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UK National Contact Point for the OECD Guidelines for Multinational Enterprises  
Department for International Trade  
3 Whitehall Place  
London  
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**Complaint regarding the involvement of JCB in human rights breaches in the occupied Palestinian territory, raised by Lawyers for Palestinian Human Rights**

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This complaint is followed by four appendices, the first of which include links to video evidence. Submitted alongside the complaint is an Evidence Bundle that includes photographic evidence, witness statements and written reports.



## 1. **Introduction and Summary**

- 1.1. J.C. Bamford Excavators Limited (**JCB**), a world-leading construction equipment company headquartered in the UK, provides heavy machinery products that are used by Israel in demolitions of Palestinians homes and property, and for the construction of settlements, settlement industrial zones and associated infrastructure, within the occupied West Bank including East Jerusalem.
- 1.2. As reaffirmed by the UK government in July 2019, demolitions in the occupied Palestinian territory “are, in all but the most exceptional of cases, contrary to international humanitarian law.”<sup>1</sup> The destruction of Palestinian homes is a breach of the basic human right to adequate housing. Products provided by JCB facilitate and implement the unlawful policy and practice of demolitions and displacement in the occupied Palestinian territory, contributing to adverse impacts on the human rights of Palestinians.
- 1.3. As recognised by the International Court of Justice in 2004, “Israeli settlements in the occupied Palestinian territory (including East Jerusalem) have been established in breach of international law.”<sup>2</sup> The existence of settlements and its associated infrastructure substantially infringes the rights of Palestinians residing in the West Bank, including East Jerusalem. Products provided by JCB facilitate and implement the unlawful construction and expansion of settlements. The UK government stated in their last annual Human Rights and Democracy report that “Israel continued its systematic policy of settlement expansion, a breach of international humanitarian law.”<sup>3</sup>
- 1.4. Lawyers for Palestinian Human Rights (**LPHR**), the complainant, has gathered credible, clear and compelling evidence of the involvement of JCB in such breaches and raises this complaint under the OECD Guidelines for Multinational Enterprises (**the OECD Guidelines**). LPHR sets out below that JCB, contrary to the OECD Guidelines, has breached obligations to respect the human rights of those affected by its activities.



## **2. The Complainant – Lawyers for Palestinian Human Rights**

- 2.1.** LPHR is a UK legal charity with charitable status since 2011. LPHR exists as a collection of individuals almost all of whom are lawyers who practice in the UK. LPHR's board of trustees include the senior human rights lawyers, Sir Geoffrey Bindman QC, Fiona McKay, Tessa Gregory and Nusrat Uddin. LPHR works on legal issues focused on protecting and promoting Palestinian human rights, with a special focus on Palestinians living under Israeli occupation in the West Bank, including East Jerusalem, and the Gaza Strip. LPHR has specialist expertise in international law, human rights, and business & human rights.
- 2.2.** LPHR has previously submitted a human rights complaint to the UK National Contact Point (NCP) regarding the activities of G4S in the occupied Palestinian territory and Israel. The complaint resulted in adverse findings being made against G4S by the UK NCP.
- 2.3.** LPHR is, therefore, well placed to bring this complaint, having legal, regional, and business & human rights expertise. Further, the human rights violations in question fall squarely within our charitable aim of protecting and promoting human rights in the occupied Palestinian territory.
- 2.4.** LPHR principally engages with human rights aspects of demolitions within the occupied Palestinian territory through a public education programme. In the last two years, LPHR has submitted letters to the Foreign and Commonwealth Office regarding demolitions in the occupied Palestinian territory, including the impending demolition and displacement of the entire Palestinian community of Khan al Ahmar in the West Bank.<sup>4</sup> Two letters specifically addressed the involvement of JCB.<sup>5</sup> In August 2018, LPHR submitted a letter directly to JCB that detailed our concerns,<sup>6</sup> and did not receive a response. The letter was published by the Business and Human Rights Resource Centre, whom also requested a response from JCB, but no reply was given.
- 2.5.** LPHR undertook an investigation in the spring and summer of 2019 in preparation for this complaint. To that end, LPHR has been provided with photographic evidence, witness statements and written information from the prominent Palestinian human rights organisation, Al-Haq. Video evidence and written information has been obtained from the leading Israeli human rights organisation,



B'Tselem. LPHR has also been provided with photographic evidence from EyeWitness to Atrocities, a UK charity founded by the International Bar Association, which provides technological and legal expertise to human rights defenders from across the world documenting human rights violations (further information is provided at Section 4 of the Evidence Bundle). LPHR has further relied on information from the Israeli independent research centre, Who Profits.

- 2.6. The objective of LPHR in bringing the complaint is to ensure that, through NCP mediation and/or examination processes, JCB complies with the requirements of the OECD Guidelines. LPHR therefore hopes to prevent further JCB involvement in adverse impacts on the human rights of Palestinians.

### 3. **The Respondent – J.C. Bamford Excavators Limited**

#### **Corporate information about JCB**

- 3.1. J.C. Bamford Excavators Limited is a private limited company, incorporated in England on 20 February 1956, with the registered number 00561597. Its registered office is Lakeside Works, Rocester, Uttoxeter, ST14 5JP. As JCB is a private company, rather than a public company, limited information about the nature of its work and business relationships is available to the public.
- 3.2. The stated principal activity of JCB and its subsidiaries is the “design, manufacture, marketing and sale of a comprehensive range of excavating, earthmoving, materials handling and agricultural machines, and the provision of after sales service and supply of parts for those machines, in construction, agriculture and industrial markets.”<sup>7</sup>
- 3.3. In financial year 2018/2019, £47.7 million of the JCB group’s £3,308.1 million turnover derived from the Middle East market.<sup>8</sup>
- 3.4. An absence of a significant local heavy machinery industry in Israel means that it is common for construction machinery manufacturers to enter into distributor relationships with businesses who sell the machinery to individual consumers (rather than the manufacturer entering into direct sales relationships with those individual consumers).<sup>9</sup>



- 3.5. JCB’s website gives users the opportunity to search for a JCB dealer near them.<sup>10</sup> JCB lists a privately-owned Israeli company, Comasco Ltd (**Comasco**), as its exclusive dealer in Israel.<sup>11</sup> Comasco’s headquarters are near Tel Aviv. The Comasco website confirms that “[f]or more than 50 years...it has been importing the leading, best known and most sought after brands of mechanical engineering equipment into Israel: JCB, Potain, Tesab and Terex.”
- 3.6. Citing 2014 data for market share in Israel, the Comasco website describe JCB as: “a brand with 65% of the market share for diggers, 65% of the market share for telescopic tools and 90% of all loaders up to 150HP with a 1.5m<sup>3</sup> bucket... [T]he above data clearly illustrates quite objectively that anyone involved in construction, municipal services, earthmoving, removal, industrial and agriculture work clearly prefers JCB. Nine out of every ten loaders up to 150 HP (1.5m<sup>3</sup>) is a JCB; there can be no doubt that no other loader offers as many advantages.”<sup>12</sup> The JCB catalogue on Comasco's website advertises 15 different vehicles, four different pieces of equipment, and various parts that are all available through Comasco.<sup>13</sup>

### **JCB Products and their Use in the occupied Palestinian territory**

- 3.7. The use of construction machinery has a substantial and material role in entrenching Israel’s occupation of Palestinian territory, owing to its central role in the demolition of Palestinian property and settlement-related construction. In some instances, the demolition of Palestinian property is specifically intended to facilitate the expansion of settlements (for example, see commentary on the pending wholesale demolition of structures and displacement of residents in the Palestinian village of Khan Al-Ahmar, at Appendix 4 of this complaint).
- 3.8. Evidence from Who Profits clarifies that Israeli authorities and private contractors are virtually dependent on imported heavy machinery for demolitions. In particular, the use of JCB products in demolitions and construction is very well documented over many years and by a number of different organisations. Al-Haq noted in a 2018 report provided to LPHR (at Section 1 of the Evidence Bundle) that JCB products are prolifically involved in demolitions in the occupied Palestinian territory, having been responsible for at least 60 out of the 266 demolitions recorded that year. This is not surprising, given the prominent proportion of the heavy machinery market in Israel that JCB absorbs, as noted at paragraph 3.6 above.



**3.9.** Whilst demolitions generally occur at the order of the Israeli authorities, they can be managed in different ways. Who Profits has identified at least two different approaches of specific relevance to this complaint:

i) The Israeli authorities will run the demolitions themselves (in which case they are likely to purchase JCB equipment directly from Comasco, as the reported exclusive dealer in Israel). This approach is reportedly prevalent for demolitions based on purported military or security needs, including in relation to settlements. Who Profits states that:

*“Over the years, rulings of the Israeli High Court of Justice accepted the Israeli authorities’ reasoning and allowed demolitions for a variety of “security needs”, among them: the building or expansion of roads, barriers and other infrastructure for the benefit and protection of Israeli settlers or soldiers; “preventive demolitions,” which may include any house or property near Israeli settlements, army positions and roads used by Israeli settlers and soldiers; and carrying out arrests of Palestinian suspects.”<sup>14</sup>; and*

ii) The Israeli authorities will commission private companies to execute “administrative demolitions” of Palestinian homes. The contracted company will be involved in all aspects of the demolition process after receiving the “administrative order” from the Israeli authorities. This approach is reportedly prevalent for home demolition orders issued on the basis of a lack of a building permit (see details on the substance of this basis at Section 5 below). The contracted company would likely purchase the JCB equipment from Comasco, as the reported exclusive dealer in Israel. One such contracted company cited as an example is a privately-owned Israeli company, E.T. Legal Services,<sup>15</sup> which reportedly quotes itself on its website as having carried out a “large number of complicated demolitions in villages in the Arab sector.”

**3.10.** LPHR has gathered credible, clear and compelling video, photographic and written contemporaneous evidence of JCB’s products being materially used in a number of specific demolition and displacement incidents, and in settlement-related construction, as detailed below and appended to this complaint. In some cases the facts of the incident are corroborated by contemporaneous reports from the United Nations, which are also appended to this complaint.



#### 4. **Summary of Evidence Submitted**

##### 4.1. LPHR submits with this complaint four categories of evidence:

- i) video evidence and supporting short written reports sourced from B'Tselem that substantiates the material use of JCB heavy machinery vehicles in demolition and displacement incidents (**see Appendix 1 at pages 31-32 below**);
  - ii) photographic evidence, contemporaneous witness statements and written reports sourced from Al-Haq, and photographic evidence sourced from EyeWitness to Atrocities, that substantiates the material use of JCB heavy machinery vehicles in demolition and displacement incidents (**see Appendix 2 at pages 33-44 below, and Section 1 of the Evidence Bundle**);
  - iii) photographic evidence sourced from EyeWitness to Atrocities and publicly available sources that substantiates the material use of JCB heavy machinery vehicles in the construction of settlements and its associated infrastructure (**see Appendix 3 at pages 45-46 below, and Section 2 of the Evidence Bundle**); and
  - iv) photographic evidence sourced from EyeWitness to Atrocities and publicly available sources, plus written information, on the pending wholesale demolition of the Palestinian village of Khan Al-Ahmar and displacement of its residents, which temporarily commenced in July 2018, and has subsequently been stayed by the government of Israel until at least mid-December 2019 (**see Appendix 4 at pages 47-51 below, and Section 3 of the Evidence Bundle**).
- 4.2. The primary evidence within the first two categories substantiates the material, well-documented, ongoing and widespread involvement of JCB products in demolition and displacement incidents that result in adverse human rights impacts against Palestinians in the occupied Palestinian territory.
- 4.3. This primary evidence relates to activities in ten villages or areas in the occupied Palestinian territory, covering a time period of 2016 to 2019. In total, 89 homes are identified as having been demolished, resulting in the displacement of at least 484 individuals, including children and the elderly. One school (*Khirbet Tana Elementary School*) is among other property demolished, as are water tanks.
- 4.4. The primary evidence within the third category substantiates the material use of JCB products in the construction of settlements and its associated infrastructure that



result in adverse human rights impacts against Palestinians in the occupied Palestinian territory, covering a time period of 2015 to 2019.

## **5. Demolitions and Displacement in the occupied Palestinian territory**

- 5.1.** According to the UN Office for the Coordination of Humanitarian Affairs (UN OCHA), “*Demolitions are typically carried out due to lack of Israeli-issued permits, which are nearly impossible to obtain, but in some cases the circumstances are different, including punitive demolitions and demolitions carried out as part of military activities.*”<sup>16</sup>
- 5.2.** UN OCHA has a database of demolitions and displacement in the occupied West Bank, including East Jerusalem, covering the last ten years.<sup>17</sup> A review of the data illustrates the magnitude of this policy and practice. They are particularly widespread in Area C of the occupied West Bank, and in occupied East Jerusalem.
- 5.3.** From 1 January 2009 to 05 October 2019, UN OCHA has documented 6,236 demolished structures, resulting in the displacement of 9,611 people. A further 101,523 people have had their livelihood affected by demolitions without being displaced. This, for example, can include impacts from the destruction of water connections and wells.<sup>18</sup> 1,056 of the demolished structures had been constructed for humanitarian assistance.
- 5.4.** UN OCHA specifies that demolished structures may be residential, livelihood-related, service-related or part of infrastructure. 1,764 of the demolished structures demolished in the above cited ten year period were inhabited residential homes, typically resulting in displacement.
- 5.5.** UN OCHA describes that other demolished structures may include schools, shops, animal shelters, walls, and warehouses. For example, in January 2019, the UN reported<sup>19</sup> that five schools in the West Bank were demolished or seized by Israeli authorities in 2018, and some 50 schools in the West Bank, including in East Jerusalem, were under threat of demolition as a result of a lack of building permits. Half of these schools had received EU or Member State funding.<sup>20</sup>
- 5.6.** In addition, other aspects of infrastructure may be demolished, such as water pipes, roads and network facilities. Incidents referred to as “demolitions” may include dismantlement, confiscation or sealing off of structures or parts of structures.



- 5.7. An independent fact-finding mission of the UN Human Rights Council has noted the particularly vulnerable circumstances of the Palestinian families and communities most targeted for demolitions and displacement in the occupied West Bank: *“Bedouin communities in general are particularly vulnerable to displacement and dispossession. Eighty per cent of them live in the Jordan Valley, the Dead Sea area and around Hebron, constituting the majority of the population in closed military training and firing zones. Many of these communities have already experienced multiple displacements. Many are food insecure, do not have access to basic services, and are not connected to the electricity grid, the road network or water systems. More than 90 per cent face water scarcity, living with less than one-quarter of the minimum standards set by the World Health Organisation (WHO). The Israeli army routinely demolishes their shelters and property, including those provided by or built with the assistance of aid agencies and international donors.”*<sup>21</sup>
- 5.8. Demolitions with the resulting displacement of a considerable number of individuals, including children and the elderly, are ongoing at the time of this complaint. The UN OCHA Humanitarian Bulletin for September 2019 reports that demolitions for 1 January 2019 – 30 September 2019 are up 43 per cent as compared to the equivalent period in 2018 (443 structures compared to 310 structures). It states: *“As a result, 547 Palestinians, including 259 children, have lost their homes and been displaced, exceeding the number of people displaced in the entire 2018; nearly 50,000 additional Palestinians have been adversely affected by the destruction of their animal shelters, water cisterns and networks, agricultural roads, commercial structures, and other properties. The vast majority of incidents have taken place in Area C and East Jerusalem, on grounds that these properties lack Israeli-issued building permits, which are nearly impossible to obtain.”*<sup>22</sup>
- 5.9. The 'near impossibility' for Palestinians to obtain building permits is illuminated in a statement by the Office of the European Union Representative (West Bank and Gaza) published in January 2019: *“According to Israeli Civil Administration figures, from January 2000 to mid-2016, Palestinians filed 5,475 applications for building permits. Only 226 (about 4 per cent) were granted. Israeli Civil Administration data also indicates that there was a 3 per cent approval rate in 2018... [T]oday, less than 1 per cent of Area C, and about 13 per cent of East Jerusalem, is zoned for Palestinian construction, which is a pre-condition for a permit to be issued by Israeli authorities, and most of these areas are already built*



*up. Meanwhile, some 35 per cent of East Jerusalem has been zoned for Israeli settlements and 70 per cent of Area C is included within the boundaries of the regional councils of Israeli settlements and thereby off-limits for Palestinian development.”<sup>23</sup>*

- 5.10.** The UN High Commissioner for Human Rights stated in March 2018, “*As reiterated in previous reports of the [UN] Secretary-General and the Committee on the Elimination of Racial Discrimination, the planning regime adopted by Israel is discriminatory and incompatible with requirements under international law. Its planning policies and processes in East Jerusalem and Area C contravene the principle of non-discrimination in relation to the right to an adequate standard of living, including the right to housing.*”<sup>24</sup> [bolded by LPHR for emphasis]
- 5.11.** The UK government reiterated in a statement by the Foreign Secretary, Dominic Raab MP, on 7 August 2019, “*The UK continues to urge the Government of Israel to develop improved mechanisms that allow Palestinians to build within Area C.*”<sup>25</sup>
- 5.12.** The UN has highlighted that home demolitions and resulting displacement lead to a “*significant deterioration in living conditions. Families and communities face increased poverty and long-term instability, as well as restricted access to basic services such as education, healthcare, water and sanitation.*”<sup>26</sup> The demolition of schools has a detrimental impact on the education of Palestinian children, and the demolition of shops, livestock shelters and warehouses has a significant impact on the livelihoods of Palestinian families.
- 5.13.** Psychological trauma is also associated with home demolitions. The UN has stated that the “*impact of home demolitions on children can be particularly devastating. Many children affected by demolitions show signs of post-traumatic stress disorder, depression and anxiety. Their academic achievement often suffers.*”<sup>27</sup> Expert evidence has further found home demolitions to have a “distinct and severe” psychological impact on women,<sup>28</sup> and that men are particularly affected by a feeling of despair that they have not been able to protect their family.<sup>29</sup>
- 5.14.** This experience is compounded by the highly militarised atmosphere in which demolitions take place, as can be seen in the evidence that LPHR is submitting with this complaint. This includes the presence of a number of personnel and vehicles from the Israeli police and military.



5.15. LPHR finally notes in this section that there is a tight nexus between demolitions and settlement expansion as identified by the aforementioned independent fact-finding mission commissioned by the UN Human Rights Council: “*While the issue is critical throughout the West Bank, the mission notes the large number of demolitions, demolition orders, forced evictions and “relocation” plans in zones identified for the consolidation of settlements, including around Bethlehem and the E-1 project, aimed at creating an urban continuum between East Jerusalem and [the large Israeli settlement] Ma’ale Adumim*”.<sup>30</sup>

6. **Settlements and Associated Infrastructure in the occupied Palestinian territory**

- 6.1. Since 1967, 253 settlements and settlement outposts in the occupied West Bank, including occupied East Jerusalem, have been established in contravention of international law, either with or without official Israeli Government authorisation. The total number of Israeli settlers living in occupied Palestinian territory is estimated by the Israeli non-governmental organisation, Peace Now, to be over 642,000.<sup>31</sup>
- 6.2. Illegal settlements and associated infrastructure (including settler-only bypass roads, military checkpoints, and the Barrier) are a central feature of Israel's prolonged military occupation of the occupied Palestinian territory. They have led to the dispossession of Palestinians, the fragmentation of their land and the exploitation of their natural resources. They have a wide-ranging adverse impact on the basic human rights of Palestinians and undermine the international rule of law, as elaborated below in Section 7.



## **7. The Legal and Human Rights Framework**

### **Demolitions and Displacement**

- 7.1. Palestinian residents in the occupied West Bank, including East Jerusalem, have the status of a protected population under the Geneva Conventions. Article 49 of the Fourth Geneva Convention<sup>32</sup> absolutely prohibits “forcible transfer” of protected persons. Article 53 of the Fourth Geneva Convention prohibits “destruction of property” not justified by military absolute necessity. Article 147 of the Fourth Geneva Convention provides that “extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly”, and “unlawful transfer of a protected person”, are grave breaches of international humanitarian law.
- 7.2. In a July 2019 statement with France, Spain and Germany, the UK reiterated its long-standing position on demolitions: “*We remain seriously concerned by the continued demolition of Palestinian property by Israeli authorities. In all but the most exceptional of circumstances, demolition in occupied territories is contrary to International Humanitarian Law and to UN Security Council resolutions. The practice causes unnecessary suffering to ordinary Palestinians and is harmful to the peace process.*”<sup>33</sup>
- 7.3. Similarly in July 2019, UN officials released a statement reiterating the position of the UN: “*Israel’s policy of destroying Palestinian property is not compatible with its obligations under international humanitarian law.*”<sup>34</sup>
- 7.4. Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Israel has ratified, requires State Parties to “*recognise the right of everyone to an adequate standard of living for himself and his family, including adequate... housing.*”<sup>35</sup> Similarly, Article 27 of the UN Convention on the Rights of the Child (UNCRC), which Israel has ratified, provides “*State Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.*”<sup>36</sup> Article 27 of the UNCRC further adds that State Parties “*shall in case of need provide material assistance... particularly with regard to housing.*”
- 7.5. The demolition of Palestinian homes and consequential displacement of its residents by Israeli authorities in the occupied Palestinian territory, constitutes a violation of the right to an adequate standard of living, including the right to



adequate housing, under international human rights law. These adverse human rights impacts are directly engaged by evidence submitted with this complaint.

- 7.6. Article 13 of the ICESCR requires State Parties to “*recognise the right of everyone to education.*”<sup>37</sup> This exact wording is replicated in Article 28(1) of the UNCRC.<sup>38</sup>
- 7.7. The demolition of schools by Israeli authorities in the occupied Palestinian territory constitutes a violation of the right to education under international human rights law. This adverse human rights impact is directly engaged by evidence submitted with this complaint.
- 7.8. The application of a business and human rights framework to the context of demolitions is indicated by the February 2013 report of the UN independent fact-finding mission on settlements (aforementioned above at paragraphs 5.6 and 5.15): “96) *Information gathered by the mission showed that business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements... the mission identified a number of business activities and related issues that raise particular human rights violations concerns.*”
- 7.9. One of these 'business activities raising particular human rights concerns' identified at paragraph 96 of the UN report by the high-level human rights experts, and which has material relevance to this complaint, is: “*The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olives groves and crops.*”

## Settlements

- 7.10. UN Security Council Resolution 2334, passed on 23 December 2016 with the support of a UK vote, reaffirmed the illegality of Israeli settlements built on occupied Palestinian territory. Operative paragraph 1 of the resolution states that these settlements have “*no legal validity and constitutes a flagrant violation of international law.*”<sup>39</sup>
- 7.11. The UK government has a long-standing position recognising the illegality of settlements. Its “Overseas Business Risk Guidance for the Occupied Palestinian Territory”, last updated on 8 August 2018, states: “*The UK has a clear position on Israeli settlements: The West Bank, including East Jerusalem, Gaza and the Golan Heights are territories which have been occupied by Israel since 1967. Settlements*



*are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution to the Israeli-Palestinian conflict impossible.*<sup>740</sup>

- 7.12.** In regard to the wide-ranging adverse human rights impact of settlements, the Office of the United Nations High Commissioner for Human Rights summarised in February 2018: *“The violations of human rights associated with the settlements are pervasive and devastating, reaching every facet of Palestinian life. Owing to settlement development and infrastructure, Palestinians suffer from restrictions on freedom of religion, movement and education; their rights to land and water; access to livelihoods and their right to an adequate standard of living; their rights to family life; and many other fundamental human rights.”*<sup>741</sup>
- 7.13.** The application of a business and human rights framework to the context of settlements is indicated by the February 2013 report of the UN independent fact-finding mission on settlements (aforementioned above at paragraphs 5.6, 5.15, 7.8 and 7.9): *“96) Information gathered by the mission showed that business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements... the mission identified a number of business activities and related issues that raise particular human rights violations concerns.”*
- 7.14.** One of these 'business activities raising particular human rights concerns' identified at paragraph 96 of the UN report by the high-level human rights experts, and which has material relevance to this complaint, is: *“The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures.”*



## **8. LPHR's Complaint Submissions under the OECD Guidelines**

- 8.1.** LPHR sets out in this section its submissions in respect of the various paragraphs of Chapter 4 of the OECD Guidelines (the human rights chapter) that it considers JCB to be in breach of. Relevant OECD guidance is carefully applied and fully referenced throughout the following submissions.

### **Breach of Chapter 4, paragraph 1 of the OECD Guidelines**

*“Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”*

- 8.2.** LPHR submits that JCB is in breach of the general obligation under Chapter 4, paragraph 1 of the OECD Guidelines to respect human rights. This specific submission is made as a consequence of our submissions immediately below that the company is in breach of specific human rights obligations at paragraphs 2-5 of Chapter 4 of the OECD Guidelines.

### **Breach of Chapter 4, paragraph 2 of the OECD Guidelines**

*“Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address impacts when they occur.”*

#### **Overview of LPHR's submissions in respect of Chapter 4, paragraph 2**

- 8.3.** The OECD Due Diligence Guidance for Reasonable Business Conduct (**OECD Due Diligence Guidance**) explains that “an enterprise ‘causes’ an adverse impact if [its] activities, on their own, are sufficient to result in the adverse impact.”<sup>42</sup> LPHR recognises that JCB producing and then selling its machinery to Comasco does not, on its own, cause an adverse human rights impact. LPHR is therefore not submitting that JCB is in breach of Chapter 4, paragraph 2 on the basis of cause.



- 8.4. Rather, LPHR submits that JCB is in breach of Chapter 4, paragraph 2 on the basis of contribution to adverse human rights impacts, noting that one of either 'causing' or 'contributing' must be present to find a breach.
- 8.5. Consequently, LPHR submits that JCB is engaged in the activity of contributing to adverse human rights impacts through:
- i) its activity/action of selling products that facilitates another entity (Israeli authorities/private contractors) to cause adverse impacts; and/or
  - ii) its activity/omission of failing to stop sales of products that facilitates another entity (Israeli authorities/private contractors) to cause adverse impacts, when having actual or constructive knowledge of such adverse impacts.

Applying Chapter 4, paragraph 2 of the OECD Guidelines

- 8.6. The OECD Commentary within the OECD Guidelines and the OECD Due Diligence Guidance provide essential guidance on how to ascertain whether or not there is “contribution” in a particular context.
- 8.7. The relevant parts of the guidance, and its application to the evidence submitted in this complaint, is immediately below (LPHR’s emphasis of the guidance is in bold):
- a) “An enterprise ‘**contributes to**’ an impact if its activities, in combination with the activities of other entities cause the impact, or **if the activities of the enterprise cause, facilitate** or incentivise **another entity to cause an adverse impact.**”<sup>43</sup>

*LPHR has shown through the credible evidence submitted with this complaint that JCB products materially 'facilitate' the demolition of homes, schools, animal shelters, business stores, and other structures enabling Palestinian livelihoods, that are carried out by the Israeli authorities or their private contractors in the occupied Palestinian territory.*

*In addition, LPHR has provided credible evidence showing that JCB products materially 'facilitate' the construction of settlements and its associated infrastructure by construction companies, with the authorisation of Israeli authorities, in the occupied Palestinian territory.*

- b) “**An adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates** or incentivises **another entity to cause an adverse impact and does not include minor or trivial contributions.**”<sup>44</sup>



*LPHR submits that JCB's contribution of selling products that materially 'facilitate' another entity to cause an adverse impact plainly meets the level of 'substantial', and cannot be reasonably described as 'minor' or 'trivial'.*

*This is underscored by consideration of the following three factors that the OECD Due Diligence Guidance advises can be taken into account when assessing whether the contribution is substantial in nature:*

**i) “The extent to which an enterprise may encourage or motivate an adverse impact by another entity, i.e. the degree to which the activity increased the risk of the impact occurring.”<sup>45</sup>**

*The evidence from Who Profits clarifies that Israeli authorities and private contractors are virtually dependent on imported heavy machinery for demolitions. The reliance on JCB machinery is demonstrated by the visual evidence and written statements appended to this complaint.*

*JCB products are documented by a prominent local human rights organisation, Al-Haq, as having a prolific presence in demolitions. The Al-Haq report entitled “2018 statistics on demolitions in the West Bank and Occupied Jerusalem”, states: “JCB's presence in demolitions against the Palestinian people is ongoing. Al-Haq has documented the usage of JCB bulldozers in at least 60 demolitions out of 266 that occurred during the year 2018.” (please see Section 1 of the Evidence Bundle)*

*Al-Haq has informed LPHR that from demolitions it has documented between 01 January 2019 to 31 October 2019, JCB products are reported to be involved in at least 70 out of 281 demolitions of homes and other property. This is an increase on the 2018 figures and substantiates that JCB's contribution to adverse human rights impacts in relation to demolitions is substantial to the date of this complaint.*

*LPHR accordingly submits that JCB's ongoing sale of products to Comasco, and/or the omission of not stopping the sale of its products to Comasco with actual or constructive knowledge of its end-use, clearly amounts to materially 'increasing the risk of these activities occurring' which cause adverse impacts.*

**ii) “The extent to which an enterprise could or should have known about the adverse impact or potential for adverse impact, i.e. the degree of foreseeability.”<sup>46</sup>**



*JCB has been working with Comasco since 1966. Online evidence of the use of JCB machinery in demolitions has been available since at least 2012.<sup>47</sup> Video and photographic evidence submitted with this complaint dates from 2015 to 2019.*

*The fact that LPHR has been able to obtain much of this evidence from publicly available sources illustrates that JCB should have known about the adverse impact of its heavy machinery vehicles, and the future potential for adverse impacts if its vehicles continued to be sold to Comasco.*

*In addition, LPHR put JCB on direct notice of the use of its heavy machinery vehicles in demolition activity in August 2018,<sup>48</sup> as did the Business and Human Rights Resource Centre, but no responses were received. The use of JCB vehicles has been documented since in demolitions.*

*LPHR submits that JCB's involvement in adverse impacts is therefore highly 'foreseeable'. JCB reasonably should have actual knowledge, or at the least be clearly and reasonably deemed to have constructive knowledge, over the end-use of the sale of its products with causing adverse impacts.*

**iii) “The degree to which any of enterprise’s activities actually mitigated the adverse impact or decreased the risk of the impact occurring.”<sup>49</sup>**

*JCB has not responded to the letter submitted by LPHR in August 2018, or the approach made by the Business and Human Rights Resource Centre shortly thereafter, in which LPHR requested that JCB takes available leverage to ensure that JCB's products are not used to contribute to the demolition process in Khan al-Ahmar or the prohibited forcible transfer of its residents, and that no further equipment is supplied in relation to such purpose.*

*LPHR submits that there is no apparent evidence that JCB's has engaged in any activities to actually mitigate, prevent or cease the adverse impact caused by the use of its products sold to Comasco, or to decrease the risk of the impact occurring. Rather, and moreover, the evidence provided in this complaint objectively demonstrates the ongoing use of JCB products in adverse impacts, over a concerted period of time.*

**c) “‘Activities’ amounting to “contribution” under the OECD Guidelines, “can include both actions and omissions.”<sup>50</sup>**



*As identified above, LPHR submits there are two relevant activities that JCB are engaged in which clearly reach the level of “contribution to adverse impacts” under the OECD Guidelines.*

*i) JCB is involved in the 'action' of JCB selling products that facilitates another entity (Israeli authorities/private contractors) to cause adverse impacts; and*

*ii) JCB has 'omitted' to stop sales of products that facilitate another entity (Israeli authorities/private contractors) to cause adverse impacts, when having actual or constructive awareness of such adverse impacts.*

#### Summary of LPHR’s submissions in respect of Chapter 4, paragraph 2

- 8.8.** LPHR submits that a careful application of the OECD's guidance on the meaning of “contribution” under Chapter 4, paragraph 2 of the OECD Guidelines to the evidence accompanying this complaint, demonstrates that JCB's activities plainly meets the level of “contribution”.
- 8.9.** Accordingly, LPHR submits that JCB is in breach of Chapter 4, paragraph 2 of the OECD Guidelines through the action of selling products that facilitates another entity (Israeli authorities/private contractors) to cause adverse impacts.
- 8.10.** In addition, or in the alternative, LPHR submits that the omission by JCB of failing to stop sales of products that facilitate another entity (Israeli authorities/private contractors) to cause adverse impacts, when having actual or constructive knowledge of the end-use of its products, also amounts to a breach of Chapter 4, paragraph 2 of the OECD Guidelines.

#### **Breach of Chapter 4, Paragraph 3 of the OECD Guidelines**

*“Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.”*

#### Overview of LPHR’s submissions in respect of Chapter 4, paragraph 3

- 8.11.** LPHR submits that JCB has failed to seek ways to prevent or mitigate adverse human rights impacts that are directly linked to its business operations and products, by a business relationship.



Applying Chapter 4 paragraph 3 of the OECD Guidelines

8.12. The OECD Commentary within the OECD Guidelines and the OECD Due Diligence Guidance explain that (LPHR emphasis in bold):

a) “The term ‘business relationship’ includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services”;<sup>51</sup> and “**directly linked’ is not limited to direct contractual relationships, for example ‘direct sourcing’**”.<sup>52</sup>

*JCB is clearly an essential part of an identifiable supply chain that transfers ownership of JCB produced machinery to its end point, for use in demolitions and settlement-related construction. This supply chain includes Comasco (as JCB’s sole distributor in Israel), Israeli contractors and the Israeli authorities.*

*The above OECD guidance confirms that the fact that JCB does not have direct contractual relationships with the Israeli authorities or the private contractors that carry out the demolitions and/or settlement-related construction, does not mean that JCB does not have a ‘business relationship’ with those entities.*

*Instead, what is materially relevant for the purpose of the OECD Guidelines is the relationship between the adverse impact (i.e. the human rights violations carried out by the Israeli authorities and/or its contractors) and the relevant products (i.e. the JCB machinery that is used to demolish homes and/or construct settlements).*

*This is significant to emphasise when reading the following excerpt from the reply<sup>53</sup> of then Foreign Office Minister, Alistair Burt MP, to LPHR’s letter dated 5 July 2018,<sup>54</sup> in which we raised concerns over JCB’s potential involvement in the pending demolition of the Palestinian community of Khan al-Ahmar. Minister Alistair Burt stated:*

*“We note the media reports and photographs that show JCB diggers around demolition sites. The reports that we are aware of show these diggers at the demolition site of Abu Nuwar [LPHR NOTE: this is documented in a video sourced from B’Tselem showing JCB machinery demolishing homes in Abu Nuwar, which LPHR appends to this complaint at Appendix 1]. Officials from the British Consulate-General in Jerusalem are aware that JCB equipment has been used on site. They witnessed the presence of JCB equipment at Khan Al-Ahmar when they visited on 4 July to demonstrate the international community’s support for the*



*village. From our enquiries, we understand that the demolitions are carried out by private contractors on behalf of the Israeli Civil Administration, so these private contractors would be the owners of any relevant equipment.”*

*Although Minister Alistair Burt's response did not expressly appreciate it, we have clarified that what he has described is a “direct link”, based on the correct interpretation of this concept provided by the OECD Due Diligence Guidance. LPHR indeed clarified in a follow-up letter (at Section 3 of our evidence bundle) to Minister Alistair Burt that the reasonable assumption by the UK government that the “private contractors would be the owners of any relevant equipment”, does not absolve JCB of its own human rights responsibilities under the OECD Guidelines.*

b) The OECD Due Diligence Guidance provides that the means of preventing or mitigating adverse impacts include:<sup>55</sup>

- i. Modifying business operations or activities to prevent and mitigate adverse impacts linked to the enterprise’s business relationships.
- ii. Using leverage to affect change in the practices of the entity that is causing the adverse impact(s) to the extent possible.
- iii. Supporting business relationships in the prevention or mitigation of adverse impact(s).
- iv. Disengaging from the business relationship.
- v. Addressing systemic issues.

*LPHR cannot identify from information that is publicly available that JCB has undertaken any of the above steps. As identified in paragraphs 8.14 to 8.16 below, JCB does not appear to have a public human rights policy and it does not appear to have released any public information about the use of its machinery in the occupied Palestinian territory.*

### Summary of LPHR’s submissions in respect of Chapter 4, paragraph 3

**8.13.** LPHR submits that JCB has not sought ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations and products by virtue of the use of its machinery by Israeli authorities and private contractors, that it is linked to via a supply chain.



### **Breach of Chapter 4, paragraph 4 of the OECD Guidelines**

*“Have a policy commitment to respect human rights.”*

#### Overview of LPHR’s submissions in respect of Chapter 4, paragraph 4

**8.14.** LPHR submits that JCB has failed to have a policy commitment to respect human rights.

#### Applying Chapter 4, paragraph 4 of the OECD Guidelines

**8.15.** The OECD Guidelines recommend that “enterprises express their commitment to respect human rights through a statement of policy that: (i) is approved at the most senior level of the enterprise, (ii) is informed by relevant internal and/or external expertise; (iii) stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (iv) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (v) is reflected in operational policies and procedures necessary to embed it throughout the enterprise.”<sup>56</sup>

*The JCB corporate responsibility page on its website<sup>57</sup> focuses primarily on environmental sustainability, and does not refer to human rights or the principles set out in the OECD Guidelines.*

*Whilst the website does also include a health, safety and environmental policy, a health and wellbeing policy statement, a modern slavery statement and a supplier code of conduct (amongst others), no human rights policy is available to view.*

*JCB’s most recent annual accounts do not appear to make any reference to human rights risks or their management.<sup>58</sup>*

#### Summary of LPHR’s submission in respect of Chapter 4, paragraph 4

**8.16.** LPHR submits that JCB has failed to develop a human rights policy that: has been approved by its Board; benefits from internal and/or external expertise; sets out the company’s expectations from its staff; is publicly available; and is embedded across the business.



### **Breach of Chapter 4, paragraph 5 of the OECD Guidelines**

*“Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.”*

#### Overview of LPHR’s submissions in respect of Chapter 4, paragraph 5

**8.17.** LPHR submits that JCB has failed to carry out human rights diligence as appropriate to its size, nature and context of operations and the severity of the risks of adverse human rights impacts.

#### Applying Chapter 4, paragraph 5 of the OECD Guidelines

**8.18.** The OECD Due Diligence Guidance sets out six steps<sup>59</sup> in the due diligence process:

i) “Embed responsible business conduct into policies and management systems”, which should “articulate the enterprise’s commitments to the principles and standards contained in the OECD Guidelines for Multinational Enterprises” and be made available on the entity’s website.

*LPHR submits that JCB has failed to embed responsible business conduct into policies and management systems, as set out in paragraphs 8.14 to 8.16 above.*

ii) “Identify & assess adverse impacts in operations, supply chains & business relationships”, in such a way as “to map [the entity’s] general operations and the structure of their supply chains in order to identify higher-risk activities, geographies, products or business relationships. As the enterprise hones-in on these higher-risk areas, it may then carry out a more detailed mapping of its actual individual business relationships in order to identify specific relationships.” It goes on to state: “Geographic risks are conditions in a particular country which may make sector risks more likely. Geographic risk factors can generally be classified as those related to the regulatory framework (e.g. alignment with international conventions), governance (e.g. strength of inspectorates, rule of law, level of corruption), socio-economic context (e.g. poverty and education rates, vulnerability and discrimination of specific populations) and political context (e.g. presence of conflict).” It also highlights the potential for product risk, including the “use of specific products.”



*There is no evidence that JCB has identified and assessed the adverse impacts of its operations, supply chains or business relationships.*

*LPHR submits that JCB's distributor relationship with Comasco should clearly be identified as high risk and thus be prioritised by JCB for consideration, as a result of the increased geographic risk presented by the use of specific products in a situation of military occupation with well-documented human rights infringements.*

*LPHR does not have any evidence that JCB is assessing its impacts in this way. JCB has not responded to a letter that LPHR wrote to it in relation to the potential risk of its machinery being involved in the proposed demolition of the entire village of Khan Al-Ahmar.*

iii) "Cease, prevent or mitigate adverse impacts."

*As set out in paragraphs 8.11 to 8.13 above, LPHR does not have any evidence of JCB ceasing, preventing or mitigating the impact of its machinery on the human rights of Palestinians.*

*Rather, LPHR has video evidence sourced from B'Tselem that clearly shows JCB machinery involved in the demolition of homes as recently as 11 September 2019 (see Appendix 1).*

iv) "Track implementation and results."

*As referred to above, LPHR has not been able to identify any relevant JCB policies, and we do not have any evidence that JCB is tracking the implementation, or results, of such policies.*

v) "Communicate how impacts are addressed."

*As referred to above, JCB has not communicated with LPHR and no other information is publicly available about if/how it is managing such impacts.*

vi) "Provide for or cooperate in remediation when appropriate."

*As yet, LPHR has not seen any evidence of JCB engaging in any remediation.*



Summary of LPHR's submission in respect of Chapter 4, paragraph 5

**8.19.** LPHR submits that JCB has failed to carry out human rights diligence as appropriate to its size, nature and context of operations and the severity of the risks of adverse human rights impacts.

**9. Distinguishing features of LPHR's complaint**

**9.1.** LPHR would like to distinguish the substance of LPHR's complaint from the complaint submitted by two civil society organisations against a lead entity based in the United States and its co-complainant in Germany, in respect of the supply of munitions to the government of Saudi Arabia (the **Munitions Complaint**).<sup>60</sup> The complaint was submitted in June 2016 and rejected by the UK NCP as a result of its Initial Assessment, which was completed in October 2016.

**9.2.** The reason for distinguishing LPHR's complaint from the Munitions Complaint is that although, on the face of it, the facts of the complaint may appear similar (namely, both complaints relate to the supply of products which are subsequently used in human rights violations in another country), the substance of the complaints is different.

**9.3.** LPHR has summarised below what it understands to be the NCP's main grounds for rejecting the Munitions Complaint<sup>61</sup>, with distinguishing factors in respect of LPHR's complaint set out below each such ground.

i) Primary sources wished to remain anonymous meaning the single "specific instance involving the company" identified by the complainant could not be verified.

*LPHR has submitted a variety of written, photographic and video evidence which refers to or illustrates the indisputable use of JCB machinery in a multiple number of specific demolitions and settlement-related construction.*

*The written evidence of accounts is presented in the form of witness statements by named individuals and reports from non-governmental organisations contemporaneous to the time of the demolition incident, and includes adequate personal details for individuals to be identified. The names of field researchers recording such statements have been included. The names of the non-governmental*



*organisations employing or appointing such field researchers has also been provided. Wherever possible, written reports from the United Nations are provided as additional corroborating information on a demolition incident documented in this complaint.*

*In the vast majority of cases, the video and photographic evidence clearly shows JCB machinery in action in respect of specific demolitions or settlement-related construction. The photos are sourced from the prominent Palestinian human rights organisation, Al-Haq. Some of the photographic evidence from Al-Haq include GPS coordinates and a time-stamp captured and preserved through the use of technology provided by EyeWitness to Atrocities (see Section 4 of the Evidence Bundle for further information). A number of videos have been submitted vividly showing JCB machinery in use at various demolition sites. The videos are sourced from the prominent Israeli human rights organisation, B'Tselem.*

*In a large proportion of the demolition and displacement cases, both visual and contemporaneous written evidence are presented to the NCP to considerably support the verification of the material use of JCB products in specific incidents.*

ii) The lack of other information about the alleged supply (in particular the participants in the supply chain) meaning a specific link could not be established.

*LPHR has included information in this complaint about the supply chain in which JCB is involved. The information has been taken from JCB's website (which illustrates Comasco is its sole distributor in Israel), Comasco's website (which confirms that it is a supplier of JCB machinery in Israel), and reports of other non-governmental organisations which sets out the nature of the heavy machinery industry in Israel, and the extensive reliance on JCB for the provision of such machinery, as evidenced in the statistics showing that numerous documented demolitions have included the use of JCB machinery. These reports also describe the whole demolition process (from the issuing of demolition orders through to the implementation of the demolition), which has enabled LPHR to set out the supply chain in which JCB appears to be involved.*

iii) The particular incident that formed the basis for the complaint was not substantiated because claims about the use of the company's products in that single incident could not be verified.



*LPHR's complaint does not focus on a single unverifiable incident in which JCB's products are involved. Rather, it sets out evidence to show the systemic and recurring involvement of JCB's products in multiple verifiable incidents of demolitions and settlement-related construction. To substantiate the grounds of its complaint, LPHR has submitted a variety of types of clear and compelling evidence (written, photographic and video), over a prolonged period of time (from 2015 to 2019), supported by contemporaneous reports from the United Nations and non-government organisations, which indisputably demonstrates the involvement of JCB products in adverse human rights impacts.*

iv) The company's approach to carrying out due diligence was to rely on the UK government export licensing procedure, including a human rights risk assessment, which the NCP considered to be an acceptable approach.

*There is no publicly available information to indicate that the JCB machinery used in demolitions and settlement-related construction in the occupied Palestinian territory is subject to the UK government's export licensing procedure. LPHR's research suggests that the heavy machinery referred to in this complaint does not fall within the UK Dual-Use List (Schedule 3 to the Export Control Order 2008<sup>62</sup>) which would trigger the requirement for export licences to be obtained. In the event that JCB is able to evidence that export licences do apply to any of the JCB products referred to in this complaint, we would of course be willing to discuss this as part of the mediation process offered by the NCP.*



**10. Choice of Forum**

**10.1.** This complaint is submitted to the UK NCP.

**10.2.** The Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises states that “generally, issues will be dealt with by the NCP of the country in which the issues have arisen.”<sup>63</sup>

**10.3.** The Guide for National Contact Points on Coordination when handling Specific Instances (**OECD Coordination Guide**) emphasises that ‘issues’ is separate to ‘impacts’.<sup>64</sup> It explains that “the ‘issues’ in question could refer to a general policy set by a company at headquarter level which may lead to impacts in several locations. In such a case, the location of the ‘issues’ may be traced back to the location of the company headquarters.”

**10.4.** The ‘issues’ set out in this complaint refer to the decisions taken by JCB (a company registered in and operating from the United Kingdom) to continue to be involved in the action of selling its products that facilitate another entity to cause adverse human rights impacts and/or the failure to stop selling such products, and related issues. The issues therefore arise in the United Kingdom.

**10.5.** The OECD Coordination Guide also emphasises the importance of NCPs ensuring a consistent interpretation of the OECD Guidelines. The UK NCP may recall that in the complaint *Lawyers for Palestinian Human Rights v G4S PLC*, which similarly related to a UK company’s involvement in adverse impacts occurring in Israel and the occupied Palestinian territory, the UK NCP agreed that it was the appropriate forum to initially assess - and subsequently fully investigate - the complaint.<sup>65</sup>

**10.6.** LPHR therefore submits that the UK NCP is the appropriate forum for this complaint.



## 11. Resolution

- 11.1. LPHR notes that where an enterprise contributes to adverse human rights impacts, its obligation is to “take the necessary steps to cease or prevent its contribution and to use its leverage to mitigate any remaining impact to the greatest extent possible.”<sup>66</sup>
- 11.2. Additionally, the OECD Guidelines “recommend that enterprises have processes in place to enable remediation.”<sup>67</sup> The OECD Due Diligence Guidance elaborates that in relation to complaints that are raised in an enterprise's supply chain, “Enterprises may establish or participate in processes that are feasible and appropriate to their circumstances, whether that involves establishing their own supply chain grievance mechanism, participating in a multi-stakeholder grievance mechanism or joining a Global Framework Agreement.”<sup>68</sup>
- 11.3. In this context, the commentary to Article 25 of the UN Guiding Principles on Business and Human Rights (UNGPs) states: “The remedies provided by the grievance mechanisms may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”<sup>69</sup>
- 11.4. Where the adverse human rights impacts are directly linked to an enterprise's operations, products or services by a business relationship, its obligation is to “use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact.”<sup>70</sup>
- 11.5. LPHR notes the OECD Due Diligence Guidance advises the actions to be taken to seek to prevent and mitigate adverse impacts linked to a business relationship include: a) modifying business operations or activities to prevent and mitigate adverse impacts linked to the enterprise’s business relationships; b) using leverage to affect change in the practices of the entity that is causing the adverse impact(s) to the extent possible; c) supporting business relationships in the prevention or mitigation of adverse impact(s); d) disengaging from the business relationship; and e) addressing systemic issues.<sup>71</sup>



- 11.6.** LPHR further notes it is explicitly stated within the OECD Due Diligence Guidance and the commentary of Article 19 of the UNGPs that where the enterprise: a) lacks the leverage to meet its obligation to prevent or mitigate adverse impacts; b) deems mitigation not feasible; or c) deems the adverse impact to be severe, “the enterprise should consider ending the business relationship, taking into account the credible assessments of potential adverse human rights impacts of doing so.”<sup>72</sup> This is clearly also the implicit position of the relevant commentary in the OECD Guidelines.
- 11.7.** LPHR additionally notes that the OECD Due Diligence Guidance advises “temporary suspension of the business relationship while pursuing ongoing risk mitigation” as an “appropriate response to risks associated with business relationships.”<sup>73</sup>
- 11.8.** Where an enterprise is found not to have a policy commitment to respect human rights, or is found not to have carried out human rights due diligence, it should ensure such a policy and due diligence process are established.
- 11.9.** As a consequence, LPHR requests that JCB:
- i) immediately suspend supply of products to Comasco that could be identified as being part of the supply chain that results in demolitions or settlement-related construction, and to permanently cease supply to Comasco should it not be able to provide credible and verifiable guarantees that such products will not be involved in the violation of Palestinian human rights;
  - ii) develops and publishes on its website a human rights policy which specifically sets out the due diligence methodology it applies to ensure that its products are not at risk of contributing and/or being directly linked in a business relationship to the violation of human rights; and
  - iii) agrees to participate with LPHR and other appropriate stakeholders in establishing an effective grievance mechanism to enable remediation. Such a mechanism would be administered in accordance with the core criteria for a remediation process as specified in the OECD Guidelines, and incorporate appropriate financial and/or non-financial remedies for individuals in respect of damages suffered through the known uses of JCB products in the demolition of their homes and property, including those identified in this complaint.



## Appendix 1

### **Video evidence supported by short written reports sourced from B'Tselem that substantiates the material use of JCB products in demolition and displacement incidents**

- Hyperlinks to the four B'Tselem videos are embedded in the title of each incident.
- LPHR has included supporting B'Tselem commentary. We have bolded the number of individuals, including children, displaced by the demolitions.

1) [“Israeli Civil Administration demolishes homes in Masafer Yatta, the South Hebron Hills, 11 September 2019”](#)

The video shows a JCB vehicle, identifiable as the model 3CX, demolishing structures that are likely to be the family homes documented in the following B'Tselem commentary under the video published on 15 September 2019:

*“On Wednesday, 11 September 2019, at around 8:00 A.M., Israeli Civil Administration personnel arrived with soldiers, Border Police officers, a bulldozer and three diggers at the Masafer Yatta area in the South Hebron Hills. In Khirbet al-Mufaqqarah, the troops **demolished three pre-fabricated buildings and a tent that had housed four families, 18 people in all, including eight children.** Later, they went to Khirbet Khilet a-Dabe’, where they **demolished two cinder block and concrete structures that were the homes of two families, with a total of nine members, including five children.**”*

2) [“Israeli Civil Administration demolishes nine homes in Abu-a-Nuwar and makes preparations for for demolitions in Khan al-Ahmar, 4 July 2018”](#)

The video shows a JCB vehicle, identifiable as the model 3CX, demolishing structures that are likely to be the family homes and other property documented in the following B'Tselem commentary under the video published on 4 July 2018 (the vehicle shown at 02-12 seconds and 27-32 seconds does not have a visible 'JCB' logo, but a faded '3CX' logo is visible and identifies it therefore as a JCB vehicle. The rest of the video footage shows a vehicle with a visible 'JCB' logo):



*“At around 9:00 am on the morning of 4 July 2018, Civil Administration personnel came with three bulldozers and an escort of dozens of police to the Palestinian community of Abu a-Nuwar, which is in the region of the [Israeli] settlement of Ma’ale Adumim. They **demolished nine dwellings and three farm buildings, leaving 62 people – about half of them minors – without a home.**”*

3) [“Israel's Civil Administration demolishes family's home in Jabal al-Baba for the second time in four months, 20 February 2018”](#)

The video shows a JCB vehicle, identifiable as the model 3CX, demolishing a structure that is likely to be the home of the Abu 'Aweideh family documented in the supporting B'Tselem commentary under the video published on 20 February 2018:

*“At around 9:00 o'clock this morning, Tuesday 20 February 2018, Israeli Civil Administration personnel came with a bulldozer and a police escort (Border Police and Israel Police) to the community of Jabal al-Baba, which is located near the town of 'Eizariyah, northeast of Jerusalem. The forces **demolished the shack that served as the home of the Abu 'Aweidah family, thereby leaving the 13-person family – including 10 minors – without a home.**”*

4) [“Israeli Civil Administration demolishes the homes of two families in Masafer Yatta, 19 October 2017”](#)

The video shows a JCB vehicle, identifiable as the model 3CX, demolishing structures that are likely to be the two family homes - one reportedly EU-funded - and other property documented in the supporting B'Tselem commentary under the video published on 19 October 2017:

*“This morning, 19 October 2017, at 10:30 am, Civil Administration officials together with a military detail, arrived at the community of Khirbet al-Halawah, in the Masafer Yatta region in the south Hebron Hills. **The forces demolished the homes of two families: a concrete structure built with the help of a contribution from the European Union, and a cinder block structure with plastic sheeting for a roof. The forces left two families homeless. One family has 15 members, including seven children and teenagers, and the other is a family of three, including one minor.**”*



**Appendix 2**

**Photographic evidence, contemporaneous witness statements and written reports sourced from Al-Haq, and photographic evidence sourced from EyeWitness to Atrocities, that substantiates the material use of JCB products in demolition and displacement incidents**

The photographic evidence, contemporaneous witness statements and written reports (including original documents in Arabic and translated documents into English prepared by LPHR), are included at Section 1 of the Evidence Bundle submitted alongside this complaint.

Key facts from the photographic and written evidence on the following incidents are summarised at pages 34-44 below (and reproduced at Section 1 of the Evidence Bundle).

- 1) Al-Aqaba village: Demolition of three homes and other property resulting in the displacement of at least 11 individuals.
- 2) Ras Al-Ahmar village: Demolition of five homes and other property resulting in the displacement of 30 individuals.
- 3) Khirbet Tana village: Demolition of 54 homes, one school, and other property displacing at least 278 individuals over five separate dates.
- 4) Shu'fat Refugee Camp: Demolition of at least 16 business stores and three petrol stations over three consecutive dates affecting the livelihoods of 30 families.
- 5) Al-Farasiya village: Demolition of nine homes and other property resulting in the displacement of 43 individuals.
- 6) Al-Khader village: Demolition of one home resulting in the displacement of two individuals.
- 7) Huwara village: Demolition of one business store affecting the livelihood of the owner.
- 8) Al-Haq report: *“2018 statistics on demolitions in the West Bank and Occupied Jerusalem”*



**1) Al-Aqaba village: Demolition of three homes and other property resulting in the displacement of at least 11 individuals**

Four photos taken on 7 September 2016 show a maximum of two heavy machinery vehicles being used in a demolitions and displacement incident in the Palestinian village of Al-Aqaba, in Area C of the occupied West Bank.

One of the photos shows a 'JCB' logo on two heavy machinery vehicles, both identifiable to be a JCB yellow backhoe loader (Model 3CX). Two more photos show one vehicle with a visible 'JCB' logo and is again identifiable to be the JCB model '3CX'. One further photo appears to show two yellow heavy machinery vehicles demolishing structures, but a JCB logo is not visible. The photos are sourced from Al-Haq.

The photographic evidence is corroborated by a contemporaneous witness statement sourced from Al-Haq dated 7 September 2016 from Daif Allah Abed Odeh Al Faqeer, a farmer, whose home was demolished. He describes “two yellow bulldozers” in his statement. The witness then describes that the following three homes were demolished:

- The witnesses' home of a family of eight was demolished;
- The home of the witnesses' son and wife was demolished; and
- The family home of a neighbour, Jaber Hamdan Hussein Jaber, was demolished.

In addition to the demolition of three homes, the witness states that barns, two bathrooms, a water tank and a baking oven were demolished.

The photographic and witness evidence is independently supported by the “UN OCHA Humanitarian Bulletin - October 2016”. Under the sub-title “*Palestinian Bedouin and herding communities targeted in wave of demolitions*”, the report states that “*Among the most severely affected were three Palestinian Bedouin or herding communities in the northern Jordan Valley: Khirbet ar Ras al Ahmar, **Al ‘Aqaba** and Khirbet Tell el Himma*”. [bolded by LPHR for emphasis]

The following photographic evidence, witness statement and written report are included at Section 1 of the Evidence Bundle submitted alongside this complaint:

- Four photos of the demolitions in Al-Aqaba, dated 7 September 2016



- Witness statement of Daif Allah Abed Odeh Al Faqeer, dated 7 September 2016 (translation in English)
- Witness statement of Daif Allah Abed Odeh Al Faqeer, dated 7 September 2016 (original in Arabic)
- UN report: “*Humanitarian Bulletin Occupied Palestinian Territory – October 2016*”



**2) Ras Al-Ahmar village: Demolition of five homes and other property resulting in the displacement of 30 individuals**

Two photos taken on 9 October 2016 show two heavy machinery vehicles being used in a demolition and displacement incident in the Palestinian village of Ras Al-Ahmar, in Area C of the occupied West Bank. The 'JCB' logo is visible on one of the vehicles which is identifiable to be a JCB yellow backhoe loader (Model 3CX). The photos are sourced from Al-Haq.

The photographic evidence is corroborated by a contemporaneous witness statement sourced from Al-Haq dated 10 October 2016 from Muhammad Fahd Bani Odeh, a farmer. The witness describes “four yellow bulldozers” in his statement. He then describes that his home of a family of seven was demolished.

In addition, the witness states that his family's cooking oven used to make bread, a water tank, a solar panel, trees, and his barn were demolished, and furthermore that homes belonging to other families were demolished.

The photographic and witness statement evidence for this demolition incident is supported by a detailed written report from Al-Haq dated 13 October 2016.

The Al-Haq report provides details on five family homes and other property that were demolished, resulting in the displacement of five families named in the report (including the family of Muhammad Fahd Bani Odeh) comprising 30 individuals, including children and the elderly.

The visual and written evidence is independently supported by the “UN OCHA Humanitarian Bulletin - October 2016”. Under the sub-title “*Palestinian Bedouin and herding communities targeted in wave of demolitions*”, the report states that “*Among the most severely affected were three Palestinian Bedouin or herding communities in the northern Jordan Valley: **Khirbet ar Ras al Ahmar**, Al ‘Aqaba and Khirbet Tell el Himma*”. [bolded by LPHR for emphasis]

The following photographic evidence and witness statement are included at Section 1 of the Evidence Bundle submitted alongside this complaint:

- Two photos of the demolitions in Ras Al-Ahmar, dated 9 October 2016



- Witness statement of Muhammad Fahd Bani Odeh, dated 10 October 2016 (translation in English)
- Witness statement of Muhammad Fahd Bani Odeh, dated 10 October 2016 (original in Arabic)
- Al-Haq report dated 13 October 2016 (translation in English)
- Al-Haq report dated 13 October 2016 (original in Arabic)
- UN report: “*Humanitarian Bulletin Occupied Palestinian Territory – October 2016*”



**3) Khirbet Tana village: Demolition of 54 homes, one school, and other property resulting in the displacement of at least 278 individuals over five separate dates**

Five Al-Haq reports specifically name only the use of “JCB” heavy machinery vehicles in demolition and displacement incidents on five dates between February 2016 and January 2017 in the Palestinian village of Khirbet Tana, in Area C of the occupied West Bank.

The same families are named in different reports, indicating that particular families have been adversely affected by multiple demolitions to their home and other property. The demolitions took place when weather conditions would likely exacerbate the experience of forced displacement. One school is also documented as having been demolished:

i) **09 February 2016:** The report specifically mentions: “*2 yellow excavators with JCB written on them with rubber wheels and buckets front and back.*” The report details that six homes and other property were demolished, resulting in the displacement of six families named in the report comprising 39 individuals, including children and the elderly.

ii) **02 March 2016:** The report specifically mentions: “*The forces were constituted of 15 military jeeps and three yellow bulldozers with the logo with JCB.*” The report details that 11 homes and other property were demolished, resulting in the displacement of 11 families named in the report comprising 35 individuals, including 10 children. The report also describes the demolition of the *Khirbet Tana Elementary School* that taught nine children, employed two teachers, and was built by an Italian aid organisation, COOPI, in 2011, for an estimated \$20,000, after a prior demolition of the elementary school in 2010.

iii) **23 March 2016:** The report specifically mentions: “*Accompanying them [15 military vehicles] were four bulldozers, two of which were yellow diggers with rubber wheels, and written on them in English were three letters ‘JCB’.*” The report details that 15 homes and other property were demolished, resulting in the displacement of 15 families named in the report comprising 79 individuals, including 33 children.

iv) **07 April 2016:** The report specifically mentions: “*They [Israeli military personnel and their jeeps] are accompanied by 4 bulldozers, three of which are yellow with three English letters (JCB) written on it and run on rubber wheels,*



*the excavator type.*” The report details that 13 homes and other property were demolished, resulting in the displacement of 13 families named in the report comprising 68 individuals, including 28 children.

v) **03 January 2017:** The report specifically mentions: “*These [military] jeeps accompanied by three yellow-coloured bulldozers with three letters written in English (JCB) over the bulldozers. The bulldozers run on rubber wheels, excavator type.*” The report details that 9 homes and other property were demolished, resulting in the displacement of 9 families named in the report comprising 54 individuals, including 27 children.

The demolitions and displacement incidents documented in the Al-Haq reports dated 02 March 2016 and 23 March 2016 are independently supported by two contemporaneous reports published by UN OCHA.

The following reports are included at Section 1 of the accompanying Evidence Bundle:

- Al-Haq report, dated 09 February 2016 (translation in English)
- Al-Haq report, dated 09 February 2016 (original in Arabic)
- Al-Haq report, dated 02 March 2016 (translation in English)
- Al-Haq report, dated 02 March 2016 (original in Arabic)
- Al-Haq report, dated 23 March 2016 (translation in English)
- Al-Haq report, dated 23 March 2016 (original in Arabic)
- Al-Haq report, dated 07 April 2016 (translation in English)
- Al-Haq report, dated 07 April 2016 (original in Arabic)
- Al-Haq report, dated 03 January 2017 (translation in English)
- Al-Haq report, dated 03 January 2017 (original in Arabic)
- UN report: “*Wide-scale demolitions in Khirbet Tana*” dated 04 March 2016
- UN report: “*Third large-scale demolition in Khirbet Tana in 2016*” dated 23 March 2016



**4) Shu'fat Refugee Camp: Demolition of at least 16 business stores and three petrol stations affecting the livelihood of 30 families**

Fifteen photos dated 22 November 2018 show a JCB yellow wheeled excavator (Model JS200W; plate number: 140 169) being used in demolitions at Shu'fat Refugee Camp in occupied East Jerusalem. The photos are sourced from EyeWitness to Atrocities, which received the photos directly from Al-Haq.

The photographic evidence is supported by a written report published by Al-Haq on its website on 15 December 2018, entitled: “*Special Focus: Highest Rate of Demolitions in Shu'fat Refugee Camp in 15 Years*”.

The visual and written evidence is independently supported by a report from UN OCHA, which gives a slightly decreased figure of 16 business stores and three petrol stations being demolished. The UN report states that the demolitions have affected the livelihoods of thirty families.

The following photographic evidence and written reports are included at Section 1 of the Evidence Bundle submitted alongside this complaint:

- Fifteen photos of the demolitions in Shu'fat Refugee Camp, dated 22 November 2018 (Item ID: 9607, 9608, 9609, 9610, 9612, 9614, 9616, 9617, 9618, 9619, 9620, 9621, 9622, 9629, 9630)
- Al-Haq report: “*Special Focus: Highest Rate of Demolitions in Shu'fat Refugee Camp in 15 Years*”
- UN OCHA report: “*West Bank demolitions and displacement | November 2018*”



**5) Al-Farasiya village: Demolition of nine homes and other property resulting in the displacement of 43 individuals**

Four photos taken on 11 February 2016 show two stationary heavy machinery vehicles, one visibly with the 'JCB' and '3CX' logo which is identifiable to be a JCB yellow backhoe loader (Model 3CX), at the site of a demolition and displacement incident in the Palestinian village of Al-Farasiya, in Area C of the occupied West Bank. The photos are sourced from Al-Haq.

The photographic evidence is supported by a contemporaneous written report dated 16 February 2016 by a fieldworker from the Al-Haq investigative unit, Farid Faqha. The witness states “two bulldozers” were used in the demolition of 9 homes and other property, resulting in the displacement of 43 individuals, including 12 children.

In addition to the demolition of nine homes, the report states that barns, caravans, solar panels, and water tanks were demolished.

The following photographic evidence and contemporaneous written report are included at Section 1 of the Evidence Bundle submitted alongside this complaint:

- Four photos of the demolitions in Al-Farasiya, dated 11 February 2016
- Written report of Farid Faqha, dated 16 February 2016 (translation in English)
- Written report of Farid Faqha, dated 16 February 2016 (original in Arabic)



**6) Al-Khader village: Demolition of one home resulting in the displacement of two individuals**

One contemporaneous witness statement by Muhanad Saed Ahmad Salah, a farmer, states that “a JCB bulldozer” demolished his home in the Palestinian village of Al-Khader in Area C of the occupied West Bank, on 17 April 2019. The witness statement is sourced from Al-Haq.

The witness states that the JCB bulldozer arrived at his home accompanied by a number of Israeli soldiers and government employees. The witnesses' father and mother were the residents of the home.

The witness describes in his statement that he was presented with a bill for the demolished home after the demolition had been completed.

The following witness statement is included at Section 1 of the Evidence Bundle submitted alongside this complaint:

- Witness statement of Muhanad Saed Ahmad Salah, dated 20 April 2019 (translation in English)
- Witness statement of Muhanad Saed Ahmad Salah, dated 20 April 2019 (original in Arabic)



**7) Huwara village: Demolition of a business store incurring loss of livelihood for the owner**

One contemporaneous witness statement by Salamah Muhammad Sulieman Saliem, a car business owner, states that a “yellow bulldozer on rubber tires from the brand JCB” demolished his business store and a caravan used as a storage space, in the Palestinian village of Huwara in Area C of the occupied West Bank, on 26 September 2016. The witness statement is sourced from Al-Haq.

The witness states that the JCB bulldozer was accompanied by a number of Israeli soldiers and six military vehicles.

The witness estimates that the financial loss incurred as a result of the demolition of his business store is approximately fifty thousand shekels.

The following witness statement is included at Section 1 of the Evidence Bundle submitted alongside this complaint:

- Witness statement of Salamah Muhammad Sulieman Saliem, dated 26 September 2016 (translation in English)
- Witness statement of Salamah Muhammad Sulieman Saliem, dated 26 September 2016 (original in Arabic)



8) **Al-Haq report entitled: “2018 statistics on demolitions in the West Bank and Occupied Jerusalem”**

LPHR includes in the accompanying Evidence Bundle a report prepared by Al-Haq earlier this year which notes JCB as having a prolific presence in demolitions in the occupied Palestinian territory in 2018.

The penultimate paragraph of Al-Haq's report states: *“JCB's presence in demolitions against the Palestinian people is ongoing. Al-Haq has documented the usage of JCB bulldozers in at least 60 demolitions out of 266 that occurred during the year 2018.”*

Both the original report in Arabic, and the English translation of the report by LPHR, are included at Section 1 of the Evidence Bundle submitted alongside this complaint.



**Appendix 3**

**Photographic evidence sourced from EyeWitness to Atrocities and publicly available sources that substantiates the material use of JCB products in the construction of settlements and its associated infrastructure**

The photographic evidence relating to the five situations below are included at Section 2 of the Evidence Bundle accompanying this complaint.

- 1) Nabi Elias village/Alfei Menashe settlement:** LPHR has obtained a photographic image dated 22 August 2017 from EyeWitness to Atrocities (Item ID: 11349), which received the image from Al Haq, showing a JCB yellow backhoe loader (Model 3CX) apparently constructing a settler-only bypass road in the occupied West Bank. The image is accompanied by a note submitted by the photographer, translated from Arabic to English by LPHR: *“Israeli bulldozers work to build a settlement road and extend water pipes to Israeli water company Mekerot along the street to connect it with the settlements near the village of Nabi Elias east of the city of Qalqilya.”*

LPHR notes that Alfei Menashe is the closest Israeli settlement to the Palestinian village of Nabi Elias. Alfei Menashe is an Israeli settlement constructed on occupied Palestinian land in the central West Bank, with a population of 7,583 residents according to the Israeli organisation, Peace Now.<sup>74</sup>

- 2) Bruqin village/Bruchin settlement:** LPHR has obtained a photographic image dated 15 April 2019 from EyeWitness to Atrocities (Item ID: 4541), which received the image from Al Haq, showing a JCB yellow backhoe loader (Model 3CX) on site at the Israeli settlement of Bruchin in the occupied West Bank. The image is accompanied by a note submitted by the photographer, translated from Arabic to English by LPHR: *“Expansion of the settlement of Bruchin, northwest of Bruqin, west of Salfit.”*

LPHR notes that Bruchin is an Israeli settlement constructed on occupied Palestinian land in the central West Bank, with a population of 919 residents according to the Israeli organisation, Peace Now.<sup>75</sup> LPHR further notes that Bruqin is a nearby Palestinian village located in Area C of the occupied West Bank, and Salfit is a Palestinian city in Area B of the occupied West Bank.



- 3) **Ma'ale Amos settlement:** LPHR has located a photographic image dated 18 June 2017, reported to have been taken by Jacob Magid of the Times of Israel, showing a JCB vehicle identifiable as a 'JCB 540-140 Telescopic Handler' apparently being used in the construction of property. The caption by the Times of Israel under the photograph states: *“A photograph of the construction work being done for a new neighbourhood in the Ma'ale Amos settlement on June 18, 2017.”*<sup>76</sup>

LPHR notes that Ma'ale Amos is an Israeli settlement constructed on occupied Palestinian land in the southern West Bank, with 421 residents according to the Israeli organisation, Peace Now.<sup>77</sup>

- 4) **Izbat al-Tabib village/Alfei Menashe settlement:** LPHR has located three photographic images dated 16 January 2017, reported to have been taken by Keren Manor of ActiveStills.org, showing a JCB yellow backhoe loader (Model 3CX) apparently being used to uproot trees. The caption by +972 Magazine under the first photograph states that the uprooting of trees is being undertaken for the purpose of building a settler-only bypass road in the occupied West Bank: *“Israeli authorities uproot olive trees in order to pave a settler bypass road, Izbat Tabib, West Bank, January 16, 2017”*.<sup>78</sup>

LPHR notes that Alfei Menashe is the closest Israeli settlement to the Palestinian village of Izbat al-Tabib. Alfei Menashe is an Israeli settlement constructed on occupied Palestinian land in the central West Bank, with a population of 7,583 residents according to the Israeli organisation, Peace Now.<sup>79</sup>

- 5) **Ariel settlement:** LPHR has located a photographic image dated 5 January 2015 taken by Annie Slemrod of the New Humanitarian, showing a stationary JCB yellow backhoe loader (Model 3CX) at a construction site. The caption by the New Humanitarian under the photograph states: *“Construction workers at Ariel, a settlement in the West Bank. Israeli settlements, illegal in the eyes of the United Nations, have expanded in recent years.”*<sup>80</sup>

LPHR notes that Ariel is an Israeli settlement constructed on occupied Palestinian land in the central West Bank, with a population of 19,626 according to the Israeli organisation, Peace Now.<sup>81</sup>



**Appendix 4**

**LPHR commentary in relation to the impending demolition of the entire Palestinian village of Khan al-Ahmar and permanent displacement of its residents which is planned to take place in mid-December 2019 at the earliest (to be read alongside Section 3 of the accompanying Evidence Bundle)**

1. The Palestinian village of Khan al-Ahmar is situated in the central West Bank, in Area C of the occupied Palestinian territory. It is home to 188 people, 53 per cent of whom are children and 95 per cent of whom are Palestine refugees registered with UNRWA. The community has a school, where some 170 children aged six to fifteen are educated, some of whom come from four nearby communities.
2. Khan al-Ahmar is at substantial risk of being the first of 46 Bedouin communities named in the government of Israel's 'relocation' plan,<sup>82</sup> published in August 2014, to be entirely demolished with all its residents permanently displaced. It is one of eighteen Bedouin communities named in the 'relocation' plan that is located in or next to the sensitive 'E1' area around Jerusalem, where the government of Israel plans to expand existing illegal settlements through the construction of thousands of new settlement housing and commercial units, thereby creating a continuous built-up area between the illegal Ma'ale Adumim settlement and Jerusalem.
3. Khan al-Ahmar therefore represents a significant test case in relation to whether or not the 'relocation' plan proposed by Israeli authorities will be implemented.
4. On 4 July 2018, the BBC Middle East Correspondent, Tom Bateman, published on his Twitter account a photograph of a heavy machinery vehicle identifiable as a JCB JS200W wheeled excavator, in the vicinity of Khan al-Ahmar. The photograph has the following caption written by Tom Bateman: "*Israeli bulldozer now clearing way ahead of planned eviction of #KhanAlAhmar.*"<sup>83</sup> The photograph is included at Section 3 of the Evidence Bundle accompanying this complaint.
5. This photograph is corroborated by another photograph taken on 4 July 2018 from an AFP journalist, Ahmad Gharabli, that also shows a JCB vehicle identifiable as a JCB JS200W wheeled excavator, with the caption: "*Israeli soldiers oversee an excavator digging in the Palestinian Bedouin village of Khan al-Ahmar, east of Jerusalem in the occupied West Bank on July 4, 2018. Khan al-Ahmar, which*



*Israeli authorities say was illegally constructed and the supreme court in May rejected a final appeal against its demolition, is located near several Israeli settlements along a road leading to the Dead Sea. Activists are concerned continued Israeli settlement construction in the area could effectively divide the northern and southern West Bank.”<sup>84</sup> The photograph is included at Section 3 of the Evidence Bundle accompanying this complaint.*

6. These photographs supported widespread reports that Israeli authorities had commenced the paving of an access road to Khan al-Ahmar, as a facilitating step towards undertaking its long-planned demolition of the whole Palestinian village and forced permanent displacement of all its residents.
7. Reflecting the gravity of the situation, an Urgent Question from Richard Burden MP was accepted for debate in the House of Commons on 4 July, entitled “Demolition of Khan al-Ahmar”<sup>85</sup>. Mr Burden MP started the debate with the following Urgent Question: “*I had hoped to ask the Foreign Secretary to make a statement on the imminent demolition of the village of Khan al-Ahmar and the threat of the forcible transfer of its residents, but in the light of developments this morning, I must instead ask the Foreign Secretary to make a statement on the demolition that has commenced at Khan al-Ahmar and the village of Abu Nuwar and on the actual forcible transfer of the residents of those villages*”.
8. The Minister for the Middle East, Alistair Burt MP, responded to the Urgent Question from Mr Burden MP by asserting the UK government's “condemnation” of the imminent demolition of Khan al-Ahmar in accordance with long-standing policy: “*This morning, officials from our embassy in Tel Aviv and from our consulate general in Jerusalem visited Khan al-Ahmar to express our concern and demonstrate the international community’s support for that community. Once there, they did indeed observe a bulldozer, which began levelling the ground. While we have not yet witnessed any demolition of structures, it would appear that demolition is imminent. We deeply regret this turn of events. The United Nations has said that this would not only constitute forcible transfer, but pave the way for settlement building in EI. In accordance with our long-standing policy, we therefore condemn such a move, which would strike a major blow to prospects for a two-state solution with Jerusalem as a shared capital.*”
9. On 5 July 2018, LPHR submitted an urgent letter to the Foreign Office expressing our concern at developments in Khan ah-Ahmar, including the apparent



involvement of the British company, JCB, in the impending demolition and displacement, that appeared to be in breach of its human rights responsibilities under the OECD Guidelines and UNGPs. We stated “serious concern” that: *“JCB’s products are contributing to human rights violations against the Palestinian residents of Khan al-Ahmar, and that the provision of JCB’s construction equipment for use by the Israel authorities in these (and other) demolitions is in breach of JCB’s human rights responsibilities under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.”*<sup>86</sup>

- 10.** Minister Alistair Burt responded to LPHR by letter dated 12 September 2018, in which he stated: *We note the media reports and photographs that show JCB diggers around demolition sites. The reports that we are aware of show these diggers at the demolition site of Abu Nuwar [LPHR NOTE: this is documented in a video sourced from B’Tselem showing JCB machinery demolishing homes in Abu Nuwar, which LPHR appends to this complaint at Appendix 1]. Officials from the British Consulate-General in Jerusalem are aware that JCB equipment has been used on site. They witnessed the presence of JCB equipment at Khan Al Ahmar when they visited on 4 July to demonstrate the international community’s support for the village. From our enquiries, we understand that the demolitions are carried out by private contractors on behalf of the Israeli Civil Administration, so these private contractors would be the owners of any relevant equipment.”*<sup>87</sup>
- 11.** Consistent with the analysis at page 20 of this complaint, LPHR clarified in a follow-up letter to Minister Alistair Burt that the reasonable assumption by the UK government that the “private contractors would be the owners of any relevant equipment”, does not absolve JCB of its own business and human rights responsibilities under the OECD Guidelines.
- 12.** In addition to dialogue with the UK government, LPHR submitted a letter to JCB on 21 August 2018 that detailed our concerns,<sup>88</sup> and did not receive a response.
- 13.** Following 4 July 2018, there was further activity in the vicinity of Khan al-Ahmar on 19 July 2018. LPHR has obtained two photographic images (Item ID: 7631, 7633) taken on this date from EyeWitness to Atrocities (which received the images directly from Al-Haq) that shows a vehicle identifiable as a JCB yellow backhoe loader (Model 3CX). The images are accompanied by a note submitted



by the photographer, translated from Arabic to English by LPHR: “Israeli occupation forces closed the road leading to Khan al-Ahmar at 12:15.” The photographs are included at Section 3 of the Evidence Bundle accompanying this complaint.

14. At a Cabinet meeting of the government of Israel on 21 October 2018, a decision was taken to delay the demolition for several weeks so as reportedly consider an offer made under duress by residents of Khan al-Ahmar to be relocated to a site several hundred metres away.<sup>89</sup> Sustained diplomatic pressure is also reported to have contributed to the decision. For example, on 10 September 2018, the UK government issued a joint public statement with other European nations<sup>90</sup>:

*“France, Germany, Italy, Spain and the United Kingdom have repeatedly expressed their concern about the village of Khan al-Ahmar, which is located in a sensitive location in Area C, of strategic importance for preserving the contiguity of a future Palestinian state.*

*We took note of Wednesday’s decision by the Israeli Supreme Court leaving a demolition of Khan al-Ahmar up to the discretion of the Israeli government.*

*We therefore join High Representative/Vice-President Federica Mogherini in reiterating our call to the Israeli government not to go ahead with its plan to demolish the village – including its school – and displace its residents.*

*The consequences a demolition and displacement would have on the residents of this community, including their children, as well as on the prospects of the two-state solution would be very serious.”*

15. As indicated in the above statement, Israel's Supreme Court gave a green light for the wholesale demolition of Khan al-Ahmar and the displacement of its residents in a judgment on 24 May 2018, and subsequently upheld its decision on 5 September 2018 when a final appeal by residents of Khan al-Ahmar was rejected.
16. The 24 May 2018 Supreme Court judgment focused upon the view that the construction in Khan al-Ahmar is “illegal”<sup>91</sup>. However, as noted at Section 5 of this complaint, this position does not acknowledge the reality that residents had been forced to build without the requisite building permissions because they are systematically denied by the discriminatory planning system operated by Israeli authorities in Area C of the occupied West Bank.



- 17.** The Supreme Court judgment also suggested that judicial intervention to prevent the demolition and displacement plan is not required because the proposal for relocation is not “so extremely unreasonable” given the “State has done a great deal for the development” of the alternative site.<sup>92</sup> Apart from the fact that this cannot justify “forcible transfer” under international humanitarian law, it is also factually incorrect. The Israeli government’s statement to the court confirms that the neighbourhood “is indeed planned in an urban environment”, which does not include large pasture lands or farming areas. Accordingly, residents would be forced not only to leave their homes, but also to change their way of life.
- 18.** The Israeli Supreme Court ruled “this review has yielded... there is no cause to instruct it [the State] to withhold [law] enforcement when it wishes to proceed with it.”<sup>93</sup> The Court, however, came to this decision without engaging with the fundamentally relevant international humanitarian law provisions that should prevent the residents' displacement from Khan al-Ahmar.
- 19.** At a later Israeli Supreme Court hearing on 17 June 2019, it is reported by Haaretz that the government of Israel informed the Court that the demolition of Khan al-Ahmar will be postponed until mid-December 2019 at the earliest, due to the impact of the two general elections this year in Israel.<sup>94</sup> Accordingly, the issue of Khan al-Ahmar is urgent at the time of submission of this complaint to the NCP.
- 20.** The apparent material use of a JCB product for the reported paving of an access road to Khan al-Ahmar in July 2018, as detailed above and supported by the photographic evidence in the accompanying Evidence Bundle, raises serious concern over JCB's possible future involvement in materially facilitating the pending demolition of the entire village with consequential adverse human rights impacts for its 188 residents.
- 21.** LPHR notes that we intend to forward to the NCP for its consideration any potentially relevant evidence of the possible future material use of a JCB product in demolition and displacement activity at the location of Khan al-Ahmar, post-submission of this complaint.

- <sup>1</sup> <https://www.gov.uk/government/news/wadi-al-hummus-france-germany-spain-and-uk-joint-statement>
- <sup>2</sup> Paragraph 120 of Advisory Opinion: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory; International Court of Justice; 9 June 2004: <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>
- <sup>3</sup> <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2018/human-rights-and-democracy-the-2018-foreign-and-commonwealth-office-report>
- <sup>4</sup> <https://lphr.org.uk/wp-content/uploads/2017/09/LPHR-letter-re-forcible-transfer-27-Sept-2017.pdf>  
<https://lphr.org.uk/wp-content/uploads/2018/06/LPHR-letter-re-Khan-Al-Ahmar-forcible-transfer-11-June-2018.pdf>
- <sup>5</sup> <https://lphr.org.uk/wp-content/uploads/2018/08/LPHR-letter-re-Khan-Al-Ahmar-JCB-involvement-05-July-2018-FINAL.pdf>  
<https://lphr.org.uk/wp-content/uploads/2018/09/LPHR-second-letter-re-Khan-Al-Ahmar-JCB-involvement-24-Sept-2018-Final.pdf>
- <sup>6</sup> <https://www.business-humanrights.org/en/british-excavation-giant-jcb-warned-about-potential-violations-of-international-law-in-the-occupied-palestinian-territories>
- <sup>7</sup> <https://companycheck.co.uk/company/00564955/JCB-SERVICE/companies-house-data>
- <sup>8</sup> 'J.C. Bamford Excavators Limited Directors' Report and Consolidated Financial Statements for the year ended 31 December 2018' is accessible at the Companies House website here:  
<https://beta.companieshouse.gov.uk/company/00561597/filing-history>
- <sup>9</sup> Page 10 of report: 'Facts on the Ground: Heavy Engineering Machinery and the Israeli Occupation'; Who Profits; July 2014: [https://whoprofits.org/wp-content/uploads/2018/06/old/facts\\_on\\_the\\_ground\\_-\\_heavy\\_engineering\\_machinery\\_and\\_the\\_israeli\\_occupation.pdf](https://whoprofits.org/wp-content/uploads/2018/06/old/facts_on_the_ground_-_heavy_engineering_machinery_and_the_israeli_occupation.pdf)
- <sup>10</sup> <https://www.jcb.com/en-gb/dealer-locator>
- <sup>11</sup> <https://www.jcb.com/en-gb/dealer-locator> (search 'Israel' under category: 'Select a Country')

Also stated at Page 31 of report: 'Doing Business with the Occupation Economic and Financial Relationships of Foreign Companies with Israel's Settlement Enterprise'; Profundo Research and Advice & 11.11.11; 26 June 2018:  
[https://plateforme-palestine.org/IMG/pdf/economic\\_relationships\\_with\\_israeli\\_settlements\\_in\\_opt\\_180625\\_final.pdf](https://plateforme-palestine.org/IMG/pdf/economic_relationships_with_israeli_settlements_in_opt_180625_final.pdf)

<sup>12</sup> <http://www.comasco.co.il/JCB-1.html>

<sup>13</sup> <http://www.comasco.co.il/jcb-catalog.html>

<sup>14</sup> Page 24 of report: 'Facts on the Ground: Heavy Engineering Machinery and the Israeli Occupation'; Who Profits; July 2014: [https://whoprofits.org/wp-content/uploads/2018/06/old/facts\\_on\\_the\\_ground\\_-\\_heavy\\_engineering\\_machinery\\_and\\_the\\_israeli\\_occupation.pdf](https://whoprofits.org/wp-content/uploads/2018/06/old/facts_on_the_ground_-_heavy_engineering_machinery_and_the_israeli_occupation.pdf)

<sup>15</sup> Page 29 of report: 'Facts on the Ground: Heavy Engineering Machinery and the Israeli Occupation'; Who Profits; July 2014: [https://whoprofits.org/wp-content/uploads/2018/06/old/facts\\_on\\_the\\_ground\\_-\\_heavy\\_engineering\\_machinery\\_and\\_the\\_israeli\\_occupation.pdf](https://whoprofits.org/wp-content/uploads/2018/06/old/facts_on_the_ground_-_heavy_engineering_machinery_and_the_israeli_occupation.pdf)

<sup>16</sup> <https://www.ochaopt.org/data/demolition>

<sup>17</sup> UN OCHA Demolitions and Displacement Database: <https://app.powerbi.com/view?r=eyJrIjojMmJkZGRhYWQ0ODk0MS00MWJkLWI2NTktMDg1NGJIMGNiY2Y3IiwidCI6IjBmOWUzNWRiLTU0NGYt>

NGY2MC1iZGNjLTViYTQxNmU2ZGM3MCIslmMiOjh9

<sup>18</sup> <https://www.ochaopt.org/content/demolitions-west-bank-undermine-access-water>

<sup>19</sup> <https://www.ochaopt.org/content/right-education-deeply-impacted-ongoing-interference-schools>

<sup>20</sup> [https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/59155/six-month-report-demolitions-and-confiscations-eu-funded-structures-west-bank-including-east\\_en](https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/59155/six-month-report-demolitions-and-confiscations-eu-funded-structures-west-bank-including-east_en)

<sup>21</sup> Paragraph 66 of report: 'Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem' UN Human Rights Council'; 7 February 2013:  
[https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf)

<sup>22</sup> [https://www.ochaopt.org/sites/default/files/hummonitor\\_sep\\_2019.pdf](https://www.ochaopt.org/sites/default/files/hummonitor_sep_2019.pdf)

<sup>23</sup> [https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/68788/six-month-report-demolitions-and-seizures-west-bank-including-east-jerusalem-01-january-%E2%80%9330\\_en](https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/68788/six-month-report-demolitions-and-seizures-west-bank-including-east-jerusalem-01-january-%E2%80%9330_en)

<sup>24</sup> Paragraph 29 of report: 'Report of the UN High Commissioner for Human Rights, Israel Settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan', March 2018. (No direct link available. Only accessible as a word document via internet search.)

<sup>25</sup> <https://www.gov.uk/government/news/foreign-secretary-statement-on-west-bank-settlements>

<sup>26</sup> <https://www.unrwa.org/demolition-watch>

<sup>27</sup> <https://www.unrwa.org/demolition-watch>

And also page 22 of report: 'Facts on the Ground: Heavy Engineering Machinery and the Israeli Occupation'; Who Profits; July 2014: [https://whoprofits.org/wp-content/uploads/2018/06/old/facts\\_on\\_the\\_ground\\_-\\_heavy\\_engineering\\_machinery\\_and\\_the\\_israeli\\_occupation.pdf](https://whoprofits.org/wp-content/uploads/2018/06/old/facts_on_the_ground_-_heavy_engineering_machinery_and_the_israeli_occupation.pdf)

<sup>28</sup> Pages 22-23 of report: 'Facts on the Ground: Heavy Engineering Machinery and the Israeli Occupation'; Who Profits; July 2014: [https://whoprofits.org/wp-content/uploads/2018/06/old/facts\\_on\\_the\\_ground\\_-\\_heavy\\_engineering\\_machinery\\_and\\_the\\_israeli\\_occupation.pdf](https://whoprofits.org/wp-content/uploads/2018/06/old/facts_on_the_ground_-_heavy_engineering_machinery_and_the_israeli_occupation.pdf)

<sup>29</sup> <https://lphr.org.uk/blog/mental-health-prolonged-occupation-and-human-rights/>

<sup>30</sup> Paragraph 65 of report: 'Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem' UN Human Rights Council'; 7 February 2013:  
[https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf)

LPHR clarifies that Maale Adumim is a large settlement established on occupied Palestinian territory in 1975, with a population of 37,817 Israeli settlers according to the Israeli organisation, Peace Now.  
(<https://peacenow.org.il/en/settlements/settlement70-en>)

<sup>31</sup> <https://peacenow.org.il/en/settlements-watch/settlements-data/population> (for Israeli settlers in West Bank)  
<https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem> (for Israeli settlers in East Jerusalem)

<sup>32</sup> <https://ihl-databases.icrc.org/ihl/INTRO/380>

<sup>33</sup> <https://www.gov.uk/government/news/wadi-al-hummus-france-germany-spain-and-uk-joint-statement>

<sup>34</sup> <https://www.unrwausa.org/unrwa-usa-press-releases/2019/7/22/un-officials-statement-on-demolitions-in-sur-bahir>

<sup>35</sup> International Covenant on Economic, Social and Cultural Rights:  
<https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

<sup>36</sup> UN Convention on the Rights of the Child: [https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf?\\_ga=2.203793813.408019731.1574099940-1616003394.1574099940](https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.203793813.408019731.1574099940-1616003394.1574099940)

<sup>37</sup> International Covenant on Economic, Social and Cultural Rights:  
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<sup>39</sup> [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2334\(2016\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2334(2016))

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<sup>41</sup> Paragraph 21 of report: 'Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem'; Report of the United Nations High Commissioner for Human Rights; 1 February 2018: [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_hrc\\_37\\_39.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_37_39.pdf)

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