

for the purpose of filing their petition and receiving an interim remedy was until October 12, 2014 (as stated in Exhibit "D") and it is assumed that the intention was to October 12, 2015, at 12:00.

- B. To obligate the respondent to provide a full technical specification of the demolition plan, and to enable the submission of a professional opinion concerning said specification and the risks embedded therein, after the petition is heard on its merits.

The grounds for the petition are as follows:

1. **The demolition and sealing order:** The subject matter of this petition is an order which was issued on October 8, 2015, by Major General Roni Numa, the Military Commander of IDF Forces in the Area, which stated as follows:

This order is issued due to the fact that the resident of the house, ___ **Abu Hashiyeh** committed an act of terror, in which he stabbed to death the soldier, the late Almog Shiloni, in the railway station "HaHagana" in Tel Aviv on November 10, 2014."

The order stated further that the commander decided, by virtue of the authority vested in him as the Commander of IDF Forces in the Area,

"And according to Regulation 119 of the Defence (Emergency) Regulations 1945, and by virtue of the powers vested in me pursuant to any law and security legislation, and due to the fact that exigent military needs so require, I hereby order that the structure described below be seized and demolished:

The ground floor in a structure in Nablus in which lives the perpetrator ___ Abu Hashiyeh (ID No. ___) in view of the fact that exigent military needs so require."

Exhibit "A"

2. The respondent did not dispute the fact that this case concerns a family of refugees from Salame (currently Kfar Shalem) Jaffa, which was rehabilitated in Askar refugee camp near Nablus, and that the land on which the house stands is land owned by UNRRA, and therefore the house is not private property. The respondent preferred to disregard these details and ignore them, as if circumventing a real obstacle without confronting it. The honorable court will be requested to examine this significant issue.
3. The above order was ostensibly issued after the petitioners were given insufficient opportunity to appeal against the intention to demolish their home. On October 3, 2015, in the morning, the residents of the house were given an inappropriate notice in Arabic which stated that there was an intention to demolish the house and that it may be appealed until October 6, 2015.

Attached is the notice Exhibit "B"

In response to the request for appropriate extension which was submitted by petitioners' counsel, an extension of one day was granted for the submission of the appeal, which was timely submitted on October 7, 2015.

Attached is the appeal Exhibit "C"

The respondent did not need much time to consider the arguments, and immediately on October 9, 2015, early in the morning, he sent his response along with a "Seizure and Demolition Order", which

has already been signed on October 8, 2015, teaching us that the respondent has even discarded all pretence to the exercise of discretion.

Attached is the decision and the order Exhibit "D"

4. In his said response to the appeal, which was drafted and signed by Major Sandra Beit-On Ofinkero, the respondent reviewed several issues which were raised therein, and ignored others with which he did not feel comfortable.

He argued that he had the power to act in Area A and that he did not need the consent of the Palestinian Authority; that he intended to demolish the entire apartment in which the nuclear family lived and did not satisfy himself with the place in which the "perpetrator" lived; he argued that this would intensify and strengthen deterrence which is the objective of the demolition; he refused to specify how the demolition would be carried out and notified that he would not provide an engineering opinion regarding the execution method, and in so doing refused to wait for an opposing opinion on behalf of the petitioners; the argument concerning disproportionality was denied; the argument that the order ran contrary to international law was denied; the argument that the son has not yet been convicted by a court of law was denied; the demand that the benefit of the demolition be examined was denied; the argument regarding discrimination between Jews and Arabs in the enforcement of punishment and deterrence was denied.

5. The respondent requested to emphasize that "**the enforcement of this order will not commence before October 12, 2014, at 12:00**"

The Legal Argument

6. Respondent's order for the seizure and demolition of the apartment in which the suspect lived is based on Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: "**Regulation 119**"). The petitioners will argue that Regulation 119, in and of itself, runs contrary to the norms by which the military commander is bound, and he should not use it. In addition, his decision is contrary to and deviates from the rules established by this honorable court and therefore it should be revoked.
7. In a situation of belligerent occupation, the military commander must act according to the rules of international humanitarian law and the rules of occupation constituting part thereof. The respondent acts a trustee of the occupied territories and is not the sovereign thereof. His powers in the occupied territory are imbued from international law, which constitutes the normative basis for the exercise of his powers (HCJ 2150/07 **Abu Safiyeh v. Minister of Defense** (not reported December 29, 2009).
8. **When a different situation is created**, such as the situation which was created following the signature of the Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip (signed in Washington, September 28, 1995) (hereinafter: the "**Interim Agreement**") the force of the demand that the military commander act according to the rules of international humanitarian law is much stronger. To the natural force **declared and agreed declaratory force** is added.

Article XIX of the Interim Agreement entitled **Human Rights and the Rule of Law** states:

Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.

And **Article XI – of Annex I: Protocol Concerning Redeployment and Security Arrangements**, explicitly states and declares once again as follows:

Rules of Conduct in Mutual Security Matters

1. Human Rights and the Rule of Law

Subject to the provisions of this Agreement, the Palestinian Police and the Israeli military forces shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms of human rights and the rule of law, and shall be guided by the need to protect the public, respect human dignity and avoid harassment.

Therefore, this **double perspective** should be used to examine the implementation of acceptable international norms of human rights and the rule of law, and their enforcement in the place in which the house being the subject matter of this petition is located.

9. Regulation 119 from the era of the British Mandate runs contrary to two main provisions of the Fourth Geneva Covenant relative to the Protection of Civilian Persons in Time of War, which constitutes to date the basis for the laws of occupation under international law. It runs contrary to Article 33 which **prohibits the use of collective punishment** and **reprisals** against protected persons and their property, and Article 53 of said covenant which prohibits the **destruction of houses** and property of protected persons by the occupying power.
10. Such collective punishment also contradicts regulation 50 of the regulations annexed to the Convention respecting the Laws and Customs of War on Land (Hague Convention 1907) which prohibits the imposition of collective penalties and regulation 43 of the Hague convention which prohibits impingement and destruction of property.
11. The respondent is bound to and is obligated to act according to the international legal rules of human rights, and particularly according to the UN Covenants on Civil and Political Rights, and on Social and Economic Rights. A ruling to that effect was also made by the International Court of Justice in its opinion regarding the separation wall. These norms also guided the honorable court in the examination of the acts of the military commander (H CJ **Albassione v. Prime Minister** TakSC 2008(1); H CJ 7957/04 **Mar'aba v. Prime Minister of Israel** TakSC 2005(3) 3333 paragraph 24; H CJ3239/02 **Marab v. Military Commander of IDF Forces** TakSC 2003(1) 937; H CJ 3278/02 **HaMoked: Center for the Defence of the Individual v. Military Commander of IDF Forces in the West Bank**, IsrSC 57(1) 385).
12. The use of Regulation 119 is also contrary to Article 17 of the International Covenant on Civil and Political Rights which enshrines a person's right not to be subjected to arbitrary or unlawful interference with his home, Article 12 which protects a person's right to freely choose his residence, Article 26 which protects the right to equality before the law, and Article 7 which protects the right not to be subjected to cruel, inhuman or degrading treatment or punishment. The UN human rights committee which examined the implementation of the covenants by the states members of the UN, also stated in its opinion of 2003 that the use of the Regulation ran contrary to the covenant.
13. The Regulation is also contrary to different Articles of the Covenant on Social and Economic Rights, such as Article 11 (which protects the right to proper housing and living conditions) Article 10 (which protects the family unit) Articles 12-13 and Article 17 of the Universal Declaration on Human Rights. There is also a concern that the use of Regulation 119 of the Defence Regulations may even amount to war crime according to the definitions of Article 8(2)(IV) of the Rome Statute on the Establishment of an International Criminal Court. Reprisals against protected persons and their property – are prohibited.

Prohibition against collective punishment and violation of fundamental rights

14. Regulation 119, by its nature, was designated to injure the public. The prohibition against collective punishment is expressed in international customary law, such as Regulation 50 of the Hague convention, which states that no general penalty shall be inflicted upon the population on account of the acts of individuals for which the public cannot be regarded as responsible. Article 30 of the Fourth Geneva Convention categorically stipulates that a protected person will not be punished for an act which he has not committed. Collective punishment and the like, and any act of terror or harassment – is prohibited.
15. This approach is also expressed in the judgments of the honorable court:

"My colleague Justice Cheshin has already stressed in connection with Regulation 119 of the Defence (Emergency) Regulations 1945, that the basic rule is "The soul that sins it shall die... one should not be punished unless he was warned and one should strike the sinner himself alone" (HCJ 2006/97 **Janimat v. GOC Central Command** – Uzi Dayan IsrSC 51(2) 651 page 654)

On this issue see Prof. Mordechai Kremnitzer, article dated February 24, 2009, Israel Democracy Institute "The legitimacy of the demolition of terrorists' homes – judicial commentary following the judgment in the matter of Hisham Abu Dheim v. GOC Home Front Command."

16. To facilitate the examination of the position of international law on this issue, as presented in HCJFH 360/15, attached is an experts' opinion regarding the **lawfulness of the house demolition policy of the state of Israel according to international law**; and a document from 1968 of the Ministry of Foreign Affairs which is also attached hereto.

Attached are Exhibits "E" and "F"

The military commander no longer has the power to exercise this sanction in Area A

17. According to the Interim Agreement and its annexes, petitioners' home is located in Area A. Israel transferred its security authorities with respect to said area to the Palestinian Council. As stated in Article XIII of the Interim Agreement under the caption "Security" in section 1: "The Council will, upon completion of the redeployment of Israeli military forces in each district, as set out in Appendix 1 to Annex I, assume the powers and responsibilities for internal security and public order in Area A in that district."

As opposed to Area B, for instance, in which the Palestinian Police assumes responsibility solely for the public order of the Palestinians.

18. Article XV **Prevention of Hostile Acts** states:

"1. Both sides shall take all measures necessary in order to prevent acts of terrorism, crime and hostilities directed against each other, against individuals falling under the other's authority and against their property and shall take legal measures against the offenders.

2. Specific provisions for the implementation of this Article are set out in Annex I."

19. Chapter 3 of the Interim Agreement which is concerned with "Legal Affairs" provides in section 2 thereof as follows:

"The authority of the Council encompasses all matters that fall within its territorial, functional and personal jurisdiction."

Section 2c of said chapter stipulates that:

"The territorial and functional jurisdiction of the Council will apply to all persons, except for Israelis, unless otherwise provided in this Agreement."

Section 3 of this chapter states that:

"The Council has, within its authority, legislative, executive and judicial powers and responsibilities, as provided for in this Agreement."

And Section 4 completes the picture and draws a clear division:

"A. Israel, through its military government, has the authority over areas that are not under the territorial jurisdiction of the Council, powers and responsibilities not transferred to the Council and Israelis.

B. To this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and responsibilities, **in accordance with international law**. This provision shall not derogate from Israel's applicable legislation over Israelis in personam."

20. According to Annex I Article V, **Security Arrangements in the West Bank, District Coordination Offices (DCO) will be established for the different districts**, and a DCO was also established for the northern part of the West Bank.

Section 2 **Area A** states as follows: **A. The Council will, upon completion of the redeployment of Israeli military forces in each district, as set out in Appendix 1 to this Annex, assume the powers and responsibilities for internal security and public order in Area A in that district.**"

21. The respondent may veer from the above rules only in a temporary situation of "engagement" and only for a very short period of time. Article XI which discusses **Rules of Conduct in Mutual Security Matters** specifies special situations referred to as "engagement steps". In these situations immediate military action may be taken if necessary, and it must cease as soon as possible, and the handling of such situation should be transferred as soon as possible to the Palestinian side. And it is so stated:

3. A. For the purpose of this Article, "engagement" shall mean an **immediate response to an act or an incident constituting a danger to life or property that is aimed at preventing or**

terminating such an act or incident, or at apprehending its perpetrators.

B. Within the territory under the security responsibility of the Council, in places where Israeli authorities exercise their security functions in accordance with this Annex and in their immediate vicinities, the Israeli authorities may carry out engagement steps in cases where an act or incident requires such action. In such cases, the Israeli authorities will take any measures necessary to bring to an end such an act or incident with a view to transferring, **at the earliest opportunity, the continued handling of the incident falling within the Palestinian responsibility to the Palestinian Police.** The Palestinian Police will immediately be notified, through the relevant DCO, of such engagement steps.

22. Section C continues to state that the use of firearms in responding to such acts or incidents shall be prohibited "except as a last resort after all attempts at controlling the act or the incident, such as warning the perpetrator or shooting in the air, have failed, or are ineffective or without any promise of achieving the intended result in the circumstances. Use of firearms should be aimed at deterring or apprehending, and not at killing, the perpetrator" and "**The use of firearms shall cease once the danger is past**", and in any event "D. Any activity involving the use of firearms other than for immediate operational purposes shall be subject to prior notification to the relevant DCO."
23. No one can argue that the imposition of the sanction according to Regulation 119 falls within the definition of "engagement steps". It is not an immediate pursuit after the perpetrators of an engagement incident, which also must cease immediately and the handling thereof transferred to the Palestinian Council.

Property of UNRRA

24. The appeal which was sent to the respondent demanded that the considerations be broadened to include the nature of the house which the respondent intended to demolish, its location and the historical aspects of the conflict embedded therein. It is not just another house which was laboriously built by poor OPT residents. It is a shelter which was designated under the auspices of international recruitment by representatives of nations of the world for families of Palestinian refugees who were uprooted in 1948 from their land following that war. It is a shelter in which the sons of said refugees try to build for themselves and for their children some future. The conflict did not end and in its current round the military commander orders to uproot them again, and at this time, pursuant to anachronistic and contemptuous Mandatory legislation adopted by the military commander for punishment and oppression purposes. The respondent should not be allowed to disregard the fact that the ancestors of the Abu Hashiyeh family lived in what was in the past Salame village in the outskirts of Jaffa and that this family currently lives under international patronage in the Arub refugee camp.
25. Only a cruel commander can disregard the demand for clarification of the position of UN institutions (such as UNRRA) regarding his intention to uproot again refugees who were settled by them with international effort, and ignore them and the position of the nations of the world which stand behind them. Was he of the opinion, from the outset that he could not convince them that a justified military need existed? Was he very well aware of the fact that such an action would be immediately denied and condemned, and therefore did not deign to make a false attempt in that respect?

The suspect and his motives

26. Even if all humanitarian reasons are denied, the honorable court will not be able to approve the demolition of the house unless it has been convinced beyond reasonable doubt that the suspicions which were raised against petitioners' son were indeed substantiated and reliable, and that the attack committed by him was indeed a "terror attack" which stemmed from fanatic nationalistic motives that cannot be eradicated other than by cruel and unlawful punishment.
27. We already know from the evidentiary material accumulated in the son's file, that the motives which caused him to commit the attack were **personal** motives, which stemmed from personal feelings of hopelessness and despair. He wanted to put an end to his life because he was persecuted by his family and rejected by his peers. He did not commit suicide bravely while having committed the acts attributed to him, but rather looked for someone who would kill him in the easiest and fastest manner and would put an end to his misery – in the sense that a knife against an armed soldier would cause his immediate death by the hands of that soldier or by passers by. In all of his interrogations he repeatedly emphasizes that he did not wish to kill the soldier, that it was not his goal. What lead his actions was the thought that an attempt to injure a soldier would result in his own death and personal liberation.
28. As stated in the appeal, petitioner 1 worked for many years in Israel under permit, he was detained after his son's arrest, was interrogated and released, his protracted dispute with his son was confirmed and verified, and no fault was attributed to him. The respondent is well aware of the disputes and gap between the petitioner and his son, and his intention to impose collective penalties on the normative family members increases the injustice and points at its indecency.
29. Therefore, when the respondent takes the position that "**proportionality is examined, first and foremost, vis-à-vis the severity of the action attributed to the suspect, from which derives the required scope of deterrence**" (paragraph 16 of Exhibit D) making reference to HCJ 8091/14 (**HaMoked: Center for the Defence of the Individual v. Minister of Defense**) and when he states that "**exigent measures must be taken to deter and prevent the execution of additional terror attacks... the decision of the military commander... is educated and calculated and is made... based on clear reasons of the security of the Area**" (paragraph 23 of Exhibit D) he does not refer to the case on its merits, he does not refer to the motives on their merits, and he does not refer to the required deterrence on its merits.

Discrimination in the enforcement of punishment and deterrence

30. The appeal already stated that in addition to the scathing criticism against the lack of justification and immorality embedded in the above sanction, one cannot ignore the fact that a not less shocking murder of an abducted Palestinian youth, Mohammed Abu Khdeir, was committed a while ago and three Israeli citizens currently stand trial for said deed, after they admitted and re-enacted it. They were caught alive and most of them are residents of settlements.

Other residents of settlements are apparently suspects of the arson and murder of the Dawabsheh family in Duma village, and despite statements which were made to the effect that their identities were known, they were not indicted and their homes, like the homes of the murderers of Abu Khdeir were not injured.

The fact that this vindictive and inappropriate sanction was not imposed on Israeli citizens is satisfying. However, if such a cruel step is not taken against Israeli citizens (some of whom live in

the Adam settlement and others in Area C in which there is ostensibly no preclusion for exercising the sanction by Israel against its own citizens), it all the more so should not be taken against the residents of an occupied territory, such as the petitioners, who are protected by international law as well as by the Interim Agreement.

Delay and passage of time

31. The offense attributed to the son was committed on November 10, 2014. Almost a year passed from the date of the incident and until a decision was made to demolish the home in which petitioners' son lived. The respondent did not consider the possibility to demolish petitioners' home when the offense was committed, he did not think it was an appropriate response in real time. Only recent political occurrences, which are probably related to the feeling of threat against the Al Aqsa Mosque, increased violence in our streets. The respondent wanted to demonstrate his ability to use force against the population in the OPT, and as he found that an offence had been committed in the past by a resident of a refugee camp near Nablus, he decided to impose a collective sanction against the family home. The passage of time indicates that the sanction is not directed against the offender himself and against the offense committed by him, but rather to a new political situation which has recently erupted, and that the sanction is not exercised as a reaction to the offense but rather serves extraneous interests.

The demolition method

32. In the appeal the respondent was requested to specify how he intended to demolish the ground floor of the house and leave the upper floor intact. He was also requested to provide a technical specification of the demolition method, and to enable petitioners' counsel to provide a professional opinion which would examine the proposed demolition method.

Respondent's response in Exhibit D is that the execution method which was chosen is the best execution method. Unfortunately, it is not the first time that such an undertaking is made, neither is it the first time in which it is breached by a brutal demolition and an insufficiently controlled detonation. HaMoked: Center for the Defence of the Individual itself submitted a complaint and a request for compensation in connection with a demolition which has been recently executed and a breach of an undertaking similar to the above.

The court should not succumb to respondent's desire to act hastily, and it is requested to protect petitioners' rights and obligate the respondent to provide the full specification of the proposed demolition method, and enable the petitioners to object to it in an educated manner by the presentation of an opposing engineering opinion, before the petition is heard on its merits, as requested.

The effectiveness of the sanction and its reasonableness

33. It is very well known that the respondent ceased to exercise the sanction of collective punishment through house demolition following an opinion which was issued by a military committee, the Shani committee, that examined the history of demolitions and concluded that said sanction did not have any real benefit and could even possibly have an adverse effect of broadening terror activity.

It has already been held in a general petition against house demolition, HCJ 8091/14 **HaMoked Center for the Defence of the Individual v. Minister of Defense**, by the Honorable Justice Rubinstein, in paragraph 27 of his judgment as follows:

I am of the opinion that the principle of proportionality does not reconcile with the presumption that choosing the drastic option of house demolition or even the sealing thereof always achieves the longed-for objective of deterrence, unless data are brought to substantiate said presumption in a manner which can be examined... in my opinion, the use of a tool the ramifications of which on a person's property are so grave, justifies a constant examination of the question whether it bears the expected fruit; This is so especially in view of the fact that even IDF agencies raised arguments in that regard, and see for instance the presentation of Maj. Gen. Shani, which, on the one hand, stated that there was a consensus among the intelligence agencies of its effectiveness, while on the other, proclaimed, under the caption "Main Conclusions" that "the demolition tool within the context of the deterring element is 'worn out'" (slide No. 20). Therefore, I am of the opinion 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"

We have not received any data according to which such an examination has indeed been conducted recently and that there is justification for the renewed use of this inappropriate sanction.

In the same judgment, paragraph 6 of the judgment of Justice Hayut:

6. And finally, I wish to note that I attach great importance to the comment of my colleague, Justice Rubinstein concerning the need to conduct in the future from time to time and to the extent possible follow-up and research concerning the house demolition measure and the effectiveness thereof (paragraph 28 of his opinion). In this context it is needless to point out that also in the past this issue was examined by the Shani committee which was mentioned by my colleague, which engaged in "rethinking the issue of house demolition" and reached at that time (2005) the conclusion, which was adopted by the security agencies, that the demolition of terrorists' homes for deterrence purposes as a method in the Judea and Samaria Area should be stopped and should be used only in extreme cases (slide 30 of the Shani committee presentation, Exhibit 1 to the petition).

The Honorable Justice was of the opinion that extreme situations indeed occurred in the terror attack in Merkaz Harav Yeshiva, in the abduction of the three youths and their murder, and in the murder of the worshippers in the synagogue. Nevertheless she held:

However, these extreme cases should not make us forget the need, as my colleague pointed out, to re-examine from time to time and raise doubts and questions concerning the constitutional validity of the house demolition measure according to the limitation clause tests... in the praise of doubts, which also those who are right should always have..."

34. Precisely the rapidly changing circumstances in the security condition of the state, as well as the new data which were thrown into the arena of the conflict, require renewed professional thinking. The

data which were presented to the Shani committee are not the same as the current data in the arena; the political map of the Arab world which existed at that time is not the same as it is currently mapped; the political balance of power in Israel when the Shani committee operated is not the same as the current political balance following the last elections; the status of religion and mutual religious extremism at that time are not similar to their current status and influence in the arena; neither is the attitude of the external world to the acts of Israel in the past similar to the current boycott threats and bans.

Before house demolition is once again used as a matter of routine as it was used in the past with no success, the military should present an updated **professional** evaluation which has not been conducted for many years concerning the benefit or the damage arising from the exercise of this sanction.

The respondent, who is trying to support his decisions by different quotes from judgments on this issue should respect the proposal made by the Honorable Justice Rubinstein in the above general petition:

I am of the opinion 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.

Attached is an affidavit to support the above facts.

In view of all of the above, the honorable court is hereby requested to issue an interim order, an *order nisi* and to make the order absolute as requested, and obligate the respondent to pay the costs of this petition including legal fees.

(Signed)

L. Tsemel, Advocate
HaMoked Center for the Defence of the Individual
Counsels to the petitioners

October 12, 2015