



November 8, 2017

Mr. Zeid Ra'ad Al Hussein
United Nations High Commissioner for Human Rights
Office of the United Nations High Commissioner for Human Rights
Palais Wilson
52 Rue des Pâquis
CH-1201 Geneva, Switzerland

Re: Resolution on the Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.

Mr. High Commissioner,

The undersigned organizations represent national and international civil society organizations specializing in business and human rights. We write concerning the Resolution of the UN Human Rights Council (HRC) on the "Israeli settlements in the Occupied Palestinian Territory (OPT), including East Jerusalem, and in the occupied Syrian Golan."¹ The Resolution requested the United Nations High Commissioner for Human Rights (High Commissioner) to produce a database of all business enterprises involved in certain specified activities² concerning the

¹ Human Rights Council Res. 31/36, U.N. Doc. A/HRC/RES/31/36, at ¶17 (Mar. 24, 2016) (calling for a database of companies impacting human rights in the ways detailed in A/HRC/22/63),

<https://unispal.un.org/DPA/DPR/unispal.nsf/0/27504FA26B31893385257FDB0074C1FC>.

² Rep. of the Indep. Int'l Fact-finding Mission to Investigate the Implications of the Israeli Settlements on the Civ., Pol., Econ., Soc. and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, including East Jerusalem, at ¶196, U.N. Doc.A/HRC/22/63 (2013),

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf.

Israeli settlements that may have negative human rights impacts. We urge the High Commissioner to promptly release the database, which should cover all business enterprises as mandated under the Resolution, and update it annually going forward.

The Context

The HRC has stated that the military occupation of the Palestinian territories by Israel qualifies as an armed conflict, noting that businesses operating in the settlements do so at increased risk of human rights abuses and in violation of international humanitarian law.³ Corporations that do business in or with settlements or settlement businesses, or otherwise further or engage in settlement-related activities, contribute to one or more violations of international humanitarian law and human rights law, including, but not limited to, violations of the Fourth Geneva Convention and the Hague Regulations of 1907.⁴ Mostly commonly, businesses contribute to such violations through land confiscation and labor abuses tied to infrastructure development, but the human rights impacts are diverse and widespread.⁵ Human Rights Watch, for example, has found that “business activities taking place in or in contract with Israeli settlements or settlement businesses contribute to rights abuses, and that businesses cannot mitigate or avoid contributing to these abuses so long as they engage in such activities.”⁶ The risks associated with doing business in and with settlements have led some States to take steps, in accordance with their duty to not recognize or give effect to Israel’s attempt to extend its sovereignty over the OPT, to properly identify goods coming from Israeli settlements and the OPT.⁷

³ See, e.g., Human Rights Council Res. 25/28, U.N. Doc. A/HRC/25/L.37/Rev.1, (Mar. 27, 2014), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/L.37/Rev.1; Rep. of the Indep. Int’l Fact-finding Mission, *supra* note 2 at ¶13-14. See also Security Council Res. 2334, U.N. Doc S/RES/2334 (2016) at ¶1 (reaffirming that Israeli settlements in OPT have “no legal validity and constitute[] a flagrant violation under international law”).

⁴ See, e.g., U.N. 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, (June 6, 2014) <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>; Human Rights Watch, *Occupation, Inc.: How Settlement Businesses Contribute to Israel’s Violations of Palestinian Rights* (Jan. 19 2016), <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian>; see also ICRC, *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law* (2006).

⁵ Human Rights Watch, *supra* note 4; see also, Rep. of the Indep. Int’l Fact-finding Mission, *supra* note 2.

⁶ Human Rights Watch, *supra* note 4 at 2.

⁷ See, e.g., EU COMMISSION INTERPRETATIVE NOTICE ON INDICATION OF ORIGIN OF GOODS FROM THE TERRITORIES OCCUPIED BY ISRAEL SINCE JUNE 1967 (Nov. 11, 2015), https://eeas.europa.eu/sites/eeas/files/20151111_interpretative_notice_indication_of_origin_en.pdf; Dept. for Env., Food and Rural Affairs, Technical advice: Labelling of produce grown in the Occupied Palestinian Territories (Dec. 10, 2009) (U.K.), <http://webarchive.nationalarchives.gov.uk/20130402191540/http://archive.defra.gov.uk/foodfarm/food/pdf/labelling-palestine.pdf>; see also S.C. Res. 2334, ¶1, 5, U.N. Doc. S.RES/2334 (Dec. 23, 2016).

As such, the Resolution calls for the production of a database, which is to be updated annually.⁸ This database should include a list of all business enterprises involved in certain specified activities in connection to the settlements found to have raised human rights violation concerns, according to the 2013 report of the independent international fact-finding mission.⁹ These activities include, *inter alia*, “the supply of surveillance and identification equipment for settlements,” “the provision of services and utilities supporting the maintenance and existence of settlements,” “banking and financial operations helping to develop, expand, or maintain settlements and their activities,” and “practices that disadvantage Palestinian enterprises.”¹⁰

Transparency Provided by the Database is Beneficial for States, Companies, and the Public

The database increases transparency as to which business entities may be running afoul of their human rights responsibilities by engaging in business activities in or with settlements. This information is crucial in assisting States in fulfilling their obligations under international law. It also enhances the ability of companies to better manage their human rights risks and allows the general public to make more informed choices concerning the impacts of their purchases and investments. Accordingly, we urge the High Commissioner to ensure that the criteria for inclusion in the database be detailed, and the procedure for both inclusion and removal clear and transparent.

States have a duty to protect human rights under international law, and in the context of the settlements, such duty includes “tak[ing] appropriate measures to encourage businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, to refrain from committing or contributing to gross human rights abuses of Palestinians.”¹¹ In addition, the United Nations Guiding Principles on Business and Human Rights¹² (UNGPs) ask States to ensure that “business enterprises operating in [conflict-affected areas] are not involved with [human rights] abuses.”¹³ The database provides easy access for States to better understand whether companies within their territory and/or jurisdiction are engaging in activities in connection to the settlements that raise human rights concerns or are

⁸ Human Rights Council Res. 31/36, *supra* note 1.

⁹ *Id.*

¹⁰ Rep. of the Indep. Int’l Fact-finding Mission, *supra* note 2.

¹¹ Human Rights Council Res. 31/36, *supra* note 1, at ¶12(b) (emphasizing States act “in accordance with their own national legislation on promoting compliance with international humanitarian law with regard to business activities that result in human rights abuses”); *see also* Mandate of the 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 (June 6, 2014), <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>.

¹² Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Bus. and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, Human Rights Council, princ. 18 cmt., U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (by John Ruggie). http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed Oct. 26, 2017).

¹³ *Id.* at princ. 7.

doing business with those that do. States will then be better equipped to provide guidance and implement measures, as required under the UNGPs, to prevent and address potential human rights violations by these businesses.

The requirement of the database is consistent with the global trend towards increased corporate transparency measures and in line with the UNGPs. In recent years, both geographical and sectoral transparency measures and standards have flourished. For example, Section 1502 of the Dodd-Frank Act asks companies to conduct due diligence in regards to minerals produced in the Democratic Republic of the Congo and surrounding countries,¹⁴ and the Footwear and Apparel Supply Chain Transparency Pledge applies to companies in the garment and footwear sector.¹⁵ The database is one such disclosure measure, which aligns with the larger trend toward normative development around corporate disclosure. Outside of the settlements and in other conflict-affected areas, similar transparency measures should also be supported.

Such transparency measures also benefit companies. The publication of the database will permit businesses operating in and/or with settlements to assess whether they are respecting human rights to prevent and minimize their legal and reputational risks. It will also assist in company efforts at mapping their supply chain and business relationships, or in conducting human rights due diligence processes in line with existing supply chain transparency frameworks.

Finally, the publication of the database will provide consumers, investors, and broader civil society with the information to make informed choices about the impacts of their purchases, investments, and actions on human rights.¹⁶ In a world of increasingly complicated supply chains and tangled webs of subsidiaries within multinational corporations, consumers, investors and civil society often find it challenging to understand the corporate entities and their operations. The database helps address this gap in information.

Conclusion

The database provides crucial transparency that benefits all stakeholders, including government, business, consumers, investors, and civil society. As such, we urge the High Commissioner to promptly release the database, which has already been delayed from the

¹⁴ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §1502(a), 124 Stat. 1376 (2010); *see also* Eur. Parl. Res. Serv. Briefing, *Minerals from Conflict Areas* (Feb. 11, 2014), [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/130680/LDM_BRI\(2014\)130680_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/130680/LDM_BRI(2014)130680_REV1_EN.pdf).

¹⁵ Human Rights Watch Et Al, *Follow the Thread: The Need for Supply Chain Transparency in the Garment and Footwear Industry* 6 (2016), *available at* <https://www.icar.ngo/publications/2017/4/20/follow-the-thread-the-need-for-supply-chain-transparency-in-the-garment-and-footwear-industry>.

¹⁶ *See, e.g.*, HUGH LOVATT AND MATTIA TOALDO, ECFR POLICY BRIEF, *EU DIFFERENTIATION AND ISRAELI SETTLEMENTS* (July 2015), at 6 (“The EU has an obligation to ensure the coherent application of EU consumer protection and labelling legislation to allow European consumers to make an informed choice when purchasing any products, including those from Israel or the settlements.”), <http://www.ecfr.eu/page/-/EuDifferentiation-final3.pdf>.

original release scheduled for March 2017.¹⁷ We also call on the High Commissioner to ensure that the database covers all business enterprises as mandated under the Resolution, and is update annually going forward.

Sincerely,

Access Now

Center for Constitutional Rights

Centre for Research on Multinational Corporations (SOMO)

CORE

Corporate Accountability Lab

FIDH (International Federation for Human Rights)

International Corporate Accountability Roundtable (ICAR)

Project on Organizing, Development, Education, and Research (PODER)

¹⁷ Human Rights Council Res. 31/36, *supra* note 1.