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Date: September 9, 2002
In your response please refer to: 17908

Colonel Shlomo Politis
Legal advisor for the West Bank
Legal advisor's office
P.O. Box 10482
Beit El 90300

Dear Colonel Politis,

Re: **Appeal against the demolition of the house of the A-shtiveh family from Kafr Tal within the framework of HCJ 6329/02**

Following the decision of the Supreme Court dated August 27, 2002 in the above referenced petition, the following are our arguments against the demolition of the house.

Description of the house and its inhabitants

1. The house being the subject matter of my letter is an old single story house to which building additions were added throughout the years. The last addition is a second floor which is used as a separate residential unit by Ya'kub A-shtiyeh and his family.

The first floor of the house is used by the couple _____ and _____ A-shtiyeh and their unwedded sons.

_____ is 60 years old. He was Tal's high school principal for 23 years and the principal of the 'Iraq Burin village high school for one year and retired in August 2001. He suffers from medical problems in _____ and he is treated by medications. His wife, _____, is 59 years old. The couple has eleven children, six of whom are married and they have twenty six grand children.

_____, the retiree, has never been arrested until July 19, 2002. On July 19, 2002 he was arrested as part of the arbitrary arrest of all male family members, but was released later on, since nothing was found against him.

The couple's children who live with their parents on the ground floor of the house are _____, _____, _____ and _____. _____ is a 24 year old third year accounting student in the Jerusalem Open University and is employed by the Palestinian National Security Forces. He is engaged to be married but has not yet signed a marriage contract. _____, is 19 years old and was employed by the Palestinian Preventive Security Service. _____, is a 16 year old ninth grade student, and _____, is a 14 year old boy, an eighth grade student. _____, _____ and _____ were arrested together with their father in said collective arrest. An indictment was filed against _____ for stone throwing in 2000 and for the firing of two bullets at IDF tanks in Ramallah in January of this year. No involvement in terror attacks was attributed to him. _____ and _____ were released without any condition or charges.

The apartment of _____, who is 35 years old, and of his wife _____, who is 28 years old is located on the second floor. _____ and _____ have five daughters and one son who live with them in this apartment. _____, is an 11 year old fourth grade student; _____, is a 9 year old third grade student; _____, is a 7 year old second grade student; _____ is a two year old toddler and the youngest son, _____, is a one year old baby. The apartment consists of two bedrooms, a living room, bath rooms, a kitchen and a balcony. _____ was also arrested in the arbitrary arrest, has been interrogated for a long period of time and was eventually released from his arrest. He has never been previously arrested, with the exclusion of an administrative arrest for six months in 1988, at the peak of the first intifada, when he was 22 years old.

The son of the A-shtiyeh couple, _____, is wanted by Israel since January 2002, and was incarcerated in a Palestinian prison until the entry of IDF forces into Nablus in April, when he disappeared.

A drawing of the house is attached to my letter, marked A.

No authority to damage the residential unit on the second floor

2. As described above, the house consists of two clearly separate and distinct residential units: the ground floor unit, in which the elderly couple lives, and the separate unit, on the second floor, in which the family of the son _____ lives.

3. The rule is that no unit other than the residential unit in which the suspect in committing an offense against state security was living, may be demolished – in this case it is the son _____. Some of the Supreme Court Justices base this rule on the concepts of proportionality and the exercise of reasonable discretion. The Honorable Justice Chesin bases this rule on the authority itself, and holds that according to the current interpretation of regulation 119 no authority is vested beyond the residential unit of the suspect.
4. Damaging the house of _____'s family is therefore forbidden. There is no authority to do it, and in any event, damaging this additional unit which is used by a separate nuclear family with six children, exceeds reasonable discretion and the boundaries of proportionality.

The inhabitants of the house are not involved in anti security activity

5. As described above, practically all of the family members living in the house have been released after they were arrested in the mass arrest in July. An indictment was filed only against one of the young sons (which has nothing to do with terror attacks). (another son who does not live at home was put in an administrative detention and has not yet undergone judicial review).
6. It is therefore evident, that even as far as you are concerned, the inhabitants of the house who will be harmed as a result of its demolition are innocent people.

Danger to nearby houses

7. The northern wall of the house is a joint wall with the house of the neighbor _____ A-shtiyeh. On its western side the house is almost adjacent to the house of _____ A-shtiyeh: the distance between the houses is only about three meters. Another residential house is located 15 meters away from the house being the subject matter of my letter, and across the road a fourth three story house is located, which consists of rented apartments. The demolition of the house with explosives will undoubtedly cause damage to all of the above four houses. A demolition by a bulldozer is also expected to cause damage to the closer houses. Any kind of demolition may cause damage to the house which has a joint wall with the house of my client, and no demolition should be carried out before an **inspection is made by an engineer**, of the extent by which the house of my client supports the house adjacent to it and of the concern that the demolition thereof will destabilize said residential house.

Proportionality

8. Notwithstanding my request of the state's counsel, advocate Helman, I have not yet been informed what were the suspicions which were pending against the wanted son. It is also not clear what is the evidence which ties the son with unlawful actions. In any event, it seems that this is not a prolonged activity (he is wanted only since January), and if a membership in a terrorist cell is concerned - the centrality of his position in the cell should be examined. The cumulative effect of the demolition of family houses until this present time should also be considered (according to the state, a deterring effect has already

been achieved), as well as the question of the added value of the demolition of this additional house to what has already been achieved.

9. Against considerations of deterrence, the severe damage that will be caused to the residency of family members who have not sinned and who were not involved in terrorism, including small children, should be considered; the damage that will be caused to the residential unit that the wanted person has not lived in and the danger to nearby houses should all be considered.
10. The violation of fundamental rights of so many can not be justified by a hypothetical claim concerning an additional deterrence which would be achieved by the demolition of another house of innocent citizens, which would be added to dozens of other houses which have been demolished until now over such a short period of time.

Demolition in the course of hostile activities

11. The state's request to schedule an urgent hearing in the petition indicates, that you do not regard the demolition of the house as an act pursuant to regulation 119 of the Defence (emergency) Regulations, 1945, but rather as an act taken by the military commander under the powers and authorities granted to him by the customary international law: whether under the limited permit which is implied from Article 53 of the Fourth Geneva Convention (concerning an occupied territory) or under the limited permit in Article 23(g) of the Hague Regulations (concerning circumstances of hostilities).
12. In this regard I would like to remind you that the customary international law utterly forbids to hit civil targets and to carry out acts of vengeance and collective punishment. By no standard, a civilian house in which families with their children live, can be considered as a legitimate military target. The demolition of a house when no combative activity is being carried out in its vicinity, no fire is opened there from and it is not used as a hiding place for combatants – can not be defined (by any standard) as a damage incidental to legitimate combative actions. The demolition of a house only because of the deeds of a person who used to live therein is clearly an act of vengeance and collective punishment.
13. Please be further reminded, that the possible demolition of the house being the subject matter of my letter joins a wide scale of allegedly unlawful acts of destruction which have already been executed over the last few months throughout the Area. It seems that you should examine your actions in this regard also in light of Article 147 of the Geneva Convention and Article 8(2)(a)(iv) of the constitution of the International Criminal Court.

Conclusion

14. The demolition of the house is unlawful and does not meet the criteria established by case law concerning house demolition pursuant to regulation

119 of the Defence Regulations, and even more so the criteria which permit demolition due to military needs.

15. You are hereby requested to advise us that there is no intention and that there will be no intention to demolish the house. Alternatively, you are hereby requested to undertake, that in the event such an intention is formulated (upon a material change of circumstances) the family would be given an advance warning for hearing purposes, or at least to enable them to find alternative accommodations and remove their belongings from the house. Unfortunately, even these minimal matters were not respected during recent IDF operations.

Sincerely,

Yossi Wolfson, Advocate

Enclosures: Exhibit A (drawing)

CC: Adv. Helman, HCJ department, State Attorney's Office