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March 20, 2016
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To
Major General Roni Numa
West Bank Commander via e-mail: pniot-tzibur@mail.idf.il and via fax: 02-5305724

Re: **Very Urgent – Closure imposed on Beit Fajjar**

1. We hereby write to you on behalf of HaMoked: Center for the Defence of the Individual regarding a closure which was imposed last Thursday, March 17, 2016, on the Beit Fajjar community located in the Betlehem district.
2. Beit Fajjar is a large community which consists of about 17,000 inhabitants.
3. Due to the closure the community of Beit Fajjar remained sealed for the last four days, **nobody comes in and nobody leaves**. The military forces do not allow anyone to either enter or leave the community. Children who attend schools outside the community and students who study in universities and happened to be in the community stayed at home and inhabitants who work outside the community could not go to work.
4. Yesterday a dialysis patient, an inhabitant of the community, tried to exit the community in a bid to receive medical care, but the military forces did not allow him to pass through.
5. In addition, this morning, six families of inhabitants of the community which were about to travel to Jordan, arrived with their suitcases to the checkpoint, but the military forces did not allow them to exit.
6. According to a report which was published in *Haaretz* on Thursday, March 17, 2016:

A soldier was medium – severely wounded in a stabbing attack in Ariel junction. The two perpetrators were shot and killed. The two are nineteen years old 'Ali Thawabteh and twenty years old 'Ali Taqatqah from the Beit Fajjar village near Betlehem. From the commencement of the wave of terror five young men from the village were killed and thirteen from the entire Betlehem district. **Following the attack, it was decided by the IDF to impose a full closure on the village of Beit Fajjar.**

See: <http://www.haaretz.co.il/news/politics/1.2885996>

7. It should be noted that in a letter dated March 17, 2016, in response to our letters concerning closures which were imposed on the communities Hajah and Zawiya, First Lieutenant Renana Kreuzer, the public liaison and follow-up officer at your office, noted

that the limitations which were imposed were "specific movement limitations on men at the ages of between 15 – 25 who do not have work permits in Israel or in Israeli settlements."

It seems that this is not an accurate description. The closures which were the subject matter of our letters to you were not limited, at least not in their initial stages, to the population group described in First Lieutenant Kreuzer's letter. Rather, those were full closures. The same applies to the Beit Fajjar closure which according to information obtained from the inhabitants as well as according to the report which was published in *Haaretz* is also a "full closure".

8. This policy is contrary to explicit undertakings of the state to the Supreme Court in response to a petition which was submitted to the High Court of Justice by the Association for Civil Rights in Israel against a closure which was imposed on the city of Nablus (HCJ 7577/06). It should be emphasized that the petition concerned a closure the restrictions of which were more lenient than the restrictions currently imposed on the community Beit Fajjar since in that case the restrictions were limited to a certain age group and according to the state's response to the petition dated January 7, 2007:

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, when a closure is imposed on the city of Nablus it 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>

9. The response continued to state that the imposition of the closure was entrenched in a declaration of the military commander and in addition it was stated (in paragraph 19) that:

The reasons for the imposition of a closure and for disconnecting one area from another are **clear security reasons**. These measures are designed to make it difficult for perpetrators and different 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, after the attack, to flee into a certain area (mostly areas A and B). In addition, the closures encumber the planning of attacks, the transfer of instruction 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, said measure is used.

10. The response also emphasized that closure was precisely imposed on the city of Nablus because the city turned into a "capital of terror" and that due to the closure "dozens and even hundreds of attacks which were aimed at Israeli targets were thwarted in recent years".

11. In response to petitioner's argument that closure constituted a collective punishment, the state stressed sharply and clearly as follows:
 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 exercise 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 by this closure, from time to time, and according to the changing security circumstances in the Area, do not constitute collective punishment as well. The limitations are not imposed in a bid 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, members of certain age groups, would be imposed based on specific 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 elements and punitive elements. The court pointed at that difference in H CJ 1113/90 **Shaw v. Commander of IDF Forces in the Gaza Strip**, IsrSC 44(4) 590, in which case the petition was directed against a curfew which was imposed night after night on the Gaza Strip. The petitioners there argued, *inter alia*, that the imposition of the protracted curfew was used 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.
12. **Although HaMoked does not agree with the entire content of the above paragraphs included in the state's response, it seems that there can be no dispute that the closure imposed on the community of Beit Fajjar and the sweeping prohibition on the entry and exit from the community constitutes a sanction of collective punishment rather than a security-preventive element.**
13. **In view of all of the above, HaMoked demands that the restrictions of the closure imposed on the community of Beit Fajjar be immediately lifted and that the collective punishment of its inhabitants stopped.**

14. **If the closure is not lifted immediately, HaMoked intends to turn to court on this issue. For this purpose we request that you transfer to us the declaration or the order pursuant to which the closure was imposed on the community and the entire reasons for its imposition.**

Thanking you in advance,

(Signature)

Yadin Elam, Advocate

Copies:

MK Moshe Ye'elon, Minister of Defense

Colonel Doron Ben-Barak, legal advisor for the West Bank

Advocate Osnat Mandel, head of HCJ department