

“Product of Illegal Israeli Settlement”

Made in Occupied Palestinian Territory

OPEN SHUHADA STREET

SUBMISSION TO THE DEPARTMENT OF TRADE AND INDUSTRY ON GENERAL NOTICE 379 OF 2012

Contents

INTRODUCTION.....	3
THE CONTENTS OF THIS SUBMISSION	4
OPEN SHUHADA STREET STANDING.....	5
THE LABEL.....	7
THE HISTORICAL ORIGINS OF THE 1949 ARMISTICE LINE	8
THE NATURE OF ISRAELI OCCUPATION OF EAST JERUSALEM, GAZA AND THE WEST BANK (OPT).....	10
INTERNATIONAL AND SOUTH AFRICAN RECOGNITION OF THE STATE OF PALESTINE AND THE PALESTINIAN AUTHORITY	14
OCCUPATION: ANNEXATION, MILITARY RULE AND BLOCKADE	16
East Jerusalem: occupied and unlawfully annexed.....	16
Two race-based legal systems: Military Rule on the West Bank.....	19
Settlement expansion and land theft	22
Settler violence	25

LAW TO CONSIDER WHEN LABELLING PRODUCTS OF ILLEGAL ISRAELI SETTLEMENTS.....	27
International law applicable to illegal Israeli settlements.....	28
The UN Charter, the DPIL and the 1949 Armistice Line Resolutions.....	29
The principle of equal rights and self-determination and the OPT	31
International humanitarian and criminal law applicable to the OPT	32
SOUTH AFRICAN CONSTITUTION AND LAWS	43
The Constitution	43
Consumer Protection Act (CPA).....	46
Unconscionable trade practices and fraudulent conduct	46
Ethical, responsible, aware and activist consumers	47
Trade descriptions and false labelling	47
Minister empowered to prescribe accurate trade descriptions	48
Facts that must be considered when applying the CPA.....	48
CONCLUDING RECOMMENDATION: WHAT SHOULD THE LABEL SAY?.....	51

INTRODUCTION

1. On the 10 May 2012, Dr. Rob Davies, the Minister of Trade and Industry issued General Notice 379 of 2012 (“the Notice”) in relation to products incorrectly labelled “Product of Israel”. It stated that the Minister intended to issue a further Notice in terms of section 24 of the Consumer Protection Act 68 of 2008 (CPA) to require traders in South Africa not to incorrectly label products that originate from the Occupied Palestinian Territory (OPT) as products of Israel.
2. The Notice states that the onus for proper labelling rests with the traders because “consumers in South Africa should not be misled into believing that products originating from the OPT are products of Israel.” In stating that the “burden of proving where the products originate will lie with the traders”, the Notice correctly requires that those who benefit from the sale of products and possessing the means to verify their origin will be required by law to do so.
3. The position of the United Nations that the internationally recognised borders of the State of Israel “do not include Palestinian Territories occupied after 1967” is the basis for the Notice. The 1949 Armistice Line (also known as the Green Line) between Israel and its neighbours Egypt and Jordan constitutes the border. (The Armistice Line’s origin is discussed below.) South Africa is required under international law to respect this border and to give effect to UN resolutions and the International Court of Justice opinion which requires states to avoid assisting in Israel’s illegal settlement enterprise.
4. Open Shuhada Street’s public call for the Minister to issue such a notice was made in submissions to Parliament; by informing companies (retailer Wellness Warehouse and importer SDV Pharmaceuticals) of the unlawfulness of false labelling; and, through public campaigning (including protests) to oppose false labelling after refusal by the companies to act within the law.

5. Open Shuhada Street then pursued charges against the use of false trade descriptions with the South African Police in terms of section 7 of the Merchandise Marks Act (Act 17 of 1941 as amended) against the above-mentioned companies; after opening a case and referring the matter to the Commercial Crimes Unit, the police have failed to enforce the law. Open Shuhada Street also made a formal complaint against the same companies to the Office of the Consumer Protector of the Western Cape and then submitted the complaint to the National Consumer Commissioner in terms of section 24 of the CPA.
6. A further request was directed to the Minister of Trade and Industry to issue a notice originally in terms of the MMA and later in terms of the CPA by Open Shuhada Street. The Minister and Deputy-Ministers of International Relations were informed of our submissions taking into account that the request for Israel and its companies to comply with South African law may have an impact on diplomatic relations.
7. This submission is made on behalf of the members of Open Shuhada Street and organisations associated with its work.¹

THE CONTENTS OF THIS SUBMISSION

8. The Notice invites “comments from the public” on prohibiting false labelling by Israeli companies. (GN 379 of 2012, page 3)
9. Open Shuhada Street’s submission will address the following issues:
 - 9.1. The standing of Open Shuhada Street;
 - 9.2. What the labels of products made in illegal Israeli settlements in the OPT must read;

¹The submission must be read with our previous submissions to Minister Rob Davies and the National Consumer Commissioner.

- 9.3. The historical origins of the 1949 Armistice Line and violations of international law;
- 9.4. Recognition of the State of Palestine and the Palestinian Authority
- 9.5. The nature of Israel's Occupation of the territories including the illegal annexation of East Jerusalem, its military rule and settlements on the West Bank and the blockade of Gaza;
- 9.6. International law applicable to the OPT;
- 9.7. The South African Constitution and law; and
- 9.8. Concluding recommendation: What should the label say?.

OPEN SHUHADA STREET STANDING

10. Open Shuhada Street is a not-for-profit organisation based in South Africa and working in the public interest. It is a voluntary association of individual members aiming to educate and inform people in South Africa about the Palestinian struggle for freedom; the perspective of human rights and international law; and to initiate and lead campaigns to promote peace, justice and freedom for all people living in the region including Israel.
11. Open Shuhada Street is dedicated to supporting Palestinian and Israeli activists working together through unarmed mass mobilisation to end the 45-year-old Israeli military occupation of the West Bank and the Gaza Strip and associated war crimes and human rights abuses. The organisation also opposes the racial discrimination against Palestinians and other minorities inside Israel and it supports the rights of Palestinian refugees (outside Israel in Arab countries) to a just solution under international law. Open Shuhada Street unequivocally condemns terrorism against civilians including Jewish Israelis by any party but it recognises that Israeli war crimes disproportionately target Palestinian people.

12. As an independent civil society organisation Open Shuhada Street is not affiliated with, nor supported by any political party in South Africa, Israel and the OPT, or elsewhere. Neither is our organisation affiliated with, nor supported by any private company. Open Shuhada Street stands for non-violence, the mutual respect of human rights, freedom and equality of life for all people living in Palestine and Israel.
13. Open Shuhada Street was co-founded on 28 January 2009 in Cape Town by Doron Isaacs, Rahma Mohamed, Rashaad Fortune, Nathan Geffen and other interested individuals. It was originally called South Africans Supporting Human Rights in Israel and Palestine, but subsequently changed to Open Shuhada Street. Currently, the organisation is led by a Management Committee comprising Reverend Alan Storey (Chairperson), Jonathan Dockney (Secretary), Aneez Bhyatt (Treasurer), and Zenande Booi (Legal Committee) with Zackie Achmat, Bruce Baigrie, Shuaib Manjra and Sifiso Zitwana as additional members.
14. Open Shuhada Street works with Palestinian people directly affected by unlawful Israeli settlements in East Jerusalem and the West Bank. In particular, we work with the Popular Struggle Coordination Committee (PSCC) and the Boycott National Committee (BNC) who struggle daily against military rule and Occupation. As a consequence, Open Shuhada Street helped establish the Legal Defense and Solidarity Fund (LDSF) to support the organising, educational and legal defense work of the PSCC.
15. Open Shuhada Street also supports the work of Jewish and Palestinian Israeli dissenters such as high-school leavers who refuse to serve in the armed forces; the Coalition of Women for Peace whose sister organisation -- Who Profits? -- provides detailed analysis of companies operating illegally in the OPT; and Breaking the Silence -- an organisation that consists of current and past members of Israeli armed forces who record human rights violations and war crimes in the OPT. Open Shuhada Street also works with the Israeli organisation Anarchists against the Wall.

16. In South Africa, Open Shuhada Street works with organisations such as Cosatu, Equal Education, Kairos Southern Africa, Lawyers for Human Rights, Social Justice Coalition, Southern African Litigation Centre, BDS South Africa, Palestine Solidarity Forum (UCT) and Wits and University of Johannesburg Palestine Solidarity Committees to achieve its objectives. Internationally Open Shuhada Street works with the Boycott Ahava campaign and Jewish Voices for Peace in the United States to campaign for Palestinian freedom within the framework of international law.
17. This submission is made in the interest of Open Shuhada Street, its members; supporters; and individual consumers in South Africa who exercise their constitutional right to impart and receive accurate information in relation to products of illegal Israeli settlements. We also exercise our democratic right to join government in its international obligation pursue peace by acting on behalf of Palestinian people directly affected by the Occupation and who do not have the means to represent their case against the false labelling of products made illegally on their land and the misappropriation of their natural resources.
18. This submission contains evidence within the knowledge and experience of the Open Shuhada Street Coordination Committee and all legal submissions are made on the advice of our legal advisors.

THE LABEL

19. Open Shuhada Street submits that products from Occupied Palestinian Territory labelled “Made in Israel” must be labelled: **“Made by Illegal Israeli Settlement”**.
20. Products that originate in part from the OPT, and, in part from within the State of Israel must be labelled **“X Made by Illegal Israeli settlement and X Made in Israel”**.

21. Products that originate from legal Palestinian businesses are already labelled “Product of Palestine” and would not be affected by a label indicating origin of product in an illegal settlement.

The reasons for the above submissions are set out below.

THE HISTORICAL ORIGINS OF THE 1949 ARMISTICE LINE

22. Israel’s border with the Occupied Palestinian Territories (OPT) is the internationally recognised 1949 Armistice Line also known as the “Green Line”. South Africa one of the founder members² of the United Nations has historically recognised this border. The origins of the 1949 Armistice Line negotiated between Israel and the Arab states requires a very basic and truncated explanation because it forms the basis of the UN position and this submission.³
23. Armed occupation of Palestine commenced with the British Mandate and its colonial relationship to indigenous Palestinians (Muslims, Christians and Jewish) on the one hand and other, European Jewish colonial settlers who arrived in the late 19th century.
24. The State of Israel finds its historical roots in European anti-Semitic pogroms, legal discrimination and ethnic cleansing until the 1930s. A different reality arose with Hitler’s accession to power. Nazi rule in Germany and its European-wide Holocaust against Jewish people during World War II made the colonisation and Partition of Palestine inevitable.⁴ Central to colonial

²See *Charter of the United Nations and Statute of the International Court of Justice* adopted in San Francisco on 26 June 1945. Prime Minister Jan Smuts represented South Africa at the San Francisco conference. The UN Charter came into effect in October 1945 and most countries in the world including Israel have ratified it (Annexure A)

³In 2008, the United Nations published a history of its relationship to Palestine and Israel titled *The Question of Palestine and the United Nations*. It is a useful history. The report is available at <http://unispal.un.org/UNISPAL.NSF/home.htm> (Annexure B).

⁴ See Tom Segev, *One Palestine, Complete: Jews and Arabs under the British Mandate*, New York: Metropolitan Books (2000) and Benny Morris, *1948: A History of the First Arab-Israeli War*, New Haven: Yale University Press (2008).

settlement of Palestinian land was the World Zionist Organization; its sister organisations the Jewish Agency and Jewish National Fund (JNF).⁵ The Jewish Agency created a quasi-state including an army while the JNF proactively dispossessed Palestinian share-croppers and peasants.

25. The British colonial government declared its intention to leave Palestine in February 1947 because it “appeared no longer capable of properly governing ... and lost the will to continue” because of terrorism by Irgun and the Stern Gang, as well as the armed forces of the Haganah.⁶ The newly established United Nations stepped in and announced Palestine’s partition into two states against the will of the majority of its indigenous people. This step was formalised by the UN General Assembly when 33 out of 56 members states voted for, 13 voted against and 10 abstained when Resolution 181 was adopted on 29 November 1947.⁷
26. Civil war between the colonial settlers and indigenous Palestinians started in earnest during February 1947 and continued until the Israeli Declaration of Independence on 15 May 1948 when war broke out between Israel and the

⁵ The Jewish Agency describes its origins in the following way: “As the de facto government of the state-on-the-way, it was recognized as the official representative of the Jewish community and world Jewry vis a vis the League of Nations, the British Mandate government, and foreign governments. Its major political thrust was to influence the British Mandate administration to interpret liberally the clause in the Churchill White Paper of 1922, which linked Jewish immigration to the “economic absorptive capacity” of the country.” Available at <http://www.jafi.org.il/JewishAgency/English/About/History/>, accessed June 2012 (Annexure C).

⁶See Benny Morris, *1948: A History of the First Arab-Israeli War* (2008) p38: “The British decision of February 1947 was firmed up over the following months by bloody events on the ground, in Palestine, in the Mediterranean, and in Britain itself; Jewish provocations and British reprisals spiraled almost out of control. British efforts to block and punish Jewish terrorism and illegal immigration took on new, bloody dimensions – though, it must be added, British officials and troops by and large displayed restraint and humanity in the face of Jewish excesses.”.

⁷*Future Government of Palestine: Plan of Partition with Economic Union* United Nations General Assembly Resolution 181(II), 29 November 1947, [A/RES/181(II)] (Annexure D).

Arab states. During that period according to Zionist historian Benny Morris 700 000 Palestinians were expelled.⁸

27. The Israeli armies conquered more Palestinian territory than envisaged under the UN partition plan. The 1949 Armistice Line (UN accepted) was negotiated by Israel and four Arab states Egypt, Jordan, Lebanon and Syria. Palestinian citizens of East Jerusalem, Gaza and West Bank were excluded from the negotiations despite the fact that Israel annexed more land and now constituted 78% of Mandate Palestine.
28. The reason for this historical background is to explain the how East Jerusalem, Gaza and West Bank, (Palestinian territories held in mandate by Egypt and Jordan) ended up under Israeli Occupation.

THE NATURE OF ISRAELI OCCUPATION OF EAST JERUSALEM, GAZA AND THE WEST BANK (OPT)

29. On 06 June 1967, Israel attacked her neighbours. The “Six Day War” between Israel, Egypt, Jordan and Syria led (in the main) to the Occupation of East Jerusalem, Gaza and the West Bank (densely populated Palestinian Non-Self-Governing Territory) that would form the basis of self-determination, freedom and equal rights for all Palestinian people. Israel had prepared the war and after a surprise attack by its air-force on Egypt, it moved rapidly to attack the Jordanian and Syrian armies as well. In a decisive land war, Israel conquered and occupied the rest of Mandate Palestine: East Jerusalem,

⁸ Morris op cit note 3 at 81-82 and 407 argues that the Nakba was caused for the most part by the “expulsionist ideology” of both sides. However, the colonial settlers had the organisational, material and diplomatic advantage. Morris writes:

“the Yishuv [settlers] generally enjoyed basic advantages over the Palestine Arabs in the major indexes of strength: “national” organisation and preparation for war, trained military manpower, weaponry, weapons production, economic power, morale and motivation, and, above all, command and control ... Facing off in 1947-48 were two very different societies: one highly motivated, literate, organized, semi-industrial; the other backward, largely illiterate, disorganized, agricultural.”

Gaza and the West Bank. In addition, Israel occupied the Sinai (Egypt) and the Golan Heights (Syria). Only the Sinai has been returned to Egypt.⁹

30. The Security Council responded in September of 1967 by unanimously adopting Resolution 242 (1967). The resolution emphasised that acquisition of territory by war was inadmissible and called for the “withdrawal of Israel armed forces from territories occupied in the recent conflict’ and called for a ‘[t]ermination of all claims or states of belligerency”.¹⁰
31. Since then, despite numerous UN Security Council and General Assembly resolutions demanding withdrawal of its armed forces beyond the 1949 Green Line, Israel has maintained occupation with military rule in the OPT. Public international law governing Israel’s presence in the OPT is not in dispute; the Supreme Court of Israel and the government has acknowledged both the Hague Convention and its Regulations (1907) and the Fourth Geneva Convention as the supreme law in the OPT.
32. In the case of *Mara’abe v. The Prime Minister of Israel*,¹¹ the Israeli Supreme Court explained the source of an Occupying state’s legal powers over territories that come under its control. In that case the Israeli Supreme Court restated its jurisprudence in relation to the West Bank and Gaza in terms of international law. The President of the Court (Chief Justice) Barak held the following:

The Judea and Samaria [West Bank and Gaza] areas are held by the state of Israel in belligerent occupation. The long arm of the state in the *area* is the military commander. He is not the sovereign in the territory held in belligerent occupation... His power is granted him by public international law regarding belligerent occupation.¹²

⁹Tom Segev, *1967: Israel, the War and the Year that Transformed the Middle-East*(2007). Segev is an Israeli historian and his work is the definitive social, diplomatic and military history of Israeli society during that period.

¹⁰United Nations Security Council Resolution 242, 22 November 1967 S/RES 242.

¹¹*Mara’abe v Prime Minister of Israel* 2004 7957 (HCJ), (Annexure E).

¹²*Mara’abe supra* note 11 para 14 (Annexure F).

President Barak explains that this public international law includes the Hague Convention (IV) 1907¹³ and the *IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949* (Fourth Geneva Convention).¹⁴

33. The *Mara'abe* case then goes on to explain the Israeli government's formal legal position in relation to the OPT:

We are aware that the Advisory Opinion of the International Court of Justice determined that *The Fourth Geneva Convention* applies in the Judea and Samaria area, **and that its application is not conditional upon the willingness of the State of Israel to up hold its provisions.** As mentioned, seeing as the government of Israel accepts that the humanitarian aspects of The Fourth Geneva Convention apply in the area, we are not of the opinion that we must take a stand on that issue in the petition before us.¹⁵

Israel's Supreme Court recognises that public international law relating to war and occupation governs the Occupied Palestinian Territories. Furthermore, the Court accepts the government of Israel's declaration that the "humanitarian aspects of The Fourth Geneva Convention apply in the area". The International Court of Justice on the other hand says that the Hague Convention (1907) and the Fourth Geneva Convention apply to the OPT irrespective of Israel's views.

34. Article 1 of the Fourth Geneva Convention requires that civilians under Occupation must be treated humanely without any arbitrary distinction; and, it specifically prohibits "at any time or any place whatsoever": violence to their lives or person; murder; cruel treatment and torture; violations of human dignity particularly humiliating and degrading treatment.¹⁶ Occupation, military

¹³ Hague Convention (IV) Respecting the Law and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land (18 October 1907) (Annexure G).

¹⁴ Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949) (Annexure H).

¹⁵ *Mara'abe* supra note 11 para 14.

¹⁶ Article 1 of the Fourth Geneva Convention op cit note 11 reads as follows:

rule, annexation and blockade by Israel deny Palestinians in East Jerusalem, Gaza and the West Bank among others the rights to dignity, equality, justice, access to livelihoods, freedom of movement and worship recognised in the Geneva Convention and the Universal Declaration of Human Rights. These violations are made on the basis of Palestinian nationality, ethnicity and religion. Illegal settlers enjoy freedom and all universal rights as well as the permanent protection of Israeli armed forces.

35. Article 49 (6) of the Fourth Geneva Convention furthermore specifically prohibits the “Occupying Power” from transferring “parts of its own civilian population into the territory it occupies.”¹⁷ Israeli settlement colonies are therefore illegal and their unlawful status is internationally accepted.
36. Article 53 of the Fourth Geneva Convention prohibits an Occupying Power from destroying any “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...” except when made “absolutely necessary by military operations”.¹⁸ The destruction and expropriation of Palestinian homes; agricultural lands; water resources; and all other forms of property by Israeli armed forces and settlers is undertaken with the sanction and encouragement of the State of Israel.

Persons taking no active part in the hostilities... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

...

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences...without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

¹⁷ Article 49, Fourth Geneva Convention op cit note 11.

¹⁸ Article 53, Fourth Geneva Convention op cit note 11.

37. South Africa is not only party to the Fourth Geneva Convention but much of it has been codified in domestic law through the **Implementation of the Rome Statute Act (Act 27 of 2002)**.¹⁹ The Schedules relating to “crimes against humanity” and “war crimes” are of particular relevance because they include the transfer of part of the Occupying Power’s population into occupied territory.
38. The nature of Israel’s occupation: the annexing of East Jerusalem; the military blockade of Gaza; and, military rule in most of the West Bank flagrantly violates international law. South Africa is under obligation to fulfil its international law duties in relation to the OPT.
39. Consumers in South Africa have the right and (we would argue) the duty to know the origin of products from illegal settlements because of Israel’s violations of international and domestic law. The war crimes and crimes against humanity by the State of Israel in the Occupied Palestinian Territories include discrimination based on ethnicity, religion and nationality; transfer of Israeli citizens into colonies known internationally as illegal settlements; violence to life and person by settlers with Israeli armed forces complicity; outrages on personal dignity by both settlers and the armed forces; the destruction and seizure of property and other natural resources.

INTERNATIONAL AND SOUTH AFRICAN RECOGNITION OF THE STATE OF PALESTINE AND THE PALESTINIAN AUTHORITY

40. In November 1988, the Palestinian Liberation Organisation (PLO) was recognised by the United Nations General Assembly as the sole representative of the Palestinian people. The PLO then declared unilateral independence on the basis of all United Nations resolutions relating to Palestine and Israel since 1947. This effectively meant formal recognition of the state of Israel by the PLO on the basis of the 1949 Armistice Line.

¹⁹Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 (Annexure I).

41. East Jerusalem, Gaza and West Bank would constitute the territorial basis on which the people of Palestine would exercise self-determination based on the relevant UN resolutions. In February 1989, the PLO informed the Security Council that it had been recognised by 94 member states of the United Nations. By January 2012 around 130 member states of the United Nation recognised the State of Palestine. President Nelson Mandela's government formally recognised the State of Palestine on 15 February 1995 and South Africa has since established an Embassy in Ramallah.²⁰
42. The United States, France, Germany and Britain are blocking the UN membership of the State of Palestine through their veto power at the Security Council.
43. However, since the 1992 Oslo Accords, the Palestinian Authority (PA) enjoys universal recognition (including the US and European governments) as the lawful civilian and internal security authority of 20% of the West Bank and all of Gaza. The Israeli armed forces remain the "lawful authority" of more than 75% of the West Bank through military rule and Occupation. As stated previously, there is universal recognition that the Armistice Line of 1949 constitutes the territory of a future Palestinian State.

²⁰On its website, the Department of International Relations and Co-operation sets out the government's position on recognition of Palestine (Annexure J):

"The establishment of full diplomatic relations with **the State of Palestine was announced on 15 February 1995**. The first South African Representative to the Palestinian National Authority took up office in August 1995. A satellite office was established in Gaza City during June 1998. The first Palestinian Ambassador to South Africa was accredited in April 1995.

The formalisation of diplomatic relations gave expression to strong and long-standing ties of friendship and mutual support between the peoples of South Africa and Palestine.

South Africa's Minister of Foreign Affairs, Mr Alfred B. Nzo paid an official visit to Palestine in September 1995 and signed an agreement on the establishment of a Joint Commission of Co-operation."

OCCUPATION: ANNEXATION, MILITARY RULE AND BLOCKADE

44. In the Palestinian Territory, Israeli Occupation is built on a complex matrix of controls based on laws, rules and regulations, permits, discretionary powers of military commanders and their relation to the Palestinian Authority (PA). Israel has full military control of more than 75% of the West Bank; it has annexed East Jerusalem and it has held Gaza under siege. This section of the submission analyses the different forms of Occupation.

East Jerusalem: occupied and unlawfully annexed

45. From 1967 onwards, Israel took a number of measures in the occupied territory aimed at changing the status of the City of Jerusalem. In 1971 the Security Council reiterated the inadmissibility of the acquisition of territory by conquest and adopted resolution 289 (1971) stating in extremely clear terms that:

all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status.

46. On the 30th July 1980 Israel adopted the Basic Law making Jerusalem the “complete and united” capital of Israel. In response to this the UN Security Council adopted Resolution 478 (August 1980), which stated that the enactment of the Basic Law constituted a violation of international law

47. The resolution went further and stated that all legislative and administrative measures taken by Israel as **'the occupying Power'**, which have altered or purport to alter the character and status of Jerusalem are null and void.

48. By April 2012, according to the United Nations “200,000 Israeli settlers reside in settlements established in occupied East Jerusalem, which has

been unlawfully annexed to Israel; 35% of the annexed areas were expropriated and allocated to settlements”.²¹

49. Palestinians living in East Jerusalem (although equally taxed) are not allowed to vote in Knesset elections; they are denied the right to build homes and equal access to basic municipal services enjoyed by Jewish Israeli settlers²²; they face forced removals, house demolitions²³, regular raids, repression, detention, imprisonment²⁴; and, even deportation also known as revocation of residency²⁵. Settlers are allowed to occupy their properties. The Israeli state refuses Palestinian people the right to build sufficient schools and classrooms for their children.²⁶ Social security and health insurance are used as tools to remove Palestinian people from East Jerusalem.²⁷ Israel’s

²¹ United Nations Office for the Coordination of Humanitarian Affairs (occupied Palestinian territory) ‘Fact Sheets’, available at <http://www.ochaopt.org/reports.aspx?id=103> accessed July 2012. See also B’tselem *East Jerusalem background* <http://www.btselem.org/jerusalem> (Annexure K).

²² B’tselem reported in 2011 that despite court cases since 2000 to remedy the situation Palestinian people in East Jerusalem struggle in dire conditions with a lack of social services: “East Jerusalem residents are required to pay taxes like all city residents. However, they do not receive the same services. The Jerusalem Municipality has continuously failed to invest significantly for infrastructure and services (such as roads, sidewalks, water and sewage systems) in Jerusalem’s Palestinian neighborhoods. Since the annexation of Jerusalem, the Municipality has built almost no new school, public building, or medical clinic for Palestinians. The lion’s share of investment has been dedicated to the city’s Jewish areas. Less than 10 percent of the Municipality’s development budget for 1999 was allocated for Palestinian neighborhoods, although the population there represents a third of the city’s residents.

http://www.btselem.org/jerusalem/infrastructure_and_services” *Neglect of infrastructure and services in Palestinian*

Neighbourhoods http://www.btselem.org/jerusalem/infrastructure_and_services (Annexure M)

²³ *Planning and Building: Statistics on Demolition of Houses Built without*

Permits http://www.btselem.org/planning_and_building/east_jerusalem_statistics (Annexure O)

²⁴ The arrests of children, raids on Palestinian homes, assaults on residents, settler violence, repression of activists through detention and imprisonment has been extensively documented by the UN B’tselem, ImTirzu, Yesh Din and other organisations including the Popular Committees in East Jerusalem and the Popular Struggle Coordination Committee.

²⁵ *Statistics Revocation of Residency* http://www.btselem.org/jerusalem/revocation_statistics I (Annexure P).

²⁶ The Association for Civil Rights in Israel (ACRI) reports that “[l]ess than half of the Palestinian students in Jerusalem – 42,000 students – study in the official public schools, and 4,387 students are not registered in any school.” Several cases have been taken to the Israeli Supreme Court over the last decade to ensure access to education for Palestinian children in East Jerusalem. *A New School Year: Education in East Jerusalem*. <http://www.acri.org.il/en/2011/09/26/a-new-school-year-education-in-east-jerusalem/> (Annexure Q)

²⁷ *Revocation of Social Rights and Health*

Insurance http://www.btselem.org/jerusalem/social_security (Annexure R)

separation barrier has intensified the dispossession, discrimination, inequality and repression faced by Palestinian people in East Jerusalem.²⁸

50. Access to places of worship is restricted with the consequence that Palestinian all worshippers from Gaza and many from the West Bank are denied the right to worship at Holy Sites in East Jerusalem.²⁹ Freedom of religion and belief are fundamental human rights guaranteed through customary international law.
51. The rights to family life including family-reunification and freedom to worship are also similarly guaranteed under international law. The splitting-up of Palestinian families who live in Jerusalem from most of their families in other parts of the West Bank and Gaza constitute grave breaches of the rights to human dignity, privacy and freedom.³⁰
52. In addition, the annexation of East Jerusalem has a serious impact on the livelihoods of Palestinian people and their rights to own property, conduct business and trade freely. On 21 March 2012, the World Bank issued a report on Palestinian economic prospects and found:

East Jerusalem has historically been the center of the West Bank economy and society, its separation also has debilitating economic and social effects. Nor is the situation [since 2010] improving: in 2011, there was a 20% increase in construction starts in Israeli settlements in the West Bank, and the highest number in a decade of plans in East Jerusalem.³¹

²⁸ See B'tselem *The Separation Barrier* http://www.btselem.org/separation_barrier/jerusalem (Annexure S)

²⁹ See OCHAoPt *Protection of Civilians Weekly Report* (25 to 31 July 2012) <http://www.ochaopt.org/default.aspx> (Annexure T)

³⁰ See B'tselem *Family Unification and Child Registration in East Jerusalem* http://www.btselem.org/family_separation/east_jerusalem (Annexure U)

³¹ World Bank Economic Monitoring Report to the Ad Hoc Liaison Committee, 'Stagnation or Revival: Palestinian Economic Prospects' available at <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WorldBankAHLCreportMarch2012.pdf> accessed July 2012 (Annexure V).

Israel's bans on the free movement people and goods between East Jerusalem, Gaza and the West Bank together with the expansion of settlements constitute a violation of international law. In addition to the direct human rights violations, the growth of illegal Israeli settlement manufacturing production and trade in Greater Jerusalem harms Palestinian right to self-determination and right to trade. Under South African and international law, consumers have the right to receive accurate information as to the origin of a product and those made by illegal settlements in East Jerusalem must reflect their origin. In characteristic understatement, the World Bank argues the social and economic separation of East Jerusalem from Gaza (which is blockaded) and the West Bank (which suffers under military rule) is "debilitating". Military occupation and military rule in the West Bank is much harsher.

Two race-based legal systems: Military Rule on the West Bank

53. As recognised by the Israeli Supreme Court for more than 75% of the West Bank, the "long arm of the state *in the area* is the military commander".³² In practice, this means that all executive, legislative and judicial powers are vested in the military commander who is obliged to follow public international law. The reality is different. A report issued in April 2012 by **Defence for Children International-Palestine Section** stated the following:

Acting on this authority, over the past 44 [45] years, successive Israeli military commanders in the West Bank have issued nearly 1,700 orders. Contrary to basic democratic principles, the local Palestinian population has no say whatsoever in how this legislative, executive or judicial authority is exercised.³³

³² *Mara'abesupra* note 8 para14-15.

³³ Defence for Children International- Palestine Section (DCI- Palestine) 'Bound, Blindfolded and Convicted: Children Held in Military Detention' available at http://www.dci-palestine.org/sites/default/files/report_0.pdf, accessed July 2012 (Annexure W).

These military orders have led to house demolitions, land confiscation, protecting settlers, setting up check-points, conducting door-to-door searches and a permanent presence of Israeli armed forces in the day-to-day lives of Palestinians. Military orders are often only published in Hebrew and not Arabic, itself illegal under international law. By contrast, the largely armed, illegal Israeli settlers by contrast do not only enjoy the protection of the state, but are also governed by Israeli civil and criminal law not military law.

54. In June 2012, a group of eminent British lawyers issued a report on military law and children on the West Bank on behalf of the **Foreign and Commonwealth Office of the United Kingdom**. *Children in Military Custody* points out in their report that two parallel legal systems based on race and nationality exist on the West Bank.

55. In their report the Foreign and Commonwealth Office delegation reaffirmed the British government and international community position that the Israeli settlements are illegal. Their report *Children in Military Custody* (CMC 2012) finds the following:

[i]n consequence of the establishment of Israeli settlements, the population of the West Bank is governed by two separate systems of law. Those who possess Israeli citizenship – that is, in practice, the population of the settlements – are subject to Israeli law. Those who do not – that is, for practical purposes, the Palestinian population – are subject to Israeli military law as well as Palestinian law.³⁴

56. The CMC June 2012 Report concludes that: “under international law no state is entitled to discriminate between those over whom it exercises penal

³⁴The United Kingdom Foreign & Commonwealth Office ‘Children in Military Custody June 2012’ available at http://www.childreninmilitarycustody.org/wp-content/uploads/2012/03/Children_in_Military_Custody_Full_Report.pdf, accessed July 2012 (Annexure X).

jurisdiction on the basis of their race or nationality. Unequal or differential justice is not justice.”³⁵

57. One of the world’s most eminent international lawyers, Professor John Dugard was asked to report to the UN Human Rights Council on the situation in the Occupied Territories. He found that among other human rights violations, more than 700 000 Palestinian children, men and women have been incarcerated under this system of unequal military justice since 1967.³⁶
58. The most egregious form of unequal military justice affects children in the OPT. Over the past 11 years, about 7500 children have been arrested, detained, interrogated, tried and imprisoned by military police, military prosecutors and military judges. The vast majority of the children are detained for stone-throwing or attending “illegal” gatherings.³⁷
59. The illegal settlements have led to increased repression by Israeli armed forces against Palestinians. The unlawful race or nationality based legal system is not only used for repression but also for the illegal appropriation of private and public Palestinian land and property in the Occupied Territories.

³⁵Ibid at 6.

³⁶ John Dugard ‘Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967’ (A/HRC/7/17 21 January 2008) <http://www.unhcr.org/refworld/pdfid/47baaa262.pdf>, accessed July 2012 (Annexure Y).

³⁷ The DCI-Palestine op cit note 12 states: “the majority of children are detained in the middle of the night in what are typically described as terrifying raids conducted by the army. Most children have their hands painfully tied behind their backs and are blindfolded, before being taken away to an unknown location for interrogation. The arrest and transfer process is often accompanied by verbal abuse and humiliation, threats as well as physical violence. Hours later the children find themselves in an interrogation room, alone, sleep deprived, bruised and scared. Unlike Israeli children living in settlements in the West Bank, Palestinian children are not accompanied by a parent and are generally interrogated without the benefit of legal advice, or being informed of their right to silence.”

Settlement expansion and land theft

60. The Israeli military occupies and controls more than 75% of the West Bank.³⁸ Illegal settlements are built on about 43% of all Palestinian land on the West Bank. This is land confiscated in terms of military orders and transferred to settlers in violation of the Fourth Geneva Convention. In January 2012, UN OCHA found that there were about 500 000 settlers living on the West Bank and also in East Jerusalem. 150 illegal settlements were established by the Israeli government and a further 121 outposts created by armed militant settlers. These “outposts” are subsidised by the Israeli state and protected by its armed forces.

61. The clearest statement on the nature of “the settlement enterprise” has come from within Israel and is described as follows:

[T]he settlement enterprise has been characterised, since its inception, by an instrumental, cynical, and even criminal approach to international law, local legislation, Israeli military orders, and Israeli law, which has enabled the continuous pilfering of land from Palestinians in the West Bank.

These are the conclusions of the respected Israeli human rights organisation **B’tselem** in its July 2010 report on illegal settlements. Labelling goods produced in whole or part in these illegal settlements as “Product of Israel” is a part of what B’tselem refers to as an “instrumental, cynical, and even criminal approach to international law”. The example of the Jordan Valley settlements illustrates why Open Shuhada Street and our allies insist that goods made in illegal settlements cannot be labelled legally “Product of Israel”. Settlement expansion has also

³⁸ Occupied Palestinian Territory in the West Bank is divided into three areas known as: Area A (18% land mass including Ramallah and Al-Khalil/Hebron mainly towns); Area B (constitutes about 22% of the West Bank mainly villages and farms with Israeli settlements); and, Area C (60% of the West Bank land mass including the Jordan Valley). The Palestinian Authority has full civilian administrative and internal policing over Area A. The Israeli Armed forces control security in Area B while the PA has civilian administrative control. Israeli armed forces have full administrative and military control over Area C the most fertile areas.

meant increased production and trade based on the illegal appropriation of Palestinian natural resources.

Illegal appropriation of Palestinian natural resources by illegal settlements

62. The Jordan Valley constitutes 30% of the Occupied West Bank land mass; it is located in Area C which is under the full control of the Israeli armed forces. The region is rich in water and fertile agricultural land. Palestinian ownership and control of land in the Jordan Valley has been restricted to about 6% while Israeli settlement authorities have been granted 86% of the land through confiscation by the Israeli armed forces and other methods devised by the Israeli state.³⁹

63. The World Bank (21 March 2012) argues that: “Israeli restrictions remain the biggest constraint facing Palestinian private sector growth”.⁴⁰ It found with particular reference to the Jordan Valley that:

...as land is a common means of storing wealth and a powerful economic asset, providing a foundation for economic activity in sectors as varied as agriculture, industry, housing and tourism, the lack of control over Area C has profound detrimental effects on the Palestinian economy. The present situation also severely handicaps Palestinian economic activity in the Jordan Valley, as most of the Jordan Valley is Area C [total Israeli military rule], thereby **denying Palestinians a potential power-house of export oriented high value-added agriculture**.⁴¹ (Emphasis added)

The World Bank’s critical comments nevertheless obscure the harsh realities faced by Palestinian people particularly in the Jordan Valley. Israeli settlements export significant agricultural produce including fruit, vegetables,

³⁹ The most important recent reports on the Jordan Valley include: B’tselem ‘Dispossession and Exploitation: Israel’s Policy in the Jordan Valley and Northern Dead Sea’ available at http://www.btselem.org/sites/default/files2/201105_dispossession_and_exploitation_eng.pdf, accessed June 2012 (Annexure Z) and Oxfam GB’s Briefing Paper, ‘On the Brink: Israeli Settlements and their Impact on Palestinians in the Jordan Valley’ available at http://www.oxfam.org/sites/www.oxfam.org/files/bp160-jordan-valley-settlements-050712-en_1.pdf, accessed June 2012 (Annexure AA).

⁴⁰ World Bank op cit note 19.

⁴¹ Ibid at 19.

herbs and flowers from the Jordan Valley including more than 50% of world production of Medjoul dates. Dates exported from the Jordan Valley are worth millions of US\$ to illegal Israeli settlements.⁴² These are all labelled “Product of Israel”.

64. Central to economic development including agricultural production and trade and a dignified life is access to water resources. The Jordan Valley contains most of the Occupied West Bank’s water resources.⁴³ Indigenous Palestinian people are increasingly denied access to the water on their land. In August 1967, a military order prohibited any access to water without permission from Israeli Authorities.⁴⁴ B’tselem’s report “Dispossession and Exploitation: Israel’s Policy in the Jordan Valley and Northern Dead Sea” (May 2011) demonstrates the disparity of water consumption between illegal settlements and indigenous Palestinian people:

The per capita allocation, for household use only, in the Ro’i settlement, in the northern Jordan Valley, was 431 liters, and in the nearby Beka’ot settlement, 406 liters. These settlements were established next to the Bedouin community al-Hadidya. In the Bedouin community, which is not connected to regular water supply, despite its proximity to a major pumping facility of Mekorot (Beka’ot 2), per capita water consumption was less than 5 percent of this figure, only 20 liters.

⁴² According to the reputable Israeli website **Who Profits? The Israeli Occupation Industry**: “Dates export from Israel to the European and North American markets has grown by 16% in 2011. 40% of the dates grown in Israel in 2011 were exported with a profit of 265 million USD to the export companies. Most of the date groves in Israel are located along the Great Rift Valley in the occupied part of the Jordan Valley and Dead Sea area. The settlements of the Jordan Valley produce 60% of the dates in Israel and 40% of the exported dates. Israel manufactures over 50% of the worlds’ Medjool dates, 51% of which are grown in the occupied Jordan Valley.” See *Who Profits? The Israeli Occupation Industry* “Made in Israel”: Agricultural Export from Occupied Territories’ available at http://whoprofits.org/sites/default/files/agricultural_export_flash_report_0.pdf accessed June 2012 (Annexure BB).

⁴³ B’Tselem op cit note 27 at 19: It contains aboveground water from the Jordan River Basin, floodwaters, and waters flowing into the Jordan River from West Bank streams and underground water from the eastern section of the Mountain Aquifer, the most important and highest quality water reservoir of Israel and the Palestinians.

⁴⁴ Order Regarding Powers Involving Water Laws (No. 92), 5727 – 1967, issued on 15 August 1967. See also B’tselem op cit note 27 at 19 (Annexure CC).

The per capita water allocation in the Niran settlement, located north of Jericho, was 433 liters, while in the nearby Palestinian village al-A'uja it was less than one-fifth that amount, 82 liters.

The per capita water allocation in the Argaman settlement, in the central Jordan Valley, was 411 liters, while in the adjacent Palestinian village a-Zubeidat it was less than one-fifth that amount, 82 liters.⁴⁵

The establishment of the settlements and their illegal appropriation of Palestinian water resources are not only grave breaches of international law - they also perpetuate a legalised system of racial and economic inequality. Restrictions on the movement of goods and people including checkpoints and settler only roads are major obstacles to Palestinian livelihoods and economic development and trade

65. According to **Oxfam's Briefing Paper**, *On the Brink: Israeli Settlements and their Impact on Palestinians in the Jordan Valley*,⁴⁶ the area "...has the potential to be the breadbasket of any future Palestinian state. However, the persistent expansion of Israeli settlements and other restrictions on Palestinian development have made life extremely difficult for Palestinian communities."⁴⁷ The Oxfam Briefing Paper argues that unless international action is taken against Israel's settlements and their unlawful exploitation of Palestinian resources, "...the prospects for the future establishment of a viable Palestinian state, living side by side with Israel in peace and security, look dangerously remote."⁴⁸ This statement is borne out by the nature of settler violence against Palestinian people.

Settler violence

66. Israel argues that the Occupation is necessary for its security. The UN states that settler-related violence against Palestinians in the West Bank

⁴⁵B'Tselem op cit note 27 at 25.

⁴⁶Oxfam op cit note 27.

⁴⁷Ibid at 1.

⁴⁸Ibid.

includes “physical assault; harassment; takeover of and damage to private property; obstructed access to grazing and agricultural land; and attacks on livestock and agricultural land.”⁴⁹ Three Palestinians were killed by settlers in 2011 while a further 183 people were injured by settlers also responsible for 293 attacks on private Palestinian property.⁵⁰

67. Israeli civilians have perpetrated various forms of violence against Palestinians in the OPT, damaging their lands, their persons and their property. These are acts of violence aimed at the Palestinian population and Israeli security forces. These acts of violence often follow actions by the Israeli authorities that are perceived as harming the settlement enterprise, or they follow Palestinian violence against the settlers.⁵¹ The non-governmental organisation B'Tselem recorded acts of violence that include the blocking of roads, throwing stones at cars and houses, making incursions into Palestinian villages and land, torching fields and mosques, uprooting olive trees, and other damage to property.⁵²

68. Security forces do not always deploy in advance to protect Palestinians from settler violence, even when such violence can be anticipated. In some cases rather than restricting the violent settlers the Israeli security forces place restrictions on the Palestinians.⁵³ B'Tselem recorded a number of incidents of settler violence in December 2011. In one recorded incident settlers entered and attacked a Palestinian village near Nablus, however,

⁴⁹United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory ‘Israeli Settler Violence in the West Bank- November 2011’ available at http://www.ochaopt.org/documents/ocha_opt_settler_violence_FactSheet_October_2011_english.pdf, accessed June 2012 (Annexure DD).

⁵⁰Ibid.

⁵¹B'Tselem ‘Violence by settlers’ available at http://www.btselem.org/settler_violence, accessed June 2012 (Annexure EE).

⁵²B'Tselem ‘Settler Violence against Palestinians and Palestinian property, December 2011’ available at http://www.btselem.org/settler_violence/20111229_settler_violence_in_dec_2012, accessed June 2012 (Annexure FF).

⁵³Ibid.

when Israeli soldiers arrived they instead took action against the village residents by firing stun guns at them.⁵⁴

69. As the occupying power, Israel is obligated to maintain public order and protect the safety of Palestinian residents. The Supreme Court in Israel has ruled on the security forces' duty to protect the security and property of the local residents.⁵⁵ B'Tselem reports that the increase in the incidence of violence can be largely attributed to Israel's long standing policy of not enforcing the law on settlers and other Israelis who harm Palestinians and Palestinian property. In many cases the victims of these acts of violence do not report the incidents because they have lost confidence in Israel's criminal-justice system.⁵⁶ There are also reports that security forces present at the scene of settler violence often do not intervene to stop the violence. They even sometimes play an active part in the violence.⁵⁷

LAW TO CONSIDER WHEN LABELLING PRODUCTS OF ILLEGAL ISRAELI SETTLEMENTS

70. Open Shuhada Street request that Minister Rob Davies consider the following submissions when issuing a Notice for the accurate labelling of goods emanating from illegal Israeli settlements in Occupied Palestinian Territory:

- 70.1. International law applicable to illegal Israeli settlements;
- 70.2. South African Constitution and laws;

Reading the international and domestic laws applicable to labelling goods emanating from illegal Israeli settlements in OPT separately and independently of each other; and, as a single system of law equally leads to

⁵⁴Ibid.

⁵⁵*Murar et al v IDF Commander for Judea and Samaria et al* 2004 9593(HCJ)and B'Tselem op cit note 39 (Annexure GG).

⁵⁶B'Tselem op cit note 40.

⁵⁷Ibid.

the same conclusion: Israeli companies are labelling settlement products unlawfully.

International law applicable to illegal Israeli settlements

71. The United Nations, United Nations Charter (UN Charter) and the organs under which Palestine was partitioned (with the intention of establishing *two states*) and its relevant legal instruments govern the relationship of the State of Israel to the OPT.
72. The UN Charter sets out its fundamental purposes and principles in the context of maintaining international rule of law and collective security through effective “measures for the prevention and removal of threats to peace”.⁵⁸ The founding purpose and principles of the UN requires the promotion and attainment of the “equal rights and self-determination of peoples” based on “fundamental freedoms for all without distinction”. Article 2(2) requires all UN member states “to fulfil in good faith the obligations assumed by them in accordance with the ...Charter”.
73. Every state is obliged to respect the self-determination and equal rights of peoples while respecting individual human rights and fundamental freedoms. The UN Charter regards these purposes and principles as central to the achievement of peace and collective security. Israel as a member state must

⁵⁸ See UN Charter Chapter 1 – Purposes and Principles:

(1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

(2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

(3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;

promote and fulfil these duties and obligations under international law towards the Palestinian people and its neighbours.⁵⁹

74. In October 1970, the UN General Assembly adopted the “*Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States*” (DPIL)⁶⁰ as an elaboration of its founding charter. Open Shuhada Street submits that the DPIL must be considered by the Ministry of Trade and Industry to ensure the accurate labelling of goods emanating from illegal Israeli settlements in Occupied Palestinian Territory for the following reasons:

74.1. Settlements violate the 1949 Armistice Line and the DPIL directly address the role of UN members in relation to armistice lines;

74.2. The principles of self-determination and equal rights of people as elaborated in the DPIL; and

74.3. The duties of member states in relation to violations of the UN Charter, international law and the DPIL.

The UN Charter, the DPIL and the 1949 Armistice Line Resolutions

75. In terms of the DPIL, every state has “the duty to refrain from the threat or the use of force to violate international lines of demarcation, such as armistice lines, **established by or pursuant to an international agreement to which it is a party** or which it is otherwise bound to respect”. (Emphasis added)

76. On 16 November 1948 after the defeat of the Arab armies that had declared war on Israel and invaded Palestine/Israel, the UN Security Council adopted a binding Resolution 62 “to eliminate the threat to peace in

⁵⁹*The Question of Palestine and the United Nations*. It is a useful history. The report is available at <http://unispal.un.org/UNISPAL.NSF/home.htm>

⁶⁰General Assembly resolution 2625 (XXV) of 24 October 1970 (Annexure HH).

Palestine”.⁶¹ Resolution 62 specifically demanded that the parties negotiate directly or indirectly to bring about an immediate armistice that would include:

- (a) The delineation of permanent armistice lines beyond which the armed forces of the respective parties shall not move;
- (b) Such withdrawal and reduction of their armed forces as will ensure the maintenance of the armistice during **the transition to permanent peace in Palestine**. (Emphasis added)

The Security Council passed this resolution in terms of Articles 39 and 40 of the UN Charter and negotiations between Israel and the Arab states of Egypt, Jordan, Lebanon and Syria commenced. Israel’s negotiations with Egypt and Jordan directly affected East Jerusalem, Gaza and the West Bank.

77. On 24 February 1949, Israel concluded the Armistice Agreement with Egypt,⁶² followed on 03 April 1949 by its agreement with Jordan⁶³ and with Syria on 20 July 1949⁶⁴. These Armistice Agreements are substantially the same and they establish what the UN and international community accept in law as the borders of Israel with the Occupied Palestinian Territory. In its 1967 war against its neighbours Israel violated the 1949 Armistice Line through its Occupation of East Jerusalem, Gaza, the West Bank.

78. The Occupation has led to annexation, blockade and military rule. In the West Bank military rule and force is used to promote, establish and sustain Israeli settlements. The threat and use of military force and settler violence to expropriate Palestinian land, violates the DPIL. The DPIL states that: **“No territorial acquisition resulting from the threat or use of force shall be recognized as legal”**.

⁶¹United Nations [Security Council](#) Resolution 62, 16 November 1948[S/1080] (Annexure II).

⁶² Israeli-Egypt Armistice Agreement, February 24, 1949 available at http://avalon.law.yale.edu/20th_century/arm01.asp, accessed June 2012 (Annexure JJ).

⁶³ Israeli-Jordan Armistice Agreement, April 3, 1949 available at http://avalon.law.yale.edu/20th_century/arm03.asp, accessed June 2012 (Annexure KK).

⁶⁴ Israeli-Syrian Armistice Agreement, July 20, 1949 available at http://avalon.law.yale.edu/20th_century/arm04.asp

79. The UN Security Council has since 14 July 1967 been seized with the Occupation and the annexation of East Jerusalem. In its resolution 298 (25 September 1971), the Security Council restated the position that Israel's "acquisition of territory of by military conquest is inadmissible". It confirmed:

...in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations, and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status⁶⁵.

80. Israel's illegal settlements and their economic enterprises; its unlawful expropriations; deportations and forced removals in the Palestinian Territories including East Jerusalem continue to violate and defy international law including the "principle of equal rights and self-determination" as set out in the DPIL and other UN resolutions.

The principle of equal rights and self-determination and the OPT

81. The DPIL not only sets out the principles governing international law but it creates the legal obligation on states to separately and jointly take action to uphold the UN Charter and the principle of equal rights and self-determination. According to the DPIL:

Every state has the duty to promote, through **joint and separate action**, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter...

... bearing in mind that subjection of peoples to alien subjugation, domination **and exploitation** constitutes a violation of the principle and, as well as a denial of human rights, and is contrary to the Charter.

It continues:

⁶⁵United Nations Security Council Resolution 298, 25September 1971 S/RES 298(Annexure MM)

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from that of the State administering it; and such separate and distinct status under the Charter shall exist until the people of a colony or Non-Self-Governing Territory have exercised their right to self-determination in accordance with the Charter, and particularly, its purposes and principles.

South Africa has a duty under the UN Charter to take joint and separate action to oppose Israel's subjugation, domination and exploitation of the Palestinian people, their land and natural resources. This action must promote the right of the Palestinian people to self-determination and equal rights.

82. Allowing companies to falsely label goods made in illegal Israeli settlements on OPT means that UN Member States, in this case South Africa, acquiesce in the illegal acquisition of territory by force and the exploitation of its resources in violation of international rule of law. Requiring companies that operate in illegal Israeli settlements to correctly label their products as such is a small step consonant with the UN Charter and all the resolutions on Palestine and Israel adopted by that body and its agencies.

International humanitarian and criminal law applicable to the OPT

83. International humanitarian law demands that all occupation is temporary. The occupying power is only given temporary powers to administer the territory, its people, assets and resources. Any occupying power acts only as a trustee acting on behalf of the lawful sovereign or the people. There are only two considerations an occupying power may take account in the administration of the territory: the welfare of the local population, and, its own legitimate security interests.⁶⁶ Israel's occupation of the OPT has lasted almost half-a-century with grave consequences and legal scholars

⁶⁶ *Case concerning armed activities on the territory of the Congo (Democratic Republic of the Congo v Uganda)*, International Court of Justice (ICJ) 19 December 2005 available at <http://www.icj-cij.org/docket/files/116/10455.pdf>, accessed June 2012 at 168(Annexure NN).

increasingly suggest that not only its actions and war crimes are unlawful but the Occupation itself violates international law.

84. The international legal instruments governing the Israeli occupation of Palestinian territory include the Hague Convention, the Fourth Geneva Convention and its protocols, and, the Rome Statute of the International Criminal Court. Under Article 49(6) of the **Fourth Geneva Convention**, it is illegal for an occupying state to “transfer parts of its own civilian population onto the territory it occupies” (the same prohibition is also set out in Article 8(2)(b)(viii) of the **Rome Statute of the International Criminal Court**).
85. As previously discussed, the destruction of “any 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...” except when made “absolutely necessary by military operations” is also prohibited under Article 53 of the Fourth Geneva Convention. Similarly, the International Court of Justice has interpreted article 43 of the Hague Regulations as requiring the protection of people and property during occupation to ensure that looting, plundering and exploitation of natural resources is prevented. In the *Case Concerning Armed Activities on the Territory of the Congo, Democratic Republic of the Congo v Uganda*,⁶⁷ the ICJ stated that such actions are a violation of the Hague Regulations and it covers both private individuals and the armed forces of an occupying power.⁶⁸
86. The State of Israel has used military force to destroy homes, wells, olive groves and other property to allow for settlement expansion. Apart from the “formal” settlements established by the Israeli government, there are more than 100 “illegal” outposts (settlements that exist without government permission) among others they include Gush Etzion (a major illegal economic hub) and Al-Khalil/Hebron established in 1967. These so-called outposts receive armed forces protection; state subsidies; water; electricity; schools

⁶⁷*Congo v Uganda supra* note51.

⁶⁸*Ibid.*

and other services from the State of Israel. They also have irregular forces based on armed settlers.

87. Armed settlers have on countless occasions attacked killed and injured Palestinian people. On fewer occasions, armed attacks by Palestinians against Israeli settlers have led to injuries and deaths. The settlements are not only a war crime by the fact of their existence in occupied territory – they have also increased violence and terror mainly against the Palestinian people. Israel used security and the protection of settlements as its rationale for the apartheid wall. International, Palestinian and progressive Israeli opinion maintained that the wall was an excuse for annexation to settlements.
88. As far back as 1980, the UN Security Council⁶⁹ called on all states not to assist in connection with settlements in Occupied Palestinian Territory. The resolution draws specific attention to Israel's formal policy and practices of settlement expansion. The Security Council's insistence on "the need to consider **measures for the impartial protection of private and public land and property, and water resources**" has direct implications for all states.
89. Therefore, the resolution requires, at the very least, that **all** States refrain from assisting in private and public land dispossession for Israeli settlement including agricultural enterprises and expropriation of Palestinian water and other resources. Security Council Resolution 465 (1980) stated the international legal position on which its conclusions are based clearly and therefore it is cited extensively:

Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's

⁶⁹United Nations Security Council Resolution 465, 1 March 1980, S/RES/465 On the **powers of the Security Council** UN Charter states the following in Article 24 (1): "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council **primary responsibility for the maintenance of international peace and security**, and agree that in carrying out this responsibility the Security Council Acts on their behalf (Annexure RR).

policy and practices of settling parts of its population and new immigrants in those territories **constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War** and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

Strongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel **to rescind those measures, to dismantle the existing settlements** and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;

Calls upon **all States not to provide Israel with any assistance** to be used **specifically in connexion with settlements in the occupied territories**;

Tragically for the Palestinian people, the United States, France, Germany and Britain while agreeing in principle with the Security Council have used or threaten to use their veto against stronger condemnation and action to achieve “a comprehensive, just and lasting peace”. However, the UN Charter and Resolution 465 (1980) requires States to take action jointly and separately to achieve a dismantling of all settlements and to ensure Israel’s compliance with international law.

90. Therefore, the South African government correctly intervened and made a submission on the legality of the so-called security barrier or Separation Wall to the International Court of Justice which stated:

It is [South Africa’s] contention that the construction of the separation wall is illegal, and regardless under which pretext it is being constructed, the practical consequence of the existing and planned Separation Wall is that it is being constructed on Palestinian Occupied Territory, including in and around East Jerusalem. This action, which is clearly illegal in terms of international law, represents the de facto annexation of parts of that

territory. This must be viewed as one of the most serious consequences of the construction of the Separation Wall.⁷⁰

South Africa's intervention in that matter signalled its willingness to uphold UN resolutions in international forums and it is equally obliged to do so in domestic law.

91. The International Court of Justice's (ICJ) finding Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,⁷¹ substantially reiterated the duty of all States party to the Fourth Geneva Convention to ensure Israel's compliance with international law. In its analysis, the Court rejected the argument that the status of the Occupation is a question for Israel and the Palestinian people to decide because of the nature of what Israel called "disputed" territories. The ICJ held that:

The Court would observe that, under customary international law as reflected ... in Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (hereinafter "the Hague Regulations of 1907"), territory is considered occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised.

The territories situated between the Green Line ... and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967

⁷⁰ Written Statement by the South African Government in response to the ICJ's call for submissions regarding the Advisory Opinion on the Separation Wall, 30 January 2004. Available at <http://www.icj-cij.org/docket/files/131/1597.pdf> accessed June 2012 (Annexure OO). See further Justice Richard Goldstone 'Report on Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact Finding Mission on the Gaza Conflict' UN Doc. A/HRC/12/48, 15 September 2009 (Goldstone Report) at para 268 – 310 available at http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/unffmrc_report.pdf, accessed June 2012. This document deals extensively with the relevant international humanitarian and criminal law obligations (Annexure PP).

⁷¹ *Legal consequences of the construction of a wall in the occupied Palestinian territory*, International Court of Justice (ICJ), 9 July 2004, available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&code=mwp&case=131&k=5a&p3=0> accessed June 2012 (Annexure QQ).

during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories ... have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.⁷²

The ICJ's decision places the Occupation and the status of the OPT beyond question and asserts the primacy of international law as the basis for settlement.

92. The Court further held that the settlements are in breach of international law. It held the following:

The Court notes that the route of the wall as fixed by the Israeli Government ...some 80 per cent of the settlers living in the Occupied Palestinian Territory. Moreover, ... the wall's sinuous route has been traced in such a way as to include within that area the great majority of the Israeli settlements in the occupied Palestinian Territory (including East Jerusalem).

As regards these settlements, the Court notes that Article 49, paragraph 6, of the Fourth Geneva Convention provides: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." That provision prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory.

In this respect, the information provided to the Court shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6, just cited.

⁷²Ibid paragraph 78

The Security Council has thus taken the view that such policy and practices “have no legal validity”. It has also called upon “Israel, as the occupying Power, to abide scrupulously” by the Fourth Geneva Convention and:

“to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories” (resolution 446 (1979) of 22 March 1979).

The Council reaffirmed its position in resolutions 452 (1979) of 20 July 1979 and 465 (1980) of 1 March 1980. Indeed, in the latter case it described “Israel’s policy and practices of settling parts of its population and new immigrants in [the occupied] territories” as a “flagrant violation” of the Fourth Geneva Convention.

The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.⁷³

The ICJ as the highest international court law has placed beyond doubt any notion that Israel has any claim to the OPT including East Jerusalem and based on its interpretation of international law held that Israeli settlements are illegal.

93. In that opinion, the ICJ found that the route of the wall (inside Palestinian territory as opposed to the Green Line) is illegal both in terms of international humanitarian law (which applies in situations of armed conflict and belligerent occupation) and international human rights law (aimed at protecting the individual in times of both war and peace). The ICJ accordingly held that:

⁷³Ibid.

All States are under an obligation **not to recognize the illegal situation** resulting from the construction of the wall and **not to render aid or assistance** in maintaining the situation created by such construction; **all States parties to the Fourth Geneva Convention** relative to the Protection of Civilian Persons in Time of War of 12 August 1949 **have in addition the obligation**, while respecting the United Nations Charter and international law, **to ensure compliance by Israel with international humanitarian law** as embodied in that Convention.

94. In the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* case, the ICJ's opinion in that matter, as well as South Africa's submissions, suggest that every country has a duty not to acquiesce in perpetuating unlawful actions that arise out of annexation and illegal Israeli settlements. One such illegal action is the fraudulent labelling of products that emanate from illegal Israeli settlements in occupied Palestinian Territory and purporting to be "Products of Israel". Allowing such fraudulence would be tantamount to recognising the fruits of war crimes and other violations of international law. The ICJ's ruling holds that all States party to the Fourth Geneva Convention including South Africa have "the obligation...to ensure compliance by Israel with international humanitarian law as embodied in that Convention."⁷⁴

95. In a case relating to goods from an illegal settlement in the West Bank, the European Court of Justice (the highest court in Europe) has set a cautious but ground-breaking precedent in *Brita GmbH v Hauptzollamt Hamburg-Hafen (Brita)*.⁷⁵ Brita, a registered German company wanted to benefit from a preferential bilateral treaty between Israel and the European Commission that would reduce its customs duties significantly.

96. In 2002, Brita imported goods including machinery, accessories and syrups to produce sparkling water and drinks from "Israel". These goods are all produced by an Israeli supplier, Soda-Club Ltd, at a manufacturing site in an

⁷⁴Ibid.

⁷⁵C-386/08 (Annexure SS).

illegal settlement at Mishor Adumin in the West Bank, to the east of Jerusalem. According to the ECJ:

During the first six months of 2002, Brita applied for some imported goods to be released for free circulation, filing more than 60 customs declarations in total. **It stated that the country of origin for those goods was 'Israel'** and sought the application of the preferential tariff provided for under the EC-Israel Association Agreement on the basis of invoice declarations made out by the supplier confirming that the products concerned originated in Israel.

97. After investigation, the German customs authorities declined to provide a preferential tariff and the German company sued. In the European Court of Justice, a number of questions had to be determined including the meaning of the territory of the State of Israel and the status of the West Bank, Gaza, East Jerusalem and the Golan Heights. It also had to decide whether an importing country (Germany) is obliged to accept without question the customs declaration of the exporting country (Israel) stating that the product originated in Israel.

98. On the 25th February 2010, the ECJ unanimously held that:

The customs authorities of the importing Member State may refuse to grant the preferential treatment provided for under the EC-Israel Association Agreement where the goods concerned originate in the West Bank.

For the purposes of the procedure laid down ... [in the trade agreement] ... between the European Communities and their Member States, ... and the State of Israel, ... the customs authorities of the importing State are not bound by the proof of origin submitted or by the reply given by the customs authorities of the exporting State where that reply does not

contain sufficient information...to enable the real origin of the products to be determined.⁷⁶

99. The implications of the ***Brita case*** operate at two levels: first, the ECJ makes it clear that goods emanating from Occupied Palestinian territories cannot claim origin in Israel and that Member States of the European Union have a right to exclude products that originate in the West Bank from preferential treatment. It further holds that a customs declaration by Israel is not sufficient to determine whether or not the product originated in that country. A customs declaration must enable the importing country to determine “the real origin of the products”.

100. In conclusion, the body of customary international law, international conventions such as the Hague and Fourth Geneva Conventions; the United Nations Charter; UN General Assembly and Security Council Resolutions; Armistice Agreements; the Rome Statute set out above define South Africa’s international obligations. Israel’s illegal settlements violate international law as set out above. South Africa and all countries have an obligation to take reasonable measures to end the occupation and Israel’s unlawful actions.

101. Minister Rob Davies, and the Department of Trade and Industry, is required by the Constitution⁷⁷ to consider South Africa’s international obligations in relation to Israel and the OPT when making a decision in terms of the Notice under the CPA.

102. In Chapter 14 under “General Provisions”, the Constitution sets out the following obligations in terms of international law and customary international law and provides for reasonable interpretation of international law:

International agreements

Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of

⁷⁶Ibid.

⁷⁷Constitution of the Republic of South Africa, 1996.

an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.⁷⁸

The Republic is bound by international agreements which were binding on this Republic when this Constitution took effect.⁷⁹

Customary international law

Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.⁸⁰

Application of international law

When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative that is inconsistent with international law.⁸¹

General Notice 379 of 2012 (“the Notice”) in relation to products incorrectly labelled “Product of Israel” stated that the Minister intended to issue a further Notice in terms of section 24 of the Consumer Protection Act 68 of 2008 (CPA) to require traders, not to incorrectly label products that originate from the Occupied Palestinian Territory (OPT) as products of Israel. This further Notice must take account of international law including international agreements; customary international law such as the jurisprudence based on Hague Regulations (1907) and the jurisprudence relating to the Fourth Geneva Convention.

103. In the *Glenister* case⁸², a majority of the Constitutional Court again set out the relationship between international obligations and laws that affect rights in the Bill of Rights. Deputy Chief Justice Moseneke and Justice Cameron wrote:

⁷⁸The Constitution, section 231(4).

⁷⁹The Constitution, section 231(5).

⁸⁰The Constitution section 232.

⁸¹The Constitution, section 233.

⁸²*Glenister v President of South Africa and others* 2011 (3) SA 347 (CC).

And it is here where the courts obligation to consider international law when interpreting the Bill of Rights is of pivotal importance. Section 39(1)(b) states that when interpreting the Bill of Rights a court “must consider international law”. The impact of this provision in the present case is clear, and direct. What reasonable measures does our Constitution require the state to take in order to protect and fulfil the rights in the Bill of Rights? That question must be answered in part by considering international law.

This submission now turns to the South African Constitution and laws and how it gives effect to international obligations including the rights of consumers in South Africa to make informed choices based on accurate information.

SOUTH AFRICAN CONSTITUTION AND LAWS

104. Open Shuhada Street submits that South Africa’s obligations to ensure accurate labelling of illegal Israeli settlement products are not only determined in international law but also domestically. This includes the Constitution, the Consumer Protection Act (CPA)⁸³, the domestic Rome Statute and relevant jurisprudence. South African laws must also be interpreted with regard to international law and may consider case law from other jurisdictions.

The Constitution

105. The Constitution holds that the principles governing national security “**must reflect the resolve of South Africans, as individuals and as a nation, to live in peace and harmony**”⁸⁴ and that this resolve “must be pursued in compliance with the law, including international law”⁸⁵.

106. The meaning of individual resolve to live in peace and harmony must be read in the context of achieving national and international peace. Section 198(b) makes this explicit because it “precludes any South African citizen

⁸³Act 68 of 2008.

⁸⁴The Constitution, section 198(a).

⁸⁵The Constitution section 198(c).

from participating in armed conflict nationally or **internationally**, except as provided for in terms of the Constitution or national legislation.”

107. Open Shuhada Street submits that a constitutional imperative exists for individuals and the state to contribute to achieving peace and harmony through opposing armed conflict and upholding national as well as international law.

108. The individual resolve to live in peace and harmony requires access to accurate information and knowledge. The Bill of Rights in our Constitution gives effect to this right to receive and access information:

everyone has the right to freedom of expression which include- the freedom **to receive or impart information** or ideas;⁸⁶

and

the right of access to-

any information that is held by... another person and that is required for the exercise or protection of any rights.⁸⁷

South African courts must interpret these rights to receive and access information by promoting values that underlie an open and democratic society based on human dignity equality and freedom.⁸⁸ Courts must consider rights in terms of international law and may consider case law from other jurisdictions.

109. A full bench of the Supreme Court of Appeal recently considered the right and freedom to receive or impart commercial information in the *British American Tobacco South Africa (PTY) Limited v the Minister of Health*⁸⁹ case. The Court’s Deputy President Mthiyane writing for a unanimous court held the following at paragraph 13:

⁸⁶The Constitution 16(1)(b) emphasis added

⁸⁷The Constitution section 32(1)(b)

⁸⁸The Constitution section 39(1)

⁸⁹[2012] ZASCA 107.

It is clear that under s16(1)(b) of the Constitution the appellant is entitled to the right to freedom of expression, which includes the 'freedom to receive or impart ideas' ... It is an indispensable element of a free and democratic society. It was stated by O'Regan J.:

'Recognising the role of freedom of expression in asserting the moral autonomy of individuals demonstrates the close links between freedom of expression and other constitutional rights such as human dignity, privacy and freedom. Underlying all these constitutional rights is the constitutional celebration of the possibility of morally autonomous **human beings independently able to form opinions and act on them.**' (Emphasis in Mthiyane DP's judgment)

Advertising allows the manufacturer, importer and other trader to impart information concerning its product. It also enables the consumer to receive such information and make consequent informed choices. ... **Freedom of commercial expression thus entails not only the right to impart information but also the right to receive it.** (Emphasis added and footnotes omitted)⁹⁰

Open Shuhada Street submits that consumers in South Africa have the right to receive accurate commercial information in terms of section 16(1)(b) of the Constitution. Further, we submit that manufacturers, importers, retailers and other traders have a duty to provide access to accurate information about their products in terms of section 32(1)(b) so that consumers may make an informed choice.

110. Access to accurate commercial information in Justice O'Regan's words will allow consumers in South Africa to "independently form opinions and act on them". Open Shuhada Street claims nothing less than the right of consumers of illegal settlement products labelled fraudulently to form independent opinions and to act on them. The state is under an obligation to

⁹⁰BATSA *supra* note 71 para 13.

provide a legal framework to exercise this right and that legal framework is the CPA.

Consumer Protection Act (CPA)

111. The CPA sets out the legal framework for Open Shuhada Street's submission that people in South Africa should have improved access to quality information "necessary so that consumers are able to make informed choices according to their individual wishes and needs"⁹¹. The CPA's purpose to create a legal framework for access to quality consumer information gives effect (in the commercial sphere) to the constitutional rights to receive information⁹² and to access information held by another person.⁹³

Unconscionable trade practices and fraudulent conduct

112. The CPA's stated aims include the protection of consumers from "unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices" and "deceptive, misleading, unfair or fraudulent conduct".⁹⁴

113. Open Shuhada Street submits that the intention of Minister Davies "to require traders in South Africa, not to incorrectly label products that originate from Occupied Palestinian Territory (OPT) as products of Israel" protects consumers from the fraudulent claims of companies in illegal settlements. Consumers have the right to act according to their conscience; consumers also have the right to know that illegal Israeli settlement create economic enterprises that unlawfully, unjustly and unreasonably expropriate property and natural resources exclusion of Palestinian people.

⁹¹ The CPA's preamble substantially restates South Africa's commitment to the **United Nations Guidelines for Consumer Protection (1999)** and gives legal effect to it. See Articles 2 and 3 that require governments to enact laws to meet legitimate needs of consumers including "Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs." The Guidelines are available at <http://www.un.org/esa/sustdev/sdissues/consumption/cpp1225.htm> (Annexure TT)

⁹² The Constitution section 16(1)(b).

⁹³ The Constitution section 32(1)(b).

⁹⁴ Sections 3(1)(d)(i) and (ii)

114. Consumers should be able to distinguish products from Israel (as demarcated by the 1949 Armistice Line) and those from companies that engage in “deceptive, misleading, unfair and fraudulent conduct” by mislabelling the products of their illegal enterprise in the OPT.

Ethical, responsible, aware and activist consumers

115. The CPA also aims to improve “consumer awareness and information and encouraging responsible and informed consumer choice and behaviour” as well as “promoting consumer confidence, empowerment, and the development of a culture of consumer responsibility, through individual and group education, vigilance, advocacy and activism.”⁹⁵

116. The Notice Minister Davies intends to issue requiring accurate labelling of products from illegal Israeli settlements will allow increased consumer awareness; individual and group consumer “education, vigilance, advocacy and activism”.

Trade descriptions and false labelling

117. The CPA requires that a person “must not knowingly apply to any goods a trade description that is likely to mislead the consumer as to any matter applied or expressed in that trade description.”⁹⁶ Under the law, a retailer is prohibited from supplying or displaying goods “if the retailer knows”; “reasonably could determine”; or, “has reason to suspect” that “a trade description applied to the goods is likely to mislead the consumer as to any matter implied or expressed in the trade description”.⁹⁷

118. A “trade description” is defined in section 1 of the CPA as “any description, statement or other direct or indirect indication, other than a trademark, as to, ... among other things, the place or country of origin of any goods.”

⁹⁵Sections 3(1)(e) and (f).

⁹⁶Section 24 (2)(a).

⁹⁷Sections 24(2)(a) and (3)(a)(i).

119. South Africa recognises both the states of Palestine and Israel, it also regards the Israeli settlements in the OPT as illegal. The DTI would fail in its international and domestic legal obligations if it continued to allow Israel and Israeli companies operating in settlements to “knowingly apply a trade description that is likely to mislead the consumer” as to the “the place or country of origin of any goods”. Companies and consumers in South Africa have a right to know when goods are made in Palestine, Israel or in illegal Israeli settlements” in the OPT.

Minister empowered to prescribe accurate trade descriptions

120. The Minister of Trade and Industry is empowered under section 24(4) of the CPA “to prescribe categories of goods that are required to have a trade description applied to them”. In this regard, the Minister can by regulation require all goods that emanate from illegal Israeli settlements (and supplied to consumers in South Africa) to be appropriately labelled as such.⁹⁸

121. The Minister may prescribe the rules to be applied when “determining the country of origin of any goods or components of goods” according to relevant international agreements.⁹⁹ The Minister is empowered by this provision to require all importers, retailers, suppliers and service providers of goods or components of goods that emanate from illegal Israeli settlements to carry the burden of ensuring that they are correctly labelled.

Facts that must be considered when applying the CPA

122. In summary, the following non-exhaustive list of facts relating to Israeli Occupation are beyond dispute and must be considered in the light of the law:

⁹⁸Regulations that prescribe “trade descriptions” must be issued by the Minister in accordance with the relevant parts of section 120 of the CPA. Before making such a regulation, the Minister **must** publish the proposed regulation in the Government Gazette for public comment; he **must** consult with the National Consumer Commission and relevant provincial regulatory authorities; and he **may** consult with accredited consumer groups. The final regulation is then published in the Government Gazette.

⁹⁹CPA section 24(4)(b).

- 122.1. The State of Israel was created by UN partition with the aim of establishing two democratic states based on freedom and equality – one with a Jewish majority and the other with a Palestinian Arab majority;¹⁰⁰
- 122.2. Following a civil war in Mandate Palestine and war between Israel and the Arab countries in 1948, an inviolable Armistice Line (Green Line) was established by agreements between Israel and the Arab states of Egypt, Lebanon, Syria and Jordan in 1949;¹⁰¹
- 122.3. These Armistice Agreements must be read with UN Security Resolution 62 of 16 November 1948 which obliged the parties to establish **“permanent armistice demarcation lines”** in order to ensure **“the transition to permanent peace in Palestine”**;¹⁰²
- 122.4. In 1967, Israel declared war against its Arab neighbours, Egypt, Jordan and Syria and through this war occupied Palestinian territory: East Jerusalem, Gaza and West Bank;¹⁰³
- 122.5. Israel established military rule in the OPT and transferred parts of its population into settlements since then;¹⁰⁴
- 122.6. The transfer of Israelis into settlements in Occupied Palestinian territory was based on land, water and other resource confiscation by

¹⁰⁰United Nations General Assembly Resolution 181 (II), 1947.

¹⁰¹United Nations Security Council Resolution 72, February 23, 1949. [S/1264]; United Nations Security Council Resolution 72, March 23, 1949. [S/1296] (Annexure UU); United Nations Security Council Resolution 72, April 3. [S/1302] (Annexure VV); United Nations Security Council Resolution 72, July 20, 1949. [S/1353] (Annexure WW).

¹⁰²United Nations Security Council Resolution 62, November 16, 1948. [S/1080]

¹⁰³Tom Segev op cit note 6.

¹⁰⁴B'Tselem 'Israeli Settlements in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects' available at: http://www.btselem.org/sites/default/files2/israeli_settlement_in_the_occupied_territories_as_a_violation_of_human_rights_legal_and_conseptual_aspects.pdf, accessed June 2012 (Annexure XX).

military orders, forced removals and housing demolitions based on force and the threat of force;¹⁰⁵

122.7. Since resolution 2253 (4th July 1967), the UN General Assembly has held that Israel's attempt to change the status of East Jerusalem is invalid;¹⁰⁶

122.8. The UN and a range of reputable international, Palestinian and Israeli sources state that there are more than 400 000 illegal settlers in Occupied Palestinian territory;¹⁰⁷

122.9. The World Bank, Oxfam, UN OCHA and B'tselem among others have established that Israeli settlements and their economic enterprises such as that in the Jordan Valley where Palestinians are confined to only 6% of their own land with the rest under settler and military occupation strangle economic development of the OPT.¹⁰⁸ A range of falsely labelled products emerge from these settlements and are sold in South Africa;¹⁰⁹

122.10. The UK Foreign and Commonwealth Office delegation of eminent lawyers have recently reiterated the two race- or nationality-based legal systems has led to systematic repression, expropriation and oppression of indigenous Palestinians while protecting and encouraging illegal settlements;¹¹⁰

122.11. Recognising the separate status of Occupied Palestinian Territory the Israeli Supreme Court has on numerous occasions found that military

¹⁰⁵B'Tselem op cit note 27; Israeli committee Against House Demolitions report 'House Demolitions between 1967-2010' available at: http://www.icahd.org/?page_id=5508, accessed July 2012 (Annexure YY)

¹⁰⁶United Nations General Assembly Resolution, July 4, 1967, [A/RES/2253].

¹⁰⁷United Nations Office for the Coordination of Humanitarian Affairs (occupied Palestinian territory) 'SettlerViolenceagainstChildren' available at: http://www.ochaopt.org/documents/opt_prot_dfci_settler_violence_children_nov_2008.pdf, accessed (Annexure ZZ)

¹⁰⁸The World Bank 'PalestinianEconomic Prospects: Aid, Access and Reform' available at <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCSept15.08.pdf>, accessed July 2012; The World Bank op cit note 19 (Annexure AAA).

¹⁰⁹ See previous submissions by Open Shuhada Street to the National Consumer Commission.

¹¹⁰The United Kingdom Foreign & Commonwealth Office op cit note 22.

commanders exceeded their powers when seizing land on the West Bank to build what is known as the “security barrier” or “apartheid wall”.¹¹¹ The International Court of Justice has held that the construction of the wall constitutes the annexation of Palestinian land;¹¹² and

122.12. Since 2007, Israel has established an illegal blockade against Gaza leading to war against its people, systematic repression, economic strangulation and exploitation of its natural resources.¹¹³

123. The law and facts above establish that Israeli settlements in OPT are illegal and constitutes a war crime. Grave human rights violations occur as a consequence of the illegal settlements under Israeli Occupation. East Jerusalem, West Bank and Gaza constitute Israeli territory, they form the territorial basis for the exercise of self-determination and equal rights by the Palestinian people.

CONCLUDING RECOMMENDATION: WHAT SHOULD THE LABEL SAY?

124. Section 24(4)(c) of the CPA empowers the Minister to prescribe “the information that is required to be included in any trade description”. In the light of all the submissions above on international law including customary international law; the UN resolutions on the illegality of Israeli settlements; facts that are beyond dispute; the South African Constitution and its Bill of Rights such a **trade description must be accurate and allow consumer choice based on the rights to know and receive information.**

¹¹¹ *Beit Sourik Village Council v. The Government of Israel* 2004 ISR 2056 (HCJ); *Mara'abe supra* note 8.

¹¹² *Legal consequences of the construction of a wall in the occupied Palestinian territory supra* note 56 (Annexure BBB).

¹¹³ United Nations Office for the Coordination of Humanitarian Affairs (occupied Palestinian territory): ‘The World’s Largest Prison Camp: A report on access to Gaza’ available at: http://www.ochaopt.org/documents/opt_prot_caabu_gaza_worlds_largest_prison_nov_2010.pdf, accessed July 2012 (Annexure CCC).

125. Open Shuhada Street submits that goods from Occupied Palestinian Territory labelled “Made in Israel” must be labelled: **“Made by Illegal Israeli Settlement”**.
126. Goods with components that originate in part from the OPT, and, in part from within the State of Israel or elsewhere must be labelled **“X Made by Illegal Israeli settlement and X Made in Israel or elsewhere”**.
127. The label **“Made in Israel”** may only be applied to goods that originate in whole from within Israel’s borders based on the 1949 Armistice Agreements.
128. Products that originate from legal Palestinian businesses are already labelled “Product of Palestine” and would not be affected by a label indicating origin of product in an illegal settlement.
129. Open Shuhada Street members and supporters; members of the broader public in South Africa and companies wishing to promote legal and ethical standards of consumption submit that it is a moral, legal and constitutional imperative to provide accurate information about illegal settlement products from Occupied Palestinian Territory.
130. The intended Notice will assist South Africa in fulfilling its international obligations towards the Palestinian people and allow people of conscience in our country to express solidarity on the basis of international and domestic law. Such a Notice will be a small step to reflect our resolve to live free in peace and harmony as global citizens.

Submitted by Open Shuhada Street

Endorsed by:

- **Boycott, Divestment and Sanctions (South Africa)**
- **Congress of South African Trade Unions**
- **Equal Education**

- **Kairos Southern Africa**
- **Lawyers for Human Rights**
- **Rhodes University Palestine Solidarity Forum**
- **section27**
- **Social Justice Coalition**
- **Southern African Litigation Centre**
- **Treatment Action Campaign**
- **University of Johannesburg Palestine Solidarity Forum**
- **University of Witwatersrand Palestine Solidarity Campaign**
- **University of Cape Town Palestine Solidarity Forum**

OPEN SHUHADA STREET PETITION ON FALSE LABELLING

Every day, people around the world buy products that are mislabelled as 'Made in Israel' when in fact they have been made illegally in the OPT. The OPT are illegal by international law. By mislabelling products, Israeli companies are taking away people's right to know and to make informed choices.

By issuing this notice, the South African government has taken a stand against Israel's illegal occupation of Palestinian territories and Israel's appalling and daily human rights abuses against Palestinians, which has not gone unnoticed and already countries in Europe such as Denmark and Switzerland are following South Africa's example. Israel and South Africa are party to international trade agreements that require accurate product labelling, which includes their place of origin. South Africa only recognises the State of Israel within the borders that were demarcated by the United Nations in 1948. These do not include the Palestinian territories occupied after the 1967 war.

South Africa has stood up for consumer choice and Palestinian rights by issuing a notice requiring that Israel stop mislabeling products made in the Occupied Palestinian Territories (OPT) as 'Made in Israel'.

The notice will allow people to choose for themselves whether they wish to provide economic support to the illegal occupation of Palestine and the settlements, which are a major obstacle to finding a peaceful and equitable solution between Israel and Palestine.

Israel and South Africa are party to international trade agreements that require accurate product labelling. South Africa only recognises the State of Israel within the Green Line (1949 Armistice Agreements). Therefore, labels should read: "Made in an Illegal Israeli Settlement". However, the Minister is facing a backlash from occupation supporters in South Africa. A 60-day comment period has begun before the notice will become law.

By signing this petition of support, you can help us reach 10 000 signatures, after which we will hand it over to the Minister in support of consumer freedom of choice and the rights of Palestinians. Please share via the Avaaz Facebook, email and Twitter links below. Open Shuhada Street (for more info: www.openshuhadastreet.org) is a South African based initiative to raise awareness about the lack of freedom of movement in Hebron and injustice towards Palestinians.

TOTAL SIGNED THROUGH AVAAZ.ORG AND HARD COPY = 7504

