
INTERNATIONAL LAW AND RECONSTRUCTION IN SYRIA: A CAUTIONARY NOTE FOR BUSINESSES

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ABSTRACT

Businesses interested in participating in reconstruction activity, specifically in Syria, and conducting wider business in the country more generally, may risk liability for complicity in Syria's war crimes and crimes against humanity, amongst other legal risks.

In addition to the Syrian government, many of Syria's elite businessmen have participated in war crimes directly or indirectly. Foreign businesses engaging in business with the Syrian government or Syria's elite businessmen may become liable for their international crimes or rights violations committed. This is because businesses have a number of legal obligations under international law, which can be, and have already been, enforced in international tribunals or domestic courts.

There are a number of business activities that businesses can take part in that may result in criminal liability for complicity in war crimes or rights violations. Businesses that provide financial support, services, goods, information or even encouragement to someone who engaged in war crimes may be complicit in those crimes. Additionally, businesses may face liability for hiring security services that engage in the conflict or contribute to rights violations. Considering the large amount of corruption that has been documented among Syrian businessmen, businesses may face liability for participating in corrupt business activities. Businesses may even incur liability for a failure to act at all if they were in a position to mitigate the crime. Depending on the economic or political power a business has, a failure to influence a crime may result in criminal complicity.

Businesses that agree to reconstruct Syria, before or during the commission of war crimes such as chemical weapons use, torture, forced displacement, indiscriminate and targeted attacks on civilians, or siege warfare, may be held liable for complicity in those crimes. Businesses may also be held liable for complicity in pillage if they purchase or rebuild properties acquired through illegal means, such as government expropriation of civilian property.

It is therefore of paramount importance that businesses interested in Syria have a strong understanding of both the legal and economical scene, in order for them to assess and mitigate legal consequences.

This report explains all the above issues in detail drawing on hundreds of resources and conclusions by international and domestic courts. It also presents a list of recommendations for businesses, states, international actors, and Syrian civil society organizations that may be involved in Syria's reconstruction.

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INTERNATIONAL LAW AND RECONSTRUCTION IN SYRIA: A CAUTIONARY TALE FOR BUSINESSES

Introduction

1. Although the conflict in Syria continues, the Syrian government and many government actors, international donors, and multinational corporations have already begun pursuing plans for rebuilding the country.¹ While many international actors, such as the European Union and the United States have opposed participation in Syria's reconstruction until an 'inclusive and genuine'² or 'serious and comprehensive'³ political transition is achieved, businesses and business actors in those states remain interested in participating in the reconstruction process. This is particularly true for businesses and business actors in states neighbouring Syria which hope to profit from the reconstruction process in Syria. However, business actors risk incurring liability in relation to the numerous human rights violations and international crimes (i.e. war crimes and crimes against humanity) that have taken place in Syria, or continue to take place, by participating in Syria's reconstruction.
2. For purposes of this report, 'businesses' refers to multinational corporations and any other corporations that may operate internationally or in states other than their home state. 'Business actors' refers to those involved in business or financial transactions. This may include business directors and officers, investors, governmental and non-governmental international donors, and economic or financial state representatives.
3. This report will survey the legal liabilities business actors may face under international criminal law ('ICL'), international humanitarian law ('IHL'), and international human rights law ('IHRL'). This report will then go through the international crimes committed during the armed conflict in Syria and outline the potential legal liabilities that business actors may face regarding these crimes while contributing to the reconstruction of Syria. The report will end with a list of recommendations for a number of stakeholders, including businesses interested in participating in the reconstruction of Syria to avoid being complicit in the numerous international crimes occurring in Syria.
4. Given that the reconstruction narrative is currently focused on rebuilding Syria at the behest of the Syrian government, this report has focused its analysis on those areas controlled by the government.
5. Where relevant, this report draws on conclusions by international and domestic courts. Although the legal authorities cited in this report draw on relevant cases where

¹ Paul Cochrane, *After the War: Who's Going to Pay for Syria's Reconstruction?*, Middle East Eye (12 Nov. 2017), available at <http://www.middleeasteye.net/essays/after-war-who-is-going-pay-syria-reconstruction-russia-iran-assad-china-871238355>.

² European Council: Council of the European Union, *Syria: Declaration by the High Representative Federica Mogherini on Behalf of the EU*, available at <http://www.consilium.europa.eu/en/press/press-releases/2018/03/15/syria-declaration-by-the-high-representative-federica-mogherini-on-behalf-of-the-eu/>.

³ Ibrahim Hamidi, *UN: Syria Reconstruction Must Depend on Political Transition*, Arab News (8 Feb. 2018), available at <http://www.arabnews.com/node/1241601/middle-east>.

businesses were held to account as recent as last year, many cases date back to the Nuremberg tribunals after World War II and other international courts that were established later. It is important to note that such cases remain persuasive legal authority.

Setting the Scene

This section will explain why businesses interested in reconstruction in Syria may risk liability for international crimes or rights violations in Syria. Not only do they face liabilities under international law, but business activity in Syria also creates many other risks for businesses.

International Law and Business Activity: Overview

6. International law has evolved over time to account for the increasingly global nature of business activity. With the expansion of global markets and the increased presence of business actors in the international scene, international law has adapted to ensure that businesses operating internationally abide by IHRL norms.⁴ Various international guidelines and commentaries have emerged demonstrating the social and human rights impact of businesses as well as the responsibilities they bear to the communities they impact. Moreover, many international treaties place duties on states to protect their citizens from abuses by third-party actors, including businesses.⁵ This creates a duty on states to regulate business activity to ensure accountability for violations of human rights.⁶
7. Businesses also bear responsibilities under ICL and IHL. Business actors have been held criminally liable for business activities that violate international law, either through international criminal tribunals or through domestic courts. These businesses have been held to account as principal perpetrators, but also for aiding and abetting or being complicit in a crime committed by other actors in international and domestic courts.
8. In a war zone such as Syria, where all the aforementioned legal regimes apply to varying degrees, businesses face a real risk of being held to account. In fact, a few cases against businesses have already taken place in the Syrian context.⁷
9. Although businesses are often concerned about violating sanctions regimes, and thus they focus on this particular international law framework rather than those mentioned above, sanctions do not necessarily have an impact on whether or not a business violates other international laws mentioned above. A business can abide by various states' sanctions regimes and still violate international law. Conversely, businesses can violate

⁴ Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, A/HRC/4/035, paras 2-4 (9 Feb. 2007), available at <https://www.business-humanrights.org/sites/default/files/media/bhr/files/SRSG-report-Human-Rights-Council-19-Feb-2007.pdf>.

⁵ *Id.*, paras 37-44.

⁶ *Id.* paras 35-39.

⁷ DW, *France's Lafarge Cement charged with crimes against humanity in Syria conflict* (28 June 2018), available at <https://www.dw.com/en/frances-lafarge-cement-charged-with-crimes-against-humanity-in-syria-conflict/a-44447288>.

sanctions regimes and still not have violated international law, as sanctions are not always justified on the basis of human rights violations or war crimes. Moreover, sanctions may not be a sufficient deterrent to conducting business with war criminals in Syria.⁸ While many of the largest war criminals in Syria have been sanctioned by western governments, many of those businessmen are getting around sanctions by creating front companies or heading companies with more discreet front men who may hide the company's connection to the sanctioned individual.⁹ Finally, sanctions may not be sufficient to prevent business relationships with the many of Syria's new business elites who have taken advantage of the war economy, as many of them have not been targeted for sanctioning yet.¹⁰

10. Accordingly, the next section will discuss in detail the legal responsibilities of businesses under IHRL, ICL and IHL.

Legal Liabilities on Businesses Under Different International Law Frameworks

Under International Human Rights Law

11. The IHRL framework provides a set of non-binding legal principles and guidelines, (or 'soft' laws) that are intended to regulate business activity.¹¹ The most influential of these are the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.¹² These guidelines are intended to create practical steps businesses can take to incorporate core IHRL documents such as the UDHR, ICCPR and ICESCR into their practice.¹³ For example, the UN Guiding Principles advise businesses to create comprehensive human rights policies, and conduct regular human rights impact assessments.¹⁴
12. Although businesses cannot be held directly accountable in a strict legal sense for their violations of human rights under international law, they can nonetheless be held accountable for violations of domestic human rights laws in their home country, or the states they operate in.¹⁵
13. Businesses can also be held accountable for their violations of human rights through non-judicial means.

⁸ Nour Samaha, *The Black Market Kings of Damascus*, The Atlantic (3 Oct. 2016), available at <https://www.theatlantic.com/international/archive/2016/10/syria-war-economy-damascus-assad/502304/>.

⁹ Robert Cusack, *Paradise Papers Reveal How Assad's Cousin Used Front Companies to Bypass US Sanctions*, The New Arab (6 Nov. 2017), available at <https://www.alaraby.co.uk/english/indepth/2017/11/6/how-rami-makhloufs-front-companies-helped-bypass-us-sanctions>.

¹⁰ *The Black Market Kings of Damascus*, *supra* note 8.

¹¹ A/HRC/4/035 14-15, *supra* note 4.

¹² *Id.*

¹³ *Id.*

¹⁴ OHCHR, *UN Guiding Principles on Business and Human Rights*, principles 15, 17(c), available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

¹⁵ *Id.* at 8.

14. For instance, naming and shaming by international human rights organizations that influence consumer behaviour may create social pressure on businesses to comply with human rights laws by affecting their profits. Such pressure has forced businesses to be more mindful of their human rights impact by developing internal policies or corporate guidelines that reflect their commitment to human rights.¹⁶ One instance of this is the Human Rights Council initiative to detail how businesses have engaged in activities that helped further illegal Israeli settlements. After identifying businesses, the Human Rights Council contacted each business individually for a response before making decisions on which businesses had been complicit in furthering illegal Israeli settlements in occupied Palestinian territories.¹⁷

Under International Criminal Law

15. Business actors and stakeholders may be held liable for criminal acts under ICL.¹⁸ ICL allows for individual criminal responsibility for international crimes. While there is no internationally recognized set of international crimes, the Rome Statute gives the International Criminal Court ('ICC') jurisdiction over a number of listed international crimes.¹⁹ However, the statutes of other ad hoc tribunals may allow for prosecution of additional international crimes.²⁰ The Rome Statute also gives the ICC jurisdiction over natural persons, i.e. individuals.²¹ Therefore, while businesses (as legal persons) may not be brought before the ICC, corporate directors and officers may be held personally liable under ICL for their role in orchestrating or committing international crimes. Perpetrators may be liable as aiders and abettors through as little as one act or omission that contributes to such crimes.²² According to the Rome Statute of the ICC and the statutes of other International Tribunals, 'a person can be responsible for committing, planning, ordering, or instigating a crime or for otherwise aiding and abetting a crime.'²³ This can include acts such as knowingly providing moral support or encouragement.²⁴ An

¹⁶ Id. at 19-21.

¹⁷ OHCHR, *UN Rights Office Issues Report on Business and Human Rights in Settlements in the Occupied Palestinian Territories* (31 Jan. 2018), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22617&LangID=E>.

¹⁸ A/HRC/4/035, paras 22-23, *supra* note 4.

¹⁹ Rome Statute of the International Criminal Court, A/CONF.183/9 (17 July 1998), Art. 7-8, available at https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

²⁰ Marie-Claude Roberge, *Jurisdiction of the Ad Hoc Tribunals for the Former Yugoslavia and Rwanda over Crimes Against Humanity and Genocide*, ICRC (31 Dec. 1997), available at <https://www.icrc.org/eng/resources/documents/article/other/57jnz3.htm>.

²¹ Rome Statute, Art. 25(2), *supra* note 19.

²² International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, *Corporate Complicity & Legal Accountability, Volume Two: Criminal Law and International Crimes*, 12 (2008) available at <http://www.refworld.org/pdfid/4a78423f2.pdf>.

²³ Rome Statute, Art. 25, *supra* note 19.; Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 7(1) (25 May 1993), available at http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf/.; Statute of the International Criminal Tribunal for Rwanda, Article 6(1) (8 Nov. 2004), available at http://legal.un.org/avl/pdf/ha/ictr_EF.pdf.

²⁴ *Volume Two: Criminal Law and International Crimes* 17, *supra* note 22.; A/HRC/4/035 10-11, *supra* note 4.

individual aids and abets when they have knowledge of the crimes they are contributing to and when their contribution has a substantial effect on the perpetration of the crime.²⁵

16. A business director or officer who is in a position to prevent a crime and knowingly chooses not to, or who exercises their influence to allow the criminal activity to continue may also be encouraging or lending moral support to criminal activity and therefore may be subject to aiding and abetting liability.²⁶ Business directors and officers may also incur criminal liability under the principle of superior responsibility, which allows for criminal liability of superior officers for their failure to hold accountable or prevent subordinates from committing criminal activity.²⁷ Moreover, acts contributing to a crime can occur before, during, or after the commission of a crime.²⁸
17. Businesses and business actors can also be held accountable for the commission of international crimes in domestic courts through the principle of universal jurisdiction or through prosecutions of crimes under domestic laws.²⁹ The doctrine of universal jurisdiction refers to the idea that every state has an interest in holding grave violators of human rights accountable and therefore any national court may hold anyone accountable for grave violations of international law and for serious international crimes.³⁰ This means that, even if a crime did not occur in a state, and even if neither the defendant nor the injured person have any connection to the state, that state may still have jurisdiction to hold the defendant liable for international crimes. Businesses and business actors may be held liable in domestic courts for international crimes either civilly or criminally.³¹ Many states also have criminal laws that bind domestic corporations operating outside their borders.³² This includes laws that require businesses to ensure certain human rights in their operations, as well as laws that specifically criminalize fraudulent behavior. One instance of this is a French law which requires thorough due diligence plans that address the various impacts of the business, including the human rights impacts. The law governs large French businesses that operate domestically and internationally.³³ Another example of such a law is the Foreign Corrupt Practices Act in the U.S., which criminalizes making payments to foreign governments or government officials in order to obtain or maintain

²⁵ *Volume Two: Criminal Law and International Crimes* 17, *supra* note 22.

²⁶ *Id.* at 20.

²⁷ *Id.* at 32.

²⁸ *Id.* at 17.

²⁹ *Id.* at 24-25, 54-55.

³⁰ International Justice Resource Center, *Universal Jurisdiction*, available at <https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/>.

³¹ Juan Pablo Bohoslavsky & Veerle Opgenhaffen, *The Past and Present of Corporate Complicity: Financing the Argentinean Dictatorship*, Vol. 23 *Harvard Human Rights Law Journal*, 174 (2010), available at <http://harvardhrj.com/wp-content/uploads/2010/10/157-204.pdf>.

³² *Volume Two: Criminal Law and International Crimes* 24-25, *supra* note 22.

³³ Law No. 2017-399 on the Duty of Care of Parent Companies and Ordering Companies, France, (27 Mar. 2017); Bjorn Fasterling, *Vigilance or Compliance? On the New French 'Vigilance' Law* (19 June 2017), available at <https://bhr.stern.nyu.edu/blogs/french-vigilance-law>.

business opportunities.³⁴ States have increasingly subjected businesses to civil and criminal liability for human rights violations both domestically and abroad.³⁵

Under International Humanitarian Law

18. Businesses operating in the context of an armed conflict also have obligations under IHL. IHL is the law that governs armed conflict and the way states and other armed actors engage in armed conflict.³⁶ IHL defines the various obligations and humanitarian protections that individuals are entitled to during an armed conflict.³⁷ Specifically, IHL aims to protect certain classes of persons such as civilians, prisoners of war, medical personnel, an enemy who surrenders, and the wounded and sick.³⁸ IHL binds all actors whose activities are closely linked with a given armed conflict.³⁹ Although this typically includes armed actors, such as national armies or non-state armed groups, businesses whose activities are closely linked to the conflict may also have obligations toward civilians and other protected persons who may be impacted by business activities. This includes respecting housing, land, and property rights and labour rights. Business activities, in the context of a conflict, may result in pillage, forced labour, forced displacement, or other war crimes if businesses are not conscious of how the presence of a conflict may impact business activities.⁴⁰ It can be difficult to determine what kind of business activities may fall under this category.⁴¹ That being said, it is not necessary for business activities to take place during fighting for them to be closely linked to armed conflict. Such activities can include the provision of logistical or asset support to parties to the conflict.
19. All the above legal regimes are binding on the relevant state if it signed and ratified the relevant treaties. However, the relevant state is also bound by customary norms of international law. The International Court of Justice statute lists international custom as a source of law.⁴² Customary rules of international law emerge from (1) a widespread practice among states in accordance with a specific norm, and (2) general recognition of an obligation to act in accordance with that norm.⁴³ Customary rules of international law exist in various international legal regimes including IHL, IHRL and ICL.

³⁴ Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, et seq (1977), available at <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>.

³⁵ *Volume Two: Criminal Law and International Crimes* 24-25, *supra* note 22.

³⁶ International Committee of the Red Cross, *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises Under International Humanitarian Law*, 9 (11 Sept. 2006), available at <https://www.icrc.org/en/publication/0882-business-and-international-humanitarian-law-introduction-rights-and-obligations>.

³⁷ *Business and International Humanitarian Law*, 9, *supra* note 36.

³⁸ ICRC, *Advocacy Service on International Humanitarian Law: What is International Humanitarian Law?* 1 (Dec. 2014), available at <https://www.icrc.org/en/document/what-international-humanitarian-law>.

³⁹ *Business and International Humanitarian Law*, 14, *supra* note 36.

⁴⁰ *Id.* at 21-26.

⁴¹ *Id.* at 14.

⁴² Statute of the International Court of Justice, Art. 38(1)(b), available at <http://www.icj-cij.org/en/statute>.

⁴³ Legal Information Institute, *Customary International Law*, Cornell Law School, available at https://www.law.cornell.edu/wex/customary_international_law.

Syria's Crime Scene

20. Considering the prevalence of the commission of human rights violations and international crimes over the course of the conflict in Syria, businesses operating in reconstruction in Syria may risk incurring criminal liability. The Syrian government, as the primary perpetrator of such violations and crimes, has engaged in a pattern of siege, aerial bombardment and forced displacement against civilians in opposition-held areas as a tactic of war.⁴⁴ Additionally, the Syrian government has used chemical weapons against civilians on multiple occasions.⁴⁵ Moreover, since the start of the conflict, the government has detained, forcibly disappeared and tortured thousands of protesters and political activists.⁴⁶ In addition to the Syrian government, a number of armed actors throughout Syria have also been engaged in the commission of numerous human rights violations and international crimes.⁴⁷
21. This array of crimes and their geographical spread across Syria should caution businesses, states and international institutions interested in taking part in the reconstruction of Syria as well as those who already do so.

Business Activity in Syria

22. The Syrian government has developed a close relationship with Syria's wealthiest businessmen based on loyalty and interdependency.⁴⁸ Syria's business elites have the opportunity to prosper at the expense of the rest of Syria's business class through preferential concessions, favors, and shortcuts.⁴⁹ This relationship and the Syrian elites' impact on the economy is one of the factors that led to the conditions that contributed to the uprising in Syria.⁵⁰ These dynamics have been exacerbated by the armed conflict and will likely have an adverse impact on the human rights situation in Syria during its reconstruction.⁵¹ Additionally, businessmen with ties to the Syrian government have also engaged in vast war crimes in support of the Syrian government.⁵² Finally, a new class of

⁴⁴ Amnesty International, *We Leave, or We Die: Forced Displacement Under Syria's Reconciliation Agreements* (2017), available at <https://www.amnesty.org/en/documents/mde24/7309/2017/en/>.

⁴⁵ *Seventh Report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism*, 7-10, S/2017/904 (26 Oct. 2017), available at https://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/s_2017_904.pdf.

⁴⁶ Amnesty International, *Detention, Torture and Enforced Disappearance by the Syrian Government*, available at <https://tensofthousands.amnesty.org/the-evidence/>.

⁴⁷ OHCHR IIIM, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/36/55 (6 Sept. 2017), available at <https://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/Documentation.aspx>.

⁴⁸ Samer Abboud, *The Economics of War and Peace in Syria*, The Century Foundation (31 Jan. 2017), available at <https://tcf.org/content/report/economics-war-peace-syria/?session=1&agreed=1>.

⁴⁹ Id.; Lina Sinjab, *How Syria's War Economy Propels The Conflict*, Chatham House (July 2017), available at <https://syria.chathamhouse.org/research/how-syrias-war-economy-propels-the-conflict/>.

⁵⁰ *The Economics of War and Peace in Syria*, *supra* note 48.

⁵¹ Id.; *After the War: Who's Going to Pay for Syria's Reconstruction?*, *supra* note 1.

⁵² *How Syria's War Economy Propels The Conflict*, *supra* note 49.

business elites has emerged, profiteering from conflict conditions through smuggling, kidnapping, and charging fees to cross checkpoints.⁵³

23. The Syrian government has used reconstruction efforts as another avenue to provide loyalists and its international allies with business opportunities.⁵⁴ Reconstruction projects under Decree 66 envision upscale and high-end city centers, affordable only to Syria's elites.⁵⁵ Not only would Syria's elites be reaping the benefits of development contracts, but they would also reap the benefits of investment in properties on such developments.⁵⁶ Similarly, the Syrian government also enacted Law 10 in April 2018, which required Syrians throughout the country to claim and provide proof of property ownership to their local governorate or otherwise risk government expropriation of the property for reconstruction purposes.⁵⁷ This law has caused concerns around the rights of vulnerable communities in Syria such as women, many of whom are not listed as the owners on property records, but whose husbands are no longer present, and refugees and displaced persons, who risk losing their properties if they do not return to their homes, where they also risk threats to their lives.
24. The Syrian regime has also provided Russian and Iranian businesses with the earliest and most lucrative reconstruction contracts.⁵⁸ Both Russia and Iran are parties to the conflict in Syria and have engaged in conduct that could amount to war crimes.⁵⁹
25. The foregoing demonstrates that there is a potential that businesses and business actors in Syria, particularly those working with the Syrian government, the main perpetrator of international crimes, could engage in activities that further government policies that may breach international law. Therefore, due diligence should be a key requirement for businesses before stepping into Syria's economic scene.

Business Activity Contributing to International Crimes

26. Reconstruction in Syria carries with it a number of liability risks for business actors, particularly as the armed conflict continues. The Syrian economy is shaped by the prevalence of corruption among government actors and Syrian business elites. Business actors risk entanglement in corruption. Considering the large number of gross human rights violations and international crimes which have been perpetrated during the Syrian

⁵³ Id.

⁵⁴ Hashem Osseiran and Joseph Daher, *The Likely Winners in the Race to Rebuild Syria*, Syria Deeply (13 Sept. 2017), available at <https://www.newsdeeply.com/syria/community/2017/09/13/the-likely-winners-in-the-race-to-rebuild-syria>.

⁵⁵ Tom Rollins, *Decree 66: The Blueprint for Al-Assad's Reconstruction of Syria?*, Irin News (20 Apr. 2017), available at <https://www.irinnews.org/investigations/2017/04/20/decree-66-blueprint-al-assad%E2%80%99s-reconstruction-syria>.

⁵⁶ Id.

⁵⁷ Human Rights Watch, *Syria's New Property Law Questions and Answers* (29 May 2018), available at https://www.hrw.org/sites/default/files/supporting_resources/20180529_syria_qa_1.pdf

⁵⁸ *The Likely Winners in the Race to Rebuild Syria*, *supra* note 54.

⁵⁹ Human Rights Watch, *Syria: Events of 2017*, available at <https://www.hrw.org/world-report/2018/country-chapters/syria>.

conflict, business actors risk contributing to, through money paid legally or illegally (bribes), or aiding and abetting the commission of crimes, or consolidating crimes already committed by reconstructing a crime scene.

27. The section below briefly outlines some business activities that may contribute to crimes.

Provision of Means to Commit a Crime

28. Businesses can be liable for complicity in international crimes by providing principal perpetrators with the means to commit a crime.⁶⁰ This can include provision of goods, services, information, logistics, and financial assistance.⁶¹ The more direct the assistance a business provides, the easier it will be to prove liability.⁶²

29. There are a number of key cases which demonstrate international criminal liability for such crimes.

30. Friedrich Flick, a wealthy German industrialist businessman was convicted of aiding and abetting the German SS, a Nazi paramilitary organization, during the Nuremberg trials in the aftermath of the World War II.⁶³ Flick was part of a group of businessmen, called the 'Friends of Himmler' who regularly met with and advised members of the SS and provided them with financial support.⁶⁴ Although there was evidence to suggest that Flick and others were not fully aware of the extent of the SS's crimes during the earlier years,⁶⁵ the court held that the crimes committed by the SS eventually became sufficiently well-known to hold that Flick and other defendants should have known the extent of the crimes they were supporting.⁶⁶ The court also noted that Flick's support must have been substantial to warrant liability.⁶⁷ The court found that Flick, together with another defendant, contributed 10% of all the donations made by the Friends of Himmler to the SS. The court held this amount to be sufficiently substantial to incur criminal liability.⁶⁸

31. Businesses who engage in reconstruction related business deals with the Syrian government or other perpetrators of international crimes may incur aiding and abetting liability for financing those crimes. Even if businesses do not know how the financial

⁶⁰ *Volume Two: Criminal Law and International Crimes* 17, *supra* note 22.

⁶¹ *Id.* at 37-39.

⁶² *Id.* at 37.

⁶³ United States Military Tribunal, The Flick Trial, Nuremberg Case No. 48, 40-43 (1947), *available at* http://www.worldcourts.com/imt/eng/decisions/1947.12.22_United_States_v_Flick2.pdf.

⁶⁴ *Id.*

⁶⁵ *Id.* at 23.

⁶⁶ Nadia Bernaz, *Establishing Liability for Financial Complicity in International Crimes In Making Sovereign Financing and Human Rights Work*, Juan Pablo Bohoslavsky and Jernej Letnar Cernic, 69-70 (2014).

⁶⁷ *Id.*

⁶⁸ *Id.* at 71.

profit they are providing is being used, it is enough to show that ‘the very availability of these funds allows the [perpetrator] to free other funds’ for use for harmful purposes.⁶⁹ Additionally, the act of providing financial support to a dictatorial regime can be presumed to finance rights violations.⁷⁰ Similarly, in Syria, businesses contracting with the Syrian government for reconstruction purposes may incur liability for the government’s ongoing war crimes if they provide the government with the financial means to commit further crimes.

32. The Blagojevic & Jokic case in the International Criminal Tribunal for the Former Yugoslavia (‘ICTY’) is an important case for businesses that come in after crimes have already been committed.⁷¹ This is because the defendants in this case were convicted of aiding and abetting war crimes and crimes against humanity for providing logistical support *after* the attacks on Srebrenica in 1995.⁷² Among other things, Blagojevic and Jokic provided machinery and personnel to assist with guarding and deporting victims as well as to assist with victim burial in the aftermath of the attacks.⁷³ Although defendants Blagojevic and Jokic were military actors as opposed to business actors, this case demonstrates the type of business-related activity that may result in liability or businesses interested in reconstruction in Syria. Although multinational businesses may not themselves be engaged in criminal activity, providing support that may enable war criminals to further their criminal acts may result in liability.

33. As this case demonstrates, businesses can incur complicity liability even after a crime has occurred. The Blagojevic and Jokic case demonstrates an instance in which the defendants were not the principal perpetrators of the crime, but had agreed to assist the principal perpetrator in the aftermath of the crimes’ commission. Similarly, businesses that are part of a common plan with the Syrian government in which the business is aware that the Syrian government will or is currently causing destruction and the business agrees to participate in the reconstruction of destroyed areas, may be held liable for complicity in the war crimes involved. Such an agreement could constitute encouragement or moral support for the commission of those crimes. There is also an argument to be made that businesses interested in working with the Syrian regime on reconstruction may face criminal liability if they were aware that the government would be using the profit from such a business deal to pay debts incurred to other states or institutions for crimes committed in Syria. The Syrian regime has incurred debts of over \$35 million to both Russia and Iran⁷⁴ and is struggling to settle these debts.⁷⁵ Businesses

⁶⁹ *The Past and Present of Corporate Complicity* 174, *supra* note 31.

⁷⁰ *Id.*

⁷¹ The Prosecutor v. Vidoje Blagojević and Dragan Jokić, International Criminal Tribunal for the Former Yugoslavia, IT-02-60-A (17 Jan. 2005), *available at* <http://www.internationalcrimesdatabase.org/Case/1222/Blagojevi%C4%87-and-Joki%C4%87/>.

⁷² *Id.* at paras 797-98.

⁷³ *Id.* at paras 130-35, 197-99.

⁷⁴ Zaman News, *Syria Debt to Iran Reaches \$35 Billion, Reconstruction Needs \$2 Billion: Syria Task Force*, Interview with Osama Qadi (26 Jan. 2017), *available at* <https://en.zamanlws.net/news/article/22638/>.

entering into reconstruction agreements with the Syrian government with awareness that the government intends to use the profits to repay debts may be aiding and abetting the government's war crimes, even though these crimes have already taken place.

Engaging in Corruption

34. Another type of activity that businesses interested in reconstruction in Syria may engage in that could be a crime itself, lead to other rights violations, or even complicity in international crimes, is corruption. Corrupt practices can not only lead to liability for crimes such as bribery, money-laundering, or fraud, but are also linked to a wide range of human rights violations and international crimes.⁷⁶ For example, funds paid as a bribe to an entity that has engaged in war crimes could be seen as providing means to commit such crimes, which was discussed in the section above.
35. Irrespective of whether corruption is linked to an international crime or not, it in itself violates a number of human rights including the right to an adequate standard of living including housing, food, and health.⁷⁷ Corrupt practices in various sectors of the economy such as the housing sector, can result in unfair disadvantages for vulnerable members of the population.⁷⁸ States that engage in a pattern of corruption with businesses violate these rights by limiting protections to health, access to food, and access to adequate housing for their citizens. Businesses engaging in such corruption with governments also violate these rights.⁷⁹
36. Corruption also violates the right to development, as stated in the Declaration on the Right to Development.⁸⁰ The right to development includes a right to fair, free, equal, and full participation of all individuals in the development of the state.⁸¹ This also implies a right to a corruption-free society.⁸² States have an obligation to facilitate a move toward the achievement of this right.⁸³ States that engage in corrupt behavior, and the businesses that are complicit in this violate the rights of civilians.⁸⁴

⁷⁵ Michael Weiss, *Deadbeat Dictator: Assad Isn't Paying His Debts to Putin*, The Daily Beast (18 Jan. 2018), available at <https://www.thedailybeast.com/comrade-con-man-assads-welching-on-his-russia-debts-already>.

⁷⁶ Red Flags: Liability Risks for Companies Operating in High-Risk Zones: *Making Illicit Payments*, available at http://www.redflags.info/index.php?topic=bribery&style_id=0.

⁷⁷ Joseph Benjamin, *Corruption: Violation of Human Rights*, in VN Viswanathan, *Corruption and Human Rights*, 28-31 (2012); International Convention on Economic, Social, and Cultural Rights, Article 11(1), (2)(a), available at <https://www.ohchr.org/en/professionalinterest/pages/ccscr.aspx>; Universal Declaration of Human Rights, Art. 25, available at http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

⁷⁸ *Corruption: Violation of Human Rights* 31, *supra* note 77.

⁷⁹ *Id.*

⁸⁰ *Id.* at 27-28.; Declaration on the Right to Development, art. 1(1), available at https://www.ohchr.org/Documents/Issues/Development/DeclarationRightDevelopment_en.pdf.

⁸¹ Right to Development art. 1(1-2), *supra* note 80.

⁸² *Corruption: Violation of Human Rights* 27-28, *supra* note 77.

⁸³ Right to Development art. 1(1), 3(1-3), 5, 8, *supra* note 80.

⁸⁴ *Corruption: Violation of Human Rights* 27-28, *supra* note 77.

37. Many Syrian businesses and government actors engage in widespread corruption to provide business actors loyal to the Syrian President with business opportunities.⁸⁵ This relationship between the Syrian government and the business elite is so well established that a European Union General Court decision held that being ‘an influential businessman operating in Syria’ was enough to establish a beneficial or supportive relationship with the Syrian government, which was sufficient to warrant sanctions.⁸⁶ Syria’s business elites have monopolized various industries throughout Syria through their government protection.⁸⁷
38. For example, Rami Makhlouf, Bashar Al-Assad’s cousin and one of Syria’s most influential businessmen controls a large portion of the Syrian economy⁸⁸ including having monopolized the mobile phone industry, various restaurant chains, and duty-free markets in Syria.⁸⁹ International actors participating in reconstruction in Syria may contribute to or become a part of this system of corruption, as the Syrian government is holding itself out to be the official reconstruction partner and many of Syria’s most able businesses are those who have succeeded through corrupt means.
39. Business actors conducting business in the context of an armed conflict are particularly at risk of engaging in corruption when operating in a state with a history of corruption.⁹⁰

40. One example of such corruption in the context of reconstruction is the U.S. criminal case against Nebraska McAlpine, the owner of a U.S. Department of Defense contractor.⁹¹ McAlpine accepted over \$250,000 in exchange for agreeing to award an Afghan subcontractor with favorable contracts without having to compete for them in violation of the U.S. Federal Anti-Kickback Act.⁹² McAlpine was eventually convicted and sentenced to 21 months’ imprisonment for accepting illegal kickbacks.⁹³ Considering the well documented and widespread corruption that exists among Syrian businesses and the Syrian government, the McAlpine case demonstrates an example of how contracting with the Syrian government or businesses affiliated with the government may result in corrupt business activity.

⁸⁵ *The Economics of War and Peace*, *supra* note 48.

⁸⁶ European Union General Court, *HX v. Conseil de l’Union Europeenne*, T-408/16 (19 June 2018), *available at* <http://curia.europa.eu/juris/document/document.jsf?text=&docid=203113&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=651844>; Maya Lester QC, *EU Court Upholds Re-listings of Syrian Businessman*; *HX v. Council*, European Sanctions (21 June 2018), *available at* <https://europeansanctions.com/2018/06/21/eu-court-upholds-re-listings-of-syrian-businessman-hx-v-council/>.

⁸⁷ Aurora Sottimano, *The Syrian Business Elite: Patronage Networks and War Economy*, Syria Untold (24 Sept. 2016), *available at* <http://syriauntold.com/2016/09/the-syrian-business-elite-patronage-networks-and-war-economy/>.

⁸⁸ Leila Al-Shami, *Syria’s Shock Doctrine*, Aljumhuriya (23 Apr. 2018), *available at* <https://www.aljumhuriya.net/en/content/syrias-shock-doctrine>.

⁸⁹ *The Syrian Business Elite: Patronage Networks and War Economy*, *supra* note 87.

⁹⁰ *Making Illicit Payments*, *supra* note 76.

⁹¹ *Special Inspector General For Afghanistan Reconstruction*, Recent Criminal Cases, *available at* <https://www.sigar.mil/investigations/criminalcases/index.aspx?SSR=3&SubSSR=20&WP=Criminal%20Cases#RecentCriminalCases>.

⁹² *Id.*; Chad Garland, *Government Contractor in Afghanistan Imprisoned for Taking \$300k in Kickbacks*, Stars and Stripes (29 Nov. 2017), *available at* <https://www.stripes.com/news/government-contractor-in-afghanistan-imprisoned-for->

41. Similarly, in 2003, in the French criminal case, *France v. Elf Aquitaine in Africa*, Loik Le Floch-Prigent, CEO of Elf Aquitaine, and over 35 others were charged with violating French corruption and bribery laws and were found to have been involved in giving bribes of \$346.8 million to secure business contracts around the world between 1989 and 2003.⁹⁴ Multiple Elf Aquitaine top executives received prison sentences of four to five years each.⁹⁵ As with the McAlpine case, the Elf Aquitaine case demonstrates how foreign or multinational businesses interested in reconstruction in Syria may take advantage of corrupt business in reconstruction deals in Syria. This is particularly true considering the vast opportunities for profit in Syria's reconstruction, which may invite greater levels of corruption from businesses interested in profiting from Syria's reconstruction.⁹⁶

Trading with Perpetrators Within the Supply Chain

42. Businesses interested in reconstruction in Syria may also be held liable for complicity in the war crimes of the suppliers they use. A business regularly or frequently buying goods from a supplier who is engaging in international crimes and rights violations may risk complicity in those crimes. Engaging in that relationship where one knows or should know of the nature of the crimes may result in encouragement of the commission of those crimes.⁹⁷

43. For instance, in the Trial of Wili Buch, a German paymaster during the German occupation of France, Buch was convicted of 'receiving stolen goods', a crime that, in the Permanent Military Tribunal at Metz, after World War II, amounted to the war crime of pillage. Another German had seized the personal property of a French citizen who left his belongings when fleeing his home and sold it at auction where Buch purchased some of the property.⁹⁸

taking-300k-in-kickbacks-1.499994.; United States of America v. Nebraska McAlpine, Northern District of Georgia, Judgement 1:17-CR-209-MHC, *available at* <https://www.justice.gov/criminal-fraud/file/1016866/download>.

⁹³ United States of America v. Nebraska McAlpine, *supra* note 92.

⁹⁴ *Making Illicit Payments*, *supra* note 76.; David Ignatius, *True Crime: The Scent of French Scandal*, Legal Affairs, *available at* http://www.legalaffairs.org/issues/May-June-2002/story_ignatius_mayjun2002.html.

⁹⁵ *Making Illicit Payments*, *supra* note 76.

⁹⁶ Muriel Asseburg & Khaled Yacoub Oweis, *Syria's Reconstruction Scramble*, German Institute for International and Security Affairs, 5 (Dec. 2017), *available at* https://www.swp-berlin.org/fileadmin/contents/products/comments/2017C51_ass_ows.pdf.

⁹⁷ *Volume Two: Criminal Law and International Crimes* 40-41, *supra* note 22.

⁹⁸ The United Nations War Crimes Commission, *Law Reports of the Trials of War Criminals Volume IX*, 65 (1949), *available at* https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-9.pdf

44. Another example is the Farben case, in which Farben was convicted of using slave labour and prisoners of war from concentration camps for rubber and gasoline production and construction work. As Farben's plants were located near Auschwitz, this was enough to suggest that Farben and other firm officials had knowledge that it was unlikely that voluntary labour was being used.⁹⁹

45. These cases demonstrate that businesses engaged in the purchase or use of goods or services acquired through illegal means can also be held liable for aiding and abetting the illegal act itself. Businesses interested in participating in reconstruction in Syria may risk such liability if they knowingly use Syrian businesses which engage in illegal business activity in their supply chains. This is of particular concern regarding purchases of real property for reconstruction purposes, as the Syrian government has passed multiple laws which legalize the expropriation of civilian property for purposes of reconstruction. This will be discussed in more detail in the forthcoming sections. This is also of particular concern in Syria as there have been reports of pillage of homes and small businesses throughout the country.¹⁰⁰

Using Abusive Security Services

46. Many of Syria's elites are high-level officials within Syria's security, air force, and military apparatuses.¹⁰¹ These elites have a symbiotic relationship with Syria's business and economic elite, relying on each other for benefits.¹⁰² For instance, Syrian business elites use Syrian intelligence and security services to provide protection during illicit operations or for intimidating competitors.¹⁰³ These services are known to have engaged in a number of repressive practices towards political activists and protesters such as intimidation, detention, forced disappearances, torture, gender-based violence, and murder.¹⁰⁴

47. Procuring the services of such security forces may incur liability for businesses.

⁹⁹ Military Tribunal VI, *United States v. Krauch (The Farben Case)*, Case No. 6 1187 (28 Oct. 1946), available at http://www.worldcourts.com/imt/eng/decisions/1948.07.30_United_States_v_Krauch.pdf.

¹⁰⁰ Middle East Monitor, *Reports: Assad's Thugs are Pillaging Aleppo* (4 May 2017), available at <https://www.middleeastmonitor.com/20170504-reports-assads-thugs-are-pillaging-aleppo/>; BBC News, *Syria War: Afrin Looted by Turkish-backed Rebels* (19 Mar. 2018), available at <https://www.bbc.com/news/world-middle-east-43457214>.

¹⁰¹ BBC News, *Basbar Al-Assad's Inner Circle* (30 Jul 2012), available at <https://www.bbc.com/news/world-middle-east-13216195>.

¹⁰² Global Security, *Syria—Corruption and Government Transparency*, available at <https://www.globalsecurity.org/military/world/syria/corruption.htm>.

¹⁰³ Id.

¹⁰⁴ Human Rights Watch, *A Wasted Decade: Human Rights in Syria During Bashar Al-Assad's First Ten Years in Power* (16 July 2010), available at <https://www.hrw.org/report/2010/07/16/wasted-decade/human-rights-syria-during-bashar-al-asads-first-ten-years-power>; U.S. State Department, *Syria 2017 Human Rights Report*, (2017), available at <https://www.state.gov/documents/organization/277509.pdf>.

48. One international example of this is the Chiquita case.¹⁰⁵ A number of criminal and civil cases have been pursued against the Chiquita company before the Colombian and U.S. courts as well as the Inter-American Commission on Human Rights due to their engagement with security forces that committed criminal acts.¹⁰⁶ Chiquita admitted to making payments of up to \$1.7 million between 1997 and 2004 to the United Self-Defense Forces of Colombia (AUC), a paramilitary organization in Colombia that has committed multiple egregious rights violations.¹⁰⁷ Chiquita made payments to AUC to secure and protect Chiquita's banana plantations in Colombia.¹⁰⁸ Lawsuits have accused Chiquita of complicity in AUC's war crimes and rights violations. The U.S. government convicted Chiquita of making payments to a designated terrorist organization and fined the company \$25 million.¹⁰⁹ Additionally, Colombian nationals sued Chiquita in multiple U.S. courts under the Alien Tort Statute, the Torture Victims Protection Act, and various Colombian laws for complicity in injuries incurred as a result of AUC activities. While some of these cases have been unsuccessful, others are ongoing. U.S. citizens also sued Chiquita on the grounds that Chiquita funded terrorists who killed five U.S. citizens. Chiquita eventually settled that case.¹¹⁰

49. The CEO of a French cement company, Lafarge, has been under investigation by French prosecutors for financing various armed groups in Syria, including ISIS. French prosecutors have charged Lafarge with complicity in crimes against humanity and financing terrorism for paying ISIS and other armed groups millions of Euros in oil purchases and payments to protect factory personnel and assets from nearby conflict.¹¹¹ Although this did not occur in the context of reconstruction, the Lafarge case demonstrates the types of abuses business actors can be involved in to secure their operations during Syria's reconstruction.

¹⁰⁵ Business & Human Rights Resource Centre, *Chiquita Lawsuits (re Colombia)*, available at <https://www.business-humanrights.org/en/chiquita-lawsuits-re-colombia>.

¹⁰⁶ Id.

¹⁰⁷ Id.; EarthRights International, *Doe v. Chiquita International*, available at <https://earthrights.org/case/doe-v-chiquita-brands-international/>.

¹⁰⁸ *Doe v. Chiquita International*, *supra* note 107.

¹⁰⁹ Department of Justice, *Chiquita Brands International Pleads Guilty to Making Payments to a Designated Terrorist Organization and Agrees to Pay \$25 Million Fine*, (19 Mar. 2007), available at https://www.justice.gov/archive/opa/pr/2007/March/07_nsd_161.html.

¹¹⁰ *Chiquita Lawsuits (re Colombia)*, *supra* note 105.

¹¹¹ The Guardian, *Lafarge Charged with Complicity in Syria Crimes Against Humanity* (28 June 2018), available at <https://www.theguardian.com/world/2018/jun/28/lafarge-charged-with-complicity-in-syria-crimes-against-humanity>; Aron Lund, *The Factory: A Glimpse into Syria's War Economy*, The Century Foundation (21 Feb. 2018), available at <https://tcf.org/content/report/factory-glimpse-syrias-war-economy/>.

50. Business actors operating in reconstruction in Syria may be compelled to hire security services for their own protection. Those who choose to rely on security services or structures tied to the Syrian regime may risk liability for aiding and abetting the crimes committed by those security forces.¹¹²

Failure to Act and Silent Presence

51. In addition to the business activities listed above, a failure to act at all can also result in complicity liability for a crime if that lack of action legitimizes or encourages the commission of a crime. This can be a result of failure to act when in close proximity during the commission of a crime or failure to prevent or mitigate a crime, despite having the power or influence to do so. The greater political or economic influence a business has, the more likely it is a failure to act may result in aiding and abetting liability. This is particularly the case for businesses operating in a state where the commission of crimes is known to be common.¹¹³
52. Although no business actor has been held accountable for an omission in an international tribunal as of yet, cases against other actors can be illustrative of what could apply to business actors.

53. One example is the Aleksovski case, brought before the ICTY.¹¹⁴ Aleksovski was a commander in a prison for Bosnian Muslim detainees, where detainees were mistreated and suffered serious injuries. Aleksovski was found guilty of “outrages upon personal dignity” for aiding and abetting the mistreatment of Muslim detainees.¹¹⁵ Aleksovski was responsible for the welfare of the detainees and was aware of soldiers’ regular mistreatment of detainees. Despite this, Aleksovski failed to take any action. Although Aleksovski was not the direct superior of the soldiers, his failure to act was found to have aided and abetted their crimes.¹¹⁶

54. Businesses interested in reconstruction in Syria that engage in business with the Syrian regime or businesses involved in criminal activity may incur liability for failing to act. The Aleksovski case demonstrates that knowing silence can give rise to complicity liability when action could have mitigated or prevented a crime.

¹¹² *Business and International Humanitarian Law* 25, *supra* note 36.

¹¹³ *Volume Two: Criminal Law and International Crimes* 19-20, *supra* note 22.

¹¹⁴ ICTY, *Prosecutor v. Zlatko Aleksovski*, paras. 167-170 (24 Mar. 2000), *available at* <http://www.icty.org/x/cases/aleksovski/acjug/en/ale-asj000324e.pdf>

¹¹⁵ *Id.* at paras 1, 167-170.

¹¹⁶ *Id.* at 167, 170.

Specific Violations Committed in the Context of the Syrian Conflict

This section will lay out the various international crimes or rights violations that businesses become complicit in when participating in reconstruction in Syria.

Siege Warfare and Starvation as a Weapon of War Against Civilians

55. Although laying a siege is not listed as a war crime in the Rome Statute, starvation of a civilian population as a method of warfare, a possible consequence and purpose behind besiegement, is a war crime in armed conflicts.¹¹⁷ Moreover, sieges could result in violations of a number of principles of IHL, such as the prohibition against the use of starvation.¹¹⁸ Common article 3 of the Geneva conventions requires parties to a conflict to treat humanely and care for the civilian population under its control.¹¹⁹ This places a duty on conflict parties to provide essential and basic supplies, including food and medical care, to civilians under their control and not to impede third parties from providing this.¹²⁰ Sieges are also likely to violate a number of IHRL norms, including the right to life, freedom of movement, the prohibition on infliction of cruel inhuman and degrading treatment, right to food, water, clothing, housing, adequate standard of living and the right to essential healthcare.¹²¹
56. Business actors participating in reconstruction in Syria risk liability for aiding and abetting in war crimes associated with siege warfare. The Syrian government has used siege warfare extensively throughout the country, besieging civilian populations, depriving them of basic need such as water, food, and medical care in an effort to force the surrender of armed groups and the evacuation of the civilian population.¹²² The besiegement and aerial bombardment of opposition held neighborhoods in Syria is the continuation and weaponization of a pre-conflict plan to destruct and renew informal settlements in Syria.¹²³ The destruction and emptying of opposition held informal settlements not only accomplishes the military goal of weakening the opposition, it also allows the Syrian government to reconstruct informal settlements and engineer the demographics of those regions.¹²⁴ The Syrian government has also repeatedly refused to allow humanitarian aid convoys to enter besieged areas in Syria, despite the overwhelming needs of civilians under siege.¹²⁵

¹¹⁷ OHCHR, *International Humanitarian Law and Human Rights Law Relevant to Siege Warfare*, 2 (Jan. 2017), available at <https://www.alnap.org/system/files/content/resource/files/main/sieges-legal-note-final-en-1.pdf>; Rome Statute Art. 8(2)(b)(xxv), *supra* note 19.

¹¹⁸ *International Humanitarian Law and Human Rights Law Relevant to Siege Warfare* 2-3, *supra* note 117.

¹¹⁹ Convention (III) Relative to the Treatment of Prisoners of War, *Conflicts Not of an International Character*, Article 3, International Committee of the Red Cross, available at <https://ihl-databases.icrc.org/ihl/WebART/375-590006>.

¹²⁰ *Id.*

¹²¹ *International Humanitarian Law and Human Rights Law Relevant to Siege Warfare* 4, *supra* note 117.

¹²² *We Leave, or We Die* 6-7, *supra* note 44.

¹²³ Valerie Clerc, *Informal Settlements in the Syrian Conflict: Urban Planning as a Weapon*, HAL, 12-14 (2014), available at <https://halshs.archives-ouvertes.fr/halshs-01185193/document>.

¹²⁴ *Id.*

¹²⁵ *Syria: Events of 2017*, *supra* note 59.

57. Businesses that agree to rebuild properties destroyed under siege or purchase properties expropriated by the government after their owners have been forcibly displaced due to siege conditions risk aiding and abetting the original commission of the crime of starvation of the civilian population and may also risk liability for violations of human rights and IHL. Businesses may be held liable if, when making the agreement with the Syrian government, they were aware of the government's tactic of forcibly displacing through besiegement and agreed, before the commission of the crime or as the crime was still ongoing, to participate in the reconstruction of besieged areas.¹²⁶

Indiscriminate Bombing

58. Indiscriminate attacks are prohibited under IHL under Article 51(4) of Additional Protocol I to the Geneva Conventions and Article 8 of the Rome Statute.¹²⁷ This prohibition is also part of customary international law.¹²⁸ Indiscriminate attacks are defined as those which are not directed at a specific military target or cannot be directed at a specific target due to the means of combat or the nature of the military objective.¹²⁹

59. In addition to siege and starvation, the Syrian regime and its allies have also indiscriminately subjected civilians in opposition-held and besieged areas to indiscriminate aerial bombardment to coerce armed groups or local authorities to surrender and evacuate civilians.¹³⁰

60. As with crimes associated with siege, businesses agreeing, during or before the commission of the crime, to participate in the rebuilding of properties destroyed or purchase properties whose owners have been forcibly displaced as a result of indiscriminate attacks may face liability for other actors' indiscriminate attacks. By making such an agreement before the crime has been committed, the business is part of the criminal plan and encourages the commission of the crime.¹³¹

Targeting of Protected Persons and Objects

61. A customary rule of IHL is the principle of distinction between military and civilian persons and objects.¹³² Parties to a conflict cannot target civilians, with special protection

¹²⁶ *Volume Two: Criminal Law and International Crimes* 21, *supra* note 22.

¹²⁷ Protocols Additional to the Geneva Conventions of 12 August 1949, Art. 51(4), *available at* https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf; Rome Statute, Art. 8(2)(b)(xx), *supra* note 19.

¹²⁸ International Committee of the Red Cross, *Rule 12: Definition of Indiscriminate Attacks*, IHL Database Customary IHL, *available at* https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule12.

¹²⁹ *Id.*; Additional Protocol I Art. 51(4), *supra* note 127.

¹³⁰ *We Leave or We Die* 6-7, *supra* note 44.

¹³¹ *Volume Two: Criminal Law and International Crimes* 21, *supra* note 22.

¹³² International Committee of the Red Cross, *Rule 1: The Principle of Distinction Between Civilians and Combatants*, IHL Database Customary IHL, *available at* https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1; Additional Protocol I Arts. 48, 51(2), 52(2), *supra* note 127. Protocol (II) Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims in Non-International Armed Conflicts, Art. 13(2), *available at* http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=198067.

afforded to sick and wounded civilians, prisoners of war, and detainees.¹³³ Egregious violations of this principle can result in liability for war crimes.¹³⁴

62. The Syrian regime and its allies have intentionally targeted civilians and civilian objects throughout the conflict.¹³⁵ The regime and its allies have specifically targeted civilian properties, civil documentation registry buildings (which contain property records), schools, and hospitals.¹³⁶ As a result, the residential sector of the economy has incurred the largest destruction as a result of the conflict, accounting to 30% of the destruction in residential buildings.¹³⁷
63. Business actors who, while the government continues to indiscriminately attack protected persons, agree to rebuild destroyed properties or those abandoned by their owners as a result of indiscriminate attacks, also risk aiding and abetting violations of the principle of distinction, as such an agreement encourages the commission of the crime.¹³⁸

Arbitrary Detention, Disappearances, and Torture

64. Torture, arbitrary detention, and forced disappearance are prohibited under the Geneva Conventions as well as core IHL treaties, in addition to the Convention Against Torture.¹³⁹ These crimes violate the right to liberty, the prohibition of murder, and the prohibition against torture.¹⁴⁰ Moreover, torture and arbitrary detention may both amount to international crimes.¹⁴¹ Systematic or widespread forced disappearances can also amount to a crime against humanity.¹⁴²

¹³³ Id.

¹³⁴ Amnesty International, *Syria: Relentless Bombing of Civilians in Eastern Ghouta Amounts to War Crimes* (20 Feb. 2018), available at <https://www.amnesty.org/en/latest/news/2018/02/syria-relentless-bombing-of-civilians-in-eastern-ghouta-amounts-to-war-crimes/>.

¹³⁵ BBC News, *Syria War: Hospitals Being Targeted, Aid Workers Say* (6 Jan. 2018), available at <https://www.bbc.com/news/world-middle-east-42591334>; *Syria: Relentless Bombing of Civilians in Eastern Ghouta Amounts to War Crimes*, *supra* note 134.

¹³⁶ *Syria War: Hospitals Being Targeted, Aid Workers Say*, *supra* note 134.; Jihad Yazigi, *Destruct to Reconstruct: How the Syrian Regime Capitalises on Property Destruction and Land Legislation*, 5-6 (July 2017), available at <http://library.fes.de/pdf-files/iez/13562.pdf>.

¹³⁷ *After the War: Who's Going to Pay for Syria's Reconstruction?*, *supra* note 1.

¹³⁸ *Volume Two: Criminal Law and International Crimes* 21, *supra* note 22.

¹³⁹ International Committee of the Red Cross, *What does the Law Say About Torture?*, available at <https://www.icrc.org/eng/resources/documents/faq/torture-law-2011-06-24.htm>; International Committee of the Red Cross, *Rule 98. Enforced Disappearance*, IHL Database Customary IHL, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule98; International Committee of the Red Cross, *Rule 90. Torture and Cruel, Inhuman or Degrading Treatment*, IHL Database Customary IHL, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule90; International Committee of the Red Cross, *Rule 99. Deprivation of Liberty*, IHL Database Customary IHL, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule99.

¹⁴⁰ *Rule 98*, *supra* note 139.; *What does the Law Say About Torture?*, *supra* note 139.; *Rule 90*, *supra* note 139.; *Rule 99*, *supra* note 139.

¹⁴¹ Rome Statute Art. 8(c)(i), 7(1)(e), *supra* note 19.

¹⁴² Rome Statute Art. 7(1)(i), *supra* note 19.

65. The Syrian conflict has resulted in a large number of arbitrary detentions, with a large majority being committed by the Syrian regime.¹⁴³ Many of those detained at the hands of the Syrian regime have reported being subjected to egregious forms of torture, including forms of gender-based violence and sexual assault.¹⁴⁴ Moreover, Syrian regime detention centers are extremely overcrowded, unsanitary, and blocked from any sunlight.¹⁴⁵ The Syrian regime has also engaged in a widespread and systematic campaign of forced disappearance that amounts to a crime against humanity.¹⁴⁶
66. Business actors operating in reconstruction in Syria may be liable for complicity in these crimes if they engage in business with perpetrators of these crimes while crimes are ongoing, and with awareness of the perpetrators role in committing such crimes. Engaging in business with perpetrators of these crimes can be seen as providing the means to those committing such offences. This can include provision of financial means, which frees up funds to continue committing such crimes.¹⁴⁷ This can also include the provision of any other means that could be used to commit the crimes.

Forced Displacement and Right to Return

67. Forced displacement is the forcible transfer or displacement of a civilian population during conflict and is prohibited under IHL except in two narrow circumstances.¹⁴⁸ Civilian populations may be transferred or displaced for imperative military purposes, or when the security of the civilian population requires it.¹⁴⁹ Forced displacement is also criminalized under ICL as a war crime or a crime against humanity and amounts to a grave violation of the fourth Geneva Convention and Additional Protocol 1.¹⁵⁰
68. Businesses have been accused of complicity in forced displacement in the past.

¹⁴³ Emma Cabrol, *Disappearance, Arbitrary Detention, Torture and Execution: The Most Extensive Crimes in Syria*, 10, Harmoon Center for Contemporary Studies (21 Dec. 2017), available at <https://harmoon.org/en/archives/7592>.

¹⁴⁴ *Detention, Torture and Enforced Disappearance by the Syrian Government*, *supra* note 46.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *The Past and Present of Corporate Complicity* 174, *supra* note 31.

¹⁴⁸ International Committee of the Red Cross, *Rule 129: The Act of Displacement*, IHL Database Customary IHL, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule129#Fn_E202C037_00004.

¹⁴⁹ Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, Article 49 (12 Aug. 1949), available at <https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>; *Rule 129: The Act of Displacement*, *supra* note 148.

¹⁵⁰ Fourth Geneva Convention Article 147, *supra* note 149.; Additional Protocol I Article 85(4)(a), *supra* note 127.; Rome Statute art. 7(1)(d), art. 8(2)(a)(vii), *supra* note 19.

69. One example is land expropriation in South Sudan, where the government confiscated the land of 500 landowners to make room for oil exploration.¹⁵¹ The major multinational oil companies operating in Sudan had contracted with the Sudanese state oil company and were demonstrated to have had knowledge of the government's forcible displacement.¹⁵² The Presbyterian Church of Sudan brought a case against Canadian oil company, Talisman for complicity in torture, genocide, war crimes and crimes against humanity, including forced displacement, in a U.S. court under the Alien Tort Statute and the Torture Victims Protection Act.¹⁵³ However, the suit was unsuccessful because, while the court acknowledged that Talisman acted with knowledge of the crimes it was aiding and abetting in, it required that plaintiffs show evidence defendants acted with the 'purpose' of aiding and abetting violations of international law, a higher standard than international tribunals have required.¹⁵⁴

70. Another instance of this is corporate complicity in and facilitation of the forced transfer of Palestinian populations from their indigenous lands, where they had lawful presence.¹⁵⁵

71. One company engaging in such acts is the U.S. based company Caterpillar, which has supplied trucks and armored vehicles to the Israeli military, which has used these products in the demolitions of Palestinian homes and the construction of Israeli settlements in their place, effectively displacing Palestinian communities.¹⁵⁶ A number of entities brought a case against Caterpillar in a U.S. court for injuries they incurred as a result of Caterpillar's operations, including allegations of illegal destruction of homes, extrajudicial killings, and war crimes.¹⁵⁷ However, the case was dismissed on procedural grounds before the court could address the issue of Caterpillar's liability.¹⁵⁸ Nevertheless, this case demonstrates the types of business activity that could result in liability for forced displacement.

¹⁵¹ Mail & Guardian, *State Land Grabs Fuel Sudan's Crisis* (4 May 2018), available at <https://mg.co.za/article/2018-05-04-00-state-land-grabs-fuel-sudans-crisis>.

¹⁵² Human Rights Watch, *Sudan, Oil, and Human Rights*, available at <https://www.hrw.org/report/2003/11/24/sudan-oil-and-human-rights#36cbec>.

¹⁵³ Presbyterian Church of Sudan v. Talisman Energy, SDNY, No. 01 CIV.9882 (AGS) (19 Mar. 2003), available at https://scholar.google.com.tr/scholar_case?case=17632085233362202877&hl=en&as_sdt=6&as_vis=1&oi=scholar.

¹⁵⁴ Id.; *Volume Two: Criminal Law and International Crimes* 21-22, *supra* note 22.

¹⁵⁵ BADIL Resource Center, *Pursuing Accountability for Corporate Complicity in Population Transfers in Palestine*, 29-32 (Dec. 2015), available at <https://reliefweb.int/sites/reliefweb.int/files/resources/Complicit%20CompaniesII-en.pdf>.

¹⁵⁶ Id. at 71-73.

¹⁵⁷ International Crimes Database, Cynthia Corrie et al. v. Caterpillar Inc., available at <http://www.internationalcrimesdatabase.org/Case/986/Corrie-v-Caterpillar/>.

¹⁵⁸ Id.

72. The Syrian government has waged a campaign of forced displacement throughout Syria.¹⁵⁹ In addition, the government is making plans to reconstruct areas emptied through displacement.¹⁶⁰ Businesses conducting reconstruction work in neighborhoods affected by Decree 66 or Law 10 also risk liability for forced displacement. Reconstruction plans under Decree 66 have already begun in the Damascus suburb, Basateen Al-Razi.¹⁶¹ Residents have been ordered to evacuate their homes, which are to be bulldozed.¹⁶² Although homeowners have been offered compensation and alternative housing, these promises have rarely been followed through on.¹⁶³ Evictions under Decree 66 amount to forced displacements of Basateen Al-Razi residents.
73. Similar to the Caterpillar case, businesses which make agreements with the Syrian government or other perpetrators of forced displacement to rebuild or purchase properties abandoned as a result of forced displacement or expropriated under Decree 66 or Law 10 risk liability for their actions if the agreement was made before or during the commission of the crime.¹⁶⁴
74. Businesses engaging in such agreements also violate the right to return of refugees and displaced persons. Under IHRL, Article 13 of the UDHR recognizes individuals' right to return to their country.¹⁶⁵ Moreover, Article 12(4) of the ICCPR states that individuals cannot be deprived arbitrarily of the right to enter their own country.¹⁶⁶
75. Additional IHRL texts exist that detail the right of refugees and displaced persons to return to their homes, such as the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons as well as the United Nations Guiding Principles on Internal Displacement.¹⁶⁷ While neither of these sets of principles is binding upon international actors, they are a part of the IHRL framework and therefore also part of the rights businesses are obligated to respect.
76. The right of displaced persons to return to their homes is also recognized under customary IHL. Displaced persons have a right to return as soon as conditions that

¹⁵⁹ *We Leave or We Die*, *supra* note 44.

¹⁶⁰ SANA, *Cabinet Sets Plan for Reconstruction and Investment of Eastern Ghouta* (25 Mar. 2018), available at <https://sana.sy/en/?p=131821>; Howard Mollett, *Reconstruction of Syria Cannot be a Real Estate Industry: Civil Society's Challenge to the Brussels Conference on Syria*, Care Insights (5 Apr. 2017), available at <https://insights.careinternational.org.uk/development-blog/reconstruction-of-syria-cannot-be-a-real-estate-industry-civil-society-s-challenge-to-the-brussels-conference-on-syria>.

¹⁶¹ *Decree 66: The Blueprint for Al-Assad's Reconstruction of Syria?*, *supra* note 55.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Volume Two: Criminal Law and International Crimes* 21-11, *supra* note 22.

¹⁶⁵ Universal Declaration of Human Rights, Art. 13, *supra* note 77.

¹⁶⁶ International Covenant for Civil and Political Rights, Art. 12(4), available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹⁶⁷ Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons, available at <https://2001-2009.state.gov/documents/organization/99774.pdf>; United Nations Guiding Principles on Internal Displacement, available at <https://www.google.com.tr/search?q=united+nations+guiding+principles+on+internal+displacement&aq=United+Nations+Guiding+Principles+on+Internal+Displacement&aq=chrome.0.014.16574j0j4&sourceid=chrome&ie=UTF-8>.

caused displacement cease to exist.¹⁶⁸ As forced displacement is an unjustified transfer of a civilian population, forcibly displaced persons always have a right to return.

77. Businesses rebuilding or purchasing the homes of displaced persons violate their right to return. It becomes more difficult for displaced persons to exercise the right to return when there is no longer a home to return to.

Pillage and Housing, Land, and Property Rights

78. Pillage, often also called ‘plunder,’ is the unlawful appropriation of another’s property for personal or private use without the consent of the legitimate owner in the context of a conflict.¹⁶⁹ In addition to being a crime under international law according to the Rome Statute of the ICC¹⁷⁰, pillage is also prohibited under IHL by the Hague Convention,¹⁷¹ and the Geneva Conventions.¹⁷²
79. Pillage also violates Housing, Land and Property rights (‘HLP’) such as the right to own property and the right not to be deprived of one’s property under Article 17 of the Universal Declaration of Human Rights (‘UDHR’). Pillage also violates the right to protection from arbitrary interference with one’s home, recognized in the UDHR and the ICCPR.¹⁷³ Additionally, Rule 133 of the International Committee of the Red Cross’s customary rules of IHL recognizes an obligation of conflict parties to respect the property rights of displaced persons.¹⁷⁴

¹⁶⁸ International Committee of the Red Cross, *Rule 132. Return of Displaced Persons*, Customary IHL Database, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule132.

¹⁶⁹ Rome Statute Art. 8(2)(b)(xvi), *supra* note 19.

¹⁷⁰ *Id.*; International Committee of the Red Cross, *Practice Relating to Rule 52. Pillage*, IHL Database Customary IHL, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule52.

¹⁷¹ *Rule 52*, *supra* note 170.; Fourth Geneva Conventions art. 47, *supra* note 149.

¹⁷² *Rule 52*, *supra* note 170.; Fourth Geneva Conventions art. 33, *supra* note 149.

¹⁷³ UDHR art. 12, *supra* note 77.; ICCPR art. 17, *supra* note 166.

¹⁷⁴ International Committee of the Red Cross, *Rule 133. Property Rights of Displaced Persons*, Customary IHL Database, available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule133.

80. The case of Alfried Krupp as part of the Nuremberg prosecutions demonstrates the type of liability business actors operating in this context may incur.¹⁷⁵ During the Second World War, the Nazi regime seized property owned by Jewish individuals under military occupation throughout Europe.¹⁷⁶ Krupp and other German business owners purchased such property and machinery from the Nazi regime.¹⁷⁷ Transfer of the property appeared to be legal, as the Nazi regime legalized such takings.¹⁷⁸ Krupp was found guilty of plunder, even though his motivations arose from his business interests as opposed to from a military objective.¹⁷⁹

81. Similarly, land expropriation under Law 10 and Decree 66 may amount to pillage and violations of HLP rights. Property taken by the Syrian government under these laws may amount to the crimes of pillage and unlawful seizure of property.¹⁸⁰ Business actors taking advantage of or purchasing properties stolen under these laws risk aiding and abetting pillage. Business actors also risk pillaging properties of forcibly displaced persons and refugees if they purchase or take advantage of abandoned properties throughout the country.

Use of Chemical Weapons

82. The use of chemical weapons amounts to a war crime under the jurisdiction of the Rome Statute of the ICC.¹⁸¹ The use of chemical weapons is also prohibited under customary IHL.¹⁸² A number of IHL treaties have been created specifically to deal with the issue of chemical weapons use, proliferation, and storage during conflict including the Chemical Weapons Convention, the Hague Declaration Concerning Asphyxiating Gases, and the Geneva Gas Protocol.¹⁸³

83. Business actors in reconstruction in Syria may also risk liability for chemical weapons use in Syria. The Syrian government has used illegal chemical weapons on a number of occasions over the course of the seven-year conflict and has even been accused of using chemical weapons on at least 50 occasions.¹⁸⁴ The UN Security Council established the Joint Investigative Mechanism, a panel of UN and Organization for the Prohibition of

¹⁷⁵ Krupp et al., US Military Tribunal Nuremberg (31 July 1948), *available at* <http://werle.rewi.hu-berlin.de/KRUPP-Case%20Judgment.pdf>.

¹⁷⁶ *Id.* at 20-53.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 20-28.

¹⁷⁹ *Id.* at 19.; *Volume Two: Criminal Law and International Crimes* 42, *supra* note 22.

¹⁸⁰ Rome Statute Arts. 8(2)(b)(xvi) & (e)(xii), *supra* note 19.

¹⁸¹ *Id.* at art. 8(2)(b)(xvii).

¹⁸² International Committee of the Red Cross, *Rule 74. The Use of Chemical Weapons is Prohibited*, IHL Database Customary IHL, *available at* https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule74.

¹⁸³ *Id.*

¹⁸⁴ Rick Gladstone, *U.S. Says Syria Has Used Chemical Weapons at Least 50 Times During War*, *The New York Times*, *available at* <https://www.nytimes.com/2018/04/13/world/middleeast/un-syria-haley-chemical-weapons.html>.

Chemical Weapons experts, to determine perpetrators of chemical weapons attacks in Syria.¹⁸⁵ The inquiry concluded that the Syrian regime had carried out attacks on multiple occasions between 2014 and 2017.¹⁸⁶ Business actors contracting with the Syrian government or other perpetrators of chemical weapons use for reconstruction purposes, while the government continues to use chemical weapons, risk incurring liability for financing the regime's use of chemical weapons.

RECOMMENDATIONS

84. As is evident above, there are a number of ways businesses and business actors can contribute to war crimes committed in Syria. However, businesses can protect themselves from liability and from allowing war criminals to profit from reconstruction. Below is a set of recommendations for various stakeholders in Syria's reconstruction that will mitigate the human rights impact of business activity in Syria's reconstruction.

For Businesses

85. **Comprehensive Human Rights Due Diligence:** Businesses interested in contributing to the reconstruction in Syria can avoid complicity in international crimes by conducting comprehensive human rights due diligence in compliance with the UN Guiding Principles on Business and Human Rights prior to beginning work in Syria. This includes conducting an investigation into Syria's economy and the history of economic policies as well as engagement with local stakeholders and civil society. Businesses can look to The Syrian Legal Development Programme's [report on the Reconstruction and Human Rights: The Syria Challenge event at Chatham House](#) for more information on the matter.
86. **Human Rights Impact Assessments:** Businesses can also mitigate human rights risks by conducting regular human rights impact assessments that monitor ways business activities have impacted the local community and the human rights concerns that may have arisen as a result of their work. However, human rights impact assessments are only as meaningful as their implementation. Businesses should have clear plans for implementing changes to their work that seek to mitigate human rights risks that exist as a result of their business operations.
87. **Human Rights Policy:** Businesses should have comprehensive human rights policies that detail the role that respect for human rights will play in their business and regulations for human rights commitments of employees and senior executives. Businesses who already have policies in place should revisit policies to take into account elevated human rights risks that arise from operating in a conflict setting. Businesses should also ensure that human rights policies are reflected in all business operations and decisions.

¹⁸⁵ Id.; Organization for the Prohibition of Chemical Weapons—UN Joint Mission, *available at* <https://opcw.unmissions.org/>.

¹⁸⁶ *U.S. Says Syria Has Used Chemical Weapons at Least 50 Times During War*, *supra* note 184.

88. **Transparency:** It is also important for businesses interested in contributing to reconstruction in Syria to be transparent in their operations. This includes publishing their due diligence policies and procedures, human rights policies, and the results of their human rights impact assessments. Businesses should disclose who their business partners in Syria are and where specifically in Syria they are operating. This ensures that businesses can be held accountable and also demonstrates a commitment to human rights.
89. **Go Beyond the Sanctions Regime:** Businesses can avoid contributing to international crimes in Syria by following and complying with the sanctions regimes of various international actors. However, as sanctions regimes do not capture all human rights violators and war criminals in Syria and its allies, it is important that business actors go beyond these regimes. This can be achieved by consulting local civil society and Syrian economic experts regarding the human rights impacts or the role of potential business partners in the armed conflict.
90. **Follow the Money:** Business actors should investigate the business operations of businesses they partner with in Syria. Specifically, businesses should ensure they are aware of those businesses' partners, subsidiaries, and parent companies. Additionally, businesses should ensure they are aware of all actors who have been part of the supply chains of the products they buy. After careful investigation, business actors should not engage in contracts with businesses who may be complicit in international crimes or rights violations in Syria.
91. **Engage Local Actors:** Businesses interested in participating in reconstruction in Syria should engage with local actors such as civil society, local businesses, and local councils to determine the potential and ongoing human rights impacts of their work. Further, engaging local actors allows them to be part of the reconstruction process of their country, which will further their right to self-determination.

For States

92. **Comprehensive Reconstruction Policy:** States that host businesses interested in participating in reconstruction in Syria should ensure that all government agencies have comprehensive reconstruction policies that fall in line with one another to ensure there are no contradictions. This will ensure that all government agencies are avoiding business contracts with businesses complicit in international crimes or rights violations.
93. **Guidance for Businesses:** State actors should create guidelines and trainings for domestic businesses interested in participating in reconstruction in Syria. Guidelines should demonstrate the potential domestic and international legal liabilities that participating in reconstruction in Syria may incur on businesses and recommend a framework for avoiding contributing to human rights violations.
94. **Extra-territorial Regulation:** States should work to develop laws regulating business activity abroad and ensure that domestic business actors working in other countries can be held liable for extraterritorial human rights violations.

For International Actors

95. **Humanitarian NGOs:** Humanitarian organizations working inside Syria should also be mindful of which Syrian businesses they work with, such as suppliers, as these businesses may also be implicated in human rights concerns in their practice. They should be prepared to adopt all the steps required by businesses under the UNGPS to know and show their respect for human rights.
96. **Business & Human Rights Organizations:** Business and Human Rights organizations that consult businesses on their human rights impact should develop guidelines specific to the context of the reconstruction of Syria that ensure that businesses have human rights policies and due diligence plans.
97. **UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises:** The UN Working Group on Human Rights and Business should publish reports on the application of the UN Guiding Principles to the situation in Syria. The UN Working Group should also conduct investigations into business and human rights issues that arise in from the Syria context, particularly those that are specific to reconstruction, and publish their findings.
98. **Consult Syrian Civil Society Organisations ('CSO'):** International actors working on human rights in reconstruction in Syria should consult Syrian CSOs to understand the human rights concerns that appear on the ground relating to business activity on reconstruction in Syria.

For Syrian CSOs

99. **Guidance:** Syrian civil society organizations should provide consultations to business actors interested in participating in reconstruction in Syria regarding the human rights concerns they see on the ground.
100. **Monitoring and Documentation:** Syrian civil society organizations should also play a monitoring and documentation role regarding business activities in reconstruction in Syria, ensuring that businesses are not violating human rights in business operations.

CONCLUSION

101. While participating in reconstruction in Syria carries a number of human rights risks, a diligent and human rights-focused approach to business operations in Syria can ensure compliance with international law and avoidance of corporate complicity in international crimes. The continuation of the conflict in Syria creates an environment that makes reconstruction and business activity difficult, as perpetrators of international crimes are still at large. The actors who have taken part in the vast international crimes committed in Syria and continue to hold control of territory in Syria are likely to impact the operations of businesses contributing to Syria's reconstruction. Comprehensive due diligence and regular human rights impact assessments can ensure that businesses are responding to the needs of Syrians during reconstruction activities. Although this might make business operations more complex and difficult, it may also lead to a more impactful rebuilding of Syria.

HUMAN RIGHT AND BUSINESS UNIT (HRBU)

In April of this year, SLDP launched the Human Rights and Business Unit to address the human rights impact of business activity in Syria. To this end, SLDP monitors and documents business related activities that may contribute to human rights violations or international crimes. SLDP also engages with Syrian civil society and international actors to ensure compliance with international human rights norms in Syria's reconstruction phase. Moreover, SLDP meets with businesses and investors interested in participating in reconstruction in Syria to ensure awareness of the human rights risks associated with business activity in Syria.

SLDP has hosted a panel discussion in partnership with Chatham House on the political, economic, and human rights implications of reconstruction in Syria. You can read more about this here.



To read more about our Human Rights and Business Unit, please visit

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