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Date: April 29, 2015  
In your response please note: 31250

To:  
Colonel Doron Ben Barak  
Legal Advisor - West Bank  
P.O. Box 5  
Beit El 90631

**By Fax: 02-9977326**

Dear Sir,

Re: **The sweeping ban on the travelling abroad of Palestinians who reside in the Hebron area, particularly in the months of June-August 2014**  
**Ours: our letters 31250 dated October 7, 2014 and December 18, 2014**  
**Yours: your letters dated November 16, 2014, December 31, 2014 and February 8, 2015**

We hereby write to you to warn of an inappropriate and unlawful conduct of the military commander of the West Bank Area during the months of June – August 2014, as follows:

1. During the months of June – August 2014, the military commander imposed on all residents of the Hebron area between the ages of 20 – 50 a sweeping ban which prohibited them from leaving the West Bank.
2. **The sweeping ban was not published** and its nature became evident only when, on June 29, 2014, in the framework of HCJ 4554/14 **Al-'Awawdeh v. The Military Commander**, the representative of the State Attorney's Office notified that "Yesterday at midnight (in the night between June 28, 2014, and June 29, 2014) the unit in charge of the coordination of government activities in the territories decided to lift the general prohibition which prevented the exit abroad of Hebron residents between the ages of 20 – 50."
3. On October 7, 2014, we sent to the Coordinator of Government Activities in the Territories an application according to the Freedom of Information Act concerning the sweeping ban on exit.
4. In the application we requested to be advised whether the prohibition imposed on the exit abroad of the residents of the West Bank was entrenched in an order, or whether it was an instruction which was given verbally.



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هاتف. ٠٢. ٦٢٨٣٥٥٥  
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5. On February 8, 2015, a response from the office of Coordinator of Government Activities in the Territories was received. **To our great astonishment**, the response indicated that said ban has not been entrenched at all: neither in writing nor verbally.
6. It is an inappropriate conduct which runs contrary to both Israeli law and international law.
7. It should be remembered that the right of the residents of the occupied Palestinian territories (OPT) to leave their country is a fundamental right, enshrined in international law. A prohibition which prevents a person from leaving his country severely violates a fundamental right.
8. The right to leave the country of residence was acknowledged as a fundamental right by a significant number of international covenants and declarations. The Universal Declaration of Human Rights (1948), in Article 13, and the Covenant on Civil and Political Rights (1966), in Article 12(2) provide that any person has the right to leave his country:

Everyone shall be free to leave any country, including his own.

9. Such a severe measure which prohibits the exit from the OPT may be exercised, at the utmost, in cases in which the exit of a specific person poses a security risk, severe and significant.
10. According to the law, when human dignity and liberty is balanced against security considerations, the fundamental premise is that preventive means and measures which violate a person's dignity and liberty may be used **only when he himself poses a threat to state security**.
11. The violation of the liberty of a person who poses no threat to state security is necessarily inappropriate. As stated by the President (*emeritus*) Barak, concerning the violation of human dignity and liberty by way of administrative detention:

Indeed, the passage from an administrative detention of a person who poses threat to state security to an administrative detention of a person who poses no threat to state security is not a "quantitative" passage but rather a "qualitative" one...

The violation of liberty and dignity is so substantial and deep, to the extent that it cannot be tolerated in a state which promotes liberty and dignity, even if the exercise of such

measures is required on the grounds of state security... Administrative detention is exercised only against a person who himself, by his own deeds, poses a threat to state security. This was the situation before the Basic Law: Human Dignity and Liberty was enacted. It is most certainly so after said Basic Law was enacted and elevated human dignity and liberty to a superior-constitutional level.

(CrimFH 7048/97 **A v. Minister of Defense**, IsrSC 54(1) 721, 743-744 (2000)).

12. The military commander is not authorized to impose a collective ban on the exit of a huge group of people without any distinction, based only on their place of residence and the age group to which they belong. Similarly, it is inconceivable that the Minister of Interior will prohibit for weeks or months the exit from Israel of a great number of Israelis based only on their place of residence and the age group to which they belong.
13. In addition, the use of the severe measure of a "closed zone", which is entrenched in the Order Regarding Security Provisions [Consolidated Version](Judea and Samaria)(No. 1651), 5770-2009 (including the issue of orders in the framework of an existing "closed zone" order) requires an explicit order of the military commander.

In this context, the military commander is obligated to lawfully entrench the order or instruction, and bring them to the attention of the injured population. The imposition of obligations, limitations and sanctions on protected residents by virtue of hidden instructions and undisclosed orders, directly contradicts the superior legal principle which provides that no hidden legislation exists, and that "hidden legislation undermines the basic principles of the rule of law and the very essence of democracy" (in the words of Justice Barak (as then titled) in HCJ 4950/90 **Parnas v. Minister of Defense**, IsrSC 47(3) 36, 42 (1993)).

14. And relevant to our case are the words of Justice Sharshovski, which were said over fifty years ago:

There is no law unless it was brought to the attention of the public in the way prescribed for that purpose by the law itself, otherwise chaos will be created in which nobody will be able to know what is permitted and what is prohibited, and consequently nobody may be demanded to abide by the law and refrain from acting unlawfully.

(HCJ 220/51 **Aslan v. Military Commander of the Galilee**, IsrSC 5(2), 148 (1951)).

15. Similarly, Justice H. Cohen stated as follows:

Any act of legislation, be it primary legislation or secondary legislation, must be published in public... even if the law includes an explicit provision which exempts such an enactment from being published in the official gazette. There are no hidden laws in the state of Israel. When the law includes a provision which exempts a certain enactment from being published in the official gazette, it is permissible not to publish it in the official gazette, but it does not mean that it should not be published at all. Legislation which is made secretly and which is kept away from the public eye is one of the identifying marks of a totalitarian regime and does not reconcile with the rule of law.

(CA 421/61 **State of Israel v. Haz**, IsrSC 15, 2193, 2204 (1961)).

16. All of the above indicate that the conduct of the military commander who, in practice, prohibited the exit of a very large number of people for a long period of time, without any order or explicit instruction, and without any lawful basis, is totally inappropriate and is in excess of authority.

17. In view of the above, you are hereby requested to make an immediate and comprehensive examination of this severe occurrence, and to take all necessary measures to ensure that such conduct does not recur in the future: that collective sanctions which sweepingly violate the rights of OPT residents will not be imposed, and that the imposition of any prohibition or restriction will be made according the provisions of international law, and will be lawfully entrenched.

18. You are requested to provide us with the results of said examination upon its conclusion, and to notify us of the measures which you intend to take to prevent similar conduct in the future.

19. Your prompt reply is appreciated.

Sincerely,  
Bilal Sbihat, Advocate

Cc:  
Adv. Yehuda Weinstein, Attorney General  
Major General Danny Efroni, Chief Military Advocate General