



With the support of



Legal seminar
Corporate complicity, access to Justice and the international legal framework for corporate accountability

Organised by the International Commission of Jurists, Geneva for Human Rights, FIAN International and Al Haq

31st May 2013
Venue: Conference Room Rue de Varembe 1-3
9:00 – 12:30 hrs

In the context of the Human Rights Council consideration of the item of business and human rights, the ICJ with the support of FIAN, GFH and AlHaq is holding a side event featuring three well-known cases from Ecuador, Uganda and Palestine. These cases are emblematic in illustrating many of the legal and political obstacles and challenges that victims of corporate human rights abuse face in their pursuit of justice at the international level. They also reveal that there are important gaps and failures in the international legal framework in relation to access to justice.

- In 2001 the Ugandan army forcefully evicted more than 2,000 people from their land in the Mubende district to make way for a vast coffee plantation operated by Kaweri Coffee Plantation Ltd. Kaweri Coffee is a subsidiary of the Hamburg-based Neumann Kaffee Gruppe and although a complaint was filed with Germany's Organisation for Economic Cooperation and Development (OECD) National Contact Point, it was quickly dismissed. On March 28th, 2013, ten years after the events, the High Court in Kampala ruled on the case finding civil responsibility of the lawyers who advised the government and company, without addressing the responsibilities of the Ugandan and German companies.
- The case of the Lago Agrio communities in the Amazonian region of Ecuador is another emblematic example of the difficulties plaintiffs experience in seeking justice for corporate wrongdoing. In the original lawsuit in the United States, the plaintiffs asserted that

from 1972-1992, the oil company Texaco (later acquired by Chevron) released massive quantities of highly toxic petroleum wastes into waters used for bathing, fishing, drinking and cooking, and that Texaco sprayed these toxic wastes onto local roads. In a decision of 16 August 2002, the US Court of Appeals for the Second Circuit dismissed the case also on the basis of *forum non conveniens*, holding that the United States was not the appropriate jurisdiction to hear the case. The plaintiffs pursued the case before Ecuadorian courts and obtained a favourable final ruling ten years later. However, given that at the present time Chevron no longer holds assets in Ecuador, the plaintiffs have now the daunting task of pursuing enforcement of the ruling in other jurisdictions where Chevron holds assets.

- In 2013, the public prosecutor in the Netherlands decided not to pursue further prosecution of Lima Holding B.V., Riwal's parent company, for its alleged involvement in the war crime of annexation of occupied territory. This was the first criminal case against corporate complicity in Europe that deals with Israel's construction of the separation wall and settlements in the Occupied Palestinian Territory (OPT). The prosecutor had determined that the Dutch company had indeed contributed to the crime, but such a contribution was not significant enough to justify prosecution involving important resources. In addition, the lack of cooperation by Israel would make it impossible to obtain the necessary evidence to secure a conviction.

These three cases are only a few examples of the many forms of corporate involvement in human rights abuse in the world. The difficulties faced by victims and the legal barriers posed to their access to justice highlight some of the shortcomings and gaps in the international legal framework: the lack of common practice across jurisdictions in attributing criminal responsibility for involvement in crimes under international law by corporations – in particular in the context of parent and subsidiary companies relationships; lack of common rules to exercise adjudicatory jurisdiction in serious human rights cases (civil and criminal); deficiencies in the investigation and judicial cooperation in dealing with transnational human rights abuses; and enforcement of judicial decisions from other jurisdictions. Some cases also highlight the limits of administrative and other non-judicial mechanisms to carry out effective investigations and provide remedies and redress.

This seminar is one among several activities the ICJ is undertaking with a view to assessing the need for a new international instrument in the field of business and human rights, including the direct responsibilities of business enterprises. The ICJ project will consider the appropriate form an instrument might take. It takes place against the background of recent developments regarding judicial decisions in several countries, legislative developments and also international initiatives within the United Nations, such as the Guiding Principles on Business and Human Rights, treaty-body's new general comments, and a possible renewed impetus in treaty-making within the International Labour Organisation. It is expected that

the seminar will touch on the future of litigation under the Alien Tort Statute in the United States, after the Supreme Court decision in *Kiobel vs Shell Inc.*, recent decisions by Canadian, British and French courts, and prosecution services of The Netherlands, Switzerland and other countries.

This seminar will provide space for these issues to be discussed more in depth in an informal but rigorous setting. The discussions will take place under Chatham House rules – the content of the discussions can be used by the participants but cannot be attributed to any one of them. The ICJ will prepare a short report of the meeting under the same rules.

Participants

Participants will include approximately 20 expert legal practitioners, scholars and public officers – all in their personal capacity - based in the larger Geneva area with a few possible attendees coming from Europe. Participation is by invitation only.

Provisional programme

09:00	Arrival and coffee
09:15	First session: Challenges to establishing legal liability for transnational corporations
11:00	Coffee break
11:30	Second session: Challenges to jurisdiction, investigation and enforcement of judgments in transnational cases
12:30	End