

25.5.2015

Follow-up to the Report on Human Rights Violations Perpetrated by Israel in the Summer of 2014

Pursuant to the report submitted by HaMoked: Center for the Defence of the Individual on January 27, 2015, to the UN-appointed independent commission of inquiry on the 2014 Gaza conflict, we wish to update you on recent developments in three of the areas we addressed in the report :

Respect for the Dead

On March 24, 2015, some five months after HaMoked applied to the Ministry of Defence for details about the bodies held by Israel of Palestinians fatalities from the Gaza Strip, the latter responded that the Israeli military was holding 19 bodies of Palestinians “from Operation Protective Edge”. According to the response, 18 bodies were buried in Israel during the fighting, on July 23, 2014. Another body was buried in October 2014 – some three months after the military forces withdrew from the Gaza Strip. The military provided no reason for the separate burial of that body and also refused to reveal the bodies' burial place for “information-security reasons”. As to the question concerning the bodies' identity, the security officials responded that “the Military Rabbinate [the religious-services corps] has in its possession data which can facilitate the identification of the bodies”, but emphasized that positive identification had not been made.¹

On April 1, 2015, HaMoked reapplied to the Ministry of Defense for clarifications. HaMoked asked to know, inter alia, why was the burial of body parts necessary; whether all 19 Palestinians whose bodies were currently in Israeli possession already dead when transported to Israeli soil

¹ The military's response is available at:
http://www.hamoked.org/files/2015/1158902_eng.pdf.



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or were they taken wounded to Israel and died there later on; furthermore, what data did the Military Rabbinate have that might facilitate future identification of the bodies.² On May 7, 2015, the IDF Spokesperson informed HaMoked that security officials require a 30-day extension to respond to the application.

On April 15, 2015 – as no response had arrived to HaMoked's inquiry, sent to the Ministry of Defense in October 2014, concerning the whereabouts of a Palestinian youth last seen in early August 2014, in the eastern part of Rafah, lying motionless and covered in blood with Israeli soldiers close by – HaMoked filed a habeas corpus petition on behalf of the missing youth's brother.³ Following the petition, on April 19, 2015, the Ministry of Defense announced that “the IDF holds a body of a Hamas activist who was killed in a battle in the Rafah area on August 1, 2014”, and added that “it is likely” that this was indeed the body of the youth HaMoked had inquired and petitioned about. The response stated that “the body was buried in the cemetery of enemy combatants”.⁴

According to a Turkish media report, as of May 2015, the ICRC is still trying to learn the fate of 15 Palestinians from the Gaza Strip, considered missing since the Israeli offensive.⁵ It is unclear how many – if any – are included in the list of bodies held by Israel, attached to the security officials' response to HaMoked.

² HaMoked's application available at:

http://www.hamoked.org/files/2015/1158905_eng.pdf.

³ HCJ 2565/15 **Mas'ud et al. v. Ministry of Defense** (2015), available at:

http://www.hamoked.org/files/2015/1158903_eng.pdf.

⁴ Letter from Adv, Avinoam Segal-Elad, Senior deputy at the State Attorney's Office, to HaMoked, dated 19 April, 2015, available at:

http://www.hamoked.org/files/2015/1158904_eng.pdf.

⁵ “Red Cross seeks fate of 15 Palestinians after Gaza war”, **Turkish weekly**, May 13, 2015, available at: <http://www.turkishweekly.net/news/185471/red-cross-seeks-fate-of-15-palestinians-after-gaza-war.html>.

Punitive House Demolitions

Following the HCJ's dismissal of the general petition against punitive house demolitions⁶ that was filed by HaMoked together with other human rights organizations, the organizations filed a request for a further hearing in the petition before an extended panel of justices. The organizations asserted, inter alia, that the main arguments in the petition – that this constituted collective punishment and destruction of protected persons' property, both prohibited under international law – had never been exhaustively considered, including in the present judgment; and stressed that this issue and its repercussions were of the outmost importance and severity.⁷

On May 11, 2015, the organizations requested leave to submit to the court a document supporting their position.⁸ The document in question is a legal opinion from 1968, written by then Israeli foreign ministry's legal adviser, Prof. Theodor Meron, one of the leading international jurists living today. In the opinion, Meron concludes that the use of Regulation 119 of the Emergency (Defence) Regulations for the purpose of demolishing houses of Palestinians clearly contradicts the provisions of the Fourth Geneva Convention. It should be noted that contrary to Israel's current position, insisting that the demolition of the houses is a measure of deterrence rather than punishment, in the document, Prof. Meron quotes the position of the Military Advocate General Corps, whereby “Blasting a home is a **punitive measure** under the local law [...]” (emphasis added).⁹

⁶ HCJ 8091/14 **HaMoked: Center for the Defence of the Individual et al. v. Minister of Defense et al.** (2014), available at:

http://www.hamoked.org/files/2014/1159000_eng.pdf.

⁷ HCJFH 360/15 **HaMoked: Center for the Defence of the Individual et al. v. Minister of Defense et al.**, available at: http://www.hamoked.org/files/2015/1159120_eng.pdf.

⁸ Ibid., Applicants' Request to Submit an Authority, May 11, 2015; available at: http://www.hamoked.org/files/2015/1159123_eng.pdf.

⁹ As far as known, the opinion, dated March 13, 1968, has never been published before; it was recently discovered at the Israel State Archives by Akevot: Institute for Israeli-Palestinian Conflict Research. Opinion available at: http://www.hamoked.org/files/2015/1159122_eng.pdf.

In its response to the submission request, the state asserted that the document was entirely irrelevant as it did not concern – the court approved – demolition of houses for deterrence purposes, but rather demolition for punitive purposes.¹⁰ However, the state decided not to object to the submission request and left it to the discretion of the court. On May 14, 2015, the court approved the submission.

The Right to Freedom of Movement

On October 7, 2014, HaMoked applied to the military under the Freedom of Information Act, requesting to know how many Hebron residents had been placed under a foreign travel ban following the abduction of three Israeli youths in the summer of 2014, and what was the source of the authority for the ban's imposition.¹¹ HaMoked asked whether a signed order or an oral instruction was issued for the purpose, and again presented its questions concerning the 30,000 West Bank residents who had been banned from exit abroad at that time.

In its response, the military reasserted its position that while indeed all Hebron residents between the ages of 20 and 50 had been denied travel, this was not a sweeping ban as it was “delimited” according to age and place of residence and its duration was circumscribed.¹² Despite HaMoked's request, the military did not supply a copy of the order for the security ban against the residents of Hebron; it, in fact, remains unclear whether the ban was imposed under an order or an explicit directive, as required by law.¹³ As to the exit ban imposed on 30,000 West Bank

¹⁰ Letter from Adv. Aner Helman, Deputy Manager of the HCJ Department at the State Attorney's Office, to HaMoked, dated May 10, 2015, available at: http://www.hamoked.org/files/2015/1159124_eng.pdf.

¹¹ HaMoked's letter available at: http://www.hamoked.org/files/2015/1158644_eng.pdf.

¹² Letter from Captain Amitai Cohen, Public Liaison Officer at COGAT, to HaMoked, dated February 8, 2015, available at: http://www.hamoked.org/files/2015/1158645_eng.pdf.

¹³ On April 29, 2015, a complaint letter on the inappropriate conduct of the military commander of the West Bank Area in this regard was sent by HaMoked to Colonel Doron

residents, the military insisted that neither a “general order” nor an “oral instruction” had been issued, rather that these were security preclusions, “entered on an individual basis and in keeping with professional-security criteria”. The military refused to provide any further details, claiming that divulging such information would jeopardise national security.¹⁴

HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger, is a human rights organization established in 1988 against the backdrop of the first intifada. HaMoked's mandate is to safeguard the rights of Palestinians living under Israeli occupation. HaMoked acts to enforce standards and values rooted in international humanitarian law and international human rights law. www.HaMoked.org

Ben Barak, Legal Advisor for the West Bank, available at: http://www.hamoked.org/files/2015/1158646_eng.pdf.

¹⁴ See supra note 12.