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URGENT!

October 17, 2015

To:

Major General Roni Nomeh
GOC Central Command
Military Commander of the West Bank
Via email: pniot-tzibur@mail.idf.il
and fax: 02-5305741

Dear Sirs,

Re: **Haj Hamed's Family Home in Nablus, Reference No. _____**
Urgent Objection

I hereby submit the following objection against your intention to demolish part of the above referenced building. The objection is filed on behalf of my clients, _____ Haj Hamed, ID ____, _____ Mashaki, ID _____, _____ Zuan, ID _____, _____ Bashir, ID ____, _____ Ghanem, ID ____, _____ Ziyat, ID _____, and the "Government Employees Cooperative Housing Company", Registration No. 355, residents of the above referenced house and/or owners of adjacent buildings:

1. On October 15, 2015, your notice concerning the intention to seize and demolish part of the building, where _____ Haj Hamed, ID _____ allegedly resides, pursuant to Regulation 119 of the Defense (Emergency) Regulations, 1945 (hereinafter: “**Regulation 119**”) was received. **While Arabic version states that the notice refers to the building’s ground floor, the Hebrew version states that the notice refers to the first and second floors, and, therefore, it is completely unclear which part of the building is designated for demolition.** According to the notice received, this measure is being taken because Mr. Haj Hamed “took action to commit a terror attack on October 10, 2015...” According to the notice, it is possible to object to the decision until October 17, 2015 at 12:00 and, hence, this objection.
2. My clients will claim that the decision to seize and demolish a part of the above building and apartments located in it (hereinafter: “**residential apartments**”) is flawed for the following reasons:
 - A. All of my clients will be harmed by the demolition, although they are not tied to the acts attributed to Mr. _____ Haj Hamed;
 - B. The decision to demolish the residential apartments is based on a flawed factual infrastructure in light of the fact that Mr. _____ Haj Hamed does not live in any of them;
 - C. The substantial inconsistencies between the Hebrew and Arabic versions of the decision are contrary to the rules of proper administration and violate my clients’ right to plead their case;
 - D. Home demolition is a forbidden act which breaches the basic rights of innocent people, and is contrary to international humanitarian law;
 - E. The demolition of residential apartments will harm innocent individuals, including children;
 - F. The decision to demolish the residential apartments is disproportional in light of the anticipated harm to adjacent buildings and apartments;
 - G. The decision to demolish the residential apartments is disproportional in light of the harm to members of the family who live in them, and in light of the severe sentence that Mr. _____ Haj Hamed is expected to receive should he be convicted at the end of his court proceeding which constitutes a sufficient means of deterrence, and due to the fact that it has not been proven that Mr. Haj Hamed resides in one of the apartments.
3. In view of the aforesaid, we request that you declare the above decision void.

The principal facts relating to the matter at hand:

4. The residential apartments are located in a five-story building which includes a ground floor and four additional floors, each consisting of a single apartment (hereinafter: “**the building**”). The building is registered in the name of Mrs. Hiyam Haj Hamed.
5. The present objection concerns the ground floor of the building where my client, _____ Haj Hamed, Mr. _____ Haj Hamed’s brother, resides with his family which includes five persons, among them three minors aged 11, 10 and 2. **It must already be emphasized that only my client’s family lives on this floor, and that in contrast with the demolition notice’s contention, Mr. _____ Haj Hamed does not live there. This information, given to an officer named Frej on October 7, 2015, when**

measurements of the building were being taken, should have sufficed to render the decision to destroy my client's residential apartment void.

6. It must also be noted that my client, who is 34 years old, is a hard-working driving instructor by profession, and his family's only provider. His family's apartment is the only residence available to them and their only possibility to develop and create an independent life.
7. In addition, the building in question is located in a crowded residential neighborhood and is surrounded by houses whose owners also object to the demolition decision in view of the damage they anticipate will be caused to their property. The building and the buildings adjacent to it are part of a housing development administered by the "Government Employees' Cooperative Housing Company" (hereinafter: the "**Housing Company**"), and are registered with the Housing company as lots according to the following specifications:
 - A. The residential building that is the subject of this objection and includes the residential apartment of Mr. _____ Haj Hamed and his family is registered as **lot 609**;
 - B. **Lot 606** is the property of my client, Mr. _____ Mashaki. This is a four-story building inhabited by more than 21 persons, including at least five children. The family's father is approximately 69 years old, suffers from various illnesses, and had undergone open heart surgery. His wife is also elderly and suffers from various illnesses'
 - C. **Lot 607** is the property of my client, Mr. _____ Zuan, 41 years old, the heir of his mother, the late Mrs. Fatma Baradan. The building consists of three floors, all inhabited, where more than a dozen people live including eight children and a woman who is ill with cancer;
 - D. **Lot 608** is the property of my client, Mr. _____ Bashir. This building consists of two floors, all inhabited, where eleven persons live. The building's owner is an elderly, ailing woman, 71 years old, whose husband recently passed away. Two of the residents suffer from high blood pressure and diabetes;
 - E. **Lot 612** is the property of my client, Mrs. _____ Ghanem. This building consists of three floors, all of which are inhabited, where dozens of persons reside including three children. The owner of the building is an elderly woman, approximately 73 years old, who suffers from asthma and chronic diabetes. Her husband is also elderly and suffers from high blood pressure;
 - F. **Lot 613** is the property of my client, Mr. Jamil Ziyat, 46 years old. This is a one-story building inhabited by six persons including four children.
 - G. **Lot 615** houses the office of the Housing Company. This is a one-story inhabited building. The Housing Company provides services to more than 1500 people who live in the housing development.

It must be noted that the buildings in this area were built at the beginning of the 1970's. Other than the above building, the development consists of 40 additional building located no more than 20-30 meters from the building that is the subject of the present objection. Over 300 people live in these buildings and it is expected that they will be harmed by the demolition.

Enclosed is the aerial photograph that was attached to your notice in which the building and adjacent buildings are marked, and a detailed letter of explanation written by the Housing Company marked as Appendixes 1 and 2 respectively.

8. The objection is as follows:

The notice is unclear and based on a flawed factual infrastructure:

9. Due to the grave breach of fundamental rights, and the irreversible damage caused to family members and other uninvolved civilians who did no wrong, it was determined that the seizure and demolition of a house for the purpose of deterrence pursuant to Regulation 119 will only be implemented in accordance with an appropriate administrative procedure, including strictly compiling a factual basis, granting notice and a fair opportunity to present an objection, and more (see HCJ 9353/08 **Abu Dheim v. GOC Home Front Command** (published in Nevo on January 5, 2009)).
10. As aforesaid, there is a fundamental discrepancy between the Hebrew and Arabic versions of the demolition notice in respect to both the number of floors you intend to destroy and to their location. Thus, for instance, whereas my client resides on the ground floor, the Hebrew notice stated that the first and second floors will be demolished. In these circumstances, the fundamental lack of clarity and the absence of specifications that arise regarding the core of the matter are contrary to the obligation of good faith and fairness, and infringe on my clients' right to plead their case. In view of the fact that the specifications of the decision are critical to its execution and to the realization of my clients' rights, these grave flaws suffice to render the decision void.
11. Moreover, despite the fact that any decision made by an administrative authority with respect to the implementation or non-implementation of its powers must be based on a proper factual infrastructure, in the present matter there is no basis to the claim that Mr. _____ Haj Hamed resides in my client's apartment. This, therefore, suffices to quash the foundation of the decision to destroy my client's apartment.
12. It must be made clear that should you have any information that supports the claim that Mr. _____ Haj Hamed does indeed live in the apartment, you are requested to present it to my client, including the presentation of confidential material in paraphrased form, in order to fulfill the legal obligation to hold a hearing and allow my client to fully voice all of his contentions concerning the matter at hand.

The prohibition of house demolition:

13. The demolition of a family's home is a cruel and inhumane act that causes severe trauma to the family, gravely breaching its right to property and to housing and leaving it destitute, , uprooted, with no roof over its head, and absolutely dependent on others.
14. The demolition of a home constitutes intentional harm to individuals who did no wrong and is contrary to a primary, fundamental moral and legal principle according to which "**fathers shall not be put to death because of their sons, and sons shall not be put to death because of their fathers, but a man shall be put to death for his own sin**" (2 Kings 14, 5-6; and also see Justice Cheshin's remarks in HCJ 2006/97 **Ghanimat v. the GOC Central Command**, IsrSc 51(2) 651, 654), and, hence, it is absolutely prohibited.

15. Moreover, it appears that there is no need to expand on the manner in which home demolitions breach protected human rights. Home demolition breaches the right to dignity, the right to existence with dignity and the right to property. As house demolition harms innocent family members, who did not commit the acts that led to the demolition, and in any event, they cannot influence the decision in question. It gravely infringes on the autonomy of will, and the prerogative of an individual to be a master of his deeds, and to be responsible for their consequences (see and compare ADA 10/94 **John Doe v. the Minister of Defense** IsrSc 53(1), 97, 107).
16. House demolition is also contrary to international humanitarian law, which prohibits collective punishment and the damage and destruction of private property (Articles 33 and 53 of the Fourth Geneva Convention and Article 46 of the Hague Regulations).
17. Apart from strictly upholding the rules of proper management, the exercise of power in the case at hand must also meet the tests of proportionality in the course of which the authorized official must strictly examine and appropriately balance the interests at hand (see HCJ 1730/96 **Salam v. the Military Commander in Judea and Samaria**, IsrSc 50(1) 353, 359). As we will argue below, the decision to destroy the residential apartment of my client's family cannot be considered reasonable or proportional in the circumstances of the case at hand.

Harm to innocent individuals:

18. As described in the section on the factual infrastructure, three children, aged 10, 11 and 2, reside in my client's house together with himself and his wife. Furthermore, the building is located in a crowded area, and there are other buildings adjacent to it where 65 people live, including approximately 20 children.
19. The demolition of _____ Haj Hamed's residential apartment will cause immense suffering to innocent individuals and gravely violate their human dignity. The harm that will be caused to the family's children breaches the children's rights and the obligations of the State of Israel under the Convention of the Rights of the Child and particularly under Article 2 (b):
 - a. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

And Article 38 of the Convention:

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

...

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

See HCJ 769/02 **the Public Committee Against Torture in Israel v. the Government of Israel** (published in Nevo on December 14, 2006), and the references noted there, in regard to the application of human rights treaties in the Occupied Palestinian Territories

20. As will be specified below, the demolition of my client's house will also cause a severe harm to scores of his neighbors, including many children, who live near the house designated for demolition and whose homes are likely to be damaged as a result of it.

The decision is not proportional:

21. According to the rulings of the Supreme Court, in light of the grave harm to fundamental rights, the exercise of a military commander's power pursuant to Regulation 119 must be limited, and subject to the exercise of reasonable discretion and the tests of proportionality. In HCJ 4597/14, '**Awawdeh et al. v. West Bank Military Commander**, (published in Nevo on January 7, 2014, hereinafter: "the Awadeh case") the Supreme Court determined:

"...in interpreting [Regulation 119], this Court limited its application and implementation and determined that the military commander is ordered to exercise reasonable discretion when implementing his power pursuant to it and to act in a proportionate manner...this determination was reinforced after the legislation of Basic Law: Human Dignity and Liberty. This Court determined that even if the Regulation is shielded by the article of the Basic Law that protects the validity of earlier laws, it must be interpreted in the spirit of the Basic Laws [...] There is no dispute that the exercise of the power pursuant to Regulation 119 violates human rights. It violates the right to property and the right to human dignity. Therefore, as we shall rule, the exercise of the authority must be proportional."

22. In the aforementioned HCJ 769/02, the Supreme Court emphasized that the point of departure for the examination of proportionality of the decision is the right of innocent civilians:

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

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

That duty is also part of the additional normative system which applies to the armed conflict: it is part of the moral code of the state and the fundamental principle of protecting human dignity. (Emphasis added, G.L.)

23. Regulation 119 ought not to be implemented under a government that respects basic rights and protects human dignity unless all other means have been exhausted. The proof of this is that Regulation 119 is not implemented in Israel against families of Jewish security prisoners, despite the escalation of violence against Arab citizens of Israel we are witness to and crimes based on nationalistic motives. Parenthetically, it should be noted, that there is a genuine concern that the disparity in the implementation of the regulation in comparable cases amounts to discrimination.
24. In the present matter, there is no rational link between the means and the stated purpose - the deterrence of potential assailants and the protection of the security of the area. In light of the grave violation of the rights of my client's family and his children, and the rights of my clients who are their neighbors, an exceptional degree of proof of the effectiveness of this drastic measure is required. However, not only is there no evidence that house demolitions serve the declared objective of this measure, but the security authorities themselves had, in the past, reached the conclusion that the demolition of the homes of the families of assailants has not proven itself to be a means of deterrence. In light of this, in 2005, the Minister of Defense accepted the recommendations of the Shani Committee and decided to stop the exercise of power pursuant to Regulation 119 as the deterrence did not prove to be effective, and the harm caused by the demolitions exceeded their gains.
25. It must be recalled that in HCJ 8091/14 **Hamoked: Center for the Defence of the Individual v. the Minister of Defense** (published in Nevo on December 31, 2014), which concerned circumstances similar to those of our matter, it was determined by the majority of the justices on the panel that in future cases of house demolitions, the army will be required to present data concerning the alleged effectiveness of house demolitions as a means of deterrence. Deputy President Rubinstein stated as follows:

“...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...

Also see paragraph 6 of the decision of the Honorable Justice Hayut.

26. In light of this, it is seemingly appropriate to immediately conduct the aforementioned research and not to persist in a house demolition policy that is not based on a proper factual study that examined its results. You are requested, therefore, not to carry out the demolition of my client's home or that of any other building before the above study is conducted as determined by the Supreme Court and its results are presented.
27. In consideration of the enormous and irreversible damage that will be caused to my clients and their families, it does not suffice that a drastic measure such as this “may” achieve the aim of deterring

additional violent actions. As it is undisputable that vast damage will occur, a significantly high level of certainty that a benefit will be attained is needed to justify it.

28. In this specific case, it is not possible to view the destruction of my client's residential apartment as a proportional measure, as his brother is expected to receive a severe sentence that will, in itself, constitutes a significant deterrence to potential assailants. The employment of the additional means of destroying the apartment of family members, a measure that is harmful, irreversible, and that has far-reaching consequences on neighbors' homes which will, most likely, be significantly damaged by this measure, emphasizes all the more, that it is punishment for the sake of revenge and an excessive reaction that harms the innocent and cannot be considered proportionate in the circumstances of the matter. Only a few days ago, Justice Fogelman, for good reason, remarked in his ruling in H CJ 5839/15 **Siedr v. the Military Commander on the West Bank** (published on the website of the Judicial Authority on October 15, 2015; hereinafter: "the **Siedr case**") that:

"The exercise of power pursuant to Regulation 119 in when there was no sufficient evidence that the suspect's relatives were involved in hostile activities is disproportional".

29. Furthermore, harm caused to innocent individuals and collective punishment also produce the negative results of increased hostility and hatred, and convey the feeling that Israel does not attach any value to the safety and well-being of residents of the Occupied Territories, even if they are innocent and are not involved in hostile activity. This broad and indiscriminate harm, in contrast with harm that targets those who are guilty or deserving of punishment, may generate feelings of despair and the willingness to sacrifice oneself, and not fear and apprehension. The indiscriminate demolition you are planning may, therefore, contribute to the feeling of nearby and distant individuals that, in any case, they have nothing to lose and thus paradoxically harm Israel's security interests and foster additional attacks. It appears that this measure is not intended for deterrence but to placate public opinion in Israel that is demanding revenge.
30. It should be noted that the Supreme Court has, in the past, deliberated the difficulty and the dilemmas involved in measures that violate human rights for the general purpose of deterrence. It was emphasized in case law that the dilemma of the objective of deterrence is augmented when it is the only purpose of a law, as noted by the Honorable President Naor in her ruling in H CJ 7385/13 **Eitan – Israeli Immigration Policy v. the Government of Israel** (published in Nevo, September 22, 2014): "**General deterrence is not in itself a legitimate purpose**" (Paragraph 2 of the Honorable President Naor's judgment). The Honorable President Naor reiterated this statement in a ruling recently given in H CJ 8665/14 **Daste et. al v. Minister of the Interior et. al** (published in Nevo, August 11, 2015, Paragraph 35 of the judgment).

Also see H CJ 7015/02 **Ajuri v. the Military Commander of the West Bank**, IsrSc 56(6), 352, 374.

31. It must further be noted that although the above petition, H CJ 8091/14, was rejected, a request to hold an additional hearing is still pending before the Supreme Court, in the framework of H CJFH 360/15 **HaMoked: Center for the Defence of the Individual et. al v. Minister of Defense**. An expert opinion

formulated by international law experts was attached to this request stating that the home demolition policy pursuant to Regulation 119 amounts to a grave violation of Israel's obligations under the provisions of public international law, and severely breaches its obligations under the laws of war, humanitarian international law, the laws of occupation, and international human rights laws. The expert opinion further determined that these violations may, in certain circumstances, amount to war crimes under the regulations of international criminal law, and that under certain circumstances, they may be subject to the authority of the International Criminal Court. The expert opinion can be viewed on www.hamoked.org.il/files/2014/1159001.pdf

32. It must also be noted that granting a decision concerning a home demolition prior to the conclusion of Yahaia Haj Hamed's interrogation and his conviction is flawed and unreasonable, particularly as no indictment has yet been served against him.

Threat to other sections of the building and harm to neighbors:

33. Demolishing or sealing my client's apartment may result in the collapse of the building and, therefore, be the cause of damage to adjacent apartments. Past experience has shown that these are not trivial damages, even if the demolition is executed manually and affects parts of the building that are not part of its infrastructure.
34. In this respect it must be recalled that in the above 'Awadeh case, the army undertook not to execute the demolition order until it is satisfied that no damage will be caused to other apartments in the building (see the remarks of the counsel for the state on page 4 of the protocol of the hearing of June 30, 2014). Yet, despite the State's undertaking which was anchored in the judgment, the demolition of the apartment that was the subject of the 'Awadeh case caused damage to neighboring apartments.
35. In wake of the above, at a hearing on the aforementioned Siedr case held on October 14, 2015, the Supreme Court justices chastised the flaw involved in causing these types of damages, and in the words of the Honorable Justice Fogelman: "**The things that happened should not have happened...**" It must be noted that, at this hearing, the Supreme Court also deliberated the possibility of compelling the State to compensate the neighbors whose apartments will be damaged as a result of a demolition action.

Summary:

36. There is no foundation, in the matter at hand, to the claim that _____ Haj Hamed resides in my client's apartment, and due to the substantial flaws contained in the notice in Hebrew and Arabic, it is not at all clear which sections of the building are intended for demolition, and it is not possible to mount an active defense against the decision.
37. Furthermore, home demolition is a cruel and irreversible measure whose effectiveness is doubtful, as even the Minister of Defense acknowledge when he halted this policy in the West Bank several years ago. In the circumstances of the matter, it is not possible to view the employment of this drastic means as proportional, particularly as my clients have no tie to the acts attributed to Mr. _____ Haj Hamed, and due to the long range impact this measure has on scores of protected civilians.

38. We, therefore, request that you rescind your intention to destroy my client's apartment.
39. As long as proceedings regarding the demolition of my client's apartment are pending, no action must be taken that will in any way damage his home. Furthermore, should it be decided to deny this objection, my clients intend to submit an urgent appeal to the Supreme Court. For this purpose, we request you allot us a reasonable period of time during which no action will be taken that will cause damage to the building.
40. Due to the urgency of the objection, and in view of the short time that was available to my client for its submission, in view of the absence of substantial material supporting the objection including the required, full clarifications regarding the planned demolition, the manner of its execution, and documentation of the interrogation of Mr. Yahai Haj Hamed, all that was stated in the above objection does not exhaust my clients' claims concerning the matter at hand, and they persist in their demand to receive all of the relevant material and reserve the right to supplement their claims as needed.

Respectfully,

[Handwritten signature]

Gaby Lasky, Adv.

Cc:

Major General Doron Ben-Barak, Judea and Samaria Legal Advisor

Via fax: 02-997326