



Working Group on the issue of human rights and transnational corporations and other business enterprises

Mr. Pulvan J. Selvanathan
Chair-Rapporteur

OHCHR,
Palais des Nations,
CH-1211 Geneva 10,
Switzerland

Geneva, September 19th 2013

Re : Submission concerning human rights violations linked to transnational corporations operating in the Occupied Palestinian Territory

Dear Members of the Working Group,

Further to Human Rights Council 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), including East Jerusalem (the *UN mission*), the International Federation for Human Rights (FIDH) and its member organisation Al-Haq would like to draw your attention to the issue of human rights violations involving transnational corporations that operate in the OPT.

The UN mission's report, presented to the Human Rights Council on 18 March 2013, reaffirms that Israeli settlements entail serious breaches of peremptory norms of international law, including, *inter alia*, the right to self-determination, and called upon all UN Member States to assume their responsibilities stemming from those breaches.

The UN mission also found that '*some private entities have enabled, facilitated, and profited from the construction and growth of settlements*'.¹

The report thus calls upon individual Third States to take measures to ensure that businesses domiciled in their jurisdiction that conduct operations in, or related to, settlements respect the rights of the Palestinian people. The report further calls upon those businesses to assess the human rights impact of their activities and take all necessary steps to ensure they are not adversely impacting on the Palestinian population, and are conforming with international law and the United Nations Guiding Principles for Business and Human Rights (the Guiding Principles).²

Finally, the Report recommends that the Working Group on Business and Human Rights (the *Working Group*) be seized of this matter.

According to its revised methods of work in November 2012, '*the Working Group may exercise its discretion to raise specific allegations that it determines to be particularly emblematic with relevant State authorities and companies, and request clarification or additional information as appropriate*'.³

Resolution A/HRC/22/L.45, in follow-up to the UN Mission report, further clarifies the role of the Working Group calling upon the relevant United Nations bodies to take all necessary measure and actions to ensure full respect for and compliance with Human Rights Council resolution 17/4 on the Guiding Principles, and other relevant international laws and standards,' specifically requesting that the Working Group fulfil its mandate accordingly, including by consultations with relevant special procedures mandate holders.

¹ Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, Advanced Unedited Version, para. 96. Available at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlements.pdf>

² Report of the UN mission, *Ibid*, para. 117.

³ A/HRC/WG.12/3/1, Outcome of the third session of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 26-30 November 2012, Methods of Work, para. 17.

Human rights abuses linked to businesses activity in the OPT

Through trade with settlement goods or through the provision of services and support to settlement infrastructures (including providing financing), multinational enterprises, and in particular European companies, are, in fact, helping to maintain the illegal settlement enterprise, and may thus be contributing directly or indirectly to human rights abuses.

We would like to bring to your attention a number of cases of economic transactions with Israeli settlements in the OPT, including through the provision of services and materials to the settlements' infrastructure, that may imply corporate complicity in human rights violations:

1. The British-Danish multinational G4S provides security services and equipment through its Israeli subsidiary to businesses operating in Israeli settlements in the West Bank, thus supporting their unlawful maintenance.⁴ It also provides these services and equipment to Israeli checkpoints, prisons and detention and interrogation facilities. Israeli checkpoints in the OPT not only violate the right of the Palestinian people to freedom of movement, but also their rights to, *inter alia*, education, healthcare, livelihood and family life. The Public Committee Against Torture in Israel has reported that, since 2001, none of the 750 complaints made concerning torture and ill-treatment by the Israeli Security Agency have resulted in a criminal investigation.⁵ Furthermore, a recent UNICEF [report](#) identified numerous examples of practices in Israeli detentions that amount to cruel, inhuman or degrading treatment or punishment according to the Convention on the Rights of the Child and the Convention against Torture.⁶ Through the provision of services and equipment to the Israeli security industry, G4S is indirectly contributing to these violations of human rights.
2. French multinationals Veolia and Alstom have been involved in the construction of a light rail tramway linking West Jerusalem to settlements in occupied East Jerusalem, thereby supporting the infrastructure of unlawful settlements and helping to entrench Israel's illegal annexation of East Jerusalem. Other companies within the Veolia group provide transport and other services such as waste collection for illegal Israeli settlements in other parts of the West Bank. Veolia also runs transportation services for Israeli settlers on settler-only roads linking the settlements with Israel, and as a result decimating Palestinian towns and villages by using their land for construction.⁷
3. The German production company Heidelberg Cement owns a sand and gravel quarry and two plants in the West Bank through its Israeli subsidiary Hanson Israel. Quarrying, mining and extracting natural resources for the economic benefit of the Occupying Power and its nationals constitutes a violation of international law and amounts to the war crime of pillage, entailing international and criminal responsibility for the State of Israel and for individuals who are complicit in such a crime.
4. Canadian corporations Green Park International and Green Mount International have been involved in the construction, marketing and selling of residential units in the Modi'in Illit settlement built on Bil'in village land in the West Bank. In 2008, the Bil'in Village Council filed a lawsuit before the Quebec Superior Court in Montreal against two Canadian corporations for breaches of international and Canadian law. The Village Council claimed that the companies aided and abetted the commission of a war crime, allegedly violating paragraph 49(6) of the Fourth Geneva Convention, which forbids the transfer of civilian populations of the Occupying Power to the occupied territory, by building and expanding settlements in occupied territories. Regrettably, the Quebec Superior Court decided that the Israeli courts were the proper forum to hear the case, the Quebec Court of Appeal agreed, and the Canadian Supreme Court refused to review the case. The courts' refusal to hear the case on the merits represents Canada's failure to provide an effective judicial remedy to the residents of Bil'in for the human rights violations they have suffered and continue to suffer due to the activities of a Canadian corporation. Significantly, the UN mission concluded in its report that the Israeli High Court of Justice 'has rendered the question of legality of the settlements non-justiciable.' An individual complaint has been filed on behalf of Bil'in village with the Human Rights Committee under the Optional Protocol to

⁴ Who Profits project has documented companies involvement in the continuing Israeli control over Palestinian land, please see <http://www.whoprofits.org/company/group4securicor-g4s>, accessed 18 April 2013.

⁵ See PCATI report Accountability Still Denied, January 2012, www.stoptorture.org.il/files/PCATI_eng_web.pdf, accessed 10 May 2013.

⁶ See UNICEF report Children in Israeli Military Detention, February 2012, http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf, accessed 10 May 2013.

⁷ Please see for further information the Palestinian BDS National Committee (a coalition of the Palestinian organisations, trade unions, networks and NGOs), <http://www.bdsmovement.net/activecamps/veoliaalstom>, accessed 18 April 2013.

The above examples illustrate the need to urgently address the involvement of corporations in human rights abuses while operating in the OPT. It is essential that the Working Group explicitly clarifies the responsibilities of both States and corporations within the context of occupation in order to put an end to human rights' abuses linked to business activity.

The State duty to protect the rights of the Palestinian people from business-related abuses

According to the commentary of the first foundational principle of the Guiding Principles, '*The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse*'.⁹

States have an obligation to take all appropriate measures to ensure that businesses under their jurisdiction are not involved in any human rights abuses through their own activities or through their business relationships when acting abroad. Given the heightened risk for businesses being involved with gross abuses of human rights in conflict-affected areas, such as the OPT, in order to discharge this obligation, State policy for corporations operating in the OPT is critical.

Corporate responsibility to respect the rights of the Palestinian people

Businesses have a clear responsibility to avoid infringing on Palestinians' human rights. '*In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts*'.¹⁰ they should develop and implement effective human rights due diligence processes appropriate to the operating context. When operating in the OPT, due diligence processes should seek to ensure that companies do not adversely impact the human rights of the Palestinian people or contribute to abusing those rights. By providing equipment and services that are used at Israeli checkpoints and prisons, or by waste collection services in settlements, corporations **are contributing to the violation of Palestinians human rights**, such as, *inter alia*, their rights to self-determination, equality and non-discrimination, freedom of movement, the right to food, water, housing, an adequate standard of living, access to natural resources and effective remedy.

By trading in settlement produce, providing services to settlers, and by investing in infrastructure and other activities related to settlements, businesses contribute to the maintenance of the settlements, the violation of international humanitarian law and to the violation of Palestinians' human rights linked to the presence of settlements.

Access to remedy

The Guiding Principles make clear that '*as part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy*'.¹¹ In practice, however, access to remedy for human rights abuses linked to settlement activity is denied to the Palestinian population. The UN mission report states that, '*The Israeli Supreme Court sitting as the High Court of Justice does not offer Palestinians a clear avenue for recourse*'.¹² Furthermore, the report finds that even where the Israeli court rulings favour the Palestinian petitioner, '*there is a consistent lack of*

8

⁹ A/HRC/17/31, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, 21 March 2011, para. IA1

¹⁰ *Ibid.*, para. II B 17.

¹¹ *Ibid.* III B 25.

¹² Report of the UN mission, *op.cit.* 1, para. 45.

enforcement of them'.¹³ Notwithstanding the favourability or otherwise of the ruling, the Israeli judiciary consistently disregards essential international legal standards, thus precluding access to effective legal remedy through the Israeli system.

The aforementioned Green Park International and Green Mount International case is a clear and representative example of the successive obstacles to justice encountered by Palestinians in cases of corporate complicity in abuses to their rights in the OPT. Both the trial and appeal courts in Canada refused to hear the case on the basis of *forum non conveniens*, failing to provide an effective judicial remedy to the residents of Bil'in. The courts' finding that the Israeli courts were the appropriate forum for the case disregards the deficiencies of the Israeli judicial system. Both Canada and Israel thus have failed in their duty to provide effective judicial remedy to the residents of Bil'in for violations of their human rights.¹⁴

According to the Guiding Principles '*States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable*'. Through political, judicial and other barriers, victims are denied access to remedy, not only in Israel, but also in the countries in which companies operating in the OPT are domiciled.

In its most recent report to the Human Rights Council,¹⁵ the Working Group identifies, *inter alia*, the need to address gaps in situations of armed conflict,¹⁶ to issue guidance on implementing the Guiding Principles in contexts with weak governance¹⁷ and for States to address the legal and practical barriers for victims in their access to justice¹⁸, all matters of key relevance to the situation in the OPT.

Therefore, FIDH and the Al-Haq **therefore welcome this recent report and** call upon the Working Group to:

1. Clarify the duty of States to protect Palestinian human rights from the detrimental impact of business activities related to settlements, with a particular view to enhancing coherence and alignment among relevant standards relating to conflict – and situations of occupation – and the Guiding Principles.¹⁹
2. Make recommendations on legislative, administrative, policy and other measures that States should take to ensure that businesses under their jurisdiction operating in the OPT:
 - (i) Do not contribute to the violations of international human rights and humanitarian law entailed in Israel's settlement enterprise;
 - (ii) Adopt human rights due diligence process appropriate for the context in which they operate
 - (iii) Assume responsibility for any violations of international law in the OPT;
 - (iv) Provide reparations to victims of those violations of international law in the OPT; and
 - (v) Are held accountable for their involvement in violations of international law.
3. Make recommendations to States to ensure effective judicial and non-judicial remedies are available in their domestic legal systems to Palestinian victims of human rights abuses linked to corporations.
4. Make recommendations to cease financial investment in settlements and impose restrictive measures on trade with settlements.

¹³ *Ibid.*

¹⁴ A/HRC/17/31, op.cit. 3, III B 26.

¹⁵ A/HRC/23/32, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 14 March 2013

¹⁶ *Ibid.*, A 1 (b).

¹⁷ *Ibid.*, A 2 (d).

¹⁸ *Ibid.*, A 4 (a).

¹⁹ *Ibid.*, A, 8 (c).

In order to fully discharge its mandate, the Working Group should closely cooperate and coordinate with other relevant special procedures and engage in regular dialogue with all relevant stakeholders, including, but not limited to, relevant United Nations bodies, specialised agencies, civil society organisations, and victims of human rights abuses linked to corporate operations in the OPT and their representatives.

We sincerely hope that you will consider our serious concerns, and would like to thank you for your cooperation on this issue. We remain at your disposal, should you need any further information.

Yours sincerely,



Karim Lahidji
President of FIDH



Shawan Jabarin
Director AI-Haq