

בִּיטָאָה

מרכז המידע הישראלי לזכויות האדם בשטחים

'בִּיטָאָה' מרכז המידע הישראלי לזכויות האדם בשטחים
BTSELEM - The Israeli Information Center for Human Rights in the Occupied Territories

INFORMATION SHEET: UPDATE NOVEMBER 1990 (English Version)

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SEALING AS A FORM OF
PUNISHMENT IN THE
WEST BANK AND GAZA STRIP
Follow-up Report**

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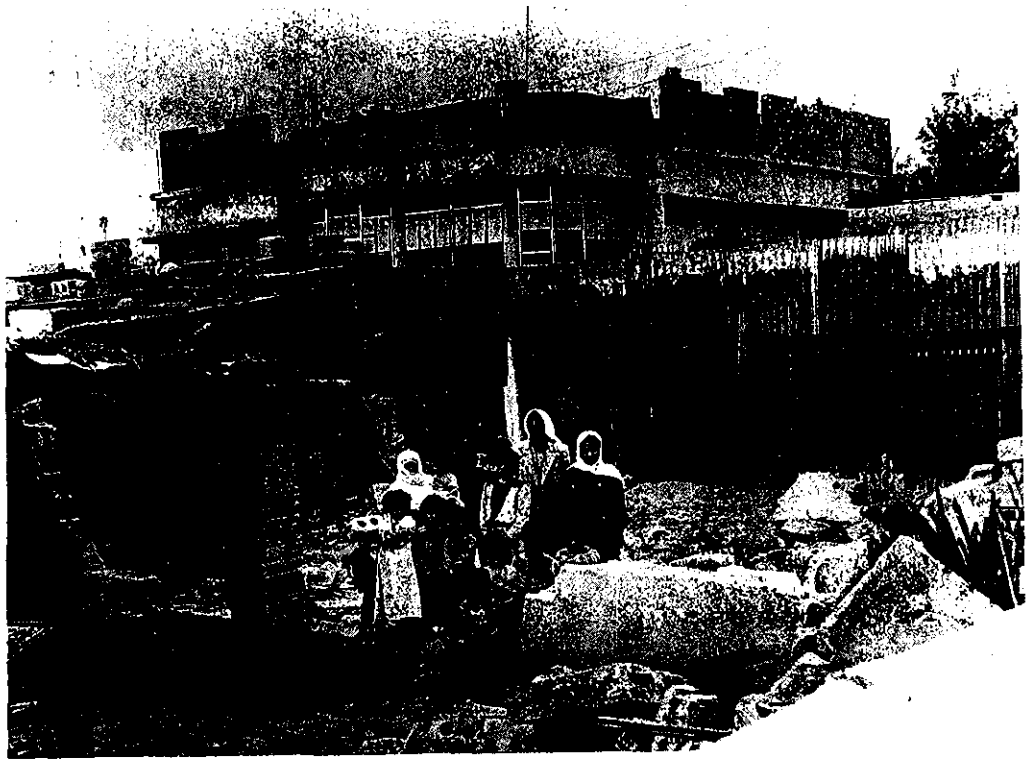
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B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, was founded in February 1989 by a group of lawyers, intellectuals, journalists, and Members of Knesset. The objective of B'Tselem is to document and to bring to the attention of policy makers and the general public, violations of human rights in the territories.

B'Tselem's data are based on fieldwork, independent investigations, and official Israeli sources, as well as on the data of Palestinian sources, especially human rights groups such as PHRIC and el-Haq.



The home of the Khalil el-Sha'ar, Khan Yunis. Partially destroyed on November 7, 1990.

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ISSN 0792-4003

PURPOSE OF THE REPORT

In September, 1989, B'Tselem published a report on the use of demolition and sealing of homes as a form of punishment in the West Bank and Gaza Strip during the Intifada. In this report, we will try to point out the trends in the use of house demolitions and sealings since the last report was published. We will also present up-to-date statistics on house demolitions and sealings in the occupied territories in this period.

Through the publication of this report we hope to bring to the attention of the public up-to-date information regarding the extent to which this sanction, one of the most severe forms of punishment used by Israeli security forces against the residents of the occupied territories, is employed.

B'Tselem regularly keeps track of and documents the demolitions and house sealings in the occupied territories. In this report, we have included photographs of houses before and after they were demolished, taken as part of B'Tselem's routine recording procedures. It is our opinion that these photographs help illustrate the severity of this unique form of punishment.

SOURCES OF INFORMATION

The statistics in this report are based on B'Tselem's investigations, High Court of Justice (HCJ) rulings, data given to us by the IDF Spokesperson, Palestinian human rights organizations, and items from the Israeli and Palestinian press.

The data from all these sources for the period August 1 to September 30, 1990 were cross-validated. In instances of conflicting data, B'Tselem fieldworkers visited the site of demolition or sealing in order to ascertain the facts. Despite this, there are difficulties in obtaining complete information regarding demolition and sealing of homes. In a number of cases, sealings and demolitions are carried out but are not reported. The report, therefore, only includes data on demolitions and sealings on which we have information.¹

1. For purposes of this report, demolition or sealing of the residential unit of a nuclear family situated inside the residence of the extended family is regarded as a complete demolition or sealing. Demolition or sealing of individual rooms that do not comprise an integral residential unit are regarded as a partial demolition or sealing.

INTRODUCTION

House demolition, or its less severe version, the sealing of the house's entrances, is a form of punishment enacted against suspected security offenders, based upon Regulation 119 of the Defence (Emergency) Regulations, 1945. This regulation grants the military commander of the relevant area the authority to employ this sanction in varying levels of severity: partial sealing, total sealing, partial demolition or total demolition. According to the ruling of the Israeli High Court of Justice (HCJ), the severity of this sanction must be proportionate to the severity of the violations attributed to the suspect.

As far as we know, this form of punishment is unique to Israel and is not employed in any other place in the world, even though it is based on regulations enacted by the British Mandatory authorities.²

The destruction of a suspect's home is an administrative process carried out without trial, and without the need to prove the guilt of the suspect before any judicial body. In the majority of cases, the sanction is carried out prior to conviction. In other words, this form of punishment is carried out primarily against individuals who are only suspected offenders. The demolition or sealing of a house is carried out in addition to sentences handed down by the court against the accused, and is not included within the framework of punishments meted out by the court. In many cases, rented houses have been demolished despite the fact that the houses' actual owners had no connection to the actions which led to the demolition.

This drastic form of punishment is even imposed, at times, on homes that serve as residences for families of men wanted by the security forces, but who have not yet been apprehended, as well as on the homes of the families of individuals who have already been killed by security forces.³

The punishment in question is one of the most draconian punishments employed against the residents of the occupied territories. Supreme Court Judge Aharon Barak pointed out in ruling 361/82 that this is a severe and drastic action that must be employed only after extensive consideration and an in-depth investigation, and only in very specific circumstances:

2. It has been published recently that Iraq has demolished the homes of recurrent traffic offenders, but we have not been able to substantiate this report.

3. For example, on January 22, 1990, the house of Yusef Nardawi's family, in the village of Hableh (Kalkilyah region) was demolished. Nardawi was wanted by the security forces at the time that the house was sealed, and was killed in April while preparing an explosive device. On February 26, 1990, the house of Aiman Muhsein el-Raza's family was sealed. Raza was the leader of the 'Red Eagle' faction in Nablus, and was killed by soldiers' gunfire on November 9, 1989.

The severity of house demolitions is threefold: Firstly, it deprives the house's residents of living quarters; Secondly, it is irreversible; Thirdly, it sometimes damages neighboring homes.

Former Supreme Court President, Shimon Agranat, recently made public his criticism of house demolitions. In the Jerusalem weekly, "Kol Ha'Ir" he said(*):

Q: In your opinion, is the demolition of houses an effective way to ensure order in the territories?

A: I think that this is not what is important. What is important is that it is inhuman.

Q: In recent years the Supreme Court has approved dozens of house demolitions in the territories. Has the Court, in your opinion, made a mistake?

A: I suggest that you draw conclusions from what I have just said.

*Kol Ha'Ir, November 2, 1990

THE PROCESS

The initiative for the demolition or sealing of a house is usually taken by one of the security forces (IDF or GSS - General Security Services) which has some kind of evidence purportedly linking a certain individual to security offenses. This evidence is usually based on reports given by various individuals regarding the actions of the suspect, or on the confession of the suspect extracted in the course of his interrogation. As mentioned above, the vast majority of demolitions are carried out before the suspect is brought to trial and convicted.

The security force (IDF or GSS) that initiates the sanction also recommends which form of punishment should be employed. The recommendation is passed on, together with the evidence against the suspect, to the legal advisor of the area in which the suspect lives.

The legal advisor checks the evidence, and after finding that the accusations are well-supported, approves the sanction in principle. If the intention is to demolish the house, the technical feasibility of the punishment is verified. If demolition is deemed impossible to carry out (if, for example, the house is an apartment in a shared building), the house is sealed rather than demolished.

In the case of a house sealing, after the sanction is approved in principle by the legal advisor, it may be carried out immediately. In the case of demolition, the family must be allowed to appeal the decision.

First, the family is informed of the decision to demolish the house. The

family may then appeal the decision within 48 hours before the military commander of their area (the commander of either the West Bank or the Gaza Strip). If the commander rejects the appeal, the family has an additional 48 hours to appeal to the HCJ. It is significant to note that of the dozens of appeals submitted to the HCJ, only one has ever been accepted (see p. 11)

In the course of this process, negotiations are carried out between the family's lawyer and the military, and sometimes a compromise is reached in which a less severe sanction is substituted for one more severe: sealing instead of demolition, partial sealing instead of complete sealing, etc. (We asked the IDF Spokesperson for data regarding occasions when a more severe sanction had been reduced to a less severe one, but we were told that the information could not be obtained because it would entail checking a large number of files.)

When the appeals process is completed and the final demolition approved, the area around the house is usually placed under curfew, the family is given a short time to remove the house's contents, and the house is demolished by a bulldozer or by dynamite. In several cases, neighboring houses have been damaged in the process of dynamiting. (see below, pp. 18-19)

The family is prohibited from building another home on the site of the one which was destroyed, and from breaking the seals of the entrances, since the order to demolish or seal the house is also an order expropriating the land on which the house is built. After the demolition or sealing, the family usually receives a tent from UNRWA (United Nations Relief Works Agency) or from the International Red Cross. The tent is usually erected on the site of the demolished house (despite the aforementioned fact that this is prohibited). The families receive some aid or compensation from Palestinian institutions and organizations which enable them to pay for the rental of an alternative residence for a number of months.

In April, 1988, a group of children on a field trip from the West Bank settlement of Alon-Moreh entered the village of Beita in Samaria. Village residents attacked the children with stones. The security man who was escorting the hikers, Romem Aldubi, opened fire. Two residents of Beita, and one hiker, were killed by the shots fired.

Following the incident, the IDF destroyed 14 houses of village residents, including a man who had provided refuge for the hiking children.

In September, 1990, reserve soldier Amnon Pomerantz took a wrong turn, and chanced into the el-Bureij refugee camp in the Gaza Strip. Residents of the camp stoned him and set his car afire.

Following the incident, the IDF destroyed approximately thirty buildings in the area of the murder, as well as at least 6 houses of civilians suspected of taking part in the murder.

DATA ANALYSIS

The tables on the following page illustrate a gap of almost 40% between B'Tselem's data and those of the IDF Spokesperson for the period covered by the report. In B'Tselem's previous report on house demolitions, we addressed the inconsistencies and internal contradictions in the data given by various entities in the defense administration, and we asserted:

We are not accusing the defence authorities of deliberate deception, but rather of not possessing accurate information, and of disregarding the gravity of the issue and the public's right to receive accurate and credible information.

Unfortunately, during the period covered by the report, a considerable portion of the demolitions and sealings which occurred were not reported. In our opinion, this is an indication of the continuing disregard to which we have pointed in the past.

Several weeks ago, B'Tselem sent the IDF Spokesperson detailed information about houses which had been sealed or destroyed, but do not appear in the list given us by the IDF Spokesperson. We were told that the information would be checked, but up until the date that this report was written, the investigation had not been concluded. We will readily publish the IDF Spokesperson's corrected data in one of our coming publications.

B'Tselem is currently conducting an in-depth investigation of the data. From a preliminary analysis, it appears that in the period covered by the report, there was a decline in the use of house demolition and sealing. In the West Bank, there was a drastic decline in the number of demolitions, and a rise in the number of sealings. In the Gaza Strip, there was a moderate rise, both in demolitions and sealings. We will highlight some of the preliminary conclusions which arise from the investigation.

A. Pretext

The pretext for the use of house demolition and sealings is, as emphasized in the introduction, charges against suspects, who in most cases have not been convicted in court, and in some cases, have not even been apprehended. House demolition and sealing were employed during this period especially against those suspected of attacking suspected collaborators.

A demolition order is usually issued against those suspected of assaulting or murdering Israelis, or of murdering suspected collaborators. Sealing is usually implemented against those suspected of membership in strike forces, throwing Molotov cocktails, attacking collaborators, and sometimes also against those suspected of involvement in murder. In certain cases, stone-throwers who injured Israelis have had their homes sealed.

| MONTH | HOUSE DEMOLITIONS ¹ | | | | HOUSE SEALINGS ¹ | | | |
|---------|--------------------------------|-----|-------|-----|-----------------------------|-----|-------|-----|
| | West Bank | | Gaza | | West Bank | | Gaza | |
| | B'T | IDF | B'T** | IDF | B'T | IDF | B'T** | IDF |
| Dec. 87 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Jan. 88 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Feb. 88 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Mar. 88 | 13 | 10 | 1 | 1 | 0 | 0 | 0 | 0 |
| Apr. 88 | 16 | 21 | 3 | 2 | 0 | 0 | 1 | 1 |
| May 88 | 2 | 1 | 2 | 2 | 5 | 6 | 1 | 0 |
| Jun. 88 | 10 | 10 | 5 | 5 | 8 | 9 | 1 | 0 |
| Jul. 88 | 6 | 10 | 7 | 6 | 6 | 6 | 3 | 1 |
| Aug. 88 | 13 | 13 | 2 | 7 | 2 | 2 | 0 | 0 |
| Sep. 88 | 0 | 16 | 0 | 0 | 0 | 1 | 0 | 0 |
| Oct. 88 | 17 | 3 | 7 | 7 | 6 | 0 | 6 | 1 |
| Nov. 88 | 17 | 17 | 6 | 7 | 8 | 12 | 4 | 9 |
| Dec. 88 | 4 | 4 | 4 | 5 | 1 | 1 | 1 | 0 |
| Jan. 89 | 15 | 15 | 9 | 0 | 6 | 8 | 8 | 5 |
| Feb. 89 | 5 | 1 | 2 | 2 | 11 | 3 | 3 | 4 |
| Mar. 89 | 14 | 15 | 18 | 12 | 3 | 3 | 2 | 4 |
| Apr. 89 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| May 89 | 21 | 12 | 2 | 0 | 11 | 7 | 0 | 0 |
| Jun. 89 | 14 | 12 | 15 | 11 | 10 | 11 | 4 | 9 |
| Jul. 89 | 3 | 0 | 10 | 6 | 2 | 0 | 2 | 3 |

| | | | | | | | | |
|-------|-----|-----|----|----|----|----|----|----|
| Total | 173 | 160 | 93 | 73 | 79 | 69 | 36 | 37 |
|-------|-----|-----|----|----|----|----|----|----|

| | | | | | | | | |
|---------|---|---|----|----|-------|----|----|---|
| Aug. 89 | 2 | 0 | 6 | 2 | 4 | 0 | 1 | 1 |
| Sep. 89 | 0 | 0 | 7 | 6 | 2 | 0 | 2 | 4 |
| Oct. 89 | 2 | 1 | 2 | 2 | 1 | 1 | 3 | 3 |
| Nov. 89 | 0 | 0 | 2 | 0 | 2** | 4 | 3 | 5 |
| Dec. 89 | 2 | 1 | 13 | 12 | 0 | 0 | 2 | 1 |
| Jan. 90 | 4 | 1 | 16 | 9 | 13*** | 17 | 2 | 1 |
| Feb. 90 | 4 | 4 | 7 | 4 | 14*** | 17 | 0 | 0 |
| Mar. 90 | 2 | 2 | 1 | 0 | 4 | 4 | 1 | 0 |
| Apr. 90 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| May 90 | 4 | 2 | 0 | 0 | 12 | 6 | 0 | 0 |
| Jun. 90 | 3 | 2 | 6 | 1 | 6 | 3 | 1 | 1 |
| Jul. 90 | 1 | 1 | 2 | 1 | 3 | 2 | 2 | 0 |
| Aug. 90 | 1 | 0 | 1 | 1 | 10 | 5 | 4 | 1 |
| Sep. 90 | 7 | 4 | 8 | 0 | 3 | 1 | 10 | 0 |

| | | | | | | | | |
|-------|----|----|----|----|----|----|----|----|
| Total | 32 | 18 | 71 | 38 | 74 | 60 | 31 | 17 |
|-------|----|----|----|----|----|----|----|----|

| | | | | | | | | |
|---------------------------------------|-----|-----|-----|-----|-----|-----|----|----|
| Total since beginning of the Intifada | 205 | 178 | 164 | 111 | 153 | 129 | 67 | 54 |
|---------------------------------------|-----|-----|-----|-----|-----|-----|----|----|

1. The data include only complete demolitions and sealings.
 * B'Tselem's data for the Gaza Strip have been updated since our last report.
 ** 3 additional houses which had been sealed, were later destroyed.
 *** An additional house which had been sealed, was later destroyed.

B. Influence of the High Court Ruling Preventing Demolition Prior to Allowing an Opportunity to Appeal

On July 30, 1989, the High Court ruled, on an appeal of the Association for Civil Rights in Israel (ACRI), that homeowners against whom a demolition order has been issued must be allowed to appeal before the demolition is carried out. A comparison between the period from the beginning of the Intifada until the High Court ruling, and the period from the High Court ruling through the end of September, 1990, reveals that:

1. The total number of houses demolished or sealed declined by approximately 22%.⁴
2. Following the High Court ruling in the ACRI case, the number of sealings rose, and the number of demolitions fell.⁵

4. Between August 1989, and September 1990, an average of 15 houses per month were demolished and sealed, while between December 1987 and July 1989, the monthly average was 19.

5. Prior to the High Court ruling, an average of 13.3 houses were demolished monthly, and 5.75 were sealed. Since the decision, there was a monthly average of 7.35 demolitions and 7.5 sealings.

C. Policy Differences between the Gaza Strip and the West Bank

At the beginning of August, 1989, Amram Mitzna, the OC Central Command (West Bank), left his post. He was replaced by OC Yitzhak Mordechai, who left his post in the Southern Command (Gaza Strip), and who was in turn replaced by OC Matan Vilnai.⁶ Whether this stems from the approach of the OC, or whether additional factors are involved (such as the situation in the field, and the involvement of other figures), the picture emerging from the comparison between the two periods we are concerned with here illustrates that under OC Yitzhak Mordechai, the sanction of demolition was employed less frequently than under other OC's.

6. During Mordechai's term as OC Southern Command, an average of 4.65 houses were demolished in Gaza per month, and less than two per month were sealed. Since Matan Vilnai became the OC Southern Command, 5 houses per month have been demolished in the Gaza Strip, and 2.2 per month have been sealed. During Amram Mitzna's term as OC Central Command, 8.65 houses were demolished monthly, and an average of almost 4 were sealed. Since Yitzhak Mordechai became OC Central Command, a monthly average of 2.3 houses have been destroyed, and 5.3 sealed.

THE LEGAL PERSPECTIVE

Petitions Submitted to the High Court against Demolitions and Sealings⁷

Over the years, the High Court of Justice has reviewed dozens of petitions against demolitions and sealings in the occupied territories. Approximately 30 such appeals have been submitted annually to the High Court since the beginning of the Intifada. To date, all appeals except one have been rejected by the Court.⁸

In July 1989 the HCJ restricted the demolition of houses for the purposes of punishment, as a result of a petition submitted by the Association for Civil Rights in Israel regarding the right of appeal before the demolition of a house is carried out (HCJ 358/88). The President of the Supreme Court, Judge Meir Shamgar, ruled that buildings must not be demolished in the territories without granting the injured parties the chance to appeal the order before the HCJ. Instant demolition, the ruling established, may be carried out only in a military or operational emergency:

When a military unit is carrying out an operational mission, in the course of which it must remove an obstacle or in order to overcome opposition, or in order to react immediately to an attack carried out against military forces or civilians at the time, or in similar circumstances.

7. In the course of preparing this section, we were aided, among other things, by a memo prepared by Attorney Kim Treiger, a volunteer lawyer for the Association of Civil Rights in Israel.

8. On May 6, 1990, the High Court reviewed an appeal submitted by Attorney Lea Tsemel, against the demolition of the house of Abed el-Rahim Abid, a resident of Gaza accused of membership in a strike force. In the decision (HCJ 802/89), the Court ruled that the military commander (the Commanding Officer of the Southern Command) erred regarding the accuracy of a significant portion of the facts upon which the demolition order was based. The judges instructed the Commanding Officer to recheck the demolition order. To date, the house has not been demolished.)

This decision of the HCJ was accepted despite the position of the defense establishment, and is attributed to the trend in the courts towards subjecting the military government's use of its extensive powers to judicial scrutiny.⁹

In the ruling, Judge Shamgar emphasized the special importance of granting the right of appeal in a case in which the results are irreversible, stating that:

If an action is required on the site, it is possible to be content with an action that is reversible, such as evacuation or sealing, and to suspend the demolition until the judicial ruling.

An examination of High Court rulings regarding house demolitions and sealings reveals the Court's attitude towards this sanction and its position regarding the various claims brought forth against its use.

A. The Extent of Judicial Scrutiny of the Military Commander's Judgement

The High Court does not examine the effectiveness or the wisdom of the application of the judgement of the military commander who issued the order; rather, it only examines the legality of the decision. In other words, did the commander act in a reasonable manner and base his decision on a sound factual foundation?

It is possible to claim, therefore, that supervision by the HCJ of the decision-making process of a military commander who orders that a house be demolished is extremely limited, and that up until now, the HCJ preferred not to "place itself in the shoes of the military commander" in examining the reasonableness of the decision.

In the beginning of 1989, Attorney Shlomo Laeker submitted a petition to the Supreme Court on behalf of a Kalkilya resident whose home was demolished. The petitioner, Atiya Khalil Mustafa, charged that the

9. The Supreme Court recently published its reasoning in the decision to cancel a temporary injunction preventing the demolition of buildings in the el-Bureij refugee camp in the Gaza Strip. In the el-Bureij case, the IDF decided to demolish the buildings not in accordance with Regulation 119 of the Defence (Emergency) Regulations, but as an operational necessity in order to widen the road where the Israeli reserve soldier Amnon Pomerantz was killed.

The Court ruled that, in principle, in such a demolition the family must be granted the right to state its case and to turn to the Supreme Court. But in the case of el-Bureij, the Court accepted the military's position that the demolition was an action that had to be carried out immediately in order to save human lives. Legal analysts argued that this case constitutes a troubling deviation from the abovementioned trend (of increasing judicial supervision of the military branch), and indicates a reluctance on the part of the Supreme Court to intervene in security considerations.

security forces demolished his house, claiming that his two step-brothers, suspected of stone-throwing, lived in his home. In fact, the petitioner argued, the two boys resided in their father's house. The father's house is a simple one, in contrast to the house demolished, which was a large luxurious home, containing three apartments.

In the petition (HCJ 539/89) Attorney Laeker drew attention to a number of improprieties in the actions of the military commander who had ordered the demolition. He argued that the commander had acted negligently throughout, and not in good faith. Among other things, Laeker charged that no serious investigation was conducted in order to ascertain where the boys actually lived. The petitioners submitted a long series of affidavits to substantiate their version of the disputed facts, as well as the results of a polygraph test which confirmed that the petitioners were being truthful. But the State Attorney's Office decided not to recheck the facts brought to light by the petitioners' claims, and based their position on classified material submitted to the Court.

In the ruling, the judges accepted the State's position in its entirety, and did not even address the evidence presented by the petitioners. The judges rejected the petition, asserting: "We are satisfied that on the basis of all the material presented, no mistake was made in the demolition of the house."¹⁰

B. The Validity of Regulation 119

The issue of the validity of Regulation 119 of the Defence (Emergency) Regulations has repeatedly been raised in many court rulings. There are those who argue that the Mandatory Regulations were abolished by the Jordanians and that as a consequence, Regulation 119 was not in force when the IDF entered the West Bank in 1967.

The position of the Supreme Court on this issue is that Regulation 119 has been in force continually since 1945, as a result of Jordanian legislation which remained in force from the period of the British Mandate (HCJ 434/79), and following, from a proclamation on the administrative and judiciary practices published when Israel occupied the West Bank in 1967. With respect to the Gaza Strip, the HCJ ruled (358/88) that "in the Gaza Strip no significant change in local legislation has been enacted since the Mandatory period. Therefore, no charge has ever been brought disputing the continuing authority of the Defence (Emergency) Regulations in the aforementioned area."

C. International Law

An additional argument has been put forth maintaining that the demolition and sealing of homes is in contradiction of the Hague and Geneva Conventions. This charge relies on the prohibition of collective punishment which appear in these conventions (Article 50 of the Hague

10. See, Moshe Rheinfeld, Ha'Aretz, "The Supreme Court Reassured," October 10, 1990.

Conventions and Article 33 of the Fourth Geneva Convention) and also in accordance with the prohibition in the Geneva Conventions (Article 53) of "destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons... except where such destruction is rendered absolutely necessary by military operations."

According to the HCJ's position (434/79, 897/86), these conventions are not relevant since Regulation 119 is part of the local law, which, in accordance with the Conventions (Article 43 of the Hague Conventions and Article 64 of the Fourth Geneva Convention), takes precedence over the other articles.

It should be noted that Knesset Member Amnon Rubinstein, together with the Association for Civil Rights in Israel, recently prepared a bill that would adopt the Fourth Geneva Convention as part of Israeli law. If this bill is approved, there will no longer be any basis for the argument that Regulation 119 takes precedence over the Geneva Conventions.

D. Collective Punishment

In its reaction to the charge that house demolition is a collective punishment, prohibited according to international law, the High Court ruled (HCJ 698/85) that:

There are no grounds for the petitioners' complaint that house demolition is collective punishment. According to their view, only the offenders and terrorists themselves should be punished, and in demolishing their houses, other family members are being punished as well since they will remain without a roof over their heads. If we were to accept such an interpretation, the aforementioned regulation would be emptied of any content, and all that would remain of it would be the ability to punish a terrorist who lived alone in his home.

Punishment imposed on a group of people for offenses they definitely did not commit, clearly constitutes collective punishment. The Court did not devote any attention to the fact that the demolition of a house is, by its very nature, a measure that punishes the family of the suspected offender, and not the offender himself. In the majority of cases, it is not the suspect, but rather a member of the family that owns the house. Accordingly, the demolition does not damage the suspect's right of possession, but rather that of his father or another relative. The demolition also does not usually damage the suspect's place of residence, since he is usually being detained by the security forces and is not residing at home.

E. The Deterrent Argument

The primary argument given to justify the use of demolition and sealing as a sanction is that it is a measure designed to deter the commission of similar offenses in the future.

In reference to this issue, Judge Ben-Dror (HCJ 698/85) ruled that the intention of Regulation 119 was to "attain the deterrent effect."

[Such a deterrent] must affect not only the terrorist himself, but also those surrounding him... he must know that his malicious actions will not only harm him, but are also likely to cause his family great suffering. In this respect, the sanction of house demolitions and sealings are no different than the imprisonment of a head of a family who is a father of young children who will remain without a guardian and provider.

Brigadier-General (res.) Aryeh Shalev, in his book on the Intifada, examined the influence of house demolitions in the occupied territories on the extent of violent incidents.¹¹ Shalev examined, among other things, whether the demolition of many houses in a particular month led to a reduction in the throwing of Molotov cocktails in the following month. According to Shalev, "The number of Molotov cocktails thrown did not decline in a month after many houses were demolished. Thus, for example, after the demolition of 23 homes in April, 1988, the number of Molotovs thrown rose to 163 in May."

In conclusion, Shalev established that "It may be said that over time, on one hand, the deterrent effect of house demolition was reduced, primarily since the PLO began granting monetary compensation to the families of those affected, and, on the other hand, that it had the effect of increasing the opposition to Israeli rule."

In a series of petitions submitted in recent months, Attorney Lea Tsemel requested that the Court issue a temporary injunction allowing her to request that the State Attorney's Office disclose statistics regarding the number of suspected collaborators injured, the date of injury, and the number of houses that were damaged as a result. Tsemel requested these statistics in order to prove her argument that despite the fact that when security forces used the sanction of house demolition and sealing frequently in the course of the Intifada, the number of rebellious actions in all their manifestations did not decrease. Consequently, in Tsemel's opinion, this sanction is not effective and is therefore unreasonable.

The HCJ judges have, until this day, consistently refused Tsemel's request and have preferred the yet unproven viewpoint of the security forces that the demolition and sealing of houses is an effective deterrent measure. In HCJ ruling 982/89 and 984/89 Judge Goldberg states:

Even if the opinion exists according to which the aforementioned measures are not at all effective, the defendant's viewpoint stands in opposition

11. Aryeh Shalev, The Intifada - The Reasons, Characteristics and Implications, Jaffe Center for Strategic Studies, Tel Aviv University, 1990, pp. 127-129.

that these measures are extremely effective and that had they not been employed, the situation in the area would have deteriorated even further. The issue before us therefore, is one of contradictory viewpoints and different assessments, and whether one or another is right cannot be proved in a court of law. In such a situation, we may not challenge the viewpoint of the defendant who is responsible for the security and public order, and we may not say of this viewpoint that it exceeds the bounds of reason.

The position of the HCJ does not address the question of whether the defense establishment's viewpoint regarding the efficacy of house demolitions justifies such a severe infringement of human rights.

THE DEMOLITION OF THE KARABSA FAMILY'S HOUSE IN EIN ARIK

The house was built in 1965, and contained 17 rooms inhabited by 25 people (excluding the son, Muhammad, 18, arrested on suspicion of committing the offenses that led to the demolition). The house was demolished on October 30, 1990.

The house's owner, Hashem el-Abd Karabsa, 60, is married to two women and has 14 children. Two of his daughters are married and live outside of the family home. In the house live the following family members: Hashem, the father, and his two wives; his son Hiri, 22, and his wife and daughter, Fatma, 7 months old; his son el-Abd, 21, and his wife; his son Rokhi, 32, and his wife and seven children, the oldest of whom is 12 and the youngest of whom is 18 months old; eight children who are of school age.

According to HCJ ruling 2665/90, Muhammad Hashem Karabsa was arrested on February 27, 1990. In the course of his interrogation, he confessed to the following offenses: Membership in a group whose aim was to kill Palestinian collaborators; preparing and throwing 14 Molotov cocktails at Israeli vehicles and administrative buildings; participation in three murders of individuals suspected of collaborating with the Israeli authorities (the three suffered multiple stab wounds in all parts of their bodies, and one was decapitated); and two attempted murders of suspected collaborators.

On May 14, 1990, Karabsa was formally charged with the above offenses.

On June 3, 1990, the suspect's father was notified of the intention to demolish his house.

On June 5, 1990, his father appealed the demolition order.

On June 11, 1990, the father was notified that his appeal had been rejected.

On June 17, 1990, the father appealed to the HCJ through his attorney Mr. Awisat, and requested that the demolition order be rescinded on two grounds:

1. The house was comprised of a number of separate residential units in which five families of the father's extended family lived. Muhammad, the son under arrest, lived in one of the five units in which there were two rooms. The father argued that the demolition of the other four units, in which 26 family members lived, was unjustified.

2. Muhammad Karabsa's trial had not yet taken place, and therefore he had not yet been convicted of the offenses of which he was charged.

On September 13, 1990, the HCJ rejected his appeal. In the ruling, Judge M. Ben-Yair wrote:

An examination of the detailed confession given by the detainee to his interrogators makes clear that the offenses attributed to him are extremely serious. They prompted the defendant to employ the pre-emptive measures in accordance with Regulation 119 of the Defence (Emergency) Regulations, and there is no place for our intervention in the defendant's judgement.

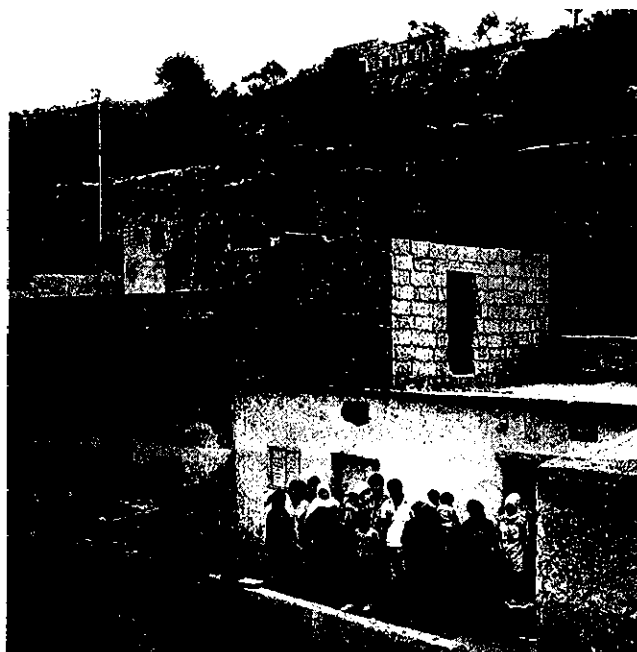
Employment of the aforesaid pre-emptive measures is not necessitated by the charges brought, but by the extremely serious offenses admitted to in the suspect's confession. Therefore, the fact that the suspect's trial has not yet begun does not justify our intervention in the defendant's decision. With respect to the claim that the demolition should be carried out only on the suspect's residential unit, there is no disagreement that this unit constitutes an inseparable part of the petitioner's home, and therefore we will not accept the argument that only the one unit should be demolished.

On October 10, 1990, at 12:00 noon, the IDF declared a curfew in Ein Arik. At 4:30 p.m., 40 soldiers arrived at the Karabsa home. An officer named "Captain Muslah" informed the owner of the house that the home was about to be demolished, and ordered him to remove the contents of the house. The Karabsa family, aided by their neighbors, evacuated the house and removed its contents in one hour.

The soldiers then tried to demolish the house with a bulldozer, but the bulldozer was unable to maneuver because of the difficult terrain. The house was finally blown up with explosives, causing considerable damage to the neighboring homes. In one house, the tin roof caved in and furniture was damaged. In two other houses, holes were made in the walls, and in two additional houses cracks appeared in the walls.



The house near the Karabsa family's house, damaged during the demolition.



The Karabsa family in Ein-Arik refugee camp near Ramalla, prior to the demolition.



The Karabsa family's house after the demolition.

CONCLUSION

The demolition and sealing of houses is a method of punishment unique to Israel and is carried out through an administrative process, without trial, prior to determining the guilt of the individual on account of whom the house is being demolished. As we have shown, those injured by house demolitions are family members of the suspected security offender, and not the offender himself.

There is an apparent decline in the number of houses demolished and sealed during the period covered by this report. Despite this trend, the fact remains that over 200 homes were demolished and sealed during this period (August 1989 - September 1990).

The decline in the overall number of houses demolished or sealed began, it seems, following the High Court of Justice's decision to allow homeowners to petition to the Court before their homes were demolished. Following this decision, there was a considerable rise in the number of house sealings, while the number of demolitions declined.

In the period covered by this report, there was a decline in the number of demolitions, and rise in the number of sealings in the West Bank. In this same period, in the Gaza Strip, there was a moderate rise, in the number of both demolitions and sealings.

The report points to a considerable discrepancy between the data B'Tselem collected and the data received from the IDF Spokesperson. B'Tselem considers the fact that the security establishment does not have complete information regarding the extent of house demolitions and sealings, as evidence of a negligent attitude.

In the chapter dealing with the High Court's approach to petitions regarding house demolitions and sealings, the report points to the fact that despite the possibility granted the residents of the occupied territories to petition to the High Court against the demolition or sealing of their homes, only one petition has actually been accepted among the dozens of appeals presented.

The judiciary supervision of the High Court regarding the decisions of the military commander is very restricted, and the judges tend not to intervene in security considerations when examining the reasonableness of decisions of the military echelons.

The High Court of Justice has consistently rejected arguments regarding the inapplicability of Regulation 119 of the Emergency (Defence) Regulations, 1945 upon which the demolitions and sealings are based. The argument that the sanction of house demolition and sealing is in contradiction to international law has been rejected in like fashion.

The High Court of Justice has not accepted the charge that the demolition and sealing of homes constitutes collective punishment, and has supported the security establishment's viewpoint, that has not been proved, which regards this sanction as an effective deterrent.

B'Tselem maintains that even if the security establishment could prove a

correlation between house demolition and a decline in the level of violence, this would not be sufficient to justify such a severe abuse of human rights.

In conclusion, we must say with regret that in rejecting all the appeals (except one) that have been presented to date, the High Court of Justice is granting legitimacy to the continuing abuse of human rights and to the use of a punishment that is unrivaled in its severity and that has been described by the former president of the Supreme Court, Judge Agranat, as "inhuman."

INTIFADA FATALITIES – TOTALS

Since the beginning of the Intifada through the end of **October, 1990**, **712** Palestinian residents of the occupied territories have been killed by Israeli security forces. Of these:

- * **Shooting deaths** (including plastic and "rubber" bullets) **678**
- * **Non-shooting deaths** (beatings, burns and other) **34**
- * **Children: 161**, including
 - Aged 12 and younger **45**
 - Aged 13 to 16 **116**

At least **83** additional people, including more than **30** infants, died a short time after exposure to tear gas. From a medical standpoint it is difficult to pinpoint exposure to tear gas as a direct and sole cause of death.

An additional **33** Palestinians have been killed, apparently by Israeli civilians, and **8** were killed by "collaborators."

During this period, **11** Israeli security force members, and **11** Israeli civilians, including **3** infants, were killed in the occupied territories by Palestinian residents.

According to the **Associated Press**, **293** Palestinians suspected of collaborating with the Israeli authorities have been killed in the occupied territories since the beginning of the Intifada.

During the same period, **21** Israeli civilians, **4** tourists, and **6** Israeli security force members were killed **within the Green Line** by Palestinian residents of the occupied territories.

At least **15** Palestinians from the territories have been killed within the Green Line by Israeli civilians.

FATALITIES IN OCTOBER - DATA ANALYSIS

In the month of October, 1990, according to B'Tselem's data, 31 Palestinians were killed by security forces' gunfire in the territories, 28 of them in the West Bank (including East Jerusalem), and 3 in the Gaza Strip.

According to the Associated Press, 21 Palestinians suspected of collaborating with the authorities were killed in the month of October.

In the month of October, there was a sharp increase in the number of fatalities in the territories. After four months during which the number of fatalities was relatively low, this month 10 Palestinians were shot dead in the West Bank, and 3 in the Gaza Strip. 2 additional Palestinians died of their wounds, and 16 residents of the territories (and one Israeli civilian) were shot dead in the Temple Mount events on October 8.

One Israeli citizen and two security force members (a female soldier and a policeman) were stabbed to death in the Jerusalem neighborhood of Bak'a by a Palestinian resident of the territories, apparently in an act of revenge for the Temple Mount events.

One Palestinian was shot in East Jerusalem, apparently by an Israeli civilian, and later died of his wounds. Two residents of the territories were killed by Israeli civilians inside the Green Line.

Seven of the those killed were residents of the Jenin area.

