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February 10, 2016
Houses 6/13

To
Lieutenant Colonel Dror Shaul
Home Front Command Headquarters
Tel: 08-9783777
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Dear Sir,

Re: **Objection against the intention to forfeiture and seal the building which served as the residence of _____ Atrash, ID _____ from Sur Bahir**

On behalf of HaMoked: Center for the Defence of the Individual, an objection against the notice of the GOC Home Front Command dated February 5, 2016, of his intention to forfeit and seal a part of a building which served as the residence of the above Walid Atrash.

The grounds for the objection are as follows:

A. The reason for the decision to forfeit and seal the house

1. As stated in the notice, the reason for the intention to take injurious measures against the house is because the above referenced individual "committed together with others an attack in which they threw stones at Jewish vehicles which were passing on the Asher Viner route in Jerusalem with the intention to injure them. As a result of the attack Alexander Levlovitch was killed after one of a stone penetrated his car in a manner which caused him to veer from the road and hit a post".
2. As is known, the case in the matter of the above referenced individual and others is still pending before the Jerusalem district court and to date judgment has not yet been given. In addition, a central issue in this case pertains to the question of whether the death of Alexander Levlovitch was caused by the attack or not. It is inconceivable that despite the fact that the case is still pending before the court and evidence has not yet been presented therein, you take the liberty to stipulate as a fact that "As a result of the attack Alexander Levlovitch was killed after one of a stone penetrated his car in...", an allegation which is totally denied.
3. Also according to the ostensible evidentiary material in the file, no allegation was made that the above referenced individual threw stones. At the utmost, it is alleged that he was with others in the place from which stones were thrown. Furthermore. According to the evidentiary material stones were thrown in the upper part of the road before the alleged stone throwing, and it cannot be proved that stones which were thrown by any of the friends of the above referenced individual hit the car rather than the stones which had been previously thrown at the road.

B. The sealing method – engineering opinion

4. The notice dated February 5, 2016, states that you intend to seal the house of the above referenced individual by way of sealing the apartment's openings, with no structural damage to the frame of the building and to adjacent buildings.
5. An appropriate engineering plan was not attached to the notice which I will be able to examine and – possibly – offer an alternative plan should the objection and the petition be denied.

C. The parts of the building which served as the residence of the above referenced individual

6. It is an old house which was built before 1948 and consists of two bedrooms, a den, a living room, kitchen and two toilettes. The apartment serves as the residence of the above individual's father, mother and four siblings who are all young, some of whom attend school and others study in universities. The detainee lived in one room with his father and two siblings and his mother and the other siblings lived in the other room.
7. Since the house demolition policy had been renewed **the commander was meticulous about taking action only against those parts of the house which served as the residence of the suspect**. The demolition which was the subject matter of HCJ 4597/14 (Muhammed Hassan 'Awawdeh et al.) was also approved only with respect to the specific apartment in which the suspect himself lived, rather than the entire housing unit. Similarly, the demolition orders which were issued at the same time to Hebron residents who were ostensibly deemed by him to be the collaborators of the suspect in that offense, Mr. Hussam Qawasmeh and Mr. Amar Abu 'Easheh, were directed against those parts of the house which served as their personal residence.
8. If the military commander intends to realize his intention to take injurious measures against the house notwithstanding the convincing reasons to refrain therefrom, he must take such measures solely against the room in which he in fact lived.

D. The purpose of the sealing

9. The notice stipulates that "it is required for the purpose of deterring potential perpetrators from the execution of similar attacks in the future".

We are not aware of any precedent in which stones that were thrown hit a car and caused death – and consequently houses were demolished. Hundreds and thousands of stone throwing incidents take place and only on rare occasions they cause injuries. Therefore no such deterrence is required with respect to such an incident.

There is no **certainty** that such a severe measure can assist security or deter perpetrators. It is only a possibility, and as held by the Shani committee **it is a very dubious possibility, the damage of which to security exceeds its benefit**. Said committee which was appointed by the Chief of Staff delivered its conclusions to the Minister of Defense in 2005, and indeed, ever since it was no longer used in the west bank territories. The renewed use of this measure did not prove itself and on the contrary, it may possibly motivates the execution of attacks.

E. Collective Punishment

10. It is known that the family members of the above referenced individual are not involved in his actions and no guilt has been proved against them. Nevertheless they are about to be the main victims of said sanction, should it be approved. It is regretful that the peripheral punishment will harm innocent people.
11. There is no need to remind that collective punishment of this sort is **completely contrary** to international humanitarian law which prohibits collective punishment (see Article 33 of the Fourth Geneva Convention) and the infliction of harm to private property (see Regulation 46 of the Hague Regulations and Article 35 of the Fourth Geneva Convention).

F. Discrimination in the implementation of punishment and deterrence

12. Without waiving any of the above arguments and without waiving the scathing criticism against the fact that the taking of the proposed steps is neither justified nor moral, we cannot disregard the fact that a not less shocking murder of an abducted Palestinian, **Mohammed Abu Khdeir**, was committed by at least three Israelis, who were caught alive, interrogated, admitted that they had committed the deed and re-enacted it, were convicted and some of them have already been sentenced. **Nevertheless no "notice of the intention to forfeiture and demolish the building" which served as the residence of either one of them was issued!**
13. In addition, at last one of the perpetrators who committed the arson attack against the home of the Dawabsheh family in Duma village was located, an attack in which the father, the mother and the son were murdered and a young child with burns all over his body was left in the hospital. To date **no "notice of the intention to forfeiture and demolish the building" which served as the residence of the perpetrator who is facing trial was issued.**
14. One cannot disregard similar cases in which stones were thrown by Jewish settlers against Palestinians vehicles, and the only punishment which was imposed on them was incarceration, and no notice was issued against them of the intention to forfeiture and demolish the building in which they lived. This case concerns a woman who drove with her husband and daughters to a wedding of family members from Ramallah to Jenin. The woman sat near her husband who drove the car, and the two young daughters, seven and two and a half years old, sat in back seat of the car. The woman herself was at that time seven months pregnant.

While driving, when the car passed near the entrance to the Yitzhar settlement, a large piece of tar and gravel which was taken from the road was thrown at the car at least by Daniel ben Avraham ben Yochanan, the defendant in the criminal file. The piece, in the shape of a building block, broke the front window, hit the mother in her head and caused her hematoma in the frontal apidrol of the brain and hemorrhage in the artery in the [...] and [...] in the brain and an injury in her hand. The mother underwent surgery and had a cesarean section. Thereafter the stone hit the two, seven and two and a half years old young girls. The minor H. was injured as a result of the attack in her skull and eye, she suffered a frontal fracture on the right side and injuries in her limbs. She was hospitalized in the intensive care unit and received drug treatment. The other girl was wounded.

The indictment to which Daniel ben Avraham – the defendant – admitted, stated that on or about 16:00 the defendant drove his car together with his minor brother and two others. He stopped near the settlement Yitzhar in the west bank, descended from

his car and picked up a big stone **in a bid to throw it at a Palestinian car which would pass on the main road.**

The file was heard by the District Court – Central District (CrimC 8286-08-08 State of Israel v. Ben Avraham) and the defendant was sentenced to ten months in prison and to twelve months suspended prison sentence. However we did not see that an order was issued against the defendant for the forfeiture and demolition of his home.

15. **And this indeed good.** A vindictive demolition and collective punishment are totally inappropriate. And if against the citizens of Israel the state did not take such an awful measure, all the more so it is precluded from taking such a measure against Israeli residents whose right to object to occupation is recognized under international law.

G. The sanction of revocation of residency – at the same time

The Minister of Interior used against the above referenced individual the sanction of revocation of residency/ On this issue a general legal proceeding is pending and there are good chances that said sanction would be denied and rejected, either due to disproportionality between the severity of the sanction and the act proved against the above referenced individual, or due to a preclusion under Israeli law prohibiting the denial of said residency. In any event, by putting the above referenced individual in double jeopardy of revocation of residency and collective punishment insult is added to injury.

H. No sanction should be taken until all remedies are exhausted

16. It should be noted that if, God forbid, this objection is denied, the suspect's family intends to file a petition with the Supreme Court against the sanctions which you intend to take. Therefore no action should be taken against the house until all legal remedies are exhausted.

In conclusion – the intention to take any measure whatsoever against the house should be revoked, and at a minimum, the least injurious measure should suffice, and the judicial system should be given the opportunity to examine these decisions and decide on them.

Very truly yours,

(Signature)
Ahmed Khaleq, Advcate
Lea Tsemel – Law Offices

Attached: Power of attorney

CC: HaMoked: Center for the Defence of the Individual