



מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.).

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

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7 May 2012

Attorney General Yehuda Weinstein

By fax to: 6467001

Dear Sir,

Re: Demolition of the houses of families of murderers of Fogel family in Itamar

Yesterday it was reported that the Israel Security Agency (ISA) recommended demolition of the homes of the families of Amjad and Hakim Awad, who murdered five members of the Fogel family in March 2011 and were sentenced to long prison terms. According to published reports, the ISA claimed that this serves as a deterrent, and that family members had helped to hide evidence after the incident. From these reports it also appears that in the next few weeks a discussion of this matter is slated to take place in your office.

I urge you to reject the ISA demand and prevent demolition of the homes of these families.

Home demolition which is not required by immediate military necessity, is illegal under international humanitarian law. Article 53 of the Fourth Geneva Convention prohibits the occupying power from demolishing the property of citizens residing in the occupied territory, “unless rendered absolutely necessary by military operations.” The International Red Cross, designated as interpreter of the Convention, defined the term “military operations” as “movements, exercises, and other actions taken by armed forces for combat purposes.” House demolitions used as a penalty or deterrent, by contrast, are not carried out as part of combat. Hence, they cannot be viewed as part of “military operations” as meant in the Geneva Conventions and certainly are not “absolutely necessary” military operations.

Punitive demolition of houses contradicts the Basic Law: Human Dignity and Liberty. Although Article 119 of the British Mandate Emergency Regulations is cited as providing the authority for these demolitions and predates the Basic Law, legal rulings have held that the spirit of the Basic Law should be used to govern the interpretation even of laws that predate it.

Moreover, home demolition for punitive and deterrent purposes also violates one of the most basic norms of justice: the prohibition against punishing someone for acts carried

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out by another person, or in other words collective punishment. This prohibition is especially severe when the punishment victimizes children. Article 33 of the Fourth Geneva Convention completely prohibits collective punishment, without exception. If it is found that family members were involved in obstruction of justice or destruction of evidence, as the ISA claims, then they should be charged and given a fair trial.

As you know, early in 2005 Mr. Shaul Mofaz, then Minister of Defense, decided to end the policy it had implemented for years, of demolishing Palestinians' homes under Article 119 of the Emergency Regulations. While the policy was in force, hundreds of homes in the occupied territories were demolished and thousands of Palestinians were left without shelter. The Minister's decision was taken in the wake of conclusions reached by a committee appointed by then Chief of Staff Moshe Ya'alon, indicating that there is no evidence that house demolitions offer an effective deterrent to terrorist acts and that the use of this method may even be harmful.

The attack carried out by Amjad and Hakim Awad is shocking and horrifying. Nothing about that attack, however, makes harming their relatives, who were never found guilty of involvement of any kind, legal.

In light of the aforementioned factors, and in consideration of the fact that a military committee has determined that nothing has proved that the main purpose of these demolitions – deterrence – is accomplished by destroying these homes, I urge you to reject the ISA recommendation to demolish the houses and act to prevent the resumption of the policy of punitive demolition of Palestinian homes.

Respectfully,

Jessica Montell  
Executive Director

Copies to:  
Mr. Benjamin Netanyahu, Prime Minister,  
Mr. Ehud Barak, Minister of Defense,  
Mr. Shaul Mofaz, Deputy Prime Minister,