

January 22, 2019

H.E. Michelle Bachelet  
United Nations High Commissioner for Human Rights  
Office of the High Commissioner for Human Rights  
Geneva

**Re: OHCHR BDS Blacklist**

Dear Commissioner Bachelet,

We are writing to express our significant ongoing concerns regarding OHCHR's preparation of a "database" of business entities based on Resolution 31/36.

Although called a "database" ostensibly about companies "directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements," this discriminatory blacklist will defame and economically damage companies for doing business with Israel. The ultimate goal is to isolate, demonize, and harm the Jewish state, as part of the antisemitic BDS campaign.

There are a number of substantive flaws regarding the "database," which we highlight below. These include the promotion of antisemitism, disregard for human rights, multiple legal fallacies, and disregard for international peace agreements.<sup>1</sup>

The mandate of Resolution 31/36 was fulfilled with the publication of OHCHR's January 2018 report. There is no moral, legal, or ethical basis for this project to continue and we urge you to order its conclusion immediately.

**Antisemitism**

- The blacklist is antisemitic in both intent and effect. No other conflict situation is singled out by the UN or OHCHR in any comparable manner, nor have any other countries been targeted for boycotts. Although UN officials and NGOs working with the UN claim this is a "first step," there are no efforts underway by OHCHR to similarly address additional conflict zones.
- In creating the blacklist, OHCHR is contributing to yet another round to the long history of boycotts targeting Jews and Jewish businesses. Based on our conversations with officials directly responsible for preparing the list, OHCHR has not taken into account the impact of this list on global antisemitism, and increasing harassment and

---

<sup>1</sup> The OHCHR blacklist also violates the UN Charter, is based on a blatantly false interpretation of international humanitarian law, and subverts and damages the business and human rights framework, in particular the UNGPs and the concepts of due diligence and risk mitigation. See our January 2017 submission to OHCHR for more analysis on these issues available at: <http://www.ngo-monitor.org/nm/wp-content/uploads/2017/01/Submission-to-HRC-on-Blacklist.pdf>

violence against Jews worldwide. Several research studies have concluded that where there is BDS, there are attacks on Jews.<sup>2</sup>

- Disturbingly, the OHCHR's blacklist has been created and developed without transparency and in close cooperation with antisemitic BDS organizations, some of which also have ties to terrorist organizations. BDS seeks to destroy Jewish self-determination by advocating the economic, cultural, and diplomatic isolation of Israel apart from all other nations. It is for this reason that world leaders and government officials explicitly reject BDS and have called it out as a discriminatory and racist movement targeting Jews.<sup>3</sup>
- In addition to working with OHCHR on the blacklist, these and other pro-BDS NGOs have extensively lobbied for the publication of company names in order to assist their allies in targeting these companies and Israel itself for boycott. The UK Quakers have already announced plans to use the list to pursue BDS against the companies named.

#### **Disregard for Human Rights, Due Process, and Rule of Law**

- Similarly, while the proponents of the blacklist claim the purpose is to enhance human rights, this is simply not the case. This blacklist is a political exercise executed with no concern whatsoever for the human rights of the thousands of employees of the targeted companies and negative impacts such as the destruction of their livelihoods, potential harassment, and doxing. There also has been no concern about the impact of this blacklist on the people who rely on services such as life-saving drugs, electricity, water, and gas.
- The blacklist specifically targets companies involved in protecting the right to life, freedom of movement, and the right to work and earn a living. In particular, many of the blacklisted companies provide services to counter Palestinian terrorism, such as those that provide baggage scanner and other technology to prevent suicide bombings and weapons smuggling at border crossings. These services also facilitate commerce, allowing Palestinians the ability to more quickly and easily access employment within Israel. Even in the absence of settlements, and as exists in every country, these same crossings would be deployed to safeguard the West Bank-Israel border.
- OHCHR sent harassing "do you still beat your wife" letters to the companies, threatening them with inclusion on the blacklist based on flimsy accusations and single sentence bullet points. These bullet points made generalized allegations without

---

<sup>2</sup> See for instance, <https://www.theguardian.com/world/2018/apr/11/traditional-antisemitism-is-back-global-study-finds>; [http://www.timesofisrael.com/bds-spurs-anti-semitism-on-campuses-says-brandeis-study/?fb\\_comment\\_id=1166317056794809\\_1166808040079044](http://www.timesofisrael.com/bds-spurs-anti-semitism-on-campuses-says-brandeis-study/?fb_comment_id=1166317056794809_1166808040079044); <https://www.thejc.com/news/uk-news/israeli-lecturer-attacked-by-belfast-pro-palestine-activists-1.21622>;

<http://edition.cnn.com/interactive/2018/11/europe/antisemitism-poll-2018-intl/>

<sup>3</sup> These leaders include, Canadian Prime Ministers Justin Trudeau and Stephen Harper; Dutch Prime Minister Mark Rutte; former U.S. Secretary of State Hillary Clinton; French President Emmanuel Macron; and many others.

any supporting evidence. OHCHR staffers then arbitrarily determined without any transparency which companies to include.<sup>4</sup>

### **OHCHR's Blacklist Targets Companies Engaged in Wholly Legal Activity**

- The listed companies have done nothing wrong. Even accepting the UN's false legal paradigm, there is no international law whatsoever prohibiting business activity in conflict areas, occupied territory, or settlements. Every court that has looked at this specific issue – including in the US, France, Canada, UK – has rejected such claims.
- Some companies targeted by OHCHR have no connection to settlements whatsoever but are involved in facilitating border crossings and providing consumer goods and services to Israelis and Palestinians alike (gas, electricity, food, transport, pharmaceuticals). Others are targeted under crackpot theories promoted by fringe BDS activists.<sup>5</sup>
- Furthermore, settlements are so broadly defined by OHCHR so as to encompass any territory beyond the 1949 armistice lines – including roads, border crossings and areas that will clearly remain Israeli under any peace agreement. The blacklist also targets companies located in “East Jerusalem,” including the Jewish Quarter of the Old City, as well as companies promoting Jewish history.

### **Violating International Economic and Peace Agreements**

- The blacklist blatantly disregards the importance of economic agreements and cooperation in overcoming distrust between Palestinians and Israelis, and how this functional cooperation creates joint interests and builds incentives toward peace. The blacklist promotes a regressive anti-normalization agenda that rejects the existence of Israel within any border.
- OHCHR's blacklist targets companies engaging in activity specifically assigned to Israeli companies by the Oslo Peace Accords (guaranteed by the international community including the UN). OHCHR has apparently even included companies that have signed agreements with the Palestinian Authority to provide the very services for which they have been targeted.<sup>6</sup>

---

<sup>4</sup> NGO Monitor has seen several examples of correspondence between OHCHR and the companies and was shocked by the flimsy, unsupported allegations and the way in which OHCHR staffers minimized and cavalierly dismissed legitimate company concerns, legal evidence, and other proof that OHCHR's accusations were wholly inaccurate. Our discussions with OHCHR officials also indicate that discriminatory determinations regarding inclusion on the blacklist were made based on the ethnicity/religion/nationality of the company ownership.

<sup>5</sup> These theories include bizarre interpretations of “captive markets.”

<sup>6</sup> For more information, see our January 2017 submission to OHCHR and our report, *Who Profits: Foundation for the UN BDS Blacklist*

## **Conclusion**

In sum, this blacklist is an anti-human rights initiative that cares little for the impacts on the livelihoods and well-being of the employees working for these companies, nor for the Israelis and Palestinians who rely on these companies' services. This effort will further entrench the Arab-Israeli conflict and will make no contribution towards peace or human rights.

Most importantly, the OHCHR blacklist continues the long history of UN double standards and cannot be characterized as anything but antisemitic. The blacklist was conceived as a means to single out Israel for demonization and to officially import BDS into OHCHR. It was created with the assistance of antisemitic and terror-connected actors. And the blacklist will undoubtedly contribute to harassment and violence against Jews globally.

Secretary General Guterres remarked in October 2018: "Anti-Semitism is a menace to democratic values and peace, and should have no place in the 21st century," and fighting it requires "a united front - bringing together authorities at all levels, civil society, religious and community leaders and the public at large - to roll back [its] forces." OHCHR's creation of the blacklist is a manifest shunning of his impassioned plea.

Sincerely,

Anne Herzberg  
Legal Advisor, NGO Monitor  
UN Liaison, Institute for NGO Research