



FIDH's contribution to the Corporate Legal Accountability Portal
Business and Human Rights Resource Centre
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Defenders on the forefront and continuous struggle to access justice

In Cambodia, in early January 2014, government security forces attacked and fired live bullets on protesting garment workers asking for a monthly minimum wage increase to US\$160.¹ A number of people were killed, injured and arbitrarily arrested.² On May 6, 2014, the trial of 23 workers who protested was again postponed. Twenty-one workers have been in jail since the protest in January and continue to be denied bail.³

From Brazil to Indonesia and across all sectors, corporate impunity continues to prevail and human rights defenders are in the line of fire. “Development” mega-projects and investments continue to be made at all costs. As competition for land and natural resources is accelerating globally, both government authorities and corporations are subjecting human rights defenders to surveillance, attacks, unfounded charges, harassment and other threats, and in some cases murder, all in a climate of impunity.⁴ Land and environmental rights defenders are increasingly at risk.

Access to remedy remains an illusion for most people affected by corporate abuses, even in countries with relatively strong judicial systems.⁵ In some cases, such as in the US and the UK, access to justice has become even more difficult.⁶ To date and as highlighted in FIDH guide for victims and NGOs on recourse mechanisms “[Corporate Accountability for Human Rights Abuses](#)”, judicial and non-judicial mechanisms are falling short of providing adequate access to remedy. The need to lift practical and procedural barriers in accessing justice, particularly in cases with an extraterritorial dimension, remains urgent.

FIDH continues to use judicial and non-judicial mechanisms, in both home and host

1 When the living wage is estimated at 283 USD, as estimated by Asia Floor Wage Alliance.

2 FIDH, “Calling the UN Working Group on Business and Human Rights to address human rights violations in the garment sector in Cambodia,” (Mar. 7, 2014).

3 Radio Free Asia, “Cambodian Court Again Delays Trial of 23 Jailed Protesters,” 9 May 2014, available at: <http://www.rfa.org/english/newivas/cambodia/bail-05092014170039.html>

4 See FIDH's latest report Indonesia: No Development Without Rights”, May 2014. See also FIDH, PBI, Forum Asia, Global Witness, IUCN, CIEL, Earth Rights International, Friends of the Earth International, ISHR and International Land Coalition, “Land and environmental rights defenders in danger: an overview of recent cases,” (Dec. 2013). See also FIDH, “Call on EU and Brazil to address the criminalisation of the social protest and violations of labor, economic and social rights in the run up to the World Cup”, 25 April 2014, <http://www.fidh.org/en/americas/brazil/15230-call-on-eu-and-brazil-to-address-the-criminalisation-of-the-social-protest>

5 See, e.g., *Kiobel v. Royal Dutch Petroleum*, 132 S.Ct. 472 (2010); see also the *Amesys* case in France, FIDH, “The investigation chamber green-lights the investigative proceeding on the sale of surveillance equipment by Amesys to Gaddafi regime” (Jan. 15, 2013).

6 See, e.g., *Kiobel v. Royal Dutch Petroleum*, 132 S.Ct. 472 (2010). See also, Gwynne Skinner, Robert McCorquodale, Olivier DeSchutter, Andie Lambe, “The Third Pillar: Access to judicial remedies for human rights violations by transnational business,” (Dec. 2013), commissioned by ECCJ (of which FIDH is a steering group member), CORE, and ICAR.

States, to seek justice for victims and ensure corporate accountability. One way is to use strategic litigation, not only to obtain remedy for victims, but also as a tool for policy change. In 2011, FIDH – together with its member organisation in France (LDH) – filed a criminal complaint against French technology company Amesys for alleged complicity in acts of torture, stemming from the company's sale of surveillance technology to the Libyan Government during Gaddafi's tenure.⁷ The Amesys case highlights the political barriers in accessing justice when cases have an extraterritorial dimension. The Public Prosecutor initially refused to open an investigation. The investigating judge appointed to the case delivered an opinion that supported the case proceeding, which was then appealed by the Public Prosecutor. The Court of Appeal eventually admitted the complaint and referred the case to the newly formed Paris tribunal unit specialising in war crimes, crimes against humanity and genocide. Five Libyan victims, represented by FIDH, were recognised as civil parties in the case and were heard by the investigative judges in June and July 2013. The case is now pending. Another judicial investigation was recently opened following a complaint filed by FIDH and its member organisation in France against Qosmos for alleged complicity in acts of torture through its sale of surveillance equipment to the Syrian Government of Bashar Al-Assad.⁸ The Amesys case has led to a change in the position of the French government. In December 2013, the French government proposed the addition of a new category to the list of items in the Wassenaar Arrangement⁹ to include those technologies sold by Amesys and Qosmos. Together with other members of the [CAUSE](#), the newly launched Coalition Against the Use of Unlawful Surveillance Technologies, FIDH will continue to seek corporate accountability in an industry where there is a clear case for stronger regulation.

Where should corporate accountability go from here?

In a [recent briefing paper](#) based on the analysis of recent cases through the lens of the three pillars of the UN Guiding Principles on Business and Human Rights (UNGPs), FIDH highlighted the difficulties in implementing the latter, as well as some of their shortcomings. These range from the voluntary nature of the UNGPs, the divergent interpretations by stakeholders, the lack of robust guidance on legislative and policy measures States should take, and the obstacles victims face in accessing justice and obtaining reparation.

What FIDH and its member organisations are experiencing is that the wide uptake of the UNGPs by States and companies has yet to be translated into tangible improvement for affected individuals and communities. There is a clear contradiction between States' and businesses' endorsement of the UNGPs on the one hand, and their actual behaviour on the other. FIDH's work highlights how States are not only failing to protect against the negative human rights impacts of corporate actors, but also how corporate actors can be complicit in labour and human rights violations. Companies, including some who have

7 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, <http://www.fidh.org/en/north-africa-middle-east/libya/Amesys-Case-The-Investigation-12752>

8 FIDH, France: Opening of a judicial investigation targeting Qosmos for complicity in acts of torture in Syria, 11 April 2014, <http://www.fidh.org/en/europe/france/15116-france-opening-of-a-judicial-investigation-targeting-qosmos-for-complicity>

9 The Wassenaar Arrangement is a voluntary export regime whose 41 members (including the US, Russia and all the EU Member States – except Cyprus) exchange information on transfers of conventional weapons and dual use goods and technologies. Although it remains a voluntary instrument, it has implications on other pieces of regulation, such as the EU Dual-Use regulation.

been recognized as CSR leaders and have publicly endorsed the UNGPs, continue to be involved in a number of human rights violations without addressing the direct impacts they are generating.¹⁰ The lack of policy coherence is blatant. For instance, documents recently obtained by NGOs through freedom of information requests have highlighted how the UK government backed Shell and Rio Tinto in human rights court cases after being lobbied by the companies for support. The UK's amicus brief submitted to the US Supreme Court in the *Kiobel v. Shell* case, seeking to prevent future similar court cases in the US, was submitted as the UK government was developing its "national action plan" for the implementation of the UNGPs.¹¹ In areas such as trade and investment, FIDH continues to insist on the need to align States' policies with their human rights obligations.

FIDH, drawing strength from its 178 member organisations' voices, has been calling on the international community to uphold its human rights obligations and to work towards strengthening the international business and human rights legal framework. FIDH and hundreds of civil society organisations and social movements are calling¹² on the Human Rights Council to initiate an intergovernmental process to explore options, through one or more instruments, to enhance standards and ensure effective redress mechanisms are available to victims. Such a process would help clarify the applicability of human rights obligations to the operations of transnational corporations and other business enterprises and contribute to the prevention and remedy of corporate-related abuses through the establishment of robust and effective monitoring and accountability mechanisms. By addressing core issues, it would also contribute to - and be complementary with - the necessity to pursue efforts to strengthen existing national and regional frameworks.

Detractors will argue that more time is needed to implement the recently adopted UNGPs. However, as highlighted by Professor John Ruggie, the UNGPs did not create new obligations for States, but rather were a mere restatement of States' existing obligations.¹³ Furthermore and as mentioned above, FIDH argues that both processes should be seen as mutually reinforcing: States and businesses should continue working towards the effective implementation of the UNGPs, while addressing some of their protection gaps.

The development of international binding standards could also create a level playing field for all companies, so they can respect human rights without losing their competitive advantage. It could potentially create greater predictability and companies would benefit from common sets of rules. Finally, such development would impulse stronger respect for human rights at the national level and would - as opposed to a commonly heard misconception- allow States to attract more investments.

10 See notably case study no.2 in FIDH, "Business and Human Rights: Enhancing Standards and Ensuring Redress", March 2014, <http://www.fidh.org/en/united-nations/human-rights-council/un-human-rights-council-25th-regular-session/14899-business-and-human-rights-fidh-calls-on-the-international-community-to>

11 See CORE, "FOI request reveals UK government backed Shell and Rio Tinto in human rights court cases after companies lobbied for support", 30 April 2014, <http://www.corporatejustice.org/FOI-request-reveals-UK-government.html>

12 See Treaty Alliance: www.treatymovement.com

13 Considered, in some aspects, as taking a regressive approach on the interpretation of human rights law. See <http://www.fidh.org/en/globalisation-human-rights/business-and-human-rights/Joint-Civil-Society-Statement-on.9066>

Treaty development will, as always, pose complex challenges. An intergovernmental process would address such challenges in a transparent and inclusive process. While the EU and others do not hesitate to enter blindfolded into treaty negotiations of investment treaties such as the Transatlantic Trade and Investment Partnership, the argument that questions remain to be addressed should not block initiatives aiming at strengthening the business and human rights legal framework

When adopting the UNGPs in Human Rights Council Resolution 17/4 of June 2011, Member States recognized these were a floor, not a ceiling and that “further enhancement of standards” should not be precluded. Building on progress made possible by the adoption of the UNGPs, the international community has the responsibility to redress existing imbalances in the international system, to further codify international law and to make sure it responds to the human rights challenges of today's globalised world.

When it comes to corporate accountability, NGOs are too often accused of being responsible for polarising debates. In a global context of shrinking space for civil society, increased criminalisation of defenders and reprisals for cooperating with human rights bodies, a shift in the discourse is required to support and recognise the essential role civil society plays in addressing corporate accountability.

Our position is a simple and pragmatic one: it is based on the reality faced by thousands of affected people on all continents who continue, as we write these lines, to suffer from the consequences of corporate abuse, and on the reality faced by those who risk their lives to challenge political and economic interests in defence of human rights and the environment.



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