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November 21, 2016

Zeid Ra'ad Al Hussein

High Commissioner

Office of the United Nations High Commissioner for Human Rights
(OHCHR)

Subject: Human Rights Watch Recommendations on the Implementation of Human Rights Council Resolution 31/36 Business Activities in Israeli Settlements

Dear Commissioner Al Hussein,

Human Rights Watch is pleased to submit recommendations to the Office of the High Commissioner for Human Rights (OHCHR) as it compiles a database of business enterprises involved in the activities listed in paragraph 96 of the [Human Rights Council Resolution 31/36](#), "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan" ("the Resolution").

In January 2016, Human Rights Watch issued a report, [Occupation, Inc.](#), analyzing the activities of companies doing business in or with Israeli settlements in the occupied West Bank, including East Jerusalem. We concluded that such business activity contributes to the serious violations of international human rights law and international humanitarian law inherent in the settlement enterprise. We recommended that businesses end all settlement-related activities.

To assist the Office of the High Commissioner in implementing the Resolution, we offer three recommendations. First, we outline the kind of business activities that we believe meet three of the criteria outlined in the Resolution. Second, we describe the kind of institutions that, if found to engage in the above-stated activities,

should be eligible to be listed in the database. Third, we recommend that three institutions, whose settlement activities Human Rights Watch has researched, be among those included in the database. Our recommendations are limited to settlements in the West Bank, including East Jerusalem.

1. Business Activities in or with Settlements

Human Rights Watch offers recommendations for determining the kind of business activities that would fall within three of the criteria outlined by the Resolution, namely:

- “The provision of services and utilities supporting the maintenance and existence of settlements, including transport
- Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses
- The use of natural resources, in particular water and land, for business purposes”

For decades, Human Rights Watch and numerous other Palestinian, Israeli, and international human rights organizations [have documented the serious violations of human rights and international humanitarian law](#) inherent to Israeli settlements in the West Bank. That research forms the basis of our conclusion that doing business in or with settlements contradicts the human rights responsibilities that businesses have under the [United Nations Guiding Principles on Business and Human Rights](#) (UNGPs). Business activities in and with settlements help support, develop, and maintain settlements, which inherently contribute to abuses such as restrictions on freedom of movement, unlawful seizure of land, unlawful exploitation of natural resources, discrimination, and restrictions on economic and educational development.

Settlement businesses contribute to and underwrite the abusive settlement system, including by:

- helping finance, develop, and market settlements, building settlement properties on unlawfully confiscated land, and trading in settlement-produced products;
- helping make settlements sustainable by providing services and employment to settlers and paying taxes to settlement municipalities;

- using their privileged access to Israeli-issued construction permits and licenses to extract natural resources that rightfully belong to Palestinians but that Israel all but denies Palestinians; and
- often taking advantage of a lack of government regulatory oversight to discriminate against Palestinian workers.

Business activities located in settlements inherently provide services that support the maintenance and existence of settlements, as per the Resolution, because they provide jobs and services in the settlements, which make them more attractive and sustainable, and they may pay taxes to settlement municipalities. They often use natural resources, including water, which is allocated more generously to settlers than to Palestinian residents of the West Bank, and they may be situated on land that has been unlawfully seized from Palestinians.

We consider settlement-related business activities to include locating or carrying out activities inside settlements and financing, administering, or otherwise supporting settlements or settlement-related activities and infrastructure, including by contracting to purchase settlement-manufactured goods or agricultural produce. We believe that these activities are within the ambit of the HRC Resolution, especially within the language quoted above. We recommend that the OHCHR consider including in its database institutions that carry out these activities.

Such activities would include but are not limited to providing waste-management services to settlements, financing construction or other projects in the settlements, marking homes in the settlements, quarrying in Area C, with the profits going to the Israeli Civil Administration, organizing professional or semi-professional sports or other recreational activities in the settlements, buying goods made or grown partially or entirely in the settlements or including components produced or grown in the settlements and providing goods or services to businesses located in the settlements.

2. Institutions Bound by the UN Guiding Principles on Business and Human Rights

While most of the business activity in the settlements is conducted by for-profit companies, we call your attention to the fact that other institutions, such as

nonprofit organizations, also have responsibilities under the UNGP, where they engage in significant commercial activity. The UNGP would apply, for example, if an entity is involved in commercial activities, independently of its legal form or sector of activity, as John Ruggie, the author of the UNGP, has said. In determining that the world football association, FIFA, is subject to the UNGP, Ruggie noted that it conducts “significant levels of commercial activity,” including procurement, branding, licensing, and sponsorship activities, relationships with commercial subsidiaries and organization of large scale events such as international tournaments.

Human Rights Watch recommends that the OHCHR consider all enterprises conducting business activities in the settlements as candidates to be added to the database, regardless of their formal organizational structure. This would include nonprofit organizations engaging in significant commercial activity, sports associations like FIFA, and other enterprises doing business in or with settlements.

3. Recommendations for Selected Institutions

Based on our research and documentation, and applying the criteria outlined above, Human Rights Watch recommends that OHCHR include in its database the three institutions listed below. In making this recommendation, Human Rights Watch in no way implies that the activities of these institutions are particularly severe or abusive, relative to other institutions doing business in or with settlements. They are simply the institutions whose settlement business activities we have researched thoroughly and have verified that they operated in settlements. They are examples of the wide range of business activities taking place in settlements. We also encourage OHCHR to confirm that these entities continue to operate in settlements prior to inclusion in this database since these entities may have changed their practices by the time the database is finalized.

A) Heidelberg Cement.

Through its subsidiary, Hanson, the German multinational Heidelberg Cement owns the Nahal Raba quarry, on the western edge of the West Bank, across from the Israeli city of Rosh Ha'ayin. Israel declared the land on which the Nahal Raba quarry sits as “state land” through its aggressive interpretation of an Ottoman law whereby land, even if privately owned, reverts to the state if not cultivated or otherwise used for three consecutive years. Israel built its separation barrier to

encompass the quarry from the east, unlawfully diverting the route of the barrier into occupied territory from the pre-1967 armistice line. The barrier seamlessly connects the quarry to Israeli territory and separates the nearby Palestinian village of Zawiyah from its lands. Hanson also owns concrete plants in two other settlements, Modi'in Ilit and Atarot.

Hanson pays royalties to the Israeli Civil Administration, the branch of the military that governs the West Bank, and municipal taxes to the settlement Samaria Regional Council. As an Israeli-administered quarry, the Nahal Raba quarry is one of 11 settlement quarries that benefits from Israel's discriminatory allocation of permits. The Israeli civil administration has not issued a single new license to a Palestinian quarry in Area C since 1994 and often conducts raids on unlicensed Palestinian quarries, confiscating equipment and disrupting operations.

Article 55 of The Hague Regulations of 1907 subjects the resources of occupied territory to the laws of usufruct, which limits an occupying power to using such resources for its military needs or for the benefit of the occupied people. In violation of this obligation, the Israeli authorities collect royalties and municipal taxes from settlement quarries, which transfer 94 percent of their product to the Israeli market, providing around one-quarter of the total consumption of quarrying materials for the Israeli economy. Settlement quarries like Nahal Raba also allow Israel to externalize the environmental impact of extraction.

In a letter to Human Rights Watch, Heidelberg defended its activities as fully complying with international law since the land was not privately owned and emphasized that the royalties it pays Israel are transferred to the Civil Administration "for the benefit of residents of Area C." It also noted that it employs 36 Palestinian residents of the West Bank who receive the same benefits and salaries as their Israeli counterparts and that another 25 Palestinians work on the site daily through a sub-contractor. At its annual shareholders meeting in May 2016, the CEO of Heidelberg Cement, Bernd Scheifele, [reportedly told shareholders](#): "The mining permit [for the Nahal Raba quarry] expires next year and we are endeavouring at the moment to find an alternative solution."

Human Rights Watch is not aware of any changes in the ownership or operation of the Nahal Raba quarry to date.

More information is available in [Occupation, Inc.](#), pages 42-53 (case study), pages 121-122, and pages 129-136 (correspondence between Human Rights Watch and Heidelberg Cement and Hanson).

B) RE/MAX and RE/MAX, LLC.

RE/MAX is a US-based international real-estate brokerage franchise. RE/MAX, LLC is the owner of the global franchise network. Its Israeli franchise, RE/MAX Israel, has a branch in the settlement of Ma'aleh Adumim and markets or has marketed homes in at least 17 additional settlements. All settlements are built on land that Israel seized and currently uses in violation of international humanitarian law. Israel also effectively bars Palestinians in the West Bank from buying or renting in settlements, even in cases where Israel confiscated their land to build a settlement.

Given the character of settlements as almost exclusively Jewish and the rules that effectively bar Palestinian residents of the West Bank from living in them, agents selling settlement properties effectively contribute to discrimination against Palestinians. By advertising, selling, and renting homes in settlements, both the Israeli franchise of RE/MAX and RE/MAX LLC, the owner of the global franchise network, facilitate the transfer of Israeli civilians into occupied territory and the associated human rights abuses.

In a press release responding to a campaign by CODEPINK, an anti-settlement advocacy group that criticized RE/MAX's sales in occupied territory, the company's headquarters clarified that it sold the franchise rights for Europe, which included Israel, in 1995. However, RE/MAX retains control over any franchisee operating under the RE/MAX brand. Given such influence, RE/MAX should conduct human rights due diligence throughout its supply chain, including by examining the activities of its franchises regardless of whether it has a broader contractual relationship with them.

In June 2016, RE/MAX, LLC Chief Executive Officer Dave Liniger told the Presbyterian Church (USA) in a letter that it had recently taken action to ensure that it "will no longer receive any income from the sale of Jewish-settlement properties in the West Bank." Requests for clarification from Human Rights Watch went

unanswered. In any event, Re/MAX, LLC continues to allow its Israeli franchise to use its brand name to market properties in the settlements.

More information is available in [Occupation, Inc.](#), pages 65-70 (case study), pages 137-144, and pages 161-162 (letters from Human Rights Watch to RE/MAX Israel and RE/MAX Holdings and letter from RE/MAX, LLC to Code Pink).

C) FIFA (Fédération Internationale de Football Association).

Through its affiliate, the Israel Football Association (IFA), FIFA is organizing matches in Israeli settlements in the West Bank on land that has been unlawfully seized from Palestinians. FIFA is sponsoring the matches by allowing six semi-professional clubs in the IFA to hold their official home matches on fields located in Israeli settlements. By allowing the IFA to organize games inside settlements, FIFA is engaging in business activity that supports Israeli settlements, contrary to the human rights commitments it recently affirmed. An [April 2016 report](#), commissioned by FIFA and written by John Ruggie, the author of the UNGP, makes specific recommendations for FIFA to implement the UNGP throughout its activities. FIFA, a nonprofit association registered in Switzerland, engages in significant commercial activity; global professional football revenues are estimated to be \$33 billion annually.

First, the settlement playing grounds, including one indoor (futsal) hall, are built on land that has been unlawfully taken from Palestinians, mostly by seizing land belonging to Palestinian individuals or Palestinian villages, declaring it state land, and then designating it for exclusive Israeli civilian use. The field in the Givat Ze'ev settlement is owned by two Palestinian families from the nearby town of Beitunia who have been unable to access their land for decades, since the settlement was built. They were offered no compensation and did not give permission to anyone, including FIFA and the IFA, to use their land.

Second, financial documents that Human Rights Watch has reviewed show that the IFA is engaging in business activity that supports the settlements. Settlement football clubs provide part-time employment and recreational services to settlers, making the settlements more sustainable, thus propping up a system that exists through serious human rights violations.

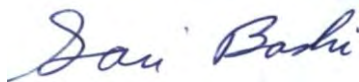
Third, the clubs provide services to Israelis but do not and cannot provide them to West Bank Palestinians, who are not allowed to enter settlements except as laborers bearing special permits. Because of this, football teams, for example, operating in the settlements, are available to Israelis only, and West Bank Palestinians may not participate, play on the teams or even attend games as spectators. In most cases, the clubs receive a majority of their funding from the settlement municipalities and regional councils, which essentially pay them to organize sports and recreational services for Israelis only.

The IFA told Human Rights Watch in a letter that it would not discriminate against clubs playing in areas subject to Israeli authority and that the issue was a political issue to be determined by future negotiations. FIFA Secretary General Fatma Samoura said in an October 28 letter to Human Rights Watch that it was committed to implementing its human rights responsibilities and that a monitoring committee “is working intensely on this matter” and that FIFA would allow this process to follow its course. The mandate of the monitoring committee expires in May 2017.

More information, including links to responses from settlement clubs and the Israel Football Association, are available in Human Rights Watch’s short publication, [“Israel/Palestine: FIFA Sponsoring Games on Seized Land,”](#) published on September 25, 2016. In that publication, we recommend that FIFA require the IFA to relocate the home games of the settlement clubs to inside Israel or, if they continue to play in settlements, exclude them from the IFA.

Thank you for your cooperation and please do not hesitate to contact me. I can be reached at bashis@hrw.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sari Bashi".

Sari Bashi

Israel/Palestine Advocacy Director

Middle East and North Africa

Human Rights Watch