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هموكيد ـ مركز الدفاع عن الفرد

Punitive house demolitions

Since 1967, Israel has been demolishing the homes of Palestinians as part of its penal policy in the Occupied Palestinian Territories (OPT). The military, relying on Regulation 119 of the Defense (Emergency) Regulations of the British Mandate, which grants broad discretionary powers, imposes this excessive and irrevocable punishment under an administrative decision, without trial or any other judicial proceedings. Concurrently, the military continues to demolish homes on various administrative claims and to implement its "razing" policy of uprooting fields and groves and demolishing homes for "security" reasons.

House demolitions constitute collective punishment, and are contrary to both international law and the basic precept of Israeli law that a person must not be punished for the acts of others. The demolition of houses does not replace criminal punishment but supplements it, and its chief victims are the occupants of the demolished house rather than the alleged perpetrator, who has mostly been imprisoned or killed.

The timeline illustrates Israel's arbitrary shifts of policy concerning house demolitions, implemented as if the OPT were its own private testing grounds and the human rights therein a plaything for the military. HaMoked deplores the fact that the High Court of Justice serves as a fig leaf for Israel's actions, and legitimizes the abuse of OPT residents and the violation of the rules of international law.

1945	**The British Mandate enacts the Defense (Emergency) Regulations** Under Regulation 119, a house may be demolished based on the mere suspicion that an offence has been committed. Aside from the suspect's house, the draconian regulation allows to demolish the houses of his relatives, neighbors and others in his community. The regulation's applicability in the OPT is questionable, given its cancelation by the British before the end of their Mandate, and regardless, it contradicts several provisions of international humanitarian law**.**

1949	**The Fourth Geneva Convention establishes that house demolitions and collective punishment constitute war crimes** Under Article 53 of the convention, the occupying power is prohibited from destroying houses or other property "except where such destruction is rendered absolutely necessary by military operations". According to Article 33, "no protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. […] Reprisals against protected persons and their property are prohibited".
1967-1987	**The military demolishes and seals over 1,300 houses in the OPT** From the beginning of the occupation until the outbreak of the first intifada, the military demolishes houses – mostly late at night – without trial or proof of any wrongdoing. In over half of these, the demolition is prompted by actions that did not involve injury or loss of life.
6.11.1979	**The High Court of Justice legitimizes punishment as a deterrent** The High Court of Justice determines that Regulation 119 of the Defense (Emergency) Regulations**,** 1945, permits the use of punitive measures for deterrence, and approves the sealing of one room in a house, which was used by an OPT resident who was convicted of an offence.
10.8.1982	**The High Court of Justice rules that house demolitions do not constitute collective punishment** The court rejects a petition against the intended demolition of homes belonging to the families of assailants who have been apprehended and sentenced. The High Court of Justice determines that the purpose of Regulation 119 is deterrence which may also be directed at those close to the offender, but that it does not amount to collective punishment. It is further held that the military commander may act pursuant to the Regulation without need for a conviction, but that he may do so in exceptional circumstances only and following due discretion and examination.

1988-1992	**During the first intifada, Israel demolishes over 430 houses in the OPT** The decisions to demolish a house are largely arbitrary. They lack clear criteria and depend on the military commander on the ground. The military demolishes the homes of individuals suspected of committing acts that threaten the lives of Israeli citizens or soldiers, and often, of "suspected agitators" and those who forcibly resisted arrest. Additionally, the military demolishes the homes of people who are not immediately related to the suspect, and houses which suspects have rented and whose owners have no connection to the reasons behind the demolition.
30.7.1989	**The High Court of Justice rules that except when "military-operational requirements" are concerned, prior warning of the impending house demolition must be served, and the occupants must be allowed to challenge the decision before the military commander and if need be, before the High Court of Justice** In "urgent cases" a house may be sealed – as a reversible action – the occupants, however, must be advised of their right to contest, as stated.
31.7.1989	**The High Court of Justice approves a house demolition pursuant to Regulation 119, although the offender is only a renter**
23.3.1992	**The High Court of Justice rules that the military commander's authority to demolish a person's house pursuant to Regulation 119, is not restricted to the specific residential unit but applies to the entire residential structure, regardless of the innocence of the other occupants** In a minority opinion, Justice Cheshin determines that only the residential unit of the convicted offender should be demolished, otherwise the demolition constitutes collective punishment.
14.6.1992	**Justice Cheshin: the 'spirit' of Regulation 119 had long vanished, and the Regulation must now be interpreted according to the Basic Law: Human Dignity and Liberty** The High Court of Justice rules that the military commander's authority to demolish a house pursuant to Regulation 119 extends to every part of the house, not just those used or owned by the suspect, without need to prove the occupants of those parts have participated, encouraged, or knew about the suspected activity. Justice Cheshin, in the minority, reaffirms his position that "the military commander is not authorized to impose collective punishment".

1993-1997	**Israel demolishes 24 houses in the OPT as punishment** Following the Oslo Accords – namely, the establishment of the Palestinian Authority and the military difficulty to operate inside the "A" areas of the OPT – compounded by public criticism and petitions filed to the High Court of Justice, the number of house demolitions declines. In this period, Israel only demolishes the houses of families of suspected perpetrators and instigators of suicide attacks.
15.2.1993	**In a rare step, the High Court of Justice rules that the military's decision to demolish a house is unreasonable** The High Court of Justice grants the petition of a mother of a man convicted of murder, against the demolition of her house by the military, in which ten members of the family live. The court finds the intended demolition disproportionate, hence unreasonable.
17.11.1994	**The High Court of Justice approves the demolition of the house of a Palestinian who died while carrying out a suicide attack: this is the first time the court legitimizes the use of collective punishment against relatives of a dead man** In a minority opinion, Justice Cheshin opposes the ruling and reaffirms the basic principle whereby "each person shall be liable for his own crime and each shall be put to death for his own wrongdoing".
10.3.1996	**HaMoked to the High Court of Justice: the demolition of the homes of assailants' families constitutes collective punishment, which is prohibited under international law and violates the basic precepts of Israeli law** HaMoked petitions the High Court of Justice on behalf of two families whose houses are subject to military demolition orders. One is the family of a suicide bomber and the other of a man who was arrested for planning an attack–. HaMoked contends the innocent should not be punished, and that the action is expressly intended for deterrence, which has been proved to be ineffective.
19.3.1996	**The High Court of Justice rejects HaMoked's petitions. The court rules that a demolition order for an assailant's houses can be suspended and implemented following an attack by others** In a minority opinion, Justice Dorner holds that a demolition order should not be implemented following attacks by assailants who do not belong to the household in question.

19.3.1996	**The High Court of Justice: the military's authority pursuant to Regulation 119, extends to the demolition of houses inside Israel** Justice Barak adds that the Defense (Emergency) Regulations **remain** valid even when they conflict with the provisions of Basic Law: Human Dignity and Liberty. The court, however, determines that the power vested by the Defense (Emergency) Regulations must be interpreted in the spirit of the Basic Law.
1998-September 2001	**Israel alters its policy and – temporarily – ceases to practice punitive house demolitions**
October 2001-January 2005	**During the second intifada, Israel demolishes 664 houses for punitive reasons** Starting in October 2001, Israel resumes its policy of demolishing homes belonging to the families of suspected terrorists as a means of "deterrence" in its fight against suicide attacks. The military rarely issues demolition orders or gives the occupants prior notice of the intended demolition as required under its undertaking to the High Court of Justice. Throughout this period, house demolitions are executed not only after suicide attacks, but also after other violent activities and attempted assaults against soldiers, for which the perpetrators have been sentenced to long prison terms.
20.7.2002	**The High Court of Justice issues an interim order in HaMoked's petition against the intended demolition of the houses of two families of suspected terrorists** HaMoked asserts that the designated house demolition violates the owner’s proprietary rights and the occupants' rights to dignity and housing, and requests the court to allow the families to contest the demolitions before the irreversible act is carried out. In February 2004, the court deletes the petition. In March 2005, following the state's decision to abandon punitive house demolitions, the families' houses are no longer under threat of demolition.
31.7.2002	**The Israeli security cabinet renews the policy of house demolitions for deterrence** The decision is passed nine months after the policy was renewed de facto.

4.8.2002

HaMoked to the High Court of Justice: order the military to allow 35 families of suspected terrorists to exhaust legal procedures before the demolition of their houses

The petitions are filed after the military demolished nine homes belonging to assailants' families in early August without providing prior notice or allowing the families to remove their belongings. With first news of the military operation, HaMoked sets up a 24/7 hotline for emergency calls on house demolitions.

By the time the petitions are filed, the military has already demolished three of the 35 houses at issue. The petitions seek to compel the military to abide by the ruling of the High Court of Justice from the first intifada: prior notice of demolition must be given to allow the families the right to contest the demolition ahead of time, and rescue their belongings.

5.8.2002

An interim order of the High Court of Justice suspending the demolition of the houses of the 35 families

HaMoked appeals to the military on behalf of 76 more families who fear the possible demolition of their houses by the military, requesting such action be halted pending a final decision on the petitions.

6.8.2002

The High Court of Justice: the military may deny the right to a hearing prior to demolition

In its ruling on HaMoked's petitions, the High Court of Justice determines that the right to a hearing can be denied if there is cause for concern that such a hearing would jeopardize the lives of soldiers or the success of the operation. **The decision of the court gives the military the power to grant or deny the right to a hearing** not just in wartime operations, but also in punitive operations against civilians. The military perceives this ruling as a blanket approval. Given its contention that prior notification increases the risk that the house will be booby trapped, and the demolition force injured, the military sees no need to revise its practice – which contravenes international law – and unfailingly continues to refrain from issuing demolition orders, and granting the right to a hearing.

7.8.2002

HaMoked files 9 more petitions to the High Court of Justice: order the military to grant the right to a hearing

The petitions concern cases of exceptional circumstances, such as an occupant's medical condition. On the following day, the High Court of Justice dismisses the petitions, and determines that each family has sufficient time to appeal to the military in writing and explain its exceptional circumstances. The ruling, which has no bearing on reality, completely eliminates the possibility of taking legal action in such matters.

26.5.2003	**Following HaMoked's petition, the High Court of Justice stipulates: a decision to demolish a house without a prior hearing, must be supplemented by a well supported document from the military legal advisor for the West Bank**
21.8.2003	**The UN Human Rights Committee: Israel contravenes international law; it must immediately cease all punitive house demolitions in the OPT** The committee deplores the demolition of houses belonging to families of individuals suspected of involvement in terrorism and concludes that Israel contravenes their rights to housing, equality before the law and protection from inhuman treatment.
2.10.2003	**The High Court of Justice rules that the military must present a written order citing the source of authority and the reasons for the decision** In it ruling, the court upholds the obligation to grant, as far as possible, a hearing in advance, as well as the obligation to present a written explanation for a decision to deny such a hearing.
3.8.2004	**Neighbors file for compensation for property damage caused when the military detonated the house of an assailant's family** The military blasted the house without a demolition order and prevented the occupants of this and surrounding houses from removing their belongings before the demolition. The state is sued for trespass to land and chattel, conversion and negligence while violating the rules of international law. As of December 2011, the civil claim – filed by HaMoked – is still in progress.
17.2.2005	**The Minister of Defense accepts the recommendations of the military committee headed by Major General Shani, and decides to cease use of house demolitions as punishment** The policy shift was announced as part of the state's supplementary notice in HaMoked's petition to order the military to refrain from demolishing the house of the family of a suspected assailant. The summary of the Shani Committee Report was presented in 2008 – in the form of a computer presentation – as part of the proceedings in HaMoked's petition. The military committee recommended to cease the use of house demolitions as a deterrent, and asserted that "**the IDF […] cannot tread the line of legality, let alone, the line of legitimacy**!!!" (*sic*).
March 2005- March 2008	**Israel – temporarily – ceases to employ punitive house demolitions**

6.8.2008	**Despite its undertaking before the High Court of Justice, and contrary to the recommendations of the military committee (the Shani Committee): Israel announces its intention to demolish a house in the East Jerusalem neighborhood of Jabal al Mukabbir, which belongs to an assailant's family**
2.9.2008	**Following HaMoked's petition, the High Court of Justice issues an interim order, directing the military to refrain from demolishing a house in Jabal al Mukabbir** Following the petition, the state announces its intention to seal two floors of the assailant's family house, instead of completely demolishing it.
6.11.2008	**HaMoked petitions the High Court of Justice against the decision to seal a house in Jabal al Mukabbir** HaMoked asserts that the Shani Committee concluded that house demolitions do not promote deterrence, but rather exacerbate friction and hatred, and recalls that Regulation 119 does not conform to Basic Law: Human Dignity and Liberty. HaMoked further adds that Israel is not contending the occupants of the house were in any way linked to the acts in question and their only crime is being related to the assailant; therefore, the damage to the house constitutes collective punishment, which is prohibited under international humanitarian law.
January 2009	**The High Court of Justice rejects HaMoked's petition: the house of a Jabal al Mukabbir family is sealed** Despite the Shani Committee's conclusion that the use of house demolitions as a deterrent should be abandoned, the court finds no cause to intervene in the decision to seal the house. Two floors in the house are sealed. The family continues to live in the remaining floors.
16.3.2009	**The High Court of Justice continues to legitimize the application of Regulation 119 of the Defense (Emergency) Regulations, and allows the military to demolish part of an East Jerusalem apartment building owned by an assailant's father**

5.4.2009	**The Jerusalem Magistrates' Court rejects HaMoked' civil claim, filed on behalf of the family of a suicide bomber for substantial property damage caused in the demolition of their house** The court rules that the demolition of the family's house – executed a year after the attack – constitutes a wartime action, for which, under the Civil Wrongs Law, the state is exempt from paying any compensation to those harmed. The court determines that the demolition was valid, regardless of the fact the plaintiffs were denied their right to a hearing and a demolition order was not issued in writing. Moreover, the court finds it acceptable that the family was given 25 minutes to remove their possessions from the house. Despite the extensive damage caused by the blast – including uprooted fruit trees, dead livestock, destroyed cars and damage to adjacent buildings – the judge determines that "The plaintiffs have failed to prove any negligence on the part of the defendant's soldiers. On the contrary, they have proven that the soldiers exercised **extreme caution**, which I hardly expect to find paralleled by any other military in the world".
10.2.2011	**Eight years after the military demolished a house in Hebron: Israel will compensate a neighbor whose apartment and its contents were damaged by the uncontrolled use of explosives** In May 2003, the military demolished an apartment on the fourth floor of a residential building in Hebron. The entire building was severely damaged in the explosion. The family who lives the apartment directly below filed a civil claim through HaMoked against the State of Israel for the substantial and unjust damage to their property, caused by the blast. The court endorses the settlement reached by the parties, whereby the state will pay the plaintiff a total of NIS 45,000 in compensation.
16.6.2014	**In response to the abduction of three Israelis: the Israeli Government considers implementing various sanctions – including house demolitions – against the Palestinian population in the Occupied Palestinian Territories** HaMoked writes to the Attorney General demanding he prevent the use of illegal sanctions.
23.6.2014	**Israel announces its intention to demolish a house in Idna Village in the Hebron District, belonging to the family of a suspected assailant**

25.6.2014

HaMoked submits an urgent objection to the military against the intention to demolish the family house

HaMoked stresses that the intended house demolition is a deliberate attack on people who have done no wrong, contrary to international law and in violation of the basic rights of the family members; HaMoked adds that the choice to carry out a house demolition does not meet the test of proportionality; furthermore, that the Israeli security establishment itself had concluded that the policy of punitive house demolitions had proved to be ineffective as a deterrent, and that demolitions were more harmful than beneficial; lastly, HaMoked notes that the house now under a demolition order does not belong to the suspected assailant, but to his brother.