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Ben and Jerry's decision to stop business relationships with the illegal Israeli settlements in the OPT is consistent with international law

Ben and Jerry's decision to stop selling its products in illegal Israeli settlements in the Occupied Palestinian Territories (OPT) is a legitimate and necessary response, in line with its responsibility to respect international law and human rights.

In a statement on 19 July, the Vermont, USA-based ice cream company stated that "it is inconsistent with our values for Ben & Jerry's ice cream to be sold in the OPT".¹ Through its Israel-based licensee, Ben and Jerry's has been available in shops in illegal settlements in the OPT.

The company's founders and original owners explained their support for the decision:

"The company's stated decision to more fully align its operations with its values is not a rejection of Israel. It is a rejection of Israeli policy, which perpetuates an illegal occupation that is a barrier to peace and violates the basic human rights of the Palestinian people who live under the occupation."²

Israel's establishment and maintenance of settlements breaches the international law rules governing what an occupying power may do in a situation of military occupation.³ Moreover, in addition to the inherent illegality of the settlements themselves, the settlement enterprise is inextricably linked to gross and systematic human rights violations against Palestinians.⁴

Given these circumstances, companies cannot do business in, or have value chains and business relationships with illegal settlements, without contributing to serious violations of both international humanitarian law and human rights law.

The settlements, their infrastructure, and land under their control comprise over 60 per cent of the occupied West Bank while Israel confiscated one third of land in occupied East Jerusalem for building and expanding settlements. Settlements use resources which should be used for the benefit of the occupied population, which is entitled to special protection under international humanitarian law. The fact that a thriving settlement economy provides a significant incentive for the development and expansion of the settlements carries enormous implications and potential consequences for the companies involved.

Business activities are essential to virtually every aspect of the maintenance, development and expansion of the settlements in the OPT. Settlement businesses depend on and benefit from Israel's unlawful confiscation of Palestinian land and other resources. They also benefit from Israel's discriminatory policies for planning and zoning, financial

¹ Ben & Jerry's Homemade, Inc (2021). "Ben & Jerry's Will End Sales of Our Ice Cream in the Occupied Palestinian Territory," July 19 2021 www.benjerry.com/about-us/media-center/opt-statement

² Bennett Cohen and Jerry Greenfield, *We're Ben and Jerry. Men of Ice Cream, Men of Principle*, New York Times, 28 July 2021, <https://www.nytimes.com/2021/07/28/opinion/ben-and-jerry-israel.html>

³ Amnesty International, *Think Twice: Can companies do business with Israeli settlements in the Occupied Palestinian Territories while respecting human rights?* Index: MDE 15/9717/2019, <https://www.amnesty.org.uk/files/2019-03/Think%20Twice%20report.pdf?BrN9NOVX3RkzTJR0uKYC46LE43hCPTu=>

⁴ Amnesty International, *DESTINATION: OCCUPATION Digital Tourism and Israel's Illegal Settlements in the Occupied Palestinian Territories*, Chapter 5, Index: MDE 15/9490/2019, <https://www.amnesty.org/download/Documents/MDE1594902019ENGLISH.PDF>

incentives, access to utilities, and infrastructure. Palestinian enterprises are disadvantaged through restrictions on movement, and administrative and legal constraints.

Most states and international bodies have long recognized that Israeli settlements are illegal under international law.⁵ The European Union has stated that: “settlement building anywhere in the occupied Palestinian Territory, including East Jerusalem, is illegal under international law, constitutes an obstacle to peace and threatens to make a two-state solution impossible.”⁶ The settlements have been condemned as illegal in many UN Security Council and other UN resolutions, most recently in December 2016.⁷

Under the UN Guiding Principles on Business and Human Rights, companies have a responsibility to respect all internationally recognized human rights wherever they operate in the world.⁸

The responsibility to respect human rights requires companies to “avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur.” If a company identifies that it may cause or contribute to human rights abuses, and that it cannot prevent these abuses, the only possible course of action is not to undertake the relevant activity.

Amnesty International has previously concluded that company due diligence in line with the UN Guiding Principles would determine that settlements:⁹

- Are inherently discriminatory and give rise to widespread, systematic, and serious human rights violations.
- Business activities in or with settlements help to normalise and legitimise an illegal situation.
- Business activities contribute to the settlement economy and, in doing so, to the maintenance, development and expansion of the settlements, which perpetuates an illegal situation.

The UN Office of the High Commissioner for Human Rights has stated that:

“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 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 [on business and human rights] and international law.”¹⁰ Any basic preliminary risk mapping would be sufficient for companies to reach the conclusion that they cannot do business in or with settlements in a way that is consistent with international humanitarian and human rights law. It is therefore right for Ben and Jerry’s to take the decision to withdraw from Israeli settlements within the OPT.

The company, which is wholly-owned by the UK-listed multinational consumer goods company, Unilever, said it would continue to sell its products within Israel’s borders. Ben & Jerry’s should also commit to continue selling to Palestinian areas within the OPT.

⁵ Amnesty International, *DESTINATION: OCCUPATION Digital Tourism and Israel’s Illegal Settlements in the Occupied Palestinian Territories*, Chapter 3, Index: MDE 15/9490/2019, <https://www.amnesty.org/download/Documents/MDE1594902019ENGLISH.PDF>

⁶ European Union External Action, Middle East Peace Process, eeas.europa.eu/headquarters/headquarters-homepage/337/middle-eastpeace-process_en

⁷ UN Security Council Resolution 2334, adopted on 23 December 2016, www.un.org/webcast/pdfs/SRES2334-2016.pdf

⁸ OHCHR, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (UN Doc. HR/PUB/11/04), Commentary to Principle 12, 2011.

⁹ Amnesty International, *DESTINATION: OCCUPATION Digital Tourism and Israel’s Illegal Settlements in the Occupied Palestinian Territories*, Chapter 7, Index: MDE 15/9490/2019, <https://www.amnesty.org/download/Documents/MDE1594902019ENGLISH.PDF>

¹⁰ UN Office of the High Commissioner for Human Rights, A/HRC/37/39/, para. 41. See ‘Key sources’, p37