

# END OF THE ROAD FOR TRANSNATIONAL CORPORATIONS?

Human rights and environment: from a groundbreaking French law to a UN treaty.



# INTRODUCTION

---

The French law on the 'duty of vigilance' of parent and subcontracting companies was passed on the 23<sup>rd</sup> of March 2017. The law, which is the result of years of campaigning by civil society, is a major step forward in the fight against the impunity of transnational corporations, which violate the rights of both their workers and local communities and pollute the environment worldwide. The massive lobbying by the private sector against the bill managed to slow down progress in getting the law adopted as well as watering down its content.

Despite these drawbacks, this law represents an undeniable international breakthrough. For the first time, parent and outsourcing companies are now legally obliged to *'identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of both people and the environment'* which may result from the activities of their corporate group (subsidiaries, controlled companies) and their supply chain (subcontractors, suppliers) in both France and abroad. Consequently, the law addresses the legal complexity of transnational corporations as well as the various commercial relations they may engage in with other business partners.

More than six months after the law came into force, it remains relatively poorly understood and there are still many questions around its implementation and its scope. The corporate duty of vigilance law, often dubbed the 'Rana Plaza law' by the press, due to the role played by the Bangladesh disaster in prompting political action towards establishing it, actually has a much broader scope than just the working conditions of suppliers of major French corporations.

This report begins with an overview of the steps that led to the law's entry into force as well as of its content, and then

looks at three concrete examples, illustrating the way in which the law should be interpreted: Total and its palm oil 'biorefinery' in La Mède, Société Générale and its support for the fracked gas export terminal Rio Grande LNG in the US, and lastly, the case of French retail chains and their business relations with the banana industry in Ecuador.

Friends of the Earth France and ActionAid France-Peuples Solidaires have, in all three cases, undertaken public campaigns targeting the corporations involved. Both organisations were behind the 'Pinocchio Awards', running from 2008 on, which aimed to draw attention to the gap between the voluntary commitments made by transnational corporations and the reality of their actions on the ground, and to call for a binding regulatory framework. The Pinocchio Awards have served to put pressure on corporations by putting their reputations on the line. But naming and shaming and citizen petitions are no longer the only way to keep companies in check - with the corporate duty of vigilance law they now have a legal obligation to remedy serious violations and will potentially have to account for their actions in court.

Fighting against the impunity of transnational corporations and ensuring respect for human and environmental rights cannot happen only in France. It is already clear that the French law's adoption is beginning to have a ripple effect abroad. A concrete initiative emerged at the UN at the same time as the French law: negotiations are underway for establishing a legally binding international instrument on transnational corporations and human rights. The draft treaty represents a unique opportunity to 'internationalise' the French law, and also to improve upon its weaker points, particularly in regards to victims' access to justice.

# CONTENTS

Report by Friends of the Earth France and ActionAid France - Peuples Solidaires  
*End of the Road for Transnational Corporations ?  
Human rights and environment: from a groundbreaking French law to a UN treaty.*  
October 2017

**Coordination:**

Juliette Renaud (Friends of the Earth France).

**Report written by:**

Juliette Renaud (Friends of the Earth France)  
and Alice Bordaçarre (ActionAid France - Peuples Solidaires).

**Acknowledgments to contributors  
and proof-readers:**

Marthe Corpet (CGT), Sylvain Angerand,  
Catherine Mollière, Lucie Pinson, Pierre Sagot  
and Malika Peyraut (Friends of the Earth France),  
Sébastien Chailleux (ActionAid France-Peuples Solidaires).

**Artistic director:**

Pierre Sagot (Friends of the Earth France).

**Design and layout:**

Aurélien Dovillez: dovillez@gmx.com

**Translation:**

Susanna Gendall.

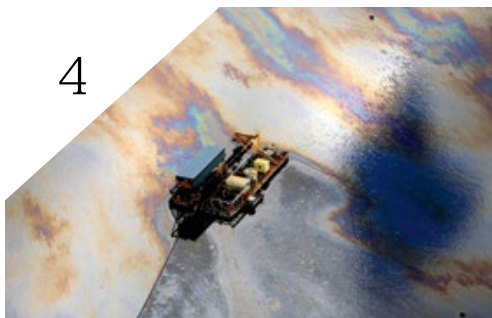
**Press relations:**

Malika Peyraut (Friends of the Earth France).  
+33 6 88 48 93 68

**Photo credits:**

Cover page: Brian Sokol / ActionAid  
Pages 4 - 5: Jiri Rezac / WWF  
Page 10: ActionAid  
Pages 12 - 13: Eva-Lotta Jansson / ActionAid  
Page 14: Illustration by Aurélien Dovillez  
for Friends of the Earth France  
Pages 15 - 19: Photos Indonesia: Victor Barro / FoEI  
Page 20: Illustration by Aurélien Dovillez  
for Friends of the Earth France  
Page 21: Simon Fraser University  
Page 25: Photos Etats-Unis: Lucie Pinson / Friends  
of the Earth France  
Page 26: Illustration by Aurélien Dovillez  
for Friends of the Earth France.  
Pages 27 - 31: Photos Ecuador: Mirjam Hägele /  
Oxfam  
Pages 32 - 33: Victor Barro / FoEI  
Pages 38 - 39: ActionAid

4



## A GROUNDBREAKING FRENCH LAW

12



## CASE STUDIES

- 14 Total: Palm Oil  
in your Engine.
- 20 Société Générale's  
Gamble on Gas
- 26 Supermarkets:  
Banana Blues?

32



## A UN TREATY ON THE HORIZON?

38



## OUR DEMANDS

# A GROUND-BREAKING FRENCH LAW

**6 NOVEMBER**

Tabling of the first bill.  
The four left-wing  
parliamentary groups support  
this ambitious proposal.

**29 JANUARY**

the French Greens push  
the bill onto the agenda.

**11 FEBRUARY**

Tabling of the second bill,  
a 'compromise bill', weakened  
by the Ministry of Economy.

**30 MARS**

1<sup>st</sup> reading: the French National  
Assembly votes in favour of the bill.



**2013**

**2014**

**2015**

Lobbying against the bill.  
The bill does not feature  
on the French National  
Assembly's agenda  
for over a year.



**2015** ————— **2016** ————— **2017** —————>

**18 NOVEMBER**  
1<sup>st</sup> reading:  
the French Senate  
suppresses all  
articles in the bill.

**23 MARCH**  
2<sup>nd</sup> reading:  
the French  
National Assembly  
reinstates the bill.

**29 NOVEMBER**  
New reading: the National Assembly  
reinstates the bill, providing more  
details about the vigilance plan.

**13 OCTOBER**  
2<sup>nd</sup> reading:  
the French Senate  
reduces the bill to basic  
extra-financial reporting.

**21 FEBRUARY**  
The French National  
Assembly definitively  
adopts the law.

**23 MARCH**  
The French Constitutional  
Council validates the law.

**27 MARCH**  
The law officially  
comes into effect.

**1<sup>ST</sup> FEBRUARY**  
New reading:  
the French senate  
rejects the bill,  
without debate.

**23 FEBRUARY**  
Republican MPs appeal to the Constitutional Council,  
contesting the substance of the law. The previous day MEDEF  
(French employers' organization) had lodged a statement of a similar nature.

# A HISTORIC BATTLE WON AGAINST THE ODDS

## GLOBALISATION AND CORPORATE IMPUNITY

Over the 20<sup>th</sup> century, globalisation and an ever greater economic and financial concentration have enabled transnational corporations to acquire an enormous influence and power which rival that of governments, to the extent that they have been able to steer public policies in the direction of their private interests and evade the law when their activities cause serious social and environmental harm.

All over the world there are serious violations of communities' rights, workers' rights and environmental rights because of the activities of transnational corporations. This has been demonstrated by such emblematic cases as the Bhopal disaster in India, the devastating oil spills in the Niger delta in Nigeria, the sinking of the Erika oil tanker and the explosion in the AZF factory in France. More recently, there has been the collapse of the Rana Plaza garment factories in Bangladesh and the major ecological disaster caused by the collapse of a mining dam in Mariana, Brazil. The extractive sector alone – oil, mining or gas – is responsible for nearly a third of human rights violations committed by corporations across the world.<sup>1</sup>

In addition, the criminalisation and persecution of human rights defenders is getting worse every year. In 2011, Margaret Sekaggya, the then UN Special Rapporteur on Human Rights Defenders, recorded 106 complaints since 2006.<sup>2</sup> According to Glo-

bal Witness, 2016 saw a record 200 killings of people defending their land, forests and rivers from destructive industries.<sup>3</sup> This included the murder of Honduran activist Berta Cáceres,<sup>4</sup> winner of the Goldman Award for the Environment for her work in mobilising the Lenca people against the 'Agua Zarca' dam project, which threatened their land and their livelihood.

The majority of these violations have gone unpunished because transnational corporations take advantage of legal loopholes and weaknesses in the institutions and legislation of certain countries. They hide behind complex legal structures and supply chains. They have a myriad of subsidiaries, subcontractors and suppliers, which enable them to produce low-cost, profitable returns while evading their responsibilities. The economic reality of transnational corporations is indeed very different to their legal reality: in France, as in other countries, the so-called 'corporate veil' means that parent companies or global buyers are not liable for actions committed by their subsidiaries or suppliers even though they are obviously economically and operationally connected.

## HARD-HITTING CIVIL SOCIETY CAMPAIGNS FOLLOWED BY A GROUNDBREAKING FRENCH LAW

Civil society has been mobilised for a great many years in reaction to this situation,

supporting the affected communities and workers and campaigning against companies involved. Through these various campaigns, many NGOs and trade unions have intensified demands to politicians that they put an end to corporate impunity. There have been a number of important investigation reports and public campaigns in France over the last decade. These include the Pinocchio Awards (since 2008), 'Hold-up international' and 'Profits réels, responsabilité artificielle' ('Real Profits, Fake Responsibility', 2009), 'Des droits pour tous, des règles pour les multinationales' ('Rights for Everyone, Rules for Multinational Corporations', 2010), 'CRAD40 - les bénéfiques sans les dégâts' ('Profits without Damage', 2012), 'Multinationales hors-jeu' ('Transnationals Offside', 2013), and 'Faites pas l'autruche' ('Don't Bury Your Head in the Sand', 2014).

Transnational corporations reacted by drawing up ethical charters and codes of conduct ... with no one else but themselves to answer to. Governments, on the other hand, established voluntary norms and standards, such as the United Nations Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises. However, these standards have proven to be largely inadequate and have even hampered initiatives seeking to establish binding frameworks.

Finally, in April 2012, following an appeal to all presidential candidates, François Hollande pledged in his electoral platform to 'establish a law that would give effect to the

*responsibility of parent companies for the actions of their subsidiaries abroad when the latter has a detrimental impact on the environment and human health.*'

Buoyed by such a commitment, various NGOs and trade unions from the French 'Forum Citoyen pour la responsabilité sociale des entreprises' (Citizen Forum for corporate accountability) - ActionAid France-Peuples Solidaires, Friends of the Earth France, Amnesty International France, CCFD - Terre Solidaire, CFDT, CGT, Collectif Éthique sur l'étiquette and Sherpa - campaigned relentlessly throughout the president's five-year term until the law was passed.

This first required convincing MPs to take up the matter. Then, in April 2013, the horror and outrage after the collapse of the Rana Plaza garment factories in Bangladesh, a tragedy that killed more than a thousand people, accelerated the process. An initial bill on the 'corporate duty of vigilance' was tabled in November 2013 by MPs Dominique Potier, Danielle Auroi and Philippe Noguès. But it was not until March 2017, after a longwinded fight that went on for 3 years, 4 months and 21 days, that the bill was officially adopted (see timeline on pages 4-5).<sup>5</sup>

## **THE RELENTLESS ATTEMPTS OF LOBBY GROUPS AND THE FRENCH SENATE TO THWART THE BILL**

Faced with the prospect of any kind of binding regulations on their activities, for nearly three and a half years corporations and their lobby groups did their utmost to prevent the law seeing the light of day. With AFEP (French Association of Large Companies) and MEDEF (the French employers' association) as their ringleaders, they succeeded in slowing down the process a number of times, and having the bill watered down because of the pressure put on MPs and the government.

Some government officials lent a sympathetic ear to these lobby groups, including within the French Ministry for the Economy and Finance, which even went so far as to make a counterproposal to the bill that was cut and pasted from proposals made by the French federations of employers.<sup>6</sup> In February 2015, in light of the bill's second version (altered after negotiations with the Ministry), which MP Dominique Potier was about to submit,

the AFEP chairman wrote to Emmanuel Macron, then Minister for the Economy: 'Dear Emmanuel, [...] companies are totally opposed to this bill. I personally have pointed out its risks to the Prime Minister and to some of your colleagues.'<sup>7</sup> A year later, on the morning of the second reading at the French National Assembly, he said in an interview with the French newspaper *Libération*, in defiance of parliamentary work: 'I have not met a minister, and that includes the Prime Minister, who could look me straight in the eye and say, "I'm behind this bill" (...) I have been assured that it will not get through parliament.'<sup>8</sup>

Throughout the legislative process, business groups published numerous articles and opinion pieces in the press, fuelling an out-and-out disinformation campaign against the bill, which they called 'repressive' and 'based on a logic of punishment', despite the fact that the bill focuses primarily on prevention. They also criticized the law for creating 'legal insecurity' for companies, and that it would represent a threat to French companies, which would potentially lose their competitive edge on the global market.<sup>9</sup> This last argument can perhaps be taken as some kind of acknowledgement, that, up to now, competitiveness has come at the cost of human rights violations and severe environmental damage.

Lobby groups had a major ally in their dealings: the conservative majority in the French Senate sometimes parroted their arguments word for word in parliamentary debates. The republican rapporteur Christophe-André Frassa expressed his resolute opposition to the bill each time it was tabled. In 2015, he presented a 'preliminary ruling' (*motion préjudicielle*),<sup>10</sup> a highly exceptional procedure, and then had the Senate adopt the deletion of all the articles in the bill.<sup>11</sup> Again in 2016, he inspired the Senate to reduce the bill to nothing more than extrafinancial reporting.<sup>12</sup> Finally, he tabled a '*motion of inadmissibility*' for the final reading in 2017.<sup>13</sup> Conservative MPs, acting as the armed wing of lobby groups, made one last attempt to thwart the bill two days after the French National Assembly definitively passed it, turning to the Constitutional Council and contesting the constitutionality of the new law, attacking virtually every paragraph.<sup>14</sup>

The Constitutional Council eventually validated the main elements of the bill,<sup>15</sup> removing only the fines - even though these were relatively small given the

size of the companies concerned (fines amounted to less than 0.1% of their turnover). It should also be noted that the fines were not to be paid to the victims but to the state. Furthermore, in cases where a company is convicted by a judge in a civil court, the amount that it would potentially have to pay to victims as compensation could be significantly more than any fine.

Even though the law has been passed, there are still a number of attempts to undermine it, particularly by legal experts aligned with private sector lobby groups.<sup>16</sup>

The next battle to be fought, now that the law has come into force, is ensuring that it is effectively enforced, and making sure judges interpret it as broadly as possible.

<sup>1</sup> Study by John Ruggie, then UN Special Rapporteur on Business and Human Rights, who analysed 320 cases between February 2005 and December 2007: [Corporations and human rights, a survey of the scope and patterns of alleged corporate-related human rights abuse](#) (2008).

<sup>2</sup> [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55\\_fr.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_fr.pdf)

<sup>3</sup> See the latest report by Global Witness, [Defenders of the Earth](#) (July 2017). In its previous reports, Global Witness documented 185 murders of defenders in 2015 and 116 in 2014.

<sup>4</sup> See the statement by Gustavo Castro Soto, coordinator at Otros Mundos/Friends of the Earth Mexico, who was injured at the time of Berta Cáceres' murder: '[Une réalité hondurienne qui dérange](#)' (Lutter contre l'impunité des multinationales : entre patience et courage', *Baleine* 184, June 2016).

<sup>5</sup> See also the article by Friends of the Earth France: '[Le parcours du combattant de la loi sur le devoir de vigilance des multinationales](#)', August 2017.

<sup>6</sup> *Contexte*, 29 January 2015, '[Le gouvernement renvoie la RSE aux calendes grecques](#)'.

<sup>7</sup> Letter published by *Contexte*, 1st April 2015, '[Devoir de vigilance : récit du lobbying autour de la loi](#)'.

<sup>8</sup> *Libération*, 23 March 2016, '[Pierre Pringuet : "Cette loi va pénaliser les multinationales françaises"](#)'.

<sup>9</sup> See the AFEP Press Release, 31 March 2015.

<sup>10</sup> See the motion of preliminary ruling, which was withdrawn at the last moment by the rapporteur. Frassa: [https://www.senat.fr/amendements/commissions/2014-2015/376/Amdt\\_COM-4.html](https://www.senat.fr/amendements/commissions/2014-2015/376/Amdt_COM-4.html) and the civil society press release, 13 October 2015: '[Devoir de vigilance des multinationales : au Sénat, le rapporteur tente d'obstruer le débat démocratique et d'enterrer la loi](#)'.

<sup>11</sup> Civil society press release, 18 November 2015: '[Rejet de la loi sur le devoir de vigilance : le Sénat vote pour le maintien de l'impunité des multinationales](#)'.

<sup>12</sup> Civil society press release, 13 October 2016: '[Devoir de vigilance des multinationales : le Sénat dénature la proposition de loi](#)'.

<sup>13</sup> Civil society press release, 1st February 2017: '[Loi sur le devoir de vigilance des multinationales : nouveau rejet du texte par le Sénat avant l'adoption définitive](#)'.

<sup>14</sup> See the [French Senators' Appeal](#) and the [French MPs' Appeal](#). See also the '[portes étroites](#)' (external contributions) sent to the Constitutional Council. Only the civil society coalition was completely transparent, making its '[porte étroite](#)' public: see [here](#).

<sup>15</sup> The Constitutional Council's decision of 23 March 2017 can be consulted in full [here](#). See also its press release. See also the civil society [press release](#), 24 March 2017: '[Devoir de vigilance : le Conseil Constitutionnel valide l'essentiel de la loi](#)'.

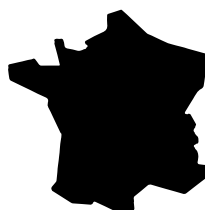
<sup>16</sup> See the [conférences on corporate social responsibility](#) held at the French Court of Cassation in 2017, with mainly speakers opposed to the duty of vigilance law, and directly or indirectly linked to economic interests. The inaugural conference, entitled, '[Does the law need to be get involved in CSR?](#)' blatantly questions the relevance of creating such a law.

# UNDER- STANDING THE DUTY OF VIGILANCE

Civil society would have preferred a more ambitious bill. However, despite its flaws, the French corporate duty of vigilance law is undeniably a groundbreaking law on the international stage, and constitutes a major historic step towards ensuring that the rights of communities, workers and the environment are respected by multinational corporations. Indeed, French parent and outsourcing companies can finally be held legally accountable for harms to people and the environment caused by their activities, as well as those of their subsidiaries, subcontractors and suppliers abroad, and taken to court if necessary.

## COMPANIES CONCERNED

ANY COMPANY WITH:



More than 5,000 employees in France



or more than 10,000 employees worldwide



As this threshold is very high, certain companies in high-risk sectors (such as the extractive or garment industry) are not affected.

## TYPES OF VIOLATIONS

THE LAW COVERS ALL BUSINESS SECTORS AND COVERS SERIOUS VIOLATIONS OF:



Human rights and fundamental freedoms



Health and safety of persons



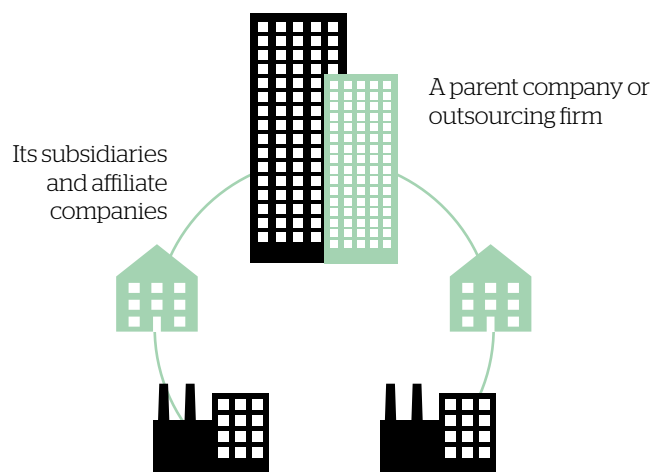
The environment



The scope is wide-ranging, unlike other laws which are limited to a particular sector - the extractive sector, for example - or only certain types of violations (corruption, child labour, etc.).

## SCOPE

THE LAW CONCERNS THE ACTIVITIES OF:



Subcontractors and suppliers with whom there is an established business relationship



This represents a major breakthrough! The law now recognises that parent companies or outsourcing firms are legally responsible for their subsidiaries, suppliers and subcontractors, both in France and abroad.



## LEGAL ACTIONS

### WHO CAN REFER A CASE TO COURT?

Anyone with legal standing before a French court (*intérêt à agir*):

NGOs of human and environmental rights defenders



-  The law provides for proceedings before a French court even for victims abroad.
-  A case may be referred even before damages have occurred. The information published in the vigilance plans may be used as evidence in the event of damages.
-  The burden of proof still falls on the claimants.

What are the penalties involved?

After a company has failed to respond to a formal notice to comply with the law, a judge may force it to meet its obligations.






The civil liability of the company may be incurred, and the company may be ordered to pay damages to the victims.



-  There is an obligation of means rather than of results: conviction may only occur when a vigilance plan is incomplete, inexistent or ineffectively implemented.
-  There is no provision for criminal proceedings in the law.

## OBLIGATIONS

### THE VIGILANCE PLAN SHOULD INCLUDE:

-  Risk-mapping
-  Procedures to regularly assess the situation of subsidiaries, subcontractors and suppliers
-  Appropriate actions to mitigate risks and prevent serious violations.
-  A whistleblowing mechanism that collects reports of potential and actual risks
-  Measures to monitor and assess actions taken

-  This is not just ex-post reporting, but an ex-ante prevention plan. Companies must not only adopt measures but follow up on the measures implemented and assess their effectiveness.

## TIMEFRAME

**2018**  
1<sup>ST</sup> plans published

**2019**  
1<sup>ST</sup> potential legal actions

Vigilance plans and reports on their implementation are made public and included in companies' annual reports.

**For a more detailed explanation,** see the document published by ActionAid France - Peuples Solidaires, Friends of the Earth France, Amnesty International France, CCFD-Terre Solidaire, Collectif Ethique sur l'étiquette and Sherpa: [French Corporate Duty of Vigilance Law - Frequently Asked Questions](#) (July 2017)



## **THE TRADE UNION PERSPECTIVE**

**3 questions for Marthe Corpet,**  
CGT Confederal Advisor.

**1. What are the main issues around big corporations subcontracting in France, in regards to the health and safety of workers and of labour law violations?**

Subcontracting is part of a strategy aimed at concentrating capital and increasing profit margins. Subcontracting has become a way to cut costs through competitive price bidding. Unfortunately, rarely do companies consider the social and environmental conditions or address the question of quality when

assessing the impact of their activities. Their primary focus remains profitability.

Structurally, subcontracting by transnational corporations can vary greatly: they can subcontract to another transnational corporation or to a SME; subcontracting can cover virtually all of a company's business or be limited to small-scale one-off markets. Sometimes the subcontractor is in a situation of dependence towards the outsourcing company, as the loss of

the market would result in the cessation of the business. This is currently the case of the company GM&S in the French region of Creuse, subcontractor for Renault.

The pressure put on subcontractors by outsourcing companies has direct consequences on the organisation of work organisation and on production conditions. In France, the use of intermediaries such as temp agencies and so-called detached workers are a way to access unskilled - and consequently cheap - labour.

The construction industry is particularly affected. A number of disputes have broken out on the EPR construction site in Flamanville, for example, a nuclear project of French energy company EDF that has been subcontracted out to Bouygues. The Cherbourg Criminal Court has charged Bouygues with using undeclared and illegal labour. EDF, the subcontracting entity, even though it has been alerted by trade unions (and the CGT in particular), is not legally liable for these violations.

The other sector that is affected, unfortunately, is the retail and garment industry, whose image became famously blighted after such tragedies as the Rana Plaza disaster, which killed more than 1,100 workers several years ago. But working conditions that fail to meet international standards also exist in France. In the Paris suburb of Aubervilliers, many companies are small-scale factories producing 'test' garments, which if they sell well in shops, will then be sent to be mass-produced in Asian garment factories. In these factories located very close to Paris, the workers, who are often Chinese, are paid 'per t-shirt', i.e. per item they produce. The workers are in highly insecure situations, which makes it difficult for them to demand decent working conditions. Although it is major French brands that employ them, these companies don't monitor the situation at all despite the fact that there are clear violations of the recommendations on decent work stipulated in international conventions.

## **2. In a context such as this, to what extent do you think that the duty of vigilance law will serve to protect these workers' rights?**

The main focus of the duty of vigilance law is to make it possible to intervene in disputes abroad. However, as of now, the law will also have an impact in France, along with several other legal instruments. French legislation already provides for compensation for damages, under conditions which, in certain respects, provide more protection than the duty of vigilance law. However, this law is introducing new legal mechanisms that will enable making progress in the protection of human rights.

The first effect of the law relates to the obligation of the outsourcing company to identify risks (mapping) and prevent these. In all the examples cited above, the outsourcing company, whether it be EDF or a major French retail brand, was under no obligation to oversee the practices of its subcontractors. Even in the case of the EPR in Flamanville, Bouygues could have gotten away with

it, if it had been able to prove that it was unaware of its labourers' working conditions. In the vigilance plans, the obligation to identify risks and prevent potential human rights violations constitutes an initial step in making outsourcing companies more accountable for the conditions under which they subcontract and their social and environmental costs.

The second direct effect of the duty of vigilance law is the possibility of making an outsourcing company liable before a civil court. A victim will now be able to claim damages in compensation for the harm suffered from the outsourcing company, and not only from the subcontractor. This is a key aspect of the law, and will force transnational corporations to pay attention to their entire supply chain and respect their commitments.

## **3. What role will trade unions play in the development of vigilance plans, and how do you intend to use this new legal instrument?**

For the first time, this law obliges companies to anticipate and prevent potential human rights violations caused by their activities. Up to now, it was only up to the company to take voluntary measures, or not. Trade unions have thus gained a little bargaining power with this tool in terms of social dialogue and in ensuring human rights are respected.

**In France, the use of intermediaries such as temp agencies and so-called detached workers are a way to access unskilled - and consequently cheap - labour.**

Although under the law dialogue with trade unions is only mentioned in regards to the whistleblowing mechanism and the collection of reports, we believe that the vigilance plan is a risk prevention plan that requires dialogue throughout its development. The law also encourages the plans be developed in collaboration with stakeholders, which include trade unions. As the vigilance plan will be included in the management report, it will be discussed at the meetings of the board, which generally includes workers' representatives. And, as it will be included in the annual report, the works council will also be consulted. Certain vigilance plans that have international implications will also be discussed at European or even international works councils. Prompted by the CGT, trade union organisations across France have endorsed this interpretation of the law and stressed the need to be involved in developing vigilance plans in order to ensure they are effective. In addition, we will work closely with trade union organisations in the countries where subsidiaries and suppliers companies are present in order to obtain specific, effective mechanisms of risk prevention.

Lastly, in no way should the vigilance plan be reduced to a series of contractual clauses that the outsourcing company integrates into its contracts with subsidiaries and subcontractors. It should be rather an ambitious monitoring process providing means to identify and effectively prevent risks. There are those that will argue that is impossible to have total transparency on the conditions of subcontractors, but to these people we will retort that if the transnational corporations in the aviation industry are able to monitor product quality right down to the tiniest screw so as to ensure planes are entirely safe, there is no reason why the same can't be done for social conditions. It is just a matter of will!



# CASE STUDIES





# TOTAL

Palm oil in your engine



## [ PROFILE ]

**PARENT COMPANY**  
Total S.A.

**SALES (2016)**  
149.743 billion USD

**PROFITS (2016)**  
4.142 billion USD

**STAFF (ON DEC 31, 2016)**  
102.168 employees.

**NUMBER OF DIRECT OR  
INDIRECT SUBSIDIARY  
COMPANIES**  
934 companies over more than  
130 jurisdictions consolidated in  
Total's annual financial statements.

**SUBSIDIARY COMPANY  
INVOLVED IN THE CASE**  
Total Raffinage France, 100%  
subsidiary of Total S.A.

# THE CASE

## A CONTROVERSIAL 'BIOREFINERY' CONVERSION PROJECT

France currently has nine operational refineries, half of which are owned by Total. Located in La Mède, in the city of Châteauneuf-les-Martigues (Bouches-du-Rhône district), the 'Raffinerie de Provence' (Provence Refinery) belongs to Total Raffinage France, a 100% subsidiary of Total S.A. Crude oil refining ceased in 2016.

Total's objective is to transform its former oil refinery into the 'first global-scale biorefinery' in France, with a 'biodiesel' production capacity of 500,000 tons/year.<sup>1</sup> Works are forging ahead, and commissioning is set to take place in mid-2018.

Employees and trade unions were strongly opposed to the project because it involved significant job cuts - from 430 to 250 on-site staff. In addition to its social impact in France, it is also likely to result in substantial socio-environmental and climate impacts, as palm oil will be the primary source for producing 'biodiesel'.

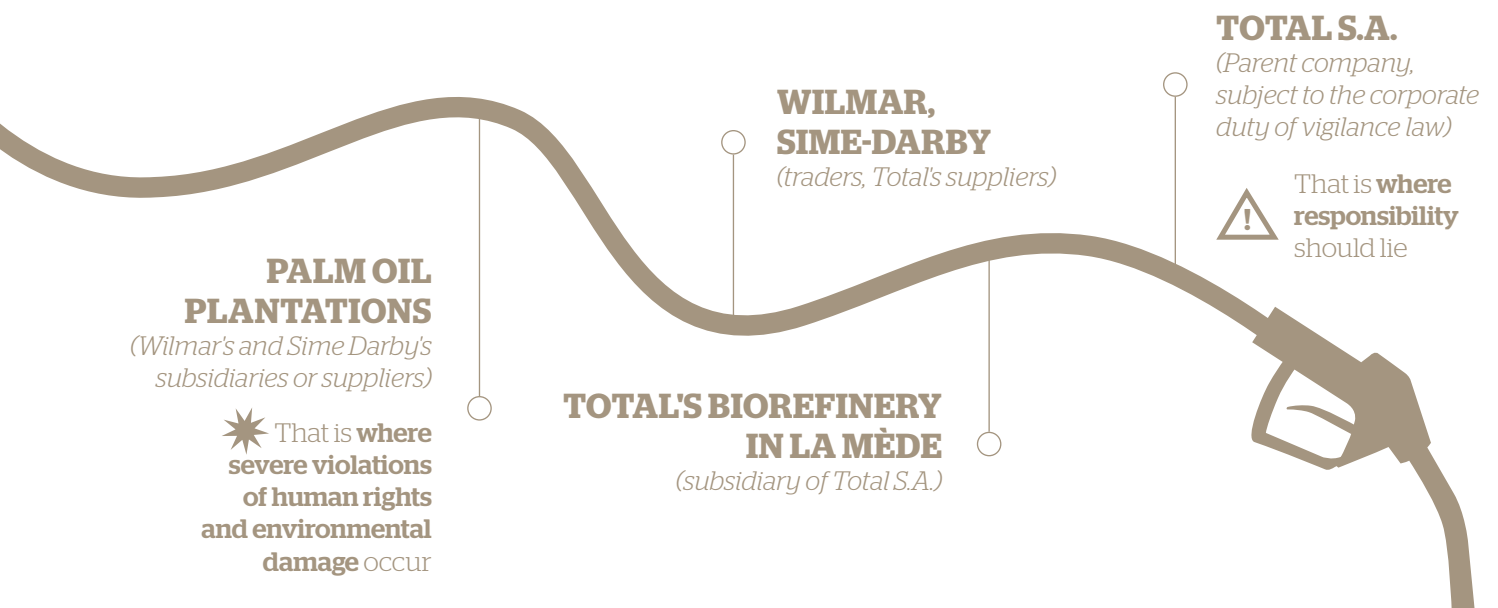
The direct use of palm oil as 'biofuel' has dramatically increased since 2010, and now represents 45% of all palm oil consumption in Europe.<sup>2</sup>

Palm oil is highly controversial because of the conditions in which it is produced and the impacts of its production. The expansion of palm oil plantations, mostly concentrated in Indonesia and Malaysia, has led to massive deforestation and to the drainage of peatlands, resulting in considerable greenhouse gas (GHG) emissions. A study commissioned by the European Commission concluded that palm

oil-based biodiesel involves very high, deforestation-related GHG emissions, equivalent to three times that of burning fossil fuels for the same amount of energy.<sup>3</sup>

Total does not provide any clear information on its sourcing strategy. Yet, because of the new obligations set by the French law on the corporate duty of vigilance, Total S.A. is now bound by law to identify any risk of serious human rights or environmental violations resulting from the activities of its subsidiary Total Raffinage France and of its suppliers (including the producers it will source its palm oil from for its biorefinery). It must also implement measures to prevent these risks from materialising.

# TOTAL S.A.'S PALM OIL SUPPLY CHAIN



## PALM OIL PLANTATIONS

(Wilmar's and Sime Darby's subsidiaries or suppliers)

★ That is **where severe violations of human rights and environmental damage occur**

## WILMAR, SIME-DARBY

(traders, Total's suppliers)

## TOTAL'S BIOREFINERY IN LA MÈDE

(subsidiary of Total S.A.)

## TOTAL S.A.

(Parent company, subject to the corporate duty of vigilance law)



That is **where responsibility should lie**

## THE CERTIFIED PALM OIL SCAM

Total's management made the following commitments in its public consultation and impact study, in an attempt to assuage concerns: 'All vegetable oils that we use will be certified in accordance with ISCC-type European Union criteria'; 'We will source our oil from RSPO member producers.'<sup>4</sup> As is often the case, Total seems to adhere to best global practices. However, a closer look reveals that the criteria it uses are far from reliable.

For example, a special report by the European Court of Auditors published in July 2016 has identified flaws in the European Union certification systems: 'Due to flaws in the Commission's recognition procedure and subsequent supervision of voluntary schemes, the EU certification system for the sustainability of biofuels is not fully reliable.'<sup>5</sup> Similarly, a December 2016 report to the French government, commissioned by the French Prime Minister, concludes that

*'although there are currently a great number of certification systems, none of them deals with the deforestation issue adequately.'*<sup>6</sup>

RSPO, or 'Roundtable on Sustainable Palm Oil', is a private certification scheme which is managed by a great number of stakeholders in the palm oil industry, including producers and palm oil-consuming industries, as well as NGOs such as WWF. According to Total, RSPO 'certifies palm oil and ensures that producers respect human rights and comply with clearly-defined environmental commitments'. The reality on the ground is very different. In recent years, Friends of the Earth and other groups have conducted numerous investigations which have revealed that RSPO labelling is based on flawed criteria and lax control:<sup>7</sup> countless concrete examples have highlighted the heavy social and environmental impacts of the very corporations that are allegedly producing 'sustainable palm oil'.

Palm oil giant Wilmar, which controls about 40% of all palm oil trading in the world, is a case in point.<sup>8</sup> A number of field investigations by Friends of the Earth groups have revealed the company is involved in land grabbing and deforestation in Uganda, Nigeria and Indonesia.<sup>9</sup> In 2016, Amnesty International also published a scathing report on Wilmar's operations in Indonesia, which denounces 'child labour, forced labour, exposure to dangerous conditions and endemic discrimination against women. These practices are in contravention of Indonesian law, some of which are criminal.'<sup>10</sup>

Amnesty International also highlights the responsibility of the multinational corporations that buy palm oil from Wilmar: 'This report clearly shows that companies have used the Roundtable as a shield to deflect greater scrutiny. Our investigation uncovered that these companies have strong policies on paper but none could demonstrate





*that they had identified obvious risks of abuses in Wilmar's supply chain.'*

Will Total be more judicious in its choice of palm oil suppliers for its La Mède biorefinery? This may prove difficult, as Wilmar is all but a one-off case. Many other RSPO-member producers have been accused of similar shortcomings, including Malaysian giant Sime Darby, which at one point also had plans to set up a palm oil refinery in France, in the Aude region. The project was called off because of civil society resistance.<sup>11</sup> Sime Darby's plantations in Liberia were to supply the refinery, where Friends of the Earth France and Bastamag have also found serious adverse impacts for local populations, particularly in terms of land grabbing.<sup>12</sup>

Paraquat, a pesticide deemed '*neurotoxic*' by the World Health Organisation, is banned in Europe and in the United States.

It is nevertheless '*tolerated*' in certified palm oil plantations. Unsurprisingly, the company that sells paraquat, Syngenta, is also a RSPO member.

More recently, Friends of the Earth Indonesia/Walhi secured a historical judicial victory: a Central Kalimantan court ordered the Indonesian government to revise all permits for palm oil plantations and initiate judicial proceedings against all companies involved in slash-and-burn practices, a low-cost way to expand plantations. The verdict was based on a comprehensive investigation by Friends of the Earth Indonesia: a thorough analysis of NASA aerial photographs of 181 concessions demonstrated that the large majority of fire outbreaks in the area were related to palm oil plantations. Again, the corporations involved in these judicial proceedings (Wilmar International, Bumitama Gunajaya Agro (BGA), Sinar Mas and Genting group)

are all active members of the '*Roundtable on sustainable palm oil*'. They could be directly targeted by lawsuits resulting from that initial verdict.<sup>13</sup>

Given the significant human rights and environmental violations associated with the palm oil industry, it is perhaps not surprising that Total shows so little transparency and refuses to disclose the name of its future suppliers. Nevertheless, its '*bio-refinery*' is set to start operating in less than a year, and given the planned production volumes, it is hard to believe that Total has not yet identified who these suppliers will be, if not started commercial negotiations with them.



## CONCLUSION

To conclude, Total is clearly about to launch a large-scale project without seriously considering the significant impacts of its palm oil sourcing, as regional authority DREAL (*Direction régionale de l'environnement, de l'aménagement et du logement*) underscores in its report: *'the impact assessment does not allow for an adequate evaluation, analysis, prevention, reduction or compensation of the potential indirect impacts of the project in regards to its supply of oils.'*<sup>14</sup>

Total's palm oil sourcing criteria do not reflect a genuine concern to prevent human rights abuses and environmental damages. The certification standards the company refers to are unreliable, and Total does not seem to have considered other vigilance measures, despite the fact that the palm oil sector is known for its significant social, environmental and climate risks.

This is not, however, the only force at play, as certification can never solve the problem of slash-and-burn deforestation. Even if certification schemes were greatly improved, and even if Total managed to source its palm oil from genuinely *'responsible'* producers and from already existing plantations (not recently deforested ones), the La Mède refinery project would remain problematic simply in terms of volume. Indeed, whoever the suppliers might be, Total's project alone will double France's palm oil imports. These new volumes will need to be supplied by the global palm oil market. Since the production of palm oil from existing plantations is limited, new sources will be needed, which means new plantations, further deforestation, and subsequently significant greenhouse gas emissions.<sup>15</sup>

This is why, on April 4<sup>th</sup> 2017, the European Parliament overwhelmingly approved a

resolution on *'palm oil and deforestation of rainforests'*, requesting the Commission *'to take measures to phase out the use of vegetable oils that drive deforestation, including palm oil, as a component of biofuels, preferably by 2020.'*<sup>16</sup>

Total's project runs counter to the current trend in public policy aimed at reducing, not increasing, palm oil demand. This raises the question of the project's economic viability, as there may not be a guaranteed market for the biorefinery's production: the market for *'biodiesel'* is shrinking (see box). Because of the above-mentioned risks, as part of its duty of vigilance to prevent serious human rights and environmental violations, Total should give up its *'bio-refinery'* project and negotiate fair conditions for the redeployment of its employees.



## SHEDDING LIGHT ON THE RESPONSIBILITY OF RETAILERS

Aside from Total, the responsibility of all retailers that would source part of their fuel from La Mède is also at stake. French supermarket chains control 60% of the petrol retail market, and are all subject to the corporate duty of vigilance law: Carrefour, Leclerc, Système U, Les Mousquetaires Intermarché, Auchan, Casino. Friends of the Earth France has consequently launched a public campaign targeted at them.<sup>17</sup> Two retailers, Leclerc and Système U, have already agreed to ensure suppliers do not integrate palm oil into their fuels. The others have all acknowledged the presence of palm oil in their fuels, but have failed to take any action or make any commitment. Will they address the issue in their first 'vigilance plan'?

<sup>1</sup> See the [project presentation on Total's website](#). For more details, see the [Résumé non technique de l'étude d'impact \(Non-technical summary of the impact study\)](#), presented as part of the public consultation.

<sup>2</sup> Transport & Environment, [Cars and trucks burn almost half of all palm oil used in Europe](#), 2016.

<sup>3</sup> Ecofys, IIASA & E4tech, [The land use change impact of biofuels consumed in the EU](#), 2015.

<sup>4</sup> [Mémoire en réponse de Total](#) (Total's Official Response), as part of the public consultation, April 2017, p. 7.

<sup>5</sup> European Court of Auditors, Special Report (18/2016), The EU system for the certification of sustainable biofuels, July 2016. [http://www.eca.europa.eu/Lists/ECADocuments/SR16\\_18/SR\\_BIOFUELS\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_18/SR_BIOFUELS_EN.pdf).

<sup>6</sup> CGEDD and CGAAER, [Durabilité de l'huile de palme et des autres huiles végétales](#), December 2016.

<sup>7</sup> See Friends of the Earth France, [Arnaque à l'huile de palme durable](#), Report, May 2011.

<sup>8</sup> <https://www.huiledelapalmedurable.org/wilmar-geant-de-lhuile-de-palme-se-positionne-en-acteur-majeur-de-la-durabilite/>

<sup>9</sup> Friends of the Earth International, [Land grabbing for palm oil in Uganda](#), May 2013; and Friends of the Earth Europe, [Continuing to exploit and deforest](#), Report, May 2014.

<sup>10</sup> Amnesty International, [The great palm oil scandal: Labour abuses behind big brand names](#), Report, November 2016.

<sup>11</sup> <http://www.amisdelaterre.org/Huile-de-palme-lesAmis-de-la.html>

<sup>12</sup> Bastamag and Friends of the Earth France, [Live or drive, a choice has to be made](#), Report, April 2012.

<sup>13</sup> See [Friends of the Earth Indonesia's and US's press release](#), and the report [Up in Smoke: Failures in Wilmar's promise to clean up the palm oil business](#), by Friends of the Earth Indonesia, Europe, US and Netherlands.

<sup>14</sup> <http://www.bouches-du-rhone.gouv.fr/content/download/22146/135170/file/Avis%20AE%20Total.pdf>

<sup>15</sup> For more information on the issues related to supply chain changes and indirect land use changes (ILUC), see [Friends](#)

[of the Earth France's contribution to the public consultation](#) (pp. 6-8); and Friends of the Earth Europe's report, [Too Green to be True](#), 2010.

<sup>16</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0098+O+DOC+XML+VO//EN> (Recommendation 82)

<sup>17</sup> <http://www.amisdelaterre.org/huiledelapalme.html>



**SOCIÉTÉ'S  
GÉNÉRALE**  
GAMBLE ON GAS



## [ PROFILE ]

**PARENT COMPANY**  
Société Générale S.A

**LEGAL STATUS**  
Public limited company  
(*Société anonyme*)

**NET BANKING INCOME (2016)**  
25.3 billion euros

**NET PROFIT (2016)**  
3.9 billion euro

**STAFF (AS AT 31 DEC 2016)**  
145,672 employees

# THE CASE

## THE DELUSION OF SHALE GAS EXPORTS

US companies are eager to open new export markets for shale gas, in the form of liquefied natural gas (LNG). To achieve their objectives, they are proposing a staggering number of new gas export terminals,<sup>1</sup> mostly concentrated on the Gulf Coast – a region already devastated by the oil and gas industry. LNG has an enormous climate footprint, due to methane leakage throughout its lifecycle as well as the significant amount of energy required to transport and freeze gas before it can be exported. All in all, from a climate perspective, LNG is even worse than coal as a source of energy.<sup>2</sup> In addition, the construction of new export terminals is a direct incentive to producing more shale gas from fracking, which is also linked to dramatic climate, environmental and health impacts.

In the Rio Grande Valley, in Southern Texas near the Mexican border, no less than three new LNG export terminals are being proposed by the oil and gas industry: Annova LNG, Texas LNG – a project in which

BNP Paribas is involved<sup>3</sup> – and the largest, Rio Grande LNG, backed by Société Générale.

In May 2017 energy company NextDecade confirmed that it had selected Société Générale, a French bank, and Macquarie Capital as financial advisers for the Rio Grande LNG terminal project and associated dual gas pipeline, the Rio Bravo Pipeline project. Société Générale will provide advice to NextDecade and assist it in finding financial backers. It is not the first time the French bank has been involved in such deals. NextDecade itself explained it had selected Société Générale because of its track record in the LNG sector: *'Société Générale has acted as Joint Lead Arranger in the financing and development of all LNG projects that have been commissioned in North America.'*<sup>4</sup>

Ignoring the climate impacts of liquefied natural gas, Société Générale boasts about its global leadership position in the sector, claiming LNG is *'an energy source that will enable transitioning to a low carbon economy and which will play a significant role in meeting world energy needs,'*<sup>5</sup> and puts it in the same category as its funding of renewable energy. The climate impact of Rio Grande LNG and of the Rio Bravo Pipeline will nevertheless be considerable: they will directly create more than 10 million

tons of CO<sub>2</sub>-equivalent greenhouse gas emissions each year of operation. That figure does not include upstream and downstream pollution, during the extraction and transport of shale gas, and when the gas exported through Rio Grande LNG will be burnt to produce electricity. Overall, the project will emit more CO<sub>2</sub> than 21 coal plants, and even more than 44 coal plants if methane leakage throughout the gas life cycle is taken into account.<sup>6</sup>

The gigantic Rio Grande LNG project will stretch over three kilometres and an area of about 400 hectares, and include six liquefaction trains and four storage reservoirs to liquefy and export more than 100 million cubic meters of gas every day. The Rio Bravo Dual Pipeline will be over 225 kilometres long and cut through the land of 150 families all the way from the Agua Dulce gas hub, which is connected to eight other gas pipelines, all linked to the Eagle Ford shale basin.<sup>7</sup>

As we shall see, the Rio Grande LNG and Rio Bravo Pipeline projects entail serious risks in terms of human rights, the health and safety of persons, and the environment. In view of its 'duty of vigilance,' Société Générale should give up any involvement in these projects, unless it wants to be seen as having contributed to these violations through its own activities (see box page 24).

## HEALTH AND SAFETY RISKS

As the condensation and transportation of gas are highly polluting, the Rio Grande LNG project will become by far the greatest source of pollution in the whole Cameron County. The company itself estimates that it will emit annually, among other hazardous air pollutants, more than 3,000 tons of carbon monoxide, more than 3,000 tons of carcinogenic organic volatile compounds, and more than 800 tons fine particles - which exacerbate asthma and are linked to heart and lung pathologies.<sup>8</sup>

These health impacts are especially worrying given that the terminals are to be built in an area that already struggles with major health disparities. Brownsville, the






administrative centre of a rural community that is 93% Hispanic and Latino, often tops the lists of poorest cities in the country.<sup>9</sup> Latino communities in the United States are particularly exposed to cancer risks associated with oil and gas infrastructure.<sup>10</sup>

Neighbouring communities are also concerned about explosion hazards. Methane is a colourless, odourless and highly inflammable gas. A leak from a pipeline or a storage tank could potentially result in a giant, lethal ball of fire. Rio Grande LNG will also be using fuels such as propane, ethylene and butane - all even more volatile than methane - for the gas cooling process. In spite of the fact that Rio Grande LNG would figure amongst the largest LNG terminals in the world, the recommended safety buffer zones between two gas infrastructures would not be respected if all

three planned LNG terminals on the site (Rio Grande LNG, Texas LNG and Annova LNG) do go ahead.<sup>11</sup> The hazard is compounded by the nearby SpaceX rocket launch site, currently under construction, which is only eight kilometres away. In June 2015 and September 2016, failed SpaceX rocket launches in Florida resulted in explosions. The risk of a failed rocket launch or a rocket falling on the Rio Grande LNG terminal cannot be excluded, as the Federal Energy Regulatory Commission itself has acknowledged.<sup>12</sup>

In addition, leaks will be harder to detect, as the gas that will be transported by the Rio Bravo Pipelines will be odourless, further endangering surrounding communities. The Texas Railroad Commission, in charge of regulating oil and gas installations, has admitted it does not have enough inspectors

## View from the sky: a heavily impacted area

-  National Wildlife Refuge
-  Rio Grande LNG
-  Texas LNG
-  Annova LNG
-  Ship channel
-  Rio Bravo Pipeline

to guarantee the safety of all the pipelines in the state.<sup>13</sup>

## **BIODIVERSITY UNDER THREAT**

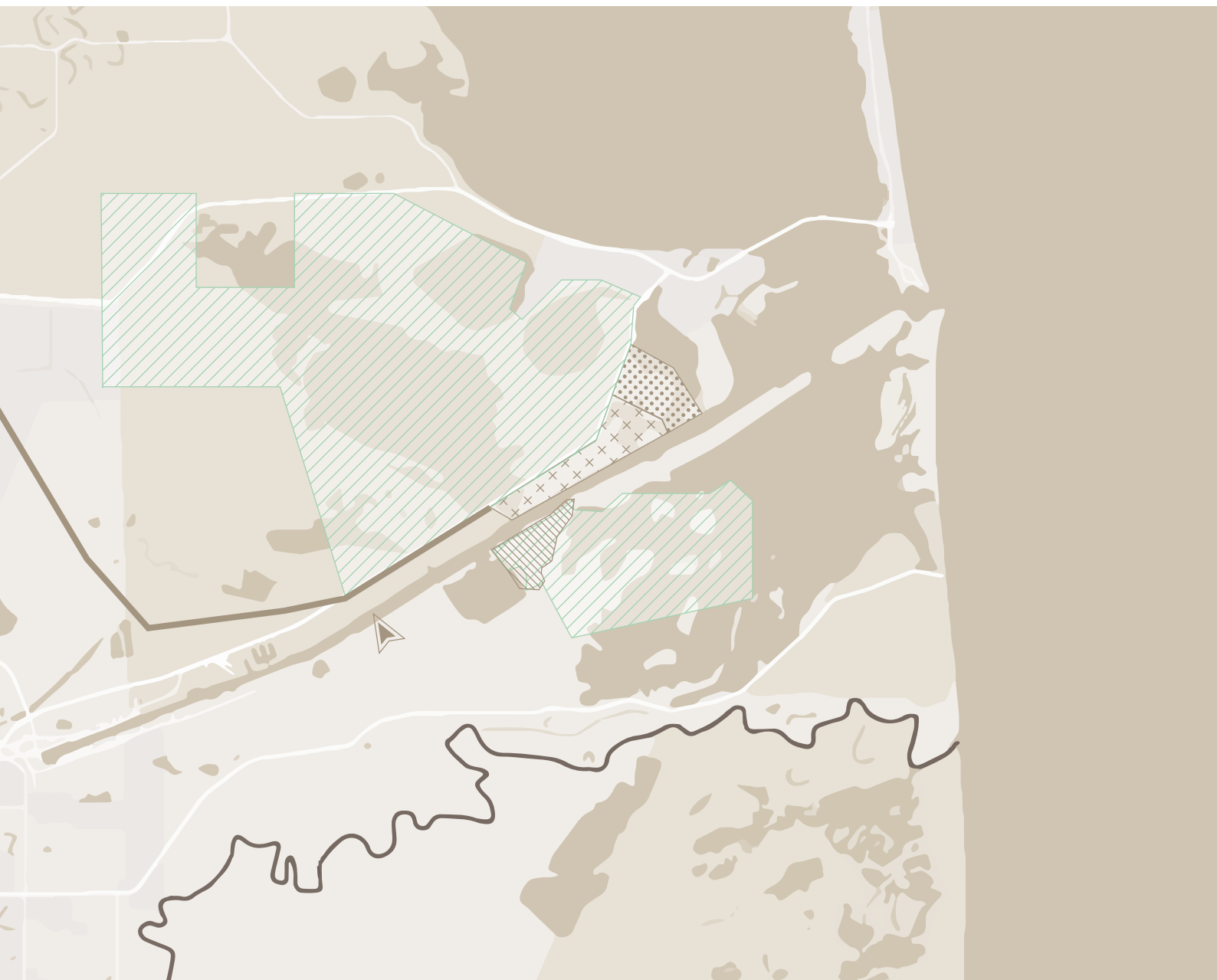
Rio Grande LNG and the two other planned terminals constitute a direct threat for the last remaining large-scale ecologically sensitive habitat in Texas. The area is home to a biodiversity that is recognised as one of the richest and most diverse in the United States.

Indeed, the proposed sites for the terminals are right on the edge of the nationally protected Laguna Atascosa reserve, on lands that were previously leased by the US Wildlife Service to safeguard fragile coastal ecosystems and the habitats of threatened species. This land, located

along the Brownsville ship channel, belong to the Port of Brownsville, which is now renting them to the three LNG corporations.

The wildlife refuge, which stretches over 40,000 hectares, is critical for the conservation of eight endangered animal species including ocelots and aplomado falcons.<sup>14</sup> As of August 2015, there were only 53 ocelots left in all of Texas, most of them in the state's Southern tip, right where the new LNG export installations are to be located.<sup>15</sup> The refuge also plays a key role in the protection of shorebirds, which results in economic benefits for the region as a whole, as more than half of all bird species in the US either live there or stop there during migration, the Laguna Atascosa reserve is the country's largest bird refuge and a prime destination for all birdwatchers.

In addition to its exceptional biodiversity, the preserved lands of Laguna Atascosa also boast native natural vegetation and an intact coastline - an exception to the rest of the heavily industrialised Gulf coastline in Texas, which has long been sacrificed to refineries and petrochemical complexes. It is also home to what the US Fish and Wildlife Service has called '*one of the largest and most successful coastal wetland restoration projects in the United States*': the Bahia Grande section, comprising 8,800 hectares almost entirely covered in wetlands, which explains its role as a safe haven for a range of species and native vegetation. It also makes it a natural barrier against tropical storms. The preservation of this ecosystem is critical in a context of climate change which will make such weather events more frequent and more intense,<sup>16</sup> hurricane Harvey being the latest example.



## RESPECTING INDIGENOUS RIGHTS

The indigenous Esto'k Gna people, one of the oldest in Texas, is mobilised against the construction of the terminals and pipelines, alongside other communities and citizens that have come together under the umbrella of the 'Save Rio Grande Valley from LNG' coalition. Free, prior and informed consent of indigenous communities is a right recognised by ILO's Convention

169 and the UN Declaration on the Rights of Indigenous Peoples. It is a right that should be recognised by the companies whose projects will affect the lands of indigenous communities, and should be required by the banks that back these projects.

However, a field investigation undertaken by Friends of the Earth France in July 2017 revealed that, to date, there has been no form of consultation whatsoever with the Esto'k Gna people, nor with any community living in the area.

The investigation found that most local people had very little awareness of the project, even though local economic activities – particularly fishing and tourism – will be directly affected by the construction and operation of the new LNG terminals. Eco-tourism, which alone accounts for 6,600 full or part-time jobs in the Valley, will likely be devastated. Rio Grande LNG, on the other hand, will only create 200 new permanent jobs.

### HOW DOES THE DUTY OF VIGILANCE APPLY TO BANKS?

In legal terms, large private French banks are '*sociétés anonymes*' (private limited companies). As they have more than 5,000 employees, they are subject to the new 'duty of vigilance' law and will have to publish their first 'vigilance plan' in a few months time. How is this 'duty of vigilance' to be enforced and understood as regards the financial sector?

In order to answer this question, previous developments should be taken into account. As a result of civil society campaigns – including campaigns led by Friends of the Earth France from 2005 onwards – banks have developed a number of voluntary guidelines to address social and environmental risks as well as human rights violations within their funding and investment policies. It can be assumed that these banks' vigilance plans will be based on already existing voluntary guidelines and processes.

Consequently, from an internal perspective, banks have developed their own 'sectoral policies' to guide their decisions in high-risk sectors such as extractive industries, arms or palm oil. They also collectively created in 2003 – and further developed since then – the 'Equator Principles', 10 principles that commit signatory banks to take certain environmental and social criteria into account before getting involved in any form of financial advice, any form of significant project funding or any loan to corporations.<sup>17</sup> The Equator Principles present similar features to what will be requested from vigilance plans, such as the requirement to identify risks and set up a whistleblowing mechanism. When a promoter is not able to prove its project will comply with the Equator Principles, Equator Principles Financial Institutions (EPFIs) are to refuse to fund it or to grant loans to the companies involved in the project. As for financial advice in relation to the project, EPFIs must demand that their client '*explicitly communicates their intention to comply with the Equator Principles*'. Société Générale endorsed the Equator Principles in 2007 and has currently 11 sectoral policies in place.<sup>18</sup> It is currently developing a new policy on '*Alternative Liquid and Gaseous Fuels*'.<sup>19</sup>

Like many other banks, Société Générale publicly states that its human rights commitments are '*guided*' by a number of international conventions and standards.<sup>20</sup> These include the United Nations Guiding Principles on Business and Human Rights (UNGPs). In June 2017, the UN Commission for Human Rights published an interpretive guide of the UNGPs for the banking sector.<sup>21</sup> This guide explains that:

- '*A bank can contribute to an adverse impact through its own activities<sup>22</sup> (actions or omissions) – either directly alongside other entities, or through some outside entity, such as a client (...). For example, a bank that provides financing to a client for an infrastructure project that entails clear risks of forced displacements may be considered to have facilitated – and thus contributed to – any displacements that occur, if the bank knew or should have known that risks of displacement were present, yet it took no steps to seek to prevent or mitigate them.*'

- '*For example, if bank identifies or is made aware of an on-going human rights issue that is directly linked to its operations, products or services through a client relationship, yet over time fails to take reasonable steps to seek to prevent or mitigate the impact – such as bringing up the issue with the client's leadership or board, persuading other banks to join in raising the issue with the client, making further financing contingent upon correcting the situation, etc. – it could eventually be seen to be facilitating the continuance of the situation and thus be in a situation of "contributing."*'

As the 'duty of vigilance' law draws in part from the UNGPs, this guide could assist judges in assessing and interpreting the obligations and liabilities of the banks subject to this law.





## CONCLUSION

The Rio Grand LNG mega project, and the Rio Bravo Dual Pipeline both create major risks of serious violations of indigenous rights, of the health and safety of neighbouring communities, and of biodiversity. It is the very example of the kind of project Société Générale should immediately refuse to get involved in, in accordance with the Equator Principles and with the UN Guiding Principles, which it endorsed many years ago. It is therefore a test of how seriously the bank will take its new legal obligations under the corporate duty of vigilance law.

Whether from the perspective of NextDecade's own responsibility as the company behind the project, or from the perspective of Société Générale and the vigilance plan it is set to establish, there is no way a simple plan can adequately prevent all the identified risks of Rio Grande LNG, especially as some of its ecological and social impacts could prove irreversible.

Unless it relinquishes its role as financial advisor, Société Générale will probably fund these related LNG terminal and gas pipeline

projects. In the unlikely event that it provides financial advice yet chooses not to fund the project itself, Société Générale would nevertheless remain one of the parties responsible for the project as well as for its negative impacts.

<sup>1</sup> The industry has proposed no less than 60 new LNG infrastructures in North America, but a recent study concluded that only six of them could see the light of day: Rachel Adams-Heard, 'Study Sees Only 6 Survivors Out of List of U.S., Canadian LNG Projects,' SNL Beta, S&P Global Market Intelligence, 12 January 2017.

<sup>2</sup> Robert W. Howarth, 'A Bridge To Nowhere: Methane Emissions and the Greenhouse Gas Footprint of Natural Gas,' Energy Science & Engineering, 22 April 2014; Rainforest Action Network, 'A bridge to nowhere: the climate, human rights and financial risk of liquefied natural gas exports,' Report, March 2017.

<sup>3</sup> Friends of the Earth France, Rainforest Action Network, and Save RGV from LNG, 'BNP Paribas exporte le chaos climatique,' Report, March 2017. See also in English: Rainforest Action Network, 'Rio Grande Valley at risk from fracked gas export terminals,' Report, October 2016.

<sup>4</sup> 'NextDecade Engages Societe Generale and Macquarie Capital as Financial Advisors for Rio Grande LNG,' 2 May 2017.

<sup>5</sup> <https://www.societegenerale.com/fr/transition-energetique-engagements-climat/financement-transition-energetique> and <https://www.societegenerale.com/fr/content/societe-generale-sengage-en-faveur-du-climat/>.

<sup>6</sup> 'Rio Grande LNG & Associated Greenhouse Gas Emissions,' Rainforest Action Network.

<sup>7</sup> 'Rio Grande LNG Is an Enormous Threat to the RGV,' May 22, 2016.

<sup>8</sup> Ibid.

<sup>9</sup> 'QuickFacts: Brownsville City, Texas,' United States Census Bureau, consulted on 23 September 2016.

<sup>10</sup> Lesley Fleischman, Declan Kingland, Christopher Maxwell, Elena Rios, 'Latino Communities at Risk: The Impact of Air Pollution from the Oil and Gas Industry,' Clean Air Task Force, League of United Latin American Citizens, National Hispanic Medical Association, September 2016, Page 2.

<sup>11</sup> According to expert Jerry Haven, the recommended safe distance is 3 miles (4.8 kilometres): [http://www.oregonlive.com/business/index.ssf/2014/04/gas\\_explosion\\_at\\_lng\\_facility.html](http://www.oregonlive.com/business/index.ssf/2014/04/gas_explosion_at_lng_facility.html)

<sup>12</sup> Jonathan Crawford, 'U.S. Raises Concerns Over SpaceX Launches Near Gas Projects,' Bloomberg, 28 October 2016.

<sup>13</sup> Railroad Commission of Texas, 'Legislative appropriations request for fiscal years 2016 and 2017.'

<sup>14</sup> 'Friends of the Laguna Atascosa Wildlife Refuge,' Friends of the Laguna Atascosa Wildlife Refuge, consulted on 10 February 2017.

<sup>15</sup> 'Recovery Plan for the Ocelot,' First Revision, U.S. Fish and Wildlife Service, July 2016.

<sup>16</sup> Bahia Grande Unit, U.S. Fish and Wildlife Service, 29 March 2015.

<sup>17</sup> [http://www.equator-principles.com/resources/equator\\_principles\\_III.pdf](http://www.equator-principles.com/resources/equator_principles_III.pdf).

<sup>18</sup> <https://www.societegenerale.com/fr/mesurer-notre-performance/rse/finance-responsable>

<sup>19</sup> <https://www.societegenerale.com/sites/default/files/documents/Document%20RSE/Finance%20responsable/Politique%20Sectorielle%20P%C3%A9trole%20et%20Gaz.pdf>

<sup>20</sup> <https://www.societegenerale.com/rapport-rse/11-droits-humains.html>

<sup>21</sup> See the 'United Nations Guiding Principles on Business and Human Rights,' and the 'Interpretive Guide in the context of the banking sector.'

<sup>22</sup> 'A bank's "own activities" in this context includes actions and decisions (including omissions) involving third parties, such as providing financial products and services to clients,' Interpretive Guide, p. 4.



# SUPER- MARKETS

Banana blues



## [ PROFILE ]

### COMPANIES INVOLVED

The six biggest French supermarket chains, Carrefour, Auchan, Casino, Leclerc, Les Mousquetaires-Intermarchés and Système U.

### SALES

(2016, companies' retail arms, some of them having diversified into bank and insurance)

- Carrefour: 76.6 billion euros
- Auchan: 51.718 billion euros
- Leclerc: 43.4 billion euro (in France)
- Casino: 36 billion euros
- Mousquetaires-Intermarchés: 33.3 billion euros
- Système U: 23.7 billion euros

### STAFF (AS AT 31 DEC 2016)

- Carrefour: 360,000 employees
- Auchan: 330,700 employees
- Leclerc: 123,000 employees
- Casino: 329,000 employees
- Mousquetaires-Intermarchés: 146,000 employees
- Système U: over 65,000 employees

### LEGAL STATUS

Limited public companies (*sociétés anonymes*) and one simplified joint-stock company (*société par actions simplifiée*) (Les Mousquetaires-Intermarchés)

## THE CASE

The figures speak for themselves: 50% of all food product sales in Europe are controlled by only ten retailers, four of which are French (Carrefour, Leclerc, Auchan et Intermarché). The European leader remains the German group Schwarz, and its flagship brand Lidl.

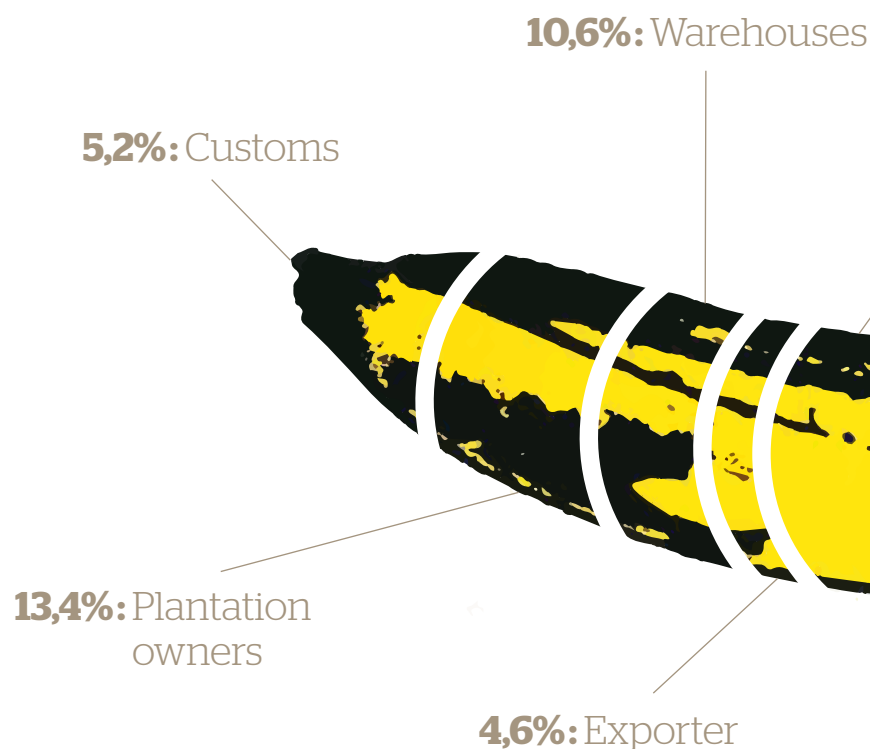
In France, Carrefour, E. Leclerc, Intermarché, Casino, Auchan and Système U

- 6 retailers - control 90% of all food sales. Concentration went a step further in March 2015 as the central procurement arms of these brands got into new agreements. Now 90% of most grocery sales are controlled by only four procurement bodies. This is particularly the case for produce from the Global South: in France, approximately 90% of orange juice, 86% of bananas and 75% of pineapples are sold in supermarkets.

Large retailers thus dominate food supply chains: they are in a position to impose

purchase conditions (price, volume, quality, etc.) on their suppliers.<sup>1</sup> Because of the increase in global buyers' power and of retailers chains' profit expectations, there is increasing pressure to keep prices low, which impacts workers at the other end of the value chain and the pittance of a salary they receive. In short, supermarket brands are having disastrous human and environmental consequences in the Global South: they purchase goods at a very low price, at the cost of workers' rights and environmental damage, and then sell them in their outlets.

# THE COST OF A BANANA



## VIOLATIONS AND POLLUTION IN THE GLOBAL SOUTH

More than one billion people work in the agricultural sector, most of them in the Global South. It is estimated that 450 million of them work in plantations,<sup>2</sup> 60% of them living below the poverty line.<sup>3</sup>

Inadequate wages, indecent working conditions, health hazards, safety issues, discrimination against female workers, unsustainable hours and work demands, unpaid overtime, union rights violations... Those who plant, harvest and transform the food products we consume pay dearly for the abusive purchasing practices of supermarkets.

The banana, particularly the Ecuadorian banana, is the most exported fruit in the world, and serves as a case in point, illustrating the way in which suppliers of large retailers are violating human rights.

## THE ECUADORIAN BANANA SUPPLY CHAIN

In 2016, France imported 455.6 million US dollars worth of bananas.<sup>4</sup> Even with its national production in Guadeloupe and

Martinique, it remains the world's 10<sup>th</sup> biggest importer of bananas.

Ecuador is the global leader of banana production with exports of about 6 million tons every year, more than a third of global banana trade. Seven to eight million tons of bananas are harvested in Ecuador each year, in plantations that cover 10% of its agricultural lands. Europe is its main export market.

Despite its success among European retailers, the production of Ecuadorian bananas is also a source of human rights violations and environmental devastation. Following a visit to the country in 2010, the United Nations Special Rapporteur on contemporary forms of slavery highlighted many cases of modern slavery in labour-intensive industries such as the banana industry.<sup>5</sup>

Supermarkets' supply chains are hard to trace: it is difficult to connect a particular banana plantation to a supermarket's aisles. As retailers are generally unwilling to disclose their business connections, we are forced to undertake our own investigations.

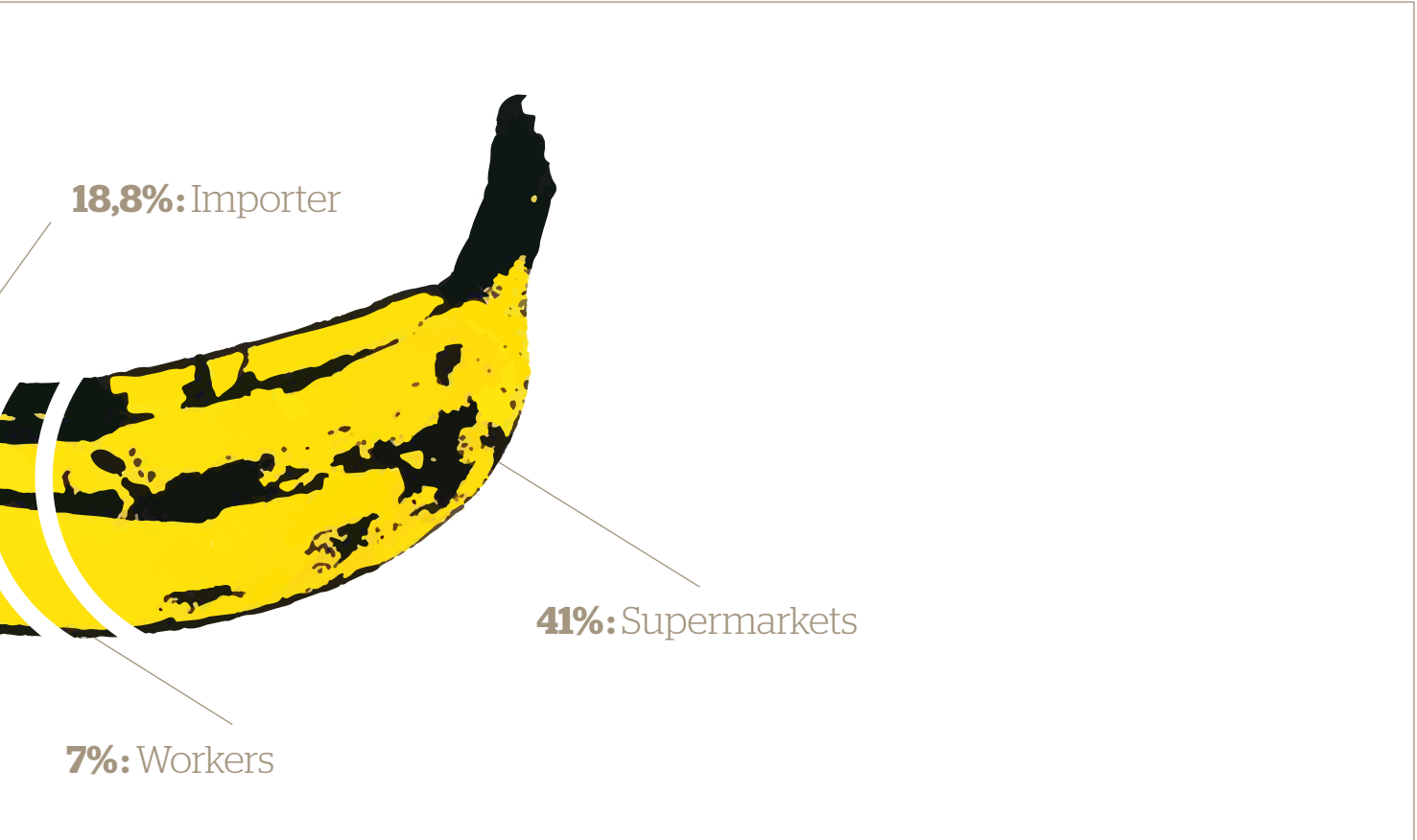
In 2016, Ecuadorian trade union Astac (Trade union association of agricultural banana workers), in partnership with ActionAid France - Peuples Solidaires, led a field

investigation based on interviews with 165 workers in around 20 plantations. The conclusions of this investigation, featured in a July 2016 report by ActionAid France - Peuples Solidaires and Oxfam Germany, are damning.<sup>6</sup>

## INADEQUATE LIVING WAGE

Over the last ten years, the legal minimum wage has been steadily increasing following action taken by Ecuador's government. It now sits at 336 US dollars (324 euros) per month - or 427 dollars (379 euros) including the 13<sup>th</sup> and 14<sup>th</sup> month salaries, which are mandatory. However, this income is still not enough to live decently: in January 2016, the average cost of feeding a family, (defined as the poverty line), was 675 dollars a month. In addition, the majority of workers live on a day-to-day basis and are unable to put aside money for emergencies, such as illnesses or natural disasters like the earthquakes that occurred in April and July 2016. Moreover, for most workers there is no transparency when it comes to how their wages are calculated.

Consequently, most workers are paid per banana, which means that their wages are based on the number of bananas picked and packaged. If they want to earn the



18,8%: Importer

41%: Supermarkets

7%: Workers

government-set minimum wage, they often have to work overtime to reach the threshold expected by their employers. But they don't get any detailed payslip, so have no way to ensure that their overtime or other bonuses have been correctly calculated, or see any deductions made on their wages. Most workers don't even have an employment contract.

### **MONOCULTURE AND PESTICIDES**

Bananas are usually grown in pesticide-intensive monoculture plantations. Labourers and residents living in areas near the plantations are often exposed to these pesticides, some of which are extremely toxic, like paraquat, banned in the European Union, and mancozeb and glyphosate, which are both carcinogenic. Crop-dusting is standard, and in a survey on workers in a plantation supplying European brands, 60% of them reported that they had worked in the plantation during or after crop-dusting, which is in direct violation with recommendations made by the Ecuador government on the amount of time that should elapse before workers may safely return to work.

Workers interviewed suffer from respiratory diseases, nausea, allergic skin reactions and

dizziness, and those working in areas close to plantations often report high rates of disability, miscarriage and cancer. These reports are consistent with conclusions drawn from scientific studies in this area.<sup>7</sup> Many plantations do not take the necessary measures to ensure health and safety at work.

In 2015, Austrian occupational doctors studied the health risks for banana workers in Ecuador. Their findings are alarming: workers in conventional banana plantations suffer from digestive disorders six to eight times more often than those working in organic plantations. Other more common symptoms include dizziness, nausea, diarrhoea, skin and eye irritation, tiredness, insomnia and irregular heartbeat.

### **DISCRIMINATION AGAINST WOMEN**

Women are restricted to working in the packing houses, where they outnumber men. They earn lower wages than agricultural workers: men are paid over a third more than their female counterparts.

In all the plantations inspected for the above-mentioned study, female workers claimed they had to undergo a pregnancy test before being hired. In addition, lay-offs due to pregnancy are not uncommon.

### **UNION RIGHTS DISREGARDED**

According to Article 23 of the Universal Declaration of Human Rights, everyone has the right to form and join trade unions for the protection of his or her interests. The banana and pineapple industry in Ecuador systematically violates this fundamental right.

It was revealed that, among the twenty companies investigated in Ecuador, not one of them had an independent staff representative. Workers report that there is a 'black list' that is passed around plantation owners in order to keep trade unionists out. At Matías, one of the suppliers of retail chain Lidl, 93% of workers interviewed stated they did not want to form a union out of fear of repressive measures.



## CONCLUSION

In France, agri-food companies including supermarkets are responsible for the safety of the foods they produce, process, transport, store or sell. They consequently take adequate measures to identify and prevent health risks.<sup>9</sup> Yet before the duty of vigilance law they were under no obligation to address the social aspects or fundamental rights of residents living near plantations or prevent violations of workers' rights.

In accordance with the corporate duty of vigilance law, French supermarkets now have a legal obligation to monitor their suppliers in order to ensure workers' fundamental rights are not being violated and the environment is not being harmed. They should now be able to guarantee that they are not buying or selling products that have been produced in conditions that violate fundamental rights.

In concrete terms, in order to guarantee decent working conditions and ensure rights are not being violated in the production of foodstuffs they are selling, supermarkets must:

- Ensure the ILO's minimum core labour standards are respected, such as freedom of association, the right to collective bargaining, the elimination of discrimination and forced labour and the abolition of child labour.
  - Pay a minimum living wage, guarantee working hours are in line with ILO standards, and ensure job security.
  - Ensure the health and safety of employees. This includes discontinuing the use of pesticides deemed highly hazardous by the Pesticide Action Network (PAN).
  - Pay adequate prices to cover the costs of sustainable production, including paying employees a minimum living wage. They should also put an end to unfair trade practices such as refusing goods without a valid reason.
  - Provide a transparent supplier list. Plantations supplying European supermarkets should be identified and an efficient complaint mechanism be established at both local and international level.
  - Create transparent monitoring systems. Inspections should be unannounced. Workers should be involved in the monitoring as well as in developing and implementing measures to improve working conditions.
  - Develop a vigilance plan in consultation with trade unions and ensure they are involved in supervising its implementation.
- All companies in the industry (including those that are too small or not French and which are therefore not subject to the duty of vigilance law) must adhere to the same obligations in order to address the issues in these global sectors - which are occurring all over the world.



## THE FRANCHISING ISSUE

A number of retailers have developed a franchising system, particularly Casino with Petit casino and Spar.

Under French law, franchising is a business contract where one trader grants another trader the right to use all or part of its intangible rights (business name, trademarks, licences) usually for a percentage of its turnover or its profits. Included in the contract is the obligation to purchase from the franchisor itself or from a supplier designated by the franchisor the goods or materials that are supplied to the franchisee at a predetermined rate, which is periodically reviewable. The franchisee itself, however, takes full responsibility for the business and its associated risks.<sup>10</sup>

The new duty of vigilance law does not mention the question of franchise staff, in particular whether or not these employees are included in the 5,000 or 10,000 employee threshold. If it turns out they are not, there is the concern that major corporations operating in France such as McDonalds, which has 80% of its French restaurants managed by more than 310 franchisees, will be exempt from this law.

<sup>1</sup> See Le Basic's report, '[Qui a le pouvoir ? Méta-étude sur la concentration du pouvoir dans les filières agricoles et ses principaux impacts sociaux et environnementaux](#)'.

<sup>2</sup> <http://www.ifad.org/operations/food/farmers.html>.

<sup>3</sup> PHurst, 2007, '[Agricultural workers and their contribution to sustainable development](#)'.

<sup>4</sup> <http://www.worldstopexports.com/bananas-imports-by-country/>.

<sup>5</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/149/22/PDF/G1014922.pdf>

<sup>6</sup> ActionAid France-Peuples Solidaires and Oxfam's report, '[Des fruits au goût amer](#)', 2016. The facts in this case study are based on this report, which includes references and detailed sources.

<sup>7</sup> <http://www.cancer-environnement.fr/239-Pesticides.ce.aspx>.

<sup>8</sup> Hutter H-P, Kundl M, Ludwig H, Moshammer H, Wallner P (2016). Epidemiologische Untersuchung von Kleinbauern und Landarbeitern im konventionellen und ökologischen Landbau (Bananen) in Ecuador, Vienna 2016, forthcoming.

<sup>9</sup> For more information, see '[La vigilance sociétale en droit français](#)'; Passerelle n°16 12/2016.

<sup>10</sup> <http://www.dictionnaire-juridique.com/definition/franchise.php>.

A photograph of the United Nations Secretariat Building in New York City. In the foreground, a long row of national flags from various countries is displayed on tall poles. The building's facade is visible in the background, featuring the United Nations emblem and the words "UNITED NATIONS" and "NATIONS UNIES". The sky is blue with scattered white clouds. A person's arm in a grey t-shirt is visible on the right side of the frame. A white diagonal line is drawn across the top left corner of the image.

# A UN TREATY ON THE HORIZON?





# MOVING TOWARDS A UN TREATY ON TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS

Although the French corporate duty of vigilance law is a groundbreaking step from a global perspective, there has been other important progress in this area. In fact, contrary to what its critics say, France is not the only country to have taken legislative measures. Other European countries have initiated or discussed binding initiatives to protect human rights in corporate value chains, such as the Modern Slavery Act in the UK, the child labour law in the Netherlands and the Responsible Business Initiative, developed by Swiss NGOs and which will soon be put to referendum.<sup>1</sup> The French law may be the most advanced among existent legislation, but the discussions around this law, and its adoption in particular, have had a real ripple effect in other countries.

Negotiations have similarly been underway at the UN since 2015, with the goal to develop a binding treaty on transnational corporations with respect to human rights.

## **THE HISTORIC TENSION BETWEEN VOLUNTARY NORMS AND BINDING STANDARDS**

As previously mentioned, for many years NGOs all over the world have been advocating for legally binding standards in

order to regulate the activities of corporations and prevent human rights abuses and environmental harm. Government responses have been to adopt voluntary standards such as the United Nations Guiding Principles on Business and Human Rights (UNGPs). Although they have become an international benchmark, these Principles, adopted in 2011, have proved to be largely inadequate in regards to victims' access to justice and compensation, due to the lack of enforcement mechanisms.

Yet an initiative to establish international legally binding regulations came close to fruition only a few years earlier within the UN itself: the UN Sub-Commission on the Promotion and Protection of Human Rights (SCDH), a body composed of 26 international experts, approved the '*Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights*' in 2003. These norms were part of a legal framework seeking to regulate by law the activities of transnational corporations, but were never adopted by the UN Commission on Human Rights, a precursor of the Human Rights Council (UNHRC), due to resistance from western countries.<sup>2</sup> Under pressure from a number of transnational corporations whose head offices are located in these countries, they then chose to back the voluntary initiative Global Compact (2004) and the UNGPs (2011).

## **NEW NEGOTIATIONS BRINGS HOPE FOR VICTIMS**

It was not for a decade (and thousands of victims later) that the UN Human Rights Council (UNHRC), under the impetus of Ecuador and South Africa, adopted resolution 26/9 in June 2014, which established an Open-ended Intergovernmental Working Group (IGWG) in order to develop an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights. The resolution was adopted despite western countries' vote against it, claiming that the initiative would undermine efforts to implement the Guiding Principles (see box page 35).

Since then the IGWG has met for two sessions of negotiations (July 2015 and October 2016), to discuss the framework and content of the future treaty: scope, rights involved, enforcement mechanisms, how it will fit with trade and investment law, etc. The third session, to be held in Geneva from 23 to 27 October 2017, will constitute a decisive step, as discussions will begin on the treaty's draft text. The European Union has, from the word go, been extremely reluctant to get involved in the negotiations, and has even attempted to slow down the process (see timeline pages 36-37).

The major campaigning efforts of international NGOs over these years have been unwavering. The Treaty Alliance,<sup>3</sup> a coalition of more than 900 organisations around the world, was involved in each of the IGWG sessions. Its members include French organisations AITEC, ActionAid France - Peuples Solidaires, Friends of the Earth France, CCFD-Terre Solidaire, Collectif Ethique sur l'Etiquette, France Amérique Latine, Ligue des Droits de l'Homme, Sherpa, most of them members of the French Citizen Forum for corporate accountability (*Forum citoyen pour la RSE*).<sup>4</sup> As many members have ECOSOC consultative status,

they can make written and oral contributions and present concrete proposals for a binding UN treaty.<sup>5</sup> Another key movement is the '*Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity*',<sup>6</sup> created in Rio in 2012, which brings together more than 200 social movements, networks, affected communities and organisations (most of which are also members of the Treaty Alliance) and which is very active on the citizen mobilisation front. It also organises a number of events outside the negotiation sessions, giving a central role to the victims of violations by transnational cor-

porations, as well as pinpointing potential legal avenues. It is thanks to the activism of these networks, which launched a petition gathering more than 90,000 signatures, that the European Union finally agreed to take part in the IGWG sessions in October 2016.<sup>7</sup>

The movement has gained increasing momentum over the years and in September 2017, MPs from several countries launched an appeal to support the elaboration of a UN treaty.<sup>8</sup>

### WHAT ROLE WILL FRANCE PLAY?

France will have a key role to play in regards to the UN treaty. Its corporate duty of vigilance law clearly makes France a pioneer, and the law is already having an impact on international law, with the current reform of the ICESCR treaty - the most important UN human rights treaty when it comes to economic issues.<sup>9</sup>

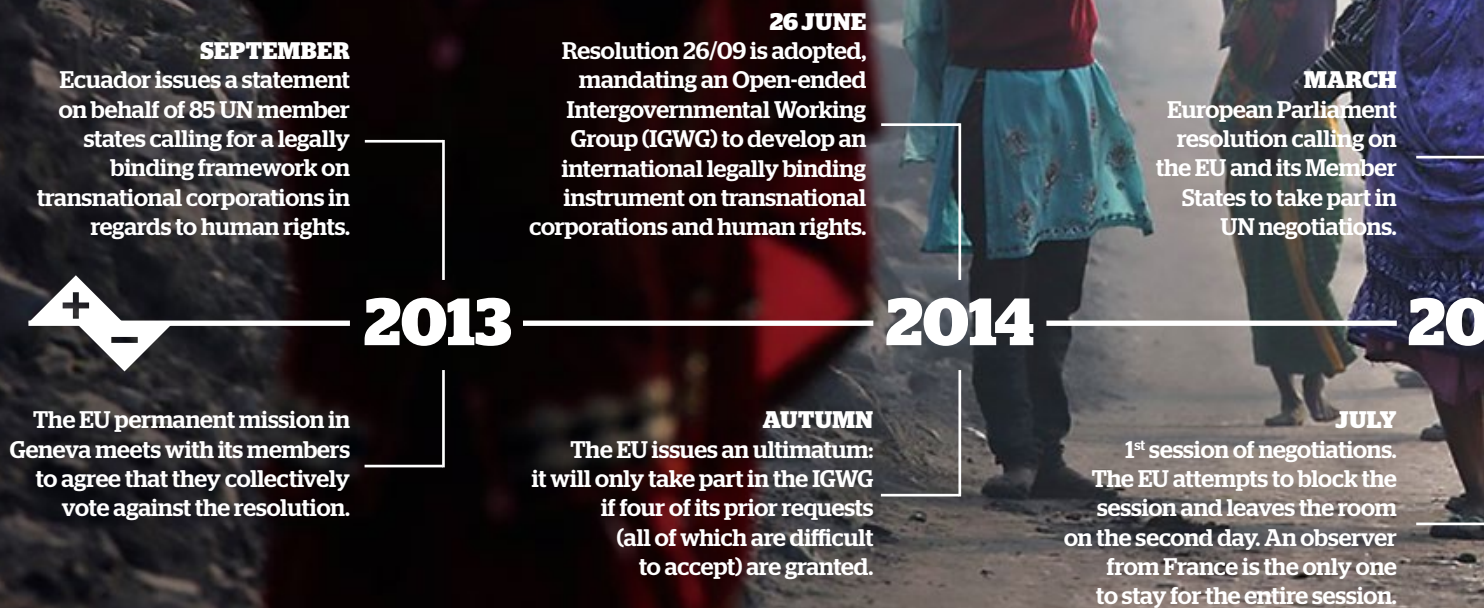
The law thus gives France the opportunity to play a leading role in UN negotiations. The content envisaged for the treaty is partly drawn from the objectives and provisions set out in the French corporate duty of vigilance law. In addition France has committed itself to promoting the new law in Europe and further abroad, within, among other measures, its National Action Plan for the Implementation of the United Nations Guiding Principles on Businesses and Human Rights, published in April 2017.<sup>10</sup> Given its pioneering law, it makes sense to expect that France will concretise its commitments by actively and constructively participating in the elaboration of this international legally binding instrument. In addition, by advocating for a similar regulation that would apply to transnational corporations all over the world, the French government could refute the private lobbies' argument spouted by a number of French decision-makers that the duty of vigilance law could result in French companies losing their competitive edge on the world market.

### THE UNITED NATIONS GUIDING PRINCIPLES<sup>11</sup>

Adopted in 2011, the United Nations Guiding Principles (UNGPs) were then seen as a way to bridge the gap between existing national legislations and companies operating internationally. The European Commission was particularly enthusiastic about the move, and even aligned its own CSR policies with the Guiding Principles. It also encouraged Member States to establish National Action Plans in order to apply UNGPs at national level.

Although the EU and its Member States claim that the UNGPs are adequate and that the UN treaty could undermine their implementation, only twelve out of twenty-eight Member States have adopted a National Action Plan since 2011.<sup>12</sup> These plans are unambitious and comprise no concrete proposals to make companies genuinely accountable for their actions or eliminate obstacles that make it difficult for victims to get legal assistance or sue companies that have violated their rights. Only Belgium's Action Plan mentions the willingness '*to argue at EU level for active EU involvement in the UN open-ended inter-governmental working group on transnational corporations and other business enterprises with respect to human rights*'.<sup>13</sup>

# THE EU'S POSITION ON UN NEGOTIATIONS



## CIVIL SOCIETY'S KEY DEMANDS

At each session, NGOs made written and oral presentations outlining their position,<sup>14</sup> as well as actively taking part in discussions, offering their knowledge and giving representatives of affected communities the chance to present their testimonies themselves before government representatives.

The key demands for the draft treaty and the negotiating process are as follows:

### - Take a comprehensive approach in terms of the rights to be protected by the Treaty

The treaty must protect all forms of human rights: civil and political rights, economic, social and cultural rights and environmental rights; it must provide effective protection for human rights defenders, particularly those defending their land and the environment, currently the main victims of persecution, criminalisation and murder.

### - Focus primarily on transnational corporations and their supply chains

In 2015, there was debate over the treaty's scope, with some in favour of a treaty that applies exclusively to transnational corporations and others that considered that all companies should be bound by the treaty. The French duty of vigilance law has moved the debate forward: responsibility lies on parent and subcontracting companies (*transnational corporations*), but this includes the activities of all the company's entities (subsidiaries and controlled companies) and their value chain (subcontractors and suppliers). Such an approach also avoids having to define the term *'transnational company'*, which has currently no legal bearing. It would be difficult to group the myriad of complex business relations that transnational corporations engage in under just one definition, creating the risk that many situations and companies would slip through the gaps, thus evading the treaty's obligations.

### - Ensure victims have access to justice and compensation

The treaty must allow for the reversal of the burden of proof, currently a major obstacle for victims who wish to assert their rights. Legal aid should also be provided in order to cover legal costs.

### - Provide effective enforcement mechanisms

The treaty must allow victims to file complaints against transnational corporations or states under the jurisdiction of the companies' home countries or of the countries in which they are operating, as well as through the creation of an international tribunal.

### - Give the Treaty primacy over trade and investment agreements

The treaty must include an international precedence clause that gives primacy to human rights obligations over other treaties, including trade and investment



2015

**SEPTEMBER**  
European NGOs collect more than 90,000 signatures in a petition calling on the EU and its Member States to participate in the negotiations.

2016

**OCTOBER**  
2<sup>nd</sup> session of negotiations. The EU and Member States are present but do not show much involvement.

**OCTOBER**  
3<sup>rd</sup> session of negotiations. Governments will negotiate the draft text of the treaty.

2017

agreements. In addition, under the treaty, States must be required to take concrete measures to prohibit investor-state dispute settlements (ISDS) that undermine their obligations to respect their human rights commitments.<sup>15</sup>

**- Protect the treaty process from interference from private sector lobbying**

It is essential that victims and those affected are given a voice and take part in treaty negotiations in order to attest to the violations that have taken place and identify the obstacles that prevent them from accessing justice and obtaining compensation. However, as the Treaty seeks to regulate the activities of companies, the latter should not be involved in its development. In the past, private sector lobby groups have succeeded in thwarting effective solutions to global issues such as climate change, food production, water, deforestation, and have prevented legally binding international regulations in these areas from coming to fruition.

<sup>1</sup> For more information on existing initiatives in Europe, see the report by the French Citizen Forum on CSR: *'In the face of corporate impunity progress in Europe'* (October 2016).

<sup>2</sup> See CETIM's report: *Sociétés transnationales et droits humains: état des lieux et enjeux des débats à l'ONU à propos des « Normes sur la responsabilité en matière de droits de l'homme des sociétés transnationales et autres entreprises »* (2005).

<sup>3</sup> <http://www.treatymovement.com>

<sup>4</sup> <http://forumcitoyenpoularse.org/>.

<sup>5</sup> All the contributions of NGOs and governments on what the future treaty should include are [available here](#).

<sup>6</sup> [www.stopcorporatimpunity.org](http://www.stopcorporatimpunity.org)

<sup>7</sup> <http://www.foeeurope.org/rights-for-people-rules-for-business-131016>

<sup>8</sup> The declaration and list of signatories is [available here](#).

<sup>9</sup> See the video dated 21 February 2017: Professor Gilles Lhuillier spoke at the UN to suggest an amendment to the text on 'extra-territorial obligations' in General Comment No. 24 of the International Covenant on Economic, Social and Cultural rights: <http://www.fmsh.fr/fr/recherche/28192>.

<sup>10</sup> <http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/droits-de-l-homme/entreprises-et-droits-de-l-homme/article/adoption-du-plan-national-d-action-pour-la-mise-en-oeuvre-des-principes>.

<sup>11</sup> This box is an updated version of the information in the report by Friends of Earth Europe: *Rights for business, not for people. the EU agenda*, November 2015.

<sup>12</sup> <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

<sup>13</sup> [https://www.sdsqs.be/sites/default/files/publication/attachments/20170720\\_plan\\_bs\\_hr\\_fr.pdf](https://www.sdsqs.be/sites/default/files/publication/attachments/20170720_plan_bs_hr_fr.pdf) (page 32).

<sup>14</sup> See *Friends of the Earth International's* written contribution in 2016 and the *six key demands of the global campaign*.

<sup>15</sup> This could be achieved by renegotiating existing agreements or cancelling investment agreements that do not explicitly recognize the primacy of human rights obligations. One

possibility would be to include an ISDS carve-out in order to ensure all measures taken by governments to meet human rights obligations are excluded from ISDS claims.



OUR  
**DEMANDS**  
TO THE FRENCH  
**GOVERNMENT**



# I

**ENSURE THE CORPORATE DUTY OF VIGILANCE LAW  
WILL BE EFFECTIVELY ENFORCED**

- Publish the list of companies subject to the law
- Put an administration in charge of monitoring the law's implementation, so as to ensure easy and centralised access to companies' vigilance plans
- Prosecute companies that do not meet their obligations
- Improve the law by making it applicable to a larger number of corporations (by lowering the current thresholds) and reversing the burden of proof
- Promote a similar legislation at European level

# II

**ACTIVELY SUPPORT UN NEGOTIATIONS AND PROTECT IT FROM INTERFERENCE  
FROM PRIVATE SECTOR LOBBYING. THE FUTURE TREATY SHOULD:**

- Take a comprehensive approach to the rights to be protected
- Focus primarily on transnational corporations and their supply chains
- Guarantee access to justice and compensation for victims: reversal of the burden of proof and legal aid
- Provide effective enforcement mechanisms: access to the national jurisdictions of both the countries in which corporations are headquartered and where they operate, and creation of an international tribunal
- Have primacy over international trade and investment law

---

The federation of **FRIENDS OF THE EARTH FRANCE** is a non-profit environmental and human rights network, independent from any religious or political influence. Created in 1970, they helped build the French ecological movement and helped found the world's largest grassroots environmental network, Friends of the Earth International. Friends of the Earth France forms a local network gathering 30 autonomous local groups that act according to their own priorities and support the national and international campaigns with a shared vision for social and environmental justice.



**Contact: Les Amis de la Terre France**  
**Mundo M, 47 avenue Pasteur • 93100 Montreuil • FRANCE**  
**Tel.: +33 1 48 51 32 22**  
**Mail: [france@amisdelaterre.org](mailto:france@amisdelaterre.org)**  
**Website: [www.amisdelaterre.org](http://www.amisdelaterre.org)**

---

Founded in 1983, **ACTIONAID FRANCE - PEUPLES SOLIDAIRES** supports women and men who struggle for their economic, social and cultural rights all around the world. Its priorities are food sovereignty (right to food, access to land, support to peasant agriculture) dignity at work (minimum wage, freedom of associations), women's rights (fight against inequality and discrimination, especially at work) and the responsibility of multinational companies. With its 180,000 signatories and its 50 local groups, ActionAid France - Peoples Solidaires informs the public, mobilizes citizens, alerts the media, puts pressure on the decision makers, to make the voices of civil society organizations from the Global South heard. ActionAid France has been a member of the international ActionAid federation since 2014.



**Contact: ActionAid France-Peuples solidaires**  
**Mundo M, 47 avenue Pasteur • 93100 Montreuil • FRANCE**  
**Tel.: +33 1 48 58 21 85**  
**Mail: [contact@peuples-solidaires.org](mailto:contact@peuples-solidaires.org)**  
**Website: [www.peuples-solidaires.org](http://www.peuples-solidaires.org)**



This document has been produced with the financial support of the European Union, Agence Française de Développement, Un Monde par Tous Foundation, Friends of the Earth International and Forum citoyen pour la RSE. Its content is the sole responsibility of Friends of the Earth France and ActionAid France-Peuples Solidaires and can under no circumstances be regarded as reflecting the position of the European Union or of other funders.