Deportation

"...deportations of protected persons from occupied territory... to that of any other country, occupied or not, are prohibited, regardless of their motive."

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), Article 49

Deportation to Gaza – the End?

In 2002, Israel adopted a policy of deporting the families of individuals suspected of involvement in activity against Israel from the West Bank to the Gaza Strip declaring this an act of deterrence. HaMoked represented the first three casualties of this policy, Abdel Nasser Assida, Intisar Ajouri and her brother Kifah. Basing its decision on the assertion that the West Bank and the Gaza Strip should be considered a single unit of occupied territory, the High Court of Justice (HCJ) held that their transfer to Gaza was not deportation but "assignment of residence," a security measure that the military may implement under Article 78 of the Fourth Geneva Convention. However, the HCJ also imposed serious restrictions on the use of this measure. Deterrence may not, under any circumstances, serve as the only grounds for assigned residence. The only reason to assign a person's residence is to prevent a danger that this person poses, and use of this measure must be discontinued once the danger has passed. The Court allowed for deterrence to come into play, but only as a secondary factor. For example, it may be weighed when choosing between measures against persons who have been established to pose a threat.[128] Based on these guidelines, the HCJ canceled the deportation order against Abdel Nasser Assida, but upheld those against Intisar and Kifah Ajouri. The two orders were effective for two years. During this term, the military's

Board of Appeals convened every six months to see whether there were still valid reasons to uphold the deportation orders. In effect, the Board was to check whether the siblings still posed a threat - the only grounds that could justify their continued assigned residence.

In its first session after the first six months, the Board of Appeals found that the siblings should remain in the Gaza Strip. The Board convened for the second time in August 2003, and submitted its recommendations a month later. In its analysis, the Board addressed the security situation that prevailed when it convened in early August. Members stated that it was a calm period - prisoners were being released, five "assigned residence" orders were canceled and one was shortened. The Board found that "the improved security situation reduces the need for the assigned residence order as a deterrent." Under the circumstances, the Board's recommendation was to push up the expiration of the orders to October 31, 2003.[129]

By the time this decision was compiled and signed, the security situation deteriorated again and the Board decided to qualify its previous recommendation. Under the circumstances of an escalating security situation, they wrote, "the relative weight of the deterrence factor should be increased in order to try and quell the motivation of the population to carry out terror attacks."[130] The Board therefore recommended that the Commander reconsider the Ajouri case in mid October and that if the security situation at the time called for an increased emphasis on deterrence, the military may keep them in the Gaza Strip. The Board nevertheless noted that the reconsideration should be done "with a view to releasing them on October 31, 2003."[131] Apparently, then, the question whether the Ajouris would be allowed to return to their homes was decided purely on the issue of deterrence, in violation of the HCJ's instructions.

Although the Board's recommendation leaned toward lifting the assigned residence orders, and although there was no further escalation in the security situation, the Ajouris were kept in exile in Gaza. The military completely ignored the Board's recommendations. The Commander of the West Bank announced his decision only in early December, about a month after the Board's recommended time for reconsideration. Contrary to the Board's recommendations, the assigned residence orders were to remain in force. A letter the Military sent to HaMoked, to inform it of the Commander's decision, never mentioned that the Board had recommended to favorably weigh their release in October. The Board's recommendations themselves were only passed on to HaMoked at the end of December, less than two months before the third session of the Board of Appeals, in February 2004. Under these circumstances, HaMoked decided not to petition the HCJ regarding the Board's recommendations and the Commander's decision, but to argue the case before the next panel of the Board.

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128 HCJ Petition 7015/02, **Ajouri et al. v. IDF Commander in the West Bank et al.**; HCJ Petition 7019/02, **Ajouri et al. v. IDF Commander in Judea and Samaria et al.**, Court Decisions [PD] 74(6) 352. For further details see also: HaMoked, **Annual Report 2002**, pp. 15-20.

129 Recommendations of the Board of Appeals, Military Court of Appeals for the West Bank and Gaza Strip, September 1, 2003, paragraph 29.

130 Ibid, ibid.

131 Ibid, paragraphs 22, 32.

By the time the Board convened for the third time in February 2004, its authority was expanded and its recommendations became binding. The Board handed down its decision in March 2004. Intisar Ajouri was allowed back into the West Bank, effective immediately. However, based on new information that the Board had been given and which ostensibly tied Kifah Ajouri with organizations that engage in operations against Israel, the Board decided to keep him in the Gaza Strip. He was allowed to return to the West Bank only when the order's full term expired, two years after his deportation to Gaza.[132]

When the Board announced that Intisar Ajouri could return to the West Bank, her sister and her two children, their father and another brother were all in the Gaza Strip with her. Ajouri requested to return to the West Bank with them. HaMoked passed on her request to the Military Legal Advisor for the West Bank, who replied that the family could return to the West Bank together on March 14, 2004. In compliance with the instructions of the military, the family reported to the roadblock at 11:30 AM, but the soldiers would not let them through for nearly eight hours, sending them back and forth inside the compound, prohibiting them from talking on the telephone and keeping them for many hours in the area between the Israeli and Palestinian side of the roadblock, where there is only one bench and no toilet.

When the family finally crossed the roadblock at around 7 PM, they were told Intisar would not be crossing with them. The military told HaMoked that Intisar Ajouri would have to be escorted by security forces back into the West Bank, a demand it had not mentioned before. She was instructed to return the next day.

Ajouri reported to the roadblock the next day, as instructed. Although the Board of Appeals had asserted she no longer represented any threat and although she was not under any form of arrest, the soldiers assigned to take her back cuffed her by the wrists and ankles and put her in a vehicle used for transferring detainees, where she sat in a small cabin with just a small window for air. During the long drive, the soldiers made a 30-minute stop, and there was another two-hour delay at Huwwara Roadblock. The small window in her cabin remained closed most of this time.

Despite HaMoked's demand that the military find a way to transfer persons whose residence had been assigned back to their homes without treating them as dangerous prisoners, Kifah Ajouri was treated the same way when he was returned to the West Bank on August 26, 2004, around one month after the order against him had expired.

(Case 17942)

The decision to deport the families of persons suspected of involvement in actions against Israel was adopted as part of a line of resolutions designed to hurt these families. These measures included house demolitions[133] and refusal to return bodies (this decision only came to light in 2004 as part of HaMoked's petitions on the subject).[134] One can only assume that Israel intended to use deportation to Gaza as extensively as it used house demolitions. However, in this case, HaMoked's legal

battle against the measure was successful, and the restrictions the HCJ imposed on the State stopped it from using deportation extensively. Apart from Intisar and Kifah Ajouri, another 17 residents of the West Bank were deported to the Gaza Strip.[135] In February 2005, the press reported that 16 had been allowed to return to the West Bank as part of what Israel referred to as "concessions to the Palestinians".[136]

Repatriation of Deportees

In 2004, HaMoked continued handling repatriation requests from deported residents of the Territories. Most applications are from Palestinians who were deported in the early 1970s without being given a deportation order or the possibility of appeal. In some of these cases, no deportation order was issued and in others the military issued orders but never bothered to present them to the deportees. HaMoked has previously been able to revoke several orders of this kind and repatriate the deportees with the families they have built during their forced exile. Several restrictions were imposed: the deportees were allowed to return with their wives, unmarried daughters of any age and unmarried sons of 22 or less.

Deportation orders do not revoke the deportees' status as residents of the Territories. Therefore, once these orders are canceled, the deportees are entitled to all the rights reserved for residents, including entering the Territories and receiving ID cards. But in fact, as several cases have shown, deportees are not always allowed to resume their lives in the Territories, even if the orders against them are lifted. In 2004, HaMoked filed two petitions to the High Court of Justice (HCJ) on behalf of two deportees. The military had canceled the deportation orders against them, but has not allowed them to return to the West Bank or lead normal lives there.

N.H. was arrested in 1970 at the age of 21. After one year of imprisonment without trial, he was driven, together with 14 other Palestinians, to the Jordanian border. The soldiers gave each man a piece of bread, a tomato, an egg, some water and one Jordanian dinar, and instructed them to walk into Jordan. N.H. never received a deportation order, nor was he informed he was about to be deported.

He remained in Jordan, studied education, married and built a family. In 2000, almost 30 years after his deportation, he decided to return to his village, Idna, near Hebron. HaMoked contacted the army that same year, demanding that the deportation order against N.H., if ever one existed,

[132] Recommendations of the Board of Appeals, Military Court of Appeals for the West Bank and the Gaza Strip, March 2, 2004, paragraphs 19-25.

[133] See chapter on House Demolitions, p. 96.

[134] See chapter on Respect for the Dead, p. 92.

[135] B'Tselem, www.btselem.org , last visited June 5, 2005.

[136] Amos Harel and Arnon Regular, "Concessions to the Palestinians: 16 Deportees to Gaza to Return to their Homes in the West Bank," **Haaretz**, February 18, 2005.

be revoked. In March 2001, the military notified HaMoked that N.H. would be allowed back into the West Bank.

Since he did not have Palestinian travel documents, the only way he could enter was on a visitors' permit issued upon an invitation by his family. In October 2001, the military Legal Advisor for the West Bank informed HaMoked that he had instructed the District Coordination Office (DCO) in Hebron to approve N.H's family's application for a visitors' permit. Five months later, the Palestinian DCO informed N.H.'s brother that the Israelis had turned down his request. The rejection was received orally and without any explanation. HaMoked again contacted the military Legal Advisor for the West Bank, demanding N.H. be allowed to return to his home. When no response was received, HaMoked filed a petition to the HCJ.[137]

The army's foot dragging had potentially devastating effects for N.H.'s family. Two of his sons, who were less than 22 years old when the deportation order was revoked, were by now too old to join their father. Furthermore, in case of children who were born abroad, registration through the Palestinian Authority (PA) is only possible for those aged 16 or less and who are physically in the Territories. Two of N.H.'s children who at the time the order was lifted were less than 16, were now too old. In the petition, HaMoked demanded that in addition to allowing N.H. to enter the Territories without delay, the State consider the children's age at the time the order was revoked, and allow them and N.H.'s wife to return with him.

The State Attorney's Office agreed to arrange for N.H.'s return and enable his wife and children, based on their age upon revocation, to return with him. According to the proposed arrangement, the wife and children over 16 would receive visitors' permits for six months at a time. HaMoked's demand that they be granted residency was turned down. **(Case 15177)**

As stated in HaMoked's report for January-June 2002, HaMoked managed to have the deportation order against A.D., a resident of the village of Kafr 'Ein, who had been deported to Jordan in 1970, revoked.[138] While the order was revoked in February 2002, A.D. has not yet been able to resume a normal life in the West Bank.

When the order was revoked, A.D. was in the West Bank, on a visitation permit. Four of his seven children were also with him. Around three months later, A.D. applied to the Palestinian Authority for an ID. Under the Oslo Accords, the PA has been charged with issuing IDs, but since the Israeli army only recognizes its own records, there is no point in issuing such IDs without prior approval from the Israeli authorities.

The PA therefore forwarded the request to the Israeli DCO, but received no answer. After a year of silence, HaMoked contacted the military Legal Advisor for the West Bank, demanding that A.D. be given an ID card and that his wife and the three children who remained in Jordan receive visitors' permits and residency. After another year of no response, HaMoked petitioned the HCJ.[139]

The State Attorney's Office responded that A.D. had already been entered in the Population Registry and that there

was no reason to refuse an ID. The State said it had no objection to letting his wife and children join him, subject to standard conditions. It is not yet clear if they will be granted residency. **(Case 11159)**

[137] HCJ Petition 10894/04, **Halawi v. Military Commander in the West Bank**.

[138] HaMoked, **Semi-Annual Report, January–June 2002**, p. 38.

[139] HCJ Petition 10151/04, **Dajara v. Military Commander in the West Bank**.