

# ORANGE'S DANGEROUS LIAISONS IN THE OCCUPIED PALESTINIAN TERRITORY

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Union  
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ORANGE'S  
DANGEROUS  
LIAISONS IN  
THE OCCUPIED  
PALESTINIAN  
TERRITORY

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# METHODOLOGY

This report is based on information gathered during meetings and field missions by some of the organizations authors of this report, and on public information including corporate documents (annual reports and communication documents), institutional websites, reports from international organizations, press articles, reports by civil society organizations (CSOs) including Israeli and Palestinian CSOs. This work is also based on citizen mobilization campaigns.

The information has been selected, cross-checked and supplemented by analytical work by the authors of this report. Contacted in writing by the authors, Orange and the French government have so far not responded. On 28<sup>th</sup> April, as this report was being finalized, Orange contacted the organizations who wrote this report to arrange for a meeting. The authors' latest meeting request was sent on 20 February 2015.



Partner Communications mast, located in the Migron outpost.

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1.

EXECUTIVE  
SUMMARY

The United Nations, the European Union and the French government have all declared that the Israeli settlements in the Occupied Palestinian Territory (OPT) are illegal under international law<sup>1</sup>. The creation and expansion of settlements have led to numerous violations of international humanitarian law and human rights violations of Palestinian people, including forcible transfer of Palestinian communities, appropriation of land, direct and indirect transfer of Israeli nationals into occupied territory, destruction of public and private property, exploitation of natural resources, restrictions on freedom of movement and access to means of subsistence and essential services, obstacles to economic development and denial of the right to self-determination, and the establishment of discriminatory practices and legal system against Palestinians. Elements of these practices could amount to war crimes according to article 8 of the Statute of the International Criminal Court (ICC)<sup>2</sup>.

Partner is an Israeli telecommunications company that operates and conducts business activities and make benefits in the Israeli settlements. Partner owns nearly two hundred telecommunications towers built on private land confiscated from Palestinians, it offers its services to settlers and to the Israeli army, and benefits from the restrictions imposed on the Palestinian economy<sup>3</sup>. Partner's operations in illegal Israeli settlements may be considered a material contribution to the economic viability and the maintenance of settlements, and thus Partner could be considered as benefiting from and contributing to the perpetuation a situation that is deemed illegal by the international community and that involves breaches of international humanitarian and human rights law.

Orange, in which the French State is a shareholder, maintains a business relationship with the Israeli company Partner and thus exposes itself to reputational risks for being associated with a company (including through its support to Partner) that can be involved in human rights violations.

This business relationship with Partner is based on a brand-licensing agreement signed in 1998, renewed in 2011 and amended in 2015<sup>4</sup>. This agreement allows Partner to use the Orange brand and image in exchange of royalties, and is the basis for Partner's marketing and competition strategy<sup>5</sup>. The relationship between Orange and Partner is thus contractual and commercial, and constitute a 'business relationship' as defined both by the OECD Guidelines for Multinational Enterprises<sup>6</sup> and the UN Guiding Principles on Business and Human rights<sup>7</sup>.

1. See in particular, United Nations General Assembly, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*, A/RES/68/82, 11 December 2013 ; EU Council of Ministers, December 2013; French Ministry of Foreign Affairs, *Israël/Territoires palestiniens - Condamnation de la construction de nouveaux logements dans les colonies*, 6 February 2014; International Court of Justice, *Legal consequences of building a wall in the Occupied Palestinian Territory*, 9 July 2004.

2. See for example Article 8 (2) (b) (viii), Rome Statute of the International Criminal Court, 17 July 1998.

3. Who Profits, "Partner Communications (Orange)", available at <http://www.whoprofits.org/company/partner-communications-orange>; Who Profits, "The Cellular Companies and the Occupation", August 2009, available at <http://www.whoprofits.org/content/cellular-companies-and-occupation>; World Bank, *West Bank And Gaza Telecommunications Sector Note : Introducing Competition In The Palestinian Telecommunications Sector*, January 2008.

4. Partner Communications, "Partner communication announces an amendment to the brand licence agreement", press release, 9 April 2015, available at <http://www.nasdaq.com/press-release/partner-communications-announces-an-amendment-to-the-brand-license-agreement-20150409-00046>

5. Partner Communications, 2013 Annual Report, Form 20-F, 10 March 2014, available at <http://www.orange.co.il/PageFiles/10890/20-F2013.pdf>: "Our marketing strategy relies on using the international Orange brand. If our brand license agreement terminates or is revoked, we will lose one of our main competitive strengths. [...] If we lose the use of the Orange brand, we would lose one of our main competitive strengths and have to create and position a new brand, which could require substantial time and financial resources. As a result, our business and results of operation may be negatively affected".

6. OECD Guidelines for multinational enterprises, ed. 25 May 2011, Note on the general principles, p. 23.

7. United Nations Guiding Principles on Business and Human Rights, A/HRC/17/31, Principle n°13, Commentary, p. 17.

According to these international instruments, such a business relationship entails responsibilities for Orange to ensure respect for human rights and other international law including by undertaking appropriate due diligence<sup>8</sup>.

The authors of this report have demanded that Orange end its business relationship with Partner numerous times, including before the renewal of the brand-licensing agreement between Orange and Partner in 2011 and its amendment in 2015<sup>9</sup>. Since February 2010, Orange has been aware of the risk of adverse impacts resulting from its existing business relationship with Partner. In response to these appeals, Orange systematically denied responsibility. According to one of Orange's directors, UN Security Council resolutions and international humanitarian law do not apply to private individuals and business enterprises<sup>10</sup>. One Orange executive even went as far as to claim that the Orange brand had been 'usurped' in Israel<sup>11</sup>. Orange has repeatedly stated that it cannot terminate its contract with Partner "in sound legal conditions"<sup>12</sup>. In an October 2014 letter to the trade unions that authored this report, Orange referred to requests it had made of Partner about its human rights record, for the first time. These requests are inadequate and fall short of the necessary steps Orange is required to adopt to meet its responsibilities under the OECD Guidelines and the UN Guiding Principles, resulting in Orange acting in breach of these guidelines.

The role of the French State in this case should also be examined on two counts.

As Orange has its headquarters in Paris and has a business relationship in a conflict-affected area, in light of its international obligations under international humanitarian law and human rights law (including the obligation to protect against violations committed by third parties), and in view of its commitment to implement the UN Guiding Principles mentioned above, France must demand that Orange respect human rights.

The French Ministry of Foreign Affairs affirmed the illegality of the Israeli settlements and has recently published an advisory warning businesses and individuals of the "legal and reputational risks" associated with economic and financial operations in the OPT<sup>13</sup>. France is also diplomatically committed to the actual establishment of a Palestinian State and provides aid to the Palestinian Authority, including for development projects<sup>14</sup>. In its 6 June 2014 statement on the implementation of the UN Guiding Principles on Business and Human Rights in the OPT, the United Nations Working Group on Business and Human Rights recalled the important role played by home States of multinational business enterprises which operate in the settlements,

8. See in particular, *Ibid.*, Principles n° 13, Note, pp. 17-18; OECD Guidelines for Multinational Enterprises, Chapter II, General Principles n° 12 and 13, and Chapter IV, principles n° 1-3, 5, 6.

9. La Fédération, « Le cas Partner : violation du droit international pour le téléphone mobile ! », *Journal de la Fédération des activités postales et de télécommunications (FAPT) de la CGT*, n° 508, February 2010, p. 13 ; SUD PTT leaflet, 5 January 2011; Letter from the chairman of the AFPS (Association France Palestine Solidarité) to Stéphane Richard, Chairman and CEO of France Télécom Orange, 13 October 2011; Challenges after the renewal: The AFPS campaign to mobilize public support in 2012; Public campaign launched by the Collectif National pour une Paix Juste et Durable entre Palestiniens et Israéliens (CNPJDP) in June 2012.

10. Email from Orange to the trade unions author of this report, 3 May 2013.

11. Response from one of Orange's corporate social responsibility executives to the e-mail from the authors, 13 March 2014.

12. See the questions and answers at the General Meeting of FT-Orange shareholders on 5 June 2012, and a letter from Orange in May 2013

13. French Ministry of Foreign Affairs, « Conseils aux voyageurs : Israël/Territoires palestiniens », updated 17 November 2014, available at <http://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays/israel-territoires-palestiniens-12265/>

14. French National Assembly, *Proposition de résolution portant sur la reconnaissance de l'État de Palestine*, 2 December 2014.

particularly in a context where the occupying State may be unable to or unwilling to effectively protect human rights<sup>15</sup>.

The French government is a significant minority shareholder of Orange as it owns 25.05% of the capital. It is the only body that, according to Orange, can exercise control over the company<sup>16</sup>. Of the fifteen members of the Board of Directors of Orange SA, three represent public interests<sup>17</sup>. Therefore, France must ensure policy coherence (to ensure the implementation of recommendations directed to individuals and businesses). France must also take additional protection measures vis-a-vis the activities of enterprises in which it is a shareholder such as Orange, including those arising from the activities of the company's business relationships, and use the leverage of the State in order to ensure that Orange conducts due diligence.



Orange shop located in the Ariel settlement.

15. Working Group on the issue of human rights and transnational corporations and other business enterprises, *Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory*, 6 June 2014, available at <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>

16. The French State holds a total of 25.05% of Orange's shares: 13.45% of the shares are held by the State. See French Ministry of Economy, *Portefeuille de participations cotées de l'État*, 31 March 2015, available at [http://www.economie.gouv.fr/files/files/directions\\_services/agence-participations-etat/Portefeuille\\_cote\\_APE.pdf](http://www.economie.gouv.fr/files/files/directions_services/agence-participations-etat/Portefeuille_cote_APE.pdf); 11.6% by Bpifrance. See Bpifrance, *Succès du placement d'actions orange par bpifrance pour environ 584 millions d'euros*, press release, 1 October 2014, available at <http://www.bpifrance.fr/Actualites-Bpifrance/%28fromDate%29/20-11-2013/%28toDate%29/17-02-2015/%28text%29/orange>. See also Orange, *Document de référence 2013, Rapport Financier Annuel*, p. 385 : « L'État, de concert avec Bpifrance Participations (...) pourrait, en pratique, compte tenu du faible taux de participation aux Assemblées Générales et de l'absence d'autres blocs d'actionnaires significatifs, déterminer l'issue du vote des actionnaires sur les questions requérant une majorité simple. »

17. *Ibid.*

## ORANGE'S DANGEROUS LIAISONS IN THE OCCUPIED PALESTINIAN TERRITORY

# 2. THE PROTAGONISTS



## 2.1. Partner

### 2.1.1. Partner's operations in the Israel-Palestine context

Partner Communications Company Limited, hereinafter referred to as 'Partner', is an Israeli mobile-telephone operator founded in 1997. It was authorized as a telephone operator in April 1998 and began operating in Israel in 1999. Its main owners are now S.B. Israel Telecom Ltd (30,87%), SCAILEX Corporations Ltd. (10,5%), and Israeli shareholders (4,5%), according to the law<sup>18</sup>. It is publicly traded on the New York stock exchange in the NASDAQ Global Select Market<sup>19</sup> and on the Tel Aviv stock exchange<sup>20</sup>.

### 2.1.2. The telecoms sector in the Occupied Palestinian Territory (OPT)

The development of the telecommunications sector in the OPT is limited because the Israeli authorities do not grant building permits to Palestinian companies to install telecommunications infrastructure, and very rarely agree to allocate them frequencies.

Two Palestinian operators have been granted access to 2G frequencies, but not to 3G frequencies. Consequently, Palestinian telecommunications are expensive and coverage is poor. The blocking of 3G is a threat to the viability of the Palestinian telecommunications sector, especially as the Israeli operators have been authorized to develop 3G infrastructure in Area C of the OPT<sup>21</sup>.

These restrictions have had detrimental economic effects causing a loss of revenue for the sector, which loss was estimated by the World Bank to have been \$48m in 2013, which amounts to 0.5% of Palestine's GDP.<sup>22</sup> In December 2012, the Minister of Telecommunication and IT in Palestine, Safa Al-Din, estimated that the percentage of the Palestinian mobile-telephone market captured by Israeli businesses was approximately \$150m a year, i.e. almost 20% of the Palestinian market<sup>23</sup>. The World Bank has indeed pointed to the unauthorized presence of Israeli operators in the OPT: 'A contentious issue emphasized by the PA [Palestinian Authority] in the area of taxation is the leakage of tax revenues from the PA to Israel through unauthorized Israeli mobile operators (Orange, Cellcom, Pelephone and Mirs) operating in the West Bank and Gaza'<sup>24</sup>.

The Israeli authorities also impose strict controls on Palestinian suppliers' imports and exports. It takes a significant amount of time for Palestinian businesses to import equipment, which means that this equipment becomes obsolete soon after its acquisition, resulting in

the widening of the technological gap between Israeli and Palestinian businesses. As a result, Palestinian companies lack competitiveness and Palestinians turn to Israeli companies for mobile-telephone services. According to the World Bank, Israeli companies held between 20% and 45% of the Palestinian mobile-telephone market in 2008<sup>25</sup>. For its part, in its 2012 annual report, Partner mentions that 30% of its clients are non-Israeli<sup>26</sup>.

Finally, Israeli businesses are paid a percentage of the call fee for connecting calls between Palestinian landlines and mobiles, as well as calls between the mobile phones of Palestinian operators and those of Israeli operators. Palestinian operators however depend on the costly services of Israeli businesses for all international calls and for calls between the West Bank and Gaza. These major obstacles limit the quality of the service provided by Palestinian operators and amount to unfair competition by the Israeli operators<sup>27</sup>.

### 2.1.3. The violations of the rights of the Palestinians

#### The involvement of mobile-telephone companies in the occupation and settlement policy

Partner is one of four Israeli mobile-telephone companies. All four Israeli companies have business activities linked to Israeli settlements. The World Bank, in its report "West Bank and Gaza telecommunications Sector Note: Introducing competition in the Palestinian Telecommunications Sector", lists Orange as an "Israeli mobile operator" in the OPT<sup>28</sup>. The map presented on Partner's website indicating its 4G coverage does not distinguish between Israeli and Palestinian territory<sup>29</sup>.

1. "These companies build infrastructure and maintain property and equipment in the illegal Israeli settlements, much of it on privately owned Palestinian land."<sup>30</sup> Partner owns 208 masts and telecommunication infrastructure facilities in the settlements<sup>31</sup>. These installations are thus considered illegal by the international community.

For example, Partner, Cellcom and Pelephone would have paid "rent" to Israeli settlers from the outpost of Migron (located on land belonging to the neighboring Palestinian villages) for 12 years in order to install antennas within the settlement. The enterprises' infrastructure has been installed without authorization from the Israeli army (because

25. *Ibid.*

26. Partner Communications, 2012 Annual Report, pp. 9-10.

27. Who profits, "The Cellular Companies and the Occupation", August 2009, available at <http://www.whoprofits.org/content/cellular-companies-and-occupation>

28. World Bank, January 2008, *op. cit.*

29. See Partner's 4G coverage map, available at <http://www.orange.co.il/cellular/sf-lp/Orange-4G/area-map>

30. Who profits, August 2009, *op. cit.*

31. This figure has been updated by the NGO *Who Profits*, which counted 165 masts owned by PARTNER in 2009. This figure would have risen to 320 before falling again. In November 2013 Partner announced an agreement with Hot Mobile Ltd (another mobile-telephone operator) to share the network. The Israeli newspaper *Globes* wrote at the time that under the agreement the two operators were creating a joint subsidiary, held equally and charged with developing and managing a single mobile network as a result of combining the infrastructures of the two networks. Each company would maintain and operate its own principal network and be responsible for the service provided to its own customers. The agreement was approved by the Israeli Competition Commission on 13 May 2014. Given that the agreement has not been in force for very long it is difficult to determine what effect this new joint network will have on Partner's presence in the OPT. An analysis of the sites run by Hot Mobile in June 2014 showed that the company had 106 masts in the Occupied Territory, most of them in the West Bank and East Jerusalem. In summary, the number of antennas managed by the two companies in the OPT would be 314, according to March 2015 data.

18. Information updated on November 2014 on the website <http://www.orange.co.il/en/Investors-Relations/lobby-company-information/ownership-structure>

19. Partner Communications, *op. cit.*

20. Partner Communications, Press release, 28 April 2011.

21. Area C as defined in the Oslo Accords makes up 61% of the West Bank and is under Israeli civilian and military control. See chapter 3, Background.

22. World Bank, *Area C and the future of the Palestinian economy*, October 2013, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16686/AUS29220REPLAC0EVISSION0January02014.pdf?sequence=1>

23. Ma'an news agency, « PA seeks recourse for Israeli telecom restrictions », 10 December 2012, available at <http://www.maannews.com/eng/ViewDetails.aspx?id=528095>

24. World Bank, *West Bank and Gaza telecommunications sector note. Introducing competition in the Palestinian telecommunications sector*, January 2008, p. 2, available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/03/20/000333037\\_20080320052257/Rendered/PDF/429870WP0GZ0Te10Box327342B01PUBLIC1.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/03/20/000333037_20080320052257/Rendered/PDF/429870WP0GZ0Te10Box327342B01PUBLIC1.pdf): "A contentious issue emphasized by the PA in the area of taxation is the leakage of tax revenues from the PA to Israel through unauthorized Israeli mobile operators (ORANGE, Cellcom, Pelephone and Mirs) operating in the West Bank and Gaza".

Migron is an outpost considered unlawful also under Israeli law). The army ordered that the construction be brought to an end, but to no avail. After the demolition of the settlement, the three companies requested that an Israeli court grant them permission to keep their antennae on appropriated lands<sup>32</sup>.

2. Through settlement-based shops, including in Ariel, Beithar Illit, Modi'in Illit and Mishor Adumim, these companies provide services to settlers.
3. Along with the other Israeli operators, Partner benefits from the ban on Palestinian operators to install telecommunications towers in Area C, which limits their ability to cover the territory and stunts their competitiveness.
4. Israeli companies do not pay taxes to the Palestinian Authority for their commercial operations in the Palestinian market, in violation of the Oslo Accords. A 2008 report by the World Bank estimated lost tax revenue from unauthorized Israeli operations at \$60m annually<sup>33</sup>.
5. Certain Israeli enterprises, including Partner, allegedly provide support to the Israeli army during military operations<sup>34</sup>.

Therefore through their operations in the settlements, mobile-telephone companies benefit from practices that hamper Palestinian economic development and stunts the Palestinian government's capabilities to protect and fulfill human rights, including economic, social and cultural rights<sup>35</sup>.

#### Land illegally appropriated for the construction of telecommunication towers

During a study visit in the OPT by the AFPS in November 2012, testimonies given by Palestinians in affected communities highlighted human rights violations committed by settlers, Israeli authorities and the Israeli army. Mr Fawaz Salameh, who in 2005 reported having had 12 dunums (12,000 m<sup>2</sup>) of agricultural land unlawfully appropriated by the Israeli authorities, said that his land was razed and his olive trees destroyed without prior notice. He recounted that when he arrived on his land, groups of men from the nearby settlement physically assaulted him, while Israeli soldiers passively stood by. According to him, his land was appropriated with the purpose of erecting a telecommunications tower previously located in the settlement, including one owned by Partner. The decision was apparently made by the settlement's municipal council, with support from the Israeli Military Advocate General corps.

32. M. Schaeffer Omer-Man, "Israeli cellular companies paid to squat on Palestinian land", +972, 14 April 2015, available at <http://972mag.com/israeli-cellular-companies-paid-to-squat-on-palestinian-land/105520/>

33. World bank, January 2008, *op. cit.*, p. 2.

34. The Electronic Intifada, "How orange telecom supported Israel's massacre in Gaza", 4 August 2014, available at <http://electronicintifada.net/blogs/ali-abunimah/how-orange-telecom-supported-israels-massacre-gaza>

35. The economist Sara Roy has developed the concept of *de-development* to describe the "process which undermines or weakens the ability of an economy to grow and expand by preventing it from accessing and utilizing the critical inputs needed to promote internal growth beyond a specific structural level. In Gaza the de-development of the economic sector has, over two decades of Israeli rule, transformed that economy into an auxiliary of the State of Israel." See S. ROY, "The Gaza Strip: A Case of Economic De-Development", *Journal of Palestine Studies*, Vol. 17, No. 1, Autumn 1987, pp. 56-88.

## 2.2. Orange

Orange is France's leading telecommunications company. In 2014, it was the ninth largest French business in terms of sales. France Télécom bought Orange in 2000, at a time when the majority of the brands owned by the France Télécom group became Orange. In 2013, France Télécom itself became Orange. Orange currently employs almost 161,000 people, 101,000 of them in France, and it has almost 236 million customers worldwide<sup>36</sup>.

After a long period as the company's majority shareholder, the French State gradually sold off its shares and is today the largest and most significant minority shareholder, **with 25.05% of the shares** held either directly or through BpiFrance (a public investment bank).

Orange is a public limited company with a capital of €10.6bn, divided up as follow:

MAIN SHAREHOLDERS <sup>37</sup>	SHARES %
Bpifrance Participations SA	11.60 <sup>38</sup>
French State	13.45 <sup>39</sup>
France Télécom SA Employee Stock Ownership Plan	5.20 <sup>40</sup>
Capital Research & Management Co. (World Investors)	2.09
Amundi SA (Investment Management)	1.61
Norges Bank Investment Management	0.91
Orange SA	0.88
Natixis Asset Management SA	0.79
BlackRock Fund Advisors	0.79
The Vanguard Group, Inc.	0.77

The Orange buyout enabled France Télécom to become an international corporation. The Orange Group was ranked as the seventh largest operator in the world in the second half of 2014 by the world association of mobile operators<sup>41</sup>. It handles fixed and mobile telephone communications, as well as broadband Internet services in 32 different countries, including Egypt, where the Group had 34.8 million customers, and Jordan, where it had 3.9 million customers in 2013. The Group offers ICT services to companies in 220 territories via its Orange Business Services brand, and is ranked as the sixtieth largest global brand (worth USD 15.5bn)<sup>42</sup>. In its

36. Orange, « Orange en un clin d'œil », February 2015, <http://www.orange.com/fr/a-propos/Groupe/Orange-en-un-clin-d-oeil>

37. Table from Zone Bourse, « Orange SA », 30 June 2013, available at <http://www.zonebourse.com/ORANGE-SA-4649/societe/>. Updated with more recent figures.

38. Bpifrance, « Succès du placement d'actions orange par bpifrance pour environ 584 millions d'euros », press release, 1 October 2014, available at <http://www.bpifrance.fr/Actualites-Bpifrance/%28fromDate%29/20-11-2013/%28toDate%29/17-02-2015/%28text%29/orange>

39. French Ministry of Economy, « Portefeuille de participations cotées de l'État », 31 March 2015, available at [http://www.economie.gouv.fr/files/files/directions\\_services/agence-participations-etat/Portefeuille\\_cote\\_APE.pdf](http://www.economie.gouv.fr/files/files/directions_services/agence-participations-etat/Portefeuille_cote_APE.pdf)

40. AASGO, « Assemblée générale de l'AASGO du 21 octobre 2014 », 7 November 2014, available at <http://www.aasgo.org/assemblee-generale-laasgo-du-21-octobre-2014/>

41. GSMA Intelligence, "Global cellular market trends and insight – Q3 2014", 3 October 2014, available at <https://gsmaintelligence.com/analysis/2014/10/global-cellular-market-trends-and-insight-q3-2014/447/>

42. See, Brandz Top 100 Most Valuable Global Brands 2014, available at <http://www.wpp.com/wpp/marketing/brandz/brandz-2014/>

2012 financial statements, the Orange Group announced the consolidation of 400 entities, although it lists only 32 of them<sup>43</sup>.

Orange advertises that its Code of Ethics<sup>44</sup> is *"in line with fundamental principles, such as those of the Universal Declaration of Human Rights, and those set out by the International Labour Organisation [...], by the OECD"*. It further maintains that it is one of the first companies to have signed the United Nations Global Compact, *"thus asserting its commitment to respecting and promoting basic human rights in its activities and sphere of influence."*<sup>45</sup>

43. CCFD-Terre Solidaire, Revue Projet, *Aux paradis des impôts perdus. Enquête sur l'opacité financière des 50 premières entreprises européennes*, June 2013, p. 23, available at [http://ccfd-terresolidaire.org/IMG/pdf/pf2013\\_210613.pdf](http://ccfd-terresolidaire.org/IMG/pdf/pf2013_210613.pdf)

44. Orange, *Code of Ethics*, 2003, p. 3, available at [http://www.orange.com/en/content/download/4813/67906/version/9/file/charte\\_deontologie\\_2013\\_VA\\_planche.pdf](http://www.orange.com/en/content/download/4813/67906/version/9/file/charte_deontologie_2013_VA_planche.pdf)

45. Orange, *CSR Complete Report*, 2013, p. 14, available at [http://www.orange.com/en/content/download/23330/480379/version/3/file/Orange\\_2013\\_CSR\\_report.pdf](http://www.orange.com/en/content/download/23330/480379/version/3/file/Orange_2013_CSR_report.pdf)

## ORANGE'S DANGEROUS LIAISONS IN THE OCCUPIED PALESTINIAN TERRITORY

# 3. THE SETTING



### 3.1. The illegality of Israeli settlements

The Israeli military government and domestic bodies have been involved in the unlawful appropriation of Palestinian land for the benefit of Israeli settlements since the territory came under Israel's administration in 1967.

The Oslo Accords, which entered into force in 1993, led to the Palestinian Territory being divided into three administrative areas, A, B and C. This partition was supposed to be provisional and temporary but it has been lasting for more than twenty years.

- In Area A (18% of the West Bank) the Palestinian Authority controls civil matters and security.
- In Area B (20% of the West Bank) the Palestinian Authority controls civil matters and Israel and Palestine jointly control security.
- In Area C (62% of the West Bank) Israel controls both civil matters and security. Most of the Israeli settlements are in Area C. By keeping control of Area C the Israeli authorities have been able to establish permanent control over the Palestinians and their resources.

Israeli settlements are illegal under the Fourth Geneva Convention of 1949, which prohibits an Occupying Power from transferring its population into the occupied territory<sup>46</sup>. However, in 2014, more than 520,000 Israeli settlers were living in Israeli-occupied territory<sup>47</sup>, in 150 settlements and 100 “outposts”<sup>48</sup>, whereas there were 2.65 million Palestinians in the West Bank. Between March and November 2013, the government of Israeli Prime Minister Benjamin Netanyahu encouraged the construction of 8,943 new houses in the settlements<sup>49</sup>. The Israeli government provides numerous financial incentives and benefits for individuals and companies with the purpose of encouraging their settlement in the West Bank. Individuals can enjoy low rents and subsidized public services, and companies receive subsidies and tax breaks. In addition, all Israeli banks provide professional loans directly or indirectly to companies based or operating in settlements<sup>50</sup>.

### 3.2 The impact of settlements on Palestinians' lives: numerous breaches of international humanitarian law and international human rights law

The Israeli occupation and settlement policy lead to multiple breaches of international humanitarian and human rights law. Palestinians are protected persons as defined in Article 4 of the Fourth Geneva Convention: they are living under occupation and are not of the same nationality as the occupying power. The rights of the Palestinians, as established including

46. Fourth Geneva Convention, Article 49, para. 6.

47. OCHA, “The humanitarian impact of Israeli settlement policies”, Factsheet, updated December 2012. This figure includes the settlements in the West Bank and East Jerusalem.

48. Settlements built by the settlers without official authorization.

49. Peace Now, *Bibi's settlement boom : March-November 2013*, 8 November 2013, available at <http://archive.peacenow.org/Bibis%20Settlements%20Boom%20-%20March-November%202013%20-%20FINAL.pdf>

50. S. Lendman, “Israeli Banks Profiteering from Occupation”, 11 August 2010, available at <http://rense.com/general92/bnk.htm>. Quoted in Prosper Palestine, *Unveiled: European trade and investment companies in the companies in the OPTs*.

under the Fourth Geneva Convention, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are the subject of systematic and serious violation.

#### Violations of the rights of the Palestinians in Israeli settlements:

> **Destruction by the occupying power of public and private property** contravenes Article 53 of the Fourth Geneva Convention.

In 2014, 601 Palestinian infrastructures were demolished<sup>51</sup>, depriving people of their homes and livelihoods, and negatively impacting children. More than 60% of the demolitions took place near or within areas occupied by settlers, mainly in Area C and East Jerusalem<sup>52</sup>. Demolitions also affected projects financed by European governments in the OPT, such as the construction of cisterns, shelters, agricultural buildings and homes.

> **The forcible transfer of protected persons, either individuals or groups**, contravenes Article 49 of the Fourth Geneva Convention.

In 2014, more than 1,200 Palestinians were displaced because of the demolitions, 651 of whom were children<sup>53</sup>. Forcible transfers have led to accelerated urbanization of rural Palestinian communities, having a negative impact on their social, economic, cultural and demographic structure.

> **Land grabbing** contravenes several provisions of international humanitarian law and international human rights law (in particular economic, social and cultural rights).

More than 42% of land in the West Bank has been confiscated from Palestinians and allocated to settlers, according to the Israeli organization B'Tselem<sup>54</sup>. Not only do the Israeli authorities take no steps to punish settlers who forcefully and criminally trespass and squat on privately owned Palestinian land, but they also actively assist them with the land seizure, often alleging security reasons to justify the construction of settlements<sup>55</sup>. These practices seriously damage the productive capacity of the Palestinian economy.

Palestinian olive groves are regularly attacked and vandalized by settlers. The United Nations Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territories recorded 1,492 olive trees damaged by settlers during the harvest period in 2013 and a total of 10,142 during the year<sup>56</sup>.

51. See OCHA, *Humanitarian Bulletin*, December 2014, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2014\\_01\\_27\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_01_27_english.pdf): Structures Demolished, (Structures demolished: includes all Palestinian-owned structures in the OPT demolished by the Israeli authorities, regardless of their specific use (residential or non-residential) or the grounds on which the demolition was carried out (lack of building permit, military operation or punishment).

52. *Ibid.*

53. *Ibid.*

54. B'Tselem, *By hook and by crook*, July 2010, available at [http://www.btselem.org/download/201007\\_by\\_hook\\_and\\_by\\_crook\\_eng.pdf](http://www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf)

55. Yesh Din, “The UN Fact Finding Mission on the Israeli Settlements in the Occupied Palestinian Territory including East Jerusalem”, 6 November 2012, available at <http://www.yesh-din.org/userfiles/file/Position%20Papers/Yesh%20Din%20Position%20to%20UN%20FF%20Mission.pdf>

56. OCHA OPT, *Fragmented Lives Humanitarian Overview 2013*, March 2014, p. 64, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_annual\\_review\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_annual_review_2014.pdf)

> **The illegal settlement enterprise has resulted in the discriminatory and starkly unequal distribution of water resources.**

The restrictions on access to water under the Paris protocol signed in 1994 as part of the Oslo Accords prevent Palestinians from irrigating their land<sup>57</sup>. Israelis (including settlers) consume thrice the amount of water as Palestinians, who live with less water than the average recommended by the World Health Organization (WHO)<sup>58</sup>. According to the United Nations “over 70% of communities located entirely or mostly in Area C are not connected to the water network and rely on tankered water at vastly increased cost; water consumption in some of these communities is as low as 20 liters per capita per day, one-fifth of the WHO’s recommendation”.<sup>59</sup>

> **Restrictions on the freedom of movement** contravene Article 12 of the International Covenant on Civil and Political Rights.

More than 500 checkpoints and roadblocks linked to the settlements hinder the freedom of movement of Palestinians within the West Bank, including East Jerusalem, and between the West Bank and Gaza<sup>60</sup>. Palestinians encounter difficulties on a daily basis to get to their workplaces –their farmland, school, university or hospital across the West Bank, and in particular Jerusalem, where it is impossible for Palestinians to go without a permit<sup>61</sup>. Special roads have been built to link settlers to the road network, Israeli towns and other settlements intentionally leaving Palestinians towns off the road network<sup>62</sup>.

By fragmenting the Palestinian territory into several separate areas, these barriers compromise the establishment of a viable Palestinian State. The Israeli authorities have erected an Annexation Wall, which is illegal under international law, as affirmed by the International Court of Justice<sup>63</sup>. Its route is determined by the locations of the settlements and intended to ensure that 85% of existing or future settlements are on the ‘Israeli side’ of the Wall, when they are in fact situated on territories occupied by Israel since 1967<sup>64</sup>. According to the World Bank, the construction of the Wall has led to the destruction of many agricultural assets, contributing to the seizure of water resources<sup>65</sup>.

57. World Bank, *Area C and the future of the Palestinian economy*, October 2013 : “To irrigate the 326,400 dunums [1 dunum = 1000 m<sup>2</sup>] of other agricultural land notionally available to Palestinians in Area C would require some 189 MCM of water per year. Current Palestinian allocations under the Oslo Accords are 138.5 MCM, or 20 percent of the estimated availability – a share to be revisited at Final Status negotiations.”

58. CCFD-Terre Solidaire, FIDH et al., *Trading away peace: how the European Union helps sustain Israeli settlements*, December 2012, Al Haq, *Water For One People Only*, 2013, available at <http://www.alhaq.org/publications/Water-For-One-People-Only.pdf>

59. OCHA OPT, *Area C of the West Bank: Key Humanitarian Concerns*, updated August 2014.

60. Report of the UN Secretary General, 12 September 2012.

61. People in possession of a ‘Jerusalem ID’ do not need a permit, but remain subject to the same means of restriction on circulation such as checkpoints and closure of access points.

62. Report of the UN Secretary General, *op. cit.*

63. International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004. The ICJ considers the parts of the Wall built on the Occupied Territory to be illegal owing to the annexation of Palestinian land. These parts represent more than 80% of the Wall.

64. OCHA, “West Bank movement and access update”, September 2012.

65. World Bank, *West Bank and Gaza checkpoints and barriers: searching for livelihoods*, 2010, p. 9.

> **The absence of control, administration and proper management of natural resources** is a violation of the Palestinian people’s internationally-recognized right to self-determination, which includes their ability to enjoy permanent sovereignty over their natural resources.

Sovereignty over natural resources is a key component of the right to self-determination. Article 1 of the International Covenant on Economic, Social and Cultural Rights states that by virtue of this right, all peoples “*may have free control over their wealth and their natural resources*” and that “*in no case may a people be deprived of its livelihood*”. The Palestinians’ limited access to their own natural resources (land, water, minerals, etc.) is thus a barrier to the Palestinian people’s right to self-determination. The exploitation of Palestinian natural resources thus constitutes a breach of international humanitarian and human rights law, in which companies could be complicit or for which they could be held liable<sup>66</sup>.

By acceding to the Rome Statute of the International Criminal Court (ICC) on 2 January 2015, and through an *ad hoc* declaration recognizing the jurisdiction of the International Criminal Court (under Article 12.3 of the Statute), Palestine triggered the ICC’s jurisdiction with respect to international crimes, including war crimes, committed on its territory or by its nationals since 13 June 2014<sup>67</sup>. On 16 January 2015, the ICC Prosecutor opened a preliminary examination into the situation in Palestine<sup>68</sup>. Although the ICC does not have jurisdiction over corporations, the Court can examine acts by corporate officials, who could be charged with the aiding and abetting in the commission of international crimes.

### **3.3. The impact of the settlement policy on the Palestinian economy: stifling development and denying the Palestinian people’s right to self-determination**

Since the entry into force of the Oslo Accords, the Palestinian economy has been frustrated by Israeli authorities’ seizure of infrastructure, imposition of restrictions on trade, and the control and appropriation of land and other natural resources, particularly in Area C, where most Palestinian natural resources are concentrated.

These restrictions have detrimentally affected not only the agricultural sector, but also the mining, quarrying and mineral extraction industries, as well as the construction, tourism and telecommunications sectors.

66. The exploitation of natural resources can also be associated with war crimes such as pillage, massive property destruction, apartheid and forcible transfers. See for example Al Haq, *Pillage of the Dead Sea: Israel’s Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory*, September 2012, available at [www.alhaq.org/publications/publications-index?task=callelement&format=raw&item\\_id=104&element=304e4493-dc32-44fa-8c5b-57c4d7b529c1&method=download](http://www.alhaq.org/publications/publications-index?task=callelement&format=raw&item_id=104&element=304e4493-dc32-44fa-8c5b-57c4d7b529c1&method=download)

67. See FIDH, *Palestinian Accession to the ICC Statute: Hope for Justice and Peace*, 2 January 2015, available 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>

68. See FIDH, Al Haq, Al-Mezan and Palestinian Center for Human Rights (PCHR), *The ICC opens a preliminary examination into the situation in Palestine*, 16 January 2015, available at <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/israel-occupied-palestinian-territories/the-icc-opens-a-preliminary-examination-into-the-situation-in>

According to the World Bank, the key to Palestinian prosperity lies in the removal of these restrictions, which “*have been particularly detrimental to the Palestinian economy*”<sup>69</sup>.

#### List of some of the provisions that give Israeli companies a competitive advantage over Palestinian companies

- The alignment of Palestine’s VAT rate with that of Israel has rendered Palestinian products extremely uncompetitive on foreign markets<sup>70</sup>.
- Import and export restrictions have hampered the development of the Palestinian economy; Imports of raw materials and equipment are controlled by Israel and dual-use items<sup>71</sup> are banned.
- Barriers to the movement of people and goods notably at Israeli checkpoints, related to the Annexation Wall and with regard to access to the Tel-Aviv airport or any other airport create delays and damage products. These restrictions greatly reduce the competitiveness of Palestinian companies on the international market. Such obstacles also indirectly forced some Palestinians into working in settlements and buying settlement goods.

### 3.4. The UN, EU and France have repeatedly condemned and demanded that Israel bring an end to the internationally-recognized illegal settlement enterprise.

> Since 1967, the **United Nations** General Assembly and the Security Council have passed numerous resolutions<sup>72</sup> calling on Israel to put an end to its settlement policy and to stop breaches of Palestinian rights<sup>73</sup>. In December 2013, the UN General Assembly passed a resolution reaffirming that Israeli settlements in the West Bank and East Jerusalem were illegal, and that they were a barrier to peace, and economic and social development. It called on Israel to put an immediate end to all its activity in the settlements<sup>74</sup>.

> Affirming the United Nations’ position, the **European Union** regularly condemns the settlement policy and other violations of international law committed by the State of Israel. In December 2013, the European Council of Ministers reiterated that Israeli settlements were illegal and expressed concern about settler violence and house demolitions in the Occupied

69. World Bank, *Area C and the future of the Palestinian economy*, October 2013.

70. J. Salingue, « Intégration inégale, dé-développement et économie-casino », available at <http://www.juliansalingue.fr/article-les-dynamiques-economiques-dans-les-territoires-palestiniens-1967-2010-80703860.html>. Based on the work of Adel Samara, Sara Roy, Leila Farsakh, Graham Usher, George Abed and Fadle Naqib.

71. Items used for both industrial and agricultural purposes, which Israel prohibits Palestinians from importing but are freely available to settlers.

72. See United Nations General Assembly, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*, A/RES/68/82, 11 December 2013 : “Recalling also the relevant resolutions of the Security Council, including resolutions 242 (1967) of 22 November 1967, 446 (1979) of 22 March 1979, 465 (1980) of 1 March 1980, 476 (1980) of 30 June 1980, 478 (1980) of 20 August 1980, 497 (1981) of 17 December 1981 and 904 (1994) of 18 March 1994”.

73. All the UN resolutions on the Israel-Palestine conflict can be consulted at <http://unispal.un.org>.

74. United Nations General Assembly, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan*, A/RES/68/82, 11 December 2013.

Palestinian Territory. On 11 January 2014, the EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, stated that the settlements were an obstacle to peace and the two-State solution. She also called on Israel to stop all its activities in the settlements<sup>75</sup>. On 5th November 2014, her successor Federica Mogherini declared : “*Since the pleas by the EU, by its Member States and by many other members of the international community on the issue of Israeli settlements have remained unheard, I call on the Israeli authorities to reverse it and put an end to its settlement policy in East Jerusalem and in the West Bank.*”<sup>76</sup>.

> **France** has condemned Israeli settlements in the West Bank on many occasions. In November 2013, François Hollande called for an end to settlement activity in his speech to the Israeli parliamentary assembly (Knesset) and at a joint press conference with Mahmoud Abbas. In February 2014 the French Ministry of Foreign Affairs condemned the Israeli authorities’ decision to issue new building permits for houses in settlements<sup>77</sup>. In May 2012, France’s position on settlements was also made clear in information published on-line by the Ministry of Foreign Affairs underlining the legal risks for individuals investing in the settlements. The notice published on the Ministry of Foreign Affairs’ website on 24 June 2014 extended this warning to companies and individuals<sup>78</sup>.

### 3.5. The human rights responsibilities of companies with a presence in the Israeli-occupied Palestinian territory

#### 3.5.1. United Nations’ Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises

Today it is widely recognized that companies have the responsibility to respect human rights. This responsibility exists independently of the ability or the willingness of States to fulfill their own human rights obligations, as pointed out in the **United Nations’ Guiding Principles on Business and Human Rights (UNGPs)**, which were adopted unanimously in 2011 by the United Nations Human Rights Council, as well as in the **OECD Guidelines for Multinational Enterprises**, which were revised in 2011. The aim of both these guidelines is to clarify what is expected of all States and all businesses with regard to the issue of business and human rights.

#### The responsibility to respect human rights

Under the UN Guiding Principles and the OECD Guidelines, companies have a responsibility to respect human rights wherever they operate. This responsibility relates to all internationally recognized human rights, at a minimum those included in the International Bill of Human Rights –consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – and in the International Labour Organization’s Declaration on Fundamental Principles

75. European Union, Statement by the EU High representative Catherine Ashton on Israel’s announcement of further settlements, 140111/02, Brussels, 11 January 2014.

76. Available at [http://eeas.europa.eu/statements-eeas/2014/141105\\_01\\_en.htm](http://eeas.europa.eu/statements-eeas/2014/141105_01_en.htm)

77. French Ministry of Foreign Affairs, « Israël/Territoires palestiniens – Condamnation de la construction de nouveaux logements dans les colonies », 6 February 2014, available at <http://www.diplomatie.gouv.fr/fr/dossiers-pays/israel-territoires-palestiniens/la-france-et-israel/evenements-18934/article/israel-territoires-palestiniens-110771>

78. French Ministry of Foreign Affairs, « Conseils aux voyageurs : Israël/Territoires palestiniens », available at <http://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays/israel-territoires-palestiniens-12265/>

and Rights at Work (UNGP 11 and 12; OECD Guidelines Chapter II, paragraph 2 and Chapter IV, Commentary).

According to the UN Guiding Principles, *“The responsibility to respect human rights requires that business enterprises:*

- a) Avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur;*
- b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”* (UNGP 13; OECD Guidelines Chapter II, paragraphs 11 and 12).

### **Human rights due diligence**

According to the UN and OECD principles, businesses must carry out human rights due diligence in order to identify, prevent and mitigate adverse human rights impacts, and report on the way in which they address them. Adverse human rights impacts are understood to cover the real or potential impact on human rights that the business enterprise may cause or contribute to through its own activities or which may be directly linked to its operations, products or services by its business relationships. The exercise of human rights due diligence must be ongoing and should be based on risk (UNGP 17; OECD Guidelines Chapter II, paragraphs 11 and 12 and Commentary).

Business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved, either through their own activities or as a result of their business relationships (UNGP 18).

Business enterprises should integrate the findings from their impact assessment across relevant internal functions and processes, and take appropriate action (UNGP19).

In order to verify whether adverse human rights impacts are being addressed, businesses should track the effectiveness of their response, which should:

- a) be based on appropriate qualitative and quantitative indicators; and
- b) draw on feedback from both internal and external sources, including affected stakeholders (UNGP 20).

In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this information externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them, which includes taking the necessary steps to prevent or discontinue any impact (UNGP 21).

### **Business relationships and the concept of leverage**

The OECD Guidelines define business relationships as *“any relationship with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services”*<sup>79</sup>.

79. OECD Guidelines for Multinational Enterprises, Chapter II, Note, p. 27.

If a business enterprise can neither prevent nor mitigate the adverse impacts directly linked to its services by its business relationship with another body, it may have to consider ending the relationship. (UNGP 19, Note)

By contributing to adverse impact, the OECD Guidelines mean *“an activity that causes, facilitates or incentivizes another entity to cause an adverse impact (...)”*<sup>80</sup>.

In order to avoid contributing to adverse human rights impacts, including impacts linked to their business relationships, companies must use their influence and intervene with the entity responsible in order to prevent and mitigate adverse impacts. According to the UN Guiding Principles, *“leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm”*<sup>81</sup>. The OECD Guidelines consider that influence exists *“if an enterprise has the ability to modify the harmful practices of the entity responsible for the harm”*<sup>82</sup>.

If the business enterprise has the power to prevent or mitigate the adverse impact, it must exercise it or attempt to increase its influence if necessary. **If an enterprise has no power to prevent or mitigate the adverse impacts and is unable to increase its leverage, it must consider ending the business relationship.** Moreover, *“in any case, as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial, or legal – of continuing the connection.”* (UNGP19, Commentary)

### **In the event of a conflict between national legislation and international human rights law**

A State’s failure to comply with its international obligations does not exonerate companies from their responsibility to respect human rights. *“A State’s failure either to enforce relevant domestic laws or to implement international human rights obligations, or the fact that it may act contrary to such law or international obligations does not diminish the expectation that enterprises must respect human rights. In countries where domestic laws and regulations conflict with internationally recognized human rights, enterprises should seek ways to honor them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the chapter on Concepts and Principles”* (OECD Guidelines, Chapter IV, Commentary).

In all contexts, business enterprises should **“seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements”** (UNGP 23).

*“Although particular country and local contexts may affect the human rights risks of an enterprise’s activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate. Where the domestic context renders it impossible to meet this responsibility fully, **business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard**”* (UNGP 23, Commentary).

80. *Ibid.*

81. United Nations Guiding Principles on Business and Human Rights, Principle 19, Note, p. 21.

82. OECD Guidelines for Multinational Enterprises, Chapter II, Note, p. 28.



According to the UN Guiding Principles, “the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights” (UNGP 11 Commentary).

#### **In conflict-affected areas**

Some operating environments such as conflict-affected areas may increase the risks for an enterprise to become complicit in or benefit from gross human rights abuses committed by other actors. Business enterprises should account for these risks as part of their legal obligations and make sure they do not exacerbate the situation (Principle 7 and 23, Commentary).

**In the event of armed conflict, business enterprises must respect the standards of international humanitarian law** (UNGPs 12, Commentary; OECD Guidelines Chapter IV, Note, Para 40). The International Committee of the Red Cross has also issued guidelines on the rights and duties of business enterprises under international humanitarian law. These guidelines reiterate that international humanitarian law imposes a duty on directors and employees to comply with international humanitarian law, and warns them and the companies themselves of the risk of civil or criminal liability if they violate their obligations, i.e. if they commit or are complicit in war crimes<sup>83</sup>.

#### **The UN Working Group on human rights and transnational corporations and other business enterprises**

The UN Working Group on human rights and transnational corporations and other business enterprises was set up in July 2011 by the UN Human Rights Council to promote the application of the UN Guiding Principles on Business and Human Rights<sup>84</sup>. In a statement from June 2014 on the implementation of the UNGPs in the Israeli settlements in the OPT, issued notably as a result of petitioning by NGOs<sup>85</sup>, the Working Group reiterated that activities or business relationships in or for the benefit of Israeli settlements could have adverse human rights impact, and that business enterprises operating in areas affected by conflicts must undertake **enhanced human rights due diligence** and actively avoid being complicit in human rights violations, including those committed by their suppliers and other business relationships.

83. ICRC, *Businesses and international humanitarian law: An introduction to the rights and obligations of business enterprises under international humanitarian law*, 2006.

84. Human Rights Council, *Human rights and transnational corporations and other business enterprises*, A/HRC/RES/17/4, 6 July 2011.

85. See for example FIDH, Al-Haq, *Submission concerning human-rights violations linked to transnational corporations operating in the Occupied Palestinian Territory*, 19 September 2013, available at [https://www.fidh.org/IMG/pdf/fidh\\_wgbhr\\_allegs\\_letter\\_13.7.13\\_-\\_final\\_edits\\_enc\\_1\\_.pdf](https://www.fidh.org/IMG/pdf/fidh_wgbhr_allegs_letter_13.7.13_-_final_edits_enc_1_.pdf)

#### **Extract from the statement of the UN Working Group on human rights and transnational corporations and other businesses<sup>86</sup>**

*“The illegal status of the settlements under international law and information available in the public domain about human right abuses related to the settlements should necessarily preface and inform any human rights due-diligence exercise carried out by a business operating in the settlements. The importance of such due diligence is also particularly important in a situation where the occupying power, exercising obligations equivalent to those of a “host State”, may be unable or unwilling effectively to protect human rights or may itself be implicated in human rights abuse. In this regard, even if businesses in the settlements are operating in compliance with Israeli laws, the corporate responsibility to respect human rights “exists over and above compliance with national laws and regulations” (Reference to UNGPs 11 and its commentary).*

*“Business enterprises doing business, or seeking to do business, in or connected to the Israeli settlements in the OPT need to be able to demonstrate that they neither support the continuation of an international illegality nor are complicit in human rights abuses; that they can effectively prevent or mitigate human rights risks; and are able to account for their efforts in this regard -including, where necessary, by terminating their business interests or activities. **Failure to undertake effective human rights due diligence can lead to adverse human rights impacts or to complicity in abuses committed by other actors. (...) Simply put, where an enterprise is unsuccessful in mitigating risks of adverse human rights impacts, despite its best efforts to use and seek to increase its leverage, it should consider ending the business relationship.** (Reference to UNGPs 19 and its commentary) (...)*

*“When businesses enterprises identify that they have caused or contributed to human rights impacts through settlement-related activities such as construction or servicing of the settlements, **they should provide for or cooperate in their remediation through legitimate processes.**”*

#### **3.5.2. Conclusions of the UN Special Rapporteur and the Independent International Fact-Finding Mission**

The UN Human Rights Council has paid particular attention to the human rights impacts of business activity in the OPT.

In 2012, the Human Rights Council set up an independent international fact-finding mission to investigate the effects of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinians in the Occupied Palestinian Territory, including East Jerusalem<sup>87</sup>. “Information gathered by the mission showed that business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements.” The mission “identified a number of business activities and related issues that raise particular human rights violations concerns. They include:

– *The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures;*

86. Working Group on the issue of human rights and transnational corporations and other business enterprises, 6 June 2014, *op. cit.*, pp. 11-12 para. 4-5, p. 14, last para.

87. Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, A/HRC/RES/19/17, 10 April 2012.



- The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements; (...)
- **The provision of services and utilities supporting the maintenance and existence of settlements, including transport**; (...)
- The use of natural resources, in particular water and land, for business purposes;
- Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints (...).<sup>88</sup>

The mission also called upon “all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, **including those owned or controlled by them**, that conduct activities in or related to the settlements respect human rights throughout their operations.”<sup>89</sup>

The UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 also paid specific attention to the role played by businesses in the settlements in his 2012, 2013 and 2014 reports. In his 19 September 2012 report, the Special Rapporteur recorded a number of violations committed by foreign and Israeli businesses in the OPT, and reiterated that the business enterprises mentioned in the report represented only a fraction of the numerous companies that deal with the Israeli settlements established in the OPT. The Special Rapporteur considered that “all companies that operate in or otherwise have dealings with Israeli settlements should be boycotted, until such time as they bring their operations fully into line with international human rights standards and practice<sup>90</sup>.” The report also called on the international community to consider requesting an advisory opinion to the International Court of Justice regarding the responsibility of businesses in relation to economic activities of settlements that are established in violation of article 49 of the Fourth Geneva Convention<sup>91</sup>. Finally, the Special Rapporteur urged the companies mentioned in the case-study part of the report to “immediately suspend all operations, including the supply of products and services, which aid in the establishment or maintenance of Israeli settlements.”<sup>92</sup>

In January 2014, the Special Rapporteur issued a report reiterating the conclusions of the international independent fact-finding mission to investigate the effects of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinians in the Occupied Palestinian Territory, including East Jerusalem:

“Private companies must assess the human rights impacts of their activities and take all necessary steps – **including by terminating their business interests in the settlements** – to ensure that they

do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law and the Guiding Principles on Business and Human Rights.”<sup>93</sup>

### 3.5.3. Concrete measures taken by international bodies and States

- > In March 2014, EU Member States sitting on the UN Human Rights Council (including France) voted in favor of a **resolution** urging all States 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 UN Guiding Principles and relevant international laws and standards.”<sup>94</sup> In March 2015, the UN Human Rights Council “encouraged business enterprises to take transparent action to comply with the Guiding Principles on Business and Human Rights with respect to their activities relating to Israeli settlements and the wall in the Occupied Palestinian Territory, including East Jerusalem, to avoid contributing to the establishment or maintenance of Israeli settlements or the exploitation of natural resources of the Occupied Palestinian Territory”<sup>95</sup>.
- > In July 2013, the European Commission issued **guidelines** making Israeli entities operating in the territories occupied by Israel since 1967 and their activities ineligible for subsidies, prizes and financial instruments financed by the EU. The guidelines entered into force on 1 January 2014, as confirmed by Catherine Ashton in her answer to a parliamentary question on 20 February 2014. They have been applied to the European research and development programme ‘Horizon 2020’, to which Israel is a party, meaning that Israeli companies and universities located in the settlements will not receive funding.
- > Germany and the United Kingdom have published **recommendations** advising that companies avoid doing business with Israeli settlements. Portugal, Austria, Malta, Ireland, Finland, Denmark, Luxembourg, Slovenia, Greece, Slovakia, Belgium, Croatia, Italy, Spain and France have published recommendations on the websites of their Ministries of Foreign Affairs informing their citizens and companies of the risks associated to financial and economic activities in Israeli settlements<sup>96</sup>.
- > In September 2013, the Dutch government asked Royal HaskoningDHV not to take part in an infrastructure project in one of the settlements<sup>97</sup>.

88. 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*, A/HRC/22/63, 7 February 2013, p. 20, para 96, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf)

89. *Ibid.*, p. 24, para. 117.

90. United Nations General Assembly, *Report of the Special Rapporteur on the situation of the human rights in the Palestinian territories occupied since 1967*, A/67/379, 19 September 2012, p. 26 para. 91, available at <http://unispal.un.org/Unispal.Nsf/a39191b210be1d6085256da90053dee5/4b2de5243ebce35685257aa200487927?OpenDocument>

91. *Ibid.*, p. 27, para. 103.

92. *Ibid.*, pp. 26-27. The enterprises specifically mentioned are: Caterpillar Incorporated, Veolia Environnement, Groupe4Security, Groupe Dexia, Ahava, Groupe Vovlo, Groupe Riwal Holding, Elbit Systems, Hewlett Packard, Mehadrin, Motorola Solutions Inc., Mul-T-Lock/Assa Abloy, Cemex.

93. Human Rights Council, *Implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem* (A/HRC/22/63), A/HRC/25/39, 10 January 2014, available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>

94. Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, A/HRC/28/L.37/Rev. 1, March 2014, para.11(b), available at [http://blog.unwatch.org/wp-content/uploads/Israel\\_settlements1.pdf](http://blog.unwatch.org/wp-content/uploads/Israel_settlements1.pdf)

95. Human Rights Council, *Israeli settlements in the Occupied Palestinian territory, including East Jerusalem, and the occupied Syrian Golan*, A/HRC/28/L.33, 25 March 2015, para 13. available at <http://unispal.un.org/UNISPAL.NSF/0/206731E3EF6B9A1185257E1A0057AB4C>

96. See FIDH, CCFD-Terre Solidaire, *Mesures européennes contre la colonisation israélienne*, July 2014, available at [https://www.fidh.org/IMG/pdf/tableau\\_comparatif\\_ccfd\\_fidh.pdf](https://www.fidh.org/IMG/pdf/tableau_comparatif_ccfd_fidh.pdf)

97. Palestinian BDS National Committee, “17 EU members take action against corporate complicity with Israeli crimes”, *BDS Movement*, 7 July 2014, available at <http://www.bdsmovement.net/2014/17-eu-members-take-action-against-corporate-complicity-12200>

> The United Kingdom and Denmark have also adopted **labeling directives** to enable consumers to distinguish between products from Israel and those from the Israeli settlements. In April 2013, the EU High Representative for Foreign Affairs and Security Policy Catherine Ashton, supported by 13 European Foreign Ministers, expressed her support for the establishment of European directives on labeling Israeli settlement products. A text is currently being prepared at the European level. Sixteen of the twenty-eight EU Foreign Affairs Ministers wrote to Federica Mogherini, the current EU High representative for Foreign Affairs and Security Policy on the 16th of April 2015 to ask her to resume and accelerate the procedure<sup>98</sup>.

In recent years, there has thus been a marked movement towards banning Israeli settlements from relations with the European Union and its Member States, in compliance with international law.

<sup>98</sup>. France, the United Kingdom, Spain, Italy, Belgium, Sweden, Malta, Austria, Ireland, Portugal, Slovenia, Hungary, Finland, Denmark, the Netherlands and Luxembourg. See R. Jaskow, "16 European Union FMs urge labeling settlement products", *The Times of Israel*, 16 April 2015.

## ORANGE'S DANGEROUS LIAISONS IN THE OCCUPIED PALESTINIAN TERRITORY

4.

# BACKGROUND: A HIGH-RISK RELATIONSHIP

## 4.1. A business relationship entered into and then renegotiated

Orange and Partner have maintained a commercial relationship since 1998, when these two companies, both subsidiaries of Hutchison, signed a brand-licensing agreement under which Partner could use the Orange brand royalty-free until 2013<sup>99</sup>. Orange's official reference documents stipulate: "pursuant to a brand license agreement dated 14 September 1998, Partner Communications Company Limited has operated a telecommunications network under the Orange brand in Israel since 1999. This brand license agreement predates the acquisition of the Orange Group by France Télécom S.A. and has no expiration date. France Télécom SA has no direct or indirect shareholding in Partner Communications Company Limited."<sup>100</sup>

Following the change in Partner's majority shareholder, Orange asked for the licensing agreement to be renegotiated in 2011. The organizations who wrote this report have requested a copy of this new contract but had not received one at the time of writing. To the authors' knowledge, two main points in the agreement were amended:

### 1. ORANGE BRAND SERVICES (100% owned by Orange, based in the UK)<sup>101</sup> now receives royalties from Partner for the use of the Orange brand name and image.

The amount of the royalty to Orange has not been made public, but in its annual report, Partner states that the amount paid is "based on a percentage of [its] revenues from the provision of services under the Orange brand"<sup>102</sup>. Therefore since the renegotiation of the contract, Orange makes a financial gain from the use of its brand by Partner.

In its annual report, Partner indicates that the license to use the Orange brand is crucial for the company: "Our marketing strategy currently relies on the use of the international Orange brand".(.) "If our license agreement is refused we shall lose one of our principal competitive advantages."<sup>103</sup> Partner therefore has an interest in continuing its business relationship with Orange.

### 2. One of the original termination clauses was further clarified:

- Termination by mutual agreement;
- Unilateral termination at Partner's discretion;
- By Orange if a court determines that Partner continuously materially misused the brand.<sup>104</sup>

This last termination clause was amended as follow:

- The misuse of the brand is established by Orange rather than by a court decision;
- This misuse can constitute grounds for termination if it takes place over a certain period of time, rather than continuously.
- Partner is allowed a certain time to rectify any misuse<sup>105</sup>.

99. Partner Communications, *2010 Annual Report*, Form 20-F, 21 March 2011, p. 35, available at [http://www.orange.co.il/globalassets/documents/investors\\_relations/f-20/20-f\\_2010.pdf](http://www.orange.co.il/globalassets/documents/investors_relations/f-20/20-f_2010.pdf) Documents/investors\_relations/F-20/20-F\_2010.pdf

100. Orange, *Registration document France Telecom-Orange 2012*, p. 254, available at <http://www.orange.com/en/content/download/12507/259369/version/3/file/2012+Registration+Document.pdf>

101. Orange, *Consolidated Financial Statements, year ended 31 December 2012*, p. 95.

102. Partner Communications, 21 March 2011, *op. cit.*, p. 50.

103. Partner Communications, *2012 Annual Report*, p. 28.

104. Partner Communications, 21 March 2011, *op. cit.*, pp. 35 and 53-54.

105. *Ibid.*, p. 28.

Partner notes that use of the Orange brand must follow the guidelines established by Orange itself.<sup>106</sup> To this day, the authors have not been able to obtain a copy of these guidelines, despite repeated requests addressed to Orange.

At a meeting with the National Collective for a Just and Lasting Peace between Palestinians and Israelis (Collectif National pour une Paix Juste et Durable entre Palestiniens et Israéliens, CNPJDI) on 21 November 2012<sup>107</sup>, a representative of Orange said: "During recent negotiations, which were very 'violent', FT-ORANGE managed to obtain that it would not provide any form of assistance to use the brand, neither for marketing nor for purchasing materials, and that Partner was not authorized to use the brand in bordering States." However this has not prevented Partner from continuing to use the Orange brand in bordering States of Israel such as Palestine<sup>108</sup>.

On 9 April 2015, Partner announced in a press release that an amendment to the contract, effective as of 31 March 2015, had been concluded between the two parties<sup>109</sup>. This amendment establishes that the brand-license agreement will terminate after a period of ten years commencing from April 1st 2015, unless extended by agreement between the parties. A raise of the royalties payable to Orange is also planned from 2019. The press release does not give any indication on the termination clauses of the contract, in particular in relation to the companies' activities in the OPT<sup>110</sup>.

The relationship between Orange and Partner is therefore contractual and commercial. The brand-licensing agreement between Orange and Partner constitutes a business relationship as defined both by the OECD Guidelines and the United Nations Guiding Principles, which entails particular responsibilities for both business enterprises.

## 4.2. A business relationship that places a responsibility on Orange

Partner conducts business activities in the Israeli settlements in the OPT, which are considered illegal by the international community (see Chapter 3). By constructing facilities, which involves land appropriation, and by offering services to the settlers among other, Partner is indirectly contributing to the establishment and maintenance of the Israeli settlements. Partner moreover draws profit from its activities in the settlements. (See Chapter 2) Telecommunications are in fact essential for the economic viability of the settlements. The agreement between Partner and the Orange Group, which is essential for Partner's business activities (see section 4.1), is thus contributing to the development of telecommunications services in Israeli settlements in the West Bank and East Jerusalem, and thereby also indirectly to their maintenance.

106. *Ibid.*, p. 50.

107. Minutes of the meeting between a delegation from the Collectif National pour une Paix Juste et Durable entre Palestiniens et Israéliens and France and Telecom-Orange management, 21 November 2012.

108. Partner communications, *2012 Annual Report*, p. 62.

109. Partner communications, « Partner communication announces an amendement to the brand licence agreement », Press release, 9 April 2015, available at <http://www.nasdaq.com/press-release/partner-communications-announces-an-amendement-to-the-brand-license-agreement-20150409-00046>

110. As mentioned above, the authors have not been able to obtain the contract.

Like all business enterprises, Orange must respect all human rights wherever it operates, including in the OPT. This responsibility exists independently of States' ability or willingness to fulfill their own human rights obligations and obligations under international human rights and humanitarian law, as in this case the State of Israel in the OPT. As there is no doubt that the OPT is a conflict-affected area, Orange must comply with international humanitarian law. By operating or having business relationships in the OPT, Orange is running more risk of associating itself to human rights abuses, including those perpetrated by other actors. (See 3.5.1.)

Orange must comply with both Israeli domestic legislation and the principles of international humanitarian law and international human rights law, which are indeed in conflict in several respects. However despite these contradicting obligations, Orange must seek ways to comply with the principles of internationally recognized human rights to the greatest extent possible given the circumstances, and must be able to demonstrate the efforts it is making in this regard.

The brand-licensing agreement between Orange and Partner constitutes a business relationship. Consequently, throughout its business relationship with Partner, Orange must implement due diligence measures in order to identify, prevent, mitigate and remedy any adverse human rights impacts in direct link to its business relationship Partner. Orange has leverage capacity on Partner (see section 4.1), which it must exercise, in particular by urging Partner to alter its practices in order to prevent and mitigate the adverse impacts linked to its activities. Orange must also seek to increase its leverage, and if it is impossible to increase its influence and to prevent and mitigate these adverse impacts, Orange must consider terminating its commercial relationship with Partner.

Orange could have decided not to renew its contract with Partner in 2011. Alternatively, when renegotiating the contract with Partner, Orange could have endeavored to insert suspension and termination clauses in the agreement, requiring that Partner comply with international law by ensuring that its operations do not include or benefit Israeli settlements. By failing to require that a clause relating to the exclusion of settlements be inserted in the agreement, Orange has arguably renegotiated and amended the contract negligently.

Since the contract was renegotiated in 2011, the United Nations, the European Union and France have further clarified the human rights responsibilities of businesses that operate in or maintain links with settlement-based entities (See section 3.4). Stéphane Richard, the CEO of Orange, took part in François Hollande's visit to the OPT in November 2013, during which the French president reiterated France's position on the illegality of the settlements (see section 5.2). Several business enterprises have taken steps in response to these public policy commitments and government advisories, with a view to ending their commercial and investment dealings with settlements (See 4.4).

Orange could try to use the clause prohibiting the use of the Orange brand in countries bordering Israel in order to review, suspend or impose a termination of the contract with Partner, following the example of numerous businesses and financial institutions who have terminated links with entities operating in settlements due to the legal and economic risks incurred (See 5.1).

### 4.3. Orange's knowledge of the situation: civil society notice the company

In addition to the stance of the United Nations, the European Union and France on the Israeli settlements in the OPT and the responsibilities of businesses operating in or having links with them, several civil society organizations have challenged Orange with regards to its business relationship with Partner.

The French trade union CGT warned as early as February 2010 in the journal of its post and telecommunications federation (*Fédération des activités postales et de télécommunication*, FAPT) that the telecommunications companies operating in the OPT were carrying out activities that were illegal under international law. The article detailed the use of unlawfully appropriated for the construction of infrastructure to provide services for settlements, and recalled Orange's responsibility under its business relationship with Partner<sup>111</sup>.

The Association France Palestine Solidarité (AFPS) has addressed the French company France-Télécom and then Orange on several occasions in relation to their operations in the OPT. In October 2011, the AFPS called on France Télécom-Orange to terminate its agreement with Partner<sup>112</sup>. At a meeting in November 2011, France Télécom-Orange said that the group could not terminate this agreement as the license it had granted Partner was for an unlimited period of time. The AFPS responded by noting that under French commercial law there is no such thing as an agreement for an unlimited period of time and that permanent obligations are in fact illegal. In 2012, the AFPS also launched a campaign to mobilize public support, which included numerous activities<sup>113</sup>.

In addition, in June 2012 the *Collectif National pour une Paix Juste et Durable entre Palestiniens et Israéliens* (CNPJDPI) launched a campaign revealing and explicitly denouncing Partner's direct involvement in Israeli settlements in the West Bank and Golan Heights<sup>114</sup>. As part of the campaign, more than 30,000 postcards printed with the statement '*Orange complice de la colonisation israélienne de la Palestine*' (Orange complicit in Israel's settlement policy in Palestine) were sent to Orange's head office. By the end of March 2014, more than 15,000 people had signed the petition. At a meeting between CNPJDPI and the Orange management on 21 November 2012, Orange's Director of Strategy and Development confirmed that Orange had received the postcards. Questioned by members of the CNPJDPI at the shareholders meeting of June 2012, the Deputy CEO, General Secretary of the Orange Group stated that "*the many analyses that [Orange] has carried out have led to the conclusion that France Télécom could not and still can not terminate the contract in sound legal conditions [...] [ORANGE] has taken the opportunity to at least obtain to receive royalties.*"<sup>115</sup>

111. La Fédération des activités postales et de télécommunications (FAPT), « Le cas Partner : violation du droit international pour le téléphone mobile ! », *Journal de la FAPT de la CGT*, n° 508, February 2010, p. 13.

112. Letter from the chairman of the AFPS to Stéphane Richard, Chairman and CEO of France Télécom Orange, 13 October 2011.

113. Press releases, distribution of leaflets outside local France Télécom agencies, petitions, complaints made in writing or by telephone and delivery of petitions by delegations in person.

114. See <http://www.france-palestine.org/Participez-a-la-mobilisation>

115. Questions and answers at the General Meeting of FT Orange shareholders, 5 June 2012. [Unofficial translation]



In a November 2012 meeting with a CNPJ DPI delegation, France Télécom management confirmed that the agreement could not be terminated, and provided an evasive answer when asked why France Télécom had agreed to renew the agreement in 2011.

Following this meeting, the CNPJ DPI sent a letter to Orange's head office refuting all the arguments put forward by the company, and reiterating its request that any agreement with Partner Communications be terminated<sup>116</sup>. The CNPJ DPI wrote to Orange's headquarters on 6 May 2014,<sup>117</sup> and to the Minister of Foreign Affairs on 8 July 2014,<sup>118</sup> to request meetings.

In addition, the trade unions CGT and Solidaires have been challenging Orange for several years through the unions' international representation bodies<sup>119</sup>.

The CGT repeatedly challenged Orange over this business relationship with Partner and requested the termination of the agreement several times, in particular at a meeting of the Alliance on 4 April 2013 held in the presence of delegations from France Télécom, UNI and the three French unions at the multinational corporation's headquarters in Paris; in a written question to Orange's Board of Directors on Monday 28 July 2014 from Ghislaine Coinaud, CGT Administrator employee of the Orange Group, following Israel's military campaign in Gaza in July and August 2014; in a letter from the CGT Board of Directors, no. 165, in August 2014; through a statement at Orange's Île de France Works Council on 15 September 2014; and at the first 2014 session of the central committee of the economic and social unit. During a meeting in April 2013, Orange promised to provide the organizations with its legal analysis in similar cases, supporting its claim that it was commercially impossible to terminate such agreements. However, the company never provided these documents. In May 2013, Orange indicated for the first time that in 2013 it had taken steps to disengage from its business relationship with Partner, but had been unsuccessful thus far.

As early as 5 February 2011, another union with members employed by Orange, Solidaires, published a leaflet through the post and telecommunications federation (*Fédération syndicale des activités postales et de télécommunication*)<sup>120</sup> in which it indicated its support for the BDS campaign (Boycott, Divestment, Sanctions) specifically pointing to Orange's relationship with Partner, "*which authorizes Partner to operate under the Orange brand, the 'leading telecoms brand in Israel'*", asking it to remove its equipment from the occupied territories. Solidaires then launched a public petition linked to the BDS campaign on this issue.<sup>121</sup>

Solidaires wrote a letter to the CEO of Orange on 13 March 2013 challenging the company over its commercial relationship with Partner, and repeating that it was taking part in a mobilisation campaign on the issue. Finally, another letter was sent to the CEO of Orange on 4 August 2014 during the 2014 hostilities in Gaza, demanding that the agreement be terminated immediately.

116. Letter from the CNPJ DPI to Orange (Mr Elie Girard), 21 December 2012.

117. Letter from the CNPJ DPI to Orange, 6 May 2014.

118. Letter from the CNPJ DPI to the Minister of Foreign Affairs, 8 July 2014.

119. Declaration issued by the office of France Télécom's Global Works Council, 9 February 2012.

120. Leaflet of the *Fédération syndicale des activités postales et de télécommunications* published by Solidaires within the France Télécom Group entitled « "Orange Partner" ne respecte pas le droit international ».

121. Petition launched by BDS and Sud Solidaires, « Territoires Palestiniens - FT-Orange complice de l'occupation ? Indignons nous ! ».

In September 2014, Solidaires received a response from Orange's CEO to its 4 August 2014 letter reiterating that the agreement between Orange and Partner could not be terminated unilaterally, adding:

*"The agreement signed in 2011 allows us to attach legal foundations to the use of the brand and thus to have a right to information on the activities of the company that holds the Orange brand in Israel. It is in this framework that we have reminded Partner of our request for the following elements to be checked and, if necessary, implemented in accordance with the law:*

- *Ensure that the owners of the lands where the masts are installed receive just and fair remuneration;*
- *Ensure respect for the national boundaries allowing operators in the neighboring countries or territories to develop their own economic activities;*
- *Commit not to contribute to military activities outside any legal framework."*<sup>122</sup>

The stark contradictions between Orange's responses to the foregoing requests by civil society organizations raise doubt about the adequacy of the measures and policies Orange has implemented to ensure corporate responsibility, including its duty of due diligence.

The organizations who wrote this report nonetheless welcome the positive changes in Orange's approach, which now implicitly admits that it has a responsibility to carry out due diligence. Notwithstanding, Orange's measures vis-à-vis Partner remain insufficient to fulfill its responsibility to identify risks of adverse human rights impact, take adequate steps to avoid involvement in human rights abuses and mitigate them when it becomes involved in abuses. They also point to Orange's lack of understanding of the situation in the OPT. Indeed, Orange's responses demonstrate that it is primarily concerned with its obligations under Israeli law, without consideration for international law or France's public policy commitments on the illegality of settlements.

The operations of Partner in the settlements entails important human right risks:

- The owners of the unlawfully appropriated land being used for the construction of telecommunications towers want to regain the use of these lands; and
- The settlements are illegal and Israeli policy does not allow operators in neighboring countries to develop their activities in conditions that ensure fair competition.

In official documents, Partner points to the importance of its business relationship with Orange. Therefore it is hard to understand that under these circumstances, Orange is unable to exercise its influence over Partner. As we have not been allowed to see the contract linking the two companies, it is difficult to ascertain what the contract contains, or the nature of restrictions placed on Orange with respect to termination.

In February 2014, all the authors of this report sent an official letter to the Orange Group's CEO requesting a meeting and inquiring about Orange's plans to terminate its agreement with Partner<sup>123</sup>. As there was no official response, on 13 March 2014 the associations sent an e-mail correspondence to one of the Group's corporate social responsibility managers, who replied that the Group had "*no link with Orange Israel. It isn't Orange but a name that has been 'usurped'*" (unofficial translation). This response contradicts information previously received from Orange.

122. Letter from Stéphane Richard to Christian Pigeon of Sud, 2 September 2014. [Unofficial translation]

123. Letter from FIDH, CCFD-Terre Solidaire, AFPS, LDH, CGT, and Sud-Solidaires to Orange, 26 February 2014.



The authors sent another letter to the Group's CEO on 20 February 2015 reiterating their concerns, questioning whether Orange had taken any concrete steps or received any assurances from Partner in relation to activities in settlements. They also informed Orange of the forthcoming publication of this report. On 28 April 2015, as this report was being finalized, Orange contacted the authors to arrange for a meeting following the authors' latest communication sent on 20 February 2015.

#### 4.4. Good practices by Orange's peers

**Several European companies have put an end to their business activities in or related to settlements.** At the end of January 2014, the largest Dutch pension fund, PGGM, decided to withdraw its investments from five Israeli banks because of their involvement in the settlements<sup>124</sup>. A Danish bank and a Norwegian pension fund later on followed suit by revoking their investments in Israeli banks and enterprises involved in the settlements<sup>125</sup>.

At the end of January 2014, Germany decided to include a territorial clause excluding the settlements in the West Bank and East Jerusalem as a condition for continuing to grant subsidies to Israeli high-tech companies as well as a condition precedent for the renewal of Germany's bilateral scientific-cooperation agreement with Israel. On 1 February 2014, Denmark's largest bank announced its decision to blacklist Israel's Hapoalim Bank because it had help to construct Israeli settlements in the West Bank. On 25 February 2014, the Luxembourg pension fund FDC added the five largest Israeli banks to its list of banned investment targets because they were "*financing illegal settlements*"<sup>126</sup>.

The Dutch pension giant ABP announced on 4 July 2014 that it was disengaging from two Israeli companies in the military sector. In June 2014, Group4Security (G4S) announced its intention not to renew its contract with the Israeli prison service when it expires in 2017. The Dutch company Vitens<sup>127</sup> terminated its relationship with the Israeli national water company, Mekorot, in December 2013, due to the status of settlements. In September 2013, the Dutch engineering consultancy Royal HaskoningDHV decided to withdraw from a sewage-disposal project intended to service settlements. Additionally, in March 2015, the company Safege, a subsidiary of the Suez Environnement Group, in charge of preliminary research related to the construction of a cable car in Jerusalem, announced its decision to withdraw from the project<sup>128</sup>.

124. PGGM, "Frequently asked questions about the exclusion of Israeli banks", available at <https://www.pggm.nl/english/what-we-think/Pages/Frequently-asked-questions-about-the-exclusion-of-Israeli-banks.aspx>

125. Reuters, « Norway's \$810 bln fund excludes two Israeli, one Indian firm », 30 January 2014, available at <http://www.reuters.com/article/2014/01/30/norway-sovereignwealthfund-idUSL5N0L417M20140130>; Al Haq, "Demark's Largest Bank Adds Israeli Bank Hapoalim to its Exclusion List over Settlement Construction", 4 February 2014, available at <http://www.alhaq.org/advocacy/targets/accountability/81-general/779-demarks-largest-bank-adds-israeli-bank-hapoalim-to-its-exclusion-list-over-settlement-construction>

126. I24News, "Luxembourg pension fund bans Israel investment", 24 February 2015, available at <http://www.i24news.tv/en/news/international/europe/140225-luxembourg-pension-fund-bans-israel-investment>

127. H. Keinon, S. Udasin, "Dutch firm severs ties with Mekorot over West Bank policy", The Jerusalem Post, 12 October 2013, available at <http://www.jpost.com/Diplomacy-and-Politics/Dutch-firm-severs-ties-with-Mekorot-over-West-Bank-policy-even-as-Israel-Jordan-PA-sign-major-water-deal-334597>

128. C. Louis, « Téléphérique à Jérusalem-Est : Suez Environnement jette l'éponge », *Le Figaro*, 25 mars 2015, available at <http://www.lefigaro.fr/societes/2015/03/25/20005-20150325ARTFIG00062-telepherique-a-jerusalem-est-suez-environnement-jette-l-eponge.php>

ORANGE'S  
DANGEROUS  
LIAISONS IN  
THE OCCUPIED  
PALESTINIAN  
TERRITORY

5.

TOWARDS A  
DÉNOUEMENT:  
RESPONSIBILITIES OF  
ORANGE AND OF  
THE FRENCH STATE

## 5.1. Orange's failure to act vis-à-vis Partner's acts: summary

	IDENTIFY AND PREVENT ADVERSE IMPACTS	PREVENT AND MITIGATE ADVERSE IMPACTS AND ACCOUNT FOR THEM	USE ITS INFLUENCE AND SEEK TO INCREASE ITS INFLUENCE	IF THAT DOESN'T WORK, TERMINATE ITS BUSINESS RELATIONSHIP
<b>Orange's human rights obligations</b>	The procedure for identifying and assessing an adverse impact usually consists in "assessing the human rights context prior to a proposed business activity; identifying who may be affected; cataloging the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified."	<i>"The responsibility to observe human rights require that business enterprises:</i> a) (...) b) <i>Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."</i>  <i>"In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. This process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed."</i>	<i>"If a business risks being implicated in an adverse effect only because the impact is linked to its activities, products or services by virtue of its commercial relationships, it is not responsible for the impact itself: it is the body that caused or contributed to it that bears the responsibility. (...) However the business enterprise has a duty to use its influence to encourage the entity that caused the impact or that contributed to it to prevent it happening again or to mitigate its effects."</i>	The OECD Guiding Principles list several possible ways of influencing business partners: "continuing the relationship with the supplier throughout the period in which the business is attempting to mitigate the risks; suspending the relationship temporarily while continuing to attempt to mitigate the risks; or, as a last resort, ending the relationship with the supplier either after attempts to mitigate the risks have failed, or because the enterprise deems that mitigation is not feasible, or because of the severity of the adverse impact."
<b>UN Guiding Principles</b>	<b>Principle 18, extract from note</b>	<b>Principles 13 and 17</b>	<b>Principle 13, extract from note, page 21 of the explanatory notes to the UN Guiding Principles<sup>129</sup></b>	<b>Question 46 on Guiding Principle 19, explanatory notes to the UN Guiding Principles</b>
<b>OECD Guiding Principles</b>	<b>Chapter II General principles and Chapter IV, Human Rights, Notes</b>	<b>Business relationship, Chapter II, General Principles paragraph 12</b>	<b>Chapter II, General Principles, Note 19</b>	<b>Chapter II, General principles, Note 22</b>

129. United Nations, *The Corporate Responsibility to Respect Human Rights, an Interpretive Guide*, 2012, available at [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)

	IDENTIFY AND PREVENT ADVERSE IMPACTS	PREVENT AND MITIGATE ADVERSE IMPACTS AND ACCOUNT FOR THEM	USE ITS INFLUENCE AND SEEK TO INCREASE ITS INFLUENCE	IF THAT DOESN'T WORK, TERMINATE ITS BUSINESS RELATIONSHIP
<b>Why Orange could have acted</b>	In addition to publicly available information and the official positions of France, the European Union and the United Nations on the Israeli occupation, Orange's trade unions – the CGT and Solidaires – and NGOs had repeatedly alerted the company of the negative impacts of Partner's activities. As early as February 2010, Orange was aware of the risk of adverse impacts directly linked to its services as a result of its business relationship with Partner.	According to the OECD Principles, human rights due diligence is an "ongoing activity" <sup>130</sup> . Orange should therefore have conducted due diligence before, during and after signing the new agreement, in order to prevent Partner from contributing to breaches of international humanitarian law and international human rights law.	Orange was repeatedly challenged by the author NGOs and trade unions. Partner changing majority shareholder in 2011 provided an opportunity for Orange to ask for the licensing agreement to be renegotiated. On this occasion, Orange could have used its financial weight and the importance to Partner of using its brand to increase its influence on how the contract was worded.  Given the nature of Orange's business relationship with Partner, it could have made Partner change its practices. At the very least, Orange could have added or deleted clauses when the brand-licensing agreement was renewed in 2011 and amended in 2015, for example a ban on the use of the Orange brand in the OPT.	The authors of this report repeatedly advised Orange to end its commercial agreement with Partner in order to avoid the risk of contributing to the adverse impacts in the settlements where Partner is operating.
<b>Orange Response / Action</b>	According to one of the responses issued by one of Orange's directors, the resolutions of the Security Council and international humanitarian law do not apply to private individuals or companies.	Orange continued to deny responsibility, including in Orange's CEO's letter of response to Solidaires in October 2014.	Orange's management team states that it complies with Israeli law, which it says governs its contract with Partner. Orange also states that it is the Israeli regulatory authority that defines Israeli territory and that it includes the settlements <sup>131</sup> , making it impossible to terminate the contract for using the brand in the countries bordering Israel.	At a meeting between CNPJDP and the Orange management team on 21 November 2012, the company asserted that it could not terminate its brand-licensing agreement with Partner and that it had had no choice but to sign the 2011 agreement since the original 1998 agreement had "no expiry date". However commercial law does not recognize agreements of unlimited duration, permanent obligations not being legal. The inclusion of a clause regarding the length of the contract, through an amendment in 2015, shows that it is possible to introduce a limit to, or even to demand an end to the contract.

130. OECD Guidelines for multinational enterprises, Chapter IV, Notes, p. 35.

131. Minutes of the meeting between the CNPJDP and FT Orange management on 21 November 2012.

	IDENTIFY AND PREVENT ADVERSE IMPACTS	PREVENT AND MITIGATE ADVERSE IMPACTS AND ACCOUNT FOR THEM	USE ITS INFLUENCE AND SEEK TO INCREASE ITS INFLUENCE	IF THAT DOESN'T WORK, TERMINATE ITS BUSINESS RELATIONSHIP
<b>Why the response is not valid</b>	Orange has repeatedly declined any responsibility, even going so far as to allege that the use of its brand has been usurped. Orange has not demonstrated that it has taken steps to identify and prevent actual or potential adverse human rights impacts.	Orange is hiding behind Israeli law, ignoring its self-standing human rights responsibilities and the international community's views that the settlements are illegal. Operating in the settlements therefore entails important human rights risks for Partner.	The UN and OECD principles state that in case of contradiction between domestic law and international human rights law, businesses must seek ways to comply with both.  " (...) <i>business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.</i> (UNGP 23)	Furthermore, Partner's 2010 annual report states that the brand-licensing agreement can be terminated by mutual consent <sup>132</sup> . Orange could therefore have entered into negotiations with Partner to try to come to an agreement to terminate the brand-licensing contract by mutual consent. In fact Orange has only once mentioned an attempt at termination, in an e-mail to the unions, and has never announced it in publicly.
<b>Example of possible action</b>	- Map the risks - Carry out a human rights impact assessment before renewing the contract - Involve civil society organizations	- Orange should have taken preventive steps to avoid possible harm and to mitigate the real and potential adverse impacts that constitute violations of internationally recognized standards resulting from its business relationship with Partner: - Demand that Partner no longer operate in the settlements in the OPT and avoid contributing to the maintenance of the settlements and contributing to their economic viability - Demand that Partner undertakes robust due diligence measures in order to prevent and mitigate adverse human rights impacts for which it bears either direct or indirect responsibility - Demand that Partner take remediation measures for the adverse impacts that it has benefited from, and collaborate with Partner to ensure their implementation through legitimate processes - Demand that Partner set up a grievance mechanism	Orange should have ensured that Partner was no longer using its brand in the Israeli settlements and the OPT, and in case of failure to do so it should have considered not renewing the contract in April 2011 nor amending it in March 2015.  Orange should have also ensured that the termination clause allowed it to terminate the agreement. Partner's financial dependence on the agreement leads one to think that Orange could have negotiated more cautiously to ensure the fulfillment of its human rights obligations.	Public declaration of Orange's intention to terminate the agreement  Termination of the agreement
<b>Exemples of measures by other businesses</b>	Some European <sup>133</sup> and Israeli businesses have withdrawn from the Israeli settlements, "because their presence was harming their image and could have legal consequences" according to the United Nations <sup>134</sup> .			

132. Partner Communications, 21 March 2011, *op. cit.*, p. 35 : "The brand license agreement may be terminated by mutual agreement [...]"

133. See section 4.4.

134. 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*, A/HRC/22/63, 7 February 2013, p. 22, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf)

## 5.2. The responsibilities of the French State

Orange's presence in the OPT, through its business relationship with Partner, raises questions about the consistency of France's policy on the Israel-Palestine conflict. France is diplomatically committed to the creation of a Palestinian State<sup>135</sup>. France also supports the Palestinian Authority financially, contributing €16m in 2014. In terms of cooperation, France is one of the main contributors of aid to Palestine: it contributed €43m in 2013 (€350m over the period 2008-2013).

When the French President, François Hollande, visited the OPT for the first time in November 2013, he reiterated France's continued position on the illegality of the Israeli settlements in the OPT and demanded a "full and final halt" to the settlement policy. Since the 24th of June 2014, the French Ministry of Foreign Affairs has been advising citizens and businesses undertaking economic and financial operations in the OPT to "seek appropriate legal advice before carrying out any such activities"<sup>136</sup> but without making any formal statement on the human rights implications of conducting such economic activities in the settlements. In March 2015, the French authorities reportedly contacted the Safège company of the Suez Environment Group, which was conducting a feasibility study on the Jerusalem cable car project, in order to warn the company of the legal risks associated with the project. The company has later on announced its withdrawal from the cable car project.

In light of its international human rights obligations, and as recognized by the UN Guiding Principles on Business and Human Rights, the French State has a duty to protect against human rights abuses by third parties, including business enterprises. According to these Principles, "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 helping businesses to identify, prevent, assess and address such risks<sup>137</sup>.

In its 6 June 2014 statement, the United Nations Working Group on Business and Human Rights reiterated the important role that must be played by the home States of multinational businesses operating in the settlements, and even more so in a situation where the occupying State may be unable or unwilling to effectively protect human rights<sup>138</sup>.

According to the UN Guiding Principles, States must ensure policy coherence. In particular, they must provide the necessary information, training and support to State and other governmental departments (such as public investment banks, development banks, export credit agencies, or agencies dealing with state's shareholding). These institutions have the capacity to influence business conduct, and must in consequence act in accordance with the State's human rights obligations, laws and policies<sup>139</sup>, such as those related to the illegality of settlements.

By holding 25.05% of the capital of Orange, the French government remains its largest minority shareholder. On this matter, it should be reminded that the UN Guiding Principles addresses the

135. French Ministry of Foreign Affairs, « Présentation des Territoires palestiniens », updated 9 January 2015, available at <http://www.diplomatie.gouv.fr/fr/dossiers-pays/israel-territoires-palestiniens/presentation-des-territoires/article/presentation-10767>

136. *Ibid.*

137. United Nations Guiding Principles on Business and Human Rights, Principle n° 7, p. 10.

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

139. United Nations Guiding Principles on Business and Human Rights, Principle n° 8, p. 12

issue of the specific links between States and certain companies that are owned or controlled by them. According to the UN Guiding 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 the statutory authority or taxpayer support, the stronger the State’s policy rationale becomes for ensuring that the enterprise respects human rights.” In its statement of June 2014, the UN Working Group on Business and Human Rights reiterated States’ obligations to take additional steps to protect against human rights abuses by businesses owned or controlled by the State in relation to the situation in the OPT<sup>140</sup>.

As Orange’s largest minority shareholder, the French government should take additional steps to comply with its obligation to protect from human rights abuses by businesses belonging to or controlled by the State. On this point, the UN Guiding Principles assert that States must encourage and if necessary **demand the effective implementation of human rights due diligence**. This obligation also applies to minority shareholders: indeed the Office of the High Commissioner on Human Rights considers that both the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises<sup>141</sup> “apply to institutional investors holding minority shareholdings”.

The UN Guiding Principles indicate that if States own or control a business, they have greatest means within their power to ensure that human rights due diligence is effectively carried out<sup>142</sup>. The French State’s leverage on Orange to encourage the enterprise to respect human rights is all the greater as France is Orange’s **largest minority shareholder**. Three of the fifteen members of Orange SA’s Board of Directors represent the public sphere<sup>143</sup>. The State’s representatives sitting on the Board of Directors and the Committee for Corporate Social Responsibility **have on several occasions been made aware of the situation in relation to Orange’s business relationship with Partner, and advised on the possible ways in which it could use its influence**. In its Reference Document 2013, Orange itself recognizes that the French State (jointly with Bpifrance Participations) is the only entity that can exercise control over Orange: “The State, jointly with Bpifrance Participations (...) could, in practice, in view of the low turnout at shareholders meetings and the absence of other coalitions of shareholders, determine the result of shareholders’ vote on motions requiring a simple majority.”<sup>144</sup>

All States must take additional steps to protect against abuses by companies that are owned by the State (even as a minority shareholder), and by abuses by companies that operate in conflict-affected areas (see section 3.5). By virtue of this principle, the French government must take additional protection measures and use its leverage to ensure that Orange effectively implement human rights due diligence measures and prevent human rights abuses linked to Orange’s business relationships in the OPT. As indicated in the June 2014 statement of the United Nations Working Group on business and human rights, “States that are ‘home states’ of business enterprises operating in or connected with settlements in the OPT should engage with such

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

141. OECD, *Due diligence in the financial sector: adverse impacts directly linked to financial sector operations, products or services by a business relationship*, June 2014. Letter from OHCHR to OECD Watch, “The issue of the applicability of the Guiding Principles on Business and Human Rights to minority shareholdings”, Geneva, April 26th 2013.

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

143. Orange, *Document de référence 2013*, p. 385.

144. *Ibid.* [Unofficial translation]

*enterprises at the earliest possible stage to provide advice and guidance, and should make clear the state’s policy in regard to the settlements. States may also consider additional measures.*”<sup>145</sup>

Le Collectif National pour une Paix Juste et Durable entre Palestiniens et Israéliens (CNPJDPI) wrote to the Minister of Foreign Affairs, Laurent Fabius, on 8 July 2014 in order alert of the concerns linked to Orange’s business relationship with Partner, and to request a meeting. A meeting took place on 18 February 2015, during which the Collective expressed its preoccupations and reiterated its position that the agreement between the two companies should be terminated.

On 20 February 2015, all the organizations that wrote this report sent a letter to the Minister of Foreign Affairs and International Development; the Minister of the Economy, Industry and Digital Affairs; the Director of Investments, Services & Finances of the State Investment Agency (*Agence des Participations de l’État*) and the CEO of Bpifrance, informing them of the report’s publication. They also questioned the measures that France had taken thus far in order to prevent the human rights violations linked to Orange’s business relationships in the OPT, and to ensure that Orange carries out effective human rights due diligence. To date, these letters have not received any response.

145. Working Group on the issue of human rights and transnational corporations and other business enterprises, *op. cit.*, p. 14.

# RECOMMENDATIONS



## Recommendations to the European Union and its member states in relation to human rights protection and human rights respect by enterprises

The EU and its member states must take the necessary steps, including legislative measures, to ensure the effective implementation and realization of their international human rights obligations, in particular that of protecting from human rights violations by third parties, including business enterprises. This obligation requires particular attention in conflict-affected areas and in situations where an occupying State may be unable or unwilling to comply with its international law obligations and to protect human rights effectively, as is the case of Israel in the OPT.

The EU and European governments must take measures to ensure coherence between their statements and their policies, including in relation to the illegality of Israeli settlements. In this regard, the Made in Illegality campaign<sup>146</sup> outlines several measures that could be implemented in relation to the exclusion of the settlements from any type of bilateral relationship:

- > Prohibit the import of settlement products;
- > Exclude the settlements from bilateral agreement and cooperation with Israel;
- > Discourage French companies from investing in settlements and from maintaining economic relations with them.

Such decisions would be coherent with the July 2013 EU directive which render Israeli entities established in the OPT and any other project implemented on this territory ineligible to EU subventions, prizes and other financial instruments.

## Recommendations to the French State

- > Through the Ministry of Foreign Affairs, France must reinforce its advisory regarding business activities in the OPT, explicitly advising not to invest in the settlements and inserting a direct reference to international humanitarian law. Such reinforcement could take the form of a legislative proposal.
- > The State must ensure effective implementation of the UN Guiding Principles on Business and Human Rights (UNGPs), which are based on existing obligations under international law. In particular, it must draw up a robust and ambitious National Action Plan for the implementation of the UNGPs, especially by following the advisory opinion issued by France's National Human Rights Institution (*Commission Nationale Consultative des Droits de l'Homme*, CNCDH)<sup>147</sup>. Particular attention must be paid to the question of access to justice and the application of the UNGPs in high-risk zones.

146. See FIDH, Plateforme des ONG françaises pour la Palestine, "Made in Illegality": End All Economic Relations with The Israeli Settlements, available at [http://www.madeinillegality.org/IMG/pdf/cncd\\_colonie\\_en.pdf](http://www.madeinillegality.org/IMG/pdf/cncd_colonie_en.pdf)

147. CNCDH, *Entreprises et droits de l'homme : avis sur les enjeux de l'application par la France des Principes directeurs des Nations unies*, 25 October 2013, available at <http://www.cncdh.fr/fr/actualite/entreprises-et-droits-de-l-homme>; see also FIDH, LDH, "Contribution à l'avis de la CNCDH sur le Plan nation d'action de mise en application des Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'homme", 16 September 2013, available at <https://www.fidh.org/La-Federation-internationale-des-ligues-des-droits-de-l-homme/europe/france/13945-contribution-de-la-fidh-et-la-l-dh-a-l-avis-de-la-cncdh-sur-l-application>

- > The French government must support the adoption and effective implementation of the bill on the duty of vigilance.<sup>148</sup> The French government must moreover ensure that the duty of vigilance covers all of companies' business relationships, regardless of their location. Finally, France must support current efforts at the UN level to reinforce the international normative framework on the issue of business and human rights.

## Recommendation to the French State as Orange's most significant minority shareholder

- > As Orange's most significant minority shareholder, the French government must set an example by adopting rigorous additional protective measures vis-à-vis Orange's business relationships, and use its leverage to ensure that Orange conducts effective human rights due diligence. Consequently, the French government must take immediate action within Orange's Board of Directors to ensure that the company demands Partner's withdrawal from Israeli settlements, or in the alternative terminates its business relationship with Partner.

## Recommendations to Orange

- > In order to prevent contributing to adverse impacts on human rights including through its business relationships, Orange must require that Partner cease its operations in settlements, in order to avoid contributing to perpetuating a situation considered illegal by the international community and involving breaches of international humanitarian and human rights law. In order to do so, Orange could apply the clause banning the use of the brand in countries bordering Israel.
- > If that approach fails, Orange must terminate its business relationship with Partner and state publicly its commitment to avoid contributing to the viability and maintenance of illegal settlements.

148. An initial bill was submitted between November 2013 and April 2014 by four parliamentary groups and was discussed in the Assembly in January 2015 until being referred back to the committee. Then a second bill was submitted by the Socialist group in February 2015 (no. 2578) and adopted in first reading on March 30<sup>th</sup>. French government must commit to plan the vote in Senate now.

# APPENDIX: ABOUT THE AUTHOR ORGANIZATIONS

## **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 4500 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 with 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.

## **International Federation for Human Rights (FIDH)**

Set up in 1922, FIDH is an international not-for-profit non-governmental organization with 178 member organizations throughout the world, including the Ligue des Droits de l'Homme (LDH – Human Rights League) in France. FIDH acts worldwide to promote respect for human rights as stated in the Universal Declaration of Human Rights. One of its main concerns is to protect economic, social and cultural rights against a background of economic globalization. FIDH documents human rights violations committed by business enterprises and promotes corporate responsibility, access to justice for victims and the strengthening of standards at the national, regional and international level. FIDH has consultative status with the UN Economic and Social Council.

## **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 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 Orange through its specific union SUD. 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.

# LAND OCCUPIED BY THE SETTLEMENTS



- Areas cultivated, fenced in or guarded by the Israel army
- Areas within settlements' local and regional councils
- Green line
- Wall built or under construction
- Planned Wall

Source: OPT-OCHA 2012, Map available in the brochure "Made in Illegality" - End all economic relations between Belgium and the Israeli settlements available at [http://www.madeinillegality.org/IMG/pdf/cncd\\_colonie\\_en.pdf](http://www.madeinillegality.org/IMG/pdf/cncd_colonie_en.pdf) [http://www.madeinillegality.org/IMG/pdf/cncd\\_colonie\\_en.pdf](http://www.madeinillegality.org/IMG/pdf/cncd_colonie_en.pdf)

ORANGE'S  
DANGEROUS  
LIAISONS IN  
THE OCCUPIED  
PALESTINIAN  
TERRITORY



fidh



Unions  
syndicales  
**Solidaires**