



LPHR Q&A: What's happened to the UN Business and Human Rights Database for companies involved in settlement-related activities?

Following on from [our briefing in January 2018](#) on the UK Government's position on the UN Business and Human Rights Database (UN Database) that will list companies involved in settlement-related activities, we have set out the latest updates on the UN Database below.

What is the UN Database and why is it important?

The UN Database will name companies involved in settlement related activities that adversely impact Palestinian human rights. It is being devised by the Office of the United Nations High Commissioner for Human Rights (OHCHR), under a mandate given to it by [UN Human Rights Council resolution 31/36](#) in March 2016.

If published (see question 5 below), the UN Database will place a spotlight on companies acting in breach of their human rights responsibilities under various business and human rights guidelines through involvement in settlement-related activities. This spotlight will enable civil society and investors to productively engage with the companies, to see how such breaches can be sufficiently addressed.

The UN Database is a necessary and proportionate measure to effectively challenge Israel's illegal settlement policy by incentivising named companies to evaluate/re-evaluate their human rights responsibilities, and to accordingly properly withdraw from settlement-related activities where it is not possible to remediate their involvement in human rights violations. In so doing, the UN Database has significant potential to effectively advance basic public interests of transparency, accountability and corporate respect for human rights.

Why does corporate involvement in settlements matter?

Continuing corporate involvement in the occupied West Bank and East Jerusalem enables and perpetuates Israel's settlement enterprise which severely harms the human rights of Palestinians.

The inextricable link between settlements and negative human rights impacts was recently reaffirmed by OHCHR in [its February 2018 update](#) on the UN Database: "[T]he violations of 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 livelihood and their right to an adequate standard of living; their rights to family life; and many other fundamental rights."

Detailed analysis from multiple sources has confirmed the "devastating" impact of the settlements on the day-to-day lives of Palestinians and their social and economic well-being. For example, the [International Labour Organisation](#) has categorically noted the detrimental impact of settlement development on the Palestinian economy: "The combined weight of the continued occupation and the settlements has not permitted the development of a viable, productive Palestinian economy, which could provide sufficient opportunities in terms of decent work. If the current trends continue, the scope for such opportunities will shrink further."

This authoritative analysis contradicts the highly disappointing suggestion of the [then UK foreign secretary, Boris Johnson, in February 2017](#), that the development of illegal settlements, and continued trade with them, is the "best way to support the economy of the region".

Many individuals and organisations have supported OHCHR in its work on the UN Database. More than [400 members of Israeli civil society](#), including a former attorney general and former members of the Knesset, have signed a petition in support of the database. [56 non-governmental organisations \(including LPHR\)](#) have signed a supportive joint statement, and 60 UN member states have signed a letter received by the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein (UN High Commissioner).

When was the UN Database due to be published and what happened?

Originally, the UN Database had been aimed to be ready for publication in March 2017. It has, however, been delayed, with no amended date set for its publication.

[OHCHR published a report, on 1 February 2018](#), setting out their progress so far. The OHCHR noted in that report that it is behind schedule because of lack of resources, and that it needs additional resources if it is to complete its work on the UN Database.

The UN High Commissioner, [Zeid Ra'ad Al Hussein, has recently suggested](#) that there may be a further update by his office prior to September, which we expect may coincide with the end of his term in August.

Will the UN Database be published?

There is a lack of clarity over whether the UN Database will ever be published.



LPHR firmly supports its publication, as soon as the relevant work is complete in accordance with OHCHR's methodology. Without publication, a number of the benefits of the UN Database, and particularly the transparency, accountability and corporate respect for human rights that it encourages, will be lost.

There has, however, been [significant pressure](#), particularly from the US and Israel, not to publish the UN Database once it is complete. In fact, the US administration claimed that it would leave the UN Human Rights Council if the Database was published; although this threat is now less relevant given the US' announcement last month that it is leaving the UN Human Rights Council in any event.

The UK Government has also argued, as one of its reasons for not supporting the UN Database, that it should not be made public based on its interpretation of UN Human Rights Council resolution 31/36. As outlined in [our January 2018 briefing on the UK Government's position on the UN Database](#), we believe the UK's interpretation is misjudged. The text of OHCHR's mandate in Resolution 31/36 carries the clear implication that the UN High Commissioner's report will be made public at a session of the UN Human Rights Council. This is in line with general practice for UN High Commissioner reports, and there is further no express reference in Resolution 31/36 for the report to be private.

What methodology has OHCHR adopted for producing the UN Database?

Both the UK Government and LPHR have previously expressed concerns about what methodology would be applied in relation to the UN Database. LPHR is keen to ensure that the methodology adopted by OHCHR is sufficiently rigorous, and, particularly, to ensure that it affords adequate due process to companies.

The February 2018 update report from OHCHR should allay these concerns.

The report explains that OHCHR devised its methodology in consultation with the Working Group on the Issue of Human Rights and Transnational Corporations.

The applicable standard of proof for potential inclusion on the UN Database is whether there are reasonable grounds to believe that a company is engaged in one or more of the listed settlement-related activities that OHCHR considers does have an adverse impact on the human rights of Palestinians.

OHCHR first carried out desk-top reviews of publicly available information, and invited information from States and submissions made by non-governmental organisations. As a result of information received, a long-list of 307 companies was formed.



This long-list was then refined, by excluding companies on particular grounds (for example, if they were no longer engaged in the alleged activities, or did not carry out any of the specific activities that were within OHCHR's remit to consider).

The resulting short-list after applying the exclusion criteria has left 206 companies for potential inclusion on the UN Database. OHCHR has not disclosed the names of any of these companies.

Is fair due process for companies provided in OHCHR's methodology?

Importantly, and in line with a call made by LPHR to incorporate fair due process into its methodology, OHCHR revealed in its February 2018 update that it had decided to contact each individual company to provide them with an opportunity to provide a response on their apparent involvement in settlement-related activities. OHCHR explained that it has provided a right of response to short-listed companies so as “to offer a procedural safeguard designed to provide fairness, consistency, reasonableness and absence of arbitrariness of potential decisions that may affect the interests of business enterprises.”

At the time of its February 2018 report, only just over one quarter (64) of the 206 short-listed companies had been contacted by OHCHR, due to its limited resources. Whilst doing so, it has carried out its own detailed research, in English and Hebrew, on the short-listed companies, and accessed a range of other information, including annual financial reports, official websites and financial resources.

How have the short-listed companies responded to OHCHR?

OHCHR's February 2018 report states that they had received mixed responses from the 64 companies that they have contacted. The precise details of the responses were not disclosed in the report, but rather have been grouped under several categories.

Whilst some objected to OHCHR's mandate altogether and declined to provide a substantive response, or rejected the information presented and objected to being included in the UN Database, some companies did accept the information presented and their participation in a particular settlement-related activity and provided explanations. Further companies provided information which indicated they were no longer involved in the relevant settlement-related activity, or that will require further discussion and analysis before a determination can be made about their involvement in a settlement-related activity.

OHCHR has not yet given further detail on what impact these specific responses will have on whether the responding companies will be included on the UN Database.



How many of the short-listed companies are from the UK?

Three of the companies on the short-list are from the UK. The names of these companies have not been disclosed. There were originally six UK companies on the long-list, but half of these were excluded as a result of OHCHR's initial screening process.

OHCHR has only contacted one of these UK companies so far, and we do not know how that company has responded.

Where are the majority of the companies being considered from?

The majority are from Israel or the settlements (131), with the rest predominantly being from the USA (20), Germany (7), the Netherlands (5) and France (4).

Is there an update on whether G4S or FIMI Opportunity Funds have been shortlisted by OHCHR?

LPHR made a submission in December 2016 to OHCHR which focused on G4S and FIMI Opportunity Funds (an Israeli private equity fund). We then submitted an update to OHCHR in August 2017 following G4S' announcement that it had completed the sale of G4S Israel to FIMI Opportunity Funds.

LPHR recommended to OHCHR that both G4S and FIMI should be considered for inclusion on the UN Database. This is because we are concerned that following G4S' announcement of its sale of G4S Israel to FIMI in December 2016, G4S has failed to provide the clarification that we have sought as to the extent of the sale or the extent to which it would continue, post-sale, to be involved in activities that infringe upon the human rights of Palestinians.

Our specific interest in these two companies arise from LPHR successfully pursuing a significant business and human rights complaint under the OECD Guidelines for Multinational Enterprises against G4S for its involvement in human rights violations against Palestinians in Israel and the occupied Palestinian territory.

In March 2016, and just nine months 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 in June 2017.



Although the names of the short-listed companies on the UN Database have not been disclosed, we are concerned that notes in OHCHR's February 2018 report suggest that neither may have been included.

OHCHR states that it has excluded from the UN Database business enterprises that were "no longer engaged in the alleged activities because of corporate restructuring (for example, if a part of the business had been sold)...". However, as we outlined in our December 2016 submission and August 2017 update, despite G4S' sale of its subsidiary, G4S Israel, to FIMI, there is no clarity about whether, despite this sale, G4S will continue to be involved in relevant activities. Until this has been clarified, we would contend that G4S should be considered for inclusion on the UN Database, and further suggest that OHCHR should investigate and engage with G4S to understand the reality of their current involvement, if any, with settlement-related activities.

OHCHR has also stated (in a footnote to its February 2018 report) that the UN Database will not include hedge funds or private investment firms. We are concerned that, on this basis, OHCHR may seek to exclude FIMI, a private equity firm, from the UN Database. LPHR would urge the OHCHR to reconsider this approach. This is because the UN Guiding Principles on Business and Human Rights (UNGPs) apply to all business enterprises regardless of their sector, and OHCHR itself has gone into some detail on [how the UNGPs apply to financial institutions](#). There is no provision in the UNGPs to exclude hedge funds or private investment firms from its scope.

Whilst there is more work to do in unpacking the ways in which the UNGPs apply in a private equity context, we suggest it would not be in the interests of transparency, accountability and corporate respect for human rights to exclude such firms from the UN Database.

What is the UK Government's current position on the UN Database?

[LPHR's January 2018 briefing](#) would be a good read for anyone seeking information on the UK Government's position on the UN Database. There has been no material change in the UK's position since then.

To recap very briefly here, the UK Government was one of 15 states to abstain from the UN vote on establishing the database in March 2016 at the UN Human Rights Council; 32 states supported the vote and no states voted against.

The UK was the only State to publicly declare at that vote that the database was "inappropriate" and that "it would not cooperate in the process" of its implementation. The UK's vote and position is glaringly incompatible with the UK's clear support for the United Nations Guiding Principles and Business and Human Rights (UNGPs) and its long-standing position that Israeli settlements are illegal.



LPHR has been in contact with HM Foreign and Commonwealth Office on the UK Government's position. It has 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. This is all outlined in our January 2018 briefing.

Subsequent to the publication of our January 2018 briefing, the UK Government has reiterated its opposition to the UN Database. This occurred at the 37th session of the Human Rights Council in March, [where the UK stated](#):

"As in 2017, today we are abstaining on the Settlements resolution. The implications of the 2016 resolution, specifically creating a database of businesses that trade with settlements, remains concerning. We urge those responsible for implementing this database to avoid doing so in ways that would exacerbate tensions and risk creating a de facto blacklist."

So is the UN Database really a blacklist?

No. The UN Database is a business and human rights mechanism that builds upon widespread support (including by the UK) for the UN Guiding Principles on Business and Human Rights, rather than a "BDS" promotional tool, or "blacklist", as pejoratively stated and framed by Israeli and United States government officials. The UK Government must be careful to refrain from repeating such language in its own discourse on the UN Database.

Companies have the opportunity to constructively engage with OHCHR prior to their potential inclusion on the UN Database, and civil society organisations and investors will no doubt also want to engage with those companies once the UN Database is made public.

There are no sanctions attached to inclusion on the UN Database and, as OHCHR has shown through its methodology, inclusion on the UN Database is not a permanent step; companies are expected to come on and off the UN Database, depending on their current activities and the information they provide to OHCHR.

What is next for the UN Database?

LPHR will await the update on the UN Database from the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, that is expected before September 2018.

In the meantime, we are in regular contact with other non-governmental organisations who support the preparation and publication of the UN Database. For example, following the OHCHR update report in February 2018, LPHR worked on a letter signed on by 33 organisations including Amnesty International, Al Haq, and the Cairo Institute for Human Rights (based in



Geneva), that was addressed to the UN High Commissioner for Human Rights, and that made the four recommendations that are well worth repeating here:

- i) Immediately list businesses that have been duly screened and contacted according to the methodology and standard of proof set out in the report, and who subsequently provided a response rejecting the process and mandate of OHCHR, or have not provided a response within the given 60 day timeframe;
- ii) Continue working with civil society organisations and human rights defenders in full transparency for the completion and continuous updating of the UN Database, and the strengthening of methodologies and procedures;
- iii) Ensure that appropriate resources are allocated so as to allow for continued development of the UN Database mechanism;
- iv) Include, in the coming report, direct recommendations for States on how to engage with the new mechanism to help them distinguish in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, as stipulated by UN Security Council resolution 2334.

LPHR will also continue to urge the UK Government, through meetings and correspondence, to take the following steps outlined in our aforementioned January 2018 briefing:

- i) 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 and its firm and clear position recognising the illegality of Israeli settlements;
- ii) Clarify the action it will be taking against any UK company placed on the UN Database, which should include considering to exclude it from procurement processes for public contracts until the human rights issues raised have been adequately addressed;
- iii) Update its Overseas Business Risk guidance to UK companies operating, or planning to operate, in Israel and the occupied Palestinian territory, so that it makes express reference to the need for companies to fully consider adhere to their human rights responsibilities under the UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises.

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