

5 September 2011

To:

Brig. Gen. Nitzan Alon

Commander of the Judea and Samaria Division

Via fax no. 02-9970436

Police Brig. Gen. Amitai Levi

Commander of Judea and Samaria Border Police

Via fax no. 02-9977417

Dear Sirs,

RE: Illegal use of a closed military zone order to restrict a legal protest
- the village of At-Tuwani

I write to you regarding the above, to request that you issue clear instructions to all forces under your command clarifying their obligation to allow protest actions in the territories, as well as the rules and regulations for the conditions and proper use of closed military zone orders to limit non-violent protests in the Occupied Territories, so that they match the instructions of the Legal Adviser to Judea and Samaria Division and previous court rulings, as outlined below.

Our letter is sent following three incidents that occurred in the past month, in which the right to protest was effectively denied through illegal use of closed military zone orders, deliberately issued to prevent a legal an non-violent protest held by Palestinian residents and Israeli and international activists.

Incident no.1 - 9 July 2011

1. The village of At-Tuwani is a Palestinian village in the South Hebron Hills, on Route 317 (henceforth: "the village").

2. For over a decade, the residents of the village and their children have been continuously suffering from abuse by Israeli settlers, from settler takeover of their agricultural lands, and from violent attacks by settlers. The villagers frequently stage protests against these infringements on their human rights, in which Israeli and international activists participate.

3. Approximately two months ago, a group of settlers pitched a new tent close to the village, on private lands owned by the villagers (henceforth: "the tent"). We are not aware of any actions taken by the authorities to remove the tent.

4. On 9 July 2011 the villagers, together with Israeli and international activists, organized a march in an attempt to protect their private property and to protest the settlers' illegal takeover of the lands and pitching of the tent. They carried signs, chanted, and marched together toward the land on which the tent had been set up.

5. The route of the march passed entirely through private agricultural lands belonging to village residents, which are at a considerable distance from nearby settlements. The march took place with no settler presence and with security forces observing the developments from a distance.

6. Before the marchers reached the plot of land on which the tent was pitched, they were approached by a number of soldiers and border policemen, who presented them with a closed military zone order, claiming the protest was illegal because it lacked a permit from the police [1]. A few minutes later, the participants were dispersed using tear gas and stun grenades, without any justification for this violent dispersion. [2]

Incident no.2 - 16 July 2011

7. In another incident, which took place on the afternoon of 16 July 2011, the village was visited by some thirty Israeli and international activists intent on exposing and documenting the settlers' encroachment on the villagers' private lands, the pitching of the tent, and the illegal construction of a stone wall on nearby lands (henceforth: "the wall").

8. When they arrived at the land on which the tent has been pitched, they were approached by two border policemen, who tried to stop them under the pretext that there was a closed military zone order for that area. At this point, they did not present the activists with the written order, and one of them was heard and documented saying on the radio: "Fadida, I need a closed military zone here!" [3]

9. A while later, more soldiers and border policemen arrived at the scene; at this point, the activists departed toward the illegal construction site.

10. The border policemen once again approached the activists and demanded they stop moving toward the wall, even threatening to arrest one of them for disobeying a police officer, and again claimed that there was a closed military zone order that included that area

of the land, as well. [4]

11. Since the arrival of the actual order was delayed, a border police officer present allowed the activists to approach the wall and to document its construction.

12. At this point, an army major arrived, who decided to allow the activists to stay on the site for a few minutes before he implemented a closed military zone order to drive them out.

13. The officer agreed to present the order and the map that was attached to it only after being repeatedly asked to do so by the activists. To their astonishment, they found that the order was unsigned, lacked commencement and expiry times, and the area marked as a "closed military zone" on the map was not the same area as the one on which they were standing.

The photocopies of the order and the map are attached to this letter as appendixes A and B.

14. Despite this, the activists' attempts to explain the illegality of the order to the officer came to naught, and he ordered his soldiers to evict them from the area at once.

15. It should be noted that the order was applied despite the fact the activists were unarmed and did not engage in violence, and that there were no concerns at any point that they might initiate a violent riot, as can be clearly seen in videos documenting the incident. Furthermore, the military officer at the scene did not claim at any point that their actions were illegal. [5]

Incident no.3 - 13 August 2011

16. In the third incident, which took place on 13 August 2011, a group of approximately 25 Israeli and international activists left the village of At-Tuwani for a tour along the main path linking the village to its farmlands and bordering a small grove around the settlement of Havat Maon. The tour was held in protest of recurring attacks by settlers from Havat Maon on village residents and on international volunteers based in the village, who use this path daily.

17. As soon as they left the village, the activists were met by a large number of soldiers and borders police. The activists told them that their intention is to walk along the path up until the edge of the grove, without entering the grove itself, in protest of the fact that Palestinians cannot walk in this main route to their lands without being attacked by the settlers of Havat Maon.

18. At this point, the military commander on the ground informed the activists that he prohibits them from using the path and that if they persist, a closed military zone order will

be issued for the area. The activists explained to the commander that as long as there is no valid order to that effect, they insist upon their right to walk the path and to protest the harm caused to the residents of At-Tuwani.

19. A few minutes later, the commander of the force produced from his pocket a prepared closed military zone order, changed some of the details (such as its issuing date and the hours in which it was valid), and presented it to the activists.

The photocopies of the order and the map are attached to this letter as appendixes C and D.

20. Even after the activists attempted to explain that it is prohibited to use a closed military zone order in a sweeping manner to limit legitimate protest and when the conditions for the use of the order are not met, the commander insisted on implementing the order, without providing any explanations. At this point, the activists left the area.

Denying the right to protest and illegal use of the authority to issue closed military zone orders

Denying the right to protest

21. The right to protest forms an inseparable part of freedom of speech. Beyond the importance of freedom of speech for any person seeking to express their opinion and the status of that freedom as a fundamental right in both Israeli and international law, curtailing freedom of speech has far-reaching implications on other human rights included in the expression being curtailed, and on the protection and promotion of said rights.

22. Considering the special status of freedom of speech and the right to protest, it is clear that the State of Israel and the security forces operating on its behalf are obligated to respect and to protect the freedom of speech and right to protest of the Palestinian residents, as well as those of the Israeli and international activists who seek to participate in protest actions and demonstrations in the Occupied Territories. This is the reason for this letter.

23. On all three incidents described above, the security forces violated said obligation by a flawed and illegal use of closed military zone orders, both in the actual decision to issue the order without the authority to issues it and in implementing the order, with the obligation to ensure that all procedural and material conditions for the orderly and proper operation of the order were in place. This misuse has eventually brought about a sweeping and illegal curtailment of freedom of speech and protest in the territories, as we describe below.

24. Article 21 of the International Covenant on Civil and Political Rights, to which Israel is a signatory, enshrines the freedom of protest and forbids its restriction, except in special cases. In the words of the article:

"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

25. And yet until now these rights, which are supposed to be granted to the residents of the territories, remain unrecognized and are revoked by the Israeli authorities. This revocation is done through military legislation operating in the West Bank [6] and through the conduct of the security forces vis-à-vis demonstrations and protest actions in the territories, as we can see from the incidents described above.

26. The present situation of the practical denial of the freedom of protest constitutes a violation of Israel's obligations under international law – to respect and protect the right to freedom of speech and protest, including the right to demonstrate, as well as the right for personal security and bodily integrity.

27. This approach must change: the rule should be that Israel, as an occupying power, must allow a full exercise of freedom of speech and the right to protest. These rights must not be restricted or infringed upon except when the anticipated harm to security interests is real and severe, and its likelihood has reached the degree of near certainty.

The illegal use of closed military zone orders

28. We do not dispute the actual authority of the military commander to issue an order to close down a certain area. Our claims, therefore, are aimed at the manner in which this authority is executed, materially and procedurally, by military officers – in contradiction of the rules and guidelines set forth by the Legal Adviser to the Judea and Samaria Division, as we will detail below.

Issuing an order without authority – a deviation from the legitimate purpose of a closed military zone order

29. A document titled *Main Highlights – Closing an Area* (henceforth: "main highlights document"), sent to us on 8 March 2010 in the course of correspondence with the Legal Adviser of the Judea and Samaria Division, stipulates that **"a military commander shall declare a closed military zone when security needs or the need to maintain public order necessitate the closure of a certain area."**

The Main Highlights Document is attached to this letter and marked as C.

30. When executing this authority, the military commander must take into account that a basic right is being exercised, the right to freedom of speech and freedom of protest. As noted above, the military commander is obligated to allow the exercise of this right unless the anticipated harm to security interests is real and severe, and its likelihood has reached the degree of near certainty.

31. In the matter at hand, all three incidents described above concerned an assembly for a peaceful and non-violent protest, and public order does not appear to have necessitated the closure of the area. The conduct of the security forces on the ground suggests that the basic assumption under which they acted was that the protesters had no right to protest and that security forces have no obligation whatsoever to enable this protest. The resulting impression is that the security forces operated under the assumption that they were in fact obligated to prevent the protest.

32. The facts of these incidents suggest that the commanders who decided to issue the closed military zones orders never made the considerations they should have made before issuing the order, thus deviating from the legitimate purpose of the use of a closed military zone order as set forth both by the Legal Adviser of the Judea and Samaria Division and by the High Court of Justice. In other words, the military commander acted without authority when issuing the orders in the three incidents that are the subject of this letter.

33. The arbitrary and automatic issuing of closed military zones orders during protests was addressed by the Hon. Judge Tzur in 48236-03-11 [7], during a hearing held in the Magistrate's Court regarding the conditions set for the release of Israeli demonstrators arrested in the territories. Tzur wrote: "Without commenting on the question of the legality of the declaration, there are rules that were laid down for the closing of an area and its declaration as a closed military zone. These rules include:

- a. A closed military zone may not be declared as a punitive measure.

b. A closed military zone may not be declared in regard to a particular group of people.

c. **A closed military zone may not be declared automatically during a friction incident (the emphasis is mine - R.J.).**

34. Contrary to the statements above, the three incidents listed in this request give rise to a real concern of a recurring pattern of arbitrary, automatic, and sweeping use of closed military zones orders, without the appropriate concrete examination of each case in and of its own.

35. The frequent and arbitrary use of closed military zone orders to limit legal protests in the Occupied Territories, for an inappropriate purpose, constitutes a clear violation of the rules of international law concerning freedom of speech and protest, as well as of the instructions of the Legal Adviser of the Judea and Samaria Division and of the rulings of the Israeli court regarding the rules and regulations of using closed military zone orders in the Occupied Territories.

Exercising an invalid order – a violation of the basic conditions of a closed military zone order

36. Beyond the fact that there was no legal purpose that justified issuing a closed military zone order in the cases described above, the incident of 16 July 2011 and appendixes A and B of this request suggest that the closed military zone order issued in this case failed to meet the conditions and regulations for issuing such an order, as clarified in the Main Highlights Document attached to this letter:

- The order was unsigned.
- It did not state commencement and expiry times.
- The area marked on the map attached to the order did not match the area from which the security forces ordered the protesters to depart.

37. The meaning of the above is that the protesters were removed from the area on the basis of an invalid closed military zone order.

Conclusion

38. Considering the multiple and grievous flaws in the decisions to issue closed military

zone orders in the incidents above and in the implementation of these decisions, and considering the resulting grave infringement on freedom of speech and freedom of protest, we ask that you issue **clear instructions** to all forces, clarifying, first and foremost, the duty of the security forces to respect and protect the right to protest and demonstrate in the Occupied Territories. We also ask that you clarify and instill the rules and regulations regarding the use of closed military zone orders in the territories, while stressing the requirement to ensure that the conditions for issuing valid orders are being met.

39. We would be grateful for your relevant reply to our request.

Respectfully,

Raghad Jaraisy, attorney

The Association for Civil Rights in Israel (ACRI)

[1] Video footage of the order presented to the protesters:
http://www.youtube.com/watch?v=1mYk4r_i29c

[2] Video footage of the use of tear gas and stun grenades to disperse the protest:
<http://www.youtube.com/watch?v=Dd4eWGSenQ8>

[3] Video footage of the protesters removed from the site under the pretext of a closed military zone: <http://www.youtube.com/watch?v=sqpsHDnK-Uw>

[4] <http://www.youtube.com/watch?v=uX2C-SXz4>

[5] Regarding this issue, see the officer's statement regarding the peacefulness of the protests and the legality of the activists' presence on the site:
<http://www.youtube.com/watch?v=2j0qAt46-c>

[6] Order no.101 - ban on the production of incitement and hostile propaganda:
<http://nolegalfrontiers.org/he/military-orders/mil06>

[7] בע"ק 48236-03-11 Vardi and others v. the State of Israel