Business and Human Rights in Palestine

"Businesses should make sure they are not complicit in human rights abuses"

UN Global Compact, Principle II

Palestinian Grassroots Anti-Apartheid Wall Campaign - www.stopthewall.org
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The Palestinian grassroots Anti-Apartheid Wall Campaign (Stop the Wall) is a grassroots movement uniting the struggle of the popular committees in the villages, refugee camps and cities struggling against the Wall and the settlements and the efforts of Palestinian civil society.

Our call is to:
- Stop the Wall
- Dismantle parts already built
- Return all lands confiscated for the Wall
- Compensate for all losses.

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Why to respect Human Rights?

Human Rights guidelines are a benefit for all

Human rights guidelines are an opportunity for business to show they care:

- The Olympia Food cooperative adopted a boycott of Israeli products. A board member explains: “For me personally there is a moral imperative that goes beyond any financial concern. So we decided to adopt the boycott which went into effect the next day.”

- In April 2012 The Co-operative Group announced it will “no longer engage with any supplier of produce known to be sourcing from the Israeli settlements”

- Retailers in the UK, Norway, Japan and Canada announced boycotts of Ahava, the Israeli cosmetics company based in an illegal settlement and exploiting natural resources from the occupied Palestinian territories

- The food and soap manufacturing multinational Unilever divested from an Israeli factory built in a settlement illegally built on land confiscated from Palestinians.

For more see:
http://www.bdsmovement.net/timeline

“Responsible investment” adds pressure on global firms Friday, October 19 2012, Oxford Analytica

Respect for Human Rights is a legal duty

Several authoritative rulings and guidelines underline that, even without relevant national laws in place, business has a legal obligation to respect Human Rights in Palestine:

- The Advisory Opinion of the International Court of Justice on the legal consequences of Israel’s construction of the Wall
  The ICJ Advisory Opinion (2004) underlines the fundamental obligation not to render aid or assistance in the commission of the Israeli violations of international law as well as in maintaining the situation created by them.

- The UN Guidelines on Business and Human Rights
  In 2012, the UN General Assembly approved the UN Guidelines on Business and Human Rights. The UN Human Rights Council follows up on the implementation of these guidelines.

- UN Global Compact
  Born in 2000, the initiative for corporate responsibility has grown to more than 10,000 participants. While itself not legally binding, it refers to legally binding international laws.

- OECD Guidelines
  The Guidelines, amended in 2011, are an international instrument of all OECD countries and have the same status as the ILO Declaration. A complaint mechanism is in place in all OECD countries as well some non-OECD countries.

- UN fact-finding mission on the Israeli settlement enterprise
  The 2013 Fact-finding mission and subsequent Human Rights Council Resolution underline the responsibilities of corporations in regard to the Israeli Wall and settlement construction.
Violating Human Rights is a risk

Reputational risk

There is a reputational risk involved for profiteers from human rights abuses. companies involved and complicit with Israeli colonialism, apartheid and occupation are facing increasingly high level campaigns across the globe.

“The GPs [UN Guiding Principles on business and human rights] offer activists more precision in campaigns, and firms with significant global or local profiles can expect increasing action -- through shareholder resolutions, litigation, or ‘naming and shaming’ -- to adopt GP-‘compliant’ policies and demonstrate adherence to these.”

Uptake of human rights norms for business remains slow, Tuesday, May 15 2012, Oxford Analytica

Economic risk

As campaigners are succeeding in their efforts, economic risks are increasing. This can include divestment and boycott campaigns, negative impact on your risk analysis or other losses due to reputational damage caused by cooperation with complicit partners:

**Agrexco:**
After years of EU-wide boycott campaigns, the Israeli export company trading in Israeli agricultural settlement produce failed after entering in financial crisis and lacking external investors.

**Veolia/Alstom:**
The two French multinationals participating in settlement infrastructure in Jerusalem are since years target of a global divestment campaign. Veolia alone lost already 14 billion Euros in non-signed contracts across the globe.

G4S:
The British-Danish multinational is facing a successful boycott campaign, loosing several public contracts due to their involvement in the Israeli prison system and other human rights abuses globally.

Legal risks

As legal analysis and rulings increase, the risk for personal criminal liability and corporate liability, including reparations to the victims, is increasing.

A number of court cases against companies involved in Israeli occupation, colonization and apartheid have already been started.
Private entities: complicity in the Israeli settlements and the Wall

Numerous Israeli and foreign (semi)private entities contribute to the construction and maintenance of the illegal Israeli settlement enterprise in the OPT.

In light of the findings of the ICJ Advisory Opinion of 2004 and subsequent studies, these private entities are likely to be complicit, aiding or abetting population transfer, unlawful destruction or confiscation of Palestinian property, systematic racial discrimination and/or apartheid linked to the settlement enterprise. These are international crimes that entail criminal or civil liability of the responsible private entity.

In 2013, the independent international fact finding mission on the Israeli settlement enterprise underlined in its report to the UN Human Rights Council the obligations of third states and private entities:

“Private companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure they are not adversely impacting the human rights of the Palestinian People in conformity with international law as well as the Guiding Principles on Business and Human Rights.”


The dirty settlement business

Nevertheless, still many private entities participate in the settlement enterprise.

Estimates of the proportion of Israeli exports that partially or fully originate from illegal Israeli settlements vary from 2% to 33%, with the larger estimates including exports partially produced in illegal settlements.

Estimates towards the higher end of the range seem reasonable when it is considered that government investment in settlement businesses can be as high as 22% of the total budget for business investment.

Many Israeli companies operate indiscriminately on both sides of the Green Line, with premises in illegal Israeli settlements playing a key role in their production.

These incomes from economic activity linked to the settlements, including exports of products, exploitation of natural resources or labour and development of technology or products, provide a large income to both individual settlers and to settlement and State authorities, improving the economic viability of existing settlements. Exports of settlement goods provide a much-needed offsetting of the costs of the settlement enterprise from outside of the domestic Israeli economy. For settlers and Israeli businesses to know that a market for settlement-related activity exists, is a powerful incentive for settlement expansion and the establishment of new settlements.

Business obligation
to respect Human Rights

“The business community has a responsibility to respect human rights, that is, not to infringe human rights, in the context of their own activities and their business relationships. Operating context, company activities and relationships can pose risks that the company might negatively impact human rights, but they also present opportunities to support or promote the enjoyment of human rights while also advancing one’s business.”
[UN Global Compact]

What is complicity?

Complicity means being implicated in a human rights abuse that another company, government, individual, group etc. is causing.

According to the UN Global Compact (UNGC) complicity is made up of 2 elements:
a) An act or omission (failure to act) by a company, or individual representing a company, that “helps” (facilitates, legitimizes, assists, encourages, etc.) another, in some way, to carry out a human rights abuse, and
b) The knowledge by the company that its act or omission could provide such help.

The UNGC notes that accusations of complicity may take different forms:

Direct complicity — when a company provides goods or services that it knows will be used to carry out the abuse.

Beneficial complicity — when a company benefits from human rights abuses even if it did not positively assist or cause them.

Silent complicity — when the company is silent or inactive in the face of systematic or continuous human rights abuse.

The Advisory Opinion of the International Court of Justice on the Wall

The relevant obligation highlighted by the ICJ opinion is the duty not recognize and not to render aid or assistance in the commission of the Israeli violations of international law or in maintaining the situation by it.

The prohibition to contribute to the maintenance of the situation is based on the continuing and composite character of Israel’s serious breaches and directly relates to all acts that may contribute the viability of the settlement project and the Wall.

Ending illegal settlement trade: a legal obligation

The duty of non-recognition does prescribe a ban on settlement trade as a negative obligation as it legally and politically recognizes the settlements and assists their sustainability.

“It is not inherently about banning trade as a sanction or countermeasure (a positive obligation) but about refraining oneself from trading with an illegal actor and a rectification of an error in international trade relations (a negative obligation). Taking into account settlement expansion and the role of economic activity therein, it is evident that trade with settlements is an element that assists in the preservation of settlement activity. Trading with settlements does not only assist in preserving the situation created by the breach, it assists furthermore in future breaches: it gives viability to Israel’s overall settlement project. The duty of non-recognition exists exactly to prevent this from even being a possibility.”

[Moerenhout, Tom, Just Trade and Foreign Policy: A Case Study of the Legal Permissibility and Political Feasibility of Ceasing Trade with Israeli Settlements in Occupied Territories (August 13, 2012)].
The Guiding Principles on Business and Human Rights, which were developed by the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, are based on the same analysis of the ICJ and discuss, among others, the question of legal responsibility of corporations in front of human rights violations.

The responsibility to respect human rights requires that business enterprises:

“(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;”

“(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”

The commentary states:

- "Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation."

- "Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations."

- Business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

(a) Draw on internal and/or independent external human rights expertise;
(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

- "As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. [...] The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime."

- "There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so."
**United Nations Global Compact**

**Principle One:**

"*Businesses should support and respect the protection of internationally proclaimed human rights*"

"Business must comply with all applicable laws and respect internationally recognized human rights, wherever they operate. In the rare situation that national law directly conflicts with international standards, companies should seek ways to honour the principles of internationally recognized human rights."

"Importantly, the corporate responsibility to respect exists independently of States’ human rights duties. Among other things, this means that businesses have a responsibility to respect human rights whether they are operating in an area of weak governance or in a more stable context."

Companies should consider 3 sets of factors:

"The first is to consider the country and local context in which it is operating for any human rights challenges that context might pose. [...]"

"The second set of factors involves considering whether the company is causing or contributing to adverse human rights impacts through their own activities within that context — for example, in their capacity as producers, service providers, employers and neighbours ("activities" is understood to include both actions and omissions). Companies should then address those impacts by adjusting their policies and practices to prevent the infringement from occurring. [...]"

"The third set of factors is an analysis of the company’s relationships with Government, business partners, suppliers and other non-State actors to consider whether they might pose a risk for the company in terms of implicating it in human rights abuse."

**Principle Two:**

"*Businesses should make sure they are not complicit in human rights abuses*"

The commentary to principle two suggests companies to consider, among others, the following:

- "Has the company made a human rights assessment of the situation in countries where it does, or intends to do, business so as to identify the risk of involvement in human rights abuses and the company’s potential impact on the situation?"

- "Does the company actively engage in open dialogue with stakeholder groups, including civil society organizations?"

- "Does the company conduct a human rights impact assessment consisting of an analysis of the functions of a proposed investment and the possible human rights impacts (intended and unintended) they may have on the community or region;"

Several factors can be suggested to consider in determining when divestment may be the most prudent course of action. These include whether countries “are subject to international sanctions; have been accused of genocide, war crimes and/or crimes against humanity; refuse access to a neutral body such as the International Committee of the Red Cross; or do not respect popular sovereignty and where there has been a clear expression of popular sentiment against any foreign commercial activities.”

OECD Guidelines for Multinational Enterprises

The 2011 edition has an entire chapter on Human Rights to bring the OECD Guidelines in line with the UN Guiding Principles and are therefore largely presenting the same standards regarding human rights.

Leverage
Business should use their leverage to stop human rights violatations by other state or non-state actors.

"Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm."

Legal value and relation to national law
"[...] the countries adhering to the Guidelines make a binding commitment to implement them in accordance with the Decision of the OECD Council on the OECD Guidelines for Multinational Enterprises."

"A State’s failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights."

"[...] in situations of armed conflict enterprises should respect the standards of international humanitarian law, which can help enterprises avoid the risks of causing or contributing to adverse impacts when operating in such difficult environments."

Scope
The Guidelines ask business to avoid infringing human rights and address adverse impacts on human rights, avoid causing or contributing to human rights violations with their own activities, and seek to prevent and mitigate human rights violations linked to their business operations, products or services, including in their supply chain.

They further ask business to ensure a policy commitment, due diligence and provision of remediation processes.

Appropriate response
"Appropriate responses with regard to the business relationship may include continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact."
Recommendations

When deciding whether to deal with Israeli partners, the only way to respect the Palestinian call for boycotts, divestments and sanctions as long as Israel violates Palestinian human rights and international law - and the easiest way - is to look for other partners.

Otherwise, you inherently risk getting involved in dirty business and, in fact, doing business as usual with Israel is already dirty enough!

Many Israeli and international companies involved in Israel have been caught giving wrong or misleading information about their operations:
- Estimates show that up to 80 per cent of settlement goods are imported to Europe under the false label of 'Made of Israel' [http://www.publications.parliament.uk/pa/cm200910/cmhansrd/chan31.pdf]
- 'Africa Israel' corporation informed the Norwegian Pension Fund it had ended construction in the settlements in order to be taken off the Fund's black list. Within few days, activists provided photographic proof that Africa Israel is still building in the settlements.

As minimum precautions and first steps towards respecting human rights in Palestine:

1) Don’t trade with products partially or totally produced in Israeli illegal settlements.

2) Don’t trade or enter into joint business operations with companies involved in Israeli violations of international law, human rights and international humanitarian law.

3) Obtain guarantee from your partners that they are not involved and won’t be involved in Israeli violations of peremptory norms of international law (but: you need to be able to provide due diligence to ensure their statements are true).

4) Don’t invest in companies that are involved in Israeli violations of international law, human rights and international humanitarian law.