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Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by Amuta for NGO Responsibility, 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.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

New Study Highlights UNHRC Blacklist Violates International Norms, Will Lead to Global Economic Turmoil

The Office of the High Commissioner for Human Rights is currently preparing a controversial database of “business enterprises have directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements,” in the words of A/HRC/22/63, Par. 96. The database was called for by Human Rights Council Resolution 31/36 (2016).

However, OHCHR’s current research into such business activity is far too narrow in its scope, and fails to capture the full context and magnitude of business activities that support settlement enterprises in occupied territories. The singular focus of OHCHR’s mandate undermines both the legal and practical value of the resulting database, and is likely to produce consequences both unexpected and undesired by the Council and United Nations Member states.

To illustrate these deficiencies, the Kohelet Policy Forum has produced a far more comprehensive research study, which will be publicly released concurrently with the 35th session of Council.

The report, entitled *Who Else Profits: The Scope of European and Multinational Business in the Occupied Territories*, examines business activity in support of settlement enterprises in occupied territories. *Who Else Profits* reveals that such business activity is ubiquitous, and involves some of world’s largest industrial, financial services, and other major publicly traded companies. Such companies include Siemens, Credit Agricole, BNP Paribas, Santander, Vodafone, Renault, and Turkish Airlines, to take just a few examples.

As a matter of human rights, the Council’s exclusive focus on Israel is difficult to understand. According to one of the report’s co-authors, Eugene Kontorovich, Professor of Law at Northwestern University and Head of the International Law Department of the Kohelet Policy Forum, there are numerous territories around the world currently under belligerent occupation, where the occupying power has allowed or facilitated the movement of settlers into the occupying territory. In all these cases, this is over the vigorous objection of the occupied party, and at odds with its sovereignty or self-determination.

Among the most salient examples, Professor Kontorovich explains, are Morocco’s occupation of Western Sahara and Turkey’s of Northern Cyprus. Both of these conflicts have seen massive government-backed settlement enterprises that dwarf anything in the West Bank. The *majority* of the population in these territories now consists of settlers, fundamentally undermining the possibility of self-determination or a political solution. There are also settlers in Armenian occupied Nagorno-Karabakh, and both the Georgian and Ukrainian Occupied Territories. *Who Else Profits* finds that foreign companies, most commonly European ones, actively support all these settlement enterprises. These activities include extracting natural resources from the territories, providing infrastructure support to the occupying power, and generally making their settlement enterprises more economically viable.

The companies involved, and documented in *Who Profits*, have a global profile, valuable brands, and which pride themselves on a respect for human rights. Moreover, many of these companies have significant links to the governments of their home countries, often being partially owned or controlled by the state. If commercial support for settlement enterprises is a human rights issue, it implicates the leading executives around the world, and in many cases, the home states that support them, the investors who fund them, and more.

The evidence revealed in the Kohelet Policy Forum report can be explained in two ways. On the one hand, it could demonstrate the fundamental falseness of the assumption underlying the OHCHR database – that businesses violate human rights when they engage in their ordinary business practices under the jurisdiction of an occupying power. On the other hand, it could demonstrate the Council’s utter indifference to human rights around the world, with one particular exception. We believe the first explanation is by far the stronger one. But either way, the evidence in this report shows that OHCHR cannot in good faith continue its current project under these parameters.

Not illegal

The widespread activity documented in *Who Profits* demonstrates that such business activity is certainly not a human rights issue, let alone illegal. There is a clear reason why the massive support of multinational corporations for occupation and settlements worldwide has not lead to any protest or even discussion in this body or other international organization: it is in fact entirely legal and consistent with human rights norms.

Their home countries have taken no steps to stop this, nor has this activity ever been criticized by the Human Rights Council. Indeed, as noted by Professor Kontorovich, the companies involved have in many cases received explicit advice from international law experts, and even their home countries' foreign ministries, that doing business under the jurisdiction of any occupying power that denies people self-determination is *not* a violation of international law or human rights.

To the contrary, a long line of imposing authorities have held that companies doing business in occupied territories does not raise human rights issues. This was the conclusion of the U.N.'s own legal advisor in a 2000 memo on Western Sahara, and of recent rulings in the U.K. and an important French appellate court in cases concerning the West Bank. Moreover, the Fourth Geneva Convention clearly authorizes the occupying power to do business in the territory it controls, and gives the occupied people no veto over this.

Human rights issues are universal

Yet, OHCHR's pending database is premised on the notion that such business activities and associated companies must somehow be shamed or sanctioned. This project fundamentally discredits OHCHR and the Human Rights Council. The Council's malicious singling out the Jewish State is not the sole reason that this is the case (the Council's record on that score is well-established and cannot be much worsened).

This organization is named the United *Nations Human Rights Council* and was founded to uphold *universal* human rights. The database that is being prepared is essentially an admission that the Council does not care about the rights of humans across nations, that it does not treat people equally by virtue of their common humanity. If businesses involved in settlement enterprises are a human rights problem, certainly companies working in Israeli-controlled areas should not be immune from scrutiny. But if it *is* a human rights problem, the Council has no basis to ignore the same problem wherever it appears in the world. Indeed, the Council ignores such business activity even in where it occurs in some of the longest and most brutal occupations globally.

Implications and recommendations

While the Council may wish, for its own reasons, to confine this discussion to Israel, it will not stay confined. With the publication of the *Who Else Profits* report, the discussion of companies involved in settlements becomes global. Activists in those territories will demand for those companies the same treatment that the entities in OHCHR's database will receive. They will pursue this goal in courts, in shareholder meetings, and before the Council. And, as Professor Kontorovich remarks, many of the same countries that have supported the Art. 117 process will find that their executives, their business, and their governments ensnared in a trap of their own making. The beginnings of this process can already be seen in legal action by the Fronte Polisario against the European Commission, where the latter was forced to apply the standards it developed in an "Israel only" context to other situations, in a way the EU has found politically and economically damaging.