

January 1, 2012

To
MK David Rotem
Chairperson of the Constitution, Law, and
Justice Committee
The Knesset

To
Members of the Constitution Committee

Dear Members of Knesset,

Re: **Discussion on Law Enforcement in the Territories, 5 January 2012**

Attacks against Palestinians and Palestinian property by Israelis in the Occupied Territories constitute a common, longstanding, and widespread phenomenon. The authorities have been aware of this reality for many years. Despite this, and despite repeated complaints and requests to the security forces and law enforcement agencies by local residents and human rights organizations, this phenomenon continues virtually unhindered. The harassment of security forces operating in the Territories by Israelis is also not a new phenomenon, and it, too, has been left for too long without the required response.

Alarming and regrettably, this lack of response has apparently had grave results, in the form of the spread of violence and law-breaking from the Territories into Israel. This violence is directed, first and foremost, against the Arab population, but also targets human rights and political activists, whose positions are disliked by the attackers. The phenomenon of inaction by the security forces, and the hesitant response, at best, to lawbreaking and violence by Israelis in the Occupied Territories, has contributed to the erosion of the rule of law in the West Bank in this context.

On dozens of occasions over the years, human rights organizations, including the Association for Civil Rights in Israel (ACRI), have repeatedly alerted the authorities regarding the severe damages caused to person and property by Israelis, particularly against Palestinians in the Occupied Territories.

As you know, one of the primary obligations incumbent on the military commander of an occupied area, with regard to its protected residents, is the need to maintain public law and order in the area under his control (Regulation 43 of the Hague Regulations); and to ensure the well-being of the local residents and protect them, particularly from violence and threats of violence (Article 27 of the Fourth Geneva Convention). This is also required by Israeli law, including the explicit ruling

established by the Court in H CJ 9593/94 *Rashid Murar v Commander of IDF Forces in the Judea and Samaria Area* (dated June 26, 2006).

Although the Israeli and international law on this matter are clear; despite the report and recommendations of the comptroller of the security system on this subject (from 2007); although the Attorney General has issued explicit instructions regarding law enforcement against Israelis in the Territories; and although the Legal Advisor for the Judea and Samaria Area has issued a series of instructions on the subject – the law enforcement authorities, including the security forces, continue to show a lack of determination in preventing violence and lawbreaking.

The Constitution Committee should require the law enforcement authorities in general, and the security bodies active in the Occupied Territories in particular, to act and to enforce the law against those who violate it, including those who act in a violent manner, without discrimination and without distinction. Law enforcement personnel and means should be enhanced in order to ensure the law enforcement is defined as a top priority task in the Territories. Police and military forces should be stationed in areas where violations are common, and the obligations incumbent on the army and the police in their operations in the Territories in terms of combating lawbreaking and enforcing the law should be clarified. Among other changes, the phenomenon of soldiers standing by while acts of violence and lawbreaking take place must be eliminated.

We urge the Constitution Committee to call upon the government to allocate all means, personnel, and tools necessary in order to ensure law enforcement as described above.

We wish to emphasize that we reject the proposals to expand the use of infringing tools of enforcement, which are liable to violate the human rights and due process to which all those suspected or accused of breaking the law are entitled. Various reports suggest that the law enforcement agencies have decided to use infringing methods, such as administrative detention and restraining orders, preventing defendants' right to review the prosecution material, and so on. We believe that such infringing means of enforcement must not be used against anyone – neither Palestinians nor Israelis. Instead, proper criminal proceedings should be followed that ensure the full rights of suspects and defendants to dignity, liberty, and due process. Insofar as there is a shortage of tools for enforcement, personnel, and so forth, it must be ensured that the security and law enforcement agencies are allocated the necessary resources to enable them to pursue investigations, detentions, indictments, and trials that maintain the rights of suspects and defendants.

We should add that we do not accept the claim by Members of Knesset Eldad and Ariel, who submitted the requests to hold this discussion, that there is discrimination against settlers, or Israelis in general, in the Occupied Territories. We believe that the facts are completely opposite to this claim, as detailed above.

In conclusion, we again urge the Constitution Committee to demand that the government, law enforcement agencies, and security forces take proper action against the phenomena of violence and lawbreaking in the Occupied Territories; act to enforce the law as required and without discrimination; and allocate the necessary means to this end. This should be done while ensuring the maintenance of a proper and standard criminal proceeding, which protects the rights of suspects and defendants, without the use of injurious means of enforcement.

Sincerely,

**Debby Gild-Hayo, Attorney
Director of Policy Advocacy**

**Tamar Feldman, Attorney
Director, Department for Human Rights
in the Occupied Territories**

CC:

MK Eldad, MK Molla, MK Ariel – initiators of the discussion

Mr. Ehud Barak, Minister of Defense

Mr. Yehuda Weinstein, Attorney General

Major-General Avi Mizrahi, OC Central Command

Commissioner Amos Yaacov, Commander of the Shai District, Israel Police

Attorney Sigal Kogut, Legal Advisor, Constitution Committee

Colonel Eli Bar On, Legal Advisor for the Judea and Samaria Area