to the Gaza Strip.

**Use of Flechette Tank Shells**

Israeli authorities began using flechette tank shells in the Gaza Strip during the current *intifada*. These shells, which explode and project thousands of small metal arrows over an area up to 300 metres long and 94 metres wide, have killed 30 Palestinians. Their use was challenged in H CJ 8990/02 *Physicians for Human Rights, et al. v Military Commander of the Southern Region*. The petitioners emphasised that the use of flechettes in populated areas is a grave violation of international law, as the means and methods utilised during armed conflict are not unlimited; such choices must be balanced with the principles of proportionality, distinction and the prohibition of superfluous injury

and unnecessary suffering. While the Court recognised that the use of flechettes “entails increased danger that they will accidentally also hit persons who are not involved in the fighting,” they refused to intervene, noting that “the choice of the means of warfare that the Respondents use to thwart murderous terrorist acts before they occur is not among the subjects with which this court finds it appropriate to interfere.”

### **Violations Against Medical Personnel in the OPT**

Israeli occupying forces have regularly targeted medical personnel in the OPT. This issue has been raised several times before the Court, including in HCJ 2117/02 *Physicians for Human Rights v Military Commander of the West Bank*. In this case, the petitioners challenged the legality of Israeli military shooting at ambulances, preventing the evacuation of injured persons, and causing injury and death to medical personnel. The petition cited two instances in Tulkarem, one in which a UN ambulance had been shot at, killing the driver and injuring two other medical personnel, and the other in which a Red Crescent ambulance had been targeted, resulting in the injury of three medical aid workers. In its decision, the Court confirmed that medical crews should enjoy complete protection while performing their duties. However, it went on to rule that while the Israeli authorities were keen to apply international humanitarian law, isolated incidents in which ambulances were used unlawfully “forced” the authorities to take “necessary” means to prohibit such activities.

### **Unlawful Detention of Palestinians**

During the Israeli military incursions in April 2002 (“Operation Defensive Shield”), thousands of Palestinians from around the West Bank were arrested and detained. Israeli occupying forces detained many of these individuals in the Ofer Detention Camp. Conditions in Ofer were severe: prisoners were left outside in the cold, given inadequate food and water, subjected to ill-treatment and torture, and denied access to legal counsel. A petition, HCJ 2901/02 *HaMoked v Military Commander of the West Bank*, was submitted to the Court, asking it to intervene and ensure that the detainees were permitted to access to legal counsel. The Court noted that the right of a detainee to meet with legal counsel is a fundamental right. Despite the clear indication that there were insufficient checks in the system to ensure the rights of detainees, the Court went on to note that in some instances the right to legal counsel may not be exercised when doing so would be prejudicial to the security and safety of the public. Thus, effectively, the fundamental right of Palestinian detainees to reasonable access to justice was denied.

### **Use of Palestinians as Human Shields**

Israeli occupying forces have used Palestinian civilians as human shields in many instances throughout the current *intifada*. The use of this practice has been documented before, during and after the April 2002 incursions, and it is evident that Israeli authorities have adopted a permissive policy regarding human shields. In HCJ 3799/02 *Adalah v Military Commander of the West Bank*, the petitioners challenged the practice on the grounds that it is a blatant violation of the rights to life and dignity, the prohibition of ill-treatment, and numerous provisions of international humanitarian law, including the prohibition on compelling protected persons to serve in the enemy’s armed or auxiliary forces. Israeli military authorities then issued an order prohibiting this practice, but permitted the “neighbour practice,” whereby individuals would be asked to knock on doors, check suspicious objects, and walk in front of soldiers as they surrounded their targets. This practice was also challenged, despite Israeli claims that they only used “assistants” if the individuals agreed and their life was not in danger. The Court then permitted this “prior warning” exception, although the petitioners noted that no Palestinian would voluntarily consent to assist the occupying forces in carrying out military operations. The case was most recently heard before the Court in July 2003; it remains pending.

## **Demolition of Palestinian Houses Without Prior Notice**

Demolitions of Palestinian homes and property is a long-term policy of the Israeli occupying forces. Houses are demolished in various contexts, including their proximity to illegal settlements and bypass roads, during illegal and indiscriminate shelling of Palestinian civilian areas; on the basis that they were built in violation of the Israeli authorities housing permit “policy;” and as a collective penalty applied to families of individuals suspected of involvement in attacks against Israeli targets. Numerous petitions have been brought before the Court regarding varying types of house demolitions, and although in a few instances it acknowledged the hardship imposed on family members of “wanted” individuals, it typically considers it to be justifiable in light of the greater concern of military necessity. This issue was raised again during the April 2002 incursions in H CJ 2977/02 *Adalah v Military Commander of the West Bank*, after Israeli occupying forces demolished houses with no prior notice. In its decision, the Court allowed for the demolition of houses without prior notice. Further, although the State acknowledged during the hearing that some demolitions began while people remained inside, the Court declined to intervene, noting that the State had “presumably - and no arguments to the contrary have been presented to us - instructed and will instruct the fighting forces to do all that is needed to avoid the possibility of causing unnecessary harm to the innocent.”

The Israeli High Court of Justice has consistently disregarded the principle of judicial independence in the interests of the Israeli government and military and has systematically failed to hold the Israeli authorities accountable in accordance with international legal obligations. The Court has consistently refused to recognise the *de jure* applicability of the Fourth Geneva Convention to the OPT, and has maintained Israel’s selective position regarding the applicability of international human rights law, thereby undermining the collective and individual rights of Palestinians. The Court has become an entity whereby the Israeli government and military can obtain an apparent stamp of legitimacy for their unlawful practices. Since the Court does not represent an effective remedy for Palestinians, victims of Israeli human rights violations are forced to seek alternative jurisdictions, including under the principle of universal jurisdiction.