



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

In June 2002, the security cabinet decided on various penal measures against the families of Palestinians who carried out or planned attacks against Israelis or are suspected of doing so. The proclaimed purpose of these measures was deterring Palestinians from partaking in such activities. One of the measures was demolishing the family home. Punitive house demolitions are not a new measure. Israel used this method until 1997 and resumed demolishing houses back in October 2001, but the cabinet resolution gave the military a green light to expand its use of this measure. The number of houses that the military demolished went up nearly sixfold, from 22 in the six months preceding the resolution to an average of 126 for every six months since then and until the end of 2004.¹⁴⁹

Upon this resolution, HaMoked set out to fight house demolitions in the courts. The High Court of Justice (HCJ), which had formerly laid down rules that somewhat restricted the ability of the State to exercise this measure, this time gave the State carte blanche to use it as it saw fit. The HCJ overturned its own rule by which the State was to give the family prior notice and enable it to state its claim. Now the Court left it to the army to decide who would be allowed to contest an impending demolition. In most of the few cases that reached the HCJ, the demolition was approved.

The military made extensive use of the leeway the HCJ had given it. Most houses were demolished in the dead of night, without any prior warning, official order or time for the family to remove its belongings.

Despite the green light from the HCJ, HaMoked continued filing appeals with the military commander in charge and petitioned the HCJ whenever there was real concern that a specific house has been earmarked for demolition. In 2004, a new dimension was added to this legal struggle when HaMoked filed its first claim for damages arising from the demolition of a house.



On August 4, 2002, soldiers arrived at a residential compound in Silat al Harithiya where there are five houses that belonged to the T. family and one other that belonged to S.Z., who is not a member of the same family. The soldiers ordered all members of the T. family who lived in the compound to get out, informed them that one of the houses was about to be blown up and moved them away. They did not allow anyone to remove any belongings from the houses. After the tenants were at a safe distance, the soldiers detonated a building that had three apartments. M.T., a widow, lived in one of them with three of her sons. Two other sons lived in the two other apartments. In March, another one of M.T.'s sons had carried out a suicide attack in Afulah.

The house where M.T. lived was completely destroyed, but the explosion also caused serious damage to the other houses in the compound. The home of M.T.'s sister-in-law, which was right next to the demolished building, was damaged so heavily that it was dangerous to enter and there was no choice but to tear it down. Parts of S.Z.'s home also became unfit for living.

In addition to the damage to the buildings,

the explosion caused extensive damage to the property inside the houses. Everything in the three apartments belonging to M.T. and her sons was buried under the rubble: appliances, beds, cupboards and all their contents, two kitchens and all the kitchenware, two washing machines, etc. Much of the property in the houses that remained standing was also damaged. A car that belonged to one of M.T.'s relatives was completely destroyed. In the neighbor's garden, fruit trees and a shed were destroyed. The explosion did not spare animals either: pet birds that were in one of the demolished houses were killed, as were rabbits and pigeons that lived in the neighbor's shed.

In response to HaMoked's inquiry, the military said that "the building was demolished by an officer from the Corps of Engineers, who took special care not to damage adjacent buildings. Before the building was demolished, members of the [T.] family were given time to remove their belongings ... If there are allegations concerning damage caused to adjacent buildings, the complainants can sue for damages ...".¹⁵⁰

In August 2004, HaMoked filed for damages both for the damage to adjacent buildings and for the loss of property in all the houses. In the statement of claim, HaMoked explained the special value of personal belongings: "The value of the destroyed property ... goes beyond the monetary market price.

¹⁴⁹ According to B'Tselem: www.btwelem.org, last checked on June 2, 2005.

¹⁵⁰ Letter to HaMoked from Captain Paso, Assistant to the Military Legal Advisor; on behalf of the Military Legal Advisor; March 1, 2004.

These are all the objects, big and small, that surround people and give them a sense of belonging and security, objects that are intertwined with a person's life memories, days gone by and people who are no longer alive. The sentimental value of such objects is priceless. The injury that deprives a person not only of his dwelling but also of his home and all the objects that constituted an intimate part of his existence, is immeasurable."

In the statement of defense filed in March 2005, the State argued that the demolition of M.T.'s house constituted a wartime action. The State also sought to serve M.T. with a third party action, claiming she knew of her son's intention to carry out the attack but did not stop him or notify the security forces. The house was demolished as a result of that attack, and so M.T. bears some of the responsibility for the demolition of her own home.

The case is still pending in the Magistrate's Court in Jerusalem. **(Case 33764, Civil Case (Jerusalem) 9326/04)**

As stated, although the HCJ has changed its policy, HaMoked still pursues this avenue and in 2004 filed 12 petitions challenging the demolition of houses. Only two petitions were actually heard. In one, the Court authorized the demolition but in the other, in an exceptional decision, the Court instructed the State to make do with sealing the room of the person because of whom the demolition had been ordered. In another case, the military demolished the house after the petition was filed.



On October 21, at 2 AM, HaMoked received an urgent call

from M.D., a resident of Qalqiliya. Soldiers came to his house and announced they were going to shortly demolish it. They did not present any demolition order and only gave the family 15 minutes to collect their belongings and leave.

An attorney for HaMoked immediately contacted the Office of the Military Legal Advisor for the West Bank, and once she confirmed that the army indeed intended to demolish the house, she petitioned the HCJ by fax.

At 2:45 AM HaMoked called M.D. to inform him that a petition had been filed. The house had already been demolished, M.D. said. **(Case 35693)**

It later transpired that while the soldiers were demolishing M.D.'s house, the military was reconsidering this policy in its entirety. In mid February 2005, the military officially announced that around four months earlier the Chief of Staff had appointed a committee to look into the house demolition policy. Following the recommendations of this committee, the military decided it would no longer demolish the homes of Palestinians who are suspected of involvement in attacks against Israelis.¹⁵¹ The official statement on the IDF website did not specify the reasons underlying this recommendation, but the media reported that the committee had concluded that the damage this policy causes outweighs its benefits. Instead of deterring, demolitions only inflame hatred and hostility.¹⁵² When this statement was released, eight petitions against demolitions that HaMoked had filed in 2004 were still pending in the HCJ. In all eight, the State announced that given the change in policy, it no longer intended to demolish the houses. The efficacy of the demolition policy is

irrelevant to the question of its legality. Demolition of houses is unlawful, among other reasons, because it constitutes collective punishment, which is prohibited by international law¹⁵³ and violates the principle of individual responsibility.¹⁵⁴

The military, on the other hand, maintains that house demolitions are required for deterrence and that deterrence is a military necessity. One of the primary arguments the army invoked for justifying the policy was its efficacy. Whenever it was required to defend a decision to demolish a house, the military repeated that there was indication that house demolitions indeed deterred Palestinians from planning and carrying out attacks against Israelis, and led others to turn in relatives who engaged in such activity. The army's statement of February 2005 shows that this argument, on which the entire policy was built, was never adequately examined. Once it was,

the military discovered that its assessments were incorrect and abandoned the policy. By the time the military realized its mistake, 666 houses had been demolished.¹⁵⁵

¹⁵¹ Defense Minister and Chief of Staff Resolution to Change the Policy of Demolishing Terrorists' Homes [Hebrew], IDF website, www.idf.il, February 17, 2005, last checked on June 1, 2005.

¹⁵² Amos Harel, "Committee Appointed by the Chief of Staff: Stop Demolishing Terrorists' Homes – the Damages outweigh the Benefits," *Haaretz*, February 17, 2005.

¹⁵³ **Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949)**, Article 33; **The Hague Convention Respecting the Laws and Customs of War on Land (1907)**, Article 50.

¹⁵⁴ See the dissenting opinion of Justice Mishael Cheshin in HCJ Petition 2006/97, **Janimat v. GOC Central Command – Uzi Dayan**.

¹⁵⁵ Since Israel again started demolishing houses in the current intifada and until publication of the statement. According to B'Tselem, www.btselem.org, last checked on June 2, 2005.