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**Human rights situation in Palestine and other
occupied Arab territories**

Written statement* submitted by The Palestinian Return Centre Ltd, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 February 2019]

* Issued as received, in the language(s) of submission only.



UN Business and Human Rights Database and the Illegality of Israeli Settlements

The building of settlements in the occupied Palestinian territories, ongoing since the occupation of the West Bank and the Gaza Strip in 1967, is a clear violation of international human rights and humanitarian laws. The 1907 Hague Regulations and the Fourth Geneva Convention of 1949, which set out the obligations of occupying powers, both state that “Transfers of the civilian population of the occupying power into the occupied territory, regardless whether forcible or voluntary, are prohibited.”¹ Additionally, the continuation of building of settlements in the West Bank is a clear violation of UN Security Council Resolution 2334.² The prohibition on settler colonialism has become a part of international customary of law as well.

However, the state of Israel continues to encourage the building and expansion of settlements in the West Bank. The nation-state law, passed by the Israeli parliament in July 2017, declares that the state encourages “Jewish settlement”³ and sees it as a national value. While it does not cite settlements in the West Bank as such, nothing in the legal text condemns or clarifies the unacceptability of establishing Israeli settlements in the West Bank, and the law could be used to further legalize settlements not recognized by the state.

The creation of settlements and the consequences it entails are a clear discrimination against Palestinians and other non-Israeli citizens⁴, in violation of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which apply to the OPT according to the International Court of Justice’s Advisory Opinion on the Wall (2004). It is also a violation of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). In addition, there is an international consensus that settlements create an obstacle to peace⁵

In the Human Rights Council Resolution 19/17, the Council established an independent international factfinding 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 (OPT), including East Jerusalem. The report of the mission identifies different rights that Palestinians see hindered as a result to the construction of settlements. Among these are the right to water, the right freedom of movement, property rights, and economic rights.⁶ The report finds that businesses operating in Israeli settlements can be complicit in human rights violations, bringing to attention the dangerous implications of businesses operating freely in Israeli settlements.

¹ ICRC, 2004. Occupation and international humanitarian law: questions and answers. *icrc.org*. Available at: <https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm>

² United Nations Security Council. *Resolution 2334 (2016) (23 December 2016)*. [Online]. S/RES/2334 (2016). [accessed 24 January 2019]. Available from: <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

³ Anon, Available at: <http://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf> [Accessed January 24, 2019].

⁴ Human Rights Council. *Report of the independent international factfinding 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*. (7 February 2013) [Online]. A/HRC/22/63. [accessed 24 January 2019]. Available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf

⁵ United Nations Security Council. *Resolution 2334 (2016) (23 December 2016)*. [Online]. S/RES/2334 (2016).

⁶ Human Rights Council. *Report of the independent international factfinding mission*. (7 February 2013) [Online]. A/HRC/22/63.

Businesses in Israeli settlements

The UN Guiding Principles on Business and Human Rights state that “Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights”⁷. The guiding principles also require businesses to assess the effect of their work on the situation of human rights.⁸ Businesses which operate in Israeli settlements specifically have an impact on human rights because of the complicated spaces in which they exist and therefore their responsibility to respect and protect human rights cannot be overlooked.

The establishment of businesses in Israeli settlements participates in developing settlements and helps in their expansion. Through providing goods and services, helping to construct homes, loaning money to buy homes, and paying taxes to settlement municipalities, businesses become a pillar in Israeli settlements’ expansion. There are however different deeply negative results stemming from the operation of businesses in settlements.

First, the existence of businesses in settlements reinforces the systematic legal and economic discriminations that Palestinians face. Legal discrimination is administered through subjecting Palestinians to different laws than Israeli settlers. Israeli settlers are subject to the Israeli civil law while Palestinians are subject to the Israeli military law. This affects Palestinian negatively in that they face heavier sentences for the same crimes as settlers and are often denied fair processes.

Additionally, Palestinian workers in Israeli settlements are subject to the Israeli labour law, but rights and protection guaranteed by this law are often neglected by Israeli employers⁹. Employers often employ Palestinians under the Jordanian labour law, which is more advantageous for the employer than the Israeli labour law.¹⁰

Economic discrimination is enforced through the economic exploitation of Palestinian workers in settlements as well as their dependency on employers and on the ‘work permit regime’. The work permit regime functions in a way that only allows Palestinians who have work permits granted by the government of Israel to work in Israeli settlements, and therefore permits are used as a bargaining chip to convince Palestinians workers to accept poor work conditions, like lower wages and minimal legal protection.¹¹ Israeli workers do not face the same conditions as they do not need a work permit and they are all employed under the Israeli labour law.

The role of businesses operating in settlements is important as the dependency of Palestinian workers on jobs in Israeli settlements, and on employers who provide them with work permits, is reinforced with the existence of such businesses. This creates a vicious cycle where Palestinians work in settlements and help settlements develop at a cheap cost, while it is the same settlements that deprive Palestinian from freedom of movement and natural resources, and by extension economic independence. This dependency is used by settlements proponents as a justification for building and expanding settlements.¹² The impact is negative not only to Palestinian individuals but also to the Palestinian people as a whole.

⁷ Office of the High Commissioner for Human Rights. *Guiding Principles on Business and Human Rights* (2011). [Online]. HR/PUB/11/04. Available at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁸ Azarova, V., 2018. The UN Database on Business in Israeli Settlements: Pitfalls and Opportunities. *al-shabaka.org*. Available at: <https://al-shabaka.org/commentaries/the-un-database-on-business-in-israeli-settlements-pitfalls-and-opportunities/>.

⁹ International Labour Office, 2017. The Situation of Workers of the Occupied Arab Territories. Available from: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_554441.pdf

¹⁰ *ibid*

¹¹ Alenat, S., 2010. Palestinian Workers in the West Bank Settlements. *kavlaoved.org.il*. Available at: <http://www.kavlaoved.org.il/en/palestinian-workers-in-the-west-bank-settlements/>.

¹² Human Rights Watch, 2016. Occupation, Inc. How Settlement Businesses Contribute to Israel’s Violations of Palestinian Rights. *hrw.org*. Available at: <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels->

Second, the existence of businesses in Israeli settlements provides an incentive to Israelis who would potentially move to settlements. Israelis are encouraged to move to Israeli settlements by the Israeli government, but businesses operating in settlements become complicit in encouraging Israelis to move to settlements. More importantly, businesses will have a benefit in seeing Israelis move to the settlements and therefore not only benefit from an illegal act but also promote it. Businesses will therefore make the establishment of settlements easier but also provides a justification for the colonization of the West Bank. The efforts of international bodies and the international community to see a halt in the building and expansion of settlements will be highly hindered by this dynamic.

Third, the existence of businesses in settlements normalizes settlements and depicts them as spaces where social and economic lives thrive, while downplaying the fact that settlements are often built on private Palestinian land,¹³ that they use underground water which should not be appropriated by the occupying power according to the law¹⁴, or that they create economic dependency. The continuation of operation of such businesses would focus on the lives of settlers and overlook the harm done to Palestinians and the resulting discrimination. Moreover, a prolonged and un-monitored presence of businesses in settlements would suggest the legal and moral acceptability of providing goods and services to settlers at the expense of Palestinians and private Palestinian property.

Conclusion

The Palestinian Return Centre supports the effort of the Office of the High Commissioner for Human Rights to establish a database of businesses operating in Israeli settlements, and stresses the importance of the creation of such a database. The database will help guide businesses to terminate all involvement in activities that are considered illegal in international law, and that have a clear negative effect on the situation of the human rights of Palestinians.

However, it is of paramount importance to make public the names of businesses operating in settlements. A prolonged anonymity would allow businesses to deepen their involvement in illegal actions and more importantly would provide room for impunity. Moreover, it would be a complicated task to monitor the compliance of businesses with their obligations under international law if those businesses remain unknown.

The PRC calls on the state of Israel to respect its obligations as an occupying power under international law and to cease the building of settlements, the appropriation of lands and natural resources for the exclusive benefit of settlers, and its systematic discrimination against Palestinians.

The PRC also calls on businesses and states to abide by the UN Guiding Principles on Business and Human Rights. Businesses have to stop operating and providing services in settlements so that they do not participate in the violation of various human rights. Origin countries of businesses, and most importantly Israel, have to provide businesses under their jurisdiction with guidance and support to guarantee businesses' respect of human rights.

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¹³ Borell, R., 2017. Land Day 2017: Israel's relentless land grab continues. *amnesty.org*. Available at: <https://www.amnesty.org/en/latest/news/2017/03/land-day-2017-israels-relentless-land-grab-continues/>.

¹⁴ United Nations Conference on Trade and Development. *The Economic Costs of the Israeli Occupation for the Palestinian People and their Human Right to Development: Legal Dimensions* (2018). [Online] UNCTAD/GDS/APP/2017/2. Available at: https://unctad.org/en/PublicationsLibrary/gdsapp2017d2_en.pdf