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CC 9327/04

Jerusalem Magistrate Court

In the matter of: 1. _____ **Masri, ID No.** _____
2. _____ **Masri, ID No.** _____
3. _____ **Masri, ID No.** _____

Residents of Aqaba - Jenin District

Represented by counsel Adv. Yossi Wolfson (Lic. No. 26174) and/or Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or Adi Landau (Lic. No. 29189) and/or Manal Hazzan (Lic. No. 28878) and/or Shirin Batshon (Lic. No. 32737) and/or Hava Matras-Iron (Lic. No. 35174)

of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – R.A.

4 Abu Obeida St., Jerusalem, 97200

Tel: 02-6283555 Fax: 02-6276317

The Plaintiff

v.

The State of Israel

Represented by Tel Aviv District Attorney's Office (Civil)

1 Henrietta Szold St., Tel Aviv 64921

Tel: 03-6970282 Fax: 03-6918541

The Defendant

Nature of Claim: Compensation for property damage

Amount of Claim: 394,270 ILS

Statement of Claim

The Parties

1. Plaintiff 1, borne on December 22, 1945, works in a restaurant, and is married with children.
2. Plaintiff 2, borne on October 5, 1970, is the son of plaintiff 1, has an academic degree in education, but works in a restaurant with his father. He is also married and has four children.
3. Plaintiff 3, about 50 years of age, is the brother of plaintiff 1.
4. At all times relevant to this statement of claim the three plaintiffs lived in close proximity to each other, in the southern part of the Aqaba village, in the Jenin district. The three plaintiffs and their family members who live with them were all protected persons according to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (hereinafter: the **Geneva Convention**).
5. At all times relevant to the event, the defendant was holding plaintiffs' area of residence under belligerent occupation (as this term is defined in international law). The defendant acted in the event (as specified below) through soldiers of the Israeli army, and possibly through security forces or other parties too (all of whom will be hereinafter collectively referred to as **soldiers**), all of whom are its employees who acted on its behalf and for whose action it is responsible.

The buildings relevant to the claim

6. On the date of the event plaintiff 2 was living in a house which was located in a very close proximity to the house of plaintiff 1. The house of plaintiff 1 is located on a slope generally declining from south to north, and the house in which plaintiff 2 was living was located closely underneath it. The house belonged to plaintiff 1. The plaintiff was living in the house with his wife and four minor children. _____, the eldest daughter, was six years old and the youngest son, _____, was just borne. In the past, another son of plaintiff 1 named _____, had also been living in the house. This son was killed while committing a terrorist attack in Jerusalem about a year before the event. When the event took place plaintiff 2 was in the process of building his

own house the construction of which was in its advanced stages. This house was also located in close proximity to the house of plaintiff 1 (a little west thereof and approximately at the same altitude, on the slope. This house was located south west of the house in which plaintiff 2 was living).

The house in which plaintiff 2 was living will be hereinafter referred to as: the **house**.

The house of plaintiff 2 which was under construction will be hereinafter referred to as: **plaintiff 2's house**.

The residential home of plaintiff 1 will be hereinafter referred to as: **plaintiff 1's house**.

7. Plaintiff 3 had a building blocks structure near the house, which was used by him as a pen for his sheep.

To understand the relative locations of the buildings and structures the honorable court is referred to the drawing attached as **Exhibit A** to this statement of claim.

The Event

8. On August 4, 2002, before sunrise, soldiers arrived at the house and ordered its occupants to vacate the place.
9. The soldiers said that they were going to explode the house.
10. A. The soldiers enabled plaintiff 2 and his wife – and no one else but them – to remove belongings from the house.

B. The soldiers did not enable any other person to assist them in the removal of the belongings.

C. The soldiers told plaintiff 2 and his wife what they could and could not remove from the house. Among other things, they enabled them to take a TV set (which was later destroyed by the blast of the explosion) and blankets for the children, but prevented them from taking furniture, documents etc.

D. The removal of the belongings was limited to a 25 minute period only.
11. The soldiers evacuated the house and the adjacent houses from their occupants and detained several members of the family.
12. The soldiers mined the house with a large quantity of explosives and exploded it.

13. The explosion was very strong. The house was completely destroyed. Parts of the house were scattered over a vast area.
14. The blast and/or parts of the building which were scattered all over the place, caused severe damage to trees around the house, to plaintiff 1's house, to plaintiff 2's house, to the structure in which plaintiff 3 was holding his sheep and to the sheep themselves.
15. The soldiers have not presented anyone with a demolition order for the house designated for demolition. In retrospect, a correspondence between plaintiffs' representative and the office of the legal advisor for the Commander of the Israeli Military Forces in the West Bank indicated that a demolition order for the house had never been issued and that such order never existed and does not exist.
16. The plaintiffs hereby notify, at this stage, that in this action they do not claim the damage caused to the house itself due to the political sensitivity of such a claim and in an attempt to narrow down the controversies between the parties. The action is limited to the damages caused as a result of the event to movable and immovable property which was in and around the house. The property which was damaged and with respect of which compensation is demanded in this action will be hereinafter referred to as the **Property**.

Causes of Action

General

17. The plaintiffs will argue that all of defendant's actions, which were committed by its soldiers as described above, were contrary to the law and establish a right to be compensated.
18. The plaintiffs will argue that the mere demolition of the house was unlawful. Nevertheless, the plaintiffs are aware of the fact that there is a legal dispute between them and the defendant. However, this dispute does not extend to the damages claimed under this action. Even according to the defendant, adjacent houses should not be damaged and a person whose house was damaged as a result of the destruction of a house designated for demolition, is entitled to file an action for compensation for the damage inflicted upon him.

Trespass and Plunder

19. Defendant's actions, which were carried out by its soldiers, constitute trespass in real property as defined in section 29 of the Torts Ordinance (New Version), 5728-1968 (hereinafter: the **Torts Ordinance**) under the provisions concerning unlawful damage to immovable property. They also constitute the tort of trespass in movable property as defined in section 31 of the Torts Ordinance, under the provisions concerning forcible interference with immovable property while in the possession of another. They also constitute the tort of plunder as defined in section 52 of the Torts Ordinance, under the provisions concerning destruction of movable property to the possession of which the plaintiff is entitled.
20. According to sections 30 and 32 of the Torts Ordinance the burden to show that its actions, which were carried out by its soldiers, were lawful, lies on the defendant.
21. Nonetheless, the following are a some of the causes which indicate, each one separately, that defendant's actions, which were carried out by its soldiers, were unlawful:
 - a. The house and property were destroyed contrary to the rules of international customary law prohibiting destruction of private property unless it is imperatively demanded by operational military need;
 - b. The house and property were destroyed contrary to the rules of international customary law prohibiting collective punishment, acts intended to intimidate or terrorize, and reprisals against protected persons and their property;
 - c. The house was destroyed (and as a result thereof the property was also destroyed) although no order for its demolition had been issued. The plaintiffs wish to point out that under regulation 119 of the Defense (Emergency) Regulations, 1945, (hereinafter: **regulation 119**) relied upon by the defendant in the demolition of houses in which perpetrators had been living, the demolition is conditioned upon the issuance of a demolition order;
 - d. The house was destroyed although the persons who were harmed by the demolition have not been given the opportunity to be heard, contrary to the law;
 - e. Regulation 119 does not authorize the defendant or any of its agencies to destroy any property beyond the house designated for demolition, including immovable property located within the targeted house. Therefore, even if the

demolition of the house itself was lawful, the destruction of the immovable property which was in the house was unlawful.

For this matter, attached is a letter of the office of the legal advisor for the Commander of the Israeli Military Forces in the West Bank, stating that "according to IDF customary working procedures concerning this matter, there is a clear directive providing that the occupants of the house must be given the opportunity to remove belongings and immovable property from the house designated for demolition." This letter constitutes a clear admission by the defendant of the correct interpretation of the law.

The letter dated August 10, 2003 is attached as **Exhibit B**.

- f. Regulation 119 does not authorize the defendant or any of its agencies to destroy real property or any other property beyond the house designated for demolition. Hence, any damage caused around the house was unlawful.

On this matter too, attached is a letter of the office of the legal advisor for the Commander of the Israeli Military Forces in the West Bank, stating that "There is a clear directive providing that causing damage to buildings adjacent to the house designated for demolition should be avoided" and "we have suggested that you file a claim for compensation" [for the damage allegedly caused to the surrounding area]. This letter and similar letters which were sent by said office constitute an admission by the defendant of the prohibition to cause damage to the area surrounding the demolished house and of the fact that such damage is actionable.

The letter dated March 23, 2004 is attached as **Exhibit C**.

Negligence

22. Defendants' actions, which were carried out by its soldiers, constitute the tort of negligence towards the plaintiffs, as this term is defined in section 35 of the Torts Ordinance. The plaintiffs will claim, *inter alia*, that the defendant, by its soldiers, committed against them the tort of negligence by the following acts and omissions:
 - a. Unlawfully destroyed the property as specified in the part relating to the torts of trespass and plunder. The unlawful destruction of the property also constitutes in and of itself a tort of negligence;
 - b. Did not enable to remove from the house the immovable property which belonged to plaintiff 2 and his family and, among other things – did not give enough time to remove the belongings; did not assist in the removal of the belongings; did not enable neighbors and other family members to assist in the

removal of the belongings; prohibited and prevented the removal of the belongings;

- c. Destroyed the house and its contents;
- d. Destroyed the house by using a large quantity of explosives, although the damage to adjacent buildings was known and expected;
- e. Detonated a large quantity of explosives in the heart of a residential and agricultural area;
- f. Failed to take reasonable precautions to prevent damage to buildings, property and agricultural crops in the area surrounding the house, but, on the contrary, took measures which increased the risk to all of the above;
- g. Did not remove from the area of the explosion animals that were expected to be harmed by it;
- h. Breached its statutory duties to protect the proprietary and other rights of the plaintiffs – including the duties specified herein-below in the part relating to a breach of statutory duty.
- i. Did not act as a reasonable authority would have acted in the enforcement of the law;
- j. Did not act as a reasonable authority would have acted under similar circumstances;
- k. The soldiers did not act in accordance with the directives concerning the obligation to refrain from causing damage to the area surrounding the targeted house as a result of the demolition;
- l. The defendant failed to properly direct the soldiers of the obligation to enable removal of belongings from the house designated for demolition and of the obligation to refrain from causing damage to the area surrounding the targeted house as a result of the demolition;
- m. The defendant sent the soldiers to commit acts of vengeance against the plaintiffs in an atmosphere of hatred and anger of terrorist attacks which had been committed against civilian population. Under these circumstances there is an inherent tendency to behave in an unrestrained manner and intensify vengeful acts. The defendant did nothing to restrain its soldiers or supervise them, and

also in retrospect did not take any measures against any of them in connection with the excess damage incurred by them.

Shifting the Burden of Proof

23. Under the circumstances of this case it is just and lawful to implement the provisions of sections 38 and 41 of the Torts Ordinance, and the burden to prove that there was no negligence, should be entrusted with the defendant.

Breach of Statutory Duty

24. Defendant's actions, which were committed by its soldiers, impose upon it liability towards the plaintiffs for breach of statutory duty, as this term is defined in section 63 of the Torts Ordinance. The defendant and the soldiers have, *inter alia*, breached the following statutory duties:

- a. Basic law: Human Dignity and Liberty, which protects the dignity and property of any person.
- b. Regulation 46 of the regulations annexed to the Convention respecting the Laws and Customs of War on Land (Hague, 1907) (hereinafter: the **Hague regulations**) according to which, *inter alia*, private property in an occupied territory must be respected; and alternatively: regulation 23(g) which prohibits destruction of enemy's property during hostilities, unless such destruction is imperatively demanded by the necessities of war;
- c. Regulation 50 of the Hague regulations prohibiting the imposition of collective punishment;
- d. Article 27 of the Geneva Convention which provides, *inter alia*, that "Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity."
- e. Article 53 of the Geneva Convention which prohibits, *inter alia*, any destruction and demolition of real or personal property belonging to private persons, except

where such destruction and demolition are rendered absolutely necessary by military operations;

- f. Article 33 of the Geneva Convention which prohibits collective punishments, measures of intimidation or terrorism and reprisals against protected persons and their property;
- g. Articles 146 and 147 of the Geneva Convention which obligate any member state to search for and prosecute persons alleged to have committed, or to have ordered to be committed grave breaches of the Convention, including extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- h. Article 17 of the Covenant on Civil and Political Rights concerning the protection of a person against unlawful interference with his privacy and home;
- i. Provisions of the Convention on the Rights of the Child concerning the protection of the child's family, home, education, bringing up etc. which concern the obligation of the state to promote same;
- j. Sections 451, 452, 453 and 454 of the Penal Law, 5737-1977 concerning various injuries, including injuries caused by explosives, injuries to animals which may be stolen and injuries to cultivated trees.

The defendant has also breached the provisions of the Animal Welfare Law, 5754-1994, by injuring the sheep of plaintiff 3 (and other animals around the house). However, since the provisions of this latter law are designed to benefit the animals themselves rather than to benefit plaintiff 3, the plaintiffs will rely on section 451 of the Penal Law, as stated above. This however may not be interpreted to imply that the severity of the actions of the defendant and its soldiers towards such animals is belittled.

- k. Section 70 of the Military Justice Law, 5715-1955, concerning causing damage to property by exceeding authority.

The Liability of the Defendant

- 25. The liability of the defendant to all actions described in this statement of claim and its liability for the torts specified above, is entrenched in one of the following sources or any of them or all of them collectively – as the case may be:
 - a. Direct liability, since these are acts and omissions which may be directly attributed to the defendant and which have taken place systemically, according to

decisions and with the involvement of the highest ranking officers and officials of defendant's military and political hierarchy;

- b. Vicarious liability for the acts of the soldiers who are employed by it and whose actions (and omissions) were taken in the course of their employment, and for whose acts it is vicariously liable;
- c. Direct liability based on section 12 of the Torts Ordinance for joining, aiding in, counseling, provoking, commanding, authorizing and/or ratifying. In this regard the plaintiffs wish to particularly note, that the defendant had taken extensive collective punishment measures in violation of the basic rights of the residents of the Area while letting its soldiers clearly understand that the property of the residents of the Area and their rights were cheap and could be treated wantonly. The plaintiffs note further that the defendant took acts of vengeance and instilled an atmosphere of vengeance among the soldiers that were sent by it to carry out such acts. The defendant did nothing to prevent the excess damage which was caused by its implicit and/or explicit authorization and/or as a result of the acts taken by it to provoke its soldiers. The defendant ratified the infliction of the excess damage by having failed to take any measure against those responsible for the damage incurred.

Plaintiffs' Damages

Damages to the buildings

26. The damages caused to the houses of plaintiffs 1 and 2 and to the fence which was destroyed are specified in an expert opinion attached to this statement of claim as **Exhibit D**.
27. In brief: the damage caused to plaintiff 1's house may be repaired and the house may be renovated. A detailed appraisal of the costs of the repairs is specified in the opinion. The cost of the repairs amounts to 68,554 ILS without VAT and the demanded compensation amount (including VAT) is **80,208 ILS**.

Plaintiff 2' house sustained a substantial damage, it poses a danger and is uninhabitable. It should be demolished and a new house should be erected in lieu thereof. The estimated cost of the demolition and re-construction is specified in the opinion and amounts to a total of 167,720 LIS without VAT. The demanded compensation amount (including VAT) is therefore: **195,062 ILS**.

Other Damages

28. In the detonation of the house its entire content which belonged to plaintiff 2 was destroyed. This includes, *inter alia*, a bed room with all of its furniture; a cupboard and its entire contents; a kitchen including a refrigerator and a stove; a washing machine; a sewing machine; a large library; a TV set and stereo system; a sun-heated

water tank; thirty sacks of wheat; curtains; chairs; clothes... in short: the entire contents of a family's residential home. For this damage the sum of **35,000 ILS** is claimed.

29. The value of the property which was destroyed in the house does not reflect only its economic value, its market value. This concerns all such small and big objects which surround a person and give him a sense of belonging and security. This concerns all such small and big objects which form part of a person's life, of his memories, which are associated with past events and with people who have passed away. Other than the objects which have significant economic value, family pictures, children's toys, the books of the eldest daughter etc. were destroyed. The emotional and sentimental value of these objects is immeasurable. An injury which leaves a person not only without a roof over his head but also homeless and devoid of all objects which formed part of his intimate world, is immeasurable. For the added value of these objects, as described above, the sum of **30,000 ILS** is claimed.
30. The detonation of the house destroyed fruit trees which were planted around it. For the destruction of the fruit trees the sum of **15,000 ILS** is claimed.
31. The detonation completely destroyed a Subaru vehicle and another vehicle was damaged. The total damage to both vehicles amounts to **14,000 ILS**.
32. For the injury to plaintiff 3's sheep the sum of **25,000 ILS** is claimed.
33. The aggregate sum of the claim amounts to **394,270 ILS**.

Therefore, the honorable court is hereby requested to summon the defendant and order it to pay the plaintiffs their entire damage (as specified above) in addition to costs of trial and legal fees, including linkage differentials and interest under the law, from the date of the event until the date of actual payment.

Jerusalem, August 3, 2004

Yossi Wolfson, Advocate

HaMoked: Center for the Defence of the Individual
Counsel to Plaintiffs