

# THE DANGEROUS LIAISONS OF THE **Carrefour** GROUP WITH THE ISREALI COLONISATION

NOVEMBER 2022



1. PURPOSE OF THE REPORT	4
2. ISRAEL'S COLONISATION OF THE OCCUPIED PALESTINIAN TERRITORY	4
3. THE <i>CARREFOUR</i> GROUP	5
3.1 History	5
3.2 <i>Carrefour</i> today	5
3.3. The <i>Carrefour</i> group and the franchise system	5
4. <i>CARREFOUR'S</i> AGREEMENT WITH TWO ISRAELI COMPANIES	6
4.1. The data of the agreement	6
4.2. <i>Carrefour</i> engages with brands directly involved in the colonies	6
4.3. <i>Carrefour</i> to involve its brand in colonisation	7
4.4 <i>Electra Consumer Products</i> and its parent company: a partner particularly involved in colonisation	7
5. CORPORATE OBLIGATIONS AND RESPONSIBILITIES WITH REGARD TO INTERNATIONAL LAW AND HUMAN RIGHTS	8
5.1. Corporate obligations under international law	8
5.2. Corporate responsibilities under international law	9
5.3. Corporate liability under French law	11
6. <i>CARREFOUR'S</i> STATED COMMITMENTS TO ETHICS AND HUMAN RIGHTS	12
7 CONCLUSIONS AND RECOMMENDATIONS	13
7.1. Vis-à-vis the <i>Carrefour</i> group	13
7.2. Towards the French government	13

# EXECUTIVE SUMMARY

On 6 March 2022, *Carrefour* announced in a press release (PR)<sup>1</sup> that it had signed a franchise agreement in Israel with the Israeli company *Electra Consumer Products* and its subsidiary *Yenot Bitan*. This agreement will allow *Carrefour* brands to set up in Israel before the end of 2022 and all *Yenot Bitan* shops, “more than 150 today”, to develop by having access to *Carrefour* branded products before the summer. In addition, the agreement states that both the *Yenot Bitan* and *Mega* brands will be discontinued in favour of the *Carrefour* brand by the end of the year, and that within three years, more than 150 *Yenot Bitan* /*Mega* branches will carry the *Carrefour* brand, along with the opening of new supermarkets.

At least three of the *Yenot Bitan* shops are located in Israeli settlements in the occupied Palestinian territory, all of which are illegal under international law, which will result in the presence of shops in these settlements that are contractually linked to *Carrefour* and that sell *Carrefour* products. *Carrefour*'s direct involvement in the colonisation will then be affirmed in a very clear, very direct and particularly indecent manner.

In addition, beyond this direct complicity, *Carrefour* compromises itself with Israeli companies, which are themselves very involved in colonisation: *Electra Consumer Products* is involved in some of its activities and the parent company of *Electra Consumer Products*, the international holding company *Elco Ltd*, is, through its subsidiaries, including *Electra* which shares its brand with *Electra Consumer Products*, one of the most important players in Israeli colonisation.

This agreement, which began to be implemented in the summer of 2022, is contrary to the human rights and international humanitarian law obligations of companies under the Geneva Conventions of 1949, and which are further elaborated by the UN Guiding Principles and the OECD Guidelines. Moreover, this agreement is in contradiction with *Carrefour*'s stated philosophy on ethics and human rights, while highlighting the inadequacy of the vigilance plan drawn up by *Carrefour*.

The signatories of this report remind the *Carrefour* group that the specific responsibility of companies exists independently of the capacity or

determination of States to fulfil their own human rights obligations. They also recall that companies operating in conflict-affected areas, as well as in situations of occupation, must exercise enhanced human rights due diligence and avoid contributing to human rights abuses, including those committed by their suppliers or business relations.

Consequently, the signatories of this report call on the *Carrefour* group to comply with the international principles outlined in this report by ceasing all activities related to Israeli settlements, which implies ending its partnership with the company *Electra Consumer Products* and its subsidiary *Yenot Bitan* as soon as possible.

They also ask the French State to act so that the *Carrefour* group and other French companies take the full measure of their obligations and put an end to any business relationship that may have a link with the Israeli colonisation. They ask the French State to draw the attention of the *Carrefour* group to the legal and reputational risks it would take by continuing this partnership.

## LIST OF ABBREVIATIONS

CSR	Corporate Social Responsibility
HRC	UN Human Rights Council
HRW	Human Right Watch
ICRC	International Committee of the Red Cross
ICC	International Criminal Court
IHL	International Humanitarian Law
OHCHR	Office of the High Commissioner for Human Rights
OECD	Organisation for Economic Co-operation and Development.
OECDG	OECD Guidelines for Multinational Enterprises
OPT	Occupied Palestinian Territory
PR	Press release
UNGP	UN Guiding Principles on Business and Human Rights

1. PR Carrefour, 2022, <https://www.carrefour.com/en/news/carrefourpartenariatIsrael>

# 1. PURPOSE OF THE REPORT

On 6 March 2022, the management of the *Carrefour* group<sup>2</sup> announced the conclusion of a strategic partnership with two Israeli companies, *Electra Consumer Products* and *Yenot Bitan*, to develop its activity in Israel. However, these two companies are, directly through their activity, and indirectly through their belonging

to the *Elco* group, involved in the colonisation activities carried out by Israel in the Occupied Palestinian Territory (OPT). Notably, the transfer of the nationals of the Occupying Power to colonise occupied territory, is a breach of Article 49 of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court.

The purpose of this report is to alert the *Carrefour* Group's management, the French government and all stakeholders to the serious human rights violations that *Carrefour* is complicit in through this partnership, and to make recommendations to address this situation.

## 2. ISRAEL'S COLONISATION OF THE OCCUPIED PALESTINIAN TERRITORY



*The settlement of Beitar Illit, built on land confiscated from the Palestinian village of Wadi Fukin village in the foreground*

Israeli colonisation of the occupied Palestinian territory began at the end of the June 1967 war following the occupation of the West Bank, with the illegal annexation of East Jerusalem and the construction of dozens of settlements throughout the Palestinian territory. It remains the major issue preventing any progress in the settlement of the Palestinian question towards peace.

Settlements are declared illegal by international law through a series of conventions and resolutions, from

the Geneva Conventions of 1949<sup>3</sup>, which prohibit any occupying State from displacing its population in the occupied State - a war crime in the sense of these conventions -, to the latest UN Security Council Resolution No. 2334 of 23 December 2016<sup>4</sup>, which, after recalling the illegality of the settlements, enjoins Member States "to distinguish, in their dealings [with the settlements], between the territory of the State of Israel and the territories occupied since 1967".

The European Union<sup>5</sup> and a large num-

ber of its Member States, including France<sup>6</sup>, have constantly reiterated the illegal nature of Israel's colonisation of the Palestinian territory.

In recent years, Israel's colonisation of the Palestinian territory has continued to expand at an ever-increasing rate. The theft of Palestinian land on which new settlements are being built is accompanied by increasingly cruel violence and abuses against the Palestinian population: evictions from land and homes, physical attacks by settlers, destruction of homes and agricultural resources, and increasingly violent repression of even peaceful acts of resistance, including administrative detentions, imprisonment and wilful killing. Palestinian villages are surrounded by settlements and "outposts" and the Palestinian population of these villages is under constant threat from settlers who use a strategy of terror to drive the inhabitants to flee, in order to take over new land. On 3 March 2021, after a long process, the International Criminal Court (ICC) announced the opening of an investigation into crimes committed in the OPT. The crimes related to colonisation such as through "the transfer of Israeli civilians into the West Bank since 13 June 2014" figures prominently in

2. PR Carrefour, 2022, op. cit.

3. Geneva Conventions, 1949, <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

4. UN Security Council Resolution 2334, 2016, <http://unscr.com/en/resolutions/doc/2334>

5. EU Foreign Affairs Council, 2012, [https://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/134152.pdf](https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/134152.pdf)

6. <https://www.diplomatie.gouv.fr/fr/dossiers-pays/israel-territoires-palestiniens/processus-de-paix/>

the list of war crimes under investigation<sup>7</sup>.

Companies which, directly or through their partnerships, participate in colo-

nisation, are in clear breach of international law, with France's stated policy, and with their commitments in terms of human rights. Their corporate

agents also risk being prosecuted by the ICC for complicity in war crimes.

## 3. THE CARREFOUR GROUP

### 3.1 History <sup>8</sup>

The *Carrefour* group is now one of the world's leading food retailers. Its history begins with the creation of the *Carrefour* company in 1959, which opened the first hypermarket in France in 1963. The company grew rapidly and was listed on the stock exchange in 1970, a first in the retail sector.

From 1973 onwards, *Carrefour* went international, exploring new markets

in Belgium, Italy and Spain, and then in Brazil in 1975. Other international establishments followed: in Argentina in 1982, in Taiwan in 1989, then in Africa, the Maghreb and the Middle East (Egypt, Jordan, Iraq, Oman, Qatar, etc.) In 1999, *Carrefour* made a public exchange offer for the shares of *Promodès*. The resulting merger between *Carrefour* and *Promodès* created the world's second largest retailer with

240,000 employees and over 9,000 shops worldwide.

During the 2000s, the group strengthened its positions in many countries through targeted acquisitions in France, Romania, Belgium, Poland, Italy, Brazil and Argentina. In 2014, *Carrefour* created *Carmila*, a company dedicated to the development of shopping centres adjacent to hypermarkets in France, Spain and Italy.

### 3.2 Carrefour today

Today, the "*Carrefour Partenariat international*" entity manages all of the *Carrefour* group's franchise partners throughout the world. It is present in 39 countries with 1,950 shops.

The *Carrefour* group, which has set itself the goal of being the world leader in the "*food transition for all*", recorded a turnover of 81.2 billion euros in 2021. In total, more than 500,000 people work under the *Carrefour* brand worldwide, in over 12,000 shops.

The distribution of the 12,225 *Carrefour* shops worldwide is currently as follows:

France: 5,274, Spain: 1,149, Italy: 1,089,

Poland: 906, Belgium: 789, Argentina: 597, Brazil: 464, Romania: 371, Taiwan: 137 and other countries (including Asia, North Africa and the Middle East): 1,449.

*Carrefour*, which has already been present in the Middle East since 1995 thanks to a partnership with the Emirati holding company *Majid Al Futtaim* (nearly 100 hypermarkets and supermarkets in several countries in the region) had already tried, without success, to establish itself in Israel six years ago.

The structure of the *Carrefour* brands is mainly developed into hypermarkets and into proximity shops which

can be designated, according to their size, *Carrefour Market*, *Carrefour City* or *Carrefour Express*. Internationally, *Carrefour* operates under other banners such as *Atacadao* in Brazil.

Since 1997, *Carrefour* has been developing its own private labels, in particular its *Reflète de France* brand.

While food retailing remains its core business, the *Carrefour* group also offers services such as travel, leisure, financial services (banking and insurance), drive-through, car rental, etc. *Carrefour* also intends to take advantage of the boom in online commerce, with the acquisition of the *Rue du Commerce* sales site<sup>9</sup>.

### 3.3. The Carrefour group and the franchise system

For the *Carrefour* group, franchising is an economic model that was established in France and around the world more than forty years ago. The *Carrefour* group's experience in franchising is so well known that it was awarded the 2022 "Digital Franchise Prize" by the newspaper *L'Express*<sup>10</sup>.

This contract defines the rules of col-

laboration between two companies, legally independent, located in different countries.

A franchise contract is a contract by which a company called the "franchisor" grants a right to use its brand name, its trademarks and its commercial processes to a group of legally independent entities called "fran-

chisees". This concession is made in exchange for the payment of a fee and is usually accompanied by an initial entry fee. The franchisees also undertake to comply with a set of specifications providing for the conditions of use of the franchise symbols and possibly the procedures for delivering the service (service franchise). Inter-

7. ICC Statement 01/18, 2021, <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine>

8. After the official Carrefour website : <https://www.carrefour.com/en>

9. <https://www.cafedelabourse.com/actualites/carrefour-analyse-un-leader-mondial-grande-distribution>

10. <https://franchise.carrefour.com/blog/la-franchise-carrefour-gagne-le-prix-de-la-franchise-digitale-de-l'express>



national law does not regulate the franchise contract. There is, therefore, a great deal of freedom in drawing up

a model international franchise contract<sup>11</sup>. This contract defines the rules of collaboration between two com-

panies, legally independent, located in different countries.

## 4. CARREFOUR'S AGREEMENT WITH TWO ISRAELI COMPANIES

### 4.1. The agreement's data

On 6 March 2022, the *Carrefour* group announced the conclusion of an international franchise agreement with two Israeli companies: *Electra Consumer Products* and *Yenot Bitan*<sup>12</sup>. The agreement stipulates the gradual conversion of more than 150 branches of the *Yenot Bitan* supermarket chain into *Carrefour* shops.

The French retailer will then open its own shops and market its own

branded products before launching banners with its partners throughout the country. This contract runs for twenty years, with the possibility of extending it for a further twenty years. It was noted that without waiting for the shops to change their signs, *Carrefour* products were already available on the website and in *Yenot Bitan* shop.

During the Council of Ministers meet-

ing of 24 July 2022, the Israeli Prime Minister, Yair Lapid, openly welcomed *Carrefour's* arrival in Israel and predicted that the French company's move would not remain isolated: "*We expect other large companies to follow suit*", words confirmed by the announcement of the Dutch supermarket chain *SPAR*, which will set up its own branches<sup>13</sup>.

### 4.2. Carrefour engages with brands directly involved in the colonies

As confirmed by the independent research centre *Who Profits*<sup>14</sup>, and as can be seen from the websites (in Hebrew) that officially list the loca-

tions of the *Yenot Bitan*<sup>15</sup>, *Mega* and *Shuk Mehadrin*<sup>16</sup> networks, a number of these shops are located in the settlements in the Occupied Palestinian

Territory, including in the "mega-settlements" of Ariel and Maaleh Adumim

Specifically, it appears that:

- *Yenot Bitan* is present in the settlements of Ariel, Alfie Menashe and Ma'ale Adumim,
- *Mega*, according to the list on their website, has no presence in the settlements,

***Carrefour* will therefore benefit directly from the settlements through the franchise agreement:**

- through the services it will provide to the *Yenot Bitan* shops located there, and the royalties it will earn from them;
- through the sale of its *Carrefour* brand products.



11. <http://globalnegotiator.com/files/contrat-de-franchise-internationale-exemple.pdf>

12. PR Carrefour, 2022, op. cit.

13. <https://www.actu-retail.fr/2022/04/21/carrefour-desormais-present-en-israel/>, 2021; and [https://www.econostrum.info/Le-Premier-ministre-israelien-plebiscite-l-arrivee-de-Carrefour-dans-sonpays\\_a28087.html](https://www.econostrum.info/Le-Premier-ministre-israelien-plebiscite-l-arrivee-de-Carrefour-dans-sonpays_a28087.html), 2022

14. <https://whoprofits.org>

15. <https://www.ybitan.co.il/retailer/information>

16. Mega and Shuk Mehadrin appear as other brands in the Yenot Bitan chain of shops.

### 4.3. Carrefour to involve its brand in colonisation

The March 2022 Carrefour PR<sup>17</sup> states: “Thanks to this partnership, Carrefour brands will arrive in Israel before the end of 2022 and will allow all Yenot Bitan shops, more than 150 to date, to have access to Carrefour branded products before the summer”. This information is confirmed by Israel Valley, the official website of the France-Israel Chamber of Commerce<sup>18</sup>, which mentions the transition of Yenot Bitan and/or Mega shops to the Carrefour brand within three years.

Even though the choice was made, initially, to use the Super brand for these shops, it appears “that they have indeed been planned by Carrefour and will meet the international criteria of

Activestills collective



Demolition of a Palestinian house by the Israeli army in the Occupied Palestinian Territory.

the French brand”<sup>19</sup>.

As far as the Yenot Bitan shops in the colonies are concerned, it is in a

direct participation in the colonisation that the Carrefour brand would be involved.

### 4.4 Electra Consumer Products and its parent company: a partner particularly involved in colonisation

Beyond this direct complicity of Carrefour with colonisation, there is also an indirect complicity as shown by the detailed documentation from the Israeli research centre *Who Profits*<sup>20</sup> which has highlighted the very great involvement in colonisation of Carrefour’s new partners, in particular its main partner *Electra Consumer Products* and its parent company *Elco Ltd*.

#### The other activities of the Electra Consumer Products group

Beyond the brands explicitly mentioned in the agreement, other brands or subsidiaries of *Electra Consumer Products* are active in the colonies:

- *Shekem Electric*, a subsidiary of *Electra Consumer Products*, has an establishment in the industrial zone of Mishor Adumim;
- *Mahsane Hashmal*, another subsidiary of *Electra Consumer Products*, is, according to the list on their website, located in the settlements of Ariel,

Mishor Adumim and Atarot.

Other activities of *Electra Consumer Products* involved in settlement include the installation of air conditioners in public buildings in the West Bank settlements of Modi’in Illit, Ma’ale Adumim and Givat Ze’ev, as well as the takeover in 2017 of the *Golan Telecom* cellular network, one of the three largest mobile operators in Israel. This company was sold in 2020.

#### The Elco group and its subsidiary Electra, major players in colonisation

*Electra Consumer Products* is a company owned by the international holding company *Elco Ltd*, based in Tel Aviv. Another group of the same holding company is the *Electra Group*, which is thus a sister company of *Electra Consumer Products*, and both companies share the same *Electra* brand. *Electra* is particularly involved, directly or through its many subsidiaries, in activities in the colonies or in

the service of colonisation.

These include:

- In August 2020, *Electra Infrastructure*, a subsidiary partly owned by *Electra* (51%), won a tender for the construction of major road infrastructure works and tunnels under French Hill in occupied East Jerusalem. The company is also involved in a major waste management project developed by *Hagihon*, the Jerusalem municipality’s water and sewerage company.
- *Electra Infrastructure* has also built vehicle tunnels near a road next to the settlement of Nili.
- *Electra Infrastructure* has contracted with Israel Railways to build Tunnel 3A in Section D of the Tel Aviv - Jerusalem (A1) express train. The A1 train route crosses the Green Line and enters the occupied West Bank at two locations.
- *Electra Infrastructure* is a shortlisted bidder for the construction, maintenance and operation of the blue and yellow lines of the Jerusalem

17. PR Carrefour, 2022, op. cit.

18. <https://israelvalley.com/2022/03/06/excellente-news-carrefour-ouvrira-des-succursales-en-israel-en-2022>

19. [https://www.econostrum.info/Le-nouveau-franchise-israelien-de-Carrefour-appellera-ses-magasins-Super\\_a28122.html](https://www.econostrum.info/Le-nouveau-franchise-israelien-de-Carrefour-appellera-ses-magasins-Super_a28122.html)

20. <https://whoprofits.org/company/electra>

- tramway in a consortium that also includes *Alstom*.
- *Electra Construction*, a wholly owned subsidiary of *Electra*, has built 141 housing units in the settlement of Har Homa (Homat Shmuel) in occupied East Jerusalem. The company also built 52 housing units in the settlement of Ma'ale Adumim, on 7,500 square metres of Palestinian land.
- Since 2008, *Electra Technologies*, another wholly owned subsidiary, has secured the water facilities of the Mateh Binyamin settlement council in the West Bank
- In 2019, *FK Electra* was contracted to provide maintenance services for generators at Ariel University in the West Bank settlement of Ariel. It also supplied generators to the Israeli army during the 2014 Israeli military assault on Gaza.
- *Electra* and several of its subsidiaries provide services to the Israeli Population and Immigration Authority (IPA) and the Israeli Prison Service. For example, *Electra Y.B.*, a wholly owned subsidiary of *Electra*, is contracted by the IPA to conduct a biometric project.

As a result of its various activities, *Electra* is registered in the United Nations database of companies involved in Israel's illegal settlement enterprise.

## 5. CORPORATE OBLIGATIONS AND RESPONSIBILITIES WITH REGARD TO INTERNATIONAL LAW AND HUMAN RIGHTS

### 5.1. Corporate obligations under international law

As a branch of public international law contained in treaties and international custom, international humanitarian law (IHL) is primarily binding on States as subjects of public international law. However, the Geneva Conventions of 1949 also require states to ensure that individuals comply with these rules, by establishing penal sanctions for grave breaches of the Geneva Conventions, and obliging States to search for and prosecute the perpetrators of such grave breaches<sup>21</sup>. They further require that each State Party take necessary measures for the suppression of all acts contrary to their provisions.

Thus, in the context of armed conflict and occupation, non-state actors - including business enterprises - must respect the applicable rules of the IHL. This means that companies face legal risks "for the commission of or complicity in war crimes or civil liability for damages" for which they may be held responsible. It also means that there are certain "**obligations for managers and staff**" and that they are exposed

**"to the risk of criminal or civil liability"** (emphasis added).

These risks also imply the individual criminal responsibility of the managers of these companies before the ICC<sup>22</sup>.

As early as 2006, the ICRC<sup>23</sup> stated that *"the company, and/or its managers, could therefore be called to account before national criminal and civil courts, where national law so permits, for the commission of or complicity in war crimes"*. In particular, the notion of corporate complicity in human rights was defined by the UN in 2008 as **"the indirect involvement of a company in a human rights abuse. In essence, complicity occurs when a company knowingly contributes to the violation of human rights by others"**<sup>24</sup> (emphasis added).

While the State of Israel plays a key role in the construction and expansion of settlements in the West Bank and Jerusalem, their maintenance and growth would not have been possible without private actors such as Israeli

and multinational business enterprises. Their role in the establishment, maintenance and expansion of Israeli settlements (as well as in the Israeli occupation and wider violations) cannot be denied or underestimated. In this regard, UN Resolution A/HRC/31/L.39<sup>25</sup>, recalls that **"companies must respect the norms of international humanitarian law when operating in situations of armed conflict, and [...] some companies have directly and indirectly enabled, facilitated and benefited from the establishment and expansion of Israeli settlements in the Occupied Palestinian Territory"** (emphasis added).

The Office of the High Commissioner for Human Rights (OHCHR) states in January 2018 in its report A/HRC/37/39<sup>26</sup> to the UN Human Rights Council (HRC): **"Considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative**

21. Article 146, Fourth Geneva Convention (1949), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/380-600168?OpenDocument#:~:text=ARTICLE%20146%20The%20High%20Contracting%20Parties%20undertake%20to,the%20present%20Convention%20defined%20in%20the%20following%20Article.>

22. Article 25, Rome statute, 2002, <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

23. ICRC, Business and Humanitarian Law, 2006, <https://www.icrc.org/en/doc/resources/documents/publication/p0882.htm>

24. UN Resolution A/HRC/8/16, 2008, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/134/78/PDF/G0813478.pdf?OpenElement>

25. UN Resolution A/HRC/31/L.39, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/057/71/PDF/G1605771.pdf?OpenElement>

26. HCDH Report A/HRC/37/39, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/021/93/PDF/G1802193.pdf?OpenElement>



**human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law.”** (emphasis added).

Specifically, in 2013, the UN published a list of 10 categories of activities that

could make Israeli or multinational companies complicit in human rights abuses where they “directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements” in the occupied Palestinian territory<sup>27</sup>.

These include:

- **The provision of services that**

**contribute to the maintenance and existence of settlements, including in the field of transport;**

- **The use of profits and reinvestments made by wholly or partly settler-owned enterprises to develop, expand and maintain settlements.**

## 5.2. Corporate responsibilities under international law

### The UN Guiding Principles on Business and Human Rights<sup>28</sup> (UNGP)

- unanimously endorsed in 2011 by the HRC -, and **the Organisation for Economic Co-operation and Development’s Guidelines for Multinational Enterprises** (OECDG) - adopted in 1976 and revised in 2011 to incorporate the UNGP<sup>29</sup> - although non-binding, provide important clarity on the scope of obligations and how to implement them.

In addition, the OECDG provide for an extra-judicial enforcement mechanism, the National Contact Points, which mediate and conciliate between companies and members of civil society, who can refer cases of non-compliance with the Guidelines to the National Contact Point<sup>30</sup>.

According to the Guidelines, all business enterprises, irrespective of their size, sector, operating environment, ownership and structure, are responsible for respecting human rights wherever they operate, as well as the norms of IHL in situations of conflict or occupation<sup>31</sup>.

**This responsibility refers to the full range of internationally recognised human rights<sup>32</sup>.**

The UNGP requires companies to:

- “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur”; and
- “endeavour to prevent or mitigate adverse human rights impacts that

*are directly related to their activities, products or services through their business relationships, even if they have not contributed to those impacts”.*

Under the terms of the Principles, companies must exercise due diligence and influence to identify, prevent and mitigate adverse human rights impacts. They must also report on how they are addressing them. “Negative impacts” refer to both actual and potential human rights impacts that companies may have, to which they may contribute or which are directly related to their activities, products or services by virtue of a business relationship or through their business dealings. Human rights

due diligence must be ongoing and must be based on the risks that business activities may pose to individual rights. Supply chain relationships must also be subject to human rights impact due diligence, as well as prevention and mitigation actions.

**Where a company cannot prevent or mitigate negative impacts directly related to its services through its business relationship with another entity, it should terminate that relationship.** The UGDP considers influence to be “where the company has the ability to bring about change in the wrongful practices of an abusive entity”, and the OECDG consider influence to be “where a company has the ability to bring about



A Palestinian farmer peacefully defends his land in the Occupied Territory against the Israeli army

27. HCDH Report A/HRC/22/63, 2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/107/42/PDF/G1310742.pdf?OpenElement>

28. UN Guiding Principles on Business and Human Rights, 2011, [https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

29. OECD Guidelines for Multinational Enterprises, 2011, <https://www.oecd.org/daf/inv/mne/48004323.pdf>

30. FIDH Report, 2016, <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/updated-version-corporate-accountability-for-human-rights-abuses-a>

31. Report “Orange’s Dangerous Liaisons in the Occupied Palestinian Territory”, 2015, [https://www.fidh.org/IMG/pdf/rapport\\_orange-eng.pdf](https://www.fidh.org/IMG/pdf/rapport_orange-eng.pdf)

32. At least those included in the International Bill of Human Rights (Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights), and the Declaration on Fundamental Principles and Rights at Work of the International Labour Organisation. [https://www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files/avis\\_sur\\_le\\_pnedh\\_-\\_version\\_definitive\\_-\\_complet.pdf](https://www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files/avis_sur_le_pnedh_-_version_definitive_-_complet.pdf), p.13, pp.20-21, 2016

## THE UNITED NATIONS DATABASE OF COMPANIES INVOLVED IN SETTLEMENT ACTIVITIES.

In March 2016, the United Nations Human Rights Council adopted a resolution to establish a public database of companies involved in colonisation.<sup>1</sup> This resolution followed the report of the 2013 international fact-finding mission, which highlighted how the activities of companies that assist in the maintenance and development of settlements constitute human rights violations and identified in its paragraph 96, a list of ten categories of such activities.<sup>2</sup>

The work of the Council took more than three years. After defining the methodology and criteria to be used to include or exclude a company from the database, the work included a first stage of data collection, which included an invitation to civil society in Member States to contribute. This resulted in 307 companies being listed. At the end of the second stage, a number of companies were excluded from the first list (notably because of the absence or insufficiency of the factual elements identified), which was then reduced to 192 companies. After further research and the addition of 14 more companies, the list was finally reduced to 206 companies, including 4 French companies.

From July 2017 onwards, the Office of the High Commissioner for Human Rights contacted the 21 Member States in which the shortlisted companies were domiciled, and the companies concerned, to inform them of their presence on the list and give them the opportunity to respond.

Finally, a list of companies involved in activities related to the colonisation of the Palestinian Territory,<sup>3</sup> as defined by the 2016 resolution was submitted to the Human Rights Council during its 43rd session in February-March 2020.

This list is intended to be updated every year, with the removal of companies that have taken the necessary steps to withdraw from their settlement activities, and the possible addition of new companies that have undertaken to do so. However, as the HRC lacks the necessary resources, no update has been published to date.

Two French companies, *Alstom* and *Egis/Egis Rail*, are on the list.

The Israeli holding company *Electra Ltd* is also on the list.

*Carrefour* has been reported to the HRC in anticipation of a future update of the database.

1. UN Resolution A/HRC/31/L.39, 2016, *op. cit*

2. UN Resolution A/HRC/22/63, 2013, *op. cit*

3. HCDH Report A/HRC/43/71, 2020, Database of all business enterprises involved in the activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian People throughout the Palestinian Occupied Territory, including East-Jerusalem, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/053/49/PDF/G2005349.pdf?OpenElement>

*change in the harmful practices of the entity responsible for the harm".*

In June 2014, the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises<sup>33</sup> issued an opinion reiterating that **companies operating in conflict-affected areas must conduct enhanced human rights due diligence** and avoid contributing to human rights abuses, including those committed by their suppliers or business relations. It stated that:

- Business enterprises doing business, or seeking to do business, in or connected to Israeli settlements in the OPT must be able to demon-

strate that they are not supporting the continuation of an internationally recognised illegal situation or being complicit in human rights violations.

- Companies must also demonstrate that they are able to effectively prevent or mitigate the risk of human rights abuses and that they are able to account for their efforts in this regard - **including, if necessary, by terminating their business interests or activities.**

A 2016 Human Rights Watch (HRW) report highlights that **no amount of due diligence would be sufficient to both protect a company operating**

**by contracting with Israeli settlements and to prevent it from contributing to human rights abuses**<sup>34</sup>.

In March 2014, EU Member States (including France) at the HRC supported the adoption of a resolution urging all States to "implement the Guiding Principles on Business and Human Rights with respect to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to encourage enterprises registered in and/or under their jurisdiction, including those owned or controlled by them, to refrain from committing or contributing to serious violations of the human rights of Palestinians, in accordance with the standard

33. UN Working Group on Business and Human Rights, 2014, <https://www.ohchr.org/en/special-procedures/wg-business>, 2016

34. HRW Report, 2014, <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israeli-violations-palestinian>

of conduct called for in the Guiding Principles and relevant international legal provisions and standards”<sup>35</sup>.

In March 2015, the HRC adopted a resolution calling on multinational enterprises to take measures to avoid contributing to the establishment or maintenance of Israeli settlements or the exploitation of natural resources in the Occupied Palestinian Territory,

including East Jerusalem<sup>36</sup>.

In March 2016, the HRC went further by calling for a public list of companies involved in settlement activity <sup>37</sup>(see box).

The OHCHR resolution of 20 March 2018 also calls on “all States [...] to implement the Guiding Principles on Business and Human Rights with respect to the Occupied Palestinian Territory, including East

Jerusalem, and to take appropriate measures to ensure that enterprises registered in and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, permitting or benefiting from serious violations of the human rights of Palestinians”<sup>38</sup>.

### 5.3. Corporate liability under French law

Amongst a few other European countries, France<sup>39</sup> has adopted national legislation that enshrines international humanitarian law standards and enhances the effectiveness that facilitates the prosecution of companies and their executives. The fact that an executive is acting on behalf of a company does not provide any form of immunity from prosecution for international crimes before national courts, and complementarily before the ICC.

In international courts, aiding and abetting the commission of war crimes may also give rise to liability<sup>40</sup>, as may an act or omission that has a substantial, direct and material effect on such violations<sup>41</sup>. In determining whether the company should have known, national judges will consider whether a company acting with due diligence could have known, on the basis of the information available, of the risks it was running<sup>42</sup>.

France was the first country to adopt a specific legislative framework for companies with the adoption on 27 March 2017, of a law on the duty of care of

parent companies and ordering companies<sup>43</sup>. This law concerns, “any company that employs, at the close of two consecutive financial years, at least five thousand employees within its own company and in its direct or indirect subsidiaries whose registered office is located on French territory, or at least ten thousand employees within its own company and in its direct or indirect subsidiaries whose registered office is located on French territory or abroad” (Article 1).

Companies subject to this new obligation of vigilance must establish and implement vigilance plans aimed at identifying upstream the risks, particularly in terms of human rights violations, to which they are exposed as well as the measures taken to prevent and reduce these risks. “The plan shall include reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment, resulting from the activities of the company and those of the companies it controls within the

meaning of II of Article L. 233-16, directly or indirectly, as well as from the activities of subcontractors or suppliers with which it has an established commercial relationship, when these activities are linked to this relationship”. “The plan is to be drawn up in association with the company’s stakeholders, where appropriate in the context of multi-stakeholder initiatives within sectors or at the territorial level”, which implies that all the human rights of all persons within or outside the sector are concerned.

This obligation applies to the entire group, including subsidiaries, but also to subcontractors and suppliers with whom there is an established commercial relationship, and it allows the multinational to be held liable for the impact of its activities. If the obligation is not respected, any victim of human rights violations or any person with an interest in the case may give formal notice to the company to comply with it and refer the matter to the judge so that the judge orders the company to respect the injunction.

35. UN Resolution A/HRC/25/L.37, 2014, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G14/126/94/PDF/G1412694.pdf?OpenElement>

36. UN Resolution A/HRC/28/L.33, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/063/43/PDF/G1506343.pdf?OpenElement>

37. UN Resolution A/HRC/31/L.39, 2016, op. cit

38. UN Resolution A/HRC/37/L.48, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G18/072/99/PDF/G1807299.pdf?OpenElement>

39. Article 121-2 of the French Penal Code: “...Legal persons, with the exception of the State, are criminally responsible, according to the distinctions of articles 121-4 to 121-7, for offences committed, on their behalf, by their organs or representatives.” See also Decision of the Court of Cassation, January 28, 1954 (D., 1954, p. 217).

40. Article 25 of the Rome Statute (op. cit.) allows us to identify the material conditions for the establishment of criminal responsibility generally recognised by States, as well as the modalities for establishing criminal responsibility at the international level, bearing in mind that the ICC’s jurisdiction is limited to the responsibility of natural persons.

41. Notion developed by the jurisprudence of international courts. See : Simić (ICTY Appeals Chamber), 28 November 2006, para. 85; Blagojevic and Jokic (ICTY Appeals Chamber), 9 May 2007, para. 127; Blaskic (ICTY Appeals Chamber), 29 July 2005, paras. 45-46; Vasiljevic (ICTY Appeals Chamber), 25 February 2004, para. 102; and Ntagerura (ICTR Appeals Chamber), 7 July 2006, para. 370. voir aussi : Yearbook of the International Law Commission, 1996, vol. II, Part Two, document A/51/10, p. 22, para. (11) .

42. FIDH, Guide for Victims and NGOs on Accountability and Redress mechanisms, 2016, <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/updated-version-corporate-accountability-for-human-rights-abuses-a>

43. Law on due diligence of parent companies and contractors, 2017, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>



## 6. CARREFOUR'S STATED COMMITMENTS TO ETHICS AND HUMAN RIGHTS

The Carrefour Group has adopted "Ethical Principles"<sup>44</sup> and has published two documents detailing the company's commitments to ethics, respect for human rights and corporate social responsibility (CSR). These are the documents entitled "Governance and method of CSR and food transition"<sup>45</sup> and "Respect for human rights"<sup>46</sup>. In these documents, Carrefour provides the following information:

*"Since 1995, Carrefour has been committed to promoting, respecting, enforcing and protecting human rights in its area of activity and sphere of influence, the Declaration on Fundamental Principles and Rights at Work and the Conventions of the International Labour Organisation (ILO), the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD), and the United Nations Guiding Principles on Business and Human Rights."*

Carrefour strongly states its intention to recognise and promote human rights: *"Carrefour recognises that the promotion of human rights is fundamental to conducting its business responsibly and over time"*.

However, an in-depth reading of these texts shows that their scope of application is limited to the rights of Carrefour's employees, suppliers or partners.

**In legal terms, the Carrefour group filed a vigilance plan in 2018<sup>47</sup>. But this plan is far from meeting the objectives of the law:**

- In the risk mapping presented in 1.2, the paragraph "Risks related to health, personal safety and human rights", despite its apparent generality, only deals with the risks incurred by employees and customers, in particular with regard to the reference to human rights,

and in no case with the negative impacts that Carrefour's activities could have on the indigenous population.

- Indeed, section 1.3 states: *"The vigilance plan and risk mapping concerning human rights, health and safety of employees..."*.
- And Chapter 2 on "General Frame of Reference", which details all the Principles/Commitment Charters/Purchasing Rules/Collaborations and Partnerships, refers only to the company's "Ethical Principles": *"respect diversity, contribute to a safe and healthy working environment, give priority to social dialogue, refuse all harassment and discrimination, select and treat suppliers objectively and fairly, develop transparent business relations, respect commitments to partners, refrain from any unfair agreement or practice, ensure the safety of people and property, protect the company's resources and assets, guarantee confidentiality, preserve the environment, be honest, individually and collectively, provide reliable and accurate reporting, avoid conflicts of interest and refuse any form of corruption"*, within the company and with its suppliers and partners.
- Similarly, in Chapter 3 "Assessment and Mitigation Measures", *"serious violations of human rights, health and safety"* are defined in a very restrictive way by selecting, from the international texts cited, only a few aspects (see paragraphs 5.1 and 5.2), namely:
  - *"non-compliance with the Universal Declaration of Human Rights (discrimination based on gender, sexual orientation, ethnic origin, forced*

*child labour, etc.)"*;

- *"non-respect of the principles of the International Labour Organisation (ILO) (social dialogue, trade union rights, collective agreements, fair wages and decent salaries, organisation of working time...)"*;
- *"violations of the health and safety of employees (working conditions, occupational diseases, accidents at work, etc.)"*;
- *"violations of consumer health and safety (quality, safety and security of products)"*.
- The updates (2021, 2022) make no changes to the objectives and targets of this monitoring plan. However, as noted in an analysis of 80 vigilance plans filed in 2018 (including that of Carrefour) by 6 NGOs specialising in human rights<sup>48</sup>: *"... companies must be attentive to the concept of risk retained by the law: it is the risks for third parties and the environment and not those for the company or investors"*.

**It is therefore clear that this due diligence plan is seriously deficient**, as are many of the due diligence plans developed following the 2017 law, since it ignores, among other things, the risks that the company may pose to external human groups as a result of its activities and does not take into account respect for human rights in the sense of *"the full range of internationally recognised human rights"*<sup>49</sup>, nor the imperatives of heightened due diligence in armed conflict zones.

44. <https://secure.ethicspoint.eu/domain/media/en/gui/102586/code.pdf>

45. <https://www.carrefour.com/sites/default/files/2020-10/Gouvernance%20et%20m%C3%A9thode%20RSE%20du%20Groupe.pdf>

46. <https://www.carrefour.com/sites/default/files/2022-05/Respect%20des%20droits%20humains.pdf>

47. <https://www.carrefour.com/sites/default/files/2020-07/Devoir%20de%20vigilance.pdf>

48. Action Aid, Friends of the Earth France, Amnesty International, Terre Solidaire, Collectif Ethique sur l'étiquette, Sherpa, The law on duty of due diligence of parent and outsourcing companies - Year 1: Companies must do better, 2019, [https://www.asso-sherpa.org/wp-content/uploads/2019/06/2019.06.14-EN-Rapport-Commun-Companies-must-do-better\\_compressed\\_compressed-1.pdf](https://www.asso-sherpa.org/wp-content/uploads/2019/06/2019.06.14-EN-Rapport-Commun-Companies-must-do-better_compressed_compressed-1.pdf)

49. At least those included in the International Bill of Human Rights (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights) and the Declaration on Fundamental Principles and Rights at Work of the International Labour Organisation.



# 7. CONCLUSIONS AND RECOMMENDATIONS

## 7.1. Vis-à-vis the Carrefour group

The specific responsibility of business exists independently of the capacity or determination of States to fulfil their own human rights obligations. According to the UN Guiding Principles on Business and Human Rights and the OECD Guidelines, companies are required to respect human rights wherever they operate. This responsibility refers to the full range of internationally recognised human rights.

Companies operating in areas affected by conflicts, as well as in situations of occupation, must conduct enhanced human rights due diligence and avoid contributing to human rights abuses, including those committed by their suppliers or business relationships.

This report highlights and denounces the direct involvement of the Carrefour group in an activity contributing to the illegal settlement enterprise of the Occupied Palestinian Territory, through the franchise agreement, signed on 6 March 2022, with the Israeli company

*Electra Consumer Products* and its subsidiary *Yenot Bitan*. These two companies are very directly involved in the colonisation, in particular through the fact that they own shops in several settlements. The *Elco* holding company, to which *Electra Consumer Products* belongs, is a major player in settlement through another of its subsidiaries, the *Electra group*, which is particularly involved in settlement activities. In addition, this agreement will allow Carrefour to participate directly in the economy of the settlements by distributing its branded products in *Yenot Bitan*-owned shops in Israel and in several settlements, as has already been the case since July 2022. Through this agreement, Carrefour is therefore *de facto* involved in the colonisation of the Palestinian territory and benefits from it.

The signatories of this report call on Carrefour to comply with the international principles outlined in this report by ceasing all activities related to the Israeli

settlements, **which implies ending its partnership with *Electra Consumer Products* and its subsidiary *Yenot Bitan*, as soon as possible.**

It should be recalled that the UN Human Rights Council, pursuant to its resolution of March 2016, published on 12 February 2020 a database of companies that violate international law by actively participating in the colonisation of the occupied Palestinian territory. It is currently working on updating this database, in which the Carrefour group would be very likely to be included if the franchise agreement with *Electra Consumer Products* and *Yenot Bitan* were indeed implemented.

It should also be recalled that this settlement-related activity is contrary to the Carrefour group's stated ethical principles, and that the continuation of these partnerships would constitute a breach of the bond of trust that it has sought to establish with its customers and other stakeholders of the group.

## 7.2. Towards the French government

The French State must take all measures to prevent any participation or investment by French companies that would contribute to Israeli colonial settlements, and to this end reinforce the "recommendations" already made to companies in the June 2014 opinion<sup>50</sup>.

It must, with regard to the Carrefour group, draw its attention strongly to the legal and reputational risks it would take by pursuing this partnership.

More generally, it must:

- Comply with its international obli-

gations, including those arising from violations of peremptory norms of international law by Israel and those to protect, respect and fulfil human rights;

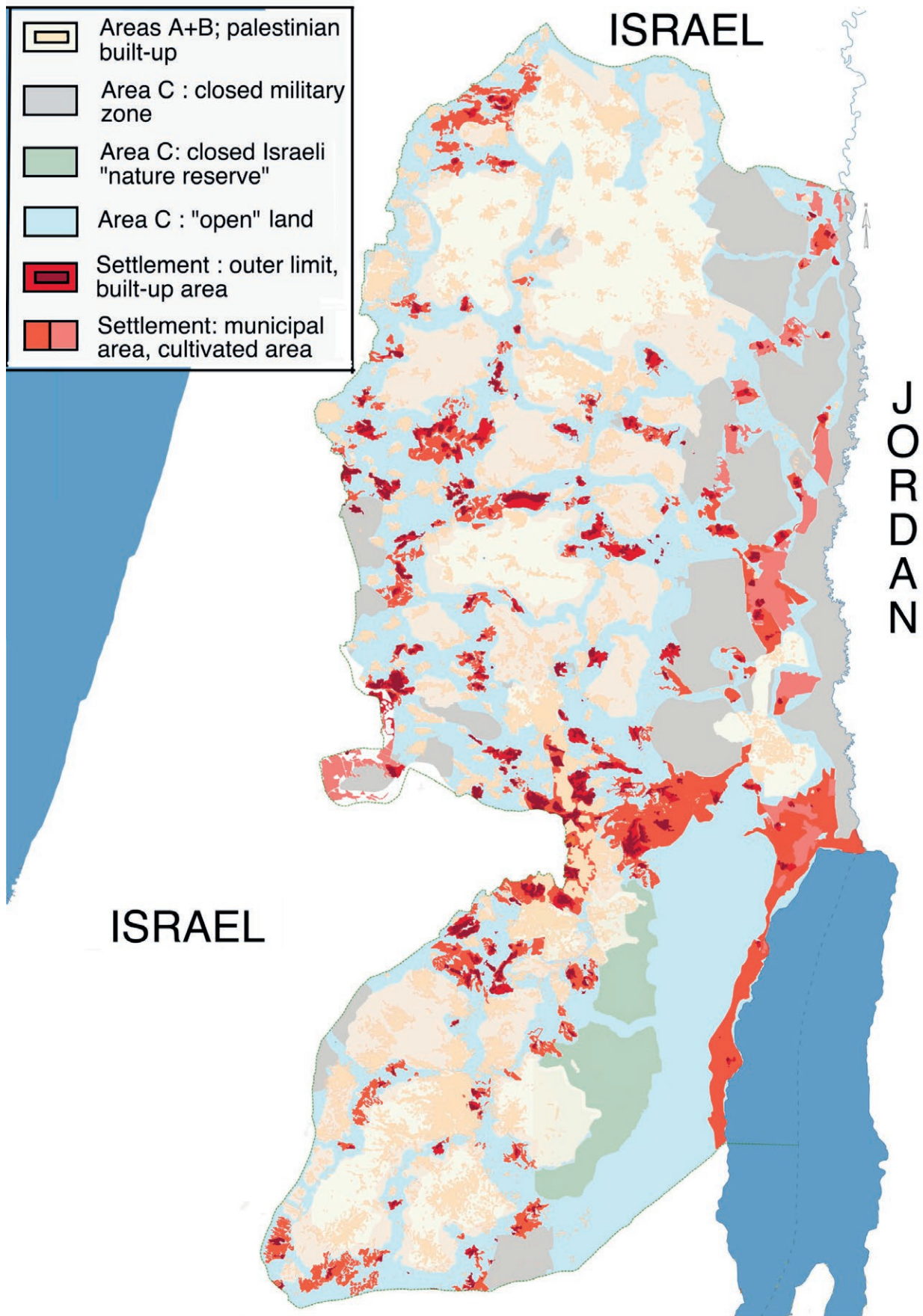
- Implement the UN Guiding Principles on Business and Human Rights and ensure that companies under its jurisdiction do not undermine the full realisation of human rights at home and abroad;
- Enforce the law concerning the duty of care of parent and sponsor

companies;

- Support, at the United Nations, the process for the elaboration of an international treaty on human rights and transnational corporations and other business enterprises;
- Support the financing and continued annual update of the UN Database on businesses active in the illegal Israeli settlements.

50. <https://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays-destination/israel-territoires-palestiniens/#complements>

## Map of the Israeli settlements in the Occupied Palestinian Territory. Settlement is a war crime.



*Credit: Association France Palestine Solidarité, adapted from OCHA (2020)*

Extent, as of 2020, of the Israeli settlements and of their agricultural extensions in Area C of the OPT, administered by Israel. The 1994 Oslo Accords defined three zones, A under complete Palestinian control, B under Israeli security and Palestinian civilian control, C under total Israeli control.