



Lawyers for Palestinian Human Rights' briefing on the UK Government's position on the UN business and human rights database listing companies involved in settlement-related activities

January 2018



About Lawyers for Palestinian Human Rights (LPHR)

LPHR is a lawyer-based charity in the UK that works on projects to protect and promote Palestinian human rights. We distinctly provide a legal and human rights perspective on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman QC and Tessa Gregory.

LPHR's expertise in business and human rights:

LPHR successfully pursued a significant business and human rights complaint under the OECD Guidelines for Multinational Enterprises against the security services company, G4S Plc, for its involvement in human rights violations against Palestinians in Israel and the occupied Palestinian territory. In March 2016, and soon after the OECD UK National Contact Point agreed with our evidence-based assessment that G4S were in breach of its human rights responsibilities under the OECD Guidelines, the company announced that it had commenced a process to sell its subsidiary, G4S Israel. The UK multinational announced the completion of the sale of G4S Israel to FIMI Opportunity Funds (an Israel private equity fund) in June 2017.

In regard to the UN Database, LPHR made a submission in December 2016 to the UN Office of the High Commissioner for Human Rights which focused on G4S and FIMI Opportunity Funds. We submitted an update following G4S' announcement that it had completed the sale of G4S Israel to FIMI Opportunity Funds. Both are published on the publications page of our website.

Author of this LPHR briefing:

Tareq Shrourou became LPHR's first Director in 2013. He previously worked as a human rights solicitor in London representing asylum claimants, unaccompanied children and survivors of human trafficking, and led the public legal advice service of the human rights organisation, Liberty. He holds a master's degree in Public International Law from King's College London.

Contact

Tareq Shrourou
Director of Lawyers for Palestinian Human Rights
Direct Line: 07949 212 795
Email: contact@lphr.org.uk



Introduction

1. The UK Government should revise its position of opposing a UN business and human rights database (“UN Database”) which will name companies involved in settlement-related activities that adversely impact Palestinian human rights. The UN Database is expected to be published in early 2018 and may include UK companies.
2. The UN Database will place a spotlight on companies acting in breach of their responsibilities under various business and human rights guidelines through involvement in settlement-related activities. Such corporate involvement enables and perpetuates Israel's settlement enterprise in the occupied West Bank, including East Jerusalem, that seriously infringes upon a wide range of human rights of Palestinians, including the fundamental right to self-determination.
3. The imminent publication of the UN Database is therefore a necessary and proportionate measure to effectively challenge Israel's settlement policy by triggering named companies to evaluate/re-evaluate their human rights responsibilities and to accordingly properly withdraw from settlement-related activities. In so doing, the UN Database has significant potential to effectively advance basic public interests of accountability, transparency and corporate respect for human rights.
4. The UK Government's opposition to the UN Database is not reconcilable with a) its progressive position of support for the UN Guiding Principles on Business and Human Rights (UN Guiding Principles), and b) its firm and clear position recognising the illegality of Israeli settlements. The UK Government should end its opposition to the UN Database so that its approach is congruent with these two pre-existing principled policy positions.

Brief background to the creation of the UN Database

5. In its February 2013 report¹, a UN commissioned independent fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people, found that *“business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements.”*
6. This expert mission then recommended that *“all Member States take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements, respect human rights throughout their operations.”*

¹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf



7. Subsequently, in March 2016, at the 31st session of the UN Human Rights Council, a request was made, in a resolution on Israeli settlements, to the UN High Commissioner for Human Rights (High Commissioner) to implement this specific recommendation. Operative paragraph 17 of the resolution instructs the High Commissioner to “*produce a database of all business enterprises involved in the activities detailed in paragraph 96 of the aforementioned report, to be updated annually, and to transmit the data therein in the form of a report it to the Council at its thirty-fourth session.*”² This resolution was adopted by the Human Rights Council by a vote of 32-0 with 15 abstentions.

Analysing the UK Government's position of opposition to the UN Database

8. The UK Government abstained on the vote of this Human Rights Council resolution in March 2016. In its explanation of its position, it was the only state to declare that the database was “inappropriate” and that “it would not cooperate in the process” of its implementation³. It has since briefly elaborated a host of reasons for its opposition to the UN Database to LPHR. Our assessment of them is that they do not individually or cumulatively amount to an adequate basis for justifiably opposing the UN Database.
9. One reason advanced by the UK Government for not supporting the UN Database is that it considers that the Human Rights Council should focus on states rather than on private companies. LPHR takes the view that this position is not compatible with the UK Government's and international community's significant recognition, as expressed in its support for the UN Guiding Principles published in 2011, that companies, in addition to states, have vital responsibilities in protecting and advancing respect for human rights.
10. A second reason advanced by the UK Government is that it interprets the wording of paragraph 17 of the Human Rights Council resolution as not permitting the High Commissioner to publish the UN Database publicly. LPHR's analysis leads to the conclusion that the UK Government has adopted an unjustifiably narrow and flawed interpretation of the remit given to the High Commissioner under paragraph 17.
11. We consider this to be the case because the language in paragraph 17 of the resolution (see paragraph 7 above), carries the clear implication that the High Commissioner's report will be made public at a session of the Human Rights Council. This would seem to be the proper presumption given that High Commissioner reports are generally made publicly available and there is no express reference for the report to be private. In addition, we take a progressive view that it is in the public interest of promoting basic

2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/082/57/PDF/G1608257.pdf?OpenElement>

3 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18535&LangID=E>



values of transparency, accountability and corporate respect for human rights, that the UN Database be published in the absence of clear language stating otherwise.

12. A third reason advanced by the UK Government is that it has concerns over the methodology used by the High Commissioner for compiling the UN Database. LPHR is also keen to ensure that the methodology adopted by the High Commissioner is sufficiently rigorous, and, particularly, to ensure that it affords adequate due process to companies. In this context, we have gained a level of assurance through limited correspondence with the Office of the High Commissioner, and information from news reports, that it is importantly providing a 'right to reply' to companies.
13. Given the apparent engagement by the High Commissioner with potentially-named companies, any rooting of opposition to the UN Database on the basis of methodology would in our view be insufficient. We would, however, like to see complete clarity from the High Commissioner about the methodology it is using. This is necessary to provide full public confidence in the fairness and accuracy of the UN Database.

Substantial incompatibility between the Government's position on the UN Database with its support for UNSC Resolution 2334 and UN Guiding Principles on Business and Human Rights

14. Following its abstention from the Human Rights Council vote in March 2016 to create the UN Database, the UK Government voted to support UN Security Council resolution 2334 in December 2016, which reaffirmed the illegality of settlements and demanded that Israel immediately cease all settlement activities on occupied Palestinian territory.
15. Additionally, and of relevance to the creation of the UN Database, operative paragraph 5 of Security Council resolution 2334 calls upon all states to distinguish in their relevant dealings between the territory of Israel and the territory occupied by Israel since 1967. This significant call to action by the UN Security Council underlines the legitimacy of creating an authoritative database of companies involved in settlement-related activities in the occupied Palestinian territory that impacts Palestinian human rights.
16. The UK Government assumed an important role in promoting corporate respect for human rights when, in September 2013, it significantly became the first state to produce a National Action Plan (updated in 2016)⁴, implementing the UN Guiding Principles on Business and Human Rights. The UK National Action Plan is explicit in its expectation that companies must respect human rights. Given the Government's view that the settlements are illegal, it seems only logical that this expectation would apply to UK

⁴ <https://www.gov.uk/government/publications/bhr-action-plan>



companies involved in settlement-related activities in the occupied Palestinian territory. Recognition of the corporate responsibility to respect human rights is also implicit in the UK Government's current Overseas Business Risk guidance issued to UK businesses, which “does not encourage or offer support” to business activities with settlements.

17. In this context, it must be underscored that the UN Database is a business and human rights mechanism that builds upon widespread support for the UN Guiding Principles, rather than a “BDS” promotional tool, or “blacklist”, as pejoratively stated and framed by Israeli and United States government officials.⁵ The UK Government must be careful to refrain from repeating such language in its own discourse on the UN Database.

Three actions for the British government to carefully consider in relation to the UN Database:

1. Revise its opposition to the UN Database, and begin supporting it, so as to establish necessary coherence with its principled positions supporting the UN Guiding Principles on Business and Human Rights, UN Security Council resolution 2334 on the illegality of settlements, and its own guidance to UK businesses in relation to illegal settlements.
2. Clarify the action it will be taking against any UK company placed on the UN Database. We recommend that this includes ensuring that any UK company on the UN Database be excluded from procurement processes for public contracts if they do not subsequently take remedial action to comply with their human rights responsibilities under the UN Guiding Principles on Business and Human Rights. This mirrors an important recommendation in the 2017 Human Rights and Business report of the parliamentary Joint Committee on Human Rights, in regard to companies found to be in human rights breach of the OECD Guidelines for Multinational Enterprises⁶.
3. As part of the Government's National Action Plan to promote corporate respect for human rights, the next iteration of its Overseas Business Risk guidance to companies operating, or planning to operate, in Israel and the occupied Palestinian territory, should include an express reference to UK companies needing to fully consider and adhere to its human rights responsibilities under the UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises.

Tareq Shrourou

⁵ <http://www.france24.com/en/20171126-israel-us-race-prevent-publication-un-settlement-blacklist-bds-boycott>

⁶ <https://lphr.org.uk/latest-news/joint-committee-human-rights-report-excerpts-lphrs-evidence-uses-basis-key-recommendation/>