

# THINK TWICE

Can companies do business with  
Israeli settlements in the  
Occupied Palestinian Territories  
while respecting human rights?

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***Think Twice: Can companies do business with Israeli settlements in the Occupied Palestinian Territories while respecting human rights?***

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# CONTENTS

Foreword	1	4. Standards: What are the standards applicable to business in occupied territories?	19
Executive summary	2	4.1 Humanitarian law	19
1. The basics: What is a human-rights-compatible approach to doing business in or with an occupied territory?	4	4.2 Human rights law interpreted for business	19
1.1 International humanitarian law is paramount	4	4.3 The OECD Guidelines for Multinational Enterprises	21
1.2 Israeli settlements in the West Bank breach international law	5	5. Responsibilities: What do companies have to do to meet their corporate responsibility to respect human rights in connection with the settlements?	23
1.3 Is human rights due diligence the solution?	5	5.1 Operating in Israeli settlements in the Occupied Palestinian Territories	23
2. Facts on the ground: What human rights issues do these settlements raise?	8	5.2 Trading with or investing in settlement businesses	24
2.1 The right to life	8	6. Decision point: Is there any way a company can meet its responsibility to respect human rights and do business with the settlements?	25
2.2 The right to adequate housing	8	7. Risks: What are the legal risks for companies that ignore human rights?	27
2.3 The right to equality and the right to non-discrimination	10	7.1 Corporate criminal and civil liability	27
2.4 The rights to liberty, security of the person and equal treatment before the law	10	7.2 Supplying funds, materials or resources	28
2.5 The right of access to an effective remedy	10	7.3 Handling or trading in goods from conflict-affected areas	29
2.6 The right to health	11	7.4 The legal consequences for breaches of law	29
2.7 The rights of the child	11	8. Disengagement: Why are businesses choosing to divest and disengage?	30
2.8 The right to water	11	8.1 Examples of divestment by companies	30
2.9 The right to education	11	8.2 Examples of companies being excluded from investment portfolios	31
2.10 The right to earn a decent living through work	11	8.3 International and governmental action and advice	32
2.11 The rights to freedom of expression and peaceful assembly	12	9. Consequences: Is there a danger that disengagement could worsen the situation for Palestinians?	34
2.12 The right to freedom of movement	12	10. Comparisons: Are these problems common to all areas under military occupation?	35
2.13 Fundamental labour rights	12	11. Actions: Why should companies act now rather than wait for governments to take action?	36
3. Businesses: What part do businesses play in these settlements?	13	Key sources	37
3.1 Banks and other financial institutions	13	Endnotes	38
3.2 Law firms	15		
3.3 Construction companies	15		
3.4 Real-estate agents	15		
3.5 Utilities and service companies	16		
3.6 Agricultural and food companies	16		
3.7 Manufacturing companies	17		
3.8 Tourism agencies	18		
3.9 Security and information technology companies	18		

**AREA A** is under the civil control of the Palestinian authority, which also controls law enforcement, but Israel retains overall military control.

**AREA B** is under Palestinian civil control and Israeli security control.

**AREA C** comprising an estimated 60 per cent of the West Bank is under full Israeli control for security, planning and construction purposes. It forms a contiguous territory in contrast to Areas A and B, which are disjointed. This is where the settlements are located.



See detailed map inside back cover

# FOREWORD

Doing business in occupied territories carries with it risks, dilemmas and potential liabilities for companies. The sources of information available to companies to address these risks are limited.

This briefing is intended to provide companies with a framework for examining their business interests and relationships with Israeli settlements in the Occupied Palestinian Territories. It covers issues that are relevant to companies in all industry sectors and at all stages of their trade and investment relationships with these settlements. It reflects a growing trend of criminal and civil cases against businesses based on their alleged complicity in serious human rights violations, including war crimes.

Amnesty International expects companies to make business decisions that align with applicable international laws and standards and that meet their responsibilities within that framework. This briefing explains how these laws, standards and responsibilities apply to the situation in the Occupied Palestinian Territories.

The reason for focusing on Israeli settlements is primarily because they are illegal under international law. This puts the onus on companies and governments to refrain from action that would perpetuate an illegal situation. There is also growing research, including by Amnesty International,<sup>1</sup> on the negative impacts that businesses operating in or with settlements have on the human rights of Palestinians. There is evidence that this is prompting a number of companies to divest from Israeli settlements by terminating their business operations there.

Moreover, some banks and pension funds have excluded companies from their investment portfolios, owing to the legal and ethical implications of those companies' business activities with Israeli settlements in the Occupied Palestinian Territories.

While this briefing is targeted at companies and investors, it may also be relevant to law firms and consultancies that advise companies, and to governmental bodies that frame policy on business dealings with Israeli settlements.

The emergence of frameworks such as the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) provides companies with authoritative reference points to navigate their human rights responsibilities.

The question of whether companies can carry on business in or with Israeli settlements in the Occupied Palestinian Territories in a way that respects international humanitarian and human rights law can be addressed best from two angles: first, by considering standards applicable to business that are derived from international human rights and humanitarian law; and second, by considering evidence of the actual impacts of settlements on the human rights of Palestinians.

# EXECUTIVE SUMMARY

The Occupied Palestinian Territories are a conflict-affected area. This fact alone increases the risks of companies operating there becoming involved in, or contributing to, serious human rights abuses.

The Israeli settlements in Occupied Palestinian Territories pose an additional category of risk for companies because they are illegal under international law. The transfer by an occupying power of its own population into the territory it occupies is forbidden by the Fourth Geneva Convention.<sup>2</sup> Under this Convention, an occupying power is also forbidden from forcibly transferring protected persons from occupied territory.<sup>3</sup> The appropriation of land and the appropriation or destruction of property required to build and expand settlements breach other rules of international humanitarian law. In addition, certain key acts required for the establishment of settlements amount to war crimes under the Rome Statute of the International Criminal Court.

This is what makes the risks of doing business in settlements distinctive and particularly acute. Israel's establishment and maintenance of settlements breaches the international law rules governing what an occupying power may do in a situation of military occupation. It constitutes war crimes. Moreover, in addition to the inherent illegality of the settlements themselves, the settlement enterprise is inextricably linked to gross and systematic human rights violations against Palestinians. Given these circumstances, companies cannot do business in or with settlements without contributing to serious violations of both international humanitarian law and human rights law.

The settlements and their infrastructure comprise over 60 per cent of the occupied West Bank. They use resources which should be used for the benefit of the occupied population, which is entitled to special protection under international humanitarian law. The fact that a thriving settlement economy provides a significant incentive for the development and expansion of the settlements carries enormous implications and potential consequences for the companies involved.

Business activities are essential to virtually every aspect of the maintenance, development and expansion of the settlements in the Occupied Palestinian Territories. Industrial parks in settlements offer numerous incentives, including tax breaks, low rents and low labour costs. Economic activities in these zones are expanding.

Settlement businesses depend on and benefit from Israel's unlawful confiscation of Palestinian land and other resources. They also benefit from Israel's discriminatory policies for planning and zoning, financial incentives, access to utilities, and infrastructure. Palestinian enterprises are disadvantaged through restrictions on movement, and administrative and legal constraints.

Companies become involved with the settlements either by operating directly in them or by having business relationships with them. Foreign companies pursue activities in the settlements or are connected to them through supply or value chain relationships. There is a human rights dimension to all such activity, regardless of company size or sector.

In its January 2018 report on business enterprises linked to the occupation, the UN Office of the High Commissioner for Human Rights (OHCHR) concludes that:

considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law.<sup>4</sup>

In keeping with the UN Guiding Principles, companies should respect the standards of international humanitarian law in situations of armed conflict. They are also expected to undertake human rights due diligence to understand when, where and how they could have an impact on human rights, and what are the most appropriate steps to ensure that they respect human rights.

A due diligence framework applied to business activities in or with Israeli settlements in the Occupied Palestinian Territories may be useful insofar as it helps companies determine that:

- These settlements are illegal and a war crime.
- They are inherently discriminatory and give rise to widespread, systematic and serious human rights violations.
- Business activities in or with settlements help to normalise and legitimise an illegal situation.
- Business activities contribute to the settlement economy and, in doing so, to the maintenance, development and expansion of the settlements, which perpetuates an illegal situation.

Any basic preliminary risk mapping would reveal these facts, which should be sufficient for any company to reach the conclusion that it cannot do business in or with settlements in a way that is consistent with international humanitarian and human rights law.

Meeting the corporate responsibility to respect human rights, as set out in the UN Guiding Principles, requires companies to stop adverse human rights impacts that they have caused or contributed to. If the adverse impacts cannot be prevented or mitigated by the company's own actions, then the company's only option is to cease operations and to disengage. Although a company may be able to mitigate human rights impacts arising from its own activities (for example impacts on labour rights), corporate mitigation efforts cannot address the fundamental, systematic and grave abuses caused by the very existence of the illegal settlements. On the contrary, the fact of business engagement, and the financial, physical and logistical support this engagement provides, makes the continuation of these abuses more certain.

Companies choosing to do business in or with settlements expose themselves to legal risks. Depending on the facts of the situation, they may lay themselves open to the criminal charge that they have been complicit in gross human rights abuses, including war crimes, committed by other actors such as security forces or other state agencies.

# THE BASICS

## 1. What is a human rights-compatible approach to conducting business in or with an occupied territory?

### 1.1 International humanitarian law is paramount

The obligations of occupying states under international humanitarian law are provided for in the Hague Regulations of 1907 and the 1949 Fourth Geneva Convention relating to the protection of civilians in time of war. A company's assessment of the legal and human rights situation in a context of occupation must take account of the standards laid down in these norms, which relate to the protection of people in occupied territory. They include a number of special protections designed to:

- safeguard the local population from abuse
- protect their assets from being pillaged
- ensure the continuation, as far as possible, of the pre-conflict way of life, which includes respect for cultural rights.<sup>5</sup>

Under international humanitarian law, occupying powers have responsibilities to protect the well-being of the occupied population. Resources of the occupied territory are treated as being held in trust for the benefit of the local population. The occupying power may only confiscate land and property and consume resources if this is justified by military necessity. Members of the local population must be treated humanely and must be protected from violence and from degrading treatment. In case of criminal prosecution, trial procedures must respect fundamental judicial principles of fairness. Religious and cultural practices and traditions must be protected.

International humanitarian law prohibits an occupying power from transferring its own civilians into a territory that it occupies.<sup>6</sup> It also prohibits an occupying power from forcibly transferring protected persons from occupied territory.<sup>7</sup>

Indeed, these prohibitions have acquired the status of *jus cogens* norms in international law: this means that they are accepted as fundamental principles of law by the international community, from which no exception or derogation is permitted.

Appropriation of land and destruction of property also breach other rules of international humanitarian law. Under the Hague Regulations of 1907, the public property of the occupied population (such as lands, forests and agricultural estates) is subject to the laws of usufruct. This means that an occupying state is allowed only limited use of this property.<sup>8</sup> This limitation is derived from the notion that occupation is temporary – the core idea of the law of occupation.

The Hague Regulations prohibit the confiscation of private property.<sup>9</sup> The Fourth Geneva Convention also prohibits the destruction of private or state property, 'except where such destruction is rendered absolutely necessary by military operations'.<sup>10</sup> An occupying power is therefore forbidden from using state land and natural resources for purposes other than military or security needs or for the benefit of the local population.<sup>11</sup>

The unlawful appropriation of property by an occupying power amounts to 'pillage', which is prohibited by both the Hague Regulations and the Fourth Geneva Convention,<sup>12</sup> and is a war crime under the Rome Statute of the International Criminal Court<sup>13</sup> and some national laws.<sup>14</sup> Corporations may also find themselves liable for pillage.<sup>15</sup>

Under the Rome Statute, the 'extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly' and the 'transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the



deportation or transfer of all or parts of the population of the occupied territory within or outside this territory' constitute war crimes.<sup>16</sup>

Any company considering operating in or trading with entities in occupied territory must take account of these norms. The question of whether they can operate in these contexts in a way that respects international humanitarian and human rights law can be addressed from two angles: first, with reference to the applicable standards and the way in which the company may contribute to or perpetuate an illegal situation; and second, with reference to evidence of the actual impacts on the human rights of the local population and ways in which the company may contribute or become linked to these impacts.

## 1.2 Israeli settlements in the West Bank breach international law

The Occupied Palestinian Territories are a conflict-affected area. This fact alone increases the risks of companies operating there becoming involved in, or contributing to, serious human rights abuses. The risks attached to operating in a context of military occupation are compounded by the fact that Israeli settlements in the Occupied Palestinian Territories are illegal under international humanitarian law. They also constitute war crimes under the Rome Statute of the International Criminal Court.

Throughout the years of occupation since the June 1967 war, Israel has promoted the creation and expansion of settlements in the Occupied Palestinian Territories. This has resulted in changes to occupied territory proscribed by international humanitarian law:

- the appropriation of more than 200,000 hectares of Palestinian land;
- the establishment of about 250 settlements, populated by 600,000 Israeli settlers;<sup>17</sup>
- the physical enclosure and segregation of the 3 million West Bank Palestinians;
- the extension of Israeli laws to the West Bank and the creation of a discriminatory legal regime;
- the unequal access to natural resources, social services, property and land for Palestinians in the occupied West Bank.

These trends have intensified over the past two years and a wide circle of senior Israeli political leaders have called explicitly for the formal annexation of parts or all of the West Bank.<sup>18</sup>

The settlements are illegal and a war crime because they violate the prohibitions under international humanitarian law on transfer of civilian populations and the displacement of the local population.<sup>19</sup> Companies considering operating in, or doing business with, Israeli settlements in the Occupied Palestinian Territories, need to take account of the fact that any business activity there will unavoidably contribute to an illegal situation. It will also contribute to a situation of systematic human rights abuse of the Palestinian population. This applies regardless of the nature of the engagement or the particular sector. Companies should also consider the range of more specific adverse human rights impacts that could arise from their particular business activities.

## 1.3 Is human rights due diligence the solution?

**If human rights due diligence is not conducted properly, it may become a smokescreen to justify actions that are not in keeping with standards that companies should adhere to**

If certain aspects of an occupation are illegal under international law, then a due diligence process must reflect this. In no circumstances should a due diligence process be used to justify reinforcing an illegal situation.

Human rights due diligence is a central concept of the UN Guiding Principles, the global standard that sets out the role of business in respecting human rights.<sup>20</sup> It also forms the basis of guidance to companies from the Organisation for Economic Cooperation and Development (OECD), which has published *Due Diligence Guidance for Responsible Business Conduct*.<sup>21</sup>

Some business operations, products or services are inherently risky because they are likely to cause, contribute to or be directly linked to adverse human rights impacts. The circumstances in which this may happen could be specific to a location, business sector or context.

The UN Guiding Principles make clear that in circumstances where companies may need to prioritise, they should focus on those human rights impacts that are severe, which means taking a view on how grave, widespread and hard to remedy they are. In occupied territories or situations of armed conflict, where there are likely to be severe and systematic human rights violations, businesses will be at particular risk of causing or contributing to such violations.

An adequate human rights due diligence process will enable a company to understand when, where and how it could impact upon human rights, and what are the most appropriate steps to ensure it respects human rights.<sup>22</sup> This should be an ongoing process to reflect how quickly circumstances can change, especially in contexts of occupation.

Due diligence should help enterprises anticipate and prevent or mitigate these impacts. A due diligence process will enable companies to decide whether to go ahead with business relationships or discontinue them because the risk of adverse impacts is too high or because mitigation efforts have failed.

Undertaking human rights due diligence may help companies avoid causing or contributing to adverse impacts on people. It may also help prevent linkage to such impacts through business relationships with third parties.<sup>23</sup> However, if human rights due diligence is not conducted properly, it may become a smokescreen to justify actions that are not in keeping with standards that companies should adhere to.

The UN Guiding Principles stress the need for assessment processes to draw from independent external human rights expertise. It is incumbent on any company considering operations in the Occupied Palestinian Territories to consult the extensive information available from UN agencies, missions and other sources which document the serious human rights abuses (both systematic and localised) that stem from the existence of the settlements and Israel's settlement policies.

A thorough human rights due diligence process also requires meaningful consultation with potentially affected groups and other stakeholders. The UN Guiding Principles draw attention to the need for companies to pay particular attention to human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability and marginalisation. In the case of the Occupied Palestinian Territories, this means that companies must give special attention to the human rights impacts of the proposed operations on the Palestinian people living there, as protected persons under international humanitarian law.

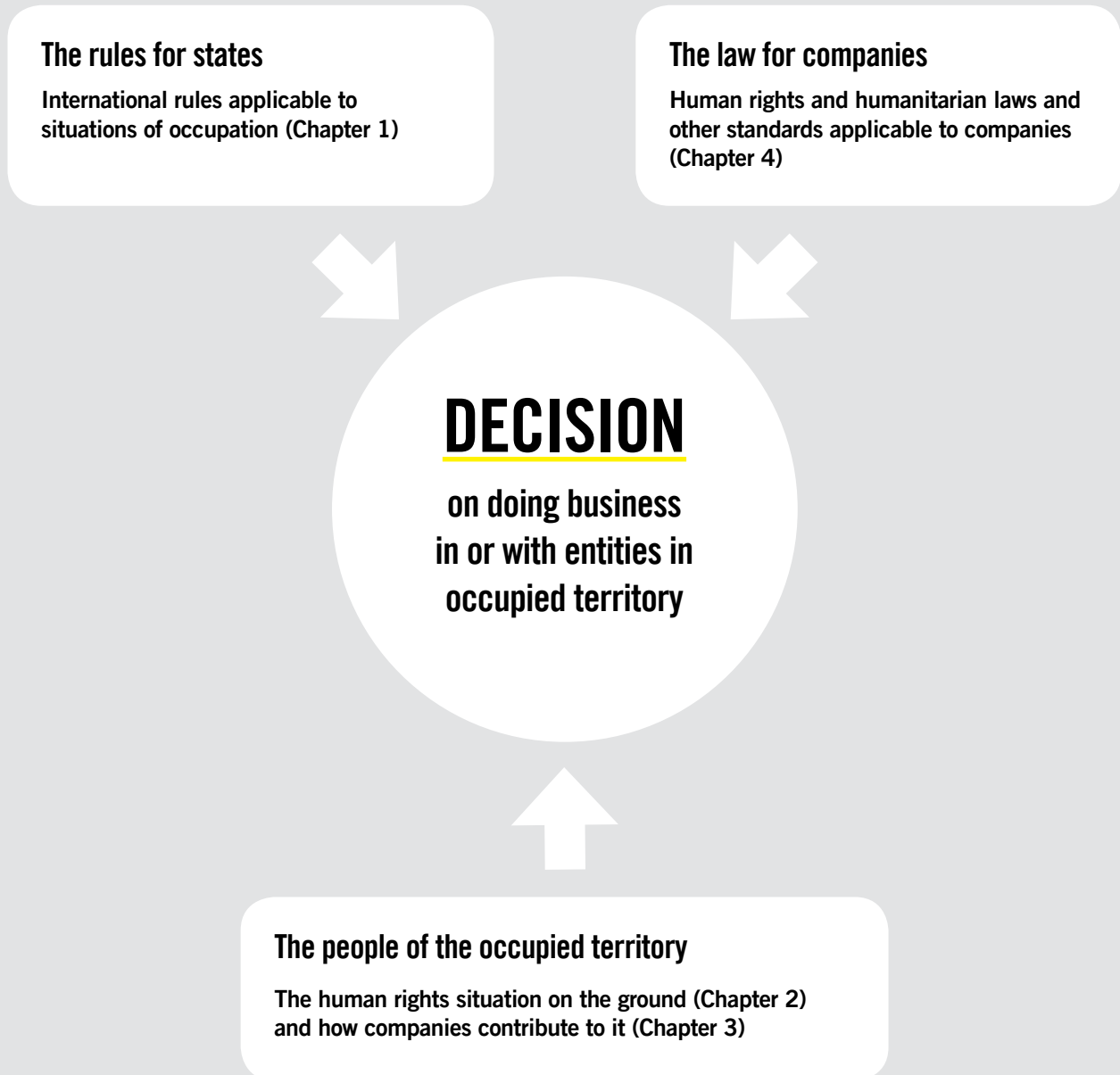
Proper human rights due diligence is not a box-ticking exercise, but an analytical process that will contribute to greater awareness and understanding of what is happening on the ground with regard to applicable laws and standards. In cases of occupation, any breaches by the occupying power of the rules determining what it should and should not do in relation to the local population ought to be paramount in determining a company's decisions.

In this respect a due diligence framework applied to business activities in or with Israeli settlements in the Occupied Palestinian Territories may be useful if it plays a role in helping companies determine that:

- These settlements are illegal and a war crime.
- They are inherently discriminatory and give rise to widespread, systematic and serious human rights violations.
- Business activities in or with settlements help to normalise and legitimise an illegal situation.
- Business activities contribute to the settlement economy and, in doing so, to the maintenance, development and expansion of the settlements, which perpetuates an illegal situation.

## **A FRAMEWORK FOR DECISION MAKING**

**What must companies take into account in order to respect human rights and international humanitarian law?**



# FACTS ON THE GROUND

## 2. What human rights issues do these settlements raise?

**Over the past 50 years, Israel has demolished tens of thousands of Palestinian homes and structures, and displaced large swathes of the population to build homes and infrastructure to settle its own population**

Israeli settlements in the Occupied Palestinian Territories, and the Israeli government's policies on them, have grave consequences for the human rights of Palestinians. Israel's policy of constructing and expanding illegal settlements in the occupied territories is one of the main driving forces behind the mass human rights violations resulting from the occupation. Over the past 50 years, Israel has demolished tens of thousands of Palestinian homes and other structures and displaced large swathes of the population to build homes and infrastructure to settle its own population.<sup>24</sup> As well as illegally building settlement homes and infrastructure on Palestinian land, Israeli and international businesses in the settlements have established a thriving economy to sustain and expand their presence. This 'settlement enterprise' relies on unlawfully appropriated Palestinian resources, including land, water and minerals, to produce goods that are exported and sold for profit.

The United Nations,<sup>25</sup> Amnesty International, Human Rights Watch, as well as Israeli and Palestinian NGOs, have researched and documented the widespread and inter-connected impacts of the settlements on human rights. The key findings are summarised below.

### 2.1 The right to life<sup>26</sup>

Israeli soldiers, police and security guards have unlawfully killed and injured many Palestinian civilians in the Occupied Palestinian Territories, including during protests against the confiscation of land and the construction of settlements.<sup>27</sup> Excessive and disproportionate force has been used against them. UN agencies and fact-finding missions have expressed concern about violence perpetrated by a minority of Israeli settlers with the aim of intimidating Palestinian populations.<sup>28</sup> These have resulted in deaths and injuries among Palestinians, including children.

### 2.2 The right to adequate housing<sup>29</sup>

Construction of the settlements and their infrastructure involves expropriation of Palestinian land and forced transfer of Palestinians, permanently altering the demographic composition of the Occupied Palestinian Territories and severing territorial continuity between Palestinian communities. All planning decisions are taken by Regional Councils (composed exclusively of representatives of Israeli settlers) and the Israeli military authorities.

Since 1967, Israel has constructed tens of thousands of homes on Palestinian land to accommodate the settlers while, at the same time, demolishing an estimated 50,000 Palestinian homes and other structures, such as farm buildings and water tanks.<sup>30</sup> Israel conducts demolitions also as a form of collective punishment against the families of individuals accused of attacking Israelis. By forcibly evicting them or demolishing their homes without providing adequate alternative accommodation, Israel has failed in its duty to respect the right to adequate housing of thousands of Palestinians.<sup>31</sup>

Large tracts of Palestinian land have been seized and placed under the jurisdiction of settlement councils. This, together with a discriminatory zoning policy, has caused widespread dispossession

# THE IMPACTS OF ISRAELI SETTLEMENTS ON THE HUMAN RIGHTS OF PALESTINIANS

## **Right to life**

Settler attacks  
Live ammunition used by security forces

## **Right to adequate housing**

Expropriation of Palestinian land for settlement expansion  
Demolition of houses  
Forced evictions

## **Right to equality and non-discrimination**

Systematic discrimination arising from settlement infrastructure, dividing wall, checkpoints, bypass roads  
Unequal access to justice and legal protection

## **Right to liberty and fair trial**

Arbitrary arrest and detention  
Military court system  
Failure to adhere to international standards of justice

## **Right to an effective remedy**

Legal, financial and procedural barriers to accessing court system  
Lack of legal enforcement of settler offences against Palestinians

## **Right to security of person and to health**

Settler attacks  
Exposure to violence leading to post-traumatic stress disorder, depression and anxiety

## **Rights of the child**

Injuries from settler attacks  
Custodial sentences handed down by military courts  
Sentences served in Israel away from family

## **Right to water**

Privileged access to water resources by settlers  
Destruction of Palestinian springs  
Water infrastructure controlled by Israel

## **Right to education**

Settler attacks on schools  
Harassment of children on way to school

## **Right to peaceful assembly**

Violent suppression of peaceful protest linked to house demolitions and expropriation of land for settlement expansion

## **Labour rights**

Lack of enforcement of labour standards for Palestinians working in settlements

## **Right to freedom of movement**

Restrictions of movement around settlements including checkpoints, settler-only roads, walls, fences and blockades

and displacement of Palestinian people. The 2012 UN fact-finding mission noted the ‘large number of demolitions, demolition orders, forced evictions and “relocation” plans in zones identified for the consolidation of settlements’.<sup>32</sup>

## **2.3 The right to equality and the right to non-discrimination<sup>33</sup>**

Systematic discrimination against Palestinians is inherent in virtually all aspects of the administration of the Occupied Palestinian Territories.<sup>34</sup> Palestinians are also specifically targeted for a range of actions that constitute human rights violations. The Israeli government allows settlers to exploit land and natural resources that belong to Palestinians.<sup>35</sup> Israel provides preferential treatment to Israeli businesses operating in the Occupied Palestinian Territories while putting up barriers to, or simply blocking, Palestinian ones.<sup>36</sup> Israeli citizens receive entitlements while Palestinians face restrictions on the grounds of nationality, ethnicity and religion in contravention of international standards.<sup>37</sup>

The Israeli authorities have created a discriminatory urban planning and zoning system. Within Area C, where most settlement construction is based, Israel has allocated only 1% of land for Palestinian development, while allocating 70 per cent to the settlements.<sup>38</sup> In East Jerusalem, Israel has expropriated 35 per cent of the city for the construction of settlements, while restricting Palestinian construction to only 13 per cent of the land. These figures clearly illustrate Israel’s use of regulatory measures to discriminate against Palestinian residents in Area C.<sup>39</sup>

## **2.4 The rights to liberty, security of the person and equal treatment before the law<sup>40</sup>**

Israeli settlers and Palestinian residents in the Occupied Territories are subject to different systems of law. Whereas Israeli settlers are broadly subject to Israeli civil and criminal law, Palestinians are subject to a military court system which falls short of international standards for the fair conduct of trials and administration of justice. Palestinians in the Occupied Territories are routinely subjected to arbitrary arrest and detention. The Israeli authorities have claimed that administrative detention – that is, detention without trial – is used exceptionally against people who pose a great danger to security. In practice, they have employed it against thousands of people, including those who posed no danger at all.<sup>41</sup>

The UN has also pointed to discrimination between Palestinians and Israeli settlers in the way in which criminal law is enforced. While prosecution rates for settler attacks against Palestinians are low, suggesting a lack of enforcement,<sup>42</sup> most cases of violence against Israeli settlers are investigated and proceed to court.<sup>43</sup>

## **2.5 The right to access an effective remedy<sup>44</sup>**

Israel’s failures to adequately investigate and enforce the law for acts of violence against Palestinians, together with the multiple legal, financial and procedural barriers faced by Palestinians in accessing the court system, severely limit their ability to seek legal redress.<sup>45</sup> The Israeli High Court of Justice has failed to rule on the legality of settlements, as it considers the settlements to be a political issue that is non-justiciable.<sup>46</sup>

These problems are compounded by fear and lack of confidence in the court system. Because of judicial deference to the government of Israel on issues related to settlements or deemed to be security matters, the Supreme Court of Israel is not a clear or reliable avenue of appeal for Palestinians living in the Occupied Territories.

## **2.6 The right to health<sup>47</sup>**

Specialists working with Palestinian populations in the Occupied Territories have documented a range of serious mental health conditions that stem from exposure to violence and abuse, including depression, anxiety and post-traumatic stress disorder.<sup>48</sup> The 2012 UN fact-finding mission expressed particular concern about the impact of such violence on children and their development.<sup>49</sup> Their report notes that ‘impunity, a feeling of injustice, the recurrence of events and anticipation of renewed abuses, especially on relatives and children, compound these conditions’.<sup>50</sup> In general, movement restrictions limit Palestinians’ access to healthcare, with detrimental consequences for women in particular.<sup>51</sup>

## **2.7 The rights of the child<sup>52</sup>**

Palestinian children have been subject to arbitrary arrest and detention, especially at ‘friction points’, such as villages near settlements. Between 500 and 700 Palestinian children from the occupied West Bank are prosecuted every year through Israeli juvenile military courts under Israeli military orders.<sup>53</sup> They are often arrested in night raids and subjected to ill-treatment.<sup>54</sup> Some of these children serve their sentences in Israel, in violation of the Fourth Geneva Convention. The UN has also documented that many children have been killed or injured in settler attacks.<sup>55</sup>

## **2.8 The right to water<sup>56</sup>**

The Israeli settlements in the Occupied Palestinian Territories have priority over (ie privileged access to) Palestinian water resources. In some cases, villagers must travel long distances to obtain water, because they cannot use closer water sources which serve settlements. Palestinians have virtually no control over water resources in the West Bank. The ability of the Palestinian Water Authority to develop new projects is hampered by its exclusion from decision-making structures, as well as by territorial fragmentation. Violent attacks by settlers at Palestinian water springs, resulting in destruction of water infrastructure, have further impeded Palestinians’ access to water supplies. Swimming pools, well-watered lawns and large irrigated farms in Israeli settlements stand in stark contrast next to Palestinian villages whose inhabitants struggle to meet their essential domestic water needs. Palestinians consume on average 73 litres of water a day per person, well below the World Health Organisation’s recommended daily minimum of 100 litres. In contrast, an average Israeli consumes approximately 300 litres of water a day.<sup>57</sup>

## **2.9 The right to education<sup>58</sup>**

Palestinian students face numerous obstacles in access to education, including forced displacement, demolitions, restrictions on movement, and a shortage of school places.<sup>59</sup> An independent fact-finding mission in 2012 noted an ‘upward trend’ in cases of settler attacks on Palestinian schools and harassment of Palestinian children on their way to and from school.<sup>60</sup> Such problems can result in children stopping schooling and a deterioration in the quality of learning.<sup>61</sup>

## **2.10 The right to earn a decent living through work<sup>62</sup>**

Expansion of Israeli settlements has diminished the amount of land available to Palestinians for agriculture and reduced their access to water for irrigation. Settlement-related infrastructure, including the dividing wall, has cut farmers off from their land. Israeli checkpoints impede Palestinian farmers transporting their goods to market.<sup>63</sup> In addition, settler violence and intimidation has damaged the livelihoods of Palestinian farmers: Palestinian crops have been burned and uprooted, and Palestinian-owned olive groves vandalised.<sup>64</sup>

Restrictions on the movement of Palestinians and Israel's control of natural resources has further undermined the Palestinian economy and contributed to the high rate of unemployment among Palestinians in the Occupied Territories. The UN has reported that in Hebron city centre, the Israeli military has forced the closure of 512 Palestinian businesses, while more than 1,000 others have shut down due to restricted access for customers and suppliers.<sup>65</sup>

## **2.11 The rights to freedom of expression and peaceful assembly<sup>66</sup>**

Israel has used military orders to prohibit peaceful protest and criminalise freedom of expression. For example, Military Order 101, which has been in force in the West Bank for more than 50 years, prohibits demonstrations of 10 or more people that have not received prior authorisation from the military. Palestinians who violate the order can face imprisonment for up to 10 years, or a hefty fine – or both.<sup>67</sup>

Peaceful demonstrations by Palestinians against settlements and settler violence have been suppressed by violent means, including tear gas, rubber bullets and occasionally live rounds.<sup>68</sup> In recent years, the West Bank has seen continuing protests against the prolonged Israeli occupation and the repressive policies, practices and outcomes to which it has given rise. These include the continuously expanding unlawful Israeli settlements established in the occupied West Bank; the approximately 700km-long dividing wall built mostly on Palestinian land; forcible house demolitions; Israeli military checkpoints; roads reserved for use by Israeli settlers from which Palestinians are excluded; and other restrictions on the movement of Palestinians in the Occupied Territories. The right to peaceful protest is of particular importance for Palestinians in the Occupied Territories as they have no opportunity to influence the policy of the occupying power through voting or other such means.

## **2.12 The right to freedom of movement<sup>69</sup>**

Many restrictions on freedom of movement are directly linked to the settlements, including restrictions aimed at protecting the settlements and maintaining buffer zones between them and Palestinian communities. These restrictions include checkpoints, settler-only roads and physical impediments such as walls and gates. The location of Israeli settlements in the West Bank and of the roads which connect the settlements to each other (bypass roads that are often prohibited to Palestinians) determine the location of the checkpoints and blockades that so restrict the movement of Palestinians in the West Bank. As Israeli settlements and bypass roads have continued to multiply and spread throughout the West Bank, so have the roads and areas prohibited to Palestinians. The location of settlements has ensured that there is no territorial contiguity between Palestinian communities in different areas of the West Bank.<sup>70</sup>

## **2.13 Fundamental labour rights**

Palestinian workers in the settlements are vulnerable to exploitation by contractors and middlemen. They have little employment security, while enforcement of labour standards, including health and safety standards, is generally poor. They are contracted under a separate and less favourable system of labour regulation than that applicable to Israeli workers.<sup>71</sup>



# BUSINESSES

## 3. What part do businesses play in these settlements?

**Settlement businesses depend on and benefit from Israel's unlawful confiscation of Palestinian land and other resources. They also benefit from Israel's discriminatory policies in planning and zoning, financial incentives, access to utilities and infrastructure**

The previous chapter showed how certain human rights violations are inherent and inextricably linked to Israel's settlement enterprise. This means that business activities in or with settlements that contribute to settlement maintenance, development or expansion also unavoidably contribute to human rights violations.<sup>72</sup> As the UN Independent International Fact-Finding Mission report of 2013 stated:

It is with the full knowledge of the current situation and the related liability risks that business enterprises unfold their activities in the settlements and contribute to their maintenance, development and consolidation.<sup>73</sup>

Business activities are essential to virtually every aspect of the maintenance, development and expansion of the settlements in the Occupied Palestinian Territories. Industrial parks in the settlements, such as Barkan and Mishor Adumim, offer numerous incentives, including tax breaks, low rents and low labour costs. Economic activities in these zones are expanding.<sup>74</sup>

Settlement businesses depend on and benefit from Israel's unlawful confiscation of Palestinian land and other resources. They also benefit from Israel's discriminatory policies in planning and zoning, financial incentives, access to utilities, and infrastructure. Palestinian enterprises are disadvantaged through restrictions on movement, administrative and legal constraints. Their economy has been subjugated to Israel's financial and economic interests.

Companies become involved with the settlements either by operating directly in them or by having business relationships with them. Many are foreign companies pursuing activities in the settlements or connected through their supply or value chain relationships.<sup>75</sup>

As stated earlier, all business activity in or with settlements, regardless of the type of company, activity, business relationship or industry sector, ultimately contributes to settlement maintenance, development and expansion, and therefore to maintaining an illegal situation. It is the settlements themselves that have become the root cause of grave and widespread human rights violations. Nevertheless, some companies may be more instrumental to the settlement enterprise because of the nature of their activities. Their particular contribution to settlement building or maintenance may play a more direct role in a range of human rights violations.

The following examples illustrate how certain companies or sectors play a direct role in the construction, consolidation and expansion of the settlements and may therefore directly assist, enable or exacerbate certain serious human rights violations. These examples are by no means comprehensive.

### 3.1 Banks and other financial institutions

Israeli banks play a crucial role in facilitating and strengthening the economy of the settlements. They provide the financial infrastructure and services for the activities of companies, governmental bodies and individuals.<sup>76</sup> These banks claim to be under legal obligation to provide services to settlements.

# HOW BUSINESSES AFFECT THE HUMAN RIGHTS OF PALESTINIANS

## Banks and other financial institutions

Provide capital and services that underpin the settlement economy and facilitate expansion

## Law firms

Give effect to Israel's laws authorising seizure of land

Assist in implementing discriminatory planning and zoning policies

## Construction companies

Provide services, equipment and material for clearing of land, demolition of buildings and construction of settlement housing and infrastructure

## Real-estate agents

Market and broker properties located on land obtained in violation of the laws of occupation

## Utilities and service companies

Reinforce huge discrepancy in water allocation between Palestinians and settlers

Undermine ability of Palestinian Authority to develop energy resources

Cause contamination by dumping settlement waste in areas inhabited by Palestinians

## Agricultural and food companies

Erode Palestinian agricultural assets

Take advantage of dispossession of land, discriminatory water allocation and multiple restrictions facing Palestinian farmers

## Manufacturing companies

Operate in industrial zones that incentivise economic development of settlements and employ West Bank Palestinians on far less favourable conditions than Israeli citizens

## Tourism agencies

Profit from promoting holiday accommodation and attractions built or developed on land seized from Palestinians

Fail to clearly describe locations as 'settlements in Occupied Palestinian Territory'

## Security and information technology companies

Provide security and surveillance services that may be implicated in abuses that Palestinians are subject to, including torture and other forms of ill treatment

However, a legal assessment by the non-governmental organisation Human Rights Watch came to the conclusion that, while under Israeli law banks cannot reject settlers as customers, they are not obliged to provide financial services for settlement activity, such as financing construction projects or mortgages for settlement property.<sup>77</sup>

Financial institutions investing in Israeli banks or other businesses operating in the settlements, providing them with capital or underwriting their risks, are also contributing to the development of the settlement economy, and to human rights violations, through these business relationships. This applies not only to banks, but also to hedge funds, pension funds, insurance companies and asset management companies.

The provision of financial services in and to settlements contributes to human rights abuses, including discrimination. Palestinians are not permitted to set foot in settlements except as labourers bearing special permits, although the settlements were built and expanded on land that was unlawfully seized from them.<sup>78</sup>

### **3.2 Law firms**

Law firms provide legal services connected with the purchase of properties and homes, and the establishment and operations of businesses in the settlements. In doing so, they help implement Israel's discriminatory planning and zoning policy, which favours the development of settlements and breaches a range of fundamental rights of Palestinians.<sup>79</sup> They give effect to Israel's laws authorising the seizure of land and act on behalf of settler bodies to facilitate the transfer of land to local and regional settlement councils, who use it for urban development, as buffer zones surrounding settlements, or for recreational and nature areas.<sup>80</sup> In all these cases, once the land is seized and reallocated in keeping with Israel's laws, Palestinians have no access to it.

### **3.3 Construction companies**

Construction companies provide services, equipment and materials to individuals, legal entities and public authorities for the clearing of land, demolition of buildings and the construction of new homes, buildings and other settlement infrastructure. Their activities provide some of the most visible evidence of business involvement in the expansion of the settlements. Some of the companies supplying heavy machinery do not operate in settlements, but make their equipment available through distribution contracts with local Israeli companies.<sup>81</sup>

The supply of equipment for the demolition of Palestinian housing, property and agricultural land in the Occupied Territories is among the settlement-related business activities identified by the 2012 UN fact-finding mission as giving particular cause for concern over human rights violations.<sup>82</sup>

Building work crucial to the maintenance and development of settlements includes the construction of transport infrastructure connecting settlements in the West Bank and East Jerusalem to Israel.

A particularly significant construction is the dividing wall, for which companies provided cement, materials, earth removers, bulldozers and contracted labour. The wall has divided Palestinian villages, cut off farmers from their lands and water, and curtailed trade with traditional markets, stifling the local Palestinian economy.<sup>83</sup>

### **3.4 Real-estate agents**

Real-estate agents organise the buying and selling of settlement homes, and provide related property services to owners, renters and buyers of real-estate. They market properties located on land illegally

appropriated from Palestinians and offer them to potential buyers who are proscribed from moving there under international humanitarian law.<sup>84</sup>

They act as brokers of properties that exist as a direct consequence of the dispossession and displacement of Palestinians. Their services are key to the consolidation and expansion of the settlements.

### **3.5 Utilities and service companies**

All utilities and services companies that conduct business in the settlements are supporting the burgeoning settlement economy in the Occupied Palestinian Territories. Water, energy, telecommunications and waste disposal companies all operate in situations of daily violations of the rights of Palestinians.

Settlement development and expansion has had enormous consequences for the right to water of Palestinians. Utility companies supplying homes and businesses in the settlements with water are reinforcing the huge discrepancy in water allocation between Palestinians and settlers. They are participating in a system of inequitable access to water. Water consumption by Israelis is at least four times that of Palestinians living in the Occupied Territories.<sup>85</sup>

The ability of the Palestinian Water Authority to transfer water to areas facing water shortages is severely inhibited by territorial fragmentation, since almost every water project implies movement through areas under Israeli control. Villages have been cut off from their wells, springs and cisterns by the dividing wall. The 2012 UN fact-finding mission reported that deep-water drillings by Mekorot, the Israeli national water company, and Mehadrin, an agro-industrial company, have caused Palestinian wells and springs to dry up in the Jordan Valley. Eighty per cent of the total water resources drilled in the area is consumed by Israel and the settlements. The Israeli authorities deny water to Palestinians and destroy their water infrastructure in order to trigger displacement, particularly in areas designated for settlement expansion.<sup>86</sup>

Settlement expansion has also undermined the ability of the Palestinian Authority to develop energy resources. Israel controls 60 per cent of the West Bank, a large part of which consists of buffer zones and connecting infrastructure for settlements. The World Bank has pointed out that this has a huge impact in denying access to the land needed to develop Palestinian renewable energy resources.<sup>87</sup> Solar fields, constructed, operated and maintained in areas of the West Bank under Israeli control, supply energy to the settlements. They not only contribute to the settlement economy, but also take up considerable areas of occupied land. They are part of the process of settlement expansion.<sup>88</sup>

Waste management companies that service Israeli settlements in the West Bank sometimes dispose of settlement waste in areas outside the settlements inhabited by Palestinians, polluting their environment and contaminating their soil and water. Some waste has been dumped in landfill sites in the Jordan Valley on land that Israel confiscated in violation of the laws of occupation. Such sites exclusively service waste from Israel and its settlements. Israel has also situated waste treatment facilities in the West Bank that process a wide range of substances that pose a threat to those living in the vicinity.<sup>89</sup>

Waste companies operate according to Israel's discriminatory approval requirements. These favour Israeli businesses servicing Israeli settlements, but discriminate against Palestinian companies servicing Palestinians, which struggle to obtain permits for landfills. In one case, Israel refused to retroactively approve a Palestinian site, and in another, it required a Palestinian landfill site to accept waste from settlements.<sup>90</sup>

### **3.6 Agricultural and food companies**

Agricultural companies and supermarkets doing business within the settlements or sourcing from

them are part of a rapidly expanding sector. Settlements established in the late 1960s and 1970s as farming communities, on land formerly cultivated by Palestinians, have developed into high technology, well-irrigated, agricultural areas, contributing to Israeli exports in this sector.<sup>91</sup>

Many Israeli agricultural settlements have been developed in the occupied West Bank, cultivating olives, grapes for winemaking in Israel, and dates for export. Other export products include avocados, flowers, herbs, melons, citrus fruit, tomatoes, cherries, aubergines, cucumbers, and peppers.<sup>92</sup>

Together, these products play an important part in the settlement economy while eroding Palestinian agricultural assets. Dwindling water resources, and high transaction and transport costs, have put Palestinian cultivators at a disadvantage. There has been a shift from irrigated land to less profitable rain-dependent crops. Productivity has fallen further because the import of fertilisers into the West Bank is banned for Palestinians.<sup>93</sup>

The agricultural sector, considered the cornerstone of Palestinian economic development, has been unable to play its strategic role because of dispossession of land, and because farmers are denied access to agricultural areas, water resources, and domestic and external markets. This has led to a continuous decline in the share of agricultural production in gross domestic product and employment since 1967.<sup>94</sup>

This has been exacerbated by confiscation of land and demolition of buildings, by attacks on Palestinian farmers from nearby settlements, especially during the olive harvest season, and by the destruction of trees, water installations and livestock. The dividing wall has cut off farmers from lands and water, curtailed trade with traditional markets and stifled the local economy.<sup>95</sup>

This means that companies that trade or do business with Israeli settlements in the agricultural sector are participating in a system that has disadvantaged and impoverished Palestinians, undermining their economic rights.

### **3.7 Manufacturing companies**

Israeli settlements in the West Bank produce a range of industrial goods, mostly manufactured in purpose-built industrial zones. Manufacturing companies in the settlements make goods for export to Israel and the rest of the world. Many such companies are active in Israeli settlements, especially in the large industrial zones such as Mishor Adumim and Barkan. Industries that have a strong presence include plastic and metal products, textiles, carpets, cosmetics, processed foods and wine.<sup>96</sup>

Like the settlements themselves, the industrial zones are a violation of international law, which prohibits the occupying power from constructing permanent infrastructure in occupied territory, unless it is for military use or serves the interests of the occupied population.<sup>97</sup>

Manufacturing and construction are the main employers of Palestinians who work in the settlements. While wages are higher than elsewhere in the West Bank, employment conditions in the settlements remain precarious. Workers claiming their rights are easily dismissed, with little supervision of employers by the Israeli authorities. The State Comptroller noted in an audit conducted in June 2011 that there is a 'lack of substantial supervision and enforcement in the field of safety and hygiene', even in factories holding and using dangerous materials. The Comptroller noted that, between 2006 and 2010, only four audits were conducted in the 20 settlement industrial zones operating in the West Bank.<sup>98</sup>

The employment conditions of Palestinian workers in settlements are subject to a system riddled with legal uncertainties. Palestinians are contracted under the pre-1967 Jordanian labour laws, while Israeli citizens in the West Bank are employed under the far more favourable Israeli labour laws. Although the High Court of Israel ruled in 2007 that Israeli labour laws also applied to

Palestinian workers, this ruling is rarely enforced. The existence of relatively cheap labour from Palestinian villages close to the settlements provides an incentive for companies to move there.

### 3.8 Tourism agencies

Companies facilitating tourism to Israeli settlements in the Occupied Palestinian Territories and brokering holiday accommodation there help to normalise the settlements and strengthen them financially. Such companies profit from promoting properties and attractions on their websites which are located in settlements that are illegal under international law, but whose owners or operators live there legally according to Israeli law.<sup>99</sup> Some tourism activities have led directly to settlement expansion.<sup>100</sup>

In addition, some tour operators and online accommodation portals fail to clearly describe the location of the properties or attractions they advertise as being in an Israeli settlement in the Occupied Palestinian Territories.<sup>101</sup> This means that some tourists may be misled into visiting and supporting settlements against their wishes.

Rental properties in the settlements listed by online agencies are available to guests under conditions of discrimination. Israeli citizens and residents, holders of Israeli entry visas and people of Jewish descent may enter settlements; but Palestinian residents of the West Bank are barred from doing so by military order, except as labourers bearing special permits.<sup>102</sup>

While Israel promotes tourism to the settlements for political and financial reasons, the Palestinian tourism sector struggles because Palestinian areas are much less accessible and are often cut off by settler roads.<sup>103</sup> Israeli control over borders and checkpoints severely restricts visits to the West Bank, so that Palestinian tour operators have difficulty attracting foreign visitors.

### 3.9 Security and information technology companies

Human rights violations have been documented in the interrogation and detention centres that Israel runs in the settlements in the Occupied Palestinian Territories.

Violations against Palestinians include administrative detention without charge or fair trial,<sup>104</sup> torture and other forms of ill-treatment, arbitrary arrest of human rights defenders participating in peaceful protests, lack of freedom of movement, and excessive and often lethal use of force.<sup>105</sup>

Many of these violations occur in the context of protests against seizure of Palestinian land and property, demolition of buildings, and construction of settlements and their infrastructure. The number of Palestinian structures demolished has increased while settlement expansion continues, creating more flashpoints.

There have also been numerous attacks by settlers against Palestinians, including against children going to and from schools near the settlements. Settlers committing such actions have enjoyed a high degree of impunity. Israeli forces have failed to protect Palestinian civilians and property against violence by Israeli settlers. They have also failed to bring the perpetrators to justice.<sup>106</sup>

Companies providing security equipment and services to the settlements will not be able to prevent their use to commit human rights violations. However, the net should be cast wider: it is not only security companies that are at risk of contributing to such violations. Technical and logistical supply and services companies may also find themselves providing goods and services to individuals, businesses and public authorities that can be linked to human rights violations. Computer hardware and software, surveillance and identification equipment may all be implicated in the abuse of Palestinians.<sup>107</sup>

# STANDARDS

## 4. What are the standards applicable to business in occupied territories?

The situation in the Occupied Palestinian Territories is one of military occupation. As the occupying power, Israel is bound by international human rights law and international humanitarian law. This arises from its ratification of international human rights and international humanitarian law treaties, and also from the fact that some of these rules are considered to be ‘customary international law’ applicable to all states at all times regardless of ratification.

### 4.1 Humanitarian law

#### Humanitarian law standards apply to business enterprises in situations of armed conflict

International humanitarian law applies to situations of armed conflict. A situation of military occupation is considered to be a conflict even if active hostilities may have ceased or occur sporadically. A situation of conflict does not release states from their human rights obligations: these obligations continue to exist alongside international humanitarian law and provide complementary and mutually reinforcing protection.

The International Committee of the Red Cross has noted that humanitarian law standards also apply to business enterprises in situations of armed conflict.<sup>108</sup> International humanitarian law provides some protection to business personnel and assets, but also imposes obligations on managers and staff not to breach its standards. If they do so, individual personnel and the enterprise are exposed to the risk of criminal or civil liability.

The UN Guiding Principles make clear that companies have a responsibility to respect the standards of international humanitarian law.<sup>109</sup> The UN Office of the High Commissioner for Human Rights (OHCHR) has explained that international humanitarian law imposes obligations on business managers and staff not to breach the rules of international humanitarian law.<sup>110</sup>

### 4.2 Human rights law interpreted for business

The UN Guiding Principles on Business and Human Rights provide the most authoritative statement of the human rights responsibilities of companies, based on international human rights law.<sup>111</sup> They were adopted by the UN Human Rights Council in 2011, and have been endorsed by governments and business associations. Since 2011, states have been developing national action plans to give effect to them,<sup>112</sup> and businesses have been developing policies to embed them across their operations.<sup>113</sup> While the UN Guiding Principles are not legally binding on companies directly, they are being integrated gradually into national laws and policies.

While the UN Guiding Principles are the most prominent articulation of the responsibilities of companies, there are other authoritative sources in the UN human rights system. For example, UN treaty monitoring bodies provide important clarifications in the form of ‘General Comments’. These are quasi-legal documents which set out a detailed interpretation of an article or issue relating to a specific UN treaty. Although their guidance is intended primarily to assist states in implementing their obligations under the treaty, some ‘General Comments’ are relevant to companies.<sup>114</sup>

# STANDARDS APPLICABLE TO BUSINESS CONDUCT IN OCCUPIED TERRITORIES

## International Humanitarian Law

Customary international law

Hague Regulations (1907)

Fourth Geneva Convention (1949)

Rome Statute of the International Criminal Court (1998)

## International Human Rights Law

Customary international law

Human rights treaties

ILO's Declaration on Fundamental Principles and Rights at Work (1998)

Rome Statute of the International Criminal Court (1998)

UN Guiding Principles on Business and Human Rights (2011)

Other international human rights standards as relevant to situation

The corporate responsibility to respect human rights: UN Guiding Principles 11-24

Access to remedy: UN Guiding Principles 29-31

OECD Guidelines for Multinational Enterprises: Chapter IV

OECD Due Diligence Guidance for Responsible Business Conduct

General Comments of UN treaty bodies



The UN Guiding Principles apply in all operational contexts,<sup>115</sup> including in situations of conflict. They explicitly recognise that conflict-affected areas present heightened risks of business involvement in human rights abuses, including ‘gross human rights abuses’,<sup>116</sup> and they contain specific provisions for preventing and addressing the human rights impacts of business operating in conflict-affected areas. An area under occupation falls within the definition of a ‘conflict-affected area’ in the UN Guiding Principles.<sup>117</sup> The UN Guiding Principles further recognise that in conflict-affected areas, the ‘host’ state may be unable to protect human rights adequately owing to a lack of effective control, or it may itself be engaged in human rights abuses.<sup>118</sup> As expressed above, the UN Guiding Principles make clear that in situations of armed conflict companies should respect the standards of international humanitarian law.<sup>119</sup>

The UN Working Group on Business and Human Rights has issued a statement setting out the implications of the UN Guiding Principles in the context of Israeli settlements in the Occupied Palestinian Territories.<sup>120</sup>

The responsibility of businesses to respect human rights refers to all internationally recognised human rights, understood, at a minimum, to be those expressed in the International Bill of Human Rights<sup>121</sup> and the principles concerning fundamental rights set out in the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work.<sup>122</sup> Depending on the context, business enterprises may need to consider additional standards.<sup>123</sup>

In essence, the corporate responsibility to respect human rights requires companies to take the following action:

- If there is a risk of *causing* adverse human rights impacts, then the company needs to take the necessary steps to prevent the impact. If there are no realistic steps that the company can take to prevent such impacts, then the operations should not commence.
- If there is a risk of *contributing* to an adverse human rights impact or becoming *linked* to one through a business relationship with another entity, then the company needs to take the necessary steps to prevent this and use its leverage to mitigate any remaining impact as much as possible. If the company cannot prevent the contribution or linkage to adverse human rights impacts, then operations should not commence.

### 4.3 The OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises are recommendations jointly addressed by governments to multinational companies. They provide principles and standards of good practice consistent with applicable laws and internationally recognised standards. They contain a dedicated chapter on human rights that is intended to align with the UN Guiding Principles.<sup>124</sup>

Under the OECD Guidelines enterprises are specifically required to:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
4. Have a policy commitment to respect human rights.
5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Each state adhering to the OECD Guidelines is required to establish a National Contact Point to resolve complaints against companies for alleged breaches of the guidelines.

In May 2014, the UK National Contact Point accepted a case against G4S which alleged that G4S contributed to serious human rights abuses through its subsidiaries that provided, installed and maintained equipment used in military checkpoints in Israeli settlements. The UK National Contact Point, in its final statement on the matter, found that G4S's actions were inconsistent with its obligations under the Human Rights Chapter of the OECD Guidelines. The company was required to address impacts it was linked to by a business relationship.<sup>125</sup>

Observance of the OECD Guidelines by enterprises is not legally enforceable. However, the 46 countries adhering to the guidelines, which include all OECD countries, make a binding commitment to implement them in accordance with OECD decisions.

The OECD has also produced a more detailed document on implementation of the OECD Guidelines. This contains recommendations to businesses on carrying out risk-based due diligence to avoid and address adverse impacts associated with their operations, their supply chains and other business relationships.<sup>126</sup>

# RESPONSIBILITIES

## 5. What do companies have to do to meet their corporate responsibility to respect human rights in connection with the settlements?

The risks attached to operating in a context of military occupation are compounded in the Occupied Palestinian Territories by the existence of settlements that are illegal under international humanitarian law, and a war crime. This is what makes the business context distinctive and without parallel in other situations of occupation.

### 5.1 Operating in Israeli settlements in the Occupied Palestinian Territories

**Virtually all business activity in the settlements goes to support an illegal situation characterised by grave and widespread human rights violations**

According to the UN Working Group on Business and Human Rights,

The illegal status of the settlements under international law and information available in the public domain about human rights abuses related to the settlements should necessarily preface and inform any human rights due diligence exercise carried out by a business operating in the settlements. The importance of such due diligence is also particularly important in a situation where the occupying power, exercising obligations equivalent to those of a 'host State', may be unable or unwilling to effectively protect human rights or may itself be implicated in human rights abuses.<sup>127</sup>

Because of the illegality of the settlements under international law, companies will need to take account of the fact that any business activity in settlements will contribute to an illegal situation and be linked to a government that systematically abuses the human rights of the local Palestinian population. In addition, they will need to consider the adverse human rights impacts that may be caused or assisted by, or directly linked to, the proposed operations.

Any business activity in settlements directly or indirectly contributes to settlement maintenance, development or expansion. Given the illegality of settlements under international humanitarian law, any such activity, therefore, helps maintain an illegal situation. Moreover, businesses that are contributing to serious violations of international humanitarian law may, in certain circumstances, be complicit in war crimes. For example, a business that participates in, assists or encourages the settling of civilians in occupied territory or the appropriation and destruction of Palestinian land and property could face allegations of complicity in war crimes. In some cases, staff, managers and directors of these businesses may be liable for their contribution to these crimes.

The illegal status of the settlements and the serious, widespread and systematic human rights abuses that stem from their very existence make it all but impossible for business enterprises to carry out any business activity in settlements in a way that is consistent with international human rights and humanitarian law. Regardless of the human rights impacts of specific activities, virtually all business activity in the settlements goes to support an illegal situation characterised by grave and widespread human rights violations.

This means that it is not possible for a company to operate in Israeli settlements in the Occupied Palestinian Territories without contributing to breaches of humanitarian law arising from the very

existence of the settlements. In such a context, a reasoned interpretation of the UN Guiding Principles would be that businesses should refrain from undertaking any activities in these settlements. Any company already carrying out such activities should take immediate steps to discontinue them.

## 5.2 Trading with or investing in settlement businesses

The human rights situation in the Occupied Palestinian Territories and the illegal status of the settlements are as relevant to companies thinking of investing or trading with settlements as they are to companies thinking of operating in them.

Because of the illegality of the settlements under international law:

**Any bank** that provides financial services to businesses operating in the settlements would also be contributing to an illegal situation and, at least indirectly, to serious human rights abuses associated with the settlements. Depending on the nature of its products or services, and to whom and for what purpose these are provided, the bank might also be contributing or directly linked to certain specific human rights abuses affecting the Palestinian population.

**Any venture capitalist or fund manager** which invests in companies that do business in the settlements would equally be contributing to an illegal situation as well as potentially being linked to adverse human rights impacts through its operations, products or services. This applies regardless of the proportion of the company's business which is settlement related. Such risks may link directly to the investor's own operations, products or services.

**Any other financial institution or investor** will need to take account of the fact that any business activity in or with Israeli settlements unavoidably contributes to an illegal situation. The proposed finance or investment may help to sustain an illegal situation, as well as contribute to human rights violations arising from the very fact of the illegal settlements. There is the additional risk that any specific adverse human rights impacts attributed to the business activities of clients or portfolio companies in the settlements could become directly linked to the investor's own business.

**Any distribution or retail company**, in order to meet its corporate responsibility to respect human rights, needs to look carefully at its supply chains. If it finds potential sources of human rights risk, it must take steps to address them. This applies wherever it operates and whatever its size and structure.

**Any company purchasing goods or products** from the settlements will need to take careful account of the likelihood that the proposed trading relationship may be helping to sustain a situation of systematic human rights abuse arising from the very fact of the illegal settlements. An additional risk is that any further adverse human rights impacts arising from the business activities of trading partners in the settlements could become directly linked to the company's own operations.

**Any company supplying goods and services** to the settlements has a similar set of issues to consider. In particular, the supply of goods or services to individuals and businesses in the settlements would be helping to sustain an illegal situation and could also be linked to systematic human rights abuses arising from the very fact of the illegal settlements. Moreover, there is the risk that the goods and services supplied may be put to uses that have further, specific, adverse human rights impacts which could link directly to the supplier's own operations.

## DECISION POINT

### 6. Is there any way a company can meet its responsibility to respect human rights and do business with the settlements?

No. A company cannot meet its responsibility to respect human rights and the standards of international humanitarian law while doing business with the settlements. This is because the settlements have been established and developed in breach of the international law rules governing what states can and cannot do in a situation of military occupation. As such, they constitute war crimes and give rise to systematic, widespread and serious human rights violations.

#### Philanthropic activities carried out by companies in the settlements do not alter the situation

In its January 2018 report on business enterprises linked to the occupation, the UN Office of the High Commissioner for Human Rights (OHCHR) concludes that

[...] considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law.<sup>128</sup>

Regardless of the human rights impacts of specific activities, virtually all business activity in the Israeli settlements, no matter how everyday it seems, goes to support a system of abuse that is systematic, widespread and severe. This makes it impossible to determine how any business activity in or connected with the settlements can take place without contributing, at least indirectly, to adverse human rights impacts.

Meeting the corporate responsibility to respect human rights, as set out in the UN Guiding Principles, requires companies to prevent adverse human rights impacts that their operations may cause or contribute to. If the adverse impacts cannot be prevented or mitigated by the company's own actions, then the company's only option is to cease operations and disengage. Human rights impacts related to a company's own activities (eg impacts on labour rights) may be amenable to mitigation by the company's own efforts. However, corporate mitigation efforts cannot address the fundamental, systematic and grave abuses caused by the very existence of the illegal settlements. On the contrary, the fact of business engagement, and the financial, physical and logistical support this engagement provides, makes the continuation of these abuses more certain.

Breaches of international humanitarian law such as unlawful expropriations of occupied territory and 'pillaging' are war crimes and thus fall into the category of 'gross' human rights abuses.<sup>129</sup> Meeting the corporate responsibility to respect human rights requires treating the risk of causing or contributing to gross human rights abuses as a legal compliance issue.<sup>130</sup> This means that companies should treat this risk in the same manner as the risk of involvement in a serious crime. In other words, companies must desist from conduct or activities that contribute to gross human rights abuses and must not do anything that might exacerbate the situation.

The UN Guiding Principles acknowledge the added complexity of cases where the company itself has not caused or contributed to human rights abuses, but where such abuses are linked to the company's operations, products or services by virtue of a business relationship.<sup>131</sup> However, even in such cases the severity of the human rights impacts in the Occupied Palestinian Territories,

combined with the unlikelihood that any corporate leverage would be able to mitigate them, could only result in a decision to disengage.

Philanthropic activities carried out by companies in the settlements will not alter this situation. This is confirmed in the UN Guiding Principles:

Business enterprises may undertake other commitments or activities to support and promote human rights which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout operations.<sup>132</sup>

## RISKS

# 7. What are the legal risks for companies that ignore human rights?

## 7.1 Corporate criminal and civil liability

### ■ Corporate criminal accountability for international crimes is an emerging norm

Doing business in, with or related to conflict-affected areas entails significant legal risk. There are two main sources of legal risk. First, there is the risk of criminal prosecution. Second, there is the possibility of private law suits for damages and other remedies by people who have been harmed as a result of these business activities.

Corporate criminal accountability for international crimes is an emerging norm.<sup>133</sup> Liability may be attached to the company itself or to its directors. In October 2018, the Swedish government authorised the Swedish Prosecution Authority to prosecute two corporate directors of Lundin Oil – the chief executive and chairman – for aiding and abetting gross crimes against international law in what is now South Sudan between 1998 and 2003. The company’s activities there were linked to forced displacement and indiscriminate attacks against civilians.<sup>134</sup>

Depending on the facts of the situation, companies doing business with, in or related to the settlements may lay themselves open to the criminal charge of complicity in gross human rights abuses, including war crimes, committed by other actors such as security forces or other state agencies. For instance, between 2010 and 2013, the Dutch company Lima BV was the subject of an investigation by the Dutch Public Prosecutor following a complaint that it had been complicit in war crimes and crimes against humanity. Through its subsidiary Riwal, Lima BV had supplied equipment which was used to construct a wall and illegal settlements in the Occupied Palestinian Territories.<sup>135</sup>

### ■ Companies doing business with, in or related to the settlements may lay themselves open to the criminal charge of complicity in gross human rights abuses, including war crimes

Complicity in war crimes has also been alleged in private law suits against companies with business interests in the Occupied Palestinian Territories. In 2007 law suits were filed against French-based multinationals Alstom and Veolia in the French courts. These law suits were based on allegations that the companies’ involvement in a consortium to build rail infrastructure in Jerusalem had, in effect, aided and abetted violations of international humanitarian law and breached sections of the French Civil Code. The litigation continued until 2013, when the case was dismissed by a French court of appeal. Since then, Veolia has disposed of many of its business operations in Israel. It sold its remaining stake in the Jerusalem light rail project in mid-2015.

These two cases – one criminal, one civil – did not ultimately result in judicial determinations of criminal or civil liability. However, they illustrate the financial, commercial and reputational risks that can result from protracted criminal investigations or civil litigation. Whether criminal or civil liability is established in a specific case depends on a host of factors, including the facts of the case, the precise way in which domestic law regimes have implemented international legal standards in the national context<sup>136</sup> and the resources available to the law enforcement authorities.<sup>137</sup> However, in cases involving allegations of corporate complicity in breaches of international humanitarian law, the legal risks are vastly compounded by the absence of geographical limits: in such cases states may prosecute for crimes committed beyond their borders.<sup>138</sup> The two cases cited demonstrate that

enforcement action may be possible in a range of jurisdictions,<sup>139</sup> not only in the jurisdiction in which the harm occurred.

## 7.2 Supplying funds, materials or resources

Supplying funds, materials or resources to a government in the knowledge that they will be used, or are reasonably likely to be used, to commit gross human rights abuses can result in criminal prosecution and sanctions. This is demonstrated by the case of Franz van Anraat, who was charged with complicity in war crimes and genocide in 2004. It was alleged that he had supplied chemicals to Saddam Hussein's government in Iraq, which used them to produce the mustard gas and nerve agents that were deployed in the Iran-Iraq war and in the Halabja poison gas attack on Iraqi Kurds in 1988.

On 23 December 2005, a Dutch court found van Anraat guilty of complicity in war crimes. On 9 May 2007, after a series of appeals, he was sentenced to 17 years' imprisonment.<sup>140</sup>

In a more recent case, also involving the Dutch criminal law system, businessman Guus Kouwenhoven was convicted of illegal arms trafficking and complicity in war crimes in Liberia and Guinea. He received a 19-year prison term. The court took account of the defendant's knowledge of the background to the conflict, and his familiarity with the factions involved, as evidence of the necessary awareness and intent needed to establish aiding and abetting under Dutch law.<sup>141</sup>

However, the risk of being held to be complicit in serious human rights abuses does not arise only from cases where companies have supplied the wherewithal to commit human rights abuses. It also arises in cases where a company's actions have enabled human rights abuses and made them more likely. For instance, in the Kouwenhoven case the defendant was held legally responsible not only for the crimes committed using the weapons he had supplied, but also for other crimes, such as rapes, which had been enabled by the presence of those weapons.

The case of the Australian company Anvil provides further examples of the kinds of corporate conduct that can expose a company to allegations of complicity in serious human rights abuses. In 2005 the Australian Federal Police opened a criminal investigation into Anvil's role in a massacre in Kilwa, in the Democratic Republic of Congo (DRC). Anvil was accused of having supplied trucks, planes and provisions to the Congolese military. Although the Australian investigation was dropped following an unsuccessful attempt to prosecute the perpetrators of the massacre in the DRC, the African Human Rights Commission recently requested the Congolese authorities to reopen an investigation into the company's role in the atrocity.

Providing funds, logistical help or resources to human rights abusers exposes companies to the risk of civil action as well as criminal investigation and prosecution. For instance, in the case of *Doe v Unocal* in the USA it was alleged that, by providing practical assistance to the Myanmar military for security-related activities, Unocal was complicit in serious human rights violations. The complainants asserted that the abuses they suffered at the hands of the Myanmar military included forced labour, murder, torture and rape. Begun in 1996, this case was eventually settled out of court in 2009.<sup>142</sup>

On occasion, commercial contracts for supply of goods and services can result in legal risks for companies, as the cases of French technology companies Amesys and Qosmos demonstrate. Amesys is alleged to have supplied surveillance technology to Libya, that was then used to repress opponents of the Gadafi regime. Likewise, Qosmos allegedly supplied surveillance material, through a German and an Italian company, to the Syrian regime. Initially, the French prosecutor had declined to pursue the complaint against Amesys, on the basis that merely selling equipment to a state would not constitute criminal conduct. However, this decision was reversed in March 2012 and the reversal was upheld on appeal in January 2013. Criminal investigations are ongoing in both cases and in April 2016 Amesys was placed under the status of assisted



witness by investigative judges of the French war crimes unit.

Providing banking and other financial services in and to conflict-affected areas can also expose businesses to legal risk, as shown by the recent complaint filed against BNP Paribas.<sup>143</sup> The complaint arises from the bank's alleged role in a transfer of more than \$1.3m which was used to finance the purchase of 80 tonnes of weapons by a Rwandan general involved in crimes of genocide. The French Public Prosecutor opened a judicial investigation on 22 August 2017.

The criminal prosecution of Swiss company Argor-Heraeus illustrates the legal risks that can arise where management has failed to undertake the due diligence needed to assess the contribution of the company's activities to the maintenance of abusive or illegitimate regimes. The Swiss authorities investigated the company between October 2013 and June 2015, following a complaint that it had refined nearly three tonnes of gold pillaged by Congolese rebels between 2004 and 2005. In a much-criticised decision, the Swiss prosecutors eventually dropped the investigation for lack of evidence that the company knew the provenance of the gold. However, not all jurisdictions take such a strict approach to the question of corporate knowledge (see sections 7.3 and 7.4 below).

### 7.3 Handling or trading in goods from conflict-affected areas

**Active involvement by the company in, for example, displacement of populations, could amount to aiding and abetting crimes under international humanitarian law**

Businesses handling or trading in goods from conflict-affected areas need to be aware of two potential sources of legal risk in particular: first, that the goods may have been produced in circumstances or settings that abused people's rights and, second, that the trade in those goods may help to maintain an abusive regime.<sup>144</sup>

Some active involvement by the company in, for example, displacement of populations, could amount to aiding and abetting crimes under international humanitarian law.<sup>145</sup> That is a criminal offence. The fact that a company has a financial interest in the continuation of an abusive state of affairs may be evidence of the level of approval or incitement needed to establish accessory liability. It may also be relevant to determining the level of culpability of a 'complicit' company, and hence to the kinds of sanctions which should be imposed.<sup>146</sup>

### 7.4 The legal consequences for breaches of law

Successful prosecutions of corporate complicity cases can have a variety of outcomes, depending on whether the subject of the complaint is an individual, a company, or both. Some cases – for example Van Aarat (page 28), Kouwenhoven (page 28), and Urapalma (endnote 145) – have resulted in prison sentences for individual business owners, managers, and employees.<sup>147</sup> In some cases (eg Urapalma) remedies have included compensation orders and orders for restitution of lost land and resources. In other civil law cases (eg *Doe v Unocal*, page 28) claimants have achieved an out-of-court financial settlement with the companies involved. In some cases, in addition to penalties and compensation orders, further administrative action may be taken, such as removal of licences or certifications, or exclusion from tendering processes.<sup>148</sup> However, the legal risks arising from doing business in, with or related to settlements are not limited to the risk of penal sanctions or compensation orders. The commercial and reputational risks can be considerable.

In summary, a wide range of activities and business relationships can give rise to accusations of corporate complicity in crimes under international law, often with serious legal, financial, commercial and reputational consequences for the companies concerned. Moreover, the law on corporate complicity for serious human rights abuses is developing fast, in response to a growing number of civil and criminal law cases in many jurisdictions.

# DISENGAGEMENT

## 8. Why are businesses choosing to divest and disengage?

**In the past few years a number of companies have terminated operations linked to the illegal settlements**

In the past few years a number of companies have decided to terminate operations linked to the Occupied Palestinian Territories, in particular to Israeli settlements. In addition, banks and pension funds have taken steps to exclude companies from their investment portfolios, owing to concerns about the legal and ethical implications of those companies' activities there.

The reasons for these divestments differ from case to case: legal action, government pressure, outcomes of dispute resolution processes under the OECD Guidelines for Multinational Enterprises, reputational risk, civil society campaigns or the ethical policies of state pension funds. The examples below cover a combination of factors that appear to have influenced decisions.

Scrutiny of companies doing business in Israeli settlements in Occupied Palestinian Territories is likely to increase: the UN is to publish a database of some of the business enterprises involved in activities there that raise particular concern about human rights.<sup>149</sup>

### 8.1 Examples of divestment by companies

- In mid-2015, French company Transdev (part owned by French utility company **Veolia**) sold its stake in the Jerusalem light rail project. It also sold its shares in Connex Jerusalem, the operating company responsible for running the train service. The rail project had been the subject of litigation against Veolia in France (dismissed in 2013) in which it was claimed that the French company's involvement in the project amounted to complicity in breaches of international humanitarian law. In public statements, representatives of the company described the sale of its stake in the rail project as 'strategic' and unrelated to a campaign to boycott the company because of these investments.<sup>150</sup> However, it was also reported that Veolia executives had acknowledged privately that the company's involvement in the Jerusalem light rail project had cost it contracts elsewhere.<sup>151</sup> The sale of the light rail project, which followed earlier disposals of other investments in utilities in Israel in April 2015,<sup>152</sup> ended a business development strategy that had long been of concern to some investors. As early as 2006, **ASN**, a bank based in The Hague, Netherlands, announced its decision to divest itself of its holdings in Veolia, on the grounds that the project 'is not in line with the UN's demand to stop all support for Israel's settlement activities.'<sup>153</sup>
- In October 2014, **Sodastream** announced the closure of a factory near the West Bank settlement of Ma'ale Adumim. The company described the decision as a purely commercial one. However, it came in the midst of a campaign by the Boycott, Divestment and Sanctions movement to boycott the company. In testimony to the US Congress in July 2015, the company's chief executive, Daniel Birnbaum, spoke of the impact of this campaign on sponsorship opportunities in France and Japan.<sup>154</sup>
- In September 2013, engineering consulting firm **Royal HaskoningDHV** announced the termination of its involvement in the Kidron wastewater treatment plant project in East Jerusalem. The company made the decision after forming the view 'after due consultation with various stakeholders' that 'future involvement in the project could be in violation of international law.'<sup>155</sup> An earlier statement by the company suggests that it had reviewed

its position following advice from the Dutch ministry of foreign affairs ‘of possible aspects relating to international law that may influence the project’.<sup>156</sup>

- In June 2015, telecommunications company **Orange** made public its wish to terminate a brand licensing relationship with Partner Communications. Orange had faced pressure from campaigners as a result of the relationship, because of Partner’s business activities in the settlements. At a press conference in Cairo, the company’s chief executive suggested that, were it not for the likely contractual penalties, he would seek to exit the arrangement as a matter of urgency.<sup>157</sup> An agreement was reached to terminate the relationship in January 2016.<sup>158</sup>
- In March 2016, security company **G4S** announced its intention to sell its Israeli subsidiary, G4S Israel. The sale was described by the company as driven by commercial considerations<sup>159</sup> and its debt reduction strategy.<sup>160</sup> However, the decision came less than a year after the UK National Contact Point under the OECD Guidelines for Multinational Enterprises had determined that the company’s actions were ‘technically inconsistent with its obligation under [the Guidelines] to respect human rights’<sup>161</sup> (see page 22). The company had been under sustained pressure over a number of years from campaigners<sup>162</sup> and trade unions<sup>163</sup> to end its activities in, and connected with, the Occupied Palestinian Territories. In 2013 the company announced that ‘having conducted a review in 2011, we concluded that, to ensure that G4S Israel business practices remain in line with our own business ethics policy, we would aim to exit the contracts which involve the servicing of security equipment at a small number of barrier checkpoints, a prison and a police station in the West Bank area.’<sup>164</sup>
- In November 2018 Airbnb announced that it would remove from its accommodation bookings website all properties in Israeli settlements built in the occupied West Bank.<sup>165</sup> In its press statement, it set out a decision-making framework to determine how to treat its listings in occupied territories. The criteria include: ‘Evaluate whether the existence of listings is contributing to existing human suffering... and has a direct connection to the larger dispute in the region.’<sup>166</sup>

## 8.2 Examples of companies being excluded from investment portfolios

**Banks and pension funds have excluded companies from their investment portfolios owing to concerns about the legal and ethical implications of those companies’ activities.**

- In January 2014, Dutch pension fund **PGGM** announced that it had withdrawn all its investments from Israel’s five largest banks (Bank Hapoalim, Bank Leumi, Bank Mizrahi-Tefahot, the First International Bank of Israel and Israel Discount Bank). The reason given was that these banks have branches in the West Bank settlements, or finance construction there. In its public statement, the fund stated that it had commenced a dialogue with the five banks because of concerns about business activities in the settlements ‘as the settlements in the Palestinian territories are considered illegal under international humanitarian law’. PGGM said it had decided to withdraw after concluding that ‘engagement as a tool to bring about change will not be effective in this case.’<sup>167</sup>
- In June 2015, Norwegian pension fund **KLP** decided to exclude Cemex and HeidelbergCement from its investment portfolio because of their involvement in the management of quarries in the occupied West Bank. In its public statement, KLP explained that it had come to the view that ‘the companies’ operations are associated with violations of fundamental ethical norms’. It added: ‘The fact that exploitation of natural resources from an occupied or non-self-governing territory may help to prolong conflict is also an important factor when assessing this matter... Any rule that allows the occupant to begin exploiting resources in occupied territory creates an incentive to prolong the occupation. This violates the underlying principle of the law on occupation – that occupation should be temporary.’<sup>168</sup>

- Norway's **Government Pension Fund Global** also has excluded companies from its investment portfolio on ethical grounds. In 2009 it sold its stake in Israeli company Elbit Systems because Elbit supplied surveillance equipment for the separation barrier in the West Bank. In its recommendation to the Norwegian Ministry of Finance to exclude the company, the Council of Ethics stated 'The construction of parts of the barrier may be considered to constitute violations of international law, and Elbit, through its supply contract, is thus helping to sustain these violations. The Council on Ethics considers the Fund's investment in Elbit to constitute an unacceptable risk of complicity in serious violations of fundamental ethical norms.'<sup>169</sup> This was followed by a decision in 2012 to exclude Israeli construction firm Shikun & Binui Ltd 'based on an evaluation [by the Ministry's Council of Ethics] of the future risk that the company will contribute to serious violations of the rights of individuals in war or conflict.'<sup>170</sup>
- **Danske Bank** has excluded several companies involved in settlement construction (eg Danya Cebus Ltd and Africa Israel Investments Ltd) and also Bank Hapoalim (see above). Bank Hapoalim was originally excluded from the Danske Bank investment portfolio in 2014 because it was held to be 'involved in activities in conflict with international humanitarian law'.<sup>171</sup> Similarly, the Danish pension fund, **Sampension**, has excluded four companies involved in business activities in the Occupied Palestinian Territories: Bank Hapoalim and Bank Leumi, along with Israeli telecommunications company Bezeq and the German company HeidelbergCement.<sup>172</sup>
- Other types of funds have also taken steps to exclude banks and construction companies with business interests in the settlements. For instance, the Pension and Health Benefits Fund of the **United Methodist Church** has imposed exclusions on five Israeli banks (Bank Hapoalim, Bank Leumi, First International Bank of Israel, Israel Discount Bank, and Mizrahi Tefahot Bank) on the grounds that investment would not be consistent with the fund's policies on human rights. The fund also excludes construction company Shikun & Binui Ltd.<sup>173</sup> The **Quakers in Britain** church has taken a further step to exclude from its centrally-held funds any companies profiting from the occupation of Palestine.<sup>174</sup>

### 8.3 International and governmental action and advice

Warnings about the legal, commercial and reputational risks associated with doing business in, with or related to the settlements are contained in the business advisory notes of many states, including 18 members of the European Union. Current UK government advice to business warns of the 'clear risks related to economic and financial activities in the settlements':

Settlements are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution to the Israeli-Palestinian conflict impossible. We will not recognise any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties.

There are therefore clear risks related to economic and financial activities in the settlements, and we do not encourage or offer support to such activity. Financial transactions, investments, purchases, procurements as well as other economic activities (including in services like tourism) in Israeli settlements or benefiting Israeli settlements, entail legal and economic risks stemming from the fact that the Israeli settlements, according to international law, are built on occupied land and are not recognised as a legitimate part of Israel's territory. This may result in disputed titles to the land, water, mineral or other natural resources which might be the subject of purchase or investment.<sup>175</sup>

Similarly, the Irish government warns businesses to 'be aware of the potential reputational implications of getting involved in economic and financial activities in settlements as well as possible abuses of the rights of individuals.'<sup>176</sup>

In Ireland and Chile, legislatures have taken initiatives to prohibit business relationships with Israeli settlements in the Occupied Palestinian Territories. Municipal authorities in other countries have also taken measures to ban procurement from the settlements because of their illegality.

In Ireland, the Control of Economic Activity (Occupied Territories) Bill 2018 received parliamentary approval from the Senate (Upper House) in November 2018.<sup>177</sup> This bill, which still has further stages to go through before it becomes law, would prohibit the import and sale of goods produced in Israeli settlements, as well as any involvement by Irish companies in the provision of services to such settlements or the extraction of resources originating from them.

In November 2018, Chile's Congress approved a resolution calling for its government to boycott Israeli settlements in any future agreement with Israel and to re-examine past agreements.<sup>178</sup> The resolution includes a demand from the government to examine all agreements signed with Israel, in order to ensure they don't cover territories occupied since 1967. It also requests that the Ministry of Foreign Affairs ensures that future agreements relating to Israel exclude the Occupied Palestinian Territories.

In the UK, several public authorities have passed motions to end procurement of goods from Israeli settlements, including Swansea City Council, Leicester City Council and Gwynedd Council. In November 2014, Leicester City Council resolved to 'boycott any produce originating from illegal Israeli settlements in the West Bank until such time as it [Israel] complies with international law and withdraws from Palestinian Occupied Territories.'<sup>179</sup>

In June 2016, the High Court of Justice affirmed the legality of the decisions by these public bodies in the UK.<sup>180</sup> The Court of Appeal subsequently rejected claims by Jewish Human Rights Watch (no relation to Human Rights Watch) that the Leicester City Council resolution was antisemitic, pointing out that the condemnation of Israel was 'in line with a respectable body of opinion, including the UK government, the United Nations General Assembly, the European Union and the International Court of Justice'<sup>181</sup>

Several municipalities in Norway, including Tromsø and Trondheim, have adopted resolutions to refrain from purchasing goods and services that support Israeli settlements.<sup>182</sup> These municipalities have based their resolutions on the need to uphold international humanitarian and human rights law relating to illegally occupied areas and the need to abide by their own ethical guidelines. The State Secretary to Norway's Minister of Foreign Affairs has affirmed that a municipal procurement boycott aimed at goods and services produced in settlements in an occupied territory is in keeping with Norway's international obligations under trade law.<sup>183</sup>

A further 16 EU member states have issued advice to business, warning of the legal, financial and reputational consequences they could expose themselves to by doing business in, with or related to the settlements.<sup>184</sup> Outside the EU, similar advice has been issued by Brazil<sup>185</sup> and Japan, among others.<sup>186</sup>

At international level, the UN High Commissioner for Human Rights continues work on a database, mandated by the Human Rights Council,<sup>187</sup> 'of all business enterprises engaged in specific activities related to Israeli settlements in the occupied Palestinian territory, in consultation with the Working Group on business and human rights, recalling the illegality of the settlements under international law'. The screening process has been completed and 192 companies have been identified for further review and consideration.<sup>188</sup>

## CONSEQUENCES

### 9. Is there a danger that disengagement could worsen the situation for Palestinians?

A major argument used by many companies to explain their involvement in the Israeli settlements is that they provide jobs to Palestinian families and help to support the Palestinian economy.<sup>189</sup>

This fails to recognise that the presence of the settlements in the Occupied Palestinian Territories, which is unlawful, serves to depress the Palestinian economy and to reduce opportunities for Palestinian businesses to thrive. The agricultural sector, which lies at the heart of the Palestinian economy, has been in continuous decline since 1967 owing to the dispossession of land and the denial of access for Palestinian farmers to agricultural areas, water resources and markets.<sup>190</sup>

The depressed Palestinian economy has had a direct effect on the job market in the Occupied Palestinian Territories. According to UNCTAD, Israel's full control over Area C, which accounts for over 60 per cent of the area of the West Bank, has contributed to a permanent unemployment crisis that forces thousands of Palestinians to seek employment in Israel and in Israeli settlements in low-skill, low-wage manual activities.<sup>191</sup>

Most Palestinians would not want to work in Israeli settlements if they had other choices, but many have little choice because the occupation makes a viable Palestinian economy virtually impossible.

The employment of Palestinians, even on favourable terms, does not exempt businesses from their responsibility under the UN Guiding Principles, which makes clear that while businesses may undertake certain activities that enhance human rights, 'these do not offset a failure to respect human rights throughout their operations'.<sup>192</sup>

## COMPARISONS

### 10. Are these problems common to all areas under military occupation?

All areas under military occupation are conflict-affected areas, and hence, challenging operational contexts for companies when it comes to preventing and mitigating human rights risks. Therefore, it is incumbent upon all those doing business in these areas, and having business relationships with entities in these areas, to apply enhanced human rights due diligence techniques. These will enable them to identify, prevent and mitigate human rights risks. The risk of causing or contributing to gross human rights issues must be treated as a legal compliance issue.

The Israeli settlements in Occupied Palestinian Territories should pose fewer dilemmas for companies than some other conflict-affected areas, because they are illegal under international law and constitute war crimes. The occupying power has transferred its own population into the settlements in breach of the Fourth Geneva Convention and segregated them from areas inhabited by Palestinians. It has forcibly transferred protected persons from occupied territory, and it has appropriated land and property to build and expand settlements. Such actions are also in breach of international humanitarian law.

The settlements and their infrastructure comprise over 60 per cent of the occupied West Bank and use resources which should be used for the benefit of the occupied population, which is entitled to special protection under international humanitarian law. The fact that business enterprise provides a significant incentive for development and expansion of the settlements carries enormous implications and potential consequences for the companies involved.

However, some of the points of principle and advice set out in this briefing are not limited to Israeli settlements in the Occupied Palestinian Territories but are potentially relevant to any place under military occupation where gross abuses are taking place.

## **ACTION**

### **11. Why should companies act now rather than wait for governments to take action?**

The corporate responsibility to respect human rights, and how companies meet it, is not dependent upon what governments do (or fail to do). As the UN Guiding Principles state, the corporate responsibility to respect human rights exists independently of states' abilities and willingness to fulfil their own human rights obligations, and it does not diminish those obligations.<sup>193</sup>

Companies that operate in Israeli settlements or conduct business there expose themselves to liability risks. International humanitarian law has been incorporated into the domestic law of many states and envisages the direct liability of individuals. Complicity in war crimes, for instance, is a serious criminal offence in many jurisdictions, and individuals – including business managers and executives – can and have been held liable for it. In addition to criminal liability, complicity in serious human rights abuses can expose companies, and their managers and staff, to the risk of civil actions for damages. Moreover, because of the flexibility of jurisdictional rules in cases of gross human rights abuses, civil or criminal proceedings could potentially be instituted in a range of jurisdictions.

Companies must act according to international humanitarian and human rights norms, regardless of state action. In relation to Israeli settlements in the Occupied Palestinian Territories, these norms dictate that they refrain from doing business in or with Israel's illegal settlements. Companies do not need enabling legislation to do this and must not delay action until specific national legislation requires them to do so.

Any basic preliminary risk mapping would reveal this reality. That should be sufficient for any company to reach the conclusion that it cannot do business in or with settlements without contributing to violations of international humanitarian and human rights law.



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- 2 Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Art. 49, para 6.
- 3 Fourth Geneva Convention, Art. 49, para 1.
- 4 UN Office of the High Commissioner for Human Rights, A/HRC/37/39/, para. 41. See 'Key sources', p37.
- 5 International humanitarian law establishes obligations concerning humane treatment and physical integrity of people living under occupation (defined as 'protected persons'): respect for their basic rights to education, a fair trial, family life, health, religion and work; maintenance of public order and safety; respect for and protection of personal property; and the management of public property, including natural resources, for the benefit of those living under occupation.
- 6 ICRC, International Humanitarian Law Database, Rule 130, <https://ihl-databases.icrc.org>
- 7 Fourth Geneva Convention, Art. 49, para 1.
- 8 Article 55 of the Hague Regulations makes occupied property subject to the laws of usufruct.
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- 11 J Crawford SC, *Opinion, Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories*, p24. See also, *Letter to Policy Makers in the European Union and its Member States Calling for Compliance with International Legal Obligations related to Withholding Trade from and toward Israeli Settlements*, [www.eccpalestine.org](http://www.eccpalestine.org)
- 12 Pillage is expressly prohibited under Article 47 of the Hague Regulations of 1907 and Article 33 of the Fourth Geneva Convention.
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# WEST BANK

Based on map by OCHA,  
October 2017

## Physical Closures

- Internal Checkpoint (fully staffed)
- Green Line Checkpoint\*
- Internal Partial Checkpoint

## West Bank Barrier

- Constructed
- Under Construction
- Planned Route
- Planned Re-routing
- Barrier Gate

## Closed and Restricted Areas

- Israeli military base  
*Access is prohibited*
- Israeli firing zone and Jordan Valley Military Buffer Zone  
*Access is prohibited*
- 'Existing and projected' closed areas behind the Barrier  
*Access is limited to permit holders*

## Palestinian Communities

- Governorate Capital
- Governorate Boundary
- Built-up
- Community
- Israeli unilaterally declared Jerusalem municipal boundary

## Israeli Settlements

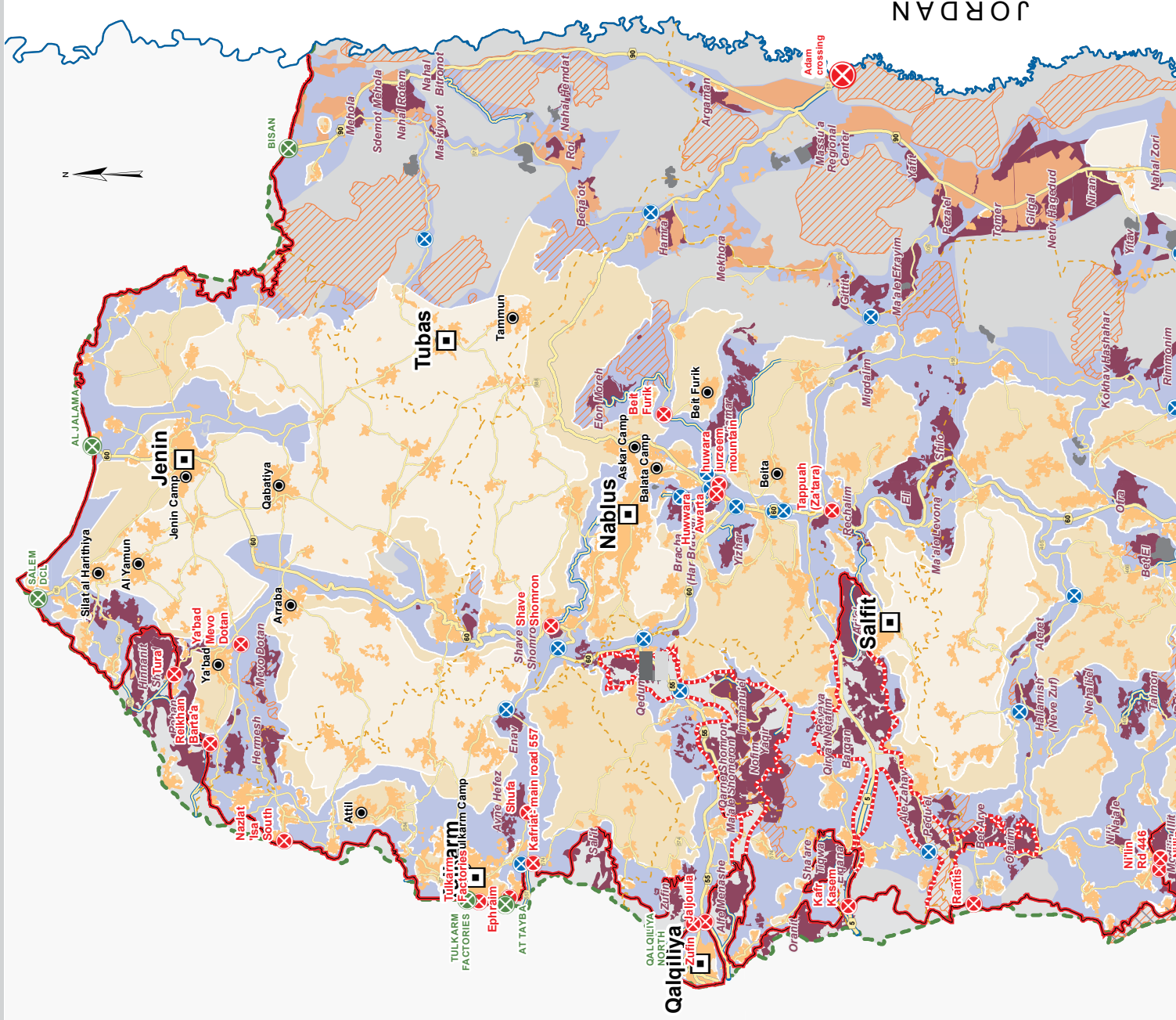
- Settlement built-up, outer limit and municipal area
- Israeli Nature Reserve

## Roads

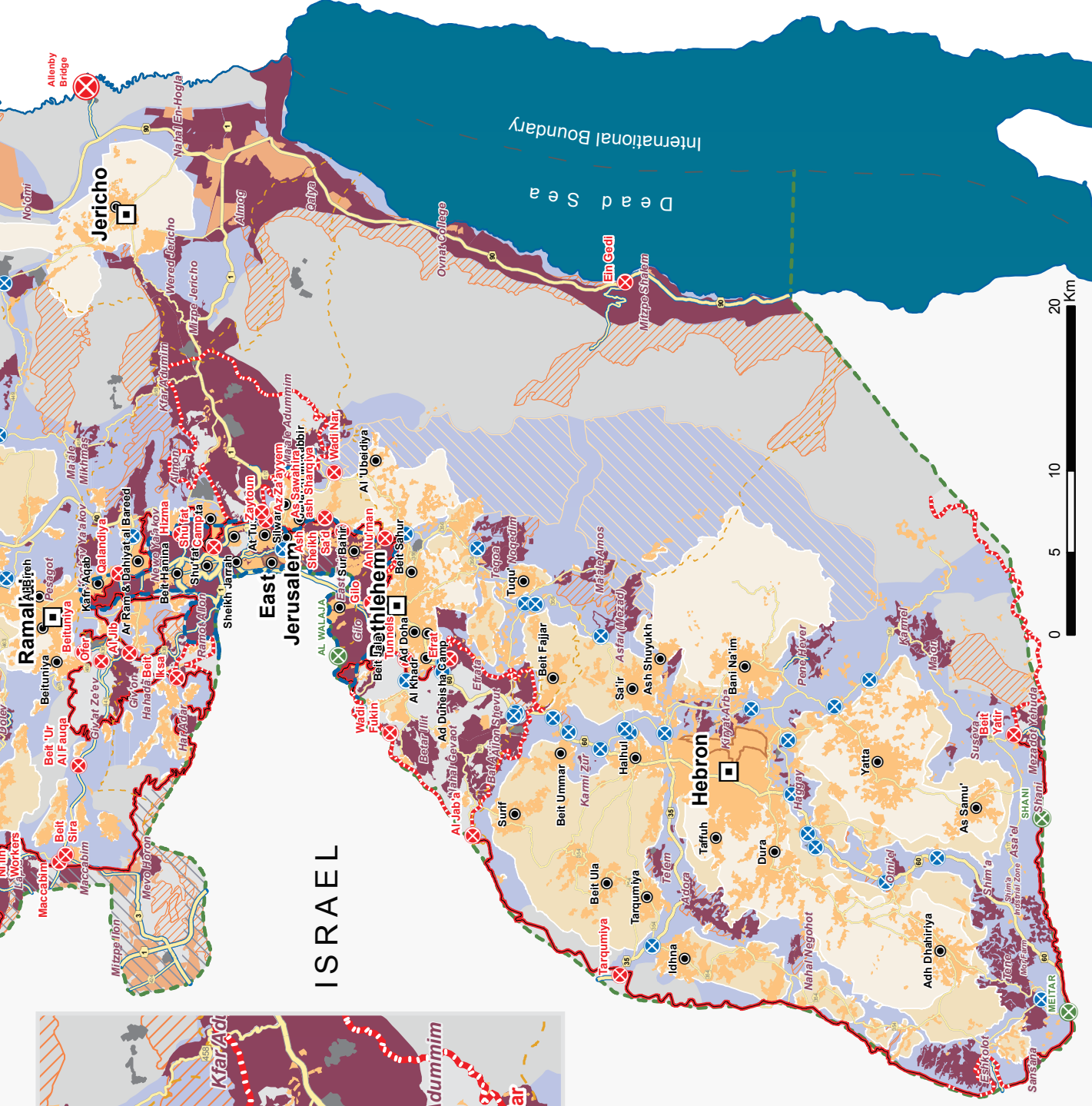
- Prohibited Palestinian vehicle use
- Main road

## Oslo Interim Agreement (1994-1999)

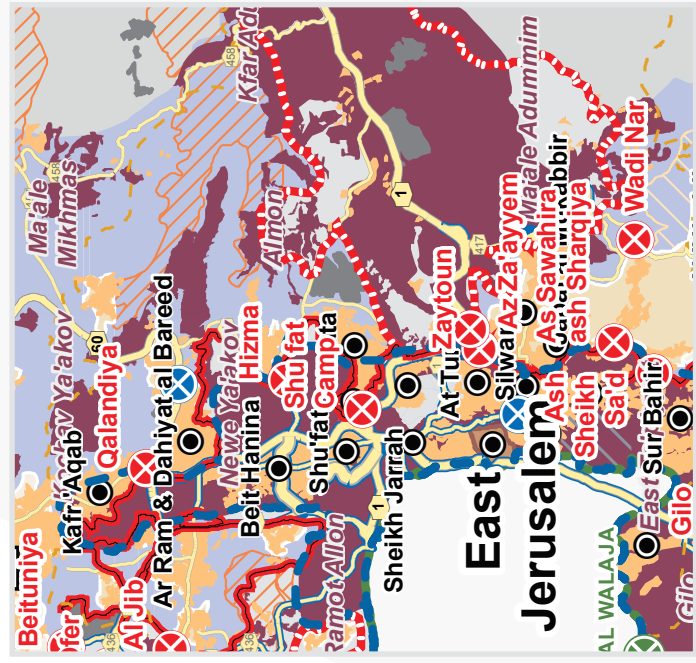
- Area A<sup>1</sup>
  - Area B<sup>2</sup>
  - Special Case (H2)<sup>3</sup>
  - Intended Nature Reserve
  - Area C<sup>4</sup>
- 1 Full Palestinian civil and security control
  - 2 Full Palestinian civil control and joint Israeli-Palestinian security control
  - 3 Intended Nature Reserve
  - 4 Full Israeli control over security, planning and construction



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Doing business with Israeli settlements in the Occupied Palestinian Territories poses significant risk to companies. Not only are these settlements illegal under international law, they are also associated with widespread human rights violations.

Business activity is essential to virtually every aspect of settlements maintenance, development and expansion. Companies operating or investing there, or sourcing goods from there, benefit from Israel's unlawful confiscation of Palestinian land and other resources. They also benefit from Israel's discriminatory policies for planning and zoning, with financial incentives and preferential access to utilities and infrastructure, all of which disadvantage Palestinian businesses.

This briefing is intended to help companies weigh up whether they can do business with Israeli settlements in the Occupied Palestinian Territories while respecting human rights. It draws on international human rights law, international humanitarian law, and on the UN Guiding Principles on Business and Human Rights. It sets out the case for companies to regard this as a compliance issue: getting it wrong may lead to reputational damage, withdrawal by investors and legal cases including criminal prosecution.

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