

EU HEADS OF MISSION

Cover Note

Considering the alarming phenomenon of increasing settler violence in the oPt;

Considering the urgent need to address the situation in conformity with the EU position, in accordance with international law, that the acquisition of territory by force or the threat of the use of force is inadmissible;

Considering the request by the COMEP ad hoc working group in its meeting on 7 Dec 2010 in Brussels,

The Heads of Mission in Jerusalem and Ramallah herewith submit to the PSC the Report on Settler Violence (Annex 1) and for discussion a series of policy recommendations regarding this phenomenon (Annex 2):

The Heads of Mission in Jerusalem and Ramallah recommend:

- Using meetings with Israeli authorities to give a clear and consistent message on settler violence in the oPt and related problems of accountability
- Appropriate follow-up to the submissions
- Mandating HoMs in Jerusalem and Ramallah to continue to monitor and report on the situation.

EU HEADS OF MISSION REPORT ON SETTLER VIOLENCE**Introduction**

This report has been prepared to highlight the phenomenon of settler violence in the West Bank. Settler activity in the occupied Palestinian territories is a leading cause of violence against Palestinian civilians, destruction of Palestinian property and the abuse of Palestinian rights under international law. Discriminatory protections and privileges for settlers further compound these abuses and create an environment in which settlers can act with apparent impunity.

This atmosphere of impunity is contributing to the persistence of, and indeed an increase in violent attacks by settlers on Palestinians. UN OCHA reports that the number of attacks by Israeli settlers against Palestinian farmers and their olive groves significantly increased in 2010 compared to the olive seasons of the previous two years. Since 2006, the total number of settler related violent incidents has nearly doubled¹.

92% of the 600 cases related to settler violence monitored by Israeli NGO Yesh Din between 2005 and April 2010 were closed by Israeli authorities without resolution. The absence of legal remedy or sanction undermines the rule of law, risks engendering more violence and jeopardises political dialogue. This applies both to the settlers, who in the absence of sanction feel able to continue attacks, and to the Palestinian population who, in the absence of protection or legal remedy may increasingly support other means in an effort to improve their situation.

Furthermore, the Palestinian Authority has almost no means - nor, in Area C, the authority - to protect its people from settler violence. This undermines the legitimacy of the PA in the eyes of the Palestinian public.

I. EU Policy and settlements

In accordance with international law, the EU regards the West Bank, including East Jerusalem, as occupied territory. Therefore, as reiterated in the 13th December 2010 European Council Conclusions, settlements are viewed as illegal under international law and an obstacle to peace.

Some 500,000 settlers live in the oPt: approximately 190,000 in 12 settlement areas in East Jerusalem and the other 310,000 in the rest of the West Bank). The 310,000 settlers live in 124 settlements (recognised by Israel) and an additional 100 unrecognized settlements, so-called "outposts", which are illegal also under Israeli law. (figures according to B'Tselem).

¹ According to OCHA, an increase from 182 incidents in 2006 to 331 in 2010 (up to 3 Dec 2010)

II. The nature of settler violence

Settler violence takes various forms and is a means of frightening, deterring or harassing Palestinians, mainly those living in areas close to Israeli settlements in the oPt.

Attacks include gunfire aimed at Palestinian civilians and their residences and even more serious acts of physical assault; the dispossession of privately held property belonging to the Palestinian population; general harassment and violent acts against individuals. Destruction of crops through burning of olive fields or uprooting of trees; blocking of roads to impede Palestinian life and commerce; stone and garbage throwing at Palestinians. These practices are all recorded incidents of settler violence.

Some attacks on Palestinians come in response to attempts by the Israeli authorities to dismantle illegally built structures in the settlements or to distribute demolition orders. The settlers refer to the ensuing violence against Palestinians as a 'price tag', intended to deter the authorities from implementing decisions seen to be directed against settlements. This so-called "price tag" strategy entails systematic, widespread and indiscriminate violence against Palestinian civilians. In some cases, Israeli security forces are also targeted. On occasion, settler violence has occurred as a retaliatory response to violence committed by Palestinians. The most serious incident in years, the murder of four Israeli citizens in the Westbank on September 2, 2010, shortly after the announcement of the resumption of direct negotiations in Washington, for which Hamas claimed responsibility, sparked acts of settler violence.

In some cases, settler attacks have directly contributed to the displacement of Palestinian residents, making way for the taking over of Palestinian residences by settlers. Examples include the H2 area of Hebron, Palestinian hamlets in Massafer Yatta, and the village of Yanun in the northern West Bank.

Among the most serious cases of suspected settler violence have been three arson attacks on mosques in the last 12 months. The political impact of the de facto impunity is significant.

Triggering factors

Settler violence occurs throughout the year, yet with particular increases in property and land damage observed during periods of intensive agricultural activity for Palestinians, especially during the olive harvest season. 2010 saw a significant increase in violent incidents by settlers against Palestinian farmers and their olive groves during the olive harvest season. Since 15 Sept., 71 incidents have been recorded resulting in injury to Palestinians, 104 since the beginning of the year (OCHA, December). This compares to 66 incidents over the entire olive season in 2009. Since the beginning of the olive harvest in mid-September some 5.900 olive trees have been damaged or destroyed, compared with a

few hundred over the course of each of the previous two seasons, and more than 800 dunums of land have been torched (OCHA, December).

There are indications that settler violence also increases at defining moments in the peace process.

III. The impact of settler violence

The impact of settler violence can be far reaching. The majority of cases are against Palestinians, but there are also reports of attacks against Israeli civilians as well as the Israeli authorities. Physical, psychological and economic impacts have all been observed.

Physical

NGOs regularly report on incidents of physical violence against Palestinians by settlers. The most common reports are of shepherds beaten while tending their animals close to settlements. Some of these incidents have been recorded on cameras provided as part of the B'tselem "Shooting back project". According to Israeli Human Rights NGOs the IDF method of preventing incidents of settler violence is to restrict Palestinian access to land near settlements in some areas of the West Bank on security grounds. These preventive measures make it very difficult for farmers to cultivate their land. They are therefore forced to find alternative forms of employment. Palestinian medical services are sometimes prevented from reaching the scene by the IDF on security grounds.

There are reports of extremist settlers attacking children on their way to school. Since November 2004, children in the village of At-Tuwani (Southern Hebron hills) have been escorted by IDF soldiers on their way to school past the illegal outpost of Havat Ma'on (Hill 833) to protect them from settler attacks. However, the settlers continue to throw stones and harass the children resulting in both physical injury and fear. When the soldiers are late or don't arrive to escort the children some take different, longer routes to avoid the settlers and others do not go to school.

In May 2010 a 15 year old Palestinian was shot and killed by a settler after the Palestinian threw stones at his car driving near Ramallah. In Sep 2010, one Palestinian was killed in Silwan by a private security guard, employed by the settler organisation Elad. One young Palestinian was shot dead by settlers on 27 Jan 2011 near Nablus and another one the following day near Hebron.

In addition, there have been incidents of settlers attacking Israeli civilians and authorities. During the 10 months settlement moratorium in 2010 there were reports of settlers attacking MOD inspectors visiting settlements to check that the moratorium was being enforced. In some settlements they succeeded in preventing the inspectors from entering the area. During the 2008 evacuation of Beit Shalom in Hebron and the demolitions of

nine houses in the illegal outpost of Amona in 2006 violent clashes erupted between settlers and the Israeli authorities resulting in many injuries.

Psychological

Settler violence and the absence of legal remedies thereafter create a sense of insecurity and vulnerability in the Palestinian population living in proximity to settlements.

Those affected by this violence suffer psychological stress similar to what is documented in cases of house evictions/demolitions, resulting in displacement of Palestinians (i.e. people forced to move to escape the sense of threat and insecurity). However, in turn, forced displacement also has severe short and long-term negative psychological consequences in the displaced (documented by Save the Children (UK) in "Forced Displacement in the Occupied Palestinian Territory", 2009).

Economic

Settler attacks have a very significant economic impact. The most common reports of settler violence result in damage to agricultural land and property, which can severely affect the livelihood of Palestinian farmers. OCHA reports that during the single month of October 2010, 3700 Olive trees were damaged (burned, uprooted, poisoned with chemicals or vandalised). These attacks took place during the olive harvesting season, an important source of income for Palestinian farmers. Furthermore, the economic effects are cumulative, as in addition to the cost of having to replant olive fields, they will require several years before they produce olives again. There are also regular reports of other Palestinian property being damaged by settlers. In October 2010 two vehicles were set alight in the West Bank village of Qusra near Nablus. Security camera footage of the incident shows three men spraying "price tag" on the door of one vehicle in Hebrew before setting it on fire.

IV. Accountability

The Fourth Geneva Convention provides for the protection of civilians in time of war, including during occupation. The presence of Israeli settlers in the Palestinian territories represents a clear breach by the Government of Israel of Article 49 of the 4th Geneva Convention ("The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.") to which the state of Israel is a signatory.

Furthermore, Article 14 of Additional Protocol II of 1977 of the Geneva Conventions², expressly prohibits attacks, destruction, removal or the rendering useless of objects indispensable to the survival of the civilian population such as food-stuffs, agricultural

² Israel has never ratified this Additional Protocol.

areas for the production of food-stuffs, crops, livestock, drinking-water installations, and supplies and irrigation works.

Additional Protocol II specifically strengthens the minimum standards of protections of the Conventions. Although the state of Israel has not ratified this Additional Protocol, its provisions are in many aspects now customary in the application of international humanitarian law and can therefore be considered as partially binding on all parties to non-international armed conflicts, in particular as regards protected persons and objects. These provisions are further complemented by non-derogable fundamental human rights.

The settler population and the Palestinians in the West Bank are subject to entirely separate and distinct legal frameworks. This coexistence in the West Bank of these two legal frameworks, one civil -more favourable- applied to the settlers, and one military applied to the local Palestinian population, has institutionalised de facto discrimination before the law.

Arguably, the single most important deficiency in the provision of an impartial rule of law is the difference in the level of protection afforded to settlers and Palestinians. Palestinians in Area C are entirely dependent on the IDF, as the occupying force, for their physical protection. IDF personnel have only limited authority to use force against settlers, as this is the prerogative of the Israeli police. As a result, they are in general prevented from protecting Palestinians from settlers. However, if Palestinians resort to even limited force in self-defence against settlers, IDF soldiers can and must intervene according to their Rules of Engagement. The presence of the IDF at scenes of settler violence against the Palestinian civilian population, together with the differences in protection provided in the IDF Rules of Engagement, creates the perception that settler violence enjoys the tacit approval of the state of Israel.

Access to police protection: Palestinian complainants must report offences by settlers to the Israeli police. Police services are almost exclusively available only inside the settlements to which Palestinian access is highly restricted. The investigation of settler crimes is customarily undertaken by the police in Hebrew. Arabic (the language of the protected population) is not used, despite its status as an official language of the Israeli state and the provisions in the 4th Geneva Convention which arguably require use of the language of the protected population. Severely limited physical access to the police and the effective operation of a language barrier constitute serious restrictions to Palestinian access to legal remedy for suspected crimes by settlers.

Police personnel routinely fail to conduct investigations into allegations of settler violence against Palestinians: in a 2006 report, the Israeli NGO Yesh Din found that over 90% of complaints and files were completed without indictments; 96% of allegations of trespassing and 100% of allegations of illegal tree felling were closed without indictments;

100% of alleged cases of property offenses were closed without indictments; 79% of assault cases were closed without indictments; 5% of all criminal complaints against Israelis and settlers by Palestinians were lost by the police authorities and the investigations were then abandoned. Subsequent reporting has confirmed this trend of impunity.

V. International concerns

Quartet members have told us that they share our concerns on settler violence. They agree that the most effective method of raising those concerns is through a combination of public statements and through regular dialogue with key figures in the Israeli military and political establishment. Like the EU, they believe that the Israeli government needs to meet its obligations as an occupying power to ensure the safety of Palestinian civilians and to deal transparently, impartially and effectively with criminal acts carried out by extreme members of the settler movement.

Recommendations

In Israeli terms, there is a negative political consequence to cracking down on settler violence and no political gain from protecting Palestinians. Therefore we need privately and publicly to give them a clear conception that there is also a negative political consequence to allowing - often through inaction - settler violence. EU HoMs recommend that the:

- EU seek clarity from the Israeli Authorities (civil and military) on law enforcement responsibilities regarding settler violence in the West Bank and East Jerusalem. This could be done on the example of mosque attacks, which the Israeli authorities have pledged to follow-up on.
- EU agree procedures for following-up on individual incidents, produce reporting and share findings with other EUMS [in line with procedures for attending military and civil courts];
- EU MS, in cooperation with missions in Tel Aviv, raise incidents of settler violence with the Israeli Authorities, and to follow up after investigations where insufficient action has been taken by the Israeli Authorities;
- EU MS consider including updated factual information following incidents of settler violence in West Bank and East Jerusalem;
- EU MS consider including violent settler leaders and those calling for violent acts against Palestinians on travel watch lists.