

בצלם

בצלם-מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)
"בטסילם" מרכז המעוּמָת האסראַילי לחקוק האַנשאַן פי האַראַסי האַחַלָּה

B'TSELEM - The Israeli Information Center
for Human Rights in the Occupied Territories
Information Sheet
November 2004



Through No Fault of Their Own

Punitive House Demolitions during the al - Aqsa Intifada

Researched and written by Ronen Shnayderman

Edited by Yehezkel Lein

Data coordination by Suhair 'Aabdi, Yael Handelsman, Sohad Sakalla

Fieldwork by 'Atef Abu a-Rob, Musa Abu Hashhash, Salma Dab'i, Iyad Haddad, Zaki Kahil, Mazen al-Majdalawi, 'Abd al-Karim a-S'adi, Suha Zeyd

Translated by Zvi Shulman

Cover photo: Palestinian boy removes family possessions from the ruins of his home, in Bethlehem, which the IDF blew up on 15 June 2004 (Magnus Johansson, Reuters)

ISSN 0792-8114



B ' T S E L E M

Information Sheet November 2004

Through No Fault of Their Own Punitive House Demolitions during the al-Aqsa Intifada

B'TSELEM - The Israeli Center for Human Rights in the Occupied Territories was founded in 1989 by a group of lawyers, authors, academics, journalists, and Knesset members. B'Tselem documents human rights abuses in the Occupied Territories and brings them to the attention of policymakers and the general public. Its data are based on independent fieldwork and research, official sources, the media, and data from Palestinian and Israeli human rights organizations.

How long does it take to demolish a house?

It takes a year to build it. Sometimes a hundred years. And there are some houses that have always been there.

How long does it take to demolish a house? Less time than is spent thinking about whether it should have been demolished. How much time is spent thinking about whether to demolish? Less time than the ring of the phone ordering the demolition.

One shove and its gone. A hole gapes in the familiar landscape, and the family that had substance and a name and an address and human beings of all ages and relationships, has in the blink of an eye become an example: the persons are punished.

The same thought applies to the demolition. It does not involve human beings, but abstract concepts: inciters, provocateurs, the punished, the deterred, and all the rest. Then the abstract rises up and demolishes the real. And life becomes a concept.

At night, no one sees where the destroyed family has gone. No one knows what they are doing now. And where they are sitting now — in some corner, uprooted with their possessions, under heavens empty and heavy, is anything being noted down about them in some corner there now?

*Leading Israeli author, Yizhar Smilanski
Davar, 26 June 1988*

Executive Summary

Principle findings

- Since the beginning of the al-Aqsa intifada, the IDF has demolished 628 housing units, which were home to 3,983 persons, as a punitive measure.
- These homes were demolished because of the acts of 333 Palestinians. On average, twelve innocent people lost their home for every person suspected of participation in attacks against Israelis.
- Almost half of the homes demolished (295, or 47 percent) were never home to anyone suspected of involvement in attacks against Israelis. As a result of these demolitions, 1,286 persons lost their homes even though according to Israeli officials they should not have been punished.
- Contrary to its argument before the High Court of Justice that prior warning is given except in extraordinary cases, B'Tselem's figures indicate that in only three percent of the cases were occupants given prior notification of the IDF's intention to demolish their home.
- Extensive destruction of property in occupied territories, without military necessity, constitutes a war crime.

The three kinds of house demolitions: operational, administrative, and punitive

Over the last four years, Israel has demolished 4,100 Palestinian homes in the Occupied Territories. About sixty percent of the demolitions were carried out in the framework of what Israel calls "clearing operations." Twenty-five percent were destroyed because Israel claims they were built without permit. The remaining fifteen percent were demolished as a means to punish the families and neighbors of Palestinians suspected of involvement in carrying out attacks against Israelis.

Punitive house demolitions over the years

Israel has demolished Palestinian houses as a punitive measure since the beginning of the occupation in 1967. The extent of the demolitions varied as the years passed:

- From 1967 to the outbreak of the first intifada, in December 1987, Israel demolished or sealed at least 1,387 homes, most in the first few years following occupation of the West Bank and Gaza Strip.
- During the first intifada, Israel increased its use of house demolitions as a punishment. From 1988-1992, Israel completely demolished 431 housing units and partially demolished fifty-nine.

- From 1993 to 1997, Israel completely demolished eighteen housing units and partially demolished three units.
- From 1998 to October 2001, Israel did not demolish or seal any houses as punishment.
- In the course of the current intifada, Israel renewed its use of punitive house demolitions in unprecedented proportions. From October 2001 to 20 September 2004, Israel demolished 628 homes. The official decision to renew the policy of punitive demolitions was made at a meeting of the Political-Security Cabinet on 31 July 2002, about nine months after the policy began in practice. This report analyzes Israel's policy during this period.

Punishing the innocent as official policy

The declared purpose of the punitive house demolitions is to deter potential attackers by harming the relatives of Palestinians suspected of carrying out attacks against Israelis. Testimonies given to B'Tselem indicate that security forces occasionally use the threat of demolition to pressure relatives of wanted persons to cooperate and turn in their relatives. Israel's policy has left 3,983 Palestinians homeless since the beginning of the current intifada.

This measure does not directly harm the suspects themselves, who at the time of the demolition are not living in the house. According to B'Tselem's statistics, thirty-two percent of the suspected offenders were in detention at the time of demolition, twenty-one percent were "wanted," and forty-seven percent were dead.

In many instances, the IDF also destroyed houses adjacent to the house that was the target for demolition. These cases involved both apartments in the same building as the suspect's apartment, and adjacent buildings. In some cases, B'Tselem found, the IDF intended to destroy the nearby houses. Yet, even if the IDF did not intend to damage nearby houses, the fact that there have been many such cases makes the lack of intention irrelevant. Since the beginning of the al-Aqsa intifada, the IDF demolished 295 adjacent homes (about one-half of all homes demolished), in which 1,286 persons lived. However, statements by the IDF Spokesperson's Office following demolitions always mention only one house, that in which the relevant individual lived, as the house that was demolished.

Demolitions not restricted to suicide bombings

The text of the decision made by the Political-Security Cabinet and reports in the media give the impression that Israel's policy is directed only against Palestinians who were directly involved in attacks that caused many Israeli casualties. However, Israel's policy is much broader than that.

Israel demolishes houses that were home to Palestinians suspected of involvement in any violent act against Israelis, regardless of the results: from suicide bombings that caused many fatalities to "failed" attacks against soldiers. Furthermore, the demolitions are aimed not only at the perpetrators themselves. Israel also demolishes the homes of individuals with any level of

involvement in the attacks, either in the planning, the dispatching of the persons who carried out the attacks, or by providing assistance of some kind. According to B'Tselem's figures, sixty-six percent of the demolitions were directed at the families of suspects who carried out attacks, while the remaining thirty-four percent were directed at those involved in other ways. Forty percent of the demolitions were in response to attacks in which no Israeli was killed.

No prior warning given

Contrary to prior practice, since the policy was renewed in 2001, the IDF has generally not issued a demolition order, and has not warned the occupants before demolishing their home. The IDF gave prior warning in only seventeen cases, representing three percent of the total. Most of the demolitions take place at night, and the occupants are given only a few minutes to remove their possessions from the house.

Severe material and psychological implications

Testimonies given to B'Tselem indicate that the harm suffered by the families affects almost all aspects of life: disruption of the family unit, as some families are forced to split up and live separately; sharp decline in the standard of living, as a result of the loss of property, even after the family finds substitute housing; and feelings of being uprooted and of instability as a result of the loss of their home, which always provides more than just shelter. Psychological research indicates that house demolitions have a substantial post-traumatic effect, primarily on children.

Violation of the right to housing

The right to adequate housing is well enshrined in international law. The right to housing is important because it is a prerequisite for the exercise of other rights, among them the right to an adequate standard of living, the right to the highest attainable standard of physical and mental health, and the right to family life. The right to housing is also a vital component of the protection of the rights of children, who are entitled to special protection in international law. As the ruling power in the Occupied Territories, Israel is required to respect the Palestinians' right to housing.

War crime

The Fourth Geneva Convention prohibits the occupying power from destroying the property of civilians in occupied territory, "except where such destruction is rendered absolutely necessary by military operations." Israeli officials have argued that its policy falls within this exception. However, this contention is baseless. Israel's interpretation of "military operations" contradicts the official commentary of the International Committee of the Red Cross, which defines "military operation" as "the movement, maneuvers, and actions of any sort, carried out by the armed forces with a view to combat." Punitive demolitions are not conducted in the framework of hostilities.

They cannot, therefore, be deemed a “military operation” within the meaning of the term in the Geneva Convention, and even more so, cannot be considered an “absolutely necessary” military action. Massive destruction of property in occupied territory – where it does not come within the exception set forth in the Fourth Geneva Convention – constitutes a war crime.

In some cases, Israel argues that the demolitions are lawful in that they are carried out pursuant to Section 119 of the Emergency Defense Regulations, which were enacted during the British Mandate. Section 119 is a draconian provision that allows a house to be demolished based on suspicion that certain offenses have been committed. The house does not have to belong to the suspects themselves, but can be the home of their family, neighbors, and other residents in the community. The applicability of Section 119 is questionable: it was revoked by the British before the Mandate ended. However, even if the British did not revoke it, Section 119 should be nullified because it violates international humanitarian law. The High Court of Justice rejected these arguments and adopted, time after time, the state’s contention that punitive house demolitions are lawful pursuant to Section 119.

Collective punishment

Israel’s policy also breaches one of the most fundamental principles of justice: the prohibition on punishing a person for acts committed by another, i.e., collective punishment. This prohibition is especially stringent when the victims are children. The Fourth Geneva absolutely prohibits collective punishment, without exception.

The Hague Regulations, on the other hand, recognize a narrow exception to this prohibition. The exception applies when occupants of the house intended for demolition knew or could foresee the act for which the army intends to demolish the house, and had the opportunity to prevent it. Despite this, state officials have often declared that prior knowledge or responsibility of the occupants is not a precondition for the legality of the demolition. In the few cases in which the High Court addressed the question of indirect responsibility of family members for failing to prevent an attack, the justices relied on baseless assumptions to determine that the relatives knew about the attack during the planning stage. This approach is completely inconsistent with the High Court’s handling of the identical offense known in Israeli law as “failure to prevent a felony,” which calls for an extremely heavy burden of proof, in which the prosecution must prove that the defendant had positive, concrete, immediate, and significant information that a felony was about to occur.

Israel further argues that house demolitions are not punishment, but rather a means of deterrence. Therefore, the state contends, the act does not comprise collective punishment and thus does not violate international humanitarian law. The High Court accepted the state’s argument by making an analogy between house demolition and incarceration of the head of a family, which also harms the entire family. However, the comparison is flawed. The purpose of imprisonment is to deny certain rights to the offender. The suffering of his family is only a by-product and is not necessary to achieve the objective of the imprisonment.

Denial of due process

Finally, demolition of houses is an administrative procedure based solely on suspicion, in which the occupants are denied the right to due process of law. Since the policy was renewed in 2001, Israeli has made matters worse by denying victims of the policy the fundamental right to plead their case to the authorities before the demolition is carried out.

Israel justifies its failure to give prior warning on the grounds that the warning is “liable to endanger our forces, and cause the action to fail, because warning will enable the enemy to booby-trap the houses scheduled to be demolished, ambush our troops taking part in the action, and the like.” This justification is baseless. At least as far as the West Bank is concerned, the IDF has effective control throughout the area, and is constantly present in almost all the cities, villages, and refugee camps. Also, making demolitions an openly declared policy enables some families to anticipate the demolition of their home. Following recent suicide attacks, the Israeli media reported that the IDF intended to demolish the houses of the persons who carried out the attacks. Thus, the state can no longer justify denial of the right to be heard on the need to preserve the element of surprise.

In the conclusion of the report, B’Tselem demands that the government of Israel immediately cease the policy of demolishing houses as a means of punishment, and compensate Palestinians whose homes have been demolished as a result of this policy.

Introduction

During the course of the al-Aqsa intifada, which began in September 2000, Israel has implemented a policy of mass demolition of Palestinian houses in the Occupied Territories. In this period, Israel has destroyed some 4,170 Palestinian homes.

The IDF carries out three types of house demolitions. Most are carried out in the framework of what Israel calls “clearing operations,” which are intended to meet what Israel defines as “military needs.” These operations take place primarily in the Gaza Strip: along the Egyptian border, which passes through Rafah and its refugee camps; around settlements and army posts; alongside roads used by settlers and IDF forces; and in the northern part of the Gaza Strip, in the area of Beit Hanun, Beit Lahiya, and the Jabalya refugee camp, from which Kassam rockets have been fired at Israeli communities inside Israel. From the beginning of the intifada through October 2004 – slightly over four years – the IDF has demolished some 2,540 housing units, in which 23,900 persons lived, in the course of the IDF’s “clearing operations.”¹

The second type of demolition is administrative demolition of houses built without a permit. These demolitions take place in Area C in the West Bank, where Israel retains authority

over planning and building even after the establishment of the Palestinian Authority, and in East Jerusalem. According to figures from the Civil Administration, between 2001 and 2003, Israel demolished 768 structures in the West Bank that had been built without permit. According to the Jerusalem Municipality’s figures, from the beginning of 2001 to February 2004, Israel demolished 161 structures that had been built without permit in East Jerusalem.² B’Tselem does not have figures on the number of Palestinians who lost their homes as a result of administrative demolitions.

The third kind of house demolitions is intended to punish the relatives and neighbors of Palestinians who carried out or are suspected of involvement in attacks against Israeli civilians or soldiers. These punitive demolitions are directed against the homes in which these suspects had lived. However, in many cases, adjacent homes are also destroyed. Since the beginning of the al-Aqsa intifada, Israel has demolished a total of 628 housing units, which were home to 3,983 persons, as a punitive measure.

B’Tselem has published a number of reports dealing with the administrative demolition of houses and demolition of houses on grounds of “military needs.”³ This report focuses on

1. Figures of the UN Relief and Works Administration indicate that, from the beginning of the intifada to September 2004, the IDF destroyed in “clearing operations” in the Gaza Strip about 2,370 housing units, in which some 22,800 persons lived. According to B’Tselem’s figures, in September and October 2004, the IDF demolished 170 housing units, which were home to 1,100 persons, in “clearing operations” in the Gaza Strip.

2. Figures of the Civil Administration and the Jerusalem Municipality do not distinguish between housing units and structures that are not intended for residential use.

3. The previous reports are *Land Grab: Israel’s Settlement Policy in the West Bank*, May 2002 (see Chapter 6); *Policy of Destruction: House Demolition and Destruction of Agricultural Land in the Gaza Strip*, February 2002; *Demolishing Peace: Israel’s Policy of Mass Demolition of Palestinian Houses in the West Bank*, September 1997; *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, May 1995.

the third type of demolition: Israel's policy of house demolition as punishment.⁴

Israel has implemented this policy of punitive house demolitions throughout the occupation, with the exception of a four-year period from 1998 to 2001. During the al-Aqsa intifada, Israel reinstated this policy, and even increased its use. Israeli officials contend that the measure is intended to deter Palestinians from attacking Israeli civilians.

Since the outbreak of the al-Aqsa intifada, attacks on Israelis by Palestinian militants have indeed increased, both inside the Green Line and in the Occupied Territories. As of mid-October 2004, these attacks have claimed the lives of 636 Israeli civilians, among them 112 children. Attacks against civilians are illegal and immoral. According to international humanitarian law, deliberate attacks against civilians constitute a war crime, and are unjustifiable in any and all circumstances. Not only is Israel entitled to protect its citizens, it has an obligation to do so. However, the measures it chooses must comply with international law.

This report examines Israel's policy of demolishing houses as punishment during the current intifada. Part One presents the factual analysis, and Part Two criticizes Israel's policy in light of international law.

In the framework of its research for this report, B'Tselem requested a meeting with the legal advisor of the IDF's Central Command to clarify a number of relevant issues. We were primarily interested in understanding the legal foundation on which Israel bases its policy and in learning the army's decision-making process regarding demolitions. The IDF Spokesperson's Office conditioned the meeting on the demand that part of the conversation be an off-the-record "background discussion," and part be "for quotation but without attribution."⁵ As a human rights organization, B'Tselem does not conceal information relating to human rights violations, so we did not accept the preconditions. B'Tselem can only regret that the IDF seeks to hide aspects of its official policy from public scrutiny. This report is based, therefore, on public statements made by Israeli officials, documents published by the state, and the data collected by B'Tselem.

4. This report will briefly discuss the other two kinds of house demolitions, and provide updated statistics.

5. Letter from the IDF Spokesperson's Office, 26 August 2004.

Part One

House Demolitions as a Means of Punishment – Factual Analysis

Chronological review of the extent of house demolitions

Since 1967, Israel has implemented a policy of demolishing and sealing houses in the West Bank and Gaza Strip.⁶ In most instances, the action is taken against the house of a Palestinian suspected of committing an attack against Israeli civilians or armed forces. The measure has never been used against Israeli civilians who committed acts similar to those for which Palestinian houses are demolished.⁷

The extent of Israel's demolition and sealing of houses has varied over the years. According to B'Tselem's statistics:

- From 1967 to the outbreak of the first intifada, in December 1987, Israel demolished or sealed at least 1,387 houses, most in the first few years following occupation of the West Bank and Gaza Strip.⁸
- Following the outbreak of the first intifada, Israel dramatically increased its use of house demolitions as a punitive measure. From 1988-1992, Israel completely demolished 431 houses and partially demolished fifty-nine.⁹ During this same period, Israel completely sealed 271 houses and partially sealed one hundred houses.
- Following the change in government in Israel in 1992 and the beginning of the peace process in 1993, Israel sharply reduced its use of house demolitions as a punitive measure. From 1993 to 1997, Israel completely demolished eighteen houses and partially demolished three houses. In addition, Israel also completely sealed twenty-six houses and partially sealed eighteen.
- From early 1998 to October 2001, Israel did not demolish or seal houses as punishment. The change resulted, in part, from the fact that most Palestinians were living in areas in which governing powers had been transferred to the Palestinian Authority pursuant to the Oslo Agreements, and the IDF refrained from entering areas under PA control (Area A in the West Bank and its equivalent in the Gaza Strip).
- In the course of the al-Aqsa intifada, Israel renewed its use of punitive house demolitions and carried out this policy with increased vigor. From October 2001 to the end of October 2004, Israel demolished 628 housing units as punishment, leaving 3,983 Palestinians homeless.¹⁰

The official decision to renew the policy of demolitions as a punitive measure was made

6. The term house refers in this context to one housing unit and not to a building or apartment building, which are likely to contain a number of apartments.

7. For example, the home of Baruch Goldstein, who committed the attack in the Tomb of the Patriarchs in 1994, in which twenty-nine Palestinians were killed, was not demolished, nor was the home of Shahar Dvir Zeliger, who was convicted of membership in a terrorist organization that intended to carry out attacks against Arabs, and between 2001 and 2003 carried out shooting attacks and laid explosives intended to injure Palestinians.

8. See B'Tselem, *Demolition and Sealing of Houses as Punishment in the West Bank and Gaza Strip as a Punitive Measure during the Intifada*, September 1989.

9. "Partial demolition" means the complete demolition of some rooms in a house.

10. Unlike in the past, during the al-Aqsa intifada Israel rarely carries out partial demolition or sealing of houses. Since the beginning of the al-Aqsa intifada, Israel has partially demolished two homes and sealed three others.

at a meeting of the Political-Security Cabinet on 31 July 2002. It followed the Palestinian attack at the Hebrew University in Jerusalem, in which five Israelis and four previously citizens were killed.¹¹ In practice though, the policy was renewed in the last two weeks of October 2001, during the IDF's operations in Area A in the West Bank.

The first of these actions took place on 23 October 2001 in Qalqiliya. The IDF demolished the home of Sa'id al-Hutri, who committed the suicide-bombing at the Dolphinarium in Tel Aviv, in which eighteen Israeli civilians (including twelve minors), two foreign citizens (one of them a minor), and one soldier were killed. The next day, in Tulkarm, the army demolished the home belonging to the family of Ra'id al-Karmi, who was suspected of killing two Israeli civilians. That same day, during IDF operations in Beit Rima, the IDF demolished three houses, in which

Palestinians suspected of attacks on Israelis lived. In its investigation of the IDF's actions in Beit Rima, B'Tselem found that when the army completed its operation, and after most of the soldiers had left the village, soldiers went to the three houses, ordered the occupants to go outside, and blew up the houses. Thirty-one other houses were damaged by the shock waves from the explosions, and dozens of vehicles parked nearby were damaged.¹² The IDF Spokesperson's Office claimed that the houses were demolished because they were the homes of Palestinians who had been involved in terrorist attacks.¹³

Over the following nine months, until the official decision was made to renew the policy, the IDF demolished an additional forty-three housing units. Immediately after the Political-Security Cabinet's decision, the IDF began to implement a systematic and extensive policy of house demolition as a punitive measure.

11. Section 9 of the state's response in HCJ 7473/02, *Bachar v. Commander of IDF Forces in the West Bank* (hereafter: *Bachar*). See also, Aluf Benn, "Actions against Families of Suicides: Expulsion and Confiscation of Property," *Ha'aretz*, 1 August 2002.

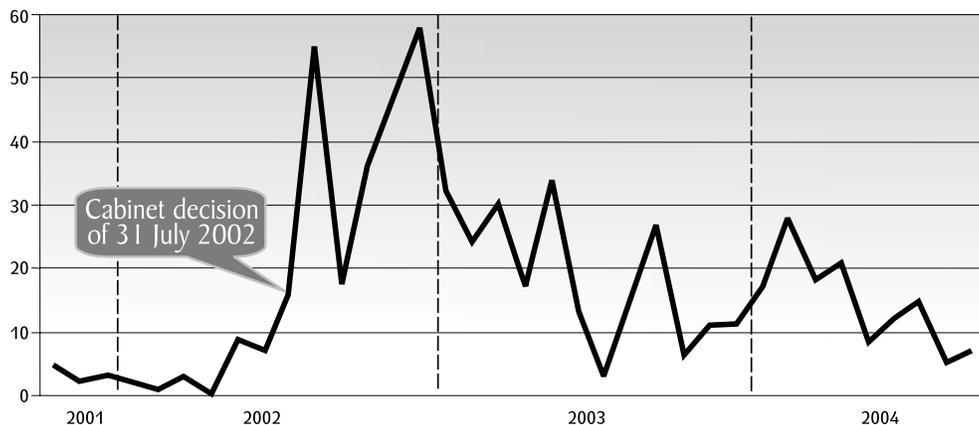
12. See B'Tselem, *Excessive Force: Human Rights Violations during IDF Operations in Area A*, October 2001.

13. See the IDF Spokesperson's Office's response appended to B'Tselem's report on Beit Rima, in *Excessive Force*. See, also, the statements of the IDF Spokesperson of 23 October 2001 and 24 October 2001. The statements of the IDF Spokesperson are available at www.idf.il.

Demolition of Houses as a Means of Punishment, by Month: October 2001 – October 2004

Year	Month	Number of Units
2001	October	5
2001	November	2
2001	December	3
2001	Total	10
2002	January	2
2002	February	1
2002	March	3
2002	April	-
2002	May	9
2002	June	7
2002	July	16
2002	August	55
2002	September	17
2002	October	36
2002	November	47
2002	December	58
2002	Total	251
2003	January	32
2003	February	24
2003	March	30

Year	Month	Number of Units
2003	April	17
2003	May	34
2003	June	13
2003	July	3
2003	August	16
2003	September	27
2003	October	6
2003	November	11
2003	December	11
2003	Total	224
2004	January	17
2004	February	28
2004	March	18
2004	April	21
2004	May	8
2004	June	12
2004	July	15
2004	August	5
2004	September	15
2004	October	4
2004	Total	143



Harming the innocent as policy

1. The rationale

In its “clearing operations,” the IDF demolishes houses which it claims are used to carry out attacks against soldiers, or which make it hard for security forces to protect army posts and settlements. Although most occupants of the homes demolished are innocent civilians who are not suspected of having committed any offense, Israel justifies the harm it causes them on the grounds that their houses are a “legitimate military object.” In the case of punitive house demolitions, the demolition is not intended to meet military needs. Rather, the main objective of the demolition is to harm the occupants of the house that is destroyed.

Israel contends that these demolitions are intended to deter Palestinians from carrying out attacks against Israeli civilians. In its response to a petition before the High Court of Justice, the state contended that, “one of the measures adopted by the Ministerial Committee for National Security Matters... to deter without delay the persons who carry out the attack and the persons who dispatch them, was the demolition of houses in which terrorists who carried our suicide attacks and other serious attacks lived.”¹⁴ Similarly, the IDF Spokesperson described the policy as a “message to terrorists and their accomplices in terrorism, that their acts come at a price that

will be paid by everyone taking part in the hostile terrorist activity.”

The assumption underlying the policy is that harm to family members will deter Palestinians from attacking Israelis. Attorney Shai Nitzan, former head of the Special Functions Division in the State Attorney’s Office, argued before the High Court that house demolitions are “intended, among other reasons, to deter potential terrorists, as it has been proven that the family is a central factor in Palestinian society.”¹⁵ The head of the General Security Service, Avi Dichter, was quoted as saying regarding house demolitions, that “harming families has been proven to be an effective policy.”¹⁶

Indeed, the primary victims of the demolitions are relatives of the suspected assailants, and include men, women, elderly, and children, none of whom are suspected of committing any offense. In the vast majority, if not all, of the cases, the suspected perpetrator was not living in the house when it was demolished, either because the individual was being sought by the Israeli security forces and was therefore in hiding, or had been apprehended by Israel and was awaiting a long prison sentence, or had been killed in an encounter with security forces, or died in the attack itself. According to B’Tselem’s statistics, thirty-two percent of the suspected offenders were in detention at the time of demolition, twenty-one percent were “wanted,” and forty-seven percent were dead.¹⁷

14. Section 9 of the state’s response in *Bachar*.

15. Moshe Reinfeld, “IDF to High Court of Justice: Terrorist Organizations Admit that Expulsions Deter,” *Ha’aretz*, 27 August 2002.

16. Aluf Benn, *supra*, footnote 11.

17. These figures relate to about eighty percent of the persons whose alleged actions led to Israel’s demolition of their houses as a punitive measure. B’Tselem does not have data on the other twenty percent.

For example, on 26 February 2004, the IDF demolished the house in which Hassan Muhammad Hassan Abu Sha'ira previously lived, which was located in the al-Aza refugee camp, Bethlehem District. According to the IDF, Abu Sha'ira had collaborated with the Israeli General Security Services (GSS). On 14 June 2001, he killed Yehuda Edri, his GSS operator, when the two met, and was killed by soldiers who were standing nearby. When Abu Sha'ira's home was demolished almost three years later, his wife, 'Itaf Hassan Muhammad Abu Sha'ira, 33, and their three children, Marwat, 12, Shirin, 10, and Tareq, 6, were living in the house.¹⁸

B'tselem's investigation revealed that some of the demolitions involved houses that were rented by the suspect. In those cases, the main victims (at least in material terms) were the property owners, who had no involvement whatsoever with the relevant acts of the suspect.

One example of such a case occurred on 8 August 2002, when IDF forces entered Bethlehem and demolished the apartment of Jamil Muhammad 'Awadalla Salahat, who lived there with his wife and eight children, and another apartment belonging to him that was located in the same building. Four days earlier, Salahat had rented the other apartment to a woman and her three children. He later found out that the tenant's husband was Yehiye D'amseh, from the Daheishe refugee camp, who was wanted by the IDF.¹⁹

2. Expanding the sphere of punishment

Attorney Nitzan, of the State Attorney's Office, contended that the IDF's policy of punitive house demolition is justified provided that the "house to be demolished belongs only to the nuclear family of the perpetrator. If others live there, the house should not be demolished."²⁰ Yet, in many instances, contrary to Nitzan's statement, the IDF also demolished houses adjacent to the suspect's house. These cases involved both apartments in the same building as the suspect's apartment, and adjacent buildings. In some cases, testimonies taken by B'tselem indicate that the damage to the nearby houses seems to have resulted from the intensity of the explosion and was not caused deliberately. Yet, it is also clear that in other cases, the IDF intended to destroy the nearby houses. This practice is common when the occupants are members of the suspect's extended family.

Of the 628 housing units that the IDF demolished as punishment since the beginning of the al-Aqsa intifada, 295 of them, in which 1,286 persons lived, were next to the house in which the suspect lived. Thus, only about one-half of the housing units demolished by the IDF as punishment involved the house in which the suspect's nuclear family lived. Yet, statements made by the IDF Spokesperson's Office following demolitions always mention one house, that in which the relevant individual lived, as the residence that was demolished.

18. See the wife's testimony, Appendix 1.

19. See Salahat's testimony, Appendix 2.

20. Einat Berkowitz, "The *Shai* ["gift" in Hebrew] of Edna Arbel [State Attorney]," *Globes*, 19 December 2002.

In his testimony to B'Tselem, 'Issam Muhammad Qassem 'Odeh, whose brother 'Abd al-Basset 'Odeh committed the attack on the Park Hotel in Netanya, killing twenty-nine persons, described how soldiers destroyed the six-apartment building in which his brother lived, and also the building next door, in which two other families lived:

I live in the southern part of Tulkarm. I own a grocery store that is about two hundred meters from my house. On Friday, 10 May 2002, at around 3:00 P.M., I was at my store. I saw soldiers and army vehicles moving about in the area near my house. There were about thirty army vehicles – jeeps and armored vehicles – and dozens of soldiers. They appeared without warning. I assumed that they came to demolish our house because my brother 'Abd al-Basset bombed the Park Hotel in Netanya on 27 March 2002. As I was watching, a loudspeaker announced a curfew on the neighborhood.

I closed the store and went to my uncle Sami's house, which was about ten meters from my house. We heard someone banging on the door of his house. My uncle opened the door. Several soldiers were standing there. They demanded that everybody in the house leave. All of us, about fifteen people, went outside...

We gathered at the entrance to my uncle's house. The soldiers ordered my uncle to go into the two adjacent buildings and tell the people to come outside, because they were about to blow up the buildings. All the residents of the buildings went outside. The soldiers made us move about 300

meters away from the buildings. I went onto the roof of a building there and saw the bulldozers demolishing the building in which I lived and the building next door, which belonged to my aunt.

Around 6:00 P.M., the bulldozers and the army vehicles left. After a few minutes, there was a gigantic explosion. About a half an hour later, I went to the site and found the two buildings – the one I lived in and the one that belongs to my aunt – along with their contents, entirely destroyed.

The building I lived in was a four-story building. My uncle Jamil Qassem 'Odeh lived on the first floor. His apartment had four bedrooms and living room, and covered 170 square meters. Five people lived in the apartment. My father, mother, and four brothers lived on the second floor. That was the apartment in which my brother 'Abd al-Basset lived. The third floor had two apartments. I lived in one with my wife and our five children. My brother 'Odeh, his wife, and their three sons lived in the other apartment. There were two apartments on the fourth floor, in which my cousins and their families lived.

All of our possessions were also destroyed because the army did not give us time to remove our things. They only allowed the occupants to leave the building.

As I said, the other building belonged to my aunt Smicha, who is fifty-six years old. The building had two floors and a total of two apartments. My aunt and her family lived in one, and Muhammad Salameh and the six members of his family lived in the other, which he was renting from my aunt.²¹

21. The testimony was given to Raslan Mahagna in Tulkarm on 24 August 2002.

In another case, the IDF demolished three houses in the Nur a-Shams refugee camp. One of them was the former residence of ‘Omer ‘Alian. On 5 March 2002, he committed a suicide-bombing at a mall in Netanya. The IDF Spokesperson’s statement on 2 August 2002, which addressed the demolition mentioned only one house, that of Ahmad ‘Alian. In her testimony to Raslan Mahagna, of B’Tselem, on 24 August 2002, Nofa ‘Abd ‘Abdallah al-Judi, 72, who lived next door, described the events that preceded the destruction of her home:

On 2 August 2002, a Friday, around 2:00 A.M., I awoke to the sound of an announcement being made over a loudspeaker in Arabic. The announcement was directed to Anwar ‘Alian, demanding that he surrender immediately. His house is situated next to mine. He is the brother of the suicide-bomber Ahmad ‘Omer ‘Alian.

The soldiers shone their lights at my house, which was in front of Anwar’s house. I got up and went outside to the main road to the north, where dozens of soldiers and army vehicles were located. There were tanks, armored vehicles, and jeeps. The soldiers ordered me to stop and to come over to them slowly. I did as they said. One of them, who was in an armored vehicle, spoke to me. I asked him what they wanted. He replied that they were looking for Anwar ‘Alian. I told him that Anwar ‘Alian did not live in that house, but in the one in the back, and that this one belonged to me. The soldiers asked me who was in my house, and I replied that my son Munir, 25, and I were. The soldier ordered me to go back home and tell my son to come out and go to the soldiers.

I called to my son to come out. When he did, the soldiers called on the loudspeaker

and ordered him to lift up his shirt and turn around, which he did. They told us to come over to them, and when we did, they took our ID cards. Munir went over to Anwar ‘Alian’s apartment... Munir returned and told the soldiers that nobody was in the house. The soldiers told him to go back to the house and remove the door. He asked the soldiers how he was supposed to do that. The soldiers ordered him to try to force the door open. Munir went back and kicked the door, but did not manage to open it. After a few minutes, about ten soldiers went over to the house and placed explosives next to the doorway.

The soldiers also removed my son Nasri, who is 33, and ordered my two sons to tell the occupants of the nearby houses to come outside. About 100 people – adults and children – left their homes. The soldiers moved everyone to an area about 100 meters east of the ‘Alian family’s house.

Around 5:30 A.M., we heard powerful explosions and saw a big cloud of smoke. Afterwards, the soldiers left. We went over to the site of the explosion. The ‘Alian’s house was totally demolished. Three rooms of my house were totally destroyed and all the windows were shattered. Almost all the contents of my house were destroyed. The house of one of the neighbors, that of Hatem Abu ‘Aabed, was seriously damaged, and it is still uninhabitable. The house of Amaneh Qarian was also damaged.

Dozens of people were left homeless. Some of them are living in houses they have rented, and others are living with neighbors because their houses are uninhabitable.

Even if the IDF did not intend to damage nearby houses, the fact that there have been many past cases in which nearby homes were damaged requires it to take the measures necessary to prevent such damage. Therefore, the lack of intention does not diminish the responsibility of IDF commanders regarding destruction of the nearby homes.

Furthermore, the media reports of one particular house demolition indicate that the IDF is capable of destroying a single housing unit if it takes the requisite safety measures. On 19 December 2002, IDF forces demolished the apartment of Sirhan Sirhan, whom Israel contended had carried out the attack in Kibbutz Metzger. The apartment was demolished in the presence of members of the media. The forces took especial care to damage only the Sirhan family's apartment, which was located on the third floor of an apartment house. "We have not yet touched Sirhan's apartment," the commander in charge contended, "because it is located on the third floor and we are afraid that if we blow it up, the lower floors and the neighboring apartments would be damaged. We have decided to carry out a controlled, microscopic explosion that will cause the ceiling of only the specific apartment to collapse."²²

3. Demolition of houses as leverage to obtain the family's cooperation

Testimonies given to B'Tselem indicate that in addition to deterrence, security forces use the threat of house demolitions to pressure relatives of wanted Palestinians to cooperate and turn them in. If they refuse, the IDF demolishes their house.

For example, on 13 March 2003, IDF troops demolished the house of Saher 'Ajaj, who was suspected of being involved in the attack in the Hermesh settlement on 29 October 2002, in which three Israelis were killed, and in an attack in Kibbutz Metzger on 10 November 2002, in which five Israelis were killed. In his testimony to B'Tselem, Subhi Ahmad Mahmud 'Ajaj, the suspect's father, described the events that preceded demolition of his apartment.

On 15 February 2002, soldiers broke into my house, which is situated in the western section of Seida. A GSS commander named Gidon was with them. He introduced himself to me and asked me where my son Saher was. Saher was not at home. The GSS commander demanded that I turn my son over to the army, and said that if I didn't, the consequences would be grave. The soldiers made me and my family leave the house and fired at and hurled grenades into the house. This was the first time that soldiers broke into our house. Saher did not turn himself in, and the soldiers, along with Gidon, subsequently broke into the house once or twice a week. They always came at night, made the family leave, fired bullets and stun grenades into the house, and searched it carefully. They said that Saher was wanted. Each time, the commander threatened to blow up the house if Saher did not turn himself in.

When they came, Gidon would assemble us and say, "I am going to give you a night lecture." He would tell us about the soldiers' actions, how they killed some guy and blew up the houses of wanted persons. He gave

22. Avichai Becker, "Enlightened Demolition," *Ha'aretz*, 27 December 2002.

us the names of families whose houses had been demolished, and ended by saying that Saher would ultimately be killed, and that if he did not turn himself in to the army, our house would be demolished. He pretended that he was giving us good advice, so that our house would not be demolished and my son would not be killed...

On 13 March 2003, soldiers broke into our village and imposed a curfew. Soldiers came to our home. Gidon was with them. He said that the soldiers were about to demolish the house, and he gave me twenty minutes to remove our belongings. He did not let any of my relatives or neighbors help me. I only managed to remove some clothes and necessities. Then they blew up the house.²³

4. The grounds for the demolitions: suspicions

Punitive house demolitions are conducted as part of an administrative process. In other words, the houses are demolished before any judicial body determines that the suspects, if still alive, indeed committed the acts that Israeli officials attributed to them. Thus, Israel demolishes the houses solely on grounds of suspicion. In cases where the suspect is dead, the demolition sometimes takes place before an autopsy is performed and the individual's identity is verified.

For example, in a routine procedure, the Police requested permission from the Jerusalem Magistrate's Court to carry out an autopsy of the woman who committed the suicide-bomb attack in French Hill, in Jerusalem, on 22 September 2004, to determine her identity. The house in which she ostensibly lived had already been demolished. Judge Haim Li-Ron denied the application on the grounds that the terrorist had already been identified. Otherwise, the judge contended, it was impossible to explain the demolition of the family's house. The Police representative argued that, "Despite all kinds of speculations, in our view the assailant is unknown."²⁴ Another Police official told the weekly newspaper *Kol Ha'Ir* that, "The fact that some terrorist organization takes responsibility for the attack and claims that this or that terrorist is the woman who carried out the attack does not enable us to verify her identity."²⁵

Not only suicide attacks warrant house demolition

The formal decision to reinstate the house-demolition policy was made, as previously stated, after the bombing attack at the Hebrew University on 31 July 2002. This fact, in addition to the statements made by Israeli officials and press reports, gave the impression that the policy was intended only regarding Palestinians who were directly involved in attacks that caused many Israeli casualties. For

23. The testimony was given to 'Abd al-Karim a-S'adi at the house of the witness's brother on 13 September 2004.

24. Yuval Yoaz, "Judge Refuses to Authorize Autopsy of Terrorist: 'They Demolished her House, so She is no Longer Unknown,'" *Ha'aretz*, 24 September 2004.

25. Avi Fogel, "For the First Time: Judge Refuses to Allow Autopsy of Woman Suicide-Bomber at French Hill Intersection," *Kol Ha'Ir*, 24 September 2004.

example, it was reported that at the meeting of the Political-Security Cabinet at which the said decision was made, the cabinet approved the “GSS and IDF plan for acting against the terrorism of Palestinian suicide-bombers.”²⁶

In practice, Israel demolishes houses in which Palestinians lived if they were suspected of any kind of violent activity against Israelis regardless of its consequences, from suicide-bombings that left many casualties to failed attacks on soldiers. For example, on 22 July 2003, IDF forces demolished a house in Beit Furik in which Zeyd Hanani lived. According to an announcement of the IDF Spokesperson that same day, Hanani had attempted to harm Israelis when he opened fire at IDF forces.

In addition to the houses of suspects of actions in which Israelis were harmed or in attempts to kill and injure Israelis, the policy is also implemented against Palestinians who initiate, plan, or assist in carrying out such attacks. For example, on 17 September 2003, IDF forces demolished the house in which Mahmud ‘Ali lived. According to a statement of the IDF Spokesperson that day, “he was involved in three attempts to dispatch suicide-terrorists.” On 5 October 2003, the army demolished the house in which Amjad ‘Abidi lived, after which the IDF Spokesperson announced that “he was involved in assisting in many terrorist attacks.”

Of all the house demolitions during the al-Aqsa intifada for which the IDF Spokesperson issued a statement identifying the person and the acts that precipitated the demolition, sixty-six percent involved suspects who had themselves

carried out attacks, while the remaining thirty-four percent involved the houses of persons suspected in one way or another of initiating, planning, or assisting in the attacks on Israelis. According to the IDF Spokesperson, in forty percent of the attacks for which the suspect’s house was demolished, no Israeli was killed.²⁷

No prior warning of demolition

Until the beginning of the al-Aqsa intifada, the IDF was careful, in almost all cases, to issue demolition orders stating that it intended to demolish the houses in which Palestinians suspected of involvement in attacks on Israelis lived. The orders were served on the occupants of the house intended for demolition, and they were given forty-eight hours to appeal the military commander’s order. Where the appeal was denied, the occupants were allowed to petition the High Court of Justice against the demolition.

In a response to the High Court in September 2003 regarding prior warning, the State Attorney’s Office contended that “demolition without prior warning takes place only in exceptional cases.”²⁸ This contention, which implies that no change in policy had been made, is blatantly inaccurate.

According to the legal advisor of the Central Command in his letter relating to the intention to demolish the house of the family of Yamen Tayib ‘Ali Frej, who was suspected of instigating a suicide bombing, it was decided that, “*although not formally required*, the family of the aforementioned assailant is given

26. Aluf Benn, *supra*, footnote 11.

27. This figure relates only to houses of suspects who carried out the attack.

28. HCJ 4241/03, *Sualma v. Commander of IDF Forces in the West Bank*.

the right to make its case or raise objections opposing the intention of the military commander to confiscate and demolish the structure in which the aforementioned assailant lived.”²⁹

According to B’Tselem’s statistics, since the beginning of the current intifada, the IDF gave prior warning of punitive demolitions in only seventeen cases, which represent less than three percent of all house demolitions. Clearly, then, the rule is that the IDF does not give prior warning. Exceptions to this rule are almost non-existent.

Most of these demolitions over the past four years have taken place at night. The occupants are given only a few minutes to remove their possessions and prevent them from being buried under the rubble.

In an article on the demolition of the house of Sirhan Sirhan, whom Israel contended, as mentioned above, of carrying out the attack in Kibbutz Metzger, the journalist Avichai Becker described the way the occupants were notified of the intention to demolish their house:

The next sentence hit Nuran Sirhan [Sirhan Sirhan’s father] like a bolt out of the blue. The way the negotiations were going, he had no idea why the soldiers had paid him the night visit. “Tell him,” the brigade commander softly requested the interpreter, “that he has ten minutes to collect the possessions he considers valuable. If he has money and gold, tell him to take them too.”

“Why?”

“Explain to him that we are going to demolish this house.”³⁰

In an incident that took place on 2 February 2004, soldiers came to the house of ‘Abd al-Majid Ahmad Hamed, in which he lived with his wife, his son Farah, who was suspected of killing three soldiers in ‘Ein Yabrud, his son ‘Abd al-Majid, and the latter’s wife and year-and-a-half-old son. The soldiers demolished the house of Farah’s family, in which he had lived until he was arrested a month earlier, and the house in which he was going to live in after he got married. In his testimony to B’Tselem, Ahmad Hamed described the way he was notified of the intention to demolish his house:

At that moment, another soldier came over to me... He asked me in Arabic: “Are you Ahmad?” I said that I was. He said, “We came to demolish your house.” ‘Abd al-Majid intervened and said to him: “The house belongs to me.” The commander replied: “We want to demolish this house and Farah’s house.” I asked the commander: “Do you have a court order to demolish the house?” He replied: “I do not have an order. Don’t ask questions. You have half an hour to vacate the house.”³¹

Israel provides the following justification for failing to give prior warning: “Giving such warning of military actions in hostile territory is liable to endanger our forces, and also cause the action to fail, because warning will enable

29. Letter from Lt. Harel Weinberg, assistant to the legal advisor for Judea and Samaria, on behalf of the legal advisor for Judea and Samaria, to Attorney Labib Habib, of HaMoked: Center for the Defence of the Individual, 31 December 2003 (emphasis added).

30. Avichai Becker, *supra*, footnote 22.

31. The testimony was given to Iyad Haddad on 10 March 2004.

the enemy to booby-trap the houses scheduled to be demolished, ambush our troops taking part in the action, and the like.”³²

However, by publicly announcing the house-demolition policy, Palestinian families in at least some cases anticipate that their houses will be demolished. The threat hovering over families of wanted persons that their houses will be demolished if they do not cooperate with security forces also serves as a kind of prior warning. Thus, in some cases, soldiers arrive at the house marked for demolition and are surprised to find that the occupants have already removed the contents.

One such case occurred on 18 May 2003, when IDF forces in Hebron demolished the apartment of Jawad Qawasme, 50, who is married and has eleven children, and the apartments of two of his sons, which were located in the same building. In his testimony to B’Tselem, Jawad Qawasme stated:

Yesterday [Saturday, 17 May 2003] at about 5:30 P.M., my son Fuad committed a suicide attack on a-Sahala Street, at the entrance to the Avraham Avinu settlement [in Hebron]. From Israeli reports, I knew that two settlers were killed in the action. That same night, around midnight, a large contingent of soldiers came to our building. The soldiers searched the apartments. We had previously removed the furniture and items, because we assumed that the army would come and demolish the house. When the soldiers saw that the apartment was empty, they got mad and went over to my

brothers’ apartments, which were close to mine. The soldiers destroyed the furniture in their apartments. I think they did it in retaliation for the fact that we had managed to remove our furniture.³³

On Saturday, 4 October 2003, Hanadi Jaradat blew herself up in the Maxim restaurant, in Haifa, killing twenty-one Israelis, including four children. In her testimony to B’Tselem, her mother, Rahma Sadeq Sa’id Jaradat, 52, from Jenin, who is married and has eight children, described what occurred after she heard that her daughter had committed the suicide-bombing attack in Haifa.

About an hour afterwards, the neighbors began to remove furniture from the house. I did not take out anything. I was thinking about my daughter. Relatives and neighbors managed to take out some of the furniture. My ailing husband, one of our daughters, a few [foreign] volunteers, and I stayed in the house and waited for the army to come and demolish the house. We expected it, because recently the army has been demolishing, the same day, the houses of the persons who carried out the actions... The next day, around 4:00 A.M., the Israeli army came to the neighborhood. I was at home with my husband and one of my daughters. The other children slept at the neighbors because we knew that soldiers would come, and we wanted as few people as possible at home. After a few minutes passed, we heard knocking on the door. Somebody said his name was Abu Hassan and that soldiers were

32. Response of the state in HCJ 6696/02, *‘Amer v. Commander of IDF Forces in the West Bank*.

33. The testimony was given to Musa Abu Hashhash in Hebron on 17 March 2004.

with him, and that they wanted us to come outside. My husband, daughter, and I went outside. The foreign volunteers left before us, so that the soldiers wouldn't assault us. When they left, the soldiers assaulted them. The soldiers ordered my husband to go over

to them. One of the soldiers asked me why I removed the furniture, and I replied, in Arabic, that it was because the army was going to demolish the house. He wanted to know when I removed the furniture, and I told him that we did it during the night.³⁴

34. The testimony was given to 'Atef Abu a-Rob in Jenin on 21 April 2004.

Demolition of houses as part of “clearing operations”

Since the beginning of the al-Aqsa intifada, Israel has demolished Palestinian houses in what it refers to as “clearing operations.” These operations take place primarily in the Gaza Strip in areas near the settlements, around military posts, alongside bypass roads used by settlers and IDF forces, along the Egyptian border which passes through Rafah, and in the area of Beit Hanun, Beit Lahiya, and the Jabalya refugee camp in the northern section of the Gaza Strip.

According to Israeli officials, these demolitions are necessary to protect the settlers and IDF soldiers in the Gaza Strip, to prevent smuggling of weapons from Egypt, and to deal with the firing of Kassam rockets from the northern Gaza Strip at Israeli communities inside the Green Line. The officials contend that Palestinian militants use these houses as shelter in carrying out their attacks.

The situation in the Gaza Strip makes it impossible to determine the precise number of houses destroyed. B’Tselem only has statistics on house demolitions of this kind for 2004: from the beginning of the 2004 through 31 October, Israel demolished 1,152 housing units in the Gaza Strip, leaving 8,700 persons homeless. A number of international bodies have presented estimates of house demolitions in Gaza for the entire intifada. According to a report presented to the Commission on Human Rights by its special rapporteur, Professor John Dugard, from September 2000 to February 2004, Israel destroyed 1,640 housing units, in which some 15,000 people lived.³⁵ According to figures of UNRWA, from the beginning of the intifada to September 2004, Israel destroyed some 2,370 housing units in the Gaza Strip, leaving approximately 22,800 people homeless.³⁶

When demolishing the houses, not only does the IDF fail to give prior warning, in most instances, unlike in cases of punitive demolition, the residents are not even given a few minutes to save some of their personal possessions. Testimonies given to B’Tselem indicate that residents have to rush out of their homes when IDF bulldozers suddenly appear at their doorway. According to B’Tselem’s figures, at least twelve Palestinians have died when their houses were demolished while they were still inside.

In certain cases, there may in fact be military necessity for the IDF’s demolitions. However, as a rule, Israel’s “clearing” policy in the Gaza Strip constitutes a flagrant breach of international humanitarian law.³⁷

35. Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian Territories Occupied by Israel since 1967, E/CN.4/2004/6/Add.1, 27 February 2004.

36. The housing unit figure does not include 130 units demolished in the Gaza Strip as a punitive measure, that appear in the UNRWA figure, in which, according to B’Tselem’s statistics, 877 Palestinians lived.

37. For extensive discussion on this policy, see B’Tselem, *Policy of Destruction*; Human Rights Watch, *Razing Rafah, Mass Demolitions in the Gaza Strip*, October 2004.

The material, social, and psychological consequences of home demolitions

The loss suffered by Palestinians whose homes have been demolished by Israel is extensive and long-term. The initial trauma is only the first stage that the families face in coping with the new reality imposed on them. In addition to the material harm inherent in the loss of their house and its contents, which often amounts to hundreds of thousands of shekels, the total disruption in their lives and the accompanying psychological effect also serve as a punitive measure, although harder to document and quantify.

Testimonies given to B'Tselem indicate that the harm suffered by families affects almost all aspects of life: the family unit is disrupted, insofar as some families are forced to split up and live separately; their living conditions decline sharply as a result of the family's loss of property; and family members suffer a feeling of being uprooted and of instability, having lost one of the most significant anchors in their life. Research on the psychological effects indicates that house demolitions have a substantial post-traumatic effect, felt primarily by children. These effects include fear of the army, decrease in ability to concentrate, incessant crying, insomnia, and nightmares.³⁸

Following are three cases that illustrate how difficult it is for individuals whose homes have been demolished by the IDF to continue to go about their normal lives.

1. The 'Abed family, from Kafr Dan, Jenin District

In the early morning hours of Wednesday, 14 July 2004, IDF forces demolished the house of 'Adnan 'Abed in Kafr Dan, in which he lived with his wife and nine children, and another house, in which his mother, sister, and his brother's second wife lived. According to the statement of the IDF Spokesperson issued on 14 July 2004, 'Adnan 'Abed's son, Husam, who had been arrested by Israel about ten months earlier, "drove the woman who committed the suicide-bombing attack at the Amakim Shopping Mall, in Afula, on 19 May, in which three Israeli civilians were killed." In his testimony to B'Tselem, 'Adnan 'Abed described what happened to himself and his family from the moment that the IDF blew up their house:

When we heard the explosion, the women... began to cry and scream. The children were frightened and ran to their parents. My daughter Miada was in terrible shape. She was screaming and shouting and saying things we couldn't understand. At that point, I forgot about the house and dedicated all my efforts to her. I tried to calm her down. I felt that I had to keep my family strong, even though I was in terrible condition myself.

Following the demolition, I did not return immediately to the house. I was afraid that I would collapse. Villagers came to the mosque to console us. A half an hour passed before I went to the house. I sat facing it. It

38. Samir Qouta, Raija-Leena Punamaki, and Eyad al-Sarraj, "House Demolitions and Mental Health: Victims and Witnesses," 7 *Journal of Social Distress and the Homeless* (Vol. 4, 1998), 279-287; Abdel Aziz Musa Thabet, Yehia Abed, and Panos Vostanis, "Emotional Problems in Palestinian Children Living in a War Zone: A Cross-sectional Study," 359 *The Lancet*, No. 9320, pp. 1801-1804.

was very distressing to see it, but there was nothing I could do about it. I worried about my two sons in prison and told myself that my situation was better than theirs.

In the morning, my brother Nu'aman, who lives in Ramallah, called me. He cried throughout the conversation. I had to calm him and try to explain that it was not so awful, that it was not the first house demolished in Kafr Dan. The houses of many residents of our village had been demolished. Residents offered to let us stay with them. I appreciated the support they gave and their invitations, but I am the head of the family, and it embarrassed me that people pitied me because of my family's situation.

I tried to get over the initial shock. I sat with my brothers and we tried to figure out what to do. I had a few options. The house of one of my brothers was under construction, and he was abroad, so I could stay there. My wife's brother also lived abroad, and his house was empty. After discussing the matter for a long time, I decided to move into my brother-in-law's house. About three weeks after the demolition, I moved into his house and began to furnish it. Until then, we moved from house to house among our relatives. At times, all of us could not stay in one place, and so we would split up.

One of my in-laws suggested that we stay with him, but that didn't feel right to me. I did not want to stay with other families all the time, because I could not act freely, and had to consider their privacy. For example, women I didn't know were also staying in his house, and I felt it would be uncomfortable for them if I went to live there. The women were restricted inside the house. My wife's

parents pressured us to stay with them, and so as not to insult them, I stayed in their house during the day. While there, we had one room for my whole family.

The demolition greatly affected my wife, both physically and psychologically. Since then, she has suffered headaches and her blood pressure has been low. She lost her appetite and sleeps a lot during the day. The demolition also affected my sons 'Amer, who is 18 years old, and Muhammad, who is 20. Muhammad became much more contemplative and "spaced out." He writes and draws a lot now. His drawings and writings express sadness over the [loss of the] house, which worries me. I am afraid that Muhammad will follow in the path of his brothers, who are in prison. His mother's deteriorating condition makes 'Amer cry. I think crying is his way of expressing himself, because he is still young. In our house, he had his own room and was very proud of it. Since the house was demolished, he is like a sad little boy.

Since my two sons were arrested, we have worried a great deal about Muhammad and 'Amer, and the fact that we are concerned does not make it any easier for them. My wife has become obsessive in watching over them. I think that her obsession borders on an emotional disorder. When they are outside the house, she looks for them and is tense. If the army makes an incursion into the village and the children are not at home, she becomes troubled, and when they are at home, she does not leave them until she knows for sure that the army has left the village.

Moving to the house we are now living in was very nerve-wracking. I have lived

here for a month, but I have been back to the demolished house many times. My condition is more stable and calm than it was in the days following the demolition. I compare myself to persons who underwent a similar incident and have yet to find a place to live.³⁹

2. The Hamdan a-Sus family, from Abu Shakhidam, Ramallah District

On the night of 30 January 2004, the IDF demolished the home of Hashem Nasser Ahmad Hamdan a-Sus, in Abu Shakhidam, Ramallah District, in which his wife and their five children lived. The IDF also severely damaged the home of a-Sus's parents, which was next door. IDF forces had arrested a-Sus four days earlier on suspicion that he was involved in the killing of three soldiers in 'Ein Yabrud. Tahani 'Omer Mahmud Hamdan (a-Sus), 29, described to B'Tselem how she coped with the loss of her house:

On 22 December 2003, the Israeli army arrested my husband Hashem, who is 37. We were at home at the time. About forty days later, on 30 January 2004, the army came to our home at night. They made my children and me, my husband's parents, and his brother leave our homes. They also made the residents of neighboring houses go outside, and around 3:00 A.M. they demolished my house and my husband's parents' house. My house was demolished completely, along with everything inside, and some of the adjoining houses were also damaged. My father-in-law's place was very severely damaged. Their patio was

damaged and some of the inside walls and ceilings were cracked.

My house was everything I had. It cost us \$40,000 to build. Everything we owned was buried under the rubble. We were left homeless. We did not even have shoes, a change of clothes, or blankets. It was rainy and very cold, and we spent the night in the street, alongside the rubble. The next day was a holiday. The children had been ready to celebrate. We had bought new clothes for them, and they couldn't wait to wear them, but it all lay there under the rubble. The children and I did not sleep that night. We cried all the time, and the children were very depressed because their father was not with them. Residents and relatives consoled us, which helped a bit.

I started to think about where we could go. I asked myself who would take us into their home? We are a large family, and since the beginning of the intifada, people have their own problems. In any event, we managed to get along the first few days. We stayed with my father. His house has two bedrooms, a living room, and bathroom. There are eight people in my father's family, but he freed up one of the rooms for me and the children. We stayed with him for one day. Then the Village Council rented an apartment for us in the village. My children, my husband's parents' family, and I stayed there... It was not large enough for two families. I did not feel comfortable. I am religious, and had to wear the *ra'ala* [head covering] every time I left the bedroom. My father-in-law is elderly, and the children's noise bothered him. He occasionally shouted at them. To

39. The testimony was given to 'Atef Abu a-Rob in Jenin on 31 August 2004.

avoid friction, I kept the children inside our room. Food and other commodities were donated to us, and my father-in-law bought staple goods for all of us.

My husband's sister lives in Jordan, and she and her six children were visiting her parents. They stayed with us in the apartment. Some of the children slept with their grandfather and grandmother, and some of them slept in the living room. That made it even more crowded, and made it even harder for me. It was disconcerting to have everybody waiting in line to use the bathroom in the morning.

It was very difficult living in the apartment. The children did not leave the room very often and lost interest in their studies. In the first few days, they did not have a school bag or school clothes because everything was buried in the rubble. We celebrated the holiday in that apartment. We were unable to visit anybody and convey holiday blessings. People visited us, but because the living room was small, they only stayed a few minutes. Mostly, they visited to console us, and the visit had nothing to do with the holiday.

After suffering for three days in the apartment, we moved to another apartment building. The Village Council rented out two apartments, one for us and one for my in-laws.... Some kind people donated a cabinet and sofas, and the Red Cross gave us mattresses, blankets, and some kitchen utensils. We do not have beds, and we sleep on the mattresses, on the floor...

During the first four months following the demolition, we lived off our savings. Then we began receiving a monthly allowance of

NIS 1,600 from the Ministry for Palestinian Prisoners. The allotment was insufficient, but it covered our basic needs. We did not pay rent for the first nine months. I was sure that the Village Council was paying it, because they found the apartment for us. I was surprised to learn that they had not paid any rent. The building's owner pressured us to pay up. He wanted 150 Jordanian dinars for every two months. That amounts to about one thousand shekels, and we simply didn't have that kind of money. Every three days, the owner sent somebody by to collect the payment. He began to cause problems for me and the family. He did not let my children play in the yard outside or go onto the roof. A few times, he turned off the water in our apartment. I looked for another place and found an apartment with two bedrooms, a living room, a kitchen and a bathroom... The rent is 90 dinars a month.

The demolition, the situation we were in just after, our current situation, and moving from place to place have been very hard on my children. My two small daughters, Asma'a, who is 10, and Shim'a, who is 11, had been very good students. They always got high grades and certificates of excellence. At the end of this school year, their average was only around 70 or 80. The grades of Tareq, who is 14, and W'ad, who is 13, also fell. My son Yassir, who is three and a half, was nervous and depressed for a whole month. He cried a lot, and kept saying that he wanted our house and did not want to live where we were, and that he wanted his bicycle and toys. Sometimes his yearning drove me to tears. He would wake up scared in the middle of the night, and his crying woke everybody up. When we passed construction sites in the village,

he asked me when we would build a new house and when he could play with his toys again. When he said such things, it really affected me.

Our social ties also deteriorated. I rarely go to visit people. I confine myself to the apartment. I am fed up with being pitied. I always heard people say how unfortunate I was, and asked me how I managed with the children, my husband being in prison, etc. etc. I prefer to stay at home and not visit friends and neighbors. My relations with my family have remained the same...

I feel a bit better now. Nothing new has occurred, but I got used to a hard life. We still rent an apartment. The allotment we receive is small and barely enough for food, rent, water, and electricity. I try to be thrifty as possible, so that I won't have to borrow money or anything else from others.⁴⁰

3. The al-Karad family, from Deir el-Balah, Gaza Strip

On 16 June 2004, the IDF demolished the home of Madlala al-Karad, in Deir el-Balah, in which she lived with her five children, and the residence of her son Muhammad, in which he lived with his two wives and their four children. According to Madlala al-Karad, Muhammad is wanted by Israel, which contends that he is an activist in the al-Aqsa Martyrs Brigades. During the demolition operation, two of her other sons, 'Abdallah and 'Abd a-Rahman, were arrested. B'Tselem does not know the charges against them. In her testimony to B'Tselem, al-Karad described

what she and her family underwent after their home was demolished.

When the army finished the demolition, the soldiers left the site. My children, 'Abd a-Latif, who is 10, Fatma, 18, and 'Abd al-Karim, 13, and I spent the night at the home of Muhammad a-Samiri...

The next day, Red Cross representatives brought us three tents, blankets, a gas canister, cooking implements, and kitchen utensils. We lived in the tents for a week. We did not shower that week because we did not have a facility to do so. We used pitchers of water to clean ourselves. The neighbors set up a portable bathroom made of stones and sheets of tin. I covered it with green nylon so we could not be seen from the outside. I cooked in the tent, using the gas canister we received from the Red Cross.

I left everything in the house – money, jewelry, furniture, and all our good memories. Our goods and the children's clothes remained under the rubble. We tried to remove a few things from the ruins, but couldn't find anything. Fatma is a student at the university, and all her books and clothes lay buried there.

About a week later, army jeeps came to the place where we had set up the tents. One of the soldiers told us that we had to leave the site. He did not say why. He spoke to us in Arabic. That same day, my children and I left the site and split up. 'Abd a-Latif and I went to live with my parents, Fatma went

40. The testimony was given to Iyad Haddad at the witness's apartment on 18 October 2004.

to her uncle's house, and 'Abd al-Karim went to live with my uncle. About a week later, we rented an apartment in the western section of Deir el-Balah. The apartment is about 150 square meters. It has three bedrooms, a bathroom, and a kitchen. I pay \$150 a month rent. UNRWA brought us six mattresses, six blankets, and a gas canister. The neighbors brought us pots and pans and their children's old clothes.

The children wear second-hand clothes that we received from neighbors. Fatma borrowed books and notebooks from her friends and photocopied the material that was buried. She is taking a summer course at the university. She did not go to school the first two weeks after the demolition because she didn't have anything, not even clothes and shoes.

We were used to our neighbors in the old neighborhood. Now, I do not know our neighbors and have no contact with them. We owned our own place before, and now I have to pay rent. Before, my life was stable, and now I fear what tomorrow will bring. Relatives visit me from time to time, and give me some money. My old neighbors and friends visit and have brought kitchen utensils, chairs, a television, and a radio.

Muhammad sends me \$250 a month to cover the rent. The amount that is left I convert into shekels and use to buy household goods. It works out to about NIS 450. For two months now, since we moved to the new apartment, I have not paid the water or electricity bill. I don't have the money. I prefer to spend it on food and drink and Fatma's university expenses.⁴¹

41. The testimony was given to Mazen al-Majdalawi in Deir el-Balah on 16 August 2004.

Part Two

The Policy of House Demolitions as a Means of Punishment from the Perspective of International Law

Protection of the right to housing in occupied territory

1. The right to housing in international law

The policy of demolishing houses as a punitive measure infringes, first and foremost, the Palestinians' right to housing. This right is well established in international human rights law. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, of 1966, which was ratified by Israel in 1991, states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right... (emphasis added)

The right to housing is important because it is a prerequisite for the exercise of a wide variety of other rights, among them the right to an adequate standard of living,⁴² the right to the "highest attainable standard of physical and mental health,"⁴³ the right to family life,⁴⁴ and the right to protection against "arbitrary or unlawful interference with privacy."⁴⁵

Also, the right to housing is a vital component of the protection of the rights of the child, which are enshrined separately and specially in the UN Convention on the Rights of the Child, of 1989, which Israel ratified in 1991. This convention requires signatory parties, as follows: "In all actions concerning children... the best interests of the child shall be a primary consideration."⁴⁶

The right to housing, like human rights in general, contains a "positive" facet and a "negative" facet. In its positive facet, the right requires the state to perform acts to ensure the realization of the right to housing, such as allocating land for building houses, establishing zoning plans, providing public funding to meet the housing needs of the financially disadvantaged, and developing infrastructure. The negative facet requires the state to refrain from doing acts that harm, or are liable to harm, a person's ability to exercise his or her right to housing. In that Israel's demolition of houses policy in the Occupied Territories relates only to the negative facet of the right to housing, we shall discuss only this aspect of the right to housing.

Israel's official position is that, although it is party to conventions that form the foundation of international human rights law, including the International Covenant on Economic, Social and Cultural Rights, these conventions do not

42. International Covenant on Economic, Social and Cultural Rights, Article 11(1).

43. *Ibid.*, Article 12(1).

44. The International Covenant on Civil and Political Rights, of 1966, which Israel ratified in 1991, Article 23(1).

45. *Ibid.*, Article 17(1).

46. *Ibid.*, Article 3(1).

Demolition of Houses as an Administrative Measure

Throughout the occupation, Israel has conducted a flagrantly discriminatory policy of development, planning, and building in the West Bank and in East Jerusalem. Israel has allocated broad expanses of area for the Jewish settlements, but has kept building opportunities for Palestinians to the barest minimum.

In 1971, Israel amended the Jordanian planning law. This change enabled Israel to alter the planning system that existed under Jordanian rule, so that it would serve almost exclusively the interests of the Israeli administration and the settlers, while drastically reducing the representation of the Palestinian population on the planning boards.

The primary means used by Israel to restrict Palestinian building is the lack of planning in Palestinian communities. During the occupation, Israel has failed to prepare updated outline plans for the Palestinian areas. As a result, until administrative powers relating to Areas A and B were handed over to the Palestinian Authority, the two planning outlines, dating from the 1940s and the British Mandate, continued to apply. These outlines still apply in Area C. In the first years of the occupation, the British planning outlines were unsuitable for urban planning, and this is true even more so today. This situation continues to affect some residents of Areas A and B, where the borders of Areas A and B run along the built-up area of Palestinian communities. Most of the land available for building lies, therefore, in Area C, which continues to be under Israeli planning control.

Israel's use of outline plans to limit Palestinian building and to expand Israeli settlements is a common phenomenon in East Jerusalem, despite the legal and institutional difference between East Jerusalem and the rest of the West Bank. The most common feature of outline plans of Palestinian neighborhoods is the vast areas (about forty percent) that are classified as "green areas," in which building is forbidden.⁴⁷

The vast majority of Palestinian requests for building permits in Area C are rejected. According to Civil Administration figures, in 2003, Palestinians submitted 337 requests for building permits in the West Bank. Two hundred and ninety were rejected.⁴⁸

In this situation, many Palestinians have no option but to build without a permit. Rather than change its policy and grant building permits in Palestinian communities in the West Bank and East Jerusalem, Israel demolishes houses that are built without permit. Between 2001 and 2003, according to Civil Administration figures, Israel demolished 768 "illegal" structures.⁴⁹ According to Jerusalem Municipality figures, from the beginning of 2001 to February 2004, Israel has demolished 161 housing units in East Jerusalem that were built without a permit.⁵⁰

47. For an extended discussion on planning and building in the Occupied Territories, see B'Tselem's reports *A Policy of Discrimination and Land Grab*.

48. Letter to B'Tselem from the Civil Administration, 31 March 2004.

49. Ibid. See B'Tselem, *Demolishing Peace*.

50. Letter to B'Tselem from the Jerusalem Municipality, 11 March 2004.

apply to its acts in the territories. According to state officials, international human rights law is limited to its sovereign territory, and clearly does not apply to territory that was handed over, pursuant to the Oslo Agreements, to the control of the Palestinian Authority. The state also argues that the hostilities in the territories free it from its obligations under international human rights law, in that the relevant legal system is international humanitarian law, which deals with situations of war and occupation.⁵¹

However, these arguments are baseless. Article 2 of the Covenant explicitly states that a state that is party to the Covenant must implement it in regard to all persons “subject to its jurisdiction.” The UN Human Rights Committee, which is in charge of interpreting the Covenant and monitoring its implementation, has declared on various occasions that the test for determining application of the Covenant in a given area is the degree of actual control by the relevant state, and not the official status of the territory.⁵²

The second argument, which contends that international humanitarian law alone is applicable, is also without foundation. The UN Human Rights Committee has stated unequivocally that the International Covenant on Civil and Political Rights does not cease to apply, regardless of the situation in the state,

even in times of war.⁵³ Similar comments were made by the UN Committee on Economic, Social and Cultural Rights:

The State party’s obligations under the Covenant apply to all territories and populations under its effective control ... even in a situation of armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law and are also prescribed by international humanitarian law.⁵⁴

The International Court of Justice in The Hague addressed the question of the applicability of the International Covenant on Civil and Political Rights during war, and its relation to international humanitarian law. It concluded that the said Covenant does not cease to apply during war, although during a war its provisions are to be construed in light of the relevant provisions of international humanitarian law. Thus, in its comments on the right to life as defined in the Covenant, the court held that:

In principle, the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be

51. See, for example, Israel’s second periodic report, CCPR/C/ISR/2001/2, 4 December 2001.

52. See, for example, the Committee’s comments in 1991 regarding the obligation of Iraq to apply the Covenant in the territory of Kuwait so long as its occupation continued, CCPR A/46/40/1991, Par. 652.

53. General Comment 3, “On the Nature of State Obligations,” Par. 11.

54. Concluding Observations of the Committee on Economic, Social, and Cultural Rights: Israel, 23 May 2003, E/C.12/1/Add.90, Par. 31.

determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities.⁵⁵

Therefore, for the policy of demolition of houses not to be considered an infringement of the right to housing, it must comply with the provisions of international humanitarian law. The most relevant provision in this matter is found in Article 53 of the Fourth Geneva Convention.

2. The Fourth Geneva Convention's prohibition on the destruction of property

Article 53 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949, states that occupying states are forbidden to destroy property, "except where such destruction is rendered absolutely necessary by military operations."

Israel officials have argued that the demolition of houses that were home to Palestinians involved in violent acts against Israelis does not violate this article. When he served as Attorney General, former Supreme Court President Meir Shamgar argued that demolition of houses as a punitive means is not a violation of Article 53. In his opinion, the term "military operations" is not limited to pure situations of fighting, but

also includes "effective military response."⁵⁶ Dov Shefi, former Judge Advocate General, arguing in a similar vein, stated that house demolition is "a military-security measure that is allowed by Article 53 of the [Fourth] Geneva Convention in certain circumstances."⁵⁷

However, this interpretation of "military operations" contradicts the official commentary of the International Red Cross, which defines "military operation" as "the movement, maneuvers, and actions of any sort, carried out by the armed forces with a view to combat."⁵⁸ Demolition of houses as punishment is not done in the framework of "movements" or "maneuvers" of IDF forces, and are not carried out in the context of hostilities. The only reason that the houses are demolished is that Palestinians suspected of committing acts of violence against Israelis lived in them. The action cannot, therefore, be deemed a "military operation" within the meaning of the term in the Geneva Convention. Certainly, it cannot be considered "absolutely necessary," as the exception in Article 53 provides.

In addition, Israel's interpretation blurs the distinction made by the Fourth Geneva Convention between military considerations – the crucial element in the exception in Article 53 ("rendered absolutely necessary by military operations") – and general security

55. International Court of Justice, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 8 July 1996, General List No. 95.

56. M. Shamgar, "The Observance of International Law in the Administered Territories," in 1 *Isr YHR* (1971) 276.

57. Dov Shefi, "The Reports of the U. N. Special Committees on Israeli Practices in the Territories" in Shamgar (ed.), *Military Government in the Territories Administered by Israel 1967-1980: The Legal Aspects* (Jerusalem, 1982) 301.

58. ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Par. 152, p. 67. An identical definition is given in a document prepared by the head of the ICRC legal department, "Interpretation by the ICRC of Article 53 of the Fourth Geneva Convention of 12 August 1949, with particular reference to the expression "military operation," 25 November 1981.

considerations.⁵⁹ The obligation to distinguish between the two is emphasized by Supreme Court President Aharon Barak, who held that, “The Fourth Geneva Convention makes a clear distinction between necessity for reasons of security and necessity for military reasons. The concept ‘reasons of security’ is broader than the concept ‘military reasons.’”⁶⁰

This blurring is intended to superficially expand the exceptions to the prohibition on destruction of property, as set forth in the Fourth Geneva Convention, while distorting the objective underlying the prohibition. Precisely for this reason, the official commentary of the ICRC states regarding Article 53 that, “It is therefore to be feared that bad faith in the application of the reservation may render the proposed safeguard valueless.”⁶¹ Regrettably, this fear has come to fruition in all its severity in Israel’s policy.

Furthermore, according to Article 147 of the Fourth Geneva Convention, “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” constitutes a grave breach of the Convention, while the Rome Statute of the International Criminal Court defines such acts as “war crimes.”⁶²

3. Section 119 of the Emergency Defense Regulations

In addition to its argument that its policy is a kind of “military operation” and is, therefore, consistent with the Fourth Geneva Convention, Israel relies on Section 119 of the Emergency Defense Regulations to justify its policy of demolishing houses as a punitive measure.

The Emergency Defense Regulations of 1945 were enacted by the acting British High Commissioner for Palestine, pursuant to Section 6 of the Palestine (Defense) Order in Council, signed by the King of England in 1937.⁶³ The regulations granted the Mandatory authorities draconian powers in various areas, such as conducting searches and making arrests, establishing military courts to try civilians without right of appeal, closing off areas, deporting individuals, imposing curfew, and demolishing houses.

The Defense Regulations were censured time and again by representatives of the Jewish community in Palestine. For example, at a protest gathering against the Defense Regulations, held by the Association of Jewish Lawyers in Eretz Yisrael [Land of Israel], Ya’akov Shimshon Shapira (later Justice Minister of Israel) said that, “The

59. David Kretzmer, *The Occupation of Justice – The Supreme Court of Israel and the Occupied Territories* (Albany: State University of New York Press, 2002) 147-148.

60. HCJ 7015/02, *Ajuri v. Commander of IDF Forces in the West Bank*.

61. Jean S. Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958) 302.

62. Article 8(2)(a)(4) of the Rome Statute, which took effect in 2002. Israel signed the Statute but has not yet ratified it.

63. *Palestine Gazette*, No. 675, Supp. No. 2, 24 March 1937, p. 267.

Defense Regulations of the government in Eretz Yisrael destroy the fundamental principles of the country.”⁶⁴ Despite this, upon its founding, the State of Israel adopted the Defense Regulations, pursuant to Section 11 of the Government and Legal Arrangements Ordinance, as part of the law that was in force on the eve of the establishment of the state.

Opposition to implementation of the Emergency Regulations was occasionally voiced afterwards as well, and by people from across the political spectrum. In a debate in the Knesset in May 1951 relating to the administrative detention of persons suspected of being members of an ultra-Orthodox underground, Member of Knesset (and later Prime Minister) Menachem Begin urged the Knesset to revoke the Regulations: “If these laws, the laws of terrorism of an oppressive regime, remain in the State of Israel, some day, the time will come that no group will not be harmed by them... The existence of these emergency statutes is a disgrace, their implementation a crime.”⁶⁵ At the end of the debate, the Knesset plenum decided that the Emergency Regulations contravene the principles of a democratic state, and directed the Knesset’s Law, Constitution, and Justice Committee to prepare a bill revoking

them.⁶⁶ Ultimately, the Regulations were not revoked. During the 1950s and the first half of the 1960s, proposals were again raised to revoke the Regulations, but they remained in effect, apparently because they formed a statutory basis for the military government that had been imposed on the Arab citizens of the state.⁶⁷ After the military government was abolished in 1966, a committee of experts was established in the Ministry of Justice to examine preparation of a bill to revoke part of the Regulations. With the outbreak of the Six-Day War the following year, the committee’s work ceased.⁶⁸

With the occupation of the West Bank and the Gaza Strip, Israel issued a military order freezing the laws that were in effect there.⁶⁹ Israel contends that the Emergency Regulations were part of the local law in those territories on the eve of the occupation. Over the years, this claim has been disputed on two principal grounds: 1) the British authorities revoked the Emergency Regulations when the Mandate ended, and 2) the Defense Regulations were revoked by Jordanian legislation in 1952.⁷⁰ Despite this, the Supreme Court accepted the state’s argument that the Regulations apply in the West Bank and the Gaza Strip.

64. 3 *Hapraklit* (1946), Part 2, p. 62.

65. *Knesset Record*, Vol. 12 (9 May 1951), p. 1807.

66. *Ibid.*, p. 1831.

67. Menachem Hofnung, *The Rule of Law versus State Security in Israel* (Jerusalem: Nevo Publishing, 1991) 81 ff (in Hebrew).

68. *Knesset Record*, Vol. 52 (1968), p. 3087.

69. Proclamation on Government and Legal Arrangements (West Bank Region) (No. 2), 5727 – 1967, and a comparable proclamation in the Gaza Strip.

70. For a discussion on the validity of the Defense Regulations in the Occupied Territories, see Kretzmer, *The Occupation of Justice*, pp. 121-124; Al-Haq, *Perpetual Emergency: A Legal Analysis of Israel’s Use of The British Defence Regulations in the Occupied Territories* (1989); Behnam Dayanim, “The Israeli Supreme Court and The Deportation of Palestinians: The Interaction of Law and Legitimacy,” 30 *Stanford Journal of International Law* (1994) 131-139.

An in-depth look at Section 119 indicates that it indeed grants the military commander authority to order the destruction of houses even if not “rendered absolutely necessary by military operations.” Subsection 1 states:

A military commander may by order direct the forfeit to the government of Palestine of any house, structure or land from which he has reason to suspect that any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown, or of any house, structure or land situated in any area, town, village, quarter or street. The inhabitants or some of the inhabitants of which he is satisfied has committed or attempted to commit or abetted the commission of or been accessories after the fact to the commission of any offence against these regulations involving violence or intimidation or any military court offence. And when any house, structure or land is forfeited as aforesaid the military commander may destroy the house or the structure of anything growing on the land.

Article 43 of the Regulations attached to the Hague Convention Respecting the Laws and Conventions of War on Land, of 1907, and Article 64 of the Fourth Geneva Convention prohibit the occupying state to amend the legislation that was in force in the occupied territory on the eve of the occupation. Thus, Israel argues, international humanitarian law

forbids it to revoke Section 119, and it may act in accordance with its provisions.

However, the accepted understanding of these two articles according to international humanitarian law is that the occupying state’s powers are limited by international humanitarian law, and that its provisions prevail over powers ostensibly given to the authorities pursuant to the local law.⁷¹ The official commentary of the International Red Cross regarding Article 64 states unequivocally that, when the local law in occupied territory contradicts the Convention, the latter prevails.⁷²

Nevertheless, when this issue was raised before the High Court of Justice, the Court accepted the state’s position, whereby local law (i.e., Section 119), is not limited by international humanitarian law.⁷³ In so holding, the Court ignored the accepted interpretation, whereby international humanitarian law is intended to protect the local population in occupied territory, and distorted, as Professor Kretzmer argues, the meaning and purpose of Article 64 of the Fourth Geneva Convention and Article 43 of the Hague Regulations.⁷⁴

In summation, even if Section 119 was in effect on the eve of the occupation, a questionable contention in itself, it should be revoked because it contradicts international humanitarian law, in particular the prohibition on the destruction of private property, as set forth in Article 53 of the Fourth Geneva Convention.

71. D. Kretzmer, “High Court of Justice Criticism of Demolition and Sealing of Houses in the Occupied Territories,” in *Klinghoffer Book on Public Law* (Jerusalem: The Hebrew University, Jerusalem, Henry Sacker Institute for Legislative and Comparative Law Research, 1993) 318.

72. Pictet, *Commentary*, supra, footnote 61, at p. 336.

73. HCJ 897/86, *Jabber v. OC Central Command*, *Piskei Din* 41 (2) 522.

74. Kretzmer, “High Court of Justice Criticism,” supra, footnote 71, at p. 318.

“Military operations” or Section 119?

Until the al-Aqsa intifada, the policy of punitive house demolitions was governed solely by the provisions of Section 119 of the Emergency Defense Regulations. The occupants were given a demolition order signed by the military commander, and they were able to appeal to the military commander and petition the High Court of Justice. Over the past four years, Israel has been vague and has refused to state unequivocally that house demolitions are being carried out pursuant to Section 119 as in the past, or whether they are actions “rendered absolutely necessary by military operations.” In November 2001, B’Tselem requested clarification from the IDF Spokesperson on this matter, but did not receive a response.⁷⁵

In response to a petition to the High Court of Justice demanding that the IDF give prior warning of house demolitions, the state argued that the houses are demolished in the course of “combat operations.” Yet, the state simultaneously argued that the Court had previously recognized the demolition of “houses in which terrorists lived” as a “legitimate and lawful means to fight the war on terror,” which is expressly based on Section 119.⁷⁶

In August 2002, B’Tselem again wrote to the IDF Spokesperson in an attempt to determine the legal basis for house demolitions. In his reply, of 21 November 2002, the IDF Spokesperson contended that, “Demolition of the houses of terrorists and those who dispatch them... is part of overall combat actions of a deterrent nature, and are carried out on the grounds of imperative military needs.”⁷⁷ Yet, in response to B’Tselem’s letter of May 2004 on the question of how many houses, if any, were demolished pursuant to Section 119 since the beginning of the intifada, the IDF Spokesperson set the number at 272, pointing out that this measure had not been used prior to July 2002.⁷⁸

The High Court also referred to the state’s lack of clarity on this issue. In one of the rare cases in which the occupants were given prior warning their house was going to be demolished, the Court held that, “The notice did not mention that the decision was made pursuant to Section 119...It states that the military commander decided to demolish the house pursuant to his authority, and also in accordance with the law and the defense legislation, and also mentions that the decision is made for reasons of imperative military needs.”⁷⁹ However, when the Court requested that the state’s counsel explain the power pursuant to which the military commander was acting, the counsel contended that the decision was made pursuant to Section 119.

75. Letters from B’Tselem to the IDF Spokesperson’s Office, 4 November 2001 and 12 November 2001.

76. Section 7 of the state’s response in HCJ 6696/02, *Amer v. Commander of IDF Forces in Judea and Samaria*.

77. Letter from the IDF Spokesperson’s Office, 21 November 2002.

78. Letter from the IDF Spokesperson’s Office, 29 June 2004. B’Tselem’s request to obtain a list of the houses that the IDF Spokesperson contends were demolished pursuant to Section 119 was not granted. Without the list, it is impossible to determine the basis for the IDF Spokesperson’s distinction between the various kinds of house demolitions, in that the demolitions that took place prior to July 2002 do not differ from subsequent demolitions, both in the manner of execution and the justification given by the IDF Spokesperson.

79. HCJ 8262/03, *Abu Salim v. Commander of IDF Forces in the West Bank*.

Collective punishment

Israel's policy on punitive house demolitions not only infringes the right to housing, but also breaches one of the rules of fundamental justice: the prohibition on punishing one person for the acts of someone else. The actual victims of the house demolitions are, as previously stated, the relatives of the person because of whom the house was demolished, the neighbors, and at times even persons who rented their house to the alleged assailant.⁸⁰

International law prohibits collective punishment outright. This is especially true regarding the punishment of children for the acts of others. Article 2 of the UN Convention on Rights of the Child requires States Parties to “ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”

Collective punishment is also prohibited by international humanitarian law. Article 33 of the Fourth Geneva Convention states that:

No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

This article, which prohibits collective punishment of any kind, is based on the principle of personal responsibility, whereby

an individual is not punished for the acts of another. The official commentary of the ICRC points out that this article does not relate to punishment imposed pursuant to the penal law (i.e., punishment imposed by courts after due process of law), but penalties of any kind inflicted on persons or entire groups of persons for acts that they have not committed.⁸¹

1. The exception in the Hague Regulations

Article 50 of the Hague Regulations also prohibits collective punishment, as follows:

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they can not be regarded as jointly and severally responsible.

Unlike the sweeping prohibition in the Fourth Geneva Convention, Article 50 can be interpreted to allow a certain degree of collective punishment. The question, then, is: In which circumstances is it permissible to punish the community for acts by an individual member? The accepted understanding is that collective responsibility placed on an entire community is acceptable only where members of the community knew of the crime that was to be committed and had the opportunity to prevent it.⁸²

The principle underlying the concept that an entire group may be punished as a group for

80. In addition to punitive house demolitions, Israel carries out a variety of other forms of collective punishment, the most blatant of which is the restriction of freedom of movement of the Palestinian population. On this topic, see B'Tselem, *Civilians under Siege: Restrictions on Freedom of Movement as Collective Punishment*, January 2001; B'Tselem, *Forbidden Roads: Israel's Discriminatory Road Policy in the West Bank*, August 2004.

81. Pictet, *Commentary*, supra, footnote 61, at p. 225.

82. Gerhard Von Glahn, *The Occupation of Enemy Territory – A Commentary on the Law and Practice of Belligerent Occupation* (Minneapolis: University of Minnesota Press, 1957) 233; James W. Garner, “Community Fines and Collective Responsibility,” *American Journal of International Law* (1917) 528-531.

the acts of some of its members is the same principle that underlies the offense of “failure to prevent a felony” as defined in Israeli penal law. An individual who knows that a certain person is plotting to commit a felony, and does not take reasonable measures to prevent the commission of the said felony, is guilty of this offense.⁸³

The burden of proof to convict a person on this charge is very heavy. In the appeal of Margalit Har-Shefi, who was convicted of failing to prevent the assassination of Prime Minister Yitzhak Rabin, the Supreme Court held that to convict a person for failing to prevent a felony, the state must prove that the defendant had positive, concrete, immediate, and significant information that a felony was about to be committed. The Court held, therefore, that “turning a blind eye” by the defendant is not sufficient. Justice Ya’akov Tirkel warned about the danger inherent in charging a person with the offense of failing to prevent a felony, as follows:

The danger that threatens our liberty from the cracks in this section [of this law] is that it does not limit itself by instructing the citizen what he must do, but leaves to the court to determine what he thought... about the thoughts of a certain person. Ostensibly, revealing hidden thoughts about hidden thoughts... The legal duty that the section imposes should be obliterated from our statute books.⁸⁴

These comments stand out in light of the High Court’s treatment of families of Palestinians who committed attacks on Israelis. According to the Court, the question of knowledge of the family about the intention of one of its members to carry out an attack is not a prerequisite for allowing demolition of their house. However, Justice Eliahu Matza held, in a petition filed by the families of two Palestinians who committed suicide attacks in Jerusalem, that information of the family on the intentions of the two “adds a moral facet to the justification of the order.” Justice Matza based his finding that the petitioning families knew the intentions of the two assailants on the belief that it was sufficient to study the statement of a brother of one of the assailants, when questioned by the Police, “to prove that the assailant’s family was aware of the change in his temperament... and if they did not shut their eyes and close their ears, they should have known prior to the act what he was about to do, and to prevent him from committing the act.” Regarding the family of the second assailant, Justice Matza held that, “He lived among his family, as a young unmarried man dependent on his parents, and under the circumstances, his parents should be assumed to have knowledge of his acts and the mood of a member of the family...”⁸⁵ If this is the case, and such knowledge is so readily attributed to the family member, the burden of proof imposed by the Court when Palestinians are involved is significantly lighter than in cases involving Jews.

83. Section 262 of the Penal Law, 5737 – 1977. Regarding the Occupied Territories, see Section 59 of the Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970.

84. Crim. App. 3417/99, *Margalit Har-Shefi v. State of Israel, Takdin Elyon* 2001 (1) 904.

85. *Bachar*, supra, footnote 11.

In any event, if the Court believed that family members indeed knew the intentions of the assailants and failed to prevent commission of the act, the family members should be prosecuted on charges of failing to prevent a felony, the maximum penalty for which is two years' imprisonment, and not demolition of their house. It goes without saying that none of the family members were prosecuted for this offense.

Thus, demolishing houses as a punitive measure violates also the exception to Article 50 of the Hague Regulations, whereby it is permitted to punish individuals for the acts of others, provided that, at a minimum, they had information of the intention to commit the act and the opportunity to prevent it. Israel breaches this article because, in its desire to demolish the house of a suspected assailant, it considers it sufficient if the suspect lived in the house, and does not bother to prove that the occupants in the house were indeed aware of the acts attributed to the said suspect.

2. Israel's attempt to distinguish between collective punishment and deterrence

Israel argues that house demolitions not only do not constitute collective punishment, they are not punitive in any way, but are a means of deterrence. Thus, the state continues, the act does not violate international humanitarian law. The High Court accepted the state's argument,

holding that the authority to demolish houses "is not intended to punish the petitioner's family. The authority is administrative, and its implementation is intended to deter, and thus preserve public order."⁸⁶

However, the argument that, insofar as the objective of house demolitions is deterrence, and consequently is not punishment, is baseless. Section 119, the basis on which Israel relies for this kind of house demolition, appears in Part 12 of the Emergency Defense Regulations, which is titled "Miscellaneous Penal Provisions." Both the Supreme Court and the authorities pointed out in the past that the section has a punitive aspect. For example, in response to the contention that house demolitions are a prohibited act of reprisal, Meir Shamgar, while serving as Attorney General, stated that it is not an act of reprisal but a means of punishment.⁸⁷ When the High Court of Justice discussed the question of the conflict between Section 119 and international humanitarian law, the Court held that the latter does not impair the validity of local law, relying on Section 64 of the Fourth Geneva Convention, which holds, as mentioned above, that the penal laws in occupied territory shall remain in effect. Also, in several other judgments, the High Court expressly related to Section 119 as a "punitive provision."⁸⁸

Furthermore, as Professor Kretzmer points out, "One of the accepted objectives of punishment is 'general deterrence.' Obviously then, the fact that the person who is the object of the

86. HCJ 798/89, *Shugri v. Minister of Defense, Takdin Elyon* 1990 (1) 75.

87. M. Shamgar, "The Observance of International Law in the Administered Territories" 275; Meir Shamgar, "Compliance with International Conventions, Destruction of Houses, and Administrative Detention," 1 *Isr YHR* (1971) 376, 380.

88. See Kretzmer, "High Court of Justice Criticism," *supra*, footnote 71, at pp. 320-321.

punishment suffers discomfort or denial of a right is part of the 'general deterrence' and does not mean that it does not involve a punitive measure. House demolitions meet all the elements of 'judicial punishment': they involve the deliberate worsening of the condition of a person because of an offense committed in violation of law, with the worsening being brought about by the competent body to take such action in the legal system whose rules were breached."⁸⁹

The High Court's recognition that house demolition is an "act that causes harm also to persons who did not commit a wrongdoing," did not prevent it from rejecting the contention that it constitutes collective punishment.⁹⁰ In explaining its ruling, the Court compared house demolition to the punishment of incarceration of the head of a family, which also harms the family:

The petitioners' claim that house demolition is collective punishment is unfounded. They believe that punishment should be meted out only to the terrorists and the offenders themselves, while house demolition harms the other members of the family, who will remain homeless... The purpose of the section is "to achieve a deterrent effect," and such an effect, by its nature, must be applied not only to the terrorist himself but also to those around him, and certainly the family members who live with him... From this perspective, such sanction of demolition is no different from imprisonment, imposed on the head of the family, the father of

small children, who will remain without support and a breadwinner. Here, too, family members are harmed.⁹¹

However, the comparison is flawed. The purpose of imprisonment is to deny certain rights of the offender. The suffering of his family is only a side-effect. If it were possible to neutralize the effect of incarceration on the family, achievement of the objective of the imprisonment would not be affected in the least. Furthermore, properly functioning states grant assistance to families in distress as a result of the imprisonment of a family member, especially when children are involved. However, in the case of house demolitions, the objective is, as appears from the High Court's comments, to cause the family to suffer in order to deter others from committing similar offenses.⁹² This objective is clear from the fact that the vast majority of demolitions involves houses that were home to suspects who were "wanted" by security forces or after the person was killed or apprehended and faced a long period of imprisonment, such that he, unlike his family, is not harmed at all by the demolition.

The only conclusion that can be reached is that of Justice Mishel Heshin, who wrote a minority opinion in the petition regarding the demolition of the house of Musa Ghaneimat, who carried out the suicide-bombing at the Apropos Cafe, in Tel Aviv, on 21 March 1997. According to Justice Heshin:

The first petitioner herein is the wife of the suicide-murderer, and she is the mother

89. Ibid., p. 322.

90. HCJ 802/89, *Nasman v. Commander of IDF Forces in the Gaza Strip*, *Piskei Din* 43 (4) 461.

91. HCJ 698/85, *Dagils v. Commander of IDF Forces in Judea and Samaria*, *Piskei Din* 40 (2) 42.

92. Kretzmer "High Court of Justice Criticism," supra, footnote 71, pp. 320.

of four small children. The wife and the children live in the same apartment in which the suicide-murderer lived, but nobody contends that they were involved in the act that he plotted – and carried out – the killing of innocent people. Nobody contends that they knew about the intended act. If we demolish the apartment of the terrorist, we demolish at the same time... the apartment of the wife and children. In doing so, we would be punishing the wife and the children although they did not sin. Such things should not be done here. Since the founding of the state – certainly since the enactment of the Basic Law: Human Dignity and Liberty – read into the provisions of Section 119 of the Emergency Regulations, read into it and submerged within it, are values that are our values, values of a Jewish, free, and democratic state. These values shall directly lead us to the early days of our people, and our present time shall be like that ancient time: we shall say no more, the fathers have eaten a sour grape, and the children's teeth shall set on edge. Rather, the teeth of those who eat a sour grape shall set on edge.⁹³

Denial of the right to be heard

International law recognizes an individual's right to due process. The International Covenant on Civil and Political Rights states, in Article 14, that everyone charged with an offense is presumed innocent until proven guilty by law. The article further states that every person has the right to defend himself before a competent, independent and impartial

tribunal. The defendant is also entitled to be informed of the charges against him, to select counsel of his own choosing, and to be given the necessary time and facilities for the preparation of his defense. The right to a fair hearing is also recognized in Articles 71 and 72 of the Fourth Geneva Convention.

Israel's policy of demolition of houses as a punitive measure tramples all aspects of the right to due process of residents of the Occupied Territories. The demolitions are part of an administrative procedure, based solely on suspicion, and without any proof in court of the guilt of the person because of whom the house is being demolished. Due process of law is violated even though, in many cases, the suspects are being held by Israel and are being tried for their alleged offenses. However, as a substitute for due process, the IDF used to give the occupants of the house prior warning of its intention to demolish their house, and enable them to state their case to the IDF and to the High Court of Justice. During the current intifada, Israel has only worsened matters by denying the last remnant of the right to due process: the right to be heard.

1. The High Court's role in eroding the right to be heard

Until 1989, the implementation of judicial review depended on the prior knowledge of the occupants that the IDF intended to demolish their house. In its ruling on a petition filed by the Association for Civil Rights in Israel (ACRI) in 1989, the High Court wrote:

93. HCJ 2006/97, *Ghaneimat v. OC Central Command*, *Piskei Din* 51 (2) 651.

The existence of fair rules for the hearing of a person's matter is reflected, in part, by the person subject to grave harm to body or property being given prior notification thereof, and being given an opportunity to make his objections in the matter...

[Consequently,] an order made pursuant to Section 119 should contain notification giving an opportunity to the person to whom the order is directed to choose counsel and appeal to the military commander before the order is carried out...and that afterwards, if they so wish, they should be given additional time to petition this court before the order is executed.⁹⁴

The High Court rejected the state's request to allow it to demolish houses "in urgent cases" without respecting the right of the occupants to be heard. In its opinion, the High Court stated that, in such cases, the state may, at the most, seal the house, which, unlike demolition, is reversible. The High Court further held that the only permissible exception to the obligation of granting the right to be heard involves "military-operational circumstances in which judicial review is irreconcilable with the conditions of time and place, or with the nature of the circumstances; for example, when the troops carrying out the operation must remove an obstruction or must overcome opposition, or respond to an attack on military forces or civilians that was taking place at the time..."⁹⁵

However, the limits of this exception were broken within about a year after the Court gave its judgment. Following the murder of reserve soldier Amnon Pomerantz by a group of Palestinians after he lost his way in the el-Bureij refugee camp, the IDF expanded the main street in the camp, which entailed the demolition of some thirty structures, without granting the occupants and owners the right to be heard. In a petition filed by ACRI against denial of the right of the residents to be heard, the High Court expanded the exception it had earlier set, and held that denial of the right was lawful "when there is a fundamental, important, and urgent interest in preserving order and safety, and preventing life-threatening dangers."⁹⁶

The announcement in 2002 of the Political-Security Cabinet's decision to reinstate the policy of house demolitions as punishment, and its large-scale application in the days that followed, without giving prior notice, raised a fear among dozens of Palestinian families that their houses would be demolished. Thus, HaMoked: Center for the Defence of the Individual petitioned the High Court, demanding that it order the IDF to give prior notice of its intention to demolish houses as a punitive measure, in order to enable the potential victims to exercise their right to be heard. The petition was filed on behalf of nineteen members of the families of Palestinians who had attacked Israelis. In

94. HCJ 358/88, *The Association for Civil Rights in Israel v. OC Central Command*, Piskei Din 43 (2) 529.

95. *Ibid.*

96. HCJ 4112/90, *The Association for Civil Rights in Israel v. OC Southern Command*, Piskei Din 44 (4) 626. See, also, Kretzmer, "High Court of Justice Criticism," *supra*, footnote 71, at pp. 332-333.

response, the state argued that giving notice was likely to endanger soldiers' lives and the success of the operation, while contending that house demolitions were military acts of warfare.⁹⁷ The High Court accepted the state's position and held that, "A decision should not be made in advance that despite hostilities, the said right to be heard should always be granted. Everything depends on the circumstances."⁹⁸ The High Court gave the IDF the responsibility for determining in which cases the right to be heard should be granted.

However, contrary to the state's contention, which was adopted by the High Court, the house demolitions are not of a military-warfare nature, but are purely a punitive act. Demolition of the house is itself the objective. It is not the side-effect of the military act of warfare.

A day after the High Court made its decision, nine petitions of Palestinians fearing that the army intended to demolish their houses were filed with the Court. In each case, the High Court ruled, in especially brief opinions, as follows:

Residents of the region, who fear that their houses will be damaged because of the acts of their terrorist relatives that resulted in the loss of life, may direct their requests to the respondent. In this context, they can provide the respondent with information that in the opinion of the family should affect his decision. When possible, a floor plan of the

house and a map pointing out its location should be provided. In acts that are planned sufficiently in advance, the respondent will not demolish a house before considering this information. The respondent accepts this proposal. In our opinion, the primary practical problem has thus been resolved.⁹⁹

In making this ruling, the High Court gave the military commander not only the power to decide if and when to punish innocent persons, but also the absolute power to determine if they are to be given an opportunity to be heard. The High Court thus eliminated judicial review and placed the fate of the potential victims in the hands of the military commander. As Professor Ze'ev Segal stated, the High Court's approach "encourages defense authorities to open a special track for bypassing a court hearing."¹⁰⁰

Furthermore, one of the main elements of the right to be heard is the obligation to give prior notification. As the former attorney general and retired Supreme Court justice, Professor Yitzhak Zamir, said, "The right to be heard is worthless if notice is not first given by the competent authority about the nature of the matter. The state authority must give notification to the holder of the right as to the facts or considerations that made the case relevant, the decision that is intended, or likely, to be made, and why."¹⁰¹ The High Court's decision, which exempts the state authority from its duty to give notification

97. See p. 27, above.

98. HCJ 6696/02, *Amer v. Commander of IDF Forces in the West Bank*.

99. HCJ 6868/02, *Salah-a-Din v. Commander of IDF Forces in the West Bank*.

100. Ze'ev Segal, "Judicial Restraint Encourages Opening 'Track to Bypass Court Hearing,'" *Ha'aretz*, 7 August 2002.

101. Yitzhak Zamir, *Administrative Authority* (Jerusalem: Nevo Publishing, 1996) Vol. 2, p. 816 (in Hebrew).

before demolishing a house, while imposing on the individual the obligation of laying out his objections to the expected harm he will suffer, makes the injury automatic, and makes it seem that it is the individual who seeks to alter the existing situation, and not the army. Placing the responsibility on the family is especially astonishing in that the family members do not always know the offenses attributed to their relative. The state's position creates the absurd situation in which Palestinians are required, in effect, to present their house to the IDF as a candidate for demolition.

In addition, the state's argument regarding the threat to soldiers' lives that would result from giving prior notification relies on a distorted picture of reality. First, at least in the West Bank, the IDF currently has complete effective control. Its forces enter the cities and refugee camps which, according to the Oslo Agreements, are the security responsibility of the Palestinian Authority, almost daily and as a matter of routine. For example, a journalist for *Ha'aretz* who recently accompanied a night patrol in the Balata refugee camp arranged by the Brigade commander, Col. Harel Knafo, for the officer who was scheduled to replace him, described it as a patrol that "was carried out leisurely, as nothing special." Col. Knafo was quoted as follows:

Although the leaders of the organizations were hit in Operation Defensive Shield, Nablus continued to be a center of opposition. In Balata and the Old City [of Nablus], an organized defense system had been set up that included look-outs, men bearing arms, and members setting

explosive charges, which greatly limited the ability of our forces to move about freely. It was impossible to travel as we are doing now. All those threats were neutralized. First we handled matters in Balata and then in the Old City. Now we completely control the narrow passageways.¹⁰²

In addition, the fact that the house-demolition policy is publicly stated, and that threats of demolition are directed at the families of suspects by security forces, eliminates the element of surprise that, according to state officials, makes it impossible to give prior notice to residents and grant them the right to be heard. Recently, following suicide attacks, the Israeli media reported that the IDF intended to demolish the houses of the persons who carried out the attacks. Reports of this kind appeared in the media following the suicide attacks in Beersheva on 31 August 2004 and at the French Hill intersection, in Jerusalem, on 22 September 2004.

The contention regarding the danger entailed in giving prior notification disregards the distinction between Areas A and B, on the one hand, and Area C. In Area C, Israel also demolishes houses on grounds that they were built without a permit. The demolitions generally take place after a long bureaucratic procedure, in which the occupants receive prior warning of the intention to demolish their house.

For example, on 11 March 2004, the IDF demolished the house of the family of Hatem al-'Arar, who had been arrested five days earlier by the IDF.¹⁰³ His parents and four

102. Avichai Becker, "Where is the Applause," *Ha'aretz*, 27 August 2004.

103. B'Tselem does not know the pretext for his arrest.

siblings lived in the house, which was located in al-Wallaja, a village near the municipal border of Jerusalem, as set by Israel in 1967. Part of the village lies within the Jerusalem Municipality's jurisdiction, and part is located in what is defined as Areas B and C. The Civil Administration issued demolition orders against several houses in the community, claiming that they were built without permit. Some have already been demolished, while the others are still the subject of litigation. When the IDF demolished the house of the al-'Aaraj family, an order was not issued, and the occupants were not given warning of the IDF's intention to demolish the house.¹⁰⁴

2. Effects of the elimination of judicial review

The High Court of Justice has consistently refused to recognize the illegality of Israel's policy of punitive house demolitions. As a rule, judicial review has been limited to the question of the manner in which the IDF exercises its authority to demolish houses. Over the years, the High Court has given more than one hundred judgments on petitions relating to the manner in which Section 119 was applied. Except in rare cases, the High Court has refused to intervene in the decision made by the authorities.¹⁰⁵ However, as Professor Kretzmer has pointed out, "It can be assumed that the very existence of judicial review in each individual case reaching the court has a

certain restraining effect on the readiness of the authorities to rely on this measure."¹⁰⁶

Decisions of the High Court have indeed restrained, to some degree, the military commander in deciding whether to use Section 119, thus somewhat limiting the extent of the harm to innocent Palestinians. In the case of a rented house, Justice Shlomo Levine held in 1991 that, despite the Court's earlier decisions, whereby Section 119 could also be applied to a rented house, the question should be left for future resolution, "in light of the extremely grave effect of the exercise of the sanction authorized in Section 119... The court should establish reservations and construe it narrowly also as regards classification of the persons who may possibly be harmed by the action."¹⁰⁷

In another petition, heard in 1992, the IDF sought to demolish the house in which Muhammad Turqman, who had killed one Israeli and injured other Israelis, lived. His mother, his unmarried siblings, his eldest brother, and the latter's wife and son, also lived in the house. In this case, the High Court held that a distinction should be made between the eldest brother and his family, and the other members of the family: "Destruction of the entire structure would constitute a disproportionate – and thus unreasonable – balance between the murderous conduct of Muhammad Turqman and the suffering that would be caused to the family of the eldest

104. For the testimony of the father, Zakaria al-'Aaraj, regarding the chronology of the events that led to the demolition of his house, see Appendix 3.

105. Kretzmer, *The Occupation of Justice*, supra, footnote 59, at p. 157.

106. Kretzmer, "High Court of Justice Criticism," supra, footnote 71, at p. 331.

107. H.C.J. 2630/90, *Karachra v. Commander of IDF Forces in Judea and Samaria, Takdin Elyon* 91 (1) 210.

brother.”¹⁰⁸ It was impossible to demolish only part of the house, so the Court ordered the sealing of two rooms to enable the eldest brother and his family to continue to live in the house. Following this ruling, the authorities have limited demolition to the house of the nuclear family of the person because of whom the house is demolished.

Another recent case demonstrates the changes resulting from the lack of the right to be heard and the lack of judicial review. On 3 April 2004, Ramzi al-‘Aarda killed one Israeli civilian and injured other Israelis, as Muhammad Turqman had done some years before. Al-‘Aarda was killed during the attack. The next day, around 4:00 A.M., IDF soldiers entered the Tulkarm refugee camp and demolished an entire building containing four apartments. Al-

‘Aarda had lived in one of the apartments with one of his brothers. His married brothers and their families lived in two of the apartments, and his parents and unmarried siblings lived in the fourth apartment. The occupants were not given any warning, and were not given the opportunity to state their case before any person or entity. They were given only fifteen minutes to remove their possessions.¹⁰⁹

This case is not exceptional. As described in the first part of this report, since the beginning of the Al-Aqsa intifada, the IDF has demolished 295 housing units only because they were near the unit in which the person suspected of violence against Israelis had lived. This practice clearly illustrates the destructive consequences of denying the right to be heard and the elimination of judicial review.

108. HCJ 5510/92, *Turqman v. Minister of Defense*, *Piskei Din* 48 (1) 217.

109. For the complete testimony of al-‘Aarda regarding the chronology of events that led to the demolition of his house, see Appendix 4.

Conclusions

The demolition of houses as a punitive measure constitutes a grave and arbitrary infringement of the right to housing of thousands of residents of the Occupied Territories. This right is a fundamental right, in that it is crucial for the enjoyment of other important rights. Denial of the right leads to a complete breakdown in the victims' way of life. The policy constitutes collective punishment: it is directed at thousands of persons whose only wrongdoing – according to the state – is that they are the relatives or neighbors of Palestinians who were involved, or were suspected of being involved, in attacks against Israelis.

Citing biblical sources, Supreme Court Justice Heshin aptly described the illegality of this policy, on the grounds that it is collective punishment:

I planted myself in the basic principle of law, and from it – so I said – I shall not swerve, neither right nor left. And this same basic principle was known by all of us, and we have learned it from our very beginnings: a man shall bear his iniquity, and shall die for his sins. And in the words of the prophet: “The soul that sinneth, it shall die. The son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son: the righteousness of the righteous shall be upon him, and the wickedness of the wicked shall be upon him” (Ezekiel, 18

(30)). No punishment shall be given without warning and only the offender shall suffer blows. This is the law of Moses and it is written in the Torah of Moses: “The fathers shall not be put to death for the children, nor the children be put to death for the fathers; but every man shall be put to death for his own sin.” (Kings II, 14 (6)).¹¹⁰

Israel's policy of punitive house demolitions has also been sharply criticized by international legal bodies. The UN Human Rights Committee, for example, which is composed of independent international experts who are charged with interpreting and applying the International Covenant on Civil and Political Rights, studied Israel's policy and held in its conclusions that:

The Committee deplores the demolition of Arab homes as a means of punishment... The Committee considers the demolition of homes to conflict directly with the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (Art. 17), the freedom to choose one's residence (Art. 12) and equality of all persons before the law and equal protection of the law (Art. 26).¹¹¹

Israel justifies its policy on the grounds that it deters Palestinians from carrying out attacks against Israelis. In its attempt to prove this contention, the defense establishment

110. *Ghaneimat*, supra, footnote 93.

111. Concluding Observations of the Human Rights Committee: Israel, 18 August 1998, Ccpr/79/add.93, Par. 24.

announces from time to time that Palestinians have turned in relatives out of fear that their house will be demolished.¹¹² Yet, the effectiveness of this policy has been disputed. Senior defense officials have raised doubts that the policy prevents terrorist attacks. In an interview with Ynet, the website of Yediot Aharonot, a person described as a “senior defense establishment official” said that, regarding the demolition of houses, “in most cases, certainly where residents of the refugee camps are involved, our measures do not work. As for those who carry out the suicide attacks, the supply is greater than the demand.”¹¹³ In their book *The Seventh War*, journalists Amos Harel and Avi Isacharoff cite an internal IDF report stating that “there is no proof of the deterrent effect of house demolitions.” The report also pointed out that “the number of

attacks... rose a few months after the policy began to be implemented.”¹¹⁴

However, the effectiveness of punitive house demolitions in preventing attacks is irrelevant to the question of their legality. Israel is not permitted to disregard international law by contending that the law constricts its actions. When the late Supreme Court President Shimon Agranat was asked whether the policy was effective, he responded: “I think that is unimportant. What is important is that it is inhuman.” As has been argued here, it is also illegal.¹¹⁵

B’Tselem demands that the government of Israel immediately cease the policy of punitive house demolitions, and that it compensate Palestinians whose homes have been demolished as a result of this policy.

112. See, for example, Gidon Alon, “Ben Eliezer, ‘There are Testimonies that the Demolition of Terrorist’s Houses Deters,’” *Ha’aretz*, 12 August 2002.

113. Felix Frisch, “Statements on the War against Suicides – Trite,” *Ynet*, 14 August 2003.

114. Amos Harel and Avi Isacharoff, *The Seventh War – How We Won and Why We Lost the War with the Palestinians*, (Tel Aviv: *Yediot Aharonot*, 2004) 163 (in Hebrew).

115. Uri Shenhar, “Agranat Against Demolition of Houses,” *Kol Ha’Ir*; 2 November 1990.

Appendix 1

Testimony of ‘Itaf Hassan Muhammad Abu Sha’ira, 33, married with three children, homemaker, resident of the al-‘Aza refugee camp, Bethlehem District¹¹⁶

I was married to Hassan Muhammad Hassan Abu Sha’ira. My husband killed a GSS agent on 14 June 2001. He met with the agent on the [Jerusalem] Tunnel Road and killed him. The soldiers who were with the agent shot Hassan, wounding him in the head and body. He died about ten days later. When he died, the army handed his body over to the Palestinian District Civil Liaison office.

Since my husband died, I have been raising our three children: Marfat, who is 12, Sharin, who is 10, and six-year-old Tareq. We lived in our own apartment, which was located in a three-story building near the Paradise Hotel. Each floor had two apartments. Each apartment was 120 square meters. My husband’s parents lived in one of the apartments on the first floor. Muhammad, my husband’s brother, lived in the other apartment with his wife and their six children. My husband’s other brothers lived on the second floor – ‘Ali with his wife and five children, and Sha’ib, with his wife and their five children. On the third floor, Jihad, another of my husband’s brothers, lived with his wife and their three children. My three children and I lived in the other apartment.

Last Thursday [26 February], around midnight, Jihad knocked on our door and told us that soldiers had knocked on his door and ordered him to go to all the apartments and

tell everybody to go outside. I thought that the Israeli army had invaded the refugee camp and were conducting a surprise search of all the houses. I woke up the children and we left through the main door of the building. The others also went outside. On the street, I saw lots of soldiers. I can’t say exactly how many there were. They were in army uniforms and their faces were painted. The soldiers ordered us to move, and one of them took us to the yard outside the Paradise Hotel, which was about 200 meters from our house. They told us to sit on the ground and keep silent. One of the soldiers asked, in Arabic, which one of us was the wife of Hassan Abu Sha’ira. I told him that I was. He replied: “We are going to blow up your apartment. We are going to make a boom inside it.” He had two stars on his shoulders, and I realized he was an officer. “What are you saying?” I asked him. He replied, “You didn’t hear me? We are going to blow up your apartment.” I should point out that the Israeli forces had not told us anything about a decision relating to our house. I asked him why, and he replied: “Because of what your husband did.” I asked him to show me an official document ordering the demolition of our apartment. He said that the Israeli military court had made a decision, and that they were going to demolish the apartment. I asked to see the decision, but he didn’t show me anything.

The officer told me: “I am giving you ten minutes to remove whatever you want from the apartment.” The soldiers spoke only to me and not to the others in the family. I managed

116. The testimony was given to Suha Zeyd in the al-‘Aza refugee camp on 2 March 2004.

to remove only documents proving that I own the apartment, and my gold [jewelry]. We were in shock, and did not manage to remove anything else. After ten minutes passed, I went back to the yard.

At around 5:00 A.M., the soldiers blew up the apartment from the inside. My apartment was completely demolished, as was the furniture. Jihad's apartment was also damaged as a result of the blast. The walls of his house were destroyed, the ceiling was cracked, the windows were dislodged, and the doors were destroyed. The apartment was uninhabitable. The apartment under mine suffered cracks

and splits in the walls. The engineer from the [Palestinian Authority's] General Construction Office came to check the building. He said that the entire building was in poor shape and too dangerous for people to live in.

My children and I now live in a rented apartment in the refugee camp. We do not have any furniture. Basically, we are living on the floor. We live like refugees and our situation is very bad. After the soldiers demolished the apartment, they told us it was forbidden to rebuild it, and that if we did, they would return and demolish it.

Appendix 2

Testimony of Jamil Muhammad ‘Awadalla Salahat, 50, married with eight children, unemployed, resident of Bethlehem¹¹⁷

I lived in the Wadi Shahin area in Bethlehem. My house had two floors. The first floor was rented out and used as a garage. The second floor had two apartments. My wife, our eight children, ranging in age from seven to twenty, and I lived in one of the apartments. Our apartment had three bedrooms, a living room, kitchen, and two bathrooms. The other apartment, which was furnished, was rented out.

On Friday, 2 August 2002, a neighbor came over and said that he knows a widow with three children, the eldest sixteen years old, who wanted to rent the furnished apartment. He told me that her husband had died, and that she would sign the lease. I didn't know anything about the woman, but I gave the keys to the neighbor, who was acting on her behalf. We agreed that the lease would be signed during the first week that she lived in the apartment. She was given the keys and moved into the apartment with her children that Sunday [4 August].

Four days later, at around 3:30 A.M., we awoke to the sound of vehicles in the street. I looked out the window and saw five jeeps and soldiers surrounding the building. Soldiers came up the steps and knocked on the door of the rented apartment. The soldiers took out a

man whom I didn't know from the apartment. I was surprised that there was a man in the widow's apartment. Later, I learned that the woman was not a widow, and that her husband was Yehiye D'amseh.

The soldiers also made us leave our apartment and told us that they intended to demolish the entire house because Yehiye lived there. I told the officer in command that it was my house and that I rented out the apartment. I told him that, from what I knew, a widow was living in the apartment with her children, and they had leased the apartment. Of course, he didn't believe me, and he said: "We are going to demolish your house to punish you." They made us leave the apartment and did not give us time to remove our possessions. A huge bulldozer demolished the entire house within two hours.

I saw the house collapse on everything inside it, and on the garage, which was on the ground floor. As a result, the equipment in the garage and a white 1985 Peugeot that belonged to my brother 'Adel, which was parked outside, were also destroyed.

Later, I checked with local residents and learned that Yehiye D'amseh was wanted by the Israeli army, and that his house in the Daheishe refugee camp had been demolished a few months earlier. The whole story about the woman being a widow was a lie to protect her husband.

117. The testimony was given to Suha Zeyd in Wadi Shahin on 13 August 2002.

Appendix 3

Testimony of Zakaria Mahmud al-‘Aaraj, 46, married with five children, laborer, resident of al-Wallaja¹¹⁸

Five days ago, soldiers arrested [my son] Hatem. At 2:00 A.M. this morning, I heard a banging on the door, which woke me and the others in my family. I figured they were soldiers. I got up and opened the door. About thirty soldiers were standing at the entrance to the house. They came in, spread out around the house, and searched it for about half an hour. We remained in the house while they conducted the search. After that, the soldiers ordered us to go into the street. We did not know why. The soldiers ordered us to sit in the street. Seven of them stood around us. The others stayed in the house. While we were outside, I saw ten army jeeps parked on the street.

About an hour later, some ten soldiers came out of the house and went to my brother Musa’s house, which is about thirty meters from my house. The soldiers made his family leave the house, put his son Majid, 22, up against the wall and had the others sit down on the ground next to us. A few soldiers remained in Musa’s house. About an hour later, the soldiers came out of Musa’s house, came over to us, and ordered us to walk in front of them. They took us into one of the bedrooms in Musa’s house. Five soldiers guarded us and kept their rifles aimed at us.

They kept us closed up in the room for two hours or so, and soldiers guarded us the whole time. We did not know what the soldiers were doing outside, and nobody told us anything. Around 6:30 A.M., I heard a gigantic explosion from very nearby, but I did not know exactly from where. At that moment, the five soldiers left the room. Musa and I followed them to see what was happening outside. I was surprised and shocked to see that the soldiers had blown up my house from inside. I saw smoke, black dust, and a pile of stones covering the house. I saw that the interior walls had collapsed, all the contents were destroyed, the roof was cracked, and all the windows were shattered. The house was uninhabitable.

When I saw this, I got very mad and went over to the jeeps that were still parked in the street. I asked to speak to the commanding officer. The soldiers referred me to their commander, and I asked him, in Arabic: “Why did you destroy the house? What did we do to you?” The commander responded, in Arabic: “Because of your son.” I replied: “What did he do? He is a student and he was never detained before. This is the first time that you detained Hatem.” The commander responded: “At the court hearing you will find out what Hatem did.” Then he ordered me to go back to the house...

118. The testimony was given to Suha Zeyd in al-Wallaja on 11 March 2004.

Appendix 4

Testimony of Fakhri ‘Abd a-Rahman Mustafa ‘Aarda, 62, married with six children, falafel shop owner, resident of the Tulkarm refugee camp¹¹⁹

I lived in a four-story building in the Tulkarm refugee camp. Each floor was seventy-five square meters and contained two rooms, kitchen, bathroom, and living room. The first floor was built in 1975, the second floor in 1998, and the other two floors in 2000. I lived on the first floor with my wife, who is 50, and two of our children, ‘Ovadiya, 18, and Dalal, who is 14. My son ‘Abd a-Rahman, 28, lived on the second floor with his wife, who is 25, and his two children, Fakhri, 3, and Ahmad, 5. Another son, Ahmad, 26, lived on the third floor with his wife, who is 22, and their son Muhammad, who is one year old. Our two other sons, Ramzi, 17, and Mahmud, 22, lived on the fourth floor.

...

On Friday night, 2 April 2004, Ramzi carried out an action in the Avnei Hefetz settlement, in which one settler was killed and another wounded. During the action, the soldiers shot and killed Ramzi. I learned about his death via the media. After the action, the IDF placed a curfew on the Tulkarm refugee camp and on Tulkarm for two days, until Sunday, 4 April. Already on the third, Saturday, when I heard about what Ramzi had done, I removed the furniture from the house and left only a few possessions inside.

That Sunday, around 4:00 A.M., soldiers came to my house and knocked on the door. When I opened the door, I saw lots of soldiers. They entered, and a soldier who identified himself as the GSS commander in the area came over to me. Speaking in Arabic, he asked me who lived in the house. I told him, and then he said that they were going to demolish the first and fourth floors of the building. I told him to do what he wants. He said: “I want to do you a favor. I am going to give you fifteen minutes to remove your things from the house.” All the children left the house and went to the neighbor’s house.

A neighbor and I removed what remained in the house, and took the things to neighbors’ houses. After about fifteen minutes passed, the soldiers ordered us to leave the house and go somewhere else. He said they were going to blow up the house. I went to a neighbor’s house, which was about two hundred meters from my house. About two hours later, I heard an enormous explosion, which shook the whole area.

After an hour or so, I looked out the window and saw the soldiers leaving the area. I went to my house and saw that the interior walls of the first floor had been demolished. The walls on the second and third floors were cracked. The fourth floor was demolished completely. An engineer from the Ministry of Construction checked the building and determined that it was uninhabitable.

119. The testimony was given to ‘Abd al-Karim S’adi at the home of the witness’s brother on 11 April 2004.

Response of the IDF Spokesperson's Office

Israeli IDF Int.	Defense Spokesperson Org.	Forces Unit Desk
Tel:	972-3-6080220/358	
Fax;	972-3-6080343	
2470	-	א-י
07.	November	2004



To

Mr. Ronen Schneiderman

B'tselem

IDF Spokesperson's response to the House Demolition Report

Since late September of 2000, the IDF has been engaged in an armed conflict against Palestinian terrorists operating in the West Bank and Gaza Strip who attempt to perpetrate murderous terror attacks against Israeli citizens. During this period, more than 20,000 terror attacks were carried out by different Palestinian terror organizations, murdering 1,004 Israeli citizens and foreign residents and wounding an additional 6,821.

As part of the IDF's legitimate struggle against terror, based on the State of Israel's inherent right and obligation to the protection of its citizens, the IDF has taken the step of demolishing the houses of terrorists who have been actively involved in carrying out terror attacks against innocent Israeli civilians and members of Israel's security forces.

This step is purely a measure for deterrence, aimed at preventing potential terrorists from carrying out additional attacks.

The above practice has been repeatedly ratified as legal by the Israeli Supreme Court (e.g. SC case 6696/02 - Amar vs. the Chief of Staff of the IDF, SC case 6868/02 - Salah-a-din vs. the Chief of Staff of the IDF). House demolition is part of the intensive effort put forth by the IDF to combat terrorist elements. House demolition is based on clear military considerations and is done in full accordance with the law and relevant statutes of international law. It is an unfortunate necessity due to the dire situation the terror organizations have created for the IDF in the past years. In fact, before the current outbreak of Palestinian violence, house demolition was a measure that was employed very sparingly.

The IDF is aware of the consequences of house demolition, and has therefore committed itself to destroy the homes of terrorists only after a great deal of thought has gone into each decision, in accordance with Regulation 119 of the Defense Regulations (1945 Emergency Regulations), and after a legal query has been conducted. This legal query weighs the relevant considerations that must be accounted for. Furthermore, cases dealing with house demolition quite often being

reviewed by Israeli Supreme Court, as are evident in the large number of Supreme Court decisions on this matter.

Contrary to what is being claimed in the report, the IDF does not base its decisions to demolish houses on Regulation 119, or on mere speculations that the owner of the property may perpetrate a terrorist attack; the decision is made only after a thorough investigation has been conducted, which indicates, beyond any reasonable doubt, that the owner of the property is a member of a terrorist organization, or that terrorist activity had been conducted from the property.

The IDF unit tasked with demolishing a terrorist's house is accompanied by professional personnel who can resolutely identify the intended house or apartment. Among this personnel are a representative of the security apparatus and a civil administration representative. The demolition itself is executed by a specially trained force, guided by a certified engineer, while taking every precaution so as to not damage the properties of others who are not involved in terrorist activities.

The IDF makes an absolute distinction between terrorists and civilians not involved in terrorist activities when dealing with house demolition, as it does with every other operation it conducts. The demolition itself is conducted in a very controlled manner, minimizing collateral damage. As a matter of fact, when the IDF has reached a decision to demolish a terrorist's apartment that is located inside a multi-story building, IDF forces can demolish the intended apartment, without causing damage to neighboring apartments in the building. The IDF has cancelled plans to demolish terrorist homes after reaching the conclusion that the operation would cause damage to surrounding structures.

Despite the caretaking measures taken by the IDF to avoid such incidents, damage to the structures surrounding the terrorist's house may occur on occasion. In these cases, residents of the damaged structures may contact the Israel Ministry of Defense to verify whether they are entitled to some compensation.

It is important to note that families who fear that their home will be demolished during IDF operations in their area, may appeal to the commander of IDF forces operating in their sector, and present their petitions against the possibility of damage to the property. The IDF commander examines the various claims brought forth by affected parties before the decision is finalized, as per the agreement proposed by the Supreme Court in decision 6868/02 (mentioned above).

The IDF acts in accordance with the law which states terrorists' families must be given the right to appeal, unless the use of this right may potentially endanger the operation or the personal safety of the soldiers partaking in it. In the event that the IDF concludes the right of appeal cannot be exercised, the arguments are documented in writing with the exception of situations in which urgent operational needs prevent said documentation.

In any case in which family members are denied the right to appeal the decision to demolish a home, they may also present their claims against the demolition order to the IDF forces operating in their region before the demolition is carried out. Demolition of several houses was prevented in this way, even after IDF forces had deployed to carry out the operation.

With regards to the presentation of a written demolition order, this is done whenever circumstances allow it. However, the Israeli Supreme Court determined that the IDF may be exempted from

presenting a written order if there is justifiable grounds for such an exemption- for example, during combat operation or when urgent necessity arises, or when IDF forces need to operate in the area (see Supreme Court Decision 8262/03- Abu Salim vs. the Commander of the IDF Forces in the West Bank).

We are rather limited in terms of the available means we can employ against suicide bombers. The assessment of the IDF is that house demolition is an effective method that can deter terrorists. It is impossible to know the exact figures of potential terrorists that have been deterred from perpetrating attacks by this prevention tactic. Listed below are a few examples of well-known cases that attest to the general effectiveness of demolishing houses as a deterrent to those contemplating perpetrating terror attacks:

- 1) In April of 2003, Hamas terrorist operatives in Tul Karem planned on perpetrating a suicide attack in an Israeli civilian area during the Passover holiday. During IDF operations in Tul Karem, several members of the terror cell were apprehended, who released the name of the potential suicide bomber to Israeli authorities. Following pressure applied by his family members, who feared that their home would be destroyed as a result of the bombing, the potential suicide bomber turned himself into IDF authorities at a nearby checkpoint.
- 2) On the 16th of September, 2004, 21-year-old Iba Adaleh Hassan Muhammad Juabreh and 22-year-old Lina Sudki Muhammed Juabreh were placed under house arrest. The two had planned to perpetrate a double suicide bombing in Tel Aviv during the previous week. Pressured by their families, who did not want to see their house demolished, the two women turned themselves in to the authorities.
- 3) On the 17th of September, 2004, Shadi Awwat was turned in, by his grandfather, to IDF forces manning a checkpoint near Nablus, after the grandfather feared their home would be demolished, given that IDF forces had entered the property on a previous occasion to locate Shadi. Later, Shadi identified the explosive device that he was concealing until the terror attack was to be carried out.
- 4) On the 21st of October, 2004, IDF forces demolished houses of two terrorists, who were responsible for the terrorist attack on Highway 6, in June, 2003. In this terror attack a young girl, named Noam Leibowitz, was murdered and three of her relatives were injured. The house of another wanted Palestinian Islamic Jihad terrorist, Tarek Ahmad A-Karim Hassin, who was also involved in this attack, was not demolished due to the fact that his relatives assisted in his arrest and the seizure of the weapon which was used.

House demolition sends a clear message to terrorists and those who assist in perpetrating acts of terror them that they will be forced to pay the price of their notions.

In the context of the ongoing war on terror, the IDF will continue to employ any means necessary and determined as legal in order to strike out at terrorists, those that assist them, and those who dispatch them, and will do anything in its power to deter them from perpetrating terror attacks.

International Organization Desk
IDF **Spokesperson**

בִּצְלֵם

בצלם-מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)

"بتسيلم" مركز المعلومات الإسرائيلي لطريق الإنسان في الأراضي المحتلة

B'TSELEM - The Israeli Information Center
for Human Rights in the Occupied Territories

רח'י התעשייה 8, תיבת דואר 53132 מיקוד 91531
טלפון: 02-6735599, פקס: 02-6749111

شارح هتعمسا 8، الطابق الرابع، القدس، ٩٣٤٢،
تلفون ٠٢-٦٧٣٥٥٩٩، فاكس: ٠٢-٦٧٤٩١١١

8 Hata'siya St., P.O.Box 53132 Jerusalem 91531
Tel: 02-6735599 Fax: 02-6749111
mail@btselem.org www.btselem.org