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**Very Urgent**

August 24, 2015

To:  
Major General Roni Numa  
GOC Central Command  
Commander of IDF Forces in the West Bank  
By Email: [pniot-tzibur@mail.idf.il](mailto:pniot-tzibur@mail.idf.il)  
And by fax: 02-5305741

Re: **The family home of \_\_\_\_\_ Alasalmon, ID No. \_\_\_\_\_ in Hebron**

**Very Urgent Appeal**

I hereby turn to you on behalf of my above referenced client in an appeal against your intention to demolish the residential apartment in which she lived together with her family, as follows:

1. On August 19, 2015, we received your notice concerning an intention to seize and demolish the residential apartment in which lived \_\_\_ Alasalmon, ID No. \_\_\_\_, by virtue of Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: **Regulation 119**). According to the notice which was given, said measure was taken in view of the fact that Mr. Alasalmon "acted in connection with the execution of a terror attack on November 10, 2014". According to the notice and the extension which was granted, the decision may be appealed until August 24, 2015, at 10:00, and hence this appeal.
2. My client will argue that the decision to seize and demolish her residential apartment is an inappropriate decision, for the following reasons:
  1. As a general rule, house demolition is a prohibited action, which impinges on fundamental rights of innocent people, contrary to humanitarian international law;

2. The demolition of the family home will injure innocent people, including children;
  3. The decision to demolish my client's apartment is not proportionate in view of the heavy punishment which has already been imposed on Mr. Alasalmon which is a sufficient deterring measure; in view of the passage of time; and in view of the damage which will be caused to the neighboring apartments in the building.
3. In view of all of the above, we request that you order to revoke the above decision.

**The main facts concerning the matter at hand**

4. The residential apartment of the Alasalmon family is located in a five story building. The first floor is a basement floor and the four additional floors are above the ground. Each floor consists of two adjacent apartments. The apartment of the Alasalmon family is located on the third floor on the east side of the building.
5. Until November 10, 2014, \_\_\_ Alasalmon, his wife, who is my above referenced client, and their two children aged six and eight lived in said apartment. On November 10, 2014, following the involvement of Mr. Alasalmon in a terror attack, IDF forces arrived to the family home, entered the apartment, interrogated my client and took articles from the apartment. Said event caused the children severe anxiety and since that day my client and her children have been living with her family as a result of the concern that the IDF forces would return, and due to her desire to protect the children from any additional trauma. However, my client lives in her family's home temporarily, and her residential apartment is the only apartment in her ownership and the only possible way available for her and her children to lead independent life, either by living in the apartment or by selling it and living in another apartment.

Hence this appeal.

**The prohibition against house demolition**

6. The demolition of a family home constitutes a cruel and inhuman measure which causes the family a severe trauma, having no a roof over its head. It impinges on the right to own property and on the right to have a home. In the absence of a roof over its head the family is displaced and is completely dependent on others.
7. The demolition causes an intentional harm to innocent people and runs contrary to the most important and fundamental legal and moral principle according to which "**The fathers shall not be put to death for the children, nor the children be put to death for the fathers; but every man be put to death for his own sin**" (Kings 14;5-6, and see also the words of the Honorable Justice Cheshin in H CJ 2006/97 **Janimat v. GOC Central Command**, IsrSC 51(2) 651, 654) and is therefore totally prohibited.
8. Moreover. It seems that there is no need to say much about the impingement inflicted by house demolition on protected human rights. House demolition impinges on the right to dignity, on the right to live in a dignified manner and on the right to own property. In view of the fact that house demolition harms innocent family members whose actions did not cause the demolition, and who have no ability to influence respondent's decision, the demolition critically impinges on the autonomy of the will and on the ability of a person to make his own decisions and take responsibility for the consequences of his own actions (see and compare AP 10/94 **A v. Minister of Defense**, IsrSC 53(1) 97, 107).

9. House demolition is also contrary to humanitarian international law which prohibits collective punishment and the infliction of damage or destruction of private property (Articles 33 and 53 of the Fourth Geneva Covenant, Article 46 of the Hague Regulations).
10. In view of the severe impingement on fundamental rights, and in view of the irreparable harm inflicted on the family members who did not sin, it was held that seizure and demolition of homes for deterrence purposes pursuant to Regulation 119 would be made only subject to a proper administrative procedure, including a meticulous factual substantiation, the grant of a warning, a fair hearing etc. (see HCJ 9353/08 **Hisham Abu Dheim v. GOC Home Front Command** (reported in Nevo, January 5, 2009)).
11. The exercise of the authority must also satisfy the proportionality tests, after the person with whom the authority is vested has meticulously examined and properly balanced all relevant interests which should be weighed (see HCJ 1730/96 **Salem v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 50(1) 353, 359). As will be argued below, the decision to demolish the family home of my client can neither be deemed reasonable nor proportionate under the circumstances of the matter.

### **Injury to innocent people**

12. As described in the factual part, in the family home of my client lived in addition to her and her husband, their two children aged six and eight.
13. Although my client and her children do not reside in the apartment at the moment in view of the concern that IDF forces might return thereto and frighten the children, their stay with my client's family is only temporary, and this apartment is the sole apartment which they have. Hence, the demolition of the residential apartment will cause great suffering to innocent persons, and will critically injure their human dignity. The injury inflicted on the family's children is contrary to the rights of the children and the undertakings of the state of Israel according to the Convention on the Rights of the Child, and particularly those stipulated in Article 2(b):

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

And in Article 38 of the convention:

A. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

...

D. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

On the applicability of human rights treaties to the Occupied Palestinian Territories (OPT) see HCJ 769/02 **The Public Committee against Torture in Israel et al., v.**

**Government of Israel** (reported in Nevo, December 14, 2006), and the authorities there.

14. In addition, the demolition of the residential apartment of the Alasalmon family will also injure their neighbors in the building, according to the opinion of the engineer Jabarin Taysir, licens number 36465, which states that the demolition or sealing of the apartment will cause the entire building to collapse. An appeal on behalf of the neighbors will be submitted separately. The opinion is attached hereto.

### **The decision is not proportionate**

15. According to the judgments of the Supreme Court, in view of the severe impingement on human rights, the exercise of the authority vested in the military commander under Regulation 119 must be limited, subject to the exercise of reasonable discretion and to the proportionality tests. And it has been recently held by the Supreme Court in HCJ 4597/14 '**Awawdeh et al. v. The Military Commander of the West Bank Area** (reported in Nevo, July 1, 2014)(hereinafter: '**Awawdeh**) as follows:

"... in its interpretation of [Regulation 119], this court limited the implementation and application thereof and held that the military commander must exercise reasonable discretion while using his authority there-under and act proportionately... This ruling was reinforced by the enactment of the Basic Law: Human Dignity and Liberty. This court held that although the 'validity of law' clause applied to the regulation, it should be interpreted in the spirit of the Basic Laws... There is no dispute that the exercise of the authority granted by Regulation 119 violates human rights. It violates the right to own property and the right to human dignity. Therefore, as held, the exercise of the authority must be proportionate.

16. In the above HCJ 769/02 the Supreme Court emphasized that the examination of the proportionality of a decision is premised on the right of the innocent civilians:

However, even under the difficult conditions of combating terrorism, the differentiation between unlawful combatants and civilians must be ensured. This is, regarding the issue at hand, the meaning of the "targeting" in "targeted killing". This is the meaning of the proportionality requirement with which my colleague the President deals extensively.

Regarding the implementation of the proportionality requirement, the appropriate point of departure emphasizes the right of innocent civilians who are not lawbreakers. **The State of Israel has a duty to respect the lives of the civilians of the other side.** It must protect the lives of its own citizens, while respecting the lives of the civilians who are not subject to its effective control. **When the rights of the innocent civilians are before our eyes, it becomes easier for us to recognize the importance of placing restrictions upon the conduct of the armed conflict.**

This duty is also part of the additional normative system which applies to the armed conflict: it is part of the moral code of the state and the superior principle of protecting human dignity. (page 61, emphases added).

17. Indeed, in a regime which respects fundamental rights and protects human dignity, Regulation 119 is not implanted unless there is no other alternative. To witness, Regulation 119 is not exercised in Israel against the families of Jewish security inmates, despite the escalation in violent actions against Arab Israeli citizens and national hate crimes we are witnesses of. Parenthetically it should be noted that a substantial concern exists that the different implementation of the Regulation in similar cases amounts to discrimination.
18. In our case there is no rational connection between the means and the alleged objective, namely, deterring potential perpetrators and protecting the security of the area. Considering the critical injury inflicted on the rights of my client and her children, a high level of proof is required regarding the efficiency of such an extreme measure. However, not only that there is no proof that house demolition indeed serves the declared purpose of the action, but the security agencies themselves have already concluded in the past that the policy of house demolition of terrorists' homes did not prove to be a deterring policy. In view of the above, in 2005 the Minister of Defense adopted the recommendations of the Shani think tank and decided to stop the exercise of the authority under Regulation 119, in view of the fact that the deterrence was not effective and the harm caused by the demolitions exceeded their benefit.
19. It should be reminded that in the judgment of the Honorable Deputy President Rubinstein in HCJ 8091/14 HaMoked: Center for the Defence of the Individual v. Minister of Defense (dated December 31, 2014) it was held in connection with house demolitions in circumstances similar to the circumstances of the case at hand that "... **state agencies should examine from time to time the tool and the gains brought about by the use thereof, including the conduct of a follow-up and research on the issue, and to bring to this court in the future, if so required, and to the extent possible, data which point at the effectiveness of house demolition for deterrence purposes, to such an extent which justifies the damage caused to individuals who are neither suspects nor accused...** " In view of the above, such an examination should have been conducted instantaneously and there was no room to continue to implement a house demolition policy which was not based on a proper empirical examination concerning its consequences. We therefore demand that you do not carry out the demolition of the family home of my client or the demolition of any other structure before such an examination is conducted as held by the Supreme Court and its results are presented.
20. Taking into consideration the immense and irreparable damage which will be caused to my client and her children (as well as the neighbors in the building), it is not sufficient that such a cruel measure "may" realize objectives of deterrence from committing additional acts of violence. The damage is certain and severe, and benefit in a substantially higher level is required to justify it.
21. In this specific case the demolition of the apartment cannot be regarded as a proportionate measure , in view of the fact that two cumulative life sentences and payment of compensation in the sum of about four million ILS to his victims have already been imposed on \_\_\_ Alasalmon in the framework of the criminal proceeding (File (Judea) 8495/14 **State of Israel v. Alasalmon** (reported in Nevo, dated March 26, 2015)). Obviously, said heavy punishment, which also includes a substantial economic component without compare in Israeli jurisprudence, constitutes a significant deterring measure of potential perpetrators. The employment of an additional measure, namely, the demolition of the family home, a measure which is injurious and irreversible, emphasizes with greater vigor the fact that it is a revengeful punishment and an

excessive reaction which injures innocent people and which may not be deemed proportionate under the circumstances of the case at hand.

22. Moreover. Injury inflicted on innocent people and collective punishment also have negative results of increased hostility and hate and giving the impression that Israel attaches no value to the safety and wellbeing of the residents of the OPT, even if they are innocent bystanders and are not involved in any hostile activity. Such a broad and non-distinctive impingement, as opposed to a specific impingement on those who are to be blamed and punished may give rise to feelings of despair and willingness to make sacrifices, rather than fear and concern. Thus, the non-discriminating demolition contemplated by you may contribute to a feeling of the close and far circles surrounding the suspect that they have nothing to lose and therefore cause harm to the security interests of Israel and encourage additional injurious acts. It seems that the objective of this measure is not to deter but rather to satisfy public opinion in Israel which demands revenge.
23. Hence, the passage of time between the terror attack committed by Mr. Alasalmon and your decision to demolish his residential apartment also attests to the absence of rational connection between the means and the alleged target, since it indicates that your decision is not actually based on the deeds of Mr. Alasalmon but rather on deeds of others which were committed later on. Although it was held that deterrence is a legitimate objective, it is clear that a direct connection must exist between the acts of the person with respect of whom the injurious measure is exercised and the alleged objective of deterrence, and one cannot act based on general deterring purposes which are not directly related to said person. Relevant to this case are the words of the Honorable Justice Dorner in H CJ 1730/96 **Salem v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 50(1) 353 (1996):

One of the requirements, which have not been disputed until now, for the exercise of the authority, is the existence of a causal relation between the terrorist attack and the demolition: Although the demolition of a house is not a punitive measure in the full sense of the word but a deterring measure, the same should not be instituted except as a direct response to a terrorist attack which was performed by the terrorist who carried out the attack who resided in the house. In the case at bar, the Respondent "froze" the demolition decision and turned it into a quasi "conditional" sanction. The "condition", so it turns out, was the performance of additional terrorist attacks, by terrorists who lived in other towns and belonged to other families. Pursuant to the performance of such further terrorist attacks, the Respondent seeks to demolish the petitioners' houses. In my opinion he is not entitled to do so, since the demolition authority should not be exercised pursuant to terrorist attacks which are not those which were performed by the terrorist who lived in the house.

24. Despite the fact that the opinion of the Honorable Justice Dorner in said judgment was a minority opinion, the Honorable Justice Bach who discussed the issue decided to deny the petition on the grounds that in the matter of the petitioners in that case notices of the intention to demolish were given shortly after the events which lead to the decision to demolish and the demolition orders were stayed due to legal proceedings which were initiated by the families, and it was held that there was no flaw in respondent's decision to examine whether appellants' appeals should be accepted. The case at hand is different in that no notice whatsoever regarding the demolition has been

given shortly after the terror attack, and the first notice was given only now, after the passage of more than ten months, in a manner which disconnects any significant connection between the acts of Mr. Alasalmon and the injurious measure.

**In Conclusion**

25. House demolition is a cruel and irreversible measure the effectiveness of which is doubtful, as was also recognized by the Minister of Defense who stopped said policy in the West Bank several years ago. Under the circumstances of this case, the employment of such an injurious measure cannot be regarded as proportionate, particularly in view of the circumstances of my client and her family.
26. Therefore, we request that you retract your decision to demolish my client's apartment.
27. For as long as the proceedings concerning the demolition of my client's apartment are pending no action should be taken which may cause any damage to their home. In addition, to the extent it is resolved to deny this appeal, my client intends to file an urgent petition with the Supreme Court. For this purpose a reasonable period of time is requested during which no action shall be taken which may cause damage to the structure.

Very truly yours,

Michal Pomeranz, Advocate

CC: Legal Advisor for the Judea and Samaria Area, by fax 02-9977326