



Pursuing Accountability for Corporate Complicity

in Population Transfer in Palestine

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Credit and Notations

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Front Cover Photo: Israeli police officers stand guard as Jerusalem municipality workers use bulldozers to demolish a residential building in the East Jerusalem neighborhood of Beit Hanina, October 29, 2013. (Photo: Activestills/BADIL)

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Table of Contents

	Introduction	5
1	Conceptualizing Population Transfer	9
	1.1 Defining The Forms of Transfer	10
	1.2 Associated unlawful practices	15
	1.3 Relevant Prohibitions under International Law	17
	1.4 Population Transfer in Palestine	29
2	Elements of Corporate Complicity	35
	2.1 Categories of Complicity	37
	2.2 Avenues to Pursue Accountability	39
	2.3. Corporate Complicity in Palestine	41
	2.4. Corporate Complicity in acts of Population Transfer in Palestine	42
3	Accountability for Corporate Complicity: Corporate Responsibility	45
	3.1. UN Guiding Principles on Human Rights	45
	3.2. Corporate Responsibility to Respect Human Rights	48
4	Accountability for Corporate Complicity: Non-Judicial Grievance Mechanisms	55
	4.1. Access to Remedy	55
	4.2. Non-Judicial Grievance Mechanisms	56
	4.3. Limitations to and Advantages of Non-Judicial Grievance Mechanisms	63
5	Follow-up Strategies for Civil Society Organizations and Advocates	65
	5.1 Preliminary Actions	65
	5.2 Engagement	66
	5.3 Previous Successes	68
6	Case Study: Heavy Equipment Companies	71
	6.1. Caterpillar	71
	6.2. AB Volvo Group	73
	6.3 Caterpillar and Volvo’s Complicity	76
	6.4. Caterpillar and Volvo Complicity in Photos	79
	Conclusion	89
	Recommendations	91

Introduction

Israel continually and systematically violates an array of international laws throughout the conduct of its activities and policies in Palestine. Such violations are characterized by activities of belligerent occupation, colonization and apartheid including, *inter alia*: the implementation of a formal system of legalized discrimination; a failure to respect the laws in place in the occupied territory; the *de facto* annexation of Palestinian land and the confiscation and destruction of Palestinian public and private property; forced displacement, population transfer and the denial of the rights to return and to a nationality; restrictions on freedom of movement and residence; pillage of Palestinian natural resources; collective punishment; and ultimately culminating in the denial of the Palestinian people's inalienable right to Self Determination, being a *jus cogens* entitlement.¹

Furthermore, corporate entities may, and do, become directly or indirectly implicated in the aforementioned activities through their conduct whether it be enabling, exacerbating or facilitating the human rights abuses.²

BADIL's previous publication on the issue of *Corporate Complicity in Violations of International Law in Palestine*³ provided an overview of the role played by private businesses in Israel's illegal activities and the ensuing violations of international law, including: involvement in the Israeli colonial (settlement) industry; purchase of colony (settlement) produce; illegal construction on occupied land; provision of services to colonies; exploitation and pillage of natural resources; controlling the movement of the occupied civilian population; and the construction of the Annexation and Separation

1 See: International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, on the Wall, 9 July 2004; The term *Jus Cogens* refers to the fundamental principles of International Law which can never be derogated from. Such *Jus Cogens* principles also include the prohibition on Genocide and Crimes against Humanity.

2 International Commission of Jurists (ICJ), *Report of the ICJ Expert Legal Panel on Corporate Complicity in International Crimes: Corporate Complicity & Legal Accountability. Volume 1: Facing the Facts and Charting a Legal Path*, 2008, Vol. 1.

3 BADIL, *Corporate Complicity in Violations of International Law in Palestine*, December 2014, available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-en.pdf>.

Wall. Further, two companies - Kardan NV and Kardan Yazamut Ltd - were the focus of an incorporated case study. As such, this report will not repeat what has already been discussed previously. In addition, given the vast extent of international laws being breached in the context of Israel's protracted occupation of the Palestinian territory, it is beyond the scope of the paper to exhaustively consider corporate complicity in all such violations, individually. Rather, this paper will focus on two interrelated and unlawful acts of **Population Transfer** – the act of *Forcible Transfer* and the associated act of *Colonial Transfer*.⁴ It will explore how these acts being committed in Palestine, and how two companies in particular – Caterpillar and Volvo - are implicated in acts of this nature. These companies have been selected for illustrative purposes: there are numerous other such companies involved in both similar and distinct operations in the oPt, which are equally as culpable and against which accountability must also be pursued.

The practice of forced population transfer and the associated practice of colonial transfer, both of which deprive the Palestinian people of their inalienable right to Self Determination, are international crimes as per the Rome Statute of the International Criminal Court (ICC); are grave breaches of international humanitarian law (IHL) as per the Fourth Geneva Convention;⁵ are prohibited as per customary rules of international law;⁶ and furthermore, invoke numerous breaches of international human rights law (IHRL) as per multiple international human rights instruments (see below).

The unlawful forced population transfer of the protected indigenous Palestinian population in Palestine - thereby rendering such transferred populations as internally displaced persons (IDPs) - is conducted in most part to facilitate the equally unlawful implantation of the occupier's own civilian population into the occupied territory (referred to herein as colonial transfer).

For its part, BADIL has identified at least nine discriminatory policies implemented by Israel with the aim of displacing the Palestinian population including: denial of residency; installment of a permit regime; land confiscation and denial of use; discriminatory zoning and planning; segregation; denial of resources and access to services; denial of refugee and IDPs reparation (return, property restitution and compensation); suppression of resistance;

4 "Colonial Transfer" is a term herein coined by BADIL for the purposes of the present report in order to differentiate between the act of illegal and colonial implantation of the Occupier's civilian population (Israeli settlers) into the occupied Palestinian territory (colonial transfer or settlement activity); and the act of forced population transfer of the indigenous Palestinian population, which, although interrelated in the present context, are separate acts.

5 International Committee of the Red Cross (ICRC), *Fourth Geneva Convention*, Article 49.

6 International Committee of the Red Cross, *Customary Rules of International Humanitarian Law*, Rules 129 & 130. .

and non-state actions conducted with the implicit consent of the Israeli state (such as settler violence).⁷

Corporations⁸ such as Caterpillar and Volvo play a substantial role in profiting from, enabling and facilitating the act of forced population transfer, through their business relationships, in the occupied Palestinian territory (oPt) including East Jerusalem. Such actions, conducted with direct and indirect support from the state of Israel, remain in clear violation of internationally established frameworks that place obligations on corporations and States to operate in accordance with international law.

The UN Guiding Principles on Business and Human Rights (the “UN Guiding Principles”) represent the most authoritative normative framework embodying the global standard *vis-à-vis* human rights obligations for States and businesses. It is the first normative framework to have been endorsed by an intergovernmental human rights body – the UN Human Rights Council – and while not legally binding, amounts to a comprehensive compilation of existing international standards applicable to states and businesses and has thus far proven relatively effective in encouraging better practice in this field.⁹

While the option to legal recourse before international and domestic judicial mechanisms also presents an avenue for redress of human rights violations by businesses, legal avenues do not cater to the pursuit of accountability for all forms of complicity. Furthermore, initiating legal action may be beyond the capacity and mandate of many interested actors and organizations. As such, and although it is encouraged that all concerned parties continue to pursue all avenues available to them, the UN Guiding Principles and non-judicial grievance mechanisms will form the basis of the guidance and analysis presented within this paper. It is intended that the information and guidance provided herein will prepare other organizations and interested

7 See: BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine - Introduction*.

8 The terms ‘corporations’, ‘businesses’ and ‘companies’ will be used interchangeably throughout the report irrespective of size, structure, nationality, or ownership of the corporations/businesses/companies.

9 In response to the “Report of the independent international fact finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, HRC 22/63, & February 2013”, a number of countries reported on various measures they had taken to combat the complicity of companies domiciled in their countries *vis-à-vis* their engagement with unlawful activities in the oPt. To that extent, Denmark reported that in October 2012 it had issued guidance to Danish retailers on labeling certain settlement products on a voluntary basis and therein prohibited the labeling of products from the oPt as originating from “Israel”. See: UN Human Rights Council, *Implementation of the Recommendations Contained in the Report of the Independent International Fact-Finding Mission on the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/22/63, 7 February 2013.

parties to feasibly pursue accountability through all avenues permitted by their respective capacities.

The UN Guiding Principles are, themselves, founded on the three core principles: the state's *duty to protect* human rights; the corporate *responsibility to respect* human rights; and *access to remedy* for victims of business-related abuses. The UN Guiding Principles also provide criteria for non-judicial mechanisms, both state-based and non-state-based, which supplement legal action and/or respond to an absence of effective legal paths for victims to access remediation.

This paper is organized into six sections:

- Section 1 provides a concise legal overview of the pertinent acts of population transfer;
- Section 2 addresses corporate complicity;
- Section 3 outlines the international framework for corporate responsibility *vis-a-vis* violations of international law, as laid out in the UN Guiding Principles on Business and Human Rights;
- Section 4 will outline various non-judicial grievance mechanisms available through the application of the business and human rights framework;
- Section 5 sheds light on follow up strategies for civil society organizations and advocates. It provides available mechanisms for assessing company's complicity, forms of engagement and successful interventions;
- Section 6 examines Caterpillar and Volvo as a case study in corporate involvement in population transfer. The section concludes with an analysis of Caterpillar and Volvo with reference to these international frameworks and practical recommendations in cases of companies participating in forced population transfer.

Conceptualizing Population Transfer

Two separate but inter-related illegal acts of Population Transfer comprise the focus of this report. Those two acts are:

1. **Forcible Transfer** of the indigenous Palestinian population;
2. **Colonial Transfer**, or the implantation of the Occupier's own civilian population into the occupied territory.

These acts of Population Transfer constitute violations of norms of International Humanitarian Law (IHL), International Criminal Law (ICL) and International Human Rights Law (IHRL) as well as being in breach of customary rules of international law. This section will thus outline the concept of population transfer and how the relevant legal frameworks prohibit the pertinent acts of Population Transfer.

As well as amounting to Grave Breaches of the Fourth Geneva Conventions, War Crimes, and Crimes against Humanity, the UN Secretary General and the UN-mandated Working Group on the issue of human rights and transnational corporations and other business enterprises, have recognized that Israeli colonial practices and policies involved in the acts of population transfer at hand - such as construction of colonies, land confiscation, the Israeli-implemented zoning and planning regime, forced evictions of Palestinians, demolitions of Palestinian structures, and the lack of accountability for colonizer violence - result in adverse human rights impacts to the Palestinians population.¹⁰ Such human rights which are negatively impacted include, *inter alia*, "rights and freedoms of non-discrimination, liberty, security of person and fair trial, freedom of movement, adequate housing, health, education, work and an adequate standard of living."¹¹

10 UN OHCHR, *Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory*, 6 June 2014, p. 11; UN Human Rights Council, *Report of the Secretary General on Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, 12 February 2014, A/HRC/25/38, sections IV and V.

11 *Ibid.*

Furthermore, such forms of population transfer, such as they occur in the oPt, could be held to amount to an act of “ethnic cleansing”. While a relatively ambiguous term under international law, ethnic cleansing has been defined by the Commission of Experts, established under UN Resolution 780 of 1992 as being “*a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas.*”¹² Further, a 1999 US State Report on Kosovo defined ethnic cleansing as “*the systematic and forced removal of members of an ethnic group from their communities to change the ethnic composition of a region.*”¹³ Notwithstanding, no formal legal definition of ethnic cleansing exists. However, the UN Commission of Experts also held that acts associated with ethnic cleansing (including forcible displacement) could “constitute crimes against humanity and can be assimilated to specific war crimes”.¹⁴

For its part, the UN Guiding Principles on Business and Human Rights focuses on upholding, as a minimum, human rights norms as expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s (ILO) Declaration on Fundamental Principles and Rights to Work.¹⁵ However, the Guiding Principles also asserts that, in addition to their responsibilities to uphold human rights standards, States and business enterprises should - in situations of armed conflict - also uphold their obligations under IHL, as well as those obligations conferred under international criminal law.¹⁶

1.1 Defining the Forms of Transfer

A. Forcible Transfer

[It should be clarified from the outset that the term “forcibly displaced” is to be used synonymously with the terms ‘deportation’ and ‘forcible transfer’,¹⁷ which are merely categories of ‘forcible displacement’.]

12 UN Security Council, *Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992)*, 27 May 1994, S/1994/674, Para 130.

13 US Department of State, *Erasing History: Ethnic Cleansing in Kosovo*, May 1999.

14 UN Security Council, *Final Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992)*, 27 May 1994, S/1994/674, Para 129.

15 UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, March 21, 2011, Principle 12.

16 *Ibid.*, Principles 7 & 12.

17 International Criminal Court (ICC), *Elements of Crimes*, 2011, p. 6, note 13.

Forcible Transfer:

Forcible transfer: amounts to (i) the forcible displacement (absent genuine consent) of one or more persons through expulsion or other forms of coercion, (ii) from a location where they are lawfully present, to another location (within a national border), (iii) where such a displacement is not conducted within grounds permitted under international law.

To that extent:

1. It has been established that “any forced displacement of population involves abandoning one’s home, losing property and being displaced under duress to another location.”¹⁸ Notably, the term “forcible” is “*not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.*”¹⁹

For its part, the International Criminal Tribunal for the Former Yugoslavia (ICTY) has submitted that such measures as “*dismissals from employment, house searches and the cutting off of water, electricity, and telephone services*” are measures which may create severe living conditions such as would pressure people into leaving their homes and thus contributing to forcible displacement.²⁰ Threats, too, may constitute material acts capable of sustaining a finding of forcible transfer.²¹

- A crucial element in establishing the ‘forcible’ nature of the displacement is the notion of involuntariness, or the absence of **genuine consent**. Indeed, as established by the ICTY, “*the requirement of “forcible” describes a situation where individuals do not have a free or ‘genuine’ choice to remain in the territory where they are present.*”²² Therefore, it is “the absence of genuine choice which makes the

18 ICTY, *Prosecutor v. Milomir Stakic*, IT-97-24-A, Appeal Judgement, 22 March 2006, (hereafter ‘*Stakic*’), para 681, citing ICTY, *Prosecutor v. Radislav Krstic*, IT-98-33-T, Trial Judgement, 2 August 2001, (hereafter ‘*Krstic*’), para 523.

19 International Criminal Court (ICC), *Elements of Crimes*, 2011, p. 6, note 12; International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Milorad Krnojelac*, IT-97-25-T, Trial Judgement, 15 March 2002, (hereafter ‘*Krnojelac*’), para 475; ICTY, *Stakic*, Appeal Judgement, para 219; ; ICTY, *Prosecutor v. Kunarac et al.*, IT-96-23-T, Trial Judgement, 22 February 2001, (hereafter ‘*Kunarac*’), para. 460, cited with approval in *Kunarac Appeal Judgement*, paras 127-128 (in the context of rape).

20 ICTY, *Prosecutor v. Momcilo Krajisnik*, IT-00-39-T, Trial Judgement, 27 September 2006, (hereafter ‘*Krajisnik*’), para 729, 732.

21 ICTY, *Prosecutor v Simić et al*, IT-95-9-T. Trial Judgement, 17 October 2003, (hereafter ‘*Simić*’) para.126

22 ICTY, *Prosecutor v. Blagojević*, IT-02-60, Trial Judgement, 17 January 2005, (hereafter ‘*Blagojević*’), para.596.

- displacement unlawful”.²³ Further, it was recognized that in certain situations, individuals may consent to “or even request” their removal but that such consent must be examined as to whether it is “real”, has been “given voluntarily” as a result of the individuals’ “free will” and that this must be “assessed in light of the surrounding circumstances.”²⁴ The trier of fact must therefore consider “*the prevailing situation and atmosphere, as well as all relevant circumstances, including in particular the victims’ vulnerability*” in assessing genuine choice to remain or leave.²⁵
- Furthermore, it has been elaborated that “*a lack of genuine choice may be inferred from, inter alia, threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will, such as the shelling of civilian objects, the burning of civilian property, and the commission of – or the **threat to commit** – other crimes.*”²⁶
 - With respect to the significance of the number of individuals being displaced, the Trial Chamber in *Stakic* held that **no minimum number** of displaced individuals is required in order to incur criminal responsibility.²⁷ This is also the position of the ICC as outlined in the ‘Elements of Crimes’.²⁸
- II. The “**lawfully present**” element – insofar as the victims must have been lawfully present in the area from which they are transferred - does not equate to the concept of lawful “residence”.²⁹ The intention of the prohibition against forcible transfer “is to prevent the wholesale destruction of communities” and as such, the period of time which an individual has lived in that location, as well as their status under immigration law, is “irrelevant”.³⁰ The Trial Chamber in *Popovic* thus held that “*what is important is that the protection is provided to those who have, for whatever reason, come to “live” in the community – whether long term or temporarily*”.³¹ This protection should also include IDPs who have established temporary homes at that location “after being uprooted from their original community.”³²

23 ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-A, Appeal Judgement, 17 September 2003, para 229; ICTY, *Prosecutor v. Milomir Stakic*, IT-97-24-A, Appeal Judgement, 22 March 2006, para 279; ICTY, *Blagojević*, Trial Judgement, para 596.

24 ICTY, *Krnjelac*, Trial Judgement, para 229; ICTY, *Kunarac*, Trial Judgement, para. 460, cited with approval in *Kunarac* Appeal Judgement, paras 127-128 (in the context of rape); ICTY, *Stakic*, Appeal Judgement, para 279, 281; ICTY, *Blagojević*, Trial Judgement, para. 596.

25 ICTY, *Blagojević*, Trial Judgement, para. 596.

26 ICTY, *Simić*, Trial Judgement, para. 126.

27 ICTY, *Stakic*, Trial Judgement, para 685.

28 International Criminal Court (ICC), *Elements of Crimes*, 2011, p. 6, 17.

29 ICTY, *Prosecutor v. Vujadin Popovic*, IT-05-88-T, Trial Judgement, 10 June 2010, para 900.

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

- The question of what is meant by “**another location**” and as to what distance from their usual place of residence an affected person must be displaced in order to satisfy a finding of forcible transfer, was addressed in *Simić*. There it was held that this requirement was met if the victim is prevented from effectively exercising their right to stay in their home and community, and their right not to be deprived of their property.³³
- With respect to both forms of unlawful forcible displacement – forcible transfer and deportation – the material act (*actus reus*) of both offences are essentially the same, however an additional element must be present for an act of deportation to have taken place. Deportation involves the forcible displacement across a *de jure* or *de facto* border.³⁴ Forcible transfer, on the other hand, takes place within national borders.³⁵

III. Forcible transfer amounts to a form of unlawful displacement that is conducted **outside those grounds permitted under international law**. The ICTY has examined this consideration and established that transfer is permitted in three instances:³⁶

- a. Transfers which are motivated by an individual’s own genuine wish to leave,³⁷
- b. Temporary evacuation undertaken to protect the security of the population,³⁸
- c. Temporary evacuation undertaken in accordance with imperative military necessity.³⁹

Evacuations are thus lawful transfers which are necessitated in order to 1) ensure the security of the population or 2) for reasons of imperative military necessity. Such evacuations are sanctioned as per Article 49 of the Fourth Geneva Conventions. This article also, however, sets out safeguards which must be ensured throughout the conduct of such an evacuation. As such, evacuations may not involve the displacement of protected persons outside the occupied territory unless it is “physically impossible to do otherwise.”⁴⁰

33 ICTY, *Simić*, Trial Judgement, para 130.

34 *Ibid.*, paras 892 -895; ICTY, *Stakić*, Appeal Judgement, para 278; ICTY, *Popvic*, Appeal Judgement, para 895.

35 ICTY, *Krnjelac*, Trial Judgement, para 474; ICTY, *Krstić*, Trial Judgement, para 521; ICTY, *Stakić*, Appeal Judgement, para 317; ICTY, *Krajišnik*, Appeal Judgement, para 304.

36 UNHCR, Forced Displacement and International Crimes, June 2011, p. 22.

37 ICTY, *Mladen Naletilic aka “Tuta”, Vinko Martinovic aka “Stela”* (hereafter “*Naletilic*”), IT-98-34-T, Trial Judgement, 31 March 2003, para 519.

38 *Ibid.*, para 518.

39 *Ibid.*

40 Pictet, J., *Commentary on the Geneva Conventions of 21 August 1949*, 1958, Volume IV, p. 280.

Secondly, evacuated persons must be transferred back to their homes as soon as the hostilities have ceased. Finally, in the event of such evacuations, appropriate accommodation, in reception centers,⁴¹ must be provided for the protected persons and family members must not be separated.⁴²

It must be further stressed that while such evacuations (or displacement for humanitarian reasons) is justifiable in certain situations, it is not justifiable when the humanitarian crisis which triggered such a displacement is itself the result of the occupier's own unlawful activity.⁴³

B. Colonial Transfer

Colonial (or settlement) transfer amounts to the deportation or implantation of the Occupier's own civilian population into the occupied territory.⁴⁴

The United Nations, as well as the International Court of Justice in its *Advisory Opinion on the Wall*, has recognized the illegality of Israeli settlements/colonies in the occupied Palestinian territory including East Jerusalem.⁴⁵ Such transfers are often conducted in an attempt to alter the demographic composition of an occupied territory and this has also been recognized as being the case in the oPt.⁴⁶ Indeed, this prohibition was included in the Fourth Geneva Convention in order to prevent the practice of transferring portions of the Occupier's own civilian population into occupied territory for "political and racial reasons" or in order to "colonize those territories". Such transfers, it was understood, would "worsen [...] the economic situation of the native population and endanger [...] their separate existence as a race".⁴⁷

41 *Ibid.*; Fourth Geneva Convention, 12 August 1949, Article 49.

42 Fourth Geneva Convention, 12 August 1949, Article 49.

43 ICTY, *Stakic*, Appeal Judgement, para 287.

44 As previously noted, "Colonial Transfer" is a term herein coined by BADIL for the purposes of the present report in order to differentiate between the act of illegal and colonial implantation of the Occupier's civilian population (Israeli settlers) into the occupied Palestinian territory (colonial transfer or settlement activity); and the act of forced population transfer of the indigenous Palestinian population, which, although interrelated in the present context, are separate acts; Fourth Geneva Convention, 12 August 1949, Article 49; ICRC, Customary Rules of IHL, Rule 130.

45 See, *inter alia*: UN Security Council, *Resolution 452 (1979)*, 20 July 1979; UN Security Council, *Resolution 465 (1980)*, 1 March 1980; International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, on the Wall, 9 July 2004, para 120.

46 See: UN Security Council, *Resolution 446 (1979)*, 22 March 1979, calling on Israel to "rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem and, in particular, not to transfer parts of its own civilian population into the occupied territories."; International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, on the Wall, 9 July 2004, para 133.

47 Pictet, J., *Commentary on the Geneva Conventions of 21 August 1949*, Volume IV, p. 282.

Crucially, the meaning attributed to this form of ‘deportation’ or ‘transfer’ (of the nationals of the Occupying Power into occupied territory) is not to be understood or applied in the same manner as that of the forcible transfer of the protected population.⁴⁸ This means that the Occupying Power need not forcibly deport or transfer its nationals into the occupied territory under duress or coercion without their genuine consent for such transfers to be deemed unlawful. To that extent, the ICJ has elaborated that “**any measures** taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory” are prohibited.⁴⁹ Indeed, the UN Security Council recognized that “**Israel’s policy and practices of settling parts of its population and new immigrants in [the occupied] territories” amounted to flagrant violations of the Fourth Geneva Convention.**⁵⁰ Such policies and practices include, *inter alia*, Government-backed tax incentives that entice Israeli civilians to relocate to settlements in the occupied Palestinian territory, and government support for and sanctioning of settlement construction, expansion and development. Furthermore, an international fact finding mission concluded that settlement industrial parks offer “numerous incentives, including tax breaks, low rents and low labour costs” and that business enterprises conducting their activities in the colonies (settlements) thereby “**contribute to their maintenance, development and consolidation**” in “full knowledge of the current situation and the related liability risks”.⁵¹

1.2 Associated Unlawful Practices

A number of attendant unlawful practices are carried out in conjunction, often inevitably, alongside acts of forcible transfer and colonial transfer. Such acts include the enactment of unlawful modifications to the laws already in place in the occupied territory; unlawful destruction and confiscation, or appropriation, of occupied Palestinian property and land – both private and public;⁵² the *de facto* annexation of occupied Palestinian

48 *Ibid.*

49 International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, on the Wall, 9 July 2004, para 120.

50 UN Security Council, *Resolution 465 (1980)*, 1 March 1980; See also: UN General Assembly, *Resolution 67/120 (2013): Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*, 14 January 2013.

51 UN Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/22/63*, 7 February 2013, para 96.

52 International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, on the Wall, 9 July 2004, paras 126, 135.

land;⁵³ the confiscation, destruction, exploitation and pillage of Palestinian natural resources;⁵⁴ the denial of the Palestinians' inalienable right to Self Determination⁵⁵ and a host of additional human rights violations including restrictions on freedom of movement and residence,⁵⁶ denial of an adequate standard of living including adequate food, clothing and housing,⁵⁷ discrimination, dispossession and displacement, restrictions on religious freedom and related intolerance, colonization, restrictions on economic rights, restrictions on the right to water, and colonial (settler) violence and intimidation, among others.⁵⁸

When forcible transfer occurs, it is often preceded by, and indeed is the result of, such aforementioned violations. For instance, home demolitions and evictions - conducted by way of an illegitimate and discriminatory planning and permit regime implemented by Israel - cause the direct displacement of Palestinians, whilst a multitude of rights violations perpetrated in the areas in which they reside creates a highly coercive environment from which they have little option but to leave against their will, or genuine consent.

Similarly, colonial (settlement) development is preceded by the confiscation and appropriation of occupied lands upon which the settlements and their connecting roads and associated infrastructure are built, amounting to *de facto* annexation of occupied lands, and results in both restrictions on movement and access to resources for the Palestinian population residing there.

These concomitant acts, by virtue of their gravity and inseparability from the central acts of population transfer, will also be considered throughout this report, and in particular, with respect to the illicit actions of those companies highlighted in the case study of Section 4, and their role in unlawful population transfers.

53 *Ibid.*, para 121, where it was concluded that “the construction of the wall and its associated regime [including settlements] create a “fait accompli” on the ground that could well become permanent, in which case... it would be tantamount to *de facto* annexation.”

54 *Ibid.*, para 133; UN General Assembly, *Resolution ES-10/14 (2003)*, 12 December 2003.

55 International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, on the Wall, 9 July 2004, para 122.

56 *Ibid.*, paras 133, 134.

57 *Ibid.*, para 134.

58 See: UN Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/22/63, 7 February 2013.

1.3 Relevant Prohibitions under International Law

A. International Humanitarian Law

International Humanitarian Law (IHL), otherwise known as the laws of war, applies in situations of armed conflict - whether international or internal - and includes situations of foreign occupation. As such, IHL applies to Israel's conduct in the Palestinian territory it has occupied since 1967, namely: the West Bank, including East Jerusalem, the Gaza Strip (hereafter the 'occupied Palestinian territory', or the 'oPt'). The Syrian Golan has likewise been under Israeli occupation since 1967.

IHL strives to regulate acceptable wartime conduct (*jus in bello*) and thereby to limit the suffering caused. Rules of IHL are primarily set out in the **Hague Regulations** annexed to the *Hague Convention IV Respecting the Laws and Customs of Wars on Land 1907* (Hague Regulations) and in the **Fourth Geneva Convention** of 1949 and its two protocols from 1977. The Hague Regulations and the Fourth Geneva Convention are largely reflective of customary international law.

While Israel disputes the applicability of IHL to its conduct in the OPT,⁵⁹ repeated resolutions of both the UN Security Council and the General Assembly have affirmed the *de jure* applicability of IHL to the oPt, and call upon Israel to abide by its terms.⁶⁰ This position was also confirmed by the International Court of Justice (ICJ) in its 2004 Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*.⁶¹ The Israeli High Court of Justice has also acknowledged the 'quasi-constitutional' status of Art 43 of the Hague Regulations (IV) and has considered the application of IHL in its rulings.⁶²

As noted above, while the UN Guiding Principles on Human Rights focus predominantly on the promotion of human rights, they also assert that, in

59 Despite its ratification in 1951, Israel has highly contested the applicability of the Fourth Geneva Convention to the OPT, maintaining that the territory is "disputed" rather than "occupied". The Israeli Government has declared that it will only abide by some 'humanitarian provisions' enshrined therein, without specifying which provisions it regards as having a humanitarian character. Further, Israel is not party to Hague Regulations, however, it is generally recognized that those provisions apply to all states as customary international law.

60 UN Security Council, *Resolution 237 (1967)*, 14 June 1967; UN Security Council, *Resolution 271 (1969)*, 15 September 1969; UN Security Council, *Resolution 446 (1979)*, 22 March 1979; See also UN General Assembly, *Resolution 56/60 (2001)*, 10 December 2001; UN General Assembly, *Resolution 58/97 (2003)*, 17 December 2003.

61 International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, on the Wall, 9 July 2004, para 78.

62 See: HCJ 2164/09 *Yesh Din – Volunteers for Human Rights v The Commander of the IDF Forces in the West Bank et al.*, 26 December 2011, ('Quarry Case').

addition to their responsibilities to uphold human rights standards, States and business enterprises should also uphold their obligations under IHL, in situations of armed conflict, and under international criminal law.⁶³

1. Forcible Transfer and Colonial Transfer

Article 49 of the Fourth Geneva Convention provides, in relevant part:

(1) Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

[...]

(6) The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies

Further, **Article 147** of the Fourth Geneva Convention provides that such unlawful deportation or transfer of the protected population (forcible transfer) amounts to a **Grave Breach of the Convention**.

2. Associated violations

1. *Discriminatory Planning system implemented through the unlawful replacement of the laws already in force*

- Article 43 of the Hague Regulations provides that the Occupying Power must “take all measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, **the laws in force in the country.**” This provision is also part of customary international law.

The current Israeli planning regime operates by virtue of a significant alteration to the Jordanian planning laws which were in place prior to the beginning of Israel’s occupation in 1967. This alteration, as per Israeli Military Order No. 418, eliminated the local and district planning committees which had previously facilitated Palestinian representation and input in the planning process and rather transferred sole authority over planning processes to the Israeli Military Commander and later to the Civil Administration.⁶⁴ This eliminates the entitlement of Palestinians residing in Area C to participate

63 UN, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”, March 21, 2011, Principles 7 & 12.

64 Order Concerning the City, Village and Building Planning Law (Judea and Samaria) (No. 418), 5731 – 1971.

in planning processes which affect the location and development of their communities.

II. Confiscation and Destruction of Public and Private Property

In times of belligerent occupation, the property of the occupied population is protected from exploitation and destruction by the Occupying Power.

- Article 46 of the Hague Regulations prohibits, without reservation, the occupying power from **confiscating private property** in occupied territory.

Notwithstanding, Israel conducts regular confiscations of private property often under the auspices of ‘military necessity’.

Israeli Military Order No. 378 (Order Concerning Security Provisions), Article 80, “Seizure and Forfeiture”, allows for the seizure of any goods, articles, documents or things which the Israeli Military Commander has reasonable grounds to suspect, prove that an offense against this order has been committed, or are the reward for the committing of any such offense or the means by which an offense has been committed or ordered or facilitated, and which may serve as evidence that an offense against the terms of this order has occurred. Those “**shall be dealt with in whatever way the Area Commander shall direct**”. Israel conducts regular confiscation of private property and humanitarian materials by virtue of this Military Order, despite such actions being prohibited under international law. Often the confiscation of such private property, including humanitarian aid, contributes to a coercive environment from which individuals are thus forcibly transferred.

- Article 53 of the Fourth Geneva Convention prohibits the Occupying Power from **destroying all property, whether public or private**, situated in the occupied territory for any reason other than imperative military necessity. While imperative military requirements may permit the Occupying Power to carry out destruction, in whole or in part, of certain private or public property in occupied territory, it must act in good faith to interpret the provision in a reasonable manner that respects the principle of proportionality. In these instances, this principle must be applied restrictively, as the military necessity has to be absolute.

Notwithstanding, Israel regularly destroys Palestinian properties. In particular, Israel implements discriminatory policies of administrative and punitive home demolitions, contrary to international law.

Administrative home demolitions are executed when the Israeli authorities deem a structure to have been built contrary to their illegitimate and discriminatory planning laws, despite *all* destruction of property being prohibited under international law.

Punitive home demolitions are conducted as a form of retaliation or revenge against, for instance, attacks deemed by Israel as acts of terrorism. The homes of perpetrators of alleged acts of terrorism are routinely demolished, for example. Such demolitions are contrary to international law, are executed in a discriminatory manner and, further, amount to a form of collective punishment against all other individuals affected by this demolition.

- Articles 53 and 55 of the Hague Regulations relates to **public property**, classed as assets belonging to the State of the occupied territory and including both moveable and immoveable property. Article 53 bestows upon the Occupying Power the right to seize such public *moveable* property as “may be used for military operations.”⁶⁵ Article 55 governs the Rule of Usufruct, which is to be applied to the administration of *immovable* public property such as “public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory”.⁶⁶ The rule of Usufruct dictates that the Occupying Power does not become the owner of the property but it simply assumes the role of administrator and usufructuary of the said property. Thus, it is entitled to use the ‘fruits’ that are derived from the property in question, but it is prohibited from exploiting these resources in a way that undermines their capital and results in economic benefits for its inhabitants or for its national economy.

Israeli settlements are constructed on private Palestinian land and “State Land”⁶⁷ alike. Such development required the prior seizure and confiscation of property – both moveable and immovable – upon which to construct the settlements.

Furthermore, settlement industries are involved in the exploitation of Palestinian natural resources, not permitted under the Rules of Usufruct.⁶⁸

65 Hague Regulations (1907) Article 53.

66 Hague Regulations (1907) Article 55.

67 See: BADIL, *Israeli Land Grab and Forced Population Transfer of Palestinians: A Handbook for Vulnerable individuals and Communities*,

68 See: Al-Haq, *Preventing the Development of Palestinian Natural Gas Resources in the Mediterranean Sea*, 2014; Al-Haq, *Water for One People Only: Discriminatory Access and ‘Water-Apartheid’ in the OPT*, 2013; Al-Haq, *Feasting on the Occupation: Illegality of Settlement Produce and the Responsibility of EU Member States under International Law*, 2013; Al-Haq, *Pillage of the Dead Sea: Israel’s Unlawful Exploitation of Natural Resources in the OPT*, 2012.

- Article 47 of the Hague Regulations and Article 33(2) of the Fourth Geneva Convention prohibit the **pillage** of property, whether public or private. Both norms encompass duties of a positive nature for the State, which is therefore not only prohibited from ordering as well as authorizing the commission of pillage, but it is also obliged to prevent and stop pillage committed by private individuals.⁶⁹ International tribunals have often interchangeably used the term ‘pillage’ and ‘plunder’ conferring to these actions the same meaning⁷⁰, and they have concluded that the prohibition against unjustified appropriation of public enemy property includes the organized seizure of property carried out within the framework of a systematic economic exploitation of the occupied territory.⁷¹
- Rule 54 of Customary IHL further prohibits “attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population”.

Further, **Article 147** of the Fourth Geneva Convention provides that extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly amounts to a **Grave Breach of the Convention**. In addition, forcible transfer is also prohibited under Rule 129 of Customary International Law.⁷²

B. International Criminal Law

1. War Crimes

War Crimes occur in situations of international armed conflict – which includes situations of foreign occupation. As previously highlighted, forcible transfer and the extensive destruction and appropriation of property, amount to Grave Breaches of the Fourth Geneva Conventions as per Article 147 of

69 Pictet, J., *Commentary on the Geneva Conventions of 21 August 1949*, 1958, Volume IV, p. 226; JM Henckaerts and L Doswald-Beck, *Customary International Humanitarian Law - Volume I: Rules*, 2009, Rule 52.

70 See: ICTY, *Prosecutor v Mucić et al.*, IT-96-21-T, Trial Judgement, 16 November 1998, paragraph 591 where it is stated: “[P]lunder should be understood to embrace all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches under international law, including those acts traditionally described as ‘pillage.’”

71 ICTY, *Prosecutor v Mucić et al.*, Trial Judgement, paragraph 590; ICTY, *Prosecutor v Blaskić*, IT-95-14-T, Trial Judgement, 3 March 2000, paragraph 184; See also US Military Tribunal Nuremberg, *United States of America v A. Krupp et al.*, Judgement, 31 July 1948, at 1337, 1369 where the US Military Tribunal at Nuremberg found six of the twelve officials of the Krupp industrial enterprises guilty of exploiting by “[a] deliberate design and policy, territories occupied by German armed forces in a ruthless way, far beyond the needs of the army of occupation and in disregard of the needs of the local economy.”

72 International Committee of the Red Cross (ICRC), “Customary IHL - Rule 129. The Act of Displacement,” accessed July 24, 2014.

that Convention. As per the Rome Statute of the International Criminal Court, Grave breaches of the 1949 Geneva Conventions amount to War Crimes.⁷³ Furthermore, Colonial transfer is also listed as a War Crime as per Article 8(2)(b)(viii) of the Rome Statute.

Thus, when conducted in the context of an international armed conflict, the following acts, being pertinent to this report, amount to War Crimes:

- “Unlawful deportation or transfer” (Forcible transfer);⁷⁴
- “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” (Colonial transfer);⁷⁵
- “Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.”⁷⁶

Mens Rea

With respect to the necessary mental state (*mensrea*) required to establish the occurrence of the above crimes, the perpetrator must have been aware of the factual circumstances that established the existence of an armed conflict.⁷⁷ Further, with regards to the acts of forcible transfer and destruction and appropriation of property, the perpetrator must have been aware of the factual circumstances that established the affected person’s protected status as per the 1949 Geneva Conventions.⁷⁸

2. Crimes Against Humanity

When committed as part of a widespread or systematic attack against a civilian population, forcible transfer can also constitute a Crime against Humanity as per Article 7(1)(d) of the Rome Statute, which prohibits “deportation and forcible transfer of population”, and Article 7(1)(h) prohibiting “persecution”.⁷⁹ Persecution is defined as the “intentional and severe deprivation of

73 International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Article 8(2)(a).

74 International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Article 8(2)(a)(vii).

75 International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Article 8(2)(b)(viii).

76 International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Article 8(2)(a)(iv).

77 International Criminal Court, *Elements of Crimes*, 2011, pp. 15, 17, 22.

78 International Criminal Court, *Elements of Crimes*, 2011, p. 7.

79 International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Article 7(d) & 7(h).

fundamental rights contrary to international law by reason of the identity of the group of collectivity.”⁸⁰ When committed as part of a widespread or systematic attack, acts of forcible transfer directed at an individual or individuals on account of their membership of a given group may give rise to a finding of persecution.⁸¹ In addition, ‘persecution’ would also encompass many of the aforementioned associated acts, which greatly infringe upon the fundamental rights of those affected.

Mens Rea

To be recognized as a Crime against Humanity as per Article 7(1)(d) of the Rome Statute, Forcible Transfer must be committed as “part of a widespread or systematic attack directed against a civilian population” where the perpetrator “knew that the conduct was part of or intended the conduct to be part of” such an attack.⁸²

To be recognized as a Crime against Humanity as per Article 7(1)(h) of the Rome Statute, relating to Persecution, the perpetrator must have targeted the affected individual(s) by reason of the identity of a group or collectivity where such targeting was based on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law.⁸³ Again, the conduct must have been committed as “part of a widespread or systematic attack directed against a civilian population” where the perpetrator “knew that the conduct was part of or intended the conduct to be part of” such an attack.⁸⁴

C. International Human Rights Law

As previously noted, while the UN Guiding Principles on Business and Human Rights asserts that States and business enterprises should also uphold their obligations under IHL, in situations of armed conflict, and under international criminal law,⁸⁵ their focus is on upholding, **as a minimum**, human rights norms as expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s (ILO) Declaration on Fundamental Principles and Rights to

80 International Criminal Court, *Rome Statute of the International Criminal Court*, 17 July 1998, Article 7(2)(g).

81 See: ICTY, *Prosecutor v Krstić*, IT-98-33-T, Trial Judgement, 2 August 2001, paras 533-538; ICTY, *Prosecutor v Naletilić & Martinović*, IT-98-34-T, Trial Judgement, 31 March 2003, para 711.

82 International Criminal Court, *Elements of Crimes*, 2011, pp. 15, 17

83 International Criminal Court, *Elements of Crimes*, 2011, p. 10.

84 International Criminal Court, *Elements of Crimes*, 2011, p. 10.

85 *Ibid.*, Principles 7 & 12.

Work.⁸⁶ This report will focus on those rights enshrined in the International Bill of Human Rights which have been violated, rather than *as per* the ILO's Declaration.

The International Bill of Human Rights consists of the:

- Universal Declaration of Human Rights (UDHR);
- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR).

As noted above, a wide array of human rights violations, as enshrined in the above instruments, are committed in conjunction with the over-arching acts of population transfer outlined above. To begin with, such acts of population transfer severely undermine and impede the Palestinian's fundamental right to **Self-Determination**, an inalienable right under international law, enumerated in Common Article 1 to both the ICCPR and the ICESCR.⁸⁷ The General Assembly reaffirmed "the right of the Palestinian people to self-determination, including the right to their independent State of Palestine."⁸⁸ The independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, concluded in their 2013 report that:

*"the right to self-determination of the Palestinian people, including the right to determine how to implement self-determination, the right to have a demographic and territorial presence in the Occupied Palestinian Territory and the right to permanent sovereignty over natural resources, is clearly being violated by Israel through the existence and ongoing expansion of the settlements. The transfer of Israeli citizens into the Occupied Palestinian Territory, prohibited under international humanitarian law and international criminal law, is a central feature of the practices and policies of Israel."*⁸⁹

86 UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, March 21, 2011, Principle 12.

87 UN General Assembly, *International Covenant on Civil and Political Rights (ICCPR)*, 16 December 1966, Article 1; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 16 December 1966, Article 1.

88 UN General Assembly, *Resolution 67/19 (2012): Status of Palestine in the United Nations*, 4 December 2012.

89 UN Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/22/63*, 7 February 2013.

Furthermore, the Palestinians' **right to equality and non-discrimination** is also being violated through the various practices associated with population transfer, as recognized by the independent fact finding mission.⁹⁰

To begin with, **separate and distinct legal systems** prevail in the occupied Palestinian territory, which are applied separately to Palestinians and Jewish-Israeli settlers respectively. While Jewish-Israeli settlers are subject to domestic Israeli law, Palestinians are subject to a web of Israeli military orders, Ottoman, British and Jordanian legislation. Israel employs its military orders, *inter alia*, to confiscate, destroy, "close" or otherwise restrict access to Palestinian land and property to the detriment of the Palestinian population, whilst simultaneously benefitting Jewish-Israeli colonies.⁹¹ It is within this context that Israel's discriminatory planning and permit regime is employed. This regime sets the pretext for, *inter alia*, the administrative home demolitions, which occasion forcible transfer. Furthermore, such discriminatory laws and the application thereof provide impunity to Jewish-Israeli settlers who regularly and violently attack and intimidate the Palestinian population.⁹²

As such, the independent fact-finding mission recognized the existence of the following various discriminatory practices, conducted by Israel and which relate to the acts of population transfer: **inequality and discrimination in the application of the law; settler violence and intimidation; restrictions on religious freedom and related intolerance; dispossession and displacement; restrictions on freedom of movement; restrictions on freedom of expression and assembly; restrictions on the right to water; and impediments to economic rights.**⁹³

Furthermore, the aforementioned acts of population transfer violate an affected individual's rights to:⁹⁴

- Freedom from cruel, inhuman and degrading treatment;⁹⁵
- Security of the person;⁹⁶

90 *Ibid.*

91 *Ibid.*, paras 39 – 49.

92 *Ibid.*, paras 44, 50-57; See BADIL, Settler attacks on Palestinians are a Natural Result of Israeli Policy, 28 August 2015, available at: <http://www.badil.org/publication/press-releases/60-2015/4502-pr-en-280815-33.html>

93 *Ibid.*, paras 39 – 95.

94 See: UN OHCHR, *Forced Evictions: Fact Sheet No. 25/Rev. 1*, 2014; UN Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/22/63, 7 February 2013, para 105.

95 ICCPR, 1996, Article 6.

96 *Ibid.*, Article 9.

- An adequate standard of living including the right to adequate housing, food, water and sanitation;⁹⁷
- Non-interference with privacy, home and family;⁹⁸
- Freedom of movement and residence;⁹⁹
- The right to education (*where, for instance, communities are forced to abandon their communities and relocate to a location with no access to education or where schoolchildren are subjected to settler and military intimidation and harassment en route to their school*);¹⁰⁰
- The right to health;¹⁰¹
- The right to work (*where, for instance, farmers are evicted and thus prevented from farming their land*);¹⁰²
- The right to property;¹⁰³
- The rights to vote and take part in the conduct of public affairs;¹⁰⁴
- The right to due process and effective remedy;¹⁰⁵
- Indigenous People's Right to land, territory and resources.¹⁰⁶
- Indigenous Peoples' right not to be forcibly removed from their lands.¹⁰⁷

D. Laws on Annexation

Article 2 of the UN Charter provides that “all members shall refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the Purposes of the United Nations.”¹⁰⁸ The ICJ, in its Advisory Opinion on the Wall, recognized that the construction of the Wall and **its associated régime (including settlements) created a *fait accompli* on the ground which may become permanent, and as such, would amount to *de facto* annexation.**¹⁰⁹

97 ICESCR, 1966, Article 11.

98 ICCPR, 1996, Article 17.

99 ICCPR, 1996, Article 12.

100 ICESCR, 1966, Article 13.

101 *Ibid.*, Article 12.

102 *Ibid.*, Article 6.

103 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

104 ICCPR, 1966, Article 25.

105 See: ICCPR, 1966, Articles 2(3), 14(1); UDHR, 1948, Articles 2, 6, 7, 8, 10.

106 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, 2 October 2007.

107 *Ibid.*

108 United Nations, *Charter of the United Nations*, 24 October 1945, Article 2(4); International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, on the Wall, 9 July 2004, para 78.

109 International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, on the Wall, 9 July 2004, para, 121.

Moreover, it was held that the construction of the Wall severely impedes the exercise of the Palestinian people's right to self-determination, and that Israel was therefore in breach of its obligation to respect that right.¹¹⁰

Furthermore, the independent fact-finding mission on Israeli settlements concluded that the establishment of Israeli settlements in the West Bank, including East Jerusalem is "leading to a creeping annexation that prevents the establishment of a contiguous and viable Palestinian State and undermines the right of the Palestinian people to self-determination."¹¹¹

E. Colonization

Colonization as the practice of colonialism, is envisaged in the *Declaration on the granting of Independence to Colonial Countries and Peoples*, involves the "the subjection of peoples to alien subjugation, domination and exploitation which denies them their fundamental human rights", and in particular, that of Self-Determination.¹¹² The Declaration thus considers that colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and infringes upon the inalienable right of all people to freedom, and sovereignty and integrity over their national territory. As such, colonization involves unlawful annexation or retention of control over territory, which has the effect of denying the indigenous population their right to self-determination. Colonialism is considered to be a particularly serious breach of international law because it is fundamentally contrary to core values of the international legal order.

Colonialism "constitutes a denial of fundamental human rights, and is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation."¹¹³ Furthermore, struggle in the pursuit of the right to self-determination is lawful and legitimate for people whose right to self-determination is denied because of their subjugation, domination and exploitation by a foreign power.¹¹⁴ Israeli colonialism utilizes settlements (colonies) as a means of subjugation and domination: spatially, legally, socially

110 *Ibid*, para 122.

111 UN Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/22/63, 7 February 2013, para 101.

112 UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1969, A/RES/1514(XV), paras 1, 2.

113 UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514 (XV), para 1.

114 See Ben-Naftali, O., Gross, A. M., & Keren Michaeli, K., "Illegal Prolonged occupation: Framing the occupied Palestinian Territory", 2005, 23 *Berkeley Journal of International Law* 551, pp. 565-566.

and economically. According to Richard Falk, former UN Special Rapporteur on the Situation of Human Rights in the occupied Palestinian territory:

*“To sustain indefinitely an oppressive occupation containing many punitive elements also seems designed to encourage residents to leave Palestine, which is consistent with the apparent annexationist, colonialist and ethnic-cleansing goals of Israel, especially in relation to the West Bank, including East Jerusalem.”*¹¹⁵

F. Apartheid

Apartheid is one of the most severe forms of racism; “a political system where racism is regulated in law through acts of parliament.”¹¹⁶ Article 3 of the *Convention on the Elimination of Racial Discrimination* (CERD) defines apartheid as a form of racial segregation. *The Convention on the Suppression and Punishment of the Crime of Apartheid* defines apartheid as including certain particular acts committed “for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.”¹¹⁷ Such acts include, *inter alia*, denial of the right to life and liberty; the imposition of living conditions calculated to destroy a racial group in whole or in part; legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country; segregation; expropriation of landed property belonging to a racial group; and denial of the right to leave and return to their country, of the right to a nationality and of the right to freedom of movement and residence.¹¹⁸

The Rome Statute defines apartheid as inhumane acts “committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.” Apartheid constitutes a crime against humanity. Members of organizations and agents of an apartheid state are subject to criminal prosecution, irrespective of the motive involved, and whenever they commit, participate in, directly incite or inspire, directly abet, encourage or cooperate in the commission of the crime of apartheid (Article III, 1976 anti-Apartheid Convention). All states are obliged to condemn, suppress and punish those involved in the crime of apartheid.

115 UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, 13 January 2014, A/HRC/25/67, para 4.

116 Davis, U., *Apartheid Israel: Possibilities for the Struggle Within*, 2003, p. 37.

117 UN General Assembly, *International Convention on the Suppression and Punishment of the Crime of Apartheid*, 30 November 1973, A/RES/3068(XXVIII), Article II.

118 *Ibid.*

John Dugard, the former UN Special Rapporteur on the Situation of Human Rights in the occupied Palestinian territory, among others, identified elements of apartheid in the Palestinian context.¹¹⁹ He further concluded that:

*[...] on the basis of the systemic and institutionalized nature of the racial domination that exists, there are indeed strong grounds to conclude that a system of Apartheid has developed in the occupied Palestinian territory. Israeli practices in the occupied territory are not only reminiscent of – and, in some cases, worse than – Apartheid as it existed in South Africa, but are in breach of the legal prohibition of Apartheid.*¹²⁰

1.4 Population Transfer in Palestine

Forms of Displacement and Population Transfer takes place across all of Historic Palestine: in the West Bank including East Jerusalem, in the Gaza Strip, as well as within Israel itself.

The West Bank including East Jerusalem

With regards to *forcible transfer*, Israel implements a variety of discriminatory policies, which contribute to the displacement of the Palestinian population. These policies include denial of residency; installment of a permit regime; land confiscation and denial of use; discriminatory zoning and planning; administrative and punitive home demolitions; segregation; denial of resources and access to services; denial of refugees and IDPs reparation (return, property restitution and compensation); suppression of resistance; and non-state actions conducted with the implicit consent of the Israeli state (such as settler violence).¹²¹ These activities exemplify coercive “push factors”, often producing displacement of Palestinians consistent with forcible transfer.

These policies are unmistakably evident in the activities surrounding the expulsion of Palestinian Bedouin communities in the context of Israel’s ongoing ‘relocation plan’, which intends to forcibly transfer as many as 7,000 Palestinians from the area known by the international community as ‘E1’ – situated between East Jerusalem and the settlement bloc of Maale Adummim (al-Khan al-Ahmar), and designated for large scale settlement development

119 See: UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, 29 January 2007, A/HRC/4/17, p. 3; para 61.

120 Dugard, J., & Reynolds, J., *Apartheid, International Law, and the Occupied Palestinian Territory*, *The European Journal of International Law*, Vol. 24, No. 3 EJIL (2013), pp. 867–913.

121 See: BADIL Resource Center for Palestinian Residency and Refugee Rights, *Forced Population Transfer: The Case of Palestine - Introduction*.

by Israel – to three urban townships which are entirely inadequate to meet the economic, social and cultural needs of these communities.

In its conduct of such activities, coupled by implementation of the attendant acts of colonial transfer through colony (settlement) construction and expansion, Israel is creating ‘facts on the ground’ and seeking to exercise permanent sovereignty over occupied Palestinian land. Such actions are unequivocally prohibited under international law, and are wholly consistent with definitions of ‘colonialism’ adopted by UN General Assembly resolutions.¹²²

The UN Secretary-General, in 2012, highlighted that the implementation of such policies would amount to individual and mass forcible transfers, in violation of international law, yet these policies continue to be enacted. On Monday 17 August 2015, the *United Nations Relief and Works Agency* for Palestine Refugees in the Near East (UNRWA) and the UN Office for the Coordination of Humanitarian Affairs (OCHA) in the oPt, reported that Israeli authorities demolished 22 structures belonging to the Jahalin Bedouin community in the ‘E1’ land corridor. 78 Palestinians, including 49 children – the vast majority of whom were already refugees – were rendered homeless (and secondarily displaced) as a result. Indeed, the UN further reported that many of these displaced families had already been displaced up to four times in the last four years. This represents the largest number of Palestinians displaced in the West Bank in one day, for almost three years.

Furthermore, between January 2015 and December 2015 alone, 500 Palestinian-owned structures were demolished in Area C and East Jerusalem resulting in the displacement of 658 Palestinians.¹²³

The UN Secretary General has recognized that there has been virtually no consultation with communities under threat of forcible transfer and, as such, “except where the affected persons provide their genuine and fully informed consent, such transfer is forcible.” Further, he noted that consent would not be genuine in an environment marked by the use of threat of physical force, coercion, fear of violence or duress and that the Israeli authorities had created a “coercive environment for the targeted communities including restricted access to grazing lands and markets for their products, which undermines their livelihood, demolitions and threat of demolitions and

122 For further analysis on the application of the legal framework of colonialism to the forced displacement of Palestinian Bedouin communities, see BADIL, 2015. *Israel’s Forcible Transfer of Palestinian Bedouin: Forced Displacement as a Pillar of Colonialism and Apartheid*. Available at: [http://www.badil.org/phocadownloadpap/badil-new/legal-advocacy/un-submissions/special-procedures/Submission-for-the-Special-Rapporteur-on%20the-Situation-of-Human-Rights-in%20the-Palestinian-Territories-Occupied-since-1967\(july2015\).pdf](http://www.badil.org/phocadownloadpap/badil-new/legal-advocacy/un-submissions/special-procedures/Submission-for-the-Special-Rapporteur-on%20the-Situation-of-Human-Rights-in%20the-Palestinian-Territories-Occupied-since-1967(july2015).pdf)

123 UN OCHA opt, *Protection of Civilians Weekly Report: 1-14 December 2015*, December 2015.

restrictions to the obtaining of building permits”.¹²⁴ Displacement resulting from such an environment would be in clear and grave breach of the Fourth Geneva Convention.

Further, the UN Secretary General has warned that “the demographic and territorial presence of the Palestinian people in the occupied Palestinian territory was put at risk by the continued transfer by Israel, the occupying Power, of its population into the occupied territory”, and noted that Israel had transferred approximately 8 per cent of its citizens into the oPt since the 1970s. He reiterated the ICJ’s opinion that the construction of the Wall, coupled with the establishment of Israeli settlements, was altering the demographic composition of the occupied Palestinian territory, and was thus severely impeding the exercise by the Palestinian people of their right to self-determination.¹²⁵

With regards to *colonial transfer*, colonies continue to develop and expand. This is both directly and indirectly supported by the Israeli government which:

- Provides defence and security to colonies;
- Allocates land for colony development through the Supervisor of Governmental and Abandoned Property, the Civil Administration and the Settlement Division;
- Provides financial assistance in the construction of colonies and their infrastructure;
- Fails to enforce even their own laws with respect to the construction of colonial “outposts” which are deemed illegal under their own laws, and indeed, retroactively legalizes such colonies;
- Offers financial incentives to encourage population transfer of Jewish-Israeli citizens to the colonies.¹²⁶

124 UN General Assembly, *Report of the Secretary General on Israeli Settlements in the Occupied Palestinian Territory including East Jerusalem and the occupied Syrian Golan*, 25 August 2014, A/69/348.

125 UN General Assembly, Report of the UN Secretary General, A/67/375, para 12; UN Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/22/63, 7 February 2013, para 33.

126 See: Yesh Din, *Under the Radar: Israel’s Silent Policy of Transforming Unauthorized Outposts into Official Settlements*, March 2015, available at: http://www.yesh-din.org/userfiles/Yesh%20Din_Under%20The%20Radar%20-%20English_Proof07.pdf; See also, UN General Assembly, *Report by the Secretary General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*, A/69/348, 25 August 2014.

Indeed, in October 2015, Israeli Prime Minister Benjamin Netanyahu retroactively approved urban building plans for four colony 'outposts' which amounted to approval for a total of 682 colony housing units.¹²⁷ **According to B'Tselem there are now an estimated 547,000 Jewish-Israeli settlers residing throughout the oPt.**¹²⁸

The Gaza Strip

Following the disengagement and the withdrawal of Israeli colonies (settlements) from the Gaza Strip in 2005, acts of colonial transfer in Gaza have ceased. Acts of forcible transfer, however, persist. Forcible transfer in the Gaza Strip is usually generated by the numerous military incursions experienced in Gaza. Between 7 July 2014 and the 26 August 2014, Israel launched a devastating military operation on the Gaza Strip resulting in the deaths of 2,310 Palestinians, according to the Palestinian Ministry of Health figures released in January 2015. 18,000 housing units were destroyed in whole or in part resulting in the internal displacement of up to 500,000 Palestinians, or 28 percent of the population, at the height of the hostilities. According to UN OCHA's most recent figures, more than 100,000 Palestinians remain displaced.¹²⁹

Israel

The displacement of Palestinians has been taking place both prior and subsequent to the 1967 Israeli Occupation of the Palestinian territory. During the *Nakba* (1947-1949), which culminated in the creation of Israel in 1948, forced population transfer of Palestinians resulted in the displacement of over 750,000 Palestinians. During the 1967 war about 240,000 Palestinians were displaced. By the end of 2014, 7.98 million (66 percent) of 12.1 million Palestinians worldwide were a forcibly displaced population. Among them, 7.26 million are refugees and 720,000 are IDPs on both sides of the Green Line (334,000 IDPs in oPt and 380,000 IDPs in Israel). These refugees and IDPs and their descendants have been denied their right of reparation (return, property restitution, compensation and satisfactions) under International Law to this day.¹³⁰ Further, many Palestinians currently residing within the State of Israel and oPt also face an ongoing risk of displacement as a result

127 B'Tselem, *Retroactive "laundering" of Itamar, Shvut Rachel, Sansana and Yaqir part of government policy to annex Palestinian land to State of Israel*, 22 November 2015.

128 B'tselem, *Statistics on Settlements and Settler Population*, 11 May 2015, available at: <http://www.btselem.org/settlements/statistics>

129 UN OCHA oPt, *Gaza Strip: Palestinians Internally Displaced Persons*, 1 April 2015.

130 See: BADIL, *Survey of Palestinian Refugees and IDPs 2013-2015*, *BADIL Resource Center for Residency and Refugee Rights*, 2015, p. 31, available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/survey/Survey2013-2015-en.pdf>

of Israeli's discriminatory policies. As such, Israel's policies of displacement detrimentally affect Palestinians on both sides of the Green Line, as well as outside Mandate Palestine. Currently there are some 80,000 Palestinian Bedouins living in 35 unrecognized villages in the Naqab desert, situated in what became the state of Israel in 1948. In designating these communities as "unrecognized", the Israeli government denies those citizens who reside there, access to basic services including water, electricity, sewage and road infrastructure, as well as to education and healthcare services. Such essential amenities are deliberately withheld in order to 'encourage' these Bedouin communities to abandon their ancestral land. In June 2013, Israel passed the *Praver-Begin Bill*, which if implemented, will result in the destruction of all these "unrecognized villages", and the forcible transfer of the 80,000 residents. This case serves as an illustration that displacement of Palestinians remains very much at the forefront of Israeli government policy, and that practices of forcible transfer are ongoing on both sides of the Green Line.

Notwithstanding the occurrences of population transfer taking place across Mandate Palestine, this report and its attached case study will focus predominantly on those processes of forcible transfer and colonial transfer occurring in the West Bank including East Jerusalem.

Elements of Corporate Complicity

The UN Global Compact, established in 2000, outlines that “**complicity means being implicated in a human rights abuse that another company, government, individual or other group is causing**”.¹³¹ Complicity encompasses an act or omission that “helps” (facilitates, legitimizes, assists, encourages, etc.) another in some way to carry out an abuse; and the company’s knowledge that its act or omission could provide this ‘help’.¹³²

States bear the primary responsibility for the protection of human rights, and corporations do not have the same obligations as States under international law. Notwithstanding, corporations often participate in, benefit from, or ignore serious violations of international law committed by States.¹³³ The Universal Declaration of Human Rights (UDHR) stipulates that “*every individual **and every organ of society**, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance...*”¹³⁴

The UN Guiding Principles on Business and Human Rights thus recognize the “role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights”.¹³⁵

The UN Global Compact recognizes that businesses must:

1. support and respect the protection of internationally proclaimed human rights,¹³⁶ and

131 UN, Global Compact: *Principle 2: What does it mean?*, available at: <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-2>; This definition is reiterated in the UN Guiding Principles on Business and Human Rights, p. 18.

132 UN Global Compact, *The Ten Principles of the UN Global Compact: Principle Two – Human Rights*, available at: <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-2>

133 Clapham, A., & Jerbi, S., *Categories of Corporate Complicity in Human Rights Abuses*, March 2001.

134 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, Preamble.

135 UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy Framework”*, 2011, p. 1.

136 UN, *Global Compact*, Principle 1.

2. make sure that they are not complicit in human rights abuses, and act with due diligence to avoid infringing the rights of others.¹³⁷ This means that businesses should both address any negative human rights impacts related to their business, and must avoid causing or contributing to adverse human rights impacts through their activities and relationships.¹³⁸

Legal and Non-Legal Complicity

As outlined in the UN Guiding Principles on Business and Human Rights (the “UN Guiding Principles”), complicity has both **legal and non-legal meanings**.¹³⁹ As such, the “legal meaning” of complicity encompasses acts tending toward the criminal law notion of aiding and abetting. The standard for aiding and abetting usually entails “*knowingly providing practical assistance or encouragement that has a substantial effect on the commission of the crime*”.¹⁴⁰ Accountability for “legal” complicity can be pursued through criminal and civil law mechanisms as outlined below.

With regards to non-legal complicity – for which accountability is *not* pursued through criminal or civil legal mechanisms – it is suggested that this would encompass ‘beneficial’ engagement with unlawful acts of another party where such engagement merely ‘benefits’ the corporation.¹⁴¹ Such non-legal complicity would likely also include ‘silent’ complicity as outlined below.

Further Reading

For general overview of corporate complicity in violations of international law in Palestine see BADIL’s previous publication: *Corporate Complicity in Violations of International Law in Palestine* (December 2014).

Available at : <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/complicit-companies-en.pdf>

137 UN, *Global Compact*, Principle 2.

138 UN, *Global Compact*, Human Rights; UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy Framework”*, 2011, Principle 11.

139 UN, *Global Compact*, Human Rights; UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy Framework”*, 2011, Principle 17, Commentary.

140 *Ibid.*

141 *Ibid.*

2.1 Categories of Complicity

With respect to the forms of complicity that corporations may become implicated in, it is suggested that three categories of complicity exist.¹⁴²

- Direct;
- Indirect/Beneficial;
- Silent.

These three encompass both the legal and non-legal forms of responsibility. As such, accountability for direct complicity may be sought through legal mechanisms, while for indirect/beneficial and silent complicity, effective recourse through legal mechanisms is less feasible.

A. Direct Complicity

Direct complicity is incurred when a company intentionally participates in conduct, not necessarily intending or desiring to do harm, but with the *knowledge* that harmful effects are foreseeable.¹⁴³ Further, direct complicity can be said to arise when a company **causes or contributes to** human rights abuses by enabling, exacerbating or facilitating them.¹⁴⁴ (See below.) Thus a corporation is directly complicit in human rights abuses “where it decides to participate through assistance in the commission of human rights abuses and that assistance contributes to the human rights abuses by another.”¹⁴⁵ The UN Global Compact has elaborated that direct complicity arises “when a company **provides goods or services that it knows will be used to carry out the abuse**”.¹⁴⁶ As will be outlined below, accountability for direct complicity may be more easily pursued through legal mechanisms.

Elements

The International Commission of Jurists has outlined a number of elements that should be satisfied in order for a corporation and/or its individual officials to be found complicit. These elements are 1) Cause and Contribution; 2) Knowledge; and 3) Proximity.

142 Clapham, A., & Jerbi, S., *Categories of Corporate Complicity in Human Rights Abuses*, March 2001; UN, Global Compact, Principle 2: What does it mean?, available at: <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-2>

143 *Ibid.*

144 International Commission of Jurists (ICJ), *Report of the ICJ Expert Legal Panel on Corporate Complicity in International Crimes: Corporate Complicity & Legal Accountability. Volume 1: Facing the Facts and Charting a Legal Path*, 2008, Vol. 1, p. 15.

145 *Ibid.*

146 UN Global Compact, *The Ten Principles of the UN Global Compact: Principle Two – Human Rights*.

1. As such, complicity could be said to exist where the conduct of the company caused or contributed to the human rights violations by:
 - *Enabling* the abuse to take place; or
 - *Exacerbating* the abusive situation; or
 - *Facilitating* the abuse.¹⁴⁷

‘Enabling’ means that the abuses would not have occurred without the contribution of the company. ‘Exacerbates’ means that the company has made the situation worse and that without its contribution, some of the abuses would have occurred on a smaller scale or with less frequency. ‘Facilitates’ means that that company’s conduct made it easier to carry out the abuses or that they changed the way the abuses were carried out, including the methods uses, the timing or their efficiency.¹⁴⁸

2. Further, the corporation or its officials should desire for, or at least have **knowledge** that, their conduct could contribute to violations, or otherwise be ‘willfully blind’ to that risk.¹⁴⁹
3. Finally, the corporation or its officials must have been in close enough **proximity** to the principle perpetrator of the violations. This proximity element is measured by geographic closeness, duration, frequency, intensity and/or nature of the connection, interactions or business transactions concerned.¹⁵⁰

B. Indirect, or Beneficial, Complicity

These forms of complicity arise when a corporation economically benefits from rights abuses without assisting or causing the abuses.¹⁵¹ Generally, accountability for such indirect complicity - e.g. mere commercial engagement with a party that is committing human rights abuses - would not be pursued through *legal* mechanisms unless, by such commercial transactions, the corporation is actually causing or contributing to such abuses. Non-judicial grievance mechanisms may, however, provide an avenue for recourse in such instances.

147 International Commission of Jurists (ICJ), *Report of the ICJ Expert Legal Panel on Corporate Complicity in International Crimes: Corporate Complicity & Legal Accountability. Volume 1: Facing the Facts and Charting a Legal Path*, 2008, Vol. 1, p. 9

148 *Ibid.*

149 *Ibid.*

150 *Ibid.*

151 *Ibid.*

C. Silent Complicity

This arises when a corporation is silent or inactive in the face of human rights abuses. (This form of complicity is the least reproachable, or least likely to result in a finding of legal liability.)¹⁵² Again, this would not ordinarily invoke *legal* corporate responsibility for complicity in human rights abuses as per legal (criminal and civil law) mechanisms. However, as outlined by the International Commission of Jurists, there may exist:

*“special situations in which a company or its individual officials exercise such influence, weight and authority over the principal perpetrators that their silent presence would be taken by the principal to communicate approval and moral encouragement to commit the gross human rights abuses.”*¹⁵³

Such silence, then, could amount to legal complicity, although this has yet to be tested in court.¹⁵⁴

Again, non-judicial pressure could be applied in instances of silent complicity to urge the company to take a stronger position *vis-à-vis* its responsibility to support and respect human rights.

2.2 Avenues to Pursue Accountability

Accountability for corporate complicity in breaches of international law may be pursued through both legal mechanisms and non-judicial grievance mechanisms.

It is important that those embarking on the pursuit of accountability against complicit companies grasp the full, conceivable range of forms of responsibility and accountability that a corporation may face. It will then be easier to ascertain which course of action would be the most feasible for an individual or organization to pursue as per their own respective mandate and capacity, and it will assist in building a robust, compelling case against a complicit company in the course of both legal and non-judicial actions.

That being said, it is not within BADIL’s mandate or capacity to pursue legal accountability. As such, this paper will later focus predominantly on non-judicial grievance mechanisms, thus offering guidance for other actors with similar capacities in pursuing accountability non-judicially. However, the

152 *Ibid.*

153 *Ibid.*

154 *Ibid.*

main elements involved in the pursuit of legal accountability will also be outlined in order to encourage and inform those who may be mandated and capacitated to pursue accountability legally do to so, as well as to offer a strong foundation for all actors upon which to base sound and compelling claims of complicity – through both legal, and non-legal avenues alike. *[Even in pursuing accountability non-judicially, it is also important to refer to all forms of complicity that may have taken place and how this could be addressed through legal mechanisms.]*

A. Legal Mechanisms

Legal mechanisms include both Criminal Law and Civil Law avenues.

1. With regards to *Criminal Law* avenues, where the human rights abuses in question give rise to a breach of international criminal law (War Crimes, Genocide, and Crimes Against Humanity including Apartheid), redress may be sought either internationally – through the ICC – or domestically, where States have incorporated international criminal law into their domestic legislation. While corporate entities themselves cannot be brought before an international criminal mechanism, individual corporate officials could be tried at an international level, such as through proceedings brought before the ICC. However, domestic laws may allow for the trial of corporate entities for crimes under international law within their own jurisdictions.¹⁵⁵
2. With regards to *Civil Law* avenues, complicity in gross human rights violations will often also invoke tort law in common law jurisdictions, and the law of non-contractual obligations in civil law jurisdictions. Both corporate entities and individuals may be held accountable under such mechanisms.¹⁵⁶

B. Non-Judicial Grievance Mechanisms (NJGMs)

1. As outlined above, certain forms of complicity – indirect/beneficial and silent – would ordinarily not invoke recourse to pursue accountability through legal mechanisms. Nevertheless, in the conduct of such forms of complicity, corporations are still evading their responsibilities *vis-à-vis* business and human rights obligations as outlined in the UN Guiding Principles (see below for discussion) and corporations engaged in such

155 International Commission of Jurists (ICJ), *Report of the ICJ Expert Legal Panel on Corporate Complicity in International Crimes: Corporate Complicity & Legal Accountability. Volume 1: Facing the Facts and Charting a Legal Path*, 2008, Vol. 1, p. 6.

156 *Ibid.*; See: International Commission of Jurists (ICJ), *Report of the ICJ Expert Legal Panel on Corporate Complicity in International Crimes: Corporate Complicity & Legal Accountability. Volume 1: Facing the Facts and Charting a Legal Path*, 2008, Vol. 3.

forms of complicity must not be granted impunity. As such, pressure must still be applied to such complicit corporations to honor their obligations to support and respect the protection of internationally proclaimed human rights and to make sure that they are not complicit in human rights abuses.

2. Furthermore, non-legal mechanisms may also be employed to pursue accountability for all forms of complicity – both legal and non-legal. It is not always within the capacity or mandate of certain invested actors and organizations to pursue legal avenues, for instance. Nevertheless, they can more feasibly engage in non-legal pressure mechanisms in the pursuit of accountability, as will be discussed below.

The framework for and forms of non-judicial grievance mechanisms will be explored in Chapter 3, below.

2.3 Corporate Complicity in Palestine

According to Who Profits, the main forms of involvement, of both Israeli and international companies, include: involvement in the industry and agriculture of colonies; construction on occupied land; provision of services to colonies; exploitation of occupied production and resources; and control of the occupied population through private security companies functioning in an occupied territory; the construction of the Annexation Wall; and the provision of other specialized equipment and services.¹⁵⁷ Similarly, the London Session of the Russell Tribunal on Palestine¹⁵⁸ divided acts attributable to corporations that have been characterized as being in support of, or contributing to, violations of international law, into three categories:¹⁵⁹

- Supply of military equipment, material and vehicles to Israel that were used during the 2008-2009 Gaza Strip incursion; supply of security equipment used at checkpoints on routes leading to the construction of the Annexation Wall; and the supply of security equipment to Israeli colonies in the occupied territory;
- Various kinds of assistance provided to Israeli colonies in the occupied territory;

157 See: Who Profits: The Israeli Occupation Industry, available at: <http://www.whoprofits.org/>

158 The Russell Tribunal on Palestine (RToP) is an international citizen-based Tribunal of conscience that examines violations of international law. For further information please visit: <http://www.russelltribunalonpalestine.com/en/>

159 Russell Tribunal on Palestine, *Findings of the London Session: Corporate Complicity in Israel's violations of International Humanitarian and International Human Rights Law*, 2nd International Session, 20-22 November 2010, p. 13, available at: <http://www.russelltribunalonpalestine.com/en/wp-content/uploads/2011/01/RTOP-London-Session-Findings.pdf>

- Forms of assistance for the construction of the Annexation Wall in the occupied territory.

2.4 Corporate Complicity in Acts of Population Transfer in Palestine

As recognized by the Independent International Fact-Finding Mission on the Implications of Israeli Settlements, business enterprises have “directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements.”¹⁶⁰ The Mission further identified those business activities that raised the most concern *vis-à-vis* their connection to population transfer:

- **The supply of equipment and materials facilitating the construction and the expansion of settlements and the Wall, and associated infrastructures;**
- The supply of surveillance and identification equipment for settlements, the Wall and checkpoints directly linked with settlements;
- **The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olives groves and crops;**
- The supply of security services, equipment and materials to enterprises operating in settlements;
- The provision of services and utilities supporting the maintenance and existence of settlements, including transport;
- Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;
- The use of natural resources, in particular water and land, for business purposes;
- Pollution, and the dumping of waste in - or its transfer to - Palestinian villages;
- Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints;

160 UN Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/ HRC/22/63*, 7 February 2013, para 96.

- Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements.¹⁶¹

For the purposes of this report, and with regards to its incorporated case study, particular focus will be given to those businesses who **supply equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olives groves and crops** and who **supply equipment and materials facilitating the construction and the expansion of settlements and the Wall, and associated infrastructures.**

As will be shown, companies who supply equipment for the demolition of housing and property, as well as for the construction of colonies (settlements), may be guilty of engaging in all forms of complicity; direct, indirect and silent.

161 UN Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/ HRC/22/63*, 7 February 2013, para 96.

Accountability for Corporate Complicity: Corporate Responsibility

As previously noted, while the option to legal recourse before international and domestic legal, or judicial, mechanisms also presents an avenue for redress of human rights violations by businesses, legal avenues do not cater to the pursuit of accountability for all forms of complicity. Furthermore, taking legal action may be beyond the capacity and mandate of many interested actors and organizations. As such, and although it is encouraged that all concerned parties continue to pursue all avenues available to them, the framework outlined in the UN Guiding Principles on Business and Human Rights, especially that of non-judicial grievance mechanisms, will form the basis of this report's analysis. It is intended that the information and guidance provided herein will prepare other organizations and interested parties to feasibly pursue accountability through all avenues made available by their respective capacities and mandates.

3.1 UN Guiding Principles on Human Rights

A. Background

In acknowledgement of the fact that corporate activities could have an adverse impact on human rights, the UN established a mandate to address the issue of business and human rights in 2005. After the appointment of a Special Representative for Business and Human Rights - Professor John Ruggie - the 'Protect, Respect and Remedy' framework was developed in 2008.¹⁶² This framework has two essential components with regards to addressing corporate liability in human rights violations. The first is that it recognizes that States have the *duty* under international human rights law to protect all individuals within their territory from human rights abuses carried out by

162 Van Huijstee, M., Ricco, V., & Ceresna-Chaturvedi, L., *How to use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy: A Guide for Civil Society Organizations*, November 2012, p. 10.

businesses. The term *duty* implies that States are required to implement laws and regulations to monitor, prevent, and address business-related human rights abuses and ensure effective access to remedy. Secondly, the framework also recognizes that businesses have a *responsibility* to respect human rights wherever they operate. These two obligations to respect human rights exist independently of each other, and therefore, both parties have distinct, yet complementary obligations.¹⁶³

This framework was further strengthened in 2011 when the UN Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights (the “UN Guiding Principles”), which further detailed and solidified the essential duties and responsibilities of the State and businesses regarding human rights abuses. Following this endorsement, the UN Working Group on Business and Human Rights was appointed to facilitate the dissemination and implementation of these Guiding Principles.¹⁶⁴

While founded in existing international frameworks, the UN Guiding Principles do not create new, binding international legal obligations for companies, nor are they supplemented with a grievance or complaints mechanism that victims of business-related human rights abuses can access for remedy. Nor do the UN Guiding Principles explicitly reference the full body of human rights law and standards and, thus, implementation of these Principles does not necessarily translate to respect for all internationally recognized human rights.¹⁶⁵ Despite these legal weaknesses, the Guiding Principles are grounded in recognition of **“the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights”**,¹⁶⁶ and therefore can be leveraged by civil society organizations and advocates to hold companies accountable for failing to respect human rights laws and standards.

B. Framework

The Guiding Principles are the most authoritative and internationally recognized framework for business and human rights, and outlines the standard of conduct that that is expected from States and corporations alike.

163 UN OHCHR, The UN Guiding Principles on Business and Human Rights: An Introduction, p. 2, available at: www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

164 UN OHCHR, The UN Guiding Principles on Business and Human Rights: An Introduction, p. 2, available at: www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

165 Van Huijstee, M., Ricco, V., & Ceresna-Chaturvedi, L., *How to use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy: A Guide for Civil Society Organizations*, November 2012, p. 12.

166 UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, March 21, 2011, p. 1.

Based on existing obligations and responsibilities under international human rights law, the Guiding Principles are divided into three main pillars: **protect, respect, and remedy**.

- The first pillar relates to the **State's duty to protect** against human rights abuses by third parties including businesses. This 'duty' involves the obligation of States to "prevent, investigate, punish and redress" human rights abuses that take place in domestic business operations and to employ "effective policies, legislation, regulations and adjudication" to that effect.¹⁶⁷ The Guiding Principles also sets out the operational activities applicable to States in upholding their duty. These entail setting appropriate regulatory and policy functions, such as enforcing necessary laws, policies and standards; supporting respect for human right in conflict-affected areas; and ensuring policy coherence.¹⁶⁸
- The second pillar involves the **corporate responsibility to respect** human rights. This responsibility entails that businesses avoid causing or contributing to human rights abuses, and address any such abuse with which they are involved; and that they "seek to prevent or mitigate adverse human rights impacts that are directly linked¹⁶⁹ to their operations, products or services by their business relationships,¹⁷⁰ even if they have not contributed to those impacts".¹⁷¹ Further, in upholding their responsibility, businesses should have in place:
 - **A policy commitment**
 - **A human rights 'due diligence' process**
 - **A remediation process**¹⁷²
- The third pillar addresses the need for access to effective **remedy**. This pillar outlines the requirement for States to ensure access to remedy through both state and non-state-based judicial and non-judicial mechanisms.

167 *Ibid*; UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*", March 21, 2011, Principle 1.

168 *Ibid.*, Principles 3-10.

169 As per the UNOHCHR, the term directly linked "refers to the linkage between the harm and the company's products, services and operations through another company (the business relationship)", OHCHR, *Frequently Asked Questions About the Guiding Principles on Business and Human Rights*, 2014, p. 32.

170 As per the UNOHCHR, "A company's "business relationships" is defined broadly to encompass relationships with business partners, entities in its value chain and any other State or non-State entity directly linked to its business operations, products or services. This includes entities in its supply chain beyond the first tier and indirect as well as direct business relationships.", *Ibid*.

171 UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*", March 21, 2011, Principles 11, 13.

172 *Ibid.*, Principle 15.

This report will focus on the second and third pillars.

3.2 Corporate Responsibility to Respect Human Rights

The Guiding Principles apply to all businesses, in all operating contexts, and all business enterprises have a responsibility to respect internationally recognized human rights regardless of location of operation. Their responsibilities apply irrespective of a State's ability or willingness to fulfill its own obligations.¹⁷³

Principle 11 of the Guiding Principles provides that:

“Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”

This responsibility to respect human rights and address violations is twofold and entails that businesses:

- Avoid causing or contributing to adverse human rights impacts through their own operations and address such impacts when they do occur;
- Seek to prevent or mitigate adverse human rights that are **“directly linked to their operations, products or serviced by their business relationships, even if they have not contributed to those impacts”**.¹⁷⁴

Here, a “business relationship” encompasses relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.¹⁷⁵

In order to fulfil its responsibility to respect human rights, Principle 15 of the Guiding Principles outlines that business enterprises should have certain policies and processes in place according to their size and circumstances including:

- A policy commitment to meet their responsibility to respect human rights;
- A human rights ‘due diligence’ process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

173 *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, March 21, 2011, Principles 11, 14.

174 *Ibid.*, Principle 13.

175 *Ibid.*, Principle 13, Commentary.

A. Policy Commitment

Guiding Principle 16 further elaborates on what form the policy commitment should take, including, *inter alia*, that it be approved at the most senior level; sets out the human rights expectations of its own personnel, business partners and other parties directly linked to its operations, products or services; and that it be publicly available.

Practical Measure:

Organizations and advocates should check for the availability of this statement and confirm whether it follows the standards of the Guiding Principles, including a clause acknowledging supply chain liability. Failure to comply with these standards can be brought to light.

B. Due Diligence

Guiding Principles 17-21 provide that business enterprises should identify, prevent, mitigate, and account for how they address their adverse human rights impacts. Potential adverse human rights impacts, or risks, should be addressed through prevention or mitigation strategies, while **actual adverse impacts, which have already taken place, should be addressed through remediation.**¹⁷⁶

Due diligence, as defined by the Guiding Principles, comprises of:

- Identifying and assessing actual or potential impacts with which the business may be involved through its own activities or which may be directly linked to its operation, products or services or by its business relationships;
- Adopting processes to take effective action regarding these findings;
- Tracking the efficacy of responses to address impacts; and
- Adopting processes to communicate how the business is addressing its impacts.¹⁷⁷

Such due diligence processes should be ongoing and their scope will vary depending on the size of the company, their severity of the adverse human rights impact, and the context of its operations.¹⁷⁸ In this regard it may not be

¹⁷⁶ *Ibid.*, Principles 17, Commentary & Principle 22.

¹⁷⁷ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, March 21, 2011, Principles 17-21.

¹⁷⁸ *Ibid.*, Principle 17.

feasible for larger companies with extensive value chains to conduct in-depth due diligence processes for all entities in its value chain. In such instances, however, companies must prioritize those areas of operation or ‘business relations’ posing a heightened risk of adverse human rights impacts for due-diligence.¹⁷⁹ This requirement would apply to all companies operating in the context of the occupied Palestinian territories where the instances, and risks of, human rights abuses are exceptionally high.

- I. **Identifying and assessing human rights risks:** The business entity should utilize both human rights expertise as well as conduct “meaningful consultations” with those groups who would be potentially impacted, and other relevant stakeholders.¹⁸⁰
- II. **Adopting processes to take effective action:** Having identified the actual occurrence of adverse human rights impacts which the company has caused or contributed to, the company must cease the wrongful conduct, prevent its impacts, and must activate a remediation process to properly address any negative impacts inflicted. Having identified the risk of *potential* adverse human rights impacts the company must work to prevent or mitigate such impacts.¹⁸¹

In cases where a company *contributes, or may contribute,* to adverse human rights impacts, mitigation of negative impacts can be pursued by the company through using its leverage against the offending entity in order to alter its harmful practices.¹⁸²

In cases where a company has not caused or contributed to an adverse human rights impact, but is rather directly linked to the negative impact through its operations, products or services by its ‘business relationship’ with another entity, then the company should first apply its leverage, where available, in compelling the offending entity to alter its harmful practices. Where leverage is lacking, the company should then seek to increase its leverage, where possible. Where the company lacks the leverage to prevent or mitigate the adverse impacts, and is unable to increase this leverage, then the company should “consider ending the relationship”. Again, the severity of the abuse must be taken into account in determining the appropriate course of action.¹⁸³

- III. **Tracking the efficacy of responses:** Companies should track the effectiveness of the response procedures by utilizing appropriate

179 *Ibid.*, Principle 17, Commentary.

180 *Ibid.*, Principle 18.

181 *Ibid.*, Principle 19, Commentary.

182 *Ibid.*

183 *Ibid.*

qualitative and quantitative indicators and should draw on both internal and external sources, including affected stakeholders.¹⁸⁴ It is further advised that companies should make “particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.”¹⁸⁵

IV. Adopting processes to communicate how the business is addressing its impacts: It is instructed that companies be prepared to externally communicate or account for how they address adverse human right impacts – particularly when concern have been raised by or on behalf of affected stakeholders. Such ‘communications’ could include in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Such ‘formal reporting’ is expected from companies whose operating contexts pose a risk of severe human rights impacts.¹⁸⁶

The principle of due diligence also directs that businesses conducting due diligence should not assume that the performance of due diligence automatically and wholly absolves them from liability for contributing to human rights abuses.¹⁸⁷

Additional Standards

The responsibility of business enterprises to respect human rights may include additional standards in the context of **at-risk populations**. As per Principles 12 and 18, corporations should respect the rights of individuals belonging to vulnerable populations requiring particular attention, including indigenous peoples; women; national, ethnic or religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families.¹⁸⁸

Regarding situations of **armed conflict**, as in the case with respect to Israel and its occupation of Palestinian territory, Principle 12 states that enterprises should respect the standards of international humanitarian law. It is further noted that certain operational environments, such as conflict-affected areas, could give rise to a heightened risk of complicity in human rights abuses by other actors (security forces, for instance). The UN Guiding Principles advise that businesses treat this risk as a *legal* compliance issue, as corporate directors, officers and employees could be subject to individual liability for human rights abuses which arise more commonly in such contexts. In terms of practical application of these UN Guiding Principles, it is notable

184 *Ibid.*, Principle 20.

185 *Ibid.*, Principle 20, Commentary.

186 *Ibid.*, Principle 21, Commentary.

187 *Ibid.*, Principle 17, Commentary.

188 *Ibid.*, Principle 12, 18, Commentaries.

that indigenous peoples and ethnic and religious minorities are specifically acknowledged and emphasized. This enhanced due diligence is particularly significant within the context of forced population transfer in the occupied Palestinian territory.

Principle 14 also provides that the **severity** of the adverse human rights impact is a major factor in determining “the scale and complexity of the processes the enterprise needs to have in place in order to know and show that it is respecting human rights”.¹⁸⁹ In the present case, War Crimes and Crimes against Humanity are being committed – some of the most severe breaches of international law and international human rights imaginable. As such, enhanced due diligence must be practiced by companies complicit in such activities.

Practical Measure:

Organizations and advocates should identify the concerned company's due diligence activities in identifying, preventing, mitigating or accounting for adverse human rights impacts, as well as its remediation plan, which requires companies to provide remedy to the victim(s) of adverse human rights impacts.¹⁹⁰ Has the company initiated a remediation process for adverse human rights impacts it may have been complicit in, or have they adopted the requisite measures to address potential adverse human rights impacts? Have they ceased their activities, applied leverage or ended the offending business relationship? Have they tracked the efficacy of their responses? Have they communicated how they are addressing their actual or potential complicity? If the company's operating context poses a risk of severe adverse human rights impacts, have they formally reported on the effectiveness of their responses? Organizations, advocates and researchers are encouraged to share the results of their assessment, specifically regarding alleged human rights abuses and lack of implementation of the Guiding Principles.

189 *Ibid.*, Principle 14; OHCHR, *Frequently Asked Questions About the Guiding Principles on Business and Human Rights*, 2014, p. 19.

190 Van Huijstee, M., Ricco, V., & Ceresna-Chaturvedi, L., *How to use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy: A Guide for Civil Society Organizations*, November 2012, p.p 48-51.

C. Remediation

When a business enterprise has identified that they have caused or contributed to adverse human rights impacts, they should “provide for or cooperate in their remediation through legitimate processes.”¹⁹¹

When a business enterprise has not itself caused or contributed to adverse human rights impacts, but is instead directly linked through its operations, products or services by a business relationship, then the responsibility of the business entity to respect human rights does not necessitate remediation to be provided by the business themselves.¹⁹² In such instances, as outlined above, the company would rather apply leverage to influence the offending entity to cease or alter its offending policies, or that failing, should seek to terminate the problematic relationship.

It is further advised that companies adopt or participate in operational-level grievance mechanisms – typically administered by the company themselves or potentially through a mutually acceptable external expert – to facilitate and expedite the remediation of grievances, and which are directly accessible to individuals or communities who may be adversely impacted by the company’s conduct.¹⁹³

Practical Measure:

Again, organizations and advocates should examine whether the company has initiated the appropriate remediation processes and whether the company is participating in operational-level grievance mechanisms. Such an examination must take into account whether the company has caused or contributed to an adverse human rights impact; or whether through its operations, products or services is directly linked to an adverse impact through its business relationships. The operating context in question and the severity of the adverse human rights impact must also be taken into account.

191 *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, March 21, 2011, Principles 15, 22.

192 *Ibid.*

193 *Ibid.*, Principle 29, Commentary.

Corporate Complicity Vis-à-Vis Israel and the oPt

Relevant to the context of this study, despite Israel's inability or unwillingness to take adequate measures, the responsibility of effectively protecting human rights also falls upon business enterprises. UN Guiding Principle 11 provides that the corporate duty to abide by human rights obligations "exists over and above compliance with national laws and regulations protecting human rights." Thus, even if a business enterprise is operating in accordance with Israeli laws, it is moreover obliged to meet international human rights requirements.¹⁹⁴

As noted above, in the context of armed conflict, or where vulnerable populations are at risk, or where there exists a risk of severe adverse impacts to human rights, a responsibility of enhanced due diligence befalls companies operating in or maintaining business relations linked to such a context.

As such, the UN-mandated Working Group's 2014 Statement on the Implications on the Guiding Principles in the oPt, reiterated that businesses connected to, doing business, or seeking to do business in the Israeli colonies in the occupied Palestinian territory "need to be able to demonstrate that they neither support the continuation of an international illegality nor are complicit in human rights abuses... and are able to account for their efforts in this regard—including, where necessary, by terminating their business interests or activities."¹⁹⁵

194 *Ibid.*, Principle 11, Commentary.

195 UN OHCHR, *Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory*, 6 June 2014, p. 11.

Accountability for Corporate Complicity: Non-Judicial Grievance Mechanisms

4.1 Access to Remedy

Under the third pillar concerning access to remedy, UN Guiding Principle 25 outlines that States must take proper steps to ensure that access to effective remedy follows business-related human rights abuses through judicial, administrative, legislative or other appropriate means. Remedy may consist of financial or non-financial compensation and punitive sanctions, apologies, restitution, rehabilitation, prevention of harm through injunctions, for example, and guarantees of non-repetition.¹⁹⁶ The UN Guiding Principles outline three forms of remedial mechanisms:

- State-Based Judicial Mechanisms;
- State-Based Non-Judicial Grievance Mechanisms;
- Non-State-Based Grievance Mechanisms.

Judicial remedies are essential to the human rights system, and States have the responsibility to guarantee access to the courts without barrier. Notably, within the setting of the occupied Palestinian territory, however, the international fact-finding mission determined that Palestinians in the OPT are unable to access effective remedy for human rights violations related to the Israeli colonies.¹⁹⁷

Non-judicial mechanisms- both state and non-state-based - including legislative or administrative mechanisms, may play a complementary role.¹⁹⁸

¹⁹⁶ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*", March 21, 2011, Principle 25.

¹⁹⁷ UN Human Rights Council, *Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/ HRC/22/63*, 7 February 2013, para 105.

¹⁹⁸ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*", March 21, 2011, Principles 25 - 27.

The Guiding Principles outline that there are two categories of non-state-based grievance mechanisms: those administered by a business enterprise alone or with stakeholders, industry associations or multi-stakeholder groups; and regional and international human rights bodies.¹⁹⁹

4.2 Non-Judicial Grievance Mechanisms

As previously outlined, legal mechanisms are not the only way to provide remedy to the victims of human rights abuses, nor are they always a viable option. As such, non-judicial grievance mechanisms present an alternative avenue in addressing negative human rights impacts, either supplementary to judicial mechanisms or in response to the vacuum of effective legal recourse for victims in accessing remediation.

The UN Guiding Principles establish two functions for non-judicial grievance mechanisms (NJGMs). The first is **adjudicative** and focused on compliance with the guidelines, while the second is **dialogue-based mediation**. Most of the mechanisms incorporate both functions. The compliance function usually consists of investigating whether a particular corporation complied with the relevant guidelines in the activities raised by the complaint. This process results in a report which concludes whether or not the standards were met. Mediation is a dialogue-based process between the corporation and those allegedly affected by its activities. In those cases where mediation is successful, it has the potential to result in lasting relationships between companies and the communities surrounding them.²⁰⁰

The UN Guiding Principles provide effectiveness criteria for non-judicial mechanisms. Guiding Principle 31 states that non-judicial grievance mechanisms - both state-based and non-state-based - should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of learning, and that operations-level mechanisms be based on engagement and dialogue.

One major weakness of the UN Guiding Principles, however, is that besides not creating any new international legal obligations for companies to enforce, they are not accompanied by a grievance mechanism that the victims of human rights violations could use to access remedies.²⁰¹ However, there do

199 *Ibid.*, Principle 28, Commentary.

200 Somo, *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape*, January 2015.

201 Van Huijstee, M., Ricco, V., & Ceresna-Chaturvedi, L., *How to use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy: A Guide for Civil Society Organizations*, November 2012, p. 12.

exist several non-judicial grievance mechanisms that were created by states, by companies themselves or by other stakeholders.

Non-judicial grievance mechanisms differ in form, scope, the issues they address, how they function, and who can file complaints, for example. More importantly, the outcomes delivered by these mechanisms may vary greatly.²⁰² The Centre for Research on Multinational Corporations (SOMO) outlines a number of types of NJGMs, including:

- Intergovernmental Grievance Mechanisms;
- National Human Rights Institutions;
- Mechanisms associated with Development Finance Institutions;
- Sectoral and Multi-Stakeholder Grievance Mechanisms;
- Operational-level Grievance mechanisms.²⁰³

International mechanisms such as the UN Global Compact should also be added to this list.²⁰⁴

A. Intergovernmental Grievance Mechanisms

These mechanisms are created by an international agreement between states and include UN treaty-based and charter-based bodies; mechanisms attached to the International Labour Association; the European, African and Inter-American human rights systems; and the Organization for Economic Co-operation and Development (OECD) National Contact Point mechanisms, although these operate at a national level.²⁰⁵

I. UN Bodies

UN charter-based bodies refer to the **UN Human Rights Council** and its subsidiary bodies. The Human Rights Council employs a number of procedures and mechanisms through which it fulfills its mandate: through the Universal Periodic Review²⁰⁶ mechanism which reviews the human rights situations in all UN Member States; through the establishment of an Advisory Committee

202 See: Somo, *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape*, January 2015.

203 *Ibid.*

204 For more on these mechanisms, see: Rees, C., *Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps*, Corporate Social Responsibility Initiative, January 2008, available at: http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_40_Strengths_Weaknesses_Gaps.pdf

205 Somo, *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape*, January 2015.

206 UN General Assembly, *Resolution 60/251. Human Rights Council*, 3 April 2006.

which supplies the Council with expertise and advice on thematic human rights issues; and through its **Complaint Procedure** through which individuals, groups and non-governmental organizations alike may confidentially submit grievances regarding human rights violations to the Council.²⁰⁷

Furthermore, the Human Rights Council also employs a **UN Special Procedures** mechanism, which was established under its predecessor. These ‘Special Procedures’ are comprised of either individual expert – (“Special Rapporteurs”, or “Independent Experts”) or Working Groups, all of which “monitor, advise and publicly report on thematic issues or human rights situations in specific countries.”²⁰⁸ The Special Procedures are endowed with either thematic or country-specific mandates. The experts, which are elected by the Human Rights Council, and work with the support of the UN Office of the High Commissioner for Human Rights (OHCHR), undertake country visits; issue communications to States and other interested parties so as to bring rights violations to their attention; conduct expert studies and consultations; contribute to the development of IHRL standards; engage in advocacy and awareness raising; provide advice for technical cooperation; and submit reports to the Human Rights Council and the General Assembly.²⁰⁹

UN treaty-based bodies were established to monitor compliance with the various treaties through a number of mechanisms including periodic reports, communications, complaints, and in issuing recommendations. Some undertake “inquiries” into certain allegations and situations. These treaty bodies include: the Human Rights Committee (CCPR); the Committee on Economic, Social and Cultural Rights (CESCR); the Committee on Elimination of Racial Discrimination (CERD); the Committee on Elimination of Discrimination against Women (CEDAW); the Committee against Torture (CAT); the Subcommittee on Prevention of Torture (SPT); the Committee on the Rights of the Child (CRC); the Committee on Migrant Workers (CMW); Committee on the Rights of Persons with Disabilities (CRPD), and the Committee on Enforced Disappearances (CED).²¹⁰

II. ILO Mechanism

This mechanism is not pertinent to the topic of the present report but suffice to say that complaints may be brought before the International Labour

207 UN Human Rights Council, *Resolution 5/1. Institution-Building of the United Nations Human Rights Council*, 18 June 2007; OHCHR, *About the Human Rights Council*, available at: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.

208 OHCHR, *About the Human Rights Council*.

209 OHCHR, *Special Procedures of the Human Rights Council*, available at: <http://www.ohchr.org/EN/Bodies/SP/Pages/Welcomes.aspx>.

210 Fisher, D., *Guide to International Human Rights Mechanisms for Internally Displaced Persons and their Advocates*, June 2006, p. 10.

Organisation's Committee on Freedom of Association, by government, workers' or employers' organizations which relate to violations of workers rights by states.²¹¹

III. OECD Mechanism

The Organization for Economic Co-operation and Development is an international economic organization comprising of 34 countries, including Israel. The 2011 OECD "Guidelines for Multinational Enterprises" outlines the standards and principles of good practice as consistent with applicable law and internationally recognized standards, and incorporates a human rights chapter in-line with the UN 'Protect, Respect and Remedy' Framework and the Guiding Principles.²¹² While they are not legally binding on corporations, States signatory to the guidelines must endeavor to implement them and encourage their use among enterprises.

The "**National Contact Points**" established in signatory States provides a forum for discussion as well as a complaint mechanism whereby individuals, communities or their representatives may bring complaints against enterprises regarding their alleged breaches of the OECD Guidelines, including their involvement in human rights violations. This offers a means of pushing for corporate accountability with respect to complicity in acts of population transfer in the occupied Palestinian territory.

The dispute resolution mechanism associated with the OECD Guidelines is a unique instrument for addressing corporate behavior, where any interested party, such as NGOs, trade unions and other stakeholders can file complaints against multinational enterprises for alleged abuses of the OECD Guidelines. Governments that adhere to the OECD and its Guidelines must establish a National Contact Point to promote the Guidelines and handle complaints about 'specific instances' of alleged company misconduct.²¹³

National Contact Points can be independent or be embedded in a government agency, and the members come from different groups such as stakeholders, civil society members, academia, trade unions, etc. However, the strength of National Contact Point differs significantly from one country to another.

211 Somo, *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape*, January 2015; Human Rights and Grievance Mechanisms, International Labour Organization's Committee on Freedom of Association, available at: <http://grievancemechanisms.org/grievance-mechanisms/international/international-labour-organizations-committee-on-freedom-of-association>

212 Van Huijstee, M., Ricco, V., & Ceresna-Chaturvedi, L., *How to use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy: A Guide for Civil Society Organizations*, November 2012.

213 *Ibid.*

National Contact Points are probably the most comprehensive non-judicial grievance mechanism in terms of scope. A complaint can be filed against any corporation regarding its worldwide activities as long as this company is based in - or operates from - an OECD member or adhering country.²¹⁴

On the 9 June 2015, the UK National Contact Point found that the British-based company, G4S, was in violation of human rights obligations stemming from its role in and involvement with Palestinian human rights abuses in the occupied Palestinian territory.²¹⁵

Practical Measure:

Sweden and the US are all OECD member states. As the companies included in this report's case study are domiciled in these states, complaints may be filed at the National Contact Points within these states.

B. National Human Rights Institutions (NHRIs)

Many states have established an Ombudsmen or National Human Rights Commission which can receive complaints relating to corporate involvement in human rights abuses. NHRIs are established to protect and monitor compliance with international human rights norms in their respective States.²¹⁶ The potency of each NHRI differs from State to State and some are empowered under national laws to handle cases of corporate involvement in human rights abuses.²¹⁷

C. Mechanisms Associated with Development Finance Institutions

Certain Development Finance Institutions (DFIs) operate grievance mechanisms which receive complaints from affected individuals and communities that are adversely affected by public and private sector entities which the DFIs finance. Examples include the Inspection Panel of the World Bank, the Project Complaint Mechanism of the European Bank

214 Somo, *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape*, January 2015.

215 See: Lawyers for Palestinian Human Rights, *LPHR Public Statement: UK watchdog finds G4S is violating human rights obligations towards Palestinians*, 9 June 2015, available at: <http://lphr.org.uk/latest-news/lphr-press-statement-uk-watchdog-finds-g4s-is-violating-human-rights-obligations-towards-palestinians/>

216 Somo, *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape*, January 2015; CESR, *National Human Rights Institutions*, available at: <http://www.cesr.org/section.php?id=177>

217 A map of NHRIs around the world may be found at: http://nhri.ohchr.org/EN/Contact/NHRIs/Documents/NHRI_May2012_map_web2%20rev2.pdf.

for Reconstruction and Development, the Compliance Advisor Ombudsman of the International Finance Corporation, and Accountability and Complaints Mechanisms of various Development Banks.²¹⁸ These mechanisms represent an avenue through which to forward complaints against human rights abuses perpetrated by entities which may be financed by such DFIs. Follow-up pressure by the DFI's against the offending entity would offer a strong incentive for such entities to cease abuses.

D. Sectoral and Multi-Stakeholder Grievance Mechanisms

These are associations that corporations and other stakeholders have created in different sectors. They are self-regulatory initiatives that develop standards and grievance mechanisms to deal with complaints if any of those standards are breached. When trying to use a grievance mechanism against a company for human rights abuses, it should be ascertained whether any such association is present in the sector where the company in question operates. Some examples are the Roundtable on Sustainable Palm Oil (RSPO), the Fair Wear Foundation or the International Code of Conduct for Private Security Providers' Association (ICoCA).²¹⁹

E. Operational-Level Grievance Mechanisms

UN Guiding Principle 29 provides that “to make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”

Many companies have established their own corporate-level grievance mechanisms, which can vary from a simple hotline to a well-established system. However, since they are controlled by the same actors who allegedly committed the human rights abuses, there exists a clear conflict of interests, with other alternative mechanisms likely to enjoy greater independence.²²⁰

F. UN Global Compact

The UN Global Compact is the world's largest voluntary corporate sustainability initiative which aims to encourage companies to align their policies and operations with the Global Compact's **Ten Principles**. These ten principles encompass best practices in the fields of human rights, labour,

218 Somo, *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape*, January 2015.

219 *Ibid.*

220 *Ibid.*

environment and anti-corruption.²²¹ Over 8,000 companies and 4,000 non-business entities are now participants in the UN Global Compact initiative and as such, commit to honouring the Global Compact's ten principles for corporate sustainability.

For the purposes of the present report, two of the ten Global Compact Principles relate to human rights. These are:

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;
- Principle 2: Businesses should make sure they are not complicit in human rights abuses.

These principles are in line with the corresponding UN Guiding Principles on Business and Human Rights.

The UN Global Compact, while not designed or mandated to monitor participant's performance, has adopted a number of 'integrity measures' which includes a procedure whereby any individual, group or organization may submit a complaint to the UN Global Compact Office against any participating company that is alleged to be committing "systematic or egregious abuses of the Global Compact's overall aims and principles".²²² This measure, however, rather than being aimed at securing remediation per se, is aimed at facilitating dialogue and in generating a response from the company. If the company in question, however, refuses to communicate then the UN Global Compact "reserves the right to remove the company from the list of participants."²²³

Further, companies are required to submit yearly 'Communication on Progress' (COPs) detailing their efforts in implementing the ten principles. Organizations and Advocates should therefore check for the availability of such a communication by participating companies they are investigating.

221 UN Global Compact Homepage, available at: www.unglobalcompact.org

222 UN Global Compact, Our Governance: Our Integrity Measures, available at: <https://www.unglobalcompact.org/about/integrity-measures>

223 *Ibid.*; Somo, *Corporate Responsibility Instruments: A Comparison of the OECD Guidelines, ISO 26000 & the UN Global Compact*, December 2013, p. 17; Rees, C., *Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps*, Corporate Social Responsibility Initiative, January 2008, p. 10.

4.3 Limitations to and Advantages of Non-Judicial Grievance Mechanisms

Of course, the existence of non-judicial grievance mechanisms does not guarantee a remedy for those affected by the activities of corporations. For example, the adjudicative processes end when the investigation concludes and a report is presented outlining the findings. If the results show that the corporation did not meet the relevant standards, the mechanisms usually do not have any authority to force such corporations to change their behavior. Therefore, if the company is unwilling to modify its activities the victims will not be provided with remediation.²²⁴

Similarly, mediation processes often experience a distinct power imbalance between complainants and the corporation. Parties often do not have access to all the information about the activities that affect them, or they might not have the resources or expertise to meaningfully participate in the dialogue. Moreover, not all cases can be addressed by dialogue-based processes. When those affected by the activities of a corporation entirely object to the project, for instance, there is little that mediation can achieve when parties are unwilling to compromise.

The outcomes of these processes could be either provision of benefits to the complainants; the company changing its policy or activities; both; or no action at all. For instance, research shows that most of the complaints filed at National Contact Points or Development Finance Institutions are usually rejected.²²⁵

The lack of independence of these mechanisms is a considerable source of concern. For example, with regards to the OECD National Contact Points, many of the NCPs of various countries are housed in certain government agencies that could give rise to conflict of interest issues. The Israeli NCP, for instance, is housed in the Israeli Ministry of Economy. The Ministry of Economy may be reluctant to highlight and remediate the unlawful activities of Israeli companies, thereby potentially discouraging foreign investment, for example.

Another important criticism that is often raised against non-judicial grievance mechanisms is the lack of accessibility. In many cases, individuals and communities are simply not aware of the existence of these mechanisms and, as a result, accountability is often pursued through judicial mechanisms, which are often ineffective or can take years.

224 *Ibid.*

225 *Ibid.*

Finally, another major limitation of non-judicial grievance mechanisms is the lack of authority to force their outcomes upon companies complicit in human rights abuses. In cases where an investigative report finds that the relevant standards or guidelines have not been met, a change in policy or remedy is entirely dependent on the willingness of the company.

However, this does not imply that the mechanisms have no utility. To begin with, they offer some advantages compared to legal proceedings, such as targeting all forms of complicity in a more accessible manner; conducting direct dialogue with the company; the possibility of utilizing these processes along with parallel proceedings; media outreach as compared to confidentiality; pressure on investors; and their ability to complement campaigning and government lobbying.

Moreover, even the most effective and well-resourced judicial systems cannot be relied upon to address all alleged abuses. In certain instances, judicial remedy may not be required or may not be the preferred approach for all complainants. This is why the existing gaps in the provision of remediation for business-related human rights abuses could be addressed by improving the non-judicial grievance mechanisms, both by expanding their respective mandates and by adding new mechanisms. For instance, other types of processes could be incorporated in addition to adjudicative or mediation-based measures, such as other cultural or traditional rights-compatible processes.²²⁶

226 *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, March 21, 2011, Principle 30.

Follow-up Strategies for Civil Society Organizations and Advocates

Civil Society Organizations (CSOs) and advocates are thus encouraged to pursue accountability against complicit companies for violations of human rights and international law using all means available to them. That being said, it is advisable that CSOs consider which strategies best serve their interests, as taking certain actions may jeopardize others. As outlined throughout the report, while it may be beyond the capacity or mandate of all such concerned parties and advocates to pursue legal accountability, an array of avenues pertaining to non-judicial grievance mechanisms are available to them.

5.1 Preliminary Actions

A. Assessment of Company's Complicity:

Organizations and advocates should begin by compiling a thorough assessment of the complicit activities of the company at hand by establishing:

- The international laws being breached (IHRL, IHL, and ICL);
- The company's mode of complicity (direct, indirect, silent).

B. Assessment of Company's Requisite Actions Vis-à-Vis Its Corporate Responsibility:

As previously outlined, CSOs and advocates are encouraged to check the availability of a company's:

- Policy commitment to meet their responsibility to respect human rights;
- Human rights 'due diligence' process to identify, prevent, mitigate and account for how they address their impacts on human rights. This process should include:

- I. An assessment of actual or potential adverse impacts which the company may be involved through its own activities or which may be directly linked to its operation;
 - II. Appropriate processes in place to address these actual or potential adverse impacts;
 - III. A tracking system to assess the efficacy of the response;
 - IV. Appropriate communications regarding these processes.
- Appropriate processes in enabling the remediation of any adverse human rights impacts they cause or to which they contribute.

The company's statement or policy commitment to respect human rights should endorse the UN Guiding Principles and should be publicly accessible.²²⁷ A company's failure to adopt such a statement can – and should – be brought to light. Furthermore, in the event that adverse human rights actions have taken place, organizations should identify the company's action plan, which sets out its strategy to cease or mitigate the negative impact; and its remediation processes which requires companies to provide remedy to the victim(s) of adverse human rights impacts.²²⁸

Organizations, advocates, and researchers are encouraged to share the results of their assessment of corporate complicity, specifically regarding alleged human rights abuses and a lack of implementation of the Guiding Principles.

5.2 Engagement

SOMO has outlined the following entities and forums for CSOs and advocates to engage with in the pursuit of accountability:

- The complicit company itself;
- Courts;
- National governments;
- OECD National Contact Points;
- National human rights institutions/Ombudsman;
- The UN: including the Working Group on Business and Human Rights as well as other mechanisms;
- Regional human rights protective systems;

²²⁷ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, March 21, 2011, Principles 15, 16.

²²⁸ Van Huijstee, M., Ricco, V., & Ceresna-Chaturvedi, L., *How to use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy: A Guide for Civil Society Organizations*, November 2012, p.p 48-51.

- Public Awareness Raising;
- Financial institutions and shareholders;
- Other business relationships;
- UN Global Compact.²²⁹

Pursuing accountability through the various follow-up avenues outlined above can help contribute to an environment of improved corporate practice; ensuring that businesses and States abide by the Guiding Principles and its central tenet of a corporate responsibility to respect human rights.

First, the results of the assessment can be addressed with the company in question, while citing UN Guiding Principles to justify their claims, with the hope that it motivates that company to take steps to prevent and address potential adverse human rights impacts.²³⁰

The assessment can also be brought to attention of UN bodies, National Governments, National human rights institutions and can be leveraged in cases involving financial institutions. Several international financial institutions have procedures that ensure standards for providing loans, where the results of a company's human rights performance assessment can be pertinent.²³¹

Further, individuals, communities or their representatives may bring a complaint before the OECD's National Contact Points. Indeed, this avenue was pursued with respect to G4S's complicit operations in the oPt.

Although the UN Guiding Principles may be considered 'soft law' (in contrast to the 'hard law' of domestic legislation), a significant portion of the content of the UN Guiding Principles may be reflected in national laws and regulations, which would then allow for actions to be pursued via the domestic court system and for communications or complaints to be brought before National governments. This is particularly so with respect to States that have adopted a **National Action Plan** on business and human rights, in line with the State's duty to protect human rights as per the UN Guiding Principles. States that have thus far developed a National Action Plan are: the **UK, the Netherlands, Italy, Denmark, Spain, Finland, Lithuania, Sweden and Norway**. A further number of countries are currently in the process of developing their National Action Plans.²³²

229 Somo, *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape*, January 2015.

230 *Ibid.*, 56.

231 *Ibid.*, 62.

232 UN OHCHR, State National Action Plans Homepage, available at: <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

Furthermore, those standards and principles in the Guiding Principles not yet enshrined in national law still retain the potential to become hard law through jurisprudence. As the UN Guiding Principles come to be commonly used in courts, non-judicial forums, and public and private policy, they increasingly take on the status of customary law.²³³

Moreover, regional forums such as the European Court of Human Rights, the Inter American Human Rights Commission and Court, and the African Commission for Human and People's Rights serve as forums that deal with human rights abuses, hearing cases brought against states to condemn breaches of their international human rights obligations which fall under their respective jurisdictions.²³⁴

Crucially, although the Guiding Principles are not legally binding, they are rooted in previously established international law, and can be brought to bear as a tool to pressure both the States and business enterprises through exposure and the resulting negative publicity. Cases where the responsibility to respect human rights is violated can be used as part of a public awareness campaign to utilize public condemnation and shaming as a motivating factor in addressing negative human rights impacts and avoid negative reputational impacts and stakeholder scrutiny.²³⁵ The potency of such an approach has been demonstrated by the fact that a number of companies have terminated their complicit actions in the oPt as a result of such pressure applied by civil society in raising awareness with regards to their operations. Such examples of the powerful effect of campaigning on complicity companies are, *inter alia*, the cases of SodaStream and G4S.

5.3 Previous Successes

Many examples abound of the commanding effect of successful campaigning and other non-judicial grievance mechanisms on complicit companies. Below are but a few such prominent examples. Notwithstanding companies rarely admit that their decisions to terminate relationships or operations are a direct result of such campaigning and so it is difficult to categorically estimate the extent of campaigning's influence, although it can be reasonably deduced in certain instances.

233 Somo, *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape*, January 2015, 57, 58.

234 *Ibid.*, 61.

235 *Ibid.*, 62.

A. SodaStream

SodaStream is an Israeli company which manufactures and distributes home beverage carbonating devices and flavorings for soft drinks.²³⁶ SodaStream's main plant is located in the Israeli colony industrial zone of Mishor Addumim in the West Bank. In 2014 a high-profile dispute ensued between Scarlet Johansson and Oxfam, whom Johansson cut ties with in January 2014 opting to star in a SodaStream television commercial, despite this going against Oxfam's principles. This dispute and the media attention it received served to shed much light on and initiate much discussion around Israeli colonial (settlement) operations and an intense boycott campaign ensued. SodaStream's revenues have since plummeted and in October 2014, SodaStream announced that it would relocate its factory from the settlement industrial zone to another location in the Naqab.²³⁷

B. G4S

G4S Israel, or Hashmira, is a Private Security Company (PSC) and subsidiary of the British-Danish G4S plc. – a corporation which conducts operations in over 120 countries and employs over 620,000 workers. It is one of the main security systems providers contracted by the Government of Israel and its authoritative branches, as well as private actors, and its scope of operations extends to the occupied Palestinian territory where it is involved in a myriad of operations in breach of international law. These include the provision of security services and equipment, including control rooms and peripheral security systems to the Israeli Prison Service (IPS); the provision of security services to businesses in the illegal colonies (settlements) in the West Bank; and the provision of luggage and full-body scanning equipment to a number of checkpoints in the West Bank and full body scanners to the Erez checkpoint in Gaza.²³⁸

Again, an intense ongoing campaign has been directed at G4S for years which saw numerous high-profile parties terminating or declining relations with G4S, including Amnesty International Denmark; Kings College London; The Bill Gates Foundation; the Irish Government; the EU;²³⁹ and most recently, the British Labour Party. Further, an investigation against G4S was brought

236 Who Profits, *SodaStream (The Soda Club Group)*, 3 November 2014, available at: <http://www.whoprofits.org/company/sodastream-soda-club-group>

237 The Jerusalem Post, *SodaStream to Relocate its Sole West Bank Factory*, 31 October 2014, available at: <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/SodaStream-to-relocate-its-sole-West-Bank-factory-380391>

238 Who Profits, *G4S Israel (Hashmira)*, 15 May 2012, available at: <http://www.whoprofits.org/company/g4s-israel-hashmira>

239 BDS Movement, *G4S Campaign Timeline*, available at: <http://www.bdsmovement.net/g4s-timeline>

before the OECD National Contact Point in the UK which, on the 9 June 2015, found G4S to be in violation of certain human rights obligations stemming from its role in and involvement with Palestinian human rights abuses in the occupied Palestinian territory.²⁴⁰

In June 2014, G4S announced that it “did not intend” to renew its contract with the Israeli Prison Service when it expires in 2017.

240 See: Lawyers for Palestinian Human Rights, *LPHR Public Statement: UK watchdog finds G4S is violating human rights obligations towards Palestinians*, 9 June 2015, available at: <http://lphr.org.uk/latest-news/lphr-press-statement-uk-watchdog-finds-g4s-is-violating-human-rights-obligations-towards-palestinians/>

Case Study: Heavy Equipment Companies Caterpillar and Volvo

From the outset of this case study, it must be reiterated that a multitude of companies are operating in complicity with violations of international law in the Palestine in a multitude of manners and industries. (See Chapter 2, above) As the focus of this guidebook is on acts of population transfer, BADIL has chosen to focus on heavy equipment companies whose equipment are used in the physical demolition of Palestinian homes and in the physical construction of the Annexation and Separation Wall and of colonies (settlements).

That being said, there are many such heavy equipment companies complicit in human rights abuses *vis-à-vis* population transfer in the oPt and it should be stressed that Caterpillar and Volvo were randomly selected for illustration purposes. Any of the other complicit companies could, and should, be similarly targeted.

In a 2014 report entitled “Heavy Engineering Machinery and the Israeli Occupation”, Who Profits outlines the relevant heavy equipment manufacturing companies including: Bobcat, Caterpillar, CNH Industrial, Doosan, Hidromek, Hitachi, Hyundai, JCB, Liebherr, Terex, and Volvo.²⁴¹

6.1 Caterpillar

Headquarters: USA

Areas of Operation: A US-based multinational company, Caterpillar is the world’s leading manufacturer of construction and mining equipment, diesel and natural gas engines, industrial gas turbines and diesel-electric locomotives. Caterpillar’s major product groups include compact trucks and multi-terrain loaders, track excavators, track loaders, work tools and attachments and other products used for construction, demolitions, landscaping and other areas and industries.²⁴²

241 See: Who Profits, *Facts of the Ground: Heavy Engineering Machinery and the Israeli Occupation*, July 2014.

242 Caterpillar, *Global Team: 2014 Year in Review*, p. 51.

Operations and Business Relationships in Israel and the oPt: Caterpillar has been operating in Israel since the creation of Israel in 1948, where it granted exclusive distributorship of its equipment to the Israel Tractors and Equipment Company Ltd., (ITE) which is a full subsidiary of part of **Zoko Enterprises Ltd.**²⁴³ ITE is the exclusive representative of Caterpillar in Israel.²⁴⁴ Caterpillar's heavy equipment, trucks and armored vehicles are supplied by Zoko Enterprises Ltd to the Israeli military and have been used in the construction of the Annexation Separation Wall and checkpoints and in the expansion of Israeli colonies.²⁴⁵

In addition to supplying the Israeli military through Zoko Enterprises Ltd., Caterpillar also sells its products directly to the Israeli army through the United States Foreign Military Sales program.

Caterpillar's products are configured by ITE, (as part of Zoko Enterprises Ltd.), and Israeli Government-owned Ramta. These two companies equip the Caterpillar products with weapon mounts, storage compartments, a spotlight and projector lamps and communication equipment.²⁴⁶

A planned contract between the Israeli military and Zoko Enterprises Ltd. would enable the immediate drafting of Zoko's civilian staff as soldiers and thereby grant them full access to Caterpillar's equipment on the battlefield.²⁴⁷ This further underscores the direct relations between Caterpillar, Caterpillar's Israeli representative Zoko and the Israeli military.

Caterpillar's equipment has been used, *inter alia*, in:

- Home demolitions in the Gaza strip;
- Killing individuals including Rachel Corrie and those killed in 'Pressure Cooker' operations;²⁴⁸
- The demolition of Palestinian houses (including in the neighborhoods

243 Zoko Enterprises, *Milestones in the History of oko Enterprises*, available at: <http://www.zoko.co.il/english/Article.aspx?Item=727>

244 Who Profits, *Zoko Enterprises (Zoko Shiluvim)*, 13 September 2010.

245 Who Profits, *Zoko Enterprises (Zoko Shiluvim)*, 13 September 2010.

246 Who Profits, *Caterpillar*, 22 July 2014.

247 Who Profits, *Facts of the Ground: Heavy Engineering Machinery and the Israeli Occupation*, July 2014, p. 54; Who Profits, *Caterpillar*, 22 July 2014.

248 The "pressure cooker procedure" was developed by the Israeli military to be used against Palestinian suspects who have barricaded themselves in a building. It involves a series of gradually escalating actions including: soldiers initially surrounding the building and ordering the evacuation; then firing at the building in the absence of evacuation using first light ammunition and finally tank shells. Should the suspect remain alive inside the house and still refuses to evacuate, the house is then destroyed with bulldozers while the suspect remains inside. See: Who Profits, *Facts of the Ground: Heavy Engineering Machinery and the Israeli Occupation*, July 2014, p. 54; Who Profits, *Caterpillar*, 22 July 2014.

- of Sheikh Jarrah, Beit Hanina and Sur-Baher in East Jerusalem, and in the South Hebron Hills area);
- The construction of the Annexation and Separation Wall and checkpoints;
 - The construction of colonies (settlements), including Revava, Maskiot, Oranit, Carmel, Elkana and Beitar Illit and Har Homa in the West Bank including East Jerusalem; and
 - The construction of projects which serve the colonies such as industrial zones, the Tel Aviv-Jerusalem Railway and an Israeli Police Headquarters located in the occupied Palestinian territory.²⁴⁹

OECD: The USA is a Member State

UN Global Compact: Caterpillar is not a participant.

Statement of Commitment to Respect Human Rights: Within their Code of Conduct, Caterpillar states that:

“We view suppliers as extensions of our company and an essential part of our extended value chain and commitment to quality. We look for suppliers and business allies who demonstrate strong values and commit to the ethical principles outlined in the Caterpillar Supplier Code of Conduct. We expect suppliers to comply with the sound business practices we embrace, follow the law and conduct activities in a manner that respects human rights.”²⁵⁰

6.2 AB Volvo Group

Headquarters: Sweden

Areas of Operation: Volvo is a multinational public company based in Sweden.²⁵¹ Over the last 10 years, the Volvo Group has been streamlining towards commercial vehicles and is today the world’s second largest manufacturer of heavy duty trucks, the leading manufacturer of heavy-duty diesel engines and one of the largest manufactures of buses and construction equipment.²⁵²

Operating and Business Relationships in Israel and the oPt: The Volvo Group has operated in Israel and the oPt for several decades, mainly through the

249 Who Profits, *Facts of the Ground: Heavy Engineering Machinery and the Israeli Occupation*, July 2014, pp. 54-55.

250 Caterpillar, *Our Values in Action: Caterpillar’s Code of Conduct*, Revised 2015, p. 21.

251 Who Profits, *Volvo Group (AB Volvo)*, 22 August 2014.

252 *Ibid.*

Israeli company **Mayer's Cars and Trucks Ltd.**, which since its establishment in 1967 has been the exclusive importer of Volvo products in Israel.²⁵³ The Volvo products distributed by The Mayer Group include trucks, bulldozers, track excavators and wheel loaders, which have been used to demolish Palestinian homes in East Jerusalem and to construct checkpoints and illegal settlements in the West Bank.²⁵⁴ Furthermore, the company operates two Volvo-certified garages in the illegal colonies (settlements) of Mishor Adumin and Atarot in the oPt.²⁵⁵ Mayer's Cars and Trucks Ltd. also owns 35% of Kavim Public Transportation, which operates bus routes to colonies (settlements) in the West Bank and East Jerusalem²⁵⁶ and Volvo's Israeli distributor thereby not only profits from selling Volvo products used to demolish Palestinian homes and create illegal settlements, but also profits from the transportation of settlers.

Furthermore, the Volvo Group also operates in Israel and the oPt through its subsidiary **Volvo Buses**. Volvo Buses is a leading manufacturer of buses and coaches, with physical presence all over the world. Although Volvo vehicles and construction equipment are distributed within Israel by Mayer's Cars and Trucks, Volvo Buses is also more directly engaged in Israeli operations, as the owner of 26.5% of the Israeli company, **Merkavim**. The remaining 73.5% of Merkavim is owned by Mayer's Cars and Trucks Ltd.²⁵⁷ Merkavim supplies armored buses for Egged, which is the largest public transportation operator in Israel, to be used in the oPt.²⁵⁸ Together with the Israeli Military and the Israeli Ministry of Security, Merkavim has developed the Mars Defender, which is a specially designed armored bus used to transport settlers, soldiers and Israeli citizens within the oPt. Another Merkavim bus, the Mars model, was developed for the Israeli prison authorities and is a high security bus used to transport Palestinian prisoners inside the oPt and also from the West Bank to detention centers located in Israel - outside of the occupied territory - in violation of International Humanitarian Law as per Article 76 of the Fourth Geneva Convention.²⁵⁹

Both the Central Company for the Development of Samaria and the Company for the Development of the Binyamin Council in the West Bank use buses produced by Volvo Buses for transportation services to the illegal Israeli colonies (settlements). The organization Who Profits has also received

253 Mayer Cars and Trucks Co. Ltd., *About The Group*, available at: <http://www.mct.co.il/index.aspx?id=4143>

254 Who Profits, *Mayer's Cars and Trucks*, 19 April 2012.

255 *Ibid.*

256 Who Profits, *Kavim Public Transportation*, 19 August 2012.

257 Who Profits, *Merkavim Transportation Technologies*, 14 April 2012.

258 *Ibid.*

259 *Ibid.*

information from the Israel Prison Service confirming that they use Volvo's buses for the transportation of Palestinian prisoners.²⁶⁰ Palestinian prisoners are often transported by Israel to detention centers located outside of the occupied territory, in violation of International Law.

Moreover, two Volvo Group subsidiaries - **Volvo Trucks** and **Volvo Construction Equipment** - supply products through Mayer Cars and Trucks Ltd., which are used in the demolish Palestinian homes and in the construction of the Annexation Wall and of Israeli colonies and their infrastructure.

Volvo's equipment has been used, *inter alia*, in:

- The demolition of Palestinian homes in the oPt (including in the South Hebron Hills, in Sur Baher, Silwan, Wadi Qaddum, Shikh Jarrah, Issawiya and in Beit Hanina in East Jerusalem on 24 November 2011 resulting in the forcible transfer of 20 people including six children),²⁶¹
- The construction of the Annexation Wall near Al-Walaja and the Huwwara checkpoint on Route 443,²⁶²
- The construction of the Har Gilo colony (settlement), as well as the Barkan settlement industrial zone;
- The demolition of Palestinian homes inside the Green Line and in attempts to evict Bedouin Communities for their lands in the Naqab,²⁶³
- The transportation of Israeli settlers, soldiers and civilians inside the occupied territory thereby facilitating acts of colonial transfer and the overall viability of the colonial project;
- The transportation of Palestinian prisoners to locations outside the occupied territory in violation of international law,²⁶⁴
- Operates two Volvo-certified garages in the settlement industrial zones of Mishor Addumim and Atarot, in the oPt, thus participating in Israel's colonial endeavor by maintaining a physical presence in Israeli colonies and actively benefitting from economic incentives attached to colonial transfer.

260 Who Profits, "Volvo Group (AB Volvo)."

261 Who Profits, *Facts of the Ground: Heavy Engineering Machinery and the Israeli Occupation*, July 2014, p. 71; Adri Nieuwhof, *Home Demolitions in Beit Hanina Executed with Volvo and Hyundai Equipment*, 16]]}}}, «schema»:»<https://github.com/citation-style-language/schema/raw/master/csl-citation.json>», 3 December 2011, available at: <https://electronicintifada.net/blogs/adri-nieuwhof/home-demolitions-beit-hanina-executed-volvo-and-hyundai-equipment#.Tt2pyHrdc1d>.

262 Who Profits, *Facts of the Ground: Heavy Engineering Machinery and the Israeli Occupation*, July 2014, p. 71

263 *Ibid.*

264 *Ibid.*

OECD: Sweden is a Member State

UN Global Compact: AB Volvo Group has been a participant since 24 December 2001.²⁶⁵

Statement of Commitment to Respect Human Rights: Within their Code of Conduct, Volvo states that:

“The Volvo Group shall support and respect the protection of internationally proclaimed human rights and make sure the Group is not complicit in human rights abuses.”

6.3 Caterpillar and Volvo’s Complicity

Caterpillar and Volvo are complicit in acts of population transfer including forcible transfer and colonial transfer, and their associated illegalities, as outlined in Chapter 1, through the use of their products in the physical destruction of Palestinian homes and resources and in the physical construction of Israeli colonies (settlements) and infrastructure which serves these colonies. Caterpillar and Volvo are thus complicit in gross violations of International Humanitarian Law, International Criminal Law and International Human Rights Law.

Caterpillar and Volvo’s actions satisfy the elements for all three modes of complicity – direct, indirect and silent.

- I. *Direct Complicity:* As outlined in Chapter 2, the International Commission of Jurists defines direct, or legal, complicity as **causing or contributing** to human rights abuses through enabling, exacerbating or facilitating the abuse. In this regard ‘enabling’ means that the abuses would not have occurred without the contribution of the company. ‘Exacerbates’ means that the company has made the situation worse and that without its contribution, some of the abuses would have occurred on a smaller scale or with less frequency. ‘Facilitates’ means that that company’s conduct made it easier to carry out the abuses or that they changed the way the abuses were carried out, including the methods uses, the timing or their efficiency.²⁶⁶ Further, the company must have **knowledge** of or foresee the risk of their conduct and must also be ‘proximate’ to the principal perpetrator of the human rights abuses “either because of geographic closeness, or because of the duration, frequency, intensity and/or nature of the connection, interactions or business transactions concerned”.²⁶⁷

265 United Nations Global Compact, “AB Volvo Group.”

266 *Ibid.*

267 International Commission of Jurists (ICJ), *Report of the ICJ Expert Legal Panel on Corporate Complicity in International Crimes: Corporate Complicity & Legal Accountability. Volume 1: Facing the Facts and Charting a Legal Path*, 2008, Vol. 1, p. 9.

Furthermore, the UN Global Compact has defined direct complicity as **the provision of goods or services that a company knows will be used to carry out the abuse.**

As has been shown above, Caterpillar and Volvo satisfy these requirements in contributing to the abuses through its supply of equipment through partners (and directly to the Israeli army through the United States Foreign Military Sales program in Caterpillar's case) which it knows will be used to carry out a multitude of violations of international law, including those pertinent to acts of population transfer, while also maintaining sufficient proximity to the principal perpetrator.

- Caterpillar and Volvo certainly **contribute through facilitation** whereby the supply of its equipment, (including the customized modifications to its equipment in Caterpillar's case), makes it easier to carry out the abuses and indeed arguably changes the way the abuses are carried out;
- Secondly, Caterpillar and Volvo's complicity in violations of international law has been repeatedly brought to its attention (in Caterpillar's case by numerous bodies including Amnesty international, Human Rights Watch, mechanisms is the United Nations, religious organizations and NGOs);²⁶⁸
- Furthermore, Caterpillar and Volvo's long-standing relationships with Zoko Enterprises Ltd. and Mayer's Cars and Trucks Ltd., respectively (and Caterpillar's direct supply of equipment to the Israeli military) establishes their proximity to the principal perpetrator of gross human rights abuses in the oPt.

A former UN Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967 highlighted Caterpillar and Volvo's troubling involvement in human rights abuses in the oPt.²⁶⁹

- II. Indirect/Beneficial Complicity:* through its lucrative business relationships with Zoko Enterprises Ltd. and Mayer's Cars and Trucks Ltd., respectively, Caterpillar and Volvo are indirectly complicit in and stand to benefit from violations of international law.
- III. Silent Complicity:* in their failure to speak out against the human rights abuses being perpetrated by their business partners, or to acknowledge the illegality of their actions, Caterpillar and Volvo are thereby offering an element of legitimacy to their actions and are thus silently complicit.

²⁶⁸ UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967*, A/67/379, 19 September 2012.

²⁶⁹ *Ibid.*

A. Caterpillar and Volvo's Responsibility

In order to honour its responsibility to respect human rights as per the UN Guiding Principles, Caterpillar and Volvo must thus adopt a policy of commitment to respect human rights; implement a due-diligence process; and activate an appropriate remediation process for victims of those abuses it was complicit in.

Specifically, they must cease causing or contributing to the human rights abuses and to prevent and mitigate through abuses directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

Crucially, they must use its already sizeable leverage against the principal perpetrator, seek to increase its leverage if needs be, or leverage failing, should consider terminating its relationship with the perpetrator.²⁷⁰

B. BADIL's Follow-up Actions in Pursuing Accountability

BADIL have conducted an assessment of Caterpillar and Volvo's complicit activities and have outlined their findings in this report. BADIL have further initiated engagement with Caterpillar and Volvo and will further seek to engage with UN mechanisms and public campaigning, looking to the future. BADIL will also target other complicit companies using the above-illustrated models of assessment.

BADIL also encourages other interested organisations and advocates to utilize the information provided here and elsewhere in pursuing these and other aforementioned mechanisms in securing accountability.

270 As per the UN Guiding Principles on Business and Human Rights; See Chapter 3 above.

6.4 Caterpillar and Volvo's Complicity in Photos



Construction in Har Homa Israeli settlement, Beit Sahour, West Bank, 3.3.2009

A Caterpillar digging machine is seen at a construction site in Har Homa Israeli settlement, which is built on land belonging to the West Bank town of Beit Sahour, March 3, 2009. There are over 400,000 settlers in the West Bank and in East Jerusalem. Despite numerous international calls to stop the settlement expansion, the number of settlers and settlements keep on increasing. All settlements are illegal according to international law.



Construction of a police station, Ma'ale Adumim, West Bank, 23.8.2007

Construction of the road leading to the police station in the E1 area, in the proximity of the illegal settlement of Ma'ale Adumim, August 23rd, 2007.



House demolition, Wadi Qaddum, East Jerusalem, 20.3.2007

A Volvo bulldozer and a border policemen seen during a house demolition in Wadi Qaddum, a Palestinian neighbourhood in the Silwan area, East Jerusalem, March 20th, 2007.



Protest against land annexation, Eizariya, West Bank, 17.3.2015

An Israeli soldier arrests an Israeli activist during a protest against Israeli plan to annex parts of the West Bank area behind the Wall (E1) to the Jerusalem district, at the city of Eizariya, West Bank, on Israeli elections day, March 17, 2015. Over 15,000 Palestinians live in what Israel terms as the 'E1 area' in 45 communities.



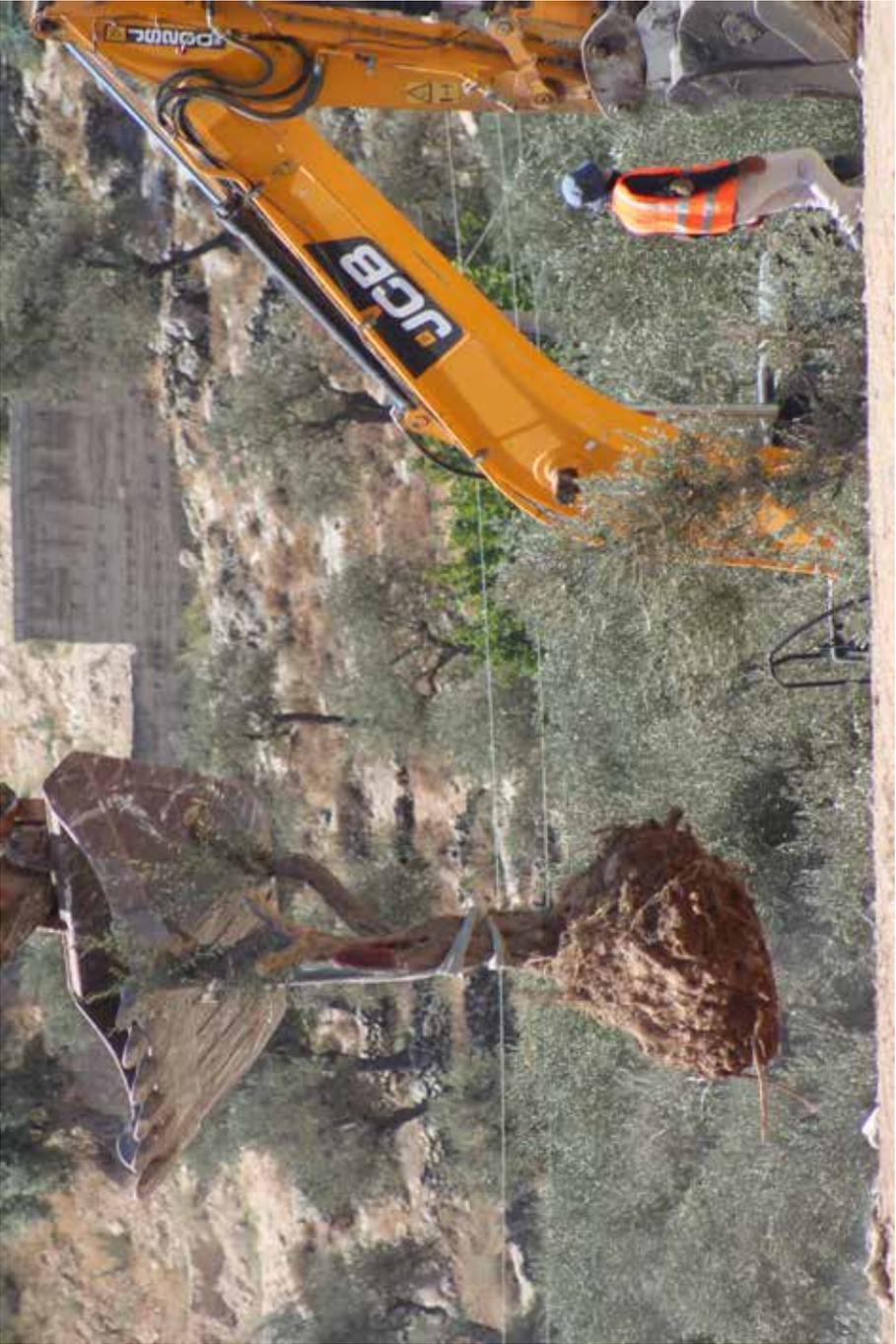
House demolition, Silwan, East Jerusalem, 16.1.2007

Bulldozers, guarded by Israeli border police, being transported to Silwan to excute a house demolition, East Jerusalem, January 16, 2007.

The following 5 photos: JCB, Caterpillar and Doosan bulldozers used by Israeli occupying forces to uproot olive trees from Palestinian confiscated land for the purpose of building the Israeli Annexation and Separation Wall in Bir Ona, Beit Jala in the West Bank. July 2015
(©Mohammad al-Azza).











Conclusion

As has been laid out within this report, the ongoing acts of population transfer implemented by Israel in Palestine amount to severe violations of human rights, as well as contravening other categories of international law such as International Humanitarian Law and International Criminal Law. Further, many corporate entities are complicit in these acts of population transfer and associated unlawful policies and practices. Israel consistently demonstrates its unwillingness to uphold international law, and the international community remains reluctant to take meaningful steps towards ending Israel's impunity for such violations. As such, it is incumbent upon Civil Society Organizations (CSOs) and other such advocates for justice to pursue accountability through alternative channels. The issue of corporate complicity presents one such channel through which to apply effective pressure on third parties to change their policies and utilize their leverage, which in turn applies pressure on Israel to address its own unlawful policies and practices.

International law offers a viable mechanism with which to hold States and corporations accountable for human rights violations when applied appropriately and diligently. The UN Guiding Principles on Business and Human Rights serves as the primary international instrument for addressing the issue of corporate responsibility in relation to human rights abuses. Both legal and non-judicial mechanisms are available to interested and affected parties in seeking redress for adverse human rights impacts. While the option to legal recourse before international and domestic judicial mechanisms also presents an avenue for redress of human rights violations by businesses, legal avenues do not always cater to the pursuit of accountability for all forms of complicity. Furthermore, taking legal action may be beyond the capacity and mandate of many interested actors and organizations. As such, non-judicial grievance mechanisms constitute a valuable tool.

The UN Guiding Principles and non-judicial grievance mechanisms can be employed by legal advocates, non-governmental organizations, civil society organizations, scholars, human rights defenders and activists to address corporate violations of humanitarian and human rights law within the

context of Israel and the occupied Palestinian territory. In examining the cases of Caterpillar and Volvo it is clear that these companies (and associated subsidiaries) are complicit, through both direct and indirect facilitation of unlawful practices, including population transfer and its associated acts, which are illegal under international law. Using the aforementioned frameworks for the seeking of redress, these and other companies complicit in unlawful practices, may be held accountable by way of legal and non-legal mechanisms. These include, more specifically: follow-up strategies, such as engagement with the company in question; use of the Guiding Principles as soft law in domestic courts; lobbying for legislation for corporate accountability and monitoring by national governments; engagement with the UN Working Group on Business and Human Rights to identify and address challenges in the implementation of the Guiding Principles; public awareness-raising in both the country where non-compliance has occurred (host country) and the country where the company is domiciled (home country), as well as any other location in which the company in question has dealings; emphasizing and highlighting the social responsibility of investors, stakeholders and consumers; public shaming to encourage companies to address their negative human rights impacts; and informing the business partners of the company in question so as to create leverage to motivate the company to change its practices.

Through both legal and non-legal avenues, companies can be confronted and pressured, directly and indirectly, to modify their practices when in violation of international law. While this paper examined Caterpillar and Volvo as specific case studies, the analysis provided can be applied to other corporations operating within and outside Israel and the occupied Palestinian territory.

Recommendations

States

- States should take appropriate legislative and administrative measures to ensure protect human rights and ensure that businesses operating in or domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, respect human rights throughout their operations. The State's duty to protect human rights includes: enforcing laws aimed at requiring business to respect human rights; ensuring that their laws governing business operations enable respect for human rights; providing effective guidance to businesses; and encouraging businesses to communicate how they address human rights impacts;
- States should develop and adopt National Action Plans in conformity with the UN Guiding Principles to be incorporated into national laws;
- States should ensure that there are sufficient remedies available and readily accessible to victims of corporate violations of international and domestic law;
- States shall cooperate to bring to an end any breaches of peremptory norms of international law and shall neither recognize as lawful a situation created by such a serious breach, nor render aid or assistance in maintaining that situation.

Non-State Actors

Companies

- Businesses must avoid causing or contributing to human rights abuses, and address any such abuse with which they are involved; and must seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts;

- Business should have certain policies and processes in place according to their size and circumstances including:
 - A policy of commitment to meet their responsibility to respect human rights;
 - A human rights ‘due diligence’ process to identify, prevent, mitigate and account for how they address their impacts on human rights;
 - Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

- In the performance of their due diligence obligations, businesses must:
 - Identify and assess actual or potential negative human rights impacts with which the business may be involved through its own activities or which may be directly linked to its operation, **products** or services or by its **business relationships**;
 - Adopt measures to take effective action in response to these findings;
 - Track the efficacy of these responses;
 - Adopt measures to communicate these responses.

- In cases where a company *contributes, or may contribute*, to adverse human rights impacts, mitigation of negative impacts can be pursued by the company through using its leverage against the offending entity in order to alter its harmful practices;

- In cases where a company has not caused or contributed to an adverse human rights impact, but is rather directly linked to the negative impact through its operations, products or services by its ‘business relationship’ with another entity, then the company should first apply its leverage, where available, in compelling the offending entity to alter its harmful practices. Where leverage is lacking, the company should then seek to increase its leverage, where possible. Where the company lacks the leverage to prevent or mitigate the adverse impacts, and is unable to increase this leverage, then the company should consider terminating the relationship;

- Businesses should exercise enhanced due diligence in situations involving vulnerable “at-risk” populations; armed conflict; or where the risk of promoting severe human rights impacts is high.

Civil Society

In pursuing accountability for corporate complicity, organizations and advocates should:

- Conduct an assessment of a company's complicity including establishing the scope of international laws breached and the modes of the company's complicity (direct, indirect, silent);
- Conduct an assessment of the company's requisite actions vis-à-vis its corporate responsibility;
- Engage with various mechanisms as per their mandates and capacities. Such mechanisms include: The complicit company itself; Courts; National governments; OECD National Contact Points; National human rights institutions/Ombudsman; The UN: including the Working Group on Business and Human Rights as well as other mechanisms; Regional human rights protective systems; Public Awareness Raising, the Palestinian civil society campaign of boycott, divestment and sanctions (the BDS movement); Financial institutions and shareholders; Other business relationships; and the UN Global Compact.

UN

It is recommended that the UN work towards developing a binding instrument on the implementation of the business and human rights framework.

Palestinian Authority and PLO

It is recommended that the PA and PLO:

- Establish a specialized department to observe, document and seek accountability for corporate complicity in the oPt;
- Develop a binding instrument on the boycott and divestment of corporations complicit in violations of Palestinian people human rights, in cooperation with the Arab League.

