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[MAG Corps Emblem]

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25	November	2014

To:
Adv. Andre Rosenthal
(By fax 02-6221148)

Re: **Objection to the intention to seize and demolish – apartment where the terrorist U Abu Jamal (ID No. _____) resided.**

Ref: Yours dated November 23, 2014 (Received November 23, 2014)

1. I hereby confirm receipt of your letter in reference dated November 23, 2014, concerning the objection of the family of U Abu Jamal (ID No. _____) (hereinafter: the terrorist), to the intent to seize and demolish the apartment located in the Jabal al-Mukabber neighborhood in East Jerusalem (coordinates: 715315.3515039, as detailed in the plan attached to the Order), 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 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 18, 2014, the terrorist, with G Abu Jamal (hereinafter, together: the terrorists) perpetrated a murderous attack in a synagogue in the Har Nof neighborhood in Jerusalem, using a gun and butcher's knives. Four civilians and a police officer were killed in the attack and many others were wounded.
 - b. The investigative materials collected indicate that the two terrorists arrived at the synagogue in a Skoda car, and parked it.
 - c. They then walked to a playground located near the synagogue and waited for the synagogue to fill with worshippers.
 - d. At around 6:56 A.M., the terrorists entered the synagogue, as the worshippers were finishing the Standing Prayer. One of the terrorists began shooting his gun and the other began attacking the worshippers, wrapped in their Talith, with the butcher's knife. Shortly after the attack began, officers who arrived at the scene neutralized the terrorists.
 - e. In the attack, four worshippers and one police officer were killed. Several worshippers sustained injuries in varying degrees.
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 for nationalistically motivated reasons. The findings uncovered at the scene and the testimonies that have been collected paint a very serious picture, whereby the terrorist arrived at the synagogue and waited for the "right time", when the synagogue was full of worshippers, in order to massacre them.
 6. In these exceptionally 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)

10. 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.
11. 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.
12. 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 claim regarding collective punishment

13. According to case law, the harm caused to other people living in the home of a terrorist that has been made the target of the power granted in Regulation 119 does not constitute collective punishment, but rather collateral damage attached to the deterrent objective in exercising the authority.

The following has been ruled, for instance in HCJ 789/99 Shukri v. Defense Minister, TakSC 90(1) 75 (1990) as follows:

The power vested in the military commander under Regulation 119 is not a power to use collective punishment. Use thereof is not designed to penalize members of the Petitioner's family. This power is administrative and **its use is designed to deter, thereby upholding public order...**

We are aware that the demolition of the building damage the dwelling of the Petitioner and his mother. True, this is not the purpose of the demolition, but it is its outcome. **This bitter outcome is designed to deter potential perpetrators of terrorist attacks**, who must understand that through their actions they themselves cause harm not only to public safety and order, and not only to the lives of innocents, but also to the wellbeing of their own loved-ones.

[emphasis added, B.S.]

14. See also the remarks of Honorable Justice (as was his title then) Mazza in the majority opinion he delivered on behalf of an extended panel of five justices in HCJ 6024/94 **Nazal v. IDF Commander in the Judea and Samaria Area**, IsrSC 48(5)338 (1994), as follows:

It is worth reemphasizing what has been said before more than once: The objective of using the measurers under the authority of the military commander under Regulation 119(1), in the portion relevant to the matter at hand, **is to use force to deter terrorists from committing murderous acts, as an essential tool for maintaining security** (See, e.g., HCJ 987/89 **Kahawaji v. IDF Commander in the Gaza Strip**, IsrSC 44(2) (remarks of Justice Beiski); HCJ 779/88 **al-Fasfus v. Minister of Defense**, IsrSC 43(1) 576, remarks of President Shamgar, p. 578). **Use of said sanction does carry a severe punitive impact, which harms not only the terrorists, but others as well, most often the relatives who live with him, but this is not its objective or purpose.** (See HCJ 242/90 **al-Qasas v. IDF Commander in the Judea and Samaria Area**, IsrSC 44(1) 614, ramarks of Justice Barak, p. 616).
[emphasis added, B.S.]

The proportionality of the decision

15. 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.

Conclusion

16. Given all the above, and having reviewed your objection, the Home Front Command has decided to reject same and that the apartment located in the Jabal al-Mukabber neighborhood in East Jerusalem (coordinates: 715315.3515039), used as a residence by the captioned terrorist and his nuclear family, will be seized and demolished, as detailed in the Order for Seizure and Demolition including the attachment thereto.
17. The Order shall not be implemented before November 27, 2014 at 12:00 Noon.

Sincerely,

[signed]

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