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At the Supreme Court
Sitting as the High Court of Justice

H CJ 1633/61

In the matter of: 1. _____ Id'es, ID No. _____

2. _____ Id'es, ID No. _____

3. _____ Id'es, ID No. _____

4. _____ Id'es, ID No. _____

5. _____ Id'es, ID No. _____

6. _____ Id'es, ID No. _____ (minor)

7. **HaMoked: Center for the Defence of the Individual, founded by
Dr. Lotte Salzberger – RA 580163517**

Represented by counsel, Adv. Smadar Ben Natan and/or Adv. Galit
Lubetzky and/or Adv. Michal Pomerantz and/or Adv. Anu Deuel
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The Petitioners

V.

1. Commander of IDF Forces in the West Bank

2. Legal Advisor for the Judea and Samaria Area

Represented by the State Attorney's Office

The Respondents

Response on behalf of the Petitioners

In accordance with the decision of the Honorable Court dated March 13, 2016, the Petitioners hereby respectfully respond as follows:

1. The undersigned first wishes to respond to the question asked during the hearing by Honorable Justice Melcer with respect to the statements made by the minor _____ Id'es during his police interrogation, wherein he answered that his mother thought he was a hero and had brought great honor to the family (Annex E of the petition). We note that _____ was apprehended in the middle of the night in his home and his statement to the police was given on January 19, 2016, whereas his parents saw him for the first time only after his arrest on February 4, 2016, such that _____ never spoke to his parents prior to the interrogation and his statements reflected his own opinion and were not based on a conversation with his mother.
2. Support for this can be found in an interview with Petitioner 2 aired on the Watan television channel on January 19, 2016, in which she described her son's arrest during the night and said she did not at all believe that her son committed the murder as alleged. This is not how a mother who considers her son a murdering hero sounds. We also note that in the interview, the mother recounts how she and Petitioner 1 were interrogated at length by the soldiers, and one wonders why the Respondents have no record of this.

The interview is available in Arabic at: <http://www.wattan.tv/video/161035.html>

3. In addition to the following, the Petitioners refer the Honorable Court to another interview, conducted with the father on al-Shams Radio on January 21, 2016 (two days after the son's arrest), wherein the father expressly denied the allegation that he had said he was proud of the attack committed by his son:

Interviewer: You know that some media outlets have quoted you as saying that you're proud of this attack and that you knew about it, or knew about it after the fact and that you're proud of this attack.

Parent: Look... what media outlet?

Interviewer: It doesn't matter where it was published... a few... do you deny this? Because it's important for us to know what your position is.

Parent: My friend, I know nothing about this. Of course I deny it, and I haven't seen anything about it. I'm a person who gets up at 3:00 AM to go to work and comes home at 7 PM. I don't follow world news. I eat dinner and go to sleep. I see my kids for half an hour. I usually work during the week, see the kids on Fridays and Saturdays and they were fine. I didn't notice any problems with them or anything.

The interview (in Arabic) is available at: <http://www.ashams.com/print.php?ID=175993> and at: <https://soundcloud.com/ashamsradio/eqcaicpdnhyy>

A copy of the full transcript of the interview is attached hereto and marked Exhibit A.

4. With respect to the statements made by Petitioner 4, the brother, in a story that aired on Channel 10, as presented in the notice submitted by the Respondents – the Petitioners wish to note that _____'s arrest

was traumatic for the family. The soldiers entered the home in the middle of the night, choked _____, did not give the women a chance to get dressed and took _____ away with the family not knowing what the issue was. It is in this context that the statements made by Petitioner 4 in the media should be understood, as he was interviewed just a few hours after the fact and was upset and angry at the IDF soldiers for the harm caused to his family. For the sake of accuracy, it should be noted that the translation of the brother's statement in the TV story was wrong. The brother said he respected attacks (whereas the translation read that he supported them).

5. In any event, **during the hearing held before the Honorable Court, counsel for the State expressly said that there was no allegation regarding any prior knowledge or involvement on the part of minor's family with respect to his intent to commit an attack.** The very attempt to find all sorts of statements made by the minor's family after the fact, fails to conform with the express purpose of Regulation 119, which is deterrence.
6. The position of this Honorable Court, as ruled many times in the past, is that powers pursuant to Regulation 119 are used solely for the purpose of deterrence, as opposed to punishing family members which would be collective punishment of uninvolved persons. Use of Regulation 119 in the matter at hand is not meant to punish the minor's family for his actions, and certainly not for his brother's statements, but, allegedly, only to deter other families so that they would prevent their children from acting in a similar way in the future (see HCJ 8091/14 **HaMoked: Center for the Defence of the Individual v. Minister of Defense**, dated December 3, 2014, para. 17, HCJ 8084/02 **Abassi v. GOC Home Front Command**, IsrSC 57(2) 55, 30 (2003); HCJ 4597/14 '**Awawdeh v. West Bank Military Commander** (January 7, 2014), para. 19; HCJ 5290/14 **Qawasmeh v. West Bank Military Commander** (August 11, 2014), para. 23; HCJ 6288/03 **S'adadeh v. GOC Home Front Command**, IsrSC 58(2) 289, 294 (2003), p. 292; HCJ 698/85 **Dajlis v. IDF Commander in the Judea and Samaria Area**, IsrSC 40(2) 42, 44 (1986)).
7. In addition to the above, and beyond the facts in the case, an examination of the positions of the family held retroactively and after the fact is not included in the tests or criteria established in case law regarding the issue of proportionality relating to the demolition of the family home (for the proportionality tests in demolition cases see HCJ 8154/15 **Daud Abu Jamal v. GOC Home Front Command**, p. 19, para. 15 of the dissenting opinion of Honorable Justice Mazuz) and, in any event, has no effective impact on it. As past experience shows – even in opposite cases, wherein the family rebuked the attack that had been committed and the harm to innocents – this did not prevent the demolition of the home (see, e.g. HCJ 8066/14 **Abu Jamal et al. v. GOC Home Front Command** (December 31, 2014).

A copy of the petition is attached hereto and marked Exhibit B.

8. Note, if the argument is that deterrence is meant to prompt Palestinian parents in the OPT (and them alone) to better supervise their children – what evidence threshold are the parents of young assailants, who did not know of the actions of their children, expected to meet in order to prove that they did, in fact, try to prevent the act? Is the Honorable Court expected in such circumstances to examine parental and supervisory skills? Moreover, the supposition that family members will not try to supervise and look after their minor son due to the obvious desire to prevent him to put his own life at risk, but will do so simply due to concerns over the demolition of their home, is perplexing.
9. Finally, it must be stressed – time and again – that **the person in question is merely a 15-year-old minor**, who, according to both case law and criminal law, holds decreased criminal liability, given his capacity to understand the meaning or wrongfulness of his actions, which is the direct and veritable result of his young age (on this issue, see, e.g. CrimA 5048/09 **A. v. State of Israel** (dated February 14,

2010) and sec. 40.11(1) of the Penal Code (Amendment 113) 5772-2012). Therefore, the preliminary question which need be examined in this case is whether deterrence through house demolitions can at all be established in cases involving minors with limited judgment – a question requiring minimal empiric facts which do not exist in this case.

Today, March 17, 2016

[Signed]

Anu Deuel Lusky, Advocate

Counsel to the petitioners