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# INSTITUTIONALISED IMPUNITY

**Israel's Failure to Combat Settler Violence  
in the Occupied Palestinian Territory**



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**Cover photo:** Desecrated mosque in Jabaa village, near Ramallah, in June 2012. The slogans read, from right to left, 'Ulpana war' and 'price tag'. EPA / Atef Safadi.

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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 (UN OCHA), 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 (UN) 'Fact-Finding Mission on the Implications of Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People throughout the Occupied Palestinian Territory, including East Jerusalem' (hereafter UN Fact-Finding Mission on Israeli 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."<sup>1</sup>

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.<sup>2</sup> Some criminal acts committed by settlers against Palestinians in the Occupied Palestinian Territory (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 averse measures to ban the entry of individual settlers involved in such violent acts to their territory.

<sup>1</sup> UN Fact-Finding Mission on Israeli 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 22<sup>nd</sup> session, paragraph 107.

<sup>2</sup> Article 1 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, International Law Commission (ILC), United Nations, 2001 (ILC Draft Articles on State Responsibility).



# 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 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').<sup>3</sup>

Since 1967, over 250 settlements and outposts have been established by the Israeli authorities in the West Bank, including East Jerusalem.<sup>4</sup> The population of Israeli settlements in the OPT numbers over 520,000 settlers, including an estimated 200,000 in East Jerusalem.<sup>5</sup> Israel's settlement project is widely considered to be a serious violation of international law by States and international organisations.<sup>6</sup> 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.<sup>7</sup> Initially, the official state rationale for the establishment of settlements was that they were necessary to provide for Israel's security.<sup>8</sup> The current official Israeli government position is that the settlements are established on 'disputed' land and therefore are not in violation of international law.<sup>9</sup>

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.<sup>10</sup> Israel's institutions not only undertake the necessary measures to appropriate Palestinian land for the construction of settlements and their ensuing infrastructure,<sup>11</sup> they also actively promote the transfer of Israeli civilians into the OPT.<sup>12</sup> Israel's supreme judicial authority, the High Court of Justice, has avoided ruling on the legality of settlements by declaring the issue as

'non-justiciable' and deferring to the government's decision on the matter.<sup>13</sup>

In 2005, an Israeli government report, authored by Talia Sasson, identified 105 unofficial settlements, referred to as 'outposts,' that were established in violation of Israeli law.<sup>14</sup> A total of 54 of these outposts were located on Palestinian private land, either in whole or in part. Subsequent to the publication of the Sasson Report, the Israeli authorities not only failed to evacuate the outposts, but proceeded to provide them with administrative and financial support. A July 2012 report, authored by former Supreme Court Justice Levy, recommends that the government retroactively 'legalise' their status.<sup>15</sup> The government has done so in a number of cases.<sup>16</sup>

Criminal activities by settler groups are particularly frequent and intense in cases where settlements and outposts have been established in close proximity to Palestinian communities and their agricultural land, thereby limiting Palestinians' access to their land and livelihoods. Israel's failure to prevent and combat such criminal activities has rendered it increasingly difficult for Palestinians to remain on their land, resulting in some cases in the indirect forcible transfer of the local Palestinian population.<sup>17</sup>

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.<sup>18</sup> 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 settlement enterprise.<sup>19</sup>

<sup>13</sup> HCJ 606/78, *Ayyoub v Minister of Defense* (English summary in 9 Israel YBHR 337 1979). See also, HCJ 390/79, *Mustafa Dweikat et al. v Government of Israel et al.* (English excerpts in 9 Israel YBHR 345, at 348 1979). One of the justices on Israel's Supreme Court, Noam Sohlberg, lives in the settlement of 'Alon Shvut'.

<sup>14</sup> A settlement which does not fulfil at least one of the following conditions is considered an unauthorised outpost: based on Israeli Government resolution; located on 'State land'; based on a lawful construction plan; and having approved jurisdictional borders. T Sasson, 'Report: Opinion Concerning Unauthorized Outposts' English summary (10 March 2005) <<http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Summary+of+Opinion+Concerning+Unauthorized+Outposts+-+Talia+Sasson+Adv.htm>> accessed 1 October 2013 (hereafter: Sasson Report).

<sup>15</sup> The Levy Commission, 'Report on the Legal Status of Building in Judea and Samaria' (9 July 2012) <<http://www.pmo.gov.il/Documents/doch090712.pdf>> (hereafter: Levy Report) accessed 1 October 2013. E Sanders, 'Israel tries to save West Bank settlements it vowed to dismantle' *Los Angeles Times* (10 April 2012) <<http://articles.latimes.com/2012/apr/10/world/la-fg-israel-settlements-20120411>> accessed 1 October 2013; Human Rights Watch (HRW), 'Israel: Reject Settlement Report' (18 July 2012) <<http://www.hrw.org/news/2012/07/18/israel-reject-settlements-report>>.

<sup>16</sup> See, for example, the cases of Sansana, Bruchin and Rehaim – three settlements whose status was 'legalised'. T Lazzarof, 'PM sets up panel to legalize state land outposts' *Jerusalem Post* (22 April 2012) <<http://www.jpost.com/Diplomacy-and-Politics/PM-sets-up-panel-to-legalize-state-land-outposts>> accessed 1 October 2013.

<sup>17</sup> UN OCHA, 'Unprotected: Israeli settler violence against Palestinian civilians and their property' (Special focus) (December 2008), 2; Report of the UN Secretary General, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan' (16 September 2011) UN Doc. A/66/364, paragraph 21; B'Tselem, 'Access Denied: Israeli measures to deny Palestinians access to land around settlements' (September 2008). Human Rights Watch (HRW), 'Separate and Unequal: Israel Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories' (December 2010). UN OCHA, 'Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank' (July 2007).

<sup>18</sup> Al-Haq, 'Unmasking the "Freeze": Israel's alleged Moratorium on Settlement Construction Whitewashes Egregious Violations of International Law' (26 September 2010). M Shmulovich, 'Netanyahu reportedly freezes new settlement construction' *Times of Israel* (7 March 2013) <<http://www.timesofisrael.com/netanyahu-enforces-settlement-construction-freeze/>> accessed 1 October 2013.

<sup>19</sup> B Hartman, 'Mizrahi Jew, settler among Supreme Court appointees' *Jerusalem Post* (1 September 2012) <<http://www.jpost.com/National-News/Mizrahi-Jew-settler-among-Supreme-Court-appointees>> accessed 1 October 2013.

<sup>3</sup> G Bisharat, 'Land, Law and Legitimacy in Israel and the Occupied Territories' (1994) 43 American University Law Review, 530-531.

<sup>4</sup> UN Office for the Coordination of Humanitarian Affairs (UN OCHA), 'The humanitarian impact of Israeli settlement policies' (January 2012), 1.

<sup>5</sup> UN Fact-Finding Mission on Israeli Settlements (n 1) paragraph 7. An Israeli media source recently reported that the number of Israeli settlers in the West Bank, excluding East Jerusalem is 367,000 as of 1 July 2013 see D Eydar, 'Despite construction slowdown, settlement population still growing fast' *Israel Hayom* (6 August 2013) <[http://www.israelhayom.com/site/newsletter\\_article.php?id=11193](http://www.israelhayom.com/site/newsletter_article.php?id=11193)> accessed 1 October 2013.

<sup>6</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) ICJ Rep 2004, paragraph 120 (hereafter: *Advisory Opinion on the Wall*), UN Security Council (UNSC) Res 446 (22 March 1979) UN doc. S/RES/446, UNSC Res 452 (20 July 1979) UN doc. S/RES/452 and UNSC Res 465 (29 July 1980) UN doc. S/RES/465.

<sup>7</sup> Internal Displacement Monitoring Center – Norwegian Refugee Council, 'Internal Displacement in the Middle East and North Africa,' Global Overview (2011). Ahram online, 'Israeli settlement population up 4.3 per cent in 2011: lawmaker' (15 January 2012) <<http://english.ahram.org.eg/NewsContent/2/8/31822/World/Region/Israeli-settlement-population-up-per-cent-in-law.aspx>> accessed 1 October 2013.

<sup>8</sup> Y Schmidt, *Foundations of Civil and Political Rights in Israel and the Occupied Territories* (GRIN Verlag, 2001) 361 - 362. Y Allon, 'Israel: the Case for Defensible Borders' *Foreign Affairs* (1 October 1976) <<http://www.foreignaffairs.com/articles/26601/yigal-allon/israel-the-case-for-defensible-borders>> accessed 1 October 2013.

<sup>9</sup> Israeli Ministry of Foreign Affairs, 'Disputed Territories: Forgotten Facts About the West Bank and Gaza Strip' (1 February 2003) <<http://mfa.gov.il/MFA/MFA-archive/2003/Pages/DISPUTED%20TERRITORIES-%20Forgotten%20Facts%20About%20the%20We.aspx>> accessed 1 October 2013.

<sup>10</sup> About 26.7 percent of the West Bank is considered by Israel as 'State land'. B'Tselem, 'By Hook and By Crook: Israeli Settlement Policy in the West Bank' (July 2010), 24.

<sup>11</sup> See, B'Tselem, 'Under the Guise of Legality: Israel's Declarations of State Land in the West Bank' (March 2012). B'Tselem, 'Acting the Landlord: Israel's Policy in Area C, the West Bank' (June 2013).

<sup>12</sup> See Section 4 below.

## 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.<sup>20</sup> 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,<sup>21</sup> the large-scale destruction of agricultural land, as well as theft of crops.



Six dunums of Palestinian land burnt following a settler arson attack, Yatta, Hebron Governorate – May 2013 – Al Haq©

According to UN 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.<sup>22</sup> UN 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

<sup>20</sup> UN OCHA, 'Unprotected: Israeli settler violence against Palestinian civilians and their property' (n 17). And Report of the UN Secretary General, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan' (n 17).

<sup>21</sup> For example, in October 2010, a group of settlers broke into a mosque in Beit Fajar (Bethlehem Governorate) and set it ablaze. On 3 May 2011, another group of settlers torched the local secondary school in Huwwara village, near Nablus. In November 2012, a school in 'Ourif village was vandalised by settlers. See, Report of the UN Secretary General, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan' (n 17) paragraph 28; and A Issacharoff, 'Palestinian mosque torched in suspected 'price tag' operation by settlers' *Haaretz* (4 October 2010) <<http://www.haaretz.com/news/diplomacy-defense/palestinian-mosque-torched-in-suspected-price-tag-operation-by-settlers-1.317090>> accessed 1 October 2013; and The Associated Press, 'Palestinian school set on fire, vandalized with 'regards from the hills' graffiti' *Haaretz* (20 October 2010) <<http://www.haaretz.com/news/diplomacy-defense/palestinian-school-set-on-fire-vandalized-with-regards-from-the-hills-graffiti-1.320228>> accessed 1 October 2013; and Al-Haq, 'Echoes of Gaza Strip Escalation: Increasing Settler Violence in the West Bank' (Weekly Focus) (30 November 2012) <<http://www.alhaq.org/documentation/weekly-focuses/648-echoes-of-gaza-strip-escalation-increasing-settler-violence-in-the-west-bank>> accessed 1 October 2013.

<sup>22</sup> UN OCHA, 'Israeli settler violence in the West Bank: fast facts' (November 2011), 2.

year.<sup>23</sup> 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.<sup>24</sup> In July 2013, UN OCHA reported at least three Palestinian civilians being physically assaulted and injured, including with pepper spray and stones.<sup>25</sup> Throughout October 2013, UN OCHA recorded nine incidents of burning, damage and theft of olive trees. Thus far in 2013, UN OCHA has recorded the damage or destruction of over 8,800 trees or saplings in the context of reported settler-related incidents.<sup>26</sup>

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 29 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, Qalqiliya, Bethlehem, Ramallah and Hebron, in close proximity to Israeli settlements.<sup>27</sup> UN OCHA recorded 359 incidents of settler violence resulting in Palestinian casualties or property damage in 2012, and an additional 49 incidents during January 2013.<sup>28</sup>

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 Nimer 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.**

<sup>23</sup> UN OCHA, 'Protection of Civilians Weekly Report: 21-27 November 2012' (27 November 2012), 2; UN OCHA 'Occupied Palestinian Territory Consolidated Appeal 2013', 19.

<sup>24</sup> UN OCHA, 'The humanitarian impact of Israeli settlement policies: fast facts' (January 2012), 1.

<sup>25</sup> UN OCHA, 'Protection of Civilians: Weekly Report, 9-15 July 2013' (15 July 2013), 2.

<sup>26</sup> UN OCHA, 'Protection of Civilians: Two-Week Reporting Period, 8 - 21 October 2013' (21 October 2013), 2.

<sup>27</sup> Al-Haq, 'Relentless Settler Attacks Continue Against Palestinian Farmers' (Weekly Focus) (17 October 2012) <<http://www.alhaq.org/documentation/weekly-focuses/633-relentless-settler-attacks-continue-against-palestinian-farmers>> accessed 1 October 2013.

<sup>28</sup> The figures do not include casualties by Israeli forces. UN OCHA, 'Protection of Civilians: Weekly Report, 6-11 February 2013' (11 February 2013), 2.



In some cases, the Israeli army has used force against Palestinian civilians under attack by settlers.<sup>29</sup> In an incident in the village of Fara'ta (Qalqiliya 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 brothers 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 At-Haq Affidavit No. 7156/2012. Given by Mohammed 'Awwad Abdul Khaleq al-Tawil, a resident of Far'ata village, Qalqiliya 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 August 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 in flames. All the passengers sustained severe burns.<sup>30</sup>

In another incident, on 28 August 2012, about 50 settlers violently raided the house of Khaled and Taghreed Taha Daraghmah, 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 Binyamin' settlement.<sup>31</sup>

29 On 13 January 2011, a group of 40-50 settlers assaulted a Palestinian farmer. When the army arrived on the scene, soldiers started shooting in the air and using tear gas to force the Palestinians to leave. Report of the UN Secretary General, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan' (n 17) paragraphs 23 and 25.

30 Al-Haq, 'Escalation of Settlers Violence: Molotov Cocktail Severely Injures Palestinian Family' (Weekly Focus) (23 August 2012) <<http://www.alhaq.org/documentation/weekly-focuses/618-escalation-in-settler-violence-molotov-cocktail-severely-injures-palestinian-family>> accessed 1 October 2013. See, for further details, N Dvir, 'Firebomb attack: Palestinian 'pulled kids from burning car' *Ynet* (17 August 2012) <<http://www.ynetnews.com/articles/0.7340.L-4269639.00.html>> accessed 1 October 2013.

31 'Al-Haq Affidavit' No. 7671/2012.

## 2.1 'Price Tag' Attacks

Settlers have perpetrated so-called 'Price Tag' attacks against Palestinian persons and property since 2008, in response to restrictions imposed or under consideration by the Israeli authorities on settlement construction or settler groups.<sup>32</sup> 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.<sup>33</sup> As put by one settler from 'Yitzhar' settlement: "[the Israeli authorities] should learn not to mess with us."<sup>34</sup>

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'<sup>35</sup> 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.<sup>36</sup> A prominent feature of many 'Price Tag' attacks is the graffiti left by the perpetrators consisting of insults and threats.<sup>37</sup> 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 groups and individuals in their planning and execution.

In 2011, 'Price Tag' attacks intensified in response to Israel'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.<sup>38</sup>

32 E Weiss, 'The settlers: we have activated a policy for collecting a 'price tag' in the whole of Judea and Samaria' *Ynet* (4 December 2008) <<http://www.ynet.co.il/articles/0.7340.L-3633598.00.html>> accessed 1 October 2013; N Shargai, 'The settlers new policy: 'price tag' for every evacuation by the army' *Haaretz* (3 October 2008) <<http://www.haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=1026113>> accessed 1 October 2013.

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 Bourin (Nablus Governorate), threw stones, 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.ynet.co.il/articles/0.7340.L-3572983.00.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/shared-uploads/outposts\\_and\\_price\\_tag\\_violence\\_-\\_a\\_blow\\_upon\\_a\\_bruise\\_-\\_sept\\_2012.pdf](http://www.najah.edu/sites/default/files/shared-uploads/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-3572983.00.html>> accessed 19 March 2013.

35 'Hilltop Youth' is the term commonly used to refer to nationalist youth in Israel. E Chernofsky, 'Hilltop Youth push to settle West Bank' *BBC News* (18 August 2009) <[http://news.bbc.co.uk/2/hi/middle\\_east/8204826.stm](http://news.bbc.co.uk/2/hi/middle_east/8204826.stm)> accessed 1 October 2013; C Levinson, 'Israel Police scrambles to stop mosque arsonist from striking again' *Haaretz* (14 December 2011) <<http://www.haaretz.com/print-edition/news/israel-police-scrambles-to-stop-mosque-arsonists-from-striking-again-1.401261>>; 'Official forum of the Hilltop Youth, hosted by Arutz Sheva' *Israel National News* <<http://www.inn.co.il/Forum/Forum.aspx?f50>> accessed 1 October 2013.

36 Y Brenner, 'A wave of arson: settlers burned Palestinian fields' *Walla News* (1 December 2009) <<http://news.walla.co.il/?w=13/1494746>> accessed 1 October 2013; A Issacharoff and A Pfeffer, 'Palestinians claim: settlers tried to burn down a mosque in Fajr village in the West Bank' *Haaretz* (4 October 2010) <<http://www.haaretz.co.il/hasite/spages/1191875.html>> accessed 1 October 2013; A Pfeffer and J Khoury, 'Following eviction of the outposts: settlers burned Palestinians fields' *Haaretz* (20 July 2009) <<http://www.haaretz.co.il/hasite/spages/1101545.html>>; accessed 1 October 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).

38 Y Altman, 'Another 'price tag': Palestinian cars vandalized in Hebron' *Ynet* (1 March 2011) <<http://www.ynetnews.com/articles/0.7340.L-4035962.00.html>> accessed 1 October 2013.



Car burnt in 'Price Tag' attack in al-Nabi Elias, Qalqiliya governorate – 2012, Al-Haq©

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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup> In February and July 2012,

39 ‘Al-Haq Affidavits’ No. 7084/2012 and 7085/2012.

40 C Levinson, ‘Mosque in West Bank village set alight in suspected “price tag” attack’ *Haaretz* (19 June 2012) <<http://www.haaretz.com/news/diplomacy-defense/mosque-in-west-bank-village-set-alight-in-suspected-price-tag-attack-1.437267>> accessed 1 October 2013.

41 ‘Al-Haq Affidavits’ No. 7673/2012 and 7674/2012.

42 Peace Now, “Price Tag” Escalation Timeline: Jan 1, 2011 – present’ (27 August 2013).



‘Price Tag’ graffiti spray-painted on a house in Se’ir village, Hebron Governorate – 2012, Al-Haq©

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.<sup>43</sup>

The targets of ‘Price Tag’ attacks have often included places of religious worship.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

43 M Lidman, ‘Vandals Target Peace Now activist in Jerusalem’ *The Jerusalem Post* (16 July 2012) <<http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=277649>> accessed 1 October 2013.

44 N Hasson, ‘Jerusalem Christians are latest targets in recent spate of “price tag” attacks’ *Haaretz* (21 February 2012) <<http://www.haaretz.com/print-edition/news/jerusalem-christians-are-latest-targets-in-recent-spate-of-price-tag-attacks-1.413848>> access 1 October 2013; A Pfeffer, ‘Israeli settlers vandalize IDF base in first “price tag” act against army’ *Haaretz* (7 September 2011) <<http://www.haaretz.com/news/diplomacy-defense/israeli-settlers-vandalize-idf-base-in-first-price-tag-act-against-army-1.383068>> accessed 1 October 2013.

45 O Rosenberg ‘Christian monastery near Jerusalem vandalized, door set on fire’ *Haaretz* (4 September 2012) <<http://www.haaretz.com/news/national/christian-monastery-near-jerusalem-vandalized-door-set-on-fire-premium-1.462622>> accessed 1 October 2013.

46 O Rosenberg, ‘Graffiti reading “Price Tag Migron” found on Mosque near Hebron’ *Haaretz* (12 September 2012) <<http://www.haaretz.com/news/diplomacy-defense/graffiti-reading-price-tag-migron-found-on-mosque-near-hebron-1.464495>> accessed 1 October 2013.

47 ‘Anti-Christian graffiti sprayed on Jerusalem monastery’ *BBC News* (2 October 2012) <<http://www.bbc.co.uk/news/world-middle-east-19798403>> accessed 1 October 2013; --- ‘Racist graffiti sprayed on Jerusalem monastery’ *Ma’an News Agency* (2 October 2012) <<http://www.maannews.net/eng/ViewDetails.aspx?ID=525277>> accessed 1 October 2013.



## 2.2 Public and Official Support for Settler Violence

While the exact origins of 'Price Tag' attacks remain unknown, some settler groups have publically identified with their perpetration<sup>48</sup> – including settlers from 'Maon Farm' settlement, south of Hebron, and 'Yitzhar' settlement, near Nablus.<sup>49</sup> 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 Yosef Tomb Yeshiva, a religious seminary in 'Yitzhar' settlement, Rabbi David Dodkowitz, 'Yitzhar' settlement's Chief Rabbi, and Rabbi Itzhak Shapira, mayor of 'Yitzhar' settlement, have publicly supported the use of 'Price Tag' attacks to deter government action against settlements.<sup>50</sup> Rabbi Itzhak Shapira 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.<sup>51</sup> 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.<sup>52</sup>

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".<sup>53</sup> 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."<sup>54</sup> 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."<sup>55</sup>

Some settler groups disseminate leaflets in synagogues and public places that encourage violence against the Palestinian population.<sup>56</sup> The newsletter 'Yesha Shelanu' (Hebrew for 'Judea and Samaria (sic) is ours'), distributed by the 'Yesha' Council,<sup>57</sup> confirms claims presented by Rabbi Shapira 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'ayanei Hayeshua' (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."<sup>58</sup>

A number of Israel's political figures, including members of the Israeli parliament (Knesset), have supported violence against Palestinians.<sup>59</sup> 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."<sup>60</sup> He also demanded that a settlement be constructed in place of the village.<sup>61</sup>

Members of Parliament Ben-Ari, Uri Ariel, Avraham Michaeli and Tzipi Hotovely also tabled a bill that seeks to shield rabbis from incitement charges.<sup>62</sup> 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.<sup>63</sup> In another instance, Member of Parliament Arie Eldad, head of the Regional Council of 'Kiryat Arba' settlement, publically expressed his support for settler acts of violence in response to the evacuation of the 'Bet Hameriva' (Hebrew for 'House of Dispute') in Hebron.<sup>64</sup>



Migron 'Price Tag' spray-painted on the mosque in Yatma village, Nablus Governorate – 2011, Al-Haq©

48 N Shargai, 'The settlements new policy: 'price tag' on every evacuation by the army' *Haaretz* (3 October 2008) <<http://www.haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=1026113>> accessed 1 October 2013.

49 *Ibid.*

50 *Ibid.*

51 'Judea and Samaria' is the name used by settlers and the Israeli authorities for the West Bank. G Varon, 'Head of Yitzhar settlement, openly supports revenge against Palestinians' *GalGalaz (Israeli Army Radio News)* (17 May 2010) <<http://www.glz.co.il/NewsArticle.aspx?NewsId=62286>> accessed 1 October 2013.

52 *Ibid.* For an example of Rabbi Shapira's speeches inciting violence see <<http://www.youtube.com/watch?v=4x40mBPhiB8>> accessed 1 October 2013.

53 R Sharon, 'Rabbi Melamed is in favour of price tag' *NRG* (15 November 2008) <<http://www.nrg.co.il/online/1/ART1/811/922.html>> accessed 1 October 2013.

54 *Ibid.*

55 *Ibid.*

56 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' *Haaretz* (15 March 2011) <<http://www.haaretz.com/print-edition/features/netanyahu-is-ignoring-abbas-efforts-to-end-palestinian-incitement-1.349255>> accessed 1 October 2013.

57 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).

58 A Eldar, 'Netanyahu is ignoring Abbas' efforts to end Palestinian incitement' (n 56).

59 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, 46); 2. Zeev Elkin (Likud, 34); 3. Yariv Levin (Likud, 27); 4. Aryeh Eldad (National Union, 24); 5. Moshe Ya'alon (Likud, 18); 6. Danny Danon (Likud, 15); 7. Moshe Kahlon (Likud, 14); 8. Michael Ben-Ari (National Union, 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.com/news/national/right-wing-ngo-exposes-extent-of-israel-s-support-of-west-bank-settlements-1.397485>> accessed 1 October 2013; H Sherwood, 'Naftali Bennett interview: "There won't be a Palestinian state within Israel"' *The Guardian* (7 January 2013) <<http://www.guardian.co.uk/world/2013/jan/07/naftali-bennett-interview-jewish-home>> accessed 1 October 2013.

60 S Pyoterkovski, 'Ben-Ari: 'Price tag' on behalf of the state' *Channel Seven News* (13 March 2011) <<http://www.inn.co.il/News/News.aspx/216741>> accessed 1 October 2013; Y Altman, 'MK Ben-Ari: to execute 'price tag' in the village from which the committers of the attack came' *Ynet* (12 March 2011) <<http://www.ynet.co.il/articles/0.7340.L-4041194.00.html>> accessed 1 October 2013.

61 *Ibid.*

62 J Lis, 'Bill granting rabbis immunity for incitement charges shot down' *Haaretz* (6 June 2011) <<http://www.haaretz.com/print-edition/news/bill-granting-rabbis-immunity-for-incitement-charges-shot-down-1.366191>> accessed 1 October 2013.

63 C Levinson and J Lis, 'National Union MK threatens revenge after rabbi arrested for incitement' *Haaretz* (30 June 2011) <<http://www.haaretz.com/print-edition/news/national-union-mk-threatens-revenge-after-rabbi-arrested-for-incitement-1.370379>> accessed 1 October 2013.

64 N Shargai, 'Rabbi Wulfa in a conference against the evacuation of the disputehouse: the Israeli government today is the enemy of the nation and country of Israel' *Haaretz* (19 November 2008) <<http://www.haaretz.co.il/hasite/spages/1038562.html>> accessed 1 October 2013.

Not only have Israeli government bodies provided funds for the settler movement through a variety of channels,<sup>65</sup> 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.”<sup>66</sup> 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.<sup>67</sup> Some settler groups involved in violent activities also receive funding from abroad, including from US – and Europe – based groups.<sup>68</sup>

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.<sup>69</sup> High-level Israeli security officials have stated that such acts should be defined and handled as “security threats of the highest order.”<sup>70</sup> 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.”<sup>71</sup>

Justice Minister Tzipi Livni, formerly the Minister of Foreign Affairs, held that “price tag is a subtle name for hate crimes,” which “have to be brought to an end.”<sup>72</sup> The 2013 report of the State Comptroller about the maintenance of the rule of law in the West Bank indicated that the lack of police law enforcement against settlers fits a pattern of suspension of the rule of law: “it’s a free-for-all in the West Bank” due to a general lack of oversight by the responsible State authorities.<sup>73</sup>

65 The Israeli government funds settlements through the State budget and governmental institutions such as the Institute for Social Security, World Zionist Organisation (WZO) or the Israeli Lottery Institution. Israeli government ministries grant significant benefits under the ‘national security areas’ scheme to encourage Israelis to move to settlements. HRW, ‘Israel: Reject Settlement Report’ (18 July 2012) <<http://www.hrw.org/news/2012/07/18/israel-reject-settlements-report>> accessed 1 October 2013, 51-52. In addition, the UN Committee on the Elimination of Racial Discrimination (UN CERD) has recently stated that “terrorist groups such as Price Tag [...] reportedly enjoy political and legal support from certain sections of the Israeli political establishment” see UN CERD, ‘Concluding Observations, Israel’ (9 March 2012) UN Doc. CERD/C/ISR/CO/14-16, paragraph 28; United States Department of State, ‘Country Reports on Terrorism 2011’ (July 2012) <<http://www.state.gov/j/ct/rls/crt/2011/>> accessed 1 October 2013, paragraph 28. Moreover, public officials from settlements conduct regular meetings with military officials to coordinate any planned evacuation of outposts and attempt to prevent evacuations. A Benjamin, ‘Major general Mizrahi demanded secrecy from the rabbis as a condition for conducting the meetings’ *Hakol Hayehudi* (Jewish Voice) (26 October 2011) <<http://www.hakolhayehudi.co.il/?p=17420>> accessed 1 October 2013.

66 A Yakobson, ‘Government must act against “price tag” phenomenon’ *Haaretz* (2 August 2011) <<http://www.haaretz.com/print-edition/opinion/government-must-act-against-price-tag-phenomenon-1.352254>> accessed 1 October 2013.

67 This funding was only recently halted due to an order by the General Security Services (GSS). C Levinson and A Harel, ‘GSS: stop the financing of ‘Od Yosef Chai’ seminary’ *Haaretz* (27 September 2012) <<http://www.haaretz.co.il/news/politics/1.1484367>> accessed 1 October 2013.

68 A law suit is pending before US courts against US groups accused for ‘material support’ of violent settler groups. C Silver, ‘Palestinians sue US groups over support for settler attacks’ *Electronic Intifada* (3 July 2013) <<http://electronicintifada.net/content/palestinians-sue-us-groups-over-support-settler-attacks/12586>> accessed 1 October 2013.

69 UNESCO Chair on Human Rights and Democracy at An-Najah National University, ‘Outposts And Price Tag Violence A Blow upon a Bruise’ (n 33), 38.

70 One high level security official stated that the main problem in enforcing the law against violent settlers, is the court system that is “affording a forgiving treatment to criminals on an ideological basis [...] the acquittal rate is relatively high in such cases [...] many judges afford a forgiving treatment to right wing settlers, in the verdict and the sentencing”; A Harel, ‘High-level security official: the court rooms are forgiving towards right wing offenders’ *Haaretz* (14 September 2008) (in Hebrew, print). See also A Yakobson, ‘Government must act against “price tag” phenomenon’ (n 66).

71 O Ezer, ‘Barak: Executors of price tag [attacks] act like a terror organisation’ *Arutz Sheva* (11 October 2011) <<http://www.inn.co.il/News/News.aspx/227139>> accessed 1 October 2013; A Atali, ‘Brigadier General Nizan Alon: Accelerate the struggle against the Jewish terror’ *NRG* (25 October 2011) <<http://www.nrg.co.il/online/1/ART2/298/785.html>> accessed 1 October 2013.

72 P Woolf and A Buchbot, ‘Netanyahu condemned vandalism of IDF cars: “claimed criminality”’ *Walla! News* (7 September 2011) <<http://news.walla.co.il/?w=9/1858029>> accessed 1 October 2013.

73 B Hartman et al., ‘It’s a free-for-all in the West Bank’, says Shapira’ *Jerusalem Post* (17 July 2013) <<http://www.jpost.com/National-News/State-Comptroller-Israel-must-be-better-prepared-for-attack-on-home-front-320140>> accessed 1 October 2013.



Car burnt by settler youths in ‘Price Tag’ attack in Se’ir village, Hebron Governorate – 2012, Al-Haq©

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.”<sup>74</sup> 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 officials’ labelled such violence as “homegrown terror.”<sup>75</sup>

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 legal support from some Israeli officials.”<sup>76</sup> The UN Fact-Finding Mission on Israeli Settlements also noted “the failure of Israeli authorities to stop the settler violence and the persistence of impunity in this regard.”<sup>77</sup>

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

74 UK Foreign & Commonwealth Office, ‘Human Rights and Democracy: The 2012 Foreign and Commonwealth Office Report – Quarterly Updates’ (18 July 2013).

75 As noted by Israeli Defence Minister Ehud Barak in 2011. US Department of State, ‘Country Reports on Terrorism 2012’ (May 2013) <<http://www.state.gov/documents/organization/210204.pdf>> accessed 1 October 2013, 122.

76 UN CERD (n 65) paragraph 28.

77 UN Fact-Finding Mission on Israeli Settlements (n 1) 13.



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,<sup>78</sup> such as the government turning a blind eye to the non-payment of leasing fees for settlement land, which keeps housing prices artificially low.<sup>79</sup>

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’ evacuees 17 million NIS (approximately 4.4 million USD) in compensation.<sup>80</sup>

<sup>78</sup> S Eldar, ‘Israeli Government Makes West Bank Settlements a National Priority’, *Al-Monitor* (6 August 2013) <<http://www.al-monitor.com/pulse/originals/2013/08/netanyahu-priority-plan-settlements.html>> accessed 1 October 2013.

<sup>79</sup> 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.

<sup>80</sup> Z Lavi, ‘Settlements to get NIS 44M’ *YNET* (15 May 2012) <<http://www.ynetnews.com/articles/0.7340.L-4229745.00.html>> accessed 1 October 2013.



### 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.<sup>81</sup> In parallel, the Israeli Military Commander issued an order that criminalises groups that carry out such attacks under military law.<sup>82</sup> 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.<sup>83</sup> 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,

<sup>81</sup> H Levinson, ‘Israel Police creates unit to fight ‘price tag’ attacks - but only in West Bank’ *Haaretz* (26 June 2013) <<http://www.haaretz.com/news/diplomacy-defense/premium-1.53195>> accessed 1 October 2013.

<sup>82</sup> G Cohen, ‘IDF outlaws ‘price tag’ rings in the West Bank’ *Haaretz* (29 July 2013) <<http://www.haaretz.com/news/diplomacy-defense/premium-1.538470>> accessed 1 October 2013.

<sup>83</sup> I Fleishman, ‘Price Tag vandals consistently escape prosecution’ *Ynet* (4 September 2012) <<http://www.ynetnews.com/articles/0.7340.L-4277043.00.html>> accessed 1 October 2013.

most on grounds that suggest investigative flaws by the police forces.<sup>84</sup>

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.<sup>85</sup>

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.<sup>86</sup> Media reports have highlighted the Israeli court system's reluctance to adjudicate such cases with the seriousness they deserve, 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.<sup>87</sup>



Aryeh Yosef – 'Price Tag' spray painted on the Deir Istiya mosque by settlers, Salfit Governorate, January 2012, Al-Haq©

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.<sup>88</sup> After five members of a settler family were killed in 'Itamar' settlement in March 2011, for instance, Israeli forces imposed closures and other measures against the neighbouring village of 'Awarta for an entire month, ostensibly

84 Yesh Din, 'Data Sheet: Law Enforcement on Israeli Civilians in the West Bank, Yesh Din Monitoring Update' (July 2013), 2. Yesh Din 'Submission by the Israeli Human Rights Organization Yesh Din: Volunteers for Human Rights to the UN Fact Finding Mission on the Israeli Settlements in the Occupied Palestinian Territory including East Jerusalem' (6 November 2012), 9.

85 Yesh Din, 'Law Enforcement upon Israeli Civilians in the West Bank, Monitoring update' (27 March 2012), 29.

86 Yesh Din has noted that the failure to enforce the law against violent settlers is inadvertently empowering them and allowing for the continuation of attacks. See Yesh Din website, 'Criminal Accountability of Israeli Civilians' <<http://www.yesh-din.org/cat.asp?catid=3>> accessed 1 October 2013.

87 C Levinson, 'Settlers served restraining orders from West Bank over planned attacks on Palestinians' *Haaretz* (2 August 2011) <<http://www.haaretz.com/news/diplomacy-defense/settlers-served-restraining-orders-from-west-bank-over-planned-attacks-on-palestinians-1.376563>> accessed 1 October 2013; C Levinson 'Female Jewish settlers arrested for 'price tag' attacks in West Bank' *Haaretz* (5 December 2011) <<http://www.haaretz.com/print-edition/news/female-jewish-settlers-arrested-for-price-tag-attacks-in-west-bank-1.399545>> 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.

intended to obtain evidence about the suspects, but in effect subjected its entire population to collective punishment.<sup>89</sup> 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.<sup>90</sup> Similarly, repeated incidents of settler violence that took place before the Palestinian UN initiatives in 2011 were neither adequately investigated nor punished.<sup>91</sup>

The West Bank is considered Israel's second largest police district, and also its most challenging.<sup>92</sup> Yet, only 6 percent of the police force operates in the West Bank, with only 2.5 percent of the overall budget.<sup>93</sup> Even when the police and the General Security Services (GSS)<sup>94</sup> manage to obtain information about settler violence,<sup>95</sup> 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.<sup>96</sup> 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 colour, racial affiliation or national ethnic origin."<sup>97</sup>

In order to amount to incitement to violence, the publication of material should be capable of producing "discord and enmity" amongst the population.<sup>98</sup> Published material that consists of a "serious and clear" call to violence against a group is criminalised on the basis that it fosters

89 Such measures taken against the population of the village in its entirety amount to a form of collective punishment of the local Palestinian population. See Al-Haq, 'Collective punishment in 'Awarta: Israel's response to the killing in Itamar settlement' (April 2011). Al-Haq, 'Continuous Collective Punishment in Awarta' (Weekly Focus) (13 September 2012) <<http://www.alhaq.org/documentation/weekly-focuses/623-continuous-collective-punishment-in-awarta>> accessed 1 October 2013.

90 Amnesty International, 'Spike in West Bank violence condemned' (Press release) (14 March 2011) <<http://www.amnesty.org/en/news-and-updates/spike-west-bank-violence-condemned-2011-03-14>> accessed 1 October 2013. See also E Levy, 'Report: Palestinian stabbed near settlement' *Ynet* (21 March 2011) <<http://www.ynetnews.com/articles/0.7340.L-4045298.00.html>> accessed 1 October 2013; Y Altman, 'Suspicion of 'price tag': Palestinians attacked with an iron pole and gas' *Ynet* (17 March 2011) <<http://www.ynet.co.il/articles/0.7340.L-4043642.00.html>> accessed 1 October 2013.

91 E Bronner, 'Amid Statehood Bid, Tensions Simmer in West Bank' *NY Times* (23 September 2011) <<http://www.nytimes.com/2011/09/24/world/middleeast-west-bank-tensions-simmer-amid-palestinian-united-nations-statehood-bid.html?pagewanted=all>> accessed 1 October 2013.

92 Israel Police, 'Districts and Branches' <<http://www.police.gov.il/mechuzot.aspx>> accessed 1 October 2013.

93 A Issacharoff, 'Report: 90% of Palestinian complaints to police 'unsolved'' *Haaretz* (11 September 2006) <<http://www.haaretz.com/print-edition/news/report-90-of-palestinian-complaints-to-police-unsolved-1.197000>> accessed 1 October 2013.

94 The GSS – otherwise known as 'Shabak' or 'Shin Bet' – 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 indictments against law-breakers in the West Bank because they are unable to gather sufficient evidence "due to the location of the crimes"; M Zonszein, 'Israel Police claims unable to enforce law on West Bank settlers' +972 Magazine (6 January 2012) <<http://972mag.com/israel-police-claim-to-be-unable-to-enforce-law-on-settlers-in-west-bank/32218/>> accessed 1 October 2013; ---, 'The GSS has to act' *Haaretz* (14 September 2011) <<http://www.haaretz.co.il/opinions/editorial-articles/1.1472996>> accessed 1 October 2013.

96 See in particular M Kremnitzer and K Ghanayim, 'Incitement not Sedition' (1998) No 3 English Policy Paper, Position paper presented by the Israel Democracy Institute, 10-11.

97 Article 114A Penal Law 5737 (1977).

98 Israeli 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 Fauchi, Hershkovitz and Ben Naftali* (Haifa Magistrates Court) CC 1232/06 (6 October 2008), paragraphs 19-20; *State of Israel v Benjamin Kahane et al* (High Court of Justice, Court of Appeals) ACC 1789/98 (27 November 2011), paragraph 145.





'Price Tag' attack in Al-Janiyeh, Ramallah Governorate – 2012, Al-Haq©

a climate of hatred that is in turn likely to perpetuate the commission of acts of violence.<sup>99</sup> 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.”<sup>100</sup>

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,<sup>101</sup> 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.<sup>102</sup> Groups sympathetic to the settler movement have tabled laws that would provide immunity against incitement charges to Rabbis and other public figures.<sup>103</sup>

<sup>99</sup> *Ibid.*

<sup>100</sup> See Amendment 66, Article 144(D2) entitled “Incitement to Violence or Terror” (1992).

<sup>101</sup> *State of Israel v Ido Alba* (High Court of Justice, Court of Appeals) ACC 2831/95 (24 September 1996); *State of Israel v Itamar Ben-Gvir* (Jerusalem Magistrates Court) CC 2225/03 (Pending).

<sup>102</sup> Itamar Ben-Gvir and others, publicly known for their roles in inciting violence against Palestinians, were compensated with 3,000 NIS each (equivalent to 779 US Dollars) for having been arrested on their way to a public celebration for the death of Yasser Arafat; *Ben-Gvir et al. v Chief Superintendent Nidam et al* (High Court of Justice, Court of Appeals) ACC 1427/05 (31 July 2008).

<sup>103</sup> J Lis, ‘Bill granting rabbis immunity for incitement charges shot down’ *Haaretz* (6 June 2011) <<http://www.haaretz.com/print-edition/news/bill-granting-rabbis-immunity-for-incitement-charges-shot-down-1.366191>> accessed 1 October 2013.

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”.<sup>104</sup> He referred to Palestinians as a “cancer” and called for “bringing down mosques.”<sup>105</sup> Despite these acts, he was only sentenced to four months of community service and six months of probation.<sup>106</sup>

Similarly, Rabbi Yitzhak Shapira, who was arrested in 2010 for “incitement to kill non-Jews”, was released after some hours without charges.<sup>107</sup> In another case, Menachem Livni, a member of the ‘Jewish Underground’<sup>108</sup> 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.<sup>109</sup>

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.<sup>110</sup>

### 3.2 Separate Legal Systems for Settlers and Palestinians

Israeli 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 Fact-Finding Mission on Israeli Settlements noted that “[t]he prevailing legal systems in OPT translate into stark inequality before the law.”<sup>111</sup>

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,

<sup>104</sup> R Avraham, ‘Federman will serve community work for incitement’ *News 1* (15 September 2009) (in Hebrew) <<http://www.news1.co.il/Archive/001-D-213923-00.html>> accessed 1 October 2013.

<sup>105</sup> *Ibid.*

<sup>106</sup> *State of Israel v Noam Federman* (Jerusalem Magistrates Court) CC 1831/06 (23 April 2009).

<sup>107</sup> C Levinson, ‘Police release rabbi arrested for inciting to kill non-Jews’ *Haaretz* (27 July 2010) <<http://www.haaretz.com/print-edition/news/police-release-rabbi-arrested-for-inciting-to-kill-non-jews-1.304261>> accessed 1 October 2013; I Harel, ‘In the Jewish state, only Jews seem to be persecuted’ *Haaretz* (18 February 2011) <<http://www.haaretz.com/print-edition/opinion/in-the-jewish-state-only-jews-seem-to-be-persecuted-1.344138>> accessed 1 October 2013. By contrast, an Imam from a mosque in Nazareth was indicted for allegedly calling for worshippers to commit acts of violence against the Israeli State; ---, ‘Nazareth imam indicted for fomenting violence, terrorism’ *Jerusalem Post* (11 July 2010) <<http://www.jpost.com/Israel/Article.aspx?ID=194347&R=R1>> accessed 1 October 2013.

<sup>108</sup> A militant organisation implicated in various terrorist plots in Israel and the OPT. Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (17 July 1985) UN Doc. A/39/591. 155-176.

<sup>109</sup> In 2013, he was awarded over 1.3 million NIS (approximately 360,000 USD) by the Israeli Tax Authority for damage allegedly caused by Palestinians to land he claimed to own. C Levinson, ‘Former Jewish Underground convict receives more than NIS 1.3 million from state’ *Haaretz* (13 February 2013) <<http://www.haaretz.com/news/diplomacy-defense/former-jewish-underground-convict-receives-more-than-nis-1-3-million-from-state-premium-1.503357>> accessed 1 October 2013.

<sup>110</sup> International Federation for Human Rights (FIDH) ‘Shielded From Accountability: Israel’s Unwillingness to Investigate and Prosecute International Crimes’ (September 2011), 14.

<sup>111</sup> UN Fact-Finding Mission on Israeli Settlements (n 1), 10-11.

including many forms of non-violent activity.<sup>112</sup> The military courts have, in practice, suppressed political dissent amongst Palestinians.<sup>113</sup>

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:

[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.

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.<sup>114</sup> 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.<sup>115</sup> The Israeli authorities have also used the Order to prosecute and detain Palestinian human rights defenders.<sup>116</sup>

<sup>112</sup> See, for instance, the Military Order regarding Prohibition of Incitement and Hostile Propaganda Actions, 27 August 1967, available in English <[http://www.btselem.org/download/19670827\\_order\\_regarding\\_prohibition\\_of\\_incitement\\_and\\_hostile\\_propaganda.pdf](http://www.btselem.org/download/19670827_order_regarding_prohibition_of_incitement_and_hostile_propaganda.pdf)> accessed 1 October 2013.

<sup>113</sup> 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.

<sup>114</sup> Articles 3 and 4 Military Order regarding Prohibition of Incitement and Hostile Propaganda Actions (n 112).

<sup>115</sup> *Ibid*, Articles 6 and 7A.

<sup>116</sup> 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 order. On 24 August 2010, an Israeli Military Court convicted Abu Rahmeh for incitement and organisation of demonstrations. The evidence used against him included the possession of spent ammunition in the form of discharged M16 bullet casings, and empty sound bomb and gas grenade canisters – all of which he had collected at demonstrations after they were used against protesters by the Israeli army. Haaretz Service and The Associated Press, 'Military Court convicts West Bank Palestinian activist of incitement' *Haaretz* (24 August 2010) <<http://www.haaretz.com/news/diplomacy-defense/military-court-convicts-west-bank-palestinian-activist-of-incitement-1.310007>> accessed 1 October 2013. See also, *Military Prosecution v Abdullah Mahmoud Muhammad Abu Rahmeh* (Judgment Military Court of Appeals) 2599/10, 2600/10 (11 January 2011). In another case, in 2010, 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'.

## 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.



Hateful phrases written by Israeli settlers on Nour al-Din Soboh's house in Dura al-Kare', Ramallah Governorate, September 2012 – Al-Haq©

The illegal status of settlements has been confirmed in numerous UN Security Council and General Assembly resolutions,<sup>117</sup> as well as by the International Court of Justice (ICJ) in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Separation Wall in the OPT.<sup>118</sup> These international bodies have also held that settlements represent an impediment to the exercise of Palestinian people's right to self-determination.<sup>119</sup> Settler violence, which is a direct result of the transfer of Israeli civilians into occupied territory and the law enforcement defaults of the Israeli authorities, entails serious violations of Israel's international legal obligations to ensure the safety of the Palestinian civilian population in the occupied territory.

<sup>117</sup> UN Res 237 (14 June 1967) UN Doc. S/RES/237; UNSC Res 271 (15 September 1969) UN Doc. S/RES/271; UNSC Res 446 (22 March 1979) UN Doc. S/RES/446; UNSC Res 465 (1 March 1980) UN Doc. S/RES/465. See also, UN General Assembly (UNGA) Res 56/60 (10 December 2001) UN Doc. A/RES/56/60; UNGA Res 58/97 (17 December 2003) UN Doc. A/RES/58/97.

<sup>118</sup> *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.

<sup>119</sup> 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.”



## 4.1 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.<sup>120</sup> 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.<sup>121</sup> In particular, the Occupying Power is obliged to "ensure, as far as possible, public order and safety."<sup>122</sup>

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."<sup>123</sup> This includes ensuring respect for the religious convictions and practices of the occupied population.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup> 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 an adequate

<sup>120</sup> Article 4 of the Fourth Geneva Convention defines protected persons as "those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."

<sup>121</sup> JS Pictet, *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC, Geneva, 1958), 274-283; Y Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Martinus Nijhoff Publishers, Leiden/Boston, 2009), 169. See also Article 47 of the Fourth Geneva Convention.

<sup>122</sup> Article 43 of The Hague Regulations.

<sup>123</sup> Article 27 of the Fourth Geneva Convention.

<sup>124</sup> *Ibid.*

<sup>125</sup> M Sassoli, 'Article 43 of the Hague Regulations and Peace Operations in the Twenty-First Century' (2004) Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law (Cambridge 25-27 June 2004).

<sup>126</sup> HRW, 'Separate and Unequal: Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories' (n 17), 103.

response. In addition, some violent acts perpetrated by settlers may amount to war crimes entailing their individual criminal responsibility. These include wilful killing and wilfully causing great suffering or serious injury to body or health.<sup>127</sup>

## 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.<sup>128</sup> 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.<sup>129</sup>

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 UN Fact-Finding Mission on Israeli 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 of 2005, which defines most incidents involving the army as 'acts of combat', which are excluded from compensation.<sup>130</sup>

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"<sup>131</sup> 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."<sup>132</sup>

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."<sup>133</sup> These

<sup>127</sup> See Section 4.3 of this Report.

<sup>128</sup> 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 106-113.

<sup>129</sup> These rights are enshrined in the ICCPR and the ICESCR; Israel is a State Party of both treaties. See also N Lubell, 'Still Waiting for the Goods to Arrive: The delivery of human rights to the Israeli-Palestinian Conflict' in Geoff Gilbert, Francoise Hampson and Clara Sandoval (eds), *The Delivery of Human Rights: Essays in Honour of Professor Sir Nigel Rodley* (Routledge Publishers, London, 2010), 211; Committee on Economic, Social and Cultural Rights, Report on the Thirtieth and Thirty-first sessions 5-23 May 2003 and 10-28 November 2003 UN Doc. E/2004/22, E/C.12/2003/14 (8 March 2004), paragraph 262.

<sup>130</sup> Palestinian Centre for Human Rights, 'Penalising the Victim' (25 April 2013), 2.

<sup>131</sup> UN CERD (n 65), paragraph 28.

<sup>132</sup> *Ibid.*

<sup>133</sup> UN Fact-Finding Mission on Israeli Settlements, (n 1) 20.

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.<sup>134</sup>



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)

### 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.<sup>135</sup> 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

<sup>134</sup> 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 "draconian '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, Colonialism, Apartheid Study* (n 114); Al-Haq, 'Water for One People Only: Discriminatory Access and 'Water Apartheid' in the OPT' (March 2013), 88-90.

<sup>135</sup> This prohibition is also found in Article 19 of the 1948 Universal Declaration of Human Rights.

risk of harm that is intrinsically dangerous to the public interest.<sup>136</sup> Article 20(2) of the ICCPR requires States to adopt the necessary legislative measures to effectively prohibit acts of incitement, including appropriate penal sanctions.<sup>137</sup> Article 4(a) of the ICERD also places States under an obligation to prohibit and punish acts intended to incite hatred.<sup>138</sup> 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.<sup>139</sup>

Many jurisdictions have prevented hate speech by criminalising it under domestic law.<sup>140</sup> The test for whether freedom of speech may be restricted in the interest of safety is often based on the imminency of the violence that it would cause.<sup>141</sup> 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.<sup>142</sup>

<sup>136</sup> T McGonagle, 'International and European legal standards for combating racist expression: selected current conundrums' in European Commission against Racism and Intolerance (ECRI) 'Expert Seminar: Combating Racism while Respecting Freedom of Expression, Strassbourg 16-17 November 2007' (July 2007). In certain cases, the speech in question does not need to incite a specific result. It is sufficient for it to fall in a category of prohibited statements. KJ Partsch, 'Racial speech and human rights: Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination', in S Coliver (ed), *Striking a Balance: Hate Speech, Freedom of Expression and Non-Discrimination* (Article 19, London, 1992). I Boerefijn and J Oyediran, 'Article 20 of the International Covenant on Civil and Political Rights' in S Coliver (ed), *Striking a Balance: Hate speech, freedom of expression and non-discrimination* (University of Essex, Essex, 1992).

<sup>137</sup> Human Rights Committee, General Comment 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20) (29 July 1983) UN Doc. HRI/GEN/1/Rev.9 (Vol.I), paragraph 2.

<sup>138</sup> In particular the Convention prohibits the dissemination of ideas based on racial superiority, hatred, incitement to racial discrimination, racially motivated acts of violence and their incitement. CERD, General Recommendation 15: Organized violence based on ethnic origin (Art. 4) (23 March 1993) UN Doc. A/48/18, 114-115.

<sup>139</sup> A disseminator should only be punished when the threat of discrimination is great and immediate. R Pettman, 'Incitement to Racial Hatred: Issues and Analysis' (1982) Human Rights Commission Occasional Paper (Australian Government Publishing Service, Canberra, 1982). M Korengold, 'Lessons in confronting racist speech: Good intentions, bad results, and Article 4(a) of the Convention on the elimination of All forms of Racial Discrimination' (1993) 77 Minnesota Law Review 719, 726-728.

<sup>140</sup> JJ Garman, 'The European Union combats racism and xenophobia by forbidding expression: An analysis of the framework decision' (2007-2008) 39 University of Toledo Law Review 844, 844.

<sup>141</sup> J Azriel, 'The internet and hate speech: an examination of the Nuremberg files case' (2005) 10 Common Law & Policy 477, 491-493; K Boyle, 'Hate speech – the United States versus the rest of the world?' (2001) 53 Maine Law Review 487, 488-502. See also, E Wolfman, 'The criminalization of hate propaganda: A clash of ideals between Canada and the United States' (1995-1996) 2 ILSA Journal of International and Comparative Law 543, 553-576.

<sup>142</sup> Israel's extension of its domestic jurisdiction into the occupied territory violates its authority as an Occupying Power and contributes to other measures responsible for the de facto annexation of parts of the West Bank.





'Price Tag' attack in Al-Janiyeh, Ramallah Governorate – 2012, AL-HAQ©

## 5. Responsibility in International Law for Settler Violence and 'Price Tag' Attacks

Every violation of international law entails the responsibility of the State, and in some cases also non-State actors, including individuals. The State of Israel is responsible for the violation of its obligations under international humanitarian and human rights law to ensure the protection of the Palestinian population in the OPT.

In addition, Israel's failure to combat settler violence invokes the duty of Third Party States not to recognise, aid or assist in Israel's serious breaches of peremptory norms of international law, arising out of its violations of the fundamental rules of international humanitarian law. Individual criminal responsibility may also arise in relation to some acts committed by settlers.

### 5.1 Israel's Responsibility for Internationally Wrongful Acts

The responsibility of a State for internationally wrongful acts results from "a breach of an international obligation of the State."<sup>143</sup> Since 1967, Israel has initiated and supported the transfer of over half a million of its civilians into the OPT, including through the extensive and unlawful appropriation of private and public land in occupied territory, in breach of the

<sup>143</sup> As defined in Article 2 ILC Draft Articles on State Responsibility.

prohibition on transfer of the Occupying Power's civilian population into occupied territory.<sup>144</sup>

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.<sup>145</sup>

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.<sup>146</sup>

### 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 recognise, aid or assist in Israel's internationally wrongful acts, in particular its serious breaches of peremptory norms of international law.<sup>147</sup> 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.<sup>148</sup>

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,<sup>149</sup> 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.<sup>150</sup>

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

<sup>144</sup> Article 49(6) of the Fourth Geneva Convention.

<sup>145</sup> JM Henckaerts and L Doswald-Beck, *Customary International Humanitarian Law – Volume 1: Rules* (ICRC and Cambridge University Press, Geneva, 2009) Rule 50 and Rule 156. European Parliament, Directorate-General For External Policies 'Policy Briefing: Israeli settler violence in Palestine' (December 2012) <<http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=79522>> accessed 1 October 2013.

<sup>146</sup> Article 1 of the ILC Draft Articles on State Responsibility, "[e]very internationally wrongful act of a State entails the international responsibility of that State". This responsibility may also be owed to the international community as a whole. Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, ILC, United Nations, 2001, 33. E de Wet, 'Jus Cogens and Obligations Erga Omnes', in D Shelton (ed), *The Oxford Handbook on International Human Rights Law* (Oxford University Press, Oxford/New York, 2013, forthcoming).

<sup>147</sup> The International Criminal Tribunal for the former Yugoslavia (ICTY) stressed that "[a]s a consequence of their absolute character, [...] each 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 IT-95-16-T (14 January 2000), paragraph 519.

<sup>148</sup> *Jus cogens* norms are those core principles of international law from which no derogation is permitted.

<sup>149</sup> 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 21(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' (15 december 2009) Official Journal C 303 of 15.12.2009.

<sup>150</sup> L Boisson de Chazournes and L Condorelli, 'Common Article 1 of the Geneva Conventions revisited: Protecting collective interests' (2000) 837 *International Review of the Red Cross* 67, 77.

under their jurisdiction, do not provide financial or other support<sup>151</sup> to settlements, settler groups or individual settlers, who may be involved in the perpetration of violent acts or the dissemination of inciting material.<sup>152</sup>

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,<sup>153</sup> to investigate the matter both domestically and extra-territorially by requiring the cooperation of the Israeli authorities.<sup>154</sup> 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.<sup>155</sup>

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.<sup>156</sup>

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.<sup>157</sup> The basis for such exclusionary measures is the financial instrument that governs the EU's research and development funds. It had to be amended to guarantee the EU's non-recognition of unlawful Israeli practice that treats the occupied territory and settlements as part of Israel, in order to bring it into line with the EU's obligations under its domestic law to ensure respect for international law .

Further, the UN Fact-Finding Mission on Israeli 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

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 sister movement is 'Kach', as well as its sub-group 'Kahane Lives', 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 recruiting Jews with military experience to "defend" Israeli settlements' *Haaretz* (11 September 2011) <<http://www.haaretz.com/news/diplomacy-defense/french-jdl-recruiting-jews-with-military-experience-to-defend-israeli-settlements-1.383822>> accessed 1 October.

152 American organisations supporting settlements enjoy a tax-reduction regime for the funds they raise. www.SettlementsinPalestine.org, 'Settlements in Palestine web Funders: Foundations That Support Non-Profits That in-turn Support Illegal Settlements' (21 May 2012) <<http://lajewsforpeace.org/Essays/Settlements/Funders.pdf>> accessed 1 October 2013. See also, D Ignatius, 'How a U.S. Tax Deduction helps Israeli Settlements' *The Washington Post* (26 March 2009) <<http://www.washingtonpost.com/wp-dyn/content/article/2009/03/25/AR2009032502800.htm>> accessed 1 October 2013. A Kadi and A Levitt, 'The U.S. cash behind extremist settlers' *The Guardian* (8 December 2009) <<http://www.guardian.co.uk/commentisfree/cifamerica/2009/dec/08/us-settlers-hebron-fund-israeli>> 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 abroad by 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.

154 UN Fact-Finding Mission on Israeli Settlements, (n 1) 11.

155 See the full text of the Committee's memorandum, 'EU countries consider sanctions on Israeli settlers' *EU Observer* (26 November 2012) <<http://euobserver.com/foreign/118317>> accessed 1 October 2013.

156 Article 41 ILC 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 7 antecedent, 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* (31 July 2013) <[www.opendemocracy.net/opensecurity/valentina-azarov/legal-house-keeping-in-eu](http://www.opendemocracy.net/opensecurity/valentina-azarov/legal-house-keeping-in-eu)> accessed 1 October 2013.

Rights and the OECD Guidelines for Multinational Corporations, and withdraw from such engagements.<sup>158</sup> 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.<sup>159</sup>

### 5.3 Individual Criminal Responsibility

Al-Haq has documented cases of settlers using live ammunition in attacks that were intentionally directed against civilians<sup>160</sup> and resulted in serious casualties and even death.<sup>161</sup> Wilfully causing great suffering or serious injury to body or health encompasses both physical and moral suffering.<sup>162</sup> Serious violations of international humanitarian law may amount to war crimes,<sup>163</sup> which entail individual criminal responsibility.<sup>164</sup> 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.<sup>165</sup>

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.<sup>166</sup> In so far as these acts amount to "grave breaches" of the 1949 Geneva Conventions, High Contracting Parties to the Conventions are required to

158 UN Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (21 march 2011) UN Doc. A/HRC/17/31 <[http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31\\_AEV.pdf](http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf)> 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', *Ynet* (25 August 2013) <<http://www.ynetnews.com/articles/0.7340.L-4421959.00.html>> accessed 1 October 2013. B Ravid, 'Dutch government urges local firm to cancel East Jerusalem project', *Haaretz* (26 August 2013) <<http://www.haaretz.com/news/diplomacy-defense/premium-1.543535>> accessed 1 October 2013.

160 See, for example, 'Al-Haq Affidavit' No. 7321/2012.

161 Wilful killing requires "an intention to cause death". JS Pictet, *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC, Geneva, 1958), 597.

162 *Ibid. Prosecutor v. Naletilic and Martinovic*, (Judgment, Trial Chamber) ICTY-95-16-T (31 March 2003), paragraphs 339-343.

163 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, 65<sup>th</sup> session, Sixth Committee, item 86. See also, K Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court* (Cambridge University Press, Cambridge, 2002), 128.

164 Article 147 of the Fourth Geneva Convention.

165 JM Henckaerts and L Doswald-Beck, *Customary International Humanitarian Law – Volume 1: Rules* (ICRC and Cambridge University Press, Geneva, 2009), Rule 156.

166 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-I-T (7 May 1997). The ICTY Appeals Chamber in *Kunarac*, stated that "the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit [the crime], his decision to commit it, the manner in which it was committed or the purpose for which it was committed." See *Prosecutor v. Kunarac et al.*, (Judgment, Appeals Chamber) ICTY-96-23/1-A (12 June 2002), paragraph 58; *Prosecutor v. Akayesu*, (Judgment, Trial Chamber) ICTR-96-4 (2 September 1998) paragraphs 439-444. This is different from a nexus between the perpetrator and a party to the conflict. Elements of Crimes, UN Doc. PCNICC/2000/1/Add.2, 18 (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 not necessary for the conflict to have been regarded as the ultimate reason for the criminal conduct, nor must the conduct have taken place in the midst of battle." *The Prosecutor v. Bahar Idriss Abu Garda*, (Decision on Confirmation of Charges, Pre-Trial Chamber I) ICC-02/05-02/09 (8 February 2010), paragraph 92.



facilitate the search for and prosecution of perpetrators, regardless of their nationality.<sup>167</sup> They are further required to enact domestic legislation and ensure that suspects are apprehended and prosecuted.<sup>168</sup>

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.<sup>169</sup> 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.

<sup>167</sup> 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.

<sup>168</sup> M Divac Oberg, 'The Absorption of Grave Breaches into War Crimes Law' (2009) 873 *International Review of the Red Cross* 163, 165.

<sup>169</sup> United Nations International Fact-Finding Mission on Settlements (n 1), 13.

## 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.<sup>170</sup>

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,

<sup>170</sup> UN Fact-Finding Mission on Israeli 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-averse 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,<sup>171</sup> 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.

<sup>171</sup> 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."

- Take law enforcement measures, including arrest and prosecution, against individuals and groups involved in acts of settler violence and the dissemination of incitement materials – especially those that hold the nationality of the Third State – in order to ensure effective enforcement of their domestic and international law obligations.
- In cases where structures destroyed by settlers have been funded by international humanitarian and development agencies, Third States may be required - under their domestic law that regulates the allocation and use of such budgets - to make inquiries and contest such acts. They must also ensure non-recognition of the basis for the destruction as lawful - namely, Israel's wrongful inaction in failing to enforce the law against settlers.
- Third States who maintain or seek prospective relations with Israel in all sectors (economic, cultural, educational, justice cooperation, etc.) should ensure that these are conditioned and structured in a manner that guarantees Israel's good faith compliance with international law, while also guaranteeing the Third State's ability to respect its own legal obligations in international and domestic law, by not giving legal effect to Israel's unlawful acts. The EU's commitment to the "full and effective" implementation of its law,<sup>172</sup> and recognition of the need to make the "necessary provisions"<sup>173</sup> to ensure non-recognition, are based on its internal legal necessity.

### Member States of the United Nations

- Take concrete measures to further the implementation of the recommendations of the UN Fact-Finding Mission on Israeli 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 OPT 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.

<sup>172</sup> Council of the EU, 'Council conclusions on the Middle East Peace Process, 3209th Foreign Affairs Council meeting' (10 December 2012), paragraph 4.

<sup>173</sup> 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<sup>174</sup> 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.

<sup>174</sup> 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.

# ANNEX

## (1) Selected Al-Haq Documentation of 'Price Tag' Attacks

Date	Incident	Documentation
5 January 2013	In Qabalan village, Nablus, petrol station defaced with 'Price Tag' graffiti, car tires slashed.	Affidavit No. 2013/8324
20 December 2012	In Majdal Bani Fadil village, Nablus, two cars torched, 'Price Tag' graffiti sprayed onto a house and a kitchen window was broken.	Affidavit No. 7970/2012
13 November 2012	In East Yatta, Hebron, 400 olive and almond trees destroyed. 'Price Tag' graffiti spray painted on top of a large stone in the area.	Affidavit No. 7871/2012
28 August 2012	In Sa'ir town, Hebron, three cars torched, graffiti sprayed on nearby house in revenge for Palestinian-settler traffic accident a year earlier.	Affidavit No. 7671/2012 Affidavit No. 76/74/2012
16 February 2012	In Nabi Elyas village, Qalqiliya, car torched, 'Price Tag' spray painted on wall of house.	Affidavit No. 7084/2012 Affidavit No. 7085/2012
11 January 2012	In Deir Istiya village, three cars torched, 'Price Tag' slogans spray painted on village mosque.	Affidavit No. 7017/2012
9 November 2011	In Beit Omar village, three cars torched, hateful slogans spray painted in response to evacuation of 'Giv'at Asaf' outpost.	Affidavit No. 6828/2011
7 November 2011	On Madama land, Nablus, 25 olive trees cut down, hateful slogans spray painted on iron barrels.	Affidavit No. 6812/2011
29 September 2011	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.	Affidavit No. 6723/2011

## (2) Selected Al-Haq Documentation of Attacks by Settlers Resulting in Serious Bodily Injury or Property Damage

Date	Incident	Documentation
22 August 2013	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.	Affidavit No. 8881/2013 Affidavit No. 8871/2013
12 July 2013	In 'Awarta, Nablus, Israeli settlers destroyed some 1,155 Palestinian olive trees.	Affidavit No. 8793/2013 Affidavit No. 8792/2013
9 June 2013	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.	Affidavit No. 8696/2013
9 May 2013	Thirteen settler attacks in one week. A school attacked, children evacuated. Two olive fields torched. Six Palestinian houses attacked by stone throwers. Two cars destroyed. Four Palestinians injured.	Affidavit No. 8573/2013 Affidavit No. 8574/2013 Affidavit No. 8577/2013 Affidavit No. 8580/2013
21 March 2013	In Ma'in village, Hebron, two young boys physically assaulted.	Affidavit No. 7671/2012 Affidavit No. 7674/2012
7 February 2013	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.	Affidavit No. 8339/2013 Affidavit No. 8337/2013
17 December 2012	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.	Affidavit No. 7971/2012
17 October 2012	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.	Affidavit No. 7756/2012 Affidavit No. 7749/2012 Affidavit No. 7750/2012 Affidavit No. 7757/2012
25 April 2013	During one week six Palestinian children attacked by Israeli settlers.	Affidavit No. 8552/2013
28 August 2012	Near Sa'ir village, Hebron, three cars torched.	Affidavit No. 7673/2012

Date	Incident	Documentation
28 August 2012	Family physically assaulted by settlers in Sharqiya village, Nablus, including women and children.	Affidavit No. 7671/2012
14 July 2012	In Al Mughayyir village, near Ramallah, settlers from 'Shilo' settlement assaulted shepherd, killed sheep.	Affidavit No. 7566/2012
20 May 2012	In Yatta village, Hebron, settlers from 'Sussia' settlement torched approximately half a ton of harvested crops.	Affidavit No. 7333/2012
19 May 2012	In Asira al Qibliya village, near Nablus, settlers from 'Yitzhar' settlement shot a person and torched fields.	Affidavit No. 7321/2012
17 May 2012	In Einabus village, Nablus, settlers from 'Yitzhar' settlement torched a car.	Affidavit No. 7322/2012
28 February 2012	In Far'ata village, Nablus, settlers from 'Hafad Gilead' threw stones and broke windows of house.	Affidavit No. 7165 /2012
26 October 2011	In Jaber neighborhood, Hebron city, settlers raided shop, distributed leaflets offering reward for killing a released prisoner.	Affidavit No. 6722/2011
19 October 2011	Settlers threw stones at Palestinian cars, causing partial loss of vision of one driver.	Affidavit No. 6710/2011
21 October 2011	Settlers physically assaulted Palestinian farmers and foreign national olive-pickers; three injured. Israeli army used tear-gas and rubber bullets. Settlers proceeded to torch 10 dunums of agricultural land.	Affidavit No. 6817/2011
4 October 2011	In Huwwara village, near Nablus, Palestinian female students run over by settler car on way to school.	Affidavit No. 6759/2011
25 September 2011	In Qusra village, Nablus, settlers seriously damaged/uprooted 500 olive trees.	Affidavit No. 6692/2011
21 September 2011	In Aseera Al Qabalyeh village, Nablus, settlers damaged homes and torched agricultural land. Israeli army used tear-gas against Palestinians. Four Palestinians were injured.	Affidavit No. 6675/2011



Date	Incident	Documentation
22 September 2011	In Der Jreer village, near Ramallah, settlers torched agricultural land, damaged 100 dunums of olive and fig trees.	Affidavits No. 6731/2011 Affidavits No. 6730/2011 Affidavits No. 6732/2011
15 September 2011	Near Beit Furik village, settlers torched three cars.	Affidavit No. 6663/2011
14 September 2011	On Qaliqilya-Nablus road, settlers threw stones at Palestinian taxi, injuring two.	Affidavits No. 6662/2011 Affidavits No. 6628/2011
12 September 2011	In Der Dibwan village, settlers vandalised homes and torched two cars and a truck.	Affidavit No. 6626/2011
12 September 2011	In Burka village, settlers vandalised homes, torched two cars and spray painted hateful slogans on homes.	Affidavit No. 6627/2011



Water For One People Only: Discriminatory Access and 'Water-Apartheid' in the OPT.



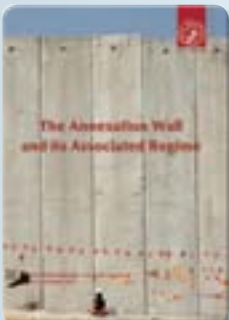
Feasting on the Occupation: Illegality of Settlement Produce and the Responsibility of EU Member States under International Law



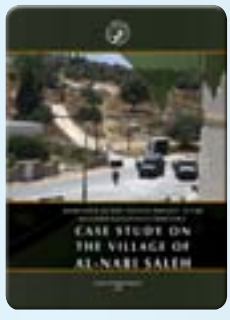
Pillage of the Dead Sea: Israel's Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory.



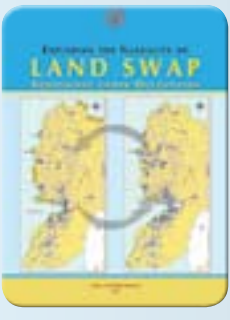
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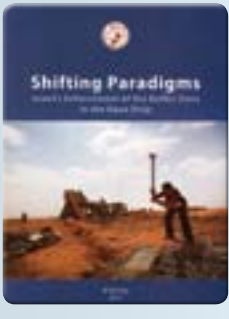
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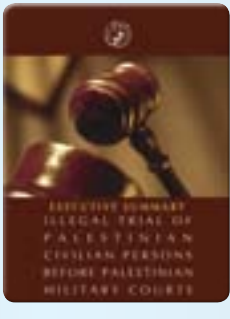
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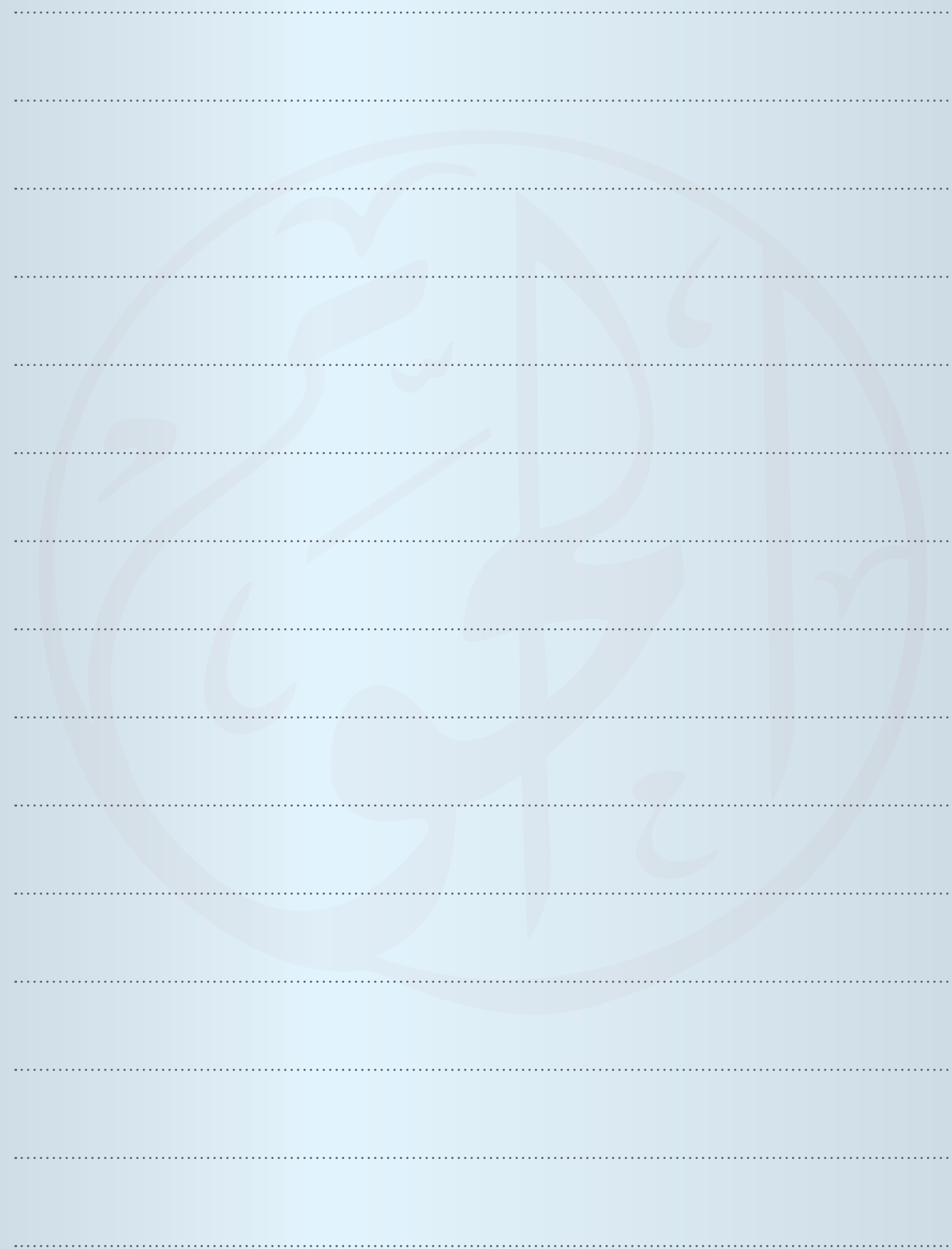
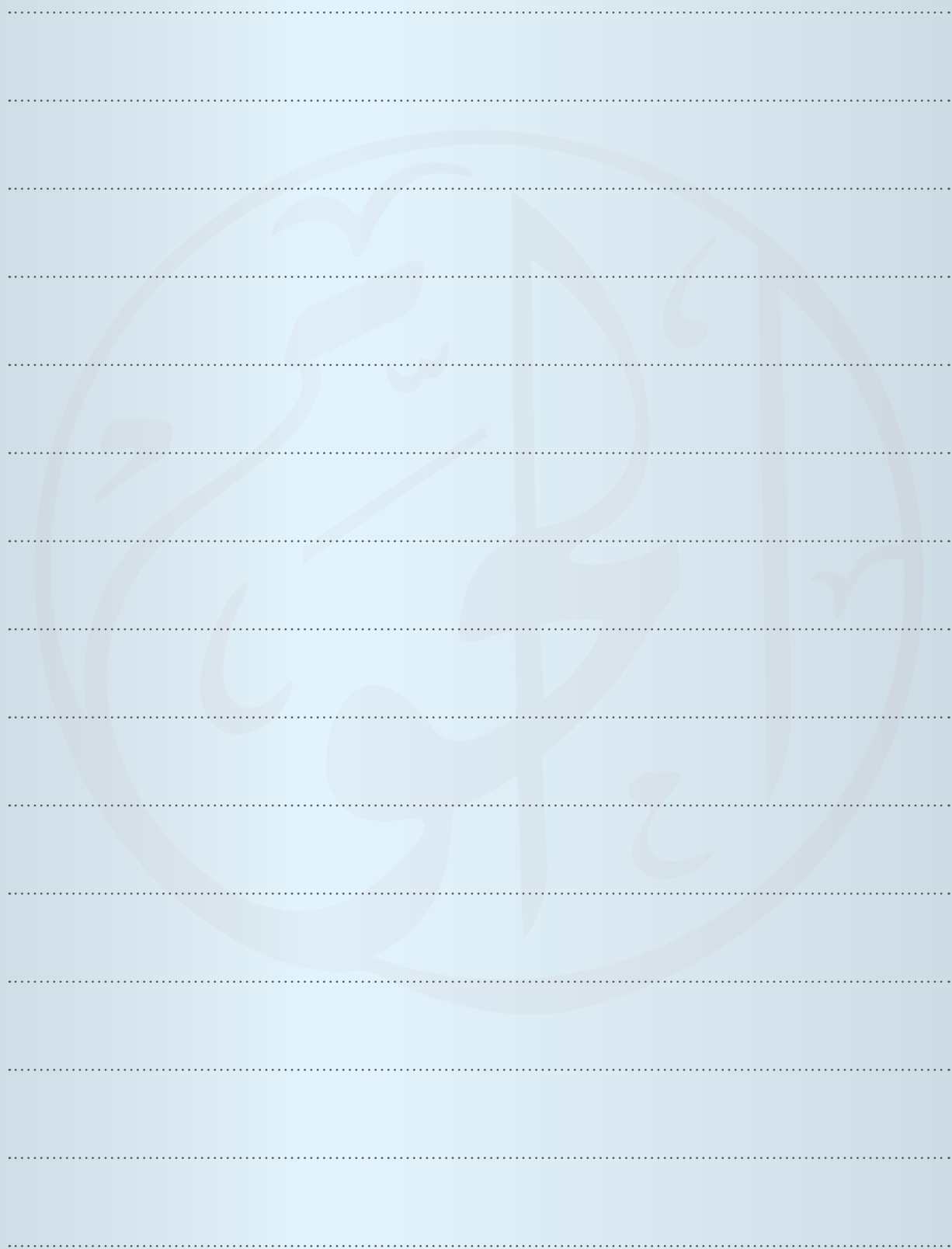
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Unmasking the Freeze





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