

## **CORPORATE ACCOUNTABILITY FOR VIOLATIONS OF INTERNATIONAL LAW**

### **Questions and Answers**

#### **1. What international legal frameworks apply in the Occupied Palestinian Territory?**

*International human rights and humanitarian law*

Since 1967, Israel has exercised effective control over the West Bank, including East Jerusalem, and the Gaza Strip, which constitute the Occupied Palestinian Territory (OPT), a single territorial self-determination unit.

As a result, the laws applicable to the OPT are the laws of military occupation, international humanitarian law, and International human rights law.

#### **2. What do we mean by corporate accountability?**

Corporate accountability means holding companies responsible for their involvement in illegal activities in violation of international human rights and humanitarian law. In the context of the OPT, for example, corporations should be held accountable for their involvement in Israel's illegal settlement enterprise.

A legal action based on corporate responsibility seeks to hold liable 1) corporate actors for their direct commission of violations of international human rights or humanitarian law, or 2) the corporate entity for “complicity” in violations of international human rights or humanitarian law.

#### **3. What is complicity?**

Complicity is a mode of liability through which corporations can be found responsible for the realisation of a crime without directly committing the crime. Companies are often said to be accountable through “complicity” in violations committed by, for example, government authorities.

Different factors might determine complicity: the company's knowledge of the violations, its intentions, whether its actions helped to cause the violation, and the relationship between the company and the victims or perpetrators.

International criminal tribunals have consequently developed a fairly clear standard for individual criminal liability through “aiding and abetting”. This standard, developed through jurisprudence, criminalises knowingly providing practical assistance, encouragement or moral support that has a substantial effect on the commission of the crime.

For example, the provision on a commercial basis of logistical support that is likely to facilitate the commission of violations of international humanitarian law may attract

legal liability. Moreover, a company that benefits from the opportunities or environment created by human rights violations, even if it does not positively assist or cause the perpetrator to commit the violations, may be found complicit in those violations.

#### **4. Do corporations have international obligations in relation to the country in which they are operating?**

**Yes.**

International principles exist, in addition to international law, which regulate corporate behaviour in relation to human rights.

- *The UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights*

The UN Norms, for example, provide that:

“Transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law. “

“Transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organization. Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.”

- *The UN Global Compact*

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption. It is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in these areas.

The ten main principles include:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: Businesses should make sure that they are not complicit in human rights abuses.

The UN Global Compact (under Principle 2) warns that “should a corporation benefit from violations by the authorities ... corporate complicity would be evident.”

## **5. Can corporations be held responsible for violations of international law?**

**Yes.**

Different branches of law – international human rights and humanitarian law, international and domestic criminal law, tort law, contract law, consumer law or company law – can be used to support a legal action against corporations.

- *Civil law*

Tort law in common law legal systems and the law of non-contractual obligations in civil law jurisdictions are particularly useful in holding private businesses legally accountable because they are concerned with the wrongful conduct of anyone, whether a government official or private individual. The categories of tortious injuries are also not closed and can expand to provide remedies for a wide range of human rights violations.

- *Criminal Law*

International criminal law is a body of law that criminalises “the most serious crimes of concern to the international community.” Under both international and domestic criminal laws, those involved in the commission of a crime can be held responsible either as principal perpetrators or as accomplices. These persons can be prosecuted for gross human rights abuses and conduct that gives rise to gross human rights abuses.

*United States v. Alfred et al*, a 1948 case at the Nuremberg Tribunal, is an early example of the application of individual criminal liability to corporate actors. The twelve defendants, all holding high ranking positions in the Krupp Industrial company, were indicted for crimes including war crimes and crimes against humanity.

## **6. Can corporations be found responsible for human rights violations in the OPT?**

**Yes.**

The issue of corporate responsibility mainly takes place in the context of their involvement in illegal Israeli settlements and related infrastructure in the OPT.

An important side of Israel's illegal settlement enterprise is the business that it generates, including, the factories, farms, service providers and other commercial enterprises operating in the settlements, as well as the developers involved in their construction. These business entities are an integral part of the Israeli settlement enterprise, benefiting from land, water and other resources illegally confiscated from Palestinians. They sustain the expansion of the settlements and settlement-related infrastructure and the growth of the settler population.

Foreign businesses also operate in the settlements or are involved in their construction. They import, distribute and sell goods and services produced by settlement businesses. Further, they profit and allow Israel's economy to benefit from the illegal settlement project and the exploitation of Palestinian resources. These actions could consequently be qualified as complicity in the illegal enterprise undertaken by Israel.

**7. Can any corporation be found responsible for human rights violations in the OPT?**

**No.**

Companies have human rights responsibilities within their “sphere of influence.” A company is unlikely to be found liable under criminal law or tort law principles for its inaction in relation to victims or perpetrators that are outside its “sphere of influence.”

The mere presence of a company in the OPT, with no other factors such as benefit or indirect assistance, is not sufficient to make this company responsible under existing legal principles, even if the company knows that violations are occurring.

**8. Has litigation been initiated against corporations involved in violations of international law committed in the OPT?**

**Yes.**

Some examples include:

- *Corrie v. Caterpillar*

The US lawsuit charged Caterpillar, Inc. with aiding and abetting war crimes and other serious human rights violations on the grounds that the company provided bulldozers to the Israeli military knowing they would be used unlawfully to demolish homes and endanger civilians in the OPT. It charges Caterpillar, Inc. with violations of US state and federal law and international law for complicity in war crimes, extrajudicial killing and cruel, inhuman, or degrading treatment or punishment. The international law-based claims were brought under the Alien Tort Claims Act and the Torture Victim Protection Act (TVPA).

In 2007, an Appeal affirmed the dismissal of the case on the grounds that the court did not have jurisdiction to decide the case and would intrude upon the US Government’s foreign policy decisions.

- *AFPS and OLP v. Veolia transport and Alstom SA*

In an October 2007 lawsuit, Association France Palestine Solidarité (AFPS) and the Palestinian Liberation Organisation (PLO), charged the European corporations Veolia Transport, and Alstom, with crimes linked to their involvement in the Israeli light rail project that is planned to link West Jerusalem with illegal Jewish settlements in the East Jerusalem area of the West Bank.

The claim alleges that Veolia is facilitating Israel's violations of the Fourth Geneva Convention, and is complicit through aiding and abetting ongoing war crimes. It is also facilitating, exacerbating, aiding and abetting Israel's breach of the Hague Regulations. These same arguments apply to Alstom.

Recently, a French court decided that it has jurisdiction in the case, after a claim of the defendants alleging that the case was inadmissible.

The case is still pending.

- *Bil'in (Village Council) and Ahmed Issa Abdallah Yassin v. Green Park International Inc, Green Mount International Inc and Annette Laroche*

In a July 2008 lawsuit, the Bil'in Village Council and Ahmed Issa Abdallah Yassin, brought Green Park International Inc. and Green Mount International Inc., before the Quebec Superior Court in Canada. Bil'in alleges that these corporations, acting as agents of Israel, are illegally constructing residential and other buildings on illegally appropriated lands under the municipal jurisdiction of the village, and that they are marketing and selling condominium units to illegal Israeli settlers. The claims were brought under international law and Canadian domestic law, including Canada's Geneva Conventions Act and the 2000 Crimes against Humanity and War Crimes Act.

The case is still pending.

### **9. Where can litigation for international crimes take place?**

Victims of gross human rights abuses must seek out the most appropriate forum and may therefore sometimes seek justice in a jurisdiction other than that in which the harm occurred.

- *National Courts*

#### Basic jurisdiction

The basic principle for establishing whether a judicial body has jurisdiction in a given case is that the competent judicial body is that which is in the defendant's place of domicile (*actor sequitur forum rei*). This general principle allows the courts of a given jurisdiction to hear any case as long as the defendant is domiciled in that jurisdiction, even if the alleged wrong took place in another state.

Another principle through which national courts can establish jurisdiction is that of territoriality – jurisdiction based on the place where the violation took place. However, in the context of the Israeli occupation, it is hard to envisage that Israeli courts would establish jurisdiction. Additionally, it is very difficult for Palestinian courts to exercise jurisdiction under occupation.

#### Extraterritorial jurisdiction

International law permits a state to exercise such jurisdiction provided there is a recognised basis: where the actor or victim is a national, where the acts have substantial adverse effects on the state, or where specific international crimes are involved. Extraterritorial jurisdiction must also meet an overall reasonableness test, which includes non-intervention in other states' internal affairs.

#### Universal jurisdiction

For some crimes under international law, the principle of "universal jurisdiction" may apply. Universal jurisdiction means that any state has the authority to investigate, prosecute and punish certain crimes under international law which are universally condemned, irrespective of where the crimes occurred or the location or nationality of the victims or perpetrators. In such instances, no connection is needed between the prosecuting state and the perpetrator.

- *The International Criminal Court (ICC)*

The ICC's jurisdiction over genocide, crimes against humanity and war crimes applies to individuals, including corporate actors, accused of these crimes, but not to corporate entities. The ICC's jurisdiction extends to those directly responsible for committing the crimes as well as to accomplices.

The Court does not have universal jurisdiction and may only exercise jurisdiction if:

- 1) the accused is a national of a State Party or of a state otherwise accepting the jurisdiction of the Court;
- 2) the crime took place on the territory of a State Party or on a territory of a state otherwise accepting the jurisdiction of the Court; or
- 3) the United Nations Security Council has referred the situation to the ICC Prosecutor, irrespective of the nationality of the accused or the location of the crime.

### **10. What kind of results can be expected from litigation?**

Civil actions, as well as criminal actions in certain jurisdictions, allow victims to seek compensation for damages. More particularly, civil liability enables individuals claiming to have suffered as a result of the wrongdoing of a business enterprise, for example, to seek compensation from national courts.

Given that suing corporations for violations of international human rights and humanitarian law is an emerging practice, few civil courts have exercised their jurisdiction and no international criminal court has yet exercised its jurisdiction to try corporate actors.

As the chances for the action to result in compensation are very low, public criticism and the undermining of the company's reputation are more likely results. For example, while the case against Veolia is still pending, Veolia has lost contracts around Europe, including a 3.5 billion EUR contract in Sweden.

### **11. What are pre-litigation steps that could be taken?**

- *Strategic corporate research*

In order to have a good understanding of the company, the claimants should have a corporate profiling strategy, which looks at various key aspects of the company under questions: type of operations, employees, media coverage, top executives, Board of Directors, competitors, institutional shareholders, etc.

- *Community-led human rights impact assessment (HRIA)*

The human rights impact assessment clarifies responsibilities of different actors, keeping in mind the obligations set above. HRIA emphasises standards established by international law and reflected in domestic legislation, thereby measuring the gap between the human rights in principle and the rights in practice. This makes it possible to identify duty-bearers and rights-holders.

- *Public awareness*

It is always important to raise public awareness about the situation of those affected by business-related abuses at the international level and within broader civil society. This pressure alone could result in a change in the behaviour of the company.

- *Inform the corporation*

In addition, it is strategically essential to ensure that the corporation and the corporation's actors are aware of the violations in order to preclude any "lack of knowledge" defence during litigation. This can be done through sending the corporation a letter detailing the legal context and the violations which have taken place and asking them to end their illegal activities.

## **12. What are common obstacles to litigation against corporations?**

- *Penetrating the "corporate veil"*

It can sometimes be difficult to identify the accountability of a parent corporation for the acts of a subsidiary in its operations abroad. Where courts are asked to determine the responsibility of parent companies for acts of their subsidiaries abroad, establishing jurisdiction can be particularly complex.

- *The forum non conveniens principle*

This doctrine is predominantly applied in common law jurisdictions and means that even where a court finds that it has the jurisdiction to hear a claim, it may decide that another forum is better placed to deal with the case and refuse to exercise its jurisdiction.

- *The "political question" doctrine*

This is an imprecise doctrine that is used to seek dismissal of a claim using the argument that the issues raised by the claim are interfering with the government's foreign affairs powers.

- *Restrictions on class action suits*

Other obstacles include the impossibility of bringing an action on behalf of a group of people (class action) in some member States of the European Union.

## Useful Resources on Corporate Accountability

The Q&A paper on corporate accountability is based on the resources provided below.

### 1. International mechanisms

In addition to national or international courts, different mechanisms and avenues exist to bring cases against companies for alleged human rights abuses, including:

- The Inter-American Commission on Human Rights (IACHR)
- National Contact Points set up by the OECD Guidelines on Multinational Enterprises as another potential if limited mechanism to bring complaints of business-related abuse to the home state of the company
- The African Human Rights System
- The World Bank Inspection Panel
- The International Centre for Settlement of Investment Disputes (ICSID) is an autonomous international institution established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID or the Washington Convention) with over one hundred and forty member States. The primary purpose of ICSID is to provide facilities for conciliation and arbitration of international investment disputes.
- The World Trade Organisation (WTO)

### 2. Resources

*Websites:*

- The Business & Human Rights Resource Centre: independent resource on the subject. News and reports about companies' human rights impacts worldwide – positive and negative.

<http://www.business-humanrights.org/Home>  
<http://www.business-humanrights.org/LegalPortal/Home>

- The International Network for Economic, Social and Cultural Rights (ESCR-Net), an international human rights network, is a collaborative initiative of groups and individuals from around the world working to secure economic and social justice through human rights. The ESCR-Net Corporate Accountability Working Group strives to strengthen corporate accountability for human rights through the collective efforts and advocacy of grassroots groups and NGOs around the world.

[http://www.escr-net.org/workinggroups/workinggroups\\_show.htm?doc\\_id=428672&attrib\\_id=13664](http://www.escr-net.org/workinggroups/workinggroups_show.htm?doc_id=428672&attrib_id=13664)

- The International Council on Human Rights Policy provides a forum for applied research, reflection and forward thinking on matters of international human rights policy. Report: Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies.

<http://www.ichrp.org/>



[http://www.ichrp.org/files/reports/7/107\\_report\\_en.pdf](http://www.ichrp.org/files/reports/7/107_report_en.pdf)

- Who Profits: exposes companies and corporations involved in the occupation of the OPT.

<http://www.whoprofits.org/>

- Bil'in Popular Committee: Bil'in is a Palestinian village particularly affected by the Wall and the Occupation and which decided to organise itself to protect its land and resources and fight for its liberty. The Village began legal proceedings in corporate responsibility against Canadian companies.

<http://www.bilin-village.org/>

- Business Leaders Initiative on Human Rights: The Business Leaders Initiative on Human Rights (BLIHR) is a programme to help lead and develop the corporate response to human rights. It is a business-led programme with 14 corporate members.

<http://www.blihr.org/>

- The Center for Constitutional Rights: the CCR is a non-profit legal and educational organisation dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Important cases related to corporate responsibility are brought by the lawyers of the CCR.

<http://www.ccrjustice.org/>

- As You Sow was founded in 1992 and has grown into two programs that strive to increase corporate accountability.

<http://www.asyousow.org/about/>

- The Human Rights Compliance Assessment (HRCA) is an online self-assessment tool that was developed jointly between companies and human rights experts.

<https://hrca.humanrightsbusiness.org/>

- The Human Rights and Business Project is a department of The Danish Institute for Human Rights devoted to business and its impact on human rights.

<http://www.humanrightsbusiness.org/>

*Documentation:*

- UN High Commissioner for Human Rights' work on the issue of business and human rights.
- Human Rights Translated - A Business reference guide, a joint publication of Global Compact Office and Office of the UN High Commissioner for

Human Rights, 2008, Castan Centre for Human Rights Law, International Business Leaders Forum, and Office of the United Nations High Commissioner for Human Rights.

- Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Business and human rights: mapping international standards of responsibility and accountability for corporate acts, A/HRC/4/35, 19 February 2007.
- [Guide for Integrating Human Rights into Business Management - A joint publication of BLIHR, Global Compact Office and Office of the UN High Commissioner for Human Rights](#), May 2006.
- Corporate civil liability for violations of international humanitarian law, Eric Mongelard, Volume 88 Number 863 September 2006, International review of the Red Cross.
- Business and International Humanitarian Law: an introduction to the rights and obligations of business enterprises under international humanitarian law, ICRC, Geneva, 2006, 26 pp.
- ICJ Final Report of the Expert Legal Panel on Corporate Complicity in International Crimes. The Expert Legal Panel on Corporate Complicity in International Crimes was set up in 2006 to explore when companies and their officials could be held legally responsible under criminal and/or civil law when they are involved with other actors in gross human rights abuses. The report, comprising three volumes, addresses corporate complicity from the angles of criminal law, the law of civil responsibility and public policy. Corporate Complicity & Legal Accountability, three volumes.
- [Embedding Human Rights in Business Practice - A joint publication of the Global Compact Office and the Office of the UN High Commissioner for Human Rights](#), December 2004.
- [The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity - an OHCHR Briefing Paper](#), December 2004.
- Beyond Voluntarism: human rights and the developing international legal obligations of companies, 2002, International Council on Human Rights Policy, Versoix, Switzerland, 174 pp.

### 3. Case study

Following are some important cases related to corporate responsibility:

*Sosa v. Alvarez-Machain*

This US case is a lawsuit against Francisco Sosa for wrongly detaining Dr. Humberto Alvarez-Machain. Mr. Alvarez-Machain charged Sosa and others with violating international norms that prohibit kidnapping, arbitrary arrest, and detention. His claims rested on the Alien Tort Claims Act.

In 1992, Alvarez-Machain was acquitted and awarded damages, the court having found that the government's case had little evidentiary support. But upon appeal to the US Supreme Court, in 2004, the Court's decision was reversed on the claim that the Alien Tort Claims Act provided insufficient basis for the suit.

*Doe v. Unocal*

The US case, *Doe v. Unocal*, involved the construction of a pipeline in Burma. The plaintiffs, villagers from the Tenasserim region of Burma, sued Unocal for its complicity in human rights violations committed by the Burmese government and military during the construction of the pipeline.

The plaintiffs allege that the Defendants directly or indirectly subjected the villagers to forced labour, murder, rape, and torture. The villagers based their claims on the US Alien Tort Claims Act in particular and a court held that the plaintiffs need only demonstrate that Unocal had knowingly assisted the military in perpetrating the abuses for Unocal to be held liable. Under this standard, the Court determined that the plaintiffs had presented enough evidence to go to trial. But before a jury could hear the case, Unocal and the plaintiffs reached an out-of-court settlement that would end both the US state and federal cases against Unocal.

*Estate of Himoud Saed Abtan, et al. v. Blackwater Lodge and Training Center, Inc., et al.*

A group of civilians, those injured and the families of those killed following two unprovoked shootings, on September 16, 2007 in Baghdad, by Blackwater "shooters", sued the company and founder Erik Prince in separate lawsuits, in a US federal court.

Plaintiffs allege that Blackwater violated the US federal Alien Tort Claims Act, and committed war crimes, assault and battery, wrongful death, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent hiring, training and supervision, and tortuous spoliation of evidence.

The case is still pending.

*Wiwa v. Royal Dutch Petroleum, Wiwa v. Anderson, and Wiwa v. Shell Petroleum Development Company.*

These are three lawsuits brought against the Royal Dutch Petroleum Company and Shell Transport and Trading Company (Royal Dutch/Shell), the head of its Nigerian operation, and Royal Dutch/Shell's Nigerian subsidiary, charging them with complicity in human rights abuses against the Ogoni people in Nigeria.

The defendants are charged with complicity in human rights abuses against the Ogoni people, including summary execution, crimes against humanity, torture, inhumane treatment, arbitrary arrest, wrongful death, assault and battery, and infliction of emotional distress. The cases were brought under the Alien Tort Claims Act and the Torture Victim Protection Act (TVPA).

In September 2006, a Judge allowed plaintiffs' claims for aiding and abetting

liability in general, as well as the claims for crimes against humanity, torture and prolonged arbitrary detention. The court certified all issues for appeal and both plaintiffs and defendants petitioned for appeal.

A trial is scheduled for April 27, 2009 in *Wiwa v. RPDC* and *Wiwa v. Anderson*.