



US Campaign to End the Israeli Occupation

"We aim to change those US policies that both sustain Israel's 38-year occupation of the Palestinian West Bank, Gaza, and East Jerusalem, and deny equal rights for all."

Israel's Human Rights Violations Facilitated by the Use of CAT Bulldozers

Issue

How are Caterpillar bulldozers used by the Israeli government to commit human rights violations?

Summary

CAT bulldozers are being used by Israel in the Occupied Palestinian Territories for purposes that contravene the Fourth Geneva Conventions (1949), the Hague Regulations, as well as the US statute, the Torture Victim Protection Act. These violations include the uprooting of olive trees, demolition of homes, murdering civilians, and constructing the Annexation Wall.

We encourage CAT to cease its bulldozer sales to Israel until Israel no longer uses CAT equipment in violation of international humanitarian and human rights law as well as US statutory law.

Facts

Caterpillar Inc., is based in Peoria, Illinois. In 2003, the corporation posted sales of and revenues of U.S. \$22.76 billion and a profit of U.S. \$1.1 billion (NYSE: CAT). Caterpillar has been selling their bulldozers to Israel through the United States Foreign Military Sales Program. Caterpillar alleges that the US provides Israel with military aid earmarked for Caterpillar bulldozers.

The Caterpillar D9 bulldozer is a track-type tractor manufactured primarily for agricultural and construction purposes. However, once supplied to Israel, they are modified by Israeli Military Industries, a state-owned Israeli arms manufacturer, and Israeli Aircraft Industries' Ramta Division. The bulldozers are modified to include machine gun mounts, smoke projectors, and grenade launchers.^[1] The front blade is more than 6 feet high and 15 feet wide. On the bulldozer's back is the 'ripper' and it can penetrate five feet and five inches into the ground.^[2]

In response to complaints from organization, Jewish Voice for Peace about the bulldozers' use in illegal home demolition, CEO James Owens wrote that Caterpillar has "neither the legal right nor the ability to monitor and police individual use of that equipment." In a Caterpillar statement on the Middle East, they said "we believe any comments on political comments on the political conflict in the region are best left to our governmental leaders who the ability to impact action and advance the peace process."^[3]

Although Caterpillar asserts that it has no responsibility for the use of its bulldozers abroad, the United Nations has begun to develop standards for corporations in the form of U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. That document states that companies should not 'engage in or benefit from' violations of international human rights or humanitarian law and that companies 'shall further seek to ensure that

the goods and services they provide will not be used to abuse human rights.’[\[4\]](#)

Human Rights Violations Committed by Israel with the Use of CAT

Destruction of Property

Olive Trees

Precise figures relating to destruction committed specifically with Caterpillar bulldozers is difficult to obtain.[\[5\]](#) The United Nations quotes the figure 385,808 fruit and olive trees uprooted “during the current crisis” (May 17, 2002), but does not specifically identify Caterpillar.[\[6\]](#) *Miftah* quotes 1,085,063 olive trees uprooted during the “last 4 ½ years” (April 13, 2005). The *War on Want* Caterpillar report quotes 454,541 trees uprooted between Oct 2000 – Dec 2001, quoting World Bank report of March 18, 2002 (pp. 17-18). The *Tyreside Palestine Solidarity Campaign* quotes 200,000 in the “past two years” (May 22, 2004)

Home demolitions

Caterpillar bulldozers are the main weapon used by the Israeli Army to demolish Palestinian homes.[\[7\]](#) According to the U.N, between September 2000 and December 2004, the Israeli Army destroyed a total of 4,170 Palestinian homes.[\[8\]](#) More than 2,500 of those homes were demolished in the Gaza Strip alone, rendering 10% of the Rafah population homeless.[\[9\]](#)

Israeli authorities have said that their demolitions are have been punitive measures against the family homes of Palestinians engaged in or suspected of engagement in armed activities against Israel.[\[10\]](#) Still, a recent report published by B’tselem and cited by the UN shows that 47% of the homes demolished by the Israeli military were never home to anyone suspected of military activity against Israel.[\[11\]](#)

Annexation Wall

Caterpillar bulldozers are enabling Israel to build its Annexation Wall. The Israeli Government contends that the wall is being built for security purposes. However, as it juts 13 miles into the West Bank, annexes most of the West Bank settlements, and spans twice the length of the 1967 Armistice Line— it is arguable that security is a pretext for a land grab and establishing facts on the ground.

At the urging of the UN General Assembly, the International Court of Justice examined the case of the Wall. In July 2004, the Court issued its Advisory opinion declaring the Wall illegal and calling for its destruction.[\[12\]](#) The Court also believed that the Wall was an attempt to annex settlements and grab land thereby creating facts on the ground.[\[13\]](#) The Opinion stated that the Wall resulted in violations of Palestinian human rights including their right to freedom of movement, work, health, education, and an adequate standard of living. Finally the ICJ rules that ‘self-defense’ or ‘state of necessity’ can not be used as a justification for violating the Palestinian right to self-determination as well as other legal principles.[\[14\]](#)

The uprooting of olive trees, demolition of homes, and construction of the annexation wall constitute violations of international law:

Under FGC, property can only be destroyed by the occupying power if it is “absolutely necessary” in preparation for or conduct of fighting. Article 53 states that “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.” Article 23(g) of the Hague Regulations of 1907 similarly forbid “destr[uction] or seiz[ure of] the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war.” The Hague Regulations apply to any situation excluded by Art. 53, as per the commentary to that article.

Destruction of agricultural land for the purpose of further colonization of Palestinian territory, such as constructing the Wall inside the West Bank, is not proportionate or necessary and therefore violates Israel’s international humanitarian law obligations.[\[15\]](#)

According to Amnesty:

“Israeli forces may, in exceptional circumstances, seize or destroy Palestinian property for a legitimate military purpose—not for the expansion of illegal settlements or settlement infrastructure, nor in retaliation for attacks committed by Palestinians against Israelis. Palestinians affected must have a meaningful right to legally challenge any seizure or destruction order.”[\[16\]](#)

Article 26 of the ICCPR provides for equality before the law and prohibits discrimination on the basis of national origin, race, language, etc. Article 17 provides the right to due process of law. Article 2(3) guarantees the right to effective remedies, determined by competent authorities, to persons whose rights and/or freedoms were violated by a State Party. According to Amnesty, “In most cases ... destruction of land and other property is carried out without prior notice, leaving little if any recourse for the victims.”[\[17\]](#)

UN Special Rapporteur on the right to food, Jean Ziegler, in a letter to Caterpillar CEO James Owens dated 28 May, 2004, concluded that the Israeli occupying forces’ destruction of Palestinian agricultural resources that “further limit the sustainable means for the Palestinian people to enjoy physical and economic access to food... constitute the violation of the right to food [contained in article 11 of the ICESCR among other international human rights instruments].”

Extrajudicial Killings

Rachel Corrie: On March 16, 2003, Rachel Corrie, 23 American peace activist, was killed by a D9 Caterpillar bulldozer as she attempted to protect a Palestinian home from demolition. The Israeli soldier responsible said he did not see Corrie and did not run her over intentionally. But international eyewitnesses, including US citizens, said Corrie stood 1000 feet in front of the bulldozer and was therefore within the driver’s sight. Moreover, she wore a bright orange vest identifying her as a member of the International Solidarity Movement,[\[18\]](#) making her clearly distinguishable. Eyewitnesses reported that at the moment that she realized that the bulldozer wasn’t going to stop she tried to climb to the top of the dirt pile—but the blade caught her legs and pushed her under it. Then the bulldozer reversed and dragged the blade over her body again.[\[19\]](#)

Al Sho'bi Family: In April 2002, Caterpillar bulldozers were used to demolish the home of Mahmoud Al Sho'bi who live in Nablus, located in the West Bank. Mahmoud's 85 year old father Umar, 2 sisters--Fatima and Abir ages 57 and 38 respectively, brother Samir, age 48, his pregnant sister-in-law Nabila, age 40, along with Samir and Nabila's three children Anas, Azzam and Abdallah ages 4, 7, and 9 respectively, were killed by a Caterpillar bulldozer when the family home was demolished and they were not given sufficient time to leave. After the Al Sho'bi family home was demolished, the IDF kept the area under strict curfew for days, denying access to rescue workers, and it was not until a week later, on April 12, 2002, that the families' bodies were found under the rubble of the house by relatives and neighbors.[20]

Jamal Fayed: On On April 9, 2002, an Israeli soldier used a Caterpillar bulldozer to demolish the home of Fathiya Muhammad Sulayman Fayed, killing her paralyzed and disabled son Jamal Fayed who was still inside at the time of the demolition.[21] 38 year old Fayed was not able to leave his home and avoid death due to his disability. Although Fayed's mother and sister informed the Israeli soldiers that Fayed was still inside—they proceeded to bulldoze the home and Fayed was crushed by the house that collapsed onto him.[22]

Ibrahim Mahmoud Mohammed Khalafallah: On June 12, 2004, a Caterpillar bulldozer was used to demolish the home of Ibrahim Mahmoud Mohammed Khalafallah located in Khan Younis refugee camp in the Gaza Strip of the Occupied Territories. Khalafallah's family was able to flee but in his seventies and unable to move without assistance, he was not able to flee his home before its demolition. When the bulldozers finally left, his wife and daughter returned to look for Mr. Khalafallah. They found his body broken and destroyed beneath the rubble. Only his head was intact and rocks filled his eyes.[23]

Extrajudicial Killings constitute violations of international law:

Extrajudicial killing is actionable in tort in US courts and it also constitutes a violation of international law. As defined by the Torture Victim Protection Act (1991) ("TVPA"), extrajudicial killing means a

deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.[24]

The Universal Declaration of Human Rights (1948) ("UDHR") enshrines the right to life in its third Article which states, "everyone has the right to life, liberty and security of person." [25] The UDHR further states that the right to life shall not be taken away without a trial at which the accused shall be presumed innocent.[26] The prohibition of extrajudicial killings is established based on these principles. Article 6 of the International Covenant on Civil and Political Rights also explicitly prohibits extrajudicial killings. [27]

The killings of civilians in the Occupied Territories with the use of Caterpillar bulldozers were deliberate and not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees that are recognized as indispensable by civilized peoples. The killings were not lawfully carried out under the authority of any country or court. They therefore constitute extrajudicial killings in contravention of the TVPA as well as the ICCPR and the UDHR.

The Uprooting of Olive Trees, demolition of homes, construction of the annexation wall, and extrajudicial killings all constitute war crimes and the intentional infliction of harm against civilians:

The Fourth Geneva Convention (1949) (FGC) is the codification of international law as it pertains to the protection of civilians in time of war. In particular, Articles 27, 32, and 33 prohibit the intentional infliction of harm against a civilian population.

Article 27 entitles persons living under occupation to respect, humane treatment and protection from violence and insults.[28] Article 32 obligates contracting parties to avoid the infliction of physical suffering onto protected persons living in territories it occupies. This prohibition applies to any measure of brutality applied by military agents and civilians.[29] Article 33 prohibits the use of collective punishment against persons living in occupied territories as a form of intimidation or reprisal. [30]

Grave Breaches of the Fourth Geneva Convention constitute war crimes. Article 147 of the Convention which list those violations that amount to grave breaches willful killing, torture or inhumane treatment, including willfully causing great suffering or serious injury to body or health, extensive destruction and appropriation of property carried out unlawfully and wantonly.[31]

Conclusion

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[1] War on Want, War on Want, *Caterpillar Bulldozers in Palestine*, available at <http://www.waronwant.org/?lid=9969>.

[2] Human Rights Watch, *Razing Rafah: Mass Home Demolitions in the Gaza Strip*, A fact sheet on the CAT D9 armored bulldozer (October 18, 2004).

[3] *Id.*

[4] See the *United Nations Norms of the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, E/CN.4/Sub.2/2003/12/Rev.2 (2003) as quoted in Human Rights Watch *supra* note 2.

[5] For instance, the *Corrie v. Caterpillar* complaint prefaces most paragraphs relating to Caterpillar destruction with: “upon information and belief.”

[6] A/57/63 – E/2002/21, perhaps covering the period April 2001 to March 2002

[7] See War on Want *supra* note 1.

[8] *Report of the Special Rapporteur of the Commission of Human Rights, John Dugard on the Situation of Human Rights on the situation of human rights in the Palestinian Territories occupied by Israel since 1967*, UN Doc E/CN.4/2005/29, 7 December 2004.

[9] Human Rights Watch, *Razing Rafah: Mass Home Demolitions in the Gaza Strip*, October 2004 available at <http://www.hrw.org/reports/2004/rafah1004/>.

[10] War on Want *supra* at note 1.

[11] B'tselem, *Through No Fault of their Own: Israel's Punitive Home Demolitions in the al-Aqsa Intifada* (November 2004) as quoted in War on Want *supra* at note 14.

[12] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Advisory Opinion July 9, 2004 para. 78.

[13] *Id.* at para. 119.

[14] *Id.* at para. 142.

[15] Amnesty International, “Under the rubble: House demolition and destruction of land and property,” MDE 15/033/2004 (May 2004), 18.

[16] *Id.* at 30.

[17] Amnesty International, “Under the rubble: House demolition and destruction of land and property,” MDE 15/033/2004 (May 2004), 58.

[18] A Coalition of Palestinian and other international activists who volunteer to serve as human rights monitors in the Occupied Territories. See Smith, Alexa, *Corries push U.S. Government to Investigate their daughter's death*, PCUSA News (October 15, 2004).

[19] Smith, Alexa, *Corries push U.S. Government to Investigate their daughter's death*, PCUSA News (October 15, 2004).

[20] *Corrie et. al., v. Caterpillar*, Civil Action No. CV-05192-FDB, (USDC Washington 2004) available at http://www.ccr-ny.org/v2/legal/corporate_accountability/docs/Caterpillar_Amended_Complaint.pdf.

[21] *Id.* at 14.

[22] *Id.*

[23] *Id.* at 18.

[24] 28 U.S.C. §1350, 1331 available at <http://www.derechos.org/nizkor/econ/TVPA.html>.

[25] G.A. Res. 217A(III), U.N. Doc A/810 at 71 (1948) available at <http://www.un.org/Overview/rights.html>.

[26] *Id.* at Article 11 ((1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence; (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.)

[27] Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force Mar. 23, 1976).

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

[28] Fourth Geneva Convention (1949) (Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.)

[29] *Id.* (The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person but also to any other measures of brutality whether applied by civilian or military agents.

[30] *Id.* (No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.)

[31] Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. Available at <http://www.unhchr.ch/html/menu3/b/92.htm>.