House Demolitions

"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 (1949), Article 53

Since the onset of the current Intifada, the High Court of Justice has in effect given the military a free hand to demolish houses without any warning and without a court hearing. The army has exercised this freedom and demolished houses without the restraints that are normally practiced by the Israeli authorities and which are required by law. Houses were demolished without warrants, without granting residents the right to be heard, without any court hearing and at times in the dead of night and without letting residents remove their property. Family albums, documents, books, money, clothes and furniture were all buried under the rubble. According to B'Tselem, in 2003 the 231 houses were demolished as a penal measure against the families of palestinians suspected to have carried out attacks and as a deterrent to others. Rulings handed down during the year by the HCJ somewhat constrain the military as they reinforce the administrative and legal barriers regulating the use of this measure.

In 2003, the military managed to operate without any supervision in this regard. The military did not issue demolition warrants as required, did not give residents prior notice and did not enable them to challenge the decision and state their claims. HaMoked therefore petitioned the HCJ whenever concerns arose that the military might demolish a house. Whenever a family inferred from the military activity or from statements made by soldiers that its house was to be demolished, it petitioned the High Court, through HaMoked. In most of these petitions, the State argued that the Court

has no need to discuss the specific matter since the military had not yet decided to demolish the house and the petition is thus a theoretical exercise without any basis in fact. In all cases, the State reserved the right to act without giving the family members prior notice or allowing them to petition.

On the night between July 18 and 19, 2002, the security forces apprehended several members of four families of the area of Kafr Tel. Apparently the arrests were made because each of these families had relatives who were wanted by Israel. The houses of two of these families were demolished with explosives that same night, without any prior notice. Three days later HaMoked petitioned the HCJ on behalf of the other two families, in order to prevent their houses from being demolished as well. HaMoked demanded that the houses not be demolished or at least that prior to demolition the families would be given the warrant ordering the demolition and permitted to state their claims before the military commander and then, if he does not rescind the warrant, before the HCJ. The Court issued an interim injunction instructing that the houses were not to be destroyed pending a final decision and that the State Attorney's Office was to submit a statement within three days. In its response, the State argued that "no decision had been made to demolish the petitioners' homes. This is therefore a premature petition which as such, must be denied." The State further argued that it "cannot be made to subject itself to various restrictions that will apply if in the future it is decided to demolish these houses." For this reason too, the State held, the Court must reject the petition *in limine*.

HaMoked replied that the families' right to be heard is a longstanding basic right and that the State must enable those injured by its actions to challenge its decisions before the relevant authorities and the High Court.

The Court decided to appoint a special panel to discuss the matter and left the interim injunction intact, pending the final decision. However, after a month had gone by and no date was set for the hearing, the State asked the Court to schedule an urgent hearing and speed up the legal proceeding.

In the first hearing, on August 28, 2002, the State agreed, at the advice of the Court, to let the family members state their claims before the military commander and try to convince him that in this case it would not be appropriate to demolish the house. The reservations were submitted but the military did not announce its decision. Throughout this time, they never adopted any formal decision to demolish the house, but continued to operate in the Court in order to revoke the interim injunction prohibiting this move. Referring to the minority opinion of Justice Dorner, that "the demolition of a house is not a penal measure in the full sense of this term but rather a deterrent measure, which should not be implemented except as a direct response to a terror attack perpetrated by a terrorist living in the house,"[28] HaMoked argued that a house cannot be demolished two years after the acts attributed to one of the tenants, and that after such a long time has gone by, the State has forfeited its right to retaliate.

In its final decision handed down in February 2004, the Court rejected HaMoked's petition and revoked the interim injunction, but stressed that the military should do its best not to destroy any family property except for the house itself.[29] The Court did not address the argument that the time gone by revokes the authority to demolish. As of the time that this report was compiled, the house was not destroyed. **(Case 17908)**

In HCJ, the State maintains that due to military reasons, the tenants cannot be heard before the demolition. In other words, the military does not give prior notice, issue a warrant or allow the tenants to be heard, due to concerns that if the plan to demolish the house is revealed, an ambush or booby traps would be set up and the house would become a death trap for the soldiers. However, this argument is invalid, both in terms of the military's operational reality and in terms of legal principle.

In most cases, the tenants know of the military's aim to demolish their house: the soldiers come to the house, search it and take photographs and measurements. Those who so desire can prepare for the military operation with or without a court hearing and attack the soldiers when as the mission is carried out. Under these circumstances, the issue of the official warrant and the holding of a hearing have no added value as intelligence and do not in and of themselves expose the military's intentions.

The argument that the risk to the life of soldiers is enough to override the need for a hearing and the right to appeal is invalid in the legal sense too. The HCJ has only permitted the military to demolish houses without first hearing the residents, only when the operational needs and the definitions of the specific mission so require, at the discretion of the military commander in the field. In short, in the course of action, the military is allowed to demolish a house that is in its way or that represents a threat to the soldiers, without pausing for administrative procedures that would slow down the operation. When the army demolishes the family homes of palestinians suspected to have carried out attacks, it turns the legal argument up side down, converting the means into the goal. Penal demolition is not, however, an operational activity; it is an administrative act. The argument that a penal act such as the demolition of a house is operational and requires the confidentiality and operational preparations in which the Court must not intervene, confuses between the military's civil duties, as the agency in charge of all matters in the occupied territories and the one authorized to perform penal actions, and its military duties as a combative organization.

The rulings handed down by the High Court in 2003 may have not prevented the demolition of houses, but they nevertheless served to curb the military in its policy of demolishing houses without due process. The rulings handed down in petitions filed with the HCJ against house demolition underscored the duties and restrictions imposed on the military, which go hand-in-hand with its powers. In a ruling from September 2003, the HCJ stressed that only in special cases can

28 HCJ 1730/96, **Adel Salem Abdelrabbo Sabih v. Maj. Gen. Ilan Biran**, P.D. [Court Rulings] 50(1), 353.

29 High Court Petition 6309/02, **Jabry et al. v. IDF Commander in the West Bank.**

houses be demolished without a warrant.[30] In another ruling, from October, the Court reminded the military commander that he has the duty of issuing a written warrant stating the authority to demolish the house, the reason for the warrant, the exact building for which the warrant is issued and where and to what extent the authority will be used (in other words – how much of the house will be sealed or demolished).[31] The Court further emphasized that the army must, to the extent possible, allow the tenants to state their case and challenge the decision before the HCJ. These duties are also mentioned in a ruling from May 2003, which held that where a warrant is not feasible, the military Legal Advisor for the West Bank must explain in writing, ahead of time, why the tenants could not be allowed to exercise their right to be heard and why a warrant could not be issued.[32]

Respect for the Dead

On February 4, 1971, R.A.'s father was killed in an encounter with the military in the Hebron hills area. After the Oslo Accords were signed, many applications were made for the return of Palestinian bodies. Twenty three years after his father's death, R.A. contacted an attorney to arrange for his father's body to be returned for burial. In November 1995 the military Legal advisor in the West Bank granted the request: "I was asked to inform you that the IDF Commander of the West Bank has approved the return of the body to the family. The body will be returned in the near future in coordination with the Civil Administration, in compliance with the procedures." But the body was never returned.

Four years later, R.A. appealed to HaMoked for help. During 1999 and 2000, HaMoked contacted various entities in an attempt to find out what happened with the promise made to the family and where the body of S.A. could be found. In its applications, HaMoked attached all the material it had – affidavits of witnesses to the encounter and newspaper clippings about it. But these applications were to no avail. In February 2001 the military told HaMoked that "the IDF has no knowledge of this [body], and has therefore been unable to trace it." But the IDF's notice left an opening, because, as stated in the notice, "at the time, the IDF was not in charge of handling the bodies; apparently, this was the responsibility of the Special Assignments Bureau of the Israel Police." HaMoked then asked the police to look

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[30] High Court Petition 4241/03, **Sualma et al. v. IDF Commander in the West Bank,**

[31] High Court Petition 8262/03, **Abu Salim et al. v. IDF Commander in the West Bank.**

[32] High Court Petition 2301/03, **Jaber et al. v. IDF Commander in the West Bank**.