



# House Demolition

**“Any destruction by the Occupying Power of real or personal property belonging... to private persons... is prohibited, except where such destruction is rendered absolutely necessary by military operations.”**

Geneva Convention Relative to the Protection of Civilian Persons  
in Time of War, Article 53

Since the start of the current intifada, the IDF has demolished hundreds of houses in the Territories, in which thousands of civilians used to live.<sup>13</sup> Along with the decision to deport relatives of suspected terrorists, the Security Cabinet adopted a policy of demolishing the homes of these families as the main tool in the fight against suicide bombers. During the six months between July and December 2002, more than 100 houses were demolished, compared to 14 that were demolished as a penalty for actions of family members from the onset of the intifada until June 2002. Concurrently, the security forces pursued the policy of “clearing”, namely, demolishing houses, uprooting orchards and leveling

fields wherever a terror attack takes place, ostensibly in order to destroy any shelter behind which terrorists may hide and shoot at IDF forces in the future. This policy came to a climax in April, when houses in the refugee camp in Jenin were demolished with their residents still inside.<sup>14</sup> HaMoked's

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<sup>12</sup> *Ibid.*, p. 11.

<sup>13</sup> According to B'Tselem, since October 2000 some 800 houses, in which more than 6,000 people lived, were destroyed in the West Bank and the Gaza Strip in “clearing” operations or as penalties and administrative IDF operations. [www.btselem.org](http://www.btselem.org)

<sup>14</sup> A reserved admission may be seen in the response of the State to the petition that was submitted to the HCJ in this regard: “... There were houses that people only left after the bulldozer had hit one of the walls ...” Statement of the State Attorney's Office,

activity in this context was covered in the previous activity report.<sup>15</sup>

Despite the lack of a duly issued order, many houses were demolished without allowing the family to argue against the demolition and without giving the people time to remove any of their belongings from the house. Therefore, all appeals received by HaMoked in this context were handled with urgency, even in those cases when it was not certain that a demolition was indeed to take place. Since the beginning of the year, HaMoked has filed 37 petitions with the HCJ on this matter, on behalf of more than 50 families. The legal arguments underlying these petitions pertain to the duty of the IDF commander to observe due process and exercise reasonable discretion. The IDF commander must therefore issue demolition orders only when he has well-founded evidence, and in any case must enable the family to be heard and to appeal the order in a court of law. The IDF commander is also obligated to observe the principle of proportionality so as to minimize injury of innocent parties.

 On the night between July 18 and 19, a number of family members  of individuals wanted by Israel were apprehended. Two homes of these families were demolished that same night. As mentioned above, deportation orders were later issued against three of the individuals arrested that night. HaMoked petitioned the HCJ to stop the demolition of the homes of the other four families; to date, these houses are still intact. During the first four days of August, nine houses of families of suspected terrorists were demolished in the West Bank. On August 2, as the

media started to report this operation of destruction, HaMoked contacted the Chief of the IDF Central Command and asked him to give the families a 48 hour extension to exercise their right to argue against the demolition of their homes. In addition, HaMoked dedicated a special 24-hour phone line exclusively for this subject. On August 4, HaMoked filed two petitions with the HCJ on behalf of 35 families with members who are suspected terrorists. As HaMoked was drafting the first petition, in the middle of the night an urgent call came in from a family that had been ordered to leave their home by soldiers who were preparing to demolish the house. Although HaMoked tried to file a petition against this operation immediately, the court's chief secretary did not enable a hearing to take place during the night. By the time the petition was filed at 8:30 AM, three of the houses had already been razed.



HCJ

N.A., whose son's body was returned with HaMoked's help, as described in the previous activity report,<sup>16</sup> lost her husband shortly after she buried her son. She now lives in Qalqiliya with her nine children on the third floor of a house in which another 10 of her relatives reside. On August 2, shortly before 3 AM, soldiers arrived at the house and ordered all members of the family to leave it immediately with nothing but the clothes they were wearing, as they were about to demolish the house. Terrified, N.A. called HaMoked, which contacted the IDF Legal Advisor for the West Bank, who replied shortly after that he had no knowledge of any intention to demolish the house. The soldiers

then allowed N.A., her children and her relatives to return to their home. On the morning of August 4, HaMoked petitioned the HCJ on behalf of N.A. and 18 other heads of families. That same evening, another petition was filed on behalf of 16 other families as well. **(Case 17963)**

The object of these petitions was to compel the IDF to follow the rulings that the HCJ had handed down during the previous intifada. Under these rulings, the IDF was to provide prior notice of any planned demolition so as to allow the families living in the houses earmarked for demolition to argue their case and get the demolition order revoked, or give them time to salvage their belongings. The HCJ issued an interim order under which the demolition of the homes of the families on behalf of which the petitions had been filed, was prohibited at least until after the hearing. The next day, another six families appealed to HaMoked, which turned to the authorities asking not to demolish their houses until the HCJ handed down its decision. On August 6, the HCJ rejected the petitions, leaving it to the military commander to decide which of the families was entitled to prior notice. The HCJ thus turned the exception into the rule: until now, the rule was that everyone had the right to be heard, except under inevitable, urgent military circumstances that emerge in the course of a military operation; from now on – according to the ruling of the HCJ – penal demolition of a family home can be considered a military operation in and of itself, so that any risk to the operation or to the soldiers carrying it out, overrides the family's right to be heard. The military has been treating this ruling as a carte

blanche; since, according to the military, if prior notice of demolition is given, the IDF force might be ambushed or the house might be booby trapped. Therefore, the army sees no reason to change the way it has been operating and to start issuing demolition orders or allowing inhabitants to argue their case.

HaMoked's request for another hearing by a special panel of the HCJ was also denied. On August 7, after both collective petitions described above were rejected, HaMoked filed nine individual petitions. The circumstances of the families involved were such that it was reasonable to assume that the HCJ would instruct the State to allow these families to argue their case before their houses are demolished.



HCJ

R.A. lives in a rented apartment on the third floor of a six-story building, together with his mother, sister, brother, sister-in-law and nephew. The family has been living in this rented apartment for 20 years. Another one of R.A.'s brothers detonated himself in a suicide bombing in Netanya, and his body was returned to the family with HaMoked's help. L.N., a 50-year-old widow, has been living in a rented apartment in Nablus since 1967; she still lives there now, together with her son, daughter-in-law and two granddaughters. Her other son apparently detonated

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HCJ Petition 2977/02, **Adalah and LAW v. The Commander of the IDF Forces in the West Bank**, Court Rulings [P.D.] 56(3), 6.

15 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 39-40.

16 **Ibid**, p. 36.

himself in a suicide bombing in the West Bank settlement of Shave Shomron. Petitions to the HCJ were filed on behalf of R.A., L.N. and seven other families, challenging the intention to demolish their homes. **(Cases 17986, 17991)**

These petitions were rejected as well. The panel declared that the HCJ was not the appropriate forum in which to exercise the right to be heard in this case, and that each of the families could appeal in writing to the IDF commander in the region, specifying its own special circumstances. Thus, when the IDF commander is about to issue an order to demolish a specific home, he can check the letter he had received from the family, and decide whether to demolish the house or not. This decision of the HCJ has practically blocked any possibility of petitioning the Court, unless there are circumstances in which it can be concluded ahead of time that the IDF intends to demolish a particular house – for example, if soldiers are taking photos or measuring the house or if they notify the family.



H.T. lives in her home at Balata Camp outside Nablus, with her seven children and 21 grandchildren. Her son apparently detonated himself in a suicide bombing in Petah Tikva in May. H.T. was one of the petitioners in the collective petition filed on August 4. At 2 AM on the night of August 13, IDF soldiers arrived at the house, ordered everyone out and said they were going to demolish it within the next few minutes. Eventually, the soldiers made do with a search, but before leaving they told H.T. that “God willing,” the IDF would destroy

the house within 24 hours. H.T. only managed to contact HaMoked the next morning. HaMoked urgently contacted the IDF Commander in the West Bank and asked him to revoke the decision to destroy the house or at least allow the family to take their case to the HCJ before the decision was implemented. The West Bank legal advisor responded that no decision had yet been made, and that – in line with the ruling of the HCJ – if such a decision were adopted, the specifics of H.T.’s case would be examined and considered. In view of the discrepancy between the statements made by the forces on the ground on the one hand and the response provided by the Legal Advisor on the other, on August 14 HaMoked filed a petition with the HCJ on this matter. In its response, the State undertook to allow H.T. to argue her case ahead of time, “unless this cannot be done, in line with the criteria stipulated by the HCJ.” At 3 AM on August 21, soldiers showed up at H.T.’s house once again. Using a neighbor as a “human shield”, they entered the house, instructed everyone to get out, searched, and before leaving, told inhabitants to remove all their belongings by morning, as the house would then be demolished. Urgent inquires made by HaMoked as the soldiers were still searching the premises, indicated that there was no intention to demolish the house and that the undertaking given to the HCJ still stood. **(Case 17998)**

With no other option, the families had to make do with the State’s response, namely that no decision to demolish their home had yet been adopted, and that if such a decision

were made, it would comply with the procedures set out in the collective petitions from early August. But in the end of October this response was found to be worthless. Two of the houses whose owners received a similar response from the West Bank legal advisor were demolished shortly after the response had been given.

Jenin residents M.H. and A.A. detonated themselves in a suicide bombing at Karkur Intersection on October 21. On October 23, their families appealed to HaMoked to save their homes from demolition. That same day HaMoked contacted the West Bank legal advisor, who replied the next day that "... no decision has been made to demolish these houses ... should such a decision be adopted in the future, the authorities will follow the criteria set forth by the HCJ..." On October 28, in the dead of night, IDF soldiers arrived at the houses of these families, blew up the home of the A. family, causing serious damage to three neighboring houses, and bulldozed the house of the H. family to the ground. **(Cases 23144, 23145)**

After this happened, HaMoked no longer made do with the army's replies, and again petitioned the HCJ whenever there was any suspicion that the IDF was planning to demolish a house.



On September 9, the N. family of Hebron contacted HaMoked, requesting help in returning the body of one of the men in the family who was allegedly involved in a shooting attack in March. On October 21, soldiers came

and took pictures of the family home. HaMoked sent an urgent fax to the office of the West Bank legal advisor, arguing against the demolition of the house and demanding prior notice if any such plan is in the making. The response provided by the authorities on October 29 was the same as the replies that were given in connection with the two houses demolished the day before. Therefore, on October 30 HaMoked petitioned the HCJ, demanding that the house not be demolished or at least that the authorities undertake to issue an order that the family could contest. The HCJ issued an interim injunction that same day, prohibiting the demolition of the house until the petition is heard. **(Case 23152)**

HaMoked no longer accepts the answers that the State gives the HCJ, which are the same answers that the IDF provides before the petitions. HaMoked continues to insist on the right to be heard, and therefore keeps petitioning the HCJ whenever there is a danger that a house might be demolished.

However, even in the isolated cases when demolition orders were issued and the families were given the opportunity to appeal these decisions to the military officer in charge and petition the HCJ, the Court refused to prevent the demolition.



M.B. owns a two-story house in Abu Dis, where he and his seven children live. The store on the ground floor is the family's source of income. P.H. and her five children also live in a house in Abu Dis. Two members of these families detonated themselves

in a suicide bombing in Jerusalem in December 2001. Both families were questioned by the security forces and none of them was found to have any connection with the suicide bombing. In a petition the families filed in 2001, the State undertook to give them at least 48 hours' notice if their houses were to be demolished. On August 24, 2002, shortly after midnight, orders for the confiscation and demolition of the houses were handed to the families. HaMoked appealed against these orders to the IDF Commander in the West Bank. On August 25, after no response was received, HaMoked petitioned the HCJ on behalf of the two families. On September 17, the HCJ rejected the petition and approved the demolition of the houses, even though it had stated that no proof had been provided to indicate that the families had anything to do with the terror attack. The Court held that there was a "presumption of knowledge", according to which the families must have known of the actions and thoughts of their relatives, who turned out to be suicide bombers. Two days later, the IDF blew up the home of P.H. and bulldozed that of M.B. **(Cases 17980, 22812)**



The authorities are taking advantage of the leeway that the HCJ has allowed them, and demolition of Palestinian houses is becoming increasingly more prevalent. In November, 34 houses were demolished as a penalty for actions by relatives – the highest number in more than a decade;<sup>17</sup> even the homes of Palestinians who are suspected of being only low-ranking activists in terrorist organizations are demolished;<sup>18</sup> IDF soldiers threaten families that their homes will be blown up if they do not turn in their relatives;<sup>19</sup> orders to seal and demolish houses in East Jerusalem have been issued against Israeli residents whose family members were suspected of being part of a cell that had carried out terror attacks (known as the Silwan Cell). HaMoked petitioned the HCJ against these orders on September 23. The HCJ endorsed the explanation provided by the State, that in view of the increasing involvement of Israeli residents in terrorist activity, demolition of houses inside Israel is justified, and on January 5, 2003, the Court rejected the petitions. A forthcoming report to be issued by HaMoked about penal demolition of houses in the West Bank, will also include a comprehensive analysis of the rulings handed down by the HCJ in this context.



# Jerusalem Residency

**“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.”**

Universal Declaration of Human Rights, Article 16 (1)

In the last year, the Ministry of Interior has started enforcing a vigorous security policy regarding Palestinians who are Israeli residents and citizens. The commitment to all Israeli residents was replaced by “a clear government agenda ... of fighting terrorism and those that incite it,” which the Minister of Interior has pledged to pursue, and the civil democracy was replaced by “a democracy on the defensive”.<sup>20</sup> Discussions that started in February 2002 about revoking the citizenship and residency of persons suspected of aiding terror attacks, materialized in July when the Minister of Interior informed two citizens and one resident of his intention to do so.<sup>21</sup> The government also prohibited suspects from leaving the country and shut down several charity organizations and one newspaper. These measures got backing by

the government and the legal system. As part of this policy, the Minister of Interior made it even harder for Palestinians who are legal residents of the State of Israel and whose spouses come from the other side of the Green Line, to conduct normal family lives: the government has adopted a resolution according to which no new requests for family unification with foreigners of Palestinian descent would be entertained, and residency of individuals

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17 According to BTselem, [www.btselem.org](http://www.btselem.org)

18 **Haaretz**, November 24, 2002, p. A3.

19 **Haaretz**, August 23, 2002, p. A2.

20 Excerpts from the response of the spokesperson of the Ministry of Interior. **Haaretz**, January 2, 2003, p. B3.

21 **Haaretz**, September 10, 2002, p. A3. On the subject of revoking residency, see also: HaMoked, **Semi-Annual Report: January-June 2002**, p.29.