At the Supreme Court **HCJ 5839/15**
Sitting as the High Court of Justice **HCJ 5844/15**

1. **_____ Sidr**
2. **_____ Tamimi**
3. **_____ Al Atrash**
4. **_____ Tamimi**
5. **_____ A-Qanibi**
6. **_____ Taha**
7. **_____ Al Atrash**
8. **_____ Taha**
9. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**
   Represented by counsel, Adv. Andre Rosenthal
   15 Salah a-Din St., Jerusalem
   Tel: 6250458, Fax: 6221148; cellular: 050-5910847

The Petitioners in HCJ 5839/15

1. **Anonymous**
2. **Anonymous**
3. **Anonymous**
4. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA**
   Represented by counsel, Adv. Michal Pomeranz et al.
   10 Huberman St. Tel Aviv-Jaffa 6407509
   Tel: 03-5619666; Fax: 03-6868594

The Petitioners in HCJ 5844/15

v.

Military Commander of the West Bank Area
Represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-6466008; Fax: 02-6467011

The Respondent in HCJ 5839/15

1. **Military Commander of the West Bank Area**
2. **Legal Advisor for the West Bank Area**
Represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-6466008; Fax: 02-6467011

The Respondent in HCJ 5884/15

Response on behalf of the State

1. According to the decisions of the honorable court (the Honorable Justice Barak-Erez) dated August 30, 2015, the state hereby respectfully submits its joint response to the two above captioned petitions, as follows.

2. The petitions concern a seizure and demolition order which was issued against a residential apartment in which lived _____ Alasalmon (hereinafter: the **terrorist**), located in Dahiyat al Zaytun neighborhood in Hebron (hereinafter: the **terrorist's apartment**).

   The order was issued by respondent 1 in the two petitions (hereinafter: **respondent 1** or the **military commander**), by virtue of his authority pursuant to Regulation 119 of the Defence Regulations (Emergency), 1945 (hereinafter: **Regulation 119** and the **Defence Regulations),** after the terrorist, who lived in the apartment designated for seizure and demolition, committed, on November 10, 2014, a combined ramming and stabbing attack at a bus stop near Alon Shvut settlement, in which the late Dalia Lemkus – a sixteen years old youth, was murdered, and two others were injured.

   In the framework of HCJ 5844/15 (hereinafter: the **petition of the terrorist's family**), the petitioners therein, the family members of the terrorist request the honorable court to order the respondent to appear and show cause "why he should not refrain from exercising the authority vested in him by virtue of Regulation 119 of the Defence (Emergency) Regulations, 1945." In addition the petitioners request the honorable court to order the respondents to show cause, why they should not present a study with factual data concerning the effectiveness of the measure of house demolition as a deterring measure before they order to carry out the demolition."

   In the framework of the petition of the terrorist's family an interim order was also requested "directing respondent 1 or anyone on his behalf to refrain from any irreversible injury to petitioners' home, and to order, among other things, to stay the execution of the demolition order until the conclusion of the proceedings in the petition at hand".

   In the framework of HCJ 5839/15 (hereinafter: the **petition of the terrorist's neighbors**), the petitioners therein, tenants of apartments adjacent to the terrorist's apartment, request the court to order the respondent to appear and show cause, "why he should not transfer to the petitioners detailed demolition plans of the residential unit"; and also "why an extension should not be given to enable an examination of the demolition plans by an engineer on their behalf".

3. The respondent will argue that the petitions and the request for an interim order which was submitted within the framework of the petition of family members of the terrorist - should be denied, in the absence of cause for intervention by the honorable court.

   From the beginning of 2013, and until these days, as reflected in the data which were gathered and which will be specified below, there is a continuous tendency of deterioration in the security condition

and a continuous increase in terror activities against the state of Israel, its citizens and residents, both within the territory of Israel and in the Judea and Samaria areas. This tendency is evidenced by an increase in the general number of terror attacks and in the number of spontaneous terror attacks and in the number of Israelis who were injured as a result of said terror activity. The terror activity was, and continues to be mostly led by local groups and by perpetrators who answer the profile of a "single terrorist", such as the acts of the terrorist at hand, along the attempts to the terror organizations to execute terror attacks on their behalf. The sharp increase in terror attacks over the last two years, their scope and severity, reflects the continued negative security tendency in the Judea and Samaria area and in Jerusalem.

Against the backdrop of the severe security circumstances the respondent will argue that the exercise of the authority according to Regulation 119 against the building in which lived the terrorist who committed the terror attack is imperative for the purpose of deterring potential perpetrators from committing additional terror attacks.

4. As will be clarified below, all arguments raised by the petitioners in both petitions are not new, and they have already been discussed and rejected in many judgments which were given by this honorable court in the past.

It should be added that during last year judgments were given by this honorable court that rejected petitions concerning the issue being the subject matter of the case at hand, which were filed against decisions to exercise the authority by virtue of the above Regulation 119 (regarding the seizure, demolition or sealing of houses). These petitions concerned cases of terrorists, residents of East Jerusalem, as well as cases of terrorists, residents of the Judea and Samaria area. See on this issue: HCJ 4747/15 **Abu Jamal v. GOC Home Front Command** (reported in the Judicial Authority Website, given on July 7, 2015); HCJ 8066/14 and HCJ 8070/14 **Abu Jamal v. Home Front Command** (reported in the Judicial Authority Website, given on December 31, 2014; hereinafter: **Abu Jamal**); HCJ 8025/14 **Akri v. Home Front Command** (reported in the Judicial Authority Website, given on December 31, 2014); hereinafter: **Akri**); HCJ 7283/14 **Ja'abis v. Home Front Command** (reported in the Judicial Authority Website, given on December 31, 2014); hereinafter: **Ja'abis**); HCJ 5290/14 **Qawasmeh v. The Military Commander** (reported in the Judicial Authority Website, given on August 11, 2014); hereinafter: **Qawasmeh**); HCJ 4597/14 **'Awawdeh v. The Military Commander for the Judea and Samaria Area** (reported in the Judicial Authority Website, given on July 1, 2014); hereinafter: **'Awawdeh**); HCJ 8024/14 **Hijazi v. Home Front Command** (reported in the Judicial Authority Website, given on June 15, 2015, the petition was deleted and the sealing of the terrorist's room was approved). In the context of the above petitions, the honorable court reiterated the rules which were established in connection with the exercise of the authority by virtue of Regulation 119, while having denied said petitions.

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

Under these circumstances, respondent 1 will argue that there is certainly no cause or justification to discuss these arguments once again within the framework of the current petitions (It should be noted that against the judgment in **HaMoked's case** a petition for a further hearing of the judgment was submitted (HCJFH 360/15 **HaMoked: Center for the Defence of the Individual v. Minister of Defense**).

The position of the state, as submitted to the honorable court on February 12, 2015, is that the petition for a further hearing - should be denied; The petition is still pending before the Honorable President Naor).

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

The main facts relevant to the matter

The parties to the petition submitted by the terrorist's family

6. Petitioner 1 is the terrorist's wife; Petitioners 2-3 are the terrorist's children.

7. The terrorist lived with petitioners 1-3 in his apartment until the day on which the terror attack was committed. From that day, as alleged in their petition, petitioners 1-3 have been living with petitioner 1's family temporarily and no longer reside in the terrorist's apartment.

The parties to the petition submitted by the terrorist's neighbors

8. Petitioners 1-8 reside in residential apartments located in the same building in which the terrorist's apartment is located.

The terror attack

9. On November 10, 2014, the terrorist committed a murderous ramming and stabbing terror attack at a bus station near Alon Shvut settlement.

   On or about 16:40, the terrorist reached Alon Shvut junction. He was driving a mazda with Israeli license plates which he purchased a day earlier in Halhul. The terrorist who noticed the late Dalia Lemkus, a sixteen years old youth who was standing near the bus stop, accelerated the speed of his car, aimed it at her and hit her with the front part of the car.

   When the car stopped, the terrorist left the car carrying a knife, and ran towards the late Dalia Lemkus who, by that time, managed to get somewhat away from the bus stop. When he reached her, the terrorist attacked her and repeatedly stabbed her with the knife in her face, neck and upper part of her body, while she was crying for help.

   Immediately thereafter, the terrorist crossed the road and attacked Yishai Katz, a passer-by who happened to be in the area and stopped his car in view of the incident. The terrorist continued to attack another person, Yesha'ayahu Horovitz, who was wounded in his abdomen. He then returned the late Dalia Lemkus and stabbed her a few more times so as to ascertain that was dead. Altogether, the terrorist stabbed the late Dalia Lemkus twenty times, in the aggregate. The terrorist's stabbing spree came to a halt only when the security guard of Alon Shvut shot and wounded him.

10. For these actions the terrorist was convicted of deliberately causing death, two attempts to deliberately cause death and of carrying a knife and was sentenced to two life sentences and a monetary penalty.

11. It is a dry description of a murderous incident, "well" planned by a terrorist in which the terrorist took the life of a sixteen years old youth and attempted to take the life of two additional passers-by, using a car and a knife which were purchased particularly for this purpose – a cruel murderous spree which, as aforesaid, caused the death of the late Dalia Lemkus and the injury of Yishai Katz and Yesha'ayahu Horovitz.

The factual chain of events prior to the filing of the petitions

12. In view of the severity of the attack and due to the substantial need to deter potential perpetrators from carrying out additional terror attacks, respondent 1 decided, based on the recommendation of the Israel Security Service (ISA), and in unison with the political level and the Attorney General, to exercise the authority vested in him according to Regulation 119 against the apartment in which the terrorist lived.

13. On August 19, 2015, the petitioners in the petition of the terrorist's family were informed of respondent 1's intention to seize and demolish the "residential apartment constituting part of a building in Hebron located in way point 207059/601609", in which the terrorist lived with his family members. The notice stated that "said measure was taken in view of the fact that the above referenced individual committed a terror attack on November 10, 2014, in which he rammed and then stabbed to death the late Dalia Lemkus and wounded other individuals in Alon Shvut junction located in Gush Etzion." In addition, the notice also informed that the terrorist's family could appeal before respondent 1 against the issue of the seizure and demolition order, before a final decision on this issue was made by him.

    A photocopy of the notice which was given on August 19, 2015, was attached to the petition of the terrorist's family as **Exhibit D**.

14. On August 19, 2015, the attorney of the petitioners in the petition of the terrorist's family submitted a "Request for an extension for the purpose of filing an appeal" in the name of the terrorist's family as well as in the name of the terrorist's neighbors arguing that "it will not be possible to give them a proper and adequate hearing in the short period allocated by you for its submission."

    In response to said request, the petitioners were given an extension until August 24, 2015, at 10:00 am.

    A copy of the request for extension dated August 19, 2015, and a copy of respondent's reply were attached to the petition of the terrorist's family as **Exhibit D**.

15. On August 24, 2015, the petitioners in the petition of the terrorist's family submitted to respondent 1 an appeal against the intention to exercise the authority according to Regulation 119 against the terrorist's apartment. On August 25, 2015 the petitioners in the petition of the terrorist's neighbors submitted an appeal on their behalf.

    The appeal on behalf of the petitioners in the petition of the terrorist's family dated August 24, 2015, was attached to the petition of the terrorist's family as **Exhibit E**.

    The appeal on behalf of the petitioners in the petition of the terrorist's neighbors dated August 25, 2015, was attached to the petition of the terrorist's neighbors as **Exhibit P/11**.

16. On August 25, 2015, after the arguments raised in the appeals of the petitioners in both petitions were considered, response letters to their appeals were sent to petitioners' attorneys on behalf of the military commander. The response letter which was sent to petitioners' attorney in the petition of the terrorist's family informed that the military commander decided, *inter alia*, as follows:

> **The administrative evidentiary material in the possession of the military commander indicates that the perpetrator is a military activist of the Palestinian Islamic Jihad organization who was convicted by the Judea military court for a ramming and stabbing terror attack in Alon Shvut junction on November 10, 2014, who serves two cumulative life sentences for the execution thereof. The perpetrator was also involved in the past in hostile terror activity on behalf of the Palestinian Islamic Jihad organization, and after having admitted to it, he served an incarceration sentence between 2000-2005.**
>
> **Under these severe circumstances, taking action by virtue of Regulation 119 of the Regulations, as specified below, reconciles with the purpose of the Regulation to deter additional perpetrators from the execution of similar terror attacks, and with the case law concerning this issue.**

In addition, the letter referred to the various legal arguments which were raised in the appeal and emphasized that:

> **The purpose of the exercise of said authority is to deter others from the execution of terror attacks, so that potential perpetrators will know that their actions will affect not only the victims and themselves, but also their family members… The position of the security agencies which is supported by comprehensive information, most of which is privileged, is that the exercise of the authority under Regulation 119 of the Regulations can establish effective deterrence against potential perpetrators in the Area. The deterioration in the security situation during the last two years including the abduction and murder of the three youths, and the murder of additional civilians as well as the current evaluation concerning the effectiveness of the deterrence in the above cases, establish the required basis for the exercise of the authority embedded in Regulation 119 of the Regulations in the case at hand.**

It was also emphasized with respect to the arguments raised in the appeal that:

> **With respect to the additional proportionality tests, the demolition of the residential unit in which the perpetrator lived was examined against the backdrop of the severity of the perpetrator's actions, the scope of the phenomenon and the need to deter as aforesaid. In addition, the effect of the demolition on the inhabitants of the other residential units in the building was examined, with a reduction to a minimum of the injury, including, *inter alia*, by a manual demolition of non-structural elements only.**

A similar response was also sent to the attorney of the petitioners in the petition of the terrorist's neighbors.

A copy of the response to the appeal of the terrorist's family dated August 25, 2015 was attached to their petition as **Exhibit F**.

A copy of the response to the appeal of the terrorist's neighbors dated August 25, 2015 was attached to their petition as **Exhibit P/12**.

17. On August 26, 2015, the attorney of the petitioners in the terrorist's family submitted a "Request to stay the execution of the seizure and demolition order for the purpose of filing a petition" until September 8, 2015. Respondent 1, in his response dated August 27, 2015, decided to "**deny your request to stay the execution of the order. However, and to enable you to consider your future acts on the legal level in this regard, the military commander decided that the order would not be carried out before Sunday, August 30, 2015, at 20:00.**"

A copy of petitioners' request dated August 26, 2015, was attached to the petition of the terrorist's family as **Exhibit G**.

A copy of the reply letter on behalf of respondent 1 dated August 27, 2015, was attached to the petition of the terrorist's family as **Exhibit H**.

18. At the same time, on August 27, 2015, the attorney of the petitioners in the petition of the terrorist's neighbors submitted an additional appeal concerning the manner of the apartment's demolition. Respondent 1 replied to said appeal on August 28, 2015, and pointed out that "**The demolition of the terrorist's apartment will be executed in a manner which will not cause damage to the rest of the building and to the other apartments located therein… in addition, during the demolition an engineer will be present on the scene who will accompany the acts of the forces and ensure the above**."

A copy of the letter of the attorney of the petitioners in the petition of the terrorist's neighbors dated August 27, 2015, was attached to the petition of the terrorist's neighbors as Exhibit **P/14**.

A copy of respondent 1's reply letter dated August 28, 2015, was attached to the petition of the terrorist's neighbors as **Exhibit P/15**.

19. On August 27, 2015, respondent 1 signed, by virtue of the authority vested in him under Regulation 119 of the Defence Regulations, a seizure and demolition order against the residential unit in the building in which the terrorist lived with his family members (hereinafter: the **order**). The order stated the grounds for its issue as follows:

> **This order is issued in view of the fact that the resident of the house _____ Alasalmon committed a terror attack in which he rammed and thereafter stabbed to death the late Dalia Lemkus and wounded additional people, in Alon Shvut junction in Gush Etzion on November 10, 2014**.

A copy of the order dated August 27, 2015 was attached to the petition of the terrorist's family as **Exhibit A**.

20. On August 30, 2015, the above petitions were filed, which are directed, as aforesaid, at the order issued by respondent 1. On that very same day the decisions of the honorable court were given (the Honorable Justice D. Barak-Erez), in which an interim injunction was issued prohibiting respondent 1 or anyone on his behalf from executing the above seizure and demolition order, until another decision is made following the submission of the response to the petitions.

<u>The home of the terrorist's family</u>

21. The apartment in which the terrorist lived is located in Dahiyat al Zaytun neighborhood in Hebron.

Said apartment is located in a four story building (which in addition also consists of a basement), divided into an eastern part and a western part. The apartment, which is owned by the terrorist, is located on the third floor on the east side of the building (it should be noted that the order stipulated, by mistake, that the apartment was located on the west side of the building. In any event the location of the terrorist's apartment is not in dispute, and no objection was raised on this issue by the petitioners in their petition). The other apartments of the building are occupied by the terrorist's neighbors, whose apartments are not designated for demolition in the framework of the seizure and demolition order which was issued by respondent 1 by virtue of the authority vested in him according to Regulation 119 of the Defence Regulations.

For terminology purposes it should be noted that the petitioners in both petitions referred to the building as a five story building while the respondents will refer in their current response to this building as a building consisting of four stories and a basement. In any event, as aforesaid, the apartment is located on the third out of four floors.

The Legal Argument

22. The legal arguments raised by the petitioners in their petitions are not new, and they were discussed and rejected in many judgments which were given in the past by the honorable court. In a host of judgments – **'Awawdeh; Qwasmeh; Abu Jamal; Akri; Hijazi and Ja'abis** – which were given over the last year (from the beginning of 2014) the honorable court re-affirmed the case law which has been in force for many years, according to which the exercise of the authority according to the above Regulation 119 under certain circumstances was a legal, reasonable and proportionate measure which could be taken, based on the evaluation of the security agencies that it was a deterring measure (see also the judgments in HCJ 124/09 **Dwayat v. Minister of Defense** (reported in the Judicial Authority Website, March 18, 2009; hereinafter: **Dwayat**); HCJ 9353/08 **Abu Dheim v. GOC Home Front Command** (reported on the Judicial Authority Website, January 5, 2009; hereinafter: **Abu Dheim**); and HCJ 5696/09 **Mugrabi v. GOC Home Front Command** (reported on the Judicial Authority Website, February 15, 2012; hereinafter: **Mugrabi**)).

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

Respondent's position shall be specified herein-below.

The normative infrastructure

Exercise of the authority to seize and demolish - general

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

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

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

And the regulation in its Hebrew version:

[Hebrew Version]

24. Regulation 119 authorizes respondent 1, as aforesaid, to seize and demolish the entire structure in which the terrorist lives with his family members. However, according to case law rendered by this honorable court, whenever respondent 1 decides to exercise the authority pursuant to Regulation 119, he must exercise his said authority reasonably and proportionately, taking into consideration an array of concerns which were specified by the court in its judgments.

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

The underlying premise is that a terrorist who knows that his family members may be injured if he carries out his evil plan – may consequently refrain from carrying out the terror attack which was planned by him. Sometimes, the deterrence is also directed at 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.

25. According to case law, the harm inflicted on additional people who live in the house of the terrorist with respect of which a decision was made to exercise the authority under Regulation 119, does not constitute a collective punishment, but is rather an impingement ancillary to the deterring purpose of the exercise of said authority.

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

> **The authority conferred upon the Military Commander pursuant to regulation 119 is not an authority for collective punishment. The exercise thereof is not designed to punish the Petitioner's family. The authority is administrative, and its exercise is designed to deter, thus maintaining public order…**
>
> **We are aware of the fact that the demolition of the building damages the dwelling of the petitioner and his mother. True, this is not the purpose of the demolition, but it is its outcome. This bitter outcome is designed to deter potential perpetrators of terror attacks, who must understand that through their actions they themselves cause harm not only to public safety and order, and not only to the lives of innocent people, but also to the 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 conferred upon the authority of the military commander according to regulation 119 (1), in pertinent part, is to deter potential terrorists from the execution of murderous acts, as an essential measure to maintain security… the exercise of said sanction indeed has a**

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.

26. The security forces, in general, and the respondents, in particular, are aware of the severe implications of the exercise of the sanctions under Regulation 119, and particularly when an irreversible measure is taken, such as demolition. The military commander is directed to exercise his house demolition authority only in such severe cases in which the "regular" punitive and deterring measures, by their nature, cannot sufficiently and properly deter terrorists and perpetrators.

27. The exercise of the sanction of house demolition is a derivative of the circumstances of time and place. In as much as terrorism changes from time to time, respondent 1 is obligated to act accordingly and to the extent required, change the measures taken to encounter the danger and annihilate it in the course of Israel's fight against the hostile and murderous terror activity.

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

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

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

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

war time special commandments are designed in order to struggle with moral and spiritual crises [Emphases added – the undersigned].

28. In view of the fact that the authority according to Regulation 119 is exercised in response to terror activity, it is not surprising that the scope of its exercise over the years was directly related to the scope of the terror attacks and their severity. Thus, during the years in which there was a decline in terror attacks, the authority according to the regulation was exercised more rarely, whereas in periods during which terror attacks became a "daily routine", the security forces had to use their authority under the regulation more frequently, in order to deter and cut off the roots of terror, so as to prevent them from spreading even further.

29. This is the place to note once again that taking measures according to Regulation 119, is based, first and foremost, on a host of balances. A balance between the severity of the act of terror and the scope of the sanction; a balance between the expected injury which would be inflicted on the family of the terrorist and the need to deter potential future perpetrators of terror attacks; a balance between the basic right of every person to his property and the right and duty of the government to maintain public order and safety, and protect the wellbeing and security of the citizens and residents of Israel.

30. Thus, within the framework of this balancing work, weight is attributed to the severity of the acts, the circumstances of time and place; the residency connection between the terrorist and the house; the size of the house; the effect of the measure taken on other people; engineering concerns and such other 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 seizure and demolition and alternatively sealing of a structure, and to what extent (see, for instance, the judgment given by an extended panel in **Nazal**).

31. About ten years ago, when there was a decline in terror attacks, a think tank headed by Major General Udi Shani recommended, in a report entitled "Rethinking House Demolitions", to reduce the use of Regulation 119 as a method, up to complete cessation, while retaining the option to use this measure in the event of an extreme change of circumstances.

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

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

    As aforesaid, following the significant deterioration in the security condition during the last two years the exercise of the authority under Regulation was renewed, according to Israeli law and according to the law which applies in the Judea and Samaria Area. In this context, the authority under Regulation

119 was exercised against the home of the terrorist who murdered police commander Baruch Mizrahi on Passover eve (**'Awawdeh**); against the structures in which lived the terrorists who abducted and murdered the three youths (**Qwasmeh**); against the home of the terrorist who committed a ramming attack at the light rail station in Giva'at Hatachmoshet on October 22, 2014, in which a baby and a tourist were killed (the house was demolished after the family did not file a petition with the court); the home of one of the terrorists who committed the massacre in the Har Nof synagogue was sealed by virtue of the authority under Regulation 119 (whose matter was heard in HCJ 8066/14).

To complete the picture it should be added that the GOC Home Front Command issued seizure and demolition orders against the homes of additional terrorists which have not yet been carried out: the terrorist who committed a ramming attack in the Sheik Jarach area on August 4, 2014, in which a Yeshiva student was killed (his matter was heard in HCJ 7238/14 – **J'a'abis**); against the home of the terrorist who committed a ramming attack in Shimon Hatzadik station in Jerusalem on November 5, 2014, in which a policeman and a civilian were killed (his matter was heard in HCJ 8025/14 – **Akri**); against the home of another terrorist who committed the massacre in the Har Nof synagogue (his matter was heard in HCJ 8070/14); against the home of the terrorist who committed the shooting attack directed at M. Yehuda Glick (his matter was heard in HCJ 8024/14 – **Hijazi**), where it was eventually decided to seal the terrorist's room.

32. On December 31, 2014, the judgment of the honorable court (the Honorable Deputy President Rubinstein, the Honorable Justice Hayut, the Honorable Justice Sohlberg) was given in the general petition in **HaMoked's case** (HCJ 8091/14). In said judgment the court denied a general petition of human rights organizations which requested that a declarative order be issued by the honorable court according to which the use of Regulation 119 was unlawful, in that it breached international law and Israeli domestic law. In the judgment which was given in the general petition, the court rejected the arguments which were raised by the petitioners in that case, including the arguments according to which house demolition constituted prohibited collective punishment and breached the rules of international law and the rules of domestic Israeli law.

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

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

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

From the general to the particular – the security need

33. According to the opinion of security agencies and the entire data accumulated by them, as of 2013, we witness a continued growth in terror activity. This is evidenced by an increase in the general number of terror attacks and spontaneous terror attacks, and in the number Israelis injured from acts of terror. Most terror activity in recent times was, and continues to be led by local groups and by terrorists who act as "single perpetrators", such as the terrorist at hand. At the same time the terror organizations continue with their efforts to execute terror attacks on their behalf. The sharp increase in terror activity during the last two years, in scope and severity, reflects the continued negative security tendency both in the Judea and Samaria Area and in Jerusalem.

34. This tendency is well reflected in the data concerning terror which accumulated **from the beginning of 2013 until these days**. Thus, in 2013, about 1,414 terror attacks were registered; in 2014 about 1,650 terror attacks were; in 2015 this tendency continued and until August 31, 2015, 1,013 terror attacks were registered. In addition, as of 2013, an irregular increase in the number of Israeli fatalities was also registered as a result of terror attacks launched from the Judea and Samaria area and from Jerusalem. **As of 2013 there were twenty five fatalities as a result of terror attacks as compared to zero fatalities in 2012**.

35. Furthermore, from the beginning of 2014, **there has been a sharp increase in the number of severe terror attacks, in which Israeli citizens were killed or in which firearms were used, as well as in attempts to carry out severe terror attacks.**

    It should be emphasized that this concerns **dozens** of consecutive terror attacks which indicate of a serious deterioration, such as the following events:

    a. **March 2014**: The activity of a military Hamas wanted terrorist from the Jenin refugee camp, who was directed by Hamas headquarters in the Gaza Strip to promote a host of terror attacks, including by shooting attacks, against Israeli targets in the Area, was thwarted. The wanted terrorist was killed in a military operation, during exchange of fire with IDF forces in Jenin.

    b. **April 2014**: A shooting attack at an Israeli vehicle in Tarqumia checkpoint, which was carried out by the terrorist, whose matter is discussed in this petition. In this terror attack an Israeli citizen was killed and two others were injured.

    c. **April 2014**: Six activists of a military group from the areas of Jenin and Bethlehem were arrested. In this case, the intention of the group, directed by an "international Jihad" activist in the Gaza Strip, to promote a shooting attack against IDF forces in the Jenin area, was prevented.

    d. **May 2014:** the intention of a suicide bomber to explode an explosive belt composed of improvised bombs, which was carried on his body, in Tapuach junction, was frustrated. The members of the cell from Nablus, which were behind the attempted terror attack, were arrested by IDF forces shortly thereafter.

    e. **May 2014:** A shooting attack was carried out in Ramat Shlomo neighborhood in Jerusalem, in which a Palestinian terrorist shot at a group of Israeli citizens. The event ended without injuries.

f. **June 2014**: A shooting attack was carried out by Palestinian terrorist using small-arms, at an IDF position in Betunia. The military force shot at the terrorist who fled the scene. The event ended without injuries

g. **June 2014**: A shooting attack was carried out from a passing Palestinian vehicle, using small-arms, at an IDF position near the tunnels road/Bethlehem bypass. The event ended without injuries and the attacking vehicle fled the scene.

h. **June 2014**: The abduction and murder attack of June 12, 2014, in which three youths who were on their way home from their schools in the Gush Etzion area, were abducted and murdered. This terror attack was planned and carried out by a military 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**: Ramming attack using an excavator in Jerusalem. One civilian killed, others injured.

m. **August 2014**: Small-arms shooting attack in Jerusalem. IDF soldier severely wounded.

n. **October 2014**: Ramming attack on light rail in Jerusalem. Baby girl and tourist killed. Other civilians injured

o. **October 2014**: Terror attack in which the terrorist, Ma'ataz Hijazi made an attempt to kill Yehuda Glick in Jerusalem, critically injuring him.

p. **October 2014**: Vehicular attack in Jerusalem, again on light rail. Two Israeli civilians murdered, several others injured.

q. **November 2014**: Ramming attack at transportation station in al-'Arrub area, moderately wounding three IDF soldiers.

r. **November 2014**: Combined ramming and stabbing attack in Gush Etzion. Israeli civilian murdered, others wounded.

s. **November 2014**: Stabbing attack at Hagana railway station in Tel Aviv. IDF soldier murdered.

t. **November 2014**: Combined shooting and stabbing attack at a synagogue in Har Nof in Jerusalem. Five Israelis were murdered in the synagogue massacre and several others were wounded.

u. **December 2014**: Stabbing attack in Alon Shvut junction in which a terrorist stabbed an Israeli civilian.

v. **March 2015**: Combined ramming and attempted stabbing attack near Shimon Hatazadik tombstone. Three border guard soldiers were injured.

w. **April 2015**: Ramming attack in Chaim Bar-Lev Blvd. in Jerusalem. One civilian was murdered and another civilian was wounded.

x. **April 2015**: Attempted stabbing attack in Mount Scopus checkpoint.

y. **April 2015**: Ramming attack on the Cohanim route in A-Tur. Three policemen were injured.

z. **May 2015:** Ramming attack in A-Tur. One border guard policeman was injured.

aa. **May 2015:** Stabbing attack in Damascus Gate, Jerusalem. One civilian was moderately injured.

bb. **June 2015**: Shooting attack directed at an Israeli in the "Ein Buvin" spring, Binyamin region. One civilian was murdered and another civilian was wounded.

cc. **June 2015:** Shooting attack near the settlement Ofra. Shooting at an ambulance and Israeli vehicle. No one was injured.

dd. **June 2015:** Shooting attack directed at an Israeli vehicle, organized by Hamas organization. Consequently, an Israeli civilian was murdered and three additional civilians were injured near the settlement Esh Kodesh.

ee. **June 2015:** Stabbing attack at the Rachel crossing, in the checking booth. A soldier was moderately-severely injured.

ff. **August 2015**: Ramming attack on route 60, near Sinjil village. Three soldiers were injured.

36. We further note that during the last two years hundreds of intended and attempted terror attacks in a variety of severe methods (abduction, bombs and shooting) in different regions in the Judea and Samaria Area and in Jerusalem were thwarted.

37. The terror activity is mostly led by local and "decentralized" groups, and by "single terrorists", with the latter coming to the fore as of late.

38. The Respondent believes that these figures reflect a substantial change of circumstances and an escalation in the scope, severity and level of murderous terrorism which require that measures be taken to deter potential terrorists from perpetrating attacks in general, and attacks of the type that have proliferated recently in particular.

39. It is important to note that some of the figures detailed above with respect to the security condition in the Judea and Samaria Area were provided to the honorable court just a few months ago in **'Awawdeh** (**which was heard in 2014, in the matter of a resident of the Judea and Samaria Area**), based on which the honorable court held that (para. 24 in **'Awawdeh**):

> **We opened by describing the extreme circumstances currently prevailing in the Judea and Samaria area, circumstances which led to the conclusion adopted at the 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 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)). <u>The conclusions arising from the severity of the recent events in Judea and Samaria are clearly a matter for the respondent to attend to</u>. 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]

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

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

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

41. Respondent 1 will argue that **<u>due to the ongoing wave of terror attacks, the need to deter additional terrorists from carrying out additional terror attacks is critical; This need is intensified given the fact that some of these terror attacks are carried out by "single terrorists", namely, terrorists who are not affiliated with an organized terror 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 additional terrorists of this type is extremely critical</u>**.

42. Given the aforesaid, the professional assessment of the security agencies - which is shared by the Prime Minister, the Minister of Defense and the Chief of Staff - is that 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 "single terrorists". Respondent 1 believes that the use of the power vested in him under Regulation 119 against the terrorist's home - as against the homes of other potential terrorists, is extremely critical.

Respondent 1 will argue further that the decision to exercise the power under Regulation 119 against the terrorist's home in the case at hand was made, *inter alia*, in view of the severity of the terror attack in which a sixteen years old youth was brutally murdered in cold blood and two others were injured. Respondent 1 believes that it is extremely crucial to take deterring measures against the execution of additional evil terror attacks in the future to the maximum extent possible.

43. The Honorable Court has already addressed the need to exercise the power under Regulation 119, as presented by the agencies in charge of state security, at a time when terrorism is on the rise, when there is a stronger need to deter additional terrorists to curb the rising tide of terrorism. Reference is hereby made to the following words of the Honorable Justice (as then titled) Naor in **Abu Dheim**, **the terrorist (resident of East Jerusalem) who committed 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**.
>
> **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. [Emphases added – the undersigned].**

Moreover. On this issue reference is made to the following words of the Honorable Justice Sohlberg in the general judgment in **HaMoked's case**:

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

44. Given the aforesaid, respondent 1 is of the opinion that there is no cause to intervene in his decision to exercise the powers vested in him by virtue of Regulation 119 against the terrorist's house

The decision was made by respondent 1 according to the power vested in him by primary legislation valid in the Judea and Samaria Area, for a proper purpose – namely, deterring additional potential terrorists from committing additional terror attacks, and was exercised in a proportionate and reasonable manner.

Response to Petitioners' arguments

45. The main argument made by the petitioners in the petition of the terrorist's family is that the decision to seize and demolish the terrorist's apartment constitutes collective punishment and injures innocent people; runs contrary to the principle of the child's best interest; runs contrary to principles of international law and additional principles of domestic law, including the proportionality principle, and that in making his decision respondent 1 took into account punitive and other extraneous considerations.

46. In this regard we shall state, firstly, that the use of Regulation 119 is meant for deterrence only, as was specified above in length.

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

It should be noted that arguments similar to this argument brought by the petitioners have been raised and rejected by this honorable court many times. On this issue, see, for instance, the judgment of the Honorable Justice (as then titled) Naor in **Abu Dheim**:

> **6. The case law discussed the claim that arose also in the petition in before us, according to which it is not appropriate, nor moral that the terrorists' family members, who did not help him nor were aware of his plans, shall bear his sin. This claim had also risen in the past and was rejected. Justice Turkel wrote in 4 this matter in HCJ 6288/03 Sa'ada v. GOC Home Front Command, Piskei Din 58(2) 289, 294 (2003)) (the Sa'ada Case):**
>
> > **"Despite the judicial rationales, the idea that the terrorists' family members, that as far known did not help him nor were aware of his actions are to bear his sin, is morally burdensome. This burden is rooted in the Israel tradition's ancient principle according to which "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers; every man shall be put to death for his own sin." (Deuteronomy, 24, 16; and compare to Justice M. Cheshin judgment in HCJ 2722/92 Alamarin v. IDF Commander in the Gaza Strip, Piskei Din 46(3) 693, 705-706). Our Sages of Blessed Memory also protested against King David for violating that principle by not sparing the seven sons of Saul (Samuel II, 21, 1-14) and worked hard to settle the difficulty (Yevomos, 79, 1). But the prospect that a house's demolition or sealing shall prevent future bloodshed compel us to harden the heart and have mercy on the living, who may be victims of terrorists' horror doings, more than it is appropriate to spare the house's tenants. There is no other way."**
>
> **7. Similarly, it was claimed before us that the terrorist's family members are not related to the terror attack and that the father even opposes such acts. For this matter it is sufficient to refer to the ruling in HCJ 2418/97 Abu-Farah v. IDF Commander in Judea and Samaria Area, IsrSC 51(1) 226 (1997) and to HCJ 6996/02 Za'arub v. IDF Commander in the Gaza Strip, 56(6) 407 (2002) in which it was ruled that deterrence considerations sometimes oblige the**

> **deterrence of potential performers who must understand that their actions might harm also the well-being of those related to them, and this is also when there is no evidence that the family members were aware of the terrorist's doings**.

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

> **The mere injury caused to the family members of the terrorist does not render the demolition of the house illegal, not even according to the rules of international law, as shown by my colleague. Indeed, when criminal punishment is concerned, unlike deterrence under Regulation 119, the focus is on the offender, rather than on his family members; but as I have noted in the above mentioned Qawasmeh –**
>
> > "**also in criminal proceedings the purpose of which is punitive – as distinct from the deterring purpose herein – innocent family members are injured. The imprisonment of a person for a criminal offense committed by him, necessarily injures his spouse, children and other relatives, both physically and mentally. There is no need to elaborate on the deprivations arising from a person's incarceration, which are suffered by his family members."**
>
> **The language of the Regulation explicitly points at the deterring purpose underlying the seizure and demolition or sealing of a residential home, which necessarily involves impingement of innocent people. Otherwise, how shall deterrence of suicide bombings and the like be achieved? The sour fruits of the murderous terror compel us to promote deterrence in this manner of horrible acts such as those which were described in the specific petitions: namely, even at the cost of injuring the family members of the terrorists. And it should be noted: the injury with which we are concerned is injury to property, not a physical one. A demolition of a house is on the scales, while on the other tip of the scales, saving of life is weighed**.

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

> The court's position regarding this issue may be summarized by the words of Justice Turkel in **Sa'ada**, which were quoted time and again:
>
> > **The idea that the terrorists' family members, that as far known did not help him nor were aware of his actions are to bear his sin, is morally burdensome… However, the prospect that the demolition or sealing of a house shall prevent future bloodshed compels us to harden the heart and have mercy on the living, who may be victims of terrorists' heinous acts, more than it is appropriate to spare the people dwelling in the house. There is no other way (Sa'ada, page 294. See also Abu Dheim, paragraphs 6-7 of my judgment**).

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

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

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

47. As to the argument that the exercise of the authority according to Regulation 119 breaches international law, we argue that this honorable court discussed these very same arguments less than a year ago and held in the general judgment in **HaMoked's case**, as well as in a host of judgments which preceded it, that the exercise of the authority under Regulation 119 for clear security reasons for deterrence purposes is legitimate, and reconciles both with international law and domestic law.

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

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

48. On this issue we shall also note that the petitioners did not show any clear cause which justifies the current reconsideration by the honorable court of arguments according to which the exercise of the authority under Regulation 119 breaches the rules of international law – **arguments which as aforesaid have never been accepted by the honorable court**. The validity of above is reinforced in view of the thorough discussion which was held in the general judgment in **HaMoked's case** as cited above, at the conclusion of which – all arguments on this issue were rejected.

49. The petitioners in the petition of the terrorist's family argue that "the long period of time which passed between the date of the event and the imposition of the sanction weakens the ostensible causal connection between these two events". In addition the petitioners argue that the passage of time "undermines the legitimacy of the purpose of deterrence since it seems that respondents' decision is not actually based on the deeds of Mr. Alasalmon himself but rather on deeds of others which were committed later on…"

On this issue respondent 1 will argue first and foremost that unfortunately, the wave of terror in the Judea and Samaria Area as well as within state limits – continues, and in view of the fact that the purpose of the measure at hand is to deter and the current security condition mandates that measures be taken to deter additional potential perpetrators – as described above – the need to deter which existed at the time the attack was committed remains – and even more forcefully.

It should also be reminded that the citation from HCJ 1730/96 **Salem v. Commander of IDF Forces in Judea and Samaria Area**, IsrSC 50(1) 353 (1996), on which the petitioners in the petition of the terrorist's family rely in paragraph 55 of their petition is taken from the minority opinion of the Honorable Justice Dorner in that case, as stated in the petition. In any event, case law does not reconcile with petitioners' arguments, and respondent 1 will argue that the decision to exercise the authority under Regulation 119 is determined according to circumstances of time and place, and is subject to the discretion of respondent 1 which is exercised, *inter alia*, based on assessments of security agencies. Indeed, the argument according to which the passage of time, in and of itself, under the circumstances of the case at hand, disconnects the connection between the deed and the measure taken, cannot be accepted.

On this issue we would like to remind that in the judgment of the honorable court in HCJ 4747/15 Abu Jamal v. GOC Home Front Command (reported in Judicial Authority Website, July 7, 2015) a similar argument was raised by the petitioners in that case, when the respondent wanted to execute a demolition order about eight months after the date of the terror attack. The honorable court held that: "… **once the execution of the order was approved by this court, the execution time of the demolition order, in general, is decided by the respondent at his discretion according to circumstances of time and place.**" The above rule – *mutatis mutandis* – is applicable to the case at hand, and concerns similar time frames. It should also be noted that this case concerns a terror attack which was committed in November 2014, namely, only about ten months ago; while the petitioners in the petition of the terrorist's family were informed of the intention to exercise said authority about nine months after the date of the terror attack. In other words, we are not concerned here with a situation in which many years passed and only due to the deteriorating security condition respondent 1 now wishes to exercise the authority against the terrorist's apartment. We are concerned with a terror attack which was committed not long ago; to our regret the wave of terror continues – as specified above.

It is also important to note that the acceptance of petitioners' argument in this context will lead to an absurd situation in which respondent 1 will always be required to exercise his authority under Regulation 119 shortly after the terror attack, even if in fact respondent 1 needs time to examine the need to use Regulation 119 in a given case. We assume that the petitioners do not aim at this result.

In view of the above respondent 1 will argue that petitioners' argument according to which respondent 1 may not exercise his authority under Regulation 119 in view of the passage of time in the case at hand – should be rejected.

50. The petitioners in the terrorist's petition argue further that the heavy punishment which was imposed on the terrorist in the case at hand is sufficient as "it also includes an unprecedented economic element which significantly deters potential perpetrators".

Respondent 1 will argue that this argument should be totally rejected. The underlying premise of the exercise of the authority under Regulation 119 is that a potential terrorist who knows that his family members may be harmed should he carry out his evil plan – may retract his plans to execute a terror attack. Sometimes, 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 act for the prevention of the terror attack in view of the fear that their home may be at risk should they fail to do so. Therefore, respondent 1 is of the

opinion that the fact that the terrorist was indicted, convicted and punished – in view of the severity of recent circumstances – does not constitute, in and of itself, sufficient deterrence against potential perpetrators.

51. Another argument raised by the petitioners concerns the efficiency of the exercise of the authority under Regulation 119.

Respondent 1 will argue that this argument as well – should be rejected. It should be recalled, in this regard, that similar arguments regarding the ostensible ineffectiveness of the exercise of the authority under Regulation 119, have already been discussed and rejected in the past, time and time again.

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

> **And indeed, in evaluating the relevance of the changes in the operational circumstances in the area under his command, the extent of the need to create deterrence and the effectiveness of the sanction according to regulation 119 in the creation of such deterrence, the respondent exercised his authority properly, and petitioners' arguments do not point at any reason which may justify intervention with said decision**.

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

> **There is no room to intervene with respondent's decision 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 by us in our case law "the court is not inclined to intervene with the security agencies' evaluation concerning the effectiveness of using the measure of demolishing houses or sealing them as a means to deter others"… Furthermore, as was noted in our case law more than once, it is impossible to conduct a scientific research which would prove how many terror attacks were prevented and how many human lives were saved as a result of taking the measure of house demolition... The conclusions arising from the severity of the recent events in Judea and Samaria are a clear matter for the respondent to attend to ['Awawdeh, paragraph 24].**

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

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

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

<u>Demolition of the building</u>

52. In the two petitions at hand the petitioners express a concern that the demolition of the terrorist's apartment will cause damage to the entire building and damage all parts of the building in which the

apartment is located. The petitioners in both petitions base their above concern on an identical expert opinion which was attached to their petitions, which argues that "the demolition or sealing of the single apartment may cause a chain reaction in the ceiling of the building including its collapse and the collapse of the entire building" (paragraph 6 of the petition of the terrorist's neighbors; paragraph 64 of the petition of the terrorist's family).

53. Respondent 1 will argue that this argument should be rejected in view of the fact that the anticipated demolition, as was also notified to the petitioners by the respondent in the replies to their appeals (paragraph 19 of the reply to the appeal of the terrorist's family; paragraph 3 of the reply to the appeal of the terrorist's neighbors), "**would be executed manually, by the demolition of non structural elements only, and by mechanical means. As a result of the employment of this method additional damages to the surrounding environment and the other parts of the building are not expected**". Therefore, the engineering opinion which was attached to the petitions and which pertains, as indicated there-from, to the demolition of the apartment by detonation or to its sealing, is not relevant under the circumstances of the matter, as it does not pertain to the method of manual demolition which the respondent decided to use in the case at hand.

In addition when the demolition will be carried out an engineer will be present on the scene who will supervise the demolition, step by step, so as to ascertain the above "in real time".

It should also be particularly noted and emphasized that there is no intention to damage the common wall between the residential unit in which the terrorist lived and the staircase and the residential apartment located nearby on the same floor.

A copy of an engineering opinion regarding the method of the planned demolition of the terrorist's home is attached and marked **R/1**.

Given all of the above and the content of the engineering opinion attached to this response, petitioners' arguments regarding the potential damage to the building have no basis, and their request to examine the demolition plan by an engineer on their behalf should also be rejected.

It should be reminded that the honorable court refrains from intervening in the method by which a demolition is executed since it is a professional matter to be attended to by professionals, as was held in paragraph 31 of the **Qawasmeh** judgment:

> **As to petitioners' arguments in HCJ 5292/14 concerning the possible effect of the demolition on adjacent apartments, we made a note of the statement made by respondent's counsel according to which he would refrain from taking actions which might cause damage to adjacent properties. If they so wish, the petitioners in the three petitions can submit 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 being the subject matter of the petition.**
>
> **However, I found no merit in the alternative request of the petitioners in HCJ 5295/14 that we order the respondent to transfer for their review an engineering opinion concerning the demolition, and I am satisfied that the respondent will carry out his decisions, taking into proper consideration the engineering characteristics of petitioners' apartment. I also found no merit in petitioners' arguments in HCJ 5300/14 concerning the manner of execution of the demolition, a matter with respect of which the respondent is vested with particularly broad discretion. In addition, I did not find that there was any**

> **room to discuss petitioners' request that the respondent would undertake to compensate the injured parties should the demolition cause damage to adjacent properties. This is a hypothetical argument which should be heard, if at all, only in the event such damages are caused as aforesaid, and by the competent instances. I am hopeful that this issue remains solely hypothetical**. **[Emphases added, the undersigned]**

54. Beyond need it should be noted that the petitioners in the petition of the terrorist's family refer to the protocol of the hearing in '**Awawdeh**, as proof, according to them, that regardless of the fact that the respondent stated that he would not execute the demolition order unless he was satisfied with the issue concerning the damage to the neighboring apartments, such damage was eventually caused. To this argument we respond, without making any reference to their arguments concerning the alleged damage to the adjacent apartments in that case, and without admitting that the alleged damages were indeed caused, that in any event no lesson may be drawn from the case cited above to the case at hand, in view of the fact that in the above cited case the demolition was carried out by way of detonation and explosives and in the case at hand, as aforesaid, the demolition is planned to be carried out manually.

Conclusion

55. In view of all of the above respondent 1 will argue that there is no cause for the intervention of the honorable court in his decision to exercise the authority vested in him under Regulation 119, against the apartment in which the terrorist lived.

56. As specified in the beginning, respondent 1 will request the honorable court to make a decision in the petitions at hand as soon as possible, taking into consideration the host of terror attacks which were recently committed and the fact that the deterrence of additional potential terrorists to the maximum extent possible is of paramount importance.

57. The facts specified in this response are supported by the affidavit of respondent 1, Major General Roni Numa, IDF GOC Central Command.

Today, 26 Elul 5775
September 10, 2015

(signed)

Avi Milikovski, Advocate
Senior Deputy in the State Attorney's Office