

BRIEFING PAPER

**BUSINESS AND
HUMAN RIGHTS:**
ENHANCING
STANDARDS
AND ENSURING
REDRESS

Taking stock

Lessons from the field

Three years have passed since the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011. In a recent brief, Professor John Ruggie highlighted the need to assess the implementation of the UNGPs based on the evaluation of their impact on “the daily life of affected individuals and communities around the world”.¹

Despite progress made after the adoption of the UNGPs, and in particular regarding their uptake by stakeholders, progress in the respect for the rights of individuals and communities affected by business activities remains insufficient. Concrete and lasting changes for those affected have yet to be seen.

Rights-holders continue to face tremendous challenges, and in some cases their situation has worsened. Long-standing **labour rights violations** in global supply chains continue. The Rana Plaza tragedy and the recent tragic deaths of striking workers in Cambodia in early 2014 show with unprecedented acuteness the failure of existing monitoring systems and highlight the urgent need for adequate preventive and accountability mechanisms.

While the development of information and communication technologies (ICTs) is often praised, recent scandals have shed light on the human rights risks associated with this sector, such as the selling of surveillance programmes used to shut down political opposition and human rights activism. Some companies are currently being prosecuted for alleged **complicity in acts of torture**.²

Human rights defenders, including land and environmental rights defenders denouncing corporate abuses, are under increasing pressure. In 2013 alone, there were dozens of reports of acts of **harassment and assassination of defenders** from all continents who had put their lives at risk in defence of local communities and the environment.³ **Access to justice remains an illusion** for victims in all too many cases and has even, in some countries, been made even more difficult as a result of recent reforms or judicial decisions.⁴

FIDH believes that the UNGPs represent a valuable first step forward. FIDH will continue to engage with the UN Working Group on Business and Human Rights (UNWG) in its efforts to ensure their effective implementation,⁵ and to call on the Human Rights Council to ensure the Working Group is adequately equipped to assess the implementation of the UNGPs and the Framework in light of international human rights standards, and to seek, receive, examine and respond to communications with a view to prevent abuses and enhance victims' access to effective remedies.

1. “UN Business and Human Rights Treaty ? An issues brief by John G. Ruggie”, 28 January 2014.

2. See, for example, FIDH and LDH complaint of October 2011, against the French IT company Amesys (case study n°3).

3. See the mobilisation of the Observatory for the Protection of Human Rights Defenders, a joint programme between FIDH and the World Organisation against Torture (OMCT). See also “Land and environmental rights defenders in danger: an overview of recent cases”, December 2013, by FIDH, PBI, Forum Asia, Global Witness, IUCN, CIEL, Earth Rights International, Friends of the Earth International, ISHR and International Land Coalition.

4. This is for example the case in the US and the UK. See Prof. Gwynne Skinner, Prof. Robert McCorquodale, Prof. Olivier De Schutter, Andie Lambe, “The Third Pillar: Access to judicial remedies for human rights violations transnational business”, December 2013, commissioned by ECCJ, CORE and ICAR. FIDH is a steering group member of ECCJ. See also *Kiobel v. Royal Dutch Petroleum, Co.* 133 S.Ct. 1659 (2013).

5. FIDH has brought to the attention of the Working Group human rights situations in Bangladesh, the OPT and most recently Cambodia. It has also sent communications to the UNWG on human rights issues relating to the World Cup in Brazil and Olympic games in Russia.

In this paper, FIDH highlights the necessity to assess the UNGPs' implementation and to explore options to address identified shortcomings and protection gaps.

To contribute to the UNGPs' assessment and their impact on affected rights-holders, and to feed into current discussions at the UN and inter-governmental levels, FIDH has selected five recent cases of corporate activities generating or contributing to adverse impacts on human rights. These **five real-life situations⁶ demonstrate critical shortcomings in the UNGPs, identify the protection gaps that need to be closed and highlight the need for policy and legislative measures**, both at the domestic and international levels.

Rights-holders continue to face tremendous challenges, and in some cases their situation has worsened.

Building on efforts at the national and regional levels, FIDH thus calls on the international community to further clarify and codify existing obligations and ensure redress for corporate-related abuses.



Air pollution in Piquiá de Baixo, Municipality of Açailândia, State of Maranhão, Brazil.
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6. FIDH acknowledges the contribution of its member and partner organisations when drafting these case studies: Al-Haq, ADHOC, Justiça nos Trilhos, Justiça Global, LICADHO, RAID in the drafting of these case studies. FIDH also acknowledges the input provided by its Vice-President Katherine Gallagher.

Cambodia

Labour rights repressed while global brands continue to profit from cheap labour

On 2 January 2014, government security forces attacked striking workers in Phnom Penh's Pursenchey District, injuring 20 people. On 3 January, the government repression took a deadly turn at Phnom Penh's Canadia Industrial Park, when police fired live ammunition on protesters. At least four people were killed and 38 were injured, including 25 who were wounded by bullets. At least one person remains missing following the violence despite repeated efforts by NGOs, unions, and media to discover his whereabouts.⁷ Twenty-three people, including human rights defenders, were arbitrarily arrested during the brutal crackdowns of 2-3 January. They were held incommunicado for several days. On 11 February, bail was refused for 21 of those still detained and no date has been set for the trial. The authorities' use of lethal force against striking workers and the unlawful detention of workers and human rights defenders are clear violations of rights to freedom of association, assembly, and expression, including the right to strike. These are the most recent examples of rights' violations, as Cambodia's garment sector is mired in ongoing human rights violations, including child labour and inadequate enforcement of workers' health and safety regulations.

Following the garment workers' strikes, clothing factories in Svay Rieng Province's Manhattan Special Economic Zone fired or suspended at least 50 workers and pursued legal action against others for participating in the protests. The Garment Manufacturers Association in Cambodia (GMAC) refused to condemn the use of lethal force against striking workers, and over 100 garment factories affiliated with GMAC filed lawsuits against the six trade unions that launched the strikes in December 2013 for allegedly inciting strikes and destroying private property. During the month of January, at least 12 factories reportedly fired more than 100 trade union representatives for encouraging workers to strike for an increase in the monthly minimum wage. Such retaliatory actions hinder Cambodian workers' right to strike and to collective bargaining.

Global brands and global trade unions publicly urged the Cambodian government to respect workers' rights, facilitate employer-union negotiations, and launch a new wage-setting process. However, the global brands must do more to ensure that their suppliers respect worker rights. FIDH and its member organisations in Cambodia, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and the Cambodian Human Rights and Development Association (ADHOC), have formally brought this situation to the attention of the UN Working Group on Business and Human Rights.⁸



A female garment worker joins a peaceful rally in front of the Ministry of Labor on December 28, 2013. © LICADHO

CASE ASSESSMENT IN LIGHT OF THE UNGPs

Pillar 1

Such events point to the Cambodian government's failure to respect human rights and to protect workers against human rights abuses committed by corporate actors. Although aware of the labour rights violations occurring in the textile industry in Cambodia, the home states of global brands have failed to enact measures that require their corporations to ensure the respect of workers' rights through their supply chains.

Pillar 2

Cambodian manufacturers and GMAC have clearly failed to respect workers' rights. Brands have failed to prevent and mitigate adverse human rights impacts by their business partners, and have failed to exercise leverage with Cambodian suppliers and business associations to prevent such abuses. Through their purchasing practices (including threats to relocate production to cheaper labour markets), global brands profit from cheap labour and weak governance in Cambodia and are thus contributing to perpetrating long-lasting labour rights violations in global supply chains.

Pillar 3

Victims of state repression and companies' retaliation following garment workers' legitimate exercise of their right to strike have not had access to an effective remedy. They are unlikely to obtain remedy as long as Cambodia's judiciary continues to be characterised by widespread corruption and lack of capacity, resources, lack of independence, lack of adequate legislation and enforcement to ensure protection of workers' rights.⁹

PROTECTION GAPS TO BE CLOSED

- **Clear and robust guidance** is especially needed in a national context characterised by ongoing human rights abuses, lack of respect for the rule of law, and weak governance.
- Need for home States to adopt adequate policy and regulatory measures to require global brands to conduct **human rights due diligence** throughout their entire supply chains, and to provide for **legal liability in case of harm or infringement of human rights, including by failing to act with due diligence**.
- Need for more robust and clear guidance as to how transnational corporations (TNCs) should exercise **leverage** with their business partners.

7. As of 7 March 2014.

8. See FIDH, "Calling the UN Working Group on Business and Human Rights to address human rights violations in the garment sector in Cambodia", 7 March 2014.

9. UN HRC, 24th session, Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, 5 August 2013, UN Doc. A/HRC/24/36, Para. 16.

Brazil

One of the world's largest mining companies designated "CSR industry leader" yet still fails to respect human rights

In the municipality of Açailândia in the Brazilian state of Maranhão, the activities of the pig iron and coal-burning industries have caused serious environmental pollution. Two hundred and sixty-eight families in the rural settlement of California and more than 300 families in the Piquiá de Baixo community have been affected by this pollution. Accidents (related to the proximity of waste products and pig iron production) and serious health issues caused by the coal-burning and pig iron pollution have been reported, including respiratory and vision problems, and even death in some cases.¹⁰

Vale, one of the world's largest mining companies, plays a key role in the production of pig iron in the region. It is the sole supplier of iron ore, and it operates the railway and port through which the transformed pig iron is transported and exported. From 2005 to 2009, Vale fully operated a charcoal production unit (UPR2). Vale has direct relationship with the five steel companies operating in Açailândia: Viena Siderurgica, Gusa Nordeste, Ferro Gusa de Maranhão, Companhia Siderúrgica Vale do Pindaré and Siderúrgica do Maranhão SA (SIMASA). The latter two merged in 2011: the company is now known as Siderúrgica Queiroz Galvão.

Public environmental agencies did not adequately monitor the activities of these companies nor was there any effective control in the licensing process of their operations. Affected communities struggled to access information regarding any such licences and as well as any impact assessments. Additionally, insufficient measures were taken to address the resulting health problems endured by residents; the prevention, notification and treatment of illnesses has been neglected.

Judicial claims presented by the communities for the damage suffered were left suspended for many years, or went without follow-up. Further, there were no means of reparation or guarantees of non-repetition. Communities also faced difficulties in accessing information and legal assistance, as well as intimidation and criminalisation of human rights defenders who were denouncing adverse human rights impacts linked to the companies' activities. Communities have used both judicial and non-judicial means to try to obtain justice, and have sought to engage both companies and the authorities, through social mobilisation, legal suits, and shareholder activism.

Vale, often presented as a Corporate Social Responsibility (CSR) industry leader, is well aware of the content of the UNGPs. The company has a human rights policy and actively participates in initiatives such as the Global Compact. Vale has engaged in a dialogue with FIDH to discuss the recommendations of its report and partly recognised its responsibility in the damages caused, but has not significantly contributed to remedying damages caused as a result of its activities and its business relationships.¹¹

In December 2013, 21 families in Piquiá de Baixo finally obtained a favourable judgement to receive financial compensation after having had initiated judicial proceedings against one of the pig iron companies.¹² The community of Piquiá de Baixo is nevertheless still waiting to be resettled,¹³ and the community of California has not received reparation for the damages caused to their health.

In February 2014, FIDH undertook an international investigative mission into allegations of illegal espionage by Vale and other companies targeting civil society organisations and movements, some of which include groups involved in documenting abuses suffered by communities in the State of Maranhão.¹⁴

10. See "Brazil: How much are human rights worth in the Brazilian mining and steel industry? The human rights impacts of the steel and mining industry in Açailândia" FIDH, JustiçaGlobal, Justiça nos Trilhos, March 2012.

11. Following the March 2012 publication of FIDH, Justiça Global and Justiça nos Trilhos' report, Vale and FIDH exchanged written responses. FIDH subsequently tried to engage in a dialogue with the company. Vale undertook a socio-economic investigation, along with a "qualitative study of vocational production" of all the residents of Piquiá de Baixo, and had agreed to help identify existing federal funds that could finance the construction costs related to the community's resettlement. According to Justiça nos Trilhos, in 2012 Vale offered 400,000 reais (about 170,000 USD) toward resettlement expenses, estimated at 10 million USD. The company's offer was conditioned upon the signing of an agreement that would discharge the company of its responsibility in this

CASE ASSESSMENT IN LIGHT OF THE UNGPs

Pillar 1

Brazil has failed to protect the communities of Piquiá de Baixo and California against abuses by coal-burning and pig iron industries.

Pillar 2

Coal-burning and pig iron companies failed to exercise due diligence and failed to address adverse impacts caused by their activities. For its part, Vale has failed to respect human rights in its operation of the UPR2 unit, in addition to failing to exercise due diligence with regards to its business partners' activities and failing to exercise leverage with such partners.

Pillar 3

Despite numerous attempts to obtain remedy via both judicial and non-judicial means, members of the California and Piquiá de Baixo communities to date have not obtained adequate reparation and compensation.

PROTECTION GAPS TO BE CLOSED

- Need for States to require companies to exercise **human rights due diligence** and to provide for **legal liability** for causing a harm or prejudice to human rights, including by failing to act with due diligence.¹⁵
- **Voluntary uptake** of the UNGPs by companies such as Vale **has not translated into tangible improvement for affected communities and right-holders' human rights.**
- Need for clear and robust guidance as to how corporate actors should use **leverage with business partners and entities in their value chain**: affected communities, civil society representatives and companies have divergent interpretations of the UNGPs in this regard.
- Need for **adequate protection measures for human rights defenders** denouncing corporate-related abuses.
- Need to guarantee the **right to access information**, particularly to rights-holders, whistle-blowers and human rights defenders.
- Need to **reinforce access to effective remedies**, as victims struggle to obtain justice through both judicial and non-judicial means.

case, and would confirm that it constitutes its sole financial contribution. Both the residents and the Public Ministry of the State of Maranhão involved in the discussions refused the proposal, which was deemed insufficient and inappropriate. The residents are trying to secure funding for the relocation process through programmes available at the federal level, but which would only represent a negligible amount of the sum needed. As far as the pig iron companies are concerned, they have agreed to support part of the fees related to the expropriation process (420,000 reales in 2011 and 350,000 reales in 2012). So far they have not agreed to contribute to the construction fees on the new location. have not agreed to contribute to the construction fees on the new location.

12. Judgement of 19 December 2013, Ulisses Ferreira Diniz and others against GUSA NORDESTE SA., Segunda Vara Judicial da Comarca de Açailândia, Maranhão, Processo 2301-25.2005.8.10.0022 / 23012005.

13. The Piquiá de Baixo community is actively participating in the resettlement discussions. A relocation proposal has been put forward by the Piquiá Residents Association (Associação Comunitária dos Moradores do Pequiá, ACMP). The proposal would require the involvement of the authorities, Vale, and the pig iron companies. The UN Special Rapporteur on the Right to Adequate Housing, Raquel Rolnik, had supported the Piquiá de Baixo community's proposal in a letter on 22 January 2014.

14. See "Brazil: Vale and Belo Monte suspected of spying - the justice system must investigate", OMCT and FIDH, 18 February 2014.

15. On due diligence recommendations, see notably Olivier de Schutter, Anita Ramasastry, Mark. B. Taylor and Robert C. Thompson, "Human Rights Due Diligence: The Role of States", December 2012 (updated in 2013). Report commissioned by ECCJ, ICAR and CNCA.

Libya

ICT company's alleged complicity in gross human rights violations

The Gaddafi regime routinely monitored, collected, and analysed communications of anti-Gaddafi activists and journalists living inside and outside Libya, and famously punished critics through arbitrary detention, torture and other inhumane and degrading treatment.¹⁶

In 2007, the Libyan government contracted with the French technology company Amesys, a subsidiary of the French-firm Groupe Bull, to provide it with surveillance technology, thereby enabling communication interception, and data processing and analysis. Amesys provided the Gaddafi regime with the Eagle intelligence software and corresponding equipment, and allegedly with ongoing support and expertise. By 2009, the Eagle surveillance software was operational in Libya, and was directly used to spy on, and subsequently arrest, detain, and torture opponents and to reinforce repression against the population as a whole. Amesys admitted supplying analysis hardware to the Gaddafi regime, but denied accusations of complicity in acts of torture. In 2012, Amesys divested its Eagle system to the French-owned company, Nexa Technologies.¹⁷ The French authorities were reportedly aware of Amesys' collaboration with the Gaddafi regime, but did not exercise export controls.¹⁸

In October 2011, FIDH and LDH filed a criminal complaint against Amesys alleging complicity in grave human rights violations.¹⁹ The Public Prosecutor refused to open an investigation. The investigating judge appointed to the case delivered a different opinion that supported the case proceeding, which was appealed by the Public Prosecutor. The Court of Appeals eventually admitted the complaint and referred the case to the newly formed Paris tribunal unit specialising in war crimes, crimes against humanity, and genocide.

The plaintiffs faced a number of barriers in accessing justice, including reluctance of the Prosecutor's office to take on the case, obstacles in accessing evidence, security concerns while investigating in a post-conflict setting, communication issues with victims, and other practical hindrances. In 2013, one woman and four men, who had been arrested and tortured during detention in Libya and allegedly identified through the Eagle programme, were admitted as *parties civiles* to the lawsuit.²⁰ The case is pending.

16. See Freedom House, Libya (2013), cited in "The Third Pillar", *op. cit.*

17. See Press Release, Bull (8 March 2012) cited in "The Third Pillar", *op. cit.*

18. "Echanges d'infos, entraînements : les visages de la coopération franco-libyenne," Le Monde, 7 September 2011.

19. See "FIDH and LDH file a complaint concerning the responsibility of the company AMESYS in relation to acts of torture", 19 October 2011.

20. See FIDH, Amesys case: "The investigation chamber green lights the investigative proceedings on the sale of surveillance equipment by Amesys to the Gaddafi regime" 15 January 2013.

CASE ASSESSMENT IN LIGHT OF THE UNGPs

Pillar 1

Libya has failed to respect human rights through the detention, torture and other inhumane and degrading treatment of critics of the regime. France's failure to protect against human rights abuses in Libya by Amesys, a company based in its territory and its failure to regulate the export of surveillance equipment used to perpetuate grave human rights violations.

Pillar 2

Amesys has failed to respect internationally recognised human rights (independently of Libya's ability and/or willingness to fulfil its own human rights obligations) and failed to avoid contributing to known adverse human rights impacts directly linked to its products or services.

Pillar 3

Road blocks erected by the Paris Prosecutor's office highlight political barriers in accessing justice when cases bear an extra-territorial dimension.

PROTECTION GAPS TO BE CLOSED

- Need for measures **preventing the export** of products or services used to perpetuate human rights violations such as ICT surveillance programmes;
- Urgent need to **ensure legal liability** of business enterprises for acts or omissions causing or contributing to grave human rights violations;
- Need to **lift practical and procedural barriers in accessing** justice in cases with an extraterritorial dimension, even in relatively well-functioning judiciary systems.

500 villagers' homes demolished and no access to effective remedy

On 24 November 2009, the Compagnie Minière de Sud Katanga (CMSK), which operates the Luiswishi mine, unlawfully demolished over 500 homes in the villages of Kawama and Lukuni-Gare. Small businesses, including a health clinic, were destroyed. Further, the villagers lost all their belongings and at least two people were seriously injured. This operation was allegedly undertaken to prevent artisanal miners (creuseurs) from stealing minerals from the nearby Luiswishi mine. The prior year, violent incidents involving mine security personnel and police allegedly injured or killed several suspected creuseurs.²¹ On 9 November 2009, Mr. Boniface Mudjani was hit in the chest by a stray bullet while he was taking a bath in his home.

CMSK is a joint venture between the Entreprise Générale Malta Forrest (EGMF) and the state-owned mining company, La Générale des carrières et des mines (Gecamines). EGMF is a subsidiary of Groupe Forrest International (GFI), headquartered in Belgium, which has a 60% shareholding in the Luiswishi mine. In September 2012 GFI announced that it had sold its shares in CMSK.

In spite of the evidence that CMSK participated in the planning of the operation, and that the company's employees and bulldozers were involved in the demolitions, GFI denied all responsibility for the demolition and other human rights abuses. It agreed to pay some creuseurs 300 USD each to leave the area, and undertook some community work at Kawama, but no compensation was offered to residents. The Police des Mines et Hydrocarbures (PMH), and the Groupe mobile d'intervention (GMI), a special unit of the Congolese Police Force, also participated in the demolitions. An inquiry into these events was initiated but later abandoned by the Kipushi District authorities.

To date, villagers have not been successful in seeking compensation for the destruction of their homes and for the injuries suffered. Through the intervention of another Congolese NGO, LICOF, in December 2013 Boniface Mudjani had an operation to remove the bullet. CMSK and the Congolese authorities have failed to conduct a full inquiry into the incident and refused to engage in negotiations with representatives of the affected community in order to reach a settlement. Attempts to have a constructive dialogue with the company in the DRC also failed.

Given the stalemate, in April 2012 RAID, ACIDH and FIDH and its member organisations in Belgium and the DRC, presented a complaint to the Belgian OECD National Contact Point. However the NCP did not operate in an impartial and transparent manner and refused to share all relevant documents with the NGOs. As such, the process failed to meet the criteria for an effective non-judicial remedy for victims.²²

21. FIDH, ACIDH and RAID, "NGO complain against Georges Forest International's illegal demolition of houses in the DR Congo", Belgian National Contact Point, 2012.

22. See "Illegal Demolitions in DRC - George Forrest International Refuses Compensation for Dispossessed Villagers, say NGOs". Belgian OECD National Contact Point fails the victims of alleged corporate abuse, 5 February 2013, <http://fidh.org/en/africa/democratic-republic-of-congo/Illegal-Demolitions-in-DRC-George-12939>

CASE ASSESSMENT IN LIGHT OF THE UNGPs

Pillar 1

DRC has failed to respect human rights via state security forces' involvement in demolitions, and as CMSK is a joint venture of a state-owned mining company, has failed to protect against human rights abuses by corporate actors. Belgium has failed to ensure companies domiciled in its jurisdiction do not cause or contribute to adverse human rights impacts when operating abroad.

Pillar 2

Companies involved have failed to exercise due diligence and to mitigate their adverse human rights impacts. On the contrary, CMSK directly participated in the planning and execution of the demolition, have denied responsibility, and have not provided any compensation.

Pillar 3

Kawama villagers' lack of access to effective remedy: there was no full inquiry into the demolitions; the NCP mediation failed and villagers did not obtain compensation.

PROTECTION GAPS TO BE CLOSED

- **Need to ensure legal liability of business enterprises** for acts or omissions causing or contributing to grave human rights violations.
- **Need to ensure victims are able to obtain access to an effective remedy in weak governance states.**
- **Need to reinforce the effectiveness of non-judicial remedies, such as OECD National Contact Points.**



Health clinic destroyed in the villages of Kawama in the vicinity of the Luiswishi mine, Democratic Republic of Congo
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Exploitation of Occupied Palestinian Territory resources by TNCs

Ahava Dead Sea Laboratories Ltd. is an Israeli cosmetic company, founded in 1988, located in the *Mitzpe Shalem* settlement on the western shore of the Dead Sea in the Occupied Palestinian Territory (OPT). The *Mitzpe Shalem* settlement, together with the settlement of *Kalia*, hold 44.5 % of the company shares. Ahava is the only cosmetics company licensed by the State of Israel to extract minerals and mud in this area. Ahava fully owns three international subsidiary companies under the name of Ahava in Germany, the United Kingdom, and the United States.²³

Israeli settlements located in the OPT are illegal under international law.²⁴ As such, operating within the settlements is likely to encompass several breaches of international law that can also be linked to abuses of the basic human rights of the Palestinian people. Israeli and multinational corporations operating within settlements can be involved either directly or indirectly in violations of international human rights and humanitarian law. For example, Ahava can be considered a primary perpetrator of the war crime of pillage as it directly profits from the appropriation and exploitation of Palestinian land and natural resources in the OPT.

At present, Ahava has caused and contributed to adverse human rights impacts and has not mitigated or addressed such impacts. Ahava is directly profiteering from the expropriated wealth of the Dead Sea and is contributing to its overexploitation and, therefore, is contributing to serious ecological and environmental problems that place the Dead Sea area at risk of total depletion. Mining activities have indeed been identified as one of the causes for the decrease in sea level, and generate extensive air, land and water pollution. Significantly, Ahava's activity in the OPT creates a direct obstacle for the realisation of the Palestinian right to self-determination and the right to permanent sovereignty over their natural resources.²⁵ The right to self-determination constitutes an essential principle of international law, since its realisation is an indispensable condition for the effective guarantee and observance of individual human rights.

In failing to put an end to Ahava's activity in the OPT, Israel violates its obligations as an Occupying Power to afford the Palestinian people with their right to self-determination. Through its inaction, the Occupying Power also violates Articles 43, 46 and 55 of the Hague Regulations and disregards its duty of due diligence, which implies Israel's obligation to protect the Palestinian population, including by preserving Palestinian natural resources. According to international humanitarian law, the Occupying Power is prohibited from exploiting the natural resources of occupied territory in a way that undermines the economy of the occupied population or results in economic benefits for the Occupying Power's inhabitants or national economy. Israel has failed to prevent, stop, investigate and prosecute the ongoing pillaging in the area. Israel has in fact actively assisted in this pillage by openly licensing Ahava and granting substantial financial benefits to the settlers living in *Mitzpe Shalem*.

Together with its member organisation Al-Haq, FIDH submitted a communication to the United Nations Working Group on Business and Human Rights on 19 September 2013, which called on the Working Group to look into the involvement of transnational corporations in unlawful conduct in the OPT. In its communication, FIDH made reference to the activities of several European multinational corporations that are at risk of corporate complicity in human rights violations through its activity with Israeli settlements and through the provisions of services and support to settlement infrastructures. To date, the UNWG has not replied or acted upon the submission.²⁶

CASE ASSESSMENT IN LIGHT OF THE UNGPs

Pillar 1

Israel has failed to respect and protect human rights by allowing and facilitating Ahava's unlawful appropriation of Palestinian land and natural resources in the OPT. Israel has been acting in violation of its role of administrator of the OPT, and has failed to prevent the war crime of pillage, which was carried out following its licensing of Ahava. Israel also failed to investigate and prosecute acts of pillage as established under international law.

Pillar 2

Ahava has failed to respect the Palestinian people's human rights via its primary involvement in the commission of the war crime of pillage, and through its failure to mitigate and address its adverse human rights impacts. More generally, all TNCs conducting business activities or interactions in settlements in the OPT are at high risk of being directly or indirectly involved in the commission of human rights violations, and they can be seen to be enabling, facilitating, and profiting from the existence and continuous growth of illegal settlements.

Pillar 3

Palestinians lack access to effective remedy: there has been no restitution and reparation to Palestinian landowners and communities, and Palestinians generally lack access to effective legal remedy through legal systems, including the Israeli system, as a result of the occupation.

PROTECTION GAPS TO BE CLOSED

- Need to address the issue of **corporate accountability** for the **war crime** of pillage and, more generally, to address corporate responsibility within the context of armed conflict involving occupation, war crimes, or crimes against humanity.
- Need for clearer guidance on how to **address the direct or indirect profiting from, and furthering of, Israeli occupation by corporate actors**, reflecting on how the Israeli occupation is further exacerbated and perpetuated by such activity.
- Need for further guidance regarding the application of the UNGPs in conflict-affected areas such as the Israeli occupation.

23. Who Profits, "Ahava: Tracking the Trade Trail of Settlement Products", April 2012.

24. Numerous UN Security Council and General Assembly resolutions have recognised the illegality of Israeli settlements in the OPT, for instance GA resolution A/RES/67/229 of 21 December 2012. See also HRC Resolution A/HRC/22/L.45 on the report of the United Nations (UN) Fact-Finding Mission on Israeli Settlements in Occupied Palestinian Territory (OPT).

25. See "Pillage of the Dead Sea: Israel's unlawful exploitation of natural resources in the Occupied Palestinian Territory", Al Haq, 2012.

26. See FIDH, "The UN should clarify State obligations with regard to settlement-related business activities in Palestine", 22 March 2013.

Taking Action

Enhancing standards and ensuring redress

These case studies are only a few examples of recent or ongoing cases of corporate-related human rights abuses. From Latin America to Asia, Europe and Africa, these cases point out some of the **difficulties in implementing the UNGPs as well as their limits**: the voluntary nature of the UNGPs and divergent interpretations by stakeholders; the lack of robust guidance on legislative and policy measures States should take and most importantly, obstacles in accessing justice and obtaining reparation. These shortcomings and protection gaps thus signal the need to pursue efforts at the national and international levels to close existing accountability gaps.

It is the responsibility of the UN to come closer to addressing the gaps that the UNGPs are not able to address on their own and to clarify and codify existing human rights obligations. **FIDH therefore calls on the Human Rights Council to build upon progress made possible by the UNGPs and to move beyond by setting up an open-ended intergovernmental working group** with a mandate to explore options to enhance standards and ensure effective redress mechanisms are available.²⁷

It should be made clear that strengthening the international normative framework is not contrary to – but rather interdependent with – the **necessity to pursue efforts to strengthen existing national²⁸ and regional frameworks,²⁹ including to ensure States comply with their extraterritorial obligations.³⁰** National and international³¹ efforts in this regard should thus be seen as complementary and mutually reinforcing.

Enhancing standards and ensuring robust and effective enforcement mechanisms will not change or fix everything. But it could make a difference. Building on evolving international human rights law interpretation and jurisprudence,³² an intergovernmental process would contribute to:

- Addressing the UNGPs' shortcomings and protection gaps;
- Addressing the transboundary nature of corporate-related human rights abuses;
- Explicitly acknowledging the applicability of human rights obligations to the operations of TNCs and other business enterprises;
- Ensuring that States can uphold their human rights obligations, especially in an environment where many are competing for foreign investments;
- Ensuring that States monitor and regulate the operations of business enterprises under their jurisdiction;
- Ensuring the integration of human rights and environmental considerations as part of the core business of companies;
- Contributing to creating a level playing field for TNCs and other enterprises; and,
- Contributing to the prevention of, and remedy for, corporate-related abuses through the establishment of a robust monitoring and accountability mechanism empowered to respond to violations, including with a transnational dimension.

27. See Joint Statement, “Call for an international legally binding instrument on human rights, transnational corporations and other business enterprises”, adopted during the Peoples’ Forum on Human Rights and Business, Bangkok, Nov. 5-7 2013. The statement was signed by over 140 civil society organisations.

* * *

When adopting the UN Guiding Principles in June 2011, member States also recognised that the **Principles are a floor, not a ceiling**. The mandate of the UN Working Group on Business and Human Rights explicitly recognised that “**further progress** can be made, as well as guidance that will contribute to **enhancing standards** and practices with regard to business and human rights, and thereby contribute to a socially sustainable globalisation, **without foreclosing any other long-term development, including further enhancement of standards**”.³³

International law is dynamic and constantly evolving: let us ensure that we create the necessary space for it to fully respond to the human rights challenges of today’s world.

28. For instance, States are slowly starting to adopt national action plans to implement the UNGPs. The few plans adopted so far illustrate the lack of political will to adopt robust and forward-looking plans particularly regarding: (i) policy and legislative measures to ensure States uphold their extraterritorial human rights obligations; (ii) monitoring and review mechanisms; and (iii) access to remedy, with the third pillar continuing to be left behind. See CORE “Good Business? Analysis of the UK Government Action Plan on Business & Human Rights”, December 2013; MVO Platform, “Dutch National Action Plan on Business and Human Rights”, 17 February 2014.
29. Building on existing efforts such as recent legislative reforms regarding mandatory reporting for companies (such as Dodd-Frank Wall Street Reform and Consumer Protection Act), as well as examples of ongoing civil and criminal proceedings (See Business and Human Rights Resource Centre, Corporate Accountability Legal Portal). For legal and policy recommendations, see notably FIDH, “Corporate Accountability for Human Rights Abuses: A guide for victims and NGOs on recourse mechanisms”, updated in March 2012. See also “The Third Pillar”, *op. cit.*
30. See notably Principle 24 on States’ obligation to regulate of the “Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights”, September 2011.
31. Such as the standard-setting work of the UN Open-Ended Intergovernmental Working Group considering the elaboration of an international regulatory framework on the regulation, monitoring, and oversight of the activities of private military and security companies. Other international organisations such as the ILO could be involved in the development of the international normative framework applicable to companies.
32. On extraterritorial obligations, see notably “Maastricht Principles”, *op. cit.*; CERD, “Concluding Observation of CERD: Canada”, CERD/C/CAN/CO/18, 25 May 2007; Committee on the rights of the child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013. See also Concluding observations of the Committee on Economic, Social and Cultural Rights in 2013 for Austria, Norway and Belgium. For more information, visit ETO Consortium.
33. A/HRC/RES/17/4, adopted on 6 June 2011.

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