

## JCB: due diligence in the illegally Occupied Territories (Palestine)

**Sector:** Heavy machinery

**Issues:** Forced displacement of protected populations, pillage, and other war crimes

**The companies:** UK company **JCB** is a key supplier of heavy machinery for the construction and agriculture industries as well as after-sales services. JCB's sole dealer in Israel is the Israeli company **Comasco** which holds contracts with Israel's Ministry of Defence for the maintenance of the same model of JCB machines used in the demolition of Palestinian homes and property, and the construction of Israeli settlements.<sup>1</sup>

**Affected rights holders:** Israel's policy of appropriating land and establishing Israeli settlements in the Occupied Palestinian Territories (OPT) has led to the destruction of Palestinian homes, agricultural land and other property for over 50 years.<sup>2</sup> Israel's building of Israeli settlements and transfer of parts of its civilian population into the OPT is illegal under international law and a war crime, thereby linking JCB's downstream value chain to breaches of international humanitarian law.<sup>3</sup>

### Details:

The Hague Regulations of 1907 and the Fourth Geneva Convention of 1949 govern the obligations of occupying states under international humanitarian law in relation to the protection of civilians in occupied territories in times of war. Companies also have an obligation to respect specific provisions of international humanitarian law when operating in occupied territories.

Since 1967, Israel has demolished tens of thousands of Palestinian homes and buildings, displacing Palestinians and settling its own population on the land, in breach of international humanitarian law.<sup>4</sup> Israel's occupation has amounted to a war crime through its destruction and appropriation of property not justified by military necessity and its transfer of its own civilian population and displacement of the occupied population into the OPT.<sup>5</sup> In addition, the unlawful appropriation of property by an occupying power or by a company amounts to "pillage" and is also a war crime under the Hague Regulations and the Fourth Geneva Convention.

JCB lists Comasco as its exclusive dealer in Israel.<sup>6</sup> Multiple organisations have documented the use of JCB machinery by Israeli authorities and private contractors in demolitions and construction. Al-Haq noted that JCB machinery was used for at least 70 out of 281 demolitions in the OPT recorded between 1 January 2019 and 31 October 2019.<sup>7</sup>

On 10 December 2019, Lawyers for Palestinian Human Rights (LPHR) made a submission to the UK NCP regarding the involvement of JCB in breaches of the OECD Guidelines for Multinational Enterprises (OECD Guidelines) in the occupied West Bank, including East Jerusalem.<sup>8</sup> It submitted that JCB failed to take the actions necessary to identify, prevent, mitigate, and address the use of its heavy machinery in the demolition of Palestinian homes and destruction of property and settlement construction on occupied lands.

In a response from JCB to the authors of this report dated 27 February 2023, the company referred to details it submitted to the UK NCP for its initial assessment in which it confirmed that all products it supplies to Israel are via a third-party independent distributor, Comasco. It also stated that there is an established second-hand market in Israel for its products and that it is not possible to confirm whether machinery originated from Comasco or whether it was acquired second-hand (see Annex for further details).

On 12 November 2021, the UK NCP issued its final statement (relevant sections of which are replicated in the Annex below). The NCP concluded that while the alleged adverse human rights activities could not be conclusively linked to JCB because of its business relationship with Comasco, it found that JCB failed to carry out human rights due diligence to assess actual and potential impacts. It also stated that JCB should set out a plan on how it would integrate and act upon the findings of its due diligence process, including how the impacts would be addressed, if identified in its supply chains.<sup>9</sup>

## How could a UK Business, Human Rights and Environment Act have made a difference?

In our assessment, under a UK Business, Human Rights and Environment Act, JCB would have been legally required to conduct an adequate due diligence process on its downstream value chain to identify the risk of its products being used to abuse human rights or, in a context such as the OPT, to commit war crimes. In the present case, as Comasco was its sole trader in Israel, it may have been aware of the use of its products by this company, and of Comasco's contracts with Israel's Ministry of Defence.

Particular risks in the case of occupation include transferring or facilitating the transfer of civilians into an occupied territory.<sup>10</sup> In this context, the risk that JCB's products were used for demolitions and to build settlements in breach of international humanitarian law, and to facilitate human rights violations, should have been foreseeable and apparent. JCB's pre-existing services include its "Live-Link" technology which can show the location of its machinery when being used in high-risk areas, including occupied territories.<sup>11</sup>

Under this law, there would be a positive obligation on the company to carry out all reasonable steps to ensure that human rights risks in both its upstream and downstream value chains were prevented. JCB's "Live-Link" technology has the capacity to locate machinery. However, currently, JCB's customer owns and controls this data (see letter in Annex for further statements from JCB).

Had a UK court determined that JCB's due diligence failed to identify potential risks to Palestinians, or to respond appropriately to these risks if identified, it may have established liability for failing to prevent foreseeable violations.

The displaced or otherwise affected Palestinians may have had access to justice in the UK courts to seek remedy for the harm suffered. A finding of liability may have led to financial compensation and the imposition of court orders to ensure that JCB began to take measures to ensure that its machinery did not continue to be used to facilitate violations in the OPT. This may have included an order to impose contractual restrictions on Comasco in relation to the onward sale of JCB products and to consider ending its business relationship with Comasco if it is unwilling to adhere to such provisions.

- 1 Amnesty International (8 December 2021), "[JCB off track: Evading responsibility for human rights violations committed with JCB machines in the Occupied Palestinian Territories](#)", p. 4.
- 2 Amnesty International (8 December 2021), p. 9.
- 3 Fourth Geneva Convention, Art.49, para 1.
- 4 Amnesty International (8 December 2021), p. 3.
- 5 Amnesty International (8 December 2021), p. 10.
- 6 Lawyers for Palestinian Human Rights (10 December 2019), "[Complaint regarding the involvement of JCB in human rights breaches in the occupied Palestinian territory, raised by Lawyers for Palestinian Human Rights](#)", pp. 5-6.
- 7 Lawyers for Palestinian Human Rights (10 December 2019), p. 17.
- 8 Lawyers for Palestinian Human Rights (10 December 2019).
- 9 OECD Watch (10 December 2019), "[Lawyers for Palestinian Human Rights vs. JC Bamford Ltd](#)".
- 10 Human Rights Watch (21 June 2016), "[Responsible Business in Occupied Territories](#)".
- 11 This technology enables the company to track the location of the machinery remotely for its customers. Eye Witness, "[JCB found to be in violation of its human rights responsibilities](#)". Accessed 9 February 2023.