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Jerusalem, February 9, 2016

To
Military Commander of the West Bank Area
Through the Public Liaison Office
Central Command

By email and fax

Dear Sir or Madam,

Re: Objection in the matter of the family home of _____ Amar ID _____

In the name of the family members of the above referenced detainee, whom I represent on behalf of HaMoked: Center for the Defence of the Individual, a not-for-profit association, I hereby submit this objection against the intention to forfeit and demolish the family home of the above detainee:

1. The family received on February 5, 2015, *[sic]* at dawn, a notice of your intention to forfeit and demolish the house in Nablus which served as the residence of the above referenced individual, according to Regulation 119 of the Defence (Emergency) Regulations, 1945. Said measure was taken due to your allegation that the above referenced individual "took part in preparations towards the execution of an attack on October 1, 2015, in which the late Henkin spouses were killed."
2. **We would like to already point out at this stage that no measure should be taken against the house for as long as proceedings concerning the intention to demolish it are pending. In addition, if the objection is denied, we already notify that we intend to turn to the Supreme Court and file a petition against the intention to forfeit and demolish the above house, and reasonable time should be given to us for this purpose, for the preparation and filing of the petition, without taking any measures against the house.**
3. The period which was given for the submission of the objection, three work days, is not a sufficient period for the gathering of the data, for the gathering of the documents, for visiting the house to the extent needed, and for the preparation of the objection. **On this**

matter, we request that you delay your decision in the objection, to enable us to make a thorough examination and gather documents.

- 4. In addition, I request to receive the evidentiary material on which you based your decision. Particularly, I request to receive to my possession the interrogation material from the criminal file which served as the basis for your decision and which served as the basis for the filing of the indictment and the decision to demolish the house. In the absence of this material, it will not be possible to really realize the right to present arguments, and therefore I request to give me one week from the date on which the evidentiary material would be transferred to me for the completion of the objection on this substantial issue.**

In addition, contrary to what was stated in the notice, the indictment against the detainee _____ Amar was not attached to the notice. Therefore, I request to receive the indictment as well.

- 5. Should my objection be denied, I notify of our intention to file a petition to the Supreme Court. For this purpose I request that adequate period be given to me of at least a few days, not including rest days. I am hopeful that it will not be necessary to file a petition to the High Court of Justice only for the purpose of receiving reasonable time to file the main petition.**
6. In addition, we request to be already advised of the method which is intended to be used for the demolition of the house and of the reason for using said demolishing method, and whether the possibility of peripheral damage was considered and whether there is an undertaking to compensate the adjacent buildings should any damage be caused to them as a result of an ostentatious demolition.

The apartment and the building and damage to the inhabitants:

7. The apartment being the subject matter of your notice is located in a nine story building. The apartment is located on the fifth floor and consists of about 100 square meters. Another apartment is adjacent thereto.
8. The apartment is owned by the father of the detainee _____, Mr. _____ Amar, and he rents it out to his son who got married in August 2015, and has been living there with his wife ever since. A copy of the lease agreement is **attached hereto**.
9. The opinion of the engineer Nasser Abu Lil, a copy of which is **attached hereto**, indicates that the demolition of the apartment will lead to the destruction of the floors located above the apartment and will cause severe damage to the entire building.
10. In view of the above, and due to the fact that the demolition will cause damage to the entire building and not only to the apartment designated for demolition, no measure should be taken against the apartment and the building so as to prevent peripheral damage and damage to the building.

Collective Punishment

11. There can be no doubt that a demolition of a home which serves as the residence of a family is a measure of collective punishment which harms innocent people. The demolition will harm the family of the detainee _____, and his father, the owner of the apartment, and therefore the demolition constitutes an immoral and disproportionate act.

12. As such, house demolition constitutes a violation of international humanitarian law, which prohibits collective punishment (Article 33 of the Fourth Geneva Convention) and the infliction of harm and destruction of private property according to Regulation 46 of the Hague Regulations and Article 53 of the Fourth Geneva Convention. House demolition also constitutes a severe violation of the dignity of the family members and of their right to live in a dignified manner and to housing.
13. Your alleged intention in making the decision to demolish the house does not change the nature of this measure or its ramification on the family members. In fact, the demolition of the house only injures the family! It does not directly injure the suspect, who does not currently live in the house.
14. Not without reason, this power to demolish family homes is located in the defense regulations, outdated regulations which were enacted in 1945, in the previous century, during the Mandatory rule, toward the end of the Second World War. This power belongs to a different times, ancient times. It is time that this remnant will also cease to exist like almost all other defense regulations which were abolished.
15. Jewish law also unequivocally prohibits to injure the innocents:

**Far be it from you to do such a thing--to kill the righteous with the wicked, treating the righteous and the wicked alike. Far be it from you! Will not the Judge of all the earth do right?"
(Genesis 18:25)**

And even if the language of Regulation 119 permits to injure the innocents for everyone to see and beware, the military commander must interpret the power and exercise it in this spirit. He should beware from leaving a large family without a roof over its heard. And it was so held by this honorable court, by the Honorable Justice Cheshin:

Since the beginning of our being, we have all known and memorized the same basic principle: Everyone shall bear his own crime and be put to death for his own sin. In the words of the Prophet: "The person who sins will die. The son will not bear the punishment for the father's iniquity, nor will the father bear the punishment for the son's iniquity; the righteousness of the righteous will be upon himself, and the wickedness of the wicked will be upon himself" (Ezekiel 18, 20). There is no punishment without a warning, and punishments are inflicted only upon the offender himself. This is the Law of Moses, and it is written in the book of the Law of Moses: "The fathers shall not be put to death for the sons, nor the sons be put to death for the fathers" (2 Kings 14, 6).

... Since the establishment of the State – and certainly so since the Basic Law: Human Dignity and Liberty – we read into the provisions of Regulation 119 of the Defense Regulations, read into it and embed in it, values which are our values, the values of a Jewish, free and democratic state. These values will lead us directly to the ancient times of our people, and our times are like those times: In those days they will not say again, the fathers have eaten sour grapes, and the children's teeth are set on edge. Each man who eats sour grapes, his teeth will be set on edge.

HCJ 2006/97 **Abu Fara Janimat v. GOC Central Command**, IsrSC 51(2) 651, 654-655.

Proportionality:

16. Without derogating from the general objection to the demolition of the house as specified in this objection, we request that to the extent a decision is made to take this measure, the least injurious option possible shall be used.
17. The principle of proportionality also applies to the exercise of power according to Regulation 119. This principle requires that the least injurious option of the various available options be used. It seems that if there is no other alternative but to take measures against the house, it would be appropriate to examine the alternative that would enable the family to continue to live in the house, rather than turn the entire family homeless.
18. It is incumbent on the military commander to consider the possibility of sealing the suspect's room at the most, or of sealing a certain part of the house, so that the family, despite the harm caused to it and to the house, would be able to continue to live therein.

The demolition of the house will not be beneficial

19. In any event, even if such an injurious and inhumane measure may be justified by virtue of any gain which may arise from the execution of the demolition, in the sense that "the cause justifies the means", here too, the loss of the act exceeds its gain: **already in 2005 the Minister of Defense accepted the recommendation of the committee appointed by the Chief of Staff to stop house demolitions in view of the fact that deterrence did not prove to be effective and due to the fact that the drawbacks of the demolitions outweighed their benefits.**
20. No experts and committees are required to figure out that such an injury, which leaves children and families homeless, can only increase the frustration, the despair, the anger and the vicious circle of hatred amongst the injured population.

Discrimination

21. The family of Ami Popper, who slaughtered innocent laborers, did not hasten to leave its home, as such sanction never hung over its head. The Goldstein family, though residing in the Occupied Palestinian Territories (OPT), never considered looking for alternate housing after its son massacred dozens of worshippers (and, on this issue, the matter of his **headstone**, was handled with "surgical" restraint). No special measures were taken against the cell of Jewish civilians who planned to hide explosives in an educational institution in Jerusalem, and conspired to carry out other attacks, other than the charges which were pressed against them. The individuals who had burnt the youth Mohammed Abu Khdeir did not vacate their homes on the fear that it might be demolished. The individuals who had burnt the Dawabsheh family were not even arrested.
22. The authorities knew very well to restrain the "deterrent measures" at their disposal even in the most grievous cases that cried out for deterrence, and refrained from causing harm to the innocents. It would also be appropriate for them to act in the same manner in the case at hand.

23. The fact that said measure of house demolition has never been used against Jews, neither in the OPT nor in Israel, also increases the sense of frustration, discrimination and deprivation and the sense that this measure is deliberately taken against the innocents and is solely directed against Palestinians.

House demolition – double punishment of the innocents

24. The detainee was put on trial. If he is proven guilty, as you allege in your notice, a very severe incarceration sentence is expected to be imposed on him. His incarceration has already caused great damage to the family and to its ability to survive without its principal provider. The addition of this cruel punishment of having the family home demolished constitutes a harsh, cruel and inhumane impingement which would most certainly fail to achieve deterrence or prevention, but would only cause severe harm to the innocents.

The suspicions against the detainee

25. According to the notice as drafted, there is no allegation that the detainee was involved in the shooting itself, and his part in the execution of the offense was very minor. The family argues that the detainee denied any material involvement on his part in the execution of the offense and refused to take an active part. Therefore, as aforesaid, you are requested to transfer the relevant material and to enable the presentation of detailed and exhaustive arguments on this issue.
26. In any event, it seems that your decision was premature. Basic respect of the judicial system, of the presumption of innocence and of the separation of powers should have caused the decision to be delayed until judgment is given by the court. This is especially so in view of the fact that the detainee is not accused of having directly committed the murder and his conviction is not obvious. The demolition of the house before conviction constitutes an act of revenge which has nothing to do with a balanced administrative decision!

Damage to the entire building

27. As aforesaid, the apartment designated for demolition is located on the fifth floor. Any act of demolition taken against this apartment will cause the entire building to collapse, or will at least, destabilize it. For this reason the intention to demolish the house should be revoked. In any event you are requested to provide details of the demolition method which you intend to use so that we shall be able to present said data before an expert on our behalf and consider the submission of an engineering opinion.
28. In view of all of the above, we request to refrain from the forfeiture and demolition of the house. You are requested to disclose the interrogation material related to the substantiation of the suspicions against the above referenced individual and details of the demolition method and to enable us to complement our arguments on this issue.

Delay and extraneous considerations

29. About six months passed from the occurrence of the acts attributed to the detainee. Your current decision was given with considerable delay. The mere delay impinges on the lawfulness of the decision and requires that it be reconsidered.
30. In addition, the delay points at the fact that the decision did not derive from circumstances which existed at the time on which the alleged offense was committed, but rather from

later considerations which are not directly related to the actions of the detained family member. For this reason too, your decision is unlawful and should be revoked.

Very truly yours

(Signature)

Labib Habib, Advocate