



**LPHR Commentary on the UK National Contact Point Final Statement
concerning LPHR's human rights complaint against G4S**

This LPHR Commentary is to be read alongside the LPHR public statement dated 9 June 2015. It provides more information on the significant Final Statement of the UK National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) on LPHR's human rights complaint against G4S.

This includes further information on:

- *the key findings of the NCP Final Statement;*
- *an outline of the complaint process to date and going forward;*
- *the OECD Guidelines and the UK NCP;*
- *key excerpts of the Final Statement; and*
- *a chronology of G4S' public statements regarding human rights and their activities in Israel and the OPT.*

Further LPHR commentary on key findings of the NCP Final Statement

LPHR considers that the only effective action that G4S can take to respect the human rights of Palestinians under the OECD Guidelines is to end their business relationship with the relevant Israeli state agencies with immediate effect. This goes beyond the recommendations of the NCP, but is firmly based on a number of related significant considerations concerning G4S' public statements since March 2011, the United Nations Guiding Principles on Business and Human Rights, and G4S' own human rights policy.

LPHR notes that G4S has made previous apparent attempts to use its leverage to prevent or mitigate Israeli violations that have been unsuccessful. This view is based on G4S' own public statements since March 2011 (see ANNEX II below). These indicate that G4S has:

- long been aware of acute human rights concerns connected to its activities in Israel and the Occupied Palestinian Territory (OPT);
- been in a dialogue about them with their contracting partners in Israel; and
- consequently made repeated commitments from March 2011 through to April 2013 to 'exit' contracts 'between 2012 and 2015', which shifted without explanation in June 2014 to a commitment to 'not renew' contracts that will end 'between 2014 and 2017'.

To date, there is no evidence available from G4S to confirm that any of the relevant existing contracts have been exited from, or have ended and not been renewed. This is of grave concern, given that it is now over four years since G4S first publicly expressed a commitment 'to exit' specific contracts so 'to ensure that our business practices remain in line with our Business Ethics Policy'. The inconsistent public commitments, and the shifting time periods for them to apparently take effect, raise the substantial concern that G4S' stated commitments are not definitive and cannot be taken at face value.



In this context, LPHR notes the commentary to the United Nations General Principles on Business and Human Rights (UNGPs) clarifies that withdrawal from a business relationship is the next step to consider when “the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage.” In this situation, the commentary to Principle 19 of the UNGPs, states: “Here the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.”

The need for immediate remedial action by G4S is underpinned by reference to their own published human rights policy. G4S' human rights policy, published in April 2013, emphasises in its opening paragraph “G4S is committed to fulfilling its responsibilities on human rights in all of its companies around the world by applying the United Nations Guiding Principles on Business and Human Rights (2011) across all of our businesses.” The human rights provisions of the OECD Guidelines reflect corporate responsibility provisions under the UNGPs. A breach of the human rights provisions of the OECD Guidelines accordingly indicates a breach of the UNGPs, contrary to the stated commitment of G4S' own human rights policy. By reference to Principle 19 of the UNGPs (see previous paragraph), this strongly indicates that the only action that G4S should now consider is immediate withdrawal from the relevant contracts with Israeli state agencies.

The NCP's findings against G4S indicate shortcomings of the 'Summary of Independent Review'— comprising a human rights and legal review of G4S' business in Israel - published by G4S on 4 June 2014. Whilst the Summary of Independent Review considers G4S' due diligence obligations under the OECD Guidelines, it does not consider whether G4S' business actions have an adverse impact on human rights under the OECD Guidelines, as alleged in LPHR's complaint. The NCP identified this omission in the Summary of Independent Review, when expressing surprise “that the review reports do not identify any actions for G4S” (at paragraph 68 of its Final Statement). The UK NCP also stated that it “considers that G4S has focused too narrowly on deciding whether or not it is justified in continuing to hold contracts referred to in the complaint” (at paragraph 69 of its Final Statement).

LPHR is gravely concerned about G4S' unsatisfactory lack of transparency regarding its activities in Israel and the OPT. Its refusal to provide straightforward information by reason of 'commercial confidentiality' is obstructive, and covers wide areas of its work in the region, including: the names and location of each military checkpoint and Israeli Prison Service facility where G4S has provided services; the full nature of the services provided at each military checkpoint and Israeli Prison Service facility; and the start date of providing such services. Withholding this basic information makes it impossible to fairly assess the full impact of G4S' involvement in violations of Palestinian human rights. Likewise, G4S refuses to fully set out the process and results of due diligence that they conducted prior to providing services to facilities at IPS facilities and military checkpoints. Given the lack of transparency to date, it is essential that G4S now states clearly and openly the actions it is immediately taking to address the significant NCP findings of violations of human rights obligations of the OECD Guidelines.

LPHR must also note its concern about the NCP's choice of cautious and apparently contradictory language attached to its findings of breach of human rights provisions of the OECD Guidelines. In particular, the use of the term 'technical' to describe G4S' breach of the



overarching 'respect human rights' provisions of the OECD Guidelines is completely inappropriate. The use of the term 'technical' has no root in the OECD Guidelines or the United Nations Guiding Principles, and it is clear there can be no difference in outcome between a 'technical' and non-technical breach. LPHR considers that the NCP's unfortunate use of this term reflects a clear misinterpretation of the OECD Guidelines, and fundamentally detracts from the NCP's role of furthering 'the effectiveness' of the OECD Guidelines.

LPHR is further concerned that the term 'technical' has been used in order to justify the NCP's highly contradictory and problematic finding that it 'has not found any general failure by the company to respect the human rights of the people on whose behalf the complaint is made'. This finding is illogical, given the NCP's finding that G4S has breached three fundamental human rights provisions of the OECD Guidelines.

LPHR has raised these concerns directly with the NCP as the subject of a Procedural Review, but the submission was dismissed as 'ineligible' following a decision by the NCP and its Steering Board that it did not amount to a procedural issue.

Complaint process to date and going forward

On 18 November 2013, LPHR, represented by law firm Leigh Day and barrister Tim Cooke-Hurle, submitted their complaint to the NCP. The complaint was then forwarded by the NCP to G4S which was invited to make representations. These representations were received by the NCP on 17 February 2014 and shared with LPHR. Further representations to the NCP were made by both parties and separate submissions were made by the Israeli NCP.

On 2 June 2014, an Initial Assessment by NCP found that certain issues raised in the complaint regarding the activities of G4S were substantiated and required further examination. Following this Initial Assessment, the parties were invited to engage in mediation. LPHR welcomed mediation, but G4S declined it. In these circumstances, the NCP conducted further examination of the issues, which included conducting interviews with relevant sources.

Today, the NCP issued a "Final Statement", detailing how the complaint has progressed and its final findings on breaches of the OECD Guidelines, making specific recommendations for action by G4S. The NCP has specified a date of March 2016 for a progress update on implementing these recommendations. The NCP is then expected to publish a "Follow-Up Statement", analysing the parties' responses and providing its own conclusions.

The goal of LPHR's Business and Human Rights work is to be at the forefront of meaningful and expert engagement with corporate legal accountability processes so to ensure multinational enterprises effectively meet their responsibilities to respect the human rights of Palestinians.

Information on the OECD Guidelines and the UK National Contact Point

The National Contact Point system under the OECD Guidelines for Multinational Enterprises is the first (and remains one of the very few) international mechanisms established by



governments to enable individuals, communities or their representatives to bring complaints against multinational corporations.

The OECD Guidelines are government-backed recommendations to enterprises regarding responsible business conduct so that they are consistent with internationally recognised standards. It is the only corporate responsibility instrument to have been adopted by all 34 member countries of the OECD, as well as eleven non-OECD countries. In 2011, the OECD Guidelines were updated to incorporate distinct obligations in relation to internationally recognised human rights standards.

Governments adhering to the OECD Guidelines are obliged to set up National Contact Points (NCPs), charged with promoting and implementing the OECD Guidelines. The NCP's role includes handling the submission of complaints on suspected violations of the Guidelines.

The UK National Contact Point is situated within the Department for Business, Skills and Innovation and is partly funded by the Department for International Development. It is staffed by civil servants, and has a steering board including members from government departments, business, trade unions and civil society.

The OECD Guidelines are a mechanism for promoting corporate respect for human rights; adherence to the OECD Guidelines is voluntary, and there is no legally enforceable remedy in respect of a company that breaches them. A satisfactory resolution depends on the goodwill of the company involved.



ANNEX I

Key Excerpts of the NCP Final Statement on LPHR's complaint against G4S

Para 39: In relation to prisons, information offered to the UK NCP establishes that some aspects of operations in prisons where G4S provides equipment are considered by international authorities and the UK government to be contrary to international human rights law and international humanitarian law. FCO annual human rights reports highlight administrative detention and detention of children as key concerns.

Para 41: The UK NCP considers that the information reviewed establishes that there are adverse human rights impacts associated with the facilities and locations referred to in the complaint.

Para 68: It is surprising that the [G4S Summary of Independent Review] review reports do not identify any actions for G4S... The reports appear to conclude that G4S has no obligation in regard to impacts associated with equipment and facilities referred to in the complaint, however, because its staff are not involved in operating them. In as far as it relates to obligations under the OECD Guidelines (and in particular the obligation under Chapter IV, Paragraph 3), the UK NCP regards this interpretation as too narrow.

Para 69: The UK NCP considers that G4S has focused too narrowly on deciding whether or not it is justified in continuing to hold contracts referred to in the complaint.

Para 76: Until G4S publicly communicates the actions it is taking to address the impacts it is linked to by the contracts referred to in the complaint, the UK NCP considers that its actions are not consistent with its obligation under Chapter IV, Paragraph 3 of the OECD Guidelines to address impacts it is linked to by a business relationship.

Para 77: The obligation to address impacts is part of the overall obligation to respect human rights in Chapter IV, Paragraph 1 and Chapter II, Paragraph 2. Because of this, the inconsistency with Chapter IV Paragraph 3 makes the company's actions technically inconsistent with these provisions also. The UK NCP considers the inconsistency with Chapter IV Paragraph 1 and Chapter II Paragraph 2 to be a technical inconsistency because its finding on these paragraphs is based on their relationship to Chapter IV Paragraph 3. The UK NCP has not found any general failure by the company to respect the human rights of the people on whose behalf the complaint is made, or any failure to respect human rights in regard to its own operations.

Para 80: The UK NCP recommends:

- a) That G4S considers how it may be able to work with business partners in Israel to support action to address adverse impacts referred to in the complaint;
- b) That G4S communicates to stakeholders and business partners any actions it is taking in regard to the issues raised in the complaint;
- c) That G4S implements across its operations a contract approvals process that includes assessment of human rights risks and application of mitigations, as it has indicated its intention



to do in the new governance risk and compliance management procedures shared in its comments on this statement.

Para 81: The UK NCP will request an update from both parties. The UK NCP's usual practice is to request an update one year after issuing its Final Statement to parties and it will therefore approach the parties in March 2016.



ANNEX II

G4S public statements regarding human rights and their activities in Israel and the OPT

April 2015

G4S releases a Corporate Social Responsibility Report, which states: “There have been a number of independent reviews of the business in Israel, the latest of which was commissioned in April 2014. That review concluded that the company has no causal or contributory role in human rights violations. At the group’s annual general meeting in June 2014, the Chairman reconfirmed decisions made previously by the company in relation to specific contracts: that they would not be renewed when they expire. The group stands by that commitment.”

- Reported by G4S, April 2015

June 2014

G4S verbally announces at its Annual General Meeting that three of its contracts in Israel and the OPT will not be renewed when they expire. G4S states that these contracts are due to expire at the end of 2014, the end of 2015 and the end of 2017, but that it will subsequently fulfil warranty periods.

G4S stated that the ‘Framework Agreement’ ending in 2014, covers all contracts with the Israeli Prison Service for facilities holding Palestinian prisoners, both within the West Bank and in Israel.

- Reported by Corporate Watch, June 2014

April 2013

G4S reaffirms its March 2011 statement when telling the Financial Times: “[h]aving conducted a review in 2011, we concluded that, to ensure that G4S Israel business practices remain in line with our own business ethics policy, we would aim to exit the contracts which involve the servicing of security equipment at a small number of barrier checkpoints, a prison and a police station in the West Bank area.”

This was reportedly due to occur in 2015.

- Reported by Financial Times, 21 April 2013

May 2012

G4S issued a CSR update, providing the following chronology:

“G4S in Israel

2002



- Group 4 Falck stated the company would “exit the West Bank”
- The company exited settlement protection services

2011

- G4S legal review of ongoing operations in the region
- G4S ethical review of ongoing operations in the region
- G4S consultation with stakeholders
- Concluded that commercial contracts for traditional security services are not controversial
- Decided to attempt to exit certain other contracts
- Began customer dialogue

2012

- Customer insisting on contractual requirements
- Exits of contracts scheduled upon contract expiry between 2012 and 2015.”

- Reported by G4S, May 2012

April 2012

The G4S 2011 Annual Report states:

“In 2010 and 2011 we faced increasing criticism regarding the provision of services to customers in the West Bank area through contracts which we had inherited through an earlier acquisition. This issue prompted us to consider our position on human rights and to undertake a broad project tasked with creating a clear human rights policy. Our review mapped the human rights landscape, analysed G4S operations to determine human rights risks and challenges and developed a human rights policy.

As a result of the project, we have recently drafted a new human rights policy and are currently seeking feedback from internal and external stakeholders on its content. Once the policy is agreed, we will implement it across the group and will develop operational guidelines to support its implementation.

We have also recently upgraded our CSR checklist process for evaluating new country entries, acquisitions and major contract bids to improve the human rights elements of the process based on a variety of external sources of human rights data.”

- Reported by G4S, April 2012

March 2011

G4S releases a public statement regarding its activities in Israel and the OPT: “...we have... concluded that to ensure that our business practices remain in line with our Business Ethics Policy, we will aim to exit a number of contracts which involve the servicing of security

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equipment at the barrier checkpoints, prisons and police stations in the West Bank. We will aim to complete this exit as soon as possible, but also recognise that we have contractual obligations to our customers which we must take into consideration.”

- Reported by Who Profits, March 2011