



REPRESSION OF NON-VIOLENT PROTEST IN THE  
OCCUPIED PALESTINIAN TERRITORY:

# CASE STUDY ON THE VILLAGE OF AL-NABI SALEH



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Any errors are those of the author alone.





# TABLE OF CONTENTS

<b>1. Background</b>	<b>7</b>
<b>2. Al-Nabi Saleh Village</b>	<b>9</b>
<b>3. Suppression of Non-violent Protests</b>	<b>11</b>
3.1 Excessive Use of Force Against Protesters	11
3.2 Targeting Residents in Their Homes	15
3.3 Damage and Destruction of Property	18
3.4 Intimidation: Arbitrary Arrests, Beatings, Night Raids	20
<b>4. Law Applicable to the Occupied Palestinian Territory</b>	<b>23</b>
<b>5. Violations of International Humanitarian Law</b>	<b>24</b>
5.1 Fundamental Rights of Protected Persons	24
5.2 Protection of Civilian Property	25
<b>6. Policing Protests in Occupied Territory: the Law Enforcement Paradigm</b>	<b>26</b>
<b>7. Violations of Human Rights Law</b>	<b>27</b>
7.1 The Right to Life	27
7.1.1 Rules of Engagement	28
7.1.2 Misuse of Weapons	29
7.2 Freedom of Assembly	32
7.3 Right to Liberty and Security of the Person and Privacy	33
7.4 Right to Health	34
<b>8. Conclusion</b>	<b>35</b>





# 1 Background

Since construction of the Annexation Wall began in the West Bank in 2002, grassroots non-violent protests have commenced in villages where land is being appropriated. These movements, referred to as popular committees, are a reflection of the growing willingness by Palestinian communities who have witnessed the steady annexation of their land – initially by settlements and more recently by the Wall – to demand their rights. Popular committees are present in several villages across the Occupied Palestinian Territory (OPT)<sup>1</sup> and their weekly protests have attracted the support of international and Israeli activists.

Demonstrations against the Wall and settlement expansion are met with an intense campaign of violence, intimidation and arrests by Israeli occupying forces. Over the past two years, Israeli authorities have intensified efforts to suppress protests, as evidenced through the increased use of violence against protesters, reckless and excessive use of weapons, and tactics that punish residents of towns and villages where demonstrations are held. According to Al-Haq documentation, 13 people have been killed in protests across the West Bank since 2004.

The people of al-Nabi Saleh village in the West Bank governorate of Ramallah have been holding weekly non-violent activities in objection to the expansion of the Israeli settlement of Halamish since December 2009. The actions of the Israeli occupying forces in al-Nabi Saleh are indicative of the amplification of repressive tactics and reflect the practices of the Israeli military against non-violent protest across the West Bank.

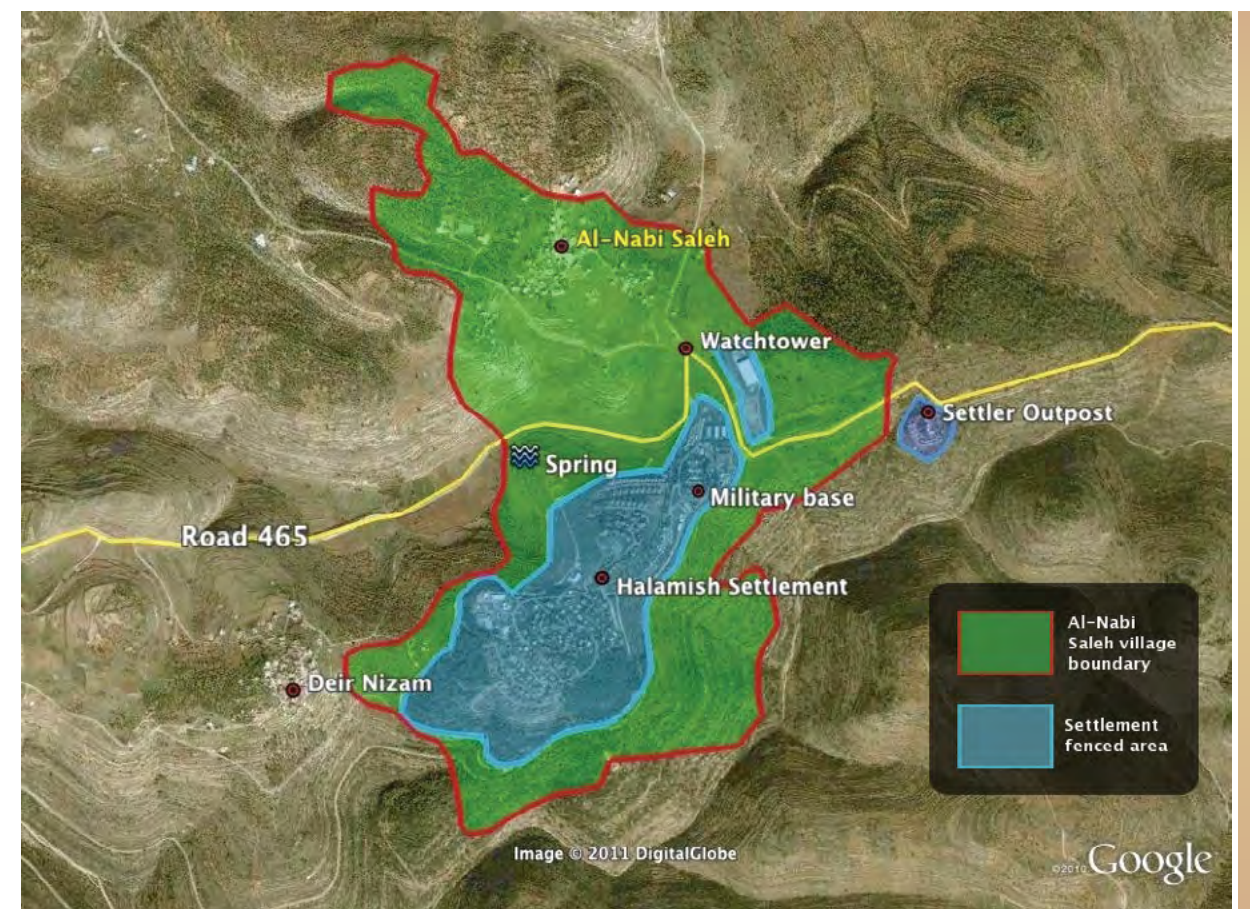
<sup>1</sup> Popular committees are present in villages including Jayyous, Budrus, Beit Surik, Biddo, al-Walajah, Ni'lin, Bil'in, Ma'sara, Beit Ummar, Iraq Burin and al-Nabi Saleh.





## 2 Al-Nabi Saleh Village

Al-Nabi Saleh is located 21 kilometres northwest of Ramallah and has a population of approximately 534.<sup>2</sup> According to the village council, the village and its agricultural land cover an area of around 4,800 *dunums*.<sup>3</sup> Located in the southern part of al-Nabi Saleh is the Israeli settlement of Halamish, which was established in 1977. The settlement, with a population of around 1,054 settlers and an area of approximately 759 *dunums*, takes land from the neighbouring Palestinian villages of al-Nabi Saleh and Deir Nitham, of which approximately 250 *dunums* are privately-owned.<sup>4</sup> A bypass road, which connects settlements in the central and northern West Bank to Tel Aviv, separates Halamish from al-Nabi Saleh.



Map of al-Nabi Saleh and neighbouring settlement of Halamish – Al-Haq ©

<sup>2</sup> Palestinian Central Bureau of Statistics 2007, Census data for al-Nabi Saleh <<http://www.pcbs.gov.ps/CensusInfo/>> accessed 1 December 2011.

<sup>3</sup> 1 dunum = 1000 square meters.

<sup>4</sup> Peace Now, 'West Bank Settlements – Facts and Figures – Full List of Settlements' (June 2009) at <<http://peacenow.org.il/eng/node/297>> accessed 2 December 2011.



The inhabitants of al-Nabi Saleh lodged a legal complaint to challenge the appropriation of their lands. In 1978, the Israeli High Court ruled that the confiscation was illegal and that the lands had to be returned to their rightful Palestinian owners.<sup>5</sup> This decision, like countless other decisions of the Israeli courts in relation to illegal land appropriation in the OPT, was not complied with or enforced. Recourse to the Israeli justice system has not improved the situation for the people of al-Nabi Saleh and residents continue to witness the steady confiscation of their lands.

In December 2009, settlers from Halamish expropriated privately-owned Palestinian land around the natural spring of *'Ayn al-Qaws*, transforming into a park and renaming it *Mi'yan Maeer* in Hebrew. Despite a pending petition by the Palestinian landowner and representatives from Al-Nabi Saleh and Deir Nitham to the Israeli High Court to demolish the settler-built structures surrounding the spring, this Israeli military has restricted Palestinian access to the water source while allowing settlers free reign.<sup>6</sup> In addition to the confiscation of the spring, al-Nabi Saleh residents have also lost hundreds of their olive trees to settler attacks over the past few years.

Aggravated by decades of land-grabs and settlement expansion, and with the Occupying Power's persistent failure to provide legal protection against further confiscation and settler attacks, in December 2009 local inhabitants of al-Nabi Saleh began non-violent marches towards the spring in an attempt to reclaim it. As the protests became a regular weekly occurrence, Israeli occupying forces began employing a number of repressive methods to suppress them.



5 HCJ 321/78, *Tamimi v. Defense Minister* (unpublished).

6 B'Tselem, 'Show of Force: Israeli Military Conduct in Weekly Demonstrations in a-Nabi Saleh' (September 2011) 8.

## 3 Suppression of Non-violent Protests

Since January 2010, Israeli occupying forces have been deliberately creating a hostile atmosphere in al-Nabi Saleh every Friday, issuing military orders to declare the village a closed military zone, deploying troops and controlling movement into and out of the area.

The Israeli military justifies its suppression of non-violent protests in the West Bank through Military Order No. 101 – "Order Regarding Prohibition of Incitement and Hostile Propaganda Actions."<sup>7</sup> Issued in 1967, this order forbids Palestinian congregations of more than ten people around activities concerning political affairs, or activities that are considered political, without obtaining permission from the Military Commander of the area. This military order gives Israeli soldiers vast powers to suppress protests and imprison participants for extended periods of up to ten years.<sup>8</sup>

The Israeli occupying forces use Military Order No. 101 to prohibit any activity aimed at protesting Israel's illegal policies in the OPT, and this is particularly evident in al-Nabi Saleh. Every week, military orders are issued by the Israeli occupying forces to create closed military zones around areas where non-violent protests take place and soldiers use various types of weapons against protesters who gather there. Under this military order, Israeli forces arrest participants and organisers of the grassroots movement in al-Nabi Saleh, accuse them of incitement, issue long prison sentences and impose large fines.

Israeli forces have intensified enforcement of this order since the beginning of 2010.<sup>9</sup> In March 2011, two members of the al-Nabi Saleh popular committee; Mr. Naji Mohammad Tamimi, 48 years old, and Bassem Mohammad Tamimi, 44 years old, were arrested on the basis of Military Order No. 101, allegedly for organising weekly demonstrations.<sup>10</sup> According to Al-Haq field documentation, on 28 June 2011, Naji was convicted for incitement, sentenced to a year's imprisonment, and fined 10,000 Israeli shekels (approximately 2,650 USD), while Bassem remains in custody as criminal proceedings against him continue.

### 3.1 Excessive Use of Force Against Protesters

The Israeli military's use of force to suppress non-violent protest ranges from the grossly negligent to the wilful endangerment and assault of civilians; both those involved in the demonstrations and other residents of the village.

7 Israel Defence Forces Order No. 101 Order Regarding Prohibition of Incitement and Hostile Propaganda Actions (1967), unofficial translation <[http://www.btselem.org/sites/default/files/19670827\\_order\\_regarding\\_prohibition\\_of\\_incitement\\_and\\_hostile\\_propaganda.pdf](http://www.btselem.org/sites/default/files/19670827_order_regarding_prohibition_of_incitement_and_hostile_propaganda.pdf)> accessed 1 December 2011.

8 R. Shehadeh, *Occupier's Law: Israel and the West Bank* (Institute of Palestinian Studies, Beirut, 1990) 3.

9 B'Tselem, 'The right to demonstrate in the occupied territories' (Position Paper, July 2010) 3.

10 Program and Information Packet of the 6th Bil'in Annual Conference on Popular Resistance, (20-23 April 2011) 28. See also M. Perry, 'When Montgomery comes to Nabi Saleh' *Al Jazeera Online*, (28 April 2011) <<http://english.aljazeera.net/indepth/opinion/2011/04/2011427184153217415.html>> accessed 2 December 2011.

In testimonies, inhabitants of al-Nabi Saleh describe how soldiers erect checkpoints at the village entrances and forbid residents from going to their lands outside the village to protest the confiscation. They also recount the manner in which soldiers begin attacking protesters as soon as they come into view.



Israeli forces block main entrance into al-Nabi Saleh to prevent protesters from marching to the Spring – July 2011, Al-Haq ©

Nariman Mahmoud al-Tamimi, a 36 year old paramedic from the village who is consistently present at the protests, has witnessed Israeli occupying soldiers use teargas grenades to stop the protests as soon as they begin. Israeli soldiers regularly launch teargas canisters and grenades from what appear to be M16-style weapons, and in retaliation, some protesters respond by throwing stones. Israeli occupying forces are also known to often use rubber-coated metal bullets during protests.<sup>11</sup>

In some cases, soldiers in close proximity to the protests have deliberately launched teargas canisters and sound grenades at non-violent protesters or observers. Moreover, in a number of documented incidents, Israeli forces continued to launch teargas canisters despite the condition of the victims and prohibited paramedics from reaching areas where they were needed. In certain instances where victims suffered injury, soldiers have also arrested and detained them.

I was standing and observing the demonstrations next to where some journalists were standing; ten metres away there were many military army jeeps. [...] Some of the soldiers began firing sound grenades at the journalists standing next to me, and one grenade shattered the windshield of a press car. Neither the journalists nor I moved. When the ambulance came to carry an injured man named Atallah Tameem Hassan, I followed the ambulance. As soon as I moved, a soldier standing ten metres away launched a sound grenade and a cylinder gas canister in my direction. I had been

<sup>11</sup> Al-Haq Affidavit 5793/2010.

looking at the soldier to see whether he would shoot or not, as he had been pointing his gun at me even before I moved. The gas canister hit me on my right leg, close to my ankle. I felt tremendous pain and fell on the floor; I was bleeding heavily from a wound around six centimetres long. It took a few moments for someone to come to my aid because the soldier had fired again towards the back of the ambulance causing the gas to surround me.

Extract from *Al-Haq Affidavit 5837/2010*. Given by Ursula Saleh Ayyoub, a resident of al-Nabi Saleh, Ramallah governorate.

In a similar case, soldiers targeted a group of local villagers assisting a family whose home was hit by a teargas canister. Majed Deifallah Tamimi, 18 years old, was injured while outside the house

I was there with a group of women and relatives of the neighbourhood who were trying to enter the house and save whoever was inside it. Majedah al-Tamimi was choking from the intensity of the gas. When the soldiers saw the people gathering at the house they fired an intense volley of live bullets and gas. [...] During that time I saw a long-range propelled gas grenade made of metal with a thin plastic covering and weighing around 300 grams crash to the ground and then bounce back up and injure my leg at the left knee. I fell straight to the ground and when I looked at my leg I saw bone and torn flesh. A number of people gathered around me and took me to Salfit Public Hospital. An examination revealed there were ten fractures in my leg which required surgery.

Extract from *Al-Haq Affidavit 6166/2011*. Given by Majed Deifallah Tamimi, a resident of al-Nabi Saleh, Ramallah governorate.

Israeli occupying forces have often justified their excessive use of force as a response to stone-throwing by village youths during the protests. However, the documentation collected demonstrates that the use of force is not directly related to stone-throwing or any other alleged physical threat to the soldiers' safety, and seems instead to be targeted against the protest as a movement.

In cases where Israeli forces have actually encountered village youth who throw stones during protests, soldiers have responded with disproportionate force to the actual threat posed. In a number of incidents, soldiers have not hesitated to use force, even when not directly threatened by stone throwing.

On 10 August 2010, an 11-year-old child, Abdel-Karim Saleh Ayyoub, was hit behind his left ear by a rubber-coated metal bullet fired by a soldier. Louai Abdel-Razzak Tamimi, 18 years old, witnessed the incident.

Five soldiers stood near the jeeps and were firing sound bombs, teargas canisters and rubber-coated metal bullets towards the youth. [...] The youth – or rather some of them – were throwing stones at the soldiers. As one of the soldiers aimed his rifle at us, me and the young men around me – including Abdel-Karim – ran back as they started firing rubber-coated metal bullets towards us. I ran about ten metres away, when I heard Abdel-Karim shouting “my head...my head,” so I looked back and found him laying on the ground. About 15 metres from him stood a soldier who was continuously shooting rubber-coated metal bullets and another, who I could not see, was firing teargas canisters in our



direction. I went back to help Abdel-Karim, who was crying, and noticed that a teargas canister had landed two metres away from him. I lifted him as blood poured from the back of his left ear.

Extract from *Al-Haq Affidavit 5792/2010*. Given by Louai Abdel-Razzak al-Tamimi, a resident of al-Nabi Saleh, Ramallah governorate.

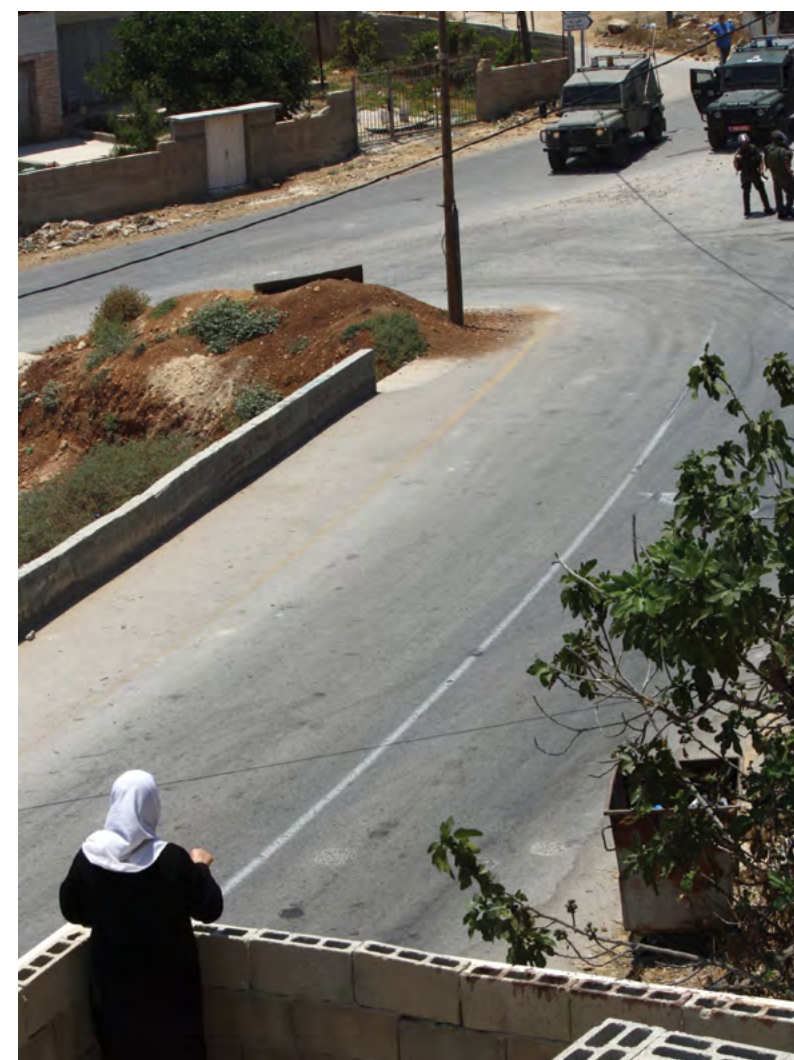
On 5 March 2011, Iyab Afdal al-Barghouthi, a 15-year-old child resident of the village, was shot while participating in the weekly demonstration. Witness testimony shows that the child was standing in the front yard of a building and throwing stones up at soldiers on the second floor who were visible through a window. Upon spotting the child, an Israeli soldier fired a rubber-coated metal bullet directly at him from above. The bullet entered around six centimetres deep into the child's head. Iyab was transported to the hospital where, after an operation, he remained unconscious for ten days and spent the following two weeks in the intensive care unit. The child still suffers from cramping in his face as a result of damage to the nerve tissue.<sup>12</sup>

Village residents involved in the demonstrations have also been targeted by Israeli soldiers when no protests are taking place. Soldiers have entered the village during the week, making patrols and provoking local youth who have reacted by throwing stones. On 2 January 2011, Sharaf Fadel Tamimi, 18 years old, was hospitalised after being shot with 12 rubber-coated metal bullets fired at him from a distance of ten metres. While there had been stone throwing directed towards the military jeep previously, at the time he was shot, Sharaf was attempting to run away from a soldier who was directly targeting him, and who made no attempt to arrest him.<sup>13</sup>

### 3.2 Targeting Residents in Their Homes

During the Friday protests, Israel's indiscriminate use of force is not limited to those involved in the protests, but is also directed against the residents of the village who attempt to stay safe in their homes. In a number of documented cases, Israeli soldiers have fired teargas or rubber-coated metal bullets in instances where people were standing on rooftops, passing by the area, or watching events by their windows. The soldiers often target homes by launching teargas canisters or by spraying "skunk," a foul-smelling chemical substance, directly at them.

Residents estimate that Israeli soldiers fire approximately 400-500 teargas canisters during each weekly demonstration. They often shower the village with canisters through mortars mounted on military jeeps that release about 20 gas canisters at once. The gas spreads densely all over the village in the form of thick clouds that block vision and cause panic and fear, particularly amongst women, children, the sick and the elderly. The canisters break through windows of village homes, causing those inside the building to suffer from gas inhalation.



Elderly resident of al-Nabi Saleh whose house has been regularly targeted by soldiers – July 2011, Al-Haq ©

The physical and psychological impacts of the Israeli military's actions during the protests are significant, and effects are compounded by the regularity and frequency by which such actions are taken. Many families are forced to leave the village every Friday to avoid the danger, others choose to stay to protect their homes and property from fire or to stay in the village in solidarity with their relatives, risking serious injury.

Al-Nabi Saleh resident Najla Ayyoub, 59 years old, describes the anxiety her family suffered after two teargas canisters penetrated her home on 29 January 2010.<sup>14</sup> A number of families, including

<sup>12</sup> Al-Haq Affidavit 6163/2011.

<sup>13</sup> Al-Haq Affidavit 6162/2011.

<sup>14</sup> Al-Haq Affidavit 5263/2010.





Teargas fired at the entrance of a home in al-Nabi Saleh – July 2011, Al-Haq ©

about ten children, were gathered inside Najla's home when rubber-coated metal bullets and teargas canisters were fired at the house, smashing the windows and causing a fire to break out. Trapped inside the home and in a state of panic, some family members attempted to get outside while others tried, unsuccessfully, to keep the children safe from the gas in another room. The children's fear and subsequent escape outside through the windows was captured on video.<sup>15</sup>

On 10 December 2010, Zeinab al-Tamimi, 20 years old, was standing with her two-year-old daughter on her second floor veranda when a gas canister penetrated their glass window. The smell of gas spread throughout the house and both Zeinab and her daughter were suffocating from the effects of the gas. The child was crying and screaming inconsolably. Zeinab enlisted the help of some village youth to rescue her child from the veranda. They brought a small wooden ladder and pushed it against the wall, but it did not reach all the way up to Zeinab. Fearing the density of the gas, the mother dropped her child into the arms of the people below in an attempt to save her life. As a result of this incident, the child is suffering from severe psychological trauma.<sup>16</sup>

Residents of the village with health problems are particularly vulnerable during the suppression of the weekly protests. Halima Yousef Tamimi, 41 years old, resides at the northern entrance of al-Nabi Saleh and suffers from tachycardia (accelerated heart rate). Teargas enters her home on a weekly basis, causing her to choke, and she has twice been transported to hospital. However, Israeli military checkpoints often block the entrances and exits of the village, which prevent her from seeking treatment.

Breathing with great difficulty from the streams of tears, I began to vomit copiously at which time my husband carried me outside to an outdoor space, but the gas had spread everywhere. I was unable to go to the hospital because of the checkpoint blocking the entrance and exit of vehicles to and from the village. [...] My husband took me to my sister's house where there was less gas, and I stayed there until 10:00 pm. However, during the night I did not improve and felt a great pain in my lungs and was unable to move. The following day at 7:00 am, my husband took me to Ramallah hospital and, after carrying out initial examinations, they pumped my stomach and the doctor informed me that due to the large amounts of gas I inhaled, the gas had reached my intestines. [...] For around ten months we have been suffering from gas grenades that are fired directly at the house. No less than four gas grenades are fired every time, and out of each round, one of the grenades falls inside the house. [...] This is the second time I have been taken to hospital to have my stomach pumped because of gas inhalation.

Extract from *Al-Haq Affidavit 5744/2010*. Given by Halima Yousef al-Tamimi, a resident of al-Nabi Saleh, Ramallah governorate.

<sup>15</sup> 'Nabe Saleh Demonstration (Part 1 of 3): House Teargassed' (29 January 2010) at

<<http://www.youtube.com/watch?v=tU-64sv2z8I&feature=BFa&list=ULgsN4o4pDNcw&index=1>> accessed 2 December 2011.

<sup>16</sup> Al-Haq Affidavit 6165/2011.



### 3.3 Damage and Destruction of Property

Teargas canisters fired by Israeli soldiers using mortars installed on jeeps have caused significant damage to many houses in the village. In addition to the residents who suffocate from inhaling the gas, furniture, curtains, and carpets are burned, glass windows are shattered and the smell of gas or “skunk” permeates homes for weeks after the incident. Inhabitants often have to leave their homes to have them ventilated and cleaned. Damage occurs regularly and, week after week, many families are forced to clean and repair their homes, replacing damaged furniture, windows, household items and plants.



Window of al-Nabi Saleh home broken by teargas canister – July 2011, Al-Haq ©

On 22 October 2010, Israeli soldiers fired two teargas canisters at the home of Maha Abd al-Hamid Ayyoub while she and her family were outside of the village. Upon their return, the family found that a fire had broken out in the house, caused by teargas canisters landing on a mattress. Repairs to the house cost approximately 10,000 USD, as well as considerable inconvenience as the family was forced to stay with a relative for ten days while work was carried out.<sup>17</sup>

<sup>17</sup> Al-Haq Affidavit 5836/2010.

There are many homes in the village where glass windows have been broken by teargas and rubber-coated metal bullets. Khitam al-Tamimi’s two-storey house is located at the main entrance of al-Nabi Saleh and is subject to teargas by Israeli soldiers on a weekly basis. Since the beginning of the protests, about 12 windows have been broken in her house by gas canisters, which have also caused partial curtain and carpet fires. The family has covered the windows with reinforced wooden boards and with carpets on the second floor because of the high cost of weekly glass replacement. Although this blocks the sun and leaves the first floor of house devoid of natural light, the family cannot afford the continuing cost of replacement.

In addition to teargas, the village is sprayed weekly with a chemical “skunk” substance, which causes great damage with long-lasting effects. Residents report that the substance is sprayed through a water cannon towards houses and on top of roofs, causing contamination of water supplies and killing plants and crops. The chemical, of unknown composition, smells foul and absorbs into surfaces including wood, fabric and clothing.

The driver directed the hose, which was fixed on top of the car, towards the house. The substance began to come out of the hose and was sprayed intensely towards the house. It was sprayed all over the balcony, the doors, and air vents, and also towards the roof of the house where it reached the water tank located there, and mixed with the water in the tank. The driver continued to spray the house in this manner for around a quarter of an hour, and I became very angry because of the driver’s purposeful spraying our house with this extremely bad-smelling substance. Meanwhile I became nauseous and felt that I had to get away from the smell, so I went out into the yard of the house and threw stones at the car until it left. I was very angry and I screamed madly, and when the car left I began cleaning the house, which took two continuous days, using every known cleaning material. I used entire containers, but the smell remained in the house for around a month, and even now because of its saturation into the wooden doors we still smell the substance when the weather is sunny. We also changed the water tank because the substance had gotten into it, and the crops in the garden of the house were also destroyed. We are very ashamed when visitors come to us and recoil at the stench.

Extract from *Al-Haq Affidavit No. 6164/2011*. Given by Khitam Faraj al-Tamimi, a resident of al-Nabi Saleh, Ramallah governorate.



### 3.4 Intimidation: Arbitrary Arrests, Beatings, Night Raids

Military repression of the protests in al-Nabi Saleh encompasses a range of tactics including arrests, night raids and assaults. There have been incidents of threats being made directly to residents and members of al-Nabi Saleh village council, who report that they receive telephone calls from an unidentified caller demanding the end of the protests and threatening that people of the village will be subject to death and brutal punishment.

Between December 2009 and April 2011, 71 people were arrested on protest-related charges,<sup>18</sup> 18 of whom were children.<sup>19</sup> Large fines, ranging from 5,000 to 15,000 Israeli shekels (approximately 1,325 - 3,980 USD), have also been imposed on protesters and organisers. Villagers are also concerned about the level of violence exerted by the Israeli forces against women and girls during the weekly demonstrations, which prevents female residents of the village from participating.

Around ten soldiers had surrounded my sister, and others were holding her, hitting her with batons and the butts of rifles, and kicking her. I moved towards her to release her from their hands. [...] Four soldiers surrounded me, hitting me with sticks and rifle butts and kicking me. I fell down on the ground and the soldiers spread out around me, two of them carried me by my hands, two others by my feet, and they dropped me into the jeep. [...] They took me to the settlement of Halamish, which lies around one kilometre south of the last houses in our village. During these events I did not see any female soldiers, they were all male. [...] The interrogator accused me of trying to grab a female soldier's weapon. I told him there were no female soldiers in the village when the clashes occurred and when they arrested me but he insisted on his position. He accused me of hitting the soldiers and resisting arrest.

Extract from *Al-Haq Affidavit No. 5265/2010*. Given by Manal Abd-al-Hafith Tamimi, a resident of al-Nabi Saleh, Ramallah governorate.

Israeli occupying forces usually conduct arrest operations late at night and, in more recent developments, have been conducting house raids where soldiers are taking photographs of all males, including children, present in the home. According to the head of the village council, such incidents occur regularly in the village.<sup>20</sup>

In another documented incident, at around midnight on 16 January 2011, Israeli soldiers entered the house of Iqbal Mahmoud Ayyoub, 46 years old, to take photographs of her son, Islam, 14 years old, as well as her husband, Saleh Ayyoub Ayyoub, 50 years old.<sup>21</sup> A week later Israeli forces entered the house late at night, assaulted family members and arrested Islam in circumstances that created fear and panic for the child. Following his arrest, Islam was taken to a location unknown to his family and held for 48 hours. Charged with throwing stones at soldiers, Islam appeared before Ofer military

<sup>18</sup> Bil'in Annual Conference (n 10) 28.

<sup>19</sup> *Ibid.*

<sup>20</sup> Some of these incidents have been documented on video. Please see, Defence for Children International, Palestine Section, 'Statements' (1 March 2011) <<http://www.dci-pal.org/english/display.cfm?DocId=1802&CategoryId=1>> accessed 1 December 2011, see also 'Middle of the night in al-Nabi Saleh' (10 November 2011) at <[https://www.youtube.com/watch?v=jnb6z5HZ34&feature=player\\_embedded#](https://www.youtube.com/watch?v=jnb6z5HZ34&feature=player_embedded#)> accessed 3 December 2011.

<sup>21</sup> *Al-Haq Affidavit 6072/2011*.



Israeli soldiers conduct night raid on Bassem Tamimi's home in al-Nabi Saleh – November 2011, photo taken by Nariman Tamimi

court where the judge gave the family a sequence of unmanageable and arbitrary options regarding their son's punishment for his alleged offences, including a proposal to take Islam away from al-Nabi Saleh and force him to live in Ramallah, away from his family.

Islam's father, Saleh Ayyoub Ayyoub, describes the court session and the proposed penalties:

He [the Judge] asked me to rent a house for him [Islam] or provide him with a dwelling in Ramallah with a land line phone and two guarantors who possessed blue [Israeli] identity cards. Islam was to stay inside the house 24 hours a day. When I mentioned to him that Islam is a student he said that this does not concern him. In case the police, the prosecutor or the intelligence call the number they have for Islam twice and do not find him then they are entitled to fine the guarantors an amount of 10,000 shekels each and issue an arrest warrant for Islam. The judge gave me three days to get the house ready, give them the phone number and provide them with the guarantors. [...] On Sunday 30 January 2011, I went to Ofer detention centre to attend the scheduled court session. I decided to reject the judges proposal and the lawyer conveyed my rejection to the judge. The judge asked me to provide an alternative. I said that the alternative is to take him to a proper court and to sentence him in accordance with proper proceedings. The judge requested that the lawyer ask me if I am willing to commute Islam to Benjamin Military Centre from 8:00 am to 5:00 pm for an unlimited period of time. I refused. [...] The judge issued a sentence, imprisoning Islam for about 100 days.

Extract from *Al-Haq Affidavit 6042/2011*. Given by Saleh Ayyoub Ayyoub, a resident of al-Nabi Saleh, Ramallah governorate.



During protests, Israel has used Israeli forces disguised as Palestinians (*Mustaribeen*), who are dressed in civilian clothes and carry hidden weapons. They often mingle with protest participants before suddenly attacking and arresting them.

The following statement by Basel Abd'Allah Ayyoub, 12 years old, describes the tactics of these special forces:

I stayed around 30 metres away from the watch tower and there was a group of youths with me and some foreign protesters. After about an hour, I heard the youths shouting and telling me to run away, and I fled without knowing what happened. I fell over on the ground after my leg got stuck in some brambles. When I fell, a youth around 20 years old came over to me and told me to go with him. He was carrying a small pistol, and he was wearing a green and white shirt and jeans, and he had tied a band in the colours of the Palestinian kuffiyah to his forehead and most of his face was covered except for his eyes. I asked him who he was and he said in Arabic, which he spoke well, that he was a protester from Birzeit University. I walked with him and he led me and took hold of my hand until the military tower, and there he told me to climb up onto a military jeep which was standing by the watch tower and he climbed up with me. The jeep set out towards Halamish settlement and there he brought me down to the settlement yard and began hitting me with a stick that was in his hand, and asked me to identify the youths who were with me in the protest and tell him their names, but I refused and started to cry from fear and pain, and he kept hitting me in the same way for around ten minutes.

Extract from *Al-Haq Affidavit No. 6167/2011*. Given by Basel Abd'Allah Ayyoub, a resident of al-Nabi Saleh, Ramallah governorate.

## 4 Law Applicable to the Occupied Palestinian Territory

It is widely accepted by the international legal community that Israel, as the Occupying Power in the OPT, is duty-bound to comply with its obligations under both international humanitarian and human rights law.<sup>22</sup> Under International human rights law, any derogation from human rights norms must be temporary and cannot be continuous, while customary human rights norms, such as those laid down in the Universal Declaration of Human Rights and those derived from *jus cogens* norms, are applicable in all situations, including during times of war.<sup>23</sup> Moreover, the two core UN international human rights instruments, which Israel has ratified, apply not only to the territory of a specific state, but to all persons under the jurisdiction or effective control of the state.<sup>24</sup>

Although Israel's High Court of Justice has accepted that the Hague Regulations apply in the OPT on the basis of their customary nature,<sup>25</sup> in practice, the Court interprets the Regulations in a narrow sense in order to legitimise the actions of the military.<sup>26</sup> Moreover, despite having ratified the Geneva Conventions in 1951, Israel refuses to accept their *de jure* applicability in the OPT. Instead, Israel claims that it will abide with the "humanitarian provisions" of the Fourth Geneva Convention, but has failed to identify the specific articles that it considers as humanitarian.<sup>27</sup> With respect to the application of international human rights law – arguably a higher level of rights and standards afforded to all people – Israel asserts that this framework does not apply to Palestinians in the OPT.<sup>28</sup>

In spite of the applicability of both legal regimes to the OPT, Israel does not fully accept the applicability of these laws to the Palestinian population. The actions of the Israeli occupying forces in repressing non-violent Palestinian protests reflect this position.

22 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion on the Wall)* (Advisory Opinion) ICJ Rep 2004, paragraphs 101-106 and 127-130. See also, UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004), UN Doc. CCPR/C/21/Rev.1/Add13.

23 T. Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford University Press, Oxford, 2009) 80.

24 UN GA Official Records, 25th Session, 'Respect for Human Rights in Armed Conflict: Report of the Secretary-General' (18 September 1970) UN Doc. A/8052, Annex 1: "General Norms Concerning Respect for Human Rights in their Applicability to Armed Conflicts." See also, UN Human Rights Committee, General Comment 31 (n 22), and *Advisory Opinion on the Wall* (n 22).

25 HCJ 302/72, *Hilu v The Government of Israel, et al.* This decision consolidated the practice that customary international law, unless contrary to internal law, is considered to have been absorbed into Israeli law without the need for special legislation. See also HCJ606/78, *Ayyoub v Minister for Defence (the Beit El case)*.

26 M. Quply 'The Application of International Law in the Occupied Territories as Reflected in the Judgements of the High Court of Justice in Israel' (1992) <<http://quplylawfirm.com/wp-content/uploads/2010/10/Application-of-international-law-in-occupied-territories.pdf>> accessed 2 December 2011

27 Al-Haq, 'Legitimising the Illegitimate? The Israeli High Court of Justice and the Occupied Palestinian Territory' (2010) 12.

28 The Israeli government's position remains that human rights law covenants do not apply in the OPT. See UN Human Rights Committee, Ninety-ninth session Concluding Observations on Israel (3 September 2010), UN Doc. CCPR/C/ISR/CO/3 paragraph 5.





## 5

**Violations of International Humanitarian Law**

Soldiers firing teargas canisters during protest - July 2011, Al-Haq ©

**5.1 Fundamental Rights of Protected Persons**

The Occupying Power is responsible for public order and safety in the occupied territory by virtue of customary international humanitarian law as reflected by Article 43 of the Hague Regulations, which sets out the obligations for the administration of an occupied territory. In discharging its responsibilities, the Occupying Power must safeguard the inviolable rights of protected persons and prevent the implementation of harmful measures for the maintenance and restoration of law and order.<sup>29</sup>

The rights of the civilian population are further guaranteed by Article 27 of the Fourth Geneva Convention, which obligates the Occupying Power to respect persons, their honour, their family rights and their right to protection from all acts or threats of violence. This provision, enshrining respect for the human person and proclaiming the inviolability of basic human rights, imposes on the Occupying Power an obligation to accord the civilian population in the occupied territory humane treatment and take reasonable measures to prevent infringement of fundamental rights. Israeli occupying authorities are therefore under a positive obligation to protect civilians from violence, to safeguard family ties and ensure that the family home is not subject to arbitrary interference.

Although the Occupying Power is permitted to implement some measures, such as restrictions on freedom of movement, to maintain control and security in occupied territory,<sup>30</sup> these may only be adopted for security purposes and should not affect the fundamental rights of the persons concerned.<sup>31</sup>

<sup>29</sup> J. Pictet, *Commentary of the Fourth Geneva Convention* (ICRC, Geneva, 1958) 272-275.

<sup>30</sup> Fourth Geneva Convention (1949) Article 27(4).

<sup>31</sup> J. Pictet (n 29) 207.

Violent suppression of peaceful protests in the West Bank, including East Jerusalem, in the manner conducted by the Israeli occupying forces cannot be justified as a security measure. The unjustified use of force against peaceful protesters in al-Nabi Saleh and the excessive use of force against civilians throwing stones infringe on the fundamental right of protected persons to life and physical integrity. The arrest and detention of non-violent protesters on spurious charges violate the right to a fair trial, while the actions of the Israeli occupying forces with respect to house raids and the arrest and detention of children are in direct contradiction to the obligations of an Occupying Power with respect to protected persons, especially concerning family rights.

**5.2 Protection of Civilian Property**

Article 53 of the Fourth Geneva Convention provides a blanket protection of civilian property in the context of belligerent occupation. The provisions in international humanitarian law on the protection of property were designed to spare civilians the suffering that might result from the destruction of their homes, clothes, foodstuffs or means of earning a living.<sup>32</sup> More specifically, Article 53 provides for protection against certain attacks on private property that would be detrimental to the mental and material condition of the persons concerned.<sup>33</sup> The Occupying Power is prohibited from destroying real or personal property belonging to private persons, except where that destruction is rendered absolutely necessary by military operations.

While imperative military requirements may permit occupying forces to carry out the destruction, in whole or in part, of certain private or public property in the occupied territory, the Occupying Power must act in good faith to interpret the provision in a reasonable manner that is proportionate to its military objective.<sup>34</sup> The actions taken by the Israeli military in reaction to the weekly non-violent protests in al-Nabi Saleh that result in damage to civilian property cannot be said to respond to an imperative military requirement.

The residents of al-Nabi Saleh, whose claim to their land is supported by a decision of the Israeli High Court of Justice, are protected persons attempting to assert their rights to property that is being confiscated by the settlement of Halamish. Even if Israeli forces are required to protect the settlers of Halamish, whose presence in the OPT is illegal under Article 49(6) of the Fourth Geneva Convention, the excessive and reckless firing of teargas canisters and the spraying of foul-smelling substances onto and inside private residences in al-Nabi Saleh is disproportionate and unjustified.

<sup>32</sup> J. Pictet (n 29) 300-302.

<sup>33</sup> International Committee of the Red Cross, 'Basic Rules of the Geneva Conventions and their Additional Protocols' (ICRC, Geneva) 47-48.

<sup>34</sup> J. Pictet (n 29) 300-302.



## 6 Policing Protests in Occupied Territory: the Law Enforcement Paradigm

Non-violent demonstrations, which are organised by grassroots community activists in response to the continued confiscation of their land and destruction of their property, are one of the most essential avenues available to Palestinians to assert their rights under occupation. These demonstrations do not have a nexus to and armed conflict and the actions of the protesters cannot be construed, under any circumstances, to amount to a resumption of hostilities. Instead, the Occupying Power is exercising a policing function with respect to its attempts to suppress the protests, and is therefore obliged to consider the situation through a law enforcement paradigm in which the framework of international human rights law complements the applicable international humanitarian law framework.

There is a distinction between violence and disorder in the form of riots or ordinary criminal activity, and actual military hostilities.<sup>35</sup> As noted by the International Committee of the Red Cross (ICRC) regarding the applicable law in a given situation, there is a need for clear rules of engagement and effective training so that soldiers can distinguish between a situation warranting use of international humanitarian law standards and those requiring adherence to human rights law standards.<sup>36</sup> Law enforcement activities must always be subject to the international human rights standards applicable to civilian police operations, which may never be conducted like hostilities against combatants.<sup>37</sup> Moreover, where hostilities in the occupied territory are not ongoing, the law enforcement regime also governs the Occupying Power's use of force in maintaining its own security.<sup>38</sup>

The practices of the Israeli military during non-violent protests in the OPT do not afford due safeguards to protected persons as required by international humanitarian law and, at the same time, breach applicable international human rights standards.

<sup>35</sup> Report of the Expert Meeting on the Right to Life in Armed Conflicts and Situations of Occupation, University Centre for International Humanitarian Law (Geneva, 1-2 September 2005.) <[http://www.adh-geneva.ch/docs/expert-meetings/2005/3rapport\\_droit\\_vie.pdf](http://www.adh-geneva.ch/docs/expert-meetings/2005/3rapport_droit_vie.pdf)> accessed 1 December 2011.

<sup>36</sup> L Doswald Beck, 'The Right to Life in Armed Conflict: Does International Humanitarian Law Provide All the Answers?' (2006) *International Review of the Red Cross* 864, 881, 892.

<sup>37</sup> M Sassoli and A Bouvier, *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law* (3rd Edn ICRC, Geneva, 2011), Volume I, Chapter 14, 4.

<sup>38</sup> Report of the Expert Meeting on the Right to Life in Armed Conflicts (n 35).

## 7

## Violations of Human Rights Law

In a situation of armed conflict and occupation, international human rights law norms complement and supplement the rules of international humanitarian law. The Occupying Power is, therefore, duty-bound by the obligations of both bodies of law with regard to its actions in occupied territory. The actions of the Israeli military in al-Nabi Saleh amount to violations of Israel's human rights obligations, particularly those enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESR), to which Israel is a State party.

### 7.1 The Right to Life

The right to life is a fundamental human right provided for in multiple treaties and Article 6 of the ICCPR states, "no one shall be arbitrarily deprived of his life." During assemblies and protests the right to life of protesters, police and even the public may be at stake. Law enforcement officials, who conduct operations that might endanger life through the use of force or firearms, are subject to regulations and standards that limit the risk of infringement of this right. International case law affirms that policing operations that are not carried out in a manner that minimises risk of death or serious injury are in breach of the right to life.<sup>39</sup>

The use of force by law enforcement officials or – in circumstances akin to Israel's occupation – military personnel who take on law enforcement functions, is regulated by the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>40</sup> These internationally accepted standards outline the main obligations aimed at protecting human rights during policing operations and apply to all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention. This encompasses military authorities and state security forces that exercise such powers and therefore includes police, customs, immigration and prison officers.<sup>41</sup>

Given the applicability of the law enforcement model in the OPT,<sup>42</sup> whenever force is used, the traditional human rights safeguard of proportionality applies. This places every law enforcement official under an obligation to "act in proportion to the seriousness of the offence and the legitimate objective to be achieved."<sup>43</sup> Therefore, in a situation where security forces are authorised to disperse a demonstration, they must use only the minimal amount of force necessary to accomplish this objective.

<sup>39</sup> *McCann v. United Kingdom* (App. No. 189884/91) (1996) 21 EHRR 97 paragraph 212; *Güleç v. Turkey* (App. No. 54/1997/838/1044) (1998) EHRR paragraphs 71 and 83.

<sup>40</sup> See Code of Conduct for Law Enforcement Officials adopted by General Assembly resolution 34/169 (1979), Article 1; see also Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders (1990), preamble.

<sup>41</sup> Amnesty International, 'Pain Merchants: Security Equipment and its use in Torture and other Ill Treatment' (2003) <<http://www.amnesty.org/en/library/info/ACT40/008/2003>> accessed 1 December 2011.

<sup>42</sup> UN Human Rights Committee, Concluding Observations; Israel (21 August 2003), UN Doc. CCPR/CO/78/ISR.

<sup>43</sup> Basic Principles on the Use of Force (n 40) Principle 5(a)



The Israeli forces have repeatedly acted outside the sphere of the principle of proportionality,<sup>44</sup> and this is particularly evident during the policing of protests in the West Bank, including East Jerusalem. The measures taken to suppress protests are in breach of international standards relating to the use of force and consequently endanger the right to life.

Such violations are perpetuated by the Israeli occupying authority's failure to investigate and prosecute individual soldiers and officers for using excessive force in a manner that endangers protesters' right to life. On the rare occasions that criminal investigations are opened against individual members of the military forces, they are almost always unsuccessful. According to a study by Israeli human rights group, Yesh Din, approximately 94 per cent of criminal investigations carried out against soldiers accused of violent crimes against Palestinians and their property are closed without any indictments and in the rare case of a conviction, the sentence issued is very light.<sup>45</sup> This failure to hold security forces accountable has created a culture of impunity where violations of the right to life continue to escalate.

In examining the practice of Israeli soldiers of failing to respect rules of engagement and misusing weapons, the testimonies from al-Nabi Saleh present strong evidence that the military's excessive, wanton and undisciplined use of force is disproportionate and results in grave threats to the safety of participants and bystanders.

### 7.1.1 Rules of Engagement

Prior to the first *Intifada*, Israel's rules of engagement and open-fire regulations conformed to Israeli criminal law, and use of force was permitted only in exceptional circumstances namely: in situations of real and immediate threat to the life of soldiers, and during the apprehension of a suspect, soldiers were permitted to shoot at a suspect's legs.<sup>46</sup>

After the start of the first *Intifada* in 1987, a change in policy allowed for a relaxation of the rules. Following the second *Intifada* in 2000, the Israeli military defined the situation in the OPT as an "armed conflict short of war," which allowed soldiers greater latitude in their use of weapons by opening up the definition of "life threatening situations."<sup>47</sup> However, Israel's open-fire regulations remain largely secret, and information about their contents is obtained mainly from soldier testimonies, public statements made by Israeli officials and media reports.

In one example of Israeli rules of engagement that have become publicly available, Section 8 of the "Permanent commands from the operation department," issued in 2005, outlines rules for a situation in which soldiers are attacked with stones:<sup>48</sup>

<sup>44</sup> Al Haq, 'In Need of Protection' (Report, 2002) 57-83.

<sup>45</sup> Yesh Din, 'IDF Investigations of IDF offenses against Palestinians: figures for 2000-2009' Data Sheet (February 2010) <<http://www.yesh-din.org/userfiles/file/datasheets/Investigations%20and%20Indictments%20DataSheet%202000-2009%20ENG.pdf>> accessed 3 December 2011.

<sup>46</sup> B'Tselem, 'Trigger Happy: Unjustified Gunfire and the IDF's Open-Fire Regulations during the al-Aqsa Intifada' (Information Sheet, March 2002) <[http://www.btselem.org/English/Publications/Summaries/200203\\_Trigger\\_Happy.asp](http://www.btselem.org/English/Publications/Summaries/200203_Trigger_Happy.asp)> accessed 1 December 2011.

<sup>47</sup> *Ibid.*

<sup>48</sup> Excerpts from Order 1/1.009, dated January 2005 (unofficial translation). These excerpts are examples of some of the rules of engagement used by Israeli forces during demonstrations. They were submitted by Israel as part of a case, *Matan Cohen v. Israel Police and the State of Israel*, civil case 1605/2007, litigated by attorney Bshara G'bali and obtained from the law offices of Gaby Lasky and Partners.

Section 8(a): "As a rule, it is prohibited to shoot live fire in the direction of a stone thrower."

Section 8(b): "It is allowed to execute the procedure for a suspect's arrest only when the attack is massive in a manner that endangers the life of the soldier or another person, and only if the procedure is executed immediately and in proximity to the incident, and at every stage it is necessary to examine whether the circumstances for the continued use of the procedure still exist."

Section 8(c): "In unique danger circumstances, when an imminent and real threat to life is perceived (for example when persons are about to throw a [concrete] block from a house's roof onto the heads of soldiers), it is necessary to shoot directly with a purpose of hitting the body of the attacker and remove the threat."

In another example of a regulation that has surfaced, section J(7) of the "Police regulations for controlling public order" outlines the requirements for using rubber bullets:<sup>49</sup>

Section J(7)(a): "it is not permitted to use rubber bullets but for in the most exceptional and extreme circumstances. For this purpose, exceptional and extreme circumstances are the uprising of many people accompanied by harsh violence [...] which may cause serious bodily or property harm."

Section J(7)(g): "the means shall not be used unless it is possible to clearly see the target and when the conditions in the field permit to see the persons engaged in the uprising that may get hurt."

Section J(7)(j): "the point of target is only the bottom part of the body."

Section J(7)(m): "firing from a low to a high place or the opposite is not permitted."

In cases where Israeli occupying forces have fired at stone-throwers, there is strong evidence that suggests attacks were deliberate and also in direct violation of the Israeli military regulations for the use of rubber bullets. The documented cases in which soldiers fired directly at their target while there was no real or imminent threat to their life; fired at targets from above or while standing in close range; or failed to use an alternative method - such as pointing the weapon next to the stone thrower or even targeting peoples' legs instead of their heads - indicate that regulations were not followed and consequently the right to life and physical integrity was violated.

### 7.1.2 Misuse of Weapons

Although international legal standards for the regulation and control of crowd control weaponry exist, Israel is not bound to comply with these norms.<sup>50</sup> In spite the lack of applicable international policies regulating Israel's use of toxic riot control agents, the use of crowd control weaponry should be regulated under the law enforcement standard, which is different than the standard applicable to the army in combat situations.

<sup>49</sup> *Ibid.*

<sup>50</sup> The Chemical Weapons Convention (1993), of which Israel is not a signatory, requires that the types and quantities of toxic riot control agents, and the munitions used to deliver them, be consistent with their purpose. All but seven countries in the world - Israel, Angola, Burma, Egypt, North Korea, Somalia and Syria - have ratified the CWC. The European Union has also recommended that certain criteria be applied when examining the safety of irritants used for law enforcement including: the toxicity of the chemical itself; the dispersal mechanisms employed; the risk of fire hazard; and the professionalism and training of the operatives. For more information please see, B. Rosenberg, 'Riot Control Agents and the Chemical Weapons Convention' Open Forum on the Chemical Weapons Convention: Challenges to the Chemical Weapons Ban (The Hague, 1 May 2003) <<http://www.sussex.ac.uk/Units/spru/hsp/documents/OpenForumCWC.pdf>> accessed 1 December 2011; see also, 'Crowd Control Technologies: An Assessment Of Crowd Control Technology Options For The European Union' (European Parliament, Luxembourg, June 2000) 36 at [http://www.europarl.europa.eu/stoa/publications/studies/19991401a\\_en.pdf](http://www.europarl.europa.eu/stoa/publications/studies/19991401a_en.pdf) accessed 1 December 2011.





Teargas canister outside home in al-Nabi Saleh – July 2011, Al-Haq ©

Inadequate or negligent operation of these “less-than-lethal”<sup>51</sup> weapons can result in loss of life, particularly as a result of inaccurate fire or the use of high-velocity or penetrative rounds in the direction of people or homes.<sup>52</sup> The deployment of incapacitating weapons should be carefully evaluated in order to minimise the risk of endangering uninvolved persons.<sup>53</sup> While teargas is considered to be safe when used correctly, high-level exposure can cause ocular, pulmonary and dermal injuries and the use of riot control agents in enclosed spaces can have severely toxic effects.<sup>54</sup> Regarding teargas grenades, manufacturers warn that they must never be fired inside buildings because of risk of fire and injury.<sup>55</sup>

The Israeli military’s use of riot-control agents against demonstrators in the OPT is contrary to law enforcement standards for the policing of protests and the disbursal of riots, and does not respect international standards applicable to toxic riot control agents. The firing of high velocity teargas rounds directly at protesters, inside buildings and in the direction of houses has resulted in serious

injury and, in at least one case, death,<sup>56</sup> and there is increasing evidence that the army is using teargas canisters as a projectile weapon to strike non-violent activists and not as a means of riot control.

Rubber bullets are often classed as “less-than-lethal” weapons and, because of this classification, their use is subject to severe restrictions, both from the manufacturers and by national rules governing the use of force. For Israeli forces, the minimum range for firing rubber bullets is 40 metres; such bullets must only be aimed at an individual’s legs and firing at children is prohibited.<sup>57</sup> The Israeli forces’ usage of these weapons is in direct contradiction to these standards, as reflected in the testimonies.

In 2002, doctors in Israel released a study analysing the effects of rubber bullets, which concluded that this weapon is not a safe method of crowd control.<sup>58</sup> The study found that the inaccuracy of rubber bullets made it impossible to avoid severe injuries to vulnerable body regions such as the head, neck and upper torso, leading to morbidity and disability.<sup>59</sup> Furthermore, as noted by Amnesty International, the Israeli army, “which exercise a policing function in the Occupied Territories, and the Israeli police, use rubber bullets that are rubber in name only. They consist of a substantial metal core covered with a very thin layer of rubber.”<sup>60</sup>

It is widely believed that Israeli law enforcement officials reserve rubber-coated metal bullets exclusively for use against Palestinians. In clashes between Israeli police and settlers at an illegal outpost in March 2011, specialised paintball guns with rubber bullets were used against stone-throwing settler youth.<sup>61</sup> During Palestinian protests in al-Nabi Saleh and other West Bank towns and villages, Israeli occupying forces use rubber-coated metal bullets against Palestinian civilians, including children. Israel has at its disposal a wide range of riot-control or crowd-disbursal methods that pose less risk to human life, and it has the training available for its law enforcement officials in how to use them, yet the military is known to use rubber-coated metal bullets – a far more dangerous weapon – against protesters in the OPT.<sup>62</sup>

Through the persistent misuse of weapons, in violation of international standards, Israel puts protected persons’ safety at risk and is in breach of the fundamental right to life. This is the case not only in al-Nabi Saleh but in all Palestinian towns and villages where peaceful protests take place and where the Israeli military uses excessive force against protesters.

56 See Al-Haq Affidavits 4850/2009 and 4851/2009; see also R. McCarthy, ‘teargas canister shot kills Palestinian demonstrator’ *The Guardian* (17 April 2009) <<http://www.guardian.co.uk/world/2009/apr/17/west-bank-demonstrator-teargas>> accessed 2 December 2011.

57 The Association for Civil Rights in Israel (ACRI), ‘Informational Pamphlet for Demonstrators in the Occupied Territories: Important Information and Coping Strategies’ (September 2011) <<http://www.acri.org.il/en/wp-content/uploads/2011/09/Rights-of-Demonstrators-OT-SEP2011.pdf>> accessed 3 December 2011.

58 A. Mahajna and M. Krausz, ‘Blunt and penetrating injuries caused by rubber bullets during the Arab-Israeli conflict in October, 2000: a retrospective study’ *The Lancet*, (Volume 359, No. 9320, 25 May 2002) 1800.

59 *Ibid.*

60 Pain Merchants (n 41) 29-30.

61 C. Levinson ‘Israeli security forces defend use of rubber bullets during West Bank outpost demolition’ *Haaretz* (1 March 2011) <<http://www.haaretz.com/print-edition/news/israeli-security-forces-defend-use-of-rubber-bullets-during-west-bank-outpost-demolition-1.346333>> accessed 2 December 2011.

62 In a 2005 report, the former head of Israel’s State Prosecution Criminal Department, Talia Sasson, found that “IDF soldiers have the enforcement powers like those given to the police officers, by virtue of the procedure for enforcing the law in the territories [...]. In practice, however, IDF soldiers do not enforce the law, are not aware of the law enforcement procedure, and are not at all interested in functioning like police officers.” See, Talia Sasson, Interim Report on the Subject of Unauthorized Outposts, (submitted to the government in March 2005) <<http://www.pmo.gov.il/NR/rdonlyres/0A0FBE3C-C741-46A6-8CB5-F6CDC042465D/0/sason2.pdf>> accessed 2 December 2011 (in Hebrew).

51 Certain organisations, such as the US National Institute of Justice use the term “less-than-lethal” to refer to riot control weaponry. See National Institute of Justice Initiative on Less-Than-Lethal Weapons, National Institute of Justice (Research in Brief, March 1993) <<http://www.nij.gov/speeches/aviation.htm>> accessed 2 December 2011.

52 Amnesty International, ‘Excessive Use of Lethal Force in Israel and the Occupied Territories, an assessment by Dr. Stephen Males’, (19 October 2000) 9.

53 Basic Principles on the Use of Force (n 40) Principle 3.

54 R. Sutherland, ‘Chemical and Biochemical Non-lethal Weapons, Political and Technical Aspects’

(SIPRI Policy Paper 23, Stockholm, November 2008) 12 <<http://books.sipri.org/files/PP/SIPRI23.pdf>>

55 Combined Tactical Systems, Chemical Munitions, Grenades Outdoor, 92 Series Jet-Lite Rubber Ball Grenades <<http://www.less-lethal.com/>> accessed 1 December 2011.



## 7.2 Freedom of Assembly

Freedom of assembly is widely recognised and protected by a number of international legal instruments.<sup>63</sup> The ICCPR recognises, in Article 21, the right of peaceful assembly and affirms that the only restrictions that may be placed on this right must conform with the law and be necessary to protect national security, public safety, public order, public health or morals or the rights and freedoms of others in a democratic society. Any limitations imposed on the right to freedom of assembly are strictly subject to principles of proportionality and necessity – measures taken to restrict freedom of assembly must be entirely proportionate and necessary to the aim being achieved so that people's right to assemble cannot be violated unless there is no other option.<sup>64</sup>

The UN Human Rights Committee asserts that the requirement to obtain prior notification for assemblies from authorities is not a *prima facie* infringement of Article 21.<sup>65</sup> However there must be a reasonable assumption that the assembly will be permitted, unless the requirements for limiting the right listed in Article 21 are met.<sup>66</sup> In this respect, the Israeli authorities must always attempt to balance the right to demonstrate with their security considerations. Israel's blanket prohibition on the right of Palestinian assembly through Military Order No. 101 and the declaration of al-Nabi Saleh as a closed military zone every Friday constitutes an overly broad limitation on the right to peaceful assembly.

The Israeli military's claim that demonstrations are suppressed only because they are characterised by violence is inaccurate, given that the protests are targeted as soon as they begin and before any stones are thrown. Moreover, while the ICCPR protects the right to peaceful assembly, an individual does not lose this right when sporadic or isolated violence occurs in the crowd.<sup>67</sup> The presence of a few youths who throw stones on the fringes of the protest cannot be used as a justification for Israel's disproportionate and illegal repressive measures against the protests.

International human rights organisations Amnesty International<sup>68</sup> and Human Rights Watch have expressed concern over the violations of the rights of protesters in the West Bank. According to Human Rights Watch:

“[...] The Israeli authorities are effectively banning peaceful expression of political speech by bringing spurious charges against demonstrators, plus detaining children and adults without basic due process protections.”<sup>69</sup>

63 Universal Declaration of Human Rights (1948) Article 20; African Charter on Human and Peoples Rights (1981) Article 11; American Convention on Human Rights (1969) Article 15; European Convention on Human Rights (1950) Article 11; Arab Charter on Human Rights (1994) Article 24.6.

64 *Platform Artze für das Leben v. Austria*, (App. No. 10126/82) (1988) 13 EHRR 204; See also *Amnesty International and Others v. Sudan* (2000) AHRLR 297 (ACHPR 1999).

65 *Auli Kivenmaa v. Finland*, Communication 412/1990, UN Doc. CCPR/C/50/D/412/1990 (9 June 1994).

66 UNHRC, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns' (May 2011) UN Doc. A/HRC/17/28, 8 <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-28.pdf>> accessed 1 December 2011.

67 *Ibid.*, 9.

68 'Amnesty International Annual Country Report 2011, Israel and the Occupied Palestinian Territories' Freedom of Expression and Association (Amnesty International, 2011) <<http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2011>> accessed 28 November 2011.

69 Human Rights Watch, 'Israel: End Crackdown on Anti-Wall Activists' (5 March 2010) <<http://www.hrw.org/en/news/2010/03/05/israel-end-crackdown-anti-wall-activists>> accessed 28 November 2011.

## 7.3 Right to Liberty and Security of the Person and Privacy

Article 9(1) of the ICCPR imposes an obligation on Israel to respect the right to liberty and security of all individuals under its jurisdiction, including the prohibition of arbitrary arrests or detention. Since Israel's ratification of the ICCPR, it has claimed to be in a state of public emergency that requires derogation from Article 9. However, a State's ability to derogate from the Covenant's rule against arbitrary detention is not unlimited, as measures derogating from the provisions of the Covenant must be exceptional, temporary, and limited to the extent strictly required using the principle of proportionality.<sup>70</sup> Moreover, Article 10(1) of the ICCPR requires that persons deprived of their liberty be treated with humanity and respect for their inherent dignity.

During the arrests of protesters and residents by Israeli occupying forces, individuals, including children, have been beaten and detained before being released with no charges laid, while others have been arrested and detained on spurious charges. These measures, undertaken by the Israeli military in its capacity as a law enforcement body, amount to violations of Palestinians basic due process rights and constitute infringements on the rights to liberty and security of the person.



Young Palestinian activist detained for verbally confronting the soldiers - July 2011, Al-Haq ©

Article 17(1) of the ICCPR guarantees that; “no one shall be subjected to arbitrary or unlawful interference with his privacy, home or correspondence, or to unlawful attacks on his honour and

70 UN Committee on Civil and Political Rights, General Comment 29, States of Emergency (Article 4) (31 August 2001), UN Doc. CCPR/C/21/Rev.1/Add.11 <[http://www.unhcr.org/refugees/doc.nsf/898586b1dc7b4043c1256a450044f331/71eba4be3974b4f7c1256ae200517361/\\$FILE/G0144470.pdf](http://www.unhcr.org/refugees/doc.nsf/898586b1dc7b4043c1256a450044f331/71eba4be3974b4f7c1256ae200517361/$FILE/G0144470.pdf)> accessed 1 December 2011.



reputation.” These rights provide for the protection of physical and mental integrity of individuals and respect for privacy in the home.<sup>71</sup> These protections are not afforded to the residents of al-Nabi Saleh who endure sustained and deliberate attacks against their homes. The night-raids conducted on Palestinian homes in al-Nabi Saleh by Israeli occupying forces amount to violations of the right to privacy and respect of the home.

#### 7.4 Right to Health

The right to health, enshrined in Article 12 of the ICESCR, was envisaged as an inclusive right that encompasses not only access to health care, but the underlying determinants of health, such as access to safe and potable water and adequate sanitation, nutrition, housing, and healthy environmental conditions.<sup>72</sup> Under its provisions, health care services must be available and accessible to all, without discrimination and all people are guaranteed the right to the highest attainable standard of physical and mental health.<sup>73</sup> States are under a particular obligation to respect the right to health, which includes a duty to refrain from denying or limiting equal access to health for all persons.

The people of al-Nabi Saleh are suffering violations of their right to health as the Israeli military endangers safety and well-being through its use of excessive force against the residents of the village. In particular, the effects of the non-lethal weapons used in al-Nabi Saleh on a weekly basis are resulting in the contamination of crops and water for village residents, and frequent exposure to such chemicals is causing short-term health emergencies while long-term health effects remain uncertain.

The reported cases of trauma and shock being suffered by residents as a result of widespread use of teargas inside or in the vicinity of private homes similarly infringes on the right to mental health, particularly for children. Furthermore, there is evidence that the Israeli occupying forces are hindering the accessibility to emergency health care services for the injured in al-Nabi Saleh by targeting ambulances, preventing access of emergency vehicles inside the village, and preventing the sick and wounded from leaving the village while the area is declared a closed military zone. These measures constitute serious infringements of the right to health for the residents of al-Nabi Saleh.

<sup>71</sup> W. Kalin and J. Kunzli, *The Law of International Human Rights Protection* (Oxford University Press, Oxford, 2009) 322.

<sup>72</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health (11 August 2000), UN Doc. E/C.12/2000/4 < <http://www2.ohchr.org/english/bodies/cescr/comments.htm> > accessed 1 December 2011.

<sup>73</sup> Ibid.

## 8 Conclusion

The use of excessive force in violation of the right to life, the deliberate and reckless targeting of people and property and the persistent use of intimidation tactics by the Israeli forces against protesters and village residents is not limited to al-Nabi Saleh. Palestinians in towns and villages across the West Bank, including East Jerusalem, who stand up for their rights and for the rights of their communities by challenging the ongoing dispossession of their land face ruthless suppression at the hands of the Israeli army. These actions are unlawful and violate Israel’s obligations under international human rights and humanitarian law.

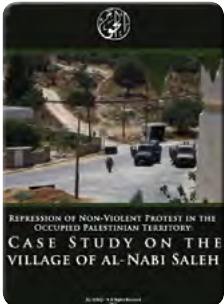
Israel’s policy of curtailing the rights of those who protest the confiscation of their land is aimed at silencing dissent against its illegal practices in the OPT. Both Israeli settlements and the segments of the Wall built on occupied land are illegal under international law. The non-violent protests in the West Bank are increasingly drawing the attention of the international community to this illegal situation and have put a spotlight on Palestinian towns and villages suffering the effects of annexation of their land.

It is imperative that the international community take effective steps to induce Israel to desist its suppression of non-violent protests and its construction of settlements and the Wall. It is the obligation of all United Nations member States to ensure that Israel respect international law by calling upon Israel to:

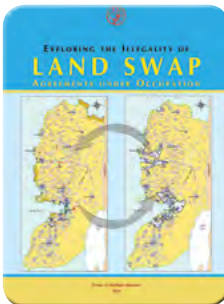
- discontinue its policy of settlement building and expansion and to dismantle all settlements and the portions of the Annexation Wall built in the OPT.
- facilitate the legality of peaceful assembly in the OPT by revoking Military Order No. 101;
- ensure that effective training in policing methods is provided for all Israeli commanders and soldiers, particularly in the appropriate use of “non-lethal” weapons, which should not be used to suppress non-violent protest; and
- ensure that soldiers responsible for using excessive force against protesters, village residents, and property are held accountable for their actions and that reparations are made available to the victims.



# AL-HAQ'S 2011 PUBLICATIONS:



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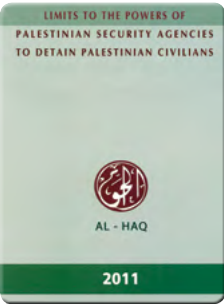
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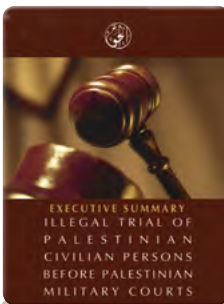
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AL - HAQ

### ABOUT AL-HAQ

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territories (OPT), the organisation has special consultative status with the UN Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, regardless of the identity of the perpetrator, and seeks to end such breaches through advocacy before national and international mechanisms and holding the violators accountable. The organisation conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. The organisation has a specialised international law library for the use of its staff and the community.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), and the Palestinian NGO Network (PNGO).