



Respect for the Dead

In 1992, Aharon Barak, who was later to become the President of Israel's Supreme Court, declared that "human dignity... means, in fact, respect for the dead ... It is natural for people to want to be buried properly ... [Respect for the dead] is also respect for the family of the deceased... the family has the right to honor the memory of their loved one and express their feelings toward him in a way that seems appropriate to them."¹⁴⁰

Palestinian families whose relatives were killed in operations against Israelis, in armed clashes with the military or in assassinations, cannot take this right for granted. For years Israel has refused to return the bodies of Palestinians to their families and treated their burial with insensitivity and disrespect. Whatever the deceased had done, upon their death they are no longer a threat. Disrespect for the dead and refusal to return the bodies, constitute, in the least, collective punishment of their families and possibly outright vindictiveness.

As noted, except for a few isolated cases, Israel has refused to return the bodies of Palestinians to their families. Even when it agreed to return the bodies, the serious irregularities in the burial procedures and incomplete documentation have, in some cases, made this impossible. In the past, bodies were buried in two enemy casualty cemeteries (today other cemeteries in Israel are used as well.) The State did not accurately record the location of the burial sites, and in some cases has been unable to trace graves. Even when it managed to trace a person's grave, it was impossible to assert whether the body was indeed his, since the measures used to mark the bodies and graves were inadequate.¹⁴¹ HaMoked's activities have led to some improvement in the State's burial procedures, but its refusal to return bodies is as unyielding as ever. HaMoked has learned that, at least starting in 2002, the practice of not returning bodies became official policy, although no

announcement has been made to this effect. In July 2002, the Israeli government adopted numerous penal measures against the families of Palestinians who have carried out attacks against Israelis or were suspected of involvement in doing so. The government announced two of these measures – deportation and house demolition,¹⁴² but did not announce that bodies would not be returned. This was only revealed in 2004, in the State's response to HaMoked's petition, when, relying on said government resolution, the State Attorney's Office refused to return the bodies of three Palestinians.¹⁴³

Arguing along the same lines as it did on the house demolition policy, the State held that by not returning the bodies of those who had attacked Israel or were suspected of involvement in doing so, it deters others from doing the same in the future. The State also maintained that this was a preventive measure, since the funerals of Palestinian activists often evolve into riots and serve as venues for recruiting more activists and promulgating violence against Israel. Additionally, the State said it was holding onto the bodies as bargaining chips for prisoner exchange negotiations.

In its response in one of the petitions, HaMoked asserted that the State was trading in corpses, and that the operations that the deceased had allegedly performed cannot possibly justify the violation of the families' rights and the disrespectful treatment of the dead. The High Court of Justice (HCJ) also expressed dissatisfaction with the State's position, and instructed the State to reconsider. Indeed, change was not long in coming. In December, the State Attorney's Office notified HaMoked that the State had reviewed the policy and

decided to abandon it. From now on, the State said, bodies would be returned to the families, except in exceptional cases.¹⁴⁴ The State did not specify what these exceptional cases were, but agreed to return all three bodies it had refused to return in the first six months of the year.

The military has two standard conditions for the return of bodies: one is that public order be maintained throughout the return and burial proceedings, and the other is that forensic tests take place to ascertain that the right body is being returned. When the body cannot be scientifically identified using existing data such as x-rays, dental records and fingerprints or through comparison of the person's unique morphology, DNA testing is required of two parents or, in their absence, of two siblings. The State demands that the relatives cover this cost, which is around NIS 3,000.

At first glance, the State's demand to ascertain that the right body is being returned seems appropriate. This is an international standard, and, clearly, identification of this kind minimizes the chance of mistake that would later cause

¹⁴⁰ HCJ Petition 5688/92, **S. Vikselbaum et al. v. Minister of Defense et al.**, Court Decisions [PD] 47(2), p. 828. In Hebrew, translated by HaMoked.

¹⁴¹ See HaMoked – Center for the Defence of the Individual and B'Tselem, **Captive Corpses**, 1999, pp. 18-22.

¹⁴² HaMoked – Center for the Defence of the Individual, **Annual Report 2002**, pp. 15-20, 23-28.

¹⁴³ HCJ Petition 3417/03, **Alan v. IDF Commander in the West Bank**; HCJ Petition 1900/04, **Mugrabi et al. v. National Institute of Forensic Medicine and IDF Commander in the West Bank**; HCJ Petition 9893/03, **Ganem v. IDF Commander in the West Bank**.

¹⁴⁴ As relayed orally to HaMoked's attorney. The State Attorney's Office turned down his requests to receive this undertaking in writing.

the families great distress. But the issue of identification is complex, and the bigger picture reveals a double standard.

The military, which is charged with handling bodies after burial, has adamantly refused to return bodies based on identification by administrative evidence such as documents found on the body or announcements issued by Palestinian organizations assuming responsibility for attacks and naming the operatives. At the same time, when demolishing a house, the soldiers do not ask the tenants for blood samples to make sure that the person because of whom the house is to be torn down is indeed their first of kin. In this case, the army makes do with administrative evidence.

Israel's policy regarding payment for the identification of bodies is also inconsistent. In the beginning of November 2004, HaMoked found out that the State intended to return the bodies of several Palestinians from the Gaza Strip. Fifteen bodies were returned in February 2005, apparently as part of what Israel refers to as "gestures" toward the Palestinian population.¹⁴⁵ Israel covered the cost of the tests performed on the bodies before their transfer to the Palestinian Authority in the Gaza Strip.¹⁴⁶ For many Palestinian families, the cost of DNA testing is an insurmountable hurdle.



In 2004, a nine-year battle for the return of R.J.'s body to his family in East Jerusalem came to a dead end. R.J. was killed in 1968 at the age of 13, when attempting to place a bomb at the Ambassador Hotel in Jerusalem - then the residence of the military governor. Nobody knew what became of his body. In 1995, R.J.'s mother asked HaMoked to help trace her son's body and bury it. For

around six years, the authorities shunted responsibility from one to the other. The Ministry of Defense said that the only documentation it could find was of the autopsy that had been performed at the National Center for Forensic Medicine at Abu Kabir. The military held that at the time, the police was responsible for burial of enemy casualties. The police, however, was unable to find any documentation. In 2001, HaMoked petitioned the HCJ, demanding that the State trace the body and return it to the family.¹⁴⁷

The police then appointed an officer to investigate the whereabouts of R.J.'s body, but the report he handed in leaves much room for doubt. The investigating officer said that the Center for Forensic Medicine had apparently destroyed all of its records from 1968, and that there is no mention of R.J. in the Institute's computerized archives. The officer tried to track the investigation file that the police had on R.J.'s brother, who was suspected of dispatching R.J., but could only find an empty binder. The documents that had been inside, the police said, were handed over to the military. The investigating officer therefore turned to the army, which said that an inquest indicated that no documents relating to R.J. existed. Precisely what kind of inquest this was remains a mystery. The officer did not bother to note whether the military archives had been checked.

He also contacted the Jerusalem police, which investigated the incident at the time. Retired officers he interviewed said that to the best of their recollection, the bodies of Palestinians that they had handled were passed on to the families once identified at the Center for Forensic Medicine. The

investigating officer asked the Jerusalem police "to use their intelligence operatives to reveal information that would help trace the body."¹⁴⁸ The officer appointed as intelligence coordinator, said that R.J.'s body had been transferred to his family and buried in the Muslim cemetery in the Old City. The funeral was attended by R.J.'s mother and brother, and at least two other people whom the intelligence coordinator could name. The intelligence officer further said that R.J. was buried in a mass grave, without any means of identification. According to the report, these details were provided by a single source, which was not named.

The investigating officer further reported that he had interviewed the two people who had ostensibly attended the funeral. However, the name of one of his interviewees was not the same as either of the names provided by the intelligence source. The investigating officer reported that in the interviews, the two men said they remembered R.J.'s death, but had no recollection of his burial. HaMoked traced these two men. One confirmed he remembered R.J.'s death, but recalled

nothing of his burial. The other said he wasn't even in the region in those years: between 1964 and 1971 he was living in Kuwait.

The investigating officer's conclusions were based primarily on the information provided by the mysterious intelligence source. R.J., the officer asserted, was buried in a mass grave. To check whether he was indeed buried there, all bodies in that grave would have to be analyzed, which was not a viable option.

HaMoked's attempts to compel the State to explain the enigmas raised by the report have yielded no results. In February 2004 there was no longer any choice but to shelve the petition.

(Case 7213)

¹⁴⁵ Aluf Benn, Gideon Alon, Yuval Azoulay, Amos Harel, "Fifteen Terrorist Bodies Move from Israel to the Palestinian Authority," **Haaretz**, February 14, 2005.

¹⁴⁶ As relayed orally to HaMoked by the Palestinian Authority's Ministry of Health.

¹⁴⁷ HCJ Petition 4047/01, **Jabber v. State of Israel**.

¹⁴⁸ HCJ Petition 4047/01, **Jabber v. State of Israel**; Investigating Officer's Report, Appendix to the Notice Added by the State Attorney's Office, November 20, 2002.