

DEMOLITION AND SEALING OF HOUSES

**as a Punitive Measure
in the Israeli-occupied West Bank**

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CONTENTS

INTRODUCTION	1
THE DEMOLITION/SEALING	3
THE ISRAELI JUSTIFICATION OF THE PRACTICE AND A RESPONSE THERETO	8
(1) Authorisation by prevailing local law	8
(2) Express authorisation under the Fourth Geneva Convention 1949	11
(3) No contravention of other provisions of international law or natural justice	13
(a) collective punishment	14
(b) extra-judicial punishment	16
(c) reprisal	18
(d) arbitrary interference in home and property	19
(4) Effective as a deterrent to others	20
(5) Preferable to more drastic punishment	22
(6) Used only in the most serious cases	23
THE ROLE OF THE ISRAELI HIGH COURT OF JUSTICE	25
The High Court's Powers of Review	27
The Burqa Decision	28
CONCLUSION	31
NOTES AND REFEPENCES	32
APPENDICES	37
1. The Burqa Decision	37
2. Examples of Demolition and Sealing Orders	42
3. Lists of Houses Demolished or Sealed 1985-6	45

INTRODUCTION

On 24 March 1986, the Israeli High Court of Justice rejected a petition submitted by the residents of three houses in the village of Burqa in the Occupied West Bank (1). They were appealing against an order of the Military Commander of the West Bank that their houses be demolished. This order was based on the fact that a member from each family was suspected of belonging to an armed group responsible for stabbing and wounding an Israeli settler working as a tour guide in the West Bank. On 15 April 1986 the three houses were destroyed leaving eleven people, excluding the suspects, homeless. At the time of the demolitions none of the suspects had been convicted; two were in prison but had not been tried, while the other had not yet even been detained.

Demolition and sealing of houses of Palestinians suspected of political offences has been carried out by the Israeli military authorities since the beginning of the occupation. In the early years this measure was much used, the Israeli authorities themselves giving the figure of 1265 houses blown up in the first 15 years of occupation (2), while other estimates are many times higher (3). This policy, like other administrative measures such as deportation and administrative detention, was increasingly condemned towards the end of the 1970's, both internationally and inside Israel. Probably in response to such pressure, the practice of demolishing and sealing houses diminished in the late 1970's and early 1980's, though it was never discontinued entirely (4).

Since 1985, however, this decline has been sharply reversed. The Burqa demolitions are only one example of a total of 102 houses, involving more than 800 inhabitants, in the occupied West Bank demolished or wholly or partially sealed by the Israeli military authorities for alleged 'security' reasons during 1985 and 1986. Residents of a number of other houses, believing their houses to be scheduled for demolition or sealing, submitted appeals against this action to the Israeli High Court, which were still pending at the end of 1986. The role of the High Court will be discussed in more detail later. A list giving details of the houses and their inhabitants thus affected from January 1985 to December 1986 is appended.

The purpose of this study is to examine the use of demolition and sealing of houses as a punitive and/or deterrent measure by the Israeli authorities in the West Bank. The justifications given by the authorities for their action will be examined and responded to in the light of local and international law.

THE DEMOLITION/SEALING

The demolition or sealing of a house for 'security' reasons generally takes place after the arrest of a resident of the house on suspicion of having committed a political offence involving or potentially involving violence, and is almost invariably carried out before the arrested person has been tried or convicted. Occasionally it takes place when there has been no arrest if the suspect cannot be found*, or even after the killing of a suspect**.

High Court Justice Meir Shamgar, then Israel's Attorney-General and now the President of the Israeli High Court, explained in 1971 in an article on the observance of international law in the Occupied Territories

* Of the three houses demolished in Burqa on 24.3.86, one belonged to the brothers of Tariq Daghlas, who had still not been arrested at the time of writing. The house was inhabited by Tariq's parents and four brothers and a sister who now live with neighbours.

** Two Palestinians from Gaza were killed while under arrest following the hijack of a bus on 12 April 1984. The houses of their families were demolished on the following day.

Four Palestinian youths from the Hebron area were killed on 6 October 1985. According to the military authorities, they were suspected of having carried out attacks, and after being surrounded were killed in a shoot-out. The houses of their families were demolished two days later, on 8 October 1985.

that: "Demolitions are of two kinds: (a) actual demolition, or (b) eviction of a person from the building and closing of the building or flat, without destroying it. The latter occurs mainly when there are other inhabitants in the building who have no connection to the offence" (5). By 'other inhabitants' he presumably meant other households in the same building, since there are invariably other family members living in the building, who are not alleged to have participated in any offence.

The criteria for ordering a house to be demolished or sealed do not seem so clear in practice. Lawyers who represent victims of demolition or sealing say that whether a house is sealed or demolished seems to depend variously on the severity of the alleged offence, the likelihood of damage to neighbouring dwellings, the nature of the neighbourhood, whether the house is owned by the family or only rented, and the age of the alleged offender. None of these factors is uniformly applied, however. Law in the Service of Man / al-Haq has documented instances where neighbouring houses have been damaged quite foreseeably by a demolition *; where houses

* The demolition of the home of 'Abbas Khader Khamis Suleiman in Beit Ur el-Tahta on 16.3.86 caused severe cracks to appear in the ceiling of the house below.

When the house of Naser Muhamed Yusef Naji in al-Amari Refugee Camp was sealed on 4.2.86, the electricity supply to the neighbouring house was also cut off since the meter to the two houses was in Naji's house. The military authorities did not allow the family time to ask the electricity company to move the meter. The inhabitants of the second house depended for their livelihood on the electricity supply in order to make sweets, and had to pay 55 Jordanian dinars (approximately \$165) for it to be reconnected. (cont'd over)

were demolished for alleged offences not involving any death or serious injury *; where rented houses have been demolished in the absence of the landlord, including houses registered in the name of UNRWA (the United Nations Relief and Works Agency for Palestinian Refugees in the Near East) ** ; and where houses of families of detainees aged 18 and under have been destroyed, and houses wholly or partially sealed where the detainee is as young as 12 years old ***.

The operation is usually carried out at night to ensure least disturbance, or, if during the day, a curfew is imposed or a

(cont'd) The demolition of the house of Majed Daghlis's family in Burqa on 15.4.86 caused the roof of a room of the neighbouring house to collapse completely.

* The demolition of 2 houses in Yatta on 26.10.85 followed the arrest of members of the families on suspicion of preparing and carrying out operations. No one is alleged to have been injured in these incidents.

** The three houses demolished in al-Fawwar Refugee Camp on 30 December 1985 were all on UNRWA-owned land. UNRWA also issued a press release on 25.6.81 protesting against the demolition of UNRWA-built houses in Bureij Refugee Camp in Gaza, and the damage caused to neighbouring houses.

*** Three houses in 'Arabuneh were demolished on 27 July 1985 in response to alleged acts of suspects aged 18, 18 and 16; three houses in al-'Ein Refugee Camp were sealed on 15 August 1985 after the arrests of youths aged 16, 15 and 15; and two houses in al-Am'ari Refugee Camp and two houses in al-Bireh were partially sealed following the arrest of youths aged 15, 12, 13 and 14.

closed military area declared. The first formal notification the family receives of an impending demolition or sealing is when soldiers arrive at the house and inform the family that they have a period, typically of between half an hour and two hours, to remove their belongings from the house. Sometimes there is no opportunity to remove belongings, or the soldiers may do it themselves, often breaking or damaging household possessions in the process. The length of time given and the curfew ensure that the family have no opportunity to contact their lawyer or other assistance. Regardless of whether all the furniture has been removed, the family are then excluded from the area and the house bulldozed, blown up or sealed *.

* When the house of Subhi 'Ali Salim al-Waridat's family in Dhahariyye was sealed on 12.4.83, the family were given no more than an hour to remove their belongings and the men were forbidden to help. When it was clear that the women would not be able to complete the work in the time given, the soldiers started doing it themselves, but moved large pieces of furniture without the necessary care, thus breaking them.

In Beit Ur al-Tahta, soldiers moved belongings out of the house of 'Abbas Khader Khamis Suleiman before demolishing it, on 16 March 1986. In so doing they broke glass objects, and burst bags of flour and sugar onto the road by throwing them down from an upper floor.

See also Law in the Service of Man, 'In Their Own Words', 1983, pp.31-35, for affidavit accounts of house demolitions by the victims of this practice, including six affiants who describe how their furniture was broken in the course of the demolition of their houses.

The land on which a demolished or totally sealed house stood is forfeited and frequently declared a 'closed area', meaning that no one can enter or leave without permission, and the family may not even be allowed to remain on the land. No help is given to the family by the authorities to alleviate their hardship or to provide shelter, other than the minimal assistance available to all, according to means, from the Social Welfare Department. Unless neighbours or relatives can take them in, the family is dependent for shelter on the International Committee of the Red Cross which provides many such families with tents.

The family is forbidden to reopen or rebuild the house without permission from the military authorities, and checks are made periodically to ensure that this has not occurred. Permission to rebuild or reopen the house is rarely given to the family, even after the detainee is released.

It is clear that great hardship is caused by this practice. A family which in many cases has already had a breadwinner detained is also left homeless and often with inadequate clothing or food. Social and medical problems also arise if families are divided or have to live in unsuitable or primitive conditions, or move to an area where they have no local support *.

* Generally conditions are harshest in refugee camps where life is already hard before demolition or sealing, due to overcrowding and lack of facilities. Those not allowed to stay on their land, or whose families are too numerous to stay with neighbours or relatives, also suffer greatly. The family of 'Issa Abu Sneid, whose house in Yatta was demolished in October 1985, spent the eight months following the demolition in an underground cave ten kilometres from Yatta, until they were obliged by the landowner to leave even the cave.

THE ISRAELI JUSTIFICATION OF THE PRACTICE
AND A RESPONSE THERETO

The main arguments presented by the Israeli authorities and their spokespeople to justify the use of demolition and sealing in these cases are:

- (1) that prevailing local law authorises the demolition or sealing of houses;
- (2) that demolition of houses is expressly permitted by the Fourth Geneva Convention;
- (3) that the demolition and sealing of houses does not contravene other provisions of international law or natural justice;
- (4) that demolishing or sealing a house acts as an effective deterrent;
- (5) that it is preferable to demolish a house than to impose a more drastic penalty;
- (6) that houses are demolished or sealed only in the most serious cases.

These points will be discussed here in turn.

(1) That prevailing local law authorises demolition and sealing of houses:

The Israeli military authorities carry out the demolition and sealing of houses relying on Regulation 119(1) of the Defence (Emergency) Regulations 1945, passed during the British Mandate, which permits a military commander to order:

... the forfeiture 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 have 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 structure or anything growing on the land.

This article authorises such action in a very wide variety of circumstances, requiring only that the house be in the same general area where an offence is said to have taken place, or a suspect to have lived.

The first step in the procedure is the confiscation of the structure or the land by order of the Military Commander; the property on the land can then be demolished or sealed as he orders. Under these regulations the order to demolish or seal is an administrative order made by the Military Commander of the area. No judicial procedure has to be followed; that is to say that there is no need for the matter to be considered by a court before this action is taken, although it has been said that each demolition must be individually approved by the Israeli Minister of Defence (6). There is no right of appeal against the decision as such, but in practice residents of the Occupied Territories are able, if given the time, to petition the Israeli High Court against administrative actions of the Military Commander, as will be discussed below.

According to Article 43 of the Hague Regulations of 1907, which are binding on

Israel as customary law, and Article 64 of the Fourth Geneva Convention of 1949 Relative to the Protection of Civilians in Time of War, to which Israel is a signatory (7), a belligerent occupier is obliged to respect the laws prevailing in occupied territories at the time of the occupation. The Israeli occupying authorities, in compliance with this rule, issued a proclamation in 1967 confirming the validity of the existing laws in the area (8). They then argued that the Defence (Emergency) Regulations 1945 were valid at the time of the occupation, and that they thus continue to be applicable.

According to the British Government, however, the Defence (Emergency) Regulations 1945 were revoked before the end of the Mandate by the Palestine (Revocation) Order in Council 1948. Palestinian lawyers confirm that the Emergency Regulations were not used under Jordanian rule of the area and were considered to have been repealed by the British Mandate. They add that even had this not been the case, subsequent Jordanian legislation would have implicitly repealed the regulations in any event.

When reintroduced by the Israeli authorities after the occupation, this argument was made many times in debate and before the High Court by distinguished Palestinian and Israeli lawyers conversant in Jordanian law, but, perhaps not surprisingly, Israel never accepted this view (9). It is significant, however, that a military order was passed in 1967 (10), shortly after the occupation began, stating that "for the avoidance of doubt" emergency regulations remain in force unless explicitly repealed, presumably to guard against any judicial decision that they are not in fact applicable.

When used by the British under the Mandate, against both Palestinians and Jews, the Defence (Emergency) Regulations 1945 were

strongly opposed and condemned by prominent members of the Jewish community (11). It is ironic that the same regulations are now used by the Israeli authorities against the Palestinian population under their control, most notably to legitimise the severe measures of house demolition and deportation.

It is also worth noting that only houses belonging to Palestinians in the Occupied Territories are treated in this way. No such action has been taken so far against Jewish settlers in the area who have been convicted of committing violent offences, including murder, against Palestinians. Nor is this power under the Defence (Emergency) Regulations made use of in Israel itself, although it is still considered valid law.

(2) That demolition of houses is expressly permitted by the Fourth Geneva Convention 1949:

Destruction by the Occupying Power of real or personal property is permitted by Article 53 of the Fourth Geneva Convention 1949, but its use is strictly limited to circumstances "... where such destruction is rendered absolutely necessary by military operations." This is an amplification of Article 23(g) of the Hague Regulations of 1907 which prohibits destruction of enemy property except where "imperatively demanded by the necessities of war". The International Committee of the Red Cross has approved an interpretation of the words "military operations" to mean "the movements, manoeuvres and other action taken by the armed forces with a view to fighting" (their emphasis). The ICRC goes on to say:

Destruction of property as mentioned in Article 53 cannot be justified under the terms of that article unless such des-

truction is absolutely necessary - i.e. materially indispensable - for the armed forces to engage in action, such as making way for them. This exception to the prohibition cannot justify destruction as a punishment or deterrent, since to preclude this type of destruction is an essential aim of the article. (12).

The Israeli military authorities make no claim that houses are demolished or sealed in order to carry out military operations, let alone because such operations render the demolitions an absolute necessity. Rather, the proclaimed intention is to punish and deter. This aim was emphasised in the High Court case of Daghlas and others -v- the Military Commander of Judea and Samaria (13), where it was stated, summarising earlier decisions of the High Court, that "...the aim of the regulation is 'to achieve a deterrent effect', and such an effect should naturally apply not only to the terrorist himself, but to those surrounding him, and certainly to family members living with him. He should know that his criminal acts will not only hurt him but are apt to cause great suffering to his family".

Article 53 therefore not only does not authorise demolitions as a punishment or deterrent, such as those carried out by the Israeli military authorities, but actually prohibits them. This view is confirmed by international lawyer Frits Kalshoven, who writes: "the practice adopted by the Israeli occupying authorities of demolishing houses in retaliation for suspected support of the Arab guerrillas and their cause fails to find justification in the law of war and in the Fourth Geneva Convention of 1949 in particular." (14)

Where international law prohibits certain actions, domestic law should not be used to override international law and legitimise action contrary to that law. Thus Professor

Gerhard von Glahn, discussing reprisals, states that "...invocation of domestic law or of domestic custom on the part of the belligerent occupant could not affect the essential illegality of the alleged reprisal: such law and such custom could not take effect in territory under belligerent occupation, in view of the Fourth Geneva Convention and its provisions" (15). Thus even if the Defence (Emergency) Regulations were still valid law in the Occupied Territories, they cannot legitimately be invoked to authorise action outlawed by the Fourth Geneva Convention.

(3) That the demolition or sealing of houses does not contravene other provisions of international law or natural justice:

Israeli authorities and courts have repeatedly denied that demolition and sealing of homes constitutes any violation of international law, but Israel's view is not shared by many. A contrary position is taken by many local and most international organisations who have considered the matter, including the UN General Assembly, the International Committee of the Red Cross, the US State Department, UNRWA, the Association for Civil Rights in Israel and the Israeli League for Civil and Human Rights (16). It is argued variously that the demolition and sealing of houses does in fact violate international law, in that it constitutes:

- (a) collective punishment
- (b) extra-judicial punishment
- (c) illegal reprisal
- (d) arbitrary interference in home and property.

These points will be dealt with in turn.

(a) Collective Punishment:

The demolition or sealing of a home clearly has the effect of a severe punishment not only on the detainee, on the basis of whose alleged activities the action is taken, but on the owner and inhabitants of that house who, though not accused of any crime, are deliberately left homeless.

The punishment of people for an action for which they are not themselves responsible, termed collective punishment, is absolutely prohibited under both Article 50 of the Hague Regulations of 1907 and Article 33 of the Fourth Geneva Convention of 1949.

The demolition and sealing of homes by the Israeli military authorities has been condemned time and again as constituting such collective punishment. Israel always rejects this claim, maintaining that it is a punishment only of the suspected offender and not of his family, who merely happen to suffer as a result. The facts show otherwise. Each demolition or total sealing of a house since May 1985 has left between 2 and 25 people, in addition to the suspect, homeless.

A clearer statement of the policy was given by the High Court in the judgment in the case of Daghlas and others -v- The Military Commander of the Judea and Samaria Region, (17) in which it was stated that the suspect "should know that his criminal acts will not only hurt him, but are apt to cause great suffering to his family." Here it is made clear that there is a specific intention to hurt the family of the alleged criminal, not as a by-product of a punishment inflicted on the prisoner, but as a primary aim. The suspect is in prison and therefore is not immediately left without shelter; moreover he or she is rarely the owner of the house so does not suffer any direct financial penalty. Those the military authorities intend to hurt

by this measure are not suspected of any crimes, but are paying for alleged acts of another. This practice of demolishing or sealing houses is undeniably a punishment deliberately inflicted on innocent people and so constitutes collective punishment, in violation of the Fourth Geneva Convention.

One example may serve to illustrate the point. 'Ali Mohamed Shehadeh al-Khalailah was killed in the Hebron hills on 6 October 1985, in a shoot-out with the Israeli authorities, according to official reports. His elderly parents' house in Samu', near Hebron, was demolished 2 days afterwards. But 'Ali had lived in his parents' house for only a few weeks before his death, having been living in Ramallah with his wife and children for the previous five years. When the house was demolished 'Ali was already dead, so was not in a position to be punished further; the only ones to suffer were his family who were not accused of any offence.

It is also sometimes argued by or on behalf of the Israeli authorities that demolition and sealing does not take place unless there is a direct connection between the act and the house. Thus it was claimed by the Military Advocate-General of the IDF that "[n]o such action is taken unless ... there [is] a direct connection between the building and terrorist and other violent activities." (18). Israeli government experts have stated that this provision "has been used with extreme caution and has been invoked only where houses were used to prepare explosives and store ammunition or as bases for the use of arms and the throwing of grenades..." (19).

That this is not so is clear from a scrutiny of the charges or of the High Court judgments. For instance it can be seen from the Burqa case attached that no facts are cited to suggest that any of the houses were used in the commission of the alleged offence.

This is so in by far the majority of cases. The action is taken directly against the houseowner and the inhabitants of the house, usually the family of the suspect, who are not themselves accused of committing any offence. The primary purpose is to make the family suffer.

This point is well illustrated in the case of two houses demolished in Jab'a in 1985. The parents of Mohamed Ahmed Abed al-Hamid al-Tus had moved from their old house in the village to a new one with all their family. When Mohamed got married he moved with his wife back to the old house. Following Mohamed's arrest, the old house in which he had been living with his wife and children was demolished on 8 October 1985. A little over a month later, on 17 November 1985, the soldiers returned and demolished the new house too, in which his parents and other members of the family were living.

(b) Extra-Judicial Punishment:

It is a fundamental requirement of the rule of law and of human rights, confirmed in Article 10 of the Universal Declaration of Human Rights and in other human rights instruments, that no one shall be tried or punished without due process of law and a fair trial.

However, demolition and sealing of houses of suspects is carried out by the Israeli military authorities without prior trial of the suspect or other legal proceedings; nor is there, in any but exceptional cases, any opportunity to challenge the decision before it is put into effect. The demolition or sealing is carried out pursuant to an administrative decision of one individual, the Area Commander.

The usefulness of such action, unhampered by judicial process, was emphasised by General

Shlomo Gazit, then Military Administrator of the Occupied Territories, who said in 1968:

The effectiveness of the blowing-up of houses lies in the fact that it is an immediate punishment and if we want to deter somebody, we cannot stop and wait for the normal, legal machinery... If we want to deter terrorists the effects must be seen immediately by the population. Employing these [Defence Emergency] Regulations, we have the possibility of doing this immediately (20).

It seems that it is considered a positive virtue of the measure that it can be carried out before trial, without opportunity to challenge the decision. Following this principle, in almost every case - except when a petition to the High Court delays the execution of the order - the action is carried out before conviction, and often within days of arrest.

Wishing to reassure his audience that the suspicion on which such action is based is usually well-founded, General Gazit added: "Whenever there is the least doubt - for example, if the man is not in our hands, or is in prison but has not admitted his guilt - the house is not blown up" (21). That this is not the case, at least not any longer, is clear from the cases, detailed above, of houses demolished before arrest or after death, directly contrary to the general's words.

In some ways the penalty suffered by the owner and inhabitants of a demolished or sealed house is harsher than a sentence delivered in court, in that the penalty imposed is of unspecified duration. The family is given no idea as to when, if at all, they will be allowed to rebuild on the land, or re-open a sealed house or room, and must live and plan their lives and those of their families with this uncertainty.

The process of charging, trying, convicting and sentencing the suspect proceeds, if at all, quite independently of the administrative measure of the demolition or sealing. As Frits Kalshoven points out: "Any attempt to justify the destructions as punitive measures inflicted on the individual suspects is bound to fail, in view of the conspicuous absence of anything like a fair and regular trial preceding the execution of the measures and establishing the liability to punishment of the persons in question" (22).

(c) Reprisal:

The demolition or sealing of a house is a drastic action taken against innocent people, and one which, prima facie, is prohibited by international law.

Under international law, however, some acts otherwise prohibited may be considered legal if they are 'in the nature of a reprisal'. Reprisals have been defined as the performance of "... acts otherwise prohibited by the laws of war, which can be taken exceptionally for the purpose of compelling the enemy to discontinue illegitimate acts of warfare" (23). Under certain circumstances this could legitimise punitive measures taken against innocent people.

In a symposium in 1971, High Court Justice Meir Shamgar, then Attorney-General, denied that the demolition of houses was carried out by the Israeli government by way of reprisal, saying that "demolition of houses is a punitive measure, according to local law, which is directed personally only against the person who has been culpable of the commission of a certain offence; a punishment for an offence is not a reprisal" (24). That this is not in fact so has been shown in the above section dealing with collective punishment. On the contrary, the practice is repeatedly

justified by the claim that it is an effective deterrent, as will be discussed in the following section, and thus is indeed a reprisal in intent.

Are the demolitions and sealings carried out by the Israeli authorities then a legitimate reprisal? In relation to civilians under occupation, Article 33 of the Fourth Geneva Convention states categorically: "Reprisals against Protected Persons and their property are prohibited". Jean Pictet, in his authoritative commentary on the Geneva Conventions, states that this provision "is absolute and mandatory in character and thus cannot be interpreted as containing tacit reservations with regard to military necessity" (25).

Demolition and sealing of houses, forbidden by the laws of war as was seen above, then cannot be justified as a reprisal in occupied territories, since reprisals are forbidden in occupied territories under all circumstances. This view is supported by Professor Gerhard von Glahn, a leading expert in the laws of war. In debating the question of whether demolition of houses by a belligerent occupier could amount to a legitimate reprisal, von Glahn concluded that, although there are circumstances where reprisal is permissible in warfare, such demolition can not be a legitimate reprisal to prevent future acts in occupied territories (26).

(d) Arbitrary Interference in Home and Property:

In relation to an owner and other inhabitants of a house who are not suspected of any offence, demolition of their home is clearly an oppressive and arbitrary action. They are penalised for an alleged action in which they played no part and over which they had no control.

Such arbitrary interference with a person's home and arbitrary deprivation of a person's property are prohibited in Articles 12 and 17(2) of the Universal Declaration of Human Rights of 1948, which state respectively: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence," and "No one shall be arbitrarily deprived of his property".

(4) That the demolition and sealing of houses acts as an effective deterrent to others:

The claim that demolition and sealing of houses is an effective deterrent is often made by the Israeli authorities, judiciary and academics. Thus High Court Justice Meir Shamgar, for example, wrote in 1971, in his paper on the observance of international law in the Occupied Territories, that: "... (demolition) is of the utmost deterrent importance" (27). The Jerusalem Post reported on 5 August 1985 that "... security experts advised that (demolition of houses) is (one of) the most effective deterrents" (28). In the High Court decision of Sahwil -v- the Commander of the Judea and Samaria Region (29) the judges ruled that demolition is "... an unusual punitive action whose main purpose is to deter performance of similar acts." Again, following the demolition of two houses in Yatta in October 1985, the Jerusalem Post reported military sources as saying: "The [demolition of houses] in Yatta was for deterrence. Today following the operation, the villagers know they can be surrounded by soldiers, and that every home is liable to be demolished" (30).

Even if a measure can be shown to be an effective deterrent, this cannot of course justify going further than international law allows, either by punishing those not guilty of any offence or by imposing illegal penal-

ties. However, since the deterrent effect is repeatedly cited in support of the continued use of the measure, we will examine it here in more detail.

The effectiveness of any given deterrent, such as demolition and sealing of houses, is notoriously difficult to support or refute. A few points can be mentioned, however:

(i) The deterrent effect is generally supposed to be strongest on people close to those whom it affects. Yet LSM/al-Haq has records of many instances in which following the demolition of a home, others in the same area and even members of the same family have been convicted of offences similar in nature and gravity to those in response to which the house was demolished.

(ii) Again, a brief survey of LSM/al-Haq's records of houses demolished reveals that there are many villages and quarters where the Israeli authorities have repeatedly considered it necessary to demolish houses throughout the period of occupation*. This would appear to suggest that the deterrent effect has not been great on those witnessing the measure. It seems indeed possible that the suffering caused to innocent people increases the anger against the occupying authorities, and thus adds to the incentive to participate in or initiate acts of resistance.

(iii) The dramatic increase in demolitions occurred from May 1985 onwards, apparently in response to increased attacks in the Occupied Territories. In September 1985, however, Vice-Premier Yitzhak Shamir, referring to

* For instance demolitions have occurred in the villages of Sa'ir, Surif and Beit Ur al-Tahta throughout the occupation, from the first years until as recently as 1985/6.

attacks by Palestinians in the West Bank during the previous months, stated that the current rash of attacks was by no means the worst in the history of the state (31). Yet in March 1986, when the policy of highly intensified house demolitions and sealings had been underway for almost one year, military sources said in an interview that armed attacks in Samaria (the Israeli name for the northern part of the West Bank) had doubled in the previous year (32). Since it is exactly in response to such alleged attacks that demolitions and sealings are usually ordered, this indicates that not only has the action taken not had a deterrent effect, but on the contrary it may even have played a part in hardening resistance to the occupation.

(iv) The effectiveness of such deterrents is in any case questionable. On deterrents generally, Professor von Glahn states that "the validity of this belief [in the effectiveness of deterrents] has not yet been proven... the subject of deterrence, as related to war crimes, is one that needs further investigation and might produce some rather interesting results." (33)

(5) That demolition or sealing of a house is preferable to more drastic punishment:

This argument is most often used to make the point that it is preferable to demolish a house than to impose a long prison term, but the argument is based on a false premise. Demolition is not carried out by the Israeli authorities as an alternative to imprisonment, since the suspect is tried quite separately in a different forum, a military court, and is subject to sentence in the military court, whereas no trial precedes a demolition order. Many of those whose houses have been destroyed subsequently receive sentences of 20 years or

more imprisonment in addition to the destruction.

If, however, this argument relates to the possible imposition of the death penalty, it cannot be disputed that house demolition is a less severe penalty, although this does not of course legitimise an illegal punishment. In practice, however, houses have been demolished or sealed in connection with alleged offences which would be unlikely to attract the death penalty in any country. Furthermore, in the cases cited above where houses were demolished following the deaths of residents at the hands of the authorities, the measure is carried out in addition to an effective death penalty.

(6) That it is used only in the most serious cases:

In 1982 in the case of Hamri -v- the Military Commander of Judea and Samaria (34) Justice Barak ruled that the powers under Regulation 119

... are serious and drastic and [that] use of them shall be made only after meticulous consideration and examination and only in special circumstances. Moreover within the framework of Regulation 119 itself there are varying degrees of means which could be used according to the gravity of the offence, from confiscation alone to confiscation accompanied by partial or complete sealing up, to the demolition of the building. But it is only natural that the seriousness of the means taken by the military commander should be connected with the gravity of the deed perpetrated by the tenant, and that only in special circumstances shall the option of demolition be adopted, since the gravity of a demolition is threefold: first, it deprives

the inhabitants of the house of a place of residence; second, it prevents the possibility of restoring the status quo ante; and third it may sometimes harm neighbouring tenants.

In relation to the particular case in question, which related to the killing of an Israeli settler working as the guard of a historical site, he stated that "the extreme gravity of the circumstances in the present case justified ... the demolition". Again it has been said by the military authorities that the provision is invoked "... generally only when terrorist acts have resulted in the murder of innocent people" (35).

Complete information on charges or sentences received by the suspects in all the recent cases is not available, since many have still not been brought to trial or even charged. However LSM/al-Haq has documented instances where, following a demolition, sentences as low as 3 1/2 years have been given, and in the case of sealing as little as 6 months. While most such instances involve alleged use of weapons or explosives, on many occasions they are not alleged to have resulted in any, or any serious, injury.

The gravity of such action should not be minimised, but the sentences later given by the military authorities are indicative that the military judges themselves do not regard all of the actions on the basis of which houses are demolished or sealed as offences of the greatest severity, meriting such unusual punishment.

The criteria laid down by Justice Barak are thus not always followed in practice.

THE ROLE OF THE ISRAELI HIGH COURT OF JUSTICE

The Israeli High Court, sitting as the Supreme Court of Justice, has in theory been made available to West Bank residents to challenge administrative decisions of the Military Government and its officers, including orders for demolition.

It should be noted, however, that since no legal proceedings are required on the part of the military authorities, and only short notice is given of the intention to demolish, an injunction to prevent the order being carried out can only be sought in cases where the inhabitants are aware that their house is at risk of demolition or sealing. This automatically excludes many cases. Moshe Negbi, a former head of the international law section of the IDF Military Advocate-General's office, confirmed this in a seminar held by the Association for Civil Rights in Israel on 10 December 1985, stating that "at least in the case of demolition of houses we cannot talk about an effective possibility of appealing to the High Court of Justice" (36). Nevertheless, a number of petitions have been presented when the inhabitants have had an indication that their houses may be targeted for such treatment, for instance because soldiers came to take measurements or to take photographs, or because of the gravity or nature of the accusations against a family member.

Such actions follow an almost invariable pattern. The High Court initially grants an interim injunction with an order nisi requiring the Military Commander to show cause why he should not refrain from demolishing or sealing the house in question. In some

instances the Commander immediately replies that he has no intention of taking such action, and the case then goes no further. Otherwise the petition is heard by the High Court within a few weeks or months; meanwhile the interim injunction prevents the implementation of the order for demolition or sealing.

According to Lea Tsemel, an Israeli lawyer who has acted in many demolition and sealing cases, many houses slated for demolition were saved in the period before 1982 if she learnt of their probable destruction in time to ask for an interim injunction. Before the High Court made its final decision, the military authorities would notify her that they had decided not to proceed with the demolition or would compromise on sealing the house. Until 1982, in not a single one of the cases she handled did the military authorities allow the matter to proceed to judgment, probably for fear of a precedent against the practice. The High Court thus acted as an effective check on the decisions of the Military Commander. In the case mentioned above of Hamri -v- the Military Commander of Judea and Samaria (37), decided in 1982, however, the authorities, at the time under intense pressure from settlers in the settlement where the guard had lived, did not withdraw the case and the High Court ruled that the demolition could take place. This case proved to be something of a watershed, having the apparent effect of removing the former hesitation of the authorities to allow any but the strongest cases to be taken before the High Court, for fear of an unfavourable decision.

Not all decisions on petitions to the High Court of Justice are reported, but the writer is unaware of any case since 1982 in which the court has overruled the Military Commander's decision in its final judgment.

The High Court's Powers of Review

The main arguments presented to the High or sealing centre around the review of the Military Commander's discretion and the legality of the measure itself.

As to the review of the Commander's discretion, the limitations imposed by the High Court itself on the scope of its own powers were spelt out in its judgment in the case of Hamamreh -v- Military Commander of Judea and Samaria (38):

The supervision of this Court over the judgment of a military commander, like judicial supervision of an act of the [Civil] Administration, has to do with judicial supervision of the lawfulness of his judgment, and not with the factual supervision of the effectiveness or wisdom involved in the employment of that judgment.

The Court has thus determined that it will not look behind the Military Commander's reasoning in reaching his decision that demolition or sealing is appropriate, but will only interfere if it has prima facie evidence that he exceeded or abused his powers.

As to the legality of the measure itself, the court has dismissed all claims that the action is contrary to international or local law. As mentioned above, the validity of the Defence (Emergency) Regulations 1945 has often been challenged before the High Court, but it has ruled that they are valid. Thus in the Burqa case, in which the validity of the Regulations was again raised, Justice Ben Dror giving judgment said merely: "It seems to the petitioners' representative that it is her privilege to again raise these claims before judges who have already decided on this subject. The little we can say on this subject

is that these previous decisions are acceptable to us as well" (39).

The High Court has equally rejected all arguments that the measure constitutes collective punishment, and, while not ruling on the applicability of the Fourth Geneva Convention to the territories occupied by Israel, has ruled that its provisions are not contravened by use of the powers under the Defence (Emergency) Regulations of 1945.

The Burqa Decision

As an illustration of the present role and attitude of the High Court in these matters, the decision given in the Burqa case on 24 March 1986, referred to at the beginning of this paper, is attached.

The petitioners' advocate, Ms. Felicia Langer, contended that the Area Commander had no authority to issue such an order, arguing that the act was one of collective punishment, illegal under international law, and that the Defence (Emergency) Regulations are no longer in force for the reasons stated above. The High Court ruled in the judgment appended, cancelling an interim injunction given earlier, that the demolitions could proceed.

It is recommended that the judgment be read in its entirety, since it illustrates well the High Court's attitude in this matter. In addition to the points made above in relation to collective punishment, the following points should be noted:

(1) Although reference is made throughout the ruling to acts allegedly committed by the suspects as though proven, it should be noted that at the time of the judgment the suspects were still either awaiting trial or not yet even detained.

(2) While rejecting the petitioners' claim that the action constituted collective punishment, the Court explicitly held that it was a deterrent to the suspect to know that his family would suffer, thus making it clear that the object of the action was to make the family suffer.

(3) In arguing that the action is not collective punishment the court made a false comparison between the suffering caused to a family when the head of the family is imprisoned as punishment, and when the family's house is demolished, arguing that there is no difference between the two. This comparison is spurious. In the first case the family suffer indirectly as a result of the action taken solely against the father, the alleged offender; in the second, the punishment is imposed directly on the family, the stated intention of the measure being to make the family suffer and thus to punish the suspect and to deter others.

Furthermore, the comparison is invalid even on its own terms, since the appropriate comparison is not between having a breadwinner imprisoned and having a home demolished. It is between having a breadwinner imprisoned on the one hand, and having a breadwinner imprisoned and a home demolished on the other.

(4) In the judgment it is stated that "...the punishment has not been imposed on the homes of uninvolved persons...". This is not substantiated by the facts. Nowhere in the judgment is there any suggestion that other members of the families whose homes were destroyed were suspected of being involved in the alleged actions, nor that the houses were used in preparing or carrying out the alleged attacks. If such accusations were made, why were those concerned not charged and tried in a military court, as is the practice?

(5) It is argued that if the action is considered to be collective punishment, it leaves Regulation 119 of the Defence (Emergency) Regulations devoid of content, since it "would leave only the possibility of punishing a terrorist who lives alone". It is implied that any interpretation of the law which leads to such an absurd result must be incorrect.

Yet one of the purposes of international humanitarian law is precisely to restrict the application of draconian local laws, and, in doing so, it may indeed leave many such regulations and laws toothless. A law can be interpreted by reference to the fact that it must have been intended to have some effect; but it cannot be deduced, from the fact that the apparent intention is forbidden by international law, that some other purpose must have been intended.

(6) The phrase quoted in (5) above contains another false argument, deducing that because the result is absurd the premise must be false. The fallacy lies in the substitution of all punishment for a specific type of punishment. Of course it is possible to punish a person who does not live alone, but not by this particular measure which punishes also other innocent people.

From this decision and other similar ones handed down in recent months, the writer concludes that the High Court accepts this practice which it has ruled is legal, and so in practice does not provide an effective forum for review against demolitions, nor does it act as a realistic restraint on the powers of the military authorities. The High Court now offers, at best, only an opportunity to delay the immediate execution of the order.

CONCLUSION

An attempt has been made above to place the Israeli practice of demolishing and sealing houses in response to alleged offences in the context of local and international law and humanitarian practice. Little emphasis has been laid on individual cases. This, however, should not divert attention from the fundamentally inhumane nature of the measure and the trauma it inflicts on the lives of those affected.

True, there can be worse tragedies than to lose your house and possessions, but the principle which is here at stake is a fundamental one - that those who are innocent of any offence should not be intentionally and arbitrarily punished. This is no ordinary punishment. A house is not merely a shelter; for most of those who own houses it is their major investment and security, in the West Bank as elsewhere. But more than that, the home, for almost everyone, is at the heart of family life and stability, a stability which in the case of those who have once or even twice been made refugees is already tenuous enough.

This paper has been prepared with the intention of shedding light on a specific, severe and cruel violation of individual human rights and of international law, by which innocent people suffer very severe trauma and hardship. The writer remains hopeful that, with the expression of enough international and local concern, the Israeli authorities may yet be persuaded to discontinue this practice described by former Justice Haim Cohn as "the stupidity of demolishing houses" (40) in favour of due legal process.

NOTES AND REFERENCES

1. H CJ 698/85 Daghlas and others -v- Military Commander of Judea and Samaria (unpublished).
2. The Jerusalem Post, 23 November 1981. These figures exclude houses in Jerusalem, and villages destroyed during and in the aftermath of the 1967 war.
3. See sources referred to in The National Lawyers' Guild, Report on Treatment of Palestinians in the Israeli Occupied Territories, 1977, New York 1978, p.65.
4. According to the records kept by LSM / al-Haq of houses demolished or sealed for political reasons in the West Bank: in 1981 twelve houses were demolished in the West Bank; in 1982 one house was demolished and eight were sealed; in 1983 six houses were demolished and eleven sealed; in 1984 only three houses were demolished or sealed; but in 1985 twenty-four houses were demolished and twenty-nine wholly or partially sealed, and in 1986 12 houses were demolished, 1 partially demolished and 35 fully or partially sealed. These figures do not include the many houses demolished for lack of a building permit, nor do they cover Gaza. There is no certainty that these figures are complete, since official figures are not published.
5. Meir Shamgar, 'The Observance of International Law in the Administered Territories', Israeli Yearbook of Human Rights, 1971 p.276.
6. Shlomo Gazit, Israel's Policy in the Administered Territories (1969) p.5.
7. Israel has ratified the Fourth Geneva Convention, but maintains that it is not applicable to its occupation of the West Bank and Gaza, while declaring that it voluntarily

observes the humanitarian principles in the convention. The General Assembly of the United Nations and almost all governments in the world, including the United States of America, hold that it is applicable, and should be complied with by Israel.

8. Military Proclamation No. 2 of 1967.

9. As to the revocation of the Defence (Emergency) Regulations 1945 under the Mandate, see a letter from the British Minister of State for Foreign and Commonwealth Affairs to al-Haq/Law in the Service of Man dated 22 April 1987, in which the Minister states that "I confirm that, in view of the Palestine (Revocation) Order in Council 1948, the Palestine (Defence) Order in Council 1937 and the Defence Regulations 1945 made under it are, as a matter of English law, no longer in force". As to the use of the regulations and their validity under Jordanian rule, see an affidavit by the late Advocate Aziz Shehadeh on this subject, to be published shortly by al-Haq/Law in the Service of Man. For further discussion on the validity of the regulations, see an unpublished article by Andre Rosenthal The 1945 Defence Regulations: valid law in the West Bank? and Joost Hiltermann, Israel's Deportation Policy in the Occupied West Bank and Gaza, Al-Haq, Ramallah 1986, pp. 8-18. For consideration of these arguments by the Israeli High Court of Justice see, for example, the case of Riyadh abdel Rashid abu Awad -v- the Area Commander for Judea and Samaria (33(3) PD 309). All the above are in the files of al-Haq/Law in the Service of Man.

10. Military Order 224, Article 3.

11. For instance, Dr Yaacov Shimson Shapiro, later Israeli Minister of Justice, speaking at a conference of the Lawyers' Association in Tel Aviv on 7 February 1946, described the Defence (Emergency) Regulations of 1945 as "unparalleled in any civilised country ...

the defence regulations passed by the government in Palestine destroy the very foundations of justice in this land". See Sabri Jiryis, The Arabs in Israel, IPS, Beirut 1968, p.4.

12. From an interpretation by the ICRC of Article 53 of the Fourth Geneva Convention of 12 August 1949, with particular reference to the expression 'military operations', dated 25 November 1981, signed by Jacques Moreillon and approved by Jean Pictet.

13. HCJ 698/85

14. Frits Kalshoven, 'Belligerent Reprisals', Leiden: Sijthoff, for the Henri Dunant Institute, 1971, p.321.

15. Gerhard von Glahn, 'The Protection of Human Rights in Time of Armed Conflicts', IYHR 1971, p.227.

16. See for example UN General Assembly Resolution No. 3240 of 29/11/74, US State Department Report 1977, ICRC Annual Report 1983, p.67.

17. HCJ 698/85

18. Dov Shefi, 'The Reports of the UN Special Committee on Israeli Practices in the Territories' in Military Government in the Territories Administered by Israel 1967-80, ed. Meir Shamgar, Hebrew University of Jerusalem, 1982, p.801.

19. Israeli Section of the International Commission of Jurists, The Rule of Law in the Areas Administered by Israel, Tel Aviv 1981, p.70.

20. Shlomo Gazit, op.cit.

21. Shlomo Gazit, op.cit.

22. Frits Kalshoven, op. cit.
23. Krzysztof Skubiszewski, 'Use of Force by States - Collective Security - Law of War and Neutrality', in Manual of Public International Law, ed. Max Sorenson, New York, Macmillan, 1968, p.754.
24. Meir Shamgar, speaking at a Symposium on Human Rights held at Tel Aviv University on July 1-4, 1971, reported in IYHR 1971, p.380.
25. Jean Pictet, 'Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War', Geneva, International Committee of the Red Cross, 1958, p.228.
26. Gerhard von Glahn, op.cit. p.225/7.
27. Meir Shamgar, 'The Observance of International Law in the Administered Territories', Israeli Yearbook of Human Rights, 1971, p.276.
28. The Jerusalem Post, 5 August 1985.
29. H CJ 434/79 Sahwil et al. -v- The Commander of the Judea and Samaria Region 34(1) PD 464.
30. The Jerusalem Post, 28 October 1985.
31. The Jerusalem Post, 6 September 1985.
32. The Jerusalem Post, 27 March 1986.
33. Gerhard von Glahn, op.cit. p.225.
34. H CJ 361/82 Hamri -v- Commander of the Judea and Samaria Region 36(3) PD 439.
35. Israeli Section of the International Commission of Jurists, op.cit. p.70.
36. From the unpublished proceedings of a symposium on 'Administrative Punishment in the Administered Territories', organised in Jeru-

salem by the Association for Civil Rights in Israel on 10 December 1985.

37. HCJ 361/82

38. HCJ 274/82 Hamamreh -v- Minister of Defence and the Commander of the Judea and Samaria Region 36(2) PD 755.

39. HCJ 698/85

40. Justice Haim Cohn, speaking as chairman in the symposium referred to in (36) above.

APPENDIX 1: THE BURQA DECISION

H CJ 698/85

Mazen Abdullah Said Daghlas and others

-v-

The Military Commander of the Judea and
Samaria Region

Request for an order nisi.
Date of hearing 19.2.86
(judgment given on 24.3.86)

Before: Justice M. Alon, Justice D. Levin,
Justice M. Ben-Dror

JUDGMENT

Justice M. Ben-Dror:

1. The five petitioners in this case submitted a request for an order nisi against the respondent, ordering him to show cause why he should not refrain from demolishing their houses.

From the wording of the request it appears that members of the petitioners' families organized and participated in a terrorist ring whose sole purpose was to attack Jews as such. There is no dispute that they planned their acts and equipped themselves with knives and a pistol, and in one instance stabbed and wounded a Jewish tour guide in Sebastia.

The representative for the State Attorney's Office submitted in writing his response and affirmed before us that the respondent does not intend to take action against the houses of petitioners #3 and #4. Accordingly, the discussion of this request is limited solely to the other petitioners.

2. The representative for the petitioners raised two claims against the decision of the

respondent to use his authority as stated in Regulation 119(1) of the Defence (Emergency) Regulations 1945 to confiscate and demolish the homes of the above petitioners. First, she claims, Regulation 119 is contrary to international law. Secondly there was in her opinion no justification under the circumstances to order the demolition of the houses. I will discuss both claims in turn.

3. As in previous instances (see for example HCJ 434/79 34(1) 464, 65) the representative for the petitioners raises the question of the validity of the above Regulations generally and in light of section 50 of the 4th Hague Convention 1907 and the previous convention of 1899. The representative for the petitioners also raises the claim that the respondent's order is contrary to section 33 of the Geneva Convention of 1949 according to which collective punishment as a means of reprisal is forbidden.

The representative for the petitioners admitted that this is not the first time these claims have been raised in the High Court and added that she is aware that this court repeatedly rejected (them) in different panels of the court (see HCJ 22/81 35(3) 223,224; HCJ 274/82 36(2) 755,756; HCJ 361/82 36 (3) 439,440). But now what? It seems to the petitioners' representative that it is her privilege to raise these claims again before judges who have already decided on this subject. The little we can say on the matter is that these previous decisions are acceptable to us as well.

It should be added that there is no basis to the petitioners' complaint that house demolition is a form of collective punishment. In their opinion, only the terrorists and criminals themselves should be punished, and house demolition punishes additional family members who are left without shelter. Such an interpretation, if accepted by us, would leave the

above regulation and its orders void of content, leaving only the possibility of punishing a terrorist who lives alone. Such a claim was rejected by this court in HCJ 361/82 (p.442). Justice Barak there established that "according to Ms Tsemel's approach, it would not be possible to make use of the authority of Regulation 119 if two persons reside in a house and only one of them committed the act forbidden by the regulation. This conclusion is utterly without grounds, both in terms of the wording of the regulations and in terms of the underlying legislative policy".

On the contrary the aim of the regulation is to "achieve a deterring effect" (HCJ 126/83 37(2) 169,173; HCJ 434/70) and such an effect should naturally apply not only to the terrorist himself, but to those surrounding him and certainly to family members living with him (HCJ 126/83 37(2) 168,172). He should know that his criminal acts will not only hurt him, but are apt to cause great suffering to his family. From this point of view, the above sanction of house demolition is no different than the punishment of imprisonment imposed on the head of a family, or on a father whose small children will be left without a supporter and breadwinner. Here, too, members of the family are effected. Indeed, it has already been established by the courts more than once in their verdicts that the petitioner must take this into account before committing his crime, and know that members of his family will be forced to suffer the consequence of his deeds. This is the law regarding the sanction of demolition of a house. In the case before us it is clear that the terrorists came from certain homes, and these homes and not others are about to be demolished. In any case the 'punishment' has not been imposed on the homes of uninvolved persons, and it is difficult to understand the origins of the claim that we are here dealing with a case of collective punishment.

4. Thus we did not find reason to intervene in this instance in the respondent's decision to demolish the above houses. We have already stated that the above terrorists were interested in attacking Jews. Three of them attacked a tour guide and it was a miracle that this assault did not result in his death. Two of them fled across the border following this criminal deed. One of them, however, returned and again sought to carry out attacks on person and property, but was discovered and turned himself in to the authorities.

This court has established that in such circumstances it must be weighed "in each case whether to confine (the action) to sealing the structure rather than demolishing it. But the judgment, if one means or another is to be used following an incident of terror, is the judgment of the military commander, who was thus authorised by the regulations, and should be guided by the seriousness of the deed" (HCJ 572/82 36(4) 610,613).

In his affidavit, the respondent confirms that which was stated in the response submitted to us by the State Attorney's office, that there has been a recent increase in Judea and Samaria and in Israel (also by residents of Judea and Samaria) of attacks which resulted in death and injury of human beings, where the common denominator was that they were local initiatives, not connected with a terror organization, but with the purpose of attacking Jews as such. A number of soldiers and citizens died, and others - such as the tour guide in the above-mentioned example - were wounded.

This court has already established (HCJ 361/82) that: "Under the circumstances of the case, firm action is required, which can serve as a deterrent element, thus safeguarding security and order. This is a consideration which, under the circumstances, falls within the framework of the lawful considerations

which a military commander may take into account.

In the case before us we do not find reason to intervene in the judgment of the respondent, upon which he reached the conclusion that the suitable punishment is the demolition of the petitioners' houses.

5. We therefore reject the petition.

Justice M. Alon: I agree.

Justice D. Levin: I agree.

Given this 24 March 1986.

APPENDIX 2: EXAMPLES OF DEMOLITION AND CLOSURE ORDERS

A TOTAL DEMOLITION ORDER

Israel Defence Forces
The Defence (Emergency) Regulations 1945
A Confiscation and Demolition Order

According to the powers delegated to me, pursuant to Article 119 of the Defence (Emergency) Regulations 1945, and since I am convinced that the inhabitant of the building described herein carried out or tried to carry out or participated in the carrying out or helped to carry out offences contrary to the provisions of the said regulations which were associated with violence and terror, and since military necessity requires it, I hereby order the confiscation of the building described below to the benefit of the IDF and also the expropriation of the rights of the owner of the building over the land on which the building stands, and the demolition of the building.

Description of the building: A building of 2 rooms and a kitchen at Beit Ur al-Tahta, in which Rifat Mahmoud Ali Badran, holder of Identity card No. 90229327, was living.

The reasons for the order: The above-mentioned Rifat Mahmoud Ali Badran was a member of a cell which was organised to carry out terrorist operations, and its members carried out the following operations:

- (i) Killing a soldier of the IDF near the Customs office in Ramallah on 4 February 1985.
- (ii) Killing a resident of the region, who was suspected of cooperation with the authorities in May 1985.
- (iii) Throwing a grenade towards soldiers who were guarding the entrance of Ramallah Municipality on 19 November 1984 (the grenade did not explode).

(iv) Putting a grenade in a truck transporting gas canisters in Rehovot on 7 December 1984.

(v) Other operations, including setting off roadside explosives and firing at a military truck.

Signed
1985.....
(entries
illegible)

(signature
in Hebrew)

(signature
in Arabic)

(signature
in Arabic)

Amnon Shahak
General Commander of the Judea
and Samaria Region

Mukhtar
Suleiman Ahmad

Ni'ma Mustafa

A PARTIAL CLOSURE ORDER

Israeli Defence Forces
The Defence (Emergency) Regulations of 1945
A Confiscation and Closure Order

According to the powers delegated to me, by Article 119 of the Defence (Emergency) Regulations of 1945, and because I believe that the inhabitant of the building described below has carried out or participated in carrying out an offence according to the said regulations which was associated with violence and terror, and since military necessity requires this, I hereby order the confiscation of all the building described below to the benefit of the IDF, and the expropriation and closure of part of the building described below.

Description of the building: A room in a 4-roomed house, a kitchen and a balcony, in al-'Amari Refugee Camp, in which Nasir Abu Humeed al-Amari was living.

Reasons for the order: Nasir Abu Humeed Muhamad Yousef al-Amari was a member in a terrorist cell whose members carried out many operations in al-Bireh region; the following list details the operations which they have carried out or participated in carrying out:

(i) November 1984 - throwing a petrol bottle towards an IDF patrol.

(ii) 7 December 1984 - throwing a petrol bomb towards the customs building in al-Bireh.

(iii) December 1984 - throwing a petrol bomb at a bus.

(iv) 22 December 1984 - throwing a petrol bomb at the customs building in al-Bireh.

(v) 17 August 1985 - throwing a petrol bomb at a tractor owned by a resident of the region.

(vi) July 1985 - throwing a petrol bomb at a tractor owned by a resident of the region.

(vii) 10 October 1985 - throwing a petrol bomb at an IDF patrol.

Yacov Orr
(signed in Hebrew)

signed (left blank)
1986 _____

Yacov Orr, Lt. Gen.
Military Commander of
the Judea and Samaria
Region

the order was read
to Yousef Muhammed
Naji by the brother
of the detainee ID.
No.943966036

Yousef Naji (written
in Arabic)

APPENDIX 3: HOUSES DEMOLISHED OR SEALED IN THE WEST BANK FOR POLITICAL REASONS IN 1985 AND 1986

<u>I</u> <u>No</u>	<u>II</u> <u>NAME</u>	<u>III</u> <u>TOWN/CAMP</u>	<u>IV</u> <u>DATE</u>	<u>V</u> <u>DP</u>	<u>VI</u> <u>SD</u>
01	Basem 'Abd-al-Razeq Kharoub	Habla	??/05/85	9	PS
02	Nabil 'Ali Merdawi	Habla	??/05/85	6	PS
03	Husam Muhammad Abou Hamda	Habla	??/05/85	10	PS
04	Ahmed 'Abd-al-Fatah Naser	Safa	24/05/85	11	D
05	Rafi' Farhoud Naser	Safa	24/05/85	4	D
06	Muhammad Ibrahim Naser	Safa	24/05/85	9	D
07	'Abd-al-Rahman Shu'ib Naser	Safa	24/05/85	12	D
08	Ra'fat Mahmoud al-Shami	Beit 'Our T.	24/05/85	11	D
09	Muhammad Hasan Sa'id al-Ghaneimat	Surif	08/07/85	10	S
10	Ziyad Mahmoud Muhammad al-Ghaneimat	Surif	08/07/85	7	D
11	Mustafa 'Amer Muhammad al-Ghaneimat	Surif	08/07/85	2	D
12	Naser Jamal Beni Hasan	'Arabouna	27/07/85	12	D
13	Haza' Muhammad al-Sa'di	'Arabouna	27/07/85	5	D
14	Uthman 'Abdallah Beni Hasan	'Arabouna	27/07/85	9	D
15	Ahmed Khaled al-Qatouni	Al-'Ein Camp	15/08/85	2	S
16	Suheil Munir Abou Ras	Al-'Ein Camp	15/08/85	11	S
17	Ghassan Dhib Shatawi	Al-'Ein Camp	15/08/85	14	S
18	Khaled Amin Gharouti	Al-'Ein Camp	15/08/85	11	S
19	Tareq Ahmed Husein Nimri	'Anabta	22/08/85	10	S
20	Khaled Ahmed Kan'an	'Anabta	22/08/85	7	D
21	Sa'id 'Abdallah Dawaba	'Anabta	22/08/85	7	D
22	Hani Badawi Jaber	Hebron	26/09/85	21	D
23	Muhammad Hasan Sa'id al-Ghaneimat	Surif	08/10/85	-	D
24	Muhammad Ahmed 'Udwan	Surif	08/10/85	6	D
25	Mahmoud Ahmed al-Najar al-Ghaneimat	Surif	08/10/85	6	D
26	'Ali Muhammad Shehada al-Khalaila	Samou'	08/10/85	2	D
27	Muhammad Ahmed al-Tous	Jab'a	08/10/85	4	D
28	'Issa Muhammad Abou Sneid	Yatta	26/10/85	25	D
29	Ahmed Mahmoud al-Najar	Yatta	26/10/85	8	D
30	Muhammad Hasan Abou Hadwan	Al-Ram	05/11/85	11	S
31	Ghalib Hasan Abou Hadwan	Shu'fat Camp	05/11/85	8	S
32	" " " "	Hebron	05/11/85	-	S
33	Najib 'Abd-al-Jalil Jaber Jeweilles	Shu'fat Camp	05/11/85	10	S
34	Muhammad Ahmed al-Tous	Jab'a	17/11/85	4	D
35	Mousa 'Abdallah al-Jaradat	Se'ir	18/11/85	13	S
36	Husein Hamed al-Shelalda	Se'ir	18/11/85	4	S
37	Jihad 'Amir al-Jaradat	Se'ir	18/11/85	7	S
38	Jamal Mahmoud Abou Kishek	'Askar Camp	26/11/85	10	S
39	Majed 'Abd-al-Qader Abou Kishek	'Askar Camp	26/11/85	6	PS
40	Khaled Isma'il Rumana	'Askar Camp	26/11/85	8	S
41	Shehada Kamel Abou Kheit	'Askar Camp	26/11/85	9	PS

42	Ahmed 'Abd-al-Yousef Damaj	Jenin	19/12/85	4	£
43	'Ala' Fakhri Beni Sa'idan	Jenin Camp	19/12/85	7	£
44	Bilal Ibrahim Berri	Ya'bad	23/12/85	4	PS
45	Tawfiq Khaled Hirzallah	Ya'bad	23/12/85	12	PS
46	Yahya Ibrahim Da'amsi	Deheisha C.	26/12/85	4	S
47	'Abd-al-Fatah 'Ali Abou Faraj	Deheisha C.	26/12/85	4	S
48	'Imad Yousef Da'amsi	Bethlehem	26/12/85	12	S
49	Tawfiq Jamil Riba'	Bethlehem	26/12/85	16	S
50	Ahmed Mousa Hamidan	Bethlehem	26/12/85	8	S
51	Nabil 'Ali Shweiki	Bethlehem	26/12/85	10	S
52	Hasan Ahmed al-'Anani	Al-Fawwar C.	30/12/85	10	D
53	Feisel 'Abd-al-Jabar Faraj	Al-Fawwar C.	30/12/85	5	D
54	" " " " " "	" " " " " "	30/12/85	-	S
55	Khaled Ahmed Abou Keifa	Al-Fawwar C.	30/12/85	10	D
56	Ahmed Tawfiq 'Abdallah al-Haj Muhammad	Jaloud	22/01/86	2	D
57	Ahed Faraj Jadou' al-Aqra	'Am'ari Camp	04/02/86	8	PS
58	Naser Muhammad Yusef Najji	'Am'ari Camp	04/02/86	5	PS
59	Iyad 'Ali Muhammad 'Asi	Al-Bira	04/02/86	5	PS
60	Husam Muhammad al-Haj	Al-Bira	04/02/86	10	PS
61	'Abd-al-Naser Sherif Muhammad Sa'id Jamous	Dhanaba	06/03/86	4	PS
62	'Abdallah Kamel Ahmed	Dhanaba	06/03/86	6	PS
63	Ahmed Fathi Ahmed Mehdawi	Shweika	06/03/86	6	S
64	'Umar Sif-al-Din 'Issa al-Shurafa	Shweika	06/03/86	8	PS
65	'Abbas Khader Suliman	Beit 'Our T.	16/03/86	7	D
66	Anis Na'im Daghlas	Burqa	15/04/86	3	D
67	Majed 'Abdallah Daghlas	Burqa	15/04/86	5	D
68	Tareq Muhammad Daghlas	Burqa	15/04/86	6	D
69	Salim Tawfiq Shehada	Beitunya	20/05/86	6	S
70	Tawfiq Ibrahim 'Abdallah	Deir Balout	29/05/86	12	D
71	Mustafa Mahmoud Qara'oush	Deir Balout	29/05/86	12	D
72	Naser As'ad Abou Sa'oud	Rafadiya	16/06/86	15	PD
73	Nidhal 'Abd-al-Rahman Abou Sa'oud	Rafadiya	16/06/86	6	D
74	Mahmoud 'Ali Dhib Ne'irat	Meithaloun	24/07/86	10	D
75	'Uthman Muhammad Ne'irat	Meithaloun	24/07/86	7	S
76	Radwan Hamid Hamamri	Husan	21/08/86	5	PS
77	Yaser Ahmed 'Odeh Hamamri	Husan	21/08/86	5	PS
78	'Adnan Ahmed Shushi	Husan	21/08/86	4	PS
79	Saleh Yousef Ahmed Ihreiz	Deir Abou Mish'al	22/08/86	8	D
80	'Abd-al-Ghani Rashad Hamed Sultan	Hebron	24/08/86	6	PS
81	Wa'el Mousa al-Sa'adi	Halhoul	24/08/86	12	PS
82	Fawaz Kathem al-Bukhtan	Al-Ram	25/08/86	11	S
83	Nazih 'Abd-al-Hadi Rammaha	Jalazon Camp	25/08/86	4	PS
84	'Umran Muhammad Husein	Jalazon Camp	25/08/86	3	PS
85	Suliman Sa'id al-Khatib	Hizma	26/08/86	10	PS
86	Ahmed Salem al-Khatib	Hizma	26/08/86	8	PS
87	'Ala'-al-Din Ahmed Rida' al-Bazayan	Jerusalem	27/08/86	12	S
88	Nabil Muhammad al-Dib'i	Shu'fat Camp	28/08/86	9	PS
89	'Umar Kamel al-Khatib	Qalandiya	06/11/86	22	S
90	Ibrahim Aleyan	'Izariya	??/11/86	-	S
91	Nidhal Mousa Shawwar	Hebron	20/11/86	3	S

92	Saleh Muhammad Ihreiz	Deir Abou Mish'al	18/12/86	7	D
93	Samir Abou Na'ma	Abou Dis	18/12/86	7	D
94	Mahmoud 'Abd-al-Nimer	Hajaj			
		Beit Rima	19/12/86	2	PS
95	Nihad Taher Sandouqa	Jerusalem	21/12/86	15	S
96	Sufiyan 'Issa al-Mughrabi	Doura			
		al-Qar'a	25/12/86	8	PS
97	Nabil Mahmoud Nafe' Hamed	Qalandiya C.	25/12/86	11	S
98	Muhammad Ahmed Hamed	Qalandiya C.	25/12/86	6	PS
99	Khalil 'Issa al-Buwatel	Qalandiya C.	25/12/86	5	PS
100	Khaled Ibrahim 'Asef	Qalandiya C.	25/12/86	10	PS
101	Taysir 'Ali Shareika	Jalazon Camp	25/12/86	10	PS
102	'Imad 'Issa al-Khalidi	Jalazon Camp	25/12/86	14	PS
103	Walid 'Abd-al-Latif Wahdan	Jalazon Camp	25/12/86	6	PS

TOTAL NUMBER OF HOUSES AFFECTED: 103, of which:

DEMOLISHED:	36
PARTIALLY DEMOLISHED:	1
SEALED:	34
PARTIALLY SEALED:	32

LEGEND

I : column indicating the number of houses demolished or sealed, chronologically, and by name of inhabitant or family member detained, escaped or killed (see column II).

II : name of the person because of whom the house was demolished, sealed or partially sealed/demolished.

III: village, town or refugee camp where the demolished or sealed house is located.

IV : date of the demolition or sealing.

V : the number of persons displaced by the demolition or sealing, not counting the person mentioned in column II.

VI : column indicating what happened to the house, where D = Demolished; S = Sealed; PD = Partially Demolished; PS = Partially Sealed; and SD = Partially Demolished and Partially Sealed.