



Expert Opinion on the Legal Responsibility of the Occupying Power under International Humanitarian Law (IHL) and International Human Rights Law (IHRL) for the displacements of Palestinian Communities in Area C due to settler violence

NRC Palestine

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1 Introduction and Scope

Since 7th October 2023, in parallel to the unfolding catastrophe in Gaza, ‘State and settler violence against Palestinians exploded’ in the West Bank, including East Jerusalem, as reported by the UN High Commissioner for Human Rights on the human rights situation in the Occupied Palestinian Territory (OPT).¹ Already in the weeks between 7th October and 20th November 2023, the exponential increase in attacks by armed settlers has led to mass displacement of Palestinian communities,² and this trend has continued into 2024, as recorded by local NGOs³ and UN-OCHA.⁴ This is occurring within a political climate whereby ‘the policies of the current government of Israel appear aligned, to an unprecedented extent, with the goals of the Israeli settler movement to expand long-term control over the West Bank’, with a view ‘to steadily integrate this occupied territory into the State of Israel’.⁵

The international community has expressed its alarm for the most recent surge in settler violence. Notably, a joint statement by the UK, the EU, Norway, Switzerland, Canada, Australia, and other countries on 15 December 2023 condemned ‘violent acts committed by extremist settlers, which are terrorising Palestinian communities’, calling on Israel ‘to take

¹ Report of the United Nations High Commissioner for Human Rights: Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice, A/HRC/55/28 (13 Feb 2024) para 8.

² UN-OHCHR, Flash Report, The human rights situation in the occupied West Bank including East Jerusalem 7 Oct – 20 Nov 2023 (Dec 2023) available [here](#).

³ B’Tselem, Forcible transfer of isolated Palestinian communities and families in Area C under cover of Gaza fighting (henceforth, ‘B’Tselem forcible transfer live data’), available [here](#).

⁴ See weekly reports by UN-OCHA, e.g. Flash Update #126 (26 Feb 2024) available [here](#).

⁵ Report of the United Nations High Commissioner for Human Rights, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, A/HRC/55/72 (1 Feb 2024) para 6.

immediate and concrete steps to tackle record high settler violence'.⁶ The same statement also recalled that:

Israel, as the occupying power, must protect the Palestinian civilian population in the West Bank. Those responsible for the violence must be brought to justice. Israel's failure to protect Palestinians and prosecute extremist settlers has led to an environment of near complete impunity in which settler violence has reached unprecedented levels. This undermines security in the West Bank and the region and threatens prospects for a lasting peace.

In response to the rise in settler violence, in February 2024 a number of states, including the USA,⁷ the UK⁸ and France,⁹ imposed **sanctions** on individual Israeli settlers involved in ideologically motivated violence against Palestinians.

The displacement of Palestinian communities in Area C of the West Bank due to settler violence raises urgent questions as to the responsibility of Israel *qua* occupying power in the OPT under both international human rights law (IHRL) and international humanitarian law (IHL). Israel's duty to protect civilians living under occupation extends to protecting these communities from settler violence at all times: before it occurs, while it is occurring, and investigating it after it occurs, to ensure those responsible are held to account and there is no climate of impunity fostering further acts of this sort. This Expert Opinion (EO) analyses the international legal responsibilities of Israel for the displacement of Palestinians due to settler violence between 7th October 2023 and 1 March 2024 in 'Area C' of the West Bank.

Before proceeding to the analysis, it is important to clarify that under international law all the West Bank, including East Jerusalem, is considered

⁶ Joint statement by UK and international partners, 'West Bank settler violence' (15 Dec 2023), available [here](#).

⁷ The White House, Executive Order on Imposing Certain Sanctions on Persons Undermining Peace, Security, and Stability in the West Bank (1 Feb 2024) available [here](#).

⁸ UK Government Press Release, UK sanctions extremist settlers in the West Bank (12 Feb 2024) available [here](#).

⁹ France Diplomatie, Israël/Territoires palestiniens - La France adopte des sanctions à l'encontre de colons israéliens violents (13 Feb 2024) available [here](#).

occupied by Israel since 1967. This is the established position of the UN and the international community, evidenced *inter alia* in: UN Security Council Resolution 242 (1967) calling for the withdrawal of Israeli forces from the territories occupied in the recent conflict, and termination of belligerency, noting also the ‘inadmissibility of the acquisition of territory by war’;¹⁰ International Court of Justice (ICJ) Advisory Opinion in *Wall* (2004);¹¹ countless reports by different UN bodies, as well as statements and conducts of countries not involved in the situation. Within this factual and legal framework, internationally-brokered negotiations between Israel as the occupying power, and the Palestine Liberation Organisation (PLO) representing the Palestinian People, resulting in the Oslo Accords – and in particular *Oslo II* (1995)¹² – led to a distinction between areas A, B and C of the West Bank. ‘Area C’ constitutes over 60% of the West Bank, and falls within full Israeli security and administrative control, with Israel retaining ‘overall security of Israelis and Settlements’ throughout the planned transitional period.¹³ Despite the fact that transfer of full powers back to Palestinian representatives was never completed within the original timeframe set out in the Oslo Accords,¹⁴ Palestinian sovereignty over Area C was never relinquished and therefore that territory – alongside the rest of the OPT – remains occupied by Israel.

Building on these established factual and legal premises, the present EO draws on a range of primary and secondary sources in international law, as well as reports by different bodies and organs of the UN as the ostensible representative of the international community, and findings of reputable local and global NGOs/CSOs, to analyse the legal responsibility of Israel under IHL and IHRL for the displacements of Palestinian communities in Area C due to settler violence, focusing on the post-October 7th period.

¹⁰ UN Security Council Resolution 242 (22 November 1967) (S/RES/242(1967)), Preamble and para 1.

¹¹ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I. C. J. Reports 2004, p. 136, para 75-78 (‘ICJ *Wall*’)

¹² Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995 (Oslo II).

¹³ *Ibid* Art XII (1).

¹⁴ See academic commentary *inter alia*: Yassir Al-Khudayri, ‘Procedural Haze: The ICC’s Jurisdiction over the Situation in Palestine’ (2020) 20(1) *The Palestine Yearbook of International Law* 117; Robert Heinsch and Giulia Pinzauti, ‘To Be (a State) or Not to Be? The Relevance of the Law of Belligerent Occupation with Regard to Palestine’s Statehood Before the ICC’ (2020) 18(4) *Journal of International Criminal Justice* 927; Jeff Handmaker and Alaa Tartir, ‘ICC and Palestine Symposium: The (Non) Effects of Oslo on Rights and Status’ *Opinio Juris* 06.02.20.

2 Factual Background

2.1 Introduction

Between 7th October 2023 and 19th March 2024, UN-OCHA recorded ‘658 Israeli settler attacks against Palestinians that resulted in Palestinian casualties (59 incidents), damage to Palestinian-owned property (524 incidents), or both casualties and damage to property (75 incidents),¹⁵ including damage to an estimated 9,850 trees and saplings.¹⁶ The latest available figures on displacement due to settler violence indicate that between 7th October 2023 and 26th February 2024, ‘at least 200 Palestinian households comprising 1,222 people, including 595 children’, have been displaced amid settler violence and access restrictions. The displaced households are from at least 19 herding/Bedouin communities.¹⁷

In specific situations, displacement due to settler violence may meet the criteria for the international crime of **forcible transfer** (Art 8(2)(a)(vii) of the Rome Statute) and amount to grave breaches set out in Art 147 Fourth Geneva Convention (GC IV) as well as a violation of various human rights norms. UN-OHCHR has monitored **settler violence leading to displacement which may amount to forcible transfer** in various Palestinian communities, including **Al-Ganoub** (Hebron), **Wadi al-Seeq** (Ramallah) and **Hizma** (East Jerusalem).¹⁸

The ‘explosion’ of settler violence in the West Bank since 7th October 2023 reflects a **material and ideological context whereby the political vision of settlers and the Israeli governing coalition in office since December 2022 converge**.¹⁹ For instance, a newly-created ministerial role within the Ministry of Defence with wide-reaching

¹⁵ UN-OCHA Flash Update #142 (19 March 2024) available [here](#).

¹⁶ UN-OCHA Flash Update #139 (14 March 2024) available [here](#).

¹⁷ UN-OCHA Flash Update #126 (26 Feb 2024) available [here](#).

¹⁸ UN-OHCHR, Flash Report, The human rights situation in the occupied West Bank including East Jerusalem 7 Oct – 20 Nov 2023, para 46.

¹⁹ Report of the UN High Commissioner for Human Rights, A/HRC/55/72 (1 Feb 2024) paras 6-8.

governing powers in the West Bank was assigned to the founder of a settler organisation.²⁰ The Government of **Israel continues to approve indirect financing of settler outposts** in the OPT through NGOs that support ‘agricultural activities’ leading to land takeover.²¹ Against this backdrop, there has been a marked increase in settlement activity, which includes the establishment of 9 new outposts and (at least) 18 illegal roads paved by settlers, many on private Palestinian land, as well as settlers closing Palestinian traffic routes and erecting fences.²² While all settlements are unlawful under international law, as confirmed in UN Security Council Resolution 2334 (2016), outposts are particularly problematic: most ‘settler-related **violence occurs in the vicinity of outposts** and there appears to be a correlation between the expansion of outposts and settler attacks against Palestinians’.²³

Settler violence is a key driver of Palestinian displacement, as evidenced in numerous reports by UN agencies,²⁴ local human rights NGOs,²⁵ and mainstream media.²⁶ Settler violence has been monitored for over a decade. A 2023 report focusing on settlements by the UN High Commissioner for Human Rights indicated:

The settler presence and violence, which appear designed to terrorize Palestinians as part of a calculated and systematic effort to expand Israeli control beyond the settlement jurisdiction areas, has also reduced Palestinians’ access to land and consolidated the presence and expansion of Israeli settlements and outposts. The climate of fear and intimidation has had a serious psychological impact on Palestinians and the increasingly severe level of settler violence is a key

²⁰ Ibid, para 7.

²¹ E.g. 4 Feb 2024: https://www.gov.il/BlobFolder/reports/sedergov010224/he/Seder_Gov_n575010224.pdf (data received from NRC).

²² Peace Now, Unmatched Surge in Settlement Activity in the West Bank Since the Onset of the Gaza War (January 2024) available [here](#).

²³ Report of the United Nations High Commissioner for Human Rights, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, A/HRC/52/76 of 15 March 2023, para 13.

²⁴ E.g. UN-OCHA, Fact Sheet: Displacement of Palestinian herders amid increasing settler violence - September 2023 available [here](#).

²⁵ B’Tselem, ‘The pogroms are working - the transfer is already happening’ available [here](#).

²⁶ Emma Graham-Harrison and Quike Kierszenbaum, ‘The most successful land-grab strategy since 1967’ as settlers push Bedouins off West Bank territory’, The Guardian (23 Oct 2023), available [here](#).

component of the coercive environment, increasing their risk of forcible transfer.²⁷

Settler violence is exacerbated by the climate of impunity: 'Israel has **failed in its obligation to promptly, effectively and independently investigate and prosecute** crimes against Palestinians committed by settlers and related violations by the Israeli security forces and to provide justice to the victims'.²⁸ The same report indicates instances where '**Israeli security forces** have not only **stood by idly** but have **actively participated** in the violence against Palestinians', and where (civilian) **settlement guards** who are 'paid for, trained, and armed by the Israeli security forces' have shot Palestinians with live ammunition, 'blurring the lines of law enforcement powers between them and the settlers'.²⁹ Indeed, the social and political reality in which settler violence occurs and the **ambiguous relationships between settlers, armed forces** and police, and security personnel are widely reported by NGOs,³⁰ media commentaries,³¹ as well as in UN reports.

The following sub-sections elaborate on these contextual elements in two parts: the first provides an overview of the reported incidents of settler violence based on reputable sources (including UN-OCHA and B'Tselem³²) clustered in 'typologies' (offences against the person, offences against property and additional types of violence) which should be **read in conjunction with the Annex to the present Expert Opinion (EO)**; the second part addresses the issue of accountability for settler violence, considering the role of Israeli armed forces, the shortcomings of law enforcement and limited prosecutions. This section as a whole sets the scene for the analysis that follows, which considers the state's role – in the various guises illustrated above – in relation to settler violence and its responsibilities under international law for such acts and its consequences.

²⁷ Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, A/HRC/52/76 of 15 March 2023, para 36 (footnotes omitted).

²⁸ Ibid, para 44-45.

²⁹ Ibid, paras 36 and 41 (footnotes omitted).

³⁰ E.g. B'Tselem, 'State Business: Israel's Misappropriation of Land through Settler Violence' (Nov 2021), available [here](#).

³¹ Yagil Levy, 'Lines Increasingly Blurred Between Soldiers and Settlers in the West Bank', Foreign Policy (9 Nov 2023) available [here](#).

³² B'Tselem, Forcible transfer of isolated Palestinian communities and families in Area C under cover of Gaza fighting (henceforth, 'B'Tselem forcible transfer live data'), available [here](#).

2.2 Incidents of settler violence since 7th October 2023: A review by typology

OFFENCES AGAINST THE PERSON

Resulting in death: murder and extrajudicial killings

UN-OCHA reports that between 7th October 2023 and 19th March 2024, 9 Palestinians were killed by Israeli settlers, and two by either Israeli forces or settlers.³³ Depending on the specific circumstances of each incident, when settler violence results in death it may meet the requirements for the category of murder, which is a crime under Israeli law, Palestinian law, and all other legal systems potentially applicable to the West Bank prior to the 1967 Israeli occupation (Jordanian Law and Ottoman Law). When such killings occur, the authorities must take all necessary steps to **intervene to prevent the criminal act, and after it occurs they must investigate** and hold those responsible to account through appropriate investigations and prosecutions based on the correct standards of fair trial and due process; as the West Bank is under military occupation, failure to carry out such investigations may violate IHL and IHRL norms, as well as domestic law, as explained elsewhere.³⁴ **Where Israeli forces are present**, but fail to prevent or stop the killing, their inaction is likely to contravene the state's **obligation to protect Palestinian civilians** – including from settler violence – based on IHL and IHRL discussed in ‘Legal context’.

There are also reports of **settlers killing Palestinian civilians who have attacked Israelis**, instead of apprehending them using non-lethal force, and handing them over to law enforcement officials for investigations and prosecutions based on fair trial and due process.³⁵ As illustrated in the ‘Annex’, some incidents may amount to **extrajudicial killings** and may violate IHL and IHRL provisions.

Use of firearms / attempted murder

³³ UN-OCHA, Flash Update #142 (19 March 2024) available [here](#). See also UN-OCHA OPT, Data on casualties, available [here](#). Note that the number of incidents reported in the official data may be smaller than the total number of attacks, which may not always be reported to the authorities, and international and local monitoring bodies due to fears of retaliation.

³⁴ NRC, Settler Violence: International Investigative and Policing Standards (June 2015) available [here](#).

³⁵ UN-OCHA, Flash Update #130 (1 March 2024) available [here](#).

UN-OCHA reports that ‘**One-third of the settler attacks against Palestinians after 7 October included firearms**, including shootings and threats of shootings. In nearly half of all recorded incidents after 7 October, Israeli forces were either accompanying or reported to be supporting the attackers’.³⁶ Some of these incidents result in shootings that cause injury short of death, but given the lethal potential of such weapons, the severity of this sort of settler violence may amount to **attempted murder** based on the specific circumstances of each case.

Threats to kill community members

A number of reported incidents of settler violence include explicit **threats to kill** Palestinians. The **correlation between such threats and the displacement** of the communities is well-documented. Families fleeing for safety following a range of violent acts, threats and repeated harassment have been reported many times by NGOs and UN monitoring.³⁷

Resulting in injury

UN-OCHA reports that between 7th October 2023 and 17th January 2024, 109 Palestinian injuries were committed by Israeli settlers.³⁸ The types of attacks differ but generally fall into the broad category of beatings, assaults, and other forms of grievous bodily harm (GBH). In many instances, these violent acts result in physical injury and are accompanied by additional harassment and intimidation. A high-profile example occurred in Wadi al-Siq.

Harassment and intimidation (including violence and threats of violence)

There are numerous reports (including by UN-OCHA and B’Tselem) of harassment and intimidation by settlers against Palestinian civilians which include violence inflicted as well as threats of violence, especially when settlers are armed. These incidents are often a **combination of related acts over a number of days** and may involve the same perpetrators, or different perpetrators from the same settlement, outpost or ideologically-driven groups. These incidents – generally in conjunction with other acts of violence, such as in the cases described above (**Zanutah** and **Wadi al-Siq**) – often lead to families fleeing for their safety, resulting in their displacement.

³⁶ UN-OCHA, Flash Update #87 (8 Jan 2024) available [here](#).

³⁷ B’Tselem forcible transfer live data.

³⁸ UN-OCHA OPT, Data on casualties, available [here](#).

A further dimension of this sort of harm is its **gendered impact** in communities in which women are traditionally very private and do not normally interact with men outside of the immediate family circle.

OFFENCES AGAINST PROPERTY

Often settler violence is directed at various types of civilian property protected under IHL and IHRL norms (as discussed in ‘Legal context’). Reports indicate that both immovable and movable property is targeted, including residential homes, community buildings and infrastructure, as well as property crucial for the economic survival of the communities.

Immovable property: Residential

Destructions, demolitions and arson of residential properties and related infrastructure (such as water or energy sources) render homes uninhabitable, forcing families to either seek temporary shelter with relatives and neighbours or flee as displaced persons. Incidents of this type include settlers (sometimes in the presence of Israeli Security Forces - ISF) burning down homes, or making them unfit for human habitation, resulting in families leaving the localities.

Immovable property: Non-residential

When settlers target non-residential property, which may be used for a variety of **community or private** functions, these incidents usually occur in conjunction with other violent acts and contribute to the **coercive environment** forcing families to flee.

→ Community structures: Schools

The targeting of Palestinian education facilities in Area C of the West Bank has clear implications not only in relation to property rights, but also in relation to the fundamental **right to education** for children (Articles 28 and 29 of the Convention on the Rights of the Child).³⁹ According to UN-OCHA, there are 58 schools (50 in Area C and eight in East Jerusalem) under partial or full demolition orders or that have received stop work orders, serving

³⁹ NRC, *Raided and Razed: Attacks on West Bank Education* (Nov 2020) available [here](#).

approximately 6,500 pupils.⁴⁰ Numerous schools have been targeted by settler violence since 7th October 2023.

For years, the UN and partner organisations have reported that the availability, accessibility and acceptability of education in the West Bank is under constant threat, which contributes to the ‘**coercive environment** which gives rise to forcible transfer of the communities’.⁴¹ Keeping children safe is a priority for all communities in which schools are targeted by settler violence. Destroying schools disrupts community life because families plan according to the school calendar. Moreover, even when settlers do not actively destroy schools themselves, there has been a trend of **settler organisations petitioning the Israeli courts** to issue or expedite demolition orders.

→ Community structures: healthcare facilities and religious buildings

Settler violence has targeted other community structures such as **healthcare facilities and religious buildings**. Targeting this sort of property is not just a violation of the **property rights** of the owners – which may be private individuals as well as community groups – but it is also likely to violate other provisions of IHL and IHRL that protect the **right to health** and the **right to religious freedom** (see ‘Legal context’).

→ Private property used for livelihoods (including land)

Most Palestinian communities in Area C are agropastoralists relying on agriculture and herding for their livelihood.⁴² Settlement expansion impacts directly on the **land available to these communities** for cultivation and grazing their flocks: when **settlers take over Palestinian land**, using it for their own benefit and to the exclusion of the Palestinian owners, in addition to the violation of property rights there is an impact on the **economic survival** of affected families. A notable example of settler violence against private property used for livelihoods is the takeover of land during the **olive harvest**, preventing Palestinian farmers from accessing the trees which results in huge economic losses.⁴³ Similarly, settler violence directed at other forms of private

⁴⁰ UN-OCHA Humanitarian Alert: Schools at Risk of Demolition (9 March 2023) available [here](#).

⁴¹ OPT Education Cluster, Background on Schools under threat of demolition in the West Bank (December 2020) available [here](#).

⁴² UNRWA, West Bank – Area C – Herders Fact Sheet (2010) available [here](#).

⁴³ UN-OCHA, Olive harvest 2023: hindered access afflicts Palestinian farmers in the West Bank (22 Feb 2024) available [here](#).

property used for economic activities, such as **animal pens and water infrastructure** used for irrigation, is also a violation of property rights as well as an attack on the livelihoods and sustainability of the communities themselves.

Movable property

Reports of settler violence extend to movable property, including animals and inanimate objects (e.g. vehicles and agricultural items including animal fodder). In the context of the fragile subsistence economy of agropastoralist communities, destruction and theft of such property can severely impact the economic survival of families.

→ Animals

There are numerous accounts of settlers killing, harming, or stealing animals alongside other forms of settler violence. The correlation between theft of sheep and goats, and the displacement of Palestinian families is widely reported in the available data.

→ Vehicles

Cars and other vehicles have been repeatedly vandalised or stolen by settlers, thus impacting on the freedom of movement of families in remote localities and contributing to the coercive environment. Theft or vandalism of **agricultural vehicles**, like tractors, severely **impacts the livelihoods** of the communities. These incidents usually occur as part of a wider array of violent acts, which taken cumulatively may contribute to displacement.

→ Agricultural property including animal fodder

The destruction or theft of other movable agricultural property including animal fodder can have a severe impact on the economic survival of Palestinian families relying on an agropastoralist livelihood, contributing to the coercive environment.

OTHER TYPES OF SETTLER VIOLENCE

In addition to offences against persons and property, the catalogue of violent acts inflicted by Israeli settlers on Palestinians includes attacks on freedom of movement, and the use of settler agropastoralism on Palestinian land to displace and replace the rightful owners. Such acts are generally committed alongside other typologies of settler violence, at times with the participation, presence or protection of army, police, and security forces.

Attacks on freedom of movement

A multitude of acts of settler violence are used to limit Palestinians' freedom of movement; these include making roads inaccessible, fencing off land, implementing other physical barriers such as roadblocks (manned by armed settlers or ISF) affecting the possibility to move freely in and out of the communities, and limiting access grazing and farming land.

Freedom of movement restrictions are also imposed by **Israeli authorities alongside settlers** as a form of **collective punishment** following specific incidents involving Palestinians and settlers. These incidents are part of the **coercive environment**, and may be one of numerous acts of **state-backed settler violence that may contribute to the displacement** of Palestinian communities in Area C.

Use of settler agropastoralism to replace Palestinians on their land

As indicated earlier, settler violence often occurs in the vicinity of outposts and farms set up deep into the West Bank. In this context, the material act of **settlers grazing their own flocks on Palestinian land has become a powerful means to land-grab and displace Palestinian herding communities**. Analysis by NGO Yesh Din illustrates how **settler farms** established on Israeli-declared 'state-land' enable settlers to **take over hundreds of thousands of dunums of land by grazing their flocks on land they wish to appropriate** and 'also by perpetrating **severe and deliberate acts of violence** with the use of ATVs, horses, drones and attack dogs'.⁴⁴ The state's allocation of **pastureland to settlers has been a method of land takeover since the early 1980s**, revealing Israel's direct and indirect support for using shepherding outposts as a tool to control land until the present day.⁴⁵ As illustrated in

⁴⁴ Yesh Din, Plundered Pastures: Israeli settler shepherding outposts in the West Bank and their infringement on Palestinians' human rights (Dec 2021), 30.

⁴⁵ Ibid, 48-53, citing four key actors in the process: the Government of Israel, the Settlement Division of the WZO, Amana – Gush Emunim's settlement arm, and the Jewish National Fund.

the Annex and reports from the field,⁴⁶ the use of settler agropastoralism to drive Palestinians from their land (usually in conjunction with other forms of violence) occurs at times alongside ISF in a facilitating and protective role.

2.3 Involvement and responsibility for settler violence by Israeli authorities

Settler violence occurs in the broader context of what the UN-OHCHR has described as ‘a **permissive environment**’ in which ‘settlers, with the **political backing of key ministers**’ take advantage of the situation ‘to accelerate displacement of Palestinians from their land, raising concerns of forcible transfer seeking to create facts on the ground making the existence of a viable Palestinian state almost impossible’.⁴⁷ A number of factors **blur the distinction between settlers and Israeli army, police and other security forces**.⁴⁸ These include the additional arming of settler militias by Israeli authorities after 7th October 2023, when ‘the Israeli Minister for National Security and the Additional Minister in the Ministry of Defense responsible for settlements, reportedly distributed 8,000 army rifles to civilian “settlements defense squads” and “regional defence battalions” established to protect settlements in the West Bank after many troops were redeployed from the West Bank to Gaza’.⁴⁹ Reports by UN agencies and NGOs indicate that **settler violence frequently occurs either in conjunction with Israeli forces, or with Israeli forces present** but failing in their duty to stop the violence. The poor record of accountability for those responsible reveals **widespread impunity**, in which police investigations, law enforcement operations and prosecutions are almost completely lacking.

Attacks by settlers and security forces

As illustrated in many of the examples provided in the ‘Annex’, settler violence is often carried out in **conjunction with the army, police, or other ISF**, and at times settlers wear official uniforms and carry army-issued rifles.⁵⁰ In this context, violence by

⁴⁶ B’Tselem forcible transfer live data.

⁴⁷ UN-OHCHR, Flash Report The human rights situation in the occupied West Bank including East Jerusalem 7 Oct – 20 Nov 2023 (Dec 2023), para 34.

⁴⁸ Ibid para 37.

⁴⁹ Ibid para 36 (footnotes omitted).

⁵⁰ Ibid para 39.

settlers and by the Israeli security forces ‘has become increasingly interwoven’.⁵¹ Such incidents raise serious concerns about ‘the **role of the Israeli security forces in participating in and providing security cover** for settlers carrying out **acts that may amount to criminal offences against Palestinians**’.⁵² As discussed in the ‘Legal Context’ section of this EO, as the occupying power in the West Bank, Israel has a **legal responsibility under IHL and IHRL to protect Palestinian civilians**. The fact that **uniformed personnel employed by the state** (or state-funded agencies) are not only **failing in the state duty to protect Palestinian civilians** living under occupation, but are also **actively participating alongside settlers in inflicting violence** against them is likely to breach international law. When there is clear evidence of uniformed personnel committing crimes against Palestinian civilians in conjunction with settlers, these actions require **proactive and meaningful investigations** by the relevant authorities, to fight the current **climate of impunity**. Moreover, it is apparent that the offences described in the previous part of this section – and in particular murder, assault causing injury, theft, trespass, destruction of property – are **criminalised in all legal systems**, including current Israeli law as well as Palestinian law. As the ‘Legal Context’ section will explain, the fact of occupation does not suspend the rule of law and the basic protections set out in the applicable legal systems. Israeli authorities have a **duty under international law** (and under domestic law) to prevent, stop, investigate and prosecute those responsible for such acts, **regardless of whether such persons are private individuals or members of state forces**.

Attacks by settlers in which security forces are present but do not stop the violence

There are numerous accounts of **ISF personnel** witnessing acts of settler violence but failing to stop it (e.g. the killings at Qusra). Even when not actively participating in settler violence, ISF may provide a form of **protective presence**, enabling perpetrators and emboldening their sense of impunity. An academic analysis of the relationship between settlers and soldiers in the West Bank as ‘fellow Israeli-Jews’ reveals a complex dynamic that generally operates against Palestinian civilians:

Soldiers tend not to intervene in violent clashes between Palestinians and settlers, which they generally interpret as “friction between civilians”—at least initially. When violence intensifies, however, it often turns into an

⁵¹ Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, A/HRC/52/76 of 15 March 2023, para 42.

⁵² Ibid.

“emergency situation,” and the **soldiers will defend the settlers**. (...) At times, they facilitate the settlers’ violence against Palestinians.⁵³

Previous empirical studies suggest a degree of **cooperation** between settlers and the military in imposing Israeli dominance through a combination of official (soldier) and unofficial (settler) violence against Palestinians.⁵⁴ Moreover, subjectivities matter: **cordial relationships** may develop through a shared language, identity and culture, influencing whether soldiers are **inclined to confront settlers**.⁵⁵ The social geography of Israeli presence in the West Bank helps foster such relationships: police stations and other security infrastructure used by ISF are often **physically located in settlements**; many settlers are also **army reservists**; and those in active service may work alongside soldiers stationed in the area, blurring the distinction between settlers as mere civilians and uniformed armed settlers representing the state.

When settler violence occurs in the presence of ISF who do not intervene to stop the criminal act, this **omission is likely a violation of the state duty to protect Palestinian civilians and their property**. Even a ‘neutral’ stance fails to satisfy the occupying power’s responsibilities under IHL and IHRL (discussed in more detail in the ‘Legal Context’ section): **the state, and thus ISF as its agents**, must take all measures in their power to ensure public order and safety (Art 43 HR).

Accountability and law enforcement for settler violence: Investigations and prosecutions

When settler violence occurs, state authorities have a duty to investigate and prosecute those responsible according to the normal standards of fair trial and due process, in order to ensure justice for victims. The obligation of Israel to protect Palestinians from settler violence includes a requirement to investigate, punish and ensure redress: this is an obligation of means (not results), so investigations must be genuine and carried out in good faith.⁵⁶ Nonetheless, Israeli settler violence against Palestinian civilians in the OPT is **rarely investigated by Israeli police** and generally falls short of the required standards. For instance, between 7th October and 7th November 2023, the police recorded 97 incidents, none of which it defined as ‘serious’; conversely, NGO Yesh Din recorded 198 incidents, including the killing of 7

⁵³ Nir Gazit and Erella Grassiani, ‘Liquid Legitimacy: Lessons on Military Violence from the Israeli Occupation in the West Bank’ (2023) 17 International Political Sociology 1, 12-13.

⁵⁴ Nir Gazit, ‘State-sponsored Vigilantism: Jewish Settlers’ Violence in the Occupied Palestinian Territories’ (2015) 49(3) Sociology 438.

⁵⁵ Ibid.

⁵⁶ NRC, Settler Violence: International Investigative and Policing Standards (June 2015).

Palestinians, which is a very serious crime in all jurisdictions.⁵⁷ Likewise, a UN report indicated that the Israeli Ministry of Justice opened 87 investigations for ‘ideologically motivated offences’ (i.e. settler violence) in 2021, but UN-OCHA had in fact documented 585 incidents that year.⁵⁸ In March 2024, the Israeli Police Chief in the West Bank alleged that reports of settler violence against Palestinians were fabricated by ‘radical left-wing anarchists’ who ‘harass IDF soldiers and heroic settlers’.⁵⁹ This political climate does not appear supportive of meaningful investigations into settler violence. Recent monitoring by an NGO found that **between 2005-2023 more than 93% of all investigations by Israeli police into allegations of settler violence were closed without an indictment**, and just 3% led to a conviction.⁶⁰ Since the inauguration of Israel’s 37th government in December 2022, ‘more **Palestinians have expressed mistrust in Israeli law enforcement**’ with ‘57.5% of Palestinian victims of crime’ choosing ‘not to exercise their right to file a police complaint against Israelis who harmed them’.⁶¹ These findings complement a 2020 Report by the UN Secretary General which included a specific section on accountability for settler violence:

Deficiencies in the justice system to hold settlers accountable for violence against Palestinians include: the application of **different legal systems to settlers and Palestinians**; the persistent and prevailing **lack of thorough and impartial investigations**; the very **low rate of indictments and convictions** reported between 2017 and 2019; frequently **delayed processes**; and **lenient charges**. Fewer complaints are submitted by Palestinians owing to **distrust in the Israeli legal system** and fear of reprisals. While efforts have been made by the Israeli authorities in recent years to prevent, investigate and prosecute particular incidents of settler violence, overall, these deficiencies sustain a **climate of impunity for settler violence, encouraging attacks to continue**.

⁶²

This echoes the UN High Commissioner for Human Rights reporting in 2023 that ‘**Law enforcement by Israeli security forces is invariably discriminatory, in support of**

⁵⁷ Yesh Din, Data Sheet, December 2023: Law Enforcement on Israeli Civilians in the West Bank (Settler violence) 2005-2023 (21 Jan 2024), 4-5, available [here](#).

⁵⁸ Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, A/HRC/52/76 of 15 March 2023, para 47

⁵⁹ Reported in Knesset News (12 March 2024) available [here](#).

⁶⁰ Yesh Din, Data Sheet, December 2023: Law Enforcement on Israeli Civilians in the West Bank (Settler violence) 2005-2023 (21 Jan 2024).

⁶¹ Ibid.

⁶² UN Secretary General Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan (1 October 2020) A/75/376, para 26-27 and para 33 (footnotes omitted).

settler communities, including when they attack Palestinians, and against Palestinians attempting to protest against illegal outpost activity'.⁶³ Despite some steps taken by Israel, such as the 'establishment of special teams to address ideologically based offences and some public calls for accountability', findings reveal that 'actual accountability measures remain gravely deficient'.⁶⁴ Thus, a climate of impunity and a discriminatory legal system and law enforcement section falls short of the occupying power's duties under IHL and IHRL discussed later in this EO, and the international standards for investigations.⁶⁵

2.4 Conclusion

This section presented the main typologies of settler violence driving Palestinian displacement in Area C, and evaluated the enabling role of Israeli armed forces, police and judiciary in determining a climate of impunity for perpetrators. The next section will address the legal framework applicable to this context in order to then assess the extent to which Israel is meeting its obligations under IHL and IHRL to protect Palestinian civilians living under occupation.

⁶³ Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, A/HRC/52/76 of 15 March 2023, para 13.

⁶⁴ Ibid, para 46.

⁶⁵ See NRC, *Settler Violence: International Investigative and Policing Standards* (June 2015)

3 Legal Context

3.1 Introduction

The OPT, which includes Area C of the West Bank, has been subject to a **protracted and ongoing occupation by Israel since 1967**. This is the established position of the international community, including all UN bodies⁶⁶ and the International Court of Justice (ICJ);⁶⁷ the only exceptions to this unanimous understanding of international law are Israel itself and its closest political allies.

The UN Independent International Commission of Inquiry on the OPT confirmed that the territory is still ‘currently under belligerent occupation’, further noting

that Israel has no intention of ending the occupation, has clear policies for ensuring complete control over the [OPT], and is acting to alter the demography through the maintenance of a repressive environment for Palestinians and a favourable environment for Israeli settlers.⁶⁸

Given that the displacement of Palestinian communities in Area C due to settler violence occurs within the reality of occupation, the law of occupation applies.

⁶⁶ For instance, see the references to the 1967 occupation embedded in the mandate of the UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967: <https://www.ohchr.org/en/special-procedures/sr-palestine>.

⁶⁷ ICJ *Wall*, paras 75–78.

⁶⁸ See e.g. Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/50/21 of 9th May 2022, paras 15-19, and para 70.

3.2 International Humanitarian Law

For as long as Israel continues to occupy the West Bank,⁶⁹ IHL provisions on the legal responsibilities of the occupying power will apply.⁷⁰ Israel is bound by relevant obligations set out in treaty and custom: it ratified the Fourth Geneva Convention (GC IV)⁷¹ on 6 July 1951,⁷² so all relevant provisions apply;⁷³ and while it is not a party to the Hague Regulations (HR),⁷⁴ many of those provisions ‘have become part of customary law’ as confirmed by the ICJ in *Wall*.⁷⁵ Israel has disputed it is bound by IHL in the OPT, although the Attorney General has *de facto* acknowledged its applicability.⁷⁶ Moreover, the customary character of key humanitarian provisions pertaining to occupation⁷⁷ and the factual reality of occupation⁷⁸ determine the applicability of relevant IHL provisions (Art 42 HR), meaning that Israel’s claims to the contrary lack legal foundation.

Under international law, the OPT – including Area C – is not disputed territory, nor does it fall under Israeli sovereignty and jurisdiction. Indeed, there is not ‘an atom of sovereignty’ vested in the authority of the occupying power, who is a mere trustee of the land until the legitimate sovereign government returns to power.⁷⁹ Despite the entrenchment and permanence of the occupation, and *de facto* attempts to annex land,

⁶⁹ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328 of 14th Sept 2022.

⁷⁰ A/HRC/50/21, para 17.

⁷¹ Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) of 12 August 1949 (GC IV).

⁷² Reported also in ICJ *Wall*, para 91.

⁷³ E.g. Articles 27-37 and 47-78 GC IV

⁷⁴ The Hague Convention (IV) respecting the Laws and Customs of War on Land (Hague Convention) and its annexed Regulations respecting the Laws and Customs of War on Land (Hague Regulations) of 18 October 1907 (HR).

⁷⁵ ICJ *Wall*, paras 78 and 89.

⁷⁶ See analysis in Théo Boutruche & Marco Sassòli, Expert Opinion on the Displacements of Bedouin Communities from the Central West Bank under International Humanitarian Law (22 September 2014), 8.

⁷⁷ See e.g. Rule 51 and 130, on the protection of civilian property in times of occupation and the prohibition of transfer of the civilian population of the occupying power in occupied territory (i.e. settlements), ICRC, Customary IHL Database available [here](#).

⁷⁸ Under Art 42 HR, the law of occupation applies to territory ‘actually placed under the authority of the hostile army’. Relatedly, Art 6 GCIV states that its provisions apply for as long as the occupying power ‘exercises the functions of government in such territory’.

⁷⁹ Lassa Oppenheim, ‘Legal Relations Between an Occupying Power and the Inhabitants’ (1917) 33 L Q Rev 363, 364.

clearly outlined by the Independent International Commission of Inquiry in 2022,⁸⁰ the OPT cannot be considered annexed to Israel due to the prohibition of territorial conquest through the use of force in Article 2(4) of the UN Charter, reflected in UN Security Council resolution 242 (1967).⁸¹ As summed up by the Independent International Commission of Inquiry:

By continuing to occupy the territory by force, Israel incurs international responsibilities arising from a continued violation of an international obligation, and remains accountable for any violations of the rights of the Palestinian people.⁸²

The guiding IHL principle during occupations is the protection the occupying power owes the civilian population living under occupation, i.e. ‘protected persons’ of Art 4 GC IV. This reflects HR and customary IHL norms on the distinction between civilians and combatants.⁸³ Protection of civilians ‘extends to their direct environment and property, i.e. ‘civilian objects’.⁸⁴

A further cornerstone is provided in Art 43 HR, whereby the occupying power must ‘take all the measures in its power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country’,⁸⁵ as well as respecting and protecting the individuals and property under its control.⁸⁶

Additional customary norms frame the legal context in which settler violence occurs. On the illegality of settlement activities, Art 49(6) GC IV is reflected in ICRC customary IHL Rule 130.⁸⁷ On the prohibition of confiscation (as well as destruction, prohibited

⁸⁰ Report of the Independent International Commission of Inquiry on the OPT, A/77/328 of 14th Sept 2022, paras 75-76.

⁸¹ UN Security Council resolution 242 (1967) of 22 November 1967, which emphasizes “the inadmissibility of the acquisition of territory by war” shortly after Israel’s occupation of the West Bank.

⁸² Report of the Independent International Commission of Inquiry on the OPT, A/77/328 of 14 Sept 2022, para 75.

⁸³ See in particular Rules 5 and 6, International Committee of the Red Cross (ICRC), Customary IHL Database, available [here](#).

⁸⁴ ICRC, ‘Protection of civilians’ available [here](#).

⁸⁵ Art 43 HR; also Arts 47 and 64 GCIV.

⁸⁶ Arts 27-34 and 53 GCIV; also Arts 46-47 HR.

⁸⁷ ICRC Customary IHL Database, Rule 130 available [here](#).

by Art 53 GC IV) of private property, Art 46 HR, is reflected in ICRC customary IHL Rule 51(c).⁸⁸ These customary norms reaffirm the illegality of settlements (and outposts) in which violent settlers reside and acts of settler violence involving destruction of private property.

3.3 International Human Rights Law

Alongside IHL, IHRL provisions also extend to the OPT, confirmed by the Independent International Commission of Inquiry on the OPT,⁸⁹ reaffirming the ICJ in *Wall*, which restated the applicability of key instruments (specifically, ICCPR,⁹⁰ ICESCR⁹¹ and CRC⁹²).⁹³ Three intertwined legal arguments support a broader applicability of IHRL in the OPT.

First, the nature of human rights and the consolidation in **customary law** of specific provisions means that some IHRL norms apply to Palestine and Palestinians, regardless of treaty ratifications. A key customary norm of IHRL is the **right to self-determination**, codified in the UN Charter as one of the core principles of the international legal order.⁹⁴ This was reaffirmed by the ICJ in *Chagos* which clarified the ‘normative character under customary international law’ of the right to self-determination, and that its respect is ‘an obligation erga omnes’.⁹⁵ The Palestinian people also have the right to self-determination including the right to an independent State of Palestine, as repeated consistently over the years by the UN General Assembly.⁹⁶ UN engagement with Palestinian matters reflects this.⁹⁷ The specific

⁸⁸ ICRC Customary IHL Database, Rule 51(c) available [here](#).

⁸⁹ A/HRC/50/21, paras 20-21.

⁹⁰ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁹¹ International Covenant on Economic, Social and Cultural Rights (adopted 19 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

⁹² Convention on the rights of the child (1989) Treaty no. 27531. *United Nations Treaty Series*, 1577, pp. 3-178 (CRC).

⁹³ ICJ *Wall*, paras 106, and 107-113.

⁹⁴ Art 1(2) and Art 55, UN Charter 1945.

⁹⁵ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95, (*Chagos*) paras 115 and 180.

⁹⁶ Including UN General Assembly Resolutions A/RES/77/208 (15 Dec 2022) and A/RES/67/19 (4 Dec 2012).

⁹⁷ GA Resolution A/RES/3376 (22 Nov 1974) - UN Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP) established in 1975, refers explicitly to the right to self-

impact of Israeli settlements on the Palestinian right to self-determination has been noted by the UN Secretary General.⁹⁸ This was corroborated by a 2013 UN Independent Fact-finding Mission ‘to investigate the implications of the Israeli settlements on the human rights of Palestinians’, which found that the right to self-determination of the Palestinian people ‘including the right to determine how to implement self-determination, the right to have a demographic and territorial presence in the [OPT] and the right to permanent sovereignty over natural resources, is clearly being violated by Israel through the existence and ongoing expansion of the settlements’.⁹⁹

Second, the **joint operation of IHL and IHRL in the OPT** sets out a range of human rights **responsibilities of the occupying power towards the Palestinian population due to the factual realities of occupation**. Despite Israel’s rejection of the applicability of its human rights obligations outside its national territory, the UN High Commissioner for Human Rights has clarified that the IHRL framework applies to Israeli actions in the OPT stemming ‘from the jurisdiction and **effective control** exercised by Israel as the occupying power’.¹⁰⁰ Notably, the above-mentioned 2013 UN fact-finding mission confirmed that ‘Israel is bound to respect, protect, promote and fulfil the full range of the social, economic, cultural, civil and political human rights of all persons within its jurisdiction as a result of its being party’ to IHRL **treaties**, and is also bound by human rights of ‘**customary** international law’ status.¹⁰¹

Third, **Palestine’s accession to the seven core IHRL treaties** on 2nd April 2014 adds a layer of human rights protections in the OPT.¹⁰² Despite the *de facto* limitations to Palestinian sovereign governance imposed by the Israeli occupation, the Palestinian

determination of Palestinians and the right to return to their homes and property from which they have been uprooted.

⁹⁸ UN Secretary-General Report A/67/375 (18 Sept 2012), paras 10-13.

⁹⁹ UN Human Rights Council, Report of the Independent Fact-finding Mission to investigate the implications of the Israeli settlements on the civil, political, economic, social, and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63), 7 February 2013, para 37-38.

¹⁰⁰ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Human rights situation in Palestine and other occupied Arab territories, A/HRC/34/38 of 13th April 2017, paras 6-7.

¹⁰¹ UN-HRC, Report A/HRC/22/63, 7 February 2013, para 11. The IHRL conventions are: ICCPR, ICESCR, CRC, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85 (adopted 10 December 1984 and entered into force 26 June 1987) (CAT), Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13 (adopted 18 December 1979 and entered into force 3 September 1981) (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (adopted 7 March 1966 and entered into force 4 January 1969) (CERD).

¹⁰² ICCPR, ICESCR, CRC, CEDAW, CAT, CERD and CRPD.

people still possess **full *de jure* sovereignty** in the OPT and ‘jurisdiction is the legal mirror image of the principle of sovereignty’.¹⁰³ So, while Israel restricts enforcement and adjudicatory jurisdiction through the mechanics of the occupation, Palestinians maintain prescriptive jurisdiction including legislative jurisdiction in the OPT.¹⁰⁴ Consequently, their representatives have **legal capacity to enter into international agreements** including IHRL treaties, which are now part of the Palestinian legal framework. This must be understood in conjunction with the IHL provision whereby **the occupying power must respect ‘unless absolutely prevented, the laws in force in the country’** (Art 43 HR) which has acquired customary status.¹⁰⁵ The temporal scope of what is meant by ‘the laws in force in the country’ is not specified in Art 43 HR. A narrow interpretation, whereby the norm indicates only the laws in force *at the start of the occupation*, contradicts the purpose and spirit of the requirement to ‘restore, and ensure, as far as possible, public order and safety’. Given the reality of the **protracted occupation** since 1967, a good faith reading of the norm would **reject suggestions that ‘the laws in force’ only refer to those in place in 1967**, restricting Palestinians from IHRL developments since then. Therefore, the correct interpretation of the laws in force in the country includes **all norms in place in the current legal system**, provided they have been adopted lawfully by designated Palestinian representatives. As such, the IHRL instruments ratified in 2014 fall within the scope of ‘the laws in force in the country’ which the occupying power has a duty to uphold.

Considering the **typologies of settler violence** presented earlier in this EO, **numerous IHRL and IHL norms seem to be (jointly) violated**. IHL provisions underpinning the duty to protect civilians from settler violence include Art 27 GC IV, which entitles protected persons in all circumstances to ‘**respect for their persons**, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity’. In IHRL, the occupying power’s duties include taking steps to ensure civilians living under occupation enjoy: the right to **life** (Art 6 ICCPR), **liberty and security** (Art 9

¹⁰³ Cedric Ryngaert, ‘International jurisdiction law’ in Austen Parrish and Cedric Ryngaert (eds), *Research Handbook on Extraterritoriality in International Law* (Edward Elgar Publishing, 2023), 13.

¹⁰⁴ On the distinction between prescriptive and enforcement jurisdiction, see Cedric Ryngaert, ‘The concept of jurisdiction in international law’ in Alexander Orakhelashvili (ed), *Research Handbook on Jurisdiction and Immunities in International Law* (Edward Elgar Publishing, 2015), 54-55; and also *mutatis mutandis*, in relation to criminal law by Carsten Stahn, ‘The ICC, Pre-Existing Jurisdictional Treaty Regimes, and the Limits of the Nemo Dat Quod Non Habet Doctrine – A Reply to Michael Newton’ (2016) 49 *Vanderbilt Journal of Transnational Law* 443.

¹⁰⁵ Marco Sassòli, Article 43 of the Hague Regulations and Peace Operations in the Twenty-First Century, available [here](#), p 2, citing at fn 3: Trial of the Major War Criminals, International Military Tribunal in Nuremberg, published in (1947) 41 *AJIL* 172, in particular at 248-249. See Eyal Benvenisti, *The International Law of Occupation* (New Jersey: Princeton Univ. Press, 1993) at 8.

ICCPR), **privacy and family life** (Art 17 ICCPR), **freedom of movement** (including of residence within a country) (Art 12 ICCPR). Special protections apply to **children** (Art 24 ICCPR, alongside Art 13 ICESCR on the right to education) and **minorities** (Art 27 ICCPR – particularly relevant to Palestinian Bedouin communities). After incidents occur, other ICCPR provisions set out a **duty to investigate**: Articles 2(3) (victim’s right to an **effective remedy**, by competent authorities, even when the ‘violation has been committed by persons acting in an official capacity’) combined with Art 14 (right to a **fair trial and non-discrimination** before the courts). Moreover, the ICESCR includes further provisions that may be violated by settler attacks, including the right to **health** (Art 12), the right to **work** (Art 6) and the right to an **adequate standard of living** (Art 11). Art 17 of the UDHR¹⁰⁶ protects **property rights**, which are often violated in settler attacks.

3.4 International Criminal Law

The system of International Criminal Law (ICL) set out in the Rome Statute for the International Criminal Court (ICC)¹⁰⁷ offers an additional layer of international law provisions applicable to the OPT reflecting and building on IHL and IHRL. This was confirmed in Pre-Trial Chamber I decision on the ICC’s territorial jurisdiction in the *Situation in Palestine*.¹⁰⁸

3.5 Conclusion

The displacement of Palestinian communities in Area C due to settler violence occurs within the factual context of ongoing occupation; as such, the occupying power has a range of duties set out in relevant provisions of both IHL and IHRL, which seem to be routinely violated in the course of settler violence and the climate of impunity in which they occur.

¹⁰⁶ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

¹⁰⁷ UN General Assembly, Rome Statute of the International Criminal Court, 17 July 1998.

¹⁰⁸ ICC PTC-I, Decision on the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court’s Territorial Jurisdiction in Palestine, ICC-01/18-143 (5 February 2021). On the various stages of Palestine’s engagement with the ICC, see *inter alia* Valentina Azarova and Triestino Mariniello ‘Why the ICC Needs a “Palestine Situation” (More than Palestine Needs the ICC): On the Court’s Potential Role (s) in the Israeli-Palestinian Context’ (2017) 1 *Diritti Umani e Diritto Internazionale* 115; and Thomas Obel Hansen ‘Opportunities and Challenges Seeking Accountability for War Crimes in Palestine under the International Criminal Court’s Complementarity Regime’ (2019) 9(2) *Notre Dame Journal of International and Comparative Law* 3.

4 Duty to Prevent Settler Violence and The Protection of Civilians

4.1 Introduction

Building on the analysis so far, the occupying power's duty to protect civilians in Area C includes the **duty to protect civilians from settler violence**. Relatedly, it has an obligation to **prevent settler violence**, which includes taking **proactive steps ex ante**, such as increased security monitoring in areas exposed to settler violence, increased surveillance (including digital surveillance through social media) of settlers known to engage in violence against Palestinians, and other lawful measures designed to thwart attacks. The duty to prevent extends to **ex post measures** to investigate and prosecute perpetrators after such attacks to ensure not only accountability for individuals, but also a wider system of accountability. This duty should be understood as incorporating not only the specific incidents of settler violence, but also its **foreseeable consequences**, such as displacement. Prominent NGOs indicate that settler violence is adopted by Israel as a tool to accelerate the pace of Palestinian **displacement**:¹⁰⁹ once territory is cleared of Palestinians, **land can be taken over and used by Israeli settlers**, in breach of various provisions of IHL and IHRL.

As indicated earlier, Art 43 of the HR sets out the obligation of the occupying power to **'take all steps in its power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country'**. This provision has become customary, as also recognised by the Israeli Supreme Court.¹¹⁰ This obligation is broader than just guaranteeing security: as noted in the EO by Prof Sassòli and Dr Boutruche, Israeli Supreme Court jurisprudence endorses the wider interpretation to encompass 'a variety of aspects of **civil life**' including economy, society, education, welfare, health, transport and 'all other aspects

¹⁰⁹ B'Tselem, *State Business: Israel's misappropriation of land in the West Bank through settler violence*, available [here](#).

¹¹⁰ Boutruche & Sassòli, *Expert Opinion* (2014), 24, citing relevant jurisprudence from IMT Nuremberg and ICJ, as well as the Israeli Supreme Court.

of life in a modern society'.¹¹¹ This is especially important in a protracted occupation, where the requirements of security and civil life in 1967 have evolved with the times. This obligation is one of **means** and not of results, to be implemented 'in full respect' of IHL and IHRL; any 'changes of the existing legislation or institutions justified by this exception are only lawful if they actually **enhance civil life**' and **public order for Palestinians**.¹¹²

4.2 Protection of civilians and prevention of settler violence based on the IHL duty to ensure 'public order and safety'

In light of the above, the occupying power has a number of interrelated duties towards Palestinian civilians affected by settler violence which may lead to displacement in Area C:

1. The obligation to **protect civilians** based on the **duty to ensure public order and civil life** and other provisions of IHL and IHRL; this includes *a fortiori* the specific obligation to take 'all steps in its power' to protect civilians from settler violence before, during and after it occurs. This is because settler violence clearly disrupts security, public order and civil life for the Palestinian population in Area C.
2. As a corollary to the above, **the obligation to prevent settler violence** includes taking 'all steps in its power' **to investigate and prosecute perpetrators** after such attacks take place, to ensure public order and civil life are not further disrupted by a climate of impunity.
3. The duty to protect civilians from settler violence extends to **accountability for the consequences of such violations which result in additional harm** affecting public order and civil life: in particular, forcible transfer (Art 49 GCIV), which may result directly and indirectly from episodes of settler violence; the destruction of private property (Art 53 GCIV); and further expansion of settlement activities (Art 49(6) GCIV), which impact directly on the public order, safety and civil life of Palestinians.
4. Ensuring that all **IHRL provisions** relevant to the above are **respected, protected, and fulfilled**, including the right to an **effective remedy** before the courts, even if the violation is carried out by persons acting in official capacity (Art 2(3) ICCPR).

¹¹¹ Ibid, 25-26, citing *A Teachers' Housing Cooperative Society v. The Military Commander of the Judea and Samaria Region*. HC, 393/82 (1983), 37 [4] *Piskei Din*.

¹¹² Boutruche & Sassòli, Expert Opinion (2014), 25-26.

4.2.1 Duty to protect civilians from settler violence

The occupying power's duty to protect civilians from settler violence was confirmed by the UN Independent Commission of Inquiry on the OPT:

'Israel as the occupying Power bears **responsibility for protecting Palestinians against settler attacks**. Such attacks violate the right of Palestinians to life, liberty, and security of the person. Victims also have a right to an effective and timely remedy, including reparations, which is not ensured in relation to settler violence'.

'The laws of belligerent occupation require that the occupying Power take measures to restore and ensure, as far as possible, public order and safety to the population under occupation. International law specifically requires **protected persons to be treated humanely and to be protected at all times, in particular against all acts of violence or threats thereof**.¹¹³

Israel's duty to protect civilians from settler violence should be understood holistically and must target individuals as well as settler organisations and other groups or businesses involved in committing, facilitating or promoting settler violence in any form. First, as indicated above, the state must take **proactive steps ex ante** to thwart attacks it can reasonably foresee through additional **security and intelligence** measures, and create the conditions for **preventive deterrence** by ensuring **settler violence in the OPT is explicitly criminalised** in the law and the general population is made aware of such through public statements by government officials and other agencies. With regards to security and intelligence measures, these may include for instance the deployment of appropriate **monitoring and surveillance** tactics in relation to Israeli settlers either known to the authorities for previous acts of violence, or those publicly espousing the ideology of violence (e.g. on social media) who may at some point commit such acts (e.g. after individuals move to an outpost after living in another locality). Such tactics are likely to be well-known to relevant state agencies bridging intelligence and security (i.e. in implementing **counterterrorism** strategies) and must be within what is permitted in the law.

Second, the occupying power has a **duty to protect civilians from settler violence while it is occurring**; this means that any ISF such as army or police, and state-trained and armed settler guards, present at the scene **must intervene to stop the violence** and apprehend those responsible to ensure they do not inflict further harm. Likewise,

¹¹³ Report of the Independent International Commission of Inquiry on the OPT, A/77/328 of 14th Sept 2022, paras 64-65.

the occupying power's duty to protect civilians from settler violence logically means that ISF **must not participate in the infliction of violence alongside settlers in any way**. However, as illustrated in the 'Factual background' section and 'Annex', there is ample evidence of incidents where ISF stand idly by without intervening, as well as participating in the acts alongside settlers or providing protective presence for settlers. Such incidents are likely to breach Art 43 HR and the relevant IHL and IHRL norms cited above.

Third, **ex post**, Israel has a duty to protect civilians from settler violence through its **positive obligation** 'to promptly, effectively and independently **investigate and prosecute** crimes against Palestinians committed by settlers and related violations by the Israeli security forces and to provide **justice to the victims**'.¹¹⁴ The occupying power's positive obligation to investigate and prosecute settler violence is grounded in the **substance of Art 43 HR**, which requires Israel to ensure public order and safety and **respect the laws in force in the country**. The typologies of settler violence presented in the 'Factual Background' and 'Annex' are likely to violate a range of IHL and IHRL provisions, as well as local laws on offences against persons and property; the duty to investigate is therefore part and parcel of the requirements of Art 43 HR. Yet, as illustrated in the 'Factual background' section, investigations, indictments and convictions of those responsible for settler violence are very low.¹¹⁵ A 2022 monitoring exercise by the UN Human Rights Committee of Israel's implementation of ICCPR obligations, including in the OPT, found 'a **general climate of impunity**', the victims' lack of trust in the system and **lack of access 'to justice and effective remedies'**.¹¹⁶ Already in 2013, a UN fact-finding mission reported that the identities of settlers responsible for violence and intimidation were generally known to the Israeli authorities, yet impunity prevailed.¹¹⁷ As such, given that accountability remains 'gravely deficient' the '**climate of impunity for settler violence, encouraging the continuation of attacks**' is sustained and exacerbated.¹¹⁸

Fourth, Israel has a **duty to protect civilians not only from settler violence but also its harmful consequences**, especially when it also amounts to **additional violations of IHL and IHRL**. The displacement of Palestinian communities in Area C due to settler violence may meet the criteria for **forcible transfer**, analysed in the EO by Prof Sassòli

¹¹⁴ Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, A/HRC/52/76 of 15 March 2023, para 44.

¹¹⁵ Yesh Din, Data Sheet, December 2023: Law Enforcement on Israeli Civilians in the West Bank.

¹¹⁶ UN Human Rights Committee, Concluding observations on the fifth periodic report of Israel, CCPR/C/ISR/CO/5 of 5th May 2022, para 24-25.

¹¹⁷ UN-HRC Report A/HRC/22/63 of 7 Feb 2013, para 50.

¹¹⁸ Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, A/HRC/52/76 of 15 March 2023, para 45-46.

and Dr Boutruche.¹¹⁹ The occupying power has a **‘positive obligation to restore and ensure public order and civil life’ which must be ‘implemented in full respect of the prohibition of forcible transfers’**.¹²⁰ Forcible transfer is also a crime under the Rome Statute of the ICC.¹²¹ Moreover, as indicated in the ‘Factual background’ section, the increasingly severe level of settler violence and widespread impunity contribute to **‘the coercive environment, increasing their risk of forcible transfer’**.¹²² Displacement may result not only from a single act of settler violence, but also from a **sequence of acts of settler violence** of varying intensity, committed over time and motivated by the same **ideology and intention** to force Palestinians off their land. The displacement in Zanutah may offer an example of this.¹²³

In the context of displacement due to settler violence, additional harmful consequences of such acts may violate other duties of the occupying power under IHL and IHRL, including the prohibition of the **destruction of private property**, as analysed by Professor Sassòli and Dr Boutruche.¹²⁴ As illustrated in the ‘Factual background’ and ‘Annex’, reported incidents of settler violence include many offences against property which violate specific IHL and IHRL norms as well as the duty to protect civilians and civilian objects. Moreover, repeated incidents of destruction of property as part of settler violence contribute to the **coercive environment, contextualising and potentially causing displacement**.

A final note on the occupying power’s duty to prevent settler violence and protect civilians relates to **Israel’s violation of the prohibition of settlement activities enabling settler violence**. Under Art 49(6) GC IV all settlement activity is illegal, as reaffirmed in UN Security Council resolution 2334 (2016) (not vetoed by the USA) and the ICJ Advisory Opinion in *Wall*.¹²⁵ Nonetheless, for decades Israel has pursued an official state policy of settler expansion in Area C of the West Bank.¹²⁶ Moreover, recent times have seen an increase in unofficial settler outposts and ‘farms’ (also known as

¹¹⁹ Boutruche & Sassòli, Expert Opinion (2014), 13-18.

¹²⁰ *Ibid*, 27.

¹²¹ Art 8(2)(a)(vii) Rome Statute.

¹²² Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, A/HRC/52/76 of 15 March 2023, para 36. Also, Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, A/77/493 of 3 Oct 2022, paras 2 and 38.

¹²³ The incidents of SV in Khirbet Zanutah include: threats, harassment, violence against the person, destruction of solar panels, a car door, draining water tanks, smashed windows of residential structure, etc, which led to the community fleeing the site. Reported [here](#).

¹²⁴ Boutruche & Sassòli, Expert Opinion (2014), 32-34.

¹²⁵ ICJ *Wall*.

¹²⁶ See e.g. B’Tselem, Land Grab: Israel’s Settlement Policy in the West Bank, available [here](#).

‘herding outposts’), which are illegal under both Israeli law and international law,¹²⁷ yet widely tolerated by the authorities and in some instances encouraged by specific government programmes, as discussed in the ‘Factual background’ section. Authoritative UN reports, including by the Secretary General¹²⁸ and the High Commissioner for Human Rights, have established the **links between the rise of settler violence and unofficial settler outposts**, described ‘by government officials as a **tool to “prevent Palestinian invasions” and acquire Israeli sovereignty over land in Area C**’.¹²⁹ Settlement expansion supported by the state violates IHL and IHRL provisions discussed earlier, but also UN Security Council Resolution 2334 (2016) which is legally binding for all UN members. This document requires Israel to **‘immediately and completely cease all settlement activities’** in the OPT and take **‘immediate steps to prevent all acts of violence against civilians’**.¹³⁰ However, the most recent UN Secretary General report on the implementation of this resolution indicates instead that the **‘relentless expansion of Israeli settlements in the occupied West Bank’ is ‘contributing to a rise in settler-related violence’**.¹³¹ When such attacks occur, Israel ‘has an **obligation to protect Palestinians and their property**’ and **‘ensure prompt, independent, impartial, and transparent investigations’**.¹³² As illustrated in the ‘Factual background’, the occupying power appears to be systematically failing in its obligations in that regard.

4.3 Conclusion

The occupying power’s duty to prevent settler violence and protect civilians – and its duty to protect civilians from settler violence that may lead to their displacement – is based on Art 43 HR and a range of other provisions of IHL and IHRL. As illustrated in the preceding analysis, Israel is failing in its obligations in that regard, both during incidents of settler violence and after they occur, by investigating and prosecuting perpetrators. In particular, the occupying power should increase measures to proactively prevent settler violence in contexts where there is knowledge that such attacks are regular and likely to occur again. While no specific measures are mandatory under international law, it is clear that in order for the substance of Art 43

¹²⁷ Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, A/77/493 of 3 Oct 2022, paras 7-8.

¹²⁸ Ibid, para 48.

¹²⁹ Report of the UNHCHR, Israeli settlements in the Occupied Palestinian Territory, A/HRC/52/76 of 15 March 2023, para 13.

¹³⁰ UNSC Resolution 2334 (2016), paras 2 and 6.

¹³¹ UN Secretary General Report on the Implementation of Security Council resolution 2334 (2016), S/2023/458, 21 June 2023, para 61.

¹³² Ibid para 69.

to be upheld, Israel must take urgent action to maintain public order where there is a genuine risk that settler violence will occur.

5 Right to Remedy and Reparations

5.1 Introduction

When Palestinian civilians living under occupation are subjected to settler violence and face displacement due to settler violence, international law provides them with a right to remedy and reparations. The normative foundations of the right to remedy are contained in Art 8 of the Universal Declaration of Human Rights (UDHR) (1948), which states that ‘Everyone has the **right to an effective remedy** by the **competent national tribunals** for **acts violating the fundamental rights** granted him by the constitution or by law’. Given the arguably **customary** connotations of the UDHR,¹³³ the inclusion of the right to remedy in it is noteworthy. A comparable norm is contained in treaty law, specifically Art 2(3)(a) of the ICCPR,¹³⁴ which extends to violations ‘**committed by persons acting in an official capacity**’; this provision sets out an obligation to ensure the victim’s claim is ‘determined by **competent judicial, administrative or legislative authorities**’ and given ‘**possibilities of judicial remedy**’ (Art 2(3)(b)) to be enforced by ‘the competent authorities’ (Art 2(3)(c)). Fulfilling these requirements contributes to meeting the **public order and safety imperatives** of Art 43 HR, and complements relevant IHL and IHRL provisions discussed in the previous section.

A related but separate **right to reparations** has also developed in general international law. There is ‘a **general principle of public international law** that any wrongful act – i.e. any violation of an obligation under international law – gives rise to an **obligation to make reparation**’ based on consolidated international

¹³³ William A. Schabas, *The Customary International Law of Human Rights* (OUP 2021), 82, citing: United States Diplomatic and Consular Staff in Tehran, United States v Iran, Judgment, ICJ GL No 64, [1980] ICJ Rep 3, ICGJ 124 (ICJ 1980), 24th May 1980, para. 91.

¹³⁴ Art 2(3)(a) ICCPR: “Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity”.

jurisprudence.¹³⁵ This is reflected in Art 31 of the 2001 **ILC Articles on Responsibility of States for Internationally Wrongful Acts** (ARSIWA) setting out the **duty to make reparations**, which is the ‘second general obligation of the responsible State consequent upon the commission of an internationally wrongful act’ (after the obligation to cease the act).¹³⁶ This provision sets out ‘an obligation to make full reparation for the injury caused by the internationally wrongful act,’ understood as ‘any damage, whether material or moral, caused by the internationally wrongful act of a State’. This principle applies to all violations of international law, therefore includes both IHL and IHRL. The ‘aim of reparation is to **eliminate, as far as possible, the consequences of the illegal act** and to restore the situation that would have existed if the act had not been committed’.¹³⁷

Both the right to remedy and to reparations has developed significantly through **soft law** instruments, as the following discussion will illustrate.

The right to **reparations for victims of international law violations in the OPT** was confirmed by the ICJ in *Wall*, establishing Israel’s ‘**obligation to make reparation for the damage caused to all the natural or legal persons**’ whose property had been requisitioned or destroyed as a consequence of the construction of the barrier by the state.¹³⁸ This provision offers a **solid legal foundation** to argue that a similar right to reparation exists for victims of settler violence, including displacement due to settler violence, **when harm originates from actions (or inaction) of state representatives**. Similar conclusions were reached by the UN Independent International Commission of Inquiry on the OPT in relation to the unlawful nature of occupation owing to its permanence and actions to annex parts of the land: it found that ‘**Israel is under an obligation** to cease the unlawful acts, offer assurances and guarantees of non-repetition, and **make full reparations**’.¹³⁹

¹³⁵ Emanuela-Chiara Gillard, ‘Reparation for violations of international humanitarian law’ (2003) 85(851) IRRC 529, 530-531, citing Permanent Court of International Justice, *Factory at Chorzow* (Claim for Indemnity) case, (Germany v. Poland), (Merits), PCIJ (ser. A) No. 17, 1928, p. 29.

¹³⁶ ILC, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001), available [here](#). (ARSIWA)

¹³⁷ Gillard, ‘Reparation for violations of international humanitarian law’, 530-531.

¹³⁸ ICJ *Wall*, para 152.

¹³⁹ Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel, for *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* - Request for an Advisory Opinion from the International Court of Justice (Sept 2023), para 6, available [here](#).

As illustrated in the ‘Factual Background’ and ‘Annex’, reported instances of **settler violence causing displacement** amount to several **unlawful acts violating IHL and IHRL**, as well as other provisions of international law. This is compounded by the **poor record of investigations** and convictions of those responsible, which creates an **enabling environment for settler violence**. Given Israel’s obligation to protect Palestinians against all acts of violence, including settler violence, these **acts and omissions by state agents (military and civilian) may amount to the state’s implication in settler violence**, as academic commentary indicates.¹⁴⁰ Consequently, depending on the specific facts of each case, the **occupying power may have a duty to provide not only remedies but also reparations** to Palestinian victims of international law violations ensuing from settler violence.

5.2 Right to remedy

The right to effective remedy introduced earlier is elaborated in soft law instruments. Principle 32 of the *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* (‘Updated Principles’) establishes that there should be ‘a **readily available, prompt, and effective** remedy in the form of **criminal, civil, administrative or disciplinary proceedings**’, and victims exercising this right ‘shall be afforded protection against intimidation and reprisals’.¹⁴¹

Further soft law support for the victims’ right to remedy for **gross violations of IHRL** as well as for **serious violations of IHL**, is found in Principle 11 of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (‘Basic Principles’), which lists:

- (a) Equal and effective access to justice;
- (b) Adequate, effective, and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.¹⁴²

¹⁴⁰ Mais Qandee, ‘Violence and State Attribution: The Case of Occupied Palestine’ (2023) 52(2) *Journal of Palestine Studies* 43.

¹⁴¹ *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, Commission on Human Rights, 61st. Session, February 8, 2005, E/CN.4/2005/102/Add.1

¹⁴² *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147, 2006.

A person is a **victim for the purpose of a right to remedy for serious violations of IHL** when they ‘individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights’.¹⁴³ This **secondary right originates ‘from a primary substantive right** that that has been breached’.¹⁴⁴

The **right to remedy of Palestinian victims of settler violence** – and its consequences, including displacement – is derived from the sources illustrated above, given the wide array of IHL and IHRL norms violated in each instance of settler violence, depending on the specific facts of each case. This appears to be an **obligation of means: Israel as the occupying power must provide meaningful access to justice** for victims. However, as evidenced in the ‘Factual Background’ section, Israel systematically fails to adequately investigate incidents of settler violence. Given that the occupying power is **unable and unwilling to uphold the right to remedy through appropriate domestic proceedings**, whenever **victims seek justice internationally** Israel should not obstruct those efforts.

5.3 Right to reparations

The right to reparations introduced earlier as a **general principle** is also found in **treaty, custom and international jurisprudence**. Under **IHL**, Art 3 of Hague Convention (IV) respecting the Laws and Customs of War on Land sets out **state liability to pay compensation** for violations of that treaty committed by members of its armed forces.¹⁴⁵ Today, the **state responsibility to make full reparation for loss or injury caused by violations of IHL** has acquired **customary international law** status as indicated by the ICRC.¹⁴⁶ While there is no indication in IHL instruments as to the beneficiaries of reparations for IHL violations,¹⁴⁷ there is ‘an increasing trend in favour of enabling **individual victims of violations of international humanitarian law to seek reparation directly from the responsible State**’ based on Art 33(2)

¹⁴³ Ibid, Principle 8.

¹⁴⁴ Liesbeth Zegveld, ‘Remedies for victims of violations of international humanitarian law’ (2003) 85(851) IRRC 497, 503.

¹⁴⁵ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Art 3: “A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.”

¹⁴⁶ ICRC International Humanitarian Law Database, Customary Rule 150. Reparation, available [here](#).

¹⁴⁷ Gillard, ‘Reparation for violations of international humanitarian law’, 536.

ARSIWA.¹⁴⁸ As indicated in ICRC literature, ‘Reparation has been provided directly to individuals via different procedures’ including ‘by individuals directly before **national courts**’,¹⁴⁹ but there is no reason to interpret this norm to the exclusion of potential **international avenues** as well. The **right to reparation has also been recognised** in recent ICC jurisprudence as a ‘**well-established and basic human right**, that is enshrined in universal and regional human rights treaties’.¹⁵⁰ Specifically, Art 9(5) ICCPR sets out an ‘enforceable right to compensation’ for victims of unlawful arrest or detention. The elaboration of the right to reparation in IHRL is discussed below.

Reparations for victims of armed conflict

Considering the factual and legal context of the ongoing occupation of the OPT discussed in earlier sections, victims of violations may benefit from the specific principles on reparations applicable to armed conflict consolidated in soft law instruments. A definition of ‘reparations’ is given in Art 1 of the **2010 Declaration of International Law Principles on Reparation for Victims of Armed Conflict of the International Law Association** (‘ILA Declaration on Reparation’):

1. (...) the term “reparation” is meant to cover measures that seek to eliminate all the harmful consequences of a violation of rules of international law applicable in armed conflict and to re-establish the situation that would have existed if the violation had not occurred.
2. Reparation shall take the form of restitution, compensation, satisfaction and guarantees and assurances of non repetition, either singly or in combination.¹⁵¹

The *ILA Declaration on Reparation* (and related Commentary to the Draft version¹⁵²) extends to **situations of occupation** (Art 2), governed by international laws pertaining to armed conflict, thus including IHL and IHRL (Art 3). Victims may be ‘natural or legal

¹⁴⁸ ICRC Customary Rule 150. Art 33(2) of the Articles on State Responsibility sets out, regarding international obligations: “without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State”.

¹⁴⁹ ICRC Customary Rule 150.

¹⁵⁰ International Criminal Court ICC-01/04-01/06, Prosecutor v. Thomas Lubanga Dyilo, Decision Establishing the Principles and Procedures to Be Applied to Reparations (2012), paras 185–97, citing inter alia Art 8 UDHR (remedy) and Art 9(5) ICCPR (enforceable right to compensation).

¹⁵¹ ILA, *Declaration of International Law Principles on Reparation for Victims of Armed Conflict* (2010), available [here](#).

¹⁵² ILA, *Draft Declaration of International Law Principles on Reparation for Victims of Armed Conflict* (2010) (with commentary), p 16, available [here](#).

persons' who **'are harmed as a result of a violation of rules of international law applicable in armed conflict'** (Art 4). States, international organisations, and other non-state actors are responsible for making reparations (Art 5). As clarified in the Commentary, violations by non-state actors **'might also trigger the responsibility of States'**.¹⁵³ As such, **responsible parties** are required to 'make every effort to give effect to the rights of victims to reparation' (Art 11), such as **'programmes and institutions that facilitate access to reparation'**, including possible programmes addressed to persons affected by armed conflicts other than the victims defined in this Declaration'.¹⁵⁴ This reflects Principle 32 of the *Updated Principles*, wherein 'Reparations may also be provided through programmes, based upon legislative or administrative measures, funded by national or international sources, addressed to individuals and to communities'.¹⁵⁵ The *Updated Principles* also indicate that 'the right to reparation includes access to applicable **international and regional procedures'**.¹⁵⁶

The *ILA Declaration on Reparation* provides an **individual entitlement** to reparation,¹⁵⁷ based on multiple sources, including ICJ Advisory Opinion *Wall*,¹⁵⁸ Principle 31 of the *Updated Principles*,¹⁵⁹ and Principle 15 of the *Basic Principles*.¹⁶⁰ Moreover, the Rome Statute of the ICC also establishes an individual right to reparation.¹⁶¹ Alongside the individual right, the Committee also indicated that

¹⁵³ Ibid, p 13.

¹⁵⁴ Ibid.

¹⁵⁵ *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, Principle 32.

¹⁵⁶ Ibid.

¹⁵⁷ ILA, Draft Declaration of International Law Principles on Reparation for Victims of Armed Conflict, p 18.

¹⁵⁸ ICJ *Wall*, para 152 ff (cited in *ibid*).

¹⁵⁹ *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, Principle 31: "Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator."

¹⁶⁰ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Principle 15: "Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: [...] adequate, effective and prompt reparation for harm suffered."

¹⁶¹ Art 75(1): "The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation, and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting."

international law supports **collective reparation**, based on a range of developments in regional human rights courts, truth commissions, as well as soft law instruments, notably the Preamble of the *Basic Principles* and Principle 32 of the *Updated Principles*.¹⁶² Academic commentary suggests that collective reparation may be well-suited to addressing **collective harm**, for instance when victims ‘share certain bonds, such as common cultural, religious, tribal, or ethnic roots’.¹⁶³ This might be pertinent to the specific situation of Palestinian Bedouin and herder communities in Area C who are targeted collectively, as a group, by violent settlers.

The *ILA Declaration on Reparation* lists the following reparation measures: **restitution**, i.e. ‘measures that re-establish the situation which existed before the violation of rules of international law applicable in armed conflict occurred’ (Art 7), **compensation** for ‘financially assessable damage’ (Art 8), **satisfaction**, i.e. ‘an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality’ (Art 9), and the responsible party’s ‘obligation to offer appropriate **assurances and guarantees of non repetition**’ (Art 10); the latter will be discussed separately in a later section of the EO.

→ Restitution

The right to **restitution** reflects Art 35 ARSIWA in seeking to re-establish the status quo ante before the violation of international law,¹⁶⁴ and elaboration in the *Basic Principles*, to include

restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.¹⁶⁵

→ Compensation and Satisfaction

¹⁶² ILA, *Draft Declaration of International Law Principles on Reparation for Victims of Armed Conflict*, p 19.

¹⁶³ Friedrich Rosenfeld, ‘Collective reparation for victims of armed conflict’ (2010) 92(879) IRRC 731, 734.

¹⁶⁴ ILC, *Articles on Responsibility of States for Internationally Wrongful Acts*, with commentaries (2001).

¹⁶⁵ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Principle 19.

Similarly, the right to **compensation** and **satisfaction** mirror Art 36 and 37 ARSIWA; the former involves monetary payment, the latter requires non-financial measures contributing to alleviating the harm.¹⁶⁶ In the *Basic Principles*, **compensation** for economically assessable damage includes:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.¹⁶⁷

As indicated in the commentary to the ILA *Draft Declaration of International Law Principles on Reparation for Victims of Armed Conflict*, a wide range of measures fall under the category of **satisfaction** and may include an acknowledgement of the breach following an inquiry, fact-finding or investigations, establishing the truth about the suffering and its perpetrators publicly, and accepting responsibility.¹⁶⁸ In the *Basic Principles*, examples of satisfaction include effective measures aimed at the cessation of continuing violations, fact-finding and truth-seeking initiatives, public apologies, commemorations and the inclusion of accurate historic accounts in educational materials.¹⁶⁹

5.4 Conclusion

Taking stock of the analysis so far, **Palestinian civilian victims of IHL and IHRL violations due to settler violence have the right to an effective remedy and reparations under international law**. This is particularly important when the occupying power is involved in the violations, either by participating in settler violence, failing to prevent it when ISF members are present at the scene, and failing

¹⁶⁶ ILA, *Draft Declaration of International Law Principles on Reparation for Victims of Armed Conflict*, p 23-24.

¹⁶⁷ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Principle 20.

¹⁶⁸ ILA, *Draft Declaration of International Law Principles on Reparation for Victims of Armed Conflict*, p 23-24.

¹⁶⁹ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Principle 22.

to appropriately investigate and prosecute those responsible. Israel as the duty-bearer for the corresponding obligations systematically fails to uphold the right to effective remedy and reparations. In addition to the **access to justice failures** in relation to settler violence, as described in the 'Factual Background' section, there seem to be **no reported reparations** seeking to return victims to the status quo ante the violations. Nonetheless, the international legal framework set out in treaty, custom, general principles, jurisprudence of the international courts, academic commentary and soft law developments indicates clearly that **Palestinian victims of settler violence and displacement due to settler violence, have a right to effective remedy as well as reparations**, which includes compensation (as confirmed by the ICJ in *Wall*), restitution, satisfaction, assurances and guarantees of non-repetition (discussed in the next section).

At present, the **displaced persons have not returned to their communities** out of **fear** of exposing themselves to further settler violence. When families express their wish to return, it is imperative that Israel facilitates this move back by taking all steps in its power in order to **protect these civilians from further violence** to ensure their safety.

6 Duty of the Occupying Power to Guarantee Non-Reoccurrence

6.1 Introduction

Alongside the victims' right to remedy and reparations discussed in the previous section, international law additionally sets out guarantees of non-reoccurrence – also referred to as non-recurrence or non-repetition – as a further tool to address the consequences of violations of IHL and IHRL. The normative foundations of non-reoccurrence emerge through an appraisal of mostly **soft law** sources. Art 30 ARSIWA declares that the 'State responsible for the internationally wrongful act is under an obligation' to 'offer appropriate assurances and guarantees of non-repetition'.¹⁷⁰ The accompanying commentary indicates that '**Assurances** are normally given **verbally**, while guarantees of **non-repetition involve something more**—for example, **preventive measures to be taken by the responsible State designed to avoid repetition of the breach**', and are 'concerned with the restoration of confidence in a continuing relationship'.¹⁷¹ The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has explained that the '**general commitment to adhere to a right involves making efforts to ensure that its violation ceases and is not repeated**. The duty to prevent recurrence is hence closely linked to the obligation of cessation of an ongoing violation'.¹⁷² Its core function 'is **preventive** in nature',¹⁷³ and can be satisfied by **diverse measures** depending on context.¹⁷⁴

¹⁷⁰ ILC, Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001).

¹⁷¹ *Ibid*, 89-90.

¹⁷² Report of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff (A/HRC/30/42) (7 Sept 2015), para 18 available [here](#).

¹⁷³ *Ibid* para 24.

¹⁷⁴ Report of the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (A/70/438) (21 Oct 2015), para 9, available [here](#).

6.2 Measure fulfilling the duty to guarantee non-reoccurrence

Assurances and guarantees of non-repetition are the fourth typology of reparation set out in Art 10 of the 2010 ILA *Declaration of International Law Principles on Reparation for Victims of Armed Conflict* discussed in the previous section.¹⁷⁵ Examples of **guarantees of non-repetition in relation to both IHL and IHRL** are provided in Principle 23 of the above-cited *Basic Principles*,¹⁷⁶ and include: civilian oversight of military and security forces; due process, fairness and impartiality in legal proceedings; independence of the judiciary; human rights and IHL training for law enforcement officials as well as military and security forces; and reforming laws contributing to or allowing gross violations of IHRL and IHL. In consideration of the **widespread impunity for settler violence** described in the ‘Factual Background’ section, the lack of meaningful investigations would necessitate **significant and proactive measures to satisfy and reassure Palestinian victims** that Israel is committed to non-reoccurrence of such acts.

With specific reference to **IHRL**, Principle 35 of the *Updated principles* sets out that:

States shall ensure that victims do not again have to endure violations of their rights. To this end, States must undertake **institutional reforms** and other measures necessary to ensure **respect for the rule of law**, foster and sustain a **culture of respect for human rights**, and restore or establish **public trust in government** institutions.¹⁷⁷

Such reforms should advance the rule of law, the repeal of laws that contribute to or authorise violations of IHRL and IHL, civilian oversight of military and security forces and intelligence, and disbandment of parastatal armed forces. The *Updated principles* provide specific guidance on the following measures.

*Reform of state institutions (Principle 36)*¹⁷⁸

¹⁷⁵ ILA, *Declaration of International Law Principles on Reparation for Victims of Armed Conflict* (2010), p 25, available [here](#).

¹⁷⁶ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Principle 23.

¹⁷⁷ *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*.

¹⁷⁸ *Ibid*, Principle 36: “States must take all necessary measures, including legislative and administrative reforms, to ensure that public institutions are organized in a manner that

In developing and implementing measures to guarantee non-recurrence, the state must undertake a comprehensive review of all relevant institutions and state agents (e.g. security forces) that may be implicated directly or indirectly in committing or facilitating international law violations. The *Updated principles* provides a list of ‘minimum’ requirements, which include, first, **terminating the service of public officials and employees in military and civilian roles who are personally responsible for gross violations** of human rights. In the context of settler violence, based on the ‘Factual background’ and ‘Annex’, such measures might require disciplinary proceedings for ISF members who participate in inflicting harm, or fail to stop it if present at the scene. Second, measures should promote **judicial independence, and ‘impartial and effective operation of courts** in accordance with international standards of due process’. As discussed in the ‘Factual background’ section, the **discriminatory legal system imposed by Israel across the OPT favours the interests of Israeli settlers over the rights of Palestinian civilians**; to fulfil the occupying power’s duty to guarantee non-recurrence, only **radical reform** of the legal system and law enforcement will rectify the institutional discrimination Palestinians face.

*Disbandment of parastatal armed forces (Principle 37)*¹⁷⁹

ensures respect for the rule of law and protection of human rights. At a minimum, States should undertake the following measures: (a) Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence, and judicial sectors, shall not continue to serve in State institutions. Their removal shall comply with the requirements of due process of law and the principle of non-discrimination. Persons formally charged with individual responsibility for serious crimes under international law shall be suspended from official duties during the criminal or disciplinary proceedings; (b) With respect to the judiciary, States must undertake all other measures necessary to assure the independent, impartial, and effective operation of courts in accordance with international standards of due process. Habeas corpus, by whatever name it may be known, must be considered a non-derogable right; (c) Civilian control of military and security forces as well as of intelligence agencies must be ensured and, where necessary, established or restored. To this end, States should establish effective institutions of civilian oversight over military and security forces and intelligence agencies, including legislative oversight bodies; (d) Civil complaint procedures should be established and their effective operation assured; (e) Public officials and employees, in particular those involved in military, security, police, intelligence and judicial sectors, should receive comprehensive and ongoing training in human rights and, where applicable, humanitarian law standards and in implementation of those standards.”

¹⁷⁹ *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, Principle 37: “Parastatal or unofficial armed groups shall be demobilized and disbanded. Their position in or links with State institutions, including in particular the army, police, intelligence, and security forces, should be thoroughly investigated and the information thus acquired made public. States should draw up a reconversion plan to ensure the social reintegration of the members of such groups. Measures should be taken to secure the

The *Updated principles* provide that **unofficial armed groups ‘shall be demobilized and disbanded’** and their **‘position in or links with State institutions, including in particular the army, police, intelligence and security forces, should be thoroughly investigated and the information thus acquired made public’**. As illustrated in the ‘Factual background’ section, in many incidents of settler violence the **distinction is blurred** between the role of settlers and ISF. **When settlers are armed by the state or operate with a degree of coordination with official forces**, their position is even more ambiguous, and they may be classified as ‘parastatal armed forces’. As such, in order to take steps towards guarantees of non-recurrences, the occupying power must take action to **identify, disarm and dismantle such unofficial armed groups, and investigate their links to the ISF and other state institutions**. Given the complex social and political environments in which violent settler groups operate, the disbandment of such unofficial armed groups requires **decisive action not just to target violent individuals but also the ideology underpinning their acts of political violence**. Moreover, the fact that violent settler groups often operate around **outposts** – which are illegal in international law (like all settlements) and generally also in Israeli law – Israel should take decisive steps to halt such activities as a matter of urgency. Additionally, as required by UNSC Res 2334 (2016), Israel must **address the settlement enterprise as a whole – and the role of violent settlers within it** – in its efforts to dismantle unofficial armed groups inflicting violence on Palestinian civilians.

Reform of law and institutions contributing to impunity (Principle 38)¹⁸⁰

In situations where the legal system – including legislation, law enforcement and justice institutions – contribute to impunity, guarantees of non-recurrence require states to embark on a process of reform. As illustrated in the ‘Factual background’ section, **settler violence occurs in a permissive environment**, characterised by **impunity** for those responsible and limited access to justice for victims. In order to take meaningful steps towards the guarantee of non-recurrence, the occupying power must **review and reform any laws and institutions contributing to impunity for settler violence** and its consequences, including displacement of Palestinians.

cooperation of third countries that might have contributed to the creation and development of such groups, particularly through financial or logistical support.”

¹⁸⁰ *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, Principle 38: “Legislation and administrative regulations and institutions that contribute to or legitimize human rights violations must be repealed or abolished. In particular, emergency legislation and courts of any kind must be repealed or abolished insofar as they infringe the fundamental rights and freedoms guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Legislative measures necessary to ensure protection of human rights and to safeguard democratic institutions and processes must be enacted.”

Relatedly, Israel must **review the discriminatory practices of key actors within the legal system** – such as law enforcement officers and other officials involved in investigations – favouring settler interests over Palestinian rights. These obligations are **broader than the specific incidents of impunity for settler violence** and go to the very heart of the urgent need for Israel to review the discriminatory legal system it imposes on Palestinians, in a context described as **apartheid** by human rights observers.¹⁸¹

6.3 Conclusion

As discussed in this section, Israel has a duty to guarantee non-reoccurrence of the violations of IHL and IHRL inflicted through settler violence through several potential measures. However, as evidenced in the ‘Factual background’ section, **Israel is failing to uphold its obligations** in that regard; in particular, by establishing a climate of impunity for settler violence, promoting the settlement enterprise despite its illegality under international law, and maintaining a discriminatory legal system in the OPT to the detriment of Palestinians, it shows **no intention to guarantee non-reoccurrence of settler violence which may lead to displacement**.

¹⁸¹ Amnesty International, *Israel’s apartheid against Palestinians* (1 February 2022) available [here](#) ; Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (27 April 2021) available [here](#) ; UN-OHCHR Press release: Israel’s 55-year occupation of Palestinian Territory is apartheid – UN human rights expert, available [here](#) ; and B’Tselem, *A regime of Jewish supremacy from the Jordan river to the Mediterranean Sea: This is Apartheid*, available [here](#).

7 Other Duty-Bearers' Obligations Under IHL\IHRL

7.1 Introduction

Third states not party to the conflict are bound by various duties set out in international law regarding the displacement of Palestinian communities due to settler violence. IHL provides the most developed framework. With regards to third state responsibilities in relation to IHRL violations, the situation is less clear, as discussed later in this section. In more general terms, the UN Charter also sets out obligations for third states. **Art 25 of the UN Charter** requires UN members 'to accept and **carry out the decisions of the Security Council**'.¹⁸² Given that **UN SC Resolution 2334 (2016)** notably reaffirms the illegality of settlements, it follows that all UN members must implement the prohibition in their official actions. The resolution explicitly calls upon **other states 'to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967'**, which translates into a positive **obligation for other duty-bearers to take proactive steps** in that regard, for instance by suspending trade and other collaborations benefitting the settlement enterprise.¹⁸³ However, as there is no prescribed format to implement UN Security Council decisions, states are entitled to develop **bespoke measures** to give legal effect to the confirmation that settlements violate international law by using their **diplomatic, political, economic influence to contrast all settlement activities** and Israeli policies that promote them. Within this framework, States may also develop **measures to address settler violence** – as evidenced through the individual **sanctions** imposed on a handful of violent settlers by the US, the UK and France in February 2024 (described in the 'Introduction').

¹⁸² The relevance of Art 25 UN Charter in relation to third state obligations is discussed *inter alia* in Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel – Request for an Advisory Opinion from the ICJ: Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Sept 2023) available [here](#).

¹⁸³ UNSC Res 2334 of 23 Dec 2016, paras 1, 2, 4, 8-9.

7.2 Other duty-bearers' obligations under IHL

In IHL, **Common Art 1 of the 1949 Geneva Conventions** sets out a general **duty for third states** 'to respect and ensure respect' for the four Geneva Conventions 'in all circumstances'.¹⁸⁴ Therefore, whenever specific incidents of settler violence violate provisions within GCIV, or when displacement of Palestinian communities due to settler violence meets the criteria for the definition of **forcible transfer contained in Art 49(1) GC IV**, third party responsibility can be invoked. As elaborated by Boutruche and Sassòli, third states 'are expected to **take all possible steps to ensure that IHL is respected by all parties, in particular by parties to a conflict or by Occupying Powers**'.¹⁸⁵ Just as that EO found that under common article 1 there is a duty on third states to 'exert pressure on Israel to put an end to the particular plan to remove the remaining Bedouin communities as a matter of preventing further forcible transfers',¹⁸⁶ in relation to displacement of Palestinian communities due to settler violence third states have a **duty to exert pressure on the occupying power to take all necessary steps to protect civilians, prevent, stop, investigate and prosecute individuals responsible for such acts, and put an end to the overall climate of impunity that enables settler violence.**

Additional IHL provisions on third state responsibilities include Articles 146-148 GC IV. In general terms, 'Each High Contracting Party shall take **measures necessary for the suppression of all acts contrary to the provisions of the present Convention**' (Art 146). Art 146 also enshrines the principle of **universal jurisdiction**,¹⁸⁷ opening up the possibility for **third states to prosecute and extradite alleged perpetrators of settler violence leading to the forcible transfer** of Palestinian communities in Area C.

The **grave breaches** set out in Art 147 GC IV include a range of acts committed against civilians and their property, which **mostly overlap with the substance of settler violence** described in the 'Factual background' and 'Annex':

wilful **killing**, torture, or inhuman treatment (...), wilfully causing great suffering or serious **injury to body** or health, unlawful deportation or **transfer** or unlawful confinement of a protected person, (...), or **wilfully**

¹⁸⁴ For a comprehensive analysis of Common Art 1, see Boutruche & Sassòli, Expert Opinion on Third States' Obligations vis-à-vis IHL Violations under International Law, with a special focus on Common Article 1 to the 1949 Geneva Conventions (2016).

¹⁸⁵ Boutruche & Sassòli, Expert Opinion on the Displacements of Bedouin Communities from the Central West Bank under International Humanitarian Law (2014), p 40.

¹⁸⁶ Ibid, p 42.

¹⁸⁷ Discussed in Boutruche & Sassòli, Expert Opinion (2014), p 40.

depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, (...) extensive **destruction and appropriation of property**, not justified by military necessity and carried out unlawfully and wantonly.

In respect to grave breaches, Art 148 GC IV states that ‘No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any **liability incurred by itself or by another**’. This establishes an important principle whereby no state is above the international rule of law, suggesting that third states should consistently support accountability initiatives at local and international level for any alleged grave breaches.

7.3 Other duty-bearers’ obligations under IHRL

As noted earlier, third state responsibilities with regards to **IHRL** are less clear. **Third state obligations** can be derived from Articles 40 and 41 **ARSIWA** pertaining to the serious breach of peremptory norms of general international law, which encompasses any IHRL and IHL norms satisfying the definition of ‘peremptory’, if ‘it involves a **gross or systematic failure by the responsible State** to fulfil the obligation’. This is understood to be a positive duty, also articulated in various preambles of human rights instruments; however, the provisions outlined in Art 41 are relatively broad, leaving states ample freedom to develop bespoke responses.¹⁸⁸

With reference to third state duties in relation to **displacement of Palestinian civilians due to settler violence**, it is first necessary to ascertain **whether any peremptory norms of general international law are breached** in the incidents reported. The main peremptory norm of IHRL violated by settler violence is the **right to self-determination**, previously discussed in relation to the Palestinian people in the ‘Legal Context’ section. The UN Independent International Commission of Inquiry on the OPT has clarified that this norm ‘implies obligations of an **erga omnes character for the international community** as a whole’.¹⁸⁹ The violation of the right to self-determination is evidenced in numerous unlawful acts by Israel, including the permanence of the occupation and actions undertaken ‘to annex parts of the land de jure and de facto’,¹⁹⁰ which include settler activities and violent acts against Palestinians to that effect. As such, the UN Independent Commission of Inquiry

¹⁸⁸ Annie Bird, ‘Third State Responsibility for Human Rights Violations’ (2011) 21(4) EJIL 883, 886.

¹⁸⁹ Position Paper of the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel (Sept 2023), para 6.

¹⁹⁰ *Ibid*

concludes that there is an **obligation for ‘Member States of the UN to not recognize the illegal situation arising out of the violation**, to not render aid or assistance in maintaining the illegal situation and to co-operate with a view to putting an end to the violations’.¹⁹¹

Duty to not “recognize as lawful” the situation created by such breaches

The first part of Art 41(2) ARSIWA stipulates that **‘No State shall recognize as lawful a situation created by a serious breach** within the meaning of article 40’. The fact that displacement of Palestinian civilians due to **settler violence occurs within the frame of an ongoing violation of the right to self-determination** described above offers additional support: third states have a duty of non-recognition of the violations of the peremptory norms sustaining the context that enables settler violence. This reflects the analysis *mutatis mutandis* of the ICJ in *Wall* whereby ‘All States are under an obligation not to recognize the illegal situation (...) and not to render aid or assistance in maintaining the situation’.¹⁹²

Duty to not “render aid or assistance in maintaining that situation”

The second part of Art 41(2) ARSIWA stipulates that **‘No State shall (...) render aid or assistance in maintaining [the] situation created by a serious breach** within the meaning of article 40’. Academic commentary indicates that the provision goes beyond the Art 16 ARSIWA prohibition of aid or assistance by third states in the commission of an internationally wrongful act; instead, it addresses conduct ‘after the fact’ which assists the responsible state in maintaining a situation ‘opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law’.¹⁹³ As such, **to the extent that displacement of Palestinian civilians due to settler violence is contextualised within the broader framework of the violation of the right to self-determination**, there exists a **duty for third states to not render aid or assistance in maintaining that situation**. How this duty should be implemented in practice will depend on the choices of each state.

Additional duties

¹⁹¹ Ibid.

¹⁹² ICJ *Wall*, para 163.

¹⁹³ Bird, ‘Third State Responsibility for Human Rights Violations’, 889.

Art 48 ARSIWA allows third states to **invoke the responsibility of a state which has breached an obligation owed to the international community as a whole**, echoing international jurisprudence.¹⁹⁴ This includes demanding the cessation of the internationally wrongful act, assurances and guarantees of non-repetition (Art 48(2)(a)), and reparations for the victims (Art 48(2)(b)). Based on ILC Commentary, measures may include proceedings before an international court and inter-state claims established in IHRL instruments.¹⁹⁵ Relatedly, Art 54 gives states entitled under Art 48(1) the right ‘to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of beneficiaries of the obligation breached’. With **reference to displacement of Palestinian civilians due to settler violence, third states may invoke the responsibility of the occupying power for breaching obligations due to the international community as a whole** and demand cessation and take other measures.

In addition to the above, there may be **scope for third states to invoke Israel’s responsibility in relation to violations of Art 2(4) of the UN Charter** prohibiting territorial conquest through the use of force, which is arguably occurring through the de facto annexation of large swathes of Area C through the expansion of settlements in part accelerated through settler violence displacing Palestinians from their land. Such a violation undermines international peace and security, a core objective of the UN Charter and indeed the entire architecture of the post-war legal and political order.

7.4 Conclusion

Third state obligations in relation to the displacement of Palestinian communities due to settler violence are primarily based on IHL norms, in particular common article 1 of the GCs, supplemented by general duties set out in Art 25 UN Charter. Moreover, in relation to third state responsibilities for IHRL violations, ARSIWA provisions regarding the violation of peremptory norms may be relevant if settler violence and displacement is framed in relation to Israel’s ongoing encroachment of the Palestinian right to self-determination.

The UN Independent International Commission of Inquiry in the OPT provides recommendations for third states to **‘refrain from recognizing, supporting, encouraging, aiding or assisting in any violations of international law’** committed ‘by Israeli authorities or other groups’;¹⁹⁶ by extension, this would arguably cover

¹⁹⁴ Ibid, 890, citing Barcelona Traction, Light and Power Case [1970] ICJ Rep 32 paras 33-34.

¹⁹⁵ Discussed in Ibid, 892.

¹⁹⁶ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (A/78/198) (5 Sept 2023), para 82.

displacement due to settler violence and may include violent settler groups as well as state actors. As such, third states are **entitled under international law to take meaningful action to ensure that they do not assist settler violence and its enabling context.**

8 Conclusions and Recommendations

This EO outlined the legal responsibilities of the Occupying Power under IHL and IHRL for the displacement of Palestinian communities in Area C due to settler violence, building on the **established understanding of international law endorsed by the UN and international community almost unanimously** – with very few exceptions (notably Israel itself and its closest allies). Given the clarity of international law on the matter, and the increasingly **strong political condemnation of the unchecked spike in settler violence** which is now also **backed up by sanctions** imposed by western powers, there is an **urgent need for the international community to act collectively to hold Israel to account** for its failures to protect Palestinian civilians in Area C from settler violence, prevent it, ensure accountability for the perpetrators, and afford victims their legitimate right to remedy, reparations and guarantees of non-reoccurrence.

If the explosion of settler violence since 7th October 2023 **continues unabated in the current climate of widespread local and international impunity**, there is a tangible risk of continued and additional displacement of Palestinian communities in Area C, which – depending on the circumstances of each case – may meet the **criteria for forcible transfer**, which is a grave breach of IHL that violates numerous IHRL provisions and constitutes an international crime under the Rome Statute of the ICC.

At present, the **displaced persons have not returned to their communities** out of **fear** of exposing themselves to further settler violence. When families express their wish to return, it is imperative that Israel facilitates this move back to the communities by taking all steps in its power to **protect these civilians from further violence** to ensure their safety.

i. Occupying power's duty to prevent settler violence and protect civilians

Israel has a duty under IHL and IHRL to protect Palestinian civilians living under occupation in the OPT, prevent settler violence, and protect civilians from settler violence. The cornerstone of this obligation is found in Art 43 HR, which has arguably acquired customary status. As such, the occupying power must ‘take all steps in its power to re-establish and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country’. Therefore, in relation to settler violence and its consequences, which may include forced displacement, Israel must take a range of measures, such as (but not limited to):

- **Ex ante** (before the attacks): increase **security** monitoring in areas exposed to settler violence, step up its **surveillance** (including digital surveillance)

through social media) of settlers and settler organisations known to engage in violence against Palestinians, and adopt other lawful measures (e.g. through **counter-terrorism** mechanisms) designed to **thwart** attacks when there is reason to believe they are imminent. Further steps should include **preventive deterrence** (e.g. explicit criminalisation of settler violence) and a law enforcement and judicial system that are willing and able to **investigate and prosecute** alleged perpetrators, and impose **effective punishment** (e.g. bans from entering the OPT, asset freezing, incarceration for the most serious offences).

- **During settler violence:** ensure clear operational orders are given to **ISF present at the scene to proactively intervene to stop harm on behalf of the state**; ISF must be instructed to **protect civilians** and **apprehend violent settlers** so they may be investigated and prosecuted according to the law. The occupying power must enforce an **absolute prohibition of ISF participating in acts of settler violence against Palestinians, or providing violent settlers any form of protection and encouragement**: any ISF members participating actively or passively in settler violence should be **promptly identified and sanctioned**, banned from serving in the OPT and tried in the military court system.
- **Ex post** (after an attack has occurred): ensure that any acts of settler violence against Palestinians and their property are **promptly, effectively and independently investigated and prosecuted** – both when such acts are committed by **individuals acting in private capacity** and when they are **acting on behalf of the state**, including e.g. those wearing military uniform while technically ‘off duty’ or coordinating their attacks formally or informally with ISF. Investigations should also target settler organisations and related international networks.

More generally, Israel has a duty under international law, as reaffirmed in UN Security Council **Resolution 2334 (2016)** to ‘immediately and completely **cease all settlement activities**’ in the OPT and take ‘immediate steps to prevent all acts of violence against civilians’. This includes taking **urgent and proactive steps to dismantle outposts and farms** that are illegal not only under international law, but also under Israeli law. These recommendations are a non-exhaustive set of suggestions.

ii. Right to remedy and reparations for victims

Victims of international law violations have an established right to effective remedy before competent courts set out in Art 8 UDHR which arguably has acquired customary status, backed up in treaty law (Art 2(3) ICCPR). Relatedly, victims have a right to reparations that has developed into a general principle of international law, as confirmed by international jurisprudence and backed up by significant soft law developments, including Art 31 ARSIWA. The aim of reparations is to eliminate, as far as possible, the consequences of the illegal act and to restore the situation that would have existed if the act had not been committed. Reparations may include restitution, compensation, satisfaction and guarantees and assurances of non-repetition, either singly or in combination. As such, Israel has a duty to:

- Ensure an effective right to remedy to Palestinian victims of settler violence by providing **effective access to justice before fair and impartial courts**.
- **Not obstruct victims' efforts to seek justice before international courts**, when domestic tribunals are unable or unwilling to provide this right.
- Provide **reparations to victims**, through a range of measures, which in addition to **adopting effective measures aimed at the cessation of continuing violations**, should include, but are not limited to, the following:
 - o **Restitution**, e.g. of stolen property; **returning to one's place of residence, when displaced families desire to do so and it is safe to do so (e.g. through increased security measures)**; etc.
 - o **Compensation** (monetary), e.g. for destroyed property; **for loss of income due to settler violence**; for physical and mental harm due to settler violence; for **legal costs**; etc.
 - o **Satisfaction** (non-monetary), e.g. **public statements** by government officials acknowledging the harm and naming the perpetrators; official **fact-finding** and truth-seeking initiatives; **public apologies accepting responsibility of the state for failing to protect civilians**; etc.

These recommendations are a non-exhaustive set of suggestions.

iii. Duty of the occupying power to guarantee non-reoccurrence

Building on the above, and also embodied in Art 30 ARSIWA, Israel has a duty to make **verbal assurances of non-repetition** and **guarantees of non-repetition** based on something more – e.g. **preventive measures designed to avoid repetition of the breach**, like the ones described under item (i) of these recommendations. Additionally, Israel should urgently consider the following non-exhaustive list of measures to guarantee non-reoccurrence:

- **Institutional and legal reforms addressing the de jure and de facto discrimination faced by Palestinian victims of settler violence**;
- **Explicit criminalisation of settler violence to ensure all incidents are duly investigated and prosecuted before independent and impartial courts, that are not biased in favour of Israeli settlers**;
- **Terminating the service of public officials and employees in military and civilian roles who are personally responsible for gross violations**;
- Developing **human resources policies barring ISF residing in settlements, including outposts and farms, from active service anywhere in the OPT** where their personal politics would prevent them from upholding the state's obligation to protect Palestinian civilians;
- **Disbanding any known paramilitary settler forces**, and clarifying / dissolving their links to the official ISF;

- Setting out clear **orders for all ISF operating in the OPT to ensure all units are instructed to uphold the state's duty to protect civilians and prevent settler violence;**
- Urgently **review all links between violent settlers / settler organisations and the state to ensure, *inter alia*, that the state does not provide financial, political or other support** for settler outposts known to be used as a base for violent settlers;
- Ensure **all investigations and prosecutions into settler violence are carried out by persons (military and civilian) not residing / linked to settlements or settler organisations;**
- Develop **domestic counter-terrorism measures to ensure ideologically-motivated violent settlers and settler organisations fall within the relevant legal definitions** and are **duly investigated** in relation to violent acts against Palestinians in Area C.
- **Enhance law enforcement powers against politicians and other public figures making statements to condone or incite** others to commit settler violence.

iv. Other duty-bearers' obligations

Third states

States not party to the conflict are mandated, under IHL, to 'ensure respect' for GCIV provisions breached by acts of settler violence. Therefore, international law enables States to develop a range of **measures, including diplomatic, economic and political, aimed at putting an end to IHL violations**. There is no specified list of actions: States may adopt bespoke approaches **unilaterally** (e.g. sanctions), and take **collective action** (e.g. through international and regional organisations) to fulfill the aims of common Art 1 GCs. Third states should also scrutinise, and when necessary, take appropriate action, against their own nationals or organisations within their jurisdiction who have direct or indirect involvement in settler violence, including financing outposts.

States must, under Art 25 UN Charter, 'accept and **carry out the decisions of the Security Council**'; as such, states are mandated under general international law to intensify their **efforts to implement UNSC Resolution 2334 (2016)** on the illegality of settlements, which includes outposts and farms used by extremist settlers as a base to inflict violence against Palestinians. As above, this may be done unilaterally and collectively, through a range of measures that states may lawfully develop. Such efforts should also include measures targeting settler organisations who promote / facilitate settler violence.

Wherever incidents of settler violence violate the Palestinian right to **self-determination**, which is a peremptory norm of international law, third states may also be entitled to act under Arts 40-41 ARSIWA. Given the use of settler violence to accelerate Palestinian displacement and facilitate Israeli land-grab in Area C, there are

likely to be consequent violations of the right to self-determination. Further analysis of ‘the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967’ is likely to emerge from the proceedings underway at the ICJ pertaining to the Advisory Opinion requested by the UN General Assembly in its resolution A/RES/77/247 of 30 December 2022. Third states should **support and endorse the ICJ work and implement its future findings**, including **aspects relating to settler violence**.

Suggested action point:

- UN Member States should **propose a Security Council Resolution reaffirming the illegality of settler violence**, calling on Israel to urgently take all steps in its power to (a) prevent such acts through appropriate use of counter-terror measures, (b) ensure ISF are not participating or providing protection to violent settlers, and (c) ensure those responsible for settler violence are investigated and prosecuted.

Palestinian Authority (PA)

As the ostensible ‘ousted government’ in Area C of the OPT, the PA must commit to actively participating in all local and international initiatives – including political, diplomatic and legal – affecting the displacement of Palestinian communities in Area C due to settler violence.

9 Annex to the Factual Background

This annex offers an overview of **representative incidents of settler violence causing displacement** of Palestinian communities in Area C since 7th October 2023 based on reports by reputable sources (including UN-OCHA and B'Tselem) clustered in the 'typologies' listed in the 'Factual Background' section of the EO, namely, offences against the person, offences against property and additional types of violence.

OFFENCES AGAINST THE PERSON

Resulting in death: murder and extrajudicial killings

Qusra: settlers kill Palestinian civilians, ISF fails to intervene. On 11-12 October 2023, 8-10 masked settlers, some armed with rifles and pistols, attacked the town of Qusra (Nablus); during the confrontations a settlement security guard killed a man and injured his daughter, and settlers killed three more men (including a boy).¹⁹⁷ The following day **settlers, in the presence of ISF, attacked the funeral procession, killing two more men.** Mainstream media reported the incident as: *Settlers killed a Palestinian teen. Israeli forces didn't stop it.*¹⁹⁸

Road 60 near Eli settlement: settler kills Palestinian after he killed two Israelis (including a child) in an attack at a gas station (instead of apprehending him and handing him to law enforcement). On 29 February 2024 on Road 60 near Eli settlement, 'two Israeli settlers, including a 16-year-old child, were killed when a Palestinian man from Qalandiya Refugee Camp opened fire at a gas station on Road 60 near Eli settlement in Nablus. The man was subsequently **shot and killed by an Israeli settler** at the scene'.¹⁹⁹

¹⁹⁷ UN-OHCHR, Flash Report, The human rights situation in the occupied West Bank including East Jerusalem 7 Oct – 20 Nov 2023 (Dec 2023), para 40, available [here](#).

¹⁹⁸ Nilo Tabrizy et al, Settlers killed a Palestinian teen. Israeli forces didn't stop it, The Washington Post (9 Jan 2024) available [here](#).

¹⁹⁹ UN-OCHA, Flash Update #130 (1 March 2024) available [here](#).

Use of firearms / attempted murder

Ein al ‘Auja: settlers accompanied by ISF shoot live ammunition: On 3 February 2024, ‘Israeli settlers, accompanied by Israeli forces, raided the ‘Ein al ‘Auja community in Jericho, **shot live ammunition**, and attacked residents with bats and stones, injuring a man in the head with a stone’.²⁰⁰

Qibya: settler shoots and injures a man. On 23 February 2023, ‘an Israeli settler from an outpost associated with Nili settlement near Qibya village (west of Ramallah), **shot and injured a Palestinian man**, with live ammunition reportedly after the settler brought his livestock to graze on cultivated Palestinian land’.²⁰¹

Threats to kill community members

Khirbat Zanutah: settlers threaten to kill community members if they do not vacate the locality leads to community displacement. In Khirbat Zanutah ‘shortly after armed Israeli settlers threatened to kill them if they did not leave, 24 Palestinian households totalling 141 people, half of whom are children, were displaced (...) On 28 October 2023, the families dismantled about 50 residential and animal structures and vacated the area with their 5,000 livestock’.²⁰²

Other examples of families fleeing for safety following a range of violent acts, threats and repeated harassment include: Maktal Msalam (20 Oct 2023),²⁰³ Kh. Samrah area/Northern Jordan Valley (15 Oct 2023),²⁰⁴ and Naba’ al-Ghazal in al-Farisiyah (16 October 2023).²⁰⁵

Resulting in injury

²⁰⁰ UN-OCHA, Flash Update #110 (4 Feb 2024) available [here](#).

²⁰¹ UN-OCHA, Flash Update #125 (23 Feb 2024) available [here](#).

²⁰² UN-OCHA, The other mass displacement: settlers advance on West Bank herders (1 Nov 2023) available [here](#).

²⁰³ B’Tselem, Forcible transfer of isolated Palestinian communities and families in Area C under cover of Gaza fighting (henceforth, ‘B’Tselem forcible transfer live data’), available [here](#).

²⁰⁴ B’Tselem forcible transfer live data.

²⁰⁵ Ibid.

Wadi al-Siq: a horrifying account of physical violence inflicted by settlers on Palestinian civilians, who subsequently fled. This brutal attack in Wadi al-Siq (Central Mountain Ridge), described by some as ‘Abu-Ghraib-style’ torture, was widely reported in local and international media.²⁰⁶ The community began leaving on 10 October 2023 due to threats by settlers, and the last remaining men left after 12 October 2023 when they were brutally attacked.²⁰⁷

Other examples include: being bitten by dogs used by settlers to intimidate Palestinians and attack their flocks (Wadi ‘Abayat, near Kisan in Bethlehem District (4 Jan 2024)),²⁰⁸ and breaking a teenage girl’s arm (Khirbet Lasefar, South Hebron Hills (28 Oct 2023)).²⁰⁹

Harassment and intimidation (including violence and threats of violence)

Examples of harassment and intimidation involving various acts of violence and threats include the reported incidents at Zanutah and Wadi al-Siq **resulting in displacement**. Additionally, many more families and entire communities experience a **high risk of displacement due to the accumulation of various acts of settler violence over time, sometimes in the presence of ISF**, e.g. Khirbet Susiya, South Hebron Hills (25-28 Oct 2023).²¹⁰

Gendered impact of harassment: an example of the additional harm experienced by women is provided in an attack in Maghayir al-‘Abid, Masafer Yatta (17 Jan 2024) when ‘three masked settlers broke into the home of NM (a 70-year-old woman) while she was asleep’ demanding to know where her deceased husband was.²¹¹

OFFENCES AGAINST PROPERTY

Immovable property: Residential

²⁰⁶ See e.g. Oren Ziv, Palestinians recount settler, army torture amid surge in West Bank expulsions, +972mag (30 Oct 2023), available [here](#).

²⁰⁷ B’Tselem forcible transfer live data.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

Baryat Tuqu': arson of three homes by settlers. On 18 November 2023 settlers burnt down three homes in Baryat Tuqu', Bethlehem District.²¹²

Khirbet a-Radhem: settlers and soldiers cutting water pipes and electrical cables in a family home. On 12 Oct 2023, settlers and ISF cut water pipes and electrical cables in a family home in Khirbet a-Radhem, South Hebron Hills, resulting in the family leaving the community the following day.²¹³

Immovable property: Non-residential

→ Community structures: Schools

Khirbet Zanutah destruction of a school. On 4 Dec 2023 settlers destroyed a school alongside 10 residential structures in Khirbet Zanutah.²¹⁴ The community was subsequently displaced.

An earlier example (prior to 7th October 2023) of a community displaced due to settler violence, including a school demolition, is Ein Samiya (East Ramallah) in May 2023. The community was displaced, after which settlers vandalised the school, which was later demolished by Israeli forces 'just days before the start of the new school year', meaning no families returned.²¹⁵ The fact that there was no school for the children to resume the normal academic year likely played a role in the consolidation of the displacement of the community.

Examples of settler organisations petitioning the Israeli courts to issue or expedite demolition orders against schools includes the demolition of the European Union-funded Palestinian primary school for the children of Jubbet ad-Dhib village, east of Bethlehem, on 7th May 2023.²¹⁶

→ Community structures: healthcare facilities and religious buildings

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ West Bank Protection Consortium, Protecting the Right to Education for Children in Area C of the West Bank (12 September 2023) available [here](#).

²¹⁶ Statement by the UN Special Coordinator for the Middle East Peace Process on the demolition of a Palestinian primary school in the occupied West Bank (8 May 2023) available [here](#).

Examples of settler violence directed at community structures includes vandalising the health clinic and the mosque in Masafer Yatta (12 Feb 2024).²¹⁷

→ Private property used for livelihoods (including land)

Examples of settler violence directed at private property used for economic activities, such as animal pens and water infrastructure used for irrigation, which are linked to displacement of Palestinian communities include the expulsion of the last remaining families in Khirbet a-Taybah, Tarqumya (October 2023 – January 2024), following which settlers burnt four agricultural structures.²¹⁸ This was likely a contributing factor to the consolidation of the displacement.

Movable property

→ Animals

Examples of the theft of animals, often alongside other forms of settler violence, which may lead to the displacement of Palestinian families includes the theft of 150 sheep (as well as beating a resident and damaging property) in Al-Qanoub, northeast of Sa'ir, Hebron District (11 Oct 2023), and the theft of 80 sheep and a car (as well as beating up the residents) in Badu Jebas (East Taybah), Ramallah District (26 Oct 2023); after both incidents the **families affected fled**.²¹⁹ The **correlation between animal theft and other attacks and the consequent fleeing of some of the few remaining Palestinian civilians surviving previous waves of displacement** has been reported in Ein Samiya (20 Feb 2024).²²⁰

→ Vehicles

²¹⁷ UN-OCHA Flash Update #118 (14 Feb 2024) available [here](#).

²¹⁸ B'Tselem forcible transfer live data.

²¹⁹ Ibid.

²²⁰ UN-OCHA Flash Update #126 (26 Feb 2024) available [here](#).

Examples of vehicles vandalised or stolen by settlers, including agricultural vehicles, include a tractor confiscated by settlers in Kh. Emneizal, Masafer Yatta, South Hebron Hills (2 December 2023).²²¹

→ Agricultural property including animal fodder

Examples of destruction or theft of other movable agricultural property encompassing animal fodder include the theft of 10 sacks of hay and agricultural implements in Khirbet Susiya, South Hebron Hills (5 Jan 2024).²²²

OTHER TYPES OF SETTLER VIOLENCE

Attacks on freedom of movement

Examples of settlers and soldiers imposing restrictions on freedom of movement in Area C include blocking all the entrances to Khirbet Susiya, South Hebron Hills (16 Oct 2023) cutting the village off from 'Yatta, which is vital to residents for supplies and medical care', and the declaration of farmland and olive groves in Baryat Tuqu', Bethlehem District (14 Oct 2023) as a closed military zone, preventing access to the land.²²³

An example of restrictions on freedom of movement **jointly imposed by settlers and ISF** as a form of **collective punishment** against Palestinians in Area C is provided in the aftermath of a Palestinian killing two Israelis on 29 Feb 2024 on Road 60 near Eli settlement; 'Israeli forces closed most of the checkpoints and roads that connect the northern West Bank to the central and southern governorates' and settlers gathered to prevent Palestinian vehicles using Road 60.²²⁴

Use of settler agro-pastoralism to replace Palestinians on their land

Examples of settlers using biblically-inspired settler-pastoralist activities to displace and replace Palestinian communities on their land include an incident in Khirbet

²²¹ B'Tselem forcible transfer live data.

²²² Ibid

²²³ Ibid.

²²⁴ UN-OCHA, Flash Update #130 (1 March 2024) available [here](#).

Susiya, South Hebron Hills (20 Jan 2024), where settlers accompanied by a military escort grazed their livestock in groves belonging to Palestinian families.²²⁵

²²⁵ B'Tselem forcible transfer live data.