AL - HAQ

LAW IN THE SERVICE OF MAN

BRIEFING PAPERS ON

TWENTY YEARS OF ISRAEL OCCUPATION OF THE WEST BANK AND GAZA

1987

INTRODUCTION

Twenty years have passed since Israel took control over the West Bank and Gaza in the Six-Day War of 1967. After twenty years, the unusual circumstance of a military occupation has assumed features of permanency.

Today more than ever there is a need to take a close look at the situation in the West Bank (including Jerusalem) and Gaza.

Al-Haq prepared a series of briefing papers on the occasion of the twentieth anniversary of the occupation. These papers deal with the following topics:

1 - An overview of the legal and human rights situation after 20 years of occupation
2 - The West Bank legal system and structure
3 - The military court system
4 - Administrative measures of punishment and control
5 - Trade unions under Israeli occupation
6 - Suppression of academic, cultural and political life.

These papers do not provide a comprehensive picture of the situation in the Occupied Territories after twenty years. They serve merely as an introduction to this topic, and may help in directing the focus toward what we believe are the most significant trends and patterns of the occupation.

For more detailed and comprehensive information, please consult our other publications, or contact us directly at our office in Ramallah.

BRIEFING PAPER NO. 1:

20 YEARS OF OCCUPATION: LAW AND RIGHTS

When Israel took military control over the West Bank and Gaza in June 1967 many thought that the occupation would be of a short duration. Today, twenty years later, the Israeli authorities are showing no serious sign of wishing to relinquish the territories, but to the contrary are holding on to them with an "iron fist", while exploiting human and material resources.

LEGAL CONTROL What is most remarkable about Israel's occupation is the elaborate legal framework that is used to govern the Territories. The Israeli authorities have created new laws and resurrected defunct ones in an apparent attempt to further their political goal of colonization. Because of their status as occupied, the West Bank and Gaza are subject in the first place to international law. Applicable international law is the Hague Regulations 1907 and the IV Geneva Convention 1949. Under the provisions of these conventions, the occupying power must observe the laws that were in force prior to the occupation, and may amend them solely either to protect its legitimate security concerns, or to advance the interests of the local population. What in reality has happened?

MILITARY ORDERS The Occupied Territories are currently ruled by a myriad of military orders (1191 in the West Bank and close to 900 in Gaza) and unserialized regulations which have amended and thereby transformed the pre-existing Jordanian law beyond recognition. The authorities have issued these orders citing either security concerns or the

interests of the local population. On the basis of these military orders, which cover all aspects of daily life and are often phrased in ambiguous terms, the Israeli authorities in the West Bank and Gaza have been able to expropriate land for public purposes or declare it state land; to impose heavy taxation on economic and commercial life; to restrict the entry of people into the area, with a clear view of trying to keep Palestinians outside their homeland; to suppress political, social and cultural activities; and to punish those who have chosen to resist actively such practices. From the beginning of the occupation, military orders have been used to control business life in the Territories, requiring a permit for most economic activities. Since 1982 a number of new military orders have further extended the authorities' control over the flow of funds to the Territories used to finance a plethora of economic and social projects.

SECURITY JUSTIFICATION The authorities routinely quote security concerns for most of the actions they take, but have refused to define what security means to them, or to explain which criteria fulfill Israeli security requirements in any given case. As a result the authorities have been able to use the security argument to justify a number of fundamental features of their occupation, including land confiscation and settlement, the introduction of civilian settlers, changes in the Territories' administrative structure, and punitive measures against the Palestinian population.

LOCAL INTERESTS The authorities have also justified legislation of measures on the basis of realities that themselves came about as a result of illegal acts. For example, Israeli civilians were introduced into the Occupied Territories contrary to Article 49 of the IV Geneva Convention. Once they had settled, they were officially designated as "local

population". The authorities could then justify actions like expropriation of land to construct roads leading to Israeli settlements on the basis of the "interest of the local population", while systematically neglecting the interests of the Palestinian population.

DEFENCE REGULATIONS In addition to creating new legislation, the authorities have resurrected the Defence (Emergency) Regulations which were issued by the British mandatory forces in 1945 and revoked by them on 14 May 1948. By virtue of these regulations, which were not used during the Jordanian period, the Israeli authorities continue to deport Palestinians or place them under town arrest, demolish and seal houses, and impose censorship.

LEGAL RECOURSE Although the authorities' control over the Territories has the trappings of a legal structure, once it comes to appealing a military order or protesting the violation of a right, there is very little effective legal recourse. Individuals convicted in a military court have no route of appeal open to them but can only ask for clemency. Acquisition of land through expropriation orders or orders declaring land as state land may be objected to before a military tribunal, which, however, can only make a recommendation to the authorities who issued the order. Administrative measures such as deportation may be appealed to the Israeli High Court of Justice, but the High Court merely reviews the Military Commander's authority in issuing such an order rather than the merits of the case, and so far only a handful of administrative orders have been reversed. (See also Briefing Paper No. 3).

ARREST AND DETENTION Palestinians arrested on suspicion of "security offences" are detained for varying lengths of time during which they are routinely exposed to maltreatment and sometimes torture at the hands of interrogators. They often will not see a lawyer until

after they have signed a confession. If convicted they must endure prison conditions which are unacceptable by international standards. Al-Haq notes in this respect physical maltreatment, reduction of air circulation, use of tear gas, overcrowding, and restrictions on movement.

IRON FIST POLICY In August 1985, the Israeli authorities launched their "iron fist" policy in the Occupied Territories. Intensifying the use of administrative punishments, they have deported Palestinians or placed them in administrative detention or under town arrest without charging them or bringing them to court. In addition, they have demolished and sealed houses of the families of individuals suspected of resistance activity as an act of collective punishment. Such practices have recurred in waves throughout the period of occupation, often after settler hysteria and consequent pressure on the authorities to act in some way or other against the Palestinian population.

FREEDOM OF MOVEMENT The military authorities have imposed strict controls on the movement of people. The Occupied Territories have been declared a closed military area. This means that traveling abroad or entry from abroad is contingent on permission from the military authorities. It also means that residents of the Occupied Territories may not stay in Israel between the hours of 1 and 5 in the morning.

FAMILY REUNIFICATION The number of Palestinians abroad who have been denied the right to rejoin their families in the West Bank is large, and the authorities so far have refused to release the criteria which they claim to apply in deciding who may enter and who may not. Al-Haq suspects that the authorities' refusal results from their fear that disclosure will show that few of the rejections of family reunification applications are justi-

fied on the basis of their own criteria. Even though in most countries that have restrictive immigration policies families are still allowed to reunite, many Palestinian families remain divided by the practice of the Israeli authorities.

CULTURE AND EDUCATION Al-Haq has become increasingly concerned in recent times by the authorities' severe attitude toward cultural and educational institutions in the Occupied Territories. Universities are habitually closed for varying periods of time, usually on flimsy pretexts and at great cost to the institutions. In the absence of a vibrant economic and commercial life, higher education is an important avenue of self-fulfilment for many Palestinians, and restrictions on education are therefore a particularly salient violation of the rights of the population.

ADMINISTRATIVE STRUCTURE The West Bank and Gaza are ruled by a military government. Although nominally having a separate administrative apparatus for civilian affairs, the Territories are integrally linked to Israel's own administration. Government departments of the Jordanian period in the West Bank serve Israeli interests and, although staffed by Palestinians, are fully supervised and controlled by Israeli personnel. In no matters like, for example, budget allocations is the civilian administration accountable to the local population, which is taxed but not represented on levels of decision-making. In Gaza the situation is identical.

LAND AND SETTLEMENT According to Meron Benvenisti, by 1985 more than fifty percent of the land of the West Bank (here not including East Jerusalem) had already been acquired by the military authorities either for immediate or future use of Jewish settlers. Over a hundred Israeli settlements have been established on Palestinian land in clear contravention of international law which

prohibits the introduction of citizens of the occupying power into the occupied territory. The settlers are armed, and habitually carry out vigilante-type attacks on the Palestinian population. Effective action to constrain them is not always taken. As a result, the security situation in the West Bank continues to deteriorate.

ECONOMY AND RESOURCES The economy of the West Bank and Gaza has been integrated into the Israeli economy to a considerable extent: approximately 150,000 workers cross daily into Israel in search of work; towns and villages have been linked up to the Israeli power grid and telecommunications network; important health and social services have been taken over by the authorities; and access to water is also controlled by the authorities. Control over resources and services has meant control over their allocation, and in many cases the allocation, for example of water or communication lines, has been clearly discriminatory in favor of Israeli citizens, whether in the Occupied Territories or in Israel itself. Only one Arab bank has been allowed to reopen in the West Bank in the past twenty years.

DE FACTO ANNEXATION Considering prevailing trends and patterns in the Occupied Territories today, one can discern a definite movement toward annexation of the West Bank and Gaza by Israel, if not legally then at least in effect. The authorities are involved in a large-scale and long-term colonization effort, flaunting applicable international law which has laid down guidelines for the occupying power in order to prevent such colonization. Many Palestinians fear, and not without justification, that the authorities' motive is to take the land, but without the people.

OBLIGATIONS OF AN OCCUPYING POWER Under international law the West Bank and Gaza are occupied territories whose final disposition

remains undecided pending a just resolution of the Palestinian-Israeli conflict. Any military occupation is by definition temporary. It is the occupying power's obligation by international law to enable the occupied population to create its own institutions which protect its interests and which will serve as the basic infrastructure for its future society once the occupation has ended. The Israeli authorities, on the contrary, have consistently reneged on these responsibilities, and instead have advanced Israeli interests to the extent that a reversal of the situation is becoming increasingly more difficult to envisage.

The IV Geneva Convention 1949 Relative to the Protection of Civilians in Time of War is applicable to Israel's occupation of the West Bank and Gaza, according to most members of the world community, including the United Nations and the United States Government. The Israeli authorities, however, continue to deny the Convention's applicability, but have declared that they will observe its humanitarian provisions. They have failed to specify which provisions they consider humanitarian in character, however, and continue to violate numerous of its provisions as indicated above, including some that are clearly humanitarian in nature such as the prohibition on deportation. As long as international law is not applied, no guidelines for Israel's administration of the areas it occupies exist, leaving the authorities free play in realizing their political goals.

According to Article 1 of the IV Geneva Convention, signatory powers have the obligation to enforce the Convention's provisions themselves, and to ensure their enforcement by the other signatory powers. So far, the governments who signed the Convention have failed to observe their duties as signatories, and no significant pressures have been applied on the Israeli authorities to comply with the

Convention's provisions. It is al-Haq's hope that, twenty years of occupation having elapsed, these governments will recognize the burden of that responsibility, and seek the enforcement of the Geneva Convention and a just resolution of the Palestinian-Israeli conflict.

BRIEFING PAPER NO.2:

WEST BANK LEGAL SYSTEM AND STRUCTURE

APPLICABILITY OF IV GENEVA CONVENTION 1949
The West Bank (including East Jerusalem) is considered by the UN and by most countries in the world to be occupied by Israel. A special body of law governing belligerent occupation comes into play in such situations, most importantly the IV Geneva Convention of 1949 relating to the protection of civilians in time of war, which governs the conduct of a belligerent occupier.

The Israeli government disagrees, holding that the situation is of a unique kind. It argues that, since only Great Britain and Pakistan recognised the annexation of the West Bank by Jordan in 1950, the status of these lands was still undetermined in 1967. According to this argument, Israel's presence is not an occupation which displaces a sovereign power, but an administration in the absence of a sovereign. The Israeli authorities thus claim that the IV Geneva Convention does not apply, although they claim to abide voluntarily by its humanitarian provisions, without defining which those provisions are.

THE LAW applied by Israel in the West Bank has three main and distinct elements:
i) the law in force in the West Bank prior to the occupation
ii) the British Defence (Emergency) Regulations 1945
iii) Israeli Military Orders and Regulations.

i) The law in force immediately before the occupation in 1967 forms the basis of the law as is required by international law. It consists mainly of the Jordanian law of that

time, including elements of Ottoman and British Mandatory law, and also Islamic law relating to personal status, inheritance and charitable endowments. As will be seen however, except for the last element which is largely unchanged, the original Jordanian law is almost unrecognizable, thousands of its provisions having been altered by Israeli military orders.

ii) The Defence (Emergency) Regulations 1945 were issued by the British Mandate authorities in 1945 in order to control both Arab and Jewish populations. Many Palestinian and Jewish lawyers argue that these regulations were not valid at the time of the occupation and should not therefore have been invoked by the military authorities.

The British Government itself claims that the mandatory authorities revoked the regulations before the end of the Mandate in 1948. Under subsequent Jordanian control of the West Bank and East Jerusalem they were not used, and, had they not been revoked by the British would anyway have been implicitly repealed by subsequent Jordanian legislation covering the same subject matter.

When used against Jews during the Mandate these same regulations were described by Dr Yaacov Shimson Shapiro, later Israeli Minister of Justice, as "unparalleled in any civilised country ...(they) destroy the very foundations of justice in this land". Nevertheless, Israel revived the regulations in the West Bank and Gaza immediately after the occupation. Encountering arguments from lawyers that the regulations were no longer valid, the authorities preempted a decision against the regulations by issuing Military Order 224 which states that "for the avoidance of doubt" emergency regulations remain in force until specifically revoked by name.

By these regulations, the military authorities are permitted to carry out draconian measures against the population of the Occupied Territories, without enacting new regulations in Israel's name.

iii) Military orders are issued by the Area Commander for the West Bank under powers granted to him by Military Proclamation No.2 of 1967. Since 1967, 1191 military orders have been issued in the West Bank.

According to international law, the pre-existing system of law of an occupied land must be respected unless its amendment is necessary for the security of the occupying forces or is for the benefit of the local population. This requirement is reflected in Section 2 of Proclamation No 2 which states that "All laws which were in force in the area on June 7 1967 shall continue to be in force as far as they do no contradict this or any other proclamation or order made by me ...". However when the substance of the military orders issued is examined it is clear that there are few areas of the Jordanian law which remain unchanged by military order.

In al-Haq's view, argued in more detail in its publications 'The West Bank and the Rule of Law' (1980) and in 'Civilian Administration in the Occupied West Bank' (1982), the military orders have served four main purposes: the assumption and maintenance of absolute control over the area and its Palestinian residents; the close determination of the pace, extent and manner of the development of society in the area, mainly by the requirement for a licence for many activities and the withholding of such licences; the creation of a situation whereby many of the economic benefits that would accrue to the State of Israel from the annexation of the territory are obtained without legal annexation; and the facilitation of a strong, large and dominant Jewish civilian presence in the area, through

the acquisition of land, the development of communications network and the establishment of administrative, legal, defence, economic and and other structures for the settlements. Over the twenty years of occupation it has become apparent that the effect of the legislation is to promote an effective annexation of the land, parallel to colonisation.

ADMINISTRATION OF JUSTICE The judicial system has suffered fundamental change during the course of the occupation, both due to its separation from the centre of the Jordanian system in Amman, and due to amendments made by the military authorities. The administration of justice is in the charge of one Israeli officer, the Officer in Charge of Judiciary. He carries the portfolios not only of the Minister of Justice, but also of over a dozen other officials including the Registrar of Trademarks, the Registrar of Land, the Registrar of Companies and even the whole Bar Association.

LOCAL COURTS continue to function but in a truncated manner. The highest court of appeal was lost with the abolition of recourse to the Court of Cassation in 1967, it being seated in Amman. The Court of Appeal ceased to function in 1967, having been ousted from its custom-made building in East Jerusalem by the Israeli District Court, and started up again only in 1970 when new premises, formerly the site of a vegetable market, were found in Ramallah. Due to the lack of supervision, the absence of administration of the courts and the demoralisation of the court officials during the first 15 years of occupation, corruption in the court system became rife. Despite many requests for investigation by lawyers, it was not until 1984 that five judges were tried for corruption and reform was instituted. The effects of the reform are still being evaluated.

Separate court systems exist for Muslim and Ecclesiastical law. Initial attempts by the Israeli authorities to assert control over the jurisdiction of the Shari'a Courts was successfully resisted. The Ecclesiastical Courts have had some of their jurisdiction in certain matters in Jerusalem usurped by the Israeli District courts, but otherwise both have largely been able to maintain their independence.

The depletion of the extent of the jurisdiction of the civil courts to the benefit of the military courts, even where there is no apparent connection with military concerns, is described below.

MILITARY COURTS AND TRIBUNALS were established in the five main towns immediately after the occupation, their procedure being governed by Military Order 378 (see Briefing Paper No.3). Cases may be heard by one Israeli army officer with legal qualifications and two other officers, or by a military judge alone. The courts thus cannot be considered as independent since most of the matters with which they deal are related to the military presence. There is no route of appeal from the military court, only the possibility of asking the Area Commander for clemency.

The military courts try all matters considered by the military authorities to be security cases. They also have concurrent jurisdiction with the local non-military criminal courts. The Military authorities decide which court should try a particular case or type of case, and have the power to remove any case from the local courts. The cases thus dealt with by the military courts include not only those with an evident security connection, but also those relating to such diverse matters as traffic, drugs, antiquities and price-fixing offences, and cases in which there is any Israeli interest.

While military courts are provided for by international law during an occupation, military tribunals are not. Yet Israel has set up numerous military trubunals composed of one or more officers to assume jurisdiction over matters such as taxation, land, planning, pensions, registration of companies, etc., such jurisdictions being removed from the local courts or committees which were formerly responsible.

THE ISRAELI HIGH COURT OF JUSTICE has been made available to the population of the West Bank and Gaza. It does not function as an appeal court, but rather as a court of judicial review over the administrative actions of the Military Commanders and their subordinates. The scope of its review and so its usefulness is limited both by its mandate and by its reluctance to look behind the 'security reasons' which in the majority of cases brought before the court are said to justify the order. Evidence given by those responsible for the security of the area is inevitably preferred over that of other experts, and in some instances, such as in appeals against deportation orders, evidence is taken in secret and so is in effect unchallengeable.

More use has been made of the High Court in recent years by residents of the Occupied Territories, and it has been found to be of use both in delaying immediate administrative actions, such as the demolition of a house, pending a full court hearing, and where the military authorities fail to follow their own procedures. Otherwise the results have not been encouraging.

ISRAELI CIVILIAN COURTS There are now some 65,000 Israeli settlers living in the Occupied Territories. Although living in the same geographical area, Israeli settlers are not treated on the same footing as Palestinian residents, but are, by a series of legal

manoeuvres, treated in most cases as residents of Israel.

Three types of court exercise criminal jurisdiction over these settlers. Criminal courts in Israel are competent to try under Israeli law anyone who is in Israel and commits an act which would be a crime if committed in Israel. Military courts in the Occupied Territories have jurisdiction over all offences committed in the Area. Settlement courts, authorised by MO 1057 in 1981, have jurisdiction to try settlers within their area for certain offences; these courts were initially justified as municipal courts dealing with only local matters, but their jurisdiction was expanded in 1983.

Jurisdiction of local criminal courts over Israeli settlers, though existing in theory, has been rendered totally ineffective by a requirement that before any such proceedings are issued a permit from the Officer in Charge of Judiciary must be obtained. In practice such proceedings are never brought, settlers being tried by one of the courts above. Even the so-called 'Jewish Terror trials' of 1985, involving offences committed by settlers in the Occupied Territories against Palestinians, were held neither in the West Bank criminal courts nor in the military courts, although both had jurisdiction, but in the Jerusalem District Court.

BRIEFING PAPER NO. 3:

THE MILITARY COURT SYSTEM

The military courts were set up on 8 June 1967, a few days after the Israeli occupation of the West Bank and Gaza. In 20 years of occupation, literally thousands of people have passed through the military courts. While al-Haq acknowledges that military courts set up by an occupier in the early stages of an occupation will by their very nature be imperfect, there has been little positive development in the military justice system in the past 20 years.

The military court system is now largely governed by Military Order 378 (1970), which lays down procedures for the arrest, detention, interrogation, and trial of Palestinians accused of having committed 'security offences'. (For a discussion of jurisdiction of these courts see Briefing Paper No. 2)

POWERS OF ARREST Under M.O. 378, the military has broad powers of arrest. Any soldier may arrest a person who has, or is suspected of having, committed a security offense. The Israeli authorities have defined "security offenses" very broadly to include many activities such as demonstrating, stone throwing, wearing the colours of the Palestinian flag, and possession of banned materials.

M.O. 29 provides that each detainee must be registered on entering a detention centre. In practice prison personnel often refuse to say whether or not a particular detainee is registered and sometimes give false information. This means that the detainee's lawyer or family cannot always ascertain where he or she is being held. Even after a detainee has been

located, he or she may be moved to another prison, and the family or lawyer needs to start the search all over again.

PRE-TRIAL DETENTION Prisoners may be detained for up to 18 days without being brought before a military court. The military court can extend this detention for up to six months without charges being filed. The judge often comes to the prison for the hearing and the detainee is brought before him, without a lawyer for the accused being there.

By agreement with the Israeli authorities, delegates of the International Committee of the Red Cross are informed of detentions 12 days after they occur and are permitted to visit detainees within 14 days of their arrest. The ICRC is not allowed to advise detainees of their right to see a lawyer, or to pass information to lawyers, nor can they publish any information about their work.

INTERROGATION Prisoners arrested on suspicion of having committed a security offense are routinely subjected to intensive interrogation by security personnel. In almost all cases, the detainee is not permitted to meet with his/her lawyer until after a confession is signed. Detainees under interrogation are therefore not warned that they have the right to remain silent, or to get other advice from their lawyer.

The detainee does not have the right to have an interpreter present during the interrogation. Article 72 of the IV Geneva Convention provides that translators should be provided "both during preliminary investigation and during the hearing in court." While M.O. 378 provides for translators during trial, this has not been extended to the preliminary investigation.

Many detainees complain of psychological and physical maltreatment during interrogation by Israeli intelligence personnel (Shin Bet). Prisoners report techniques such as prolonged beatings, hot and cold showers, being left "hooded" and handcuffed for long periods of time, sleep deprivation, threats, and other methods of intimidation being used by interrogators. Al-Haq and other organisations such as Amnesty International have documented and published details of numerous cases of the use of torture and intimidation by interrogators in order to extract a confession. In the military courts, a signed confession is usually the primary and decisive evidence used in the case against the accused.

Confessions are almost always written in Hebrew, a language that few Palestinians understand. The Israeli High Court has ruled that, although it is preferable to have confessions written in Arabic, confessions written in Hebrew are considered valid.

CONDITIONS OF DETENTION Conditions in which the detainees are kept are also harsh. Al-Haq recently documented the conditions in the Tulkarem detention centre. The detention centre is composed of eight or nine prefabricated cells. Several of these cells measure 1.8 square metres holding three or four prisoners. Other cells measure .70 metre on each side, usually holding a single detainee.

The cells have no windows, only three small holes in the door of each cell, and five similar holes in the ceiling. The holes are not covered, so that when it rains in the winter water enters the cells. Since there are no windows, air circulation is minimal, and in the summer the cells are stiflingly hot and airless. There are no regular toilet facilities, only a bowl which remains inside the cell and is emptied once a week.

RIGHT TO A LAWYER Under Article 72 of the Fourth Geneva Convention, accused persons "shall have the right to be assisted by a qualified advocate of their own choice..." Under Israeli Military Order 29 there is no absolute right for a detainee to consult a lawyer. Under this Order, the decision as to if and when a detainee may meet with a lawyer is up to the discretion of the prison commander. The Order states that a detainee is only allowed to meet with a lawyer if "the meeting will not impede the course of the investigation" and if the prison commander "is convinced that the request was made for the purpose of dealing with the legal affairs of the prisoner...".

It has been argued by Israeli jurists that denial of the right to legal counsel is permitted for reasons of "military security" under Article 5 of the Fourth Geneva Convention. However, even in connection with relatively minor offenses, such as stone throwing, detainees are not allowed to see their lawyer until they sign a confession.

BAIL AND HABEAS CORPUS Applications for bail are rarely granted by the military courts. The courts have also refused to hear applications for habeas corpus (an application to the court which tests the legality of an individual's detention), although the Israeli High Court accepts the right.

STRUCTURE AND INDEPENDENCE OF MILITARY COURTS Under Article 10 of the Universal Declaration of Human Rights of 1948, everyone is entitled to a fair hearing before an "independent and impartial tribunal". Several aspects of the military courts raise serious questions as to whether or not the military court constitutes an independent judiciary. All judges in the military court, for example, are army officers on active duty, some without legal qualifications. Many Palestinian lawyers do not practice in the military courts because of their

perception of the court as biased in favor of the prosecutor and their feeling that a fair trial is impossible.

Military courts either have a single judge or a three judge panel. A single judge and the president of a three judge panel must have legal qualifications. The other judges on a three judge panel are usually army officers without legal qualifications. A single judge cannot impose sentence of over five years.

APPEALS Decisions of the military court are not subject to appeal. No court can be expected to be perfect, since errors in fact and law are inevitable in any court system. There is thus no justification for the continued lack of any appeals procedure after 20 years of occupation. The lack of an appeals procedure is a violation of Article 14 of the International Covenant on Civil and Political Rights of 1966, which states: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law".

PRISONS Currently, there are six prisons in the West Bank holding political detainees: Jenin, Nablus, Ramallah, Hebron, Fara'a, and Jnaid. There is also a prison in the Gaza Strip. These figures do not include police lock-ups, temporary detention facilities, or facilities in Jerusalem. West Bank prisons are governed by Military Order 29 (Order Concerning the Operation of Prison Institutions).

In addition to these prisons, many political detainees from the Occupied Territories are held in prisons inside Israel. This is a clear contravention of Article 76 of the Fourth Geneva Convention which states that detainees must be "detained in the occupied country, and if convicted they shall serve their sentences therein."

PRISON CONDITIONS Al-Haq has been concerned with conditions in West Bank prisons for several years. From information gathered from lawyers, families of detainees, and released prisoners, al-Haq has documented conditions in these prisons, and has intervened with the authorities on several occasions. Poor conditions in the prisons led to a hunger strike in West Bank prisons earlier this year. Below is a brief analysis of some of the conditions we have documented:

Use of tear gas in enclosed spaces Al-Haq has documented the use of tear gas in closed cells on a number of occasions, primarily in Jnaid prison. The use of gas in confined spaces is clearly inhumane and cannot be justified under any circumstances. The most recent incident al-Haq documented was on 27 January 1987, when guards in Jnaid sprayed tear gas into cels in all sections where Palestinian political prisoners are detained.

Overcrowding Overcrowding is a problem in most West Bank prisons. In Jnaid, for example, 12 prisoners are kept in a cell measuring only 21 square metres. In al-Fara'a 30 prisoners are kept in rooms which measure 20 square metres and contain no WC. Toilet facilities are always inadequate to meet the needs of prisoners. In Fara'a, for example, there are only 5 toilets for over 100 prisoners. Prisoners are routinely kept in their cells twenty-two hours a day.

Proper ventilation is also a problem. In Jnaid, windows are covered with large asbestos sheets larger than the windows themselves, which effectively block daylight and air circulation. The use of asbestos sheeting poses a health hazard from asbestos fibres, which have been shown to cause cancer and asbestosis.

Maltreatment In addition to abuse during interrogation, al-Haq has documented cases of serious beatings and other forms of maltreat-

ment and humiliation. In Jnaid, prisoners are routinely forced to take off their clothes and subjected to full body-searches in front of their fellow prisoners. We have also confirmed reports of physical and psychological pressure on prisoners to collaborate with the authorities as informers.

BRIEFING PAPER NO. 4:

ADMINISTRATIVE MEASURES OF PUNISHMENT AND CONTROL

Throughout the occupation the Israeli military authorities have made extensive use of administrative measures of punishment and control over the population of the Occupied Territories. These measures include deportation, administrative detention, restriction of individuals to confined areas, demolition and sealing of houses and restriction of travel. Such action is taken without any court procedure, generally at the discretion of a single Israeli officer, the Area Commander.

Use of these measures has varied at different stages of the occupation, some falling almost into disuse for periods, then again being employed extensively. Their use at times is a reaction to intensive resistance activity, but at other times it can be seen more as a response to pressure on the government by interest groups, such as settlers. One such instance is the "Iron Fist" policy of 1985, introduced shortly after the exchange of prisoners, much criticised in Israel, between Israel and the PFLP-GC in May 1985. Although resistance activities in the Occupied Territories had not increased markedly in the preceding period, from August 1985 there was a rapid escalation in the use of administrative detention and deportation, while the same increase in house demolitions had been apparent from the time of the exchange in May.

Use of these punitive measures enables the authorities to silence those they consider a threat to security but cannot successfully prosecute for any offence, while avoiding the delays and rigorous examination of the basis

for the suspicion that would be required by a regular court.

ADMINISTRATIVE PUNISHMENT The Area Military Commanders for the West Bank and Gaza assert powers originating from the defunct British Mandate Defence (Emergency) Regulations 1945 (see Briefing Paper No.2), which enable them to impose severe punitive measures on residents of the Occupied Territories, without charge or trial. This action is in violation of basic principles of human rights which provide that there should be no punishment without a fair trial.

Although there is no charge or trial, military orders provide for a quasi-judicial review procedure in the case of deportation and restriction orders, and in all cases there is the possibility of a petition to the Israeli High Court. However the scope of the petition is very restricted, amounting in no sense to a full appeal, and the chance of success in such proceedings is very limited unless on a technicality, due to the following, amongst other, reasons:

(i) both in the review process and in the court, the onus is on the subject of the order to prove that the order is unreasonable or made in bad faith, not on the Military Commander to convince the court that it is reasonable;

(ii) preparation of arguments against the order is made more difficult or even impossible in many cases where the evidence, if any, is not disclosed for 'security' reasons, leaving no real possibility of challenging the basis of the decision;

(iii) the review committees, though not of course the High Court, are themselves composed of military officers, and cannot be considered as providing an independent review, since they are asked to assess orders made by their superior officer;

(iv) neither the review committee nor the

High Court examine the substance of the allegations, but only whether the considerations of the Commander were legitimate on the face of it; it is thus in no sense a full appeal.

DEPORTATION At least 1,156 Palestinians were deported by Israel from the Occupied Territories between 1967 and 1978, excluding many unrecorded cases such as those where alleged infiltrators, or those unregistered in the 1967 census are put across the border, or prisoners 'agree' to leave in exchange, for instance, for a shorter prison sentence. After 1978 deportations were rare until 1985 when they were stepped up dramatically under the 'Iron Fist' policy. Since 1985, 40 Palestinians have been deported from Gaza and the West Bank, and an order is still pending against one other.

Deportation orders are issued by the Area Commander, by his powers under either the Defence (Emergency) Regulations 1945 (Articles 108 and 112(1)) or Military Orders (MO 329 in the West Bank and MO 290 in the Gaza Strip). Once served with the order, the deportee is invariably detained in prison until deportation. The deportee has the opportunity to appeal to a Military Objections Committee, which hears the appeal in secret and makes non-binding recommendations to the Military Commander. The deportee can further petition the Israeli High Court against the order. In deportation cases the evidence is invariably kept secret, so there is no real possibility of challenging the basis of the decision. These restrictions lead most deportees to have little faith in the potential for a fair hearing, and indeed no orders for deportation have yet been cancelled.

Deportation usually occurs very shortly after the determination or withdrawal of any appeal, or the expiry of the time allowed for appeal. In most cases deportations are to Jordan, the deportee being sent across the

border south of the Dead Sea.

Article 49 of the Fourth Geneva Convention absolutely prohibits deportation. It is also one of the 'crimes against humanity' defined in the Nuremburg Charter, drawn up after World War II to define the criteria for the trial of war crimes.

ADMINISTRATIVE DETENTION is another measure which fell into disuse in the early 1980s, only to be revived under the "Iron Fist" policy. Since July 1985, 232 orders of administrative detention have been issued, many of them later renewed.

The detention of individuals without charge or trial for renewable periods of 6 months, known as administrative detention, was introduced by the British Defence (Emergency) Regulations 1945 (Articles 108 and 111(1)) and used extensively in the Occupied Territories from 1967. For instance in 1970 alone there were 1,131 administrative detainees according to military sources. Administrative detention is now governed by Article 87 of Military Order 378, which replaced the relevant provisions of the Emergency Regulations in 1970, and was itself extensively amended by Military Order 815.

As the military law now stands, an administrative detention order can be issued by the Area Commander for a period of up to 6 months, and by a Regional Commander for up to 96 hours. The order can then be renewed for further periods of 6 months indefinitely - Ali Awwad al-Jammal had been under administrative detention for just under 7 years when he was released in 1982.

Although this is again an extra-judicial procedure, there being no trial, there is a review procedure by which the order must be confirmed by a military committee within 96 hours and thenceforth reviewed every 3 months.

The detainee can also appeal to a military judge, and finally petition the Israeli High Court, but these procedures are subject to exactly the same limitations as in deportation cases.

Administrative detention is permitted by Article 78 of the Fourth Geneva Convention, but only when "necessary for imperative reasons of security" (emphases added), and only in any case during the first year after the cessation of hostilities. Imprisonment without trial, and the absence of any fair appeal violates the rule of law and basic principles of human rights.

TOWN ARREST

Article 110 of the British Defence (Emergency) Regulations 1945 provided for the restriction of an individual to a certain area. This has been replaced by Article 86 of Military Order 378, which has been much used since 1979, usually to confine a person to his or her town, village or camp. The order is usually for 3 or 6 months, but can be, and often is, renewed repeatedly. There is no automatic judicial review, although a recommendations committee informally considers each case every six months and a committee meets if an appeal is presented by the restricted person. Again secret evidence is often relied on and the procedure is subject to the same limitations as described above.

Freedom of movement is also often restricted as a punitive measure by confiscation of identity cards and the witholding of permits to travel. Failure to produce an identity card on demand is a punishable offence, so that the absence of such a card forces the owner to restrict his or her own movements. A longer-term restriction results from the refusal of a travel permit, usually without reason given and with no time limit specified.

DEMOLITION AND SEALING OF HOUSES

Also relying on the British Defence (Emergency) Regulations 1945, the Israeli authorities have demolished or sealed thousands of houses in the Occupied Territories lived in by families of Palestinians suspected of resistance activity. Article 119 authorises the Military Commander to order the demolition or sealing of a house where there is a connection with someone suspected of committing an offence under the regulations. In practice this action is usually taken shortly after the arrest of the suspect, though sometimes when there has been no arrest and on a few occasions even after the suspect has been killed by the army. Almost invariably it occurs before any trial, unless the action is delayed by High Court administrative review. In the majority of cases the house does not belong to the suspect, but to his or her family who are thus also made homeless.

As in all the above measures, the decision is an administrative one taken by the Area Commander, and here no review procedure is provided by the military orders. The family, if aware of the threat, can apply to the Israeli High Court which will often grant an interim injunction, but we are unaware of any case where the order has been overturned in the final hearing.

It is clear that this measure does not only constitute an extra-judicial punishment of the suspect, but also collective punishment of all others living in the house who are not even suspected of any offence. Collective punishment is expressly forbidden by Article 50 of the Hague Regulations 1907 and by Article 33 of the IV Geneva Convention of 1949, both of which regulate the conduct of an occupying power. Destruction of property is also prohibited by Article 53 of the IV Geneva Convention 1949 except when absolutely necessary for military purposes, which, according

to the interpretation of the International Committee of the Red Cross, the main authorities on the Geneva Conventions, does not apply here.

ADMINISTRATIVE ORDERS DOCUMENTED BY LSM/AL-HAQ

	1984	1985	1986	1987*
Deportation Orders+	1	31	5	5*
Administrative Detention Orders~	0	131	37	73*
Town Arrest Orders~	46	31	62	54*
Houses Demolished or Sealed~	4?	55	48	22*

* 1987 figures to 6 June only, and only those verified by al-Haq.

+ from the West Bank and Gaza

~ from the West Bank only

BRIEFING PAPER NO. 5:

TRADE UNIONS UNDER ISRAELI OCCUPATION

The right of workers to organise is one of the basic human rights. The efforts of Palestinian workers to organise unions in the Occupied Territories have, however, been met with severe repression by the Israeli military authorities. Although the authorities have allowed the registration of 5 new unions since 1967, union activists have been imprisoned, union offices have been closed, union members have been harassed, and union leaders have been deported in an attempt by the authorities to block their union activities.

Despite these actions by the authorities, unions have continued their efforts to organise workers. These unions negotiate collective agreements with employers, educate workers about their rights, help workers who have problems with their employers, and provide basic services like health insurance and legal advice to their members.

RESTRICTIONS ON REGISTRATION There are at present 31 registered unions in the West Bank, and over twice that many operating without licenses. Under the Jordanian Labor Law of 1960, any group of 20 or more workers in one trade or in one establishment may apply to establish a union. Currently there are over 50 West Bank unions who have applied for permits and who have either received rejections or received no reply from the authorities.

RESTRICTIONS ON HOLDING UNION OFFICE The only restriction put on eligibility for union office by the Jordanian Labour Law is that a person seeking union office must not have been

convicted of either a felony or a misdemeanour. The Israeli authorities, however, have put heavy restrictions on who can hold union office. Israeli Military Order 825 (1980) requires all unions to submit a list of the names of all candidates for union office to the military at least 30 days before the election, and gives the military the right to bar anyone who has been convicted of a political offense from holding elected positions in a union.

ARREST AND DETENTION WITHOUT TRIAL The military authorities have used a variety of administrative procedures against the unions and individual union leaders. On 15 May 1987, there were at least 16 trade union leaders under town arrest and 7 union leaders under administrative detention. In the past two years, two unionists have been deported by the Israeli government. These administrative procedures are imposed without a trial or even formal charges being filed.

The International Labour Organisation (ILO) has emphasised the principle of fair and prompt trials in all cases involving unionists, including cases in which the government considers that the charges have no relation to trade union functions. The ILO has also decided in the past, in cases where unionists have been accused of illegal activity, that the government must show that their arrest is in no way occasioned by their trade union activities.

OTHER VIOLATIONS OF THE RIGHT TO ORGANISE The workers' right to organise has also been violated by the closure of union offices, both temporarily and permanently. On 15 May 1987 there were three union offices under administrative closure orders. Al-Haq has also documented frequent raids on union offices in which union property is often confiscated and/or damaged and union members are detained. The raid by the authorities on an office in

Jenin shared by four trade unions on 12 February 1987, is just one example. Union meetings and events are also repeatedly barred or cancelled by the military. Two recent examples are the barring of two May Day celebrations in Jerusalem, and one in the village of Izna, near Hebron. Al-Haq has also documented reports of intelligence officers intimidating union members from entering the offices of the union by standing outside the union's offices and threatening to photograph anyone who enters, and other forms of harassment.

WORKERS IN ISRAEL Currently over half of the workforce from the Occupied Territories, about 150,000 people, are working in Israel. These workers face many problems at work, including discrimination and lack of proper representation. All legally registered workers pay dues to the Histadrut, the Israeli trade union federation. Workers from the Occupied Territories are not, however, entitled to be members or to vote in elections for local workers' councils or for the Histadrut executive council. West Bank unions have begun setting up informal committees for workers from the West Bank who work in Israel to teach them about their rights and help them fight against the discrimination they experience on the job.

THE GAZA STRIP Unions in the Gaza Strip were only allowed to reopen in 1979. The military authorities, however, told the Gaza unions that they were not allowed to accept new members or elect new officers without permission from the military. The first union elections in over 20 years were successfuly held in Gaza in February and April of 1987, despite a ban and threats of violence by the Gaza military authorities.

From the pattern of harassment we have documented, we believe that there has been a conscious attempt by the authorities to create an atmosphere of fear around the unions. The

frequent harassment of union leaders and raids on union offices have discouraged many workers from joining unions and exercising their right to organise. Under present conditions it is very difficult for trade unions to fulfill their proper role, or to develop and grow naturally, due to the restrictions imposed on them by the authorities. While on one hand the authorities criticise the unions for not fulfilling their role, and accuse them of not being real unions, on the other hand they have created an atmosphere where such development is extremely difficult.

BRIEFING PAPER NO. 6:

SUPPRESSION OF ACADEMIC, CULTURAL AND POLITICAL LIFE

From the beginning of the occupation the Israeli authorities have kept tight control over the Palestinian population's educational, cultural and political activities. They have done so by a variety of means.

EDUCATION Five independent universities have opened their gates or expanded their scope in the Occupied Territories since the mid-1970s to provide an education to those whose access to universities in the Arab world had become cut off by restrictions on movement from and to the West Bank and Gaza. The Israeli authorities, however, have imposed restrictions on and otherwise interfered with academic freedom throughout the occupation. The promulgation of Military Order 854 in 1980 caused an uproar for the wide powers it gave to the military authorities to supervise and restrict higher education in the Territories. Although the order so far has not been implemented, it also has not been revoked, and could be applied at any time.

The military authorities have used their wide powers of arrest under Military Order 378 to detain students, often without pressing charges or bringing them to trial. Administrative measures against student leaders are frequent. Two student leaders from Bir Zeit University and al-Najah University were deported to Jordan in May 1987.

Universities are frequently closed down by military order, sometimes for months at a time. Bir Zeit University currently faces a four-month closure order. Military check-

points on roads leading to universities have led to de facto closures. For example, army checkpoints were placed on the main road to Bir Zeit University thirty-six times during the 1985-86 academic year. Three students died and many were injured after Israeli soldiers opened fire at Bir Zeit University at two occasions during the past half year. The universities have been harassed in other ways as well, including through censorship and confiscation as well as prevention of importation of books and periodicals, impositions of customs duties on educational, scientific and cultural materials contrary to Article 1 of the UNESCO Agreement of 1950, and interference with cultural activities like exhibits.

Al-Haq continues to be concerned with the authorities' practice of arresting high-school students at the time of their tawjihi (or matriculation) exams and then releasing them without charges as soon as the exams have ended, thus forcing them to lose a year of their studies. Although the authorities notified al-Haq in a letter that they do not condone this practice, al-Haq continues to receive information about such cases.

PRESS AND PUBLICATIONS There is a measure of press freedom in the Occupied Territories. Operating licenses have been granted to a number of papers based in East Jerusalem. Press freedom is curtailed, however, by the editors' obligation to submit all materials they intend to publish to the Military Censor in West Jerusalem. Thus parts of articles and sometimes articles in their entirety are excised from the daily and weekly papers by the authorities. The authorities can close down papers by virtue of the (defunct) British Defence Regulations of 1945, and have done so on at least four occasions in the last two years alone.

According to censorship rules, all written materials that are imported, distri-

buted, published or simply in someone's possession in the Occupied Territories are subject to military scrutiny. The possession of no publication is permitted in the Occupied Territories unless a permit has been obtained for each particular publication from the military authorities. The authorities have issued a list, now comprising 417 titles, of publications for which no permit can be obtained. The authorities have used the blanket prohibition selectively, for example to convict individuals against whom they hold suspicions unrelated to their possession of certain publications, but against whom they are unable to bring sufficient evidence. In one recent example, a person was convicted to the period of pre-trial detention for the possession of illegal publications after having been interrogated about unrelated activities.

CULTURAL ACTIVITIES Cultural life under occupation also faces serious restrictions imposed by the military authorities. Al-Hakawati Theater in East Jerusalem has been closed fourteen times since it opened its doors in 1983, seven closures taking place in the past three months alone. Artists and writers, including journalists, have been placed under town arrest and administrative detention, or have been deported. Many have been prohibited from traveling abroad. The authorities have also on occasion closed down social and youth centers in refugee camps, and arrested or harassed members of voluntary work committees.

POLITICAL FREEDOMS Political life has been closely circumscribed under occupation. No municipal elections have been held since 1976, and the authorities have cracked down on any person who has spoken out in any way that could be interpreted as being political. Prominent community leaders and activists in mass organizations and professional associations, including mayors, trade union leaders, teachers, student activists and others,

continue to be deported, administratively detained, or placed under town arrest. In this sense the often-voiced Israeli claim that there is nobody to negotiate with among the Palestinians in the Occupied Territories has some validity: the authorities have consistently removed any emerging local leadership.

Deprived of its local leadership and muzzled in its political and cultural expression, the Palestinian population of the Occupied Territories has been systematically thwarted in the aspiration it shares with Palestinians everywhere: to exercise its most basic right, the right of self-determination.