



Working Group on Business and Human Rights
United Nations Office of the High Commissioner for Human Rights
Geneva, Switzerland
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10 April 2020

Dear Honourable Members of the Working Group,

Re: Submission for ‘Project on Business in Conflict and Post-Conflict Contexts’

1. Our organisations – Al-Haq¹ and the Global Legal Action Network (GLAN)² – have been engaged in investigating, analysing and pursuing legal interventions to redress the ways businesses cause and contribute to abuses of the rights of protected populations in occupied territory. Our experiences with businesses, states and regulatory bodies, including both courts and mechanisms such as the OECD’s national contact points, demonstrate the need for authoritative guidance specific to such business environments on the responsibilities of business and states under existing obligations, including the enhanced human rights due diligence measures they are expected to adopt to respect and ensure respect for human rights. The need for authoritative guidance on the implementation of businesses and home States human rights responsibilities in occupied territory is also apparent from the number of foreign companies included in the first tranche of companies listed in the database of companies active in Israeli settlements.³
2. We are writing to share with you the attached report, *Business and Human Rights in Occupied Territory*, which is based on consultations with experts and human rights groups working on different ongoing situations of occupation, and which makes concrete suggestions on the steps that businesses and home States should take in contexts of occupation. We will make the report public early next week.

¹ See <http://www.alhaq.org/>.

² See <https://www.glanlaw.org/>.

³ UN Human Rights Council, Database of all business enterprises involved in the activities detailed in paragraph 96 of the independent fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem – Report of the United Nations High Commissioner for Human Rights (1 February 2018) UN Doc. A/HRC/37/39 at para 41; the UN Human Rights Council has referred to such adverse impacts as “immitigable”, see UN Human Rights Council Resolution 34/31 (24 March 2017) UN Doc. A/HRC/RES/34/31 at para 13(b).

3. The Working Group has addressed concerns in relation to business activities in the occupied Palestinian territory, but has not published general guidance intended to apply to any cases of occupation. The attached report seeks to offer a comparative perspective on three such business environments: 1) Israeli-occupied Palestinian territory, including the illegally-annexed territory of East Jerusalem; 2) the territory of Western Sahara controlled by Morocco; and 3) the occupied and annexed Ukrainian territories of Crimea and Sevastopol controlled by Russia through proxy *de facto* authorities.⁴ It surveys different business sectors, considers the responses of specific businesses to the realisation that their operations have adverse human rights impacts, and home State regulatory measures in this regard, and profiles several companies that maintain operations in more than one occupied territory.
4. The report demonstrates that activities by foreign businesses in occupied territory, such as the construction of settlements and the exploitation of natural resources, are inextricably linked to population transfers and demographic transformations of the territory that international authorities have condemned and called on states not to recognise as lawful or otherwise assist.⁵ The cases examined in the report show that foreign businesses with activities in such environments *invariably* contribute to and benefit from abuses of human rights and serious violations of international humanitarian law, such as the Occupying Power's unlawful acts of appropriation of land and other natural resources and conveyance of property rights to its citizens—acts that attract the criminal liability of the occupying State's officials under international law.⁶
5. None of the occupying States profiled in our report recognise the status of these territories as occupied, nor accept the application of relevant international laws to their administration of that territory. Notwithstanding such positions by the occupying power, or the wholesale transformation of laws and institutions in occupied territory, the law of occupation prohibits foreign businesses from treating the occupying State's domestic jurisdiction as the 'applicable law'.⁷
6. Our report concludes that all foreign businesses with activities in occupied territory must conduct *enhanced* and *ongoing* human rights due diligence to mitigate adverse human rights impacts, as well as be ready to terminate operations where mitigation is not possible. The United Nations Office of the High Commissioner for Human Rights' (OHCHR) January 2019 progress report on the establishment of the database of

⁴ Information on the occupied status of these territories and the main violations taking place in these contexts are available at <http://www.rulac.org/classification/military-occupations>.

⁵ See e.g., *inter alia*, UN Security Council Resolution 242 (22 November 1967) UN Doc. S/RES/242; UN Security Council Resolution 2334 (23 December 2016) UN Doc. S/RES/2334. ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) (9 July 2004) para 1.

⁶ Article 55, *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (Hague Regulations)* (adopted 18 October 1907, entry into force 26 January 1910). Articles 49(6) and 53, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287; Article 50, *Hague Regulations*.

⁷ *Guidelines*, Section IV, Principle 13 and paras. 38-39.

companies active in Israeli settlements: it would be “difficult to imagine a scenario” of a business that engages in specified activities related to the establishment, maintenance, and growth of settlements “in a way that is consistent with the Guiding Principles and international law”.⁸

7. Crucially, the report finds that in situations of prolonged occupation that pursue an underlying claim to sovereignty, there is a presumption that foreign business should scrupulously verify and restrict their operations. However, this presumption has not been enforced through effective regulatory measures by home States. By permitting their companies to operate in such business environments without even issuing guidance on this critical point, home States have failed to uphold their responsibilities under both international and domestic laws. By taking a permissive approach towards economic dealings in occupied territory, home States have acquiesced to – and treated as lawful in contravention with their obligation not to recognise and assist in the maintenance of such unlawful situations⁹ – attempts by occupying States to acquire (parts of) occupied territory, or otherwise alter the status of the territory by force, and the flagrant denial of the right of peoples to self-determination they entail.
8. We remain at your disposal for any clarifications or further information on the report and our organisations’ work on business involvement in occupied territory. We thank you, in advance, for acknowledging receipt of this submission.

Sincerely,

For Al-Haq:

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⁸ UN Human Rights Council, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (26 January 2018) A/HRC/37/39, paras 40-41.

⁹ Article 41(2), ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts 2001.