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

**HCJ 1624/16**

In the matter of:

1. \_\_\_\_\_ **Hamed, ID No. \_\_\_\_\_**
2. **HaMoked: Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger (RA)**

Represented by counsel, Adv. L. Tsemel and/or Adv. A. Khaleq and/or Adv. Hava Matras-Iron and/or Adv. Sigi Ben Ari and/or Adv. D. Shenhar and/or Adv. Noa Diamond and/or Adv. Benjamin Agsteribbe and/or Adv. Bilal Sbihat  
Of HaMoked: Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger  
2 Abu Obeida St., Jerusalem,  
Tel: 02-6273373; Fax: 02-6289327

**The Petitioners**

v.

**Military Commander of the West Bank Area**  
Represented by the State Attorney's Office  
Ministry of Justice Jerusalem

**The Respondent**

## **Petition**

A petition is hereby filed which is directed at the respondent ordering him to appear and show cause, why he should not refrain from the forfeiture and demolition of the apartment located on the roof of a building the Qalandiya refugee camp, and why he should not retract the statement according to which no structure shall be erected in the apartment being the subject matter of the

order which served as the residence of \_\_\_\_\_ Hamed ID No. \_\_\_\_\_, before he was killed, and direct him by an absolute order to refrain from doing so.

**As an Interim Remedy**

The honorable court is requested to order the respondent or anyone on his behalf:

To refrain from causing any damage to the apartment being the subject matter of the petition until all remedies in this petition shall have been exhausted. The actual short date which was given to the petitioners for the purpose of filing their petition and receiving an interim remedy was until Sunday, February 28, 2016.

**The grounds for the petition are as follows:**

1. **The forfeiture and sealing order:** The subject matter of this petition is an additional forfeiture and demolition order which was issued on February 23, 2016, by Major General Roni Numa, the Military Commander of IDF Forces in the Area, which stated as follows:

This measure is taken due to the fact that the perpetrator carried out on December 23, 2015, together with another perpetrator a stabbing attack in the Jaffa gate of the old city of Jerusalem, in which the late Reuven Birmacher was stabbed to death with a knife. While acts were taken by the security forces in an attempt to take control over the perpetrators the late Ofer ben Ari was killed and two other individuals were wounded.

No structure shall be erected in the apartment being the subject matter of this order.

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

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

**The apartment located on the roof of a building in Qalandiya which served as the residence of the perpetrator Anan Muhammad Salah Hamed, ID \_\_\_\_\_, in view of the fact that exigent military needs so require."**

**Attached as Exhibit "A"**

2. The above order was ostensibly formulated after the petitioners were given insufficient opportunity to object to the intention to take injurious measures against their home. On February 5, 2016, about a month and a half after the alleged incident, the inhabitants of the apartment were given notice in Arabic which stated that there was an intention to take injurious measures against the apartment and that an objection thereto could be submitted until February 10, 2016.

The objection was submitted on February 10, 2016.

### **Attached is the objection, Exhibit "B"**

In the objection details were given regarding the family, which is a family of refugees from Saris in Bab al Wad currently known as "Shoresh". The family was housed in refugee camps and arrived to the Qalandiya refugee camp in 1950. The family is eligible for UNRRA aid and resides in a dwelling which was built on land allocated to it by the UN. The house was originally built as a refugees' house by the family's grandfather and is currently shared by different family members. The studio apartment on the roof, the 25 square meters apartment against which the forfeiture and demolition order was issued, served as the residence of the late Anan who lived there by himself, and who intended to complete the construction for himself so that he would be able to get married in the future. He had a high school diploma, he studied electronics in a college in Qalandiya and intended to finish the construction of his apartment and marry.

3. Thirteen days later, on February 23, 2016, the respondent sent his response to the objection together with a "**forfeiture and demolition order**" which had been signed a day earlier, Exhibit "A".

### **Response to the Objection:**

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

The collective punishment issue: was rejected by him on the grounds that in the current security situation this regulation should be used.

The demolition method of the specific apartment: paragraph 9 of the response states that: "**The apartment will be demolished by a controlled detonation using drill charges.**"

The demand to receive the investigation materials: no investigation material was received which is substantial and essential for the consideration of the requested sanction. Attached to the response were five testimonies of individuals who were present in the incident, but not all versions were provided, the documentation of the incident which allegedly existed and was made public was not attached and the medical records of the deceased were not attached either.

5. The respondent wished to emphasize that "**the realization of this order will not commence before Sunday, February 28, 2016**", which means that the petitioners must

operate within a very tight schedule and cannot refer to the entire investigation material which has not yet been transferred to them.

**Attached as Exhibit "C"**

**How did the deceased die?**

6. **The deceased \_\_\_\_\_ Hamed is no longer alive. However, it is known that he was alive after the incident and the circumstances of his death are unclear.**

**Full investigation material regarding the incident was not received. Only partial investigation material was provided by the respondent together with respondent's response dated February 23, 2016, despite the fact that the objection had been submitted on February 10, 2016, and despite the argument in paragraph A 1 that reference to the deceased's part in the incident was required.**

**It is known that the deceased was shot at least by Border Policewomen. However, it is also known that he was alive after the shooting and that one of the policemen testified that he threw the knife which was not far from him and then spoke with him and he replied, and thereafter he sat on him and tied his hands behind his back until an ambulance arrived to take him. It is also known that a citizen was documented hitting the Palestinians who were lying on the floor with a crowbar.**

**His family alleges that he was seen lying on a stretcher while he was still alive.**

**His body was returned to his family on December 31, 2015, and it evidently underwent massive surgery. The transfer of his body was subject to the condition posed by the military that he would be buried on the very same day and therefore his body was not examined in Ramallah as required.**

**Therefore, it is important to receive the entire medical file about him, so that all data may be adequately considered before a final decision is made in this petition.**

7. Immediately after receipt of the response petitioner's counsel wrote to the respondent and requested to receive the investigation material and the details of the site referred to in the response regarding the documentation of the incident. In addition she requested to receive all medical records including deceased's autopsy prior to the hearing of the petition. A waiver of medical confidentiality on behalf of the family was attached to said letter.

**A letter dated February 26, 2016, is attached as Exhibit "D"**

**UNRRA's property**

8. The respondent did not dispute the fact that this case concerned a family of refugees which was rehabilitated in the Qalandiya refugee camp and that the land on which the house was built was land owned by UNRRA and therefore was not private property. The respondent preferred to ignore these details and not to refer to them, as if circumventing

a substantial obstacle without confronting it. The honorable court will have to refer to this substantial issue.

9. The objection which was sent to the respondent referred to the nature of the house against which the respondent intended to take injurious measures, its location and the historical aspects of the conflict embedded therein. It is not just another house which was laboriously built by poor OPT residents. It is a shelter which was designated under the auspices of international recruitment by representatives of nations of the world for families of Palestinian refugees who were uprooted in 1948 from their land following that war. It is a shelter in which the sons of said refugees try to build for themselves and for their children some future. The conflict is not over and in its current round the military commander orders to demolish the 25 square meters which were built up by the grandson, and at this time, pursuant to anachronistic and contemptuous Mandatory legislation adopted by the military commander for punishment and oppression purposes. The respondent should not be allowed to disregard these facts.
10. Only a cruel commander can disregard the demand to clarify the position of UN institutions (such as UNRRA) regarding his intention to harm again refugees who were settled by them with international effort, and ignore them and the position of the nations of the world which stand behind them. Was he of the opinion, from the outset that he could not convince them that a justified military need existed? Was he very well aware of the fact that such an action would be immediately denied and condemned, and therefore did not deign to make a futile attempt in that respect?

#### **The Legal Situation – The Prohibition against the Use of Regulation 119**

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

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

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

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

**Rules of Conduct in Mutual Security Matters**

1. Human Rights and the Rule of Law

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

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

14. Regulation 119 from the era of the British Mandate runs contrary to two main provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, which constitutes to date the basis for the laws of occupation under international law. It runs contrary to Article 33 which prohibits the use of **collective punishment and reprisals** against protected persons and their property, and Article 53 of said convention which prohibits the **destruction of houses** and property of protected persons by the occupying power.
15. Such collective punishment is also contrary to regulation 50 of the regulations annexed to the Convention respecting the Laws and Customs of War on Land (Hague Convention 1907) which prohibits the imposition of collective penalties and regulation 43 of the Hague convention which prohibits impingement and destruction of property.
16. The respondent is bound to and is obligated to act according to the international legal rules of human rights, and particularly according to the UN Covenants on Civil and Political Rights, and on Social and Economic Rights. A ruling to that effect was also given by the International Court of Justice in its opinion regarding the separation wall. These norms also guided the honorable court in the examination of the acts of the military commander (HCJ **Albassione v. Prime Minister** TakSC 2008(1); HCJ 7957/04 **Mar'aba v. Prime Minister of Israel** TakSC 2005(3) 3333 paragraph 24; HCJ3239/02 **Marab v. Military Commander of IDF Forces** TakSC 2003(1) 937; HCJ 3278/02

**HaMoked: Center for the Defence of the Individual v. Military Commander of IDF Forces in the West Bank, IsrSC 57(1) 385).**

17. The use of Regulation 119 is also contrary to Article 17 of the International Covenant on Civil and Political Rights which enshrines a person's right not to be subjected to arbitrary or unlawful interference with his home, Article 12 which protects a person's right to freely choose his residence, Article 26 which protects the right to equality before the law, and Article 7 which protects the right not to be subjected to cruel, inhuman or degrading treatment or punishment. The UN human rights committee which examined the implementation of the covenants by the states members of the UN, also stated in its opinion of 2003 that the use of the Regulation ran contrary to the covenant.
18. The Regulation is also contrary to different Articles of the Covenant on Social and Economic Rights, such as Article 11 (which protects the right to proper housing and living conditions) Article 10 (which protects the family unit) Articles 12-13 and Article 17 of the Universal Declaration on Human Rights. There is also a concern that the use of Regulation 119 of the Defence Regulations may even amount to war crime according to the definitions of Article 8(2)(IV) of the Rome Statute on the Establishment of an International Criminal Court.

**Prohibition against collective punishment and violation of fundamental rights**

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

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

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

**The military commander no longer has the power to exercise this sanction in Area A – where the apartment is located**

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

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

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

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

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

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

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

Section 2c of said chapter stipulates that:

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

Section 3 of this chapter states that:

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

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

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

B. To this end, the Israeli military government shall retain the necessary legislative, judicial and executive powers and

responsibilities, **in accordance with international law**. This provision shall not derogate from Israel's applicable legislation over Israelis in personam.

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

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

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

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

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

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

perpetrators of an engagement incident, which also must cease immediately and the handling thereof transferred to the Palestinian Council.

### **Should additional deterrence be approved after the deceased's elimination**

28. The honorable court should seriously consider the issue which is repeatedly brought to it, much more than is required, namely: **whether after an immediate elimination of a person who is a suspected perpetrator deterrence by way of taking an injurious measure against his home is still required?** If we are concerned with deterrence, is there a greater deterrence than the immediate elimination and killing of a suspected perpetrator? And if such deterrence – which has already become the end result of each and every event which is described as an attack – is not sufficiently deterring, maybe "deterrence" as an automatic reaction should be discarded of, and other solutions should be sought for the prevention of 'lone-wolf attacks'?
29. The honorable court is requested to determine that when a person suspected of having committed an attack was **executed and killed** without trial and without inquiry, additional deterring measure will not be allowed.
30. In view of the troublesome accumulation of very severe cases and the severe reactions thereto, it is incumbent on the honorable court to entrench the rule that whenever passers-by or persons of authority abused a person suspected of having committed an attack after he had already been neutralized and did no longer pose danger, no additional deterring sanctions would be used.

**The court must hold that deterrence cannot be used unilaterally, and that it should be employed in a measured and educated manner after the examination of each case and its circumstances. Deterrence should not become an automatic obligation, so as to prevent us from reaching said slippery slope of cruel and vindictive impingements which commence on scene and spread to broader circles of persons having ties with the perpetrator, which are manifested by injurious measures taken against houses, may continue, God forbid, with injurious measures taken personally against his family members, and who knows where this would end.**

### **The demolition method**

31. In the objection the respondent was requested to provide technical specifications of the demolition method and to enable petitioners' counsel to provide a professional opinion which would examine the proposed demolition method. Upon the blessed limitation of the demolition solely to the apartment of the deceased on the roof of the building, the initial concern of damage to the dwelling of all other family members and neighbors was removed. Yet, the description of the intent to cause damage the house is worrisome: **"controlled detonation using drill charges"**. Seemingly, the intention is to put explosives in the walls of the apartment in a bid to have them demolished ostentatiously as is customarily done. However, one of the walls of the apartment is also the wall of the stairwell. We were not informed of the assurances which would guarantee that no damage would be caused to the stairwell and that the ceiling of the building and its walls would not collapse onto the ceiling of residential unit located below it.

## **Remission and Reinstatement**

32. However, in any event it must always be ascertained that the last part of Regulation 119 may be fulfilled, namely, that the respondent may retract the order in the future. It must be ensured that any injurious measure taken by the respondent by virtue of the Defence Emergency Regulations, in view of its nature and purpose, is reversible.

What does this mean? Each and every demolition according to the first part of Regulation 119 of the Defence (Emergency) Regulations 1945 must ensure that the last part of said Regulation may be fulfilled. The mandatory Regulation 119 of the Defence Regulations did not only enable forfeiture and demolition, as repeatedly quoted by the respondent. **It enabled remission and reinstatement.**

The Regulation in pertinent part provides for remission:

And when any house, structure or land is forfeited as aforesaid, the Military Commander may forfeit the house or the structure or anything in the house, structure, land or on them. **Where any house, structure or land has been forfeited by order of a Military Commander as above, the Minister of Defense (the High Commissioner) may at any time by order remit the forfeiture in whole or in part and thereupon, to the extent of such remission, the ownership of the house, structure or land and all interests or easements in or over the house, structure or land, shall revert in the persons who would have been entitled to the same if the order of forfeiture had not been made and all charges on the house, structure or land shall revive for the benefit of the persons who would have been entitled thereto if the order or forfeiture had not been made.**

**The military commander, the same military commander who is empowered to forfeit and demolish is also empowered to remit the forfeiture and demolition!** The demolition method must ensure that a real and viable remission is possible.

## **The effectiveness of the sanction and its reasonableness**

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

It has already been held in a general petition against house demolition, HCJ 8091/14 by the Honorable Justice Rubinstein, in paragraph 27 of his judgment as follows:

I am of the opinion that the principle of proportionality does not reconcile with the presumption that choosing the drastic option of house demolition or even the sealing thereof always achieves the longed-for objective of deterrence, unless data are brought to

substantiate said presumption in a manner which can be examined... in my opinion, the use of a tool the ramifications of which on a person's property are so grave, justifies a constant examination of the question whether it bears the expected fruit; This is so especially in view of the fact that even IDF agencies raised arguments in that regard, and see for instance the presentation of Maj. Gen. Shani, which, on the one hand, stated that there was a consensus among the intelligence agencies of its effectiveness, while on the other, proclaimed, under the caption "Main Conclusions" that "the demolition tool within the context of the deterring element is 'worn out'" (slide No. 20). Therefore, I am of the opinion that State agencies should examine from time to time the tool and the gains brought about by the use thereof, including the conduct of a follow-up and research on the issue, and to bring to this court in the future, if so required, and to the extent possible, data which point at the effectiveness of house demolition for deterrence purposes, to such an extent which justifies the damage caused to individuals who are neither suspects nor accused

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

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

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

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

However, these extreme cases should not make us forget the need, as my colleague pointed out, to re-examine from time to time and raise doubts and questions concerning the

constitutional validity of the house demolition measure according to the limitation clause tests... in the praise of doubts, which also those who are right should always have...

34. Precisely the rapidly changing circumstances in the security condition of the state, as well as the new data which were thrown into the arena of the conflict, require renewed professional thinking. The data which were presented to the Shani committee are not the same as the current data in the arena; the political map of the Arab world which existed at that time is not the same as it is currently mapped; the political balance of power in Israel when the Shani committee operated is not the same as the current political balance following the last elections; the status of religion and mutual religious extremism at that time are not similar to their current status and influence in the arena; neither is the attitude of the external world to the acts of Israel in the past similar to the current boycott threats and bans.

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

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

I am of the opinion that State agencies should examine from time to time the tool and the gains brought about by the use thereof, including the conduct of a follow-up and research on the issue, and to bring to this court in the future, if so required, and to the extent possible, data which point at the effectiveness of house demolition for deterrence purposes, to such an extent which justifies the damage caused to individuals who are neither suspects nor accused.

The above was said before individuals, mostly young, risked their lives and went off to execute attacks in the Occupied Palestinian Territories and in Israel, knowing with an almost absolute certainty that they would be killed and their relatives would be harmed. **It seems that the measures which were meant to deter achieve the opposite results and just motivate these young people.** As these measures proved to be ineffective, political solutions should be sought.

This is the time.

### **Discrimination in the enforcement of punishment and deterrence**

35. It has already been stated in the objection that in addition to the scathing criticism against the lack of justification and immorality embedded in the above sanction, one cannot ignore the fact that not less shocking murder of an abducted Palestinian youth, Mohammed Abu Khdeir, was committed a while ago and three Israeli citizens currently

stand trial for said deed, after they admitted and re-enacted it. They were caught alive and most of them are residents of settlements.

It is already known at this time that at least one resident of the settlements was caught and stands trial for the arson and murder of the Dawabsheh family in Duma village. No injurious measures were taken against his home or against the homes of the murderers of Abu Khdeir.

The fact that this vindictive and inappropriate sanction was not imposed on Israeli citizens is satisfying. However, if such a cruel step is not taken against Israeli citizens (some of whom live in the Adam settlement and others in Area C in which there is ostensibly no preclusion for exercising the sanction by Israel against its own citizens), it should most certainly be avoided when residents of an occupied territory are concerned, such as the petitioners, who are protected by international law as well as by the Interim Agreement.

The question of whether the mere discrimination gives incentive and propels additional attacks should not be left under advisement.

Attached is an affidavit to support the above facts.

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

(Signed)

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

February 28, 2016