Gaby Lasky & Partners, Law Offices

15 March 2010

Col. Eli Bar-On
Legal Advisor, Judea and Samaria
Via Fax: 02-9977326 - Urgent -

Dear Colleague,

Re: Closed military area orders for the villages of Bil'in and Ni'lin

"Everyone has the right to freedom of peaceful assembly and association."

(Universal Declaration of Human Rights, 1948, Art. 20)

On behalf of my clients – numerous Palestinian, Israeli, and foreign peace activists who have demonstrated against the construction of the separation fence on land of the village of Bil'in for more than five years, and for some two years in the village of Ni'lin – I write to you as follows:

1. Last night, dozens of soldiers entered the village of Bil'in and posted notices stating that the villages of Bil'in and Ni'lin have been declared a closed military area under section 90 of the Order Regarding Defense Regulations, every Friday between the hours of 8:00 A.M. and 8:00 P.M, commencing 18 February 2010 and ending 17 August 2010 (hereafter: "the declaration" or "the order").

2. In effect, the declaration is intended to prevent, by sweeping and unprecedented means, the freedom of expression and protest of residents of the village and their Israeli and foreign supporters, who have protested for more than five years the breach of their basic rights and the usurping of their land and livelihood for the purpose of building the separation fence.

3. The right to protest derives from the right of free speech and is a fundamental right given to everyone, in every situation, regardless of the matter concerning which the protest is made; it has been described as the most precious element of democracy (see Crim App 255/68, *State of Israel v. Ben Moshe*, the comments of President (ret.) Barak in HCJ 153/83, *Levy v. Southern District Police Commander, Piskei Din* 38 (2) 393, and HCJ 8988/06, *Yehuda*

Meshi Zahav v. Commander of Jerusalem District (not yet reported, given on 27 December 2006).

4. It also should not be ignored that, two and a half years ago, in HCJ 8414/05, *Ahmad 'Issa 'Abdallah Yassin v. Government of Israel*, the Supreme Court held that the route against which the villagers are protesting is unlawful, and that the authorities in the region must move it, thus effectively accepting the residents' claims that the route is disproportionate and seriously infringes human rights. Despite the judgment and the court's determination that the state was in contempt of court for failing to move the fence, only recently has preliminary work begun to change the route.

5. Accordingly, the declaration is a drastic and illegal measure intended to suppress the legitimate popular struggle in the villages of Bil'in and Ni'lin. This follows the initiation of a series of additional actions, such as the arrest of representatives of the Popular Committees in the villages, despite their advocacy of non-violent struggle. This declaration also blatantly ignores the military commander's obligation to respect the residents' right to free speech.

6. Just like any other administrative action carried out by the sovereign, imposing a closed military area order is subject to the rules of reasonable and proportionate action. The imposition of a closed military area order is harmful, seriously injuring people's liberty and movement, and thus clearly violates the Basic Law: Human Dignity and Liberty. As was established in App Comm (Judea and Samaria) 5/06, *Eran Schwartz v. Commander of IDF Forces in the Region* (2006) – published in Nevo, by the Honorable Judge Benisho, orders issued by the military commander are subject to court review under the rules of orders given by an Israeli authority. As the judgment states:

> However, in accordance with the aforesaid, *orders issued by the military commander must conform with Israeli administrative law and also with the spirit of the Basic Law.* In this framework, the military commander is prevented from enacting orders that contradict the values of the State of Israel, are intended for a forbidden purpose, or do not meet the conditions of proportionality (emphasis added).

7. The sweeping wording of the order, too, is completely contrary to your directive "Fundamental Points of Emphasis – Closure of Area," as given to the Association for

Civil Rights in Israel approximately one week ago by Captain Aviva Lewis of your office. These directives instruct that a commander will declare a closed military area only when security needs or the need to maintain public order so require, *and that an order is not to be issued automatically to cope with friction.* The document further states that the order must be issued for a fixed period of time, and that it is not to be used as a punitive measure (a copy of the directive is attached).

8. An examination of the scope and purposes of the declaration indicates that its issuing constituted a blatant violation of authority, and that it completely fails to meet the proportionality tests of the legal limitation clause, particularly in that it fails to use means that would cause lesser harm to the residents, and since the harm to the right to demonstrate and to freedom of movement of the villagers and their supporters is greater than the interest of maintaining public order, that is, in demonstrations that are essentially non-violent and the justice of which has been recognized by the Supreme Court.

9. In light of the above, and particularly in light of the unreasonable and disproportionate character of the order, I request that you take action to cancel the declaration no later than this Thursday, 18 March 2010, in order to enable the demonstrations to take place. In the event that the orders remain in force at that time, my clients intend to use all legal means available to them, including petitioning the High Court of Justice, to bring about the immediate cancellation of the orders, on the grounds that they are illegal and intrinsically invalid.

10. I would appreciate your response as soon as possible.

Sincerely,

Gaby Lasky, Attorney