

JOINT NGO POSITION PAPER

Three reasons why the European Union should support the United Nations Database on businesses activities related to Israeli settlements

The undersigned human rights organisations stress the utmost importance of European Union (EU) and Member States supporting the United Nations (UN) Database on businesses operating in Israeli settlements (the Database), as a necessary and proportionate measure to promote greater transparency, accountability and respect by both states and businesses of international law.

Companies that engage in business activities in or with settlements play an essential role in Israel's settlement enterprise, which is in violation of international humanitarian law and lies at the root of the systematic human rights violations affecting every aspect of Palestinians' lives. Doing business in or with the settlements contributes to the maintenance and expansion of settlements and therefore to violations of human rights. Businesses in these situations are acting in breach of their responsibility to respect human rights.¹

While we welcome the steps taken so far by the EU and its Member States in ensuring non-recognition of the illegal situation created by the establishment of settlements in the Occupied Palestinian Territory (OPT), we call on them to support a public and regularly updated database² and to actively cooperate in bringing companies under their jurisdiction in line with international humanitarian law and their human rights responsibilities.

The Database is a tool for strengthening implementation of international law and the UN Guiding Principles in conflict areas

The Database is an effective mechanism to put into practice existing human rights obligations in the area of Business and Human Rights. Similar mechanisms have been previously instituted in other conflict-affected areas.³ By supporting the Database, the EU would be contributing to the establishment of an action-focused initiative promoting respect for the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises.

In this regard, the EU and its Member States have endorsed the UNGPs and recalled these commitments, notably in the EU Strategy on Corporate Social Responsibility.⁴ The EU has repeatedly committed to advancing other initiatives that contribute to their implementation, including by proactively engaging with businesses on issues related to Business and Human Rights.⁵ Out of 28 EU Member States, 14 have already produced their National Action Plans on Business and Human Rights,⁶ which testifies to the increasing European commitment and progress in this regard. The EU has also identified this issue as a priority in UN Human Rights Fora for 2018.⁷

¹ <https://www.hrw.org/news/2017/11/28/israel/palestine-un-settlement-business-data-can-stem-abuse>

² The 2016 Human Rights Council resolution expressly instructs to the UN that the database is "to be updated annually"

³ For instance, the list of companies compiled in the U.N. Panel of Experts on the Democratic Republic of the Congo Addendum Report, (S/2002/1146/Add.1) June 20, 2003.

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0681>

⁵ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/action-plan-on-human-rights-and-democracy-2015-2019_en.pdf

⁶ <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

⁷ <http://data.consilium.europa.eu/doc/document/ST-6346-2018-INIT/en/pdf>

The Database is a tangible instrument for business transparency and corporate responsibility

Effective implementation of the UNGPs requires innovative and creative tools to promote due diligence processes and correct irresponsible business conduct. The process of developing a Database would encourage companies to evaluate their involvement in settlement-related activities and accordingly properly bring their business operations in line with human rights standards, as already required by the UNGPs and OECD Guidelines for Multinational Enterprises. In this way, the Database helps responsible companies avoid their legal, financial and reputational risks when involved in settlement-related activities, as many individual EU Member States already warn in their guidance to businesses.

The Office of the High Commissioner is setting out a clear methodology to ensure it affords adequate due process and procedural safeguards to companies., which testifies to the solid normative framework under which the Database process will operate. The Database should be seen as a crucial resource for engaging businesses and citizens to promote business transparency and corporate responsibility.⁸ This complements existing EU legislation, which requires large companies to disclose information on their policies and risks regarding, among others, respect for human rights, thus encouraging greater transparency and accountability for negative human rights impacts.⁹

By ensuring the Database is duly transparent and regularly updated, the EU and its Member States will enable States, civil society and investors to productively engage with companies, to prevent human rights violations and address possible breaches. Past experiences have shown that proactive engagement with companies lead to positive results, as demonstrated by earlier decisions taken by European companies, financial institutions and pension funds to terminate activities supporting illegal operations in the OPT.¹⁰ As the EU maintains, greater transparency makes companies more resilient and increases their performance, both in financial and non-financial terms.¹¹

The Database is an operative tool to advance EU non-recognition policy and reverse settlement expansion

In the specific context of Israel/Palestine, the Database constitutes a practical measure to cease company involvement in the continuing settlement expansion, by implementing UN Security Council Resolution 2334 and the EU's non-recognition policy. The longstanding position of the EU and its Member States is that settlements are "illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible".¹² The EU has already in place a policy of differentiation that discourages Israel's illegal activities in the OPT.

However, settlement construction keeps accelerating at an unprecedented level, as the EU noted in its July 2018 report.¹³ The Database offers an opportunity to further put into practice this European policy, by ensuring greater transparency around business activities contributing to or benefitting from Israel's expropriation of Palestinian land and natural resources. It could also help deter further illegal transfer of Israeli settlers into the OPT, as it may reduce the economic profitability of the settlement enterprise.

⁸ <http://theconversation.com/why-the-un-is-setting-up-a-database-of-international-businesses-operating-in-israeli-settlements-85499>

⁹ https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

¹⁰ Examples include British security services company G4S; Norwegian Government Pension Fund Global; Dutch pension fund Stichting Pensioenfonds Zorg en Welzijn, formerly PGGM; Denmark's Danske Bank and Dutch infrastructural company Royal HaskoningDHV;

¹¹ http://europa.eu/rapid/press-release_IP-17-1702_en.htm

¹² https://eeas.europa.eu/headquarters/headquarters-homepage/23938/statement-federica-mogherini-latest-decisions-israeli-government-regarding-settlements_en

¹³ 6,111 housing units in the occupied West Bank including East Jerusalem were advanced in different stages of the planning and implementation process: https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/48438/six-month-report-israeli-settlements-occupied-west-bank-including-east-jerusalem_en

The undersigned organisations:

Access Now

Al-Haq

Al Mezan Center for Human Rights

Amnesty International

Arab Association for Human Rights (HRA)

Article 1 Collective

Cairo Institute for Human Rights Studies (CIHRS)

Centre for Research on Multinational Corporations (SOMO)

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Corporate Europe Observatory

Dutch League for Human Rights (LvRM)

EuroMed Rights

International Accountability Project

International Federation for Human Rights (FIDH)

Jerusalem Legal Aid and Human Rights Center (JLAC)

Lawyers for Palestinian Human Rights (LPHR)

Palestinian Centre for Human Rights (PCHR)

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