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Israel Defense Forces
Judea and Samaria Area
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House Demolition
(Perpetrators and
Operations 00152-17-443
Shvat 22 5776
February 1 2016

To
Advocate Gaby Lasky
(by fax: 03-6244387)

Dear Colleague,

Re: Demolition of the home of the perpetrator _____ Harub ID _____ -
Response to objection against the intention of the military commander
to forfeit and demolish the perpetrator's housing unit

Reference: Your letter dated December 31, 2015

1. In the above referenced objection the Commander of IDF Forces in the Judea and Samaria Area was requested to refrain from the forfeiture and demolition of the housing unit which served as the residence of the perpetrator Mohammed Abd al-Baset Odeh Harub, ID _____ (hereinafter: the **Perpetrator**), who committed on November 19, 2015, an attack in which he shot to death three individuals, the late Yaakov Don, the late Ezra Schwartz and the late Washadi Zuhdi Rateb Arafe.

Description of the building and location of perpetrator's housing unit

2. The objection argues that the notice of the intention to forfeit and demolish the perpetrator's housing unit is flawed since it pertains to the middle apartment [*sic*] in a three story residential building which consists of two apartments whereas the perpetrator lives on the ground floor.
3. Please be advised that prior to the issue of the notice of the intention of the military commander to forfeit and demolish the perpetrator's housing unit, a visit was conducted in the perpetrator's house on November 19, 2015, with the participation of a qualified engineer from the engineering corps.
4. In that visit the engineer measured the entire residential building and mapped all of its floors. Hence, the following details arose from said mapping:

- a. It is a three story building built on a multilevel area.
 - b. The ground floor consists of a storeroom; The first floor, half of which is located on the ground and the other half is located on the ground floor which consists of a storeroom as specified above, **consists of one housing unit**; The third floor consists of one housing unit.
 - c. The middle floor which served as the residence of the perpetrator consists of a single housing unit which consists of a living room, three bedrooms, two bathrooms, a kitchen, an entrance hall and four balconies.
5. Therefore, the military commander cannot accept the argument that the floor consists of two separate apartments or that the perpetrator lived on the ground floor which is used as a storeroom, as aforesaid.

The arguments regarding the danger posed to the other parts of the building

6. The objection was accompanied by the opinion of Mr. Taysir Jabarin, a civil engineer, who is also a construction contractor, who referred to the anticipated damages which would be caused to the other parts of the building as a result of the demolition of the perpetrator's housing unit.
7. It should be noted that the arguments of Mr. Jabarin were transmitted to the qualified engineer on behalf of the engineering corps, who commented in response that said arguments were irrelevant due to the fact that the military commander did not plan to act for the demolition of the perpetrator's housing unit by using explosives, namely, by detonation.
8. The perpetrator's housing unit is expected to be demolished as follows: the part which is located on the ground will be sealed with cement and the internal walls of the part which is located above the ground floor which is used as a storeroom will be demolished manually.
9. Accordingly, no damage whatsoever is expected to be caused to either the upper or lower floors.
10. With respect to the argument according to which an opinion on behalf of the qualified engineer was not attached to the notice of the intention to forfeit and demolish, it should be noted that it has been recently held by the court (HCJ 7040/15 **Fadel Mustafa Hamed et al., v. Commander of IDF Forces in the Judea and Samaria Area**) as follows: "In my opinion there is also no reason to intervene in respondents' refusal to provide the engineering opinions for petitioners' review. In the cases at hand in which it was argued that damage may be caused to buildings adjacent to the building designated for demolition, the respondents described in the framework of their decisions in the objections and in their responses to the petitions the manner by which each demolition would be carried out and clarified that the execution of the demolitions themselves would be monitored by an engineer. The above indicates that the petitioners were presented with a comprehensive picture of the contemplated demolitions, and their arguments that the demolition plans remained vague and unclear should not be accepted".
11. In any event this letter includes above a detailed description of the demolition method which the military commander intends to use and therefore we found no reason to accept your argument.

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Arguments pertaining international law

12. The objection argued that the exercise of the power by virtue of Regulation 119 of the Defence (Emergency) Regulations, 1945, against the housing unit of the perpetrator would cause harm to his wife and children who were not involved in the actions of the perpetrator and that said action amounted to collective punishment and was contrary to the provisions of international law.
13. In addition it was argued that the policy of the exercise of the power by virtue of Regulation 119 could not be regarded proportionate and that prior to its application to your client's case the military commander should conduct a proper factual examination of the effects of said policy and as to whether it realized the deterrence purposes.
14. With respect to the argument that the exercise of the power of the military commander to act for the forfeiture and demolition of perpetrators' homes by virtue of Regulation 119 constitutes collective punishment, it should be noted that this argument has already been discussed and dismissed time and time again by the Supreme Court, including recently.
15. The issue of deterrence and the need to re-examine said issue from time to time were also discussed in recent judgments, and in a nutshell it should be noted that the Supreme Court was convinced, based on its review of data presented to it *ex-parte*, as mentioned in your letter, that the demolition of perpetrators' homes had an advantageous deterring effect and that said power could be also be exercised against family members for as long as the power was exercised reasonably and proportionately.
16. The military commander is of the opinion that in the case at hand, the manner by which the power is exercised, namely, the demolition of the unit with measures which would not cause damage to the neighboring apartments is reasonable and proportionate in view of the severe circumstances of the perpetrator's actions and the need to deter other potential perpetrators from the execution of additional similar murderous attacks.
17. Therefore, these arguments are rejected by the military commander who is of the opinion that currently, in view of the deteriorating security situation, the above regulation should be used in the case at hand for the above specified reasons.¹

Conclusion

18. In view of all of the above said, the military commander cannot accept the objection against the intention to forfeit and demolish the housing unit which served as the residence of the perpetrator _____ Harub, ID _____, who committed on November 19, 2015 a terror attack in which he shot to death three individuals the late Yaakov Don, the late Ezra Schwartz and the late Washadi Zuhdi Rateb Arafe.

¹ HCJ 7040/15 **Fadel Mustafa Hamed et al., v. Commander of IDF Forces in the Judea and Samaria Area**

19. Hence, a proper forfeiture and demolition order is hereby delivered to you, for your clients.

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20. We wish to emphasize that the realization of this order will not commence before **Thursday, February 4, 2016, at 17:00.**

Sincerely,

(Signed)

**Sandra Beit-On Ofinkero, Major
Head of Division Infrastructure and Seam Zone
On behalf of the Legal Advisor**

Attached: Forfeiture and Demolition Order

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