

January 2, 2020

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,

According to media accounts, the Office of the High Commissioner for Human Rights is planning to issue at the end of January 2020 its discriminatory blacklist of companies purportedly doing business in Israeli “settlements” based on UN Human Rights Council (HRC) Resolution 31/36.

On March 4, 2019, you authored a letter to the President of the HRC noting that “given the novelty of the mandate [of 31/36], and its legal, methodological, and factual complexity, further consideration is necessary”.

To that end, we ask the following questions:

1. Since March 4, 2019, what specific measures did you or OHCHR take to consider the “legal, methodological, and factual complexity” of 31/36?
2. The original blacklist was prepared in 2017, nearly three years ago. Has OHCHR taken any steps to update the list? If so, when were these updates conducted? What specific measures were taken to update the list?
3. Were concerned states and/or concerned companies notified that you plan to publish the blacklist in advance of the March 2020 HRC session?
4. If such notifications were sent and no updates were conducted by OHCHR, did you inform the concerned states and/or concerned companies that the blacklist will be published based upon on data compiled by OHCHR in 2017?
5. On December 23, 2016, the UN General Assembly approved \$138,700 to cover the costs. \$102,400 was allocated as salary for the OHCHR employee hired to compile the list over a period of eight months, and \$36,300 for “documentation.”¹ This employee left her position in March 2018 and we are unaware of any additional funding authorizations granted for this project. Did OHCHR obtain additional funding to continue the “database” project from March 2018-through the present? If so, how much was this additional allocation and from where was it authorized? If not, from what regular OHCHR budget item is the database project drawing its funding and for how much?

We would appreciate a response to these questions by January 9, 2020.

¹ <https://www.cnsnews.com/news/article/patrick-goodenough/un-approves-funding-first-anti-israeli-settlement-blacklist>

In addition to the important due process and transparency questions raised above, we again remind you of our significant ongoing concerns regarding OHCHR's preparation of this "database".

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 is intended to 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.²

The mandate of Resolution 31/36 was fulfilled with the publication of OHCHR's January 2018 report. There is no moral, legal, methodological, or factual 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 contrast to OHCHR's efforts to create universally binding business and human rights guidelines applied in a consistent manner, OHCHR has instead invented a completely separate framework to apply to Israel alone. **These double standards applied by OHCHR are in direct violation of the International Holocaust Remembrance Alliance's Working Definition of Antisemitism**, adopted by the EU and nearly 30 countries and counting, and endorsed by the Special Rapporteur on Freedom of Religion or Belief.³
- **In creating the blacklist, OHCHR is contributing to yet another round to the long history of boycotts targeting Jews and Jewish businesses.** Based on multiple 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 violence against Jews worldwide. Several research studies have concluded that where there is BDS, there are attacks on Jews.⁴ **OHCHR's action to**

² 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>

³ <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/ReportSRtotheGeneralAssembly.aspx>

⁴ 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-campus-says-brandeis->

add to this discrimination is particularly shocking given the significant increase in 2019 of attacks against Jews globally.⁵

- **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.⁶
- 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 them and 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.

[study/?fb_comment_id=1166317056794809_1166808040079044](https://www.facebook.com/?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/>

⁵ See, e.g. <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/ReportSRtotheGeneralAssembly.aspx>, <https://www.dw.com/en/anti-semitism-on-the-rise-in-the-eu/a-50820057>, <https://www.wsj.com/articles/rise-in-anti-semitic-incidents-goes-beyond-recent-violent-attacks-11576611407>.

⁶ 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.

- **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 any supporting evidence. OHCHR staffers then arbitrarily determined without any transparency which companies to include.**⁷
- **OHCHR’s blacklist endorses racial discrimination against both Palestinians and Jews and seeks to harm the economic freedom of both peoples.** Essentially, OHCHR is applying tests of ethnicity and nationality to determine who should be able to conduct business and/or be served as customers. In one outrageous example, an OHCHR official responsible for compiling the blacklist told me that if a Palestinian owner of a building located in a “settlement” in “East” Jerusalem wanted to rent out commercial space to an Israeli business, the Israeli business would be placed on the blacklist but not the Palestinian landlord. In another case, based on media reports, a telecommunications company is being targeted by OHCHR because it provides services to the Arabic-speaking Palestinian population in East Jerusalem. These cases are clear examples demonstrating the discriminatory underpinnings of OHCHR’s blacklist.

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. **Similarly, there are no international business and human rights guidelines that follow OHCHR’s discriminatory approach towards Israel.** For instance, the OECD Guidelines for Multinational Enterprises, in no way bar business activity in conflict zones or require companies to cease business activities in occupied territories. Based on conversations with OECD officials, and based on EU and domestic regulations, the only “no go” area for business activity is considered to be in the area of conflict minerals.
- **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.⁸

⁷ 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.

⁸ These theories include bizarre interpretations of “captive markets”.

- **Furthermore, settlements are so broadly defined by OHCHR so as to encompass any territory or activity beyond the 1949 armistice lines – including all roads, border crossings, eating, shopping, bathrooms, and commuting to work. 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.⁹**

Conclusion

In sum, this blacklist is an anti-human rights initiative, compiled without due process or adherence to international law, 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 towards Israel and Jews 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.

⁹ For more information, see our January 2017 submission to OHCHR and our report, *Who Profits: Foundation for the UN BDS Blacklist*, <https://www.ngo-monitor.org/reports/who-profits-foundation-for-the-un-bds-blacklist/>.

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,

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