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Date: June 30, 2016
In your response please note: 31430

To: **By Fax: 03-5694562**
Captain Eliran Ben Eliezer
Legal Advisor Home Front Command

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Dear Sir,

Re: **Measurement of Houses by the Military before a demolition order is issued by virtue of Regulation 119 of the Defence (Emergency) Regulations, 1945, as an intimidating measure**

شارع أبو عبيده ٤
القدس ٩٧٢٠٠
هاتف. ٦٢٨٣٥٥٥. ٠٢.
فاكس. ٦٢٧٦٣١٧. ٠٢.

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1. I hereby write to you with respect to a sweeping use of measurements and mapping of houses of families of individuals suspected of having committed attacks.
2. The military forces customarily make measurements before a demolition order is issued by virtue of Regulation 119 of the Defence (Emergency) Regulations, 1945. However, **there is no authority** to enter into the homes of the families and make measurements at this stage in which a decision to issue a demolition order has not yet been made, while the purpose of the measurements is to facilitate the implementation of such an order.
3. In the period which passed from October 12, 2015, until April 7, 2016, HaMoked: Center for the Defence of the Individual documented 95 cases in which the military made engineering measurements and carried out mapping activities in the homes of persons involved in or suspected of the execution of attacks, although no demolition order was issued against these houses by virtue of Regulation 119.

A table documenting these cases is attached to this letter – marked A.

4. The data which were collected attest to the fact that the measurements were made in a sweeping and automatic manner in each and every incident which was deemed an attack, regardless of its consequences. In 13 of the houses which were documented in the attached list the relevant incident ended with no casualties whatsoever (other than the perpetrator). In other 37 cases the incidents ended with light injuries only.

5. Accordingly, for instance, on November 1, 2015, the house in which lives the family of Hadil Alshalmon in Hebron was measured. Hadil was shot to death by soldiers on September 22, 2015, in "Hassam Shoter" checkpoint in Hebron, after she had allegedly pulled a knife at them. In said incident no one was injured but her (incident No. 76 in the table). Another example is the measurement of the house in which lives the Dweik family in Kafr 'Aqab on October 18, 2015. The family member, Tareq Dweik stabbed and lightly injured a person in Ahuza Street, Raanana on October 13, 2015 (incident No. 87 in the table).
6. House measurement is not only an engineering-technical act and one cannot disregard the severe ramifications it has on the family and its close environment. The military forces which are responsible for making the measurements usually arrive to the house in the middle of the night in large forces. It is an act which creates panic and fear amongst the family members. The above is coupled with the sense of anxiety and uncertainty which the act of measurement causes to the family that continues to live in constant fear of the possibility that its house will be indeed demolished.
7. The act of measurement taken by the military forces harms the family members to whom no involvement in the attack is attributed and who have done nothing wrong. As known, our position is that the use of Regulation 119 of the Defence (Emergency) Regulations, 1945, against family members constitutes collective punishment and is contrary to international humanitarian law, international human rights law and Israeli administrative and constitutional law. However, even the Supreme Court which rejected the arguments against the lawfulness of the Regulation held that it should be used only in cases of extreme severity. Justice Sohlberg in a recently given judgment reiterated said rule:

It was ruled more than once that in view of the severity of the sanction of the demolition of a residential unit, which in the vast majority of cases also harms family members who were not directly involved in the hostile activity, it should be used moderately and carefully: "The military commander must make prudent and limited use of said authority, according to principles of reasonableness and proportionality" (**Hamed**, paragraph 23). The violation of the proprietary rights of the inhabitants of the house was justified when it was used for a deterring purpose, but said deterrence is proportionate "when the acts attributed to a suspect are particularly severe" (*Ibid.*, paragraph 24; H CJ 8066/14 **Abu Jamal v. GOC Home Front Command**, paragraph 9 (December 31, 2014)). (H CJ 1629/16 **Ziad 'Amar v. Commander of IDF Forces in the Judea and Samaria Area** (April 20, 2016).

8. In view of the above one wonders why measurements were made in cases the vast majority of which does not reach at all the severity level in which the Regulation is customarily used. Even if the purpose of the measurements was not only to terrorize and frighten the family members, in practice, dozens of measurements were made without any justification. It stands to reason that such an offensive measure which is knowingly used against innocent persons, will be taken **only in severe cases in which a decision to issue a demolition order was made**, rather than sweepingly and off-handedly.
9. In view of the above, and in view of the severe and pointless harm caused to the families, we request you:
 - a. To clarify what is the source of the authority by virtue of which the military forces entered the homes of innocent persons to make measurements, at the early stage in which no demolition order has yet been issued and even before notice was given to the family regarding the intention to demolish its home.
 - b. To immediately stop the current practice of sweeping measurements in each incident which is deemed an attack.
 - c. To notify how you intend to act *vis-à-vis* the families listed on the attached list – families which are still concerned, in view of the measurements which were made, of the possibility that their homes will be demolished – in a manner which would alleviate the concern and slightly reduce the damage which has already been caused to them without any justification.

Sincerely,

Advocate Anat Gonen
Legal Department
Coordinator

Cc:
Brigadier General Sharon Afek, Military Advocate General

An identical letter was sent to Colonel Doron Ben Barak, Legal Advisor for the West Bank