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January 27, 2016

Ref: 30601

To:

Maj. Gen. Roni Numa
West Bank Commander

By e-mail: pniot-tzibur@mail.idf.il and fax: 02-5305724

Re: Extremely Urgent – Closure on Beit Ur a-Tahta

1. I am contacting you on behalf of my client, HaMoked: Center for the Defence of the Individual, regarding a closure imposed two days ago on the community of Beit Ur a-Tahta.
2. The announcement made by the Prime Minister on his Facebook page on January 25, 2016 reads as follows:

In accordance with the policy I have put in place, the IDF is currently imposing a closure on the community of the terrorist who perpetrated tonight's terrorist attack in Beit Horon.

See: <https://www.facebook.com/Netanyahu/posts/10153410007402076>

3. Also, according to a story published in Haaretz daily newspaper yesterday, January 26, 2016:

On Monday, in the wake of the attack in Beit Horon, it was decided to impose a closure around the village of Beit Ur al-Tahta. As of Tuesday, the checkpoints preventing the exit of the Palestinian residents of the village, with the exception of cases defined as "humanitarian" (such as sick people or pregnant women), were still in operation.

See: <http://www.haaretz.com/israel-news/.premium-1.699668>

4. This policy contradicts an express pledge made by the state before the Supreme Court in response to a petition filed by the Association for Civil Rights in Israel against a closure imposed on the city of Nablus (HCJ 7577/06). We note that the petition therein addressed a closure that included lighter restrictions than those currently imposed on Beit Ur a-Tahta, as it affected only a certain age group. According to the response submitted by the state on January 7, 2007:

On this matter, it is stressed at this early point, that the term “closure” does not generally mean a sweeping ban on entry and exit from a certain area, **but a requirement for a security check upon entry and exit into the area.** In other words, the closure on the city of Nablus means the installation of checkpoints and roadblocks that prevent free access to and from the city, **but allow access to and from it subject to a security check.**

Paragraph 15 of the Response on behalf of the State, available on HaMoked’s website (Hebrew): <http://www.hamoked.org.il/items/8711.pdf>

5. Elsewhere in the response, the state noted that the closure was imposed by order of the military commander, and (para. 19) that:

The reasons for imposing the closure and severing between certain areas are **pure security reasons.** These steps are meant to make it difficult for terrorists and various hostile elements to freely exit the area under closure without monitoring, on route to commit terrorist attacks. They are also meant to make it difficult for them to flee to a certain area (particularly Areas A and B) after committing an attack. In addition, closures make it difficult to plan terrorist attacks, transmit instructions to commit attacks, transfer weapons from place to place, etc. The measure is taken for these reasons, which are essential for the security of the area.

6. The response also stressed that the reason for imposing a closure on Nablus specifically, was that it had become a “terrorism capital” and that thanks to the closure “scores, perhaps hundreds of terrorist attacks directed against Israeli targets have been thwarted”.
7. In response to the petitioner’s claim that the closure constituted collective punishment, the state was very clear and unequivocal:

86. This argument must be rejected. There is no dispute that that rules of customary international law prohibit collective punishment. However, and as detailed above, in the case at hand, there is no punishment whatsoever, but rather preventative security measures, taken pursuant to the powers and duty of the military commander to protect all residents of the Judea and Samaria Area, as well as the State of Israel and its residents.

87. Just as installing checkpoints and conducting security checks around the city of Nablus do not constitute collective punishment, and arguments to that effect were raised in by the Petition in **Alawneh** and rejected by the Court, so the restrictions on movement imposed as part of this closure from time to time and in accordance to the changing security circumstances in the area, do not constitute collective punishment. The restrictions are not imposed for the purpose of causing harm, they are imposed for a security purpose

and the harm is an incidental effect of the measure taken. We reiterate that it has been decided to currently impose restrictions on movement on residents of a certain age, based on concrete information about a terrorist who is seeking a way out of the area.

88. The Petitioner wishes to deduce from the fact that the restriction is sweeping that it is a collective punishment sanction, but this is not the case.
89. There is a distinction between security-preventative elements and punitive elements. The Honorable Court addressed this distinction in H CJ 1113/09 **Shawa v. IDF Commander in Gaza**, (IsrSC 44(4) 590), where the petition challenged a nightly curfew imposed on Gaza. The petitioners therein argued, inter alia, that the curfew was a sanction rather than a means to achieve an end of the type which the Respondent has power to pursue. The Supreme Court ruled in the judgment it issued in that petition that if it had been a sanction, it would have been prohibited.

8. **Even if our client does not agree with everything stated in these paragraphs from the state's response, it appears that the closure imposed on the community of Beit Ur a-Tahta, and the complete ban on travel into and out of the community constitute a collective punishment sanction rather than a security-preventative element. The Prime Minister's statements explicitly says as much.**
9. **Given the aforesaid, our client demands the immediate cessation of the closure imposed on the community of Beit Ur a-Tahta and the collective punishment of its residents.**
10. **Should the closure not cease immediately, our client intends to take legal action. For this purpose, we request that you provide us with the declaration or order pursuant to which the closure is being imposed on the community and all the reasons for imposing same.**

Sincerely,
[signed]
Yadin Eilam, Adv.