

## Veolia – a case to answer



24th May 2012

Veolia is a multinational company providing services to local authorities and other bodies up and down the country. It is also involved in providing services linking Israel to its illegal settlements in the occupied Palestinian territories. Many people are campaigning against Veolia being considered for contracts in the UK (and elsewhere) while it is complicit in the illegal occupation. They are encountering the view, prevalent among local authorities, that what Veolia does elsewhere is not relevant in the UK. It is even claimed that it would be illegal *not* to consider them when awarding contracts.

We consulted Hickman & Rose, Solicitors on this and related questions. They have prepared a [legal briefing note](#) on Veolia at the request of JfJfP and the No to Veolia Action Group (NO2VAG) advising that ***There is every reason for excluding Veolia from public contracts in the UK and no good legal reason not to do so.*** Accompanying their briefing are factsheets providing additional information and support for their arguments. They are published here for the first time.

We would like to acknowledge the important contribution made by Angus Geddes over the years to the Veolia campaign in general and to carrying out much of the work that has gone into producing these Factsheets. We are all indebted to The Civic Coalition for Defending the Palestinian Rights in Jerusalem whose report [The Jerusalem Light Rail Train: Consequences and Effects](#) highlighted the issue. The content of the factsheets draws heavily on the invaluable work of [Who Profits from the Occupation](#) (an Israeli Coalition of Women for Peace research project) ; and on that of researcher [Adri Nieuwhof](#) who has published consistently on this and other topics related to the occupation on the [Electronic Intifada](#) and who also gave evidence to the Russell Tribunal on Palestine (see below). Thanks to Islington Friends of Yibna who instigated the legal work on Veolia and to Salim Alam who commissioned specific work on UK and EU law on all of which this brief has drawn. Finally, special thanks to Daniel Machover of Hickman & Rose for his work and commitment beyond the call.

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### The Legal Briefing:

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through its profits

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### **Some additional references**

The Civic Coalition for Palestinian Rights in Jerusalem, [The Jerusalem Light Rail Train: Consequences and Effects](#), December 2009

A Different Jewish Voice (Een Ander Joods Geluid) & United Civilians for Peace (Cordaid, ICCO, Oxfam Novib and IKV Pax Christi), [Veolia Fact file](#) and relevant maps of [East Jerusalem](#), [planned routes of the light rail](#), and the [Tovlan landfill](#). (There is also an extensive [legal opinion](#) in Dutch only.)

Adri Nieuwhof, Video of Evidence to the Russell Tribunal on Palestine, [Implications of Corporate Activities In & Around Settlements \(Part 2\)](#), starting at 3'03"



– **NOZVAG** –

## Excluding Veolia from public contracts

A legal briefing note prepared by Hickman & Rose, Solicitors<sup>1</sup>

***There is every reason for excluding Veolia from public contracts in the UK and no good legal reason not to do so.***

The multinational company, Veolia operates as a single entity worldwide, providing transport, sewage treatment, landfill and waste collection services that benefit illegal Israeli settlements in East Jerusalem and the occupied West Bank. These actions amount to “grave misconduct” in the conduct of business under any reasonable interpretation, given that they directly assist serious violations of international humanitarian law by Israel. Veolia should be excluded from public contracts on these grounds. There is no foundation for the argument that exclusion of Veolia is itself illegal and contrary to the Local Government Act 1988. Indeed Minister for the Cabinet Office Francis Maude in a written parliamentary answer on 23<sup>rd</sup> May 2012 regarding illegal Israeli settlements was explicit that companies that have committed “an act of grave professional misconduct in the course of their business or profession” “may be excluded from a tender exercise”.<sup>2</sup>

This briefing sets out the reasoning behind these contentions. You will find links to further evidence and arguments in their support on this web page:

[http://jifp.com/?page\\_id=30763](http://jifp.com/?page_id=30763)

<sup>1</sup> [Hickman & Rose](#), solicitors, 17-18 Aylesbury St, London EC1R 0DB

<sup>2</sup> <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120523/text/120523w0004.htm#12052384000139>

## **1. Grave misconduct**

Under the Public Contracts Regulations 2006<sup>3</sup> a public body may exclude a bidder or reject a bid where it is found that the individual or organisation in question has “committed grave misconduct in the course of his business or profession” (s.23(4)(e)). The Regulations were enacted to comply with the requirements of EU Directive 2004/18/EC of 31 March 2004.<sup>4</sup> “Grave misconduct” is not specifically defined in the Directive or the Regulations, but is understood to be something that can be proven to be such.

In this case, the claim of grave misconduct concerns Veolia’s activities in linking Israel to its illegal settlements located in the occupied West Bank and East Jerusalem. Veolia has done so with the provision of a light railway and bus services, and by supplying sewage treatment, waste collection and landfill services to such illegal settlements. In doing this, Veolia aids, abets, exacerbates and facilitates Israel’s continued violation of international humanitarian law – including the commission of “grave breaches” of the Fourth Geneva Convention 1949 and the First Additional Protocol of 1977 – as well as Israel’s continued human-rights violations, in breach of international law. Furthermore, Veolia breaches international codes of conduct and authoritative guidance applicable to multinational corporations, including the OECD Guidelines for Multinational Enterprises (2000). All of these actions amount to “grave misconduct” on any reasonable interpretation.

It is important to stress that Veolia does not deny that it provides these services that openly benefit illegal Israeli settlements in the occupied West Bank (for more on these services see [http://jifip.com/?page\\_id=30824](http://jifip.com/?page_id=30824) ).

**2. The argument is often heard that what Veolia does in the UK has nothing to do with what it does elsewhere in the world. This is not the case. Veolia is a**

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<sup>3</sup> <http://www.legislation.gov.uk/ssi/2006/1/regulation/23/made>

<sup>4</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts *Official Journal L 134* , 30/04/2004 P. 0114 – 0240, English language version at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:HTML>

**multinational company with a complex structure, but it operates as a single entity. The conduct of one part of the company cannot be viewed in isolation from the activities of other parts of the company.**

**(a) Veolia's structure**

Veolia Environmental Services in Britain is part of the multinational French corporation, Veolia Environnement SA (henceforth Veolia). So too are Veolia Environmental Services Israel (VES Israel) and Veolia Transdev, companies involved in activities in the Occupied Palestinian Territories.

Veolia has four divisions: environmental services, transport, water and energy. Veolia Environmental Services is a UK subsidiary of Veolia's environmental services division. **In 2005 the company's four divisions adopted the single name, Veolia, and the Veolia website states that this move "signalled the desire of the entire company to link the Veolia divisions in a coherent way and increase its visibility".<sup>5</sup>** Veolia's revenues and profits are calculated as a whole. The corporation is listed on the Paris and New York stock exchanges. In reporting results, Veolia regards its subsidiaries as divisions of itself, and its subsidiaries' contracts as its own contracts. All of these features are important in showing that Veolia and its subsidiaries in the UK and in Israel and the occupied Palestinian territories should be treated as a single entity.

For further elaboration, see [http://jfjfp.com/?page\\_id=30853](http://jfjfp.com/?page_id=30853)

**(b) UK law**

UK public bodies are entitled by law to look behind the corporate structure of a bidding company to assess if any part of the business in question is committing grave professional misconduct.

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<sup>5</sup> <http://www.veolia.com/en/group/history/today/>

English case law establishes that a holding company and subsidiary can be treated as a single entity, and the profits of the subsidiary can be treated as profits of the parent company.<sup>6</sup> The legal position has been described as follows: “[A] court may, if the justice of the case so requires, treat two or more related companies as a single entity so that the business notionally carried on by one will be regarded as the business of the group or another member of the group if this conforms to the economic and commercial realities of the situation”.<sup>7</sup>

### **(c) EU law and the UK**

The case is further strengthened when we take EU law into account. The European Court of Justice recently adopted a wide approach to parent liability for subsidiary conduct where the subsidiary is wholly owned by the parent company.<sup>8</sup> As already pointed out above, Veolia treats itself as a single entity and so the conduct of one division *is* the conduct of Veolia as a whole. The Veolia website states, “Veolia Environnement is the only global company to provide the full gamut of environmental services in the water, environmental services, energy and transportation fields under one brand name.”<sup>9</sup> **UK law on procurement of public contracts must be applied so as to give effect to EU law. Given the definitions set out in the Directive and EU law a public body is entitled to treat a group of companies under common control as the bidder even where just the UK part of the group makes the bid.** This means the conduct of all companies in the group can legitimately be imputed to the bidder. EU law will not permit a wrong-doer to shelter behind corporate structures or arrangements that ensure that they were not the bidder for the purposes of the Directive.

In other words, EU law encourages us to focus on substance rather than the legal form of companies, and to view “control” as the key issue of substance when

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<sup>6</sup> *Smith, Stone and Knight Ltd v The City of Birmingham* [1939] 4 ALL ER 116

<sup>7</sup> *Supermarkets Limited v Crumlin Investments Ltd and Dunnes Stores (Crumlin) Limited* (22 June 1981, Unreported, High Court) *Connelly v RTZ Corporation Plc and others* [1998] AC 854 and *Lubbe v Cape PLC* [2000] 4 All ER 268 further demonstrate occasions where the court has lifted the corporate veil in light of realities on the ground.

<sup>8</sup> *Akzo Nobel NV v Commission of the European Communities* (2009) All ER (D) 93 (Sep)

<sup>9</sup> <http://www.veoliaenvironnement.com/en/group/activities/default.aspx>

examining the status of economic entities. This provides further support for the focus on substance rather than the legal form of companies, and for viewing “control” as the key issue of substance when examining the status of economic entities. In EU competition law it has long been established that companies will be held responsible for the activities of their subsidiaries. There is a presumption that where a company is wholly owned by another company it does “not decide independently upon its own conduct” but rather carries out the instructions of its parent.

In short, EU law permits public bodies to impute the conduct of group companies forming a single economic unit to the bidder. **If one division of Veolia is involved in activities of grave misconduct and Veolia as a whole profits from such conduct, then Veolia as a single entity including all of its divisions and subsidiaries must necessarily be implicated in such misconduct.**

**3. Wouldn't it be contrary to the Local Government Act (LGA) 1988 to treat Veolia in this way? The answer is 'no'.**

It is often claimed that LGA 1988 prevents public bodies from excluding Veolia from bidding for contracts on the basis of the above considerations. This is not so. There is no such legal impediment set down in any legislation, including LGA 1988.

Section 17 of the LGA 1988 provides as far as relevant (emphases added):

*s.17 Local and other public authority contracts: exclusion of non-commercial considerations*

(1) It is the duty of every public authority to which this section applies, in exercising, in relation to its public supply or works contracts, any proposed or any subsisting such contract, as the case may be, any function regulated by this section to exercise that function without reference to matters which are ***non-commercial matters for the purposes of this section.***

...

(5) The following matters are non-commercial matters as regards the public supply or works contracts of a public authority, any proposed or any subsisting such contract, as the case may be, that is to say—

...(e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors...

The wording may be complicated but it is clear that only *certain kinds of non-commercial considerations* are ruled out of consideration. Local authorities are *not* entitled to take into account some *specific* non-commercial considerations when making public contract decisions. But they *are* entitled to consider, for example, criminal conduct alleged against a bidder in a particular locality.

The “non-commercial matters” that are being put forward as the basis for excluding Veolia from public contracts do not contravene the LGA 1988 prohibition. That is because the grave misconduct alleged against Veolia does not relate to its activities in Israel or the Occupied Palestinian Territories (OPT) *per se*, or the location *per se* of its business activities or interests in Israel or the OPT. Rather, the (non-commercial) matter in question is the precise nature of Veolia’s activities in the West Bank, which is *totally outside* the list of excluded “non-commercial matters” in s17.<sup>10</sup>

To clarify: there would be no complaint if Veolia were providing a bus service solely within Israel proper; or supplying waste disposal services to Palestinian communities alone within the West Bank; or not servicing illegal settlements as part of the Jerusalem Light Railway into East Jerusalem. In short, it is not that Veolia’s business activities take place in a particular country or territory that give rise to the allegation of “grave misconduct in the course of [its] business or profession”, but the *nature of* Veolia’s economic activity in the West Bank, including East Jerusalem (that is to say, the fact that Veolia acts in wilful defiance of international law).<sup>11</sup>

## Conclusion

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<sup>10</sup> Section 19 LGA 1988 entitles the Government to pass regulations to “specify as a non-commercial matter for the purposes of section 17...any other matter which appears...to be irrelevant to the commercial purposes of public supply or works contracts of any description”. But no changes have been made that affect decisions on excluding Veolia for grave misconduct.

<sup>11</sup> Any LGA 1988 argument runs into a further difficulty: EU law requires that the 1988 Act must be “read down” so as to enable the 2006 Regulations to operate effectively within EU procurement law and ensure that the discretion being considered here can be properly exercised i.e. EU law will be dominant in this context.



Veolia's activities, insofar as they aid, abet, facilitate and exacerbate human-rights violations and discrimination, clearly constitute misconduct sufficiently grave to warrant the exclusion of Veolia Environmental Services from bidding for (or being awarded) any new contract. Indeed, it is difficult to imagine what "misconduct" could be more "grave" than the aiding, abetting, facilitation or exacerbation of human-rights violations and discrimination.

Public bodies in the UK need to be aware they could expose themselves to legal action for failing to take on board their obligation to recognise and comply with their duties and responsibilities under the Geneva Conventions and international law.

Accordingly, public bodies should indicate as soon as possible what action they intend to take to investigate the matters raised above and whether they intend to exclude Veolia from bidding for new contracts. It would be fair and appropriate to put the above allegations to Veolia Environmental Services, before making any decisions.

# Factsheet 1 | Jews for Justice for Palestinians



## Factsheet 1

### Veolia's Corporate Structure and Control: a Single Entity

#### 1. Corporate Structure

Veolia Environnement (VE) is the Paris-based parent company.

Veolia Environmental Services UK (VES UK) is a wholly owned subsidiary of VE.

Veolia Environmental Services Israel (VES Israel) is 99% owned by the Veolia Environmental Services Division of VE (the remaining 1% is owned by E Europeenne compagni).

VES Israel owns 95.9% of TMM Integrated Recycling Services which, together with its subsidiary Y.R.A.V Sherutei Noy 1985, **operates the Tovlan landfill site** that takes refuse from illegal Israeli settlements in the occupied Jordan valley and from Israel. TMM and Y.R.A.V Sherutei Noy 1985 also transfer waste to Tovlan.

Veolia Transport merged with Transdev to form Veolia Transdev as from 3 April 2011. Veolia Transdev is 50% owned by VE, but VE has effective control of Veolia Transdev as, in addition to owning half the shares, the CEO/Chairman of VE is also the Chairman of Veolia Transdev. In its reporting VE treats Veolia Transdev's operations as its own.

Before 3 April 2011 Veolia Transport Israel had been a wholly-owned subsidiary of the Veolia Transport Division of VE. In the reconstruction it became a wholly-owned subsidiary of Veolia Transdev, and thus, as described above, remained effectively under the control of the parent company VE.

Veolia Transport Israel owns 5% of the CityPass consortium **that built the Jerusalem Light Rail Transit (JLR)**, which as a result of recent construction now services illegal exclusively Jewish Israeli settlements in illegally annexed East Jerusalem. Connex Jerusalem Light Rail operates the JLR. Veolia Transport Israel owns at least 78.8% of Connex Jerusalem Light Rail **and therefore has control of the operation of the JLR.**<sup>[1]</sup>

Veolia Transport Israel also operates **bus services Connex 7, 19, 109, 110, 422 and 425 that connect illegal Israeli settlements to Israel.**

#### 2. Management

There is ample evidence from the company's management practice that Veolia is one commercial entity and that Veolia Environnement has effective control of its subsidiaries and requires them to follow its instructions.

In 2005 VE's four divisions adopted a single name, Veolia, and a new logo. As the Veolia website states, this move 'signalled the desire of the entire company to link Veolia divisions in a coherent

way and increase its visibility'. Veolia's revenues and profits are calculated as 'a whole', and the corporation is quoted on Euronext Paris and the New York Stock Exchange. Indeed, even when reporting results, Veolia regards its subsidiaries as 'divisions' of itself and, significantly, Veolia regards its subsidiaries' contracts, including those with British local authorities, as its own. This is clearly illustrated [in their statement](#) that "The company [Veolia Environnement] won and renewed multiple contracts in its priority development zones, including: ... Shropshire in the UK in the Environmental Services (Waste Management) division."

Further evidence that Veolia is one commercial entity is provided by a recent letter from VES (UK), which refers to "ascertaining the status of our involvement with the Jerusalem Light Railway. All of your comments have been passed to the relevant departments within our company for their consideration." From the comments a few lines later it is clear that "relevant departments" included the Paris Head office, i.e. the head office of the parent company. The letter goes on to refer to "our colleagues who are more closely linked to this project." It is abundantly clear from this that for VES (UK) 'our company' is the entire Veolia group, the Paris office of VE is VES (UK)'s Head Office, other Veolia Group companies are departments of Veolia as a whole, and all personnel within the Veolia Group are colleagues of VES (UK).

This approach is further reflected in the employment policies, as [here](#). This shows Veolia's commitment to allowing staff to move freely among the various divisions of Veolia Environnement, providing further evidence of one corporate entity. See, in particular: page 29 where it says that an employee's company service is based on their start date within the group; page 40 where it says that international transfers are written up in an amendment to the employment contract; and page 45 where it says that at the end of an expatriation assignment your original company will make it a priority to find you a new assignment in the division and that, whilst on expatriate assignment, your career advancement will continue to be monitored in the same way as other VE division employees.

Further, VE's 2008 document "[Ethics, Commitment and Responsibility](#)", provides more clear evidence of one commercial entity. This document has a brief Foreword then two major chapters: 1. Guiding Principles and 2. Organisation and a brief Summary. The Foreword, "Our Corporate Commitment", describes the document as "designed to constantly serve as a guide for our 336,013 employees who operate in 68 countries worldwide". It continues: "Irrespective of the geographical area in which we operate, we must conduct our business in accordance with both national standards and the recommendations of international organisations

These guidelines are clearly regarded as instructions within the company. "Guiding Principles 4.1 Safety and Morale in the Workplace" states "Employees must comply with instructions and procedures issued in these areas by... Veolia Environnement." This is an unambiguous indication of the parent company's control of its subsidiaries' employees. The "Organisation" section opens boldly with the statement that "All employees must comply with the Veolia Environnement "*Ethics, Commitment and responsibility*" programme. " The section "Organisation: 1. Programme Scope of Application" states that "The Programme applies to all companies controlled by Veolia Environnement, that is to say all companies in which Veolia Environnement directly or indirectly owns or controls over 50% of the voting rights." This is a clear statement of the parent company's control over VES (UK) and Veolia Environmental Services (Israel). In its opening sentence "Guiding principles" states that "Our Divisions... all represent Veolia Environnement", while its section 3, "Social Responsibility", includes the objective of "offering its employees... long-term local employment", indicating that it is VE, the parent company, that is the real employer, even if the employee signs a contract with the local subsidiary.

Finally it is worth noting that the very first of the Guiding Principles in this document is "Strict respect for the law", from which "no exceptions" are allowed. And section 2.2 spells this out as respect for "all applicable laws or regulations".

Further evidence of VE as a single entity is provided by VE's [Purchasing Charter](#). It includes the statement "This Charter covers all purchasing categories in all countries where Veolia Environnement has a presence. It concerns all the people involved in the purchasing process"; also

the telling instruction to “Serve as a representative for all of Veolia Environnement and represent Veolia Environnement as one company”.

The most recent evidence is provided by page 59 of the [presentation on VE’s Investor Day 2011](#) (6 December 2011). Referring to Veolia as a whole, it states: “All investments above 10 million Euros to be approved by Veolia’s investment committee, depending on strict return criteria.”

## **Conclusion**

It is evident from the foregoing that Veolia comprises a single entity and profits and prospers as such. VES (UK) is under the control of the parent company VE, which in turn has control of its Israeli subsidiaries that have been committing, and continue to commit, acts of grave misconduct. VE bears responsibility for these acts and as a single entity the whole company, including its subsidiaries, shares this responsibility.

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[1] Veolia claim to have sold or be in the process of selling their interests in Tovlan and JLR. However, no sale has in fact taken place in either case and permission may not be given by the relevant Israeli authorities. If the sale of the JLR interests went ahead, Veolia would still be involved through the technical consultancy. If the Tovlan operating rights sale were to be completed it would be to an illegal Israeli settlement (the sale itself therefore arguably amounting to grave misconduct on its own) and Veolia would still be involved in an advisory role. It would still be transferring refuse to Tovlan through TMM and its other subsidiary YRAV. Any future sales would not alter the fact that Veolia has committed acts of grave misconduct in the course of its business activities.

## Factsheet 2 | Jews for Justice for Palestinians



### Fact Sheet 2

#### **The Jerusalem Light Railway (JLR) and Veolia's other business activities in the Occupied Palestinian Territory**

##### **JLR**

1. In 2002, the City Pass consortium, which is made up of Alstom, Veolia Transport,<sup>[1]</sup> and a number of Israeli companies, concluded a contract with the Israeli government for the building, maintenance and running of the Jerusalem Light Rail Tramway for thirty years, as well as for the manufacturing of tramway cars and signals. Veolia Transport has a 5% share in the City Pass consortium and acts as operator now the service has begun. As an operator, Veolia is responsible for the day-to-day operational functions of the system, including customer service, service planning, ticketing and fare collections and track control.
2. The first line opened in August 2011. The tramway has connected West Jerusalem with a number of illegal Israeli settlements in and around occupied (and illegally annexed) East Jerusalem, and by doing so has reinforced the permanence of those illegal settlements. It will also contribute to the expansion of new settlements. The system will help to cement Israel's hold on occupied East Jerusalem and tie the settlements even more firmly in to the state of Israel. The first line now links the illegal settlements of Pizgat Zeev and French Hill with West Jerusalem. A station at Ammunition Hill operates as a feeder station for traffic from Ma'aleh Adumim, a large Israeli settlement in the West Bank and Israeli settlements in the Jordan Valley.
3. As the tram routes are within Occupied Palestinian Territory, they are subject to the legal regime of "belligerent occupation", including the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, the 1977 First Additional Protocol and the Hague Regulations of 1907. The tramway constitutes a clear violation of articles 49(6)<sup>[2]</sup> and 53<sup>[3]</sup> of the Fourth Geneva Convention (IVGC) and article 3 of the Hague Regulations. Article 49(6) IVGC prohibits an occupying power from transferring its own civilians into occupied territory and Article 53 prohibits an occupying power from destroying real or personal property in the occupied territory. Additionally, article 3 of the Hague Regulations prohibits significant alteration to the infrastructure of the occupied territory.
4. Israeli settlements in the OPT and the Israeli annexation of East Jerusalem have unanimously been considered to be illegal in the eyes of successive British governments, the international community, and authoritative international legal bodies.<sup>[4]</sup> In January 2007, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 reaffirmed the illegality of the settlements under article 49 IVGC and noted that the continued expansion of Israeli settlements and the enclosing of the wall will "effectively divide Palestinian territory into cantons, thereby destroying the territorial integrity of Palestine."<sup>[5]</sup>
5. All the settlements being served by the tramway are on the Israeli side of the wall which has been built separating them from the West Bank and some of the Palestinian populated areas of East

Jerusalem. The tramway therefore reinforces the process of incorporation by Israel of the settlements and the sections of Occupied Palestinian Territory between the wall and the green line into Israel. This is crucially important, given that the primary reason that the International Court of Justice declared the wall in the OPT and East Jerusalem illegal in 2004 was that its purpose was to incorporate the self same territory.<sup>[6]</sup> It is therefore clear that the tramway itself constitutes a breach of article 49(6) IVGC.

6. The construction of the tramway has involved (and will continue to involve) the confiscation of Palestinian land and extensive damage to the roadway on which the tracks have been laid. As early as 11 July 2001 already the Palestine Liberation Organisation, (recognized as the “sole legitimate representative of the Palestinian people” by the United Nations), reported that: “Last week, the Israeli West Jerusalem Municipality issued letters to several Palestinian families in the Shu’fat neighborhood informing them that they intend to confiscate 15 dunums of land to build a parking lot and a station for the future Light Rail.”<sup>[7]</sup> Journalist Adri Nieuwhof, who has followed the JLR story since its inception, reports for example that “Two-thousand square meters of land belonging to Shuafat resident Mahmoud al-Mashni have been confiscated for the light rail project, and more of his land will be confiscated for the parking lot next to the station.”<sup>[8]</sup> The nature and extent of the damage constitute major destruction, contrary to article 53 IVGC.<sup>[9]</sup> The construction also constitutes significant alteration to the infra-structure of the OPT, contrary to article 3 of the Hague Regulations 1907. Furthermore, the construction and maintenance of the tramway, involving the dispossession of Palestinian land, and the transfer of the Israeli civilian population into the occupied area amounts to a “grave breach” of the Geneva Conventions, contrary to article 147 IVGC.<sup>[10]</sup>

7. Further, an important reference to the Jerusalem light railway was made in a resolution that was adopted by the United Nations Human Rights Council sitting in Geneva on 14 April 2010. The reference for the resolution is: A/HRC/RES/13/7. The resolution is entitled “Israeli settlement in the occupied Palestinian territory, including East Jerusalem, and in the occupied Syrian Golan”. The preamble includes references to the illegality of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, which the Council says constitutes “very serious violations of international humanitarian law . . . .” At paragraph 5 the Council expresses “its grave concern” at a number of Israeli actions, including at (g):

“the Israeli decision to establish and operate a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev, which is in clear violation of international law and relevant United Nations Resolutions.”

This unequivocal reference to the Jerusalem light railway, which Veolia is involved with, and the grave concern expressed about the project, given that it links up illegal Israeli settlements with West Jerusalem, must be an additional factor that public bodies take into account when deciding whether or not Veolia’s conduct can be described as “grave misconduct in the course of [Veolia’s] business or profession” within the meaning of the relevant procurement regulations.

### **Other misconduct**

8. In addition to the JLR, Veolia Transport Israel operates several bus routes (at the last count the following routes: 7, 19, 109, 110, 422, and 425), connecting Israeli communities in Israel to illegal Israeli settlements in the West Bank.

Specifically:

- *Route no. 7 runs between Modi’in (a town that is just within the green line, so is not an illegal Israeli settlement) to the illegal Israeli settlements of Hashmonaim and Kfar Ha’oranim.*
- *Route no. 19 runs between Modi’in and the illegal Israeli settlement of Mevo*

Horon.<sup>[11]</sup>

- *Route 109 runs from Jerusalem to Modi'in, but also services the illegal Israeli settlements of Mevo Horon and Giv'at Ze'ev, located in the West Bank..*
- *Route 110 runs from Jerusalem to Modi'in, but it provides a bus service to the illegal Israeli settlement of Giv'at Ze'ev.*
- *Three bus lines between Bnei-Brak and Jerusalem that cut through the OPT, two of them, 422 and 425, with stops to serve the settlers. At the end of November 2011, Veolia won a contract to operate these bus services for the ultra-orthodox Haredim community.*
- *Route 422 passes through the OPT in Mahane Ofer junction, Givat Zeev Junction, Sderot Golda Meir, Shefa Haim and Ohel Yehoshua in Jerusalem.*
- *Route 425 passes through the OPT in Mahane Ofer junction, Givat Zeev junction, Sderot Golda Meir and Sderot Vaitzman, Jerusalem.*

In the same way as the tramway, the bus routes reinforce the process of incorporation of the settlements, and as such aid and abet Israeli officials in breaching article 49(6) IVGC.

Furthermore, **Veolia Transport Israel operates the services on a discriminatory basis. With the possible exception of a short stretch on some of the routes Palestinians who reside in the West Bank are not allowed to use them.** Palestinians with evidence of East Jerusalem residency rights can in theory use the routes. The problems of West Bankers not resident in East Jerusalem was highlighted on 15 November 2011, when Palestinians from outside East Jerusalem sought to use an Egged bus service, finding that six consecutive drivers refused to even stop for them, and after a seventh driver allowed them to board, all six Palestinian passengers were forcibly removed due to their non-Jewish status.<sup>[12]</sup>

Veolia's activities in the OPT clearly do not benefit the local population.

9. Further, Veolia:

(a) Collects and disposes of waste from the Tomer settlement, an illegal Israeli settlement established in 1976 on the lands of the people of Fasayil, Al Auja and other nearby Palestinian communities, located in the Jordan valley north of Jericho.

(b) Supplies waste-management services to the illegal Israeli settlement of Beqa'ot, which is in the northern part of the Jordan valley within the West Bank, a few kilometres southeast of the Palestinian town of Tubas.

(c) Manages the Tovlan landfill site in the Jordan valley (Israeli-occupied West Bank).<sup>[13]</sup> This site receives waste from illegal Israeli settlements in the West Bank, including waste that is brought to that landfill site by Veolia trucks. Indeed, recent information disclosed by the Israeli Civil Administration over the West Bank has revealed that communities inside Israel have been using the West Bank site to dispose of their waste!<sup>[14]</sup> A UN General Assembly Resolution on 28 January 2009 specifically called on "Israel, the occupying Power, to cease the dumping of all kinds of waste materials in the Occupied Palestinian Territory".<sup>[15]</sup>

(d) Veolia Water Israel provides services to the illegal settlement of Modi'in Illit. [Who Profits?](#) – a research project of the Israeli Coalition of Women for Peace – uncovered evidence of Veolia's involvement by researching the company's website, official Israeli websites and financial reports. On its website, [Veolia Water Israel](#) writes that its Ayalon Sewage Treatment Plant provides wastewater treatment to several communities, including the Israeli settlement of Modi'in Illit. The illegal Modi'in Illit settlement is situated between Jerusalem and Tel Aviv, in the occupied West

Bank. Veolia Water Israel is a full subsidiary of Veolia Environnement, according to Who Profits?<sup>[16]</sup>

These services are part of the “grave misconduct in the course of [Veolia’s] business or profession” that public bodies must take into account when exercising their discretion to exclude Veolia from bidding for public contracts.

### **Veolia selling off involvement in the JLR & Tovlan**

10. It is understood that Veolia has stated that the JLR and the Tovlan site mentioned above are currently up for sale. First, that does not apply to the other undertakings above. Further, in the case of any sell-off of the JLR stake held by Veolia to Egged, as with the comparable sell-off relating to the Tovlan landfill site, Veolia will continue its involvement in the JLR by providing consultancy services, as regards ticketing and other aspects of the service. Furthermore, such sell-offs, do not annul Veolia’s past complicity in their aforementioned activities and thus its past grave misconduct.

11. Public bodies are therefore entitled to look at Veolia’s complete involvement in the impugned projects and services, **historically and currently**, and to test carefully any evidence supplied about a prospective sale of shares in those projects.

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### **References**

[1] Via its 50% owned subsidiary Veolia Transport Israel. Since 3 April 2011, Veolia Transport Israel has been a subsidiary of Veolia Transdev. The Chair/CEO of VE is the Chair of Veolia Transdev.

[2] Article 49(6) of IVGC states that, “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. There are exceptions of military necessity but these do not apply in this context.

[3] Article 53 IVGC states that, “Any destruction by the Occupying Power 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 organisations, is prohibited, except where such destruction is rendered absolutely necessary by military operations”.

[4] See UN General Assembly resolution, A/RES/56/62 of 10 December 2001, A/RES/58/97 of 9 December 2003 and UN Security Council Resolution 465 of 1 March 1980.

[5] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, January 2007, Human Rights Council, A/HRC/4/17, Para.32.

[6] Legal Consequences of the Constructions of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, paras.61-63, and 197.

[7] Orient House [press release](#)

[8] [Veolia whitewashes illegal light rail project](#), The Electronic Intifada, 25 August 2010.

[9] Any denials of this violation by Veolia need to be treated with great caution, as both public and private land has been confiscated to enable the tram to be constructed.

[10] Article 147 states, “Grave breaches to which the preceding article relates shall be those involving any of the following acts...extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”.

[11] Bus services 7 and 19 both go into the West Bank but service only Israeli Jewish settlers.



[12] The bus boarded was an Egged one, but the Freedom Riders' campaign also highlighted Veolia's involvement. Also, note that Veolia was trying to sell its shares in the Jerusalem light rail tramway operating company to Egged. See [here](#), [here](#), [here](#) and [here](#).

## Factsheet 3 | Jews for Justice for Palestinians



### Factsheet 3

#### **Veolia Environmental Services supports Israel's violation of international law through its profits**

Independent of their complicity in Israel's violations of international law as a part of the one commercial entity Veolia, the company's subsidiaries such as Veolia Environmental Services (UK) support Israel's illegal settlements in another way, through their profits.

These profits become part of the income of the parent company Veolia Environnement. Veolia Environnement uses some of this income to provide its subsidiaries with services that assist their operations.

In the case of the subsidiary Veolia Transport Israel, these operations include tram and discriminatory bus services linking illegal settlements to Israel. In the case of Veolia Environmental Services Israel these operations include taking rubbish from illegal settlements and rubbish from Israel and dumping it in occupied territory.

The support Veolia Environnement provides its subsidiaries is varied; it includes, for instance, purchasing services as described in [its purchasing charter](#) and many others. Thus, through the allocation of its profits to a parent company that makes use of them in support of illegal settlements, Veolia Environmental Services (UK) shares in responsibility for supporting the violation of international law that Israel's illegal settlements represent. Veolia Environmental Services (UK), through the medium of its profits, is complicit in Israel's violations of international law. Such complicity clearly comprises grave misconduct and provides ample grounds for excluding Veolia Environmental Services from contracts under article 23(4)(e) of the Public Contract Regulations.

If Veolia Environmental Services (UK) is awarded public contracts, taxpayers' money will go via the parent company Veolia Environnement to support Israel's illegal settlements and finance perpetuation of Israel's war crimes.

## Factsheet 4 | Jews for Justice for Palestinians



### Factsheet 4

#### Veolia's activities and services are not for the benefit of "the local population"

Veolia's activities in the OPT offer services exclusively to Israelis and not to Palestinians living under Israeli occupation (i.e. these are not services for the "local population" within the meaning of international law).

1. Veolia Transport Israel operates six bus routes (routes 7, 19, 109, 110, 422 and 425), which connect Israeli communities in Israel to illegal Israeli settlements in the West Bank. Furthermore, **Veolia Transport Israel operates the services on a discriminatory basis. With the possible exception of a short stretch on some of the routes Palestinians who reside in the West Bank are not allowed to use them.** Palestinians with evidence of East Jerusalem residency rights can in theory use the routes.
2. Despite Veolia's assurances to the contrary, the evidence is that the Jerusalem Light Railway serves Israelis to the exclusion of local Palestinians. While under construction, on 23 April 2009, in response to a question about whether a tram line running from Jerusalem to Jewish settlements would be of value to Palestinians, City Pass spokesperson Ammon Elian stated that, "if Palestinians would want to make use of the light rail, both groups will not meet on the train, because of their different life patterns".<sup>[1]</sup> He went on to state that the first line, which opened in August 2011, is targeted at the secular Jewish population, while the second line will target the Jewish Orthodox population. According to Elian, the existence of the network of buses used by Palestinians made integration of Palestinian residents in the tram line "redundant".
3. "Protected persons" (Palestinians living under Israeli occupation) similarly benefit very little from the activities of Onyx, a subsidiary of Veolia Waste Management, which is contracted to operate the Tovlan landfill site in the Jordan Valley in the West Bank. The Tovlan site was established in 1999 and serves at least five illegal Israeli settlements. Veolia Waste Management states that the site also serves the Palestinian town of Nablus. However, in reality their use of the site is highly restricted due to the number of Israeli check points which need to be crossed in order to access the site, and the high fees charged to dump waste at the site.

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[1] Public transport and political control: empirical study of the CityPass project on the West Bank, Karolien van Dijck, University of Gent, 2008-2009 (Unpublished)

# Factsheet 5 | Jews for Justice for Palestinians



## Factsheet 5

### Veolia's racist practices in its recruitment practices

In 2010, Veolia placed a newspaper advertisement to recruit operatives for its Jerusalem Light Railway project. The advertisement was in Hebrew but the original and an English translation are supplied [below](#).

Palestinians living in the eastern area that the JLR covers (i.e. in occupied East Jerusalem), are in any event barred from applying to operate it.

However, in its advertisement Veolia was clearly looking to go beyond excluding Palestinians from the OPT from its workforce, but also to exclude Palestinian citizens of Israel (often referred to as 'Israeli Arabs') – who make up approximately 20% of the population – from applying for or from being offered the posts. The evidence for this are the twin requirements stated in the advertisement (i) for linguistic competence in Hebrew to be to 'mother tongue' standard and (ii) for a standard record of past military/civic service.

Hebrew to mother tongue standard is a deliberate discriminatory hurdle. The advertisement could have asked for sufficient competence in Hebrew to operate trains, but instead went beyond this to send a message to would-be applicants about which racial/ethnic group is really preferred.

The requirement for a standard record of past military/civic service is also deliberately discriminatory. Palestinian citizens of Israel are not called up to serve as conscripts in the Israeli Defence Forces – so cannot be expected to meet Veolia's requirement. The civic service alternative is also discriminatory. Civic service is almost entirely managed by bodies that direct the giving of such service within Jewish communities only.

In view of the above, public bodies must ask why and how it can allow Veolia – with its *de facto* 'Palestinians need not apply' policy – to be considered as a suitable candidate for tendering for public contracts.

### Veolia ad for operators for the Jerusalem light rail (larger image available on request):

September 12, 2010

#### Translation (literal):

(on the picture: "The light rail opens a door for you...")

Wanted for the light rail in Jerusalem

Control and operations workers



## Job requirements:

25 year old or older; residence in Jerusalem and the area; Hebrew at a mother tongue level, English at a 4 units level; full army service/ civic service; advantage to technological education; B level driving license with at least 2 year experience; full control of a computerized environment; no criminal record; good health; the work is in shifts, including weekends; good concentration abilities; good learning abilities; trust-worthiness; dedication; good performance under stress



## Factsheet 6 | Jews for Justice for Palestinians



### Factsheet 6

#### **Additional legal points when assessing Veolia’s conduct – the responsibility of the UK**

As a signatory to the Geneva Conventions, the UK is obliged to observe and ensure the observance of the Geneva Conventions and international law. Public bodies, as an extension of the state, are obliged to recognise and comply with these duties and responsibilities.

The nature of these duties and responsibilities in the context of the expropriation, occupation, and settlement of Palestinian land have been articulated by the International Court of Justice:

*The Court would also emphasise that Article I of the Fourth Geneva Convention, a provision common to the four Geneva conventions, provides that “the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”. It follows from that provision that every State party to that Convention, whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with.*

*Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognise the illegal situation resulting from the construction of the wall the OPT, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self determination is brought to an end. In addition, all the States parties to the Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.<sup>[1]</sup>*

In summary, the UK, and by extension English public bodies, are required under article 1 IGC to “respect and ensure respect for the present Convention in all circumstances” and under article 146(3) IGC to take all measures necessary for the suppression of all [non-grave] breaches of that Convention. Moreover, all public bodies have the responsibility to protect against human rights abuses by transnational corporations and to formulate policies which ensure transnational corporations respect human rights.<sup>[2]</sup> Therefore, and at the very least, corporations implicated in human rights abuses and violations of international humanitarian law should not be rewarded with public contracts.

**In light of the above it is clear that public bodies must recognise the “grave misconduct” by Veolia, and not reward these activities by allowing it to bid for (or awarding it) public contracts.**

Public authorities in England and Wales need to take into account this country’s international obligations under the Fourth Geneva Convention when determining what constitutes grave misconduct, including paragraph three of Article 146 IVGC, which states:

*Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.*

Article 146 therefore not only requires universal jurisdiction to be applied to those suspected of criminal liability for grave breaches, but pursuant to article 146 (3), all states are required to take effective measures to repress non-grave breaches too. This duty is explained in the official ICRC commentary to the Convention as follows:

*...under the terms of this paragraph, the Contracting Parties must also suppress all other acts contrary to the provisions of this Convention.*

*The wording is not very precise. The expression “faire cesser” used in the French text may be interpreted in different ways. In the opinion of the International Committee, it covers everything which can be done by a State to avoid acts contrary to the Convention being committed or repeated. ...[T]here is no doubt that what is primarily meant is the repression of breaches other than the grave breaches listed and only in the second place administrative measures to ensure respect for the provisions of the Convention.*

Veolia’s activities also breach the OECD Guidelines for Multinational Enterprises (2000), which state that enterprises should “Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments”.

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[1] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, paras 158-159.

[2] Report of the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Human Rights Council, A/HRC/8/5, 7 April 2008.