

Mandates of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

Ref.: Letter 19/2011

(Please use this reference in your reply)

To

[REDACTED]
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[REDACTED]

22 November 2021

Re: Responsible Investments – UN Guiding Principles on Business and Human Rights Investments in the Israeli settlement economy

[REDACTED]

I am writing in my capacity as the United Nations Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967. I was appointed to this position by the United Nations Human Rights Council in March 2016 and was mandated to assess the human rights situation in the Occupied Palestinian Territory, to report publicly about human rights violations, and to work with governments, civil society and others to foster international cooperation. One of my areas of engagement focuses on the responsibility of businesses and investment funds to respect human rights.

Since 1967, when it occupied the Palestinian territory (the West Bank, including East Jerusalem, and Gaza), Israel has created close to 300 settlements, where more than 680,000 Israeli settlers presently live. These settlements are sustained, in significant part, by international and Israeli corporations who are heavily invested in the thriving settlement economy.

The Illegality of the Israeli Settlements

The illegality of the Israeli settlements is one of the most settled issues in modern international law. The United Nations Security Council stated in December 2016 that the settlements are a flagrant violation under international law.¹ This position has been affirmed

¹ UNSC **Resolution** 2334 (23 December 2016).

by the International Court of Justice,² the United Nations General Assembly,³ the UN High Commissioner for Human Rights,⁴ the UN Human Rights Council,⁵ the European Union,⁶ Amnesty International,⁷ the International Committee of the Red Cross,⁸ the High Contracting Parties to the *Fourth Geneva Convention*,⁹ the International Commission of Jurists,¹⁰ Human Rights Watch,¹¹ Al-Haq¹² and B'Tselem.¹³

Under the 1998 *Rome Statute of the International Criminal Court*, the Israeli settlements are a presumptive war crime.¹⁴ The *Rome Statute* has been enacted in full into UK law through the *International Criminal Court Act 2001*,¹⁵ meaning that they would have the same status under domestic law.

The Israeli Settlements, Businesses and Human Rights

Recent reports by the UN Office of the High Commissioner for Human Rights have concluded that the Israeli settlements are a significant source of human rights violations against the protected Palestinian population in the occupied territory. These violations include land confiscation and alienation, settler violence, discriminatory planning laws, the appropriation of natural resources, home demolitions, forcible population transfer, labour exploitation, forced evictions and displacement, discriminatory law enforcement and the imposition of a two-tiered system of unequal political, social and economic rights based on ethnicity. Above all, the settlements are an integral part of the Israeli policy to deny the right to self-determination to the Palestinians under occupation.¹⁶

Over the past five years, a number of leading human rights leaders and organizations have conducted comprehensive reviews of the human rights impact of the Israeli settlements and the role that corporations and businesses play in furthering the adverse human rights consequences of the settlements [See Appendix 1]. The conclusion from all of these comprehensive reports and statements is that it is impossible to engage either directly with the Israeli settlement economy or indirectly through investments with corporations that are engaged in the settlement economy without violating well-recognized international human rights standards and the UN Guiding Principles on Business and Human Rights.

² *Wall Advisory Opinion*, (2004), 43 ILM 1009, at para. 120.

³ A/Res/71/97 (23 December 2016).

⁴ A/HRC/40/42 (30 January 2019).

⁵ A/HRC/43.L37 (22 June 2020).

⁶ <https://www.consilium.europa.eu/en/press/press-releases/2016/01/18/fac-conclusions-mepp/>

⁷ <https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>.

⁸ Peter Maurer, "Challenges to International Humanitarian Law: Israel's Occupation Policy," (2012), 888 *International Review of the Red Cross* 94, 1507.

⁹ [Declaration of Conference of High Contracting Parties to Fourth Geneva Convention - Swiss FDFA document/Non-UN document \(17 December 2014\)](https://www.fdfa.ch/de/declaration-of-conference-of-high-contracting-parties-to-fourth-geneva-convention-swiss-fdfa-document/non-un-document-17-december-2014)

¹⁰ <https://www.icj.org/wp-content/uploads/2019/11/Israel-Road-to-Annexion-Advocacy-Analysis-brief-2019-ENG.pdf>.

¹¹ <https://www.hrw.org/world-report/2019/country-chapters/israel/Palestine>.

¹² <https://www.alhaq.org/advocacy/7266.html>.

¹³ <https://www.btselem.org/topic/settlements>.

¹⁴ *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, Article 8(2)(b)(viii).

¹⁵ 2001, c. 17.

¹⁶ Report of the United Nations High Commissioner for Human Rights, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", A/HRC/43/67 (30 January 2020); A/HRC/46/65 (15 February 2021).

The United Nations Database

In February 2020, the Office of the United Nations High Commissioner for Human Rights (OHCHR), pursuant to a resolution of the United Nations Human Rights Council in March 2016, published a report on a database of “business enterprises involved in certain specified activities related to the Israeli settlements in the Occupied Palestinian Territory.”¹⁷ This database was developed and released within the broader context of the United Nations' efforts to promote stronger business practices with respect to human rights. The UN Guiding Principles on Business and Human Rights, adopted by the United Nations Human Rights Council in 2011,¹⁸ are clear that enterprises need to respect the standards of international humanitarian law and that conflict-affected areas, such as the Occupied Palestinian Territory, involve a heightened risk to human rights, and subsequently require enhanced human rights due diligence.

The specified activities in the Israeli settlement that are captured by the UN Database include the provision of equipment, materials and services for the construction, expansion or maintenance of the settlements; the supply of equipment for the demolition of property and infrastructure; banking and financial operations to develop and expand the settlements; and the use of natural resources for business purposes.

In developing the Database and the accompanying report, the OHCHR conducted advanced engagement with all of the companies listed through all of the stages of its work before its publication. After this extended engagement, the companies were only listed if they still met a required standard of reasonable grounds constituting one or more of the listed activities. Thus, the listed companies have already been subject to rigorous and extensive engagement already.

The Database identified 112 business enterprises involved in one or more activities in the Israeli settlements that were found by an earlier United Nations fact-finding mission in 2013 to raise grave human rights concerns.¹⁹ Recent research has revealed that 85% of LGPS funds whose investments could be ascertained have holdings in enterprises included in this UN Database.²⁰

It should be noted that OHCHR is also explicit on the fact that “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 other words, LGPS funds may have other enterprises in its portfolio that require enhanced human rights due diligence respecting the Israeli settlement economy.

Pension Funds and Disinvestment from the Israeli Settlement Economy

In the aftermath of the publication of the Database, a number of corporations have decided to disengage from corporations engaged in the Israeli settlement economy. KLP, the largest Norwegian pension fund, announced in July 2021 that it would no longer invest in 16 companies because of their corporate links to the Israeli settlement economy.

¹⁷ OHCHR (2020), [A/HRC/43/71](#), Report to Human Rights Council on database of business enterprises

¹⁸ [guidingprinciplesbusinesshr_en.pdf \(ohchr.org\)](#)

¹⁹ [OHCHR | Session19 International Fact-Finding Mission](#)

²⁰ Information from Palestinian Solidarity Campaign

Relying upon the 2020 UN Database, KLP stated, in its assessment that:

“...there is an unacceptable risk that the excluded companies are contributing to the abuse of human rights in situations of war and conflict through their links with the Israeli settlements in the occupied West Bank.”²¹

This followed an earlier announcement in May 2021 by Norway’s Sovereign Wealth Fund – the largest pension fund in the world – that it was excluding a series of corporations involved in the Israeli settlement economy from its portfolio, “due to unacceptable risk that the companies contribute to systematic violations of individual’s rights in situations of war or conflict.” The Council of Ethics, which had guided the decision, stated at the same time that:

“...the Israeli settlements in the West Bank have been built in violation of international law and that their existence and constant expansion causes significant harm and disadvantage to the area’s Palestinian population.”²²

Clearly, a wide range of larger and smaller institutional investors, including sovereign wealth funds, pension funds, asset management companies, and commercial and savings banks, need to react and recalibrate their portfolios in line with the OHCHR database. Public sector pension and investment funds around the world have been at the forefront of the global discourse on responsible investment. They have led by example on a number of important social and economic issues, including climate change, deforestation and human rights. This engagement displays the kind of investment leadership that is necessary to successfully tackle the looming social and economic challenges facing all of us.

The Local Government Pension Scheme

The Local Government Pension Scheme (LGPS) is one of the largest defined benefit pension plans in the world. I understand that it is the largest such scheme in England and Wales, managing the contributions of over 6.2 million members and 16,300 employers. With this role comes a responsibility to maintain and raise ethical investment standards, as well as break new ground when appropriate or necessary.

The LGPS, by virtue of its size and reputation, can play a transformational role in demonstrating the ethical validity of a more robust approach to investments in conflict-affected areas, as well as fulfilling its own role, as one of the world’s leading pension funds, in respecting international humanitarian and human rights law.

Israel continues to expand its settlements in occupied East Jerusalem and the West Bank. This relentless growth, in defiance of international law, makes it imperative that investors accept their international responsibilities and extricate themselves from any direct and indirect involvement with the settlement economy.

²¹ [Nordic fund KLP excludes 16 companies over links to Israeli settlements in West Bank | Reuters](#)

²² [Norway Wealth Fund Drops Firms Linked to West Bank Settlements - Bloomberg](#)

Request for Action

Accordingly, I am writing to ask you:

1. **To conduct enhanced human rights due diligence for all companies** that are listed in the OHCHR Database, as well as others beyond the scope of the database that may be involved in the illegal Israeli settlement economy. This should include using leverage to influence investee companies to desist from involvement in the settlement economy, as well as accounting for steps taken by LGPS in this regard.
2. **To divest LGPS of its holdings in any of the companies that are listed in the database**, if the company cannot give clear assurance that it itself has removed itself entirely from the settlement economy.
3. **To ensure that holdings in companies in high-risk, conflict-affected areas** (wherever they may be in the world) **are a priority for LGPS's ESG strategy**, and provisions should be made with the LGPS's Investment Strategy Statement.

All of the above would be in line with international law, with UN resolutions, with the UN Guiding Principles, with the OECD guidelines, as well as OHCHR advisories.

I would look forward to speaking with you with regards to the issues raised in this letter.
My very best wishes



Michael Lynk

Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

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Appendix

Human Rights Watch

In a major report in 2016, which examined how businesses contribute to Israel's violations of Palestinian rights, Human Rights Watch²³ stated that:

“...any adequate due diligence would show that business activities taking place in or 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. “In Human Rights Watch’s view, the context of human rights abuses to which settlement activity contributes is so pervasive and severe that businesses should cease carrying out activities inside or on behalf of settlements, such as building housing units or infrastructure, or providing waste removal and landfill services. They should also stop financing, administrating, trading with or otherwise supporting settlements or settlement-related activities and infrastructure.” [Emphasis added]

UN OHCHR

In 2018, the Office of the High Commissioner for Human Rights (OHCHR) released an interim report regarding its progress towards creating a database of businesses involved in the Israeli settlements.²⁴ The interim report offered a damning analysis of the human rights impact of the settlements on Palestinian life:

“The violations of Palestinian human rights associated with the settlements are pervasive and devastating, reaching every facet of Palestinian life. Owing to settlement development and infrastructure, Palestinians suffer from restrictions on freedom of religion, movement and education; their rights to land and water; access to livelihoods and their right to an adequate standard of living; their rights to family life; and many other fundamental human rights. “[EA]

OHCHR then expressed profound doubt as to whether a company could engage with the Israeli settlements and, at the same time, comply with its human rights responsibilities:

“Considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law.” [EA]

²³ *Occupation, Inc.*

²⁴ A/HRC/37/39

Amnesty International

In 2019, Amnesty International published a substantive study on the human rights and legal implications of companies doing business with the Israeli settlements.²⁵ It concluded that, given the grave human rights consequences of the settlements, only a complete red light abstinence would suffice:

“A company cannot meet its responsibility to respect human rights and the standards of international humanitarian law while doing business with the settlements. This is because the settlements have been established and developed in breach of the international law rules governing what states can and cannot do in a situation of military occupation. As such, they constitute war crimes and give rise to systematic, widespread and serious human rights violations.” [EA]

UN Special Rapporteur OPT

In October 2020, my annual report to the United Nations General Assembly focused in part on corporations, human rights and the Israeli settlements.²⁶ I took the view that:

“any form of corporate involvement – whether Israeli or international, whether direct or indirect, whether intentional or incidental – with the Israeli settlements is wholly incompatible with human rights obligations, with the Guiding Principles and with any purposive definition of enhanced due diligence. Three reasons inform this view. [EA]

First, the Israeli settlements are a flagrant violation and a grave breach of the *Fourth Geneva Convention* and a presumptive war crime under the Rome Statute. These are among the most serious of contraventions under international human rights, humanitarian and criminal law. [EA]

Second, corporations and businesses operating in, or benefiting from, the settlements provide the indispensable economic oxygen for their growth. Whatever positive benefits are cited by companies in defending their engagement with the settlements – often, the employment of Palestinian labour, or the payment of local taxes – are far outweighed on the human rights ledger by the scale of gross violations inherent in the settlement enterprise. [EA]

Third, the settlements are the primary political instrument – the pervasive “facts on the ground” – employed by the Government of Israel to advance its *de facto* and *de jure* annexation claims and to deny Palestinian self-determination. Annexation is a crime of aggression,²⁷ and self-determination is the *primus inter pares* of human rights.²⁸ [EA]

²⁵ *Think Twice*.

²⁶ A/75/532.

²⁷ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, article 8 bis, para. 2 (a).

²⁸ Self-determination is the very first human right cited in both the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*.