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**At the Supreme Court**  
**Sitting as High Court of Justice**

**HCJ 6745/15**  
**Set for October 21, 2015**

1. **Abu Hashiyeh, ID No.** \_\_\_\_\_

2. **Abu Hashiyeh, ID No.** \_\_\_\_\_

Represented by Adv. Lea Tsemel and others

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**The Petitioners**

V.

**Military Commander of the West Bank Area**

Represented by the State Attorney's Office

Ministry of Justice, Jerusalem

Tel: 02-6466246, Fax: 6467011

**The Respondent**

**Response on behalf of the State**

In accordance with the decision of the Honorable Justice Hendel of October 13, 2015, and subject to the delivery of the decision concerning the request of October 19, 2015 for an extension of several hours, the State respectfully submits its response to the petition as follows:

1. The petition concerns the seizure and demolition order directed at a residential apartment located in the "New Askar" Refugee Camp in Nablus where \_\_\_\_\_ Abu Hashiyeh (hereinafter: the "**terrorist**") resided (hereinafter: "**the terrorist's apartment**").

The order was issued by the Respondent (hereinafter also: "**the military commander**") by virtue of his authority vested in him pursuant to Regulation 119 of the Defense (Emergency) Regulations, 1945 (hereinafter: "**Regulation 119**" and "**Emergency Regulations**"), after the terrorist, who resided in the apartment designated for seizure and demolition, committed a stabbing attack on November 10, 2014 in the vicinity of the "Haganah" train station in Tel Aviv in which the soldier, the late First Sergeant Almog Shiloni was murdered.

In the petition, the Petitioners, the terrorist's parents, requested that the Honorable Court order the Respondent to show cause "**why he should not refrain from the seizure and demolition of the apartment located on the ground floor of a house of the United Nations Relief and Rehabilitation Administration (UNRWA), in which the Petitioners and five of their children live in the Askar Refugee Camp near Nablus**".

In the petition It was also requested that the Court issue an interim injunction ordering the Respondent to **“refrain from causing any damage to the house that is the subject matter of the petition until all remedies in this petition shall have been exhausted”** and that **“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”**.

2. The Respondent will argue that the petition, and the request for an interim injunction, is destined to be rejected in the absence of cause for the intervention of the Honorable Court.

From the beginning of 2013 and until now, as reflected by data that was collected and which will be specified below, there has been an ongoing deterioration (compared with the preceding years) in the security situation and a continuous increase of terror activities against the State of Israel, its citizens and residents, both within the territory of the state and in the area of Judea and Samaria (hereinafter: **“Judea and Samaria”** or **“the Area”**). This tendency is evidenced by an increase in the general number of attacks and in the number of spontaneous terror attacks, as well as the number of Israeli who were injured as a result of this terror activity. An additional significant rise has occurred since March 2014 **particularly of attacks that took place in grave circumstances in which citizens were killed or in which firearms were used, and in attempts to commit serious attacks.** Most of the terrorist activity was, and continues to be, led by local groups and by perpetrators profiled as “lone assailants”, exemplified by the terrorist whom this petition concerns, along with the attempts to the terror organizations to execute terror attacks on their behalf. The steep rise in terrorist attacks in the past two years, their scope and gravity, reflects the continuing negative security trend in Judea and Samaria and Jerusalem, and in additional communities within the State of Israel.

Against this current backdrop of severe security circumstances, the Respondent will argue that the exercise of the authority pursuant to Regulation 119 against the building that was the home of the terrorist who committed the stabbing attack, which unfortunately has become the “routine” method used by lone assailants, is imperative for the purpose of deterring potential terrorists from carrying out similar attacks.

3. As will be clarified below, the arguments raised by the Petitioners are not new, and have been deliberated and rejected in the framework of numerous rulings delivered by this Honorable Court in the past.

Additionally, in the past year, judgments were delivered by this Honorable Court that rejected petitions concerning the issue that is the subject matter of this petition which were filed against decisions to exercise authority pursuant to the aforementioned Regulation 119 (regarding the seizure, demolition or sealing of buildings). These petitions concerned cases of terrorists, residents of East Jerusalem, as well as cases of terrorists, residents of the Judea and Samaria area. In this context see: H CJ 4747/15 **Abu Jamal v. GOC Home Front Command** (published on the Judicial Authority Website on July 7, 2015) H CJ 8066/14 and H CJ 8070/14 **Abu Jamal v. the Home front Command** (published on the Judicial Authority Website on December 31, 2014; hereinafter: **“the Abu Jamal case”**); H CJ 8025 **Akari v. the Home Front Command** (published on the Judicial Authority Website, December 31, 2014; hereinafter: **“the Akari case”**); H CJ 7283/14 **Ja'abis v. the Home Front Command** (published on the Judicial Authority Website on December 31, 2014; hereinafter: **“the Ja'abis case”**); H CJ 5290/14 **Qawasmeh v. Military Commander** (published on the Judicial Authority Website on August 11, 2014; hereinafter **“the Qawasmeh case”**); H CJ 4597/14 **'Awawdeh v. West Bank Military Commander** (published on the Judicial Authority Website on July 1, 2014; hereinafter: **“the 'Awawdeh**

case”); HCJ 8024/14 **Hijazi et al. v. GOC Home Front Command** (published on the website of the Judiciary Authority, judgment dismissing the petition and approving the sealing of the terrorist’s room was delivered on June 15, 2015); HCJ 5839/15 **Sidr v. Military Commander of the West Bank Area** (published on the Judicial Authority Website on October 15, 2015; hereinafter: “**the Sidr case**”).

In the context of the above petitions, the Honorable Court reiterated the rules which were established in connection with the exercise of the authority pursuant to Regulation 119, and rejected the said petitions.

Moreover: on December 31, 2014, a judgment was delivered by this Honorable Court in HCJ 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defense** (hereinafter: “**HaMoked's case**”), in the context of which the court analyzed in depth the questions of principle pertaining to the use of Regulation 119, which are also the issues being raised in the petition at hand, and the arguments there were denied in a detailed and reasoned judgment in which it was held that there was no room to veer from the consistent judgments of the Honorable Court which were given over the course of many years concerning the exercise of the Regulation.

Under these circumstances, the Respondent will argue that there is surely no cause or justification to discuss these arguments once again within the framework of the current petition (It should be noted that against the judgment in **HaMoked's case** a petition for a further hearing of the judgment was submitted (HCJFH 360/15 **HaMoked: Center for the Defence of the Individual v. Minister of Defense**). The position of the state, as submitted to the Honorable Court on February 12, 2015, is that the petition for a further hearing should be denied; the petition is still pending before the Honorable President Naor).

4. In view of the host of terror attacks which were committed shortly before and after the execution of the terror attack that is the subject of the above petition, and in view of the fact that it is extremely important to deter other potential terrorists; particularly those who wish to act as "lone assailants" rather than in the framework of terrorist organizational infrastructure, and in view of the fact that the Respondent is of the opinion that the exercise of the authority pursuant to Regulation 119 of the Defense Regulations, is indeed imperative in the case at hand for the deterrence of additional potential terrorists – the Respondent will request this Honorable Court to make a decision in this petition as soon as possible.

#### **The main facts relevant to the matter**

5. The Petitioners are the terrorist’s parents.
6. The terrorist lived with the Petitioners and their other four children – his siblings – in his apartment until the day of the attack.

#### **Description of the attack**

7. On November 10, 2014, the terrorist carried out a murderous attack near the “Haganah” train station in Tel Aviv.

According to the indictment filed against him, on November 9, 2014, the terrorist entered Israel without a permit in order to find work . The terrorist reached Jaffa and when he did not succeed in his search for employment, spent the night in an empty apartment.

On November 10,2014, after his search for employment did not succeed, the terrorist decided to commit an attack by means of stabbing a soldier with a knife, hoping that in response he will be killed and be awarded the status of a "Shahid" [martyr]. He purchased a knife at the Jaffa flea market For this purpose, took a bus from Jaffa, and got off in the vicinity of the "Haganah" train station in Tel Aviv.

At approximately 12:00, the terrorist saw the late First Sergeant Almog Shiloni who was wearing a uniform and was armed with his personal gun, he approached him, stabbed him in the stomach with the knife and, after the deceased fell to the ground, kicked him and continued to stab him in the right side of his upper back, and on the right and left thighs. He also tried to take the deceased's rifle but a civilian who came by hit the terrorist who was forced to run away, throwing the knife down. At the end, the terrorist was apprehended by security forces on the roof of a building near the scene of the attack.

As a result of the stabbing, the late First Sergeant Shiloni was severely injured in the main arteries. He died at the Sheba Hospital in Tel Hashomer the same evening.

8. On November 24, 2015, an indictment was filed against the terrorist charging him with the offense of premeditated murder.

A photocopy of the indictment in TA 51040-11-14 of November 24, 2014 is attached hereby and marked **R/1**.

#### **The factual chain of events prior to the filing of the petition**

9. In view of the severity of the attack, and due to the vital need to deter potential terrorists from committing additional terror attacks, the Responded decided, based on the recommendation of the Israel Security Service (ISA, GSS), and together with the political echelon and the Attorney General, to exercise the authority vested in him pursuant to Regulation 119 against the apartment in which the terrorist lived.
10. On October 3, 2015, the Petitioners were notified of the Respondent's intention to seize and demolish the "lower floor of a building in Nablus located on coordinates\_\_\_\_\_ in which the terrorist lived with his family members. The notice stated that "**the said measure was taken in view of the fact that the above referenced individual committed a terror attack on November 10, 2014, in which he stabbed the late First Sergeant Almog Shiloni to death at the "Haganah" train station in Tel Aviv.**" In addition, the notice stated that the terrorist's family may submit an objection to the Respondent against issuing of the seizure and demolition order, before a final decision on the matter is made by him.

A photocopy of the notice which was given on October 3, 2015, was attached to the petition as **Exhibit B**.

11. On October 3, 2015, the counsel for the Petitioners submitted a request for an extension in order to submit an objection . In the response to the request dated October 4, 2015, the Petitioners were given an extension until October 7, 2015 at 6:00 PM.

A copy of Respondent's reply of October 4, 2015 is hereby attached and marked **R/2**.

12. On October 7, 2015, the Petitioners submitted an objection to the Respondent against the intention to exercise the powers pursuant to Regulation 119 against the terrorist's apartment.

A photocopy of the appeal of October 7, 2015 was attached to the petition as **Exhibit C**.

13. On October 8, 2015, after deciding to deny the Petitioners' objection, the Respondent, by virtue of the authority vested in him under Regulation 119 of the Emergency Regulations, signed a seizure and demolition order against the residential unit in the building in which the terrorist and his family lived (hereinafter: "**the order**"). The order stated the grounds for the issue of the order as follows:

**"This order is issued in view of the fact that the resident of the house Aladin Abu Hashiyeh committed a terror attack in which he stabbed to death the late First Sergeant Almog Shiloni at the "Haganah" train station in Tel Aviv on November 10, 2014".**

A copy of the order dated October 8, 2015 was attached to the petition as **Exhibit A**.

14. On October 9, 2015, the Petitioners' counsel was given a letter on behalf of the military commander replying to their objection in which the arguments for the denial of the appeal were specified. It was also written in the letter that "**the implementation of this order will not take place before October 12, 2014 at 12:00**".

A photocopy of the reply to the Petitioners' objection was attached to their petition as **Exhibit D**.

15. On October 12, 2015, the petition in question was submitted, directed, as aforementioned, against the order issued by the Respondent. The same day a ruling was delivered by the Honorable Court (by the Honorable Justice Amit), in whose framework a temporary injunction was given delaying the execution of the seizure and demolition order, and scheduling a hearing on the petition before a panel of justices for October 15, 2015. By request of the counsel for the Petitioners, the hearing was postponed to October 21, 2015.

#### **The home of the terrorist's family**

16. The apartment the terrorist lived in is located in the "New Askar" Refugee Camp in Nablus.

This is a one-story ground floor apartment with an exit to the roof. An additional apartment, built on half of the roof, is held by the terrorist's uncle. It must be clarified that the apartment that is built on the roof of the apartment that is the subject of the petition at hand is not designated for demolition in the framework of the seizure and demolition order which was issued by the Respondent by virtue of the authority vested in him according to Regulation 119 of the Defense Regulations.

According to the examination conducted by the relevant Civil Administration professionals, the apartment is located within Area B, and according to the interim agreements, the authority for security in the area is consigned to Israel.

An aerial photograph of the area of the building that is the subject of the petition is attached hereby and marked **R/3**.

### **The Legal Argument**

17. The legal arguments raised by the Petitioners in their petitions are not new, and had been deliberated and rejected in the framework of many judgments given in the past by the Honorable Court. In a host of judgments in the cases of **'Awawdeh; Qwasmeh; Abu Jamal; Akari; Hijazi and Ja'abis** delivered over the last year (from the beginning of 2014) the Honorable Court reaffirmed the case law which has been in force for many years, according to which the exercise of the authority according to the above Regulation 119 under certain circumstances is a legal measure which can be taken on the basis of the assessment of the security agencies that it is a deterring measure (see also the judgments in H CJ 124/09 **Dwayat v. Minister of Defense** (reported in the Judicial Authority Website, March 18, 2009; hereinafter: the **Dwayat case**); H CJ 9353/08 **Abu Dheim v. GOC Home Front Command** (reported on the Judicial Authority Website, January 5, 2009; hereinafter: the **Abu Dheim case**); and H CJ 5696/09 **Mugrabi v. GOC Home Front Command** (reported on the Judicial Authority Website, February 15, 2012; hereinafter: the **Mugrabi case**)).

Furthermore, in the **principle judgment** delivered on December 31, 2014, in **HaMoked's case**, these arguments were considered and analyzed in depth, and it was also held in said case that they should be denied.

The Respondent's position shall be specified below.

### **The normative infrastructure**

#### **Exercise of the authority to seize and demolish – general**

18. The authority to order the seizure, and sealing or demolition, of a structure pursuant to Regulation 119 of the Defense Regulations, is vested with the military commander being part of the local law in the Judea and Samaria area.

**Regulation 119 of the Defense Regulations provides, in its binding English version, as follows:**

**“A Military Commander may by order direct the forfeiture to the government... of any house, structure or land situated in any area, town, village, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed... any offense against these regulations involving violence or intimidation or any military court offense.”...**

And the regulation in its Hebrew version:

[Hebrew Version]

19. Regulation 119 authorizes the Respondent, as aforesaid, to seize and demolish, or seal, the entire structure in which the terrorist lives with his family. However, according to case law rendered by this Honorable Court, whenever the Respondent decides to exercise the authority pursuant to Regulation 119, he must exercise his said authority reasonably and proportionately, taking into consideration all of the concerns which were specified by the court in its judgments.

According to case law, the purpose of exercising the authority pursuant to Regulation 119 is solely to deter and not to punish. Hence, the authority pursuant to Regulation 119 is not exercised as a punishment for a terror attack which was committed in the past, but rather it is implemented only if the military commander reached the conclusion, that the exercise of the authority was required to deter terrorists from carrying out additional terror attacks in the future – and for this purpose only.

The underlying premise is that a potential terrorist who knows that his family members may be harmed if he carries out his evil plan may, consequently, refrain from carrying out the terror attack which was planned by him. Sometimes, the deterrence is also directed at members of the assailant's family, who may be aware of his plans, in order to cause them to take action to prevent the terror attack in view of the concern that their home would be damaged should they fail to do so.

20. According to case law, the harm inflicted on additional people who live in the terrorist's house against which a decision pursuant to Regulation 119 was directed, does not constitute a collective punishment, but is only an ancillary harm to the deterring purpose of the exercise of the authority.

It was so held, for instance, in H CJ 798/89 **Shukri v. Minister of Defence**, TakSC 90(1) 75 (1990) as follows:

**“The authority conferred upon the Military Commander pursuant to regulation 119 is not an authority for collective punishment. The exercise thereof is not designed to punish the Petitioner’s family. The authority is administrative, and its exercise is designed to deter, thus maintaining public order...**

**We are aware of the fact that the demolition of the building damages the dwelling of the Petitioner and his mother. True, this is not the purpose of the demolition, but it is its outcome. This bitter outcome is designed to deter potential perpetrators of terror attacks who must understand that through their actions they themselves cause harm not only to public safety and order, and not only to the lives of innocent people, but also to the well-being of their own loved-ones.”**

And see also the remarks of the Honorable Justice (as then titled) Mazza, in the majority opinion in a judgment given by an extended panel of five justices in H CJ 6026/94 **Nazal v. Commander of IDF Forces in Judea and Samaria Area**, IsrSC 48(5) 338 (1994) (hereinafter: **“the Nazal case”**), as follows:

**“We should therefore reiterate what has been said more than once: the purpose of using the measures conferred upon the authority of the military commander according to regulation 119 (1), in its pertinent part, is to deter potential terrorists from the execution of murderous acts, as an essential measure to maintain security... the exercise of said sanction indeed has a punitive implication, which injures not only the terrorist but also others, mainly his family members who live with him, but it is neither its purpose nor designation.”**

21. The security forces, in general, and the Respondent, in particular, are aware of the severe implications of the exercise of the sanctions under Regulation 119, and particularly when an irreversible measure is taken, such as demolition. The military commander is directed to exercise his house demolition authority only in such grave cases that, due to their nature, the "regular" punitive and deterring systems cannot sufficiently and properly address in order to deter terrorists and assailants.
22. The exercise of the sanction of house demolition is a consequence **of the circumstances of time and place**. In as much as terrorism changes from time to time, the Respondent is obligated to act accordingly and to the extent required, and alter the measures taken to prevent the danger and annihilate it in the course of Israel's fight against the hostile and murderous terror activity.

In this regard, it has already been held by this Honorable Court by the Honorable President Shamgar in HCJ 358/88 **The Association for Civil Rights in Israel v. GOC Central Command**, IsrSC 43(2) 529, 539 (1989), as follows:

**“The prevention of acts of violence is a condition for maintaining public safety and order. There is no security without law enforcement, and law enforcement will not be successful and will not be effective if it does not also have a deterrent effect. The scope of the measures taken to enforce the law is, in any event, related to the seriousness of the offense, to the frequency of its commitment and to the nature of the offense committed. If, for example, there is a proliferation of murders of people because of their contacts with the military authorities, or if attacks are launched which are intended to burn people or property so as to sow terror and fear, more rigorous and more frequent law enforcement is required. The above said is applicable to any area, and areas under military control are no exception in this regard; to the contrary, the maintenance of order and security and the enforcement thereof in practice are, according to public international law, among the central tasks of the military government.”**

It was also held in the general judgment given in **HaMoked's case**, by the Honorable Justice Sohlberg that:

**“Regretfully, we do not live peacefully and safely. Peace is an ideal but the time has not yet come. The IDF, the Police and other security forces must cope with evil, murderous terror, which does not sanctify life but rather worships death. We have come to the point that in their horrific actions the terrorists are willing to die as "martyrs" provided they take Jews with them to hell. A time of war is unlike a time of peace as far as the applicable law is concerned...Moreover: the rules of war between the nations (in terms of what is permitted and prohibited) also underwent important changes... with all the required due care and safety precautions, it is clear that special laws were designated for time of danger and war, under which damage to the environment cannot be absolutely prevented. The time of war presents a moral challenge. The tools that are used by the soldiers in the battle field, and that are necessary for their success in their missions, are tools of killing and destruction, which under normal conditions run contrary to the values of ethics and human rights...Special commandments are designed For war time in order to struggle with moral and spiritual crises”** [Emphases added – the undersigned].

23. In view of the fact that the authority according to Regulation 119 is exercised in response to terror activity, it is not surprising that the scope of its exercise over the years was directly related to the scope of the terror attacks

and their severity. Thus, during the years in which there was a decline in terror attacks, the authority according to the regulation was exercised less frequently, whereas in periods during which terror attacks became a "daily routine", the security forces were forced to respond by exercising their authority under the Regulation more frequently, in order to deter and sever the roots of terror, so as to prevent them from spreading even further.

24. This is the place to note once again that taking measures pursuant to Regulation 119, is based, first and foremost, on a host of balances. A balance between the severity of the act of terror and the scope of the sanction; a balance between the expected harm which would be inflicted on the family of the terrorist and the need to deter potential future perpetrators of terror attacks; a balance between the basic right of every person to his property and the right and duty of the government to maintain public order and safety, and protect the well-being and security of the citizens and residents of Israel.
25. Thus, within the framework of these balances, weight is attributed to the severity of the acts, the circumstances of time and place; the link between the terrorist's place of residence and the house; the size of the house; the effect of the measure taken on other people; engineering concerns and other related considerations. Only after the weighing, examination and balancing of the entire array of considerations relevant to the circumstances of the matter is completed, does the military commander decide whether to use the measure of seizure and demolition, or alternatively sealing of a structure, and to what extent (see, for instance, the judgment given by an extended panel in the **Nazal case**).
26. About ten years ago, when there was a decline in terror attacks, a think tank headed by Major General Udi Shani recommended, in a report entitled "Rethinking House Demolitions", to reduce the use of Regulation 119 as a method, up to complete cessation, while retaining the option to use this measure in the event of an extreme change of circumstances.

And indeed, following a substantial increase in the involvement of East Jerusalem residents in terror activity in 2008-2009, the GOC Home Front Command issued three orders by virtue of his authority under Regulation 119, which were directed against the houses of the terrorist who carried out the attack at Merkaz Harav and the terrorists who committed two ramming attacks in Jerusalem. The three petitions which were filed to the Honorable Court against these orders in the cases of **Abu Dheim, Dwayat** and **Mugrabi**, were denied.

In the Judea and Samaria Area the authority under Regulation 119 was not exercised at all from 2005 until 2013. Only in 2014 did the military commander decide to exercise Regulation 119, following a considerable deterioration in the security condition, which was reflected in an increased number of terror attacks in general and of spontaneous terror attacks in particular, as well as in the number of injured Israelis. As aforesaid, most terror activity during the last two years was, and continues to be led by local groups and by terrorists who act as "lone assailants", such as the terrorist at hand. At the same time the terror organizations continue with their efforts to execute terror attacks on their behalf. Furthermore, as aforesaid, the sharp increase in terror activity during the last two years, in scope and severity, reflects the continued negative security trend both in both the Judea and Samaria Area and in Jerusalem.

Following the significant deterioration in the security situation in the last two years, the exercise of the authority under Regulation 119 was renewed, pursuant to both Israeli law and according to the law which applies in the Judea and Samaria Area. In this context, the authority under Regulation 119 was exercised against the home of the terrorist who murdered police commander Baruch Mizrahi on Passover eve (the '**Awawdeh case**'); against

the structures in which lived the terrorists who abducted and murdered the three youths (the **Qwasmeh case**); against the home of the terrorist who committed a ramming attack at the light rail station in Giva'at Hatachmoshet on October 22, 2014, in which a baby and a tourist were killed (the house was demolished after the family did not file a petition with the court); the home of one of the terrorists who committed the massacre in the Har Nof synagogue (the matter was heard in HCJ 8066/14); against the terrorist who committed a ramming attack in Sheik Jerach on August 4, 2014 in which a Yeshiva student was killed (whose matter was heard in HCJ 7283/14 – **the Ja'avis case**); against the house of the additional terrorist who committed the massacre in the Har Nof synagogue (his matter was heard in HCJ 8070/14); and against the house of the terrorist who committed the shooting attack directed at Mr. Yehuda Glick (his matter was heard in 8024/14 – **the Hajazi case**), where it was decided to seal the terrorist's room.

To complete the picture, we may add that the commanders of the Home Front Command and the Central Command issued seizure and demolition orders against the homes of additional terrorists, which have not yet been executed: the house of the terrorist who committed the ramming attack on November 5, 2014 at the Shmuel Hazadik bus station in Jerusalem in which a policeman and a civilian were killed (his matter was elaborated in HCJ 8025/14 – **the Akari case**); the terrorist who committed a ramming and stabbing attack at the bus station near the Alon Shvut settlement in which the Dalia Lemkus Was killed (HCJ 5839/15 and HCJ 5844/15 in which the Honorable Court delivered its ruling on October 15, 2015).

27. On December 31, 2014, the judgment of the Honorable Court (the Honorable Deputy President Rubinstein, the Honorable Justice Hayut, the Honorable Justice Sohlberg) was given in the principle Petition, **HaMoked's case** (HCJ 8091/14). In its judgment the court denied a principle petition submitted by human rights organizations which requested that the Honorable Court declare that the use of Regulation 119 was unlawful, in that it breached international law and Israeli domestic law. In the judgment, the court rejected the arguments that were raised by the Petitioners, including the arguments according to which house demolition constituted prohibited collective punishment and breached the rules of international law and the rules of domestic Israeli law.

In his judgment, the Honorable Deputy President Rubinstein held, *inter alia*, that **"we found no cause to reconsider issues which have already been resolved by this court, even if the grounds do not satisfy the Petitioners" and that "the purpose of Regulation 119 is to deter rather than to punish; its objective was to give the military commander tools with which effective deterrence may be created, an objective the importance of which cannot be easily disputed... With respect to the question of whether the destruction of a specific structure can create effective deterrence, it was held that this court did not enter the shoes of the security forces, which are vested with the discretion to determine when the measure is effective and should be used to achieve deterrence."**

The Honorable Justice Sohlberg determined in his judgment that **"we were convinced that once the criteria established by law and case law are met, it is an inevitable necessity. The injury caused to the family members of the terrorist does not render the demolition of the house illegal, not even according to the rules of international law" and that "The fear of having its house demolished, is intended to encourage the family of the potential terrorist to exert its influence in the right direction, to spur it to deprive him from the inner support circle, and thus to cause him to abandon terror or the execution of an act of terror. Hence, deterrence has an influence, even if to a small extent, which, under the circumstances of time and place, may be decisive; for good or for evil."**

The Honorable Justice Hayut, in her judgment, held that **"It seems to me that it is difficult to classify the demolition of a terrorist's home as collective punishment in the usual sense, even if as a result of the demolition of his house, his family members who live with him in the same house are also harmed..."**.

### **From the general to the particular – the security need**

28. According to the opinion of security agencies and the overall data accumulated by them, as of 2013, we have been witnessing a continued growth in terror activity (in relation to previous years). This is evidenced by an increase in the general number of terror attacks and spontaneous terror attacks, and in the number Israelis injured by acts of terror. Most terror activity in recent times was, and continues to be led by local groups and by terrorists who act as "lone assailants", such as the terrorist at hand. At the same time the terrorist organizations continue with their efforts to execute terror attacks on their behalf. The sharp increase in terror activity during the last two years, in scope and severity, reflects the continued negative security trend both in the area of Judea and Samaria and in Jerusalem.
29. This tendency is well reflected in the data concerning terror which accumulated **from the beginning of 2013 and until these days**. Thus, in 2013, about 1,414 terror attacks were registered; in 2014 about 1,650 terror attacks were; in 2015 this trend continued and until October 18, 2015, 1,703 terror attacks were registered. In addition, as of 2013, an irregular increase in the number of Israeli fatalities was also registered as a result of terror attacks launched from the Judea and Samaria area and from Jerusalem. **As of 2013 there were thirty five fatalities as a result of terror attacks as compared to zero fatalities in 2012.**
30. Furthermore, from the beginning of 2014, **there has been a sharp increase in the number of severe terror attacks, in which Israeli citizens were killed or in which firearms were used, as well as in attempts to execute severe terror attacks.**

It should be emphasized that this concerns **dozens** of consecutive terror attacks indicating a serious deterioration, as **exemplified** by the following events:

- a. **March 2014:** The activity of a wanted Hamas militant from the Jenin Refugee Camp, who was directed by Hamas headquarters in the Gaza Strip to promote a host of terror attacks, including shooting attacks, against Israeli targets in the Area, was thwarted. The wanted militant was killed in a military operation, during an exchange of fire with IDF forces in Jenin.
- b. **April 2014:** A shooting attack at an Israeli vehicle at the Tarqumia checkpoint. In this terror attack, on the eve of Pesach, Commander Moshe Mizrahi was killed and two others were injured.
- c. **April 2014:** Six activists of a military group from the areas of Jenin and Bethlehem were arrested. In this case, the intention of the group, directed by an "international Jihad" activist in the Gaza Strip, to promote a shooting attack against IDF forces in the Jenin area, was thwarted.
- d. **May 2014:** the intention of a suicide bomber to detonate an improvised explosive belt, hidden on his body, in Tapuach junction, was thwarted. The members of the cell from Nablus, who were behind the attempted terror attack, were arrested by IDF forces shortly thereafter.

- e. **May 2014:** A shooting attack was carried out in Ramat Shlomo neighborhood in Jerusalem, in which a Palestinian terrorist shot at a group of Israeli citizens. The event ended without injuries.
- f. **June 2014:** A shooting attack at an IDF position in Betunia was carried out by Palestinian terrorist using small-arms,. The military force shot at the terrorist who fled the scene. The event ended without injuries
- g. **June 2014:** A shooting attack at an IDF position near the tunnels road/Bethlehem bypass was carried out from a passing Palestinian vehicle, using small-arms. The event ended without injuries and the attacking vehicle fled the scene.
- h. **June 2014:** An abduction and murder attack was carried out on June 12, 2014, in which three youths, Gil-Ad Shaer, Naftali Fraenkel and Eyal Yifrah, were kidnapped and murdered when they were on their way home from their schools in the area of Gush Etzion. This terror attack was planned and carried out by a military Hamas cell.
- i. **July 2014:** Terrorist shooting at an Israeli civilian at Rehalim intersection in the Judea and Samaria Area attack from a passing vehicle using small-arms. The civilian was moderately injured.
- j. **July 2014:** IDF soldier lightly injured in a terrorist attack using small-arms in Samaria.
- k. **July 2014:** Hamas attempt to perpetrate terrorist attack in Israel using booby trapped vehicle was thwarted when the vehicle was seized at a military checkpoint in the Judea and Samaria Area.
- l. **August 2014:** Ramming attack using a mobile excavator in Jerusalem. One civilian was killed, and others injured.
- m. **August 2014:** Small-arms shooting attack in Jerusalem. IDF soldier severely wounded.
- n. **October 2014:** Ramming attack on light rail in Jerusalem in which a baby girl and a tourist were killed. Other civilians were injured
- o. **October 2014:** Terror attack in which the terrorist, Ma'ataz Hijazi attempted to kill Yehuda Glick in Jerusalem, critically injuring him.
- p. **November 2014:** Vehicular attack in Jerusalem, again on the light rail. Two Israeli civilians were murdered and several others were injured.
- q. **November 2014:** Ramming attack at transportation station in al-‘Arrub area, moderately wounding three IDF soldiers.
- r. **November 2014:** Combined ramming and stabbing attack in Gush Etzion committed by the terrorist against whose home an order pursuant to Regulation 119 was issued. The girl, Dalia Lemkus was killed and two others were wounded.
- s. **November 2014:** Stabbing attack at the Haganah railway station in Tel Aviv. The IDF soldier, First Sergeant Almog Shiloni, whom this petition concerns, was murdered.

- t. **November 2014:** Combined shooting and stabbing attack at a synagogue in Har Nof in Jerusalem. Five Israeli citizens were murdered in the synagogue massacre and several others were wounded.
- u. **December 2014:** Stabbing attack in Alon Shvut junction in which a female terrorist stabbed an Israeli civilian.
- v. **March 2015:** Combined ramming and attempted stabbing attack near the tomb of Shimon Hatazadik. Three female border guard officers were injured.
- w. **April 2015:** Ramming attack in Chaim Bar-Lev Blvd. in Jerusalem. One civilian, Shalom Yohai Sharky, was murdered and a woman was injured.
- x. **April 2015:** Attempted stabbing attack in Mount Scopus checkpoint.
- y. **April 2015:** Ramming attack on the Cohanim route in A-Tur. Three policemen were injured.
- z. **May 2015:** Ramming attack in A-Tur. One Border Police officer was injured.
- aa. **May 2015:** Stabbing attack in Damascus Gate, Jerusalem. One civilian was moderately injured.
- bb. **June 2015:** Shooting attack at an Israeli in the "Ein Buvin" spring, in the Binyamin region. One civilian, the late Dani Gonen, was murdered and another civilian was wounded.
- cc. **June 2015:** Shooting attack near the Ofra settlement. Shots were fired at an ambulance and Israeli vehicle. No one was injured.
- dd. **June 2015:** Shooting attack directed at an Israeli vehicle, organized by the Hamas organization. Consequently, an Israeli civilian, the late Malachi Rosenfeld, was murdered and three additional civilians were injured near the Esh Kodesh settlement.
- ee. **June 2015:** Stabbing attack at the Rachel crossing, in the checking booth. A female soldier was moderately-severely injured.
- ff. **August 2015:** Ramming attack on route 60, near Sinjil village. Three soldiers were injured.
- gg. **September 2015:** shooting attack at the Habitot junction in Samaria during which a female Israeli citizen was slightly injured.
- hh. **September 2015:** On the even or Rosh Hashana, stones were hurled at a vehicle traveling near the Armon Hanatziv neighborhood in Jerusalem. Due to the stone hurling, the vehicle's driver, the late Alexander Levlovich, lost control of the steering wheel and was killed.
- ii. **October 2015:** Shooting attack from a moving vehicle towards an Israeli vehicle. As a result the couple, Naama and Eitam Henkin, were killed.
- jj. **October 2015:** A stabbing attack in Petach Tikva, in the course of which a terrorist stabbed a civilian slightly wounding him.

- kk. **October 2015:** A stabbing attack next to the government buildings complex in Tel Aviv in the course of which a terrorist stabbed a female soldier and four civilians using a screwdriver.
- ll. **October 2015:** A stabbing attack in the old city in Jerusalem in the course of which the terrorist stabbed three family members and an additional person. The late Nechemiah Lavie and Aharon Benita were murdered in the attack.
- mm. **October 2015:** A stabbing attack at the Afula central bus station in the course of which a soldier was moderately-seriously wounded.
- nn. **October 2015:** A stabbing attack in Kiryat Arba in the course of which a terrorist stabbed a civilian seriously wounding him.
- oo. **October 2015:** A stabbing attack near the Israel Police National Headquarters in Jerusalem during which a terrorist stabbed a Yeshiva student near the local light rail station seriously wounding him.
- pp. **October 2015:** Attempt to commit a stabbing attack at the Afula central bus station.
- qq. **October 2015:** A stabbing attack in Kiryat Arba during which a terrorist stabbed a Border Police officer slightly wounding him.
- rr. **October 2015:** A stabbing attack in Shmuel Hanavi street in Jerusalem in the course of which a Palestinian youth using a peeler stabbed a 16 year old youth slightly wounding him.
- ss. **October 2015:** A stabbing attack in Hanevi'im Street in Jerusalem in the course of which a Palestinian youth, approximately 16 years old, stabbed two young Israelis who were slightly – seriously wounded.
- tt. **October 2015:** A stabbing attack near Damascus Gate in Jerusalem in the course of which a terrorist stabbed and wounded two police officers.
- uu. **October 2015:** Attempt to detonate a bomb in a car near the Al-Zaim checkpoint in the course of which a police officer was slightly wounded.
- vv. **October 2015:** A ramming and stabbing attack near Gan Shmuel in the Sharon in the course of which a female soldier was seriously wounded, another soldier was moderately wounded, and two civilians were slightly wounded.
- ww. **October 2015:** A stabbing attack in the Old City in Jerusalem during which a terrorist attempted to stab a security guard near the Lions Gate.
- xx. **October 2015:** A stabbing attack near Giv'at Hatachmoshet in Jerusalem in the course of which a young Palestinian woman attacked a Border Police officer slightly wounding him.

yy. **October 2015:** A stabbing attack in Pisgat Ze'ev in Jerusalem committed by two Palestinian youths, age 13 and 15, from the village of Beit Hanina, during which a young Israeli was seriously wounded and a 13 year old boy was severely wounded.

zz. **October 2015:** A stabbing attack near the Chords Bridge at the entrance to Jerusalem in the course of which a soldier was slightly-moderately wounded.

aaa. **October 2015:** A shooting and stabbing attack on a bus in the Armon Hanatziv neighborhood in Jerusalem in the course of which Alon Govberg and Haim Haviv were murdered, and several others wounded, some seriously.

bbb. **October 2015:** A ramming attack on Malchei Israel street in Jerusalem in which Yeshayahu Akiva Krishevsky was killed.

ccc. **October 2015:** A stabbing attack near the Beit Levenstein hospital in Rana'na during which a terrorist stabbed four civilians, wounding one seriously and three slightly.

ddd. **October 2015:** A stabbing attack at a bus station on Ahuza street in Rana'na during which one person was slightly wounded by the terrorist.

eee. **October 2015:** A shooting attack at the Beer Sheva central bus station in the course of which a soldier and a foreign subject were killed and ten others wounded, one very seriously and two seriously.

31. As shown above, in the past several weeks there was a further escalation in the number of grave attacks committed throughout the country in which ten Israeli citizens were killed. **Thus, from the eve of Rosh Hashana and until October 18, 2015, approximately 681 attacks were registered in which 10 people were killed and approximately 100 were wounded. In practice, the past month was characterized by a host of attacks, when day after day, and on each day, several attacks take place throughout the country and in Judea and Samaria.**
32. We further note that during the last two years hundreds of planned and attempted terror attacks employing a variety of harsh methods (abduction, bombs and shooting) in different regions in the Judea and Samaria Area and in Jerusalem were thwarted.
33. The terror activity is mostly led by local and "decentralized" groups, and by perpetrators profiled as "lone assailants", with the latter coming to the fore as of late.
34. The Respondent believes that these figures reflect **a substantial change of circumstances and an escalation in the scope, severity and level of murderous terrorism which require that measures be taken to deter potential assailants from perpetrating attacks in general, and attacks of the type that have proliferated recently in particular.**
35. It is important to note that some of the data detailed above with respect to the growing severity of the security condition in the Judea and Samaria Area were provided to the Honorable Court just a few months ago in the

‘Awawdeh case (which was heard in 2014, and concerned a resident of the Judea and Samaria Area), based on which the Honorable Court held that (para. 24 in ‘Awawdeh):

**“We opened by describing the extreme circumstances currently prevailing in the Judea and Samaria area, circumstances which led to the conclusion adopted at the governmental level, that a change of policy was required. I am of the opinion that the data presented, as specified above, constitutes a change of circumstances. There is no room to intervene in the decision of the Respondent, who concluded that at this time, tangible deterrence was required, and that the demolition of the terrorist's house would result in such deterrence. As held in our ruling: "the court is not inclined to intervene with the security agencies' evaluation concerning the effectiveness of using the measure of demolishing or sealing houses as a means to deter others" (Abu Dheim case, para. 11). Furthermore, as ruled on more than one occasion, it is impossible to conduct scientific research which would prove how many terror attacks were prevented and how many human lives were saved as a result of implementing the measure of house demolitions (see, for instance: HCJ 2006/97 Ghanimat v. GOC Central Command, IsrSC 51(2) 651, 655 (1997)). The conclusions arising from the severity of the recent events in Judea and Samaria are clearly a matter for the Respondent to attend to. The Petitioners' argument, that the Respondent's decision was tainted by extraneous considerations as a result of the kidnapping of the three youths, and did not derive from considerations of deterrence, is hereby dismissed. The kidnapping of the youths constitutes part of the escalation in terror activity in the Judea and Samaria area, which underlies Respondent's conclusion that a change of circumstances has occurred justifying the intensification of the deterrence, by the demolition of 'Awwad's home.”** [Emphases added - the undersigned]

36. Moreover. In the principle judgment given in **HaMoked's case**, the Honorable Justice Hayut held as follows:

**“The last wave of terror which commenced with the abduction and murder of the three youths God bless their souls and continued in frequent killings and massacres of innocent civilians, passers-by and worshipers in a synagogue, also marked an extreme change of circumstances, characterized by terrorists from East Jerusalem, which required the re-activation of this measure”.**

**Against the above backdrop the Respondent will argue that currently, given the recent surge of murderous terror attacks, there is tangible need to take deterring measures for the purpose of deterring potential perpetrators from carrying out terror attacks.**

37. The Respondent will argue that **due to the ongoing wave of terror attacks, the need to deter additional terrorists from carrying out additional terror attacks is critical; This need is intensified given the fact that some of these terror attacks are carried out by a “lone assailant”, namely, a terrorist who is not affiliated with an organized terror infrastructure, a terrorist who is willing to die in the course of the attack and, hence, such attacks are inherently difficult to stop in advance. It follows that early deterrence of additional terrorists of this type is extremely critical.**

38. Given the aforesaid, the professional assessment of the security agencies - which is shared by the Prime Minister, the Minister of Defense and the Chief of Staff - is that the creation of maximum deterrence against further terror attacks is currently critically important; particularly given the difficulty to thwart attacks of the type perpetrated in recent months by “lone assailants”. The Respondent believes that the use of the power vested in him under

Regulation 119 against the terrorist's home - as against the homes of other potential terrorists - is extremely critical.

The Respondent will argue further that the decision to exercise the power under Regulation 119 against the terrorist's home in the case at hand was made, *inter alia*, in view of the severity of the terror attack in which the late First Sergeant Almog Shilony was murdered in cold blood. It is obvious that it is extremely crucial to take deter additional brutal terror attacks in the future to the maximum extent possible.

39. The Honorable Court has already addressed the need, as perceived by the agencies in charge of state security, to exercise the power under Regulation 119 at a time when terrorism is on the rise, when there is a stronger need to deter additional terrorists in order to curb the rising tide of terrorism. Reference is hereby made to the following words of the Honorable Justice (as then titled) Naor in the case of **Abu Dheim , the terrorist (and resident of East Jerusalem) who committed the murderous attack in Merkaz Harav Yeshiva:**

**“Thus, the possibility of changing the policy once more also existed at the time the various petitions were dismissed without prejudice. Furthermore, the Respondent claims that prima facie it is clear that the gravity of the case in the matter at hand is highly extreme, so that, even according to the policy set forth by the Chief of Staff in early 2005, in keeping with the recommendation of the think tank, it would be possible to consider use of the power granted under Regulation 119 with respect thereto. Therefore, the Respondent claims that this is sufficient for rejecting the Petitioners’ claim regarding the change of policy.**

**11. Our position is that there is no room to intervene in the Respondent’s change of policy. The new-old policy relies on the aforesaid opinion of the Israel Security Agency, and it is shared by the Chief of Staff and the Minister of Defense. Indeed an authority may change a policy and it may surely do so when circumstances change... As was ruled in the past by this Court, the Court is not inclined to intervene in the security forces’ evaluation of the effectiveness of demolishing or sealing houses as a factor that deters others. The same was true when, a few years ago, there was a change of policy following the recommendations of the think tank headed by Major General Shani. As mentioned above, it was ruled on more than one occasion that it is impossible to conduct scientific research that would prove how many terror attacks were prevented and how many human lives were saved as a result of using the measure of house demolitions. On this issue, nothing has changed. Indeed, reality has changed and so has the severity of the events. The conclusions to be drawn from that are clearly for security forces to evaluate. [Emphases added – the undersigned].**

Moreover, in regard to this issue we refer to the following remarks made by the Honorable Justice Sohlberg in the general judgment in **HaMoked's** case:

**“In fact, the military command currently exercises the authority in a moderate, balanced and responsible manner... in the last decade, since 2005, the military commander exercised the power in question only a few times: in 2008-2009 following a wave of terror in the capital, the power was exercised against residential homes in East Jerusalem twice... In the summer of 2014, the power under Regulation 119 was exercised against four structures (the house of the murderer of the late Police Commander Baruch Mizrahi, and the houses in which lived the three members of the cell who abducted and murdered the three youths Gil-Ad Shaer, Naftali Frenkel and Eyal Yifrach, Z”L). The significant escalation in the security situation required it... Hence, we are concerned with small numbers and not with a "collective punishment".**

The above remarks are relevant to our matter, word for word.

40. Given the aforesaid, the Respondent is of the opinion that there is no legal cause to intervene in his decision to exercise the powers vested in him by virtue of Regulation 119 against the terrorist's house

The decision was made pursuant to the power vested in the Respondent by primary legislation valid in the Judea and Samaria Area, for a proper purpose – namely, deterring additional potential assailants from committing additional terror attacks, and was exercised at this time, in circumstances of a recurring, growing tide of terror, in a proportionate and reasonable manner.

### **Response to Petitioners' arguments**

41. The main argument made by the Petitioners is that the decision to seize and demolish the terrorist's apartment constitutes collective punishment and harms innocent people, and that it is contrary to the principles of international law.
42. In this regard we shall state, firstly, that the use of Regulation 119 is meant for deterrence only, as was specified at length above.

Secondly, according to case law, the awareness of the family members or the assistance provided by them to intentions of the terrorist to carry out the attack that provoked the use of the powers granted under Regulation 119 is not at all required to effectuate said power pursuant to the regulation.

It should be noted that arguments similar to this argument brought by the Petitioners have been raised and rejected by this Honorable Court on numerous occasions. On this issue, see, for instance, the judgment of the Honorable Justice (as then titled) Naor in the **Abu Dheim case**:

**6. The case law discussed the claim that also arose in the petition in before us, according to which it is not appropriate, nor moral that the terrorists' family members, who did not help him nor were aware of his plans, shall bear his sin. This claim had also risen in the past and was rejected. Justice Turkel referred to this matter in H CJ 6288/03 Sa'ada v. GOC Home Front Command, IsrSc 58(2) 289, 294 (2003)) (hereinafter: the Sa'ada Case):**

**“Despite the judicial rationales, the thought that the terrorists' family members, that as far as known did not help him nor were aware of his actions, are to bear his sin, is morally burdensome. This burden is rooted in the ancient principle in the tradition of Israel according to which “The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers; every man shall be put to death for his own sin.” (Deuteronomy, 24, 16; and compare to Justice M. Cheshin judgment in H CJ 2722/92 Alamarin v. IDF Commander in the Gaza Strip, IsrSc 46(3) 693, 705-706). Our Sages of Blessed Memory also protested against King David for violating that principle by not sparing the seven sons of Saul (Samuel II, 21, 1-14) and worked hard to settle the difficulty (Yevomos, 79, 1). But the prospect that a house's demolition or sealing shall prevent future bloodshed compels us to harden the heart and have mercy on**

**the living, who may be victims of terrorists' heinous acts, more than it is appropriate to spare the people dwelling in the house. There is no other way."**

**7. Similarly, it was claimed before us that the terrorist's family members are not tied to the terror attack and that the father even opposes such acts. For this matter it is sufficient to refer to the ruling in H CJ 2418/97 Abu-Farah v. IDF Commander in Judea and Samaria Area, IsrSC 51(1) 226 (1997) and to H CJ 6996/02 Za'arub v. IDF Commander in the Gaza Strip, 56(6) 407 (2002) in which it was ruled that deterrence considerations sometimes require the deterrence of potential terrorists who must understand that their actions might also harm the well-being of those close to them, even when there is no evidence that the family members were aware of the terrorist's doings.**

In addition, the Honorable Justice Sohlberg stated in paragraph 4 of his judgment in the principle judgment in **HaMoked's** case as follows:

**"The injury caused to the family members of the terrorist does not render the demolition of the house illegal, not even according to the rules of international law.. Indeed, when criminal punishment is concerned, unlike deterrence under Regulation 119, the focus is on the offender, rather than on his family members; but as I have noted in the above mentioned Qawasmeh case –**

**"Also in criminal proceedings whose purpose is punitive...innocent family members are injured. The imprisonment of a person for a criminal offense committed by him inevitably harms his spouse, children and other relatives, both materially and mentally. There is no need to elaborate on the deprivations that often accompany a person's incarceration, which are suffered by his family members."**

**The language of the Regulation explicitly demonstrates the deterring purpose underlying the seizure and demolition, or the sealing, of a residential home, which unavoidably involves impingement of innocent people. Otherwise, how shall deterrence of suicide bombings and the like be achieved? The fetid fruits of murderous terror compel us to promote deterrence in this manner of horrible acts such as those that were described in the specific petitions: namely, even at the cost of injuring the family members of the terrorists. And it should be noted: the harm with which we are concerned is harm to property, not a physical harm. A demolition of a house is on the scales, while on the other tip of the scales, saving of life is weighed."**

Also see the remarks of the Honorable Deputy President (as then titled) Naor in '**Awawdeh** (paragraph 22 of the judgment):

**22. The court's position regarding this issue may be summarized by the words of Justice Turkel in the Sa'ada case, which were quoted time and again:**

**"The idea that the terrorists' family members, that as far known did not help him nor were aware of his actions are to bear his sin, is morally burdensome [... ] However, the prospect that the demolition or sealing of a house shall prevent future bloodshed compels us to harden the heart and have mercy on the living, who may be victims of terrorists' heinous acts, more than it is appropriate to spare the people dwelling in the house. There is no other way**

(Sa'ada, page 294. See also Abu Dheim, paragraphs 6-7 of my judgment). [Emphases added—the undersigned].

And also see the words of the Honorable Justice Danziger in the **Qawasmeh case** (paragraph 24 of the judgment):

**“Hence, the fact that the exercise of the authority according to regulation 119 violates the rights of innocent parties does not prevent the military commander from exercising the authority vested in him under said regulation. However, in order to justify the exercise of the authority according to regulation 119 the military commander must show that there is a substantial military need to deter, that the exercise of the authority will indeed create, in practice, the desired deterrence, and that the authority will be exercised in a proportionate manner”.**

Also see HCJ 2418/97 **Abu Phara v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 51(1), 226 (1997); HCJ 6996/02 **Za'arub v. Commander of IDF Forces in the Gaza Strip**, IsrSC 56(6) 407 (2002).

43. As to the argument that the exercise of the authority according to Regulation 119 breaches international law, we will argue that this Honorable Court discussed these very same arguments less than a year ago and held in the principle judgment in **HaMoked's case**, as well as in a host of judgments which preceded it, that the exercise of the authority under Regulation 119 purely on security grounds for the purpose of deterrence is legitimate, and in keeping with both with international law and domestic law.

On this issue, as aforesaid, it was determined in the principle judgment in **HaMoked's case** that:

**“We cannot accept Petitioners' argument that any demolition whatsoever, small or large, and regardless of its specific circumstances, necessarily amounts to collective punishment which is prohibited under Article 33 of the Fourth Geneva Convention... The same applies to the prohibition on house demolition which appears as aforesaid in Article 53 of the Fourth Geneva Convention; the prohibition is qualified, namely, if the action is required for military purposes, it is not prohibited under the Article... The question is, as aforesaid, a question of proportionality, and it has already been clarified here that the above authority of the military commander should not be used in a disproportionate manner, which would amount to collective punishment, prohibited under international law”** [*Ibid.* paragraph 23 of the judgment of the Honorable Justice (as then titled) Rubinstein].

44. On this issue we shall also note that the Petitioners did not show any clear cause which justifies the current reconsideration by the Honorable Court of arguments according to which the exercise of the authority under Regulation 119 breaches the rules of international law – **arguments which as aforesaid have never been accepted by the Honorable Court**. The validity of above is reinforced all the more in view of the comprehensive discussion held in the principle judgment in the **HaMoked's case** as cited above, at the conclusion of which – all arguments on this issue were rejected.
45. The Petitioners also argue that **“the passage of time indicates that the sanction is not directed against the offender himself or 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”** (paragraph 24 of the petition).

On this issue the Respondent will argue, first and foremost, that, unfortunately, the wave of terror in the area of Judea and Samaria as well as within the territory of the state – continues, and in view of the fact that the purpose of the measure at hand is to deter and the current security condition mandates that measures be taken to deter other potential perpetrators – as described above – the need to deter which existed at the time the attack was committed remains – and even more forcefully.

The Respondent will argue that the decision to employ the measure pursuant to Regulation 119 is determined according to the circumstances of the time and place, and is granted to the Respondent’s discretion that is based, *inter alia*, on situation assessments by security agencies. Indeed, the claim that the passage of time, in itself, in the circumstances of our matter, severs the link between the offence and the measure that will be taken must not be accepted.

In regard to this issue we would like to note that in the judgment of the Honorable Court in HCJ 4747/15 **Abu Jamal v. GOC Home Front Command** (reported in Judicial Authority Website, delivered on July 7, 2015) a similar argument was raised by the Petitioners when the Respondent wanted to execute a demolition order about eight months after the date of the attack. The Honorable Court held that: “... **once the execution of the order was approved by this court, the execution date of the demolition order is, in general, decided by the Respondent at his discretion according to circumstances of time and place.**” The above rule – with the necessary changes – is applicable to the case at hand, and even concerns similar time frames. It should also be noted that this case regards an attack which was committed in November 2014, namely, less than one year ago. In other words, we are not concerned here with a situation wherein many years passed after which the deteriorating security condition caused the Respondent to act to exercise the authority against the terrorist's apartment. We are concerned with an attack which was committed not long ago; to our regret the wave of terror continues – as specified above.

It is also important to note that the acceptance of Petitioners' argument in this context will lead to an absurd situation in which the Respondent will always be required to exercise his authority under Regulation 119 shortly after the attack, even if in fact the Respondent needs time to examine the need to employ Regulation 119 in a given case and against the backdrop of a particular security situation. I must be assumed that the Petitioners are not seeking this result.

Finally, we will note that a similar issue was recently raised in the framework of the petitions that concerned the seizure and demolition order that was issued against an apartment of the terrorist Maher al-Hashalmun, who on November 10, 2014 committed a ramming and stabbing attack at the Alon Shevut intersection bus station in the course of which a young woman, the late Dalia Lemkus, was murdered and two others wounded (the **Sidr case**), in which claims were raised regarding the passage of time between the date the offense was committed and the issuing of the order by the military commander. The Honorable Court addressed the argument and determined (the Honorable Deputy President Rubinstein with the agreement of the Honorable Justice Amit and contrary to the minority opinion of the Honorable Justice Fogelman) that:

**“G. Secondly, it appears there is no place for intervention in this specific case regarding the timing of the notification of the Petitioners of the intention to demolish, and even if such timing as a rule is subject to the authorities’ discretion (the aforementioned HCJ 4747/15), this matter is also be subject to reasonableness, proportionality and common sense, moreover the appearance of things carries importance as well. It seems that as soon as there the intent to demolish exists, notification should be given as soon as possible after the criminal act in question. Under the overall circumstances of the case at hand, intervention is not possible, as noted, and in any case this argument does not carry enough weight to sway the scales; but going forward our comments should be heeded, even though the exact timing of notification is fundamentally in the hands of the authorities.”**

These remarks are relevant to the case at hand, word for word.

In light of the above, the Respondent will argue that the Petitioners’ argument that the passage of time, in the case at hand, does not allow the Respondent to exercise the measure pursuant to Regulation 119 must be rejected.

46. Another argument raised by the Petitioners concerns the efficiency of the exercise of the authority under Regulation 119.

The Respondent will argue that this argument as well – should be rejected. It should be recalled, in this regard, that similar arguments regarding the ostensible ineffectiveness of the exercise of the authority under Regulation 119, have already been discussed and rejected in the past, time and time again.

See for instance, the words of the Honorable Justice Danziger in his judgment in the **Qawasmeh case**:

**“And indeed, in evaluating the relevance of the changes in the operational circumstances in the area under his command, the extent of the need for deterrence and the effectiveness of the sanction pursuant to regulation 119 in creating such deterrence, the Respondent exercised his authority properly, and Petitioners' arguments do not point at any reason which may justify intervention with said decision”.**

And in the **'Awawdeh case**, it was held by the Honorable Deputy President (as then titled) Naor:

**“There is no room to intervene with the decision of the Respondent who has concluded that at this time actual deterrence is required, and that the demolition of the terrorist's house would result in such deterrence. As held by us in our case law "the court is not inclined to intervene with the security agencies' evaluation concerning the effectiveness of employing the measure of demolishing houses or sealing them as a means to deter others"... Furthermore, as was noted in our case law more than once, it is impossible to conduct a scientific research which would prove how many terror attacks were prevented and how many human lives were saved as a result of exercising the measure of house demolition... The conclusions arising from the severity of the recent events in Judea and Samaria are a clear matter for the Respondent to attend to [the 'Awawdeh case, paragraph 24].**

And see also the remarks of the Honorable Justice Sohlberg in his judgment in **HaMoked's case**, after having reviewed different and diverse understandings and studies on this issue:

**“All of the above indicate, that the demolition of terrorists' houses will add the knowledge that his family members will pay the price for his actions to the cost-benefit calculation conducted by a potential terrorist” (Paragraph 13 of the judgment).**

Also see: paragraphs 8-11 of the judgments in the Abu Dhiem case; the Sidr case paragraphs 2-3 of the Honorable Justice Amit's judgment.

And the above remarks are relevant to the case at hand, word for word.

47. Concerning the Petitioners' claim that discrimination is employed by the Respondent in the exercise of his authority pursuant to Regulation 119, we will note that this argument was also deliberated and rejected in the past. Thus, for example, the Honorable Justice Danziger determined in the Qawasmeh case, in paragraph 30 of the judgment as follows:

**“30. Indeed, it cannot be denied that acts of incitement and violence in Jewish society against Arabs have proliferated. It is regretful and one should act forcefully against such phenomena. However, the comparison is not in place, in view of the fact that the measure of house demolition in the Area is not taken in cases of incitement and violence, but only in extreme cases of murder. I am not oblivious of the horrifying murder of the youth Mohammed Abu Khdeir, a case which rocked the foundations of our country and was condemned across the board. However, this is an extremely exceptional case. Therefore, I am of the opinion that there is no room for the artificial symmetry argued by the Petitioners in support of their argument concerning discriminating enforcement.**

Moreover, I do not think that the Petitioners' discrimination argument is acceptable. The burden to present adequate factual infrastructure which can refute the presumption of administrative validity is imposed on the party who argues that discriminating or "selective" enforcement is applied. Even if the arguing party surmounted this hurdle, the authority can still show that the seemingly selective enforcement is, in fact, based on pertinent considerations...

**In the case at hand, the Respondent made a decision which is, as aforesaid, at the core of his discretion. The Petitioners' arguments cannot point, at this time, at the existence of discrimination or extraneous considerations which underlie the Respondent's decision. In view of the fact that regulation 119 has a deterring rather than a punitive purpose, the mere execution of heinous terror acts by Jews, such as the abduction and murder of the youth Mohammed Abu Khdeir, cannot justify, in and of itself, the application of the regulation against Jews, and there is nothing in Respondent's decision not to exercise the regulation against the suspects of this murder, which can point at the existence of selective enforcement.** [Emphases added– the undersigned.

48. In regard to the Petitioners' claim that the military commander has no authority at this time to act in Area A we will note that the Respondent's position is that this argument should be rejected.

Firstly, it must be noted, as aforesaid, that according to the examination conducted by professional parties in the Civil Administration, the building that is the subject of the petition is located in Area B, therefore, the Petitioners arguments in this regard are theoretical, and there is no need to clarify them. Beyond what is necessary, it must be noted that the Honorable Court has recently addressed this issue and determined that the military commander

is also authorized to issue orders pursuant to Regulation 119 in Area A (see: the **Qawasmeh case**, paragraph 28; also see HCJ 2717/96 **Wafa v. the Minister of Defense**, IsrSc 50(2) 848, 853 (1996)).

49. Furthermore, the Petitioners claim that it is not possible “to approve the demolition of the house unless it has been convinced beyond reasonable doubt that the suspicions that were raised against Petitioners' son were indeed substantiated and reliable” (Paragraph 21 of the Petition).
50. The Respondent will argue that the petition must be rejected as, according to case law, the existence of administrative evidence that the terrorist lives in the house suffice to allow the exercise of authority pursuant to Regulation 119. Regarding this matter, see for example, the **Nazal case**, page 345:

**“Moreover: the power to employ the aforesaid authority is not conditioned on the conviction of any individual; as, according to the regulation, should the military commander be satisfied that the offense was committed by one or some residents of an area, town, village, neighborhood or street, he is authorized to seize any house, structure, or plot of land that are located within the area the perpetrator came from.”**

Also see the remarks recently made in the **Awadeh case**, Paragraph 21:

**“...In addition, it was held that the exercise of the authority was not conditioned on the conviction of the terrorist under criminal law, and that for that purpose one could sufficiently rely on administrative evidence which was presented to the Respondent and satisfied him that the offence was committed by an occupant of the house which was designated for demolition...”**

51. The Respondent will argue that when the State is in possession of clear-cut, definitive administrative evidence, **including the terrorist’s confession**, that he committed the attack, it is entitled to implement the authority granted to it pursuant to Regulation 119 in the matter of the terrorist and the house he resides in also in consideration of the severity of the offense, its murderous result and in order to deter other “lone assailants” from committing the same offenses.
52. Moreover, the Petitioners unconvincingly claimed 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” as it is “a shelter which was designated under the auspices of international recruitment” (Paragraph 22 of the petition).
53. Firstly, it must be stated that the Petitioners’ arguments in this regard are insignificant and were made without any evidentiary or legal support, particularly in view of the affidavit of Ahmed Halak, Adv., an attorney in the office of the Petitioners’ counsel, that was appended to the petition in which he stated that the facts cited in the petition are true “after I examined and verified them with the Petitioners and on the basis of my personal knowledge that is based on matters known in the office”. Beyond the fact that this is not an affidavit given by the Petitioners, in accordance with the provisions of Amendment 4 to the Rules of Procedure in the High Court of Justice 5764-1984, a flaw that may be amended, the affidavit does not support the Petitioners’ arguments in the case at hand.

54. Furthermore, as above described, in accordance with the information in the possession of the State, the apartment that is the subject of the petition at hand is located in the “New Askar” Refugee Camp. An examination of the UNRWA internet website reveals that the area of this refugee camp is not officially recognized as a Refugee Camp, and has no UN installations. The website maintains:

**” ... ”New Askar” is not, however, officially recognized as a camp, and there are thus no UNRWA installations in the new camp.”**

[Emphases added– the undersigned]

It must, additionally, be noted that an examination of the registry of the Commanding Officer of Land Registry in the Civil Administration revealed that the Respondent is not in possession of any listing regarding the identity of the owners of the land on which the building under discussion in the petition at hand is constructed as, *inter alia*, this building is located in Area B whose civil authorities under the interim agreement, including land registration, is consigned to the Palestinian side.

A photocopy of the UNRWA internet website pages regarding the “Askar” Refugee Camp is attached hereby and marked **R/4**.

55. When a matter concerns arguments that are not legal arguments, that were made immaterially, and which are not in keeping with the factual picture known to the Respondent, they must be rejected.
56. And finally, the Petitioners express a fear that the demolition of the terrorist’s apartment will damage the additional apartment on its roof, and thus the Honorable Court was requested **“to obligate the Respondent to provide the full specifications concerning the proposed demolition method, and to enable the Petitioners to object to it in an knowledgeable manner through the presentation of an opposing engineering opinion”** (Paragraph 25 of the petition).
57. The Petitioner will claim that the argument must be rejected as the planned demolition plan that was given the Petitioners by the Respondent in reply to their objection (Section 11 of the reply to the objection) **“was formulated by professionals on behalf of the military commander after accurately mapping the residential unit, taking into consideration of its structural characteristics. The method that was chosen is the best method in consideration of the tools the professional engineering parties are in possession of, and in consideration of the need to avoid, as much as possible, harming adjacent structures or parts of the building not designated for demolition, i.e. the upper floor”**.

It must also be noted that an engineer will be present during the demolition to supervise the demolition and all its stages in order to ascertain the aforesaid in “real time”.

58. In this context, the Respondent wishes to state that in accordance with the engineering opinion regarding the apartment under discussion in the petition at hand, the best demolition method in the circumstances is by the employment of drill chargers in some of the structure’s components and small shock charges in some of the rooms. In accordance with the professional opinion, this method will enable **“maximum destruction of the ground floor, upholding the principle of maximum execution of the mission with minimum collateral damage”**.

A photocopy of the engineering opinion concerning the anticipated method of demolition of the terrorist's house is attached hereby and marked **R/5**.

In consideration of the aforesaid, and of the engineering opinion attached to this response, the Petitioners' arguments regarding the potential harm to the structure must not be accepted, and their request to have the demolition plan examined by an engineer on their behalf must also be rejected.

It must be recalled that the Honorable Court refrained from intervening in the methods of demolition as this is a professional matter which professionals must address. In paragraph 31 of the judgment in the **Qawasmeh case** it was ruled:

**“As to Petitioners' arguments in HCJ 5292/14 concerning the possible effect of the demolition on adjacent apartments, we made a note of the statement made by Respondent's counsel according to which he would refrain from taking actions which might cause damage to adjacent properties. If they so wish, the Petitioners in the three petitions can submit an engineering opinion to the Respondent on their behalf concerning this issue, and the Respondent will examine these opinions with an open heart and mind before he executes the orders that are the subject matter of the petition.**

**“However, I found no merit in the alternative request of the Petitioners in HCJ 5295/14 that we order the Respondent to transfer for their review an engineering opinion concerning the demolition, and I am satisfied that the Respondent will carry out his decisions, with proper consideration for the structural characteristics of Petitioners' apartment. I also found no merit in Petitioners' arguments in HCJ 5300/14 concerning the manner of execution of the demolition, a matter with respect of which the Respondent is vested with particularly broad discretion.** In addition, I did not find that there was any room to discuss Petitioners' request that the Respondent would undertake to compensate the injured parties should the demolition cause damage to adjacent properties. This is a hypothetical argument which should be heard, if at all, only in the event such damages are caused as aforesaid, and by the competent instances. I am hopeful that this issue remains solely hypothetical.” [Emphases added– the undersigned].

### **Summary**

59. In view of all of the above the Respondent will argue that there is no cause for the intervention of the Honorable Court in his decision to exercise the authority vested in him under Regulation 119, against the apartment in which the terrorist lived.
60. As specified in the beginning, the Respondent will request the Honorable Court to make a decision in the petitions at hand at the earliest possible time, taking into consideration the surge of recent terror attacks and the fact that the deterrence of additional potential terrorists to the maximum extent possible is of paramount importance.
57. The facts specified in this response are supported by the affidavit of the Respondent , Major General Roni Numa, GOC Central Command.

Today: 6 Heshvan 5776  
October 19, 2015

[Handwritten signature]  
**Yochi Genesin, Adv.**  
**Senior Department Director (Administrative Affairs)**  
**at the State Attorney's Office**

[Handwritten signature]  
**Yonatan Zion-Moses, Adv.**  
**Deputy Attorney**  
**at the State Attorney's Office**