

**PHROC Joint Open Letter to the EU High Representative regarding Collective
Punishment of Palestinians in the Occupied Palestinian Territory during Operation
Brothers' Keeper**

Dear EU High Representative for Foreign Affairs and Security Policy,

On 12 June 2014, three Israeli settlers disappeared from the Occupied Palestinian Territory (OPT). Since their disappearance, Israel has engaged in large-scale searches, closures, and raids across the OPT, resulting in the killing of two Palestinians, Ahmad Sama'da, 20, and Mahmoud Dudeen, 15. Additionally, one Palestinian was shot in the head and is said to be in a state of clinical death. As of 21 June, Al-Haq has documented the detention of approximately 454 Palestinians across the West Bank.¹ Further, 51 of the detained Palestinians had been released in the Shalit prison exchange deal in 2011. In total, 12 members of the Palestinian Legislative Council (PLC) have been arrested since 12 June, including the head of the PLC.² The large-scale wave of arrests is reportedly accompanied with permission being given to Israeli interrogators to resort to "moderate physical pressure" against the Palestinian detainees.³ During late-night house raids, Israel has also been ransacking houses and destroying private possessions while intimidating and harassing the residents of the West Bank in reprisal for the missing settlers. The closure of checkpoints, particularly the Container checkpoint east of the City of Bethlehem, has led to further restrictions on the freedom of movement of approximately 100,000 Palestinians, many of whom are university students. Furthermore, many Palestinian residents in the West Bank have been forced to limit their movement as a result of a dramatic escalation in settler violence.

As the Occupying Power, Israel is obligated to carry out its search for the missing settlers in line with its obligations under international human rights law (IHRL) and international humanitarian law (IHL). IHRL obligates Israel to respect the right to life of Palestinians by ensuring that the use of force and firearms by law enforcement officials is carried out in a manner that minimises damage and injury and respects and preserves human life. IHRL further prohibits arbitrary or unlawful interference with privacy, family, home and correspondence and affords all persons the right to liberty and security of person. As such, Israel may not arrest and detain Palestinians in a sweeping fashion; there must be a legal basis for each and every individual arrest. Furthermore, all persons that are arrested must be treated with humanity and respect for their inherent dignity. Israel is absolutely prohibited from resorting to torture, cruel, inhuman and degrading treatment. Unlike the ruling of the Israeli Supreme Court, Israel is not allowed to inflict so called 'moderate physical pressure' against Palestinians, regardless of the situation. Under IHRL, Israel is also prohibited from restricting the freedom of movement of the thousands of Palestinian civilians as a form of collective punishment. The grave infringement currently imposed on

¹ According to Al-Haq data, 200 Palestinians were arrested in Hebron, 78 in Nablus, 48 in Ramallah, 34 in Jenin, 23 in Tulkarem, 7 in Tubas, 1 in Jericho, 13 in Qalqiliya, 30 in Bethlehem and 20 in Jerusalem.

² According to Al-Haq data, one PLC member was arrested in Tulkarem, 3 in Nablus, 5 in Ramallah, 1 in Tubas and 2 in Hebron.

³ <http://www.stoptorture.org/il/en/node/2007>

Palestinians in the OPT, in particular residents of Hebron, is not proportionate nor necessary to protect Israeli national security and is highly intrusive.

Israel is also bound by IHL in the OPT. Particularly, Article 27 of the Fourth Geneva Convention defines the unequivocal duties of the Occupying Power, including the obligation to respect persons, their honour, freedom from physical or moral coercion and freedom from collective punishment. This entails a duty on Israeli occupying forces to protect civilians from all acts of violence or threats thereof, against humiliating punishment, and to ensure that homes do not become the object of arbitrary interference. While Article 27(4) of the Fourth Geneva Convention authorises the Occupying Power to take stringent measures of "control and security," such as imposing restrictions on movement or depriving individuals of their liberty, these can be adopted only on necessary security grounds, and in a manner that is not discriminatory.

Significantly, the collective punishment of the civilian population is absolutely prohibited under Article 33 of the Fourth Geneva Convention, which forbids the Occupying Power to use "[c]ollective penalties and likewise all measures of intimidation [...]." Article 75(2)(d) of the First Additional Protocol to the Geneva Conventions, reflective of customary law, confirms that collective punishments are prohibited at any time. The Israeli army has previously claimed to use closures as preventative and deterrent measures, despite international law recognising their effect as being punitive and collective, in particular due to their indiscriminate nature.

The methods employed in Israel's investigation into the disappearances of the settlers are indiscriminate in their nature and are undermining the fundamental rights of the Palestinian population. Article 26 of the International Covenant on Civil and Political Rights provides that all persons are entitled to equal protection before the law without discrimination. Furthermore, the violations that are being carried out are based on mere speculation regarding the circumstances surrounding the disappearance of the settlers, the possible identity of those responsible and their location. As such, these measures indicate Israel's intention to impose punitive measures against large portions of the Palestinian population in violation of Article 33 of the Fourth Geneva Convention prohibiting reprisals against protected persons and their property, as well as collective punishment.

Furthermore, threats by the Israeli Government to expel Hamas officials from the West Bank to the Gaza Strip on the basis of allegations that the organisation is responsible for the settlers' disappearances not only amounts to indiscriminate collective punishment but also violates Article 49 of the Fourth Geneva Convention, which prohibits forcible transfers and deportations of protected persons in occupied territory. The violation of this provision amounts to a grave breach of the Geneva Conventions and as such may constitute a war crime under Article 8(2)(a)(vii) of the Rome Statute of the International Criminal Court.

The manner in which Israel is carrying out so called Operation Brothers' Keeper, including threats issued regarding Hamas officials, the re-arrest of Palestinian prisoners that were released under the Shalit prisoner exchange deal, the increasing number of administrative detainees despite an ongoing hunger strike in protest of Israel's illegitimate use of administrative detention, and the large scale closures and raids, raises grave concern regarding the actual purpose of Israel's actions in the OPT - one that is not consistent with the alleged purpose of the investigation into the disappearance of the settlers.

The EU's response to Israeli measures undertaken in the context of the disappearing settlers has dangerously ignored Israeli violations and failed to distinguish between lawful measures employed by Israel to locate the settlers and measures that infringe on the rights of Palestinians. The search for the settlers may not be used as a pretext to kill, arrest, torture, and infringe on the privacy of Palestinians. The EU statement of 17 June 2014, and subsequent statement under Item 4 during the 26th session of the Human Rights Council illustrate an utter and worrying disregard for Israel's unlawful acts following the disappearance of the three settlers. An accurate analysis of Israel's response demands that the EU, including in international fora such as Item 7 of the 26th Human Rights Council session:

- strongly condemn Israeli actions amounting to IHL and IHRL violations undertaken during so called Operation Brother's Keeper;
- demand that Israel strictly adheres to its responsibilities as an Occupying Power and discontinue the investigation in its current form;
- demand that Israel releases Palestinians arbitrarily detained, including administrative detainees;
- demand that Israel promptly investigate, in accordance with international law standards, and hold to account the perpetrators involved in the killing of Palestinians, including Ahmad Sama'da and Mahmoud Jihad Muhammad Dudeen;
- demand that Israel calls on the Attorney General to clearly articulate to all security officials that torture is absolutely prohibited and to hold to account any Israeli official who resorts to it;

One must consider that Israel is obligated to protect the occupied Palestinian people – including during investigations surrounding Israelis. The EU must not give Israel a carte blanche for undertaking any measure – regardless of its implications on the Palestinians – they deem fit in their blindsided search for the three settlers. We recall that in 2011, Israel also engaged in collective punishment when carrying out a large-scale investigation in the village of 'Awarta (Nablus governorate) and that the failure of the EU to properly address Israel's so called investigation can only be seen as encouraging Israeli violations of Palestinians' rights. To that end, we ask that the EU take strong action to ensure Israel's violations of international law during this investigation is not encouraged but rather restrained. Finally, it must be recalled that each individual EU member state, as High Contracting Parties to the Fourth Geneva Convention are under an obligation to ensure respect for its provisions.

Yours Sincerely,



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