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Date: March 17, 2016
In your response please note: 92557

To:
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Urgent!

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

Dear Sir,

Re: **Forcible assigned residence of assailants' relatives**

mail@hamoked.org.il
www.hamoked.org.il

1. I hereby write to you following an announcement made by the deputy cabinet secretary regarding a cabinet meeting dated March 13, 2016, in which it was stated that the Prime Minister was examining the possibility of forcible assignment of residence within the West Bank of assailants' relatives. We hereby request your intervention in a bid to prevent the use of said measure.
2. Uprooting a person from his place of residence and his forcible transfer to a different location constitutes a crucial violation of his dignity, liberty and property. A home is not only a shelter and a person's expulsion therefrom also separates a person from his family members, from his entire social environment, from the sources of his livelihood and property.
3. Article 78 of the Fourth Geneva Convention allows taking the extreme measure of assigned residence within the area subject to belligerent occupation. However, an essential condition for being able to assign the place of residence of a person under said Article is that the person himself poses a danger, and that assigning his place of residence will aid in averting that danger. The place of residence of an innocent person or of a person who did carry out acts which harmed security in the past but who does no longer present a danger may not be assigned. Likewise, a person's residence may not be assigned merely because such measure would deter others. This conclusion stems from the approach which regards this measures as one of the most severe and serious measures that an occupying power may take against protected residents and it therefore may be used only in extreme and exceptional cases [H CJ 7015/02 **Ajuri v. Commander of IDF Forces**

in the West Bank, 56(6) 352 (hereinafter: **Ajuri**) paragraph 24 of the judgment].

4. It was further held in **Ajuri** with respect to the degree of danger which is posed by the person whose residence is sought to be assigned that any degree of danger was insufficient and that assignment of residence could be exercised only if clear and convincing administrative evidence existed which showed that if such an extreme measure was not employed, there was a reasonable possibility that he would present a real danger to the security of the area (*Ibid.*, paragraph 25 of the judgment). The court also emphasized that the use of the measure of assigned residence must satisfy all proportionality tests acceptable in administrative law.
5. Assigned residence of assailants' relatives – in the absence of any personal involvement of their part in the execution of the attack or any specific future risk – does not comply with the conditions and limitations established by the court with respect to the exercise of Article 78 of the Geneva Convention, as specified above.
6. As aforesaid, contrary to the manner by which Regulation 119 of the Defence (Emergency) Regulations, 1945, was construed by the court – as allowing the exercise of deterring measures such as house demolition, also when they harm the innocent – with respect to Article 78 it was explicitly stated that it could be exercised only against **the same person** whose acts may pose danger to the security of the area.
7. Moreover, in the absence of evidence regarding an actual danger posed by each one of the family members, assigned residence will constitute collective punishment of innocent persons.
8. As is known, collective punishment is prohibited by international law in the context of the laws of war and by international human rights law. The superior principle which prohibits the use of sweeping punitive and arbitrary measures which harm entire groups of people also constitutes an important part of the rules of international customary law.
9. In this context, Regulation 50 of the Hague Regulations provides as follows:

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

And Article 33 of the Fourth Geneva Convention stipulates as follows:

No protected person may be punished for an offence he or she has not personally committed. **Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.** Pillage is prohibited.

10. In view of the above said, and in view of the principles outlined by the Supreme Court in its judgment, your intervention to thwart the intent to use the draconian measure of assignment of residence is requested, considering the clear and unequivocal unlawfulness involved in the exercise of said measure against persons whose only sin is their kinship with an assailant.

Sincerely,

Anat Gonen, Advocate
Legal Department Coordinator

Copies:
Minister of Defense, Mr. Moshe Ya'alon
Advocate Osnat Mandel, Head of HCJ Department