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Human rights situation in Palestine and other occupied Arab territories

Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights

Summary

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has prepared the present report, pursuant to Human Rights Council resolution 31/36 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, on producing a database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63) ("listed activities"). It describes the state of progress made towards the consolidation of the database, including the methodology adopted by OHCHR, recalls the normative framework used, and makes a preliminary analysis of the most common explanations given by companies for their involvement in the listed activities, and makes recommendations.

I. Introduction

A. Background

1. The present report of the United Nations High Commissioner for Human Rights is submitted to the Human Rights Council pursuant to resolution 31/36, on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, adopted by the Council on 24 March 2016. In paragraph 17 of resolution 31/36, the Council requested the United Nations High Commissioner for Human Rights to produce a database of all business enterprises engaged in certain specified activities related to the Israeli settlements in the Occupied Palestinian Territory, in consultation with the Working Group on the issue of human rights and transnational corporations and other business enterprises, and to transmit the data therein in the form of a report to the Council at its thirty-fourth session. The Council also requested that the database be updated annually.

2. On 13 February 2017, the Human Rights Council, pursuant to the recommendation of the High Commissioner, decided to defer consideration of the report to allow for additional time to consider the inputs received in the context of an open call for submissions, and to ensure a fair process for concerned stakeholders (see A/HRC/34/77).

B. Mandate

3. Human Rights Council resolution 31/36 establishing the database follows up the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63). In its report, the fact-finding mission found that business enterprises had directly and indirectly enabled, facilitated and profited from the construction and growth of the settlements; in paragraph 96 of the report, it provided a list of activities that raised particular human rights violations concerns (“listed activities”). In resolution 31/36, the Council defined the parameters of activities to be reflected in the database by reference to the list compiled by the mission in its report, which comprised:

(a) The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures;

(b) The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements;

(c) The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olive groves and crops;

(d) The supply of security services, equipment and materials to enterprises operating in settlements;

(e) The provision of services and utilities supporting the maintenance and existence of settlements, including transport;

(f) Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;

(g) The use of natural resources, in particular water and land, for business purposes;

(h) Pollution, and the dumping of waste in or its transfer to Palestinian villages;

(i) Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements;

(j) Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints.

4. OHCHR notes that six of the 10 listed activities – (a), (b), (d), (e), (f) and (i) – refer to activities that are explicitly linked to the settlements, while the remaining four – (c), (g), (h) and (j) – refer to activities that may not be geographically connected to settlements, but form part of the processes that "enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the Green Line". [1] For example, OHCHR notes that a company that is operating a quarry on Israeli-confiscated land in the West Bank will be considered to fall under category (g) regardless of whether it is located in or connected to a defined settlement community. Its presence in the Occupied Palestinian Territory and the use of its natural resources for business purposes is sufficient to fall within the scope of the database, as required by resolution 31/36.

5. The parameters of the database encompass local and international companies, whether domiciled in Israel, the Occupied Palestinian Territory or abroad, carrying out listed activities in relation to the Occupied Palestinian Territory. Companies engaged in activities related to the occupied Syrian Golan do not fall within the mandate.[2]

6. The mandate for producing the database established by resolution 31/36 is strictly confined to the 10 activities listed in paragraph 3 above. The database does not cover all corporate activity related to settlements, nor does it extend to all corporate activity in the Occupied Palestinian Territory that may raise human rights concerns.[3] In addition, while there may be other types of entities engaged in significant corporate activity related to the settlements, only those entities established as business enterprises are considered; non-governmental organizations, charities, sports associations or federations, and other entities are therefore excluded from consideration.

C. Methods of work

7. As with all other mandates, in performing the present mandate assigned to it by the Human Rights Council in resolution 31/36, OHCHR was guided by the principles of independence, impartiality, objectivity, credibility and professionalism. OHCHR formulated its methodology in accordance with these principles, based on best practices, the advice and guidance of the Working Group on the issue of human rights and transnational corporations and other business enterprises, and consultations with stakeholders (see paras. 23-25 below).

8. The work conducted by OHCHR in producing the database is in full compliance with resolution 31/36 and does not purport to constitute a judicial process of any kind. OHCHR is mandated to make factual determinations of whether businesses enterprises are engaged in the listed activities.

9. It is the view of OHCHR that the work performed in consolidating and also in communicating the information in the database to the Human Rights Council can assist both Member States and business enterprises in complying with their respective legal obligations and responsibilities under international law, including through constructive engagement and dialogue and by serving as a source of information to promote transparency.

1. Standard of proof

10. OHCHR has determined that where there are reasonable grounds to believe based on the totality of the information reviewed by it that a business enterprise is engaged in one or more of the listed activities, such business enterprise will be included in the database. This

[1] The fact-finding mission defined Israeli settlements as encompassing "all physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the Green Line of 1949 in the Occupied Palestinian Territory" (see A/HRC/22/63, para. 4).

[2] While resolution 31/36 refers to the occupied Syrian Golan, paragraph 17 establishing the mandate to produce a database and the report of the fact-finding mission to which it refers pertain to the Occupied Palestinian Territory only.

[3] For instance, the mandate for the database does not extend to companies involved in supplying the Israel Defense Forces with weapons or other equipment used during military operations, nor does it encompass companies involved in controlling access to and from Gaza.

standard is consistent with the practice of United Nations fact-finding bodies and is lower than a criminal standard. There are "reasonable grounds to believe" that a business enterprise is engaged in one or more of the listed activities where OHCHR has reviewed a reliable body of information, consistent with other material, based on which a reasonable and ordinarily prudent person would have reason to believe that the business enterprise is involved in such activities.

11. The same standard will be used to make determinations as to whether business enterprises are no longer engaged in one or more of the listed activities; thus, if subsequently, based on the totality of information reviewed by OHCHR, there are reasonable grounds to believe that a business enterprise is no longer engaged in the listed activities, the business enterprise will be removed from the database.

2. Information-gathering process

(a) Initial steps taken to collect information

12. OHCHR examined information relevant to the mandate that was available to it, initially gathered through the following methods:

- A desk review of publicly-available information, including reports by the United Nations, civil society organizations (Israeli, Palestinian and international), media reports, academic writings
- Information received in response to notes verbales sent on 11 October 2016 to all Member States inviting them to provide inputs relevant to the implementation of resolution 31/36
- Information received in response to an open invitation to all interested persons, entities and organizations to submit relevant information and documentation

(b) Screening exercise

13. OHCHR reviewed information pertaining to 307 companies that were named in the notes verbales or in the responses received through the open call for submissions. OHCHR excluded those that met the following criteria:

(a) Business enterprises that were not, on the face of the submissions, covered by the mandate; these included companies that were alleged to have engaged in human rights abuses or supported the occupation through their corporate activity, but were not alleged to have engaged in any of the listed activities;

(b) Business enterprises about which there were insufficient facts in the submissions or in the public domain to support allegations of involvement in the listed activities;

(c) Business enterprises that were no longer engaged in the alleged activities because of corporate restructuring (for example, if a part of the business had been sold), dissolution or other corporate action;

(d) Business enterprises with a minimal or remote connection to the listed activities.

14. Of the 307 companies reviewed, 115 companies were excluded on the basis of the criteria set out in paragraph 13 above. The 192 remaining companies formed the initial group of "screened" companies that were subject to further research and consideration. The majority of these 192 companies are domiciled in Israel or the settlements, followed by the United States of America, Germany, the Netherlands and France.

(c) Further communications

15. OHCHR sent notes verbales on 11 July 2017 to the 21 Member States in which the initial 192 screened companies were domiciled, identifying companies domiciled in that Member State. The purpose was to inform those Member States that information had been received alleging that business enterprises domiciled in their territories and/or under their

jurisdiction were engaged in one or more listed activities, and to invite any comments or observations concerning measures taken to ensure implementation of resolution 31/36. Fifteen of the 21 Member States responded by the deadline of 1 September 2017. Five of these Member States expressed a position in the notes verbales or in confidential meetings that supported OHCHR being in direct contact with companies. Six of the 15 Member States did not comment on this point, while four Member States expressed a position in the notes verbales or in confidential meetings that did not support direct contact between OHCHR and companies.[4]

16. In reviewing past practices, consulting with the Working Group on the issue of human rights and transnational corporations and other business enterprises, after having duly considered the responses and positions of Member States, considering the complexity of business relationships involved in each situation concerning listed activities, which often encompassed business enterprises domiciled in multiple States, and to offer a procedural safeguard designed to provide fairness, consistency, reasonableness and absence of arbitrariness of potential decisions that may affect the interests of business enterprises, OHCHR decided to communicate with the initial list of all 192 screened companies – not just those domiciled in the States that indicated they were in favour of such an approach – to provide them with an opportunity to respond to the information presented.

17. Of the 192 screened companies, OHCHR first contacted the companies concerning which the strongest allegations of a clear connection to listed activities had been received. To supplement information received in notes verbales from Member States and through the open call for submissions from interested stakeholders, OHCHR conducted further research into this subset of companies. This stage of the research included analysing public annual financial reports, official websites from companies in English and Hebrew, financial websites and media in English and Hebrew, the Israeli and other stock exchange markets, the websites of Israeli government offices[5] and websites of settlement industrial zones and settlement councils.

18. When contacting companies, OHCHR included in the communications, wherever possible, all relevant entities with respect to that particular situation of concern, including parent companies and their subsidiaries, franchisors and franchisees, local distributors of international companies, partners and other entities in relevant business relationships. In some of these cases, further research by OHCHR revealed relevant business entities, such as parent companies or subsidiaries, that were not initially named in the submissions received in notes verbales from Member States or through the open call for submissions from interested stakeholders. This necessitated adding 14 companies to the initial list of 192 screened companies, resulting in a total of 206 companies reviewed at the time of writing (see table below paragraph 22).

19. OHCHR was given limited resources to carry out the mandate within the anticipated time frame, which required it to calibrate its research and engagement with companies accordingly. Not all companies about which OHCHR had received information could be contacted by the time of submission of the present report. At the time of writing, OHCHR had contacted 64 of the 206 companies involved in 33 different situations concerning the listed activities.[6]

[4] Notably, one Member State acknowledged awareness of the alleged activity of a company domiciled in its territory, and informed OHCHR that the Government had decided in August 2017 to conduct a baseline study to assess the degree of implementation of the Guiding Principles on Business and Human Rights in domestic legislation. OHCHR looks forward to the results of that study.

[5] These included the Israeli Companies Registrar (http://havarot.justice.gov.il), the Bank of Israel (www.boi.org.il/heb/Pages/HomePage.aspx), the Knesset Research and Information Centre (www.knesset.gov.il/mmm/heb/index.asp), the Ministry of Environmental Protection (www.sviva.gov.il) and the Ministry of National Infrastructures, Energy and Water Resources (http://energy.gov.il/).

[6] Not all parent companies or other ownership structures were contacted. For instance, if a company was acquired by a hedge fund or private investment firm, these were not included for reasons of practicality, given the lack of publicly available information concerning their portfolios.

20. In the letters addressed to the companies concerned, OHCHR informed them of the listed activities that they appeared to be engaged in (based on the totality of information reviewed by OHCHR), and set out the basic facts of the companies' involvement in the listed activity or activities. Companies were requested to respond in writing within 60 days for an initial response, providing any clarification or update of the information. Companies were informed that they could request that the substance of their written responses be kept confidential; a number of companies made such a request.

21. OHCHR was also contacted by a number of companies that had not received letters from the Office, but had either seen news of the database in the media or had been informed by their governmental authorities of their inclusion in the notes verbales addressed to Member States on 11 July 2017.

22. Responses from companies included those that (a) objected to the mandate of OHCHR and declined to provide a substantive response to the information presented; (b) rejected the information presented and objected to being included in the database; (c) confirmed the information presented concerning their involvement in one or more of the listed activities, and provided explanations; (d) provided updated information that indicated they were no longer engaged in one or more of the listed activities; and (e) provided additional information and clarifications that will require further discussion and analysis before a determination can be made. OHCHR is considering the responses received to date, and offers preliminary observations to the most common explanations put forth by companies for their involvement in the listed activities (see paras. 50-60 below). Where companies declined to provide a substantive response or failed to respond entirely, this will not prevent a determination as to their involvement in listed activities from being made.

Summary of screening exercise and communication with companies at the time of submission[a]

State concerned	Total number of companies reviewed	Number of companies screened from initial list	Number of companies excluded	Number of additional companies screened	Total number of screened companies[b]	Number of companies contacted to date	Number of companies not yet contacted
Israel or Israeli settlements	186	131	43	12	143	45	98
United States of America	54	20	32	2	22	7	15
Germany	21	7	14	--	7	1	6
Netherlands	7	5	2	--	5	3	2
France	8	4	4	--	4	2	2
Republic of Korea	3	3	0	--	3	1	2
Italy	3	3	0	--	3	0	3
United Kingdom of Great Britain and Northern Ireland	6	3	3	--	3	1	2
Canada	2	2	0	--	2	0	2
Japan	3	2	1	--	2	1	1
Switzerland	12	2	10	--	2	0	2
Ireland	2	1	1	--	1	0	1
Mexico	1	1	0	--	1	1	0
Denmark	1	1	0	--	1	0	1
Russian Federation	1	1	0	--	1	0	1
Singapore	1	1	0	--	1	0	1
Turkey	1	1	0	--	1	0	1
Sweden	2	1	1	--	1	1	0
Spain	2	1	1	--	1	0	1
Belgium	1	1	0	--	1	1	0
South Africa	1	1	0	--	1	0	1
Others	3	0	3	--	0	0	0
Total	**321**	**192**	**115**	**14**	**206**	**64**	**142**

(d) Consultations

23. Throughout the process, as mandated by Human Rights Council resolution 31/36 and in preparation for the report, OHCHR carried out five in-person consultations with the Working Group on the issue of human rights and transnational corporations and other business enterprises and exchanged additional written correspondence. The feedback, guidance and advice from the Working Group were critical to the development of the methodology used to implement the mandate.

24. In addition, OHCHR held extensive discussions with Member States and was in regular contact with Israeli, Palestinian and international civil society, think tanks, academics, employer organizations, and other interested parties.

25. A number of Member States, civil society organizations and other entities have repeatedly voiced strong opposition, both publicly and privately, against Council resolution 31/36 mandating the High Commissioner to produce a database. Other Member States have

[a] Does not include companies that contacted OHCHR proactively (see para. 21 above).

[b] Reflects the number of companies screened from the initial list plus the number of additional companies screened after further research (see para. 18 above).

expressed support, along with Israeli, Palestinian and international civil society, academics and think tanks. This includes a petition signed by over 400 members of Israeli civil society, including a former attorney general and former members of the Knesset, retired diplomats, and other prominent individuals;[7] a joint statement by 56 non-governmental organizations;[8] and a letter signed by almost 60 Member States addressed to the High Commissioner.[9]

(e) Next steps

26. More resources are required for OHCHR to continue its dialogue with and issue communications to relevant business enterprises, adding information to the database and updating existing information in the database as required by resolution 31/36. Once OHCHR has been in contact with all 206 companies, and subject to determinations of their responses and non-responses, OHCHR expects to provide the names of the companies engaged in listed activities in a future update. Before the determinations on the companies are made public, OHCHR will notify the companies concerned.

II. Normative framework

A. The obligations of Israel as the occupying Power

27. As stated above, the creation of the database is not a judicial process. In this respect, the work of OHCHR is guided by Council resolution 31/36, in which paragraph 17 sets out the tasks given to OHCHR. The preamble to resolution 31/36 reflects the normative framework with regard to Israel as the occupying Power.[10]

28. Since the adoption by the Human Rights Council of resolution 31/36, the Security Council, on 23 December 2016, in its resolution 2334 (2016), reaffirmed its position that the establishment by Israel of settlements in the Occupied Palestinian Territory, including East Jerusalem, had no legal validity, and constituted a flagrant violation under international law. As recognized in numerous reports of the High Commissioner and the Secretary-General, continued expansion of settlements not only undermines the possibility of a two-State solution, but is also at the core of many human rights violations in the West Bank (see for example A/HRC/28/80, A/HRC/31/42, A/HRC/31/43 and A/HRC/34/39).

Human rights situation

29. The extensive human rights impact of settlements on the human rights of Palestinians has been well documented in successive reports of the High Commissioner, the Secretary-General and the fact-finding mission (see for example A/HRC/22/63, A/HRC/25/38, A/HRC/28/44, A/HRC/31/42 and A/HRC/34/39). The reports detailed how the settlements are extensively altering the demographic composition of the Occupied Palestinian Territory and fundamentally threatening the Palestinians' right to self-determination. The violations of human rights associated with the settlements are pervasive and devastating, reaching every

[7] See "Hundreds of Israelis urge publication of UN settlement database", Middle East Monitor, 4 December 2017.

[8] "Joint NGO Statement in Support of the UN Human Rights Database on Business Activities related to Settlements in the Occupied Palestinian Territory", Worldwide Movement for Human Rights, 30 November 2017.

[9] On file with OHCHR.

[10] In the preamble to resolution 31/36, the Human Rights Council recalls, inter alia, relevant reports of the Secretary-General, OHCHR and the fact-finding mission; relevant resolutions of the Commission on Human Rights, the General Assembly, the Human Rights Council and the Security Council reaffirming, inter alia, the illegality of the Israeli settlements in the occupied territories, including in East Jerusalem; the advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory rendered on 9 July 2004 by the International Court of Justice, which concluded that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, had been established in breach of international law; the treaty bodies monitoring compliance with the human rights treaties to which Israel is a party; relevant provisions of the Fourth Geneva Convention and customary law; and the Guiding Principles on Business and Human Rights.

facet of Palestinian life. Owing to settlement development and infrastructure, Palestinians suffer from restrictions on freedom of religion, movement and education; their rights to land and water; access to livelihoods and their right to an adequate standard of living; their rights to family life; and many other fundamental human rights.

B. Obligations of States for business and human rights in the Occupied Palestinian Territory

30. The Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by all States Members of the Human Rights Council in its resolution 17/4, set out the international human rights law obligations of States concerning business enterprises. They do not create new legal obligations, but rather clarify the implications of relevant existing international human rights standards, and provide practical guidance on how they can be operationalized.[11] These include the State duty to protect against human rights abuses by third parties, which includes business enterprises. States may be held responsible for abuse by business enterprises where the conduct can be attributed to them (for example, in the case of a State-owned enterprise) or where States fail to take appropriate steps to prevent, investigate, punish and redress abuse.[12]

31. The Guiding Principles specifically address the issue of business operations in conflict-affected areas, which includes situations of occupation. In conflict-affected areas, the Guiding Principles recognize that the "host State"[13] may not be able to adequately protect human rights because of a lack of effective control or involvement in abuses itself.[14] In these situations, the Working Group on the issue of human rights and transnational corporations and other business enterprises acknowledges that "home States"[15] of transnational corporations have a crucial role to play. In the context of the Israeli settlements, Israel as the occupying Power is considered to have obligations equivalent to those of a "host State".[16] Given the direct involvement of Israel in establishing, maintaining and expanding the settlements, OHCHR considers that the role of homes States of transnational corporations is essential in assisting both corporations and Israel to ensure that businesses are not involved in human rights abuses.[17]

32. States' obligations specifically concerning business operations connected to Israeli settlements have been the subject of a number of United Nations reports and resolutions (for example, A/HRC/22/63, para. 117 and A/HRC/34/39, paras. 34-39, and Human Rights Council resolutions 28/26 and 34/31, para. 13 (*b*)). In its resolution 2334 (2016), the Security Council called upon all States to distinguish between the territory of Israel and the territories occupied since 1967. With regard to the role of home States, the fact-finding mission called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations (A/HRC/22/63, para. 117).

[11] See *Frequently Asked Questions about the Guiding Principles on Business and Human Rights* (OHCHR, New York and Geneva, 2014), p. 8.

[12] Guiding Principle 1.

[13] A "host State" is defined as the country in which a business operates. See *Frequently Asked Questions about the Guiding Principles* (see footnote 11), p. 23.

[14] See Working Group on the issue of human rights and transnational corporations and other business enterprises, statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory, 6 June 2014, p. 3.

[15] A "home State" is defined as a State where a company is incorporated or has its headquarters or primary seat. See *Frequently Asked Questions about the Guiding Principles* (see footnote 11), p. 23.

[16] The Working Group recognized that the term "host State" is ambiguous in situations of occupation, and that it would be more accurate to refer to the State that exercises effective control over an occupied territory as having obligations equivalent to those of a "host State". See statement of the Working Group (see footnote 14), pp. 6-8.

[17] In accordance with the statement of the Working Group, ibid., pp. 3-4 and 7.

33. Some States have taken steps towards fulfilling their obligations towards businesses operating in settlements. In November 2015, the European Union issued guidelines on the labelling of products made in Israeli settlements.[18] As at December 2017, 18 States members of the European Union had issued advisories warning businesses of the financial, legal and reputational risks incurred by becoming involved in settlement activities.[19]

34. Some States have argued that they do not have an obligation to regulate extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. While States are not generally required under international human rights law to do so, according to the Guiding Principles on Business and Human Rights, there are "strong policy reasons" for homes States to clearly set out expectations that businesses respect human rights abroad. States also have additional obligations as economic actors in their own right when it comes to State-owned enterprises. In its report submitted to the Council at its thirty-second session, the Working Group on the issue of human rights and transnational corporations and other business enterprises stated that there were compelling reasons for "greater action on the part of States with regard to State-owned enterprises" so that they lead by example (A/HRC/32/45).

C. Responsibilities of businesses

35. While States remain the primary duty bearers for the protection and promotion of human rights, international law has increasingly evolved to recognize that non-State actors – including business enterprises – also have responsibilities. The Guiding Principles on Business and Human Rights set out a "protect, respect and remedy" framework for business and human rights, which recognizes that while States have a duty to protect the rights of all against violations by third parties, there is an independent and complementary corporate responsibility to respect all internationally recognized human rights standards. In addition to human rights, humanitarian law standards also apply to business enterprises in situations of armed conflict.[20]

36. Under the Guiding Principles, all companies, regardless of size, industry, location, ownership or legal structure, have a responsibility to conduct due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts (principle 14). In its statement on the implications of the Guiding Principles in the context of Israeli settlements in the Occupied Palestinian Territory of 6 June 2014, the Working Group declared that businesses have a responsibility:

(a) To avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) To seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

37. The Guiding Principles recognize that businesses operating in conflict-affected areas – which include areas under occupation – face heightened risks of involvement in human rights abuses, including gross human rights abuses committed by other actors (Principle 7). In such situations, the Working Group clarified in the above-mentioned statement that where businesses have an increased risk, "enhanced" due diligence (namely, the "heightened care" with which due diligence processes should be executed) is required. The Working Group also highlighted a number of actions that enhanced due diligence may require, including formally integrating human rights principles into relevant contracts; exercising extreme caution in all business activities and relationships involving the acquisition of assets in conflict zones; and seeking advice from international organizations and mechanisms.

[18] European Commission, Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967 (11 November 2015).

[19] For excerpts of each State's advisory, see www.ecfr.eu/article/eu_member_state_business_advisories_on_israel_settlements.

[20] 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*, ICRC, Geneva, 2006).

38. As part of the due diligence process, particularly in relation to a complex operating environment like the Occupied Palestinian Territory, businesses enterprises may need to consider whether it is possible to engage in such an environment in a manner that respects human rights. To do so, businesses would have to be able to show that they (in the words of the Working Group in its statement) do not "support the continuation of an international illegality nor are complicit in human rights abuses", and that they can effectively prevent or mitigate the risks to the human rights of Palestinians. This includes ensuring that businesses are not acquiring resources and property without the "freely given consent of the owner".[21]

39. In its report, the fact-finding mission emphasized that companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law and the Guiding Principles (A/HRC/22/63, para. 117).[22]

40. The scale, scope and immitigability of the human rights impacts caused by settlements must be taken into consideration as part of businesses' enhanced due diligence exercises.[23] The Guiding Principles do not explicitly require companies to terminate operations where they are involved in human rights abuses; they do stipulate, however, that such companies should be prepared to "accept any consequences – reputational, financial or legal – of the continuing connection."[24]

41. OHCHR notes that, considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law. This view was reinforced in Human Rights Council resolution 34/31 on the Israeli settlements, in which the Council referred to the immitigable nature of the adverse impact of businesses' activities on human rights.

III. Involvement of business in settlements

A. Overview

42. Businesses play a central role in furthering the establishment, maintenance and expansion of Israeli settlements. They are involved in constructing and financing settlement homes and supporting infrastructure, providing services to the settlements, and operating out of them. In doing so, they are contributing to Israel's confiscation of land, facilitate the transfer of its population into the Occupied Palestinian Territory, and are involved in the exploitation of Palestine's natural resources (see A/HRC/34/39, para. 11).

B. How Israeli authorities encourage settlement businesses

43. The Government of Israel actively encourages economic development of and for the settlements through the Israeli and international private sector by creating an attractive financial business market, by providing key financial incentives to companies to operate in the settlements. Ninety settlements have been designated as "national priority areas", which allows businesses operating within them to benefit from reductions in the price of land, grants for the development of infrastructure, and preferential tax treatment (A/HRC/34/39, para. 24). Businesses in settlements can also take advantage of functional immunity from labour law with respect to the treatment of Palestinian workers.[25] According to the fact-finding

[21] Ibid., p. 22.

[22] See also the statement of the Working Group (see footnote 14) and Guiding Principles 17 to 19.

[23] The commentary to Guiding Principle 14 provides that the severity of impact is judged by its scale, scope and irremediable character. See also Guiding Principle 17 on human rights due diligence.

[24] Commentary to Guiding Principle 19.

[25] Human Rights Watch, "Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights", 19 January 2016.

mission, business owners are able to cut their costs by paying lower rates to Palestinian workers than their Israeli counterparts, with substandard work conditions. This is largely due to a lack of supervision or regulation of employers in the settlements by Israeli officials (A/HRC/22/63, paras. 94-95).

44. Furthermore, Israeli authorities use their permit and licensing regime to encourage international and Israeli business engagement with the settlements. Permits and licenses are readily provided to businesses operating in or servicing settlements, but are rarely granted to companies engaged in providing similar services to Palestinians.[26] Israeli and international companies are regularly given quarrying licenses in Israeli-controlled territory in the West Bank, whereas, according to the Palestinian Union of Stone and Marble, no new permits have been issued to Palestinian businesses to open quarries in Area C[27] since 1994.[28]

45. Domestic laws and regulations in Israel also play a role in inducing businesses to serve individuals in the settlements. The Consumer Protection Law (1981) was amended in 2017 in response to alleged discrimination against consumers living in settlements. The revised law makes it mandatory for businesses to state clearly before any transaction is finalized whether they are not willing or able to provide services to settlements. The Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law (2000), was amended at the same time to include customers' "place of residence" to the list of prohibited grounds for discrimination. It applies to any business that provides public services, even if it is privately owned, such as transportation services, communications services, entertainment, tourism or financial services intended for public use.[29] While these laws do not compel businesses to provide services to individuals in the settlements, they make it more difficult not to do so.

C. How businesses contribute to and benefit from the establishment, maintenance and growth of settlements

46. OHCHR notes that businesses play a key role in facilitating the overall settlement enterprise, contributing to Israel's confiscation of land and the transfer of its population through commercial development. Some are directly involved in the confiscation of land by carrying out demolitions that make way for settlement residential communities or associated infrastructure, or by financing or executing settlement construction itself. Others provide services that ensure the sustainability of residential settlement communities, such as transport services that connect the settlements to Israel proper, tourism activities that contribute to the profitability of the settlements, and telecommunication services. Those that are located in the settlements help to perpetuate their existence through the payment of taxes to settlement regional councils and Israeli authorities and the provision of jobs to settlers, and by occupying confiscated land.

47. The involvement of businesses in the settlements extends across all main industries and sectors, including:

[26] Ibid.

[27] Under the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) of 1995, the West Bank, excluding East Jerusalem, was divided into three temporary administrative zones, referred to as Areas A, B and C. Israel retains almost exclusive control over Area C, including control over law enforcement, building and planning (see www.ochaopt.org/location/area-c).

[28] World Bank, "West Bank and Gaza: Area C and the Future of the Palestinian Economy", Washington, D.C., 2013, para. 30.

[29] According to articles 1 to 3 of the Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law (2000), "financial services" include banking services and the provision of credit and insurance.

- The banking industry, which helps to finance construction and infrastructure projects in settlements, provide loans and financial services to settlement councils, and provide mortgage loans to home buyers[30]
- The tourism industry, including tour companies, online accommodation and travel booking sites, and rental car companies, all of which help to make the settlements profitable and sustainable[31]
- The private security industry, which includes companies involved in providing security for companies or residences in settlements, as well as those involved in the checkpoints throughout the West Bank, including East Jerusalem[32]
- The technology industry, which provides surveillance and identification equipment for use in the settlements, the wall and checkpoints
- The construction and demolition industries, including heavy machinery suppliers, which help to facilitate and entrench Israel's confiscation of Palestinian land for settlements and associated infrastructure[33]
- The real estate industry, including companies involved in marketing, renting and selling properties in settlements, which helps settlements to function as viable housing markets, enabling the transfer of Israel's population[34]
- The extractive industry, including mining and quarrying, which contribute financially to the sustainability of settlements through the payment of fees to settlement municipalities and the Israeli Civil Administration[35]
- The telecommunications industry, which includes mobile networks and Internet providers servicing settlements
- The agricultural industry, which includes companies involved in crop and livestock production, the wine industry and export companies
- The transportation industry
- The manufacturing industry, which includes companies that use raw materials from occupied territory
- Others

48. In addition to the financial benefits provided by the Israeli authorities for operating in the settlements, businesses engaged in certain sectors are able to take advantage of captive Palestinian markets for Israeli goods. According to the United Nations Conference on Trade and Development (UNCTAD), the Occupied Palestinian Territory operates as a captive market for Israeli exports due to the imbalanced customs arrangements enshrined in the Paris Protocol on Economic Relations and restrictions on movement and other obstacles to trade.[36] With regard to the economic consequences of situations of occupation, UNCTAD had noted

[30] See Who Profits, "Financing Land Grab: The Direct Involvement of Israeli Banks in the Israeli Settlement Enterprise", February 2017, and A/HRC/22/63, para. 97. Owing to the involvement of the banking industry in servicing and supporting the settlements, a number of pension funds in different countries have reportedly withdrawn their investments in Israeli banks; see for example PGGM, "Statement regarding exclusion of Israeli banks", 8 January 2014; Linda Bloom, "Israeli banks on ineligible list for pension agency", United Methodist Church, 13 January 2016; and Middle East Monitor, "Danish pension fund excludes four companies for role in Israeli occupation", 11 October 2017.

[31] Who Profits, "Touring Israeli settlements: business and pleasure for the economy of occupation", flash report, September 2017.

[32] Who Profits, *Private Security Companies and the Israeli Occupation*, Tel Aviv, January 2016.

[33] Who Profits, Facts on the Ground: Heavy Engineering Machinery and the Israeli Occupation, Tel Aviv, July 2014.

[34] Human Rights Watch, "Occupation, Inc." (see footnote 25).

[35] Ibid.

[36] Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory (UNCTAD/APP/2016/1), para. 20.

that they always involved the exploitation, impoverishment, marginalization, displacement and appropriation of resources of the occupied indigenous people. Such acts often deprived the people under colonial rule of the internationally recognized human right to development by confiscating their national resources, preventing them from accessing and utilizing those resources, depriving them of the ability to produce and thus forcing them to consume products produced by the occupier.[37]

49. An example of how Israeli companies are benefiting from a captive Palestinian market can be seen, for example, in the telecommunications industry. Palestinian mobile and landline companies are prevented from operating fully and effectively in the West Bank, including East Jerusalem, owing to restrictions on the import of necessary equipment, which is often identified by Israeli authorities as "dual use"; restrictions on the movement of goods and people; the inability to have independent access to international networks; restrictions on the building of the necessary infrastructure in Area C following the rejection of permit requests; and the provision of limited frequencies by the Israeli authorities.[38] Palestinian mobile providers are reportedly prohibited from operating inside Israel and annexed areas, including East Jerusalem, which forces users to rely on Israeli mobile providers.[39] Israeli telecommunications operators are authorized under the Oslo Agreement to provide services to settlements and settlement roads, but their infrastructure now covers large areas of the West Bank. According to World Bank estimates, between 10 and 20 per cent of the mobile market share in the West Bank has been captured by unauthorized Israeli operators, largely due to the fact that Palestinian companies do not have access to more than 60 per cent of Area C. In 2014, the Office of the Quartet Representative estimated that the quota captured by Israeli operators was even higher, between 20 and 40 per cent of total market share.[40]

IV. Preliminary observations of responses of business enterprises

50. In communicating with companies and reviewing publicly available information, OHCHR encountered a number of companies that acknowledged some connection to the settlements and provided explanations of their involvement on a number of grounds. A summary of the most common explanations are set out below. OHCHR offers the following observations in response in the interest of continuing the dialogue with companies.

51. A major argument used by companies to explain their involvement in listed activities is that they provide jobs to Palestinian families and help to support the Palestinian economy.

52. OHCHR observes that this argument does not recognize that the presence of the settlements in the Occupied Palestinian Territory, which is unlawful, serves to depress the Palestinian economy and to reduce opportunities for Palestinian businesses to thrive. As pointed out by the fact-finding mission, the agricultural sector, which lies at the heart of the Palestinian economy, has been in a continuous decline since 1967 owing to the dispossession of land and the denial of access of Palestinian farmers to agricultural areas, water resources and trade markets (A/HRC/22/63, para. 89). According to the Office for the Coordination of Humanitarian Affairs, 70 per cent of Area C is "off limits for Palestinian use and development", as it falls within the boundaries of regional settlement councils. Palestinian construction is heavily restricted in 29 per cent of Area C, and only the remaining 1 per cent has been planned for Palestinian development.[41] The World Bank has acknowledged that the

[37] *Official Records of the General Assembly, Seventieth Session, Supplement No. 35* (A/70/35), annex, para. 6.

[38] World Bank Group, *The Telecommunication Sector in the Palestinian Territories: A Missed Opportunity for Economic Development* (World Bank, Washington, D.C., 2016); see also World Bank, West Bank and Gaza: Area C and the Future of the Palestinian Economy, Washington, D.C., 2014, paras. 52-62.

[39] "Israeli mobile companies banned from PA cities", Ma'an News Agency, 1 April 2010.

[40] Office of the Quartet Representative, Initiative for the Palestinian Economy: Summary Overview, March 2014 (available at www.quartetrep.org/files/image/initiative.pdf).

[41] Office for the Coordination of Humanitarian Affairs, Area C of the West Bank: Key Humanitarian Concerns, update August 2014.

land allocated for settlement activity in Area C has "significantly reduced land available for use by the Palestinian private sector".[42] In East Jerusalem the situation is similar, as 35 per cent of land has been allocated to settlements and only 13 per cent is zoned for Palestinian construction.[43]

53. The depressed Palestinian economy has had a direct effect on the job market in the Occupied Palestinian Territory. According to UNCTAD, Israel's full control over Area C, which accounts for over 60 per cent of the area of the West Bank, has contributed to a "permanent unemployment crisis" in the Occupied Palestinian Territory that forces thousands of unemployed Palestinians to seek employment in Israel and in settlements in low-skill, low-wage manual activities (TD/B/63/3, para. 6). In 2017, the International Labour Organization reported that the "stagnating labour market in the West Bank pushes Palestinians to take up work wherever it is to be found."[44]

54. OHCHR notes that the employment of Palestinians, even on favourable terms, does not exempt businesses of their responsibilities under the Guiding Principles concerning their overall engagement in or with the settlements. The Guiding Principles make clear that, while business enterprises may undertake certain commitments or activities to support and promote human rights, these "do not offset a failure to respect human rights throughout their operations."[45]

55. Another argument used by some business enterprises to explain their involvement in listed activities was that they did not take a political position in the conflict between Israel and the Occupied Palestinian Territory, nor did they actively support Israel's occupation of Palestine. OHCHR recalls, however, that the political position of business enterprises is not a relevant consideration in determining whether their actions are consistent with the Guiding Principles or whether their business activities fall within the ambit of Human Rights Council resolution 31/36.

56. Some companies that acknowledged operating in or with the settlements highlighted the fact that they were acting in compliance with Israeli national laws and in accordance with all required permits and authorizations.

57. According to the commentary to Guiding Principle 11, the corporate responsibility to respect human rights "exists over and above compliance with national laws and regulations protecting human rights".[46] Compliance with the national laws and regulations of a State does not necessarily equate to compliance with the Guiding Principles or international law. In the case of Israel, its national laws and regulations that allow for the establishment, maintenance and existence of the settlements are in direct conflict with international law, as settlements are widely recognized by the United Nations and the international community as being illegal.

58. Some companies indicated that they had no knowledge or control over the actions of other entities with which they had business relationships, such as distributors, partners or other entities in their value chains, and therefore they should not be held responsible for any harm caused by those entities.

59. According to the Guiding Principles, the responsibility of businesses to respect human rights extends to their business relationships. Guiding Principle 13 states that businesses are responsible for preventing or mitigating adverse human rights impacts directly linked to their operations, products or services through their business relationships, even if they have not contributed to them; this includes impacts caused by both actions and omissions.[47] The

[42] World Bank Group, *Prospects for Growth and Jobs in the Palestinian Economy: A General Equilibrium Analysis*, November 2017.

[43] Office for the Coordination of Humanitarian Affairs, East Jerusalem: Key Humanitarian Concerns, update August 2014.

[44] International Labour Office, The situation of workers of the occupied Arab territories, report of the Director-General, International Labour Conference, 106th session, 2017, para. 21.

[45] Commentary to Guiding Principle 11.

[46] See also Working Group on the issue of human rights and transnational corporations and other business enterprises, statement (see footnote 14), pp. 11-12.

[47] Commentary to Guiding Principle 13.

responsibility to conduct due diligence – and in the occupied territory this involves enhanced due diligence (see para. 37 above) – entails taking active steps to identify and assess any actual or potential adverse human rights impacts made as a result of business relationships.

60. Furthermore, in its report, the fact-finding mission stated that business enterprises conduct their activities in the settlements with "the full knowledge of the current situation and the related liability risks" and "contribute to their maintenance, development and consolidation" (A/HRC/22/63, para. 97).

V. Recommendations

61. **The United Nations High Commissioner for Human Rights urges all businesses with which OHCHR has been or may be in contact in carrying out its mandate under Human Rights Council resolution 31/36 to cooperate with OHCHR with a view to engaging in constructive dialogue.**

62. **The High Commissioner acknowledges with appreciation the extension granted by the Human Rights Council for OHCHR to implement the mandate under resolution 31/36. Recognizing that this was the first time OHCHR has been tasked with such a mandate, the High Commissioner is satisfied that significant progress has been made. However, while the dialogue with concerned business enterprises is continuing, the work remains ongoing. For the High Commissioner to update the database as required by resolution 31/36, more resources are required.**