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At the Supreme Court
Sitting as the High Court of Justice

HCJ 7076/15
HCJ 7079/15
HCJ 7082/15
HCJ 7085/15
HCJ 7087/15
HCJ 7092/15

Scheduled for: October 29, 2015

_____ **Haj Hamed & 7 others**

The petitioners in HCJ 7076/15
Represented by Adv. Gabi Lasky et al.
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The Petitioners in HCJ 7076/15

_____ **Rizziq & 5 others**

_____ **Haj Hamed & 4 others**

_____ **Kusa & 1 other**

The petitioners in HCJ 7079/15, in HCJ 7085/15
And in HCJ 7087/15
Represented by Adv. Labib Habib et al.,
New Beit Hanina, P.O.Box 21225, Jerusalem 97300
Telefax: 02-6263212; Cellular: 052-4404477

The Petitioners in HCJ 7079/15

The Petitioners in HCJ 7085/15

The Petitioners in HCJ 7087/15

_____ **Razeq & 5 others**

The petitioners in HCJ 7082/15
Represented by Adv. Andre Rosenthal et al.,
15 Salah-a-Din Street P.O.Box 19405, Jerusalem 91194
Telephone: 02-6250458; Fax: 02-6221148

The Petitioners in HCJ 7082/15

_____ **Kusa & 2 others**

J 7092/15
The petitioners in HCJ 7092/15
Represented by Adv. Lea Tsemel et al.,
2 Abu Obeida Street, Jerusalem
Telephone: 02-6273373; Fax: 02-6289327

The Petitioners in HCJ 7092/15

The Petitioners

v.

Military Commander of the Wes Bank Area
Legal Advisor for the Judea and Samaria Area
Commander of IDF Forces in the West Bank
Represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Telephone: 02-6466246; Fax: 02-6467011

The Respondents in HCJ 7076/15
The Respondent in HCJ 7079/15
in HCJ 7082/15
in HCJ 7085/15
in HCJ 7087/15
and in HCJ 7092/15

Respondents' Response

According to the decision of the Honorable Justice Vogelman dated October 22, 2015, the respondents hereby respectfully submit their response to the petitions at bar as follows:

1. The petitions at bar concern forfeiture and demolition orders which were issued against housing units which served as the residence of the perpetrators _____ Razeq (hereinafter: **Razeq**), _____ Kusa (hereinafter: **Kusa**) and _____ Haj Hamed (hereinafter: **Hamed**); all three collectively hereinafter: the **perpetrators**) located in the Nablus area.

The orders were issued by the respondent (hereinafter also: the **military commander**) based on the power vested in him according to Regulation 119 of the Defence (Emergency) Regulations, 1945 (hereinafter: **Regulation 119** and the **Defence Regulations**), after the perpetrator who lived in the housing units designated for forfeiture and demolition carried out, on October 1, 2015, a shooting attack at an Israeli vehicle in the area of the Beit Furiq junction, in which the late spouses Na'ama and Eitam Henkin were killed in front of their four young children who were with them in the car.

2. The petitions in HCJ 7079/15 and in 7082/15 concern the housing unit which served as the residence of **Razeq**. In the framework of HCJ 7079/15 the petitioners, the parents and siblings of the perpetrator **Razeq** request the honorable court to direct the respondent to appear and show cause:
 - A. **Why he should not refrain from the forfeiture and demolition of the house which serves as the residence of petitioners 1-5 located in Nablus or from injuring it in any other manner;**
 - B. **Alternatively, why he should not choose a less injurious sanction.**

- C. **In any event, even if a decision is made to demolish the house, why he should not carry out the demolition in a moderate manner which does not cause damage to the surrounding area.**
- D. **Why he should not transfer, in any event, the investigation material which substantiates the suspicions which lead the respondent to issue the order.**

In the framework of HCJ 7082/15 the petitioners, inhabitants of the building in which **Razeq's** apartment is located and inhabitants of neighboring buildings, request the honorable court to direct the respondent to appear and show cause:

Why the petitioners should not be provided in advance with detailed plans regarding the demolition of the housing unit which served as the residence of Karim Razeq on the middle floor of a three story building in Nablus, prior to the execution of the demolition; In addition, why the petitioners should not be given an extension which would enable them to examine the demolition plan which was prepared by respondent's engineer.

- 3. The petitions in HCJ 7087/15 and 7092/15 concern the housing unit which served as the residence of **Kusa**. In the framework of HCJ 7087/15 the petitioner, the wife of the perpetrator Kusa, requests the honorable court to direct the respondent to appear and show cause:
 - A. **Why he should not refrain from the forfeiture and demolition of the house which serves as the residence of petitioner 1 and her family which is located in Nablus or from injuring it in any other manner;**
 - B. **Alternatively, why he should not choose a less injurious sanction.**
 - C. **In any event, even if a decision is made to demolish the house, why he should not carry out the demolition in a moderate manner which does not cause damage to the surrounding area.**
 - D. **Why he should not transfer, in any event, the investigation material which substantiates the suspicions which lead the respondent to issue the order.**

In the framework of the petition in HCJ 7092/15 the petitioners, inhabitants of the building in which **Kusa's** housing unit is located, request the honorable court to direct the respondent to appear and show cause:

Why he should not undertake to refrain from causing any injury or damage, direct or indirect, to the place of residence of the petitioners.

- 4. The petitions in HCJ 7076/15 and 7085/15 concern the housing unit which served as the residence of **Hamed**. In the framework of HCJ 7076/15 the petitioners, inhabitants of the building in which the apartment unit of **Hamed** is located and inhabitants of neighboring buildings, request the honorable court to direct the respondent to appear and show cause:

Why they should not refrain from exercising the power according to Regulation 119 of the Defence (Emergency) Regulations, 1945... including

the forfeiture, demolition or the infliction of any other injury on two floors in a building in which petitioner 1 resides and which is located near the houses of petitioners 2-7;...

In addition, the honorable court is requested to issue an *order nisi* which would direct the respondents to appear and show cause:

- A. Why they should not provide the petitioners with detailed plans and opinion regarding the execution of the seizure and demolition order prior to its execution, and why they should not give the petitioners an extension which would enable an engineer on their behalf to examine the plan;**
- B. Why they should not declare that to the extent that during the execution of the forfeiture and demolition order being the subject matter of the petition damage is caused to petitioners' homes, they undertake to compensate them for such damage;**
- C. Why they should not present a study with factual data regarding the alleged effectiveness of house demolition as a deterring measure before they order that the demolition be realized and as a condition for the realization thereof.**

In the framework of HCJ 7085/15 the petitioners, the parents, brothers and sister of the perpetrator Hamed, request the honorable court to direct the respondent to appear and show cause:

- A. Why he should not refrain from the forfeiture and demolition of the apartments on the second and third floors located in Nablus or from injuring them in any other manner;**
- B. Alternatively, why he should not choose a less injurious sanction.**
- C. In any event, even if a decision is made to demolish the house, why he should not carry out the demolition in a moderate manner which does not cause damage to the surrounding area.**
- D. Why he should not transfer, in any event, the investigation material which substantiates the suspicions which lead the respondent to issue the order.**

- 5. In the framework of the petitions, interim orders were also requested directing the respondent to refrain from the realization of the orders which were issued against the housing units, until a decision is made in the petitions. On October 22, 2015, the decisions of this honorable court were given according to which the dwellings being the subject matter of the petitions would be neither forfeited nor demolished until resolved otherwise.
- 6. The respondent will argue that the petitions as well as the requests for interim orders should be dismissed in the absence of cause for intervention by the honorable court.

From the beginning of 2013 to date, as reflected by the data which were gathered and which will be specified below, there is a continuing deterioration (relative to previous years) in the security situation and a continuing increase in terror activity against the state of Israel, its citizens and residents, both within territory of Israel as well as in the territories of the Judea and Samaria area (hereinafter: the

Area). The above is reflected in an increase in the number of attacks in general and in the number of popular terror attacks, as well as in the number of Israelis who were injured as a result of said terror activity, with another significant increase from the beginning of March 2014, **mostly of severe attacks in which civilians were killed or in which live ammunition was used and attempts to carry out severe attacks**. The vast majority of said terror activity was and continues to be executed by local cells and by perpetrators who answer the profile of a "single perpetrator". At the same time, terror organizations continue with their efforts to launch attacks on their behalf. The sharp increase in terror attacks over the last two years, in their scope and severity, reflects the continuing negative security decline in the Area and in Jerusalem as well as in additional areas within the state of Israel.

Against the current severe security circumstances, the respondent will argue that the exercise of the power according to Regulation 119 against the dwellings which served as the residences of the perpetrators who carried out the shooting attack is necessary for the purpose of deterring additional potential perpetrators from carrying out additional similar attacks.

7. As will be clarified below, the arguments raised by the petitioners are not new and they were discussed and rejected in many judgments which were given in the past by the honorable court.

In addition to the above it should be noted that last year judgments were given by the honorable court which dismissed petitions on the issue being the subject matter of the petitions at bar which were filed against decisions to exercise the power by virtue of the above Regulation 119 (for the forfeiture and demolition or sealing of dwellings). Said petitions pertained to matters of perpetrators residents of East Jerusalem as well as to matters of perpetrators residents of the Area. See in this regard: H CJ 4747/15 **Abu Jamal v. GOC Home Front Command** (reported in the Judicial Authority Website, December 31, 2014; hereinafter: **Abu Jamal**); H CJ 8025/14 **Akari v. GOC Home Front Command** (reported in the Judicial Authority Website, December 31, 2014; hereinafter: **Akarai**); H CJ 7823/14 **Ghabis v. Home Front Command** (reported in the Judicial Authority Website, December 31, 2014; hereinafter: **Ghabis**); H CJ 5290/14 **Qawasmeh v. The Military Commander** (reported in the Judicial Authority Website, August 11, 2014; hereinafter: **Qawasmeh**); H CJ 4597/14 **'Awawdeh v. The Military Commander of the Judea and Samaria Area** (reported in the Judicial Authority Website, July 1, 2014; hereinafter: **'Awawdeh**); H CJ 8024/14 **Hajazi v. Home Front Command** (reported in the Judicial Authority Website, given on June 15, 2015. The petition was deleted and the sealing of the perpetrator's room was approved); H CJ 5839/15 **Sidr v. The Commander of IDF Forces in the West Bank** (reported in the Judicial Authority Website, October 15, 2015; hereinafter: **Sidr**).

In the framework of the above petitions, as aforesaid, the honorable court reiterated the rules which were established with respect to the exercise of the power by virtue of Regulation 119, while having dismissed said petitions.

Moreover: on December 31, 2014, the judgment of the honorable court was given in H CJ 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defense** (hereinafter: **HaMoked**) in which the court revisited and thoroughly analyzed the general issues that pertain to the use of Regulation 119 which are the same issues being raised in the petition at bar. The court denied the arguments which were raised there in a detailed and reasoned judgment and held that there was no reason to veer from the honorable court's consistent ruling of many years regarding the use of the Regulation.

Under these circumstances the respondent will argue that there is certainly no cause or justification to re-visit these arguments in the framework of this petition (it should be noted that a request for further hearing against the judgment in **HaMoked** was filed (HCJFH 360/15 **HaMoked: Center for the Defence of the Individual v. Minister of Defense**); Respondent's position which was submitted to the

honorable court on February 12, 2015, is that the request for further hearing – should be denied; The request is still pending before the Honorable President Naor).

8. Considering the host of attacks which were carried out around the time on which the attack being the subject matter of the petitions at bar was executed and until this very day; in view of the fact that deterrence of additional potential perpetrators is of a supreme importance; and in view of the fact that the respondent is of the opinion that the exercise of the power according to Regulation 119 of the Defence Regulations is indeed crucial in the case at hand for the purpose of deterring additional potential perpetrators, **the respondent will request the honorable court to make a decision in the petitions at bar as soon as possible.**

The Main Relevant Facts

9. The petitioners in HCJ 7079/15 are the parents and siblings of the **perpetrator Razeq** who reside in the same apartment in which **Razeq** lived. The petitioners in HCJ 7082/15 are additional inhabitants who reside in the building in which the apartment that served as the residence of **Razeq** is located and which is designated for demolition, and in other buildings adjacent to said building.

The petitioner in HCJ 7087/15 is the wife of the **perpetrator Kusa** who resides together with their children in the same apartment which served as the residence of **Kusa**. The petitioners in HCJ 7092/15 are additional inhabitants who reside in the building in which said apartment is located.

The petitioners in HCJ 7076/15 are additional inhabitants who reside in the building in which the apartment that served as the residence of the **perpetrator Hamed** is located, and in other buildings adjacent thereto. The petitioners in HCJ 7085/15 are the parents, brothers and sister of **Hamed**, who reside in the apartment which served as the residence of **Hamed**.

Description of the attack

10. On October 1, 2015, the three perpetrators **Razeq, Kusa and Hamed** executed a murderous attack in the area of Beit Furiq junction.
11. According to the information in respondent's possession, as indicated by the investigations which were conducted thus far by the security agencies, the shooting attack was carried out by a Hamas cell from Nablus which consisted of five members each of whom had been assigned a specific task: the three members who were responsible for carrying out the attack are the perpetrators in the case at bar, one member who was responsible for "opening the route", and the cell commander who was not in the vehicle. It was also informed that additional suspects involved in the infrastructure activity were arrested.

According to the information, the perpetrators opened fire while driving their car (which was driven by **Kusa**) at the car of the Henkin family and caused it to stop. After the car stopped, **Razeq and Hamed** approached the front doors of the Henkin family's car and Hamed shot at the late Henkin spouses from close range. In said shooting **Razeq** was wounded and consequently the handgun he had in possession fell down and was left on scene. Shortly thereafter **Razeq and Hamed** left the scene, boarded the car in which **Kusa** was waiting, and hurriedly left the scene of the attack. As aforesaid, in said atrocious attack the late Henkins spouses were killed in front of their four young children.

It should be noted that the incident is still being investigated. However, already at this stage, a clear picture arises with respect to the direct involvement of the three perpetrators in the execution of the murderous attack which was planned in advance by the members of the cell, **all according to their own admissions.**

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

12. Due to the severity of the attack and in view of the crucial need to deter potential perpetrators from executing additional terror attacks, the respondent decided, according to the recommendation of the Israel Security Agency (ISA), with the consent and agreement of the political level, the State Attorney and the General Attorney, to exercise his power according to Regulation 119 against the housing units in which the perpetrators lived.

The housing unit which served as the residence of Razeq

13. The housing unit which served as the residence of the **perpetrator Razeq** is located in Arek a-Tikh neighborhood in the city of Nablus. The housing unit is located on the second floor of a three story building.
14. On October 15, 2015, the petitioners in HCJ 7079/15 and in HCJ 7082/15, were informed of respondent's intention to forfeit and demolish the "**apartment on the middle floor of a three story building in Nablus located at way point 226,018.52/680,411.69**", which served as the residence of the perpetrator and his family members. The notice noted that "**this measure is taken due to the fact that the above referenced acted for the execution of a terror attack on October 1, 2015, in which he caused the death by gunshots of the late Henkin spouses**". In addition, the notice also advised of the possibility to submit an objection to the respondent against the forfeiture and demolition order, before a final decision was made in this matter.

A copy of the admission which was given on October 15, 2015, was attached to the petition in HCJ 7079/15 as **Exhibit P-1**.

15. On October 17, 2015, petitioners' counsel in HCJ 70791/15 submitted an objection to the respondent against the intention to use the power under Regulation 119 against **Razeq's** housing unit. At the same time, on that very same day, petitioners' counsel in HCJ 7082/15 submitted another objection regarding the same housing unit.

A copy of petitioners' objection in HCJ 7079/15 dated October 17, 2015, was attached to their petition as **Exhibit P-2**.

A copy of petitioners' objection in HCJ 7082/15 dated October 17, 2015, was attached to their petition as **Exhibit P/7**.

16. On October 19, 2015, after he had decided to deny petitioners' objection in the two petitions mentioned above, the respondent signed, by virtue of his power pursuant to Regulation 119 of the Defence Regulations, a forfeiture and demolition order against the housing unit in the building which served as the residence of **Razeq** (hereinafter: the **Razeq order**). The reason for its issue was stated in said order as follows:

This order is issued due to the fact that the inhabitant of the house Lutafi Fathi Razeq ID No. 853848869 killed in cold blood by gunshots the late Henkin spouses in an attack on October 1, 2015.

A copy of the Razeq order dated October 19, 2015, was attached to the petition in HCJ 7079/15 as **Exhibit P-3**.

17. At the same time, on October 19, 2015, petitioners' counsels were provided with response letters on behalf of the military commander to the objections which had been submitted by them, which specified

the reasons for the denial of the objection. Said letters noted further that "**the realization of this order will not commence before the elapse of 48 hours from the date on which it was served.**"

A copy of the response to petitioners' objection in HCJ 7079/15 dated October 19, 2015, was attached to their petition as **Exhibit P-3**.

A copy of the response to petitioners' objection in HCJ 7082/15 dated October 19, 2015, was attached to their petition as **Exhibit P/8**.

18. On October 22, 2015, the petitions against the **Razeq** order were filed.

The housing unit which served as the residence of Kusa

19. The housing unit which served as the residence of the **perpetrator Kusa** is located in Dahia neighborhood, in the city of Nablus. The housing unit is located on the first floor of a building which consists of two completed floors and an additional floor in advanced construction stages.

20. On October 15, 2015, the petitioners in HCJ 7087/15 and in HCJ 7092/15 were informed of respondent's intention to forfeit and demolish "the lower floor in a building located in Nablus, waypoint _____", which served as the residence of the perpetrator **Kusa**. The notice stated that "**this measure is taken due to the fact that the above mentioned individual took part in the execution of the terror attack on October 1, 2015, in which the late Henkin spouses were shot to death.**" The notice also advised that an objection could be submitted to the respond against the forfeiture and demolition order before a final decision was made in the matter.

A copy of the notice which was given on October 15, 2015 was attached to the petition in HCJ 7087/15 as **Exhibit P-1**.

21. On October 17, 2015, petitioners' counsel in HCJ 7087/15 submitted to the respondent an objection against the intention to exercise the power according to Regulation 119 against **Kusa's** housing unit. At the same time counsel to the petitioners in HCJ 7092/15 submitted an additional objection in the matter of **Kusa's** housing unit.

A copy petitioners' objection in HCJ 7087/15 dated October 17, 2015, was attached to their petition as **Exhibit P-2**.

A copy of petitioners' objection in HCJ 7092/15 dated October 17, 2015, was attached to their petition as **Exhibit A**.

22. On October 19, 2015, after he had decided to deny petitioners' objection in the two petitions mentioned above, the respondent signed, by virtue of his power pursuant to Regulation 119 of the Defence Regulations, a forfeiture and demolition order against the housing unit in the building which served as the residence of **Kusa** (hereinafter: the **Kusa order**). The reason for its issue was stated in said order as follows:

This order is issued due to the fact that the inhabitant of the house Zuhir Ibrahim Kusa ID No. 907514700 took part in the execution of a terror attack on October 1, 2015, in which the late Henkin spouses were shot to death.

A copy of the Kusa order dated October 19, 2015, was attached to the petition in HCJ 7087/15 as **Exhibit P-3**.

23. At the same time, on October 19, 2015, petitioners' counsels were provided with response letters on behalf of the military commander to the objections which had been submitted by them, which specified

the reasons for the denial of the objection. Said letters noted further that "**the realization of this order will not commence before the elapse of 48 hours from the date on which it was served.**"

A copy of the response to petitioners' objection in HCJ 7087/15 dated October 19, 2015, was attached to their petition as **Exhibit P-3**.

A copy of the response to petitioners' objection in HCJ 7092/15 dated October 19, 2015, was attached to their petition as **Exhibit B**.

24. On October 22, 2015, the petitions against the **Kusa** order were filed.

The housing unit which served as the residence of Hamed

25. The housing unit which served as the residence of the **perpetrator Hamed** is located in the Ascan Rujib area in the city of Nablus. It is a four story building and according to the information in respondent's possession **Hamed** lived together with his parents in a housing unit located on the first floor (above the ground floor) thereof. The second floor of the building is **Hamed's** designated residence which is in its final construction stages, while according to the information in respondent's possession, **Hamed** has recently used said housing unit as his residence intermittently.

26. On October 15, 2015, the petitioners in HCJ 7076/15 and in HCJ 7085/15 were notified of respondent's intention to forfeit and demolish "the first and second floors of a building in Nablus located at waypoint _____" in which the perpetrator **Hamed** lived. The notice stated that "**this measure is taken due to the fact that the above mentioned individual acted towards the execution of a terror attack on October 1, 2015, in which the late Henkin spouses were shot to death.**" The notice also advised of the possibility to submit to the respondent an objection against the forfeiture and demolition order before a final decision was made in the matter. It should be noted that a typographic error occurred in Arabic version of said notice, according to which the housing unit which served as the residence of **Hamed** was located on ground floor of the building.

A copy of the notice which was given on October 15, 2015 was attached to the petition in HCJ 7085/15 as **Exhibit P-1**.

27. On October 17, 2015, petitioners' counsel in HCJ 7076/15 submitted to the respondent an objection against the intention to exercise the power according to Regulation 119 against **Hamed's** housing unit. At the same time counsel to the petitioners in HCJ 7085/15 submitted an additional objection in the matter of **Kusa's [sic]** housing unit.

A copy petitioners' objection in HCJ 7076/15 dated October 17, 2015, was attached to their petition as **Exhibit 5**.

A copy of petitioners' objection in HCJ 7085/15 dated October 17, 2015, was attached to their petition as **Exhibit P-2**.

28. On October 19, 2015, after he had decided to deny petitioners' objection in the two petitions mentioned above, the respondent signed, by virtue of his power pursuant to Regulation 119 of the Defence Regulations, a forfeiture and demolition order against the housing unit in the building which served as the residence of **Hamed** (hereinafter: the **Hamed order**). The reason for its issue was stated in said order as follows:

This order is issued due to the fact that the inhabitant of the house _____ Haj Hamed ID No. _____ killed by gun shots the late Henkin spouses in a terror attack on October 1, 2015.

A copy of the Hamed order dated October 19, 2015, was attached to the petition in HCJ 7085/15 as **Exhibit P-3**.

29. At the same time, on October 19, 2015, petitioners' counsels were provided with response letters on behalf of the military commander to the objections which had been submitted by them, which specified the reasons for the denial of the objection. Said letters noted further that "**the realization of this order will not commence before the elapse of 48 hours from the date on which it was served.**" It should be noted that in the response letter to petitioners' objections in HCJ 7076/15 it was explicitly clarified that "**there is no intention to act for the demolition of the apartment of your client, Mr. _____ Haj Hamed, which is located on the ground floor of the building in which the perpetrator lived. We regret the typographic error which occurred in the translated version of the notice into Arabic.**"

A copy of the response to petitioners' objection in HCJ 7076/15 dated October 19, 2015, was attached to their petition as **Exhibit 6**.

A copy of the response to petitioners' objection in HCJ 7085/15 dated October 19, 2015, was attached to their petition as **Exhibit P-3**.

30. To complete the picture it should be noted that on October 20, 2015, petitioners' counsel in HCJ 7076/15 turned once again to the respondent in a request "**to receive all documents underlying the forfeiture and demolition order, including the plan and/or opinion regarding the demolition method and its ramifications, the investigation material concerning Mr. Haj Hamed's matter and any other relevant document.**"

On that same day a response was provided on respondent's behalf in which the request to receive the engineering opinion had been denied. However, the response letter noted that "**the execution method which was examined is by way of controlled detonation which would result in the demolition of non-structural walls of the apartment in a controlled manner**".

A copy of the letter of petitioners' counsel in HCJ 7076/15 dated October 20, 2015, was attached to their petition as **Exhibit 7**.

A copy of the response letter dated October 20, 2015, was attached to the petition in HCJ 7076/15 as **Exhibit 8**.

31. On October 22, 2015, the petitions against the **Hamed** order were filed.

The Legal Argument

32. The legal arguments raised by the petitioners in their petitions are not new, and were discussed and denied in the framework of many judgments which were given by the honorable court in the past. In a host of judgments – '**Awawdeh; Qawasmeh; Abu Jamal; Akaari; Hajazi and Ghabis** – which were given in the last year (as of 2014), the honorable court has repeatedly approved the long standing case law according to which the exercise of power by virtue of the afore-mentioned Regulation 119 under certain circumstances is a lawful act which may be taken, based on the professional opinion of the security agencies that this measure has a deterring effect (and 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 in the Judicial Authority Website, January 5, 2009; hereinafter: **Abu Dheim**); and HCJ 5696/09 **Mughrabi v. GOC Home Front Command – Major-General Yair Golan** (reported in the Judicial Authority Website, February 15, 2012; hereinafter: **Mughrabi**).

Moreover. In a **general judgment** which was given on December 31, 2014, in **HaMoked**, the arguments were thoroughly examined and analyzed and there too it was held that they should be denied.

Respondent's position is specified in detail herein-below.

The Normative Framework

Exercise of the power to forfeit and demolish – General

33. The power to issue an order for the forfeiture or demolition of a building by virtue of Regulation 119 of the Defence Regulations is vested with the military commander constituting part of the local law of the Area.

Regulation 119 of the Defence Regulations, in its binding English version provides 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:

[-]

34. Regulation 119 authorizes as aforesaid the respondent to forfeit and demolish or seal the entire building in which the perpetrator lives with his family members. Nevertheless, according to the case law of this honorable court, even when the respondent decides to exercise the power according to Regulation 119, he must exercise his said power reasonably and proportionately. Taking into consideration the entire circumstances which were specified by the court in its judgments.

According to case law, the purpose of exercising the power according to Regulation 119 is only to deter and not to punish. Hence, the power according to Regulation 119 is not exercised as a punishment for the attack which was executed in the past, but rather only if the military commander concludes that the exercise of the power is required for the purpose of deterring perpetrators from the execution of additional attacks in the future – and for this purpose alone.

The underlying premise is that a potential perpetrator who knows that his family members may be harmed if he carries out his scheme – might consequently refrain from carrying out the planned attack. Sometimes, deterrence is also directed against the family members of the perpetrator who may be aware of his plans, to cause them to take action for the prevention of the attack if they are fearful that their home may be harmed should they fail to do so.

35. According to case law, the harm caused to additional inhabitants who live in the house of the perpetrator against which a decision was made to exercise the power according to Regulation 119 does not constitute collective punishment, but is only an injury ancillary to the deterring purpose of the exercise of the power.

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

The power conferred upon the military commander pursuant to Regulation 119 is not a power to impose collective punishment. The exercise thereof is not designed to punish the petitioner's family. The power is administrative, and its exercise is designed to deter, and is so doing to maintain public order...

We are aware of the fact that the demolition of the building harms the dwelling of the petitioner and his mother. True, this is not the purpose of the demolition but it is its outcome. This severe outcome is designed to deter potential perpetrators of attacks who must understand that in their doings they cause harm not only to public safety and security and to the lives of innocent people, but also to the welfare of their own relatives.

See also the words of the Honorable Justice (as then titled) Maza, in the majority opinion of the judgment which was given by an expanded panel of five Justices in HCJ 6026/95 **Nazzal v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 48(5) 338 (1994)(hereinafter: **Nazzal**) as follows:

It is therefore appropriate to reiterate what has been said more than once: the purpose of taking the measures which the power to take them is vested with the military commander according to Regulation 119(1), in pertinent part, is to deter potential perpetrators from carrying out murderous attacks as a crucial measure for maintaining security... the exercise of said sanction does indeed have a severe punitive ramification which harms not only the perpetrator himself but also others, in the vast majority of cases his family members who live with him, but it is not the purpose thereof.

36. The security forces, in general, and the respondent, in particular, acknowledge and are aware of the severity of the sanctions exercised according to Regulation 119, and particularly when they are exercised in an irreversible manner, such as demolition. The military commander is directed to exercise his house demolition power only in such severe cases in which the "regular" punitive and deterring measures, by their nature, cannot sufficiently and properly deter assailants and perpetrators.
37. 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, the respondent 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** 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].

38. In view of the fact that the power 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 power 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.
39. 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 perpetrator and the need to deter potential future perpetrators; 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.
40. Thus, within the framework of this balancing work, weight is attributed to the severity of the acts, the circumstances of time and place; the residence 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 forfeiture and demolition and alternatively sealing of a structure, and to what extent (see, for instance, the judgment given by an extended panel in **Nazzal**).
41. About ten years ago, when there was a decline in terror attacks, a committee 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 power under Regulation 119, which were directed against the houses of the perpetrators who carried out the attack at Merkaz Harav and the perpetrators who performed two ramming attacks in Jerusalem. The three petitions which were filed with the honorable court against these orders – **Abu Dheim, Dwayat and Mughrabi** – were dismissed.

In the Judea and Samaria Area the power 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 increase in the number of attacks in general and of popular 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 assailants who act as "single perpetrators". At the same time the terror organizations continue with their efforts to execute 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 decline both in the Judea and Samaria Area and in Jerusalem.

Following the significant deterioration in the security condition during the last two years the exercise of the power 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 power under Regulation 119 was exercised against the home of the terrorist who murdered police commander Baruch Mizrahi on Passover eve ('**Awawdeh**); against the dwellings in which lived the perpetrators who abducted and murdered the three youths (**Qwasmeh**); against the home of the perpetrator 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); against the home of one of the perpetrators who committed the massacre in the Har Nof synagogue (whose matter was heard in HCJ 8066/14); against the perpetrator who committed a ramming attack in the Sheikh Jarrah area on August 4, 2014 in which a Yeshiva student was killed (whose matter was heard in HCJ 7238/14 - **Ghabis**); against the home of another perpetrator who committed the massacre in the Har Nof synagogue (whose matter was heard in HCJ 8070/14); and against the home of the perpetrator who committed the shooting attack which was directed at Mr. Yehuda Glick (whose matter was heard in HCJ 8024/14 – **Hajazi**), where it was eventually decided to seal the perpetrator's room.

To complete the picture it should be added that the GOC Home Front Command issued forfeiture and demolition orders against the homes of additional perpetrators which have not yet been carried out: 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 – **Akari**); against the home of the perpetrator who committed the shooting attack in which the late Dani Gonen was killed (his case is pending before the honorable court in HCJ 7081/15 **Amar v. Commander of IDF Forces in the West Bank**); against the homes of the perpetrators who carried out the shooting attack in which the late Malachi Rosenfeld was killed (their cases are pending before the honorable court in HCJ 7040/15 **Hamed v. The Military Commander of the West Bank Area**; HCJ 7077 **Ana'em v. The Military Commander of the West Bank Area**; HCJ 7084/15 **Hamed v. Commander of IDF Forces in the West Bank**).

42. 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** case (HCJ 8091/14). In said judgment the court dismissed 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

43. 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 (as compared to previous years). This is evidenced by an increase in the general number of attacks and popular attacks, and in the number Israelis injured from acts of terror. The vast majority of terror activity was and continues to be recently led by local groups and by assailants who act as "single perpetrators". At the same time the terror organizations continue with their efforts to execute attacks on their behalf. The sharp increase in terror activity during the last two years, in scope and severity, reflects the continued negative security decline both in the Judea and Samaria Area and in Jerusalem.
44. This phenomenon is well reflected in the data concerning terror which accumulated **from the beginning of 2013 until these days**. Thus, in 2013, about 1,414 attacks were registered; in 2014 about 1,650 attacks were registered; in 2015 this decline continued and until October 18, 2015, 1,703 attacks were registered. In addition, as of 2013, an irregular increase in the number of Israeli fatalities was also registered as a result of attacks launched from the Judea and Samaria area and from Jerusalem. **As of 2013 there were thirty five fatalities as a result of attacks as compared to zero fatalities in 2012.**
45. Furthermore, from the beginning of 2014, **there has been a sharp increase in the number of severe attacks, in which Israeli citizens were killed or in which firearms were used, as well as in attempts to carry out severe 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 perpetrator 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 perpetrator 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. In this attack Police Commander Mizrahi was killed on Passover eve, 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 perpetrator shot at a group of Israeli citizens. The event ended without injuries.
- f. **June 2014**: A shooting attack was carried out by Palestinian perpetrator using small-arms, at an IDF position in Betunia. The military force shot at the perpetrator 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 attack was planned and carried out by a military Hamas cell.
- i. **July 2014**: A shooting attack was carried out from a passing vehicle using small-arms, in which shots were fired an Israeli civilian at Rehelim intersection in the Judea and Samaria Area. The 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 attack using booby trapped vehicle was thwarted due to the seizure of the vehicle 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**: Attack in which the perpetrator, Ma'ataz Hijazi made an attempt to kill Yehuda Glick in Jerusalem, critically injuring him.
- p. **October 2014**: Ramming attack in Jerusalem, again on light rail. Two Israeli civilians killed, 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, which was carried out by the perpetrator against whose home the order under Regulation 119 was issued. In the attack the youth, the late Dalia Lemkus was killed and two others were wounded.
- s. **November 2014**: Stabbing attack at the Hagana railway station in Tel Aviv. IDF soldier, the late staff sergeant Almog Shiloni was killed.
- t. **November 2014**: Combined shooting and stabbing attack at a synagogue in Har Nof in Jerusalem. Five Israelis were killed in the synagogue massacre and several other civilians were wounded.
- u. **December 2014**: Stabbing attack in Alon Shvut junction in which a perpetrator 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 killed, the late Shalom Yochai Sharaki, 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 killed, the late Dani Gonen, 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, the late Malachi Rosenfeld, was killed 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.
- gg. **September 2015**: Shooting attack at Habitot junction, Samaria. One Israeli citizen was lightly wounded
- hh. **September 2015**: On new year's eve stones were thrown at a vehicle which was driving near Armon Hanatziv neighborhood in Jerusalem. As a result of the stones which were thrown at him the driver of the vehicle, the late Alexander Leblovitch, lost control and was killed.
- ii. **October 2015**: A shooting attack from a passing vehicle directed at an Israeli car. Consequently, the late spouses Na'ama and Eitam Henkin, the objects of the petitions at bar, were killed.

- jj. **October 2015**: A stabbing attack in Petah Tikva in which the perpetrator stabbed and lightly injured a civilian.
- kk. **October 2015**: A stabbing attack near Kiryat Hamemshala (Government complex) in Tel Aviv, in which the perpetrator stabbed a soldier and four civilians with a screwdriver.
- ll. **October 2015**: A stabbing attack in the old city of Jerusalem in which the perpetrator stabbed three family members and another individual. In this attack the late Nechemia Lavi and the late Aharon Benita were killed.
- mm. **October 2015**: A stabbing attack in the central bus station in Afula in which a soldier was moderately-severely injured.
- nn. **October 2015**: A stabbing attack in Kiryat Arba in which the perpetrator stabbed a civilian and severely injured him.
- oo. **October 2015**: A stabbing attack near the national headquarters of Israel Police in Jerusalem in which the perpetrator stabbed a Yeshiva student near the light rail station there and severely injured him.
- pp. **October 2015**: An attempted stabbing attack in the central bus station in Afula.
- qq. **October 2015**: A stabbing attack in Kiryat Arba in which the perpetrator stabbed a border guard combatant and lightly injured him.
- rr. **October 2015**: A stabbing attack in Shmuel Hanavi street Jerusalem, in which a young Palestinian stabbed a 16 old youth with a vegetable peeler and lightly wounded him.
- ss. **October 2015**: A stabbing attack in Hanevi'im street, Jerusalem in which a 16 years old Palestinian stabbed two young Israelis who were lightly and severely injured.
- tt. **October 2015**: A stabbing attack near Damascus Gate, Jerusalem, in which the perpetrator stabbed and wounded two policemen.
- uu. **October 2015**: An attempt to blow-up an incendiary explosive device in a car near al-za'im checkpoint in which an Israel Police officer was lightly wounded.
- vv. **October 2015**: A ramming and stabbing attack near Gan Shmuel located in Hasharon area, in which a soldier was severely wounded, another soldier was moderately wounded and two civilians were lightly wounded.
- ww. **October 2015**: A stabbing attack in the old city, Jerusalem in which the perpetrator tried to stab a security guard near the Lion's Gate.
- xx. **October 2015**: A stabbing attack near Givat Hatachmoshet, Jerusalem in which a young Palestinian woman attacked a border guard combatant and lightly wounded him.
- yy. **October 2015**: A stabbing attack in Pisgat Zeev, Jerusalem which was carried out by two Palestinian youths, residents of Beit Hanina village, 15 and 13 years old. In the attack a young Israeli was severely wounded and a 13 years old boy was critically wounded.
- zz. **October 2015**: A stabbing attack in near the Chords Bridge in the entrance to Jerusalem in which a soldier was lightly-moderately wounded.

- aaa. **October 2015:** A shooting and stabbing attack in a bus in Armon Hanatziv neighborhood, Jerusalem in which the late Alon Gobeberg and the late Chaim Haviv were killed, and several others were wounded. Some of the wounded suffered severe injuries.
- bbb. **October 2015:** A ramming attack in Malkhei Yisrael street, Jerusalem in which the late Yehayahu Akiva Krishevski was killed.
- ccc. **October 2015:** A stabbing attack near Levinstein hospital, Ra'anana in which the perpetrator stabbed four civilians, one of whom was severely wounded and the other three were lightly wounded.
- ddd. **October 2015:** A stabbing attack in a bus station in Achuza street, Ra'anana in which one person was lightly wounded by the perpetrator.
- eee. **October 2015:** A shooting attack in the central bus station in Beer Sheva in which a soldier and a foreign national were killed and ten others were wounded one of whom in a very severe manner and two in a severe manner.

Most recently. From October 19, 2015, through October 25, 2015, 97 attacks were carried out which included 78 attacks in which Molotov cocktails were thrown, 9 stabbing attacks, 3 ramming attacks, 6 pipe bombs and another improvised explosive device known as a gas canister bomb. In these attacks many civilians were wounded and one individual was killed, as follows:

Stabbing attack in Beit Awwa – October 20, 2015 - a soldier was wounded.

Ramming attack in al-Fawwar - October 20, 2015, one person killed - the late Avraham Asher Hasano.

Public order disturbances in Rachel's Tomb - October 20, 2015 - two policemen wounded.

Ramming attack in Gush Etzion junction – October 10, 2015 – two wounded.

Stabbing attack in Adam square – October 21, 2015 – a soldier wounded.

Ramming attack in Beit Omar – October 21, 2015 – five wounded.

Stabbing attack in Beit Shemesh – October 22, 2015 – one wounded.

Stabbing attack in Tsurif – October 23, 2015 – one wounded.

Throwing of Molotov cocktails in Beit El – October 23, 2015 – three wounded including a three year old girl.

- 46. **As indicated from the above, during recent weeks an additional increase occurred in the number of severe attacks which were carried out throughout the country in which nine Israeli citizens were killed. Accordingly, from new year's eve until October 25, 2015, about 778 attacks were carried out in which eleven individuals were killed and according to estimates about one hundred individuals were wounded. In fact, the last month has been characterized by a host of attacks, while several attacks are carried out each and every day throughout the state of Israel and the Area.**
- 47. We further note that during the last two years hundreds of intended and attempted 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.
- 48. The Respondent is of the opinion that the above 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.**
- 49. It is important to note that some of the figures detailed above with respect to the escalation of the security condition in the Judea and Samaria Area have already been provided to the honorable court 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)). 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]

50. Moreover. In the general judgment given in **HaMoked**, 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 attacks, there is a substantial need to take deterring measures for the purpose of deterring potential perpetrators from carrying out attacks.

51. 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 attacks is currently critically important.

The respondent will argue further that the decision to exercise the power under Regulation 119 against the homes of the perpetrators in the case at bar was made, *inter alia*, in view of the severity of the attack in which the late Henkin spouses were killed in cold blood in front of their young children. The respondent is of the opinion that it is extremely crucial to take deterring measures against the execution of additional cruel attacks in the future to the maximum extent possible.

52. 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 perpetrators 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.

11. 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... 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**:

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".

The above is relevant to the case at bar, *verbatim*.

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

Hence, respondent's position is that this case concerns a decision which was made according to the power vested in the respondent by primary legislation valid in the Judea and Samaria Area; which is intended to achieve a proper purpose – namely, deterring additional potential perpetrators from committing additional attacks; and which was currently exercised under circumstances of a rising and recurring wave of terror, in a proportionate and reasonable manner.

Response to petitioners' arguments

54. The different petitions raise many common arguments. We shall now respond to them in an orderly manner.
55. The main argument raised by the petitioners in the petitions is that the decision to forfeit and demolish the perpetrators' apartments constitutes collective punishment and injures innocent people, and that it runs contrary to the provisions of international law (see paragraphs 46-63 of the petition in HCJ 7076/15; paragraphs 22-32 of the petition in HCJ 7079/15; paragraphs 27-37 of the petition in HCJ 7085/15; paragraphs 22-32 of the petition in HCJ 7087/15; paragraphs 9-11 of the petition in HCJ 7092/15).
56. On this issue we shall state, firstly, that Regulation 119 is used 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 perpetrator who intends to carry out the attack that prompted the use of the power granted under Regulation 119 is not at all required for the realization of the power according to the Regulation.

It should be noted that arguments similar to this argument brought by the petitioners have already 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**, as follows:

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

57. 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**, as well as in a host of judgments which preceded it, that the exercise of the power under Regulation 119 based on clear security reasons for deterrence purposes is a legitimate action which reconciles both with international law and domestic law.

On this issue, as aforesaid, it was held in the general judgment in **HaMoked** 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].

58. 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 power 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** as cited above, at the conclusion of which – all arguments on this issue were rejected.

59. Another argument raised by the petitioners concerns the efficiency of the exercise of the power under Regulation 119 and the proportionality of the decision (paragraphs 30-37 of the petition in HCJ 7076/15; paragraphs 33-36 of the petition in HCJ 7079/15; paragraphs 38-42 of the petition in HCJ 7085/15; paragraphs 34-36 of the petition in HCJ 7087/15; paragraphs 19-20 of the petition in HCJ 7092/15).

The respondent 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 power 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** 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).

See also: paragraphs 8-11 of the judgment in **Abu Dheim; Sidr**, paragraphs 2-3 of the judgment of the Honorable Justice Amit.

And the above are relevant to the case at hand, *verbatim*.

60. With respect to petitioners' argument that the respondent exercises the power according to Regulation 119 in a discriminatory manner (paragraphs 41-42 of the petition in HCJ 7079/15; paragraphs 47-48 of the petition in HCJ 7085/15; paragraphs 41-42 of the petition in HCJ 7087/15) it should be noted that this argument too has already been long ago discussed and rejected. Thus, for instance, the Honorable Justice Danziger held in **Qawasmeh**, in paragraph 30 of his judgment as follows:

30. Indeed, it cannot be denied that acts of incitement and violence in Jewish society against Arabs have proliferated. It is regretful and one should act

forcefully against such phenomena. However, the comparison is not in place, in view of the fact that the measure of house demolition in the Area is not taken in cases of incitement and violence, but only in extreme cases of murder. I am not oblivious of the horrifying murder of the youth Mohammed Abu Khdeir, a case which rocked the foundations of our country and was condemned across the board. However, this is an extremely exceptional case. Therefore, I am of the opinion that there is no room for the artificial symmetry argued by the petitioners in support of their argument concerning discriminating enforcement.

Moreover, I do not think that petitioners' discrimination argument is acceptable. The burden to present adequate factual infrastructure which can refute the presumption of administrative validity, lies on the party who argues that discriminating or "selective" enforcement is applied. Even if the arguing party surmounted this hurdle, the authority can still show that the seemingly selective enforcement is, in fact, based on pertinent considerations...

In the case at hand, the respondent made a decision which is situated at the heart of his discretion. Petitioners' arguments cannot point, at this time, at discrimination or extraneous considerations which underlie respondent's decision. In view of the fact that regulation 119 has a deterring rather than a punitive purpose, the mere execution of hideous terror acts by Jews, such as the abduction and murder of the youth Mohammed Abu Khdeir, cannot justify, in and of itself, the application of the regulation against Jews, and there is nothing in respondent's decision alone, not to exercise the regulation against the suspects of this murder, which can point at the existence of selective enforcement.

[Emphases added – the undersigned]

61. In addition, the petitioners argue (paragraphs 14-21 of the petition in HCJ 7079/15; paragraphs 19-26 of the petition in HCJ 7085/15; paragraphs 14-21 of the petition in HCJ 7087/15) that the power under Regulation 119 may not be exercised in view of the fact that the suspicions against the perpetrators have not yet been proved.

The respondent will argue that this argument should be denied since according to case law it suffices to have administrative evidence that the perpetrator served as the residence of the perpetrator to enable the exercise of the power according to Regulation 119. On this issue see for instance the court's words in **Nazzal**, page 345:

Moreover: the power to use said authority is not conditioned on the conviction of any person in the commitment of an offense; according to the language of the regulation it suffices that the military commander is satisfied that an offense was committed by inhabitants of an area, town, village, quarter or street or by any one of them to give him the power to forfeit any house, structure or land situated therein from which the offender came.

Also see, recently, in 'Awawdeh, paragraph 21:

... In addition, it was held that the exercise of the authority was not conditioned on the conviction of the terrorist under criminal law, and that for that purpose one could sufficiently rely on administrative evidence which was presented to

the respondent and satisfied him that the offense was committed by an occupant of the house which was designated for demolition...

62. The respondent will argue that in view of the fact that the State has in its possession clear and unequivocal evidence, **including admissions of the perpetrators** that they committed the attack which was pre-planned by them, he can exercise the power vested in him by virtue of Regulation 119 against the perpetrators and the houses in which they lived, also taking into consideration the severity of the offense and its murderous result. Hence, this argument should also be denied.

The respondent will be prepared to present the information in his possession in this regard *ex parte* subject to petitioners' consent.

63. With respect to petitioners' argument concerning the flaw in the notice of the intention to demolish the housing unit of **Hamed** as a result of the error which occurred in the Arabic version of the notice which was translated from the Hebrew (paragraphs 17-19 of the petition in HCJ 7076/15; paragraphs 11-18 of the petition in HCJ 7085/15), then, as noted above, it is a typographical error which was amended in respondent's response to the objections submitted by the petitioners in said petitions, and in any event there was no intention to act for the demolition of the lower floor of the building. Therefore, if any technical flaw occurred in this context it was amended prior to the filing of the petitions and it cannot, certainly not at this time, justify the revocation of the administrative proceeding initiated in **Hamed's** case (see and compare: Daphna Barak-Erez **Administrative Law** Volume B, 805 (2010) (hereinafter: **Barak-Erez**)).

64. The petitioners also argue that the amount of time which they were given to prepare for the hearing constitutes a flaw in the proceedings which took place in their matter (paragraph 21 of the petition in HCJ 7076/15; paragraphs 9-13 of the petition in HCJ 7087/15).

In this context it should be reminded what was mentioned above that the use of the sanction of house demolition is a derivative of circumstances of time and place. To the same extent that terror changes its course from time to time, the respondent must make the necessary adjustments, and to the extent required, change the measures taken to prevent and eliminate evil acts in the war of Israel against the hostile and murderous terror activity (see: **Barak-Erez**, Volume A, 515-518).

In view of the above-said and the host of attacks which were carried out shortly before the execution of the attack being the subject matter of the petitions at bar and thereafter until this very date, the position of the state is that it is of the utmost importance to deter additional potential perpetrators, *inter alia*, by exercising the power according to Regulation 119. Under these circumstances, the state acted to bring to the attention of the petitioners its intention to exercise the power vested in it in this context as soon as possible so that said power may be exercised as soon as possible after the date on which the attack was carried out. Clearly, the amount of time given to the petitioners to submit an objection against respondent's intention also derives from the need to exercise the power without delay. It should also be noted that it is not the first time in which a short hearing is held prior to the issue of an order according to Regulation 119 (and see for instance, '**Awawdeh**, paragraphs 6-8 of the judgment).

65. With respect to petitioners' argument in HCJ 7092/15 (paragraphs 7-8, 12-18) according to which the respondent is not authorized to act in the area in which the building is located, it should be noted that respondent's position is that this argument should be denied.

The Interim Agreement was incorporated into the local law of the Judea and Samaria Area through the Proclamation Regarding Implementation of the Interim Agreement (Judea and Samaria)(No. 7), 5756-1995 (hereinafter: **Proclamation 7**).

The honorable court has already held that to the extent any contradiction exists between the provisions of the Interim Agreement and the provisions of Proclamation 7, the provisions of Proclamation 7 prevail. On this issue it was explicitly determined in H CJ 2717/96 **Waffa v. Minister of Defense**, IsrSC 50(2) 848 (1996) as follows:

The Proclamation applies the Interim Agreement to Judea and Samaria. It applies it in the same manner that the Law on Implementing the Interim Agreement concerning the West Bank and the Gaza Strip (Jurisdiction and Other Provisions)(Amendments of Legislation) applies the Agreement to Israel. But the Proclamation is the law. It determines who has authority and what is the nature of the authority with respect to a certain matter in this area or another. It does rather than the Interim Agreement. The Interim Agreement is the historical source of the Proclamation, but it is not the source of the Proclamation's force. Therefore, even if there are discrepancies between the provisions of the Proclamation and the provisions of the Interim Agreement, and even if a contradiction exists between them, the provisions of the Proclamation prevail. The provisions of the Interim Agreement form part of the law which applies to Judea and Samaria only if adopted, and to the extent adopted, by the Proclamation. [Emphasis added – the undersigned]

66. Proclamation 7 left in the hands of the military commander wide authorities regarding, *inter alia*, Area A, while section 6B of Proclamation 7 explicitly stipulates that

The decision of the commander of IDF forces in the region that the powers and responsibilities remain with him will be decisive for this matter. [Emphasis added – the undersigned].

67. Hence, it is clear that the provisions of the Interim Agreement cannot prevent the military commander from exercising his power according to Regulation 119, and the determination of the military commander that he is authorized to issue orders according to Regulation 119 in Area A as well is decisive for this matter.
68. It should be noted that the honorable court also discussed this issue recently and accepted respondent's position on this issue. Reference is made in this regard to the court's words in **Qawasmeh**, paragraph 28:

I also found no merit in petitioners' arguments in H CJ 5290/14 concerning respondent's authority to act in Area A. Petitioners' arguments on this issue do not reconcile with the fact that respondent's authority is regulated by the law which applies in to the Area and is controlled directly by the Interim Agreement. As noted by the respondent, the provisions of the Proclamation grant the respondent very broad discretion in the interpretation and application of the provisions of the Interim Agreement, and they do not prevent the respondent from acting in Area A when such activity is required to safeguard security... [Emphasis added – the undersigned]

69. Finally, the petitioners express a concern that the demolition of the perpetrators' apartments would cause damage to additional apartments located in the same buildings or in adjacent buildings, and request to receive for their review the opinion regarding the demolition method (see: paragraphs 23-29 and 43-48 of the petition in H CJ 7076/15; paragraphs 37-40 of the petition in H CJ 7079/15; paragraph 3 of the petition in H CJ 7082/15; paragraphs 43-46 of the petition in H CJ 7085/15; paragraphs 37-40 of the petition in H CJ 7087/15).

The respondent will argue that this argument should be denied due to the fact that the plan of the anticipated demolition, as the petitioners were also notified by the respondent in his response to the objection which was submitted in **Hamed's** matter in HCJ 7076/15 "**was established by professionals on behalf of the military commander who are qualified engineers, following an accurate mapping of the apartments and having taken into consideration their engineering characteristics. The professional execution method which was examined and chosen by the professionals for the realization of the decision of the military commander is the execution method which in the opinion of the engineering professionals provides for the realization of the decision of the military commander, while taking into consideration the need to refrain, to the maximum extent possible, from causing damage to neighboring buildings, or parts of the building which are not designated for demolition, namely, the ground floor and the top floor**" (paragraph 5 of the response to the objection; see also similar statements in **Razeq's** matter paragraph 14 of the response to the objection in HCJ 7079/15 and in paragraph 3 of the response to the objection in HCJ 7082/15; in paragraph 14 of the response to the objection in HCJ 7087/15 and in paragraph 3 of the response to the objection in HCJ 7092/15 in **Kusa's** matter; and in paragraph 15 of the response to the objection in HCJ 7085/15 in **Hamed's** matter).

It should also be noted that during the demolition an engineer will be present on scene who will supervise the demolition step by step to ascertain the above said in "real time".

70. In this context the respondent wishes to point out that according to the engineering opinions regarding the apartments being the subject matter of the petitions, the optimal demolition method under the circumstances of the matter changes from one apartment to the other.

Accordingly, with respect to **Razeq's** apartment, drill explosive charges will be used within the apartment, on the walls facing south and west, whereas on the north front penetration explosive charges will be used. All of the above, for the purpose of preventing damage to additional apartments in the building as well as to apartments in adjacent buildings. Therefore, the estimate is that this method would enable the demolition of the exterior walls with the exception of the reserved fronts and the demolition of interior partitions in the apartment without causing structural damage to adjacent buildings and to the additional floors of the building.

With respect to the apartments of **Kusa** and **Hamed**, controlled detonation will be used, namely, small explosive devices in the rooms of the apartment for the purpose of causing a shock that would render the apartment inhabitable. According to the position of the professional officials, this method is not expected to cause structural damage, neither to the building in which the apartment is located nor to adjacent buildings.

Considering all of the above, petitioners' arguments regarding the potential damage which may be caused to the buildings in which the apartments designated for demolition are located or to buildings adjacent thereto cannot be accepted, and their request to have the demolition plan reviewed by an engineer on their behalf should also be denied.

It should be remembered that the honorable court refrained from intervening in the demolition method in view of the fact that it is a professional matter that should be adhered to by professionals, and it was so 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]

Conclusion

71. In view of all of the above the respondent will argue that there is no cause for the intervention of the honorable court in his decision to exercise his power according to Regulation 119 against the apartments in which the perpetrators lived.
72. As stated in the beginning, the respondent will request the honorable court to make a decision in the petitions at bar as soon as possible, considering the increasing number of attacks which were carried out recently and in view of the fact that maximum deterrence of additional potential perpetrators is of the utmost importance.
73. The facts specified in this response are supported by respondent's affidavit, Major General Roni Numa, GOC Central Command, IDF.

Today, 14 Heshvan 5776
October 27, 2015

(Signature)
Yuval Roitman, Advocate
In charge of HCJ Matters
State Attorney's Office

(Signature)
Yonatan Zion-Mozes, Advocate
Deputy at the State Attorney's Office