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## Human Rights Council

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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.

[03 February 2020]

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



## The UN must urgently release the database pursuant Human Rights Council resolution 31/36

The Palestinian Return Centre (PRC) continues to be concerned by the decision of the Office of High Commissioner for Human Rights (OHCHR) to not implement the mandate stipulated in resolution 31/36 by the UN Human Rights Council in 2016. The Human Rights Council mandated the OHCHR in March 2016 to "produce a database of all business enterprises engaged in specific activities related to Israeli settlements in the occupied Palestinian territory."<sup>1</sup> 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.

The Human Rights Council resolution 31/36 followed 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 which, in 2013, found that business enterprises had "directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements."<sup>2</sup> The Fact-Finding Mission's report provided a list of 10 activities that are either explicitly linked to the settlements or enable and support their establishment, expansion and maintenance. Notably, this UN database does not call for sanctions or criminal liabilities against businesses and is supposed only to encourage companies not to contribute to human rights violations. The database could facilitate informed decision making by " investors, procurers and consumers, and bolster private (horizontal) enforcement processes."<sup>3</sup> It could also encourage third states to ensure that businesses divest from activities in Israeli settlements. Yet, the database does not cover other non-state organisations given that is restricted to businesses, therefore nongovernmental organizations, charities, sports associations or federations, and other entities who also are complicit in Israel's settlements are excluded from consideration.

In February 2018, the OHCHR produced a report updating the Human Rights Council on the work it has conducted in building the UN database and provides details on methodology, some results and challenges going forward. Crucially, no company discussed in the report has been named publically, and the OHCHR has so far failed to provide valid justifications for this unprecedented lack of implementation of the mandate. In the report it noted that given the novelty of the UN database and in order to implement the methodology properly, and give businesses involved the possibility to fairly engage with the work of the OHCHR, some delays were necessary.

Yet, over three years since the HRC resolution 31/36, it has become evident that the failure to release the UN database is based on political pressure arising from Israel<sup>4</sup> and the US.<sup>5</sup> This pressure is also being exerted by European Member States which are seemingly willing to defend the reputation and profits of businesses located in their country rather than challenge their active complicity in Israel's colonial settlements project. According to media reports, "Western diplomats have said the database could set a harmful precedent by blurring the line between business and human rights on issues that are better left to trade policy than the Geneva council" and that "Israel and its allies have been encouraging the council to leave

<sup>1</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22617&LangID=E>

<sup>2</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22617&LangID=E>

<sup>3</sup>

[https://www.banktrack.org/download/business\\_and\\_human\\_rights\\_in\\_occupied\\_territory/business\\_and\\_human\\_rights\\_in\\_occupied\\_territory\\_the\\_un\\_database\\_of\\_business\\_active\\_in\\_israels\\_settlements.pdf](https://www.banktrack.org/download/business_and_human_rights_in_occupied_territory/business_and_human_rights_in_occupied_territory_the_un_database_of_business_active_in_israels_settlements.pdf)

<sup>4</sup> <https://www.haaretz.com/israel-news/.premium-israel-to-the-west-don-t-honor-unhrc-vote-1.5422459>

<sup>5</sup> <https://www.timesofisrael.com/us-threatens-to-cut-un-funding-over-settlement-blacklist-report/>

the list out and submit only a basic, broad-strokes report that doesn't name names."<sup>6</sup> The lack of apparent transparency from the OHCHR on the reasons for the delay leaves civil society and Palestinians to question the commitment of the Office to upholding the values of justice needed to end Israel's violations of Palestinian rights. It is also untenable for EU states, including the United Kingdom of Great Britain and Northern Ireland, to officially state that they consider Israeli settlements in the Occupied West Bank illegal and at the same time oppose any mechanism for accountability for businesses contributing to human rights violations through their involvement in those colonial settlements.

In its report, the UN Human Rights Office stated that it had short-listed 206<sup>7</sup> companies that it will contact for potential inclusion in the UN database. At the end of 2017 it stated that "the Office has contacted 64 of these companies, informing them of the listed activities that they appeared to be engaged in."<sup>8</sup> The AP has reported that Israeli officials confirmed "that about 100 local companies that operate in the West Bank and east Jerusalem have received warning letters that they will be on the list. In addition, some 50 international companies, mostly American and European, also have been warned."<sup>9</sup>

The OHCHR sent "notes verbales" on 11 July 2017 to the 21 Member States in which the initial screened companies were domiciled, identifying companies domiciled in that Member State. The "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." The Washington Post reported in August that among the American companies that received letters were Caterpillar, Priceline.com, TripAdvisor and Airbnb. Israel's Channel 2 reported that the list includes some of the biggest companies in Israel, such as Teva, Bank Hapoalim, Bank Leumi, Bezeq, Elbit, Coca-Cola Israel, Africa-Israel, IDB, Egged, Mekorot and Netafim.<sup>10</sup>

In the report OHCHR states that three companies based in the UK had been screened and only one directly one contacted. Given the failure to release the names of these companies it is only possible to speculate which companies have been included. Although, 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. Specific activities include the supply of construction and surveillance equipment, the supply of surveillance, security, banking and financial services, the exploitation of natural resources and, more generally, the supply of services and utilities supporting the maintenance and existence of settlements. Criteria "c" notes: "The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olive groves and crops."

As a UK-based organisation, the PRC has an added interest in establishing which UK company has been screened and/or contacted by UN Human Rights Office. A UK company that strongly fits the criteria "c" described above is JCB, which is the world's third largest construction equipment manufacturer, that manufactures equipment used in the agricultural, construction and defense industries.<sup>11</sup> British company JCB manufactures both civil and military bulldozers, which are regularly used by the Israeli police, military and Civil Administration to demolish Palestinian property. JCB's bulldozers are used to build Israel's illegal settlements and to expand Israel's apartheid wall in the West Bank. They are also used in the construction of checkpoints and roadblocks. The company has also applied for several arms export licenses to export military equipment from the UK.<sup>12</sup> Recently, the charity

<sup>6</sup> Ibid.

<sup>7</sup> The majority of these companies are domiciled in Israel or the settlements (143), with the second largest group located in the United States (22). The remainder are domiciled in 19 other countries.

<sup>8</sup> Ibid 2.

<sup>9</sup> <https://apnews.com/9f910e5a7b264c38aad504a6147d9898>

<sup>10</sup> <https://www.haaretz.com/israel-news/un-warned-150-companies-for-doing-business-in-settlements-1.5453996>

<sup>11</sup> <https://whoprofits.org/company/jcb-j-c-bamford-excavators/>

<sup>12</sup> <https://corporateoccupation.org/wp-content/uploads/sites/34/2019/03/resisting-demolitions-ebook-v2.pdf>

Lawyers for Palestinian Human Rights (LPHR) filed an OECD<sup>13</sup> Guidelines complaint against JCB for involvement in human rights breaches in the occupied Palestinian territory.<sup>14</sup> LPHR presented evidence it received from Palestinian human rights organisation Al-Haq, which shows that "JCB products are prolifically involved in demolitions in the occupied Palestinian territory, having been responsible for at least 60 out of the 266 demolitions recorded that year."<sup>15</sup> There is abundant publicly available evidence showing JCB's involvement in war crimes against Palestinians. According to research conducted by Corporate Occupation, in 2018 JCB bulldozers demolished at least 130 structures, including 31 homes, 2 schools, 22 businesses displacing at least, 163 people including 31 children. JCB bulldozers also destroyed at least 17 graves and 499 trees as well as 2 villages water piper, 2 roads and 11 solar panels. JCB bulldozers are also being used in the construction of the barrier incarcerating the besieged Gaza Strip.<sup>16</sup>

In September 2019, 39 UK parliamentarians signed a letter submitted to UN High Commissioner for Human Rights, Michelle Bachelet, urging her to immediately publish the UN database listing companies involved in settlement-related activities. In the letter MPs note that there have been some reasons elaborated by the UK government for its opposition to the database. The first is that the UN Human Rights Council should focus on states rather than on companies; the second is that the HRC resolution 31/36 does not expressly provide that the database be made public. The MPs counter that those are not adequate justifications, and in their view it is clear that the resolution stipulates that the name be made public.<sup>17</sup>

The PRC considers that it is highly likely that JCB was one of the companies screened and contacted by the OHCHR for potential inclusion in the UN database. If that is not the case, it should urgently be considered for inclusion in the database as it's prominent role in the destruction of Palestinian properties fits the criteria set out by the OHCHR report. We call on the UK government to disclose which were the three companies mentioned in the "notes verbales" received from the OHCHR in July 2017.

The repeated, open-ended, and unexplained delays in establishing this UN database have no precedent in the handling of previous mandates by OHCHR.<sup>18</sup> The PRC calls on the UN High Commissioner for Human Rights to set a date for the release of the database, and to provide guidance to businesses operating in illegal Israeli settlements to ensure that they stop their activity and cease their complicity with human rights violations. The failure to release the database and make it public provides businesses with an opportunity to continue benefitting from operating in Israeli settlements with impunity.

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<sup>13</sup> Organisation for Economic Co-operation and Development

<sup>14</sup> <https://lphr.org.uk/latest-news/lphr-files-oecd-guidelines-complaint-against-jcb-for-involvement-in-human-rights-breaches-in-the-occupied-palestinian-territory/>

<sup>15</sup> Ibid.

<sup>16</sup> <https://corporateoccupation.org/2018/06/08/equipment-manufactured-by-european-us-and-asian-companies-being-used-to-fortify-gaza-apartheid-walla/>

<sup>17</sup> <https://lphr.org.uk/wp-content/uploads/2019/09/201909-Parliamentary-Letter-to-UN-High-Commissioner.pdf>

<sup>18</sup> <https://www.hrw.org/news/2019/10/01/joint-statement-continued-delay-un-database-un-high-commissioner-human-rights>