

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

Ref.: Letter 02/2022

To: Ms. Elzbieta Karska, Mr. Surya Deva,
Ms. Fernanda Hopenhaym & Ms. Anita Ramasastry
Chair and Members
Working Group on the issue of human rights
and transnational corporations and other business enterprises
c/o

25 April 2022

Re: **Corporate and Business Involvement in the Israeli Settlements – Enhanced Due Diligence or Complete Abstinence? – Revisiting the 2014 Statement of the Working Group**

Dear Ms. Karska, Mr. Deva, Ms. Ramasastry and Ms. Hopenhaym:

This letter is a follow-up to the letter that Michael Lynk wrote to the Working Group on 22 July 2021 (enclosed). This present letter is jointly signed by Michael Lynk, the outgoing UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, and Ms. Francesca Albanese, the newly appointed Special Rapporteur, who will assume her position on 1 May 2022.

Background

We are writing you with respect to the request contained in the 22 July 2021 letter that the Working Group review and revise its 2014 statement on the implementation of the Guiding Principles in the context of Israeli settlements in the Occupied Palestinian Territory.¹ As the July 2021 letter stated:

...the ‘yellow light’ caution which the Working Group’s 2014 statement provided to corporations and business is not appropriate in light of the dynamic growth of the [Israeli] settlements and the seriousness of the human rights violations associated with them...the only apposite guidance that can be given to corporations and businesses

¹ <https://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>

who are, or might become, associated with the Israeli settlements is a ‘red light’ direction: that is, it is impossible to comply with the Guiding Principles and international human rights obligations while maintaining a business involvement in the settlements, as many human rights organizations and other experts have concluded.

The July 2021 letter quoted from a number of recent reports – including from Human Rights Watch², the High Commissioner for Human Rights in 2018,³ Amnesty International⁴ and the Special Rapporteur for human rights in the OPT⁵ – which had concluded that *any* corporate involvement in the Israeli settlement enterprise is incompatible with the Guiding Principles and international human rights obligations.

United Nations Security Council

In addition, what was not cited in the July 2021 letter was the direction given to the international community by the United Nations Security Council respecting the Israeli settlements. In Resolution 465 (1 March 1980), the Security Council determined that the Israeli settlements constituted a “flagrant violation” of the *Fourth Geneva Convention* and, accordingly:

7. “Calls upon all states not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories...”

More recently, in Resolution 2334 (23 December 2016), the United Nations Security Council stated that the Israeli settlements constitute “a flagrant violation under international law” and, accordingly:

5. “Calls upon all States...to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967...”

United Nations Human Rights Council

On 25 March 2022, the UN Human Rights Council adopted resolution A/HRC/49/29 respecting the Israeli settlements. Among other things, the resolution affirmed the illegality of the Israeli settlements and the range of human rights associated with the settlements. In paragraph 6, it then called for an end to the conduct of economic activities for the benefit of the settlement enterprise:

6. Expresses its grave concern at and calls for the cessation of:

(a) The conduct of economic activities in the Occupied Palestinian Territory, including East Jerusalem, for the benefit of the settlement enterprise and associated activities.

² Human Rights Watch, *Occupation, Inc.* (2016).

³ A/HRC/37/39

⁴ Amnesty International, *Think Twice* (2019).

⁵ A/75/532.

2022 Report of the High Commissioner for Human Rights

In March 2022, the UN High Commissioner for Human Rights delivered her latest report to the Human Rights Council with respect to the human rights impact of the Israeli settlements.⁶ The High Commissioner's report noted:

- The rising levels of Israeli settler violence against Palestinians;
- The lack of accountability for settler violence;
- Palestinian communities at risk of forcible transfer arising from settlement expansion; and
- Israeli suppression of Palestinian protests against settlement activities in East Jerusalem and the West Bank.

In her conclusion and recommendations, the High Commissioner noted that the transfer by an occupying power of its own civilian population into the territories it occupies is prohibited under international humanitarian law. Furthermore, she observed that such transfers amount to a war crime under the 1998 *Rome Statute of the International Criminal Court*.⁷ She then stated that:

52. Settlements have significant adverse effects on the rights of Palestinians, including their rights to life and security of person, freedom of movement, privacy, family life, an adequate standard of living, work and education, the exercise of their right to self-determination, and threaten to fragment the contiguity of the West Bank.

53. Discriminatory planning policies and practices, demolitions and forced evictions in the Occupied Palestinian Territory, including for the benefit of settler organisations, entail numerous human rights violations and are a key factor in the coercive environment which exists. Displacement and relocation to alternative residential areas as a result of such an environment could amount to forms of forcible transfer, contrary to Israel's obligations under international humanitarian law and international human rights law.

54. Settler violence intensified, with the acquiescence or, on occasion, practical support by ISF [Israeli Security Forces]. Israel repeatedly failed in its responsibility as the occupying Power to protect Palestinians and their property, while ISF in numerous cases used excessive force against the Palestinians. This contributed to worsening of the coercive environment for Palestinians, with a climate of impunity prevailing for settler violence and for use of such force by ISF.

55. Israel suppressed Palestinians demonstrating against settlements and settlement-related activities. Documented cases of discriminatory law enforcement, intimidation of protesters and journalists, mass arrests, and excessive use of force raised serious concerns that Israel committed human rights violations, including against the rights of Palestinians to freedom of expression and peaceful assembly, and their right to life and security of person.

⁶ A/HRC/49/85.

⁷ Article 8(2)(b)(viii).

Additional Comments

We note that, in 2014, when the Working Group released its current statement on the implementation of the Guiding Principles in the context of Israeli settlements in the Occupied Palestinian Territory, there were 370,700 Israeli settlers living in West Bank settlements, along with 208,000 settlers in East Jerusalem. In 2022, the population in the West Bank has risen to 480,000 settlers, along with 230,000 settlers in East Jerusalem.

Some corporations who are involved with the Israeli settlement enterprise justify their investments on the basis that they providing employment for Palestinians, who otherwise live in a depleted and job-scarce economy. We commend to you two recent reports on the troublesome conditions of Palestinian workers employed in the Israeli settlements, one issued by the International Trade Union Confederation⁸ and the other by Al-Haq.⁹ According to Al-Haq:

...this report dispels the myth that international companies provide necessary work and benefits to the Palestinian workforce that justifies their illegal operations in the OPT. Instead, the ugly truth unfolds of international and Israeli companies exploiting a captive Palestinian workforce in a captive economy, in companies operating on unlawfully appropriated Palestinian lands, pillaging the natural resources and subsistence of the Palestinian people, and maintained by a lethal military occupation and apartheid regime under the wilful profiting eye of the international community.

Request

In the July 2021 letter, the Working Group was urged to:

“...revisit its 2014 statement and to develop a new statement which better reflects the changing reality on the ground and incorporates the current human rights thinking towards the Israeli settlements.

This would:

- Provide the clear and consistent human rights advice that corporations and risk investment consulting companies are looking for;
- Bring the Working Group’s position on businesses and human rights in the occupied Palestinian territory in line with current thinking on international law and the settlements;
- Bring the Working Group’s position in line with the evolving human rights thinking on the pervasive scale of abuses in the occupied Palestinian territory; and
- Heighten the international awareness that the Israeli settlements are a human rights no-go zone.”

Michael Lynk subsequently held some virtual discussions with the members of the Working Group on this matter in the summer and fall of 2021. However, since then, the Working Group has not communicated what, if any, steps it is taking to respond to the July 2021 request.

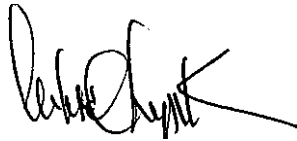
⁸ ITCU, *Workers’ Rights in Crisis: Palestinian workers in Israel and the Settlements* (2021).

⁹ Al-Haq, *Captive Markets, Captive Lives: Palestinian Workers in Israeli Settlements* (2021).

We would welcome the opportunity to meet virtually with the Working Group in the near future to discuss the requests for the 2014 yellow-light statement to be revisited and revised.

We would propose to post both letters on the website of the Special Rapporteur OPT by 9 May 2022.

Our best wishes for the continued success of your work.



Michael Lynk

Special Rapporteur for the situation of human rights in the Palestinian territory occupied since 1967 (2016-2022)



Francesca Albanese

Special Rapporteur for the situation of human rights in the Palestinian territory occupied since 1967 (2022--)