

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

Yadin Elam, Law Offices

4 Rothschild Blvd.
Tel Aviv Jaffa 66881
Phone: 03 560 6080
Fax: 03 560 6083

March 21, 2013
Reference: 13494

To
Major General Nitzan Alon
West Bank Commander

via fax: 02-5305741

Re: Removal of closure violating the freedom of movement of the inhabitants of Kafr Malik

1. I hereby write to you on behalf of my client, Mr. Majed Muadi, Head of Kafr Malik Council and on behalf of HaMoked: Center for the Defence of the Individual (**HaMoked**) regarding the above referenced matter. A power of attorney is attached hereto.
2. For several years the direct exit way by vehicles from Kafr Malik to route 458 (Alon route) is closed for the passage of vehicles by a double blockade of stones and dirt.
3. As a result of the above closure the inhabitants of the village who own agricultural lands on the east side of the road, in the Ein Samiyeh area, are denied direct access to their lands.
4. Consequently, the farmers are forced to take a much longer route.
5. A person wishing to travel from the center of Kafr Malik to his lands in Ein Samiyeh, were it not for the closure, could have travelled through the village eastward, crossed route 458 and arrived to his land. Said route, from the center of the village up to route 458 is only about four kilometers long.
6. As a result of the closure, instead of a four kilometer route, one is forced to travel south west to route 449, turn east on route 449 up to the junction with route 458 and travel north on route 458 up to the access route to Ein Samiyeh. In this manner his way is almost four times longer and is about 15.8 kilometer long. Absurdly, as a result of the lengthening of the road his exposure to the population of the settlers in the area grows.
7. It should be noted that it is unclear whether the order to block the road was lawfully given. In the judgment regarding route 443 (HCJ 2150/07 **Abu Safiyeh v. Minister of Defense**, not reported, given on December 29, 2009), the High Court of Justice stated (in paragraph 37 of the judgment of the Honorable Justice Vogelmann) as follows:

The provisions of section 88 of the Security Provisions Order, which were cited above, authorize the military commander to order the closure of a road "by means of an order or by issuing directives or in any other manner." This indicates that the military commander

has the authority to order the closure of a road even if no written authorizing document exists. However, this authority should properly be exercised only in cases where a need arises for the immediate closure of a road, when it is feared that security will otherwise be jeopardized. **Even in such a case, if the closure is not for a brief and limited period of time, the directive should subsequently be anchored in a written order...** A similar question was brought before this Court in the context of the military commander's authority to order the closure of a land area, which is anchored in sec. 90 of the Security Order. The ruling in that case was as follows:

The closure of the areas should be executed by means of written orders that are issued by the military commander and, in the absence of closure orders, the Palestinian residents should not be denied access to their land. Nothing in the aforesaid detracts from the authority of the commander in the field to issue oral instructions for a closure of any area on a specific basis for a short and limited period in the event of unexpected circumstances which give rise to a concern of an immediate danger to security that cannot be dealt with by any other measures. But we should take care to ensure that the authority to order the closure of a specific piece of land without a lawful order, as a response to unexpected incidents, should be limited solely to the time and place in which it is required immediately. **In principle, the closure of areas should be effected by means of an order, notice of which is given to whoever is affected by it, 44 and the residents whose lands are closed to them should be given an opportunity to challenge its validity**" (per [then] Justice D. Beinisch in *Morar v. IDF Commander in the Judaea and Samaria* [23], para. 21).

8. Internal freedom of movement or freedom of movement inside the state is a recognized right in Israeli and international law and according the judgments of the High Court of Justice, it is also enshrined in international customary law.
9. In the judgment which was given in H CJ 1890/03 (**Bethlehem Municipality v. State of Israel**, IsrSC 59(4) 736, 754-755) the court stated as follows:

Freedom of movement is one of the basic human rights and it has been recognized in our law both as an independent basic right... and as a right that is derived from the right to liberty (per President Barak and Justice Cheshin in H CJ 5016/96 **Horev v. Minister of Transport**, IsrSC 51(4) 1, pages 59 and 147, respectively)(hereinafter: **Horev**). **In addition, there are some authorities that argue that this freedom is also derived from human dignity.**

The status of the freedom of movement in our legal system was discussed by this court in **Horev**... In that case, President Barak said that **freedom of movement was ‘one of the more basic rights’** (*ibid.* page 49), that **the right to freedom of movement ‘is in the first rank of human rights’** (*ibid.* page 51) and that **freedom of movement is ‘a freedom that is on the very highest level of the scale of rights in Israel’** (*ibid.*, page 53). The president also added in **Horev** that **‘as a rule, we place the freedom of movement within the boundaries of the state on a similar constitutional level to that of the freedom of expression’** (*ibid.* page 49). It should be noted that similar remarks with regard to the status of the freedom of movement were also made by the justices who did not agree with President Barak’s majority opinion in Horev (see, for instance, the remarks of Justice Cheshin (*ibid.* page 147) and the remarks of Justice Tal page 181). On the status of freedom of movement in Israeli law following Horev, see also Y. Zilbershatz, ‘On Freedom of Movement within the State: Following HCJ 5016/96 Horev v. Minister of Transport et al.,’ 4 Mishpat uMimshal (1998) 793, 806-809 (hereinafter: Zilbershatz).

The freedom of movement is recognized as a basic right also in international law. The freedom of movement within the state is enshrined in a whole host of international conventions and declarations concerning human rights (see, *inter alia*, Article 12 of the International Covenant on Civil and Political Rights, 1966, Article 13 of the Universal Declaration of Human Rights, 1948, and Article 2 of the Second Protocol of the European Convention on Human Rights, 1950) **and it would appear that it is also enshrined in international customary law** (see Zilbershatz above, pages 800-801).

10. There is no doubt that the closure as a result of which the farmers who reside in Kafr Malik must take a route which is many times longer violates their right to freedom of movement.
11. In view of all of the above, you are hereby requested to order that the double closure described above be lifted and open the short and direct passage from Kafr Malik to Ein Samiyeh.
12. Should it be decided not to lift the closure, please specify the reasons for said decision and kindly attach a copy of the order according to which the road was blocked and a copy of the notice which was given to the inhabitants of Kafr Malik regarding the closure of the road.

Thanking you in advance,

(Signature)

Yadin Elam, Advocate

Copies:

Brigadier General Moti Almoz, Head of Civil Administration
Doron Ben-Barak, legal advisor for the West Bank