

Banks

INSURANCE



FRENCH BANKS' DANGEROUS LIAISONS WITH THE ISRAELI SETTLEMENT ENTERPRISE

Report, march 2017



SUMMARY

| | |
|--|----|
| EXECUTIVE SUMMARY | 3 |
| METHODOLOGY | 7 |
| 1. Acceleration of illegal settlement expansion in the occupied West Bank | 9 |
| Palestinian population suffers wholesale settlement expansion | 10 |
| Settlement expansion: repeated violation of international law | 11 |
| International legal context | 11 |
| Responsibilities of businesses in the context of international law | 12 |
| Obligations of the French State | 14 |
| 2. How French banks are involved in Israeli settlement expansion | 16 |
| Israeli banks and businesses – key players in settlement expansion | 17 |
| French banking and insurance financial links with settlement players | 18 |
| French banking and insurance groups holding or managing shares in Israeli banks and businesses | 19 |
| Settlement development projects receiving French financing | 19 |
| 3. Conclusion and recommendations | 21 |
| Recommendations to French banks and insurance companies | 22 |
| Recommendations to the French Government | 23 |



FRENCH BANKS'
DANGEROUS LIAISONS
WITH THE ISRAELI
SETTLEMENT
ENTERPRISE

EXECUTIVE SUMMARY

As 2017 arrives to mark fifty years of Israeli occupation of the Occupied Palestinian Territory, the Israeli Government's settlement expansion policy has recently dramatically escalated in the West Bank, including in East Jerusalem. The very existence of Israeli settlements is considered illegal under international law. The settlement enterprise is accompanied by numerous restrictions imposed on the Palestinian population, which violate their most fundamental human rights and deprive them of decent living conditions.

The United Nations¹, European Union² and French Government³ have on numerous occasions affirmed the illegality of settlements. The recent UN Security Council Resolution 2334 passed on 23 December 2016⁴ reaffirmed that the Israeli settlements in the Occupied Palestinian Territory do not form part of Israel as defined by the 1967 borders and are illegal under international law. These settlements which "are steadily eroding the two-State solution and entrenching a one-State reality"⁵ therefore remain a major obstacle to any resolution to the conflict. The same United Nations Security Council Resolution also demanded that all States should make a distinction in relevant dealings between the territory of the State of Israel and the territories occupied since 1967.

The Israeli banking system constitutes an essential tool of the settlement policy and Israeli companies contribute to maintaining and developing the settlements. French financial institutions, by persistently providing Israeli banks and companies directly involved in settlement expansion with financial support, are therefore contributing to maintaining and developing this situation.

Five major French financial groups – namely BNP Paribas, Crédit Agricole, Société Générale, BPCE and AXA – manage financial holdings or hold shares in Israeli banks and companies which contribute to the Israeli settlements and supply the services that are essential for maintaining and developing the settlements, such as house and factory construction, telecommunications and internet connections or the installation of surveillance equipment.

In addition to these holdings, the four leading French banks — namely BNP Paribas, Société Générale, LCL (subsidiary of the Crédit Agricole group) and Natixis (subsidiary of the Banques Populaires — Caisse d'épargne group) — have granted loans totalling 288 million euros for the period 2004-2020 to the Israeli public company, Israel Electric Corporation (IEC), for a project to extend two gas-powered electricity plants⁶, at a time when IEC supplies electricity to all illegal settlements in the occupied West Bank.

The French government is responsible on three levels:

- (1) Obligations under international law (to protect, respect and fulfil human rights, to refuse to recognise as legal any situation created as a result of a serious violation of international law, to refuse to lend aid or assistance to the maintenance of such a situation and to cooperate to bring it to an end)⁷;
- (2) An obligation to protect against human rights violations by third parties, including companies and banks;⁸
- (3) A specific obligation as a 20% shareholder in Alstom, a company which is carrying out the extension of one of the two electric power plants: France ought to have and must now take even more rigorous measures in this instance where the company belongs to the State or is in part controlled by the State, even where it is a minority shareholder.⁹

1 - http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/82 (accessed 15/12/16)

2 - <http://www.consilium.europa.eu/en/press/press-releases/2016/01/18-fac-conclusions-mepp/> (accessed 16/12/16)

3 - <http://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays/israel-territoires-palestiniens/> (accessed 16/12/12)

4 - Security Council Resolution no. 2334(2016) adopted on 23 December 2016, available online at <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

5 - See Resolution no. 2334(2016), preamle.

6 - <http://www.gtreview.com/news/europe/germans-back-israel-electric>

7 - <https://www.fidh.org/IMG/pdf/trading.pdf> (accessed 24/11/2016). For more details, see the Section 1.2 below.

8 - According to United Nations Guiding Principles 11 to 24. In addition, "Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses", notably by providing support to businesses in identifying, preventing, evaluating and dealing with the risks. Principle 7.

9 - Notably Guiding Principle 4, tackle the issue of specific links between States and certain companies that belong to them or are controlled by them. According to these Principles, "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies [...], including, where appropriate, by requiring human rights due diligence" and "the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights". In its opinion issued in June 2014, the United Nations Working Group also gave a reminder of the obligation of States to take additional measures to protect against human rights violations by State-owned or controlled businesses.

The organisations which have endorsed this report have urged these French banks and insurance companies to comply with international principles by ceasing all financing of the Israeli settlements. Numerous public and private European and American financial institutions and pension funds¹⁰ have already taken this step and have disengaged from Israeli entities which support settlement expansion, in contrast to the French financial institutions discussed in this brief.

Despite clear infringements of human rights, to date, not one French bank has provided a commitment to cease financing entities that facilitate the development of Israeli settlements in the Palestinian territory. The risk of a fresh round of financing linked in particular to the extension of the East Jerusalem tram network by Alstom¹¹, in which the State itself has a 20% stake, heightens the urgent need for serious commitments. It is not too late to act: French banks must give undertakings in line with international law and publicly announce an end to all financial support for entities that facilitate the maintenance and development of illegal settlements in the Occupied Palestinian Territory.

The signatories organisations demand that:

French banks withdraw all direct or indirect funding from Israeli banks and companies facilitating Israeli settlements, publicly undertake to no longer finance these entities and develop a credible policy aimed at excluding any business enterprise participating in the settlement enterprise;

The French State:

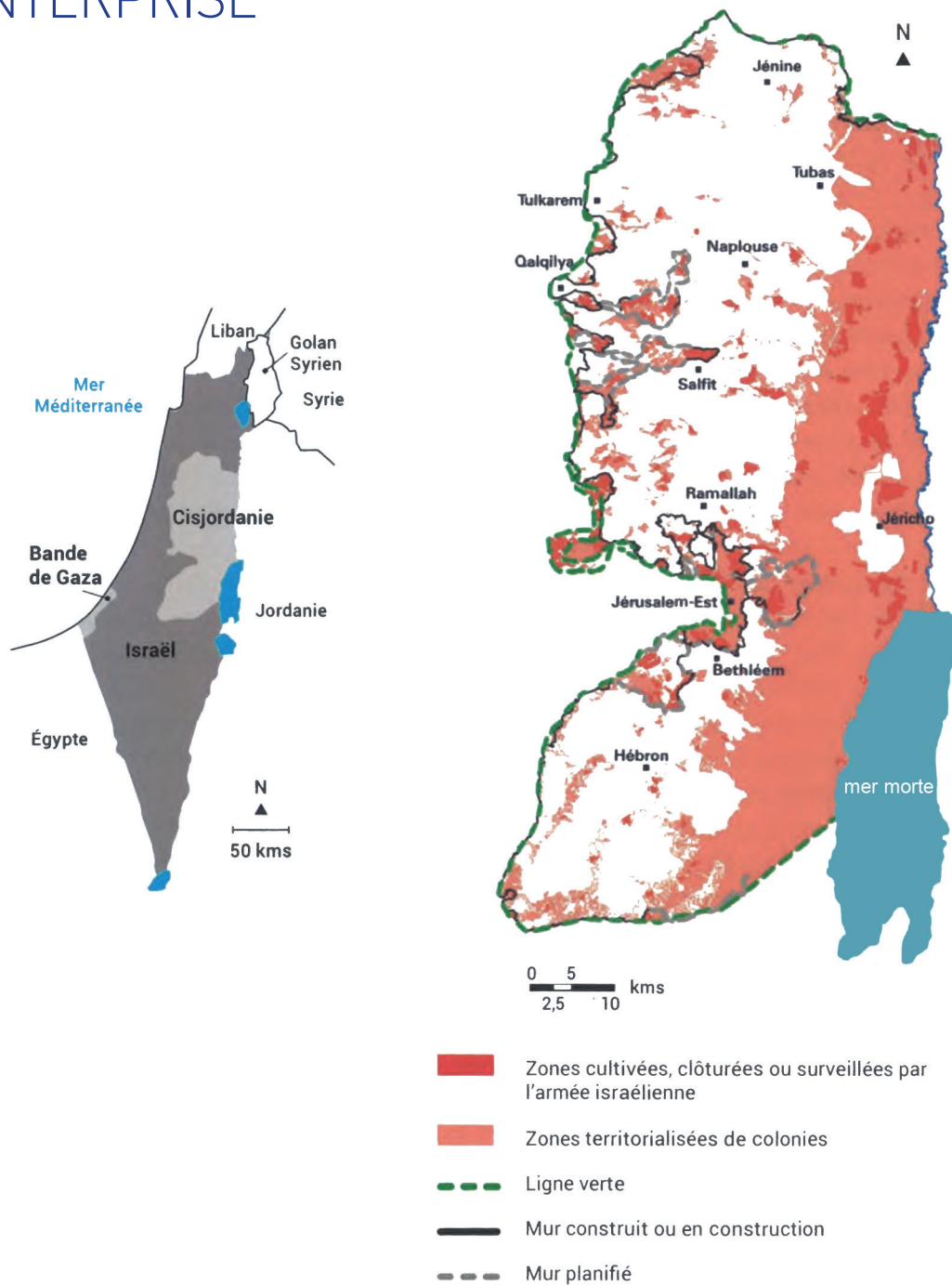
- respect its international obligations, (notably those deriving from the Israeli violations of international law and to protect, respect and fulfil human rights)
- take all measures to prevent any holding or investment by French companies that might contribute to Israeli settlements, including¹²:
- implement the United Nations Guiding Principles on Business and Human Rights and ensure that companies within its jurisdiction, including banks, do not hamper the full exercise of fundamental rights in France and abroad;],
- enforce the law concerning due diligence on the part of parent and contracting companies and,
- support the process towards the drafting of an international treaty on human rights and transnational and other businesses at the United Nations.

10 - This is notably the case with the Norwegian Government Pension Fund (2010), the Netherlands pension fund PGGM (2013), the Luxembourg pension fund FDC (2014), the Danish and German banks Danske Bank (2014) and German Deutsche Bank (2014) and the pension fund of the American Methodist Church (2016).

11 - Some information have been published in June 2016, indicating that a commercial agreement has been established between the Israeli government; the Israeli consortium Citypass and Alstom in order to realise the Jerusalem tramway. Alstom and the French government have been approached by one of the signatories organisations in June and September 2016 on this topic. In this occasion they have not denied that such agreement exists. We can legitimately think that such agreement, valued 350 million euros, will need a bank loan to go forward.
<http://www.globes.co.il/en/article-jerusalem-light-rail-to-double-capacity-1001129270>
<http://www.ceec.uitp.org/jerusalem-light-rail-extension-sealed>

12 - As an addition to the advice of the French Ministry of Foreign Affairs already published and accessible at <http://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays/israel-territoires-palestiniens/>

FRENCH BANKS' DANGEROUS LIAISONS WITH THE ISRAELI SETTLEMENT ENTERPRISE



Source : TPO-OCHA 2012, Plateforme des ONG françaises pour la Palestine. Carte disponible dans la brochure « Made in Illegality »- stop aux relations économiques de la France avec les colonies israéliennes, disponible à http://www.madeinillegality.org/IMG/pdf/2015-01_fr_made-in-illegality_brochure_france.pdf



FRENCH BANKS'
DANGEROUS LIAISONS
WITH THE ISRAELI
SETTLEMENT
ENTERPRISE

METHODOLOGY

The information contained in this report is based on a financial analysis conducted between March and June 2016 by the Dutch consultancy firm Profundo in partnership with the signatory organisations. The analysis (available to consult at the following link¹³) is based on company and banking financial publications and specialized financial databases (Orbis, Bloomberg, LexisNexis and ProQuest), cross-referenced with information that is accessible online.

A public database¹⁴, which identifies all financial and economic entities directly involved in the settlement enterprise, was consulted for this report. The database sources its information from field research and public information contained in annual reports and financial statements, websites and other official company publications.

The French financial institutions cited in this report are just one example of the various bodies indirectly supporting the Israeli settlement enterprise. Our investigation also focused on the Israeli banks and companies mentioned in this report, as a result of their indisputable support for Israeli settlement of the Occupied Palestinian Territory.

Additional information was collected in France by the organisations that authored the report during meetings with French financial institutions and the French government. Evidence was also gathered from consulting information in the public domain (institutional documents, press articles, institutions' websites and expert reports), which was published in the media and by international bodies or by Israeli and Palestinian civil society organisations in particular.

All the banking and insurance institutions mentioned here have been contacted on several occasions in the context of this report. They received the research that prompted this report several months in advance of its publication and were invited to comment. In addition, all the banks were asked on several occasions for meetings. We met with two of them — Crédit Agricole and Société Générale — in April and October 2016. In the context of these exchanges, the content of the research and the recommendations referred to above were discussed. To date, none of them has refuted the financial links put forward and some have confirmed them orally or in writing.

13 - <http://www.fairfinancefrance.org/media/373618/links-between-french-banks-and-companies-profitng-from-the-occupation-of-160628.pdf> et <http://www.fairfinancefrance.org/media/373619/links-between-french-fis-and-israeli-banks-160614.pdf>

14 - The Israeli non-governmental organisation, *Who Profits*, identifies all financial and economic bodies directly involved in settlement expansion. Information contained in the *Who Profits* database comes from research in the field and publicly available information contained in annual and financial reports, on websites and in other official company publications. See <http://whoprofits.org/>

FRENCH BANKS'
DANGEROUS LIAISONS
WITH THE ISRAELI
SETTLEMENT
ENTERPRISE

1.
ACCELERATION
OF ILLEGAL
SETTLEMENT
EXPANSION
IN THE OCCUPIED
WEST BANK

PALESTINIAN POPULATION SUFFERS WHOLESALE SETTLEMENT EXPANSION

Fifty years after the Israeli occupation of the Occupied Palestinian Territory began and at a time when the international community condemns the *status quo* of peace negotiations, the reality on the ground is that the situation continues to deteriorate, Israeli settlement expansion is gathering pace and the closure of Gaza, in place for a decade, persists.

During the first six months of 2016, the Israeli government announced the construction of 1,823 additional houses in the Israeli settlements in East Jerusalem and in Area C, an area which covers 60% of the occupied West Bank and which has been entirely under Israeli civil and military control since the Oslo Accords.¹⁵ The Israeli government had already unveiled plans in 2014 to build 3,860 Israeli housing units in the Occupied Palestinian Territory, heralding the most significant settlement expansion in 30 years.¹⁶ This settlement policy is based on both constant fresh land grabs by Israel and also on the creation of a coercive environment to ensure the transfer of the Palestinian population.¹⁷ In such an environment, respect for the most fundamental of human rights is seriously flouted.

One of the most alarming coercive measures in 2016 was the sudden increase in the demolition of Palestinian homes and other structures and the confiscation of humanitarian aid delivered by international organisations in the West Bank. According to the United Nations, 986 Palestinian houses and other structures (schools, water tanks, livestock enclosures, water and sewage installations, etc.) were destroyed or confiscated by the Israeli authorities in 2016 – a record number and up 80% compared to 2015. The demolitions have led to the forced displacement of many Palestinian civilians.¹⁸ While Israel uses the absence of valid building permits to justify the demolitions, the United Nations condemns a profoundly discriminatory planning process in which 98.5% of applications for permits for Palestinian infrastructure in Area C were rejected by the Israeli Civil Administration between 2010 and 2014.¹⁹

The coercive environment, which is generated by and goes hand in hand with Israeli settlement expansion, has a direct impact on the living conditions and human rights of the 300,000 Palestinians living in Area C and the 298,000 Palestinians of East Jerusalem. The restrictions, both administrative (building permits, residence permits, etc.) and physical (checkpoints, road barriers, separation wall, etc.), imposed by the Israeli authorities considerably limit the Palestinians' access to adequate housing, external economic markets, natural resources (grazing and farmland, sources of water, etc.) and essential services (energy, education, health, water and sewage, etc.).

By fragmenting the occupied West Bank, these restrictions also have an impact on the civilian populations in the Palestinian towns situated in Areas A and B (accounting for 18% and 22% of the West Bank respectively), which remain partially dependent on Area C for their social and economic development, as Area C contains the majority of Palestine's natural resources and other means of development. With just 1% of Area C reserved for Palestinian development, the World Bank estimates that these restrictions represent a loss of revenue of at least 3.4 billion dollars per year for the Palestinian economy, thereby affecting all Palestinians in the Occupied Territory more widely.²⁰

Another striking fact in 2016 was the accelerated pace of settlement in the E1 area, politically a highly sensitive area as it stretches between East Jerusalem and the settlement of Ma'ale Adumim in the centre of the West Bank. Any continued settlement of the E1 area has been defined as a major obstacle to pursuing the peace process by the European Union, given that such a move would completely isolate East Jerusalem from the rest of the West Bank and would eliminate any prospect of a two-State political solution.²¹ Despite the European Union's warnings,²² in July 2016 the Israeli government revealed plans to construct 531 houses in the Ma'ale Adumim settlement and 169 houses in the

15 - <http://peacenow.org.il/en/2016-plans> (accessed on 23/11/2016)

16 - <http://www.yesh-din.org/postview.asp?postid=299> (accessed on 23/11/2016)

17 - The Israeli authorities cite several reasons to justify the confiscation of further land in Area C, including the creation of military zones, nature reserves and archaeological parks, or declarations of "state lands" or retrospective legislation concerning Israeli outposts in particular.

18 - http://www.ochaopt.org/sites/default/files/ocha_opt_the_humanitarian_monitor_2016_11_09_english.pdf (accessed on 23/11/2016)

19 - http://www.ochaopt.org/sites/default/files/annual-humanitarian-overview_10_06_2016_english.pdf (page 6, accessed on 28/11/2016). Israeli Civil Administration is the department who is responsible of the application of the Israeli government policy in the West Bank. It is part of the Coordinator of Government Activities in the Territories (COGAT), that is a unit of the Ministry of Defense.

20 - <http://www.worldbank.org/en/news/press-release/2013/10/07/palestinians-access-area-c-economic-recovery-sustainable-growth>. (accessed on 28/11/2016)

21 - <http://www.haaretz.com/israel-news/1.622099> (accessed on 15/12/2016)

22 - https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/7191/statement-spokesperson-israels-announcement-new-settlement-units-east-jerusalem-and-west-bank_en (accessed on 15/12/2016)

My name is Husseni Mahmoud Saleh Abu-Hanieh and I am 68 years old. I live in Azzoun to the east of Qalqilya. My brothers and I own three parcels of farmland covering 11 dunums¹. On 21 December 2015, the Israeli Occupying Forces decided to confiscate 93 dunums of land belonging to the villages of Azzoun, Al Nabi Elias and Izbat Alteeb, with a view to building a road for the settlers [...], destroying farmland planted with olive trees. On 16 January 2017, at around 10 o'clock in the morning, I was told that the Israeli Occupying Forces and yellow bulldozers [...] were in the process of uprooting the olive trees. My brothers and I rushed to the site. When we arrived, we saw [...] the bulldozers which were uprooting the old Roman olive trees [...] under the protection of the occupation soldiers. 25 of my trees had been uprooted, 13 of them very old [Roman] trees [...] several centuries old, and 12 others ten years old [...]. After that the trees on another parcel of land belonging to my brother and me were uprooted. We will not be able to replant as we have lost our land to the construction of a settlers' road [...], with the sole aim of making movement between the Israeli settlements easier and linking the settlements of the West Bank, particularly those to the east of the town of Qalqilya, to Israel.²



Al-Haq

1 - 1 dunum is equivalent to 1/10 of hectare
2 - Al-Haq affidavit No. 42/2017

settlements of Ramot, Pisgat Ze'ev and Har Homa in East Jerusalem.²³ At the same time, Palestinian communities, such as Abu Nwar and Jabal Al Baba at the centre of the E1 area, were forcibly displaced by the Israeli authorities as part of a plan to "relocate" over 7,000 Palestinian Bedouins to pre-planned townships.²⁴

These recent developments seriously threaten the territorial continuity of the Occupied Palestinian Territory and fuel the despair and frustrations of Palestinians in the face of the international community's inertia. Against this backdrop, the West Bank, and East Jerusalem in particular have, over the past 18 months, been the setting for the most violent clashes since 2005.

In January 2017, the Israeli government announced construction of more than 6,000 new housing units in settlements across the West Bank and adopted a law legalising more than 50 settlement outposts built on private Palestinian property in violation of international law.

SETTLEMENT EXPANSION: REPEATED VIOLATION OF INTERNATIONAL LAW

International legal context

The settlement process is illegal under international law as the Security Council pointed out once again on 23 December in resolution 2334.²⁵

International humanitarian law and international human rights law provide the applicable legal framework for situations of occupation. Israel's control over Palestinian territory qualifies as an occupation as defined by international humanitarian law. The laws of occupation are predominantly set out in the Fourth Geneva Convention Concerning the Protection of Civilians Persons in Time of War 1949 (Fourth Geneva Convention)²⁶ and the Regulations Annexed to the Hague Convention IV Respecting the Laws and Customs of War on Land of 1907 (Hague Regulations). The International Court of Justice has explicitly recognised the applicability of the Fourth Geneva Convention to Israel's occupation of Palestinian territory.²⁷

The settlement enterprise violates several provisions of international humanitarian law (IHL). The forced transfer of the occupied population from occupied territory, as well as the transfer of civilians from the occupying power's state

23 - <http://peacenow.org.il/en/2016-plans> (accessed on 23/11/2016)

24 - http://www.ochaopt.org/sites/default/files/ocha_opt_the_humanitarian_monitor_2016_06_03_english_1.pdf (accessed on 28/11/2016)

25 - See Security Council Resolution no. 2334(2016), adopted on 23 December 2016, op cit

26 - International Court of Justice, Advisory Opinion, The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, <http://www.icj-cij.org/docket/files/131/1671.pdf> (accessed 31/01/2017)

27 - ICJ, Advisory Opinion, 9 July 2004.

into occupied territory is prohibited under Article 49.²⁸ Any destruction and confiscation of civil, public and private assets and of humanitarian aid is forbidden under the terms of Article 53 of the Convention. Any violation of the terms of Articles 49 and 53 is considered a grave breach of Article 147 of the Convention.²⁹ Article 146 of the Convention affirms that High Contracting Parties and parties involved in a conflict must suppress all such grave breaches and take the measures required to bring to an end all other breaches of the Convention.³⁰

Furthermore, these grave breaches may also constitute war crimes as defined under Article 8 of the Rome Statute of the International Criminal Court (ICC). War crimes come under the jurisdiction of the ICC, which intervenes to complement national jurisdictions in the absence of the willingness or capacity of national jurisdictions to conduct genuine investigations and proceedings in accordance with Article 17 of the Rome Statute.³¹ A preliminary investigation of the situation in Palestine, including allegations of violations related to settlement activity, by the Office of the Procurator of the ICC has been underway since January 2015.³²

In addition, the various physical and administrative restrictions that deprive the Palestinian population from access to essential services violate international human rights law as codified in the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights.³³

The settlement policy pursued by Israel is therefore operating in clear breach of international law. By virtue of Israel's breaches of peremptory norms of international law, certain obligations arise for third-party States. The International Court of Justice has explicitly recognised the *erga omnes* nature of certain obligations of IHL and specifically of the right of the Palestinian people to self-determination.³⁴ According to the Court, this implies that third-party States cannot recognise as lawful any situation arising from a serious violation of international law, nor can they lend aid or assistance to help maintain this situation, and must cooperate to put an end to any serious violation.³⁵ Consequently, States are obliged to terminate any economic and financial relations with entities perpetuating a situation that is illegal under international law.³⁶

In this context, the Security Council Resolution of December 2016 “[c]alls upon all States [...] to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”.

Responsibilities of businesses in the context of international law

While obligations under public international law are directed first and foremost at States, individuals and business enterprises are also subject to certain obligations.

IHL, as a branch of public international law contained within treaties and international custom and to which States are subject, imposes obligations primarily on States. The Fourth Geneva Convention also requires States to ensure public international law is respected by third parties, including business entities, by establishing the appropriate sanctions at their disposal for grave breaches, by pursuing the perpetrators and by taking all measures necessary to bring any acts contrary to its provisions to an end. This could, in this instance, also apply to banks.

The International Committee of the Red Cross has published a guide providing a non-binding interpretation of the obligations of business enterprises under IHL and a reminder that “[i]nternational humanitarian law does not just bind States, organised

28 - https://www.ochaopt.org/documents/ocha_opt_area_c_factsheet_august_2014_english.pdf (accessed 28/11/2016)

29 - <https://www.icrc.org/eng/resources/documents/misc/57jp2a.htm> (accessed 16/12/16)

30 - Art. 146 of Fourth Geneva Convention states, *inter alia*, that “The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article [...]” ; see also Art. 86 of the Protocols Additional to the Geneva Conventions of 12 August 1949 relating to the protection of victims of international armed conflicts (Protocol I) of 8 June 1977. https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf

31 - By ratifying the Rome Statute of the International Criminal Court on 2 January 2015 and accompanying it by an ad hoc declaration of acceptance of its jurisdiction (by virtue of Article 12.3 of the Statute), Palestine accepted the jurisdiction of the ICC over international crimes, including war crimes, committed on its territory, including East Jerusalem, or by its citizens since 13 June 2014. See Palestinian Accession to the ICC Statute: Hope for Justice and Peace, 2 January 2015, FIDH, available online at <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/israel-occupied-palestinian-territories/palestinian-authority/16724-palestinian-accession-to-the-icc-statute-hope-for-justice-and-peace>

32 - For more information on the preliminary investigation of the situation in Palestine by the Office of the Procurator of the ICC, see: <https://www.icc-cpi.int/palestine>

33 - Right to dispose of natural wealth and resources (Art.1), right to privacy (Art. 17), right to freedom of movement (Art. 12); to dispose of wealth and natural resources (Art. 1), right to protection and assistance afforded to families, children and adolescents (Art. 10); the right to an adequate standard of living, including food, clothing and accommodation (to be protected from hunger) (Art. 11); the right to health (Art. 12) and the right to education (Art. 13 and Art. 14)

34 - ICJ, Advisory Opinion, 9 July 2004, op. Cit.

35 - *ibid*.

36 - <https://www.fidh.org/IMG/pdf/trading.pdf> (accessed on 24/11/2016)

armed groups and soldiers – it binds all actors whose activities are closely linked to an armed conflict. Consequently, although States and organised armed groups bear the greatest responsibility for implementing international humanitarian law, a business enterprise carrying out activities that are closely linked to an armed conflict must also respect applicable rules of international humanitarian law.”³⁷

Accordingly, a business enterprise and/or its directors could be summoned to answer before national criminal and civil courts for having committed or been complicit in war crimes, where the national law in force allows. In particular, the idea of the complicity of business enterprises in the context of human rights has been defined by the UN as “the indirect involvement of companies in human rights abuses. In essence, complicity means that a company knowingly contributed to another’s abuse of human rights.”³⁸

Certain countries, such as Belgium³⁹, France⁴⁰, Portugal⁴¹, Luxembourg⁴² and Spain⁴³, have adopted national legislation that enshrines the norms of IHL and strengthens their effectiveness, thereby facilitating proceedings against companies and their directors. The fact that a director acts on behalf of a company provides no form of immunity from prosecution for war crimes before national courts or before the International Criminal Court.

Players involved in affording comprehensive aid and assistance for the commission of war crimes may also find themselves held responsible before international courts⁴⁴. The same applies to any act or omission that has a substantial, direct and appreciable impact on the said violations.⁴⁵ Any acts or omissions occurring in the context of activities carried out on behalf of a business enterprise entail a responsibility, when such activities enable, aggravate or facilitate serious violations of international humanitarian law. To determine whether a particular business enterprise should have known the risks it was running, national judges will consider whether a business enterprise acting with due diligence could have known the risks in the light of the information available.⁴⁶

The United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles) as well as the Organisation for Economic Cooperation and Development Guidelines for Multinational Companies (OECD Guidelines) significantly clarify the scope of soft-law obligations and the means to implement them. These principles⁴⁷ are aimed at States and businesses. The principles reaffirm that it is incumbent on companies to respect human rights and create guidelines to help business enterprises fulfil their responsibility. In addition, the OECD Guidelines set out an extra-judicial mechanism for their implementation – the National Contact Point (NCP) – which provides for mediation and conciliation between business enterprises and members of civil society, who can contact the NCP in the event of non-observance of the Guidelines by a business.⁴⁸

The specific responsibility of business enterprises exists independently of the capacity or determination of States to fulfil their own obligations relating to human rights.

According to these principles, no matter where companies operate, they are bound to respect human rights as well as the norms

37 - ICRC, *Business and International Humanitarian Law*, December.

38 - United Nations Human Rights Council, *Clarifying the Concepts of ‘Sphere of Influence’ and ‘Complicity’*, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie, Eighth Session 15 May 2008, UNdoc A/HRC/8/16.

39 - A. Misonne, “La responsabilité pénale des personnes morales en Belgique – Un régime complexe, une mise en œuvre peu aisée” in “La responsabilité pénale des personnes morales en Europe”, (eds.) S. Adam, N. Colette-Basecqz and M. Nihoul, La Charte, Brussels, 2008, p. 67.

40 - Article 121-2 of the Penal Code. See also Decision of the Court of Cassation, 28 January 1954.” (D., 1954, p. 217).

41 - 1982 Penal Code amended by law 59/2007 which modified and extended the sphere of Article 11.

42 - Law of 3 March 2010, 1) Introducing the criminal responsibility of moral persons in the Penal Code and in the Code of Criminal Procedure; 2) Amending the Penal Code and Code of Criminal Procedure. Available online at:<http://legilux.public.lu/eli/etat/leg/loi/2010/03/03/n1/jo>

43 - Article 31bis of the Penal Code, 9 June 2010. This Article has been recently amended by the State Authorities Act 1/2015 of 30 March 2015.

44 - Art. 25 of the Rome Statute. Although the International Criminal Court can only condemn physical persons, the content of this article enables us to identify the material conditions for establishing criminal responsibility that are generally recognised by States as well as the methods for establishing criminal responsibility at international level.

45 - This notion is developed in the jurisprudence of international courts, i.e. see: Simić (ICTY Appeals Chamber), 28 November 2006, para. 85; Blagojevic and Jokic (ICTY Appeals Chamber), 9 May 2007, para. 127; Blaskic (ICTY Appeals Chamber), 29 July 2005, paras. 45-46; Vasiljevic (ICTY Appeals Chamber), 25 February 2004, para. 102; and Ntagerura (ICTR Appeals Chamber), 7 July 2006, para. 370. See also: Yearbook of the International Law Commission, 1996, vol. II, Part Two, document A/51/10, p. 22, para. (11), available online at http://legal.un.org/ilc/documentation/english/reports/a_51_10.pdf

46 - See FIDH, *Guide for Victims and NGOs on Accountability and Redress mechanisms*, available online at <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/updated-version-corporate-accountability-for-human-rights-abuses-a>

47 - Referred to as ‘soft law’, as it is non-binding and with no accompanying sanctions as opposed to international law or so-called ‘hard law’ which entails sanctions in the event of any violation.

48 - See FIDH, *Guide for Victims and NGOs on Accountability and Redress mechanisms*, op. cit.

of IHL in situations of conflict or occupation.⁴⁹ This responsibility refers to internationally recognised human rights as a whole.⁵⁰

Under the terms of these principles, companies must exercise reasonable diligence and use their influence to identify, prevent and mitigate adverse impacts on human rights. They must also give an account of the way in which they are remedying the adverse impacts.⁵¹ “Adverse impacts” cover both the real as well as the potential impacts on human rights that companies might have, and to which they might contribute or which are directly linked to their activities, products or services as a result of a business relationship or commercial relations. Reasonable diligence regarding human rights must be exercised on an ongoing basis and must be based on the risks involved.⁵²

When a company cannot prevent or mitigate the negative impacts directly linked to its services via its commercial relationship with another entity, it must terminate this relationship.⁵³ According to the UN Guiding Principles “[l]everage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm”, and according to the OECD Guidelines “[l]everage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts”.⁵⁴

In June 2014, the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises published a notice pointing out that business activities or relations in or linked to Israeli settlements risked having a negative impact on human rights. Furthermore, it pointed out that businesses operating in zones affected by conflicts must provide proof of enhanced due diligence in the matter of human rights and must avoid contributing to human rights violations, including those committed by their suppliers or business relations.⁵⁵

A Human Rights Watch report published in 2016 emphasised that no level of due diligence would be sufficient to shield a company operating within or in contract with the illegal Israeli settlements from contributing to human rights violations.⁵⁶

In March 2014, the EU Member States sitting on the United Nations Human Rights Council (including France) supported the adoption of a resolution urging all States to “to implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to encourage businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, to refrain from committing or contributing to gross human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards”.⁵⁷ In March 2015, the United Nations Human Rights Council adopted a resolution demanding that multinational companies take measures to avoid contributing to the establishment or maintenance of Israeli settlements or the exploitation of the Palestinian Territory’s natural resources, including in East Jerusalem.⁵⁸ More recently, in March 2016, the United Nations Human Rights Council went further by adopting a resolution which called for the creation of a database of all businesses involved in the settlement enterprise.⁵⁹ This resolution was a follow-up to the Report of the International Fact-Finding mission which highlighted that several business activities, including those of banks and the financial operations which help develop, expand or maintain settlements and their activities, constituted human rights violations.⁶⁰

By pursuing their support for the Israeli settlements, the French financial institutions, which are the subject of this report, are contravening the obligations and principles of international law, as set out in the existing legal framework, and are contributing to human rights violations.

49 - For further details, see the May 2015 report, “Orange’s Dangerous Liaisons in the Occupied Palestinian Territory”. https://www.fidh.org/IMG/pdf/rapport_orange-eng.pdf

50 - As a minimum those included in the International Charter of Human Rights (which comprises the Universal Declaration of Human Rights and the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights) and in the Declaration on Fundamental Principles and Rights at Work by the International Labour Organisation. UN Guiding Principles 11 and 12; OECD Guidelines, Chapter II, paragraph 2 and Chapter IV, Commentary).

51 - UN Guiding Principles 19.

52 - UN Guiding Principles 17; OECD Guidelines, Chapter II, paragraphs 11 and 12 and commentary

53 - The OECD Guidelines understand “contributing to adverse impacts” to mean “an activity that causes, facilitates or incentivises another entity to cause an adverse impact”. To avoid contributing to adverse impacts on human rights, including impacts relating to business relations, companies must use their leverage and intercede with the entity responsible to prevent and mitigate these adverse impacts.

54 - See Orange Report, “Orange’s Dangerous Liaisons in the Occupied Palestinian Territory”. https://www.fidh.org/IMG/pdf/rapport_orange-eng.pdf, op. Cit.

55 - Ibid.

56 - HRW, Occupation Inc., January 2016, <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian>

57 - Human Rights Council, 25th Session, point n. 7 of the agenda: «Human rights situation in Palestine and other occupied Arab territories»

58 - http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_28_L33.pdf (accessed 15/12/2016)

59 - http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/31/L.39 (accessed 15/12/2016)

60 - UN Human Rights Council, “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, UNHRC 22nd Session, Agenda Item 7 (7 February 2013). Online: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC-22-63_en.pdf.

Obligations of the French State

Under international humanitarian law, States are obliged to refuse to recognise as legal any situation arising from a serious violation of international law. Nor may a State aid or assist the maintenance of such a situation and they must cooperate to put an end to any serious violation. Moreover, according to the UN Guiding Principles, a State is also specifically obliged to take all measures to ensure that human rights are respected by all entities under its jurisdiction. This duty has equal implications for violations committed beyond its territory. Appropriate measures must be adopted in order to prevent these infringements, investigate them when they do occur, punish the perpetrators and provide access to remedy.

Reminding States of their obligations, the UN Guiding Principles specify that States where multinational business enterprises are domiciled play an even more important role in situations where the host State is an occupying power.⁶¹ This was confirmed by the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises. In its notice dated 6 June 2014, it pointed out the key role played by home States of transnational corporations operating in occupied territories, where the occupying State may be unwilling or unable to protect human rights effectively.⁶²

France is the first country to acquire a legislative framework on the duty of parent and contracting companies to exercise due diligence. According to this law, the banks subject to this new obligation to exercise diligence must establish and implement diligence strategies designed to identify in advance the risks to which they are exposed, particularly those relating to human rights abuses. This obligation is incumbent on the whole business group, including subsidiaries, as well as on subcontractors and suppliers with whom commercial relations are established. Any failure to abide by this obligation entitles any interested party to take action and formally demand that the business complies, and to submit the matter to a judge for a court order forcing the business to respect the said injunction. This new legislation relating to the duty of due diligence will enable victims of human rights abuses or any interested party to take action in the French courts and to point to the responsibility of the parent company for failing to adopt or comply with its strategy of due diligence.

EU POLICY OF 'DIFFERENTIATION'

To comply with international law and to avoid recognising as legitimate a situation created by a serious violation of international law, the European Union and its Member States are in the process of implementing a policy of territorial differentiation. The policy involves establishing a clear distinction between Israel and its the Israeli settlements in the Occupied Palestinian Territory, which are illegal and do not form part of the territory of Israel.¹

In July 2013, the European Commission took the step of making its non-recognition explicit by adopting Guidelines² that make Israeli entities established in the territories occupied by Israel since 1967 ineligible for European Union grants, awards or financial instruments.³ Furthermore, the Guidelines also exclude entities established within Israel, when they undertake activities within occupied territories.⁴

Territorial differentiation, which results from the application of international law, is also directed at businesses, including banks and insurance companies. Twenty European countries have warned companies of the legal, economic and reputational risks of maintaining financial or economic links directly or indirectly with the Israeli settlement enterprise.⁵ This is notably the case with France via the recommendations published on the website of the French Ministry of Foreign Affairs and International Development.⁶

A further EU territorial differentiation measure was the publication in November 2015 of *the Interpretive Notice on indication of origin of goods from the territories occupied by Israel since June 1967*, an Explanatory Note on EU legislation requiring the wording "Israeli Settlement" or equivalent to be included on the labelling of agricultural and cosmetic products to indicate they originated in the Israeli settlements.⁷ This regulatory text was taken up by France in November 2016 in a "Notice to Economic Operators" published by the Ministry of Economy and Finance.⁸

1 - [http://www.ecfr.eu/page/-/ECFR_194 - EU DIFFERENTIATION AND THE PUSH FOR PEACE IN ISRAEL-PALESTINE \(1\).pdf](http://www.ecfr.eu/page/-/ECFR_194_-_EU_DIFFERENTIATION_AND_THE_PUSH_FOR_PEACE_IN_ISRAEL-PALESTINE_(1).pdf) (accessed 25/11/2016)

2 - European Commission, Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards, 2013/C 205/05, 19 July 2013.

3 - http://eeas.europa.eu/archives/delegations/israel/documents/related-links/20130719_guidelines_on_eligibility_of_israeli_entities_en.pdf (accessed 25/11/2016)

4 - In any case for the funding and only for the activities that take place, in part or entirely, within the occupied territory for the subventions.

5 - For example, in 2016, Germany published guidelines that underline the legal and economic risk for financial transactions and in general for all the economic activities in the settlements, see http://www.ecfr.eu/article/eu_member_state_business_advisories_on_israel_settlements

6 - <https://www.legifrance.gouv.fr/affichTexte.do>

7 - [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015XC1112\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015XC1112(01))

8 - https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=AE9D6C55B501756D63EBDF11A39F4D43tpdila09v_2?cid_Texte=JORFTEXT000033464109&date_Texte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000033463474

61 - The United Nations Guiding Principles on Business and Human Rights, Principle 7, p. 8. They affirm that "the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses", notably by supporting business enterprises to identify, prevent, assess and address the risks.

62 - Working Group on the issue of human rights and transnational corporations and other business enterprises, op. cit.



FRENCH BANKS'
DANGEROUS LIAISONS
WITH THE ISRAELI
SETTLEMENT
ENTERPRISE

2.
HOW FRENCH BANKS
ARE INVOLVED
IN ISRAELI
SETTLEMENT
EXPANSION

ISRAELI BANKS AND BUSINESSES – KEY PLAYERS IN SETTLEMENT EXPANSION

The Israeli government is responsible for the settlement enterprise in the Palestinian Territory as it decides, approves and finances plans for settlement expansion, offers a range of grants and incentives for the settlement process (economic and financial advantages, privileged access to essential services, natural resources and quality infrastructure) and provides protection and impunity for the settlers at the expense of the occupied population.⁶³

Over and above the Israeli government's responsibility, Israeli banks and businesses that supply services and infrastructure and generate activities in the Israeli settlements are also responsible for maintaining and developing the Israeli settlements. In 2013, the *United Nations 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 Territory including East Jerusalem* condemned the pivotal role of Israeli banks in the settlement enterprise and the consequences in terms of human rights violations.⁶⁴

Thus, Israeli banks, such as Bank Hapoalim, Bank Leumi, First International Bank of Israel, Israel Discount Bank and Mizrahi Tefahot Bank, supply the necessary financial infrastructure for activities in the settlements undertaken by government agencies, companies and individuals.⁶⁵ In particular, they grant mortgages to private individuals and loans to companies for property construction in the settlements. They also supply financial services to local authorities in the settlements as well as to businesses with activities there. In some cases, they have a physical presence in the settlements in the form of local branches.⁶⁶ This is the case, for example, with Bank Hapoalim which has business branches in the settlements of Ariel, Beitar Illit, Modi'in Illit, Ma'ale Adumim, Pisgat Ze'ev, Gilo and Ramot.⁶⁷

Furthermore, the settlements cannot be maintained and developed without a whole range of services supplied by Israeli companies. For example, the public company Israel Electric Corporation (IEC) supplies the Israeli settlements with electricity.⁶⁸ Bezeq, Partner and Cellcom supply them with telecommunications services such as mobile communications, internet connectivity and 4G networks. Cellcom after-sales service centres are located in the settlements of Ariel, Modi'in Illit and Beitar Illit in particular.⁶⁹

Elbit Systems, a company specialising in the production of military equipment, is the main supplier of surveillance equipment for the separation wall, which is considered illegal by the International Court of Justice and which remains Israel's central tool for restricting the movement of Palestinians and annexing further lands for the purpose of settlement expansion.⁷⁰ The Israeli construction company Shikun & Binui is directly involved in the construction of housing in the Ma'ale Adumim and Homat Shmuel settlements and a factory in the settlement of Kiryat Sefer.⁷¹ The company Delek supplies fuel through its network of service stations in the Israeli settlements of Alfei Menashe, Ariel, Givat Ze'ev and Neve Ya'akov, among others.⁷²

63 - https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp160-jordan-valley-settlements-050712-en_1_4.pdf (accessed 28/11/2016)

64 - UN Human Rights Council (2013, March 22), 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, Twenty-second session, Agenda item 7, p.20.

65 - Who Profits (2010, October), Financing the Israeli Occupation, Tel Aviv, Israel: Coalition of Women for Peace; Who Profits (2013, November), Financing the Israeli Occupation - The Current Involvement of Israeli Banks in Israeli Settlement Activity, Tel Aviv, Israel: Coalition of Women for Peace.

66 - <http://www.whoprofits.org/content/financing-israeli-occupation> (accessed 26/11/2016)

67 - <http://www.whoprofits.org/company/hapoalim-bank> (accessed 29/11/2016)

68 - <http://energy.gov.il/Subjects/Electricity/Pages/GxmsMniElectricityJudeaandSamaria.aspx> (accessed 28/11/2016)

69 - <http://whoprofits.org/company/cellcom-israel> (accessed 29/11/2016)

70 - <http://whoprofits.org/company/elbit-systems> (accessed 29/11/2016)

71 - Government Global Pension Fund Council on Ethics (21 December 2011), "Recommendation for exclusion of Shikun & Binui Ltd from the Government Pension Fund Global (GPF)", p.3, and http://en.shikunbinui.co.il/category/sole_boneh_logistics (accessed March 2016)

72 - <http://www.whoprofits.org/company/delek-israel-fuel> (accessed 15/12/2016)

FRENCH BANKING AND INSURANCE FINANCIAL LINKS WITH SETTLEMENT PLAYERS

Despite the clear involvement of these Israeli banks and companies in the development of Israeli settlements in the Occupied Palestinian Territory, French financial institutions persist in supporting them financially, thus supporting violations of international law. Our investigation revealed financial links between these Israeli entities and the following French banking groups: BNP Paribas, Société Générale, Crédit Agricole and its subsidiary LCL, BPCE and its subsidiary Natixis and AXA.

Yet all these financial institutions have a policy of corporate social responsibility and several of them have declared that they support and comply with the United Nations Guiding Principles on Business and Human Rights.⁷³

HUMAN RIGHTS COMMITMENTS ALREADY MADE BY FIVE FRENCH BANKS AND INSURANCE COMPANIES

All the financial institutions in this report have given undertakings relating to respecting human rights and have subscribed to one or more of the following voluntary, non-binding directives: the United Nations Global Compact, the OECD Guidelines and the UN Guiding Principles.

BNP Paribas “is committed to the protection and respect of internationally recognised Human Rights standards. It shall uphold respect for these rights in all its activities, in all the countries in which it operates and in all the dealings that it maintains with its employees, its supply chain, its clients and the communities in which it operates.”¹

Credit Agricole wishes to provide “proof of due diligence towards its clients [...] in order to avoid being directly or indirectly unwillingly complicit in human rights abuses.”²

Natixis is a signatory of the United Nations Global Compact and indicates that “[o]ur commitment to human rights [...] was confirmed by Natixis’ CEO in July 2014.”³

Société Générale has adopted Environmental and Social General Guidelines for Business Engagement and sectorial and cross-sectorial policies: “the Universal Declaration of Human Rights and associated covenants (namely the International Covenant Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights); [...] the OECD Guidelines for multinational enterprises and the Ruggie principles; the UN Global Compact.”⁴

The AXA group gives a commitment to “respecting internationally recognized human rights principles as defined by the United Nations Universal Declaration of Human Rights, the core standards of the International Labour Organization and the Guiding Principles for the implementation of the United Nations ‘Protect, Respect and Remedy’ Framework (‘Ruggie Principles’).”⁵

1 - BNP Paribas, Corporate Social Responsibility, BNP and Human Rights, available at: https://group.bnpparibas/uploads/file/uk_declaration_bnp_sur_droit_de_l_homme.pdf

2 - Crédit Agricole, Charte des Droits Humains dans l’entreprise Groupe Crédit Agricole S.A, available in French at: http://www.uncepourtout.fr/fs/Accords/8xopa-Charte_des_droits_humains_dans_l_entreprise_groupe_CASA.pdf

3 - Natixis, “Commitments”, available at: https://www.natixis.com/natixis/jcms/ala_5403/en/commitments

4 - Société Générale, Environmental and Social General Guidelines, available at <https://www.societegenerale.com/sites/default/files/2016/environmental-and-social-general-guidelines-oct2016.pdf>

5 - AXA, “Our commitment to human rights”, available at <https://www.axa.com/en/about-us/our-commitment-to-human-rights>

INVESTORS WITHDRAWING FROM FINANCING ILLEGAL ISRAELI SETTLEMENTS

To comply with international law, a number of foreign public and private financial institutions have publicly decided to curtail all current and future investment in Israeli banks and businesses involved in the settlement enterprise.

In 2010, the Council of Ethics of the Norwegian Government Global Pension Fund added Shikun & Binui and Elbit Systems to their blacklisted companies.

In December 2013, the Netherlands pension fund PGGM, belonging to PFZW, the biggest pension fund group in the Netherlands, added five Israeli banks (Bank Hapoalim, Bank Leumi, First International Bank of Israel, Israel Discount Bank and Mizrahi Tefahot Bank) to their exclusion list as a result of their involvement in Israeli settlements. This decision followed the refusal of these banks to cease financing activities in the Israeli settlements, despite the concerns repeatedly voiced by the Netherlands pension fund regarding violations of international law.

In 2014, the Luxembourg pension fund FDC divested from these five Israeli banks for the same reason. The same year, the Finnish Danske Bank and the German Deutsche Bank Ethical Fund blacklisted Bank Hapoalim. More recently, in January 2016 the pension fund of the Methodist Church in the United States, valued at 20 billion dollars, withdrew from Bank Hapoalim and Bank Leumi and added the five banks to its exclusion list as a result of their direct contribution to Israeli settlement.

Stichting Pensioenfondszorg en Welzijn (2014, April), Annual Report 2013, p.59,60;

Stichting Pensioenfondszorg en Welzijn (2015, April), Annual Report 2014, p.46.

73 - CCFD and others, responses to questionnaire issued to C40 companies on the Guiding Principles, available at <http://ccfd-terresolidaire.org/IMG/pdf/questionnaire-entreprisescac40.pdf>

French banking and insurance groups holding or managing shares in Israeli banks and businesses

Support from French financial groups takes the form of direct or indirect minority shareholdings in the capital of Israeli banks and businesses. The table below summarises the financial links between French banking and insurance companies and Israeli entities in the form of shareholdings or management of shares.

| French banks with shares in Israeli entities | | BNP Paribas Group | Crédit Agricole Group | BCPE Group | Société Générale Group | AXA Group |
|---|------------------------------------|-------------------|-----------------------|------------|------------------------|-----------|
| Israeli entities directly involved in Israeli settlements | Bank Hapoalim | X | X | X | X | X |
| | Bank Leumi | | X | X | X | X |
| | First International Bank of Israel | | X | | | |
| | Israeli Discount Bank | | X | X | | |
| | Mizrachi Tehafot Bank | | X | X | X | X |
| | Bezeq | | X | X | X | |
| | Cellcom | X | X | | | |
| | Elbit Systems | | X | X | | X |
| Shikun& Binui | | X | | | | |

A cross indicates a financial relationship in the form of French banks' minority holdings in Israeli entities or management of their shares, on their behalf or on behalf of third parties. Detailed totals are available in the full Profundo investigation document which can be found in the following link.⁷⁴

Any investment of whatever amount by French banks in Israeli entities constitutes a commercial relationship as understood by the UN Guiding Principles. In the UN's clarification of how the Guiding Principles may be applied, Guiding Principle 13(b) makes clear that "the Guiding Principles apply to institutional investors holding minority shareholdings" of the companies concerned and that these "minority shareholdings [...] constitute a 'business relationship'".⁷⁵ This means that, for the purposes of this Principle, "investors would be expected to seek to prevent or mitigate human rights risks identified in relation to shareholdings" and "[i]f efforts in this regard are not successful, [...] the institutional investor should consider ending the relationship."⁷⁶

In view of the infringements of Palestinians' fundamental rights by many Israeli entities and considering that the French banks and insurance companies, as minority shareholders, are not in a position to prevent or mitigate the negative impacts and are not able to enhance their leverage, they must bring their economic relations with these entities to an end.

By refusing to comply with these principles and by persisting in financing the Israeli entities involved in the settlement enterprise, the French banks are failing to respect the United Nations Guiding Principles and are indirectly contributing to maintaining and developing a situation recognised as illegal under international law.

Settlement development projects receiving French financing

Support for settlement expansion by French finance groups is also evident in the form of loans granted to companies to fund specific projects. In 2004, four French banks – BNP Paribas, Société Générale, LCL (subsidiary of the Crédit Agricole Group) and Natixis (subsidiary of the Banques Populaires-Caisse d'Épargne Group) – as part of a consortium of international banks directed by Deutsche Bank, signed four loan agreements totalling 288 million euros with Israel Electric Corporation (IEC).

74 - <http://www.fairfinancefrance.org/media/373618/links-between-french-banks-and-companies-profit-from-the-occupation-of-160628.pdf> and <http://www.fairfinancefrance.org/media/373619/links-between-french-fis-and-israeli-banks-160614.pdf>

75 - United Nations Office of the High Commissioner of Human Rights (2013, April 26), *The issue of the applicability of the Guiding Principles on Business and Human Rights to minority shareholdings – letter to SOMO*, p. 3, 4, and 6.

76 - Ibid.

These loans, which are due to be paid back in 2020, are to finance a project to extend two of IEC's gas-powered electricity plants. The decision by French banks to grant this financing to IEC is closely linked to the fact that the work is being carried out by the French company Alstom in partnership with the German company Siemens AG.

The link between the French banks and IEC is problematic given that IEC:

- (1) supplies the Israeli settlements with electricity and thus promotes their continuation and expansion⁷⁷;
- (2) has been accused on several occasions of imposing total electricity blackouts in Palestinian towns and cities such as Nablus and Jenin as well as in Gaza. These power cuts are potentially part of collective punitive measures and as such are prohibited by international humanitarian law.⁷⁸

The loans granted by the French banks to IEC for the expansion of its plants by Alstom and Siemens AG thus contribute to ensuring IEC's activities continue in the Occupied Palestinian Territory and thereby contribute directly to maintaining and developing the settlements.

By persisting with financing the project, BNP Paribas, Société Générale, LCL and Natixis have manifestly failed to assume their responsibilities in accordance with the OECD Guidelines and the UN Guiding Principles, namely conducting enhanced due diligence for activities in conflict zones and, where necessary, bringing an end to financial relations with entities involved in human rights abuses (Principle 19 of the UN Guiding Principles). Regarding the obligations under international law to protect, respect and fulfil human rights, the French State is bound to require businesses and banks with head offices in France to respect human rights. It is also obliged to ensure that non-State players, whom it is in a position to regulate, such as private individuals, organisations, transnational companies and other enterprises coming under its jurisdiction, do not impinge on the full exercise of economic, social and cultural rights, including in their operations involving any extra-territorial outcome or impact. This is further reinforced by the fact that the France has undertaken to implement the UN Guiding Principles.

According to the UN Guiding Principles, States must ensure their policies are consistent. In particular, they must supply information, training and support necessary to State bodies and other public institutions, such as public investment and development banks, export credit agencies or government shareholding agency, which have the capacity to influence the behaviour of companies and to this end must act in compliance with the State's human rights obligations.⁷⁹

77 - <http://energy.gov.il/Subjects/Electricity/Pages/GxmsMniElectricityJudeaandSamaria.aspx> (accessed 28/11/2016)

78 - <http://www.alhaq.org/publications/publications-index/item/the-unlawful-seizure-of-palestinian-taxes-israel-s-collective-punishment-of-a-people> (accessed 29/11/2016).

79 - United Nations Guiding Principles on Business and Human Rights, Principle 8, p. 12.

FRENCH BANKS'
DANGEROUS LIAISONS
WITH THE ISRAELI
SETTLEMENT
ENTERPRISE

3.
CONCLUSION
AND RECOMMENDATIONS

In spite of the provisions of international law regarding the illegal nature of settlement expansion, the European Commission's guidelines, the French government's notices on financial investments that benefit the settlements and the resolutions by the United Nations Human Rights Council calling for the implementation of the United Nations Guidelines on Business and Human Rights, the French banking groups persist in financially supporting Israeli banks and enterprises with activities in the Israeli settlements.

By participating in this way in the maintenance and development of the illegal settlement of the Occupied Palestinian Territory, BNP Paribas, Société Générale, Crédit Agricole (and its subsidiary LCL), BPCE (and its subsidiary Natixis) and AXA are helping perpetuate a situation that infringes the right to self-determination and the fundamental rights of the protected Palestinian population, notably through exploitation of natural resources, destruction of personal property and humanitarian aid, transfer of protected persons and restrictions on movement and access to necessities and essential services.

French banking institutions, by continuing to finance the entities that are a driving force behind the illegal settlement policy, are in violation of the OECD Guidelines and the United Nations Guiding Principles on Business and Human Rights, and are an obstacle to the two-State solution, unanimously recognised by international entities and supported by the French government in the peace negotiations.

The French State also has a responsibility for the maintenance of this illegal situation given its silence regarding the activities carried out by the French banks and insurance companies in which it owns shares and which have their registered offices in France. This failure is all the more unacceptable in view of the fact that the banking activities in question go entirely against the French government's international commitments and its diplomatic efforts to bring about a two-State solution and establish just and lasting peace.

RECOMMENDATIONS TO FRENCH BANKS AND INSURANCE COMPANIES

(1) Immediately end all current links between French banks and insurance companies and the Israeli settlement in the occupied territory

We urgently demand that French banking and insurance companies put an immediate end to all financial support that facilitates the existence and expansion of illegal Israeli settlements in the Occupied Palestinian Territory. In particular, we are demanding:

- Their immediate and public withdrawal from all financial participation – i.e. the holding or management of shares — in the Israeli banks and companies involved in the Israeli settlements.
- Their undertaking not to renew the loan granted to Israel Electric Corporation for the project to extend the gas-powered electricity plants carried out by Alstom and Siemens AG;

(2) Develop a policy of excluding entities involved in Israeli settlements in the future

We urge all French banking groups to henceforth apply enhanced due diligence and to develop a policy towards business enterprises, financial and otherwise, which support Israeli settlement in the Occupied Palestinian Territory. This policy should ensure that the UN Guiding Principles and the OECD are implemented and should, as a minimum, signal:

- The absence of all support in the form of financial instruments for Israeli companies and banks involved in Israeli settlements in the Occupied Palestinian Territory.
- The cessation of all direct financing (all transactions and loans devoted to project finance) linked to maintaining and developing the settlements, whatever the nationality of the business enterprise concerned.
- The drafting and implementing of an effective strategy for vigilance, as set out in the legislation on due diligence for parent and contracting companies.

RECOMMENDATIONS TO THE FRENCH GOVERNMENT

In line with its vote in support of resolution 2334 (2016) of the UN Security Council against the settlement enterprise, we urgently demand that the French State respect its international commitments, in particular its duty to protect human rights and to ensure that non-State actors, whom it is in a position to regulate, such as private individuals and organisations and transnational companies and other enterprises coming under its jurisdiction, do not impinge on the full exercise of economic, social and cultural rights, including in their operations involving any extra-territorial result or impact. In particular, we demand that the French State:

- Engage with French banks and businesses, particularly those cited in this report, so that they withdraw without delay from any financial links with the Israeli banking system and, more broadly, from any links with the Israeli settlement enterprise.
- To this end, reinforce through the Ministry of Foreign Affairs and International Development, its notice to businesses in all sectors, explicitly advising them against investing in the settlement enterprise. The reinforcement measures may take the form of a legislative proposal prohibiting businesses in all sectors from investing in the settlements.
- Effectively implement the UN Guiding Principles by actively supporting and participating in the process of drafting up a legally binding international treaty to regulate the activities of transnational companies and other businesses within the framework of international human rights and notably:
- Enforce the law relating to due vigilance on the part of parent and contracting companies;
- Draft a coherent and ambitious National Action Plan to implement the UN Guiding Principles, based in particular on the opinion of the Government's Corporate Social Responsibility Platform, adopted in September 2016.⁸⁰ Particular attention must be paid to the question of access to justice and to applying the Guiding Principles in areas at risk.



Al-Haq – Defending human rights in Palestine since 1979

Al-Haq is an independent Palestinian non-governmental human rights organization based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory, the organization has special consultative status with the United Nations Economic and Social Council. Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before local, national and international authorities and by holding the violators accountable. Al-Haq also cooperates with Palestinian civil society organizations and government institutions in order to ensure that Palestinian laws and policies are compliant with international human rights standards. The organization has a library specializing in international law, which can be used by local communities. Al-Haq is member of the International Commission of Jurists (ICJ), the World Organization against Torture (OMCT), the Euro-Mediterranean Human Rights Network (EMHRN), the International Federation for Human Rights (FIDH), the Habitat International Coalition and the Palestinian NGO Network (PNGO).



Association France Palestine Solidarité (AFPS – France-Palestine Solidarity Association)

The AFPS was founded in May 2001 from the Association Médicale Franco Palestinienne (Franco Palestinian Medical Association) and the Association France-Palestine (France-Palestine Association). It has 4900 members. The aim of the AFPS is to support the Palestinian people, in particular in its struggle to obtain international legal recognition as a nation. It brings together individuals who believe in the right of people to self-determination and in the defence of human rights. It works alongside the Palestinian people and their legitimate representatives for real and lasting peace based on the application of international law.



Comité Catholique contre la Faim et pour le Développement (CCFD-Terre Solidaire – Catholic Committee against Hunger and for Development)

The catholic committee against hunger and for development-Terre Solidaire is the premier development NGO in France. It received state recognition in 1984 and was given the Cause of National Importance in 1993 and has consultative status at the UN Economic and Social Council. For over 50 years CCFD-Terre Solidaire has worked to reduce hunger in the world via three modes of operation – international development projects run with local partners, raising awareness and understanding of development amongst the French public, and advocacy with French and European political and economic decision makers.



Confédération Générale du Travail (CGT – General Confederation of Labour)

The CGT has 690,000 members, is affiliated to the European Trade Union Confederation and the International Trade Union Confederation and is one of France's representative confederate trade-union organizations. Through its analysis, proposals and initiatives it strives to ensure that ideals of freedom, equality, justice, secularity, fraternity and solidarity prevail in society. It fights to translate these ideals into individual and collective guarantees: the right to training, employment and social protection; the right to live with dignity at work, at home and in the community; the right to freedom of opinion and expression; and the right to act through a trade union, to strike and to participate in social and economic life at work and in society. At the international level it is involved in major projects promoting solidarity and focuses on sustainable human development.



Fair Finance France

Fair Finance France, member of the global network Fair Finance Guide International, investigates major French banks' policies, investments and practices and exposes their impacts on population across the world, with the aim of holding banks more transparent and accountable to social and environmental standards.



Fédération Internationale des ligues des Droits de l'Homme (FIDH – International Federation for Human Rights)

FIDH is an international human rights NGO federating 184 organizations from 112 countries. Since 1922, FIDH has been defending all civil, political, economic, social and cultural rights as set out in the Universal Declaration of Human Rights. FIDH acts in conjunction with its member and partner organisations. Its primary means of action are: alerting, documenting and mobilising actors of local change; capacity building and experience exchanges for national NGOs; and international advocacy and litigation. Its actions are founded on three strategic pillars: securing the freedom and capacity to act for human rights defenders, the universality of rights and their effectiveness.



Ligue des droits de l'Homme (LDH – Human Rights League)

Founded in 1898, the LDH is a free and independent civil organization. It fights injustice, racism, sexism, antisemitism and discrimination of all types and defends liberties. The LDH is a generalist association. It acts alongside operators in the solidarity-based social economy and promotes corporate social responsibility and improvements in public services. In order to develop, people need effective civil and political rights and economic, social, cultural and ecological rights. The LDH considers that rights reinforce one another.

Along with the FIDH and the European Association for the Defence of Human Rights (AEDH) it endeavours to get the struggle for human rights and the observance of international law written into European Union documents.



Union Syndicale SOLIDAIRES

The Union syndicale Solidaires includes 100,000 members, it is active in many sectors including French banks. It acts in France to defend the material and moral interests of workers and social transformation : for wages, employment, social protection, to improve working conditions, rights and freedoms, for ecological transition, equality, social justice and other distribution of wealth. It works with workers and people at international level according to its traditions of solidarity, anti-racism, and its fights for freedom and peace. It is a member of several associations supporting Palestinian people.



Part of this report has been supported by the Swedish Agency for International Development. However, the content of this report relies solely on the responsibility of signatories organisations and it does not reflect the official position of the Swedish Agency for International Development and its services.

Auteurs : AL-HAQ, AFPS, CCFD - Terre Solidaire, CGT, FAIR FINANCE FRANCE, FIDH, LDH, Union Syndicale SOLIDAIRES.

Realisation : Espace information et communication of the CGT

Legal deposit : Mars 2017