Human Rights Litigation and the Corporate Accountability Movement

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Corporate impunity is one of the most important challenges facing the world today. Activists from around the world are working to develop effective mechanisms to hold corporations accountable for human rights abuses that range from labor violations to violent abuses such as torture, summary executions and genocide. Civil litigation against corporations is one tactic in the multi-pronged effort to seek redress for past corporate human rights violations and to deter future violations.

The challenges posed by corporate human rights abuses are well-documented. Corporations do not have democratically elected leadership and are not accountable to the public interest, yet they dominate many national governments and often set domestic and international political agendas. The leadership of the corporation may outlast that of the government, furthering a power imbalance which is even more acute in smaller and less developed countries. Carefully created multinational structures enable corporations to insulate themselves from liability, minimizing their presence in any one country while moving their assets to more business-friendly locations. In many countries, there is no functioning mechanism by which corporations can be held accountable for even the most egregious violations of human rights.

In the face of these obstacles, a range of legal, political, economic and other strategies is essential. Tactics include local campaigns to organize workers and consumers, lobbying for legislative reform, shareholder activism, and efforts to strengthen international human rights norms applicable to corporations. We work on one particular approach: civil litigation in the United States against multinational corporations that commit human rights violations directly or through their support for abusive governments or abusive private security forces. Different legal systems permit different categories of claims against corporate defendants. In some legal systems, including the United States, corporations can be sued for violations of international human rights norms, including genocide, war crimes, summary executions and torture.

Several dozen corporate-defendant human rights cases have been filed in the United States. While foreign corporations claim that being brought before U.S. courts involves a form of "legal imperialism", plaintiffs bringing these claims ask only that corporations that do business in the United States abide by all their legal obligations – including their obligations to follow international human rights law. U.S. courts have held for over a century that "international law is part of our law", and corporations are no exception.

U.S. litigation against corporations rests on a series of human rights cases against individual defendants beginning in the late 1970s. The Center for Constitutional Rights (CCR) litigated the first human rights case under the Alien Tort Statute, *Filártiga v. Peña-Irala,* filed in 1979 on behalf of Dolly and Joel Filártiga, the sister and father of a 17-year-old tortured to death by a Paraguayan police official working for then-dictator Stroessner. The U.S. Court of Appeals for

the Second Circuit held that the police official could be held liable because a torturer, "an enemy of all mankind," can be brought to justice wherever he is found. Although the Filártigas have to date been unable to collect the multi-million dollar judgment they won, Dolly Filártiga has spoken about the sense of power and vindication that she felt when the court ruled in their favor, describing the victory as the triumph of truth over terror.

While the Filártigas sued the actual torturer, other survivors of human rights abuses have sued those who ordered abuses, including former Philippine dictator Ferdinand Marcos, Haitian dictator Prosper Avril, Indonesian general Sintong Panjaitan, and former Guatemalan Minister of Defense Hector Gramajo. In 1993, CCR and the International Women's Human Rights Law Clinic at the City University of New York brought a case against Radovan Karadzic, the self-proclaimed leader of the Bosnian Serbs. The lawsuit was part of a much larger effort to find ways to support those targeted by the genocidal Bosnian Serb regime. In addition to drawing attention to their struggle and providing a forum in which they could tell their stories, the lawsuit led to an important advance in the underlying legal principles. Karadzic argued that since he was not an official of an internationally recognized government, international law did not apply to him. However, in 1995, the Second Circuit Court of Appeals ruled that Karadzic could be held to international law standards for violations such as genocide, war crimes, and crimes against humanity because those norms apply to all persons, regardless of whether they are state officials or private actors. The Second Circuit also held that Karadzic was acting in conjunction with the recognized government of Slobodan Milosevic, and could therefore also be held responsible for claims such as torture which by definition required government action.

This logic led directly to a line of cases against corporate defendants. In 1997, in *Doe v. Unocal*, a judge applied the *Karadzic* logic to a corporate defendant accused of responsibility for slavery, forced labor, rape and other torture committed during the construction of a natural gas pipeline project in Burma. The court relied on the *Karadzic* ruling to find that plaintiffs could sue the private corporation for forced labor and slavery because government participation was not a required element in the international law definition of those violations. It also held that plaintiffs' allegation that Unocal was acting in complicity with the military government of Burma was sufficient to support claims that did require state action, such as rape and other torture.

A few years later, a key decision held that companies doing significant business in the United States, as well as those with U.S. headquarters, could be tried for human rights violations. *Wiwa v. Royal Dutch Shell* sought redress for the 1995 deaths of leaders of the Ogoni community in Nigeria. The Nigerian government had falsely accused them of murder and tried them in front of a special military tribunal. After trials that were internationally condemned and rigged to ensure a conviction, the Ogoni Nine were executed. CCR brought a claim on behalf of two of the deceased against Royal Dutch Shell, alleging that it colluded with the Nigerian government to execute the Ogoni Nine, bribed witnesses, and led a campaign against Ken Saro-Wiwa that led to the executions. For four years, the plaintiffs fought against the claim that Royal Dutch Shell, a company headquartered in the Netherlands and England, could not be sued in the United States. The Second Circuit held that the foreign company did sufficient business in the United States to be sued in a U.S. court because of activities which included an investor relations office in New York City. As a result, companies with continuous and systematic ties to the United States face the risk of litigation in U.S. courts if they engage in human rights violations.

These cases seek to hold corporations accountable not for the independent actions of governments or other actors, but for their own actions, either violations that they commit directly or their own acts of support for violations committed by others. In *Wiwa v. Royal Dutch Shell*, CCR charged that the corporation directly committed some of the violations. Cases have also alleged "secondary liability," which relies on well-established principles of conspiracy, aiding and abetting and joint venture liability. A case cannot succeed if it is brought against a company for merely doing business in a place where human rights

violations occur: to be held liable for aiding and abetting, the company must knowingly provide substantial assistance in the commission of the abuses. Development of this doctrine provides important support to the corporate accountability movement, because it addresses directly the role that corporate money and resources often play in supporting abuses committed by government and private security forces.

Another important development, the recognition that corporations can be liable for gender crimes such as rape, has contributed to the international movement to combat gender violence. In the *Unocal* case, soldiers raped two women who had returned home to get food after their village was forcibly relocated as part of the pipeline project. The Court of Appeals for the Ninth Circuit held that their claims for rape could proceed against the corporation and its officers. Other courts have held that a corporation can be sued for rape as a war crime in Papua New Guinea, and that sexual assault can be cruel, inhuman or degrading treatment when committed in an immigration detention facility.

Corporate-defendant cases have also targeted U.S. government contractors. In 2004, CCR brought cases alleging that CACI and Titan, private contractors hired by the U.S. government, were responsible for the torture and other abuse of detainees at Abu Ghraib and other detention facilities. The judge dismissed the claims against Titan but permitted some claims to proceed against CACI; the parties are currently appealing both decisions. More recently, in late 2007, CCR sued Blackwater USA for firing on Iraqi civilians in Bagdad. The contractor defendants have argued that they are not liable because they were under contract with the U.S. government and are therefore protected by U.S. governmental immunity. A successful challenge to this claim will assist in breaking down the impunity with which private contractors are operating in war zones in Iraq and elsewhere.

Human rights litigation against corporations faces difficult legal hurdles. Plaintiffs must show that the corporations can be held liable for the abuses that they suffered, that those abuses constituted violations of international law, and that no immunity doctrine protects the defendants. In addition, the cases often face daunting logistical, practical and even emotional hurdles. Plaintiffs are usually in a foreign country, often in a rural area that is difficult to reach and often in an ongoing situation of war and other security problems. As a result, the logistics of travel, communication and translation can be very difficult. The facts may be difficult to sort out. Moreover, plaintiffs who have survived human rights abuses or lost relatives to such abuses are often traumatized and may require ongoing emotional support. They must be prepared to stay with litigation that may drag on for years. Finally, corporate defendants have seemingly endless resources to pour into legal defense. Lawyers and community groups interested in pursuing corporate-defendant human rights litigation should be clear about the underlying facts, about the plaintiffs' long-term commitment to the lawsuit, and about the resources available to support the case.

Despite these hurdles, corporate-defendant human rights litigation contributes to the growing movement to strengthen corporate accountability mechanisms. These legal developments, and the lawyers working for them, must not be seen in a vacuum. Legal developments in the courts are complemented by other actions to highlight human rights violations by companies and by the growing movement to press the United Nations to develop international standards of corporate behavior. Cases brought under the Alien Tort Statute are part of an important movement to create a "double bottom line" for corporations – no longer can profits be the only measure, but a corporation's adherence to human rights standards must also be a second "bottom line." Litigation in the United States adds to the growing international awareness that there are solid legal standards for this argument.

The ultimate goal, of course, is that, in addition to compensating and empowering victims and survivors of corporate human rights violations, cases brought under the Alien Tort Statute contribute to a system of human rights standards which deters the violations from occurring in the first place.