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**CENTER FOR
THE DEFENCE OF
THE INDIVIDUAL**

המוקד להגנת הפרט

مركز الدفاع عن الفرد

Date: June 25, 2014

In response please cite: 83308

To:

West Bank Military Commander
via Public Liaison Office
Central Command

Via Fax and Email

EXTREMELY URGENT!

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Dear Sir,

Re: **Objection concerning the family residence of 'Awwad, ID No. _____, and the family residence of 'Awawdeh, ID No. _____, in Idhna Village**

شارع أبو عبيده ٤
ألقدس ٩٧٢٠٠
هاتف. ٠٢. ٦٢٨٣٥٥٥
فاكس. ٠٢. ٦٢٧٦٣١٧

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1. Two days ago, in the afternoon, the 'Awwad family received notice of your intention to seize and demolish the structure where the above named _____ 'Awwad resides pursuant to Regulation 119 of the Emergency Regulations (1945) (hereinafter: **Regulation 119**). It is your contention that this measure is being pursued because Mr. _____ 'Awwad "perpetrated a terrorist attack on April, 14, 2014" and because it "may deter potential terrorists and promote security in the Area".
2. Your notice indicates that objections against the intent to demolish the house may be filed within 48 hours. The family has authorized the lawyers at HaMoked: Center for the Defence of the Individual to handle all matters relating to the demolition. This objection is filed accordingly.

Attached herein is a power of attorney from Mr. _____ 'Awawdeh, the brother of Mr. _____ 'Awwad.

3. **We wish to stress that the house must not be damaged so long as proceedings regarding the intent to seize and demolish it are in progress. Furthermore, insofar as this objection is rejected and your decision stands, we intend to file a petition against the decision to the Supreme Court and we must be granted a reasonable period of time do to so, during which no action that would cause damage to the house may be taken.**

4. **Additionally, we stress that the house slated for seizure and demolition does not belong to _____ ‘Awwad but to his brother, Mr. _____ ‘Awawdeh, as detailed below.**

The prohibition on house demolition

5. Demolishing the home of a family is a cruel and inhuman measure which severely traumatizes the family, leaving it destitute and displaced.
6. Demolition targets individuals who have not offended and contradicts a supreme and fundamental moral and legal principle, whereby ““Parents are not to be put to death for their children, nor children put to death for their parents; each will die for their own sin.” ([2 Kings 14: 6 \(New International Version\)](#)); see also the remarks of Honorable Justice Cheshin in H CJ 2006/97 **Ghneimat v. GOC Central Command**, IsrSC 51(2) 651, p. 654), and it is therefore entirely prohibited.
7. House demolition is a breach of international humanitarian law, which prohibits collective punishment (Art. 33 of the Fourth Geneva Convention), as well as damage to and destruction of private property (Art. 46 of the Hague Regulations and Art. 53 of the Fourth Geneva Convention).
8. The demolition of a family home is also a violation of fundamental rights – the right to live in dignity, the right to shelter and the right to property.
9. While the seizure and demolition of homes under Regulation 119 for the purpose of deterrence has been sanctioned by the Supreme Court, it must still meet the test of proportionality and the military commander must thoroughly examine the matter and strike a proper balance among all the interests at stake.
10. Among others, the military commander must consider the extent of the harm to innocent people, inquire who owns the home and what size the home is, consider whether there is any evidence that any of the individuals residing in the home were aware of the actions taken by the person alleged to have committed a terrorist attack and to what extent there is substantiated evidence with respect to the cause underlying the order (see, e.g., §13 of Barak’s opinion in H CJ 6299/97 **Yasin v. Military Commander**) and more. These issues are examined below.

The facts about the home and the family

11. The approximately 500 square-meter ‘Awawdeh home currently houses 16 individuals. The house has two stories, with four storage units on the bottom floor and two apartments on the top floor. One apartment is occupied by _____ ‘Awawdeh’s family of eight, including his wife and their children aged 5 to 19. The second apartment is occupied by _____ ‘Awwad’s family of ten, including his wife and their eight children aged three months to 20. As is known, _____ ‘Awwad and his son _____ are currently held in detention. **Thus, the demolition of the home would leave 16 individuals, including eight innocent minor children, without a roof over their heads.**

12. The demolition of the residence of Mr. ‘Awwad and his brother ____ ‘Awawdeh, his wife and their children, would cause unimaginable suffering to innocents and seriously violate their human dignity. Beyond requirement, we note that ____ ‘Awawdeh and his family have no connection to actions intended to harm security. ____ was detained once, many years ago, in 1987, and released within several days with no indictment served against him.
13. Your allegation that the home that is slated for seizure and demolition is owned by ____ ‘Awwad is incorrect. As stated in the opening paragraphs, the land and the structure built upon it belong to ____ ‘Awawdeh.
14. The land on which the structure was built was originally owned by ____ ‘Awawdeh’s father, and then transferred to ____, who built the home over several years, beginning in 1995 and ending in 2003. The house is registered with the tax authorities and the Idhna municipality solely under the name of ____ ‘Awawdeh. The water and electricity bills for the entire house are, accordingly, in ____ ‘Awawdeh’s name.

Attached herein is a copy of the Palestinian Finance Ministry, Property Tax Department, record of ____ ‘Awawdeh’s title with respect to the land and the structure, marked A.

Attached herein is a copy of confirmation from the Idhna municipality of ____ ‘Awawdeh’s title with respect to the land and the structure, marked B.

Attached herein are copies of confirmations from the Idhna municipality of the utility bill registration under ____ ‘Awawdeh’s name, marked C and D.

15. ____ ‘Awawdeh’s family moved into the house after construction was completed, followed by the wife and children of ____ ‘Awwad (who was incarcerated in Israel at the time). After ____ ‘Awwad’s release from prison in 2011, the brothers signed a contract on May 15, 2012, according to local custom and in order to prevent a possible family feud in the future. The contract clarified that ____ had transferred all rights in the apartment in which he resides to _____. Thereafter, on May 20, 2012, the brothers signed a lease agreement whereby ____ would lease to ____ the second floor apartment in which ____’s family resides, in return for 800 Jordanian dinars per year.

Attached herein is a copy of the sale agreement between ____ and ____, marked E.

Attached herein is the copy of the lease agreement between the siblings, marked F.

The tests of proportionality

16. In view of the above, your intention to seize and demolish the house for the purpose of deterrence fails to meet the test of proportionality. It does not meet the test of rational connection between the measure taken and the purpose sought, and, we note beyond requirement, also fails to meet both the test of the least injurious measure, and the harm versus benefit test (proportionality in the narrow sense).

17. With regards to the issue of rational connection between the measure taken and the purpose sought, i.e., between the demolition of the home and deterrence: a high order of proof is required with regards to the efficacy of such a severe and injurious measure. And yet, not only is there no evidence that house demolitions do in fact serve the official purpose of deterring potential terrorists and promoting security in the Area, but security authorities themselves have reached the conclusion that the long pursued military policy of demolishing homes where relatives of alleged terrorists reside had failed to prove itself as a deterrence. In view of this conclusion, in 2005, the Defense Minister accepted the recommendations of a committee appointed by the Chief of Staff, to stop house demolitions because deterrence had not been proved effective and the damage caused by the demolitions exceeded the benefit.
18. Indeed, in 2009, the Supreme Court sanctioned the demolition of parts (!) of the Abu Dheim residence and one floor (!) of the home where Husam Dwayat resided. The State explained that it had suspended the decision to stop house demolitions in these cases because there appeared to be a new phenomenon of terrorist attacks perpetrated by residents of Jerusalem and that this new threat necessitated deterring measures ([HCJ 9353/08 Abu Dheim v. GOC Home Front Command](#) and [HCJ 124/09 Dwayat v. Defense Minister](#)).
19. Additionally, as stated, in these cases the decision was to demolish the houses where the perpetrators had lived only partially since other nuclear families lived in them as well (on this issue see HCJ 5510/92 **Hamada Turqman v. Minister of Defense** wherein the Supreme Court ruled that the demolition of the entire building was disproportionate given the damage to other relatives living there, and HCJ 5696/09 **Mahmoud Mughrabi v. GOC Home Front Command**).
20. In contrast, demolishing the ‘Awawdeh home is a return to the policy practiced prior to the Defense Minister’s decision to stop demolitions of homes belonging to relatives of individuals involved in terrorist attacks, as their efficacy had not been proven. In your decision you do not explain how and why, at this particular point in time, you have decided to renew house demolitions, contrary to the recommendation and decision of 2005.
21. It is noted that in your notice of the intention to seize and demolish the ‘Awawdeh home, you employ the word “may” in reference to the purpose of this measure, “may deter potential terrorists and promote security in the Area”. However, the fact that this extreme and irreversible measure “may” achieve one goal or another is insufficient justification for using it.

22. The decision to stop house demolitions and the unexplained departure from this decision raise grave concerns that the purpose here is not deterrence, but rather the decision is the result of extraneous considerations. These concerns grow graver given the abduction of three Israeli youths in the West Bank on June 12, 2014, apparently near Hebron, and the large scale military operation launched in an effort to locate and release them. Shortly after these incidents, on June 16, 2014, the media reported that the Government of Israel had instructed the Justice Ministry to examine the possibility of demolishing the homes of Hamas operatives and other sanctions. Thus, the decision to demolish the ‘Awwad home for the purpose of deterrence, in response to an attack he allegedly perpetrated prior to the abduction incident raises concerns that the purpose of the demolition is in fact to take revenge on Hamas, which the Government of Israel holds responsible for the abduction. Considerations of revenge are clearly prohibited and have no place in a law abiding country.
23. Demolishing the ‘Awawdeh home also fails to meet the other two proportionality tests. The test of the least injurious measure and the test of proportionality in the narrow sense. It is clear that the military commander is able to use less injurious means in order to achieve deterrence (such as fining the family, or other sanctions), rather than the most extreme, injurious and irreversible measure. It is also clear, in light of all of the above, that the injury caused by the demolition – a serious violation of the dignity of innocents, leaving 16 individuals, including minors, without shelter – far exceeds its benefit which amounts to supposition and conjecture.
24. It is further noted that an indictment has been served against ____ ‘Awwad. **He has not been tried yet** and his guilt has not been proven. Given the fact that if and when he is convicted, he will be sentenced and penalized for his actions, the haste with which you pursue the demolition of the family home is unclear.

Conclusion

25. House demolition is a cruel measure which violates fundamental rights and human dignity. It is a breach of international humanitarian law and punishes the innocent. It is therefore entirely prohibited.
26. While Israeli jurisprudence does sanction the demolition of perpetrators’ homes under Regulation 119 for the purpose of deterrence, any decision to do so must meet the test of proportionality.
27. The facts described above – the demolition would leave 16 individuals, including minor children, as refugees, without shelter; the house slated for demolition does not belong to ____ ‘Awwad, but to his brother; ‘Awwad’s guilt has yet to be proven; the brother and his family have no connection to activity designed to harm security; the withdrawal from the security authorities’ decision not to demolish homes is unexplained and there is concern that this decision is motivated by extraneous considerations – all together render the decision extremely disproportionate and it must be withdrawn.

28. Therefore, we request that you retract any intention to demolish the families' home. We note again, that should you decide to reject this objection, we shall ask for a reasonable period of time to appeal to the Supreme Court, during which no action that would damage the families' home may be taken.

Sincerely,

Sigi Ben Ari, Adv.

Enclosed:
Power of Attorney
Annexes A-F