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March 3, 2016  
Reference: 31122

To  
Major General Roni Numa  
West Bank Commander

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

**Re: Urgent – Closure imposed on the village of Borin**

1. I hereby appeal to you on behalf of HaMoked: Center for the Defence of the Individual regarding the closure that was imposed yesterday evening, March 2, 2016, on the village of Borin.
2. The village of Borin, located in the district of Nablus, numbers approximately 3,000 residents. The vast majority of its residents work outside the community, particularly in the city of Nablus.
3. The vital health, education and other institutions are located outside the village.
4. According to the residents, from the evening and until around midnight, military operations were conducted in the village. Afterwards the forces left the village itself and are making do with imposing a closure on it.
5. The entrance and exist of residents was allowed to until 7:00 AM, subject to a security check. However after 7:00 AM the soldiers refused to allow anyone to enter and exit the village.
6. This policy is contrary to explicit undertakings of the state to the Supreme Court in its response to a petition which was submitted to the High Court of Justice by the Association for Civil Rights in Israel against a closure that was imposed on the city of Nablus (HCJ 7577/06). It should be emphasized that the petition concerned a closure whose restrictions were far more lenient than the restrictions currently imposed on the village of Borin since in that case the restrictions were limited to a certain age group. The state's response to the petition dated January 7, 2007 also stated:

“In that respect it should already be emphasized at this point that the term "closure", in general, does not generally mean a sweeping ban on entry and the exit from a certain area, but **a requirement for a security check upon entry and exit from said area.** In other

words, a closure that is imposed on the city of Nablus means that barriers and check points are erected which prevent free entry and exit from the city of Nablus, **but enable entry and exit from the city subject to security check**".

Paragraph 15 of the state's response which may be viewed in: <http://www.hamoked.org.il/items/8711.pdf>

7. The response further stated that the imposition of a closure was entrenched in the declaration of the military commander, and in (in paragraph 19) it was stated that:

"The grounds for the imposition of a closure and for disconnecting one area from another are **clear security grounds**. These measures are designed to make it difficult for terrorists and various hostile parties to leave the closed area freely and in an un-supervised manner on their way to commit attacks, and are also designed to make it difficult for them to flee into a certain area, (mostly areas A and B), after the attack,. In addition, the closures hinder the planning of attacks, the transfer of instructions for the execution of attacks, the transfer of firearms from one place to the other, etc. For these reasons, which are essential for the security of the area, the said measure is employed".

8. The response also emphasized that closure was deliberately imposed on the city of Nablus because the city has turned into the "capital of terror" and that due to the closure "scores and even hundreds of terrorist attacks aimed at Israeli targets were thwarted in recent years".

9. In response to petitioner's argument that closure constituted collective punishment, the state stressed sharply and clearly that:

86. This argument should be denied. Indeed, there is no dispute that the rules of international customary law prohibit collective punishment. However, and as specified above, this case does not concern any punishment whatsoever but rather security preventive actions which are exercised by virtue of the power 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. To the same extent that the erection of check-points and the execution of security checks around the city of Nablus and its vicinity do not constitute collective punishment, and arguments to that effect have already been raised by the petitioner in '**Alawneh** and denied, the limitations imposed on movement from time to time by this closure, in accordance with the changing security circumstances in the Area, do not constitute collective punishment as well. The limitations are not imposed in order to cause harm but rather to achieve a security purpose and the harm is ancillary to the measure taken. It should be emphasized once again that it was currently decided that limitations on the movement of residents who are members of certain age groups would be imposed on the basis of concrete information about a perpetrator who is trying to leave the area.

88. The petitioner suggests that the fact that we are concerned with a sweeping limitation means that these are collective-punitive sanctions, but this is not so.

89. There is a difference between security-preventive measures and punitive measures. The court addressed this distinction in HCJ 1113/90 **Shaw v. Commander of IDF Forces in the Gaza Strip**, IsrSC 44(4) 590, that was directed against a curfew which was imposed nightly on the Gaza Strip. The petitioners argued, *inter alia*, that the imposition of the protracted curfew was intended as a sanction and that respondent's power was not granted to him for that purpose. The Supreme Court held in its judgment in said petition that had it been a sanction, it would have been prohibited.

**10. Although HaMoked does not agree with the entire content of the above sections of the state's response, it seems that there can be no dispute that the closure imposed on the village of Borin and the sweeping prohibition on the entry and exit of residents from the community constitutes a sanction of collective punishment and not a security-preventive measure.**

**11. In view of all of the above, HaMoked: Center for the Defence of the Individual demands that the restrictions of the closure imposed on the village of Borin be immediately lifted and that the collective punishments of its residents be halted.**

**12. If the closure is not lifted immediately, HaMoked intends to appeal to the courts regarding this issue. For this purpose we request that you send us the declaration or the order pursuant to which the closure was imposed on the village, and all of the reasons for its imposition.**

Thanking you in advance,  
(Signature)  
Yadin Elam, Advocate

Cc:  
MK Moshe Ya'alon, Minister of Defense  
Colonel Doron Ben-Barak, Legal Advisor for the West Bank  
Advocate Osnat Mandel, head of HCJ department