

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact [site@hamoked.org.il](mailto:site@hamoked.org.il)**



Date: September 9, 2002  
In your response please refer to: 17908

Colonel Shlomo Politis  
Legal advisor for the West Bank  
Legal advisor's office  
P.O. Box 10482  
Beit El 90300

Dear Colonel Politis,

Re: **Appeal against the demolition of the house of the Jaberi family from Kafr Tal within the framework of HCJ 6329/02**

Following the decision of the Supreme Court dated August 27, 2002 in the above referenced petition, the following are our arguments against the demolition of the house.

**Description of the house and its inhabitants**

1. The house of the Jaberi family is a two story house. The house was built in the 1970's by the late father of Mr. \_\_\_\_\_ Jaberi and is registered under his name. The estate of the late \_\_\_\_\_ Jaberi has never been distributed and although Samih, his wife and their children reside in the house, it is owned by all of the heirs. The first floor is used by the family for animal breeding, from which it makes its living. The first floor also consists of: a cistern. The inhabitants of the house live on the second floor in three bedrooms. In addition this floor consists of balconies, a living room, a guest room, two bath rooms, a kitchen and a stairwell leading to the roof.

A drawing of the house is attached and marked A.

2. Eight people live in the house, four of whom are minors.

Mr. and Mrs. Jaber live in one room. Mrs. Jaber was born in 1955. Mr. Jaber was born in 1949 and acts as the manager of the tutorial department at the Palestinian Ministry of Education. The couple has ten children. Six of whom live at home. (the son \_\_\_\_\_, is wanted by Israel since the beginning of January 2002. Since approximately mid January and until this April \_\_\_\_\_ was incarcerated by the Palestinian Authority. Since IDF's entry into Nablus in the "Operation Defensive Shield" he has disappeared without a trace. Three additional daughters of the couple are married and do not live at home.)

The four daughters of the couple live in the second room: \_\_\_\_\_, is 20 years old, a second year student of education studies in the Al Najach university. \_\_\_\_\_ is 16 years old, an eleventh grade high school student in the village. \_\_\_\_\_, is 14 years old, an eighth grade student. \_\_\_\_\_ is 12 years old, a fifth grade student.

The boys \_\_\_\_\_ and \_\_\_\_\_ live in the third room. \_\_\_\_\_ is a 23 year old fourth year Geography student in the Al-Quds university. \_\_\_\_\_ is engaged to be married but has not married yet. \_\_\_\_\_ is a 13 year old school student.

**The inhabitants of the house are not involved in anti-security activity**

3. We do not know what are the suspicions which are pending against the son \_\_\_\_\_ Jaber, who is wanted. He has never been arrested before the IDF searched for him in January 2002 – a search following which his father extradited him to the Palestinian Authority.
4. The father \_\_\_\_\_, has never been arrested (with the exclusion of an arrest for interrogation purposes by the end of the 1970's, following which he was released and no indictment has been filed against him). The son \_\_\_\_\_ has never been arrested. All of the above until July 19, 2002.
5. On July 19, 2002 the family's father and the eldest son \_\_\_\_\_ were arrested – their only fault being that they were family members of the son \_\_\_\_\_. Following lengthy interrogations, which were intended – so we understand – to differentiate between family members who were involved in any unlawful activity and may be deported (according to you) and those who have not been tainted by anything, they were both released with no condition.
6. It is therefore evident, that even as far as you are concerned the inhabitants of this house, who will be harmed from its demolition, are innocent.

**Damaging the family's livelihood, the animals and the source of water**

7. As described above, the ground floor of the house is used as a shelter for animals from which the family makes its living. The demolition of the house

will also result in the demolition of the place in which the animals are held, and in a potential damage to the animals – either physical damage, or damage arising from the lack of shelter and living resources, or the damage involved in their transfer to an alternative shelter. Beyond the distress that will be caused to the animals, this, will undoubtedly damage the family's livelihood.

8. In addition, the ground floor also consists of a cistern. Under the current circumstances, when the water supply to the Samaria villages is often disrupted, the existence of a facility for the gathering and storage of water is of a special importance. Both due to the right of every individual to have water, and based on the obligation of the military commander to ensure water supply to the inhabitants, causing damage to this source of life should be avoided.

#### **Damage to the other heirs**

9. As aforesaid, the house is not exclusively owned by its inhabitants. As a real estate property it also belongs to the brother of Mr. \_\_\_\_\_ Jaber, and the damage that will be caused to him should also be taken into consideration.

#### **Damage to nearby houses**

10. The house being the subject matter of my letter is not located in a vacant area. Additional houses are located in its vicinity: one of the houses is a three story house which is located only 7-8 meters away from it. Another house is located about 6 meters away from it. A third house is located about 10 meters away from it and a fourth house is located about 20 meters away from it. The demolition of the house with explosives will undoubtedly cause damage to all of the above four houses. A demolition by a bulldozer is also expected to cause damage to the closer houses. Regulation 119 does not grant any authority whatsoever to demolish these houses, and any act which may damage these houses should be avoided.

#### **Proportionality**

11. Notwithstanding my request of the state's counsel, advocate Helman, I have not yet been informed what were the suspicions which were pending against the wanted son. It is also not clear what is the evidence which ties the son with unlawful actions. In any event, it seems that this is not a prolonged activity (he is wanted only since January), and if a membership in a terrorist cell is concerned - the centrality of his position in the cell should be examined. The cumulative effect of the demolition of family houses until this present time should also be considered (according to the state, a deterring effect has already been achieved), as well as the question of the added value of the demolition of this additional house to what has already been achieved.
12. Against considerations of deterrence, the severe damage that will be caused to the residency of family members who have not sinned and who were not involved in terrorism, including small children, should be considered; the damage to the source of water; the damage that will be caused to additional individuals who also own the house or the houses of whom may be damaged as a result of the demolition should all be considered.

13. The violation of fundamental rights of so many can not be justified by a hypothetical claim concerning an additional deterrence which would be achieved by the demolition of another house of innocent citizens, which would be added to dozens of other houses which have been demolished until now over such a short period of time.

#### **Demolition in the course of hostile activities**

14. The state's request to schedule an urgent hearing in the petition indicates, that you do not regard the demolition of the house as an act pursuant to regulation 119 of the Defence (emergency) Regulations, 1945, but rather as an act taken by the military commander under the powers and authorities granted to him by the customary international law: whether under the limited permit which is implied from Article 53 of the Fourth Geneva Convention (concerning an occupied territory) or under the limited permit in Article 23(g) of the Hague Regulations (concerning circumstances of hostilities).
15. In this regard I would like to remind you that the customary international law utterly forbids to hit civil targets and to carry out acts of vengeance and collective punishment. By no standard, a civilian house in which a family lives, sheep are held and which consists of a cistern which serves civilian population, can be considered as a legitimate military target. The demolition of a house when no combative activity is being carried out in its vicinity, no fire is opened there from and it is not used as a hiding place for combatants – can not be defined (by any standard) as a damage incidental to legitimate combative actions. The demolition of a house only because of the deeds of a person who used to live therein is clearly an act of vengeance and collective punishment.
16. Please be further reminded, that the possible demolition of the house being the subject matter of my letter joins a wide scale of allegedly unlawful acts of destruction which have already been executed over the last few months throughout the Area. It seems that you should examine your actions in this regard also in light of Article 147 of the Geneva Convention and Article 8(2)(a)(iv) of the constitution of the International Criminal Court.

#### **Conclusion**

17. The demolition of the house is unlawful and does not meet the criteria established by case law concerning house demolition pursuant to regulation 119 of the Defence Regulations, and even more so the criteria which permit demolition due to military needs.
18. You are hereby requested to advise us that there is no intention and that there will be no intention to demolish the house. Alternatively, you are hereby requested to undertake, that in the event such an intention is formulated (upon a material change of circumstances) the family would be given an advance warning for hearing purposes, or at least to enable them to find alternative accommodations for themselves and an alternative shelter to the animals, and

to remove their belongings from the house. Unfortunately, even these minimal matters were not respected during recent IDF operations.

Sincerely,

Yossi Wolfson, Advocate

Enclosures: Exhibit A (drawing)

CC: Adv. Helman, State Attorney's Office, HCJ department.