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|--|-----------------|------------|
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| Legal Advisor for GOC Home Front Command |                 |            |
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| AR                                       | 38              | –          |
| 2  | Kislev          | 5775       |
| 24                                       | November        | 2014       |

To:

Adv. Labib G. Habib  
(By fax 02-6263212)

Re: **Objection to the intention to seize, partially demolish and seal – apartment where the terrorist Mu'taz Ibrahim Khalil Hijazi (ID No. \_\_\_\_\_) resided.**

Ref: Yours dated November 11, 2014

1. I hereby confirm receipt of your letter in reference dated November 22, 2014, concerning the objection of the family of Mu'taz Ibrahim Khalil Hijazi (ID No. \_\_\_\_\_) (hereinafter: the terrorist), to the intent to seize, partially demolish and seal the apartment located on the ground floor of a two-story building in the Abu Tur neighborhood in East Jerusalem, used by the terrorist as a residence. The objection has been presented to the IDF GOC Home Front Command and I hereby present you with his decision in the matter.
2. We begin by saying that having reviewed the arguments presented in your captioned letter, the GOC Home Front Command decided to reject your clients' objection. We specify the Commander's position regarding the arguments made in your letter.

### **The background and basis for the decision**

3. The intent to seize, partially demolish and seal the apartment where the terrorist resided, was made as part of a counter-terrorism policy, in view of a series of recent terrorist attack, given the need to respond appropriately to threats to national security and to the safety of the country's citizens and residents, and pursuant to the power vested in the GOC Home Front Command under Regulation 119 of the Defense (Emergency) Regulations 1945 (hereinafter: the Regulations).
4. The administrative evidence in the GOC Home Front Command's possession indicates the following:

- a. On October 29, 2014, at about 10:05 P.M., the terrorist committed a shooting terrorist attack in the plaza at the exit of the Begin Heritage Center (hereinafter: the center), wherein he fired several shots at Yehuda Glick, fatally wounding him.
  - b. The terrorist had worked as an assistant cook in the restaurant located in the center. On the day of the attack, he asked to leave early and was captured on the center's security cameras leaving the center at 9:37 P.M., holding a white helmet and walking toward the scooter he used to arrive at work.
  - c. About thirty minutes after he departed the area (10:04 P.M.), the terrorist is seen arriving at the center's plaza, riding the scooter. Yehuda Glick is seen on the security cameras leaving the center at the same time.
  - d. Testimonies collected in the case indicate that at that stage, the terrorist approached Yehuda, saying "Yehuda. I'm sorry, but you really ticked me off", with a thick Arabic accent. After the terrorist identified Glick, he shot several bullets at him and fled the scene on the scooter. As stated, Yehuda Glick was critically wounded as a result of the shooting.
  - e. The next morning, shortly after 5:00 A.M., armed forces arrived at the terrorist's home in Abu Tur in East Jerusalem, with the intention of apprehending him and bringing him in for questioning. The terrorist was spotted on the roof of the building, holding a gun and pointing it at the forces. In response, the forces fired at the terrorist. He was killed in the shooting.
  - f. In a search of his home, forces recovered a scooter, two helmets and the gun he was holding when shot. Ballistics showed unequivocally that the shell casings found at the scene of the attack were fired from the gun the terrorist was holding during the attempt to arrest him.
  - g. Moreover, information available to the Israel Security Agency indicates that the terrorist had a long history of criminal and terrorist activity and that he had been in touch with prominent Hamas activists. In addition, while incarcerated, he received financial aid from Islamic Jihad and had approached Hamas, the Popular Front and the Democratic Front, asking to join their ranks.
5. The overall administrative evidence in possession of the GOC Home Front Command indicates that this was a terrorist attack perpetrated with the goal of harming Yehuda Glick for nationalistically motivated reasons.
  6. In these grievous circumstances, the GOC Home Front Command believed that measures under Regulation 119 should be taken in order to deter any other potential terrorists from carrying out such attacks.

### **The legal basis for the demolition of terrorists' homes pursuant to Regulation 119**

7. In accordance with the judgments issued by the Supreme Court, the military commander has the authority to use Regulation 119, in the appropriate circumstances, for the purpose of deterrence and for reasons clearly related to security.
8. The Court has only recently reiterated this case law, as stated in paragraph 16 of the opinion of Honorable Vice President M. Naor dated July 1, 2014, HCJ 4597/14 Muhammad 'Awawdeh v. West Bank Military Commander (not yet reported, hereinafter: 'Awawdeh):

House demolitions are carried out by the security forces, as described above, pursuant to Regulation 119. The language of the Regulations provide for house demolitions on a very broad scale. However, in its interpretation of the Regulation, this Court has limited its implementation and application, holding that the military commander must exercise reasonable discretion in exercising his power thereunder and act proportionately (see, for instance, HCJ 361/82 Hamri v. Commander of the Judea and Samaria Area ...; HCJ 2722/92 Alamarin v. Commander of IDF Forces in the Gaza Strip ...; HCJ 6026/94 Nazal v. Commander of IDF Forces in the Judea and Samaria Area...; HCJ 1730/96 Salem v. Commander of IDF Forces in the Judea and Samaria Area...

(Emphases added, the undersigned).

9. The purpose of exercising this power is to deter the public from perpetrating terrorist attacks. It is to let potential terrorists know that their actions would impact not just their victims and themselves, but also the terrorists' own families. On this issue, see the remarks made in paragraph 19 in '**Awawdeh**:

**The purpose of house demolitions was held in case law to be deterrence rather than punishment** (see HCJ 6996/02 Zu'rub v. Commander of IDF Forces in the Gaza Strip, IsrSC 56(6) 407, 409-410 (2202); 'Abbasi, page 59; Sa'ada' page 249; Sharbati, page 814; Mughrabi, paragraph 12 of the opinion of Justice H. Melcer).

(Emphases added, the undersigned)

The remarks made by Honorable Justice Barak (as was his title then) in HCJ 798/99 Shukri v. Minister of Defense, Takdin 90(1), 75 and HCJ 3363/03 Zeinab Baker v. IDF Commander, TakSC 2003(3), 185, are relevant as well.

10. Security officials believe that employing a sanction under Regulation 119 acts as an effective deterrent for potential terrorists. The recent escalation in the Jerusalem area, which peaked with terrorist attacks by car, gun and knife, carried out of late, as well as current evaluations regarding the efficacy of deterrence in said cases, provide the necessary foundation for exercising the power granted by Regulation 119 in the case at hand.

### **The proportionality of the decision**

11. The demolition of the building was balanced against the severity of the terrorist's actions, the scope of such attacks and the need for deterrence as noted above. The GOC Home Front Command examined all available alternatives that would realize the purpose of the power, as well as the benefit that might be gained by the demolition. The effect of the demolition on individuals living in nearby buildings was also examined, and care has been taken to avoid any significant harm to buildings located near the terrorist's home as a result of the demolition.

Given the aforesaid, the seizure, partial demolition and sealing of the apartment occupied by the captioned terrorist conforms with the provisions of Regulation 119 and with the rationale of deterrence underlying said Regulation

### **Response to the argument regarding lack of ownership**

12. The objection raised the argument that the apartment that has been designated for demolition is owned by the terrorist's late grandfather.

13. The GOC Home Front Command examined this argument and determined that it does not preclude the demolition of the apartment. The fact that the terrorist is a lessee in the apartment rather than an owner with propriety rights thereto, does not detract from the military commander's power under Regulation 119. According to the common interpretation of the powers granted in Regulation 119, "residency ties" to the effect that a terrorist resided in a building are sufficient to activate the power to demolish said building. On this issue, see paragraph 6 of the opinion of Honorable Justice Mazza (as was his title then) in **Nazal**, as follows:

On the issue of the Respondent's power pursuant to Regulation 119(1), we must be satisfied that the terrorist was a "resident" or an "inhabitant" of the home which is the subject of the seizure and demolition order.

See also the remarks made by Honorable President Barak in paragraph 10 of his opinion in HCJ 2/97 **Abu Halaweh v. GOC Home Front Command** (reported in ARS, August 11, 1997), as follows:

The argument regarding the distinction between owners and terrorists who are merely lessees must also be rejected. Indeed, since Regulation 119 is used for the purpose of deterrence, there is no room for distinguishing between a terrorist who owns the building and one who rents it (see HCJ 3560/90 a-Sabber v. Minister of Defense (unreported)). This is particularly so considering the home of Petitioner 4 above was sealed rather than demolished.

### **Response to the argument that the demolition would damage apartments located near the terrorist's apartment**

14. The objection raised the argument that demolishing the terrorist's apartment would damage the entire building, and particularly the apartment located directly above it.
15. As noted in the Notice of Intent to Seize, Partially Demolish and Seal the terrorist's apartment, use of the power granted in Regulation 119 of the Defense (Emergency) Regulations 1945 refers to the apartment where the terrorist lived with his nuclear family. At the time of the demolition, measures will be taken to minimize the chances of significant damage being caused to both the building in which the terrorist's apartment is located and the apartments located near it. It is for this reason that the GOC Home Front Command was of the opinion that a combination of demolition and sealing should be used and avoided ordering the complete demolition of the apartment.

### **Response to the argument regarding the time allotted for submission of the objection**

16. The argument regarding the time given to the terrorist's family to prepare for filing an objection must also be rejected.
17. The argument regarding the time given to the terrorist's family to prepare for filing an objection must also be rejected [sic]
18. The intent to seize and demolish the terrorist's apartment was formulated given a string of terror attacks perpetrated over a short period of time in Jerusalem and in the Area. These acts of terrorism necessitated an immediate, effective response, intended to deter potential terrorists from realizing their murderous intent. The time given to the terrorist's family for the purpose of

presenting their arguments regarding the intention to seize and demolish the apartment was determined with attention to the need for immediate deterrence in order to prevent further terror attacks.

19. We note, that, as per your request, the GOC Home Front Command agreed to extend the time allotted your clients by more than 36 hours (bringing the total to over three and a half full days). Given this, the GOC Home Front Command maintains that the timetable, which has been extended at your clients' request, is sufficient for formulating an objection.

### **Response to the argument regarding discrimination**

20. With respect to your argument that the demolition of the terrorist's home constitutes discrimination compared to Jewish perpetrators, the Supreme Court has just recently addressed an identical argument, holding:

In view of the fact that Regulation 119 has a deterring rather than punitive purpose, the mere execution of hideous terror acts by Jewish citizens, such as the abduction and murder of the youth Muhammad Abu Khdeir, cannot justify, in and of itself, the application of the Regulation against Jewish citizens, and there is nothing in Respondent's decision alone, not to exercise the regulation against the suspects of this murder, which can point to selective enforcement.

Moreover:

I am not oblivious of the horrifying murder of the youth Muhammad Abu Khdeir ... However, this is an extremely exceptional case. Therefore, I am of the opinion that there is no room for the artificial symmetry argued by the petitioners in support of their argument concerning discriminatory enforcement.

(HCJ 5290/14 **Qawasmeh v. West Bank Military Commander** (not yet reported, August 11, 2014))

21. Moreover, as detailed herein, use of the GOC Home Front Command's power under Regulation 119 is made in consideration of deterring terrorists from committing attacks, in the context of the recent escalation in the Jerusalem area as aforesaid. Therefore, the GOC Home Front Command has not found that the arguments made in your objection point to the existence of discrimination, collective punishment or extraneous considerations underlying the decision of the GOC Home Front Command to use measures pursuant to Regulation 119 with respect to the terrorist's apartment.
22. The remaining arguments made in the objection were general and had been presented to the Supreme Court in the past, reviewed on their merits and rejected.

### **Conclusion**

23. Given all the above, and having reviewed your objection, the Home Front Command has decided to reject same and that the apartment located on the ground floor of a two-story building in the Abu Tur neighborhood in East Jerusalem, used as a residence by the captioned terrorist and his nuclear family, will be seized, partially demolished and sealed as set out in the plan attached to the Seizure and Demolition Order.

Seizure and Demolition Order attached.

24. For your information, said Order shall not be implemented before November 26, 2014 at 10:30 A.M.

Sincerely,

[signed]

Binyamin D. Shindell, Captain  
Acting Home Front Command Legal Advisor  
Legal Advisor and Legislation Department