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[MAG Corps Emblem]

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2	Kislev	5775
24	November	2014

To:

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

Re: **Objection to the intention to seize and demolish – apartment where the terrorist Ibrahim Muhammad Daud ‘Akari (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 Ibrahim Muhammad Daud ‘Akari (ID No. \_\_\_\_\_) (hereinafter: the terrorist), to the intent to seize and demolish the apartment located on the third, top, floor in the Shu’fat 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 and demolish the apartment located on the third and top floor in Shu’fat, 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 November 5, 2014, the terrorist was captured by security cameras located near the light rail station on Shimon HaTzadik Street, driving a pickup truck. The vehicle was seen veering off the road and into the light rail track, where pedestrians were standing. The vehicle was seen speeding and ramming into pedestrians and then continuing with accelerated speed with the intention of running over more pedestrians.
  - b. While speeding, the vehicle was seen mounting the sidewalk in order to run over a cyclist who was cycling there. It hit the cyclist and killed him. Later, the vehicle continued its erratic driving, crashing into other cars, until it reached the hotel junction, where it stopped.
  - c. After the vehicle stopped, the terrorist was seen exiting it, carrying an iron bar. The terrorist attacked a police cruiser with the bar, managing to break its windows. He then appeared to be searching for more victims, but a police force that arrived at the scene shot and killed him.
  - d. Following the attack, the terrorist's vehicle was examined and found to be in good working order. The investigation revealed that the terrorist had strong ties to Hamas and that he had been involved in transferring Hamas funds. Moreover, a spokesperson for the organization claimed responsibility for the attack.
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 innocent civilians.
6. In these grievous circumstances, and given a series of recent terrorist attacks, 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.
7. 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).
8. 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)

9. 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.
11. Given the aforesaid, the demolition of the part of the building occupied by the captioned terrorist conforms with the provisions of Regulation 119 and with the rationale of deterrence underlying said Regulation.

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

12. 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.

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

13. The objection raised the argument that the apartment that has been designated for demolition is not owned by the terrorist and that he was a lessee therein.
14. 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.

15. We note that according to consistent case law, the fact that the terrorist was a lessee in the building slated for demolition rather than its owner, does not preclude use of the power with respect to the building. The rationale for this was made clear as early as in HCJ 542/89 **al-Jamal v. IDF Commander in Judea and Samaria** (reported in Nevo, July 31, 1989), as follows:

Learned counsel argued that the power granted in Regulation 119 could not be used as the Petitioner leased the apartment to the second Respondent and that in any case, the ties between him and the person who carried out the offenses against national security are distant enough to negate the material justification for employing said Regulation 119. There is no dispute that, as phrased, the Regulation may be used. In other words, given the Regulation's provisions, the fact that the person who committed the offenses is merely a lessee does not preclude use of the power. The argument addresses the material justification for using said legal provision.

We have considered the arguments made by learned counsel for the Petitioner. Our conclusion is that Regulation 119 is used as a deterrent punitive tool and, should it come to pass that sanctions could be avoided if terrorists rent apartments, the deterrent effect expected from use of said provision will be lost.

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.

See also:

HCJ 1056/89 **Saradih v. Minister of Defense** (reported in Nevo, March 27, 1990)

HCJ 2630/90 **Karakreh v. IDF Commander in the Judea and Samaria Area** (Reported in Nevo, February 12, 1991).

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

16. The objection raised the argument that demolishing the terrorist's apartment would damage other apartments in the same building.
17. As noted in the Notice of Intent to Seize and Demolish 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 apartments located near the terrorist's apartment.
18. Selective enforcement based on discrimination and collective punishment.
19. With respect to your argument that the demolition of the terrorist's home constitutes discrimination compared to the treatment of the families of Ami Popper and Baruch Goldstein, and the families of the persons who murdered the young Muhammad Abu Khdeir, 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))

20. 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 arguments made in the objection were not deemed to point to the existence of discrimination, collective punishment or extraneous considerations underlying the decision of the GOC Home Front Command.

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

21. The argument regarding the time given to the terrorist's family to prepare for filing an objection must also be rejected.
22. 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.
23. 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.

#### **Conclusion**

24. 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 third and top floor in the Shu'fat neighborhood of East Jerusalem, used as a residence by the captioned terrorist and his nuclear family, will be seized and demolished as set out in the plan attached to the Seizure and Demolition Order.

Seizure and Demolition Order attached.

25. 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