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At the Supreme Court
Sitting as the High Court of Justice

H CJ 8070/14
Scheduled for December 3, 2014

1. U_____ Abu Jamal, ID No. _____
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
3. **Addameer – Prisoner and Human Rights Association**

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The Petitioners

v.

GOC Home Front Command, Maj. Gen. Eyal Eisenberg

represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-6466008; Fax: 02-6467011

The Respondent

Response on behalf of the Respondent

1. In accordance with the decision of Honorable Justice Hayut dated November 27, 2014, the Respondent hereby respectfully submits his response to the petition as follows:
2. The petition herein concerns Petitioners' request that the Honorable Court order the Respondent to appear and show cause why the seizure and demolition order for the apartment in which U_____ Abu Jamal (hereinafter: **the terrorist**) resided, in the Jabel al-Mukabber neighborhood of Jerusalem should not be revoked.

The order was issued by the Respondent in accordance with the power vested in him under Regulation 119 of the Defense (Emergency Regulations) 1945 (hereinafter: **the Defense Regulations**), after the terrorist who had lived in the apartment slated for

demolition, along with his cousin, carried out a knifing and shooting terrorist attack at the Bnei Torah, Kehilat Yaacov synagogue in the Har Nof neighborhood in Jerusalem on November 18, 2014. Four Israeli civilians and one police officer were murdered and several other civilians were injured.

3. The Respondent will argue that the petition must be dismissed in the absence of cause for the Honorable Court's intervention. The Respondent argues that given the recent escalation which peaked with terrorist attacks in the heart of Jerusalem, use of the powers granted under Regulation 119 against the structure in which the terrorist resided is essential for deterring other potential terrorists from carrying out additional attacks.
4. As detailed below, most of the arguments raised by the Petitioners are not new. They have been reviewed and rejected in many judgments issued by the Honorable Court in the past.

We add that only recently, the Honorable Court issued judgments in HCI 4597/14 **Awawdeh v. Judea and Samaria Area Military Commander** (published on the website of the Judicial Authority, July 1, 2014, hereinafter: **Awawdeh**) and HCI 5290/14 **Qawasmeh v. Military Commander** (published on the website of the Judicial Authority, issued August 11, 2014, hereinafter: **Qawasmeh**), wherein the Honorable Court repeated the rulings made with respect to the use of powers granted under Regulation 119, and dismissed the petitions.

In the circumstances, the Respondent will argue that there is no cause or justification to address these arguments once more in the framework of this petition.

5. Given the series of terror attacks perpetrated in recent months shortly before and after the terror attack which is the subject of this petition, and since deterring potential terrorists is of the utmost importance, in particular potential terrorists among residents of East Jerusalem, especially those who intend to act on their "own initiative" rather than as part of an organized terrorism, network and since in our view, use of the powers granted under Regulation 119 is indeed necessary for deterring future potential terrorists, the Respondent asks the Court to rule on this petition as soon as possible.

The main relevant facts

6. Petitioner 1 is the terrorist's father.
7. The terrorist had a permanent residency permit in Israel. He lived in an apartment with his parents, three brothers and sisters, in the Jabel al-Mukabber neighborhood of East Jerusalem.

Description of the terror attack

8. On November 18, 2014, the terrorist, with his cousin, G___ Abu Jamal perpetrated a murderous attack in a synagogue in the Har Nof neighborhood in Jerusalem, using a gun and butcher's knives.
9. The terrorists arrived at the synagogue in a Skoda car, and parked it. They then walked to a playground located near the synagogue and waited for the synagogue to fill with more worshippers.
10. At 6:56 A.M., as the Standing Prayer was coming to an end, the terrorists entered the synagogue. One of the terrorists began shooting his gun at the worshippers and the other began attacking the worshippers with a butcher's knife.

11. At 7:01 A.M., the police was called by one of the worshippers who managed to escape the scene. Seven minutes later, at 7:08 A.M., officers arrived at the scene of the incident. At some point, U____ Abu Jamal went out of the synagogue toward the officers, holding the knife, and was shot by the officers. Then, the terrorist who had the gun came out, and apparently, after a gun battle with the officers, he was also shot.
12. This is a dry description of a heinous act, “carefully” planned by the terrorists, in which they took the lives of worshippers inside a holy site, using a gun and butchers’ knives – a brutal massacre which resulted in the death of five innocents – four civilians and a police officer, and the injury of others.

The facts leading up to submission of the petition

13. Given the severity of the terror attack and the critical need to deter potential terrorists from perpetrating terror attacks inside the State of Israel, the GOC Home Front Command has decided, at the recommendation of the Israel Security Agency (ISA), with government-level approval and the approval of the Attorney General, to exercise his power under Regulation 119 with respect to the apartment in which the terrorist lived.
14. On November 20, 2014, the Petitioner was informed of the Respondent’s intent to seize and demolish “the apartment located on the ground floor, to the northwest, in the Jabal al-Mukabber neighborhood in East Jerusalem (coordinates: 715315.3515039, as detailed in the plan attached to the Order), where the terrorist resided with his family . The notice cited: “This measure is taken since on November 18, 2014, the captioned individual, along with G____ Abu Jamal, (ID No. ____) perpetrated a terrorist attack during which they shot and stabbed worshippers at the Bnei Torah, Kehilat Yaacov synagogue in the Har Nof neighborhood in Jerusalem. Five people were killed in the terror attack and seven others sustained varying degrees of injuries. The GOC Home Front Command believes the measure is necessary for deterring potential terrorists from perpetrating such terror attacks in future”. The notice also indicated that the terrorist’s family may file an objection with the Respondent against the seizure and demolition order before he makes a final decision in the matter.

A copy of the notice dated November 20, 2014 is attached hereto and marked **R/1**.

15. On November 23, 2014, the Petitioners submitted an objection against the intent to use the powers granted under Regulation 119 with respect to the house.

The objection dated November 23, 2014 was attached to the petition and marked **P/2**.

16. On November 25, after a review of the arguments made in the objection, counsel for the Petitioners was sent a response to the objection, informing him of the military commander’s decision as follows:

The overall administrative evidence in possession of the GOC Home Front Command indicates that this was a terrorist attack perpetrated with the goal of harming innocent civilians for nationalistically motivated reasons. The findings uncovered at the scene and the testimonies that have been collected paint a very serious picture, whereby the terrorist arrived at the synagogue and waited for the “right time”, when the synagogue was full of worshippers, in order to massacre them. In these exceptionally grievous circumstances, the GOC Home Front

Command believed that measures under Regulation 119 should be taken in order to deter any other potential terrorists from carrying out such attacks.

The response also referred to the various legal arguments raised in the objection, emphasizing that:

The purpose of exercising this power [the power to take measures under Regulation 119] is to deter the public from perpetrating terrorist attacks. It is to let potential terrorists know that their actions would impact not just their victims and themselves, but also the terrorists' own families... Security officials believe that employing a sanction under Regulation 119 acts as an effective deterrent for potential terrorists. The recent escalation in the Jerusalem area, which peaked with terrorist attacks by car, gun and knife, carried out of late, as well as current evaluations regarding the efficacy of deterrence in said cases, provide the necessary foundation for exercising the power granted by Regulation 119 in the case at hand.

The response also stressed, with respect to arguments made in the objection, that:

According to case law, the harm caused to other people living in the home of a terrorist that has been made the target of the power granted in Regulation 119 does not constitute collective punishment, but rather collateral damage attached to the deterrent objective of exercising the authority... The demolition of the building was balanced against the severity of the terrorist's actions, the scope of such attacks and the need for deterrence as noted above. The GOC Home Front Command examined all available alternatives that would realize the purpose of the power, as well as the benefit that might be gained by the demolition. The effect of the demolition on individuals living in nearby buildings was also examined, and care has been taken to avoid any significant harm to buildings located near the terrorist's home as a result of the demolition.

The response to the objection dated November 25, 2014, was attached to the petition and marked **P/3**.

17. At the time the response to Petitioners' objection was provided, on November 25, 2014, the Respondent signed a Seizure and Demolition Order for the residential unit in which the terrorist lived with his family (hereinafter: **the Order**), pursuant to his powers under Regulation 119. The Order stated the grounds for its issuance

This Order is issued as the occupant of the apartment, U__ Abu Jamal (ID No. _____) perpetrated a terrorist attack along with his cousin G__ Abu Jamal (ID No. _____) during which they stabbed and shot worshippers at the Bnei Torah, Kehilat Yaacov synagogue in the Har Nof neighborhood in Jerusalem. Five people were killed in the terror attack and seven others sustained varying degrees of injuries.

A photocopy of the Order dated November 25, 2014 was attached to the petition and marked **P/4**.

18. On November 27, 2014, the petition herein, which is directed against the Order issued by the Respondent was filed. On the same day, the Honorable Court issued an interim order precluding the

Respondent or anyone acting on his behalf from seizing, sealing or demolishing the apartment which is the subject of the petition.

The terrorist's family home

19. The apartment in which the terrorist resided is located in the Jabel al-Mukabber neighborhood of East Jerusalem.
20. The apartment where the terrorist resided with his nuclear family has a living room, kitchen, sitting room and three bedrooms. Adjacent to the apartment in which the terrorist lived, there is an additional, separate residential unit which is rented and **is not** slated for demolition as part of the Seizure and Demolition Order issued by Respondent in accordance with the power vested in him under Regulation 119.

The legal argument

21. The legal arguments made by the Petitioners are not new. They have been reviewed and rejected in many judgments issued by the Honorable Court in the past. In two judgments, **Awawdeh** and **Qawasmeh**, given just a few months ago, the Honorable Court confirmed the long standing case law, whereby the demolition of terrorists' homes, is, in certain circumstances, a lawful, reasonable and proportionate measure based on the Military Commander's assessment that the measure acts as a deterrent (see also, judgments in [HCJ 124/09 Dwayat v. Minister of Defense](#) (published on the website of the Judicial Authority, March 18, 2009, hereinafter: **Dwayat**); [HCJ 9353/08 Abu Dheim v. GOC Home Front Command](#) (published on the website of the Judicial Authority, May 1, 2009, hereinafter: **Abu Dheim**); [HCJ 5696/09 Mughrabi v. GOC Home Front Command, Maj. Gen. Yair Golan](#) (published on the website of the Judicial Authority, February 15, 2009, hereinafter: **Mughrabi**)).

Respondent's position is detailed below.

The normative framework

Use of the power to seize and demolish - general

22. The power to order the seizure, sealing or demolition of a structure under Regulation 119 of the Defense Regulations is granted to the military commander, as part of local law.

Regulation 119 of the Defense Regulations, in the binding English language version, stipulates as follows:

A MILITARY COMMANDER MAY BY ORDER DIRECT THE FOREFEITURE 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 OFFENCE AGAINST THESE REGULATIONS INVOLVING VIOLENCE OR INTIDMIDATION OR ANY MIITARY COURT OFFENCE”...

[Hebrew translation follows]

23. As stated, Regulation 119 empowers the Respondent to seize, demolish or seal the entire structure in which the terrorist lives with his family. At the same time, according to the jurisprudence of the

Honorable Court, when the Respondent decides to exercise his power under Regulation 119, he must exercise said power reasonably and proportionately, taking into consideration the overall circumstances outlined in case law.

According to case law, the purpose of exercising the power granted under regulation 119 is solely to deter and not to punish. Hence, the power granted under Regulation 119 is not exercised as a punishment for terror attacks perpetrated in the past, but is rather exercised only if the military commander reaches the conclusion, that use of the power is required to deter terrorists from carrying out additional terror attacks in the future – and for this purpose only.

The underlying premise is that a terrorist who knows that his family members may be harmed if he carries out his plan – may consequently refrain from carrying out his planned terror attack. The deterrence is also directed at the family members of the terrorist, who may be aware of his plans, and is intended 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.

24. According to case law, the harm inflicted on additional people who live in the house of the terrorist which has been made the object of the power granted under Regulation 119, does not constitute collective punishment, but is rather an impingement that is ancillary to the deterring purpose of using said power.

In HCJ 798/89 **Shukri v. Minister of Defence**, TakSC 90(1) 75 (1990) the following was held:

The power vested in the military commander under Regulation 119 is not a power to use collective punishment. Use thereof is not designed to penalize members of the Petitioner's family. This power is administrative and its use is designed to deter, thereby upholding 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 order and safety, and not only to the lives of innocent people, but also to the wellbeing of their own loved-ones.

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

We should therefore reiterate what has been said more than once: the purpose of using the measures subjected to the power of the Military Commander under Regulation 119 (1), relevant to the issue herein, 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 severe 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.

25. 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 authority to order house demolitions only in such severe cases in which "ordinary" punitive and deterring measures, by their nature, cannot sufficiently and properly deter terrorists who harm body and soul.
26. Using the sanction of house demolitions is a **direct outcome of circumstances of time and place**. Just as terrorism takes on a new shape from time to time, so the Respondent is obligated to act accordingly and to the extent required, and alter the measures taken to counter the danger and annihilate it in the course of Israel's fight against the hostile and murderous terror activity.

In this regard, it has long since been held by this Honorable Court , authored by Honorable President Shamgar in H CJ 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 order and safety. 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 gravity of the offense, to the frequency with which it is committed and the nature of the acts involved therein. If, for example, the murder of people who have contacts with the army becomes widespread, or, if attacks intended to burn people or property in order to instill terror and fear proliferate, the law must be enforced more rigorously and more frequently. The aforesaid is applicable anywhere, and areas under military control are no exception in this regard; on the contrary, maintaining order and safety and the enforcement thereof in practice are, according to public international law, among the central tasks of the military regime.

27. In view of the fact that the power granted under Regulation 119 is exercised in response to terrorism, it is not surprising that the scope of its use over the years was directly related to the scope and severity of the terror attacks. Thus, during the years in which there was a decline in terror attacks, the power granted under the Regulation was exercised more rarely, whereas in periods during which terror attacks became a "daily routine", security forces were compelled to respond by using the Regulation more frequently, in order to deter and cut off terrorism at the root to prevent the harm from spreading even further.
28. This is the place to note once again that taking measures according to Regulation 119, is based, first and foremost, on a number of balances. A balance between the severity of the act of terrorism and the scope of the sanction; a balance between the expected injury which would be inflicted on the family of the terrorist and the need to deter potential future perpetrators; a balance between every person's basic right to his property and the right and duty of the government to maintain public order and safety, and protect the wellbeing and security of the citizens and residents of Israel.
29. Thus, within the framework of this balancing task, weight is given to the gravity of the acts, the circumstances of time and place; the terrorist's residential ties to the house; the size of the house; the effect of the measure on other people; engineering concerns and other such considerations. Only after the weighing, examination and balancing of the entire array of considerations which are relevant to the circumstances of the matter, shall the military commander decide whether to use the

measure of demolishing or sealing a structure, and to what extent (see, for instance, the judgment in **Nazal**).

30. Some nine years ago, when terrorism abated, a think tank headed by Major General Udi Shani issued a report entitled "Rethinking House Demolitions", in which it recommended bringing the systematic use of Regulation 119 down to a complete stop, while retaining the option to use this measure in extreme cases. A presentation to that effect was made in a meeting held by the IDF Chief of Staff in February 2005. Upon the conclusion of said meeting, the Chief of Staff decided to suspend, at that time, the use of the power granted under Regulation 119. However, it should be emphasized, that the Chief of Staff also determined that this decision could be revisited in extreme cases (as recommended by the think tank). The Minister of Defense adopted the Chief of Staff's policy. In the same context it was also determined that should there be an extreme change of circumstances, the decision would be reconsidered.

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 the power vested in him under Regulation 119. The orders were directed against the houses of the terrorist who carried out the attack at Merkaz Harav Yeshiva and the terrorists who perpetrated two vehicular attacks in Jerusalem. Three petitions submitted to the Honorable Court against these decisions – **Abu Dheim, Dwayat, Mughrabi** – were denied.

After that wave of terrorism subsided, several years went by without recourse to this measure.

From the general to the particular – security necessity

31. According to the professional assessment of security officials and the information collected by them, over the last two years the Jerusalem and Judea and Samaria sectors have shown a trend toward deteriorating security. This is evidenced in the increase in the overall number of terror attacks (including the number of severe attacks), the number of unorganized terror attacks and the number of casualties in these attacks.
32. This trend is well reflected in the terrorism figures collected **from the beginning of 2013 to mid-November 2014**. Thus, in 2013, 1,414 terror attacks were recorded in the Area, while more than 1,650 terror attacks have been recorded in 2014 to date. Of the attacks carried out in 2014, 1,595 were unorganized (including 1,387 incidents of Molotov cocktails thrown at cars and people, and 187 improvised pipe bombs). This period also saw a spike in the number of Israelis killed in terror attacks originating in the Area and in Jerusalem. **From 2013 up to the present time, 22 people have been killed in terror attacks, compared to zero casualties in 2012.**
33. Furthermore, from the beginning of 2014 - **and especially during the last few months - there has been a sharp increase in the number of severe terror attacks in which Israeli citizens were killed or firearms were used, as well as attempts to carry out severe terror attacks.**

We emphasize that this refers to a sequence of **dozens of incidents** which evince a serious escalation, such as the following cases:

- a. **March 2014:** A wanted Hamas terrorist from the Jenin refugee camp, who was directed by Hamas headquarters in the Gaza Strip to advance a series of terror attacks, including shooting attacks against Israeli targets in the Area, was thwarted. The terrorist was killed in a military operation, during a gun battle with IDF forces in Jenin.

- b. **April 2014**: Shooting attack at an Israeli vehicle at the Tarqumya checkpoint, killing Police Commander Baruch Mizrahi on Passover eve and injuring two others.
- c. **April 2014**: Six activists of a military group from the Jenin and Bethlehem areas were apprehended, thwarting the its plan, directed by an "international Jihad" activist in the Gaza Strip, to perpetrate a shooting attack against IDF forces in the Jenin area.
- d. **May 2014**: Suicide bomber's plan to detonate an explosive belt composed of improvised bombs carried on his person, at the Tapuach junction, frustrated. The members of the cell from Nablus, who were behind the attempted terror attack, were arrested by IDF forces shortly thereafter.
- e. **May 2014**: Shooting attack in the 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**: Shooting attack carried out by a Palestinian terrorist using small-arms, against an IDF position in Bitunya. The military force shot at the terrorist who fled the scene. The event ended without injuries
- g. **June 2014**: Shooting attack using small-arms carried out from a Palestinian vehicle, at an IDF position near the tunnels road/Bethlehem bypass. The event ended without injuries and the terrorist's vehicle fled the scene.
- h. **June 2014**: June 12, 2014 - kidnapping and murder of three youths who were on their way home from their schools in the Gush Etzion area. This terror attack was planned and executed by a Hamas cell.
- i. **July 2014**: Terrorist attack using small-arms, shots fired at an Israeli civilian at Rehelim intersection in the Judea and Samaria Area. 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 using booby trapped vehicle thwarted. Vehicle seized at a military checkpoint in the Judea and Samaria Area.
- l. **August 2014**: Vehicular attack using an excavator in Jerusalem. Once civilian killed, others injured.
- m. **August 2014**: Small- arms shooting attack in Jerusalem. IDF soldier severely wounded.
- n. **October 2014**: Vehicular attack on light rail in Jerusalem. Baby girl and tourist killed. Other civilians injured
- o. **October 2014**: Terror attack in which terrorist Mu'taz Hijazi made an attempt on Yehuda Glick's life, critically injuring him.
- p. **October 2014**: Vehicular attack in Jerusalem, again on light rail. Two Israeli civilians murdered, several others injured.
- q. **November 2014**: Vehicular attack at transportation station in al-'Arrub area, moderately wounding three IDF soldiers.

- r. **November 2014**: Combined vehicular and knifing attack in Gush Etzion. Israeli civilian murdered, others wounded.
 - s. **November 2014**: Knifing attack at Hagana railway station in Tel Aviv. IDF soldier murdered.
 - t. **November 2014**: Combined shooting and knifing attack at a synagogue in Har Nof in Jerusalem. Five Israelis were murdered in the synagogue massacre and several others were wounded. This is the terror attack that is the subject of the petition at bar.
 - u. **December 2014**: Knifing attack at Alon Shvut junction, in which a terrorist stabbed an Israeli civilian.
34. We further note that since the beginning of 2014, about 137 intended and attempted terror attacks in a variety of severe methods (kidnapping, bombs and shooting) in different sectors in the Area were thwarted.
35. The terror activity is mostly lead by local and "decentralized" groups, and by "lone terrorists", with the latter coming to the fore as of late.
36. The Respondent believes that **these figures indicate a substantial shift in circumstances and an escalation in the scope, force and level of murderous terrorism which require measures to deter potential terrorists from perpetrating attacks in general, and attacks of the type that have proliferated recently in particular.**
37. It is important to note that some of the figures detailed above with respect to the state of security in the Judea and Samaria Area were provided to the Court just a few months ago in 'Awawdeh, leading the Honorable Court to rule (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 ministerial level, that a change of policy was required. I am of the opinion that the data presented, all as specified above, constitutes a change of circumstances.
There is no room to intervene in the decision of the Respondent, who has concluded that at this time, actual deterrence was required, and that the demolition of the terrorist's house would result in such deterrence. As held in our jurisprudence: "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, 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 taking the measure of house demolitions (see, for instance: HCJ 2006/97 Janimat 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.
 Petitioners' argument, that Respondent's decision was tainted by extraneous considerations as a result of the kidnapping of the three teens, and did not derive from considerations of deterrence, is hereby dismissed. The kidnapping of the teens 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]

We wish to argue, a fortiori, that given the recent surge of murderous terror attacks in Jerusalem and its vicinity, there is real need for deterrent measures in order to deter potential perpetrators from carrying out attack in general, and attacks of the types perpetrated in the recent wave of terrorism in particular.

38. The Respondent argues that **due to the wave of terror attacks in Jerusalem in recent months, some of which were perpetrated by residents of East Jerusalem, deterring terrorists who are residents of Jerusalem from carrying out attacks inside the country is critical. The need is all the greater given that some of these terror attacks were perpetrated by “lone terrorists”, i.e., terrorists who are not affiliated with an organized terrorism network, terrorists who are willing to die in the execution of the attack. Such attacks are inherently difficult to stop in advance. It follows that early deterrence of other terrorists of this type in Jerusalem is all the more critical.**
39. Given the aforesaid, the professional assessment of security officials, which is shared by the Prime Minister and the Chief of Staff, is that 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 terrorists”. The Respondent believes that use of the power granted under Regulation 119 against the terrorist’s home, as against the homes of other potential terrorists in East Jerusalem, and in the Area, is the order of the day.

The Respondent further argues that the decision to use the power granted by Regulation 119 against the terrorist’s home in this case was reached noting, *inter alia*, the severity of the terror attack; perpetrated by a resident of East Jerusalem who used a firearm to shoot at an Israeli citizen for nationalistically motivated reasons, in the heart of the city. The Respondent believes that it is utterly crucial to deter further such attacks to the extent possible.

40. The Honorable Court addressed the issue of using the power granted by Regulation 119 at a time when terrorism is on the rise, when there is a stronger need to deter other terrorists in order to curb the rising tide of terrorism. We refer to the remarks made by Honorable Justice (as then titled) Naor in **Abu Dheim, the terrorist who perpetrated the murderous attack in Merkaz Harav Yeshiva.**

Thus, the possibility that the policy would once again change was present even at the time the various petitions were dismissed without prejudice. Furthermore, the Respondent claims that prima facie it is clear that the case in the matter at hand is severely extreme, such that, according to the policy set forth by the Chief of Staff in early 2005, as per the recommendation of the think tank, it would be possible to consider use of the power granted under Regulation 119 with respect thereto. Therefore, claims the Respondent, this is sufficient for rejecting the Petitioners’ claim regarding the change of policy. Nevertheless, the respondent clarifies that he intends to activate the power vested in him under Regulation 119 also with respect to houses in which other terrorists from East Jerusalem resided, and that in view of the change of circumstances since the policy change was made in 2005, there is no impediment to changing the policy once more and enabling use of the aforesaid Regulation. The respondent claims that the general principal is that policy can be changed when the circumstances change (see for example: AAA 1386/04 National Council for Planning and Building v. Neot Rosh Ha’ayin Association, Registered Association (not yet published, 20 May 2008). The respondent specifies that according to data produced by the Israel Security Agency, there has been a surge of terrorism in which East Jerusalem residents are

involved, since 2007. This surge intensified in 2008. Unlike previously, a principal characteristic of the current wave of terrorism, aside from its extent, has been that residents of East Jerusalem perpetrate the terror attack themselves rather than aiding terrorists from the Area, as had been the case in the past. Security forces have gathered information on the intentions of residents of East Jerusalem to carry out additional terror attacks, and have also managed to thwart several additional terror attacks planned by residents of East Jerusalem. The Respondent attached to his response a review by the Israel Security Agency regarding the involvement of East Jerusalem in terrorism. This review was updated to 22 September 2008. The review indicates that in 2008, 104 residents of East Jerusalem were arrested due to involvement in terror attacks, while during the entire period lasting from 2001 to 2007, 374 people were arrested. It is, therefore, a steep increase in the number of terrorists from East Jerusalem. This review mentions prominent terror attacks in 2008 including the vehicular terror attack in Tzahal Square in which 18 Israeli civilians were injured; the tractor terror attack on Mapu Street in which an Israeli civilian was severely wounded and 22 were lightly wounded; a shooting terror attack in the Old City in which one police officer was killed and another was wounded; a tractor terror attack on Jaffa Street in which three Israelis were killed and 42 wounded; a stabbing terror attack near Nablus Gate in the Old City, in which an Israeli civilian was wounded; a terror attack near Shu'fat Refugee Camp in which a border police officer was killed and a police officer was severely wounded, and of course - the terror attack in Merkaz HaRav Yeshiva that was perpetrated by the Petitioner's son. The Israel Security Agency also indicates in its review that intensified deterrent measures are required in order to deal with the new threat, including demolishing of terrorists' houses, intensifying sanctions against terrorists' families, increasing Israeli security presence in East Jerusalem, exhausting legal remedies vis-à-vis individuals who commit the criminal offense of arms trading, and charging anyone who intends to carry out a terror attack. The Respondent notified in his response that he intended to use Regulation 119 (subject to a hearing) in two other cases of tractor terror attacks.

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 the circumstances change. With respect to terrorists who are residents of East Jerusalem the Respondent demonstrated with concrete data, the highlights of which we mentioned above, that there is indeed a change of circumstances. 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, as ruled on more than one occasion, 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.

These remarks are relevant word-for-word to the matter at hand.

41. Given the aforesaid, the Respondent believes there is no cause to intervene in his decision to make use of the powers granted under Regulation 119 with respect to the terrorist's house.

In addition to the general critical need to deter other potential terrorists who are plotting to harm innocent civilians, there is also a concrete, essential need, to deter additional terrorists who enjoy full freedom of movement inside Israel from deliberately harming innocent civilians by exploiting their access to vehicles.

The decision falls within the purview of the Respondent under primary legislation. It is made for a proper purpose, i.e., deterring other potential terrorists from committing additional terror attacks inside the country and executed in a proportionate and reasonable manner.

The remaining arguments made by the Petitioners

42. Petitioners' main argument is that the decision to seize and demolish the terrorist's apartment constitutes collective punishment and harming innocents and that the Respondent's considerations were related to punitive action and other extraneous considerations.
43. On this issue we respond, that, first, use of Regulation 119 is for deterrent purposes only and the matter has been reviewed at length above.

Second, according to case law, family members' awareness or assistance with respect to the terrorist's intention to carry out the attack that prompted use of the powers granted under Regulation 119 is not required to effectuate said power.

We note that arguments similar to this argument brought by Petitioners have been raised and rejected by this Honorable Court many times. On this issue, see, for instance, the judgment in H CJ 2418/97 **Abu Phara v. IDF Commander in the Judea and Samaria Area**, IsrSC 51(1) 226 (1997), as follows:

Indeed, it is true that there is no evidence which ties the petitioner and the family members of the terrorist with the acts attributed to him, but as was held more than once, the demolition of a structure is designed to deter rather than to punish and its purpose is "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 wellbeing of their own loved-ones.

And see also the remarks in made in the judgment in H CJ 6996/02 **Zu'rub v. Commander of IDF Forces in the Gaza Strip**, IsrSC 56(6) 407 (2002), as follows:

Furthermore, we are of the opinion that in view of the fact that the Respondent took into consideration the engineering structure of the house and the fact that all of the inhabitants of the house were living together, but nevertheless concluded that in view of the circumstances of time and place, decisive importance should be given to considerations of deterrence, the Respondent did not exceed the legitimate limits of his discretion, even if there is no evidence that the other inhabitants of the house were aware of the actions of the son.

And see also on this issue the judgment of Honorable Justice (as then titled) Naor **Abu Dheim** (the terror attack perpetrated by an East Jerusalem resident at Markaz Harav Yeshiva), as follows:

6. The argument which also arose in the petition before us, that it is neither appropriate nor moral that the terrorists' family members, who did not help him and were not aware of his plans, shall bear his sin, was discussed in our jurisprudence. This argument was raised in the past and rejected. Justice Turkel wrote in this matter in HCJ 6288/03 **Sa'ada v. GOC Home Front Command**, IsrSC 58(2) 289, 294 (2003)) (the **Sa'ada** Case):

“Despite the judicial rationales, the idea that the terrorist’s family members, that to the best of knowledge, did not help him and were not aware of his actions are to bear his sin, is morally burdensome. This burden is rooted in the Jewish tradition’s ancient principle according to which “Parents are not to be put to death for their children, nor children put to death for their parents; each will die for their own sin” (Deuteronomy 24:16; and compare to Justice M. Cheshin’s judgment in HCJ 2722/92 **al-‘Amarin 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 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 fall victims to terrorists’ horrifying actions, more than it is appropriate to spare the house’s tenants. There is no other way.”

7. Similarly, it was argued before us that the terrorist’s family members were not related to the terror attack and that the father even opposed such acts. For this matter it is sufficient to refer to the ruling in HCJ 2418/97 **Abu Pharah v. IDF Commander in Judea and Samaria Area**, IsrSC 51(1) 226 (1997) and to HCJ 6996/02 **Zu’rub v. IDF Commander in the Gaza Strip**, [IsrSC] 56(6) 407 (2002) in which it was ruled that deterrence considerations sometimes oblige the deterrence of potential perpetrators who must understand that their actions might also harm the well-being of their loved ones, even when there is no evidence that the family members were aware of the terrorist’s actions.

See also recently, para. 22 in **Awawdeh**

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

the idea that the terrorist’s family members, that to the best of knowledge, did not help him and were not aware of his actions are to bear his sin, is morally burdensome [...] But 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 fall victims to terrorists’ horrifying actions, more than it is appropriate to spare the house’s tenants. There is no other way (**Sa'ada**, page 294. See also **Abu Dheim**, paragraphs 6-7 of my judgment).

44. To the argument that Regulation 119 contravenes international law, we respond that this Honorable Court has ruled in numerous judgments that use of the power under Regulation 119 for reasons clearly related to security, for the purpose of deterrence is legitimate and consistent with both international law and domestic law. Various arguments made in many petitions against this

measure, mostly concerning the argument that the measure constitutes collective punishment and that it contradicts international law and domestic law, have been rejected by this Honorable Court, and the Supreme Court has affirmed the lawfulness of said measure (see, by way of example only, H CJ 897/86 **Jaber v. GOC Central Command**, IsrSC 41(2) 522 (1987); H CJ 2977/91 **Salem v. IDF Commander in the West Bank**, IsrSC 46(5) 467 (1992); H CJ **Nazal v. IDF Commander in the Judea and Samaria Area**, IsrSC 48(5) 338 (1994); FHH CJ 2161/96 **Sharif v. GOC Home Front Command**, IsrSC 50(4) 485 (1996); H CJ 6996/02 **Z'urub v. IDF Commander in the Gaza Strip**, TakSC 2002(3) 614 (2002); H CJ 2418/97 **Abu Phara v. IDF Commander in the Judea and Samaria Area**, IsrSC 51(1) 226 (1997), and **Awawdeh**).

Demolition of the Structure

45. In the petition, Petitioners express their concern that the demolition of the terrorist's apartment would result in damage to the entire building, and damage all parts of the building wherein the apartment is located.

To this we respond that during the demolition, precautions will be taken to minimize the chance that significant damage will be caused to apartments located near the terrorist's apartment.

We note that the Court refrains from intervening in the manner in which a demolition is to take place, as this is a professional matter for professionals to attend to. So was ruled in para. 31 in **Qawasmeh**:

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

However, I found no merit in the alternative request of the petitioners in H CJ 5295/14 that we order the Respondent to provide them with an engineering opinion concerning the demolition, and I am satisfied that the Respondent will carry out his decisions, while properly considering the engineering characteristics of Petitioners' apartment. I also found no merit in Petitioners' arguments in H CJ 5300/14 concerning the manner in which the demolition will be carried out, a matter regarding which the Respondent has particularly broad discretion. In addition, I did not find that there was room to discuss Petitioners' request that the respondent 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 that such damage is caused as aforesaid, and by the competent instances. I am hopeful that this issue remains solely hypothetical.
[emphasis added, the undersigned]

