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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General 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 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.

I. Introduction

A. Background

1. The present report 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 2016.¹

2. In paragraph 17 of resolution 31/36, the Council requested production of a database of all business enterprises involved in certain specified activities related to the Israeli settlements in the Occupied Palestinian Territory, to be updated annually, and to transmit the data therein in the form of a report to the Council.

3. OHCHR presented a previous report on the matter at the thirty-seventh session of the Human Rights Council, on 20 March 2018 (A/HRC/37/39). That report set out methodology used to discharge the mandate of the Council.

4. In its previous report, OHCHR noted that it had reviewed information on a total of 321 business enterprises following transmittal of notes verbales to States, an open invitation for submissions and its own research. Following review, a total of 206 business enterprises were assessed at that time for further consideration.

5. Paragraph 26 of that report stated that “[o]nce 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.”

B. Mandate

6. Human Rights Council resolution 31/36 requesting production of a database was in follow-up to 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 set out a list of activities that raised particular human rights concerns for it (“listed activities”).² In resolution 31/36, the Council defined the database by reference to the listed activities compiled by the fact-finding mission in its report, which were:

(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;

¹ While resolution 31/36 refers to the occupied Syrian Golan, paragraph 17 requesting production of a database and the report of the independent international fact-finding mission to which it refers pertains to the Occupied Palestinian Territory only. Business enterprises involved in activities related to the occupied Syrian Golan therefore do not fall within the present mandate.

² A/HRC/22/63, para. 96.

(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) 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;

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

7. Paragraph 5 of the previous report outlined parameters of the database, which encompasses business enterprises, whether domiciled in Israel, the Occupied Palestinian Territory or abroad, carrying out listed activities in relation to the Occupied Palestinian Territory.

8. The mandate to produce the database set out by the Council's resolution 31/36 is confined to the 10 activities listed above. The database does not cover all business activity related to settlements, and does not extend to wider business activity in the Occupied Palestinian Territory that may raise human rights concerns. In addition, while there may be other types of enterprises involved in significant business activity related to settlements, only those enterprises constituting business enterprises are considered; non-business enterprises are excluded from consideration.

C. Definitions

9. The mandate set out in the Council's resolution 31/36 requires identification of three cumulative elements: (a) "business enterprises"; (b) "involved"; (c) in one or more listed activities. This report's approach to the interpretation of each element is as follows:

(a) "Business enterprises":

10. In paragraph 18 of its previous report, OHCHR noted:

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.

11. In assessing “business enterprises”, for the purposes of this report, OHCHR considered the nature and substance of the functions and activities of the relevant commercial entities, irrespective of their specific corporate form or structure, or characterization as a matter of national law of States of domicile.

(b) “Involved”:

12. OHCHR identified as “involved”, for purposes of this report, substantial and material business activity that had a clear and direct link to one or more of the listed activities, encompassing the following business forms:

- A business enterprise itself engaged in a listed activity in the Occupied Palestinian Territory;
- A parent company owning a majority share of a subsidiary engaged in a listed activity in the Occupied Palestinian Territory. Where a business enterprise owns a minority share in a subsidiary that business enterprise is not considered to be “involved” for the purposes of this report;
- A business enterprise granting a relevant franchise or license to a franchisee or licensee engaged in a listed activity in the Occupied Palestinian Territory.

13. In temporal terms, OHCHR required such involvement to have been during the period 1 January 2018 to 1 August 2019.

(c) Listed activities:

14. As noted in resolution 31/36, the Council defined the specific activities to be reflected in the database by reference to those activities set out by the fact-finding mission in paragraph 96 of its report (see paragraph 6 above).

15. Due to the specific formulation of certain listed activities, the following additional considerations were taken into account:

Listed activities (a), (b), (c), and (d); activities of “supply”:

16. Activities listed in categories (a), (b) and (d) require acts of “supply” of equipment, services or materials for certain purposes, uses or effects.³ The notion of “supply” was considered to encompass, as relevant, processes of manufacture, provision and/or distribution of equipment, services and/or materials that, have been employed for those purposes, uses or effects.

17. In relation to listed activity (c), the formulation of the listed activity is phrased more restrictively, identifying that the relevant equipment must be specifically supplied “for” the particular activities of demolition or destruction of the forms of property set out in the activity (c).

Listed activity (g):

18. Listed activity (g) covers the use of natural resources, in particular water and land, for business purposes. As such, it is considered to include business enterprises that are physically located on land in the Occupied Palestinian Territory, in addition to those that benefit commercially from the use of natural resources located in the

³ (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; and (d) The supply of security services, equipment and materials to enterprises operating in settlements.

Occupied Palestinian Territory, irrespective of such business enterprises' physical presence.

D. Methods of work

19. In executing the present mandate pursuant to resolution 31/36, OHCHR applied a comprehensive methodology, as initially outlined in its previous report. OHCHR's work in producing the database, in full compliance with resolution 31/36, is not, and does not purport to constitute, a judicial or quasi-judicial process of any kind or legal characterization of the listed activities or business enterprises' involvement therein. Rather, the Council requested factual determinations as to whether businesses enterprises were involved in the listed activities.⁴

20. OHCHR's contact directly with all screened business enterprises, in consultation with the Working Group on the issue of human rights and transnational corporations and other business enterprises, offered procedural fairness and facilitated consistency of conclusions reached.

21. Following the previous report, further analysis of the 206 business enterprises assessed resulted in 188 business enterprises for additional consideration. Enterprises were set aside, in particular, due to insufficient factual basis in the submissions or in the public domain to support the contentions of involvement in the listed activities. These business enterprises were contacted between September 2017 and October 2018.

22. In a letter sent to each of the 188 business enterprises, OHCHR informed them of the listed activities that they appeared to be involved in, based on the totality of information reviewed by it, and set out the basic facts of the enterprises' alleged involvement in the listed activity or activities. Business enterprises were requested to respond in writing within 60 days with an initial response, providing any clarification or update of the information. Business enterprises were informed that they could request that the substance of their written responses be kept confidential; a number of enterprises made such a request.⁵ In some cases, lengthier processes of dialogue developed between OHCHR and business enterprises. In other cases, no response was received.

23. At the conclusion of this process, on the basis of the totality of information available to it, OHCHR assessed against the definitions of the three necessary elements stated in paragraph 9 above, whether, as a factual matter, the standard of reasonable grounds to believe involvement in the listed activities had been met.

E. OHCHR engagement with business enterprises

24. OHCHR engaged with business enterprises throughout all stages of its work on the database. The direct communication facilitated an exchange of information and offered business enterprises opportunity to provide views on the alleged involvement in listed activities. In several instances, business enterprises confirmed that there was no involvement in the listed activities. These business enterprises were not included in the database. In some cases, business enterprises requested further information on the methodology and mandate, to which OHCHR responded.

⁴ A/HRC/37/39, para. 8.

⁵ A/HRC/37/39, para. 20.

25. As noted in OHCHR's previous report (A/HRC/37/39), responses from business enterprises 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; and/or (d) provided updated information that indicated they were no longer involved in one or more of the listed activities.

26. OHCHR responded to business enterprises addressing queries as to the Council's mandate, and, as necessary, further detailed information presented concerning their alleged involvement in listed activities.

27. Business enterprises that met the standard of proof for inclusion in the database were each informed in writing, and of the procedure by which they could be removed. OHCHR invited enterprises to continue their engagement with the Office in line with the Guiding Principles on Business and Human Rights.⁶

28. OHCHR re-screened all business enterprises prior to the submission of this report to confirm that the activity for which they were included in the database met the applicable standard of proof, during the relevant temporal period.

29. A number of business enterprises communicated with OHCHR that they were no longer involved in the relevant activity, or that the involvement was of a different nature outside the scope of mandate. In these cases, OHCHR assessed the information provided and discontinued consideration of those business enterprises no longer assessed as involved in the listed activities.

30. Where business enterprises did not provide additional information or clarifications, OHCHR relied on desk research to assess the information received from Member States and stakeholders.

F. Database of business enterprises

31. OHCHR identified that 112 of the 188 business enterprises considered for inclusion in the database met the required standard of reasonable grounds to believe involvement in one or more of the listed activities. These are set out immediately following. Seventy-six of the 188 business enterprises did not meet the standard of proof, and were not included in the database.⁷

(a) Business enterprises involved in listed activities

<i>No.</i>	<i>Business Enterprise</i>	<i>Category of listed activity</i>	<i>State concerned</i>
1	Afikim Public Transportation Ltd.	E	Israel
2	Airbnb Inc.	E	United States
3	American Israeli Gas Corporation Ltd.	E, G	Israel

⁶ Guiding Principles for Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, (2011).

⁷ With respect to three listed activities (c), (i) and (j), OHCHR did not identify any business enterprise satisfying the standard of reasonable grounds to believe involvement consistent with the definitional approach set out above.

4	Amir Marketing and Investments in Agriculture Ltd.	G	Israel
5	Amos Hadar Properties and Investments Ltd.	G	Israel
6	Angel Bakeries	E, G	Israel
7	Archivists Ltd.	G	Israel
8	Ariel Properties Group	E	Israel
9	Ashtrom Industries Ltd.	G	Israel
10	Ashtrom Properties Ltd.	G	Israel
11	Avgol Industries 1953 Ltd.	G	Israel
12	Bank Hapoalim B.M.	E, F	Israel
13	Bank Leumi Le-Israel B.M.	E, F	Israel
14	Bank of Jerusalem Ltd.	E, F	Israel
15	Beit Haarchiv Ltd.	G	Israel
16	Bezeq, the Israel Telecommunication Corp Ltd.	E, G	Israel
17	Booking.com B.V.	E	Netherlands
18	C Mer Industries Ltd.	B	Israel
19	Café Café Israel Ltd.	E, G	Israel
20	Caliber 3	D, G	Israel
21	Cellcom Israel Ltd.	E, G	Israel
22	Cherriessa Ltd.	G	Israel
23	Chish Nofei Israel Ltd.	G	Israel
24	Citadis Israel Ltd.	E, G	Israel
25	Comasco Ltd.	A	Israel
26	Darban Investments Ltd.	G	Israel
27	Delek Group Ltd.	E, G	Israel
28	Delta Israel	G	Israel
29	Dor Alon Energy in Israel 1988 Ltd.	E, G	Israel
30	Egis Rail	E	France
31	Egged, Israel Transportation Cooperative Society Ltd.	E	Israel
32	Energix Renewable Energies Ltd.	G	Israel

33	EPR Systems Ltd.	E, G	Israel
34	Extal Ltd.	G	Israel
35	Expedia Group Inc.	E	United States
36	Field Produce Ltd.	G	Israel
37	Field Produce Marketing Ltd.	G	Israel
38	First International Bank of Israel Ltd.	E, F	Israel
39	Galshan Shvakim Ltd.	E, D	Israel
40	General Mills Israel Ltd.	G	Israel
41	Hadiklaim Israel Date Growers Cooperative Ltd.	G	Israel
42	Hot Mobile Ltd.	E	Israel
43	Hot Telecommunications Systems Ltd.	E	Israel
44	Industrial Buildings Corporation Ltd.	G	Israel
45	Israel Discount Bank Ltd.	E, F	Israel
46	Israel Railways Corporation Ltd.	G, H	Israel
47	Italek Ltd.	E, G	Israel
48	JC Bamford Excavators Ltd.	A	United Kingdom
49	Jerusalem Economy Ltd.	G	Israel
50	Kavim Public Transportation Ltd.	E	Israel
51	Lipski Installation and Sanitation Ltd.	G	Israel
52	Matrix IT Ltd.	E, G	Israel
53	Mayer Davidov Garages Ltd.	E, G	Israel
54	Mekorot Water Company Ltd.	G	Israel
55	Mercantile Discount Bank Ltd.	E, F	Israel
56	Merkavim Transportation Technologies Ltd.	E	Israel
57	Mizrahi Tefahot Bank Ltd.	E, F	Israel
58	Modi'in Ezrachi Group Ltd.	E, D	Israel
59	Mordechai Aviv Taasiot Beniyah 1973 Ltd.	G	Israel
60	Motorola Solutions Israel Ltd.	B	Israel
61	Municipal Bank Ltd.	F	Israel
62	Naaman Group Ltd.	E, G	Israel
63	Nof Yam Security Ltd.	E, D	Israel

64	Ofertex Industries 1997 Ltd.	G	Israel
65	Opodo Ltd.	E	United Kingdom
66	Bank Otsar Ha-Hayal Ltd.	E, F	Israel
67	Partner Communications Company Ltd.	E, G	Israel
68	Paz Oil Company Ltd.	E, G	Israel
69	Pelegas Ltd.	G	Israel
70	Pelephone Communications Ltd.	E, G	Israel
71	Proffimat S.R. Ltd.	G	Israel
72	Rami Levy Chain Stores Hashikma Marketing 2006 Ltd.	E, G	Israel
73	Rami Levy Hashikma Marketing Communication Ltd.	E, G	Israel
74	Re/Max Israel	E	Israel
75	Shalgal Food Ltd.	G	Israel
76	Shapir Engineering and Industry Ltd.	E, G	Israel
77	Shufersal Ltd.	E, G	Israel
78	Sonol Israel Ltd.	E, G	Israel
79	Superbus Ltd.	E	Israel
80	Supergum Industries 1969 Ltd.	G	Israel
81	Tahal Group International B.V.	E	Netherlands
82	TripAdvisor Inc.	E	United States
83	Twitoplast Ltd.	G	Israel
84	Unikowsky Maoz Ltd.	G	Israel
85	YES	E	Israel
86	Zakai Agricultural Know-how and inputs Ltd.	G	Israel
87	ZF Development and Construction	G	Israel
88	ZMH Hammermand Ltd.	G	Israel
89	Zorganika Ltd.	G	Israel
90	Zriha Hlavin Industries Ltd.	G	Israel

(b) Business enterprises involved as parent companies

<i>No.</i>	<i>Business Enterprise</i>	<i>Category of listed activity</i>	<i>State concerned</i>
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91	Alon Blue Square Israel Ltd.	E, G	Israel
92	Alstom S.A.	E, G	France
93	Altice Europe N.V.	E	Netherlands
94	Amnon Mesilot Ltd.	E	Israel
95	Ashtrom Group Ltd.	G	Israel
96	Booking Holdings Inc.	E	United States
97	Brand Industries Ltd.	G	Israel
98	Delta Galil Industries Ltd.	G	Israel
99	eDreams ODIGEO S.A.	E	Luxembourg
100	Egis S.A.	E	France
101	Electra Ltd.	E	Israel
102	Export Investment Company Ltd.	E, F	Israel
103	General Mills Inc.	G	United States
104	Hadar Group	G	Israel
105	Hamat Group Ltd.	G	Israel
106	Indorama Ventures P.C.L.	G	Thailand
107	Kardan N.V.	E	Netherlands
108	Mayer's Cars and Trucks Co. Ltd.	E	Israel
109	Motorola Solutions Inc.	B	United States
110	Natoon Group	E, D	Israel
111	Villar International Ltd.	G	Israel

(c) Business enterprises involved as licensors or franchisors

<i>No.</i>	<i>Business Enterprise</i>	<i>Category of listed activity</i>	<i>State concerned</i>
112	Greenkote P.L.C.	G	United Kingdom

G. Removal from the database

32. A business enterprise may provide information indicating that it is no longer involved in the relevant listed activity. Where there are reasonable grounds to believe that, based on the totality of the information available, the business enterprise is ceasing or no longer involved in the relevant activity, the business enterprise would be removed from the database.

H. Recommendation

33. Resolution 31/36 contemplated that the database be updated annually. OHCHR would recommend that the Human Rights Council establish a group of independent experts, with a time-bound mandate, to report directly to the Council for such a purpose.