ANDRE ROSENTHAL | ADVOCATE

January 21, 2016
Ref: 81/5

To:
IDF Commander in the West Bank
By e-mail: pniot-tzibur@mail.idf.il

Dear Sir,

Re: The Khalil Family Home, Dura, Hebron District

1. I am representing the Khalil family on behalf of HaMoked: Center for the Defence of the Individual. Power-of-attorney enclosed.

   I request to receive a copy of the minutes of ___ Khalil's ISA interrogation.

2. According to the indictment attached to the Notice of Intent to Seize and Destroy the home of ___ Khalil, an occupant of the house has committed two murders and three attempted murders. Doubtlessly, should he be proven guilty, he shall face the severe penalties set in Israeli law.

3. The question that arises is why you see fit to take action under Regulation 119 against his wife and their five children. The material that has been provided to me contains not a shred of evidence linking the wife and children to the acts in question. The connection, at least in the children's case, is a blood connection. The demolition of the home of the wife and five children constitutes collective punishment for all intents and purposes, despite repeated claims that it is a deterrent against potential terrorist attacks. This policy, implemented by you for several months, cannot be said to have stopped the stabbings or attacks that have been taking place in the West Bank, Jerusalem, and elsewhere in the country. As you know, use of Regulation 119 is not a recent matter. It has been widely used in the West Bank throughout the occupation, beginning in 1967, and still, the Palestinians persist in their fight against the occupiers and commit terrorist attacks, which, as you know, are the weapons of the weak. There is good reason to reconsider and discontinue the use of this ancient policy, in place since the British Mandate, which has never proven itself. Terrorist attacks and house demolitions have become an inseparable part of the Israeli-Palestinian way of life. We argue that the time for a paradigm shift has come. As you know, punishing innocents who have nothing to do with any sort of criminal act defies not only universal legal principles, but also Jewish law.

4. Using the argument of "deterrence" in isolation from the penalty the court will impose on the perpetrator pursuant to Sec. 40.G of the Penal Code, contradicts fundamental principles in Israeli law. As is known, though the Israeli Penal Code does not apply in the West Bank, the perpetrator is standing trail in the Tel Aviv District Court and the Supreme Court has repeatedly ruled that where a lacuna exists in security legislation, the void may be filled by Israeli law. We refer to the remarks of Justice Arbel with respect to the use of the "deterrence" argument in HCJ 7146/12 **Serge Adam v. The Knesset** (published in Nevo), though made in the context of persons seeking asylum in Israel, the principle is the same:

> 85… Indeed, there can be no dispute that the purpose of putting a stop to infiltration is both proper and important, given the difficulties this phenomenon has caused. Yet, the meaning of this purpose, in the context of the amendment, is deterrence. In other words, the fact that infiltrators are put into custody deters potential infiltrators from reaching Israel, as they know that they too, would be put into custody. To put it in Vice President Cheshin's poetic language: "Let us not be confused by the polite language. We all know that inside the kid gloves, a fist awaits" (Stamka, p. 769).
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> 86. The difficulty raised by deterrence as a purpose is clear. A person is put under arrest not because he poses some sort of personal risk, but to deter others. He is treated as a means rather than an end. Such treatment is undoubtedly a further affront to his human dignity. "Human dignity sees a person as an end, not a means for achieving other people's ends" (Barak, Constitutional Interpretation, p. 421). "People are always a purpose and a value unto themselves. They cannot be seen merely as a means, or a commodity to be traded – however noble the purpose" (First **Kav LaOved** case, p. 399). I have also noted that "a person cannot be treated solely as a means to incidental, external ends, as this is a violation of his dignity", as the philosophy of Emmanuel Kant teaches us (**Human Rights Division**, para. 3 of my opinion).

5. In terms of international law, the State of Israel exists by force of a UN resolution, hence the international legal legitimacy for its existence. We are entirely baffled by the systemic disregard shown by the State of Israel, and in particular the IDF Commander in the West Bank, for the prohibitions set out in international law with respect to damaging private property when there is no imperative military need to do so. In the case herein, there is no dispute that the act in question is purely punitive. The section under which the Regulation appears evinces the intent of the British legislator – Part XII – Miscellaneous Penal provisions. The findings the Supreme Court has made on the "true" purpose of the Regulation, i.e. "deterrence", are, as you know, merely subterfuge.

6. What completely eludes us, and we have asked this question repeatedly and never received an answer, is why use of this draconian power granted by Regulation 119, which is better suited for a junta than a country that aspires to be "Jewish and Democratic", has been resumed after being abandoned once the Minister of Defense adopted recommendations

issued by a military committee put together in response to comments made by the Supreme Court in a case involving house demolitions in 2005 (HCJ 7733/04 **Nasser**). On this issue, we shall refer to remarks made by former Military Advocate General and soon-to-be Attorney General, Maj. Gen. (reserves) Avichai Mandleblit, who presented the policy change to members of the Knesset Constitution Law and Justice Committee:

> The decision that was made is certainly dramatic. It does not pertain only to times of relative calm, though it was made partly in the context of the current calm, I will not deny it. It also pertains to a time when, heaven forbid, hostilities resume. It will stand then too. The decision is that there are no more demolitions for the purpose of deterrence…"

7. The house in question is a 150-square-metre home with two bedrooms, a living room, a kitchen and a bathroom. It has a subterranean level with storage space and a water cistern. Other than the perpetrator himself, the house is currently occupied by his wife, three sons and two daughters.

8. We ask you to spare the family and withdraw your plan to employ Regulation 119 in a bid to change the violent dialogue between us and the Palestinians. Alternatively, we ask that you limit your action to sealing the bedroom in the perpetrator's home and refrain from demolishing the entire house.

We hope that you will be able to grant our request.

Sincerely

Andre Rosenthal | Advocate

Enclosed: Copy of power-of-attorney
CC: HaMoked: Center for the Defence of the Individual