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To:

Minister of Defense
MK Mosheh Ya'alon
By fax, 03-6976218

Attorney General
Adv. Yehuda Weinstein
By fax, 02-6467001

IDF Commander in the West Bank
Maj. Gen. Nitzan Alon
By fax, 02-5305741

-- URGENT --

Re: Use of Regulation 119 of the Defense (Emergency) Regulations 1945 for the Purpose of Demolishing the Homes of Families of Suspected Terrorists
our client, HaMoked: Center for the Defence of the Individual

Dear Sirs,

1. We are contacting you on behalf of our client in reference to the painful and serious matter of the policy practiced by the security establishment with regards to the (alleged) power granted by Regulation 119 of the Defense (Emergency) Regulations – 1945 (hereinafter: the Defense Regulations).
2. The regulation in question allegedly empowers the IDF Commander to seize and demolish the homes of individuals suspected of hostile activity. We recall that the regulation is phrased in extremely broad terms, ostensibly allowing for the demolition of the homes of neighbors, and other homes on the same street and even in the same community, all in response to suspected involvement of a resident of the home/street/community in hostile activity.
3. As you are well aware, the question of whether the practice of demolishing the homes of suspected terrorists is legal – and no less importantly – whether it is moral, has been the subject of public debate in Israel and abroad, a debate as old as the use of this power itself. Demolishing the homes of suspects harms innocents, including members of the suspects' nuclear and more distant families, and sometimes also the neighbors or the owners of demolished properties. It harks back to tribal justice, vindictive and perverse. The argument that house demolitions carried out pursuant to the regulation are a breach of international law has been part of the debate on this issue since the late 1970s, and rather rarely, this position is shared by almost all international legal bodies and scholars.

4. Despite scathing criticism, between 1967 and 1998, the State of Israel used this power against residents of the Occupied Palestinian Territories in hundreds of cases, perhaps more. The State has claimed that these were acts of “deterrence”, but the difference between “deterrence” and “punishment” is merely semantic when deterrence is sought by deliberately hurting innocents. Since the dawn of history, armies have retaliated against the actions of individuals by using barbarically cruel measures against innocents in a bid to “teach them a lesson” (or, in your words, “to deter” them), or scare those plotting “terrorism” from executing their plans (or, in your words, Defense Minister, “etch it into their consciousness”).
5. At any rate, in 1998, the State of Israel altered its policy and decided to refrain from using the power granted by Regulation 119. However, after the Second Intifada broke out in October 2000, Israel resumed punitive house demolitions of suspected terrorists’ homes and according to data collected by our client, 664 homes were demolished during this time.
6. In February 2005, the State once again resolved to discontinue the punitive house demolition policy, after the security establishment itself came to the conclusion that the practice was ineffective and in fact detrimental to the efforts to fend off attacks against Israel and Israelis. The Minister of Defense accepted the recommendation of a military commission of inquiry that had been appointed to examine the issue (headed by Maj.Gen. Shani). A presentation of the commission’s findings was provided to our client in 2008, during court proceedings. It contained the statement that: “**The IDF [...] cannot tread the line of legality, let alone, the line of legitimacy!!!**” [*sic*]. The new position taken by the security establishment was reported to the High Court of Justice in proceedings held in a petition filed by the relatives of a suspected assailant who was represented by our client.
7. The foregoing forms the background for this communication. This is a draconian punitive power that harms innocents, has been widely used despite scathing legal and moral criticism and has been abandoned after the security establishment itself concluded that it was ineffective and teetering on the precipice of illegality and illegitimacy.
8. **We contact you now because recent events and media reports indicate that the State of Israel has once again decided to shift its policy, and return to using the power allegedly granted by Regulation 119 to demolish homes as punishment for an occupant’s involvement in terrorist attacks. We draw this conclusion from the fact that a demolition order has been issued and executed against a home where the suspect in the murder of police officer Baruch Mizrahi resided with his family in the village of Idhna; as well as from the reported staff work now underway to issue dozens of demolition orders against the homes of individuals suspected of involvement in terrorist attacks, or Hamas activity, following the abduction and murder of the three Israeli youths, Gilad Shaar, Naftali Fraenkel and Eyal Yifrah (see report in Haaretz Newspaper: “IDF planning to demolish homes of dozens of Palestinian militants in West Bank”, Haaretz, July 4, 2014 (<http://www.haaretz.com/news/diplomacy-defense/.premium-1.603029>)).**
9. **Our clear position is that demolishing or sealing the homes of suspected terrorists or individuals suspected of holding positions in unlawful organizations is unlawful and constitutes a grave breach of international law. Our position relies, *inter alia*, on the following arguments:**
 - a. Punitive house demolitions constitute collective punishment, which is prohibited under international law, thereby constituting a grave breach thereof and may amount to a war crime;

- b. Demolishing the homes of protected persons is prohibited under the law of occupation, and, for this reason as well, constitutes a grave breach of international law and may amount to a war crime;
 - c. Regulation 119, pursuant to which the military commander purports to have the power to demolish the homes of suspected terrorists, was revoked by the British authorities prior to the termination of the Mandate. Furthermore, no use could be made of this regulation for the purpose of house demolitions under Jordanian law, which was the law in effect in the West Bank prior to the occupation. Since Article 43 of the Annex to the Fourth Hague Convention requires upholding the laws in force prior to the occupation, the military commander is precluded from demolishing homes.
 - d. For reasons stemming from the doctrine of proportionality, demolishing the home of a suspected terrorist, whose family members reside with him, can never be lawful.
10. In addition to the foregoing, we wish to clarify that in our view, in the time that has passed since the military last decided to discontinue the use of punitive house demolitions in 2004, developments in the field of international law have bolstered the prohibition on collective punishment and added to the interpretation thereof, as well as that of the principle prohibiting damage to the property of protected persons. Additionally, the trend toward recognizing the Fourth Geneva Convention as customary law (and as such, internally binding rather than merely a matter of international relations), has gathered momentum.
11. Finally, we also wish to note that since the practice of punitive house demolitions **amounts to a grave breach of humanitarian law, it is a natural candidate for consideration as a war crime**, therefore, employing such a policy puts everyone involved in legal peril – those issuing the orders, those planning or approving their execution, and those executing them.
12. The State of Israel is bound both by universal moral principles (which include the principle prohibiting collective punishment, phrased in our tradition as: “The one who sins is the one who will die. The child will not share the guilt of the parent, nor will the parent share the guilt of the child. The righteousness of the righteous will be credited to them, and the wickedness of the wicked will be charged against them” (Ezekiel 18:20, New International Version)), and by the principles of international law described above. The use of Regulation 119 is a breach of both.
13. In light of the foregoing, we hereby inform you that our client intends to challenge the policy change and take every legal measure at its disposal to prevent the use of the regulation.
14. In light of the above, we request that you notify us that the Government of Israel and the IDF do not intend to resume the policy of punitive house demolitions (referred to by State officials as a “deterrence” policy).
15. We shall wait for your response for two weeks, until July 22, before proceeding with legal action as stated.

Respectfully,

Michael Sfar, Adv.
[signed]

Noa Amrami, Adv.
[signed]

Roni Pelli, Adv.
[signed]