

VIOLATIONS SET IN STONE

HEIDELBERGCEMENT IN THE OCCUPIED PALESTINIAN TERRITORY



MAHA ABDALLAH AND LYDIA DE LEEUW

FEBRUARY 2020



COLOPHON

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Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), the organisation has special consultative status with the United Nations Economic and Social Council.



Cover photo: A picture of the Nahal Raba quarry, taken from the land of Al-Zawiya village, showing the Separation/Annexation Wall in the form of a fence. Photo taken by Al-Haq on 18 January 2020.

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EXECUTIVE SUMMARY

Palestinians in the Occupied Palestinian Territory (OPT) have been subjected to ongoing Israeli occupation and colonisation policies depriving them of their basic rights. Among others, this has been manifested in the unlawful exploitation of natural resources in the OPT, resulting in a wide array of human rights violations and intensifying the de-development and capture of the Palestinian economy by the Occupying Power and business enterprises. Israeli and multinational corporations operating and active in the OPT under Israel's administration are knowingly complicit in breaches of international law against the occupied Palestinian population. Unsurprisingly, these companies have benefited from the already-existing culture of impunity for Israel's prolonged occupation and the lack of (the enforcement of) regulatory frameworks under international law, namely humanitarian and human rights law, for businesses operating in the OPT to avoid liability and whitewash their unlawful activities – accompanied by the lack of political will of third States in this regard.

The *Nahal Raba* stone quarry, operated by the German multinational HeidelbergCement through its subsidiary Hanson Israel, provides a clear example of corporate complicity in grave breaches of international humanitarian law that may amount to internationally recognised crimes against Palestinians. The case study in this report documents the direct and indirect implications of the quarry and its activities in the past 13 years on the lives of Palestinian communities living nearby as well as the Palestinian population as a whole.

HeidelbergCement's extraction of Palestinian natural resources, namely stone, has taken place in a context of deliberate institutional policies aimed towards the confiscation and exploitation of Palestinian land and resources by Israel, the Occupying Power. Consequently, Palestinians have been denied their right to self-determination, access and sovereignty over their natural resources, while their economy suffers from a continued state of captivity and de-development. The Palestinian economy has been stripped of billions of dollars each year. Conservative estimates by the World Bank indicate that the missing revenues amount to USD 3.4 billion per year, which has the potential to increase the Palestinian GDP by about a third.¹ The potential value which could be generated by mining production in the occupied West Bank, wherein HeidelbergCement operates, is estimated at USD 900 million annually.²

KEY FINDINGS

HUMAN RIGHTS VIOLATIONS RESULTING FROM THE QUARRY'S OPERATIONS

- *The Right to Self-Determination and to Permanent Sovereignty over Natural Resources:* HeidelbergCement's activities, comprising quarrying and manufacturing of materials in the *Nahal Raba* quarry in occupied territory contribute to the infringement of the Palestinian right to self-determination and to permanent sovereignty over natural resources, a fundamental principle of international law.

- *Unlawful Appropriation of Land:* HeidelbergCement AG is benefiting from the appropriation of private and public property that belongs to the protected Palestinian population.
- *Pillage:* the unlawful quarrying of natural resources from the *Nahal Raba* quarry is accompanied by the transfer of materials to Israeli settlements and the construction sector in Israel, while royalties are paid to the Israeli Civil Administration. This provides evidence that the illegal activities in the *Nahal Raba* quarry benefit the Israeli economy, including the settlement enterprise, at the expense of the Palestinian people, thus amounting to the crime of pillage committed by the Occupying Power and facilitated by HeidelbergCement.
- *The Right to Freedom of Movement:* HeidelbergCement has contributed to and benefited from the systemic Israeli-imposed restrictions on Palestinian access to land and natural resources, which has been implemented by means of land confiscation, the construction of the Wall, its settlement enterprise, and military infrastructure.
- *The Right to Work and Access to Livelihood:* the *Nahal Raba* quarry has prohibited Palestinians from accessing and utilising their land and resources, thus further limiting job prospects, economic opportunities and denying livelihoods.
- *Transfer of Civilian Populations into Occupied Territory:* HeidelbergCement's continued operations and activities in the *Nahal Raba* quarry, for more than a decade now, have facilitated the transfer of Israeli settlers into the OPT, including by means of providing job opportunities and construction materials used to establish and expand illegal Israeli settlements.
- *Environmental Impacts and Destruction:* the *Nahal Raba* quarry has been in operation for more than three decades, depleting the finite resources and raw materials therein. In addition, the resulting clouds of dust and pollution from the quarry have impacted the residents and agriculture in the nearby villages. The destruction of the environment further infringes on the right to life and health.

DENIAL OF INVOLVEMENT IN AND RESPONSIBILITY FOR GROSS HUMAN RIGHTS ABUSES

HeidelbergCement has presented a myriad of justifications to legitimise its operations in the *Nahal Raba* quarry and denies liability for its involvement in human rights violations and grave breaches of international law:

- *Aligning with the Occupying Power:* HeidelbergCement disregards and takes advantage of the existence of an occupation where its activities take place in the *Nahal Raba* quarry in the occupied West Bank, thus violating the rights of Palestinians by operating through the oppressive and exploitative policies that Israel, the Occupying Power, enacts as it exercises effective control over the OPT.

- *Exploiting an Unjust Legal System:* Israeli jurisprudence allows for the exploitation of natural resources in the OPT, as can be seen from the Israeli Supreme Court's decision in 2011.
- *Disseminating Misinformation Regarding its Responsibility:* HeidelbergCement denies that its activities cause harm to Palestinians and their economy and result in human rights abuses. HeidelbergCement also denies its role in bolstering Israel's exploitative and expansionist policies in the OPT, including those that contribute to the maintenance and growth of Israel's illegal settlement enterprise.
- *Claim to Benefit the Affected Community:* in an apparent effort to deflect criticism of their operations in the OPT, HeidelbergCement claims that its activities in the *Nahal Raba* quarry benefit Palestinians, including the claim to provide job opportunities and projects for their benefit. HeidelbergCement has also established a Palestinian subsidiary under the jurisdiction of the Palestinian Authority in the West Bank, in an apparent attempt to enhance its image. The Palestinian subsidiary is unlinked to its activities in the *Nahal Raba* quarry, and it remains unclear what its economic activity or value constitutes.
- *Undermining Rightful Owners and Communities:* by shaping a distorted narrative which frames its operation of the quarry as benefiting the local population, HeidelbergCement not only manipulates how its activities are perceived, but it also feeds into the structural delegitimation of the affected population's struggles against foreign occupation and associated corporate interests.
- *Shielding the Parent Company from Liability:* HeidelbergCement has structured the transnational corporate group into distinct legal entities and carried out its operations through an Israeli subsidiary to insulate the parent company from liability.
- *Irresponsible Disengagement through the Sale of the Quarry to Avoid Liability:* in May 2019, HeidelbergCement announced that it had decided to sell the *Nahal Raba* quarry and that a 'disposal process was started'. Often, companies turn to disengagement as a method to avoid bearing responsibility for human rights violations they are involved in and to maintain their reputation – without mitigating the adverse impacts or allowing for effective redress.

METHODOLOGY

This report is based on desk and field research between September 2018 and January 2020. The desk research included a close examination and analysis of HeidelbergCement's records and publications, company statements, available news articles, and correspondence between the company and civil society organisations and journalists. The aforementioned has enabled us to elicit the relevant corporate strategies to avoid liability and continue its activities contrary to its responsibilities under international law – as highlighted in the report. The field research included a dozen visits to the affected villages, and twelve individual and group interviews with members of the communities and other relevant civil society members, in order to better understand the impacts of the company's activities, and to give a voice to those most affected by the company's illegal activities. The section containing corporate information relied mainly on HeidelbergCement's annual reports and access to different engines, including LexisNexis, Thomson Reuters Eikon, and Orbis, that allow for examinations of corporate developments, and companies' shareholders and investors respectively. In addition, the corporate information relevant to the Israeli subsidiary (Hanson Israel) relied on access to the Israeli Registrar of Companies, detailing its subsidiaries' different owners and affiliations. The research also relied on years of in-depth and rigorous research conducted by different organisations concerned with business-related human rights abuses in the context of Israel's occupation.

HeidelbergCement was given the opportunity to review and comment on the draft report in the last two months of 2019. Where relevant, the comments of the company were processed in the final version of this report.

GLOSSARY

Occupied Palestinian Territory (OPT): refers to the territory occupied by Israel in 1967, comprising the West Bank, including East Jerusalem, and the Gaza Strip.

Settlement Enterprise: civilian colonies or settlements in the form of residential communities, industrial zones, agricultural areas, among others, illegally established in the Occupied Palestinian Territory, encouraged and facilitated by the Israeli government and official institutions to transfer their civilians into occupied territory.

Settler-Colonial Enterprise: an enterprise that functions through the replacement of indigenous populations with the civilian population of the Occupying Power, i.e., settlers. Israel has worked to develop laws and policies that would enable it to seize control and expand its settler-colonial enterprise primarily through entrenching its territorial control of Palestinian land, its illegal settlement enterprise and annexation measures.

Colonisation: the process of settling, establishing control and an open claim to sovereignty over indigenous lands and populations, or adopting measures that deliberately deny, or demonstrate an intention to permanently deny, the indigenous populations the full exercise of their sovereign rights and their right to self-determination.

The Green Line: the 1949 Armistice Line, which is internationally accepted as the boundary between Israel and the OPT. Its name derives from the green ink used to draw the line on the map during the peace talks.

Pillage: pillage is when a perpetrator intentionally appropriates property and allocates it for personal and private use, including land and natural resources. In accordance with the Rome Statute of the International Criminal Court, pillage constitutes a war crime when committed in the context of an international armed conflict, including situations of military occupation.

Occupation: a stage of international armed conflict that arises when a territory, or parts thereof, come under the effective control of a foreign hostile armed force, even if it is not met with armed resistance. An occupation should remain a temporary regime which does not lead to any claim of sovereignty.

Occupying Power: the foreign hostile regime which has the effective control of a territory. It does not, however, acquire sovereignty but rather acts as the *de facto* administrator of the territory.

Annexation: incorporating occupied territory into the territory of the Occupying Power; an act prohibited under international law. Israel's deliberate annexation policy in the OPT is most apparent on three fronts: the annexation of East Jerusalem, the continued settlement construction and expansion, and the aggressive appropriation of essential Palestinian resources.

The Israeli Civil Administration: is part of the Coordinator of Government Activities in the Territories (COGAT), which is a unit of the Israeli Ministry of Defence. The Israeli Civil Administration administers its rule over the OPT through military orders.

Coercive environment: an environment formed of unliveable conditions and created through the Israeli government's adoption of a wide range of laws, policies, and practices designed and intended to displace and forcibly transfer Palestinian communities from the region.

1 INTRODUCTION

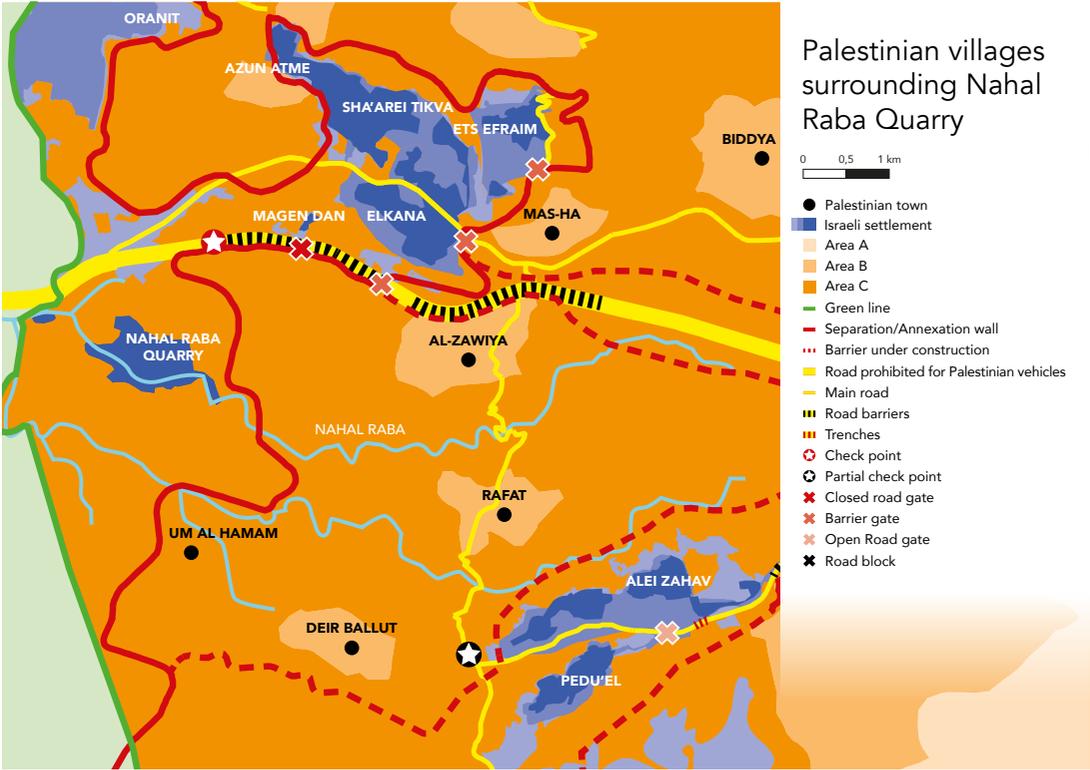
Since the start of its military occupation of the West Bank, including East Jerusalem, and the Gaza Strip – comprising the Occupied Palestinian Territory (OPT) – in 1967, Israel has sought to expand its territorial control, *inter alia*, by constructing and expanding its illegal settlement enterprise in the West Bank, including East Jerusalem. To this end, Israel has systemically appropriated Palestinian private and public land, property and natural resources, demolished Palestinian property and restricted Palestinian planning, zoning and residency rights, thus creating a coercive environment that results in the forced transfer and displacement of Palestinians. At the same time, Israel facilitates the transfer of Israeli Jewish settlers into the OPT. The unlawful forcible displacement of Palestinians and transfer of settlers violates international humanitarian and human rights law and amounts to internationally recognised crimes. Against this backdrop, Israeli and multinational corporations have played a key role in the maintenance and growth of Israel's illegal settlement enterprise and have contributed to and profited from serious human rights abuses.³

The 'use of natural resources, in particular water and land, for business purposes' has been one way through which business activities have contributed to the systemic human rights violations in the OPT.⁴ The Occupying Power has long confiscated Palestinian land and unlawfully exploited natural resources, emboldened by the presence and activities of private Israeli and multinational corporations. There are hundreds of businesses operating in Israeli settlements in the West Bank, providing jobs and income to tens of thousands of Israeli settlers,⁵ thus sustaining and normalising their presence. The implications of business enterprises in 'directly and indirectly' enabling, facilitating and profiting from the construction and growth of the settlements has been clearly established.⁶

This is illustrated in the case of HeidelbergCement AG (HeidelbergCement) and its subsidiary Hanson Israel which have been quarrying *Nahal Raba* on confiscated private and public Palestinian land in and near the villages of Al-Zawiya and Rafat in the West Bank since 2007 – in breach of international law and amounting to internationally recognised crimes such as pillage committed by the Occupying Power and contributed to by HeidelbergCement. This has denied the residents of both villages the right to access and develop their land. HeidelbergCement and Hanson Israel have contributed to the construction of illegal Israeli settlements by providing them with raw material for construction, while also selling raw material to the Palestinian captive market in the OPT. In their activities and operations, both companies have contributed to the perpetual de-development of the Palestinian economy where, in the case of quarrying, most Palestinian operators are prohibited access to and development of stone reserves in Area C of the West Bank.⁷

Israeli and multinational corporations, such as HeidelbergCement and its subsidiary Hanson Israel, operate under the jurisdiction of the Israeli Civil Administration (ICA) in the OPT. The ICA issues mining permits and collects licensing fees in the form of royalties for the operation of the stone quarries. Corporate royalties are then redistributed to directly fund settlement regional councils.⁸

In 1980, the Israeli authorities declared the land in Al-Zawiya village where the *Nahal Raba* quarry is located a closed military zone.⁹ The land was then used for military training, forcing the Palestinian farmers and herders to leave the area and stop using it. In 1982, an Israeli company, under license from Israel, started blasting and crushing stones. The company established the quarry west of Al-Zawiya, in an area identified by the community as Khilet Al-Watawit. In 1983, the quarry was opened¹⁰ on about 101 dunums¹ of land owned by several families from Al-Zawiya, and then started to expand until it controlled between 600–800 dunums of land belonging to the Palestinian village of Al-Zawiya and its residents.¹¹ More recently, in February 2019, an Israeli military order announced the confiscation of more than 98 dunums of privately-owned land from the nearby Rafat village, declaring it 'State land' for the purpose of allocating it for Hanson Israel and the *Nahal Raba* quarry.¹²



Map indicating the location of the Nahal Raba quarry in proximity to Al-Zawiya and Rafat villages and surrounding Israeli settlements. Source: UN OCHA¹³

¹ A dunum is a unit of land equal to about 1,000 square metres, used throughout the Ottoman and British Mandate eras.

CORPORATE PROFILE HEIDELBERGCEMENT AG

Company name

HeidelbergCement

About the company

A German multinational company for building materials. HeidelbergCement AG is the world's second largest¹⁴ cement producer and manufacturer of aggregates and ready-mix concrete. Its products are used for the construction of infrastructure, houses, and commercial and industrial facilities. HeidelbergCement operates through various sectors, including cement and aggregates, which focus on raw materials for the production of concrete; cement and aggregates (such as gravel, sand and crushed rock).

Industry

Quarrying and construction

General Info

Head office: Berliner Strasse 6, 69120 Heidelberg, Germany

Tel: +49 6221 481 13227

Website: www.heidelbergcement.com

Private/ Public - traded in:

Public, traded in Frankfurt Stock Exchange (FWB), under the ticker symbol HEI

Revenues

The Group's revenues in 2018 reached 18,075 million euros.

Ownership

Major shareholders: Spohn Cement GmbH (25.98%); First Eagle Investment Management, LLC (7.34%); BlackRock Institutional Trust Company, NA (4.81%).

Chairman: Bernd Scheifele

Subsidiaries

The company owns 1,626 subsidiaries worldwide. In Israel, the company's subsidiaries are: Hanson (Israel) Ltd., Hanson Quarry Products (Israel) Ltd, Pioneer Concrete Imports & Quarries Ltd., Hanson Yam Limited Partnership, Hanson Quarry Products (Israel) Ltd. These companies are 99.98 per cent to 100 per cent controlled by HeidelbergCement AG.

Location – Headquarters

Germany

Global presence

Belgium | Netherlands | Luxembourg | France | Germany | Italy | Spain | UK | Albania | Bosnia-Herzegovina | Bulgaria | Croatia | Czech Republic | Denmark | Georgia | Greece | Hungary | Iceland | Kazakhstan | Norway | Poland | Romania | Russia | Slovakia | Sweden | Estonia | Latvia | Canada | USA | Israel | Australia | Bangladesh | Brunei | China | India | Indonesia | Malaysia | Singapore | Thailand | Egypt | Israel | Mauritania | Morocco | Turkey | Palestine | Benin | Burkina Faso | Gambia | Democratic Republic of the Congo | Ghana | Liberia | Mozambique | Sierra Leon | South Africa | Tanzania | Togo | Kuwait

When analysing the actual and adverse impacts of the *Nahal Raba* quarry operations on the occupied population and Palestinian communities, it is important to keep in mind the link between the Israeli authorities, namely the Israeli Civil Administration, the laws governing natural resources in the OPT, both domestic and international, and the activities carried out by the company and its subsidiary. It is equally important to contextualise the activities and operations of HeidelbergCement and its subsidiary Hanson Israel within the framework of a prolonged military occupation. Israel's occupation has entailed systemic and ongoing confiscation of Palestinian land, policies and measures that aim to consolidate control and annex territory, accompanied by a myriad of methods to establish population control in the OPT, while imposing a system of structural economic subordination against Palestinians.

The following section explains the legal and political context within which HeidelbergCement and Hanson Israel operate, and how they have exploited Palestinian natural resources contrary to international law. Chapter 2 of this report addresses corporate complicity in the appropriation, unlawful exploitation and pillage of Palestinian land and natural resources, primarily stone. In Chapter 3, the report thoroughly examines the activities of HeidelbergCement and its subsidiary Hanson Israel in the *Nahal Raba* quarry and the companies' involvement in human rights abuses and potential crimes, relating to the right to self-determination, appropriation of land, pillage, the right to freedom of movement, to work and access livelihood, the transfer of civilian populations of the Occupying Power into occupied territory, and the environmental impact. In Chapter 4, the report proceeds to identify the various strategies seemingly used by HeidelbergCement to avoid responsibility for its involvement in human rights abuses in the OPT linked to its operations and activities.

In Chapter 5, the report presents an analysis of the 'Protect, Respect and Remedy' framework relevant to HeidelbergCement and the *Nahal Raba* quarry in the OPT, including a compilation of various attempts by civil society to counter HeidelbergCement's involvement and illegal activities. Lastly, Chapter 7 presents the conclusions and recommendations of the report to the different stakeholders, including HeidelbergCement itself, Germany as a home State, third States, the European Union, the Palestinian Authority.

1.1 OCCUPATION, ANNEXATION AND ISRAEL'S SETTLEMENT ENTERPRISE

In 1967, Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip, comprising the OPT, as well as the Syrian Golan. Israel is the Occupying Power in the OPT and the occupied Syrian Golan, and accordingly holds duties and obligations in line with international law. For the purpose of this report, the focus will be on the OPT. In the West Bank, including East Jerusalem, Israel has established at least 250 settlements and outpostsⁱⁱ in the past 53 years, housing more than 600,000 Israeli settlers, in stark violation of international law.¹⁵ As a result of Israel's expanding illegal settlement enterprise, more than 40 per cent of the West Bank, excluding East Jerusalem, now lies within the control of Israeli settlements and their regional councils.¹⁶

ii Outposts are settlements that are not yet officially recognised by the Israeli government.



Israeli settlement in the Occupied West Bank. Photo taken by Al-Haq on 18 January 2020.

Israel's settler-colonial enterprise has been established on privately and publicly-owned Palestinian land, appropriated by the Israeli authorities since 1967 under the pretext of declaring it 'abandoned land', closed military zones and firing zones, nature reserves, archaeological sites, or 'State land'. The Israeli authorities and officials have persistently pushed forward an annexationist agenda, whereby Area C of the West Bank, which is already under full Israeli jurisdiction, would formally become an Israeli-annexed territory.¹⁷ In November 2019, Israeli Prime Minister Netanyahu approved to advance a bill before the Israeli parliament to apply Israeli sovereignty over the Jordan Valley in the West Bank.¹⁸ Prior to this, within a period of five months in 2017, members of the Israeli parliament (Knesset) proposed 10 draft bills pushing for the annexation of areas in the West Bank, including the settlement of *Ma'ale Adumim*¹⁹ near Jerusalem and the settlement of *Ariel* in the north of the West Bank.²⁰

Settlements are illegal under international law, as reaffirmed and reiterated by UN Security Council resolution 2334 (2016),²¹ UN General Assembly resolution 70/89 (2015),²² amongst others, and the International Court of Justice (ICJ) in 2004.²³ Article 49 of the Fourth Geneva Convention prohibits the Occupying Power from transferring its civilian population into occupied territory. Critically, the transfer in of the civilian population of the Occupying Power amounts to a grave breach of the Fourth Geneva Convention, and a war crime under the Statute of the International Criminal Court.²⁴ In addition, Israel's confiscation of Palestinian land for the construction of Israeli residential, agricultural and industrial settlements²⁵ amounts to unlawful appropriation of private and public property in accordance with Articles 46, 52 and 55 of the Hague Regulations,²⁶ whereas the extensive destruction and appropriation

of property not justified by military necessity amounts to a grave breach of Article 53 of the Fourth Geneva Convention, and is listed as a war crime under the Rome Statute.²⁷ Furthermore, as seen in this report, the expropriation and exploitation of natural resources in occupied territory for the benefit the Occupying Power, its economy and population, contravenes the laws of occupation and international humanitarian law, amounting to pillage – which also constitutes a war crime.²⁸



Figure 3:
Map of the
Occupied
Palestinian
Territory
and the region.
Source:
UN OCHA²⁹

Nonetheless, the Israeli government has continued to support and facilitate the construction and growth of Israeli settlements and outposts in the OPT. The Occupying Power has done so through policy, legislation and military orders that allow for the appropriation of Palestinian land,³⁰ expediting the construction of settler housing units and public buildings, advancing plans and tenders for settlement expansion,³¹ providing financial incentives, and by providing security and protection. Israel's Law for the Regularisation of Settlement in the West Bank, passed in February 2017 by the Israeli parliament, allows for the retroactive legalisation of illegal Israeli settlements constructed on private Palestinian property under Israeli domestic law.³² In September 2019, the Israeli government approved the outpost settlement of *Mevo'ot Yericho* near Jericho in the Jordan Valley.³³ The application of domestic Israeli legislation to the settlements in the West Bank, amounting to *de jure* extension of sovereignty over occupied territory³⁴ amounts to annexation which is absolutely prohibited under international law.

As evidenced throughout the report, multinational corporations and business enterprises have played a key role in advancing and deepening Israel's unlawful territorial control and annexation of Palestinian land. This has resulted in the denial of basic rights for Palestinians, notably of their right to self-determination and to permanent sovereignty over their natural resources.

1.2 POPULATION CONTROL

Israel's occupation has involved the imposition of an institutionalised system of population control over Palestinians. Israel has developed an intricate system of oppression that combines military force, technology and military orders to further expand its control over land, resources and the occupied population. This system of control is intensified through oppressive policies and measures against Palestinians, exemplified in the violent suppression of protests, arbitrary arrests and detention, movement restrictions and related harassment of Palestinians at military checkpoints. This has resulted in the denial of basic human rights for Palestinians.

Furthermore, the Occupying Power has isolated Palestinian communities and severed the territorial contiguity of the OPT to consolidate territorial sovereignty, population control, and in some parts, demographic domination.³⁵ The Israeli-Palestinian Interim Agreement of 1995 (the Interim Agreement), which was supposed to last for a transitional period no longer than five years,^{III} divided the West Bank into Areas A, B and C. Area A comprises about 18 per cent of the West Bank and is supposed to be under Palestinian civil and security control, whereas Area B comprises 22 per cent of the West Bank and is supposed to be under Palestinian civil control and Israeli security control. Area C comprises about 60 per cent of the West Bank and was placed under full Israeli control, including over security, planning and construction, and was supposed to be gradually transferred to the Palestinian Authority's jurisdiction two years after the Agreement was signed.

III The Interim Agreement was supposed to be temporary and transitional, not exceeding five years. The Interim Agreement, as illustrated throughout this report, is not fully in line with international law nor guarantees Palestinian basic right to self-determination, including sovereignty and access over natural resources.

Nonetheless, Israel has continued to restrict Palestinian access, control and development of Area C and the natural resources therein. The imposed restrictions are embodied in the military checkpoints, roadblocks, fences and the separation and annexation Wall (hereinafter the Wall),^{IV} restrictions on Palestinian planning and zoning, and declarations of vast areas as closed military zones, 'State land' and national parks. Consequently, Israel has maintained solid control over the most resource-rich areas of the OPT³⁶ as part of a deliberate State policy and plan that underlines the importance of controlling Area C for alleged security reasons, to further expand its settler-colonial enterprise and ultimately annex it.³⁷

1.3 PALESTINIAN CAPTIVE ECONOMY: STRUCTURAL SUBORDINATION

The Palestinian economy has been made dependent on foreign aid, humanitarian assistance and Israel.³⁸ To date, the Palestinian market has been turned into a *de facto* captive market, following binding economic agreements, mainly the Protocol on Economic Relations between Israel and the PLO (Paris Protocol), the economic annex to the Oslo Accords.³⁹ As a result, the Palestinian economy is subject to impediments and restrictions imposed by Israel on labour, trade relations, fiscal relations and monetary agreements.⁴⁰ For example, 85 per cent of the OPT's exports are absorbed by Israel whereas 70 per cent of the OPT's imports are from Israel.⁴¹

In 2017, the UN Conference on Trade and Development (UNCTAD) revealed that the continuing loss of land and natural resources to settlements and the annexation of land have caused the Palestinian economy to perform 'far below potential'.⁴² Then in 2019, it evaluated that the Palestinian economy and humanitarian conditions 'reached an all-time low'.⁴³ In December 2019, UNCTAD announced to the UN General Assembly that the revenue loss between 2000 and 2017 for the State of Palestine is estimated at USD 48 billion due to Israel's occupation; a figure that continues to rise.⁴⁴ This loss is a direct result of Israel's restrictions on movement for Palestinian people and goods, "control by Israel of Area C in the West Bank and all border crossing points; denying the Palestinian people their right to freely utilise their land, natural and human resources; and depriving the Palestinian government of meaningful control over its fiscal resources".⁴⁵

In Area C of the West Bank, the main natural resources present include land and agricultural land, Dead Sea minerals, and stone reserves, which substantially contribute to the area's economic development, along with the tourism, construction and telecommunications industries.⁴⁶ The World Bank estimated in 2013 that revenue from natural resources in Area C could contribute about USD 2.2 billion annually to the Palestinian economy.⁴⁷ Instead, the Palestinian economy has been severed and held captive by Israel and its economy and made dependent on the Israeli market, foreign aid and humanitarian assistance.⁴⁸

IV Israel's 700-kilometre-long Separation and Annexation Wall passes through the occupied West Bank and is designed to separate East Jerusalem from the rest of the West Bank. The wall has facilitated the annexation of more land in the occupied territory, and has physically segregated Palestinians living to the east of the separation/annexation Wall from the rest of historic Palestine.

It should be noted that Israel is obliged to continue the application of the Palestinian tax system (value added and income tax) in Area C and transfer the amount collected from the thousands of Israeli business enterprises therein to the Palestinian treasury. Nonetheless, since 2000, Israel has not committed to the principle thus causing the Palestinian economy about USD 320 million loss between 2001 and 2017 in value added tax, income tax, property tax and other fees in Area C.⁴⁹

14 APPLICABLE LEGAL FRAMEWORK

In the OPT, international humanitarian law, regulating situations of armed conflict and military occupation, applies as the *lex specialis*, with international human rights law applying concurrently as *lex generalis*.⁵⁰ The law of armed conflict applicable in the OPT is embodied in the Hague Regulations (1907), the four Geneva Conventions (1949), in particular the Fourth Geneva Convention, and their Additional Protocols. It should be noted that, in line with Article 43 of the Hague Regulations, the domestic law of the occupied territory should continue to apply, altered only by military necessity and humanitarian considerations where absolutely necessary. In January 2015, the State of Palestine lodged an *ad hoc* declaration pursuant to Article 12(3) of the Rome Statute of the International Criminal Court, accepting that the International Criminal Court (ICC) exercise jurisdiction as of 13 June 2014, then acceded to the Rome Statute which the ICC Registrar accepted.⁵¹

Specifically relevant to this report, it should be noted that in situations of armed conflict, international humanitarian law is not only binding upon States, armed groups and combatants, but also extends to bind "all actors whose activities are closely linked to an armed conflict".⁵² Accordingly, corporations and business enterprises with activities closely linked to the armed conflict also have a responsibility to respect international humanitarian law and human rights standards.

The Occupying Power, Israel, has argued that human rights treaties and the Fourth Geneva Convention are not applicable *de jure* in the OPT. However, international bodies, including the International Court of Justice (ICJ), the United Nations (UN) and the International Committee of the Red Cross (ICRC) have refuted this position and reaffirmed Israel's obligations in the OPT.⁵³ State parties to international conventions assume obligations and duties under international law to protect and fulfil rights.⁵⁴ The State of Israel is obliged to respect and ensure rights guaranteed in international conventions it is party to, to all individuals within its territory and subject to its jurisdiction.⁵⁵ Accordingly, Israel must uphold its duties in the OPT, in line with human rights conventions that it is party to, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), among others.

LAWS GOVERNING NATURAL RESOURCES IN THE OPT

The sovereign rights of the occupied territory remain vested in the occupied population, including permanent sovereignty over natural resources.⁵⁶ Article 55 of the Hague Regulations provides that the Occupying Power does not become the sovereign owner of the property in occupied territory and is simply the “administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State”.⁵⁷ Governed by the principles of usufruct, the Occupying Power is permitted to use the fruits of the property (natural resources) but is prohibited from exploiting these resources in a way that undermines their capital or benefits the Occupying Power’s economy and national interest. The Occupying Power is obliged to maintain and safeguard the capital of the property for the returning sovereign, that is, the occupied population. Failure to safeguard and maintain the capital of the property may constitute pillage of public and private property. Pillage is prohibited under international humanitarian law, namely under Article 47 of the Hague Regulations, and amounts to a war crime as per Article 8(b)(xvi) of the Rome Statute.

Natural resources in the OPT are also governed by provisions such as the Palestine Mandate (1920), the Provisional Law on the Regulation of the Affairs of Natural Resources (Jordanian Law No. (37) of 1966 applicable in the West Bank and East Jerusalem), Palestinian Law No. (1) of 1999 for Natural Resources, and the 2003 Amended Basic Law. Palestinian Law No. (1) (1999) provides that natural resources are considered public property, excluding stone, lime, and sand present in stone quarries and mines that ‘are owned by others’.⁵⁸ Moreover, Chapter 7 of Palestinian Law No. (1) (1999) provides that no one is allowed to establish a quarry and exploit it, whether on private or public land, without a licence from the Palestinian Ministry of Industry.⁵⁹ Nonetheless, it should be noted that in practice, the Palestinian Authority does not exercise authority in Area C, rendering these laws and provisions practically inapplicable there. Instead, Israeli military orders have selectively chosen and altered laws from the Jordanian, British and Ottoman eras, to maintain a tight grip over land and property in the West Bank.⁶⁰

As previously mentioned, Area C remains exclusively administered by Israel, the Occupying Power, despite the Interim Agreement which provided that Area C would be transferred to Palestinian control.⁶¹ The Interim Agreement provides numerous provisions surrounding the use of and access to natural resources in the OPT. For example, Annex III (Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs) of the Agreement addresses planning and zoning, water, electricity, energy, fisheries, and environmental protection, among others. Annex VI (Protocol Concerning Israeli-Palestinian Cooperation Programs) focuses on economic cooperation, including regarding natural resources such as the Dead Sea, agriculture and energy resources, as well as the industrial sector. Most of the provisions included in the Interim Agreement provide for a gradual transfer of power and responsibilities to the Palestinian authority, which never materialised.

In relation to quarries and mines in Area C, the power and responsibilities, including the rights to operate them as well as 'licensing and supervision of the establishment, enlargement, and operation of quarries, crushing facilities and mines' should have been transferred gradually to the Palestinian jurisdiction, except for issues to be determined in the permanent status negotiations.⁶² Article 31(3) (a) of the Interim Agreement provides that:

"Rights of Israelis (including corporations owned by Israelis) regarding quarries situated within the areas under the territorial jurisdiction of the Palestinian side, which are not operative, may be purchased by the Palestinian side, with the consent of the Israeli concerned, through a joint committee which shall be established by the CAC for this purpose. The sum to be paid to each Israeli with regard to his rights in the said quarries shall be based upon the investments made by him in the site. The Israeli side shall freeze licenses to such quarries. Pursuant to the date of the signing of this Agreement, such quarries shall not become operative."

The provisions of the Interim Agreement were meant to be temporary, and by no means do they terminate the situation of occupation.⁶³ Therefore, the Interim Agreement does not absolve the applicability of relevant laws of occupation in the OPT, including Article 47 of the Fourth Geneva Convention which stipulates that the occupied population should not be deprived of the benefits of the Convention "by any change introduced... nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power". Additionally, by signing the Interim Agreement, the Palestinian Authority does not in any way consent (nor is it authorised) to transfer the property ownership to the Israeli authorities, nor does it provide consent to allow for the exploitation of the natural resources in the OPT by the Israeli authorities and companies within its jurisdiction.⁶⁴

Moreover, the provisions of the Interim Agreement do not provide for full and genuine Palestinian sovereignty over natural resources, thus contradicting relevant principles and fundamental rights enshrined under international law. For example, Article 12(B)(3) of Annex III (Protocol Concerning Civil Affairs) of the Agreement states that "Both sides will strive to utilize and exploit the natural resources, pursuant to their own environmental and developmental policies, in a manner which shall prevent damage to the environment, and shall take all necessary measures to ensure that activities in their respective areas do not cause damage to the environment of the other side".⁶⁵ Such a provision contradicts international humanitarian law, which explicitly prohibits the Occupying Power from exploiting natural resources of the occupied territory for its own benefit and the benefit of its civilian population⁶⁶ – acts which amount to a war crime.

2 CORPORATE COMPLICITY IN ISRAEL'S OCCUPATION: HEIDELBERGCEMENT'S UNLAWFUL EXPLOITATION OF PALESTINIAN STONE

2.1 BACKGROUND

As mentioned, Israel's prolonged occupation of the OPT has featured the appropriation and exploitation of Palestinian land and natural resources for the benefit of Israel's economy and that of its settlement enterprise, denying Palestinians the right to self-determination, sovereignty over and access to their own natural resources, including those in Area C of the West Bank and along the coast of the Gaza Strip.⁶⁷

In the West Bank, Palestinian stone has been called 'white gold' or 'white petroleum'⁶⁸ as its value is estimated at USD 30 billion,⁶⁹ making up 30 per cent of the total Palestinian Gross Domestic Product (GDP).⁷⁰ It is estimated that there are approximately 20,000 dunums of quarrying area, more than half of which are in Area C of the West Bank under full Israeli control.⁷¹ Palestinians have been largely unable to utilise and develop their stone industry due to access restrictions, Israeli-imposed prohibitions on the renewal of licences, confiscation of their equipment, and restrictions on transportation and export procedures.⁷²

According to a World Bank report, an additional USD 30 billion could be added to the Palestinian economy should Israel remove its restrictions imposed on Palestinian development of stone reserves in Area C.⁷³ Meanwhile, in 2015, manufacturing, mining and quarrying constituted 19 per cent of Israel's product composition, with industrial exports worth more than USD 50 million.⁷⁴ In 2018, Israel's GDP from construction increased to 17,600,000 Israeli New Shekels (ILS).⁷⁵ At least a quarter of Israel's millions of the aggregate quarrying and mining material is from the West Bank, from Israeli-administered quarries therein.⁷⁶

As of 2015, quarries in Area C produced about 17 million tons of material, millions of which transferred into Israel,⁷⁷ as well as to Israeli settlements in the West Bank.⁷⁸ According to estimates by the Israeli authorities, 94 per cent of the production of the quarries in the West Bank is taken to Israel.⁷⁹

At the same time, the Israeli authorities have shut down Palestinian quarries in the West Bank under the pretext of 'lack of permit'. In late March 2016, the Israeli Civil Administration, with the support of the Israeli military, shut down 35 small–medium sized quarries in the Palestinian town of Beit-Fajar,⁸⁰ as part of collectively punishing the residents of the area.⁸¹ In addition, the Israeli authorities repeatedly confiscate equipment from Palestinian-administered quarries, including tractors, air compressors and control computers, and Palestinian owners have had to pay heavy fines and lawyer fees.⁸² Such fines and penalties range between 40,000–120,000 ILS, whereas the inability to obtain permits has created

uncertainty that has led to temporary closures in some cases, while also affecting other businesses in the chain of production.⁸³

In some cases, trucks transferring material from Palestinian quarries were prevented from passing through Israeli military checkpoints.⁸⁴ Evidently, Israel has managed to establish a monopoly over the stone industry in Area C of the West Bank.

2.2 THE NAHAL RABA QUARRY



A photograph of the Nahal Raba quarry, taken from Al-Zawiya on 18 January 2020, Al-Haq © 2020.

The *Nahal Raba* quarry, owned and operated by HeidelbergCement and its subsidiary Hanson Israel, has been operating illegally⁸⁵ on land belonging to the Palestinian village of Al-Zawiya, and will potentially extend to the village of Rafat. The *Nahal Raba* quarry consists of various stone crushers, a linked conveyor system, a stone washing plant, and a store room.⁸⁶ The quarry extracts dolomite and crushes it in order to produce about 4,000 tons of gravel per day, which is then used to produce concrete asphalt.⁸⁷

Between 1986 and 2000, the *Nahal Raba* quarry was operated by Australian conglomerate, Pioneer.⁸⁸ In 2000, British Hanson purchased Pioneer.⁸⁹ Then in 2007, German HeidelbergCement AG, the world's second largest⁹⁰ cement producer and manufacturer of aggregates and ready-mix concrete, purchased British Hanson, including its Israeli subsidiary Hanson Israel Ltd.⁹¹



Satellite image of the *Nahal Raba* quarry (left), and Al-Zawiya (upper right) and Rafat (bottom right).

Source: <https://geomolg.ps/L5/index.html?viewer=A3.V1> (Accessed on 16 August 2019)

AFFECTED PALESTINIAN VILLAGES: AL-ZAWIYA AND RAFAT

The land on which the *Nahal Raba* quarry is currently situated, operated by HeidelbergCement and its subsidiary Hanson Israel, belongs to the village of Al-Zawiya and has been confiscated by the Israeli authorities since the early 1980s. Al-Zawiya is a Palestinian village located in the central area of the West Bank, approximately 14 kilometres away from the city of Salfit,⁹² and is home to more than 6,000 residents as of 2017.⁹³ Nearby villages include Mas'ha to the north, Bidya to the east and Rafat to the south. The western land belonging to Al-Zawiya stretches to the towns of Kufor Qassem and Ras Al-'Ein situated inside the Green Line.⁹⁴ The main economic activities for the residents of Al-Zawiya are the Israeli labour market, the professions, trade, agriculture and industry.

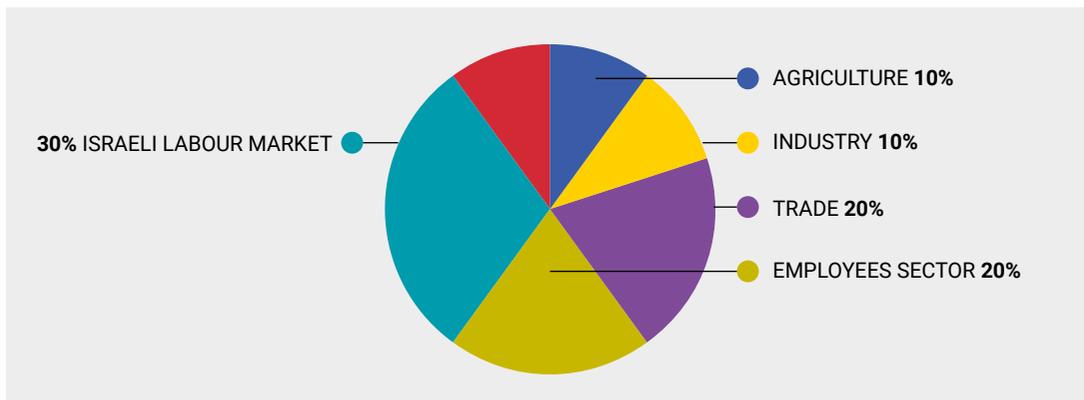


The village of Al-Zawiya. Photo by Al-Haq, 18 January 2020.

The land belonging to Al-Zawiya is about 12,000 dunums, about 603 of which comprise the residential area for the population and 5,548 dunums designated for agricultural purposes. About 1,138 dunums of the land (about 9.5 per cent) is classified as Area B, where most of the residents live, whereas 10,862 dunums (about 90 per cent of the total area) are classified as Area C (see photo above).⁹⁵

It is estimated that at least 1,747 dunums of land from Al-Zawiya have been confiscated by the Israeli authorities to build the settlements of *Mazor Atiqa* (where the *Nahal Raba* quarry is)⁹⁶ in 1986 and *Elkana* in 1977, along with bypass road Number 5^v and the Wall.⁹⁷ The settlements built near and/or on land belonging to Al-Zawiya include: *Mazor Atiqa*, *Elkana*, *Oranit*, *Shaarei Tikva* and *Magen Dan*.⁹⁸ Additionally, following the construction of the Wall in 2004, about 4,228 dunums of land from Al-Zawiya were appropriated by Israel.⁹⁹

V Bypass roads are Israeli-imposed and cut through the lands of the West Bank, with Palestinians being largely restricted or prohibited from using and accessing the roads.



The main economic activities for the residents of Al-Zawiya¹⁰⁰

Rafat is a Palestinian village located about 13 kilometres west of Salfit city. Its neighbours include: Kufur Al-Dik to the east, Deir Ballout to the south, Kufur Qassem to the west, and Al-Zawiya to the north.¹⁰¹ The total area of Rafat is 8,870 dunums, of which 8,204 dunums are designated as Area C, whereas the remaining 666 dunums are in Area B.¹⁰² There are approximately 2,500 Palestinians residing in the village as of 2017.¹⁰³ The main economic activities for the residents of the village are agriculture, working in Israel, and white-collar jobs.¹⁰⁴



The village of Rafat. Photo by Al-Haq, 18 January 2020.

The settlements built near and/or on land belonging to Rafat include: *Alei Zahav* and *Pedu'el*. At least 222 dunums of land from Rafat have been confiscated by the Israeli military throughout the years,¹⁰⁵ in addition to the 3,000 dunums of agricultural land which were isolated behind the Wall.¹⁰⁶

In February 2019, the Israeli military announced the confiscation of more than 98 dunums of privately-owned land from Rafat village, adjacent to the land that has already been confiscated and used for the quarry, declaring it 'State land', for the purpose of allocating the area for Hanson Israel and the *Nahal Raba* quarry.¹⁰⁷

Responding to the draft findings of this report, HeidelbergCement stated it does 'not intend to extend [its] own quarrying business' but rather that the permit extension is a 'mere measure to ensure the sale of the quarry'.¹⁰⁸ At the time of writing this report, HeidelbergCement was awaiting a final decision from the Trade and Industry Office of the Israeli Civil Administration regarding the issuing of the extended licence.¹⁰⁹



Map indicating the location of the Nahal Raba quarry in proximity to Al-Zawiya and Rafat villages and surrounding Israeli settlements. Source: UN OCHA¹¹⁰

2.3 LICENSING ILLEGAL ACTIVITIES

In the early to mid-1970s, Israel's Military Commander of the West Bank started issuing permits to Israeli-administered companies to carry out quarrying activities in the OPT, mostly on public land declared by the Israeli Civil Administration as 'State land'.¹¹¹ The Israeli Civil Administration (ICA) is responsible for the administration of natural resources and "for issuing licenses for the activity of Israeli and Palestinian quarries, supervising them and coordinating the export of merchandise vis-a-vis the Civil Administration officials".¹¹² Accordingly, quarrying and mining activities in Area C of the West Bank are controlled by the ICA which issues licences and mining permits.¹¹³ The Natural Resources Administration (NRA) within the Israeli Civil Administration holds the responsibility and authority to grant permits for new quarries and extractive industries and approve the renewal of licences.¹¹⁴ The NRA is also listed as part of Israel's Ministry of Energy with a specialised department for quarries and mines.¹¹⁵

The Israeli Civil Administration has adopted a discriminatory policy regarding the issuing of permits to Palestinian quarry owners and operators in the OPT. Despite a provision in the Interim Agreement stipulating that Israel should consider requests by Palestinians to operate quarries in Area C,¹¹⁶ the Israeli Civil Administration has not issued or renewed any permits to operate Palestinian quarries since 1994,¹¹⁷ with nine Palestinian quarries operating in Area C as of July 2012,¹¹⁸ and about 16 Israeli-administered quarries operating therein as of October 2018.¹¹⁹ As of 2013, "only 70 of around 300 Palestinian stone mining and quarrying operations are located in Area C and only a handful of them operate legally and without interruptions."¹²⁰

According to HeidelbergCement, the company is granted a licence typically for two or three years by the Israeli government – the licence is short-term and must be renewed.¹²¹ Israeli corporations "pay the Civil Administration a standard license fee for leasing the land on which the quarry is located and royalties commensurate with the volume of substances quarried".¹²² Between 2009 and 2015, the Israeli Civil Administration received royalties worth over 285 million ILS from quarries in Area C.¹²³ The funds, which are supposed to benefit the Palestinian population under international law,¹²⁴ are instead transferred into the Israeli State fund and not to a separate fund; therefore, it is difficult to know how the funds are used.¹²⁵

In October 2019, in its concluding observations in the fourth periodic report of Israel, the UN Committee on Economic, Social and Cultural Rights addressed Israel's licences to Israeli and multinational corporations for natural resources in occupied territories, including the OPT. To this end, the Committee expressed concern "about reports that the State party has given licences to Israeli and multinational companies... without consulting the affected communities" while prohibiting Palestinians from accessing, controlling and developing their natural resources.¹²⁶ To this end, the Committee recommended that Israel "immediately cease to issue licences for the exploitation of natural resources in the occupied territories and that it regulate the operations and activities of Israeli and multinational companies operating in the occupied territories in order to ensure their compliance with human rights standards".¹²⁷

3 ILLEGAL QUARRYING ACTIVITIES: HEIDELBERGCEMENT'S INVOLVEMENT IN SERIOUS HUMAN RIGHTS VIOLATIONS



The Nahal Raba quarry. Photo taken from Al-Zawiya by Al-Haq, 18 January 2020.

By operating in the OPT, HeidelbergCement and its subsidiary Hanson Israel are actively involved, aiding and abetting the commission of various grave breaches of international humanitarian law, including the appropriation of public and private property in occupied territory, pillage, the destruction of the environment and natural resources, classified as internationally-recognised crimes. HeidelbergCement's operations have also resulted in and contributed to human rights abuses that affected residents of Al-Zawiya and Rafat, *inter alia*, land rights, rights to work and livelihood, freedom of movement, and environmental rights.

3.1 THE RIGHT TO SELF-DETERMINATION AND TO PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

HeidelbergCement's activities, comprising quarrying and manufacturing of materials in the *Nahal Raba* quarry in occupied territory directly contribute to the obstruction of the Palestinian right to self-determination and the right to permanent sovereignty over natural resources, a fundamental principle of international law. The right to self-determination is enshrined in the Charter of the United Nations¹²⁸ as well as Common Article 1 of the ICESCR and ICCPR, among other international declarations and covenants.

The Palestinian right to self-determination has been reaffirmed by UN General Assembly resolutions 181 A and B (II) of 1947, 194 (III) of 1948 and 67/19 (2012), as well as UN Security Council resolutions 242 (1967), 338 (1973), 1387 (2002) and 1402 (2002). The right to self-determination encompasses the realisation of the Palestinian people's right to permanent sovereignty over their natural wealth and resources, in the best interest of their national development and well-being.¹²⁹

Under Article 43 of the Hague Regulations, Israel as Occupying Power is a temporary administrator over the OPT, limited in scope of authority to ensure public order and safety. The sovereign rights over the land and natural resources in the OPT remain vested in the occupied population. An Occupying Power has no right under international humanitarian law to open new mines in occupied territory.

3.2 APPROPRIATION OF LAND

HeidelbergCement is benefiting from the appropriation of private and public property that belongs to the protected Palestinian population. Before the land of Al-Zawiya was declared public land by the Israeli Civil Administration, it was privately owned by residents of Al-Zawiya,¹³⁰ who used it for agricultural purposes and livestock. One of the rightful owners of 502 dunums of land, which he and his siblings inherited from their father, and where the quarry is located,¹³¹ notes that the family used to grow wheat, lentils, sesame, barley, tomatoes, and okra, among other produce. He recalled that the land was fertile, and stated:

"My parents used to always stay in the land, taking care of it and the livestock. Myself, my siblings and our spouses used to join them after we finished our work, especially that the area is far from our house which is in the village and there were no means of transport."¹³²

The landowner also recalls that in 1980, the Israeli authorities declared the area a closed military zone. The Israeli military then started using it as a military training area, which pushed farmers and herders away out of fear of being shot, injured or harmed by the remnants of military equipment.¹³³

The landowner further stated that in 1982, an Israeli company started crushing rocks and using explosives in Khilet Al-Watawit (west of Al-Zawiya). When the owners of the land filed a petition against the quarrying activities and land takeover by Israel at the Court of First Instance in Nablus, correspondence indicates that on 30 May 1981, the land in Plot 4 in Al-Zawiya was declared 'government' property and was leased in August 1981 to an Israeli company for quarrying and crushing purposes.¹³⁴ When the owners' lawyer submitted a petition before the Israeli Supreme Court, he received a response in 1984 that the owners have been notified of the decision to confiscate the land and were given time to object, but no objection had been filed. The owners confirmed that they were never informed of the decision.¹³⁵

According to Human Rights Watch, the Israeli Civil Administration confiscated about 600 dunums on which the *Nahal Raba* quarry was established in 1983 by declaring it 'State land', applying an Ottoman law whereby even if the land had been privately owned, if it is not cultivated or used otherwise for three consecutive years, then it is given to the State.¹³⁶ The purpose was to maintain continuous cultivation of the land at the time, rather than permanently end private rights of cultivation. Regardless, private property is protected against confiscation under Article 46 of the Hague Regulations.

HeidelbergCement has claimed that land ownership was checked and no private ownership could be determined, and therefore no expropriation occurred.¹³⁷ HeidelbergCement has relied on the Jordanian Planning of Cities, Villages and Construction Law No. 79 of 1966 (Jordanian Planning Law) to determine that no private ownership existed of the land concerned.¹³⁸ It should be noted that in 1970–1971, Israel altered the Jordanian Planning Law by Military Orders No. 393 and 418, transferring the competence on such matters to the Israeli Civil Administration's Local Planning and Licensing Subcommittee. The illegal alteration and manipulation of the Jordanian Planning Law by Israel, in breach of Article 43 of the Hague Regulations, has since facilitated the construction of settlements and the denial of building permits for Palestinians in the West Bank and removed Palestinian participation from the planning process for the villages and cities.

On 30 April 2016, the Israeli Civil Administration delivered a military order to confiscate about 2,400 dunums from Al-Zawiya under the pretext of abandoned land or 'State land',¹³⁹ giving owners 45 days to object. The land confiscated in the order includes those in Plot 4 where the *Nahal Raba* quarry is located. The land also extends to the borders of Kufor Qassem to the west, through to the lands isolated by the Wall, to the eastern side of the Wall, close to the residents' homes. Most of the land falling within this military order is planted with olive trees. The owners of the land have filed a petition through the Palestinian Colonization & Wall Resistance Commission. Although this particular confiscation has not been directly linked to the *Nahal Raba* quarry, the fact that the land confiscated is situated in Plot 4 where the quarry exists, may result in benefits for the quarry and its expansion.

Regardless, land confiscation in the adjacent village of Rafat to expand the *Nahal Raba* quarry was declared in February 2019 by the Israeli Civil Administration. The Israeli Custodian for Government and Abandoned Property in the West Bank issued a military order declaring 98.33

dunums of land in Rafat village in Plot 2 of Khirbet Kasfa and Al-Jabal Al-Azraq be transferred to Hanson Israel to allow it to expand the *Nahal Raba* quarry.¹⁴⁰ Shortly after, in March 2019, a petition for an injunction was filed on behalf of 23 of the landowners to the Custodian for Government and Abandoned Property in the West Bank, requesting that the State not implement the order until further documents proving Palestinian private ownership have been provided.¹⁴¹ On 22 July 2019, a final petition was submitted by landowners to the Custodian for Government and Abandoned Property, including structural plans for the land for each file. The petition claims that the State has no right to grant land without investigating its ownership.¹⁴² The petition was rejected.

According to customary international humanitarian law,¹⁴³ private property in occupied territory must be protected against confiscation.¹⁴⁴ Article 46 of the Hague Regulations provides that private property must be respected and cannot be confiscated. Article 53 of the Fourth Geneva Convention prohibits the destruction of private property, unless for absolute military necessity. Clearly, an active quarrying site, with lucrative economic benefits for the Occupying Power and private business enterprises on the land confiscated, does not qualify as a military necessity or a necessity of war.

Additionally, Article 55 of the Hague Regulations provides that the Occupying Power is only an administrator and usufructuary of public buildings, real estate, forests, and agricultural assets in occupied territory. The Occupying Power does not have sovereignty over these resources, which remain vested in the occupied population. The Occupying Power cannot confer permanent rights in public property belonging to the occupied population to corporate activities and interests. The Occupying Power cannot hold itself out as the owner of public property owned by the occupied country,¹⁴⁵ nor grant licences to companies that would deplete these resources which must be used for the benefit of the occupied population. The Occupying Power has further obligations to safeguard the capital of the property. HeidelbergCement's repeated claim of no established private ownership of land does not legalise its operations in the *Nahal Raba* quarry.

Article 8(2)(a)(iv) of the Rome Statute provides that the 'extensive destruction and appropriation of property, not justified by military necessity' is a war crime within the context of an international armed conflict, including in situations of military occupation.¹⁴⁶ While the Rome Statute provides for two separate crimes of appropriation and pillage, the crime of appropriation is not necessarily only restricted to the act of transferring the property title from an owner, but may, according to international humanitarian law experts, also include appropriation through the property's exploitation by means of extraction, export and selling.¹⁴⁷

Furthermore, the confiscation and destruction of private property violates Article 17 of the Universal Declaration of Human Rights (UDHR) which affirms that no one should be arbitrarily deprived of his/her property.

3.3 PILLAGE

The three stone quarries in Israel and the West Bank owned by Hanson Israel, HeidelbergCement's subsidiary, including the *Nahal Raba*, yield more than eight million tonnes of aggregates, including stone and gravel used in construction and infrastructure.¹⁴⁸ In June 2018, a public tender that was published by the Israeli Civil Administration stated that Hanson Israel provides 196,000 tonnes of material extracted from the *Nahal Raba* quarry to Israel's construction work in the West Bank.¹⁴⁹ Furthermore, while HeidelbergCement denies that it sells construction material to Israeli settlements,¹⁵⁰ in June 2013 and June 2016, Hanson Israel trucks were documented leaving the *Nahal Raba* quarry to supply concrete and raw material to the *Barkan* industrial settlement and *Ofarim* settlement respectively.¹⁵¹

In addition, HeidelbergCement stated in a letter to Human Rights Watch that in 2014 Hanson Israel paid approximately 3.2 million euros in royalties to the Israeli Civil Administration and an additional 430,000 euros directly to the Samaria Regional Council, a regional council of settlements in the West Bank, in return for the operation of the *Nahal Raba* quarry. Royalties paid to the Israeli Civil Administration by HeidelbergCement are mostly directed towards the funding of the Israeli Civil Administration itself, thereby reducing related costs to administer its military occupation incurred by the State and the Israeli taxpayer.¹⁵²

The transfer of materials quarried and produced in the *Nahal Raba* quarry, along with the royalties paid to the Israeli Civil Administration, provide evidence that the illegal activities in the *Nahal Raba* quarry are indeed for the benefit of the corporation and the Israeli economy, including the economy of the settlement enterprise, thus sustaining the crime of pillage which HeidelbergCement is complicit in, and aiding and abetting.

Pillage occurs when a perpetrator intentionally appropriates property and allocates it for personal and private use; such the land and stone appropriated and allocated for the use of HeidelbergCement and its subsidiary.¹⁵³ In accordance with the Rome Statute, war crimes committed in the context of an international armed conflict, including situations of military occupation,¹⁵⁴ have been defined to include serious violations of the applicable laws, including the destruction or seizure of an enemy's property, unless imperatively demanded by the necessities of war, and pillage.¹⁵⁵ In accordance with the Rome Statute, the *actus reus* elements (conduct) of the war crime of pillage are satisfied when the perpetrator appropriates property, with the *mens rea* (intention) to deprive the original owner of the property and to appropriate it for private or personal use, without the owner's consent, within the context of an international armed conflict.¹⁵⁶

The existence of an armed conflict needs to "have played a substantial part in the perpetrator's ability to commit the act, his decision to commit it, the manner in which it was committed or the purpose for which it was committed," and not necessarily the causal element for the commission of the crime.¹⁵⁷ In addition, the war crime does not need to be planned or supported by some form of policy or practice by one of the parties to conflict.¹⁵⁸ It is sufficient that the crime is 'closely related' to the armed conflict and hostilities to establish the link.¹⁵⁹

It is worth noting that all types of property, whether public, private or of mixed ownership, falls within the framework of the prohibition against pillage.¹⁶⁰ In addition, the International Criminal Tribunal for the former Yugoslavia (ICTY) provides that pillage may extend to incidents where there is “organised seizure of property undertaken within the framework of a systemic economic exploitation of occupied territory”.¹⁶¹

Moreover, in relation to the *Nahal Raba* quarry, it must be emphasised that the land was unlawfully appropriated by the Israeli authorities and then leased and exploited by corporations, currently HeidelbergCement and its subsidiary Hanson Israel, without the consent of the rightful owners of the land on which the resources are located. Within the context of foreign occupation, annexation and colonisation in the OPT, genuine consent from the occupied population for the exploitation of their property and resources is rather unattainable.^{VI}

34 THE RIGHT TO FREEDOM OF MOVEMENT



Palestinian land, including from the village of Al-Zawiya, confiscated for the construction of the Wall.

Photo taken on 18 January 2020 by Al-Haq.

VI The Interim Agreement does not translate into consent for the exploitation of Palestinian public property and natural resources, whereas private property of the occupied population would need to have been consented to through a commercial agreement with the rightful owner or owners.

"Some of the quarries were attached to settlements, while others, like the Nahal Raba quarry, run by the Israeli subsidiary of Heidelberg Cement and operating on land taken from al-Zawiya village, were deliberately facilitated by the rerouting of the Separation Wall."¹⁶²

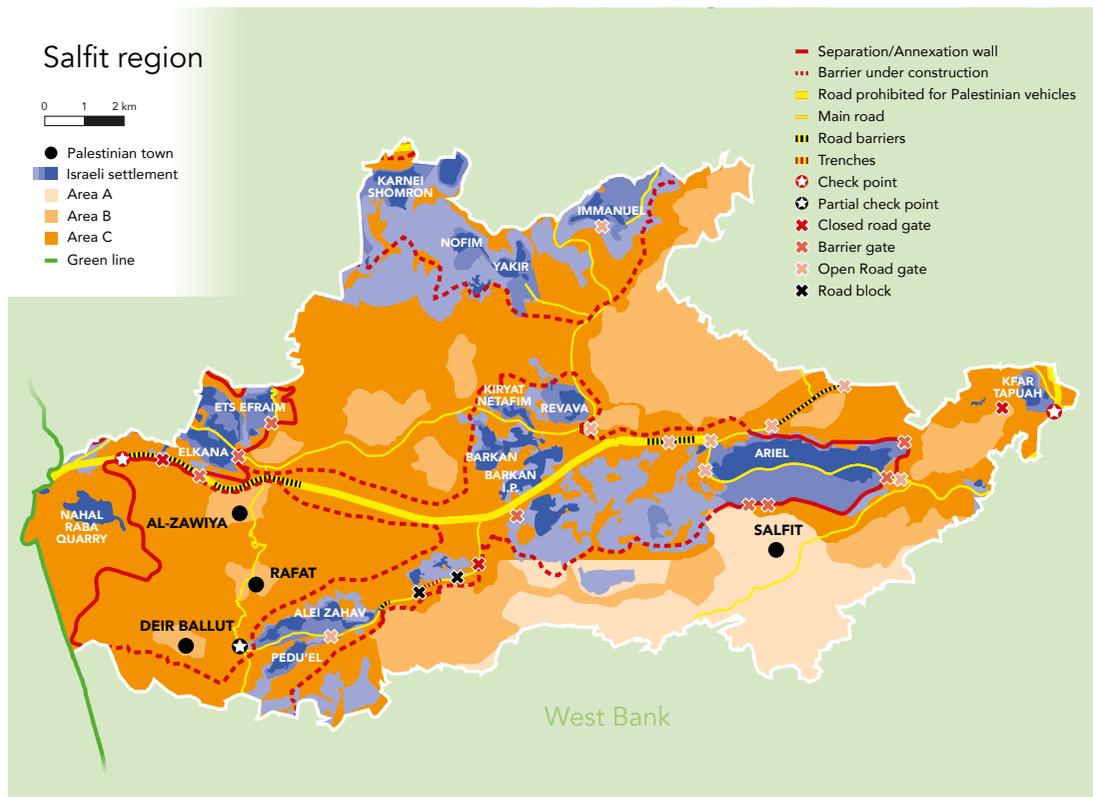
As seen throughout the report, HeidelbergCement is financially contributing to the Israeli Civil Administration and settlement enterprise, which directly disrupts Palestinian territorial contiguity, and Palestinians' right to freedom of movement, access to land and natural resources. HeidelbergCement has contributed to and benefited from the systemic Israeli-imposed restrictions on Palestinian access to land and natural resources which has been implemented by means of land confiscation, the construction of the Wall, and the Israeli settlement enterprise. Land confiscated from Al-Zawiya and Rafat villages has been used for the construction of the Wall, for military and alleged security purposes, including those benefiting the quarry and its activities.

Besides the confiscation of Palestinian land to construct the *Nahal Raba* quarry, and in order to appropriate more Palestinian land for the quarry,¹⁶³ in 2004, Israel built part of the Wall to encompass the quarry from the east, annexing the land into Israeli territory. The Wall has also separated Palestinian villages, including Al-Zawiya and Rafat, from their lands and prevented owners and farmers from accessing their land.

Since the construction of the Wall in 2004,¹⁶⁴ a gate and a checkpoint were set up by the Israeli military to severely restrict the access of Palestinian residents of Al-Zawiya to their land where the *Nahal Raba* quarry operates. Since then, residents are required to obtain special permits from the Israeli Civil Administration in order to access their land. Such permits are only granted to one individual per family, who should be above the age of 60.

One of the residents of Al-Zawiya, whose late husband owns about 190 dunums of land that were isolated behind the Wall recalls:

"When they first started constructing the Wall, I used to risk it and go to the land from the parts of the Wall that had not been constructed fully yet. I used to drive for about an hour, then sneak through the openings in the Wall to the other side and walk about an hour until I would reach the land. There, I would find wild plants had grown a lot, and the small olive trees had been uprooted, probably by the [Israeli] army, or burnt. I am so attached to the land, I used to go every other day. The soldiers and teams of 'nature protection' used to come after us. If they would catch us, they would confiscate the produce we had harvested, and detain us for long hours."



Map of Salfit area, including Al-Zawiya and Rafat, the surrounding settlements, checkpoints, and the Wall.

Source: UN OCHA¹⁶⁵

Once the construction of the Wall was finished, I could no longer reach the land. In 2007 or 2008, I found myself having to request a permit from the Israeli occupation in order to be able to access my land through a gate that connects the village [Al-Zawiya] to the land through the Wall. I remember that I went to request a permit, the officers at the liaison office required that I provide papers proving my relationship to the land behind the Wall...The first time I saw the land after a while, it looked in disarray and like an abandoned home. It was unploughed and the stone walls were destroyed. The wild grass filled the land, in addition to the immense amount of dust from the quarry and crusher that covered the land."¹⁶⁶

Even when Palestinians are granted permits, Israeli soldiers prohibit them from bringing in machines, vehicles, bikes, and animals onto their land. As a result, residents would have to walk for about one hour through a valley. Individuals with permits may only access their land between 5:00 am and 7:00 pm on weekdays through a gate, manned by the Israeli military. In fact, there have been cases where the Israeli military has deliberately closed the gate prior to the set time, including during harsh weather conditions, leaving the residents to wait for hours for the soldiers to open the gate for them to be able to leave the land. In some cases, the residents would be denied a permit to access the land on alleged security grounds.¹⁶⁷

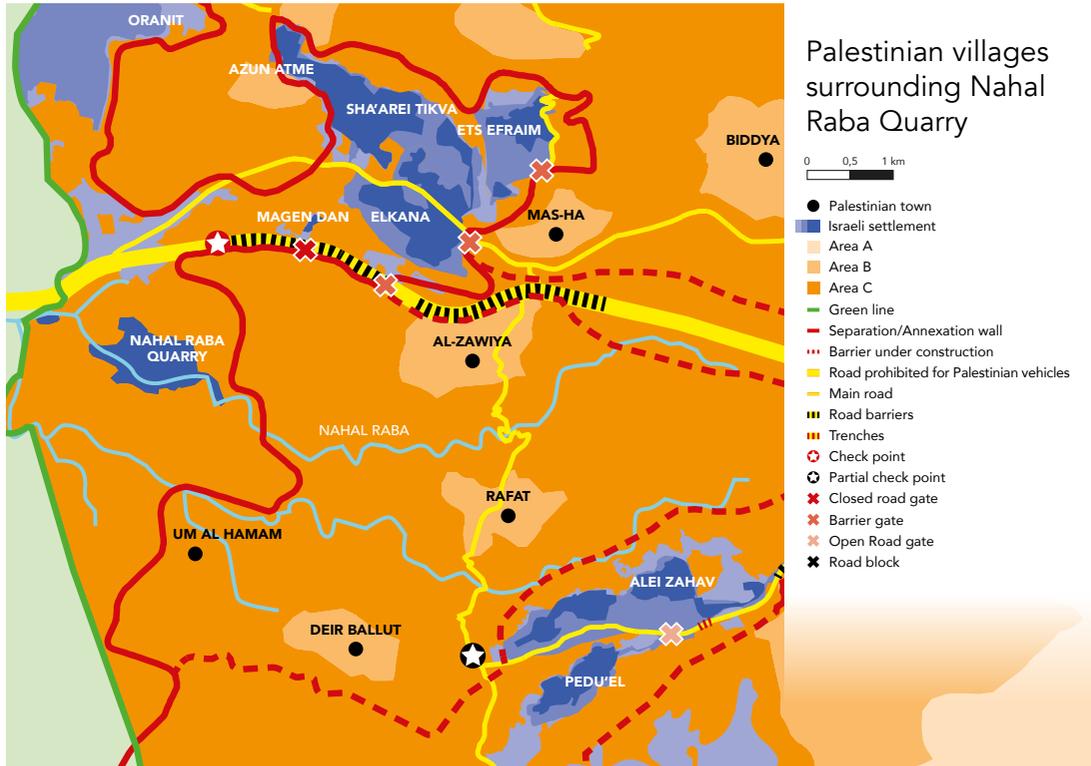
In the village of Rafat, according to interviews held with several residents and landowners there, there has been approximately 5,000 dunums of the village's land confiscated and isolated behind the Wall. One of the farmers stated that the Wall has prohibited them from accessing their land which they used to plant and was a main source of income.¹⁶⁸ Another resident from Rafat said that the village's agriculture and livestock economy has been destroyed and vanished due to land confiscation and isolation.¹⁶⁹ The residents of Rafat used to plant these areas with wheat and legumes, and in the summer use them for their livestock. Following the confiscation and isolation of lands from the village, all of this became impossible.

In its 2004 Advisory Opinion, the ICJ found the Wall illegal under international law as it is not consistent with the 1949 Armistice Line and has created "a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the Wall by Israel, it would be tantamount to de facto annexation"¹⁷⁰ – Al-Zawiya and Rafat are two Palestinian villages which exemplify this reality.

3.5 THE RIGHT TO WORK AND ACCESS TO LIVELIHOOD

The presence of Israeli settlements and Israeli and foreign business enterprises therein, accompanied by Israeli restrictive and discriminatory measures against Palestinians to access and develop Area C of the West Bank, has resulted in severe losses to the Palestinian economy and livelihoods.¹⁷¹ The presence of the *Nahal Raba* quarry has prevented Palestinians from accessing and utilising their land and resources thus further limiting job prospects, economic opportunities and denying livelihoods. Among others, this contravenes Article 6 of the ICESCR on the right to work, which encompasses the right to 'freely chosen work' and is a foundation to the enjoyment of other "subsistence and livelihood rights such as food, clothing, housing, etc."¹⁷² Article 11 of the ICESCR further affirms the "right of everyone to an adequate standard of living for himself and his family" for which States must take appropriate steps in order to realise.

3.6 TRANSFER OF CIVILIAN POPULATIONS IN AND OUT OF OCCUPIED TERRITORY



Map showing the Nahal Raba quarry, Al-Zawiya, Rafat and the surrounding settlements. Source: UN OCHA¹⁷³

HeidelbergCement's continued operations and activities in the *Nahal Raba* quarry for more than a decade have contributed to the transfer of Israeli settlers into the OPT, including by means of providing job opportunities and construction materials used to establish and expand illegal Israeli settlements in the occupied West Bank, including East Jerusalem. As already mentioned, the company also pays taxes to local settlement councils, specifically the Samaria Regional Council, contributing to the construction and expansion of Israel's unlawful settlement enterprise in the OPT, and thus contributing to a war crime. The transfer of Israeli civilians (civilians of the Occupying Power) into occupied territory (the OPT) violates Article 49(6) of the Fourth Geneva Convention and constitutes a war crime under Article 8(2)(b)(viii) of the Rome Statute.

In addition, by granting and renewing the licence for HeidelbergCement and its subsidiary Hanson Israel, among other financial and security incentives and support provided, the Occupying Power has created the system which facilitates and encourages the transfer of its civilian population, including for business and commercial activities, into occupied territory.

The continued construction of Israeli settlements, bypass roads and infrastructure for Israeli settlers, which contribute to the Israeli-created coercive environment inflicted on Palestinians in the OPT, have all contributed to the forcible transfer and displacement of the occupied population.¹⁷⁴



Signs indicating Israeli settlements near the villages of Al-Zawiya and Rafat. Photo by Al-Haq, 18 January 2020.

3.7 ENVIRONMENTAL IMPACTS AND DESTRUCTION

The Israeli Ministry of Interior has acknowledged that the entirety of the mining quarries in Area C will be exhausted in 38 years as of 2010, given the rate of activities and plans.¹⁷⁵ The depletion of non-renewable and finite resources may amount to the war crime of destruction of natural resources and environmental destruction.¹⁷⁶ The *Nahal Raba* quarry has been in operation for more than three decades, thus depleting the resources and raw materials therein. In an anonymous statement made by one of the previous workers at the quarry, the individual confirmed that the company has discharged about 26 Palestinian workers over the past two years as a result of minimised work in the quarry, as the stone reserve in the land they have been operating in has been depleted. This explains the attempts to expand the operations into Rafat since February 2019, as previously mentioned. Furthermore, it has been reported that Israeli companies are encouraged to open quarries in the West Bank where they are not required to follow Israeli environmental standards and procedures, causing damage to the residents, land, landscape and environment.¹⁷⁷

According to several testimonies from the villagers, the resulting clouds of dust, pollution and noise from the *Nahal Raba* quarry have impacted the lives of residents and their olive groves in Al-Zawiya and Rafat. According to one of the residents of Al-Zawiya who has lived about one-and-a-half kilometres from the *Nahal Raba* quarry since 1992:

"We have not been able to enjoy the house since we have moved due to the loud noises coming from the crushers while crushing stone and rocks during the daytime and night all throughout the week, except Fridays, Saturdays and Jewish holidays... In addition to the sound of explosions which seemingly result from the explosives in rocks to crush it, especially in the evenings. This is accompanied by heavy red and white dust that spreads all over the areas near the western side where the quarry is located. This dust covers trees and olive trees. I have to close the windows, so the dust does not come into my house. The dust then accumulates on the windows from the outside, the doors and the yard. I am therefore forced to spray it with water, and to wipe it with cloth, creating additional burdens for me in the house, especially that I have a big family and already with a lot of chores at home.

The dust has a foul smell, almost like gunpowder, so I always must keep the windows of my house closed and use air fresheners, which causes humidity inside the house. I then am forced to open the windows, even if partially... then must close them again because of the dust coming from the quarry. Humidity is easier to tolerate than the dust which I do not know what it carries with it, and how it could endanger my children's life... my youngest child, Muhammad, was born with a virus in the head. The doctors then told me that it could be a virus due to the polluted environment caused by the quarry. He was five years when he had his skull restructured. He is now doing better but has seizures from time to time because of the surgery... my other children are always coughing because of the dust coming from the quarry."¹⁷⁸

In 2019, in an annual report to the UN General Assembly, the Special Rapporteur on human rights and the environment focused on the right to breathe clean air, as a component of the right to a healthy and sustainable environment, the right to life, and the right to health.¹⁷⁹ The report suggests that air pollution is the greatest risk to health worldwide and emphasises the correlation between exposure to air pollution, and the wide range of associated health implications. Vulnerable groups, particularly children, are disproportionately and often severely harmed by air pollution. This is due to children's magnified sensitivity to air quality, and the long-term consequences associated with childhood exposure to poor air quality.¹⁸⁰

In reference to the right to health, the Convention on the Rights of the Child (CRC)¹⁸¹ sets explicit requirements by States to act in the best interest of the child, including by eliminating environmental risks associated with air pollution. Subsequently, the World Health Organization (WHO) has stated that it is a basic right for children to "breathe clean air in their homes,

schools and communities”.¹⁸² Furthermore, women can be especially vulnerable to air pollution in situations where poor air quality is prevalent within the household.¹⁸³

Under international environmental law, States are obliged to preserve the environment, protect it from pollution, and its natural resources.¹⁸⁴ The destruction of the environment further infringes on the right to life and health. The inherent right to life, guaranteed by Article 6 of the ICCPR,¹⁸⁵ entails having all of the basic necessities required to survive, including basic necessities needed for shelter and security which HeidelbergCement’s activities have negatively impacted for the surrounding Palestinian communities.

Moreover, the right to the enjoyment of the highest attainable standard of physical and mental health, or the right to health, is guaranteed *inter alia* under the UDHR and ICESCR.¹⁸⁶ The ‘underlying determinants of health’ include safe drinking water and adequate sanitation and healthy working and environmental conditions.¹⁸⁷ Considering the testimonies of residents near the *Nahal Raba* quarry, the activities of HeidelbergCement undermine these rights. Pollution and the destruction of the natural environment can have serious effects on the surrounding habitats and may cause pollution to the nearby water sources and animals.

Furthermore, in 2016, the ICC stated “it would also prioritize crimes that result in the ‘destruction of the environment’, ‘exploitation of natural resources’, and the ‘illegal dispossession’ of land. It also included an explicit reference to land-grabbing”.¹⁸⁸ The ICC explained that it was not extending its jurisdiction, but merely expanding the scope of its existing focus, crimes against humanity. One of the key drivers for this change was the devastating impact that land-grabbing had on the environment and people. Additionally, in November 2019, the ICC Prosecutor reiterated that the ICC may exercise jurisdiction over individuals who through business activities either contribute to or directly commit international crimes under the Rome Statute, referencing the destruction of the environment and the illegal exploitation of natural resources.¹⁸⁹

Accordingly, HeidelbergCement’s activities and their direct impact on the depletion of natural resources, pollution and destruction of the environment may amount to prosecutable crimes within the ICC’s jurisdiction under the Rome Statute.

4 HEIDELBERGCEMENT'S PERCEIVED STRATEGIES TO DEFLECT ALLEGATIONS OF AND DENY ITS INVOLVEMENT IN SYSTEMIC AND GROSS HUMAN RIGHTS ABUSES

Given HeidelbergCement's involvement and operations in Israeli settlements in occupied territory, the company must ensure it remediates the impacts linked to its operations, and responsibly disengages from the *Nahal Raba* quarry. Instead, a pattern can be observed in the way HeidelbergCement has responded to allegations of its involvement in systemic and gross human rights violations, seemingly indicating strategies to justify and legitimise its operations in the *Nahal Raba* quarry and to deflect allegations of and deny its involvement in human rights violations and grave breaches of international law. The company has further taken advantage of Israel's colonial policies, exemplified in land and property confiscation for its benefit. These perceived strategies, which will be further elaborated on below, are specific forms of corporate strategies to avoid responsibility for involvement in human rights violations, observed within the global framework of the Mind the Gap research project, namely the utilising of State power; distracting and obfuscating stakeholders, and; avoiding liability through judicial strategies.

4.1 ALIGNING WITH THE OCCUPYING POWER

HeidelbergCement's activities and operations in the *Nahal Raba* quarry exemplify how business interests and colonial-oppressive State policies and measures work together to infringe on human rights. HeidelbergCement uses the State's (Occupying Power) narrative to deflect allegations of and deny its involvement in systemic and gross human rights violations. HeidelbergCement has participated in a situation of military occupation to advance its business activities while also avoiding accountability. In carrying out its activities in occupied territory, HeidelbergCement has relied on policies and measures imposed by the Occupying Power, including those related to, *inter alia*, the confiscation of Palestinian land and control over natural resources. This is also well reflected in the construction of the Wall, military orders and numerous restrictions imposed on the Palestinians to hinder their movement and access to their land.

HeidelbergCement works with the Israeli military and the Israeli Civil Administration to ensure the continuity and growth of its activities in the *Nahal Raba* quarry operating on occupied Palestinian land, including by receiving licences that permit its operation. In response to criticism, HeidelbergCement states:

“The Civil Administration is the Israeli governing body that operates in the West Bank and administers Area C of the West Bank... The Civil Administration is part of the Coordinator of Government Activities in the Territories (COGAT) disposition and constitutes the body responsible for implementation of government policy in Judea and Samaria and bettering these areas in civil matters in accordance with the guidelines set by the government and in coordination with ministries, the IDF and the security forces. In line with international provisions applicable to Area C and reflecting the Oslo Accords, which also define ownership and operation of quarries in Area C, Israel has total tax and royalty sovereignty over the quarries.”¹⁹⁰

Israel, as Occupying Power, does not have sovereign rights, including on tax-related matters, as reflected in the provisions of Articles 48, 49 and 55 of the Hague Regulations. HeidelbergCement, however, has disregarded the existing state of occupation where its activities and operations are taking place, in violation of Palestinian rights. HeidelbergCement disregards that Israel is the Occupying Power that retains control over the OPT and has allocated much of its resources in order to expand and consolidate Israel’s settlement enterprise and military presence, primarily in Area C of the West Bank.¹⁹¹ HeidelbergCement fails to acknowledge the fact that its activities are taking place on occupied Palestinian land.

In response to reviewing a draft of this report’s findings, HeidelbergCement explicitly denied being involved in human rights violations in the West Bank¹⁹² and stated that ‘[t]he exploitation of the quarry in Area C is legal under international law’, and that it ‘deem[s] [its] operations in line with IHL statutes, as confirmed by the Israeli High Court of Justice in its court ruling.’¹⁹³

4.2 EXPLOITING AN UNJUST LEGAL SYSTEM

The Israeli judicial system¹⁹⁴ has enabled HeidelbergCement to escape accountability. This is accompanied by a lack of binding provisions for accountability under international law and that require corporate compliance with international law, human rights and environment standards. Concerned parties creating such a gap include government bodies and representatives such as the Israeli Civil Administration, the Israel Nature and Parks Authority, the Israeli military, Israeli Border Police, as well as relevant Israeli courts.

In 2011, the Israeli Supreme Court validated the structural economic exploitation within the context of the stone sector in the OPT after rejecting a petition filed by the Israeli organisation *Yesh Din*.¹⁹⁵ The petition challenged the legality of the use of natural resources extracted by 11 Israeli-administered companies, including HeidelbergCement, that quarry and mine in the occupied West Bank. In rejecting the petition, the Court legalised and formalised a continued Israeli policy in the West Bank through a ruling that distorted Article 43 and Article 55 of the Hague Regulations, by claiming that it was necessary for the occupation to develop new quarries.¹⁹⁶

The Court claimed that quarries in Area C were established on Israeli 'State land' which had been specifically allocated for the purpose of quarrying. In addition, the Court argued that the "Procedures for the establishment of quarries in the Area had involved an examination of ownership over the land, full statutory planning procedures and also quarrying licensing procedures in accordance with the governing law in the Area (the Jordanian Cities, Villages and Buildings Planning Law no. 79 of 1966)".¹⁹⁷

The Court also argued that Israel's quarrying activity in the West Bank provides for employment opportunities to the Palestinians living there, a claim also made by HeidelbergCement. By invoking the Interim Agreement, which designates the quarries in Area C to be under Israeli control, the Court has determined that the Palestinian Authority had given its consent to the quarrying activities. However, there is no consent which is particular to this sector in the Agreement, and even if there had been, the Palestinian Authority (and the PLO) does not have the required authority to consent to the exploitation of the Palestinian natural resources that would lead to violations of international humanitarian law.¹⁹⁸ It should be noted that the ruling was widely criticised internationally and in Israel.¹⁹⁹

In conjunction with the petition, HeidelbergCement reaffirmed its support to Israel's unlawful policies that are codified through Israeli legal mechanisms, by claiming that "in December 2011 the Israeli High Court of Justice confirmed in its ruling HCJ 2164/09 of 26th December 2011, based on numerous convincing arguments, that the operation of *Nahal Raba* is in full legal compliance with national and international laws".²⁰⁰

HeidelbergCement has taken advantage of the Court decision, disregarding international humanitarian law and the international normative framework governing the situation in the OPT, including its activities and operations. Furthermore, the Court ruling illustrates the extent to which the occupation of Palestinian land and the exploitation of resources therein are institutionalised and reinforced by Israeli State authorities. The ruling further reaffirms the inability for Palestinians to seek justice through the Israeli judicial system, which has formalised and legitimised the occupation and colonisation of Palestine.

4.3 DISSEMINATING MISINFORMATION REGARDING ITS RESPONSIBILITIES

HeidelbergCement has falsely informed the public about the facts of its operations in the *Nahal Raba* quarry and its responsibility. The company denies that its activities cause harm to the Palestinian people, including the community of Al-Zawiya and Rafat, or to the Palestinian economy as a whole. In fact, HeidelbergCement argues the opposite. The company denies the fact that its activities in the *Nahal Raba* quarry result in and contribute to human rights abuses and violations. In 2017, HeidelbergCement's then spokesperson stated:

“From HeidelbergCement’s perspective, the quarrying activity at Nahal Raba is compatible with international humanitarian law as it produces substantial advantages for the local Palestinian population... Royalties and leasing fees are used by Israel for local projects, for example infrastructure projects, in Area C.”²⁰¹

One resident from Al-Zawiya strongly refuted this argument and stated:

“The Israeli authorities do not provide any services or projects for the local Palestinian community [in Al-Zawiya]. In fact, when we try to build our own roads and infrastructure, they often obstruct us from doing that for alleged security reasons.”²⁰²

HeidelbergCement denies its role in bolstering Israel’s exploitative and expansionist policies in the OPT, including those that contribute to the maintenance and growth of Israel’s illegal settlement enterprise. In 2014, HeidelbergCement paid USD 467,000 in taxes to the Samaria Regional Council and USD 3.53 million for the Israeli Civil Administration for using the *Nahal Raba* quarry.²⁰³ At the same time, HeidelbergCement denies the fact that the material produced in the *Nahal Raba* quarry is used in Israeli settlements by stating that the company “does not sell building materials to Israeli settlements in the West Bank or the construction of border protection systems”.²⁰⁴

In 2019, in response to criticism around the extension of the quarry to lands in Rafat, HeidelbergCement claimed that the request for extension is “in line with a strategic reorientation of our subsidiary Hanson Israel focussing on cement imports”. Using vague and confusing language, the company is once again attempting to avoid accountability, especially since it is not clear how extending the quarry benefits the process of ‘reorienting the subsidiary’ or ‘focusing on imports’.²⁰⁵

Responding to the draft findings of this report, HeidelbergCement stated that it does “not intend to extend [its] own quarrying business”, but rather that the permit extension is a ‘mere measure to ensure the sale of the quarry’.²⁰⁶

4.4 CLAIM TO BENEFIT THE AFFECTED COMMUNITY

CLAIM TO PROVIDE JOB OPPORTUNITIES TO JUSTIFY ILLEGAL ACTIVITIES

In an effort to deflect criticism of their operations in the OPT, HeidelbergCement claims that its activities and operations in the *Nahal Raba* quarry benefit Palestinians. The company has vaguely presented ‘incentives’ for the occupied population and affected community, including by allegedly providing them with job opportunities and projects.²⁰⁷

HeidelbergCement notes that it “employs 36 Palestinian residents of the West Bank who receive the same benefits and salaries as their Israeli counterparts and that another 25 Palestinians work on the site daily through a sub-contractor”.²⁰⁸ In response to the draft findings of this report, HeidelbergCement noted that Hanson Israel employs 35 Palestinian workers at the *Nahal Raba* quarry, and that Hanson Israel employs 38 Palestinian workers in total.²⁰⁹

The presence of Palestinian workers in business enterprises in settlements ‘does not exempt businesses of their responsibilities’ under international law. The Office of the High Commissioner for Human Rights (OHCHR) noted that:

“[T]he employment of Palestinians, even on favourable terms, does not exempt businesses of their responsibilities under the Guiding Principles concerning their overall engagement in or with the settlements. The Guiding Principles make clear that, while business enterprises may undertake certain commitments or activities to support and promote human rights, these ‘do not offset a failure to respect human rights throughout their operations.’”²¹⁰

Additionally, Palestinian workers in settlements, who are sometimes the rightful owners or descendants of rightful owners of the land on which they are labourers for an Israeli or multinational corporation, are often subject to an array of discriminatory measures, treatment and legal proceedings. Palestinian workers in Israeli settlements are subject to a strictly imposed Israeli-permit system, often poor working conditions, including lower wages, absence of benefits or healthcare and safety measures on the job, as well as lacking labour rights and regulations, and they are treated under a different legal regime from Israeli workers.²¹¹ Working under exploitative conditions, Palestinian workers often find themselves without protection, due to their inability to unionise under precarious conditions, fearing that any struggle might jeopardise their livelihoods.²¹²

Palestinian workers in Israeli settlements have been harassed and subjected to violence and force by Israeli settlers.²¹³ Israeli settlers and employers in settlements have also threatened Palestinian workers with being banned from entering settlements and having their employment terminated, thereby jeopardising their livelihoods, should they cooperate with human rights organisations.²¹⁴ Similarly, towards the end of March 2018, the Shomron Regional Council (a settlement council) and other settlements distributed leaflets in the village of Bruqin, Salfit, with a ‘decision’ not to allow the entry of any Palestinian from this village for their alleged ‘support for terrorism and violence’ and ‘lack of trust’.²¹⁵ This illustrates the relationship between Israeli employers in settlements and Palestinian workers therein, with the latter at risk of their jobs and livelihoods being arbitrarily terminated at any point.

More specifically, in Israeli-administered quarries, Palestinian workers are often employed “without payslips or paper records of any kind”, and with “little or no protection from the environmental hazards of extraction, processing, and asphalt production on site”.²¹⁶

In relation to the *Nahal Raba* quarry, a former Palestinian worker stated anonymously that he did not have an employment contract while working there and that he would receive his salary in bank cheques. He also stated that he and other Palestinian workers from the West Bank required permits from the Israeli authorities in order to be able to access the quarry, and their movement in the area was limited. It should be noted that several workers declined to be interviewed in the research for this report, fearing reprisals from the company and Israeli authorities thus jeopardising their livelihoods.

The claim of providing Palestinians with job opportunities and livelihood does not render HeidelbergCement’s activities lawful, especially since its activities are substantially and mostly benefiting the Occupying Power, its economy and settlements, while strangling the Palestinian economy.

ESTABLISHING A PALESTINIAN SUBSIDIARY

HeidelbergCement has tried to enhance its image and avoid accountability by establishing a Palestinian subsidiary under the jurisdiction of the Palestinian Authority in the West Bank, which is unlinked to its activities in *Nahal Raba*. On 4 May 2016, HeidelbergCement declared in its General Assembly that it is searching for a new site in the West Bank. Following long-standing criticism from investors, shareholders²¹⁷ and other stakeholders about its operations in the OPT, the company founded its subsidiary HeidelbergCement Mediterranean Basin Holdings SLU Palestine Ltd. which is 100 per cent owned by HeidelbergCement. In doing so, the company attempts to appear to be benefiting Palestinians, their economy and promoting development.

In its 2017 annual report, HeidelbergCement states that “since establishing an independent subsidiary in Palestine in 2016, we have also operated a cement import business to Gaza and the West Bank and are committed to setting up a local building materials production site for aggregates in order to support the development of the region’s infrastructure”.²¹⁸ However, neither this report, nor the 2018 report or other available publications provide clear evidence of activities carried out by this subsidiary. Moreover, the annual report does not reflect profits that are being generated from the subsidiary. Regardless, even if the Palestinian subsidiary is operating and contributing to the Palestinian economy, it does not in any way absolve HeidelbergCement from responsibility for its unlawful activities and operations in *Nahal Raba*.

4.5 UNDERMINING RIGHTFUL OWNERS AND COMMUNITIES

By shaping a distorted narrative which frames its operation of the quarry as benefiting the local population, HeidelbergCement not only manipulates the narrative surrounding its activities, but it also feeds into the structural delegitimisation of the affected population's struggle against foreign occupation and associated corporate interests.²¹⁹ HeidelbergCement has undermined the role of the community in any decision making,²²⁰ primarily by aligning itself with the Occupying Power and its systemic policies of land appropriation, by claiming to benefit Palestinian communities while paying the Israeli Civil Administration and settlement regional councils large sums for operating its quarry on occupied territory – as mentioned above.

4.6 SHIELDING PARENT COMPANY FROM LIABILITY

As is standard practice with (multinational) corporations, HeidelbergCement has structured the transnational corporate group into distinct legal entities, establishing a 'corporate veil' which separates a corporation from its owner, and can insulate the parent company from liability. This is a common way for multinational corporations to avoid liability, increase profit and avoid losses through their corporate structure. The widespread nature of HeidelbergCement's operations, which is illustrated further below, adds to the challenge of holding any entity liable for human rights violations.²²¹ HeidelbergCement has numerous shareholders and subsidiaries which further complicates litigation against it or holding it to account as a legal entity, especially for the actions committed through its subsidiaries.

The following subsections provide details about the structure of HeidelbergCement, its shareholders, subsidiaries in Israel, as well as the corporate structure and subsidiaries of Hanson Israel, HeidelbergCement's subsidiary operating the *Nahal Raba* quarry.

HEIDELBERGCEMENT AG

HeidelbergCement is a German multinational company for building materials whose products are used for the construction of houses, infrastructure, commercial and industrial facilities. The company operates through various sectors, including cement and aggregates, which focus on raw materials for concrete; cement and aggregates, such as sand, gravel and crushed rock. The company's other sectors include ready-mixed concrete, asphalt and service-joint ventures, including trading activities.²²² The Group's revenues in 2018 reached 18,075 million euros.²²³

HeidelbergCement is a public company traded in the FWB stock exchange. Aktiengesellschaft 'AG' means a public limited company in Germany. For such companies, the shares are offered to the general public and traded on a public stock exchange.²²⁴ In terms of liability, the members of the managing board of an AG as well as its board of directors may be held legally liable for business decisions that were taken, if they violated their duty of care or have acted illegally under German law.

Shareholders at HeidelbergCement

Shareholders at HeidelbergCement include but are not limited to:²²⁵

Shareholders	Percentage	Country
Spohn Cement GmbH	25.98%	Germany
First Eagle Investment Management, L.L.C.	7.34%	United States
BlackRock Institutional Trust Company, N.A.	4.81%	United States
Société Générale Gestion	3.84%	France
Black Creek Investment Management, Inc.	2.99%	Canada
The Vanguard Group, Inc.	2.12%	United States
First Pacific Advisors LP	1.73%	United States
Norges Bank Investment Management (NBIM)	1.65%	Norway

Other names of investors include, but are not limited to: First Eagle Global Fund (United States); Statens Pensjonsfond Utland (United Kingdom); FPA Crescent Fund (United States); American Funds EuroPacific Growth Fund (United States); First Eagle Overseas Fund (United States); Vanguard Total International Stock Index Fund (United States); Black Creek Global Leaders Fund (Canada); and Vanguard International Growth Fund (United Kingdom).²²⁶

Subsidiaries of HeidelbergCement in Israel

The number of companies identified within HeidelbergCement is 1,626. By December 2018, HeidelbergCement had the following companies within its corporate group in Israel: Hanson (Israel) Ltd., Hanson Quarry Products (Israel) Ltd, Pioneer Concrete Imports & Quarries Ltd., Hanson Yam Limited Partnership, Hanson Quarry Products (Israel) Ltd. In December 2017, Tadir ReadyMix Concrete (1965) Ltd. was also identified as part of the group, as was Pioneer Beton Muva Umachzavot Ltd.²²⁷ These companies are 99.98 per cent to 100 per cent controlled by HeidelbergCement AG.

Within Israel's settlement enterprise, HeidelbergCement has, through Hanson Israel, owned three plants and one aggregates-quarry in the OPT; a concrete plant in the settlements of *Modi'in Ilit* and *'Atarot industrial settlement*, besides the *Nahal Raba* quarry located south of *Elkana* settlement.²²⁸ The plants of *Modi'in Ilit* and *Atarot* have been closed and are no longer operating.

HANSON (ISRAEL) LTD.

Hanson (Israel) Ltd. is Israel's second largest producer of building materials, including concrete, aggregates and asphalt for the construction industry. Hanson (Israel) Ltd is a private limited company that was established in 1962. The controlling shareholder of Hanson (Israel) Ltd. is HeidelbergCement, comprising 99.98 per cent of the total ownership as of December 2018.²²⁹ In 2017, the annual revenues of Hanson Israel were ILS 1.2 billion²³⁰ (approximately USD 0.31 billion); the company provided over 20 per cent of Israel's demand for aggregate and concrete products.²³¹ In 2017, HeidelbergCement reported achieving a significant increase in sales volumes in Israel.²³² In its annual report in 2018, HeidelbergCement stated that:

"Israel is recording consistently positive economic growth, with an estimated rise of 3.6% for 2018, combined with moderate inflation of 1.2 %. The construction industry benefited from the healthy economic environment, with an estimated increase of 3.0% in cement consumption for 2018. Public expenditure on infrastructure projects will continue to be the main driver in the construction market."²³³

Meanwhile, in the same report, HeidelbergCement stated that "In Israel, we suffered considerable volume losses as a result of lower production volumes in the context of licensing negotiations."²³⁴ Hanson Israel's subsidiaries are Hanson Quarry Products (Israel) Ltd, Pioneer Concrete Imports & Quarries Ltd., and Hanson Yam Limited Partnership.²³⁵

IRRESPONSIBLE DISENGAGEMENT THROUGH THE SALE OF THE QUARRY TO AVOID LIABILITY

In May 2019, HeidelbergCement announced that it has decided to sell the *Nahal Raba* quarry and that a 'disposal process was started', without disclosing the potential buyers or any other details.²³⁶ In December 2019, in its response to the findings of this report, HeidelbergCement confirmed that the company has applied for a permit extension for the *Nahal Raba* quarry "as a prerequisite for the already communicated disposal process of the quarry". The company representative confirmed that the disposal process of the *Nahal Raba* quarry started at the 'end of last year' and that HeidelbergCement does not intend to expand its quarrying business therein, and the permit extension (on occupied Palestinian land in the village of Rafat, which landowners have objected to as mentioned in the Introduction and Chapter 2 of this report) is merely to ensure the sale of the quarry.²³⁷

In some instances, when companies are confronted with the human rights abuses they have been involved in, they turn to disengagement as a method to avoid bearing responsibility for these violations and maintain their reputation – without mitigating the adverse impacts or allowing for effective redress. Such disengagement can be carried out in several ways, including through shutting down operations or the selling of the business – as is the case with HeidelbergCement and the *Nahal Raba* quarry as illustrated in the previous paragraph. Companies will then claim that they are no longer associated with the human rights abuses and may consider themselves to have fulfilled their human rights due diligence and responsibility.

Nonetheless, as discussed at length in Chapter 5, as part of the corporate responsibility to respect international law, where a company is linked to human rights abuses through its operations and business relationships, it should address and stop such adverse impacts by means of engaging with its business partners and use its leverage to prevent, mitigate and remediate. In the case that the company decides to disengage, then it should take into consideration any adverse impacts of such a decision. Irresponsible disengagement could create further challenges for victims and affected persons seeking remedy, thus hindering accountability for human rights abuses, as is the case in the *Nahal Raba* quarry and HeidelbergCement.

However, HeidelbergCement's responsibility to remediate those impacts to which it contributed remains even if it sells the quarry and thereby disengages from the relationship through which it contributed to the human rights abuses.²³⁸

5 'PROTECT, RESPECT AND REMEDY' FRAMEWORK RELEVANT TO HEIDELBERGCEMENT'S ACTIVITIES IN OCCUPIED PALESTINIAN TERRITORY

5.1 THE STATE DUTY TO PROTECT HUMAN RIGHTS

As a foundational principle and obligation, States “must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises”.²³⁹ As part of their obligations, States must take the necessary steps in order to “prevent, investigate, punish and redress such abuse” through different means, including effective regulatory frameworks, policies and legislation.²⁴⁰ Notably, States have an obligation to protect and promote the rule of law, equal access to remedy and redress as well as provide for “adequate accountability, legal certainty, and procedural and legal transparency”.²⁴¹ In conflict-affected areas, States are expected to take measures to ensure that corporations are not involved in gross human rights abuses.²⁴²

The case of HeidelbergCement's *Nahal Raba* quarry illustrates how a State and its authorities are an obstacle and a facilitator for the commission of human rights violations and crimes. State institutions may facilitate and incentivise the presence of corporations, including by means of granting licences, providing financial incentives and physical security and protection, allowing for the company to conduct its operations, while the State proceeds to fulfil its goals such as annexation, colonisation and exploitation of natural resources.

THE 'HOST' STATE

Due to its prolonged occupation of Palestinian territory, Israel holds the responsibilities of an Occupying Power and the 'host State' for corporations operating within the OPT under its jurisdiction.²⁴³ The 'host State' retains the primary responsibility to protect against actual and adverse human rights impacts and abuses by businesses and their operations,²⁴⁴ including the responsibility to prevent, investigate, punish and redress human rights abuses and adverse impacts of business activities on individuals and communities within its jurisdiction.²⁴⁵ The Occupying Power is also obliged to provide an adequate legal and regulatory framework to regulate business respect for human rights as well as guidance for businesses.²⁴⁶ In addition, the Occupying Power must ensure that individuals affected by corporate activities within its jurisdiction have access to effective remedies, including through judicial, administrative and legislative means.²⁴⁷

However, it is unrealistic to expect any implementation of the host State's responsibilities towards corporations in the Palestinian context, since the host State in this case is the main perpetrator of human rights violations, supported by private actors including business enterprises. By virtue of the prolonged military occupation and the Interim Agreement,

the Palestinian Authority does not exercise any sort of autonomy or control over Area C of the West Bank, thus rendering its legislations and laws worthless in this part of the OPT specifically. Meanwhile, Israeli legislation, policies and institutions facilitate the presence and operations of multinational and Israeli corporations, operating under Israel's administration in the OPT, including through the Israeli Civil Administration. The policies put in place only serve to tighten Israel's grip over the OPT and foster the presence of Israeli settlers therein, thus only serving and benefiting Israeli-administered businesses and Israeli settlers.

HeidelbergCement has been benefiting from Israel's occupation, colonisation and annexation of the OPT and relies on the power Israel has over the occupied territory to continue its operations and avoid being held accountable. Since 1967, Palestinian natural resources have boosted Israel's national and settler expansionist economy. Ever since, and as illustrated throughout this report, local and multinational companies such as HeidelbergCement have been complicit in Israel's prolonged military occupation, while receiving access to land and resources, as well as assistance and protection for their activities.

THE HOME STATE

Home States of transnational corporations tend to apply a less stringent regulatory framework when it comes to their operations abroad, including when they are involved in human rights abuses and grave violations. In the case of the *Nahal Raba* quarry and considering the involvement of HeidelbergCement through its subsidiary Hanson Israel, Germany is the 'home State'. The 'home State' must recognise the situation of occupation in the OPT, subsequently the applicable legal framework and obligations, including those stemming from its responsibilities as a third-party State.

Germany has endorsed the UN Guiding Principles on Business and Human Rights, including by formulating and publishing its National Action Plan in this regard. In its National Action Plan, Germany highlights business activity in conflict zones, stating that "The Federal Government therefore considers that it has a responsibility to try to ensure that German enterprises operating in such conditions have no part in any adverse impacts on human rights".²⁴⁸

As there has been an explicit recognition that the 'host State' is unable to protect human rights in situations of conflict and occupation, as the 'host State' itself is involved in devising and commission of the systemic human rights abuses, as evident throughout this report, and where multinational corporations are involved, then the 'home State' has "crucial roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuses, while neighbouring States can provide important additional support".²⁴⁹

Common Article 1 of the Geneva Conventions places an obligation on the High Contracting Parties to ensure that Israel does respect international humanitarian law in the OPT. Additionally, the High Contracting Parties must refrain from rendering any support to Israel's illegal practices, policies and measures in the OPT, including that of its illegal settlement enterprise. Meanwhile, Article 41 of the International Law Commission Draft Articles provides

that States are obliged to not recognise Israel's illegal conduct as lawful, not to provide it with aid or assistance that would maintain an illegal situation, and cooperate to bring it to an end. Accordingly, States must cease any business or economic activity and/or relationship with the illegal Israeli settlements and ban the import of their goods. Additionally, High Contracting Parties to the Geneva Conventions are under an obligation to investigate and prosecute individuals responsible for the commission of grave breaches,²⁵⁰ and to cooperate with the International Criminal Court in this regard.²⁵¹

The German Federal Foreign Office adopts the position of the European Union that Israeli settlements are in violation of international law. Nonetheless, it only depicts German economic activity 'in and for the benefit of settlements' to be posing 'considerable risks'. The German Federal Foreign Office further states that economic activities with settlements 'give rise to legal and economic risks' considering that the settlements are built on occupied territory, contrary to international law and are not part of Israel's territory.

The Federal Foreign Office merely highlights that 'German companies and private individuals should also be aware of the reputational risks associated with economic and financial activities in and for the benefit of settlements' as well as the 'potential violations of international humanitarian law and human rights conventions in connection with settlements in the occupied territories'. Nonetheless, when referring to ownership and investments made in the OPT, including in relation to the 'acquisition of land, water, mineral and other natural resources', particularly in Israeli settlements, the German Federal Foreign Office points out that these 'could have repercussions' where the Office would not 'intervene in disputes of this kind'.²⁵²

Instead of taking the appropriate measures to prevent and protect against human rights abuses, including by explicitly advising companies and investors within its jurisdiction not to engage with Israeli settlements, the German Federal Foreign Office limits its advice to soft language with a minimum reference to international law and human rights framework applicable to the OPT. The UN Guiding Principles on Business and Human Rights provide States with operational regulatory principles for businesses within their jurisdiction and in their operations abroad.²⁵³ In addition to providing effective guidance to business enterprises on the respect of human rights throughout their operations, States are also expected to enforce laws and policies in order to 'meet their [State] duty to protect'.²⁵⁴

Specifically, relevant to conflict-affected areas, States should ensure that businesses operating within this context are not involved in human rights abuses. Accordingly, States should engage with the business enterprise to 'identify, prevent and mitigate' human rights-related risks; 'provide adequate assistance to business enterprises to assess and address the heightened risks of abuses'; deny access to public support and services for businesses that are involved in gross human rights violations; and ensure that the State's policies, legislation, regulations and enforcement measures are effective to counter business involvement in human rights abuses.²⁵⁵

5.2 CORPORATE RESPONSIBILITY AND REMEDIATION

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes that would allow for remediation for adverse human rights impacts that they cause or contribute to.²⁵⁶ Accordingly, the business enterprise should 'provide for or cooperate' in remediation where they have caused or contributed to adverse human rights impacts.²⁵⁷ Where gross human rights abuses and crimes are at stake, the remediation process will require that the business enterprise cooperates with judicial mechanisms.²⁵⁸

As a company operating in a context of occupation, HeidelbergCement is expected to respect principles of international law, especially those pertinent to international armed conflict and belligerent occupation. A business enterprise with activities and operations linked to an armed conflict must respect the provisions of international humanitarian law.²⁵⁹ International humanitarian law "imposes obligations on managers and staff not to breach international humanitarian law, and provides for exposure of individual personnel and the enterprise to the risk of criminal or civil liability in the event they do so".²⁶⁰

Businesses operating in conflict-affected settings, including situations of occupation, 'run legal risks' on the basis of 'criminal responsibility for the commission or complicity in war crimes or on civil liability for damages'.²⁶¹ Business enterprises may further be held liable for violations of international humanitarian law relevant to the environment.²⁶²

Business enterprises have a responsibility to respect human rights standards throughout their operations and relationships.²⁶³ The UN Guiding Principles on Business and Human Rights provide that a company must avoid causing or contributing to any adverse human rights impacts. The company must prevent and mitigate any potential adverse human rights impacts directly linked to its operations, products, and services; in this case, through HeidelbergCement's involvement and operations in the *Nahal Raba* quarry. As part of their required due diligence, HeidelbergCement must also address the impacts of its activities, and engage with Hanson Israel Ltd. (its business relation) and the Israeli government to use its leverage to prevent, mitigate and remediate adverse impacts they have caused or contributed to.

The company must adhere to principles provided for under international humanitarian and human rights law, including the UN Guiding Principles on Business and Human Rights, in order to avoid pertinent human rights abuses and potential complicity in grave breaches and war crimes. Prior to acquiring shares and commencing its operations via Hanson Israel, HeidelbergCement should have conducted genuine and enhanced human rights due diligence, considering its operations in occupied territory. In the process of conducting enhanced human rights due diligence, the company would have found that they could not mitigate the human rights impacts of their involvement in the *Nahal Raba* quarry, and from that assessment should have come to the conclusion that they could not responsibly invest in the quarry or Hanson Israel Ltd. HeidelbergCement has been made aware of the human rights impacts of their operations for years, which cannot be mitigated (as the illegality of

the settlements cannot be mitigated), therefore is required to initiate a process of responsible disengagement from the quarry.

Heidelberg's response to the draft findings of this report gives an insight into the company's approach to the human rights due diligence requirement: "It is presented as if Heidelberg-Cement itself had voluntarily decided to invest into the OPT. In fact, HeidelbergCement inherited the *Nahal Raba* quarry as a result of the Hanson acquisition."²⁶⁴ The company further stated "[p]lease note that HeidelbergCement AG did not directly acquire Hanson Israel. Hanson Israel was one of the many subsidiaries of Hanson Group which was acquired in 2007. As the company was listed and the acquisition took place through a public offer, no due diligence could have taken place prior to the acquisition due to confidentially reasons."²⁶⁵

RESPONSIBILITY OF SHAREHOLDERS AND INVESTORS

For the company to be able to fulfil and implement its human rights due diligence process, it needs to involve the various stakeholders, whether external or internal, including investors and shareholders, as well as the affected persons and individuals.²⁶⁶ According to the Interpretive Guide on the Corporate Responsibility to Respect Human Rights, "business relationships include indirect business relationships in its value chain, beyond the first tier, and minority as well as majority shareholding positions in joint ventures".²⁶⁷

A controlling shareholder owns 50 per cent or more of the shares while no other shareholder owns 50 per cent,²⁶⁸ thereby influencing the activities.²⁶⁹ In the case that there are no other shareholders controlling, the controlling shareholder can be deemed as the ultimate owner.²⁷⁰ In the case of HeidelbergCement and Hanson (Israel) Ltd., the former controls almost 100 per cent of the latter. According to Germany's Corporate Governance 2018, shareholders have limited duties and responsibilities towards the company but may be held liable in certain instances.²⁷¹

Shareholders, along with investors, may be involved in actual or adverse human rights impacts when their activities, represented in commissions and omissions, infringe on the human rights of persons or groups.²⁷² They could also contribute to and be complicit in human rights abuses, where their activities, commissions or omissions, assist in the perpetration of a violation.²⁷³

Investors are expected to respect human rights in their activities, links and relationships.²⁷⁴ Accordingly, investors should also seek to avoid causing or contributing to adverse human rights impacts in their activities and address such abuses when they do occur in their operations, products, services or relationships, seek to prevent and mitigate them, even when they have not contributed to the adverse impacts.²⁷⁵

A business enterprise and the financial sector²⁷⁶ "may neither cause nor contribute to the impact, but be involved because the impact is caused by an entity with which it has a business relationship and is linked to its own operations, products or services."²⁷⁷ In addition, according to the OECD Guidelines for Multinational Enterprises:

"[I]nvestors, even those with minority shareholdings, may be directly linked to adverse impacts caused or contributed to by investee companies as a result of their ownership in, or management of, shares in the company causing or contributing to certain social or environmental impacts."²⁷⁸

Regardless of the size of the investment and category such as a minority shareholder, investors have a responsibility,²⁷⁹ in line with international law and soft law mechanisms, including the UN Guiding Principles and OECD Guidelines. To this end, it is important to ensure meaningful stakeholder engagement, requiring a proactive approach, transparency and accountability, which could encompass policy commitments, assessing impacts, embedding and integration, remedy and grievance mechanisms, tracking and communication, among others.²⁸⁰

More specifically, human rights due diligence requires the investors to use their leverage in order to prevent or mitigate relevant human rights abuses.²⁸¹ In practice, this can be carried out by engaging with other investors to influence the company's operations and activities, including by exercising voting rights, attending annual general meetings, collaborating with other investors to exercise leverage, contacting the investee company, and engaging with policymakers.²⁸² According to the UN Guiding Principles, where a business is causing or may cause an adverse human rights impact, then it should take the appropriate and necessary steps in order to cease or prevent the impact. In the case that a business is contributing or may contribute to an adverse human rights impact, it should take necessary steps to cease or prevent and use its leverage to influence and realise change in addressing the remaining impact, to the extent possible.²⁸³

Meanwhile, where the impact is directly linked to the business operations, products or services as a result of its relationship with another entity, the termination of the relationship exerting the adverse human rights impact must be considered, that is, divestment in this case, especially when leverage proves to be insufficient. In such instances, the severity of the human rights abuses must also be considered; "the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship."²⁸⁴ Accordingly, in the case of HeidelbergCement, considering the various adverse human rights impacts which may rise to the level of international crimes, resulting from the Nahal Raba quarry; an investor may be "providing direct financial support to these violations. This is true no matter how small the investment", thus contributing to them.²⁸⁵

As such, investors and shareholders must reconsider their relationship with Heidelberg-Cement, and exercise their leverage to ensure full respect for human rights and international law. Where it is not possible to ensure compliance with international law, investors and shareholders must consider terminating their relationship and divesting from the company, in line with the UN Guiding Principles and their responsibilities under international law more broadly.

5.3 ACCESS TO EFFECTIVE REMEDY

The residents of Al-Zawiya and Rafat, and Palestinian and international civil society and human rights organisations have carried out numerous activities and utilised several mechanisms in order to highlight and counter the unlawful exploitation of stone by the Israeli occupying authorities, HeidelbergCement and Hanson Israel. Their ultimate aim is to end the international law violations related to the unlawful extraction activities in the *Nahal Raba* quarry, to hold those actors involved (including HeidelbergCement) to account, and to achieve effective remedy for the people affected.

Below is a non-exhaustive overview of attempts by civil society to counter HeidelbergCement's involvement in violations through its operations in the *Nahal Raba* quarry, and the results achieved so far:

Action	Actor	Reaction/Result
Direct and indirect communications with HeidelbergCement to address their illegal operations in the OPT. ²⁸⁶	Palestinian and international civil society organisations.	HeidelbergCement continues to systematically deny the illegality of its operations in the <i>Nahal Raba</i> quarry, and uses the State's (Occupying Power) narrative to deflect allegations of and deny its involvement in systemic and gross human rights violations.
Establishing direct and indirect communication with HeidelbergCement's investors and accompanying them to the <i>Nahal Raba</i> quarry.	Palestinian and international civil society organisations.	In June 2015, a Norwegian pension fund divested from HeidelbergCement over concerns about their operations in the occupied West Bank. ²⁸⁷ In October 2017, the Danish pension fund Sampension excluded HeidelbergCement, among three other companies, from their investment portfolio for their involvement and activities in Israeli settlements. ²⁸⁸
Visuals, teaching and advocacy resources have been developed on the <i>Nahal Raba</i> quarry and HeidelbergCement. ²⁸⁹	Palestinian and international civil society organisations.	Increased awareness among the public, civil society organizations, corporate and other relevant stakeholders about the case.
HeidelbergCement and Hanson Israel have been included in several databases that track business operations in occupied territory, including in the OPT. ²⁹⁰	International civil society organizations.	Increased awareness among the general public, civil society organizations, corporate and other relevant stakeholders about the case.
HeidelbergCement has been named and shamed several times in media reports. ²⁹¹	International media.	Increased awareness among the general public, civil society organizations, corporate and other relevant stakeholders about the case.

Action	Actor	Reaction/Result
Regular field visits to the communities affected by the <i>Nahal Raba</i> quarry to monitor and document pertinent human rights violations and adverse impacts.	Palestinian civil society.	Building strong evidence-based documentation on the adverse impacts of the quarry's operations, while including the communities' narrative in the various communications with the company and relevant stakeholders.
Written submission (August 2018) to the UN Human Rights Council, highlighting the importance of the UN Database of companies involved with Israeli settlements, shedding light on multinational corporations' involvement, including that of HeidelbergCement. ²⁹²	Palestinian human rights organization (Al-Haq).	Increased awareness among UN Members States about the involvement of multinational corporations in Israel's ongoing occupation and unlawful exploitation of natural resources; the adverse impacts on Palestinian human rights, the environment and the Palestinian economy; thus sustaining the need for tools to address corporate impunity within such context.
Written submission in March 2019 on the issue of natural resources, including stone and illegal quarrying activities in the OPT, to the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. ²⁹³	Palestinian human rights organization (Al-Haq).	The Special Rapporteur submitted a report examining the human rights situation in the OPT, with a particular emphasis on access to natural resources and environmental degradation, during the 40th session of the Human Rights Council in March 2019. ²⁹⁴
Submission to the International Criminal Court (October 2018) presenting information and analysis alleging the war crimes of appropriation, pillage and destruction of Palestinian property and natural resources, including stone, and listed the names of some Israeli and multinational companies involved. ²⁹⁵	Four Palestinian human rights organisations	Engagement with the ICC Office of the Prosecutor on the need to ensure accountability for corporate involvement in grave breaches of international law and internationally recognised crimes taking place in the OPT, including the pillage and destruction of natural resources in occupied territory.
Written submission (February 2019) to the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, focusing on Israeli-administered quarries in Area C of the OPT, highlighting the case of HeidelbergCement in the West Bank. ²⁹⁶	Palestinian human rights organization (Al-Haq).	Increased awareness at UN-level about the institutionalized discrimination, as administered by the Occupying Power in the OPT and against the occupied population, including in relation to extractive activities such as those taking place in the <i>Nahal Raba</i> quarry.

Despite these and other counter-strategies utilised by civil society, no accountability or remedy has been achieved for the victims. The context of occupation, the continued support by the Israeli authorities for HeidelbergCement's activities, and HeidelbergCement's persistent reliance on Israel's unjust legal system have hindered any serious impact.

The lack of political will, by both the Occupying Power and the 'home State' (Germany), to take concrete measures against such operations in the OPT also forms a key factor perpetuating impunity in this situation. The State duty to protect against business-related human rights abuses involves ensuring access to effective remedy for those affected within its territory and/or jurisdiction, whether through judicial or non-judicial means.²⁹⁷ Considering that Germany is the home State of HeidelbergCement, there are several judicial and non-judicial mechanisms that may be considered for the purpose of accessing effective remedy.

54 JUDICIAL MECHANISMS: CORPORATE LIABILITY IN GERMANY AND LIABILITY FOR CORPORATE AGENTS

There exists no 'corporate criminal liability' in Germany, as only natural persons are typically seen as being subjects of German criminal law.²⁹⁸ Thus, any possible corporate liability for criminal conduct must stem from the actions of a natural person who acts as a legal representative of a corporation. In other words, corporate liability is "a 'collateral consequence' (Nebenfolge) of the offense committed by a natural person."²⁹⁹ Meanwhile, it should be noted that German law allows for administrative liability for legal persons, that is, corporations.³⁰⁰

Sections 30 and 130 of the Administrative Offences Act allow for corporations to be fined following the conviction of an agent of the company, although these cases are typically settled out of court.³⁰¹ The success of this approach hinges upon the successful establishing of 'liability of a representative [in order] to impose a fine on the company'.³⁰² It should be noted, however, that fines under Section 30 must be based on criminal or administrative offences in carrying out 'company-related duties'.³⁰³ Omissions or negligence in a supervisory role may also qualify as offences under this rubric: "It is not necessary in this respect that the representative actively commits the offence himself. Rather, it can suffice for the representative to have failed intentionally or negligently to take supervisory measures which are necessary in order to prevent criminal or minor offences being committed by ordinary employees".³⁰⁴

It follows from this that individual criminal liability can be imposed upon members of executive management, as they have a responsibility to ensure the duties of the company at large are fulfilled. Therefore, the failure of an individual member of a management board "can lead to criminal liability on the part of (other) management board members or other representatives of the company if they either actively support such acts or refrain from preventing respectively tacitly approve them".³⁰⁵ This situation may also trigger the aforementioned Section 130, which allows the company's proprietor, or those carrying out management functions, to be fined if they fail to take sufficient measures to ensure that the business is in compliance with its legal obligations, or if such breaches would have been "made substantially more difficult to commit by proper supervision".³⁰⁶

EXTRA-TERRITORIAL JURISDICTION IN GERMAN LAW

Extra-territorial jurisdiction under German law may be traced to Section 23 of the German Code of Civil Procedure (ZPO). Based on this provision, the necessary link is the presence (or past presence) of assets belonging to the entity in question on German soil.³⁰⁷ This creates a strong basis for extra-territorial jurisdiction, even for corporations which have, for example, entirely left Germany.³⁰⁸ Noting that, the ZPO is applicable to civil law cases like torts and breach of contract. In the case that German international jurisdiction is determined, the plaintiff then has a right to choose where to bring a suit.

The ZPO offers several options. Section 17 addresses the basic rule for legal persons and regulates that jurisdiction is given in the principal place of business. Section 32 is for cases of torts and regulates that jurisdiction is given wherever the offence took place. But in cases of 'distant offences', jurisdiction is given where the action that caused the damage was taken, or where the result of that action is. Given that HeidelbergCement is an 'AG', there is *lex specialis* for jurisdiction in cases where certain responsibilities of corporate law have been neglected. In most cases, however, the principal place of business is where jurisdiction is given.

Meanwhile, German criminal law under Section 3 of the Criminal Code is generally based on the territoriality principle, thereby limiting jurisdiction over offences committed within Germany, although there are several exceptions, including:

- Section 5: offences committed against domestic interests, e.g. offences by or against German public officials;
- Section 6: offences committed against recognised international interests, (example given is human trafficking and other interests based on international agreements binding on Germany, therefore highly likely to also apply to international humanitarian law, international criminal law, and international human rights law);
- Section 7(2): offences which are criminal offences in the location of its commission, or if that place is not subject to any other criminal jurisdiction, if the offender was either a German national at the time, or became so after, the commission of the offence, or was a foreign national who could be extradited under the Extradition Act, but was not for reasons of timeliness, rejection, or infeasibility; and
- Offences listed under German legislation which feature an extra-territoriality component.³⁰⁹

It should be noted that, among the sections listed above, universal jurisdiction for international criminal law is regulated in Section 1 of the German Criminal Code for International Criminal Law (VStGB).

PROPOSED CORPORATE SANCTIONS ACT (CSA)

The current German government, in its coalition treaty of 14 March 2018, agreed to impose stricter regulations on companies, to incorporate a formal concept of corporate criminal liability, and to make prosecution obligatory in these cases.³¹⁰ The draft of the CSA was presented by the German Ministry of Justice and Consumer Protection on 22 August 2019, and is expected to be adopted by the Bundestag sometime this legislative term ending 2021.³¹¹

The scope of the CSA is envisaged to extend to all companies based in or doing business in Germany,³¹² and therefore has an extra-territorial component, being applicable to offences committed outside of Germany, provided the offence is prohibited under German law, and the law of the State within which it was committed.³¹³ Further, the CSA removes the prosecutorial discretion on investigating and prosecuting corporate crimes.³¹⁴

The CSA also provides for extensive criminal sanctions to be imposed directly upon the company, for the wrongdoing of either the company itself or its agents:

- For offences due to negligence, a 5 per cent fine on group-wide annual sales for companies with an average annual turnover above 100 million euros;
- For wilful single offences, a 10 per cent fine on group-wide annual sales for companies with an average annual turnover above 100 million euros;
- For wilful multiple offences, a 20 per cent fine on group-wide annual sales for companies with an average annual turnover above 100 million euros;

In cases involving a large number of victims, publication of the sentence imposed on the company; and as a last resort, a court order for dissolution of the company.³¹⁵

5.5 OTHER JUDICIAL MECHANISMS

UNIVERSAL JURISDICTION FOR CORPORATIONS

Universal jurisdiction, a concept that was initially codified in the 1949 Geneva Conventions on the laws of war, requires States which are parties to the Conventions to prosecute or extradite suspects of war crimes. It provides an opportunity for investigation and trial of grave international crimes in the case that the territorial State is unwilling or unable to do so. This concept has been recognised by 194 States which have ratified the 1949 Geneva Conventions. International customary law permits universal jurisdiction to be used in heinous crimes such as genocide and crimes against humanity. In recent years, States, particularly those in Europe, have begun to apply their universal jurisdiction legislation.³¹⁶

One notable use of universal jurisdiction is that of France, which has used it to initiate corporate crime proceedings against the cement company Lafarge SA (now LafargeHolcim) for financing “terrorism”, complicity in crimes against humanity, deliberate endangerment of human lives, exploitative labour practices, forced labour, and illegal purchase of oil. The suspects are French and Norwegian nationals.³¹⁷ The use of universal jurisdiction in regard to corporate liability may be applicable in the case of HeidelbergCement for its involvement in numerous violations of international law. HeidelbergCement corporate agents may be prosecuted under universal jurisdiction in German domestic courts or, if Germany is unwilling or unable to prosecute, the International Criminal Court may investigate and prosecute representatives of the company for their involvement.³¹⁸

5.6 NON-JUDICIAL MECHANISMS

OECD GUIDELINES

The OECD provides guidelines for multinational enterprises which regulate an enterprise’s activities in foreign States. The Guidelines include general standards of business conduct as well as specific principles, focusing on disclosure policies, human rights, employment and industrial relations, environment, combating bribery and extortion, among others. The OECD Guidelines urge enterprises to “respect the internationally recognised human rights of those affected by their activities”³¹⁹ and to “avoid causing or contributing to adverse impacts on matters covered by the Guidelines ... and address such impacts when they occur.”³²⁰ In addition, the OECD Guidelines state that “[o]beying domestic laws is the first obligation of enterprises.”³²¹ The OECD guidelines specifically incorporate by reference numerous international treaties including the ICCPR, the ICESCR, the International Labour Organisation Declaration on Fundamental Principles and Rights at Work, the International Labour Organisation Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the Rio Declaration.

All States adhering to the OECD Guidelines for Multinational Enterprises are required to establish a ‘National Contact Point’ (NCP) to hear complaints by those affected by corporate activity.³²² The NCPs are required to handle complaints that allege breaches of the OECD Guidelines in a procedure known as the ‘specific instance’ procedure. The procedure is designed to resolve disputes between companies and people negatively impacted by the company’s business activities. Any stakeholder that can demonstrate an interest in the alleged violation can file a complaint.

There have been a number of completed cases at the German NCP; some have been processed and adopted, while others have been rejected.³²³ The filed complaints against corporate actors have ranged from poor working conditions to failing to carry out due diligence and environmental impact assessments.³²⁴ The German NCP has had some success in seeking remedy for affected persons and communities for corporate involvement in human rights abuses, but leaves room for improvement as a grievance mechanism, considering the process’s standard of admissibility, among others.

6 CONCLUSION AND RECOMMENDATIONS

Private corporations and business enterprises have long been involved in and facilitated Israel's human rights abuses in the OPT. The report provides an extensive overview of the situation of a prolonged military occupation of Palestinian territory and people, while highlighting ways in which this reality is intensified and consolidated through the activities of businesses, such as the publicly-traded German company HeidelbergCement and its Israeli subsidiary Hanson Israel. The company provides an example of the ways in which corporate interests meet colonial policies, and the ways in which corporate capital benefits from a situation of occupation. In attempts to contribute to the ongoing efforts of different civil society organisations to hold the company accountable, the report exposes the tools and strategies HeidelbergCement has been using in order to avoid accountability, continue with its exploitative activities unabated, while making a profit.

As the report demonstrates, by operating a quarry in an illegal settlement on confiscated Palestinian land, paying royalties to the Israeli occupying authorities administering the West Bank, and selling construction materials to settlements and inside Israel, the company not only bolsters the Israeli settlement enterprise and contributes to the unlawful transfer of Israel's civilian population into occupied territory, it also boosts the Israeli economy at the expense of the Palestinian fundamental rights and economy. In a context of continued captivity and de-development, where Palestinians are prevented by the Israeli occupation from accessing their land and resources in the OPT, the Palestinian economy is stripped of billions of dollars annually. As such, HeidelbergCement's activities in the occupied West Bank have direct and indirect impacts on the Palestinian communities, resulting in grave breaches of international law, such as the pillage of stone reserves. Considering the context of prolonged occupation, HeidelbergCement's activities breach international humanitarian and human rights law – both applicable in the OPT.

The specific case of the *Nahal Raba* quarry in the West Bank of the OPT, operated by HeidelbergCement and its subsidiary Hanson Israel, sheds light on the company's illegal extraction of resources in occupied territory, as well as the impacts of the quarry on the local Palestinian communities of Al-Zawiyah and Rafat villages, within which the quarry is located. HeidelbergCement is actively involved in various human rights abuses that affect residents of the villages, including violation of their land rights, rights to work and livelihood, freedom of movement, and environmental rights. Furthermore, the report exposes the different strategies used by HeidelbergCement to whitewash its involvement in unlawful policies and measures, avoid public scrutiny and accountability for its involvement in grave breaches of international law, some of which amount to war crimes.

By studying the company's responses to allegations against its operations in the OPT, monitoring its activities and announcements, the report identifies seven main strategies that the company uses in order to continue its operations: aligning with the Occupying Power; exploiting an unjust legal system; disseminating misinformation regarding its responsibility; claim to benefit the affected Palestinian communities; shielding the parent company from

liability; undermining rightful owners and communities, and; irresponsible disengagement through the sale of the quarry to avoid liability.

Through examining the strategies used by HeidelbergCement, this report also attempts to identify possible avenues to counter the company's involvement in serious and systemic human rights abuses in the OPT and end corporate impunity.

Based on the findings of the report, we propose the following recommendations to:

6.1 THE FEDERAL REPUBLIC OF GERMANY AND RELEVANT OFFICIAL INSTITUTIONS

- 1.** Recognise the role which German multinationals, including HeidelbergCement, play in the ongoing denial of the right to self-determination which encompasses permanent sovereignty over natural resources in the OPT, and accordingly act in line with its obligations under international humanitarian and human rights law;
- 2.** Ensure respect for international humanitarian law in the OPT, including by business enterprises within its jurisdiction, as a High Contracting Party and in line with Common Article 1 of the Geneva Conventions. Germany must refrain from rendering support to the Occupying Power's illegal practices, policies and measures, including its illegal settlement enterprise to which HeidelbergCement has been contributing for more than a decade;
- 3.** Strengthen its regulatory framework for German multinational corporations operating abroad, including in occupied territories and conflict-affected settings, to ensure that mandatory strict and enhanced due diligence procedures are carried out to guarantee compatibility with both corporate responsibility and State responsibility under international law;
- 4.** Deny access to public support and services for HeidelbergCement and other business enterprises that are involved in gross human rights violations, in line with the UN Guiding Principles on Business and Human Rights;
- 5.** Ban the import of products originating from illegal Israeli settlements, in line with its positive obligations under international humanitarian law, including the Fourth Geneva Convention;
- 6.** Investigate and prosecute those responsible for and contributing to the commission of grave breaches in the OPT,³²⁵ including corporate-related ones, and to cooperate with relevant accountability mechanisms, including the International Criminal Court, in this regard;³²⁶

7. Support and effectively engage with international mechanisms that would allow for transparency on corporate activities and corporate accountability, such as the UN database of businesses involved in Israeli settlements, and the legally binding instrument to regulate – in international human rights law – the activities of transnational corporations and other business enterprises;
8. Acknowledge the importance of the Draft Principles on the Protection of the Environment During Armed Conflict, which also provides for corporate accountability for environmental harms.

6.2 HEIDELBERGCEMENT

1. Immediately cease all activities on appropriated Palestinian land and in illegal Israeli settlements, including in the *Nahal Raba* quarry in Salfit, while observing the requirement, outlined in the UN Guiding Principles on Business and Human Rights and OECD Guidelines, to responsibly disengage from business relationships when adverse human rights impacts cannot be mitigated, which is the case in relation to the *Nahal Raba* quarry and business activities in Israeli settlements in general;
2. Use its leverage, to the greatest extent possible, to mitigate any remaining adverse impact, including by initiating an inclusive and effective process of dialogue with all rights holders regarding the future use of the licence, and promote respect for international humanitarian law and human rights in relation to the *Nahal Raba* quarry and other activities in occupied territory;
3. Make reparations to Palestinians, including those whose land it has, in conjunction with the Israeli Civil Administration and Israeli occupying authorities, unlawfully exploited for more than a decade, as part of an effective grievance mechanism that would ensure remediation to all affected persons;
4. Immediately cease supplying cement and construction materials to illegal settlements in the occupied West Bank;
5. Introduce, in good faith, strict and stringent human rights due diligence procedures to ensure that its operations outside Germany, including in occupied territories and conflict-affected areas, are fully compliant with its responsibilities under international law, including international humanitarian law and the UN Guiding Principles on Business and Human Rights.

6.3 THIRD STATES

1. Strengthen domestic regulatory frameworks concerning multinational corporations operating in conflict-affected areas and situations of occupation such as that existing in the OPT;
2. Support the UN High Commissioner for Human Rights to immediately and without further undue delay publish the database of business enterprises involved in Israeli settlements, in line with UN Human Rights Council Resolution 31/36 (2016), considering the recognised role that businesses have played in entrenching Israel's military occupation, making it profitable and sustainable for more than five decades;
3. Impose sanctions on illegal Israeli settlements and businesses engaged in activities and relationships therein, in line with their positive obligations under international humanitarian law, including the Fourth Geneva Convention and international human rights law;
4. Call on and support the Prosecutor of the International Criminal Court to open an investigation into the situation in Palestine which should look at the involvement of corporate actors in the commission of war crimes and crimes against humanity;
5. Support and effectively engage with the negotiations on the international legally binding instrument to regulate the activities of multinational corporations and other businesses enterprises under international law to safeguard human and environmental rights. The binding instrument on business and human rights is necessary to promote corporate accountability, including in situations of conflict and occupation;
6. Take other positive steps to ensure that Palestinians may genuinely exercise their right to self-determination and permanent sovereignty over their natural resources, as repeatedly enshrined under international law.

6.4 THE EUROPEAN UNION

1. Urge the European Parliament and Commission to adopt effective measures towards multinational corporations that are active in the OPT, along with other situations of occupation and conflict, to ensure that they do not contribute to and benefit from human rights violations and internationally recognised crimes;
2. Ensure that its Member States comply with existing legal jurisprudence and customary international law with regards to the illegality of Israeli settlements, including in their business dealings and relationships. To this end, for example, EU Member States should respect the recent decision of the European Court of Justice requiring the correct labelling of settlement products, and adhere to their obligations under international law in this regard;

3. Support and effectively engage with the negotiations on the international legally binding instrument to regulate the activities of multinational corporations and other businesses enterprises under international law to safeguard human and environmental rights.
4. Impose sanctions on illegal Israeli settlements and businesses engaged in activities and relationships therein, in line with their positive obligations under international humanitarian law.

6.5 THE INTERNATIONAL CRIMINAL COURT

1. Immediately open an investigation into the situation in Palestine to effectively respond to the deteriorating human rights situation, war crimes and crimes against humanity allegedly committed, including those relevant to pillage, appropriation and destruction of Palestinian natural resources;³²⁷
2. Investigate the role of Israeli and multinational private actors in the commission of and involvement in the crimes of pillage, extensive destruction and appropriation of property, the destruction and seizure of property, and the destruction of the environment.

6.6 THE PALESTINIAN AUTHORITY

1. Immediately activate in domestic laws all international human rights treaties relevant to the unlawful exploitation of natural resources by the Israeli occupying authorities and associated businesses in the OPT;
2. Investigate the activities, or lack thereof, of HeidelbergCement's Palestinian subsidiary, HeidelbergCement Palestine;
3. Continue to support the communities of Al-Zawiyah and Rafat, as part of its positive obligations to promote, protect and fulfil its obligations towards its population under Palestinian and international laws, including those relevant to the right to work, livelihood and access to remedy;
4. Support the Office of the Prosecutor of the International Criminal Court in opening a formal investigation into the situation of Palestine, including the relevant involvement of corporate actors in the commission of war crimes and crimes against humanity;
5. Carry out bilateral and multilateral advocacy surrounding corporate involvement in undermining the Palestinian right to self-determination and permanent sovereignty over their natural resources, and continue the call to sanction illegal settlements in the occupied West Bank and associated businesses.

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This research report is part of the Mind the Gap project, which is coordinated by SOMO. Mind the Gap is a four-year project in which consortium partners research how companies avoid responsibility for human rights abuses, collaborate with civil society to improve corporate accountability and engage with policy makers to close governance gaps that enable companies to avoid responsibility. The overall aim of the project is to increase respect for human rights and effective access to justice and remedy for individuals and communities whose lives and livelihoods are affected by multinational corporations.

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