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Collective Punishment in 'Awarta Israel's Response to the Killing in Itamar Settlement



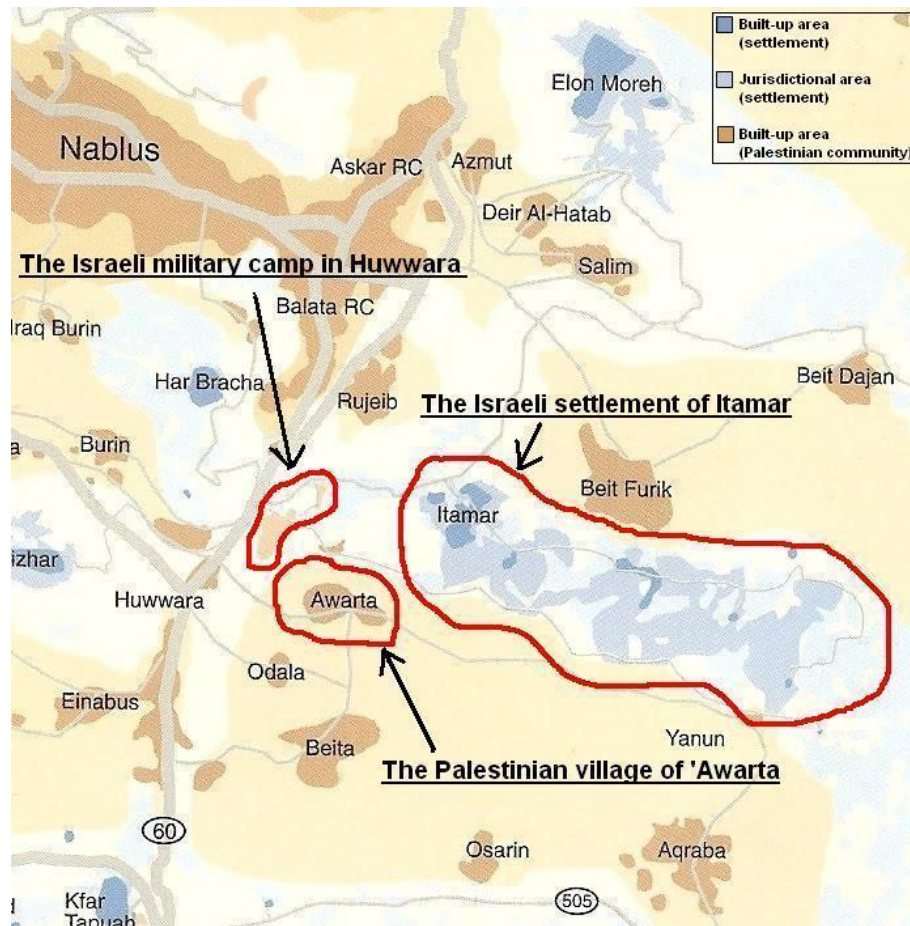
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1. Introduction

On 11 March 2011, five members of a settler family, including three children, were murdered in the Israeli settlement of Itamar in the West Bank. This appalling crime led to an investigation by the Israeli military in the nearby Palestinian village of 'Awarta (Nablus Governorate). The incident was followed by incitement and exploitation at a ministerial level as Israeli leaders hastily condemned Palestinian involvement and attempted to use the crime as a pretext for further construction of illegal settlements. The incident also led to an escalation in settler violence throughout the West Bank.



A map of the area of 'Awarta – 2008, B'tselem©

Due to the nature of the killings, the Israeli military reportedly believes that the attack was not carried out by an organised political infrastructure but rather by one or two individuals.¹ Israeli authorities stated that they suspect that the settler family may have been murdered in revenge for the murder of two Palestinians from 'Awarta, who were killed allegedly by Israeli soldiers in unclear circumstances near Itamar in 2010.² Palestinian media coverage initially questioned the veracity of Israeli claims that a Palestinian committed the murders, reporting that a Thai or Philippine worker, employed in the Itamar settlement, was arrested on suspicion of the killings.

¹ Y Katz, 'IDF hunting for perpetrators of brutal Itamar killings' *Jerusalem Post* (13 March 2011) <<http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=211879>> accessed 16 March 2011.

² E Sanders, 'Brutal West Bank killings shock Israel, stir fears of renewed violence' *Los Angeles Times* (13 March 2011) <<http://www.latimes.com/news/nationworld/world/la-fg-israel-settlement-killings-20110313.0,3329690.story>> accessed 16 March 2011.

A gag order was imposed on information connected to the investigation, preventing Israeli authorities from commenting further on the identity of the alleged perpetrators.³ Even before the investigations revealed any Palestinian involvement in the crime, Israeli political leaders and military officials were quick to pass judgment, immediately labelling the crime a 'terror attack' and accusing Palestinians of taking part in it.

On 17 April 2011, the Israeli court lifted the gag order on the investigation and the authorities announced the arrest of two Palestinian teenagers from 'Awarta as allegedly responsible for the murder in Itamar settlement. Nevertheless, the accusations against the two are, as reported in the media, based solely on their confessions, with seemingly no other evidence.⁴ The mother of one of the suspects stated that when the army raided their house on 10 April at around 4:00 am, her son, Amjad Awwad, was taken to the washroom where he was interrogated for six and a half hours. His mother reported hearing her son screaming intermittently whilst she was held outside of the house. Her husband and another son were taken to Huwwara military base for questioning, but the location of Amjad's place of detention was not disclosed to the family at the time of the arrest, thus preventing him from receiving any form of legal assistance.⁵

It should be noted that the use of confessions as a primary evidential basis for the substantiation of charges by Israeli courts, and in particular the Israeli military court system, falls short of the basic evidential threshold prescribed by international law standards.⁶ Under Israel's evidential standards, the teenagers, who are expected to be tried in an Israeli military court, could be convicted and sentenced to life imprisonment.⁷

Many of the measures carried out in 'Awarta in support of the Israeli investigation for suspects to the killing in Itamar, violated Israel's obligations under international humanitarian and human rights law and must be considered within the context of Israel's policing and law enforcement powers in occupied territory. This paper examines the measures taken by the Israeli army in 'Awarta under international humanitarian and human rights law, on the basis of the documentation collected by Al-Haq's field researchers.

³ K Abu Toameh, 'PA-linked sites: 'Foreign worker behind Itamar killings'' *Jerusalem Post* (15 March 2011) <<http://www.jpost.com/MiddleEast/Article.aspx?id=212177>> accessed 16 March 2011.

⁴ A Pfeffer, 'Palestinian teenagers arrested over murder of 5 members of Fogel family' *Ha'aretz* (18 April 2011) <<http://www.haaretz.com/print-edition/news/palestinian-teenagers-arrested-over-murder-of-5-members-of-fogel-family-1.356514>> accessed 18 April 2011.

⁵ A Hass, 'In Awarta people are worried from the settlers and collective punishment' *Ha'aretz* (18 April 2011) <<http://www.haaretz.co.il/hasite/spages/1225414.html>> accessed 16 March 2011.

⁶ Criminal Appeal 6613/99 *Smirk v State of Israel*, 56(3) P.D. 529, 546 (2002); See also, B Sangero, 'The Necessity of Corroboration to Confession' (2005) 4 *Alei Mishpat* 245, 260 (in Hebrew).

⁷ The Israeli courts are required to examine the confession under a strict standard of 'voluntariness' by using a subjective test in order to determine whether the investigation methods used to obtain a confession invalidate it. The case law has, however, broadly interpreted confessions to include not only a full admission of guilt, but also any incriminating statement that leads to a proof of guilt, even if it does not directly point to the commission of the offense. The Israeli HCJ judgement in the *Issascharov* case corroborates the rule in Article 12 of the Israeli Evidence Ordinance, by holding that failure of the police to inform a suspect of the right to legal counsel prior to questioning gives a court authority to declare inadmissible any confession obtained following such violations. *Issascharov v Chief Military Prosecutor* (Judgment) Crim. App. 5121/98 (4 May 2006) paragraph 67. The decision on the admissibility of a confession depends also on the gravity of the crime. Statistics from 2007 show that 99.7 percent of all cases in Israeli military courts result in convictions; see, *Convictions in Criminal Trials, by Selected Characteristics*, 'Statistical Abstract of Israel' (2009) <http://www.cbs.gov.il/shnaton60/st11_04.pdf> accessed 18 April 2011.

2. Factual Information

The Israeli military and police forces launched a wide scale manhunt for suspects in the Itamar killings throughout the area, focusing their search on the village of 'Awarta, which is located approximately one kilometre from the Israeli settlement of Itamar.

2.1 Military Deployment, Curfew and Closure of the Village

On Saturday 12 March at about 2:00 am, Israeli Air Forces commenced aerial surveillance of the village and surrounding area, using both unmanned aerial vehicles and F16 aeroplanes. Light and sound grenades were dropped on 'Awarta for about an hour before Israeli troops entered the eastern side of the village and stormed into Palestinian properties, including the family homes of the two Palestinians who were killed allegedly by the Israeli occupying forces in equivocal circumstances near 'Awarta on 21 March 2010.⁸

Later in the morning, at approximately 7:30 am, Feisal Mahmoud Qawariq, the father of one of the aforementioned 'Awarta residents killed last year, heard Israeli soldiers on the streets, announcing a curfew until further notice.

I heard ammunition and sound bombs not far from my house. I then heard a voice saying "get out of the house." I did not know which house they meant [...]. Moments later, I heard gunfire and bullets hitting the walls of the house, one pierced through the western side of the house. I felt like the bullets were falling on the rooftop. I smelt tear gas. I told my children that we were being fired at which suggested we were the ones being asked to leave the house. I told them to fetch their IDs and to take care of their mother in case I got shot. I then went out and asked the soldiers why they were shooting at my house. They told me to go back inside and close the door, so I said that I was confused and did not know what they wanted from us. I then retreated back inside the house and closed the door.

Moments later, I reopened the door and asked the soldiers to stop shooting because my wife was sick and I asked a soldier if I needed to leave the house. The soldiers ordered us, through speakers, to leave the house one by one and demanded that each member of the family put their hands on their heads.

Extract from Affidavit No. 6232/2011. Given by Feisal Mahmoud Qawariq, a resident of 'Awarta, Nablus Governorate.

It was also reported that soldiers shot live bullets in the direction of houses in the village while threatening to shoot anyone who failed to comply with the curfew. Some time later, at approximately 9:00 am, further units of Israeli soldiers entered the village in armoured vehicles. Troops were also deployed on the hilltops and checkpoints were erected at all the main entrances to the village, barring residents from leaving. At noon the imposition of a 24-hour curfew was announced and the entire village of 'Awarta was declared a closed military zone.

Throughout the four-day-long incursion the arrests, assaults, house-to-house searches and vandalism continued, adding to the impact of the curfew and leaving the residents of 'Awarta traumatised. The first siege ended when Israeli soldiers retreated from the village at about 9:00 am on 16 March, without announcing that the curfew had been lifted.

⁸ Al-Haq, 'Al-Haq Action Alert: Four Unarmed Teenagers Shot Dead by Israeli Military in Nablus District' (23 March 2010) <<http://www.alhaq.org/pdfs/Iraq+Burin+and+Awarta+Deaths+Final.pdf>> accessed 18 April 2011. The case of the two Palestinians from 'Awarta killed allegedly by Israeli occupying forces in March 2010 was closed without a criminal investigation as, on the basis of the operational debriefing on the incident, the soldiers in question were found to have behaved according to Israeli military conduct.

Less than a week later, on 22 March 'Awarta was subject to a second curfew, lasting from 4:30 am until 6:00 pm. A third curfew was declared by the Israeli occupying forces on 9 April at 9:30 pm and lasted until 12 April at 3:30 pm. Measures carried out in the initial four-day military incursion were repeated during both subsequent curfews.

2.2 Raiding of Homes and Damage to Private Property

House-to-house searches were conducted as Israeli soldiers and police forcibly entered homes, breaking doors and windows in the process, and sending in military dogs ahead of personnel. Equipped with cameras, soldiers and police filmed the initial stages of the searches, which were conducted in accordance with military procedures, before turning off all recording equipment and proceeding to assault residents and vandalise property.

Women and children were forced to wait outside while male family members were arrested and their homes were raided and ransacked. In many of the houses soldiers made holes in the floors and the walls, destroyed home furnishings, gas heaters and personal possessions, and removed electric sockets causing damage to the fuses. Computer hard drives and USB flash sticks were confiscated from numerous houses as well as from a computer shop. Additionally, soldiers stole money and jewellery, and confiscated three mobile phones, from Feisal Mahmoud Qawariq.



A bedroom after a 'search' by Israeli soldiers – April 2011, Al-Haq©

Approximately 30 houses, mostly located at the highest point of the village, were turned into military bases to be used as interrogation centres by day and occupied by the soldiers as barracks by night. Several families were evicted from their homes and had to seek shelter with neighbours or sleep outdoors. In other houses, families were forced to stay in one room and denied free movement within their homes and access to essential belongings, while soldiers occupied the rest of the house. Police dogs were reportedly allowed to defecate in the rooms and on the beds of those houses turned into military outposts.

On the fourth day of the curfew, men were still being arrested and houses searched. Although soldiers marked properties with the letter "E" to indicate that a search of the premises had taken place, many houses were nonetheless ransacked and raided up to five times during the four-day curfew.



A public building marked with the letter "E" to indicate it had already been searched by the Israeli army – April 2011, Al-Haq©

2.3 Mass Arrests, Interrogations and Physical Abuse

On the morning of Sunday 13 March, soldiers roamed 'Awarta with loudspeakers blaring out a call for all 16 to 35-year-old male residents to gather at the local school. Some 500 village residents were detained until 5:00 pm, 200 in the local school and 300 in the yard outside the old 'Awarta Mosque. Fingerprints and body samples (DNA) were taken from the detainees, who were strip searched both inside the school and in the houses that were being used as military outposts, before being taken back outside, blindfolded.

There were numerous reports of physical abuse and ill-treatment. Children as young as three years old were taken from their homes and forced to stand outside with their faces pressed to the wall and their hands held above their heads. Some of the detainees reported being blindfolded, handcuffed and beaten by soldiers while in custody. A 75-year-old woman lost consciousness after being handcuffed and forced to sit on the ground while soldiers searched her home, and several other women, including an 80-year-old woman, were physically assaulted by soldiers. According to eyewitness accounts, a 28-year-old man was handcuffed and blindfolded before being beaten by at least six soldiers at intervals for two hours. During the prolonged attack he lost consciousness several times and when his family later managed to smuggle him to Rafidiya hospital in Nablus, he was diagnosed with a dislocated shoulder, back injuries and a twisted ankle.

Another resident witnessed soldiers forcing his brother to the ground where they kept him pinned face down for ten minutes, one soldier with a foot on his head, and another with a foot on his back. The man's face and ear started to bleed profusely but when medics tried to approach the soldiers ordered them to retreat.

On Monday 14 March, Imad Ahmad Darawsha was arrested during a search of his house and taken to a detention camp where he was beaten at intervals while blindfolded, and interrogated. In the early hours of 15 March, he was released and ordered to make his own way back to 'Awarta, where he soon discovered that his ordeal was not over. On reaching the village he immediately encountered a group of Israeli soldiers.

One was pointing his weapon at me and told me to take off my clothes so I took all my clothes off and remained in my underwear. I stood in my underwear for ten minutes until the soldier told me I could get dressed and walk back to the village. The village was still under curfew at the time and I reached home at around 5:00 am. At about 3:00 pm the next day, Israeli forces stormed my house again and ordered my family and me out of the house. There were thirty soldiers with police dogs and they ordered my father and me to take off our clothes. They entered the house and stayed for an hour. A conversation was going on between my mother and a soldier. I heard him telling her that if they found anyone in the house, no matter their age, that person would be bombed (*sic*) and fired at. They then left my house and headed to the village. When we checked the house we found that the Israeli soldiers had destroyed furniture, clothes, mattresses and made holes in armchairs.

Extract from Al-Haq Affidavit No. 6228/2011. Given by Imad Ahmad Darawsha, a resident of 'Awarta, Nablus Governorate.

2.4 Closure of Public Services and Businesses

As a result of the curfew, which prevented shops, schools and health clinics from opening, some residents ran out of basic food items, sick people were not allowed to leave their homes for medical treatment and the 1,642 schoolchildren of the village were prevented from attending classes. Additionally, on the first day of the military incursion ambulances were denied access to 'Awarta.

On 13 March, Dr. Najeh Muhammad Nammour, a resident of Nablus, tried to open his medical clinic in the village but was ordered by soldiers to close it and to leave 'Awarta and 'never come back.'

I headed to the village in an ambulance with a medical team but we were held up at the checkpoint from 8:00 am until 1:00 pm. Many ambulances were stopped at this checkpoint at the entrance to the village. There were ambulances from the Palestinian Red Crescent Society, UNRWA, the Medical Relief Committees and the Ministry of Health. All were forbidden from entering the village. Subsequently, I called the Head of the Village Council and asked him to speak with the Israeli Military base to arrange for us to enter the village. Meanwhile a representative of the International Red Cross arrived, and a foreigner spoke to the soldiers. The foreigner told us that the soldiers would allow us to enter but that they needed some more time.

Afterwards, an Israeli officer named Captain Jamal (I found out his name from an ambulance' driver) told the staff of the Medical Relief Ambulance to enter the village, drop off a patient and come back. Then an argument broke out between us and the captain in which he made it clear that he did not want us to stay in the village. He was shouting foul terms of abuse in Arabic. He demanded that the ambulance cars go to the northern entrance of the village. We did, and we waited at this entrance until 4:00 pm when we were finally able to enter.

Extract from Al-Haq Affidavit No. 6231/2011. Given by Dr. Najeh Muhammad Nammour, a resident of Nablus, Nablus Governorate.

2.5 Further Military Operations

During the Israeli incursion on 22 March, prayers at the old 'Awarta mosque were interrupted when soldiers wrenched the mosque door from its hinges before entering with shoes on and evicting the worshippers.

On 6 April at about midnight, Israeli military forces surrounded 'Awarta, sealing the entrances to the village and arresting over 200 women, including the elderly, sick and pregnant, in connection with the ongoing investigation. No female soldiers were present, no arrest warrants were presented and a number of soldiers, including the commanders of the arresting forces, wore masks to cover their faces during the operation.⁹ The detainees, many of whom were arrested in their night gowns, were taken to Huwwara military camp where they were assigned numbers to distinguish them from one another, before being individually interrogated without the presence of a lawyer or an interpreter.



An armchair torn by Israeli soldiers – April 2011, Al-Haq©

A 70-year-old woman told Al-Haq that officers started her interrogation by asking her if she knew the reason for her detention, before informing her that she was being accused of murdering five members of a family. Other detainees described a similar interrogation procedure, which ended with them being told to sign a two-page statement in Hebrew and threatened with prolonged detention if they refused.¹⁰ Following their interrogation the detained women were photographed and had their fingerprints and DNA samples taken. Eventually, by about 4:30 am most of the detainees were released. The Israeli army has yet to comment on the operation.

On 9 April at 9:30 pm, Israeli forces re-entered the west side of 'Awarta searching and vandalising four houses. They detained the residents of one house, including 20 children, from midnight until 3:00 pm the following day, holding them outdoors for most of the night, denying them food and drink and repeatedly refusing requests from the residents to use the bathroom. Eventually, two people from the house were arrested and the soldiers left.

Since 12 March approximately 700 people from 'Awarta have been detained. While most of the villagers have been released within hours of their arrest, by 10 April 55 remained in detention without charge, including two children,¹¹ one of whom, a 16-year-old girl, was detained on 4 April and not released until 15 April.

⁹ Addameer Prisoners Support and Human Rights Association, 'Addameer Calls on International Community to Monitor Mass Arrests in Awarta Village' (Press Release, 10 April 2011) <<http://addameer.info/?p=1989>> accessed 13 April 2011.

¹⁰ Ibid.

¹¹ Ibid.

3. Settler Violence in 'Awarta and in the Rest of the West Bank

Settler attacks are a regular occurrence in rural communities such as 'Awarta even in times of calm, but since the murder of the Itamar family, villagers have noticed a marked increase in settler violence.

On 12 March, at about 4:00 pm, hundreds of settlers entered 'Awarta and launched an attack on the village, throwing empty bottles and stones at the houses. The soldiers forced the Palestinians to remain indoors but did not attempt to prevent the attacks. Residents of 'Awarta remained distressed after observing settlers from Itamar loitering in the areas overlooking the village.

On 14 March, when Iyad Usama Abd al-Jawad tried to ward off an attack on his house he was beaten up and dragged five metres in the direction of Itamar by a group of angry settlers, armed with empty bottles and stones. Following his escape he returned home to discover that other members of his family had also been attacked.

My parents informed me that a few settlers had attacked my uncle Sa'ed Yousef Awwad's house, and fired bullets at it. My uncle Najeh Mohahhamad Abd al-Jawad's house had also been attacked by settlers who had thrown rocks at the property and broken a window.

Extract from Al-Haq Affidavit No. 6229/2011. Given by Iyad Usama Abd al-Jawad, a resident of 'Awarta, Nablus Governorate.

In addition to the incidents in 'Awarta, attacks on Palestinians by settlers were documented in the areas of Hebron, Nablus, Qalqiliya and Ramallah, as confirmed by the reports of international non-governmental organisations:

Israeli settlers have reportedly used stones, Molotov cocktails, guns, clubs and knives to attack Palestinians in vehicles and in their homes in villages and towns across the West Bank. Settlers have also burned fields, cars and property [...]. In some cases Palestinians have reported that Israeli security forces on the scene did nothing to stop the settler attacks.¹²

On 21 March, three Palestinians were injured following two separate settler attacks in the area of Hebron; one was stabbed in the back as he rode his donkey from Um Tuba to the village of Yatta. The other two Palestinians suffered gunshot wounds after being fired at from a passing settler car while they were attending a funeral procession at the entrance to Beit Ummar.

¹² Amnesty International, 'Spike in West Bank violence condemned' (14 March 2011) <<http://www.amnesty.org/en/news-and-updates/spike-west-bank-violence-condemned-2011-03-14>> accessed 16 March 2011.

4. Israel's Political Response to the Killing in Itamar Settlement

Following the criminal attack in Itamar, Prime Minister Benjamin Netanyahu hastily condemned the Palestinian Authority for incitement against Israel which, according to him, caused the killing of the settler family.¹³ Seizing the crime as yet another opportunity to heighten construction in the West Bank, he promised to build 400 homes in the main settlement blocs and even declared, during a condolence visit to the family of the victims, “[w]e shall build our land.”¹⁴ During his visit, Netanyahu also stated, with reference to the Palestinians, that “they shoot and we build.”¹⁵

Israel's efforts to realise political goals in the wake of a regretful loss of life could not be more obvious. On Saturday 12 March, the ministerial committee on settlement affairs decided to approve the construction of some 500 new housing units in the settlement blocs of Gush Etzion, Ma'ale Adumim, Ariel and Kiryat Sefer.¹⁶ On Sunday 13 March, the Israeli cabinet approved the construction of these additional housing units in response to the killing of the settler family.¹⁷ Interior Minister Eli Yishai even declared that the decision did not go far enough and that Israel must build “at least a thousand new homes for each person murdered.”¹⁸

Other Israeli political leaders were also quick to take advantage of the Itamar murders. Housing and Construction Minister, Ariel Atias of Shas, affirmed “we must change the ratio and build in Jerusalem and Judea and Samaria. We must strengthen the settlement, and the time is now,”¹⁹ while Knesset Speaker, Reuven Rivlin, contended that Israel “shall continue to build anywhere and at any time.”²⁰

On 16 March, news agencies reported that residents of Itamar were undertaking the construction of a new outpost a few hundred meters away from 'Awarta, unofficially named “Aryeh,” an acronym of the first letters (in Hebrew) of the names of the victims of the killings. They are reportedly receiving assistance from the Shomron Local Council of settlements, including the provision of a bulldozer, which has been used to build a road to the Itamar settlement, as well as an electric generator, perimeter lights and a water tank.²¹

¹³ B Ravid, ‘Yishai: Israel must build 1,000 new units in settlements for every person murdered’ *Ha'aretz* (13 March 2011) <<http://www.haaretz.com/misc/article-print-page/yishai-israel-must-build-1-000-new-units-in-settlements-for-every-person-murdered-1.348879?trailingPath=2.169%2C2.216%2C2.217%2C>> accessed 16 March 2011.

¹⁴ N Shtrasler, ‘Netanyahu's exploitation of the murders at Itamar’ *Ha'aretz* (15 March 2011) <<http://www.haaretz.com/print-edition/opinion/netanyahu-s-exploitation-of-the-murders-at-itamar-1.349258>> accessed 16 March 2011.

¹⁵ ‘PM visits Itamar victims' families: “They shoot, we build”’ *Jerusalem Post* (13 March 2011) <<http://www.jpost.com/Headlines/Article.aspx?id=211986>> accessed 16 March 2011.

¹⁶ B Ravid (n 13).

¹⁷ Amnesty International (n 12).

¹⁸ B Ravid (n 13).

¹⁹ B Ravid (n 13).

²⁰ N Shtrasler (n 14).

²¹ Y Ettinger, ‘Settlers create new West Bank outpost in memory of slain family’ *Ha'aretz* (16 March 2011) <<http://www.haaretz.com/print-edition/news/settlers-create-new-west-bank-outpost-in-memory-of-slain-family-1.349441>> accessed 16 March 2011.

5. Legal Analysis of the Israeli Army's Measures in 'Awarta

The Israeli occupying forces are duty-bound in their activities in occupied territory to comply with their obligations under both international human rights and humanitarian law.²² Despite this, some of the measures implemented in 'Awarta by the Israeli occupying forces in exercise of their law enforcement powers in the OPT constitute *prima facie* violations of a series of Israel's international humanitarian and human rights law obligations.

5.1 Law Enforcement Powers Exercised by Israeli Occupying Forces

In assisting the Israeli civilian police in its investigation into the killing in Itamar settlement, the Israeli army is acting in its capacity as a civil authority and must therefore ensure that it does so in accordance with its obligations for the administration of an occupied territory, namely, the duty to ensure and restore public order and civil life under Article 43 of the Hague Regulations. Article 47 of the Fourth Geneva Convention, which proclaims the inviolability of the rights and safeguards of protected persons, prevents the Occupying Power from adopting harmful measures in order to restore and maintain law and order.²³ The basic protection provided by this provision reinforces the need to apply, when possible, a higher standard for the protection of civilians, namely that of international human rights law and Article 47 of the Fourth Geneva Convention.

The current situation in the West Bank, where actual fighting has died down and the presumption of the existence of hostilities does not apply, amounts to a "calm" prolonged occupation. Since Israel, as the Occupying Power, has sufficient control over the territory to enable it to carry out law enforcement operations, international human rights law standards govern its activities as they supplement the applicable rules of international humanitarian law in the OPT.²⁴ Policing activities remain at all times governed by the specific international human rights standards applicable to police operations against civilians, which may never be conducted like hostilities against combatants.²⁵ Moreover, "the law enforcement model also governs the use of force by the Occupying Power in providing for its own security, at least where there are no hostilities in the occupied territory."²⁶

Consequently, when Israeli soldiers undertake to enforce a curfew and closure of a village for the alleged purpose of undertaking investigative measures and collecting evidence, they are acting in their capacity as a law enforcement authority and are bound by the relevant international human rights law standards.

In a report on unauthorised settler outposts published in 2005, Talia Sasson, former head of the Israel's State Prosecution Criminal Department, held 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."²⁷

²² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (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/Add.13.

²³ JS Pictet, *Commentary of the Fourth Geneva Convention* (ICRC, Geneva, 1958) 272-275.

²⁴ L Doswald Beck, 'The Right to Life in Armed Conflict: Does International Humanitarian Law Provide All the Answers?' (2006) 864 *International Review of the Red Cross* 881, 892.

²⁵ 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), Vol I, Chap. 14, 4.

²⁶ 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> accessed 17 April 2011.

²⁷ T 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-CDC042465D/0/sason2.pdf>> accessed 13 April 2011 (in Hebrew).



Destroyed furniture following a 'search' by Israeli soldiers – April 2011, Al-Haq©

5.2 Violations of International Human Rights Law

A large part of the Israeli army's measures in 'Awarta infringe upon some of Israel's most basic international human rights law obligations, particularly those under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR), to which Israel is a State Party.²⁸

5.2.1 Right to Be Free from Cruel, Inhuman or Degrading Treatment

Article 7 of ICCPR imposes an absolute obligation on Israel to ensure that all persons under its jurisdiction are free from cruel, inhuman or degrading treatment or punishment and requires its state agents, including the army, to refrain from such treatment at all times and to fulfil positive duties of precaution and prevention. This obligation is further affirmed in Article 16(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Inhuman treatment or punishment includes cases in which intensive mental and/or physical suffering is either unjustifiably caused by specific circumstances or arises from a punishment that is unlawful in terms of its nature or manner of imposition,²⁹ as the unlawful interrogation and detention measures implemented in the context of the recurrent curfews in 'Awarta. Additionally, to the extent that the curfew measures themselves constitute a form of collective punishment, as discussed below, the curfews themselves amount to unlawful measures.

The European Court of Human Rights has held that "[i]ll-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the European Convention of Human Rights. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and health of the victim [...] the suffering and humiliation must in any event go beyond the inevitable element of suffering or humiliation

²⁸ Israel is also a State Party to the following UN human rights conventions: Convention for the Elimination of all forms of Discrimination against Women (CEDAW), Convention International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and Convention on the Rights of the Child (CRC). Israeli extraterritorial obligations under these instruments in the OPT were affirmed by the ICJ Advisory Opinion on the Wall in 2004.

²⁹ W Kalin and J Kunzli, *The Law of International Human Rights Protection* (Oxford University Press, Oxford, 2009) 322.

connected with a given form of legitimate treatment or punishment, as in, for example, measures depriving a person of their liberty.”³⁰



A room looted by Israeli soldiers – April 2011, Al-Haq©

The measures of ill-treatment implemented during the execution of mass arrests and interrogations, including the violent raiding of homes and verbal humiliation, harassment and beating of persons in custody, for the apparent purpose of intimidation in order to obtain information, constitute inhuman treatment and punishment. These measures, undertaken by the army in its law enforcement capacity, also amount to excessive use of force. Although due force can be used to effect an arrest, the level of force should be reasonable in the circumstances of the case, and law enforcement officials are required to minimise damage and injury and ensure that medical aid is rendered to any affected persons.³¹

5.2.2 Right to Liberty and Security of the Person and Privacy of the Home

Article 9(1) of ICCPR imposes an obligation on Israel to respect and protect the right to liberty and security of all individuals within its jurisdiction, including protected persons in occupied territory, prohibiting the execution of arbitrary arrests, except on such grounds and in accordance with procedures established by law.³² Arresting officials must ensure they treat the suspect with fairness whilst upholding the presumption of innocence, which demands that there be a legal basis for every arrest, and that individuals are informed of the reasons for their arrest.³³ When conducting mass arrests of men, women and children in ‘Awarta, the army was making groundless claims against large numbers of individuals to the effect that they had committed the killing in Itamar settlement.

³⁰ *Wainwright v United Kingdom* (App no 12350/04) (2006) 44 EHRR 40, 41. See also, J Waldron, “Cruel, Inhuman, and Degrading Treatment: The Words Themselves” (2008) NYU School of Law, Public Law Research Paper, No. 08-36, 17 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1278604> accessed 18 April 2011.

³¹ UN 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). Most countries, including the United Kingdom, refrain from arming police officers in ordinary situations, see, R Smith, *Texts and Materials on International Human Rights* (2nd edn Oxon, Routledge, 2010) 508-509.

³² UN Human Rights Committee, General Comment 8, Right to liberty and security of persons (Article 9 of ICCPR) (30 June 1982), paragraph 4. The only relevant permissible legal ground for the deprivation of liberty according to Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), would be the “arrest of suspected offenders and pre-trial detention where there is a risk of flight or where it is necessary to prevent the commission of further offenses.” See also, W Kalin (n 29) 443-450.

³³ *Boriscenci v Hungary*, Communication 852/1999, Human Rights Committee, UN Doc. CCPR/C/76/D/852/1999, paragraphs 2.1-2.3, 3.1 and 7.3. See also, RKM Smith (n 31) 485-487.



A ransacked shop in 'Awarta – April 2011, Al-Haq©

Similarly, Article 10(1) of ICCPR requires that the Israeli army treat all persons deprived of their liberty with humanity and with respect for their inherent dignity. In addition, Article 17(1) of the same Covenant states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” The main scope of these rights is the protection of physical and mental integrity of individuals and the respect of privacy and of the home against state-conducted searches.³⁴

The mass arrests conducted by the Israeli army for the collection of information from 'Awarta residents constitute continuous infringements on the right to liberty and security of persons, as well as the right to be protected from arbitrary deprivation of liberty. Furthermore, the house raids conducted by the army, which resulted in extensive property damage and involved incidents of theft of private possessions, amount to violations of the right to respect of the home and the right to protection of privacy.

5.2.3 Right to Freedom of Movement

Article 12(1) of ICCPR guarantees the right to freedom of movement, which cannot be restricted, but for in the most exceptional circumstances premised on a clear national security or public order rationale. Any restrictive measures must also conform to the principles of proportionality and necessity, be appropriate to achieve their protective function and constitute the least intrusive instrument amongst those that might achieve the desired result.³⁵ Measures of derogation must be limited to the strict requirements of the exigencies of the situation, being appropriate, limited in time and strictly required by the seriousness of the specific facts of the situation that triggers their adoption.³⁶

It is recalled that Israel has not claimed the applicability of a security rationale to the case of 'Awarta. Additionally, the collective measures inflicted by the army, namely the restriction on the freedom of movement of the entire village through the imposition of a four-day-long curfew and the closure of all public premises, including shops and medical clinics, can hardly

³⁴ W Kalin (n 29) 382-389.

³⁵ UN Human Rights Committee, General Comment 27, Freedom of Movement (Article 12 of ICCPR), (2 November 1999) UN Doc. CCPR/C/21/Rev.1/Add.9, paragraph 14.

³⁶ C Beyani, *Human Rights Standards and the Movement of People within States* (Oxford University Press, Oxford, 2002) 137-138.

be justified as strictly required measures for the purpose of undertaking an investigation and are therefore disproportionate to the result they are allegedly meant to achieve.

5.2.4 Right to Health

Israel is obliged to provide health services and ensure the right to health of the civilian population in the OPT in accordance with its obligations under Article 2 of ICESCR, which prescribes “the right to the highest attainable standard of health.” The right to health is also enshrined in the Convention for the Elimination of all forms of Racial Discrimination (CERD), the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).³⁷ The obligations to respect and protect medical personnel, to maintain and to ensure access to hospitals are also part of Israel’s obligations under international humanitarian law, as it will be explained below.³⁸

Access to the basic necessities of life, which include minimum medical treatment especially in case of life-threatening health problems, is part of the protection provided for by the right to life. Although Israel’s obligations in relation to the right to health are considerably broader, as a bare minimum, Israel is prohibited from denying access to existing health services.³⁹ The obstruction of access to medical treatment by the Israeli army, and its refusal to allow the entrance of medical personnel to the village thereby constitute serious violations of the right to health, and further corroborate the inhuman character of the treatment imposed on the civilian population.

5.2.5 Right to Education

The Israeli army’s closure of the village and of all public premises, including schools, amount to violations of Israel’s obligations in relation to the right to education. Articles 13 and 14 of the ICESCR and Articles 28 and 29 of the CRC set forth the obligation of the State to protect this right, including by ensuring physical access to schools.⁴⁰ The right to education is also safeguarded by the law of occupation under Article 24 of the Fourth Geneva Convention.⁴¹ The closure of the schools by the army for the duration of the curfews, and their use for the detention of men and women from the village, amounts to the violation of the right to education.

³⁷ CERD Article 5(e)(iv); CEDAW Article 12; CRC Article 24.

³⁸ Fourth Geneva Convention (1949) Articles 16-23, 38 and 55-57.

³⁹ UN Committee on Economic Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health (Article 12 of ICESCR) (2000), paragraph 12(b). See also, W Kalin (n 29) 312-319; S Jamar, ‘The International Right to Health’ (Fall 1994) Southern University Law Review 59-60.

⁴⁰ UN Committee on Economic Social and Cultural Rights, General Comment 13, The right to education (Article 13 of ICCPR) (12 August 1999) UN Doc. E/C.12/1999/10, paragraph 6(b). It includes physical accessibility to education as part of the State’s obligations in relation to this right in holding that “education has to be within safe physical reach.” See also, W Kalin (n 29) 405.

⁴¹ Y Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Martinus Nijhoff Publishers, Leiden and Boston, 2009) 385-386.

5.3 Violations of International Humanitarian Law

International human rights law norms complement and supplement the application of the rules of international humanitarian law in force due to the existence of a military occupation. The Occupying Power is, therefore, duty-bound by the obligations of both bodies of law with regard to its actions in occupied territory. Accordingly, the Israeli army's actions in 'Awarta should also be examined in light of the army's obligations under international humanitarian law.



Efforts to restore order in a room vandalised by Israeli soldiers – April 2011, Al-Haq©

5.3.1 Fundamental Guarantees of Protected Persons

Article 27 of the Fourth Geneva Convention defines the unequivocal duties of the Occupying Power, including the obligation to respect persons, their honour, freedom from physical or moral coercion and freedom from collective punishment.⁴² These rules impose an obligation on Israel to accord the civilian population in occupied territory humane treatment and to take all the precautions to prevent possible infringements of these fundamental rights. This entails a duty on Israeli occupying forces to protect civilians from all acts of violence or threats thereof, against humiliating punishment and insults, and to ensure that homes do not become the object of arbitrary interference. This obligation also emphasises the importance of affording special protection to women.

While Article 27(4) of the Fourth Geneva Convention authorises the Occupying Power to take stringent measures of “control and security,” such as imposing restrictions on movement or depriving individuals of their liberty, these can be adopted only on security grounds, and in a manner that is not discriminatory.⁴³ It is recalled that the Israeli army is acting in its capacity as a law enforcement authority exercising ordinary policing powers aimed at supporting the Israeli civil police investigation of the killing in Itamar settlement. Even if Israel were to claim that security interests existed in the case of 'Awarta, a security rationale invoked for the exercise of policing powers in response to an ordinary crime, such as the killing in Itamar settlement, could not be used as a justification for the indiscriminate and disproportionate measures implemented by the Israeli army in the village.

⁴² Ibid, 270-271.

⁴³ JS Pictet (n 23) 207.

Even when measures of constraint are justified, they should not affect the fundamental rights of the persons concerned,⁴⁴ especially the rights to life and physical integrity. Neither the right to freedom of movement nor the right to personal liberty can be suspended in an indiscriminate manner through the imposition of a curfew on an entire village, and, in time of occupation, they should remain in general unimpaired.⁴⁵ Additionally, Article 32 of the Fourth Geneva Convention prohibits the Occupying Power from applying measures causing physical suffering to protected persons, including “any measures of brutality,” and Article 33(1) guarantees the right of protected persons to be free from “any measures of intimidation or terrorism.” The inhumane and degrading character of some of the measures undertaken by the Israeli occupying forces during the curfews imposed on ‘Awarta – including violent house raids, arbitrary arrests, seizures of homes for military use, incidents of physical and psychological abuse and damage to private property – is *prima facie* evidence of violations of fundamental guarantees of protected persons.

Moreover, the Israeli army’s refusal during the curfew to grant access to medical personnel to provide medical treatment to patients, including those who had been injured and beaten during the arrests and house raids, is a violation of the Occupying Power’s duty to grant special treatment to medical personnel at all times and ensure that their work remains unhampered.⁴⁶

5.3.2 Prohibition of Collective Punishment

The collective punishment of the civilian population is absolutely prohibited under Article 33 of the Fourth Geneva Convention, which forbids the Occupying Power to use “[c]ollective penalties and likewise all measures of intimidation [...]”.⁴⁷ Article 75(2)(d) of the First Additional Protocol to the Geneva Conventions, reflective of customary law,⁴⁸ confirms that collective punishments are prohibited at any time.

Although some of the measures may have a link with the investigation of the killing in Itamar settlement, the methods employed are clearly unreasonable by virtue of their indiscriminate nature and go beyond the kind of measures that would be employed in a similar investigation were the suspects Israeli settlers⁴⁹. For that reason, Israel’s actions in ‘Awarta strongly indicate Israel’s intention to impose punitive measures against the entire population of the village on the basis of mere allegations that someone from the village could be involved in the killing of the family in Itamar settlement. The Israeli army has previously claimed to use closures and curfews as preventative and deterrent measures, despite international law recognising their effect as being punitive and collective, in particular due to their indiscriminate nature.⁵⁰

Even the Israeli High Court of Justice has previously ruled that a protracted curfew would amount to an unlawful collective penalty when it is not directly associated with the exigencies

⁴⁴ Y Arai-Takahashi (n 41) 275.

⁴⁵ JS Pictet (n 23) 202-203.

⁴⁶ Fourth Geneva Convention (1949) Article 20(1).

⁴⁷ Provisions similar to Article 33 are found in Article 50 of the Hague Regulations (1907), which holds that “[n]o general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.”

⁴⁸ JM Henckaerts and L Doswald-Beck, *Customary International Humanitarian Law* (ICRC and Cambridge University Press, Geneva, 2009) Vol. I Rule 10 <http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule103> accessed 16 April 2011.

⁴⁹ Israel has created two parallel legal systems in the OPT for the two different groups residing there: military courts enforcing military law against Palestinians, while Israeli civilian courts apply civil and criminal law to Israeli settlers in the OPT. This forms the basis for a strong argument of discrimination in that Palestinians are subject to different standards of evidence and procedure than those applied to settlers, and ultimately receive harsher penalties. See ‘Occupation, Apartheid, Colonialism? A re-assessment of Israel’s practices in the occupied Palestinian territories under international law’ (Human Sciences Resource Council, Cape Town, 2009) 105-118 <www.hsrc.ac.za/Document-3227.phtml> accessed 18 April 2011.

⁵⁰ JS Pictet (n 23) 228; see also, Y Arai-Takahashi (n 41) 225-226.

of a specific security situation, like in some of the cases during the second *Intifada*,⁵¹ requiring that a situation be qualified as a conduct of hostilities operation. The Court held that the legality of a curfew, which seriously disrupts the life of the civilian population, depends on its purpose and the particular circumstances at hand. In the case of 'Awarta, the conditions of a specific security situation do not apply as the Israeli army is acting in its capacity as a law enforcement authority, where a military security rationale is not applicable. In light of the nature of the measures implemented in 'Awarta, it can be concluded that they are likely to be in contravention of the prohibition of collective penalties.⁵²

5.4 Individual Criminal Responsibility of Israeli Occupying Forces

Human rights law sets out the standards applicable to the Israeli occupying forces law enforcement operations, like the one conducted in 'Awarta. Whilst being duty-bound by international human rights law standards, in a situation of military occupation violations of international human rights law impact upon the Occupying Power's compliance with international humanitarian law obligations. Therefore, the conduct of the Israeli occupying forces not only constitutes serious violations of international human rights law, but may also amount to grave breaches of the Fourth Geneva Convention, giving rise to individual criminal responsibility of the Israeli soldiers and commanders responsible for the planning and execution of mass arrests, house raids and other forms of inhuman treatment in 'Awarta.

Article 147 of the Fourth Geneva Convention defines "inhuman treatment" of protected persons as a grave breach of the Geneva Conventions, prohibiting assaults on their human dignity and preventing all forms of physical injury and moral suffering. The cumulative effect of the measures causing the physical and moral suffering of the entire village community is likely to reach the threshold of "inhuman treatment," considering in particular cases of persons who were beaten whilst in custody, and families whose homes were violently raided, damaged and seized for military use.⁵³ Statements issued by Israeli officials as well as remarks made by soldiers and commanders to individuals in the village further indicate that these measures were used as a form of punishment or an act of revenge for the killing in Itamar settlement.⁵⁴

Those measures implemented by Israel in 'Awarta that inflict suffering on the civilian population and amount to collective inhuman treatment, may also amount to the war crimes of "humiliating and degrading treatment"⁵⁵ and of "cruel and inhumane treatment."⁵⁶ The International Criminal Tribunal for the former Yugoslavia has held that such treatment includes intentional acts or omissions that are inconsistent with the principles of humanity and human dignity.⁵⁷ A determination of whether conditions are inhuman is made on the basis of the individual circumstances of each case,⁵⁸ taking into account a multitude of facts and the nature of the attack on the human dignity of the civilian population.⁵⁹

⁵¹ HCJ 1113/90, *Shua et al. v IDF Commander of the Gaza Strip*, 44(4) PD 590, 591 (the judgment is excerpted in English in IYHR 332 1993); and HCJ 1759/94, *Sruzberg et al. v Minister of Defence*, 55(1) PD 625, 628. See also, Y Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press, Cambridge, 2009) 155.

⁵² CV Reicen, 'Preventive Detention, Curfews, Demolition of Houses, and Deportations: An Analysis of Measures Employed by Israel in the Administered Territories' (1986-7) 8 *Cardozo Law Review* 515, 544.

⁵³ G Werle, *Principles of International Criminal Law* (2nd Edn T.M.C. Asser Press, The Hague, 2009) 387.

⁵⁴ In an interview Rabbi Avichai Ronzki, the former chief Rabbi of the Israeli army and a current resident of Itamar settlement, calls to avenge the murders by using against the whole village harsher measures than those already implemented. See A Hass, 'In Awarta people are worried from the settlers and collective punishment' *Ha'aretz* (18 April 2011) <<http://www.haaretz.co.il/hasite/spages/1225414.html>> accessed 18 April 2011 (in Hebrew).

⁵⁵ Statute of the International Criminal Court (2002) Article 8(2)(b)(xxi).

⁵⁶ Statute of the International Criminal Court (2002) Article 8(2)(a)(ii).

⁵⁷ *Prosecutor v Aleksovski* (Judgment, Trial Chamber) ICTY-95-14/1-A (25 June 1999), paragraphs 56 *et seq.*; affirmed in *Prosecutor v Naletilic and Martinovic* (Judgment, Trial Chamber) ICTY-98-34-T (31 March 2003), paragraph 246. See also, *Prosecutor v Blaskic* (Judgment, Trial Chamber) ICTY-95-14-A (3 March 2000), paragraphs 154-155.

⁵⁸ "To assess the seriousness of an act, consideration must be given to all the factual circumstances. These circumstances may include the nature of the act or omission, the context in which it occurred, the personal

As for the collective measures imposed on the entire population of 'Awarta, such measures constitute means of repression or intimidation of the civilian population, often under the guise of law enforcement. The criminalisation of collective punishment is a rule of customary international law with a strong basis in conventional law.⁶⁰ Moreover, the Special Court for Sierra Leone, which has prosecuted individuals for the war crime of collective punishment, has found this offense to consist of punitive measures imposed indiscriminately and collectively upon persons for acts that they may not have committed; namely, punishment that is inflicted arbitrarily, without establishing individual criminal responsibility or "without any real attempt to identify the perpetrators, if any."⁶¹ Consequently, Israeli soldiers and commanders who were involved in the planning, organisation and active implementation of such policies and practices may be liable to incur individual criminal responsibility.⁶²



A kitchen after a 'search' by Israeli soldiers— April 2011, Al-Haq©

circumstances of the victim [...], as well as the physical, mental and moral effects of the act upon the victim," see *Prosecutor v Vasiljevic* (Judgment, Appeals Chamber) ICTY-98-32-A (25 February 2004), paragraph 165.

⁵⁹ *Prosecutor v Blagojevic and Jokic* (Judgment, Trial Chamber) ICTY-02-60-T (17 January 2005), paragraphs 605-610; *Prosecutor v Kordic and Cerkez* (Judgment, Appeals Chamber) ICTY-95-14/2-A (17 December 2004), paragraph 117.

⁶⁰ S Darcy, "Prosecuting the War Crime of Collective Punishment: Is it time to Amend the Rome Statute?" (2010) 8 International Journal of Criminal Justice, 29-30.

⁶¹ *Prosecutor v Brima et al.*, (Judgment, Trial Chamber) SCSL-04-16-T (20 June 2007), paragraph 680. The customary law status of this prohibition was established in *Prosecutor v Fofana and Kondewa*, (Judgment, Trial Chamber) SCSL-04-14-T (2 August 2007), paragraphs 178 *et seq.*

⁶² It was recently reported that the curfew on the village was ordered by the Israeli Major General Avi Mizrahi, GOC Central Command; see, H Levinson and A Harel, 'The security system believes: soon there will be notable progress in the investigation of the murder in Itamar' *Ha'aretz* (11 April 2011) <<http://www.haaretz.co.il/hasite/spages/1224531.html>> accessed 18 April 2011. The same Major General was also involved in the exoneration of three incidents of wilful killing, two at Al-Hamra checkpoint in the Jordan Valley and one in Hebron, see, Al-Haq, 'Whitewashing Procedures: Israeli Major General Exempts Soldiers of Responsibility for Wilful Killings' (4 March 2011) <www.alhaq.org/pdfs/Whitewashing%20Procedures_4_3.pdf> accessed 18 April 2011.

6. Conclusion and Recommendation

Operating under a belief that the killing in Itamar settlement was committed by a Palestinian from 'Awarta, Israel's arbitrary and indiscriminate measures against the civilian population of the village are unlawful and constitute violations of Israel's obligations under international human rights and humanitarian law. The infliction of inhuman and degrading treatment and forms of collective punishment on the civilian population constitute violations of the most fundamental prohibitions of international humanitarian law, which may also amount to war crimes.

Israel is under an obligation to ensure that the army's policies and practices do not amount to collective punishment or violate other norms of international human rights and humanitarian law. The primary reason for Israel's widespread violations of international law is the approval of unlawful measures through policy set by political and military decision-makers, and its implementation through unwarranted easing and incoherent formulation of the army's rules of engagement. Israel is under an obligation to ensure that the army's law enforcement policies and practices in the OPT are reviewed and made compliant with applicable international law standards, and that rigorous training is provided to Israeli commanders and soldiers in this regard.⁶³

Pursuant to the violations committed in 'Awarta, Israel is under an obligation to ensure that a prompt, impartial and thorough investigation is opened at once, and that the perpetrators of violations are prosecuted, where appropriate, in accordance with the standards of international criminal justice. Israel's deficient accountability mechanisms create a culture of impunity amongst Israeli soldiers and commanders which contributes to an increase in the scope and severity of violations of international law. In all cases, measures to bring justice to victims should also consist of reparations, including but not limited to monetary compensation.⁶⁴ However, the victims of the illegal measures implemented by the Israeli occupying forces in 'Awarta are likely be barred from obtaining compensation for their injuries and extensive property damage, since the jurisprudence of Israeli courts indicates that such measure might conveniently be justified as an "act of war." It should also be recalled that amendments to Israeli law are underway (Amendment 8 to the Civil Wrongs (Liability of State) Law) to fully exclude the possibility of compensating Palestinian victims of Israeli military operations in the OPT.

In the likely default of the Israeli authorities to conduct effective investigations and prosecutions and provide measures for reparation to victims that comply with international law standards, Al-Haq calls on the international community to ensure that these violations of international law do not remain unpunished and recourse be made to the relevant mechanisms of international accountability, including UN mechanisms and criminal justice.

⁶³ Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, UN General Assembly A/HRC/16/71 (3 March 2011), paragraph 59(h).

⁶⁴ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Human Rights, adopted and proclaimed by General Assembly Resolution 60/147 (16 December 2005). Article 9(5) of the ICCPR reaffirms that "[a]nyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. See also, W Kalin (n 29) 450.