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Ensuring that the Human Rights Council challenges Israeli impunity by effectively utilising Agenda Item 7

As members of the Palestinian Human Rights Organisations Council (PHROC) we are deeply concerned about the escalating nature of Israeli violations of international law in the Occupied Palestinian Territory (OPT) since the resumption of US-led negotiations on 29 July 2013. Between 29th July and 31st December 2013, while the negotiations were on-going, there was a 43 percent increase in house demolitions and a 74 percent increase in people displaced by demolitions as compared to the same period in 2012¹. In the first four months of negotiations the government of Prime Minister Benjamin Netanyahu advanced plans for 5,349 illegal Israeli settlement-housing units in the West Bank, and has promoted 11,047 housing units through different stages². The Human Rights Council's (HRC) inaction in response to Israel's on-going violations has been particularly alarming as it perpetuates a culture of impunity and facilitates the continuation of Israel's colonial policy that involves the dispossession of Palestinian land and the transfer of settlers into the OPT.

Forcible transfer of Palestinians, restrictions on the freedom of movement, settler violence, and extensive destruction of property are all direct results of Israel's settlement policy and demand urgent action from the international community. The international community must not only oppose the construction and expansion of Israeli settlements but must also seek to put an end to the entire settlement enterprise, which provides the economic, legal and physical infrastructure that maintain the occupation.

The Human Rights Council Must Not Tolerate Israel's Impunity

The culture of impunity associated with Israel's unlawful conduct presents the main obstacle to the realisation of the right to self-determination of the Palestinian people – a right that is considered a peremptory norm of international law. In the event of a breach of such norms, all States have an obligation not to recognise Israel's illegal conduct as lawful, not to render aid or assistance in maintaining the illegal situation and to cooperate to bring it to an end.

Israel's increasing violations of international law, documented by PHROC, indicate that states have, to this day, failed to effectively utilise important forums such as the HRC to address Israel's violations in a serious manner and with the necessary urgency. During the 47 years of its occupation, Israel has continued to violate both international

¹ These figures were all compiled using data available from UN OCHA's Protection of Civilians Database from 1 January 2009- 31 December 2013

² Americans for Peace Now, 'New tenders for 1877 housing units behind the Green Line', (January 2014) <<http://app.activetrail.com/S/eixijfjez.htm>> accessed February 15 2014.

humanitarian and human rights law by, inter alia, committing war crimes and grave breaches of the Geneva Conventions and refusing to recognise its unequivocal obligation to respect, protect and fulfil its human rights obligations vis-à-vis the occupied Palestinian population.

The lack of political will by third State actors to fulfil their obligations under international law has allowed Israel to successfully create facts on the ground that seriously jeopardises chances for a future agreement between both parties that respects the principles of international law.

The manner in which Israel participated in the Universal Periodic Review (UPR) highlighted its disregard for the mechanisms of the UN. After avoiding any repercussions for its refusal to participate in the first officially set date for its review, Israel continued to maintain ambiguity about its participation in the process, even when its review was re-scheduled for 29 October 2013. Israel's vagueness about its participation created a situation of uncertainty that forced civil society organisations to revise or limit their engagement with the UPR to avoid the risk of them investing significant resources into a process that Israel may not have been present at, as had happened during preparations at the 29 January session. Consequently, a key component of the UPR process, civil society engagement, was severely hampered.

Similarly, by submitting its national report less than 48 hours before the interactive dialogue, Israel made it difficult for States to undertake an in-depth examination of the report prior to the review. Hence, another key component of the UPR process, effective peer review by other States, was also impeded. During the review, States re-iterated the need for Israel to significantly increase its cooperation with the HRC and other UN mechanisms. While it is important to highlight Israel's lack of cooperation with the HRC, such criticism has proven insufficient in ensuring Israeli accountability. The soft approaches taken by States in challenging Israel for its internationally wrongful acts within forums such as the HRC escalate Israel's adverse behaviour towards the Palestinian population.

More concerning, however, have been the indications that Israel has been given concessions in return for its renewed cooperation with UN mechanisms. International civil society repeatedly warned Member States of the negative consequences that would result if concessions were made to secure an end to Israel's non-cooperation with the HRC. Unfortunately, Israel's on-going exertions to use the threat of continued noncompliance with the mechanisms of the HRC as leverage to undermine the validity of Item 7 of the Council agenda and to gain membership of the Western European and Other Group (WEOG) have been acquiesced to by some states.

On 2 December 2014, Israeli media celebrated Israel's invitation to join the WEOG, claiming that it had been a success gained from Israel's refusal to cooperate with the HRC. Although conceding to Israel's request to join the WEOG is a political decision, the relevant states of the Council that made this decision are setting a dangerous precedent by seemingly granting it as a concession in return for cooperation with the UPR. Israel's actions, and the Council's lenient response, risk incentivising other States that violate human rights to refuse to engage with the UPR in order to either decrease critical appraisal of their human rights records or to gain concessions in return for their renewed cooperation, which will only serve to increase their impunity.

Item 7 is a means to pursue accountability

Despite the continued appropriation of Palestinian land and the denial of Palestinian rights, both of which solely benefit Israel's settlement project, recourse to effective judicial mechanisms within Israel has not been guaranteed to Palestinians. As such, effective domestic means to halt the confiscation of Palestinian territory remain unavailable to Palestinians, thereby denying them the ability to seek accountability for violations of international law. Hence, international mechanisms offer the only alternative for Palestinians seeking to pressure Israel to respect their human rights.

Palestinian civil society considers Item 7 a vital but underused forum through which to advance towards realising Israeli accountability. This Item was set as part of a standing agenda in the HRC precisely with the intention of bringing to an end violations of international law carried out by Israel in the OPT. This agenda item was necessary because other UN bodies, including the Security Council, were unable to ensure Israeli accountability because the United States' persistently used its veto power, which created an imbalance throughout the UN that strongly favoured continued Israeli impunity in the OPT. Even with Item 7 on the agenda of the Human Rights Council, however, it is evident today that not even the basic rights of the Palestinian people have been realised. As such, not only must Item 7 remain on the Agenda until Israeli violations in the OPT come to an end, it must also be used more effectively as it is one of the very few international avenues available for the progression towards ending the occupation and ensuring justice.

During the 22nd session of the HRC in March 2013, however, the European Union (EU) stated that violations committed by Israel against the Palestinian people should not be addressed under Item 7, but rather under Item 4, which is designed to address human rights situations that require the Council's attention. The EU further expressed its intention not to participate in the General Debate under Item 7 and indeed refrained from doing so during the 23rd and 24th sessions of the HRC. PHROC reiterates its disappointment with the EU's position on Item 7. Item 7 is one of the few forums that allow States to address a unique situation of prolonged occupation, and provides a critical avenue to pursue Israeli accountability.

The failure of the international community to take action as per the recommendations of the "UN Fact-Finding Mission Report on the Gaza Conflict", treaty bodies, multiple UNGA resolutions, and the recommendations of the "UN Fact-Finding Mission Report on Settlements" has only reinforced the perception amongst Palestinians that international law does not protect them. Increased and effective utilisation of Item 7 is a means to address this imbalance. As Palestinian human rights organisations, we urge the members of the Human Rights Council to:

- Ensure the rigorous and efficient utilisation of Item 7 as a forum designed to protect the occupied Palestinian population by holding Israel to account. As such, we ask that all States ensure their active participation in Agenda Item 7 of the Council, particularly the European Union.
- Vote in support UN HRC resolutions seeking to ensure respect for the Palestinian people's right to self-determinations, including their right to permanent sovereignty over natural resources.

- Adopt effective guidelines to ensure that companies domiciled in their jurisdiction do not participate in Israel's illegal settlement policies.