INSTITUTIONALISED IMPUNITY

Israel’s Failure to Combat Settler Violence in the Occupied Palestinian Territory
ACKNOWLEDGEMENTS

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Summary

Attacks by Israeli settlers in the occupied West Bank against members of the Palestinian population and their property are an extensive, long-term, and worsening phenomenon. According to the United Nations Office for the Coordination of Humanitarian Affairs, the number of settler attacks resulting in Palestinian casualties and property damage increased by over 144 percent in 2011, compared to 2009, with an average of eight incidents per week, and over 400 incidents throughout the year. Al-Haq has documented a significant increase in incidents of settler violence against the Palestinian population of the West Bank since 2011. In 2013, the report of the United Nations International Fact-Finding Mission on Settlements highlighted the failure of the Israeli authorities to enforce the law by investigating such incidents and taking measures against their perpetrators. The Fact-Finding Mission came to the "clear conclusion that there is institutionalised discrimination against the Palestinian people when it comes to addressing violence."  

Acts of settler violence are intended, organised, and publicly represented to influence the political decisions of Israeli State authorities. For settlers, some acts of violence facilitate the transfer of Palestinians off their land to make way for the construction of settlements, in the expectation that the Israeli authorities will eventually formally recognise the settlement’s establishment or expansion. Other acts of settler violence are intended to exert a toll on the Israeli government for any measure that negatively affects settler interests, as a form of retaliation against restrictions on settlement construction or evacuations of settlements. Settler groups, who often refer to such acts of violence as ‘Price Tag’ attacks, have mobilised a public campaign that advocates for the use of physical violence against the Palestinian civilian population and their property.

Israel’s legislative and administrative regime in the West Bank, coupled with its institutional unwillingness to prosecute offending settlers, shields settlers from the consequences set out in law and has allowed such violence against the Palestinian civilian population to continue and intensify. Settlers involved in the planning and perpetration of such acts have remained largely immune from the enforcement of the law and, in some cases, have even benefited from official support from State authorities for educational, social and religious activities. Such attacks have severely harmed the rights and livelihoods of the Palestinian population in the occupied territory. This systematic lack of law enforcement against settlers as well as the failure to investigate such incidents have led to the creation of a culture of impunity and contributed to an increase in the frequency and severity of such attacks.

This report examines the effects of such acts of violence by settlers, including those under the ‘Price Tag’ label, and Israel’s deficient institutional practice of law enforcement to prevent and punish settler attacks. As an Occupying Power, Israel has a responsibility under both international humanitarian and human rights law to ensure the protection of the Palestinian civilian population subject to its control, including by preventing both the carrying out and incitement of acts of violence against them. Israel’s failure to protect the occupied Palestinian population entails its international responsibility for wrongful acts. Some criminal acts committed by settlers against Palestinians in the OPT may not only result in sanctions against individual settlers by certain countries, but might also entail their individual criminal responsibility.

Acts of settler violence also entail the responsibility of third party States, as they have a duty under customary international law not to recognise, aid or assist serious breaches of peremptory norms of international law. Support of such violent acts by private entities in Third States may have consequences under the national law of those States. Third States are under an obligation to combat organised crime in accordance with their domestic laws and public policy, as well as their international law obligations.

The report calls on the Israeli government to take effective law enforcement measures to combat settler violence, and recommends that Third States and international actors take steps to ensure that individuals or groups under their jurisdiction do not lend support, financial or otherwise, to violent settler groups in the interest of ensuring their own domestic rule of law. It further calls on Third States, in particular European countries to take risk aversive measures to ban the entry of individual settlers involved in such violent acts to their territory.

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1 United Nations International Fact-Finding Mission on Settlements, ‘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’, Advanced Unedited Version (January 2013) UNHRC 22nd session, paragraph 107.

1. Introduction

Israel's settlements are established and maintained on the basis of internationally-unlawful legislative and administrative measures that have served to further the de facto annexation of large parts of the territory of the West Bank. The first Israeli settlement in the occupied territory, 'Kfar Etzion', was established only a few months after the beginning of Israel's occupation in June 1967. The construction of settlements was formally declared as part of the government's agenda in 1977, when a group of Israeli settlers, ideologically committed to the settlement of 'Eretz Yisrael', initiated the 'Gush Emunim' movement (Hebrew for 'Bloc of the Faithful').

Since 1967, over 250 settlements and outposts have been established by the Israeli authorities in the West Bank, including East Jerusalem. The population of Israeli settlements in the OPT numbers over 250,000 settlers, including an estimated 200,000 in East Jerusalem. Israel's settlement project is widely considered to be a serious violation of international law by States and international organisations. According to Israel's Ministry of Interior, the number of Israeli settlers living in the West Bank rose by 4.3 percent in 2011 alone. Initially, the official state rationale for the establishment of settlements was that they were necessary to provide for Israel's security. The current official Israeli government position is that the settlements are established on 'disputed' land and therefore are not in violation of international law.

Israel's official government position continues to reject the de jure application of the law of belligerent occupation to the OPT, and, in practice, the government treats much of the territory, and particularly the settlements, as part of the territory of Israel. Israel's institutions not only undertake the necessary measures to appropriate Palestinian land for the transfer of Israeli civilians into the OPT. Israeli supreme judicial authority, the High Court of Justice, has avoided ruling on the legality of settlements by declaring as 'non-justiciable' and deferring to the government's decision on the matter.

In 2005, an Israeli government report, authored by Talia Sasson, identified 105 unofficial outposts. In 2012, Israeli Prime Minister Benjamin Netanyahu reportedly froze new settlement construction. Since 2009, settlers groups have retaliated violently to the albeit limited measures taken by the Israeli government to place some restrictions on construction in the OPT in response to international pressure. Yet, the settler movement has gained many allies in the Israeli political system. All of Israel's governments since 1967, despite their otherwise differing political agendas, have provided support to maintain the settler enterprise.
2. Settler Violence in the Occupied Palestinian Territory

Incidents of settler violence against Palestinians – involving the use of live ammunition, other forms of assault, and the destruction and denial of access to property – have intensified in frequency and severity over the course of the last several years, becoming one of the primary concerns for the safety of the Palestinian civilian population in the West Bank. These incidents regularly result in physical injury to Palestinians and severe damage to private and public property. They consist of attacks against persons, private homes and property, mosques and schools,24 the large-scale destruction of agricultural land, as well as theft of crops.

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), the number of settler attacks resulting in Palestinian casualties and property damage increased by 32 percent in 2011 compared to 2010, and by over 144 percent compared to 2009.25 OCHA’s database of weekly reports indicates a clear escalation in acts of settler violence throughout 2011, reporting an average of eight incidents per week, with over 400 incidents that resulted in casualties or damage to property throughout the year.26 In the same year, five Palestinians (including two children) were killed and over 1,000 injured (of whom nearly a fifth were children) by Israeli settlers or security forces in incidents related to settlements.27 In July 2013, OCHA reported at least three Palestinian civilians being physically assaulted and injured, including with pepper spray and stones.28 Throughout October 2013, OCHA recorded nine incidents of burning, damage and theft of olive trees. Thus far in 2013, OCHA has recorded the damage or destruction of over 8,800 trees or saplings in the context of reported settler-related incidents.29

Settler attacks have intensified during agricultural seasons such as the olive harvest, which takes place from mid September through to November. In 2012, Al-Haq documented more than 250 settler attacks against Palestinian farmers, resulting in the destruction, burning, uprooting or damaging of at least 747 olive trees. A total of over 7,500 olive trees were damaged or destroyed by settlers during 2012. Most of these incidents occurred in the areas surrounding Nablus, Qalqilya, Bethlehem, Ramallah and Hebron, in close proximity to Israeli settlements.30 OCHA recorded 359 incidents of settler violence resulting in Palestinian casualties or property damage in 2012, and an additional 49 incidents during January 2013.31

The measures taken by the Israeli law enforcement authorities in response to such attacks have been highly inadequate, as discussed below. Israel’s national police, responsible for enforcing the law against settlers, regularly fail to arrive at the scene of the incident in time to intervene or prevent escalation. The Israeli army, often present during attacks by settlers, regularly fails to provide any protection to Palestinian civilians under attack and generally refuses to take any restraint measures against settlers, therefore often becoming passive bystanders during such attacks.

“Confrontations were taking place between young villagers [of Asira al Qibliya village] and 150-200 settlers from the ‘Yitzhar’ settlement. I saw four settlers, who were carrying M16 rifles, at a distance of 100 metres east of the confrontation site [...]. The young men told me the settlers had set fire to the grass and wheat crops. Settlers started throwing stones at the young man and at me [but the Israeli soldiers present] did not stop them or force them away [...]. Four settlers, along with three Israeli soldiers, were standing about 20 metres from me. A settler was carrying an M16 rifle, and pointed his weapon at me [...]. My nephew Fat‘hi ‘Asayrah, 24, had been running fast and stopped in front of me. The Israeli settler fired two bullets and Nimer fell to the ground. I saw blood gushing out from my nephew’s face and neck [...]. During the confrontation, the Israeli soldiers fired tear gas and sound grenades as well as live bullets in the air, dispersing Palestinian villagers. In the meantime, the fire was destroying fields cultivated with wheat and malt crops. However, the Israeli occupying forces denied the Burin Civil Defence Centre access to a fire extinguisher to put out the fire.”

Extract from Al-Haq Affidavit No. 7321/2012. Given by Bassam Nijem Abdul Rahman Asayrah, a resident of Asira al Qibliya village, Nablus governorate, on 21 May 2012.

24 UN OCHA, ‘The humanitarian impact of Israeli settlement policies: fast facts’ (January 2012), 1.
29 The figures do not include casualties by Israeli forces. UN OCHA, ‘Protection of Civilians: Weekly Report, 8-11 February 2013 (11 February 2013), 2.”
In some cases, the Israeli army has used force against Palestinian civilians under attack by settlers. In an incident in the village of Fara’at (Qalqilya Governorate), in March 2012, a group of about 30 settlers started throwing stones at the home of the al-Tawil family. When the Israeli military patrol vehicles arrived at the scene, Israeli soldiers started firing tear gas and stun grenades to disperse a group of Palestinian youths throwing stones in response to the settlers’ attack. The Israeli soldiers on site proceeded to raid Mohammad al-Tawil’s house, arrest Mohammad and his three brothers, and attack their mother.

“I saw about 30 Israeli settlers in civilian clothes approaching our house. They were standing about 50 metres away. Some settlers wore masks and some carried shovels, sticks and sharp tools [...]. Having stopped at a distance of two metres from the house, the settlers started to throw stones, breaking the northern glass window of the house. My brother and I threw stones back at the settlers in order to keep them away from the house. About 10 minutes later, 10 Israeli military patrols arrived carrying around 30 soldiers in military uniform. They fired stun and tear gas grenades towards the young men to disperse them. While we were on the roof, settlers pointed to my brothers Tawfiq and Fadi and me. Later, almost 20 Israeli soldiers raided my family’s house. The soldiers assaulted my mother, Tamam Mohammed Mustafa al-Tawil, and aunt, Muna Abdul Rahman al-Tawil, because they prevented them from arresting me. The soldiers beat my mother and aunt with their rifles. Having inquired about my name, two Israeli soldiers grabbed me and forced me out of the house.”

Extract from Al-Haq Affidavit No. 7156/2012. Given by Mohammed ‘Awwad Abdul Khaleq al-Tawil, a resident of Fara’at village, Qalqilya governorate, on 3 March 2012.

In 2012, Al-Haq documented a significant increase in the number of settler attacks and in the severity of violence used. On 16 December 2012, a Palestinian family was travelling in a taxi near their village of Nahhalin, in the Bethlehem Governorate, near the ‘Gush Etzion’ settlement bloc. When the taxi came close to ‘Bet Ein’ settlement, an Israeli settler threw a Molotov cocktail that landed inside the vehicle, setting it on fire. As a result, the driver lost control of the vehicle and crashed into a safety barrier on the side of the road, leaving the passengers trapped for several minutes, while the vehicle was on fire. All the passengers sustained severe burns.

In another incident, on 28 August 2012, about 50 settlers violently raided the house of Khaled and Taghreed Taher Daraghamh, in Al Lubban ash Sharqiya (Nablus Governorate). Settlers entered the house shouting and proceeded to beat some of the family, including women and children, with batons. Israeli soldiers who arrived on the scene proceeded to interrogate members of the family and arrested two of them, who were later detained at the police station in ‘Sha’ar Binymanim’ settlement.

21 ‘Price Tag’ Attacks

Settlers have perpetrated so-called ‘Price Tag’ attacks against Palestinian persons and property since 2008, in response to restrictions imposed or understood by the Israeli authorities on settlement construction or settler groups. The stated aim of ‘Price Tag’ attacks is to prevent the Israeli authorities from adopting such restrictive measures by threatening them with potential counter-attacks against Palestinians. As put by one settler from ‘Yitzhar’ settlement: “[the Israeli authorities] should learn not to mess with us.”

The attacks are typically carried out by organised groups of settlers who use mobile technology and social media – including online discussion forums such as ‘Eretz Moledet’ (Hebrew for ‘Motherland’), used by the so-called ‘Hilltop Youth’ to coordinate their actions. ‘Price Tag’ attacks often involve damage to property, including desecration of religious sites, defacing public facilities and torching cars, but they often also result in serious bodily injury and sometimes death of Palestinians. A prominent feature of many ‘Price Tag’ attacks is the graffiti left by the perpetrators consisting of insults and threats. In addition to the widespread occurrence of such acts, the parallel dissemination of public materials inciting their commission attest to the level of organisation and coordination amongst settler individuals and groups in their planning and execution.

In 2011, ‘Price Tag’ attacks intensified in response to Israeli’s forced evacuation of a number of outposts across the West Bank. Following the demolition of settler outposts and farms, some settler groups announced their intention to take revenge against the Israeli authorities by engaging in violence against Palestinians. They proceeded to carry out their threats through a series of attacks against Palestinians in Hebron and Huwwara (Nablus Governorate), which consisted of destroying cars, burning tires and throwing petrol bombs at residential buildings.

33 For example, after a bus transporting Israeli settlers was evacuated by the Israeli Civil Administration and police, about 150 settlers attacked farmers in the Palestinian village of Burin (Nablus Governorate), three stores, set fire to the farm land and caused damage to the property; E Weiss, ‘Settlers after Yitzhar: A “price tag” was given to the evacuations’ (ynet 25 July 2008) <http://www.ynetnews.com/articles/0,7340,L-3679819,00.html> accessed 19 March 2013. See also, UNESCO Chair on Human Rights and Democracy at An-Najah National University: Outposts and Price Tag Violence A Blow upon a Bruise (September 2012) 31-32 <http://www.najah.edu/sites/default/files/shares/upload/outposts_and_price_tag_violence_a_blow_upon_a_bruise_- sept_2012.pdf> accessed 1 October 2013.
34 E Weiss, ‘Settlers after Yitzhar: A “price tag” was given to the evacuations’ (ynet 25 July 2008) <http://www.ynet.co.il/articles/0,7340,L-3679819,00.html> accessed 19 March 2013.
37 A Issacharoff, ‘Palestinian mosque torched in suspected “price tag” operation by settlers’ (n 21) and The Associated Press, ‘Palestinian school set on fire, vandalized with “regards from the hills” graffiti’ (n 21).
29 ‘Price Tag’ attacks are acts committed by so-called ‘Hilltop Youth’ whom the General Security Service (GSS) described as consisting of young people from the Hebron area who engage in acts of violence against Palestinian farmers in the West Bank. The ‘Hilltop Youth’ groups are often described as violent bodies of young people engaged in so-called ‘Price Tag’ attacks. For instance, after a bus transporting Israeli settlers was evacuated by the Israeli Civil Administration and police, about 150 settlers attacked farmers in the Palestinian village of Burin, vandalizing three stores, setting fire to the farm land and causing damage to the property. E Weiss, ‘Settlers after Yitzhar: A “price tag” was given to the evacuations’ (Ynet 25 July 2008) <http://www.ynetnews.com/articles/0,7340,L-3679819,00.html> accessed 19 March 2013. See also, UNESCO Chair on Human Rights and Democracy at An-Najah National University: Outposts and Price Tag Violence A Blow upon a Bruise (September 2012), 31-32 <http://www.najah.edu/sites/default/files/shares/upload/outposts_and_price_tag_violence_a_blow_upon_a_bruise_- sept_2012.pdf> accessed 1 October 2013.
Incidents documented by Al-Haq in 2012 included a group of settlers burning a car and spray-painting Hebrew graffiti on the wall of a house stating “you will pay the price” in Al-Nabi Elias village (Qalqiliya Governorate) in February. In June, a mosque in the village of Jab’a (Ramallah Governorate) was set on fire and graffiti carrying messages such as “[t]he war has begun” and “you will pay the price” was spray-painted on the walls of the mosque. Similarly violent acts were carried out in Shuafat neighbourhood, East Jerusalem. On 28 August 2012, about 30 settlers and five Israeli soldiers raided Se’ir village (Hebron Governorate) burning two cars, and spray-painting ‘Price Tag’ graffiti on one of the homes.

Harassment and acts of violence against Palestinians have also been commonplace in East Jerusalem. On 7 and 11 February 2012, the playground at a bilingual school in Beit Safafa neighbourhood in East Jerusalem was sprayed with graffiti that said “death to Arabs”. On 10 June 2012, cars belonging to Palestinian residents of Shuafat refugee camp were vandalised with graffiti that read “Ulpana”, the name of an illegal outpost. In February and July 2012, threatening slogans were found spray-painted on the Jerusalem office walls of Peace Now, an Israeli human rights group, as well as on the home of one of its researchers.

The targets of ‘Price Tag’ attacks have often included places of religious worship. On 4 September 2012, the door of a Christian monastery in Latrun, located near the illegal outpost of Migron (Jerusalem Governorate) was set on fire, and Hebrew slogans were found spray-painted on the monastery’s walls, including religious insults. In a similar incident, on 10 September 2012, graffiti stating “Price Tag Migron” was found on the wall of a mosque in Dura village, southwest of Hebron. On 2 October 2012, graffiti was found on the main door of the Convent of Saint Francis in Jerusalem; it read “Price Tag” and consisted of insults against Jesus. The incident was reported to have been investigated by the Israeli police but, as far as we understand, did not lead to the prosecution of potential perpetrators.

2.2 Public and Official Support for Settler Violence

While the exact origins of 'Price Tag' attacks remain unknown, some settler groups have publicly identified with their perpetration— including settlers from 'Moon Farm' settlement, south of Hebron, and 'Yitzhar' settlement, near Nablus. Public figures, including officials, have supported and justified the acts of violent settler groups, which have also, in some cases, benefited from financial and administrative support from Israeli government institutions. This support has contributed to the promotion of such activities amongst settler communities.

Prominent religious figures, including Rabbi Itzhak Ginsburg, the president of the Yesod Tomb Yeshiva, a religious seminary in 'Yitzhar' settlement, Rabbi David Dodkowitz, 'Yitzhar' settlement's Chief Rabbi, and Rabbi Itzhak Shapiro, mayor of 'Yitzhar' settlement, have publicly supported the use of 'Price Tag' attacks to deter government action against settlements.53 Rabbi Itzhak Shapiro called for “mutual debt” in the West Bank and inside Israel, “when someone is hurt in one place there needs to be a response everywhere”, he stated.54 His book, ‘Torat Hamelech’ (Hebrew for ‘The King’s Torah’), and public speeches have called for acts of revenge against the Palestinian civilian population and justified violence against non-Jews.55 Similarly, Rabbi Elieser Melamed, the mayor of ‘Bracha’ settlement near Nablus and head of ‘Bracha’ settlement’s religious seminary (‘Yeshiva’), publically supported ‘Price Tag’ attacks as “highly effective”.56 He called to “praise the dear youths of the hilltops who devote their lives to the settlement of the land,” as, according to him, “it is impossible not to appreciate their wonderful ability to direct their energy for sacred values.”57 Rabbi Melamed held that the ‘Hilltop Youth’ “should never stop demanding a ‘Price Tag’ from the people who threaten to demolish their houses”, since in doing so “they are realizing the vision of the prophets.”58

Some settler groups disseminate leaflets in synagogues and public places that encourage violence against the Palestinian population.59 The newsletter ‘Yesha Shalanu’ (Hebrew for ‘Judea and Samaria (sic) is ours’), distributed by the ‘Yesha’ Council,60 confirms claims presented by Rabbi Shapiro in ‘Torat Hamelekh’, which states that in order to bring non-Jews to believe in God, “[we] need to smash their wickedness.” A leaflet called ‘Ma’ayanet Hayehuda’ (Hebrew for ‘Springs of Salvation’), written by Rabbis Shmuel Eliyahu and Shlomo Aviner of ‘Beit El’ settlement, and Rabbi Yaakov Ariel of Ramat Gan, a town inside Israel, held that, “the conflict over land is a conflict over justice – a war between the sons of light and the sons of darkness.”61 A number of Israel’s political figures, including members of the Israeli parliament (Knesset), have supported violence against Palestinians.62 For example, Michael Ben-Ari, a member of Parliament from the ‘National Unity’ party, responded to the killing of five family members from ‘Itamar’ settlement in March 2011 by stating, “the Israeli government needs to execute price tag [measures] on behalf of the State […] to identify the village from which the despicable killers came, to deport its residents and to simply destroy it.”63 He also demanded that a settlement be constructed in place of the village.64

Members of Parliament Ben-Ari, Uri Ariel, Avraham Michaeli and Tzipi Hotovely also tabled a bill that seeks to shield Rabbis from incitement charges.65 In June 2011, Member of Parliament Yaakov Katz, chairman of the ‘National Union’ party, threatened to avenge the arrest of Chief Rabbi Dov Lior of ‘Kiryat Arba’ settlement, who also heads the Council of Rabbis for the whole of the West Bank, on incitement charges.66 In another instance, Member of Parliament Arieh Eldad, head of the Regional Council of ‘Kiryat Arba’ settlement, publicly expressed his support for settler acts of violence in response to the evacuation of the ‘Bet Hameriva’ (Hebrew for ‘House of Dispute’) in Hebron.67

56 Ibid.
57 Ibid.
59 ‘Torat Hamelech’ (Hebrew for ‘The King’s Torah’), and public speeches have called for acts of revenge against the Palestinian civilian population and justified violence against non-Jews.
60 For example, Rabbi Shapiro’s speeches inciting violence see <http://www.youtube.com/watch?v=s-68r1r98z8> accessed 1 October 2013.
62 Ibid.
63 Ibid.
64 For example, 91 leaflets were distributed by seven key religious nationalist groups during the course of three months, around the time of ‘Operation Cast Lead in the Gaza Strip. A Eldar, ‘Netanyahu is ignoring Abbas’ efforts to end Palestinian incitement’ (15 March 2011) <http://www.haaretz.co.il/archives/01340583.html> accessed 1 October 2013.
65 The Yesha Council is the umbrella organisation of the municipal councils of Israeli settlements in the West Bank. Municipal councils are the local authorities in Israel and have the status of a city. Yesha is the Hebrew abbreviation for Judea and Samaria (sic).
66 A Eldar, ‘Netanyahu is ignoring Abbas’ efforts to end Palestinian incitement’ (n 56).
67 A recent media report lists Israeli Knesset members who regularly engage in legislative initiatives, lobbying and media activity in support of settlements. The top ten MPs in terms of what has been defined as ‘activity of a national character’ were as follows (the number in parenthesis indicates number of ‘national’ activities): 1. Uri Ariel (National Union, 48); 2. Zeev Elkin (Likud, 34); 3. Yetti Lev-Ad (Likud, 27); 4. Arie Yehed Edut (National Union, 29); 5. Moshe Ya’alon (Likud, 18); 6. Danny Danon (Likud, 15); 7. Moshe Kahlon (Likud, 14); 8. Michael Ben-Ari (National Unity, 13); 9. Benny Begin (Likud, 13); 10. Tzipi Hotovely (Likud, 13). Numerous statements in favour of settlements were also made by candidates in the January 2013 elections. J Lis, ‘Right-wing NGO exposes extent of Israel’s support of West Bank settlements’ Haaretz (24 November 2011) <http://www.haaretz. co.il/news/1.907460> accessed 1 October 2013; R Shargai, ‘The settlements new policy: ‘price tag’ on every evacuation by the army’ Haaretz (3 October 2008) <http://www.haaretz.co.il/hasite/2008/03/29/109117.html> accessed 1 October 2013.
68 A Eldar, ‘Netanyahu is ignoring Abbas’ efforts to end Palestinian incitement’ (n 56).
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71 Ibid.
72 Ibid.
Not only have Israeli government bodies provided funds for the settler movement through a variety of channels, but individual Israeli officials have voiced support for settler attacks against Palestinian persons and property. Following an incident involving Israeli settlers physically assaulting a Palestinian worker, the Israeli Military Commander in the West Bank, while calling for the Israeli authorities to intervene, commented that “[t]he price tag incidents do not embody values contrary to our values as Israelis and Jews.”

The frequency and severity of violent attacks by settlers across the West Bank has prompted some Israeli officials to publicly condemn the attacks and call for measures to bring about their cessation. High-level Israeli security officials have stated that such acts should be defined and handled as “security threats of the highest order.” Minister of Defence, Ehud Barak, amongst others, stated that perpetrators of ‘Price Tag’ attacks are acting like a terror organization and Major General Nizan Alon called the activities acts of “terror.”

Justice Minister Tzipi Livni, formerly the Minister of Foreign Affairs, held that “price tag incidents do not embody values contrary to our values as Israelis and Jews.” State ministries have provided funding to the ‘Od Yosef Chai’ seminary in ‘Yitzhar’ settlement despite the involvement of ‘Yitzhar’ students in illegal activities against Palestinians and Israel’s security forces. Some settler groups involved in violent activities also receive funding from abroad, including from US – and Europe – based groups.

The US State Department’s 2012 Country Report on Terrorism mentions a series of settler violence incidents, including ‘Price Tag’ attacks, and notes that Israeli authorities “continue to encourage the Israeli authorities to bring those responsible to justice.”

The gravity of settler violence against Palestinians has attracted international attention. The UK Foreign & Commonwealth Office 2013 human rights report recalls Alistair Burt’s condemnations of the rise in settler violence and ‘Price-tag’ vandalism attacks and notes that the UK authorities “continue to encourage the Israeli authorities to bring those responsible to justice.”

International bodies such as the United Nations Committee on the Elimination of Racial Discrimination (CERD) committee have condemned the “impunity of terrorist groups such as [those who commit attacks under the label of] Price Tag, which reportedly enjoy political and social support from some Israeli officials.” The United Nations International Fact-Finding Mission on Settlements also noted “the failure of Israeli authorities to stop the settler violence and the persistence of impunity in this regard.”

Instead of taking effective measures to eradicate settler violence, the Israeli government has apparently sought to appease settler demands by retroactively ‘legalising’ outposts. It has also continued to encourage Israeli civilians to move to the occupied territories by sanctioning the expansion of existing settlements and by providing a variety of formal
economic incentives for residents of the more than 90 settlements designated as "national priority areas". Informal incentives also exist for Israeli settlers living in the occupied territories, such as the government turning a blind eye to the non-payment of leasing fees for settlement land, which keeps housing prices artificially low.

Moreover, in exchange for the evacuation of outposts, the government has provided settlers with financial resources for the construction of alternative settlements. For example, following the High Court of Justice order to evacuate the ‘Migron’ outpost in May 2012, the Israeli government approved two new settlements and the Parliament Finance Committee awarded ‘Migron’s’ evictees 17 million NIS (approximately 4.4 million USD) in compensation.

3. Unwillingness to Enforce the Law Against Israeli Settlers

Despite repeated condemnations and calls for action by local and international bodies, the Israeli authorities have failed to undertake effective measures that could deter and bring an end to settler violence.

In 2013, the Israeli police reportedly established a new ‘special unit’ to combat settler violence. In parallel, the Israeli Military Commander issued an order that criminalises groups that carry out such attacks under military law. A sufficient legislative basis already existed for the prosecution of violent settlers before these adjustments. The fact that police forces have failed to enforce existing laws reveals an institutional unwillingness to hold settlers accountable for criminal acts perpetrated against Palestinians.

Most investigations of incidents of settler violence have not led to the arrest of suspects, let alone to their prosecution. The Israeli human rights group Yesh Din has monitored 938 cases of settler violence in which the Israeli police opened an investigation between 2005 and 2013. Over 90 percent of these cases were closed without an indictment being filed,

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79 Peace Now, ‘The Government Announce the Intention to Legalize Outposts’ (October 2011). Declaring an area to be 'State land' is a common tool in the construction of settlements. Prior to 1967, only 527,000 dunums of land were ‘State land’. Under Israeli occupation the amount of ‘State land’ has increased to over 1.44 million dunums. B'Tselem, 'Under the Guise of Legality: Israel’s Declarations of State Land in the West Bank' (n 11), 15.
most on grounds that suggest investigative flaws by the police forces. 84

Victims of settler violence are often deterred from notifying Israeli police of the incident due to the low probability that a complaint to police will bring settlers to justice, the costly and time-consuming process of filing complaints, and the possibility of reprisals by settlers. Moreover, in order to file a complaint with an Israeli police station, an individual needs to be able to enter a settlement, usually requiring a permit. 85

Israel’s response to acts of settler violence and incitement to commit them continues to be inadequate, despite the Israeli authorities’ awareness of the escalation in these organised violent activities. The virtual impunity for the majority of settler attacks has created an enabling environment for violence rather than a deterrent to it. 86 Media reports have highlighted the Israeli court system’s reluctance to adjudicate such cases because they desire, effectively failing to protect Palestinians living under its jurisdiction. Measures taken by the Israeli authorities against settlers have consisted of temporary restraining orders from specific parts of the West Bank, fines and in the extreme few cases, house arrest. Potential suspects that were arrested by the police were released shortly after.

By contrast, in cases where Palestinians are suspected of having been involved in violent attacks against settlers, Israeli law enforcement authorities have undertaken extensive investigative measures, including large-scale campaigns of arrests, searches and interrogations to apprehend the suspects. 87 After five members of a settler family were interrogations to apprehend the suspects. After five members of a settler family were transferred of prisoners”; International Fact-Finding Mission on Settlements (n 1) 22.


intended to obtain evidence about the suspects, but in effect subjected its entire population to collective punishment. 88 To Al-Haq’s knowledge, no known arrests of those involved in the counter-attacks against Palestinians for the killing in ‘Itamar’ settlement were carried out. 89 Similarly, repeated incidents of settler violence that took place before the Palestinian UN initiatives in 2011 were neither adequately investigated nor punished. 90

The West Bank is considered Israel’s second largest police districts, and also its most challenging. 91 Yet, only 6 percent of the police force operates in the West Bank, with only 2.5 percent of the overall budget. 92 Even when the police and the General Security Services (GSS) 93 manage to obtain information about settler violence, they face considerable political pressure, on top of existing deficiencies in the investigation of incidents.

3.1 Israeli Anti-Incitement Laws and Settler Violence

Israel’s domestic law, which it extends to settlers in the West Bank, contains strong administrative and criminal prohibitions against incitement to violence. These laws have been enforced strictly against groups and individuals found to be engaging in most acts of incitement against Jews. 94 The 1977 Israeli penal law defines “racism” as including “persecution, humiliation, degradation, a display of enmity, hostility or violence, or causing violence against a public or parts of the population, because of their race, colour, affiliation or national ethnic origin.” 95

In order to amount to incitement to violence, the publication of material should be capable of producing “discord and enmity” amongst the population. 96 Published material that consists of a “serious and clear” call to violence against a group is criminalised on the basis that it fosters


86 Yesil Din has noted that the failure to enforce the law against violent settlers is inextricably empowering them and allowing for the continuation of attacks. See Yesil Din website, ‘Criminal Accountability of Israeli Civilians’ [http://www.yesil-din.org/eng/crime_2012-03-20] accessed 1 October 2013.


88 ‘Report of the Secretary General, Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan’ (n 17). 31 ‘The International Fact-Finding Mission remarked the widespread practice of arbitrary arrest and detention in the West Bank and called upon Israel “to put an end to arbitrary arrest and detention of the Palestinian people, especially children, and observe the prohibition of the transfer of prisoners”’, International Fact-Finding Mission on Settlements (n 1) 22.


94 The GSS – otherwise known as ‘Shabak’ or ‘Shiti Shabak’ – is the Israeli security agency responsible for intelligence gathering operations inside Israel as well as in the West Bank, including East Jerusalem.

95 The Israeli police offer different reasons to excuse their inability to enforce the law in the OPT, such as the difficulties in issuing incitement against law-breakers in the West Bank because they are unable to provide sufficient evidence “due to the location of the crime”; M Zoriik, ‘Israel Police claims unable to enforce law on West Bank settlers’ (21 March 2011) [http://972mag.com/israel-police-claim-to-be-unable-to-enforce-laws-on-settlers-in-west-bank-32218/] accessed 1 October 2013. ---, ‘The GSS has taken no action’ Haaretz (11 September 2011) [http://www.haaretz.co.il/opinion/opinion/articles/0,7340,1472959,00.html] accessed 1 October 2013.


98 Israel courts have held that freedom of expression should be limited where it may cause violence or incite hate amongst parts of the population. State of Israel v Feuchtwanger, Herronstein and Ben-Naftali (High Magistrates Court) CC 122/05 (9 October 2005), paragraphs 19-20. State of Israel v Benjamin Kahane et al (High Court of Justice, Court of Appeals) ACC 178/98 (27 November 2011), paragraph 145.
The case of Noam Federman, a prominent leader of the settler movement, is illustrative of the system's leniency. Federman was found guilty of using public television appearances and widespread media statements to incite hatred and acts of violence against Palestinians with the underlying purpose of "deporting all Arabs". He referred to Palestinians as a "cancer" and called for "bringing down mosques." Despite these acts, he was only sentenced to four months of community service and six months of probation.

Similarly, Rabbi Yitzhak Shapira, who was arrested in 2010 for "incitement to kill non-Jews", was released after some hours without charges. In another case, Menachem Livni, a member of the 'Jewish Underground' responsible for killing three Palestinian students and for wounding 33 others in an attack in Hebron in 1983, served less than seven years in prison. Upon his release, he returned to the 'Kiryat Arba' settlement.

Israel's legislative and administrative provisions for combating racism have been grossly under-enforced in cases of settler violence. The deficiencies in the enforcement of existing Israeli domestic laws against settlers and the protection of the Palestinian population in the OPT attest to Israel's institutional unwillingness to hold settlers to account.

3.2 Separate Legal Systems for Settlers and Palestinians

Settlers enjoy virtual impunity for crimes against Palestinians and benefit from the protection of Israeli domestic laws, including rights under its basic (quasi-constitutional) laws, and the jurisdiction of Israeli civil courts. By contrast, Palestinians living in the same territory are subjected to the jurisdiction of Israeli military law and military courts, which impose draconian restrictions on their rights, including the rights to freedom of expression, assembly and association. The UN International Fact-Finding Mission on Settlements noted that "[t]he prevailing legal systems in OPT translate into stark inequality before the law."

The margin of interpretation of Israeli military laws is particularly wide. It allows for the prosecution of Palestinians for acts of political and cultural expression and association, a climate of hatred that is in turn likely to perpetuate the commission of acts of violence. A 1992 amendment to the penal law states that if there is "a real possibility that it will result in acts of violence or terror, then [the perpetrator] will be liable to five years of imprisonment." Despite the clear relevance of these laws to acts of incitement to violence against Palestinians committed by settler groups, and the importance that the Israeli authorities purport to attach to combatting incitement, investigations of such acts by settlers remain virtually unheard of. This is due largely to the political pressure placed on the Israeli authorities not to enforce the law against settlers, sometimes resulting in courts granting compensation to settlers for their arrest. Groups sympathetic to the settler movement have tabled laws that would provide immunity against incitement charges to Rabbis and other public figures.

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including many forms of non-violent activity.\textsuperscript{113} The military courts have, in practice, suppressed political dissent amongst Palestinians.\textsuperscript{114}

The military courts apply Military Order No. 101, on the Prohibition of Incitement and Hostile Propaganda Actions, promulgated by the Israeli Military Commander in the West Bank in 1967. Article 7 of the Order reads as follows:

\begin{quote}
\textbf{[a]ny person who (a) attempts, orally or in another manner to influence public opinion in the region in a manner that is liable to harm public safety or public order, or (b) does any act or has in his possession any object with the intent to do or facilitate the commission of an attempt as aforesaid, will be charged with violating this Order.}
\end{quote}

The Order requires Palestinians to obtain a permit from the army for any assemblies, processions and vigils consisting of more than ten persons. The military commander is granted broad discretionary powers to close any place of public gathering without a right of appeal.\textsuperscript{115} The Order prohibits the publication of political leaflets, and forbids any expression of sympathy, support or association with a "hostile organisation", its actions or objectives.\textsuperscript{116} The Israeli authorities have also used the Order to prosecute and detain Palestinian human rights defenders.\textsuperscript{117}


\textsuperscript{113} Occupation, Colonialism, Apartheid? A re-assessment of Israel’s practices in the occupied Palestinian territories under international law (hereafter: Occupation, Colonialism and Apartheid Study) (Human Science Research Council, Cape Town, 2009), 117-118.

\textsuperscript{114} Articles 3 and 4 Military Order regarding Prohibition of Incitement and Hostile Propaganda Actions (n 112).

\textsuperscript{115} I ibid. Articles 6 and 7A.

\textsuperscript{116} For example, Palestinian human rights defender Abdullah Abu Rahmeh faced charges by the Israeli Military Advocate General for his membership in the Bil'in Committee of popular resistance against the Wall and settlements, and for incitement of mass disturbance of the public (Associated Press, ‘Military Court convicts West Bank Palestinian activist of incitement’ June 2010, <http://www.btselem.org/download/19670827_order_regarding_prohibition_of_incitement_16092013.pdf> accessed 1 October 2013). See also, Military Prosecution v Abdullah Mahmoud Muhammad Abu Rahmeh (Judgment Military Court of Appeals) 2595/10, 2805/10 (1 January 2011). In another case, in 2015, the Bethlehem Area Commander of the Israeli army to Al-Ma’sara village, threatened that demonstrations against the Wall would be harshly repressed and those involved in their organisation or attendance would be arrested and ‘blacklisted’.


\textsuperscript{120} Advisory Opinion on the Wall, (n 6), paragraphs 115-122. In particular, the Court declared that Article 49 of the Fourth Geneva Convention prohibits not only forcible transfers, “but also any measures taken by an Occupying Power in order to organise or encourage transfers of parts of its own population into the occupied territory”. Advisory Opinion on the Wall, (n 6), paragraph 120.

\textsuperscript{121} The right to self-determination is the basis for the enjoyment of many other rights. Articles 1 of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) contain the same clause, stating that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

4. Settler Violence and ‘Price Tag’ Attacks under International Law

Israeli settlements in the occupied West Bank, including East Jerusalem, are illegal under international law. Article 49(6) of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) states that “the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” Israel’s governmental decisions to establish settlements, and its matrix of legislative and administrative measures to facilitate their growth and development, are directly responsible for this internationally unlawful conduct.
4.1 International Humanitarian Law

An Occupying Power is under an obligation to ensure the provision of special guarantees to protected persons under the law of belligerent occupation. For example, Article 43 of the 1907 Hague Regulations annexed to the Hague Convention IV Respecting the Law and Customs in War on Land (1907 Hague Regulations), reflective of customary international law, imposes an obligation on the Occupying Power to safeguard the well-being and safety of the local population and to ensure that they are not mistreated by either the Occupying Power’s authorities or by private actors. In particular, the Occupying Power is obliged to “ensure, as far as possible, public order and safety.”

Article 27 of the Fourth Geneva Convention requires that the Occupying Power ensure the humane treatment of protected persons, without any distinction based on race, religion or political opinion. The Occupying Power is also obliged to ensure that the occupied civilian population is “protected especially against all acts of violence or threats thereof and against insults.” This includes ensuring respect for the religious convictions and practices of the occupied population.

These principles are restated in Article 47 of the Fourth Geneva Convention:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory [...] nor by any annexation by the [the Occupying Power] of the whole or part of the occupied territory.

Israel’s obligation to ensure safety, public order and civil life in the occupied territory includes taking effective measures to protect the lives and livelihoods of the local population. The scale and frequency of settler violence has created a situation in which it has become increasingly difficult for Palestinians living in the West Bank to stay on their land. In 2002, for example, settlers launched such sustained and violent attacks against the village of Upper Yanun that all but two Palestinian families living there were forced to leave their homes.

The displacement of Palestinians from their land due to constant settler attacks may amount to their indirect forcible transfer by the Israeli authorities, who failed to provide a adequate response. In addition, some violent acts perpetrated by settlers may amount to war crimes entailing their individual criminal responsibility. These include wilful killing and wilful causing great suffering or serious injury to body or health.

4.2 International Human Rights Law

The Israeli authorities operating in the OPT must respect Israel’s obligations under international human rights instruments by ensuring the Palestinian population’s ability to fully exercise their rights. Settler attacks infringe upon Palestinians’ rights, including freedom of movement and residence, freedom from interference with home and family life, as well as the rights to health, education, work and an adequate standard of living.

By failing to enforce the law with regards to settler violence, Israel is in breach of its obligation to provide an effective legal remedy to Palestinian victims of such attacks. Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) affirms that every State Party to the Covenant undertakes “to ensure that any person whose rights as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” Article 26 of the Covenant prescribes the obligation to ensure that all persons are entitled to equal protection before the law without discrimination.

The United Nations International Fact-Finding Mission on Settlements noted the lack of effective legal remedies for Palestinians including legislative and administrative limitations such as the Civil Torts (Liability of the State) Law 2005, which defines most incidents involving the army as ‘acts of combat’, which are excluded from compensation.

The UN CERD Committee has expressed concern about “the increase in racist violence and acts of vandalism on the part of Jewish settlers in the Occupied Palestinian Territory targeting non-Jews” and about the Israeli authorities’ failure to adequately investigate such incidents. The Committee has urged Israel “to ensure that all forms of violence and harassment are impartially investigated by the judiciary and that perpetrators are prosecuted to the fullest extent of the law, irrespective of their national, ethnic or other origin.”

The use of two entirely separate legal and institutional systems for settlers and Palestinians living in the West Bank contributes to the entrenchment of “total segregation.”

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122 See Section 4.3 of this Report.
123 Both the Human Rights Committee and the ICJ have affirmed that Israel’s international human rights obligations extend to the OPT. See also, Human Rights Committee, “Concluding observations, Israel” (3 September 2010) UN Doc. CCPR/C/ISR/CO/3, paragraph 5; Advisory Opinion on the Wall (n 6), paragraphs 108-112.
125 Palestinian Centre for Human Rights, ‘Penalising the Victim’ (25 April 2013), 2.
126 UN CERD (n 65), paragraph 28.
127 Ibid.
discriminatory policies combine with the impunity of violent settlers to establish a reality of domination by one racial group over another, in violation of the international prohibition against apartheid.134

4.3 ‘Price Tag’ Attacks and the Prohibition of Incitement to Violence

Israel is obligated to enforce the prohibition of incitement to violence enshrined in the ICCPR, which also bars the dissemination of all ideas based upon racial superiority or hatred.135 Article 20(2) states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law,” regardless of the internal or transnational character of the offence.

The prohibition of incitement of hatred is limited to the materials that produce an imminent risk of harm that is intrinsically dangerous to the public interest.136 Article 20(2) of the ICCPR requires States to adopt the necessary legislative measures to effectively prohibit acts of incitement, including appropriate penal sanctions.137 Article 4(a) of the ICERD also places States under an obligation to prohibit and punish acts intended to incite hatred.138 Statements made by some settler groups as well as public figures inciting to violence manifest a clear and imminent risk of harm through violent acts against the Palestinian civilian population.139

Many jurisdictions have prevented hate speech by criminalising it under domestic law.140 The test for whether freedom of speech may be restricted in the interest of safety is often based on the imminence of the violence that it would cause.141 Israel’s failure to enforce domestic anti-incitement legislation against settlers demonstrates an institutional failure to protect the Palestinian population from such acts and enforce the law against violent settlers.142

A Benedictine monk stands by a car vandalised with graffiti and with its tires slashed next to the Dormition Abbey just outside Jerusalem’s Old City walls, 31 May 2013. Anti-Christian graffiti was spray painted on two cars and near doors to the popular pilgrimage site overnight with Hebrew-language slogans reading, “Christians are monkeys,” “Christians are slaves,” and “Havat Maon,” in reference to a Jewish settler outpost in the West Bank. (Saeed Qaq / APA images)

134 The International Convention on the Suppression and Punishment of the Crime of Apartheid has three requirements for the crime of apartheid: (1) demarcating the population into different racial groups; (2) segregating the population into different areas and restricting the movement of groups into different areas; and (3) implementing a system of “racially ‘security’ laws” designed to suppress opposition and to reinforce the system of racial domination. Although Israel is not a State Party to the Convention, the Convention’s provisions nonetheless bind it as customary international law. See further, Occupation, Occupation, Apartheid Study (n 114), Al-Haq, ‘Water for One People Only: Discriminatory Access and ‘Water Apartheid’ in the OPT’ (March 2013), 88-90.

135 This prohibition is also found in Article 19 of the 1948 Universal Declaration of Human Rights.
prohibition on transfer of the Occupying Power’s civilian population into occupied territory.\(^\text{144}\) Israel’s settlement policy consists of serious breaches of peremptory norms of international law, including the right to self-determination, the prohibition against apartheid and the prohibition against extensive destruction and appropriation of property in armed conflicts.\(^\text{145}\)

Israel has also failed to take the necessary measures to prevent settler violence by enforcing the law against settlers and protecting the Palestinian population. Israel’s failure to respect its international legal obligations entails its responsibility as a State to desist from its wrongful conduct and provide full reparations for the loss or injury caused.\(^\text{146}\)

### 5.2 Responsibility of Third States and International Actors

Israel’s serious breaches of peremptory norms of international law give rise to the duty of third party States not to recognize, aid or assist in Israel’s internationally wrongful acts, in particular its serious breaches of peremptory norms of international law.\(^\text{147}\) According to the ICJ, the rules found in the “grave breaches” regime of the Geneva Conventions as well as other fundamental rules of international humanitarian law constitute peremptory norms of international law.\(^\text{148}\)

Under Common Article 1 to the Conventions, High Contracting Parties to the Geneva Conventions are under an obligation to “respect and ensure respect” by promoting good faith compliance with the Conventions by other States,\(^\text{149}\) particularly those with which the Third State is engaged in relations. The obligation can also be implemented through diplomatic action or public denunciation and through the principle of universal jurisdiction, requiring States either to try or extradite alleged criminals.\(^\text{150}\)

Third States should make sure that their State and private institutions, as well as individuals

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143 As defined in Article 2 ILC Draft Articles on State Responsibility.

144 Article 49(1) of the Fourth Geneva Convention.


147 The International Criminal Tribunal for the former Yugoslavia (ICTY) stressed that “[e]ach and every member of the international community has a legal interest in their observance and consequently a legal entitlement to demand respect for such obligations.” The Prosecutor v. Zoran Kupreskic and others (Judgment, Trial Chamber) ICTY (1995-16-T) (14 January 2000), paragraph 519.

148 Jus cogens norms are those core principles of international law from which no derogation is permitted.

149 The European Union (EU), as an international actor, and some of its Member States, have undertaken the commitment to promote compliance with international law, and in particular international humanitarian law (IHL), through their external relations with third countries. Article 2(1) of the Treaty on the European Union notes that the Union’s “action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.” Updated EU Guidelines on promoting compliance with international humanitarian law (12 December 2009) (Official Journal C 303 of 15.12.2009).

under their jurisdiction, do not provide financial or other support\textsuperscript{151} to settlers, settler groups or individual settlers, who may be involved in the perpetration of violent acts or the dissemination of inciting acts.\textsuperscript{152}

States that become aware of the possibility of such support for unlawful acts from within their jurisdiction are required under international law, and in some cases also under their own domestic laws,\textsuperscript{153} to investigate the matter both domestically and extra-territorially by requiring the cooperation of the Israeli authorities.\textsuperscript{154} The EU's Political and Security Committee approved, in November 2012, a further mode of action as the imposition of visa bans and travel restrictions on violent Israeli settlers.\textsuperscript{155}

More broadly, all States are under an obligation to ensure that their relations with Israel do not benefit, directly or indirectly, Israel's settlement enterprise, under the international duty of non-recognition and its basis in the domestic legal orders of States.\textsuperscript{156}

The EU Guidelines on the eligibility of Israeli entities for EU support and funding, issued in July 2013, are an example of a measure that seeks to ensure the EU's ability to fully and effectively implement its own law by excluding Israeli entities based or operating in settlements from receiving EU funds.\textsuperscript{157} The basis for such exclusionary measures is the financial instrument that governs the EU's own research and development funds, which had been used to facilitate the EU's non-recognition of unlawful Israeli practices that treat the occupied territory and settlements as part of Israel, in accordance with the EU's obligations under its domestic law to ensure respect for international law.

Further, the United Nations International Fact-Finding Mission on Settlements called on foreign companies involved in and profiting from Israeli international law violations in the OPT to comply with the principles enshrined in the UN Ruggie Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Corporations, and withdraw from such engagements.\textsuperscript{158} Moreover, the States in which these companies are domiciled should ensure the proper implementation of domestic law on corporate governance and regulation to bring the cessation of business activities in or concerning settlements and other Israeli violations.\textsuperscript{159}

5.3 Individual Criminal Responsibility

Al-Haq has documented cases of settlers using live ammunition in attacks that were intentionally directed against civilians\textsuperscript{160} and resulted in serious casualties and even death.\textsuperscript{161} Wilfully causing great suffering or serious injury to body or health encompasses both physical and moral suffering.\textsuperscript{162} Serious violations of international humanitarian law may amount to war crimes,\textsuperscript{163} which entail individual criminal responsibility.\textsuperscript{164} Israeli settlers may be responsible for committing, aiding or abetting such acts against the Palestinian population, including wilful killing and wilfully causing great suffering, or serious injury to body or health.\textsuperscript{165}

For an act of violence mounted by a settler to amount to a war crime it must have a sufficient link to the armed conflict, for example through a link between the perpetrator and a party to the conflict. Secondly, the perpetrator of the act must have been aware of the protected status of the Palestinian victim.\textsuperscript{166} In so far as these acts amount to “grave breaches” of the 1949 Geneva Conventions, High Contracting Parties to the Conventions are required to

151 For example, the French Jewish Defence League (JDL) organised military and weapon training for settlers throughout 2011. In the US, the JDL is considered to be a violent, extremist organisation, and is therefore banned in the US. The JDL's main movement is Kach, as well as its sub-group 'Kahane Live', whose stated goals included the violent expulsion of Arabs from Israel and the OPT. They were both outlawed in Israel in 1994. D Harman, 'French JDL recruits Jews with military experience to “defend” Israeli settlements'  Haaretz (17 September 2011) <http://www.haaretz. com/news/diplomacy-defense/franc-j-dl-recruiting-jews-with-military-experience-to-defend-israeli-settlements-1.318322> accessed 1 October 2013.


153 These may include criminal law and the duty to combat organised crime and its support transnationally, such as the criminal activities committed by settler groups. Some States have also enacted ‘anti-terror’ laws as part of their transnational organised crime laws, to combat support, financial or otherwise, of violence against groups and individuals from their jurisdiction. The 1999 International Convention for the Suppression of the Financing of Terrorism has been transposed into national legislation in many of the 106 State parties.


156 Article 41 ICC Draft Articles on State Responsibility.

157 The EU's July 2013 Guidelines come following its correction of some financial instruments for funding, such as the Framework Program Horizon 2020, which will require Israeli entities, governmental and non, to sign a ‘declaration of honour’ that none of the funding will be used to support activities in settlements. See, for further analysis of the basis for the EU's issuance of the Guidelines, V Azarov, 'Legal house-keeping in the EU' Open Democracy (21 July 2013) <www.opendemocracy.net/opendemocracy/camilla-azarov/legal-house-keeping-in-eu/> accessed 1 October 2013.


159 Effective implementation of domestic and internal law is needed to ensure that corporate nationals of that country do not engage in activities abroad that entail their involvement in unlawful conduct of a foreign authority and thereby, for example, result in deceiving consumers at home by breaching the company's voluntary public commitments. I Eichner, ‘European nations: Don't do business in settlements’, Haaretz (20 August 2013) <http://www.haaretz.com/news/diplomacy-defense/europeans-dont-do-business-in-settlements-1.543607> accessed 1 October 2013.

159 See, for example, ‘Al-Haq Advises’ No. 7321/2012.


162 The International Committee of the Red Cross (ICRC) noted that “State practice has confirmed the customary principle that States may also establish universal jurisdiction over other war crimes, war crimes that are additional to the grave breaches of the Geneva Conventions.” ICRC, ‘The Scope and Application of the Principle of Universal Jurisdiction’ (15 October 2010) Statement at the UNGA, 65th session, Sixth Committee, item 68. See also, K Elgvene, ‘Elements of War Crimes under the Rome Statute of the International Criminal Court (Cambridge University Press, Cambridge, 2002) 128.

163 Article 147 of the Fourth Geneva Convention.


165 The ICTY held that, in order for civilians to commit a war crime there must be a link between the act perpetrated and the armed conflict. Prosecutor v. Tadic: (Judgment, Trial Chamber) ICTY-94-1-T (7 May 1997). The ICTY Appeals Chamber in Prosecutor v. Akayesu (Judgment, Trial Chamber) ICTR-96-4-T (2 September 1998) paragraphs 439-444. This principle is different from a nexus between the perpetrator and a party to the conflict. Elements of Crimes, UN Doc, PCIJIC/2000/30/Ab.1B. (Introduction to the Elements of Article 8). <http://www.icc-cpi.int/nr/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> accessed 1 October 2013. The Pre-Trial Chamber of the International Criminal Court (ICC) explained that “it is necessary to the conflict to have been regarded as the authorized context for the criminal conduct, not merely the conflict have taken place in the midst of battle.” The Prosecutor v. Bahar Idriss Abu Garda, (Decision on Confirmation of Charges, Pre-Trial Chamber) I ICT-03-05-02/03 (8 February 2010), paragraph 92. 
facilitate the search for and prosecution of perpetrators, regardless of their nationality.\textsuperscript{167} They are further required to enact domestic legislation and ensure that suspects are apprehended and prosecuted.\textsuperscript{168}

Settler attacks have inflicted physical suffering and harm to mental health due to their regularity and the fear they are intended to spread amongst the civilian population.\textsuperscript{169} To this extent, concerted acts of settler violence are also instrumental to bringing about the indirect forcible transfer of the Palestinian civilian population from their homes and land, within and outside the occupied territory. Such acts could therefore be used as evidence against Israeli officials involved in planning and executing Israel’s policy of forcible transfer.

6. Conclusion and Recommendations

Israel has failed to protect the Palestinian population in the OPT by not taking appropriate measures to combat settler violence, including the investigation and prosecution of its perpetrators. The failure to effectively enforce the law against settlers and settler groups involved in violent acts and the dissemination of incitement materials has “institutionalised discrimination against Palestinians” and resulted in the escalation of such attacks.\textsuperscript{170}

Israel’s failure to adequately respond to acts of violence by settlers violates a range of its international legal obligations, including prohibiting incitement to violence, ensuring the safety and well-being of the civilian population, and providing effective remedies for violations.

Acts of settler violence also engage the responsibility of third party States not to recognise or render aid and assistance to such internationally unlawful acts, such as Israel’s continued support for the settler movement, of which politically motivated violent acts are a product.

The duty of non-recognition is based on the domestic law and public policy commitments of Third States to ensure respect for international law within their own legal order and, if defaulted, results in the deficient implementation of their own law, as well as international law. In addition, some settler acts may also attract individual criminal responsibility under international law.

The Government of Israel:

- Guarantee the protection of the Palestinian civilian population in the OPT by taking all necessary measures to ensure effective law enforcement against settlers and adequate protection of Palestinians and their property by the Israeli police and armed forces.
- End all incitement to violence and hatred against the Palestinian population by adopting measures against groups and individuals involved in the dissemination of such materials, including, in particular, statements and publications by public religious and political figures. Terminate all government funding of seminaries and community centres in settlements, and review all links and support lent by private entities in Israel.
- Provide training for members of the Israeli military, police and private security forces to ensure that adequate protection is afforded to the Palestinian population and to ensure the equal enforcement of the law, including specific legislation concerning hate crimes.
- Afford all victims of settler violence access to justice and effective remedies.

\textsuperscript{167} The State has a duty to enforce the law within borders and in those incidents where citizens commit crimes extraterritorially. G Hallevy, A Modern Treatise on the Principle of Legality in Criminal Law (Springer, Heidelberg, 2010), 126.


\textsuperscript{170} United Nations International Fact-Finding Mission on Settlements (n 1), 12, 13 and 21.
including by ensuring the investigation of incidents and the prosecution of potential perpetrators. Israel should provide reparations in accordance with international law for its wrongful inaction. Reparations should not be limited to monetary compensation, and should include, where possible, restitution, e.g. providing farmers safe access to their agricultural lands.

• Desist from all practices that constitute a form of discrimination against the Palestinian population, particularly with regards to law enforcement and access to justice. Facilitate the filing of complaints and lift existing obstacles to access to justice by victims of settler violence.

• Immediately halt the planning, construction and development of all settlements, including all public budgeting and other financial and administrative support, including private financing of settlers and settlements in the OPT from Israel or abroad. Progressively undertake measures to dismantle all existing settlements and their infrastructure and withdraw civilians from the OPT.

Third party States and International Actors, including the European Union

• In order to ensure their own ability to respect international, as well as their domestic law and public policy, undertake necessary measures that guarantee Israel’s genuine law enforcement and investigation into incidents of settler violence, in accordance with its international law obligations.

• Implement national laws intended to combat organised crime and its support, financial or otherwise, by private and public entities within their jurisdiction. Require the cooperation of the Israeli authorities through provisions of necessary information that would enable the Third State authorities to make determinations concerning the identity of individuals and groups involved in acts of violence, and the potential links to such entities and individuals from within their jurisdiction.

• Adopt national and EU-wide risk-aversive restrictive measures against settlers involved in the organisation, incitement and commission of violent acts against Palestinians and their property, in order to protect their own legal and public orders. Based on existing national legislation, such measures would include restrictions on travel and visa bans, as was recommended in November 2012 by the EU Political and Security Committee. Some national laws, including those of the US, explicitly require the authorities to deny an entry visa to their territory to an individual who committed or was involved in international crimes, violations of the laws of war or serious human rights abuses.

Member States of the United Nations

• Take concrete measures to further the implementation of the recommendations of the United Nations International Fact-Finding Mission on Settlements and previous reports and resolutions. Facilitate the cooperation amongst States to take coordinated measures to bring Israel to alter its behaviour in accordance with international law.

• Undertake countermeasures, in accordance with previous UN practice (e.g. South Africa’s illegal presence in Namibia), against Israel’s de facto annexation of the occupied Palestinian territory and the flagrant denial of the Palestinian people’s right to self-determination, including by calling for targeted sanctions by States to ensure non-assistance to and non-recognition of Israel’s internationally unlawful acts.

171 In the US, for instance, any person who “outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture ... or under color of law of any foreign nation, any extrajudicial killing” is ineligible for a US visa. US Naturalization Act. This is affirmed in a Proclamation issued by President Obama in 2011 denying entry to the US to: “(b) Any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, war crimes, crimes against humanity or other serious violations of human rights, or who attempted or conspired to do so.”


173 EU-Israel Association Council, ‘Statement of the European Union, Tenth meeting EU-Israel Association Council’ (22 February 2011), paragraph 38.
To the Palestinian Representatives

- The representatives of the State of Palestine should take steps to ratify the Rome Statute of the International Criminal Court, and reaffirm validity of the submission in January 2009 of the declaration under Article 12(3) of the Rome Statute. It should also seek accession to international human rights and humanitarian law treaties, to further the protection of rights on the national level, as well as to strengthen the standing and legitimacy of Palestinian rights claims on the international level.

- Actively seek the cooperation of international humanitarian and development agencies and Third States in the development of plans and implementation of projects in Area C. Seek the cooperation of international agencies in adopting a unified position to ensure that they do not seek permits from the Israeli authorities for projects in Area C, or at the very least not to accept the lack of permits as a barrier to the implementation of projects.

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174 The Palestine Liberation Organization (PLO) represents the State in its international relations for as long as Israel maintains its occupation of the OPT. The PLO representatives, in this capacity, submitted the bid for UNESCO membership and proceeded to ratify eight UNESCO conventions and protocols since October 2011. The Palestinian Authority is not the government of the State of Palestine, but rather a body created by the 1995 PLO-Israel Interim Agreements for the administration of the occupied territory in coordination, and as an agent of the Israeli authorities.

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ANNEX

(1) Selected Al-Haq Documentation of ‘Price Tag’ Attacks

<table>
<thead>
<tr>
<th>Date</th>
<th>Incident</th>
<th>Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 January 2013</td>
<td>In Qabalain village, Nablus, petrol station defaced with ‘Price Tag’ graffiti, car tires slashed.</td>
<td>Affidavit No. 2013/8324</td>
</tr>
<tr>
<td>20 December 2012</td>
<td>In Majdal Bani Fadil village, Nablus, two cars torched, ‘Price Tag’ graffiti sprayed onto a house and a kitchen window was broken.</td>
<td>Affidavit No. 7970/2012</td>
</tr>
<tr>
<td>13 November 2012</td>
<td>In East Yatta, Hebron, 400 olive and almond trees destroyed. ‘Price Tag’ graffiti spray painted on top of a large stone in the area.</td>
<td>Affidavit No. 7671/2012</td>
</tr>
<tr>
<td>28 August 2012</td>
<td>In Sa’ir town, Hebron, three cars torched, graffiti sprayed on nearby house in revenge for Palestinian-settler traffic accident a year earlier.</td>
<td>Affidavit No. 7072/2012</td>
</tr>
<tr>
<td>16 February 2012</td>
<td>In Nabi Elyas village, Qalqiliya, car torched, ‘Price Tag’ spray painted on wall of house.</td>
<td>Affidavit No. 7074/2012</td>
</tr>
<tr>
<td>11 January 2012</td>
<td>In Deir Istiya village, three cars torched, ‘Price Tag’ slogans spray painted on village mosque.</td>
<td>Affidavit No. 7091/2012</td>
</tr>
<tr>
<td>9 November 2011</td>
<td>In Beit Omar village, three cars torched, hateful slogans spray painted in response to evacuation of ‘Giv’at Asaf’ outpost.</td>
<td>Affidavit No. 6829/2011</td>
</tr>
<tr>
<td>29 September 2011</td>
<td>Near Halhul village, 45 olive trees destroyed, stars of David and hateful slogans spray painted on rocks. ‘Price Tag’ for car accident between Palestinian and settler.</td>
<td>Affidavit No. 6723/2011</td>
</tr>
</tbody>
</table>
## (2) Selected Al-Haq Documentation of Attacks by Settlers Resulting in Serious Bodily Injury or Property Damage

<table>
<thead>
<tr>
<th>Date</th>
<th>Incident</th>
<th>Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 August 2013</td>
<td>In Mikhmas, Ramallah, six settlers beat a Palestinian shepherd with metal rods. In another incident, a Palestinian man was hit in the head with stones thrown by settlers. Both victims lost consciousness and required medical treatment.</td>
<td>Affidavit No. 8819/2013  &lt;br&gt; Affidavit No. 8817/2013</td>
</tr>
<tr>
<td>12 July 2013</td>
<td>In ‘Awarta, Nablus, Israeli settlers destroyed some 1,155 Palestinian olive trees.</td>
<td>Affidavit No. 8792/2013  &lt;br&gt; Affidavit No. 8791/2013</td>
</tr>
<tr>
<td>9 June 2013</td>
<td>During one week 20 dunums of cultivated land in Qalqiliya, 10 dunums in Beitillo, six dunums in Yatta and five dunums in Nablus were set on fire and destroyed. 300 olive trees in ‘Awarta village, Nablus, uprooted.</td>
<td>Affidavit No. 8696/2013</td>
</tr>
<tr>
<td>21 March 2013</td>
<td>In Ma’in village, Hebron, two young boys physically assaulted.</td>
<td>Affidavit No. 7621/2012  &lt;br&gt; Affidavit No. 7624/2012</td>
</tr>
<tr>
<td>7 February 2013</td>
<td>In Bourin Village, Nablus, settlers threw stones at Palestinian protesters. Ten Palestinians arrested by Israeli soldiers. Later, 25 settlers attacked a Palestinian house in the village with stones and destroyed 65 olive trees. A confrontation between the settlers and Palestinians from the village broke out; young boy shot.</td>
<td>Affidavit No. 8338/2013  &lt;br&gt; Affidavit No. 8339/2013</td>
</tr>
<tr>
<td>17 December 2012</td>
<td>In Madama village, Nablus, a shepherd and his family physically assaulted by settlers. Israeli soldiers threw gas canisters and fired live ammunition towards the family; two people injured.</td>
<td>Affidavit No. 7672/2012</td>
</tr>
<tr>
<td>17 October 2012</td>
<td>Near the old city of Hebron a family surrounded by 30 settlers during olive harvest and physically assaulted. Israeli soldiers arrested the family and their olives confiscated.</td>
<td>Affidavit No. 7156/2012  &lt;br&gt; Affidavit No. 7149/2012  &lt;br&gt; Affidavit No. 7150/2012  &lt;br&gt; Affidavit No. 7153/2012</td>
</tr>
<tr>
<td>25 April 2013</td>
<td>During one week six Palestinian children attacked by Israeli settlers.</td>
<td>Affidavit No. 8550/2013</td>
</tr>
<tr>
<td>28 August 2012</td>
<td>Near Sa’ir village, Hebron, three cars torched.</td>
<td>Affidavit No. 7673/2012</td>
</tr>
<tr>
<td>Date</td>
<td>Incident</td>
<td>Documentation</td>
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</tr>
<tr>
<td>15 September 2011</td>
<td>Near Beit Furik village, settlers torched three cars.</td>
<td>Affidavit No. 6663/2011</td>
</tr>
<tr>
<td>12 September 2011</td>
<td>In Der Dibwan village, settlers vandalised homes and torched two cars and a truck.</td>
<td>Affidavit No. 6626/2011</td>
</tr>
<tr>
<td>12 September 2011</td>
<td>In Burka village, settlers vandalised homes, torched two cars and spray painted hateful slogans on homes.</td>
<td>Affidavit No. 6627/2011</td>
</tr>
</tbody>
</table>