



Defendants, IG Farben Case, 1947



Victims and families, Ford case, 2018

THE CORPORATE CRIMES HANDBOOK

LESSONS LEARNED BY PRACTITIONERS, COMMUNITIES, AND
LAW ENFORCEMENT SEEKING TO HOLD CORPORATE ACTORS
ACCOUNTABLE FOR HUMAN RIGHTS ABUSES



CORPORATE
CRIMES PROJECT

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Cover: The first photograph (back left) depicts the 24 defendants charged in the first corporate crimes case of the modern era, the prosecution of the executives of the German chemical company I.G. Farben, which manufactured the pesticide gas known as Zyklon B that was used in gas chambers by Nazi Germany, as part of the Nuremberg Trials following the Second World War. The second photograph (front right) depicts victims and their families in an Argentinian courtroom moments before the two Ford Argentina executives were convicted in 2018 for complicity in crimes against humanity, including torture and illegal deprivation of liberty, committed by Argentina's military dictatorship in the late 1970s.

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*Full biographies available in **Annex III** on page 86*

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KEY TERMS

ACTUS REUS	An act or omission that comprises the physical elements required to establish that a crime has been committed.
ADVOCACY (OUTSIDE THE COURTROOM)	The broad range of actions by which practitioners legitimately influence decision makers such as state officials and corporate leaders outside the courtroom, including by engaging in persuasive communications in media and social media.
AFFECTED COMMUNITY	A group of rights holders whose human rights have been, or are at risk of being, violated.
CORPORATE ACTOR	A corporate entity or individual acting on behalf of a corporate entity.
CORPORATE CRIME	Illegal conduct by a corporate actor that is linked to a human rights abuse, including conduct that should be criminalised in order to meet requirements under international law even if a state has failed to do so.
CORPORATE CRIMES CASE	All litigation that spurs law enforcement authorities to hold a perpetrator of corporate crime accountable, including by using civil, administrative or other enforcement mechanisms.
CRIME BASE EVIDENCE	Evidence that establishes the principal crime(s) occurred without necessarily attributing them to any particular actor.
CRIMINAL COMPLAINT	A legal filing submitted by a civil society practitioner to a law enforcement official that accuses an actor of criminal responsibility as substantiated by admissible evidence collected as part of their civil society investigation.
EVIDENCE	Any item or information admissible before a court of law that has probative value in that it makes a relevant fact in a legal proceeding more or less likely to be proven to the applicable standard under the law.
IMPACT	The broad set of material and non-material changes, positive and negative, that can result from strategic litigation including remediation, criminal sanction, setting of legal precedent, policy change, change in state or corporate behaviour, raising awareness, and empowerment of affected communities of rights holders such as by supporting their advocacy, truth-telling, and sense that justice has been done.
INDICTMENT	The formal accusation by a state law enforcement authority of a natural or legal person alleging that they are responsible for a crime, thereby initiating their prosecution under the applicable law.

CIVIL SOCIETY INVESTIGATION	The collection of evidence and leads by civil society practitioners with the aim of persuading law enforcement officials to take up a corporate crimes case.
LAW ENFORCEMENT	State officials responsible for enforcing the law including police, investigators, judges, and prosecutors.
LEAD	Any item or information which may not be admissible before a court of law in and of itself but which can direct an investigator to admissible evidence.
LINKAGE EVIDENCE	Evidence that links a particular actor to a crime, including facts that are probative of the mode of responsibility for a crime such as direct perpetration, responsibility as an accomplice (i.e. complicity), or civilian superior responsibility.
MENS REA	The mental elements required to establish that a crime has been committed, such as knowledge or intent.
OSINT	Open source intelligence, often collected by professionals via advanced techniques for identifying publicly available sources of information.
PRACTITIONER	Legal practitioners as well as other members of civil society that contribute to the development, investigation, advocacy and litigation of corporate crimes cases.
PRELIMINARY ASSESSMENT	An examination of the viability of a prospective case based on the facts, the law, and the strategic considerations prior to initiating strategic litigation.
REMEDY	Full and effective reparation that seeks to restore, to the greatest extent possible, victims and survivors of a human rights abuse to the situation they would have been in had the violation not occurred including via restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.
RIGHTS HOLDER	Individuals whose human rights have been, or are at risk of being, violated.
STAKEHOLDER	Any person who has an interest in the processes and/or outcomes of a corporate crimes case.
STRATEGIC LITIGATION	The choice to resolve disputes by means of legal proceedings with the strategic aim of creating systemic change designed to advance the clarification, respect, protection and fulfilment of human rights. Litigation is strategic when it concerns a broader group of people than the individual parties to a case and is part of a broader programme of change in and out of the courtroom.



QUICK REFERENCE GUIDE

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1 INTRODUCTION

1.1 THE PURPOSE OF THIS HANDBOOK

At the heart of many of the world's most pressing human rights crises sit powerful corporations that enjoy impunity for the harm they cause or to which they contribute. While it remains rare for corporate actors to be held to account for their role in harming people and planet, the consequences of corporate impunity are grave. Businesses affect virtually the entire spectrum of internationally recognized human rights. While some corporations strive to abide by their responsibility to respect human rights, far too many are involved in the pillage of natural resources, enable forced labour and human trafficking across supply chains, contribute to climate change, habitat loss and pollution, and are complicit in international crimes in areas of armed conflict and occupation.

In response, rights holders around the world are organizing to hold corporate actors to account for their role in harming communities in the name of profit. Their struggles can be typified as those between David and Goliath not only because of the tremendous disparity in power between resource-rich corporations and the rights holders they have harmed, but also due to the uneven playing field whereby laws are generally drafted by and bend toward the will of the powerful. To help overcome this disparity, communities often work with civil society practitioners that have experience in challenging corporate impunity in the courtroom and beyond.

For more than a decade, Amnesty International's Corporate Crimes Project has worked with members of civil society, law enforcement, and affected communities to hold corporate actors accountable for human rights abuses. The project achieves this by researching, advocating, and litigating to bring an end to impunity for corporate crime, as well as by coordinating and supporting a global network of practitioners engaged in a common effort to do the same.

In 2016, Amnesty International and the International Corporate Accountability Roundtable (ICAR) published a set of Corporate Crimes Principles, developed by an Independent Commission of Experts, which provide guidance for law enforcement officials seeking to hold to account those responsible for corporate crime.¹ The Corporate Crimes Principles define "corporate crime" to be illegal conduct by a corporate actor that is linked to a human rights abuse, including conduct that should be criminalized to meet requirements under international law even if a state has failed to do so.²

1 ICAR and Amnesty International, *Corporate Crimes Principles: Advancing Investigations and Prosecutions in Human Rights Cases*, October 2016, <https://www.commercecrimehumanrights.org/>.

2 ICAR and Amnesty International, *Corporate Crimes Principles* (previously cited).

The Corporate Crimes Project recognizes the unique value of pursuing prosecutions of conduct linked to human rights abuses because the intervention of law enforcement authorities can significantly mitigate the inherent power disparity between corporations and rights holders. Criminal accountability can also have outsized impact in closing the impunity gap because it can lead to deterrence as corporations change behaviour to avoid being the prosecutor's next target – a corporate executive cannot simply write off a prison sentence as the “cost of doing business”. To be sure, there are disadvantages to seeking criminal accountability as well, including the high evidentiary standard and reliance on prosecutorial authorities.

While it may seem counter-intuitive, not all corporate crimes cases are necessarily criminal. Amnesty International takes a broad view of such cases to encapsulate all litigation that spurs law enforcement authorities to hold a perpetrator of corporate crime accountable, including by using civil, administrative or other enforcement mechanisms. After all, the definition of corporate crime accounts for the possibility that the applicable criminal law may not penalize the full scope of conduct prohibited under international law. As such, a public civil suit brought by the state as a representative of the public interest, administrative sanctions by public agencies including the suspension of a company's licence to do business, or other legal mechanisms may be better able to provide the remedy that rights holders seek.

The Corporate Crimes Principles remain relevant for judges, prosecutors, police and other state officials with a duty to protect against human rights abuses committed by corporate actors.³ However, state authorities are hardly the only actors working to bring corporate criminals to justice. Civil society organizations acting in concert with affected communities play a crucial role in uncovering facts, filing complaints and advocating for accountability in corporate crimes cases.

While many civil society practitioners seek opportunities to collaborate with one another, there are structural barriers involved in doing so including confidentiality constraints, language barriers and capacity limitations. Amnesty International has brought together practitioners from around the world to securely collaborate with trusted colleagues on strategic litigation, known as the Corporate Crimes Network, which has fostered coordination among civil society groups and increased the capacity of the field of corporate crimes.⁴ However, barriers to collaboration persist and limit opportunities for practitioners to learn from one another's experiences. The guidance herein aims to bridge that gap by serving as a resource for practitioners and affected communities to learn from the experiences of others in a manner that informs and supports their efforts to end impunity for corporate crime.

This *Corporate Crimes Handbook* compiles insights and lessons shared by practitioners, communities, and law enforcement who are stakeholders in corporate crimes cases. Case studies accompany the lessons, where appropriate, to ground them in real-world practice experience. This Handbook is not a comprehensive collection of best practices based on a complete survey of cases from across the globe. The lessons presented in this Handbook are not meant to suggest a universal application nor to be used as a checklist or ingredients in a recipe for success. They are offered as general guidance that can complement the contextual expertise and strategy of practitioners working on corporate crimes cases.

3 UN Guiding Principles on Business and Human Rights, Pillar I.

4 Corporate Crimes Hub, “NGO partners”, <https://corporate-crimes.org/about-us-the-ngo-partners/>.

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1.2 METHODOLOGY

The methodology applied to reach the guidance contained in this Handbook began with a review of the secondary literature pertaining to strategic Business and Human Rights (BHR) litigation and a review of primary documents associated with nearly a dozen corporate crimes cases selected as case studies. Between January 2024 and March 2025, Amnesty International conducted consultations with 46 stakeholders involved in the case studies. These included 25 civil society practitioners,⁵ 12 law enforcement officials,⁶ and nine rights holders. These consultations included interviews with stakeholders, mostly held over remote video conference.⁷

A group of 25 stakeholders was subsequently invited to a multi-day “Corporate Crimes Workshop” held in the UK in July 2024 for a group consultation with the aim of arriving at deeper insights into the lessons to be learned from their corporate crimes practice when placed within a comparative perspective.⁸ Drawing from the findings of these consultations, Amnesty International discerned the lessons presented in this Handbook. These lessons were reviewed and endorsed by the Members of an Expert Committee, which advises Amnesty International’s Corporate Crimes Project.⁹

1.3 THE CASES

The corporate crimes cases presented below were selected primarily for their value in terms of lessons learned for corporate crimes practice, as well as for their recency. All the cases have proceedings that are either ongoing at the time of this writing or which have concluded in the past five years.¹⁰ While some corporate crimes cases were selected due to the precedent they set or the impact they had, others were included for their instructive value.

For the purpose of this Handbook, Amnesty International does not take a position on the merits of any particular case. Amnesty International contacted the companies involved in the cases below prior to publication and provided them with an opportunity to respond to the relevant text describing the case studies. The responses can be found in Annex IV.

5 For the sake of brevity, the Handbook generally refers to “practitioners” as stakeholders in corporate crimes cases, which encapsulates legal practitioners as well as other members of civil society that contribute to the development, investigation, advocacy and litigation of such cases.

6 The law enforcement officials were largely current or former prosecutors.

7 At times, interviews were held with the same stakeholder on multiple occasions or with multiple stakeholders at once that were involved in the same case.

8 The Corporate Crimes Workshop is referred to as “CCW” in footnotes.

9 The biographies of the members of the Expert Committee are available in Annex III.

10 There is value in evaluating cases prior to their completion as strategic litigation is a dynamic process that can have impact on human rights throughout the trajectory of a case. OSJI, *Strategic Litigation Impacts: Insights from Global Experience*, 2018, <https://tinyurl.com/mwe89m6p>, pp. 18-19. The status of a case refers to the status of litigation proceedings at the time of writing.

1 The Lundin case¹¹

Accused:	Former Orrön Energy (formerly Lundin Energy) CEO and Chairman of the Board of Directors
Jurisdiction:	Sweden
Description:	Swedish prosecutors indicted the accused in 2021 for complicity in war crimes, including intentional and/or disproportionate attacks against civilians committed by the Sudanese military from 1999 to 2003, as a result of their alleged facilitation of the military's operations in Block 5A of South Sudan in order to enable the extraction of oil from the region, which was the subject of a report written by PAX and published by the European Coalition on Oil in Sudan (ECOS).
Status:	Ongoing (in trial)

2 The Lafarge cases¹²

Accused:	Lafarge S.A., Lafarge Cement Syria S.A., former CEOs and other executives
Jurisdiction:	France; USA
Description:	French prosecutors indicted Lafarge S.A. for complicity in crimes against humanity and all of the accused for financing terrorism and violation of international sanctions in 2017 and 2018 as a result of their involvement in making alleged payments to armed groups in 2013-2014, including the Islamic State in Iraq and al-Sham (ISIS), which enabled the accused to operate a concrete factory in northern Syria. These charges were brought following a complaint filed by the NGOs Sherpa and the European Center for Constitutional and Human Rights (ECCHR), among others, which have since participated in the criminal proceedings. In the United States, Lafarge and its Syrian subsidiary pled guilty to the charge of conspiracy to support a designated terrorist organization in 2022, which culminated in the defendants being placed on probation, forfeiting \$687 million in assets, and paying a \$90.76 million fine. A group of Yazidi plaintiffs sued Lafarge in US courts in 2023 to seek compensation for harm resulting from their alleged aiding and abetting of terrorism.
Status:	USA prosecution completed (guilty plea); USA civil case ongoing; France prosecution ongoing

11 For further details about this case, please consult open sources. See, for example Swedish Prosecution Authority, Indictment, 11 November 2021, <https://tinyurl.com/2x9sfzwe>; Swedish Prosecution Authority, "Trial commences in case regarding complicity in grave war crimes in Sudan", 24 August 2023, <https://tinyurl.com/u7uxrknb>.

12 For further details about these cases, please consult open sources. See, for example, see Department of Justice, "Press Release: Lafarge pleads guilty to conspiring to provide material support to foreign terrorist organizations", 18 October 2022, <https://tinyurl.com/5c9zv92d>; Cour de Cassation, Ruling of 7 September 2021, Appeal No. 19-87.367, <https://tinyurl.com/2ycwfi4p>; *Nadia Murad et al. v. Lafarge S.A., Lafarge Cement Holding Limited, and Lafarge Cement Syria S.A.*, Complaint, United States District Court for the Eastern District of New York, 14 December 2023, <https://tinyurl.com/yxfujwzr>.

3 The Chiquita cases¹³

Accused:	Chiquita Brands International, former executives at Chiquita subsidiaries C.I. Bananos de Exportacion S.A. (Banadex) and C.I. Banacol S.A. (Banacol)
Jurisdiction:	Colombia; USA; International Criminal Court (ICC)
Description:	US prosecutors reached a guilty plea agreement in 2007 with Chiquita Brands International for paying a paramilitary group known as the Autodefensas Unidas de Colombia (AUC) that was designated as a terrorist organization in the United States, which culminated in the company being placed on probation and paying a \$25 million fine. A civil suit was filed against Chiquita by the NGO EarthRights International to seek compensation for the murder, torture, forced displacement, enforced disappearances, and other abuses committed by the AUC with the alleged support of Chiquita. A jury found Chiquita liable in 2024. In 2017, Colombian prosecutors also indicted former Chiquita executives for complicity in crimes against humanity committed by the AUC as part of the armed conflict in Colombia. CAJAR has since participated in the criminal proceedings as a civil party. Seven executives were convicted, sentenced to more than 11 years in prison and received a \$3.4 million fine in 2025. A coalition of civil society groups also filed a complaint against Chiquita executives to the Office of the Prosecutor of the ICC, which had opened a preliminary examination into the situation in Colombia in 2004 that monitored developments until its closure in 2021.
Status:	USA prosecution completed (guilty plea); US civil case ongoing (verdict finding liability appealed); Colombia prosecution ongoing (conviction subject to appeal); ICC preliminary examination closed.

13 For further details about these cases, please consult open sources. See, for example, see Department of Justice, “Press Release: Chiquita Brands International pleads guilty to making payments to a designated terrorist organization and agrees to pay \$25 million fine”, 19 March 2007, <https://tinyurl.com/mwct2sah>; Juzgado Sexto Penal del Circuito Especializado de Antioquia, Sentencia Ordinaria Ley 600 Del 2000, 22 July 2025, on file with Amnesty International; In Re: Chiquita Brands International, Inc. Alien Tort Statute and Shareholder Derivative Litigation, United States District Court Southern District of Florida, Verdict, 10 June 2024, <https://tinyurl.com/36undvef>; CAJAR, FIDH, and the International Human Rights Clinic at Harvard Law School, Article 15 Communication to the International Criminal Court: The Contribution of Chiquita corporate officials to crimes against humanity in Colombia, May 2017, <https://tinyurl.com/mpa7y55j>.

4 The Ford case¹⁴

Accused:	Former Ford Argentina Manufacturing Director and Security Manager
Jurisdiction:	Argentina
Description:	Argentinian prosecutors indicted the accused who were convicted in 2018 for complicity in crimes against humanity, including torture and illegal deprivation of liberty committed by Argentinian state authorities during the military dictatorship in the late 1970s, as a result of the executives identifying workers and providing a space for their detention at the Ford facility near Buenos Aires. The defendants were sentenced to over ten years in prison. Survivors and victims' families participated in the criminal proceedings.
Status:	Ongoing (conviction appealed)

5 The La Fronterita case¹⁵

Accused:	CEO and five other members of the Board of Directors of the La Fronterita sugar mill
Jurisdiction:	Argentina
Description:	Argentinian prosecutors indicted the accused in 2012 for complicity in crimes against humanity, including alleged killings, torture and enforced disappearances committed by Argentinian state authorities during the period of its military dictatorship in the 1970s and 1980s, as a result of the executives identifying workers, supplying company-owned vehicles to military personnel, and granting the military access to company facilities. Four of the six persons originally accused are no longer part of the proceedings either due to death or illness. ANDHES represents the family members of one of the victims in the case and has participated in the criminal proceedings. Amnesty International and other NGOs submitted amicus briefs as part of the proceedings.
Status:	Ongoing (proceeding to trial)

14 For further details about this case, please consult open sources. See, for example, see Centro de Información Judicial, "Lesas humanidad: procesaron a ex directivos de la empresa Ford" ["Crimes against humanity: former Ford executives prosecuted"], 21 May 2013, <https://tinyurl.com/55vhp23z>; Tribunal Oral en lo Criminal Federal N° 1 de San Martín, Judgement, Cases No. 2855 and 2358, 15 March 2019, <https://tinyurl.com/sdxzhs3>.

15 For further details about this case, please consult open sources. See, for example Ministerio de Justicia, "Lesas humanidad: la Secretaría de Derechos Humanos será querrelante en la causa 'La Fronterita'" ["Crimes against humanity: The Secretariat of Human Rights will be a plaintiff in the 'La Fronterita' case"], 6 November 2020, <https://tinyurl.com/nssedp5a>; Amnesty International, "Amigo del Tribunal, Causa N 7282/2016/9/1/1/CFC004", 19 February 2025, <https://tinyurl.com/mr3xae2>.

6 The Volkswagen case¹⁶

Accused:	Volkswagen do Brasil Ltda.
Jurisdiction:	Brazil
Description:	Brazilian prosecutors brought a public civil inquiry against the accused for complicity in crimes against humanity, including murder and torture committed by Brazilian state authorities during the military dictatorship in the 1960s to 1980s, as a result of the company's employees identifying workers who were then arrested and tortured at its factory near São Paulo. The matter was settled by agreement with the accused in 2020 whereupon Volkswagen publicly apologized and agreed to pay approximately R\$36 million to compensate victims, support state reparation, establish a memorial for those harmed during the dictatorship, and support future investigations of corporate crime. Several civil society groups including a labour union, victims' association and workers' rights organization participated in the civil inquiry and settlement negotiations.
Status:	Completed (settlement reached)

7 The Union Carbide cases¹⁷

Accused:	Union Carbide Corporation (UCC), Union Carbide Eastern (UCE), Union Carbide India Limited (UCIL), Dow Chemical Company, former UCC chairman, former UCIL Managing Director, and six other UCIL officials
Jurisdiction:	India; USA
Description:	Indian prosecutors indicted the accused in 1987 for negligent homicide as a result of one of the world's worst industrial disasters caused by a poisonous gas leak which killed tens of thousands of people in 1984. The Indian police arrested UCC Chairman Warren Anderson, but he was released on the same day and permitted to leave the country. The prosecution of the UCIL officials proceeded and resulted in convictions in 2010, although the defendants have not served their sentences as their appeals remain pending. A civil case in India was settled in 1989 after a civil claim in the USA was dismissed several years prior. Several NGOs, including the Coalition for Supporting the Cause of Bhopal Gas Victims and Bhopal Gas-Affected Women Workers' Organization, have advocated to advance the criminal proceedings.
Status:	India prosecution completed in part (conviction of UCIL officials, further summons issued for Dow Chemical Company); India civil case completed (settlement reached); USA civil case completed (dismissed)

16 For further details about this case, please consult open sources. See, for example Ministério Público Federal and others, "Inquérito civil, compromisso de ajustamento de conduta" ["Civil inquest, commitment to adjust conduct"], 23 September 2020, <https://tinyurl.com/mrdtzpe4>.

17 For further details about these cases, please consult open sources. See, for example, see *State of Madhya Pradesh through CBI v. Warren Anderson et al.*, Case No. 8460/1996, Judgement, Court of Chief Judicial Magistrate Bhopal, 7 June 2010, <https://tinyurl.com/2s45jc4s>; *Union of India & Ors. v. Union Carbide Corporation & Ors.*, Supreme Court of India, Civil Appellate Jurisdiction, Order, 14 March 2023, <https://tinyurl.com/3uy46b4j>; *Janki Bai Sahu et al. v. Union Carbide Corporation and Warren Anderson*, Opinion and Order, United States District Court Southern District of New York, 26 June 2012, <https://tinyurl.com/43bzravy>.

8 The Metssa case¹⁸

Accused:	Metssa Congo Ltd.
Jurisdiction:	Republic of the Congo
Description:	The Republic of the Congo's Ministry of the Environment suspended Metssa Congo's operating licence in 2024 based on the "major risk posed by [Metssa Congo's] activities to human health and the environment" in accordance with Congolese law on sustainable environmental management. The Ministry of Environment then opened an investigation of pollution being emitted from Metssa Congo's recycling plant in Pointe-Noire, which culminated in an order to dismantle the facility based on the findings of the investigation. These law enforcement actions followed a ruling in summary judgement earlier that year by the Pointe-Noire Administrative Court to temporarily suspend Metssa Congo's activities pending a decision on the merits of an administrative claim filed by the affected community of the neighbourhood of Vindoulou with the support of Amnesty International. The community has since decided to withdraw the administrative claim and filed a civil case seeking compensation to cover medical treatment for the harm caused.
Status:	Administrative case completed (withdrawn after enforcement by Ministry of Environment); civil case ongoing

9 The DRC case¹⁹

Accused:	Congolese subsidiary of multinational corporation
Jurisdiction:	Democratic Republic of the Congo (DRC)
Description:	The Auditeur Militaire Supérieur (Military Prosecutor) opened an investigation into alleged international crimes committed by individuals affiliated with a company operating a gold mine in the DRC as a result of violence against the local population, unlawful appropriation and destruction of their land, as well as pollution of the environment. The investigation was opened following the submission of criminal complaints by a Congolese civil society organization acting in partnership with an international NGO.
Status:	Ongoing

18 For further details about these cases, please consult open sources. See, for example, see Republic of the Congo Ministry of the Environment and Sustainable Development of the Congo Basin, "Order of total suspension of activities", 17 June 2024, <https://tinyurl.com/yc7cjury>; Tribunal Administratif de Pointe-Noire, Ordonnance, Les Consorts Ndembi Cyrille Traoré v. La Société Metssa Congo Sarlu, 3 April 2024, on file with Amnesty International; Amnesty International, *In the Shadow of Industries in the Republic of Congo: Environment, and Economic and Social Rights Threatened in Villages Near Oil and Recycling Companies* (Index: AFR 22/7887/2024), 4 June 2024, ; Amnesty International, "Republic of Congo: Suspension of Metssa Congo's activities must be followed by urgent investigation", 19 June 2024, <https://tinyurl.com/33xfaahh>; Amnesty International, "Republic of Congo: Metssa Congo recycling plant under investigation due to health risks documented by Amnesty International", 8 August 2024, <https://tinyurl.com/bdzey96c>; <https://tinyurl.com/mwkhm32i>.

19 The identity of this corporation and other information has been redacted to protect the sensitive nature of this ongoing case.

10 The Shell, Eni, and Malabu cases²⁰

Accused:	Shell plc (formerly Royal Dutch Shell), Eni S.p.A., Shell Nigeria Ultra Deep Ltd., Shell Nigeria Exploration Production Company Ltd., Shell Petroleum Development Company of Nigeria Ltd., Shell UK Ltd., Shell Exploration and Production Africa Ltd., Nigeria AGIP Exploration Ltd., Malabu Oil and Gas Ltd., as well as current and/or former executives of these companies
Jurisdiction:	Italy; Nigeria; the Netherlands; Switzerland; UK; USA
Description:	Italian prosecutors indicted, and in 2021 an Italian court acquitted, the accused on bribery-related charges for alleged corruption associated with the sale of Oil Prospecting License 245 (OPL 245) off the Nigerian coast in 2011. Nigerian prosecutors also indicted the accused, as well as state actors, for bribery and tax offences. Various other law enforcement authorities in the USA, the Netherlands, the UK and Switzerland opened criminal investigations into the alleged conduct. All criminal proceedings have since been closed.
Status:	Italy completed (acquitted); Nigeria completed (dismissed); the Netherlands completed (investigation closed); Switzerland completed (investigation closed); USA completed (investigation closed); UK completed (investigation closed).

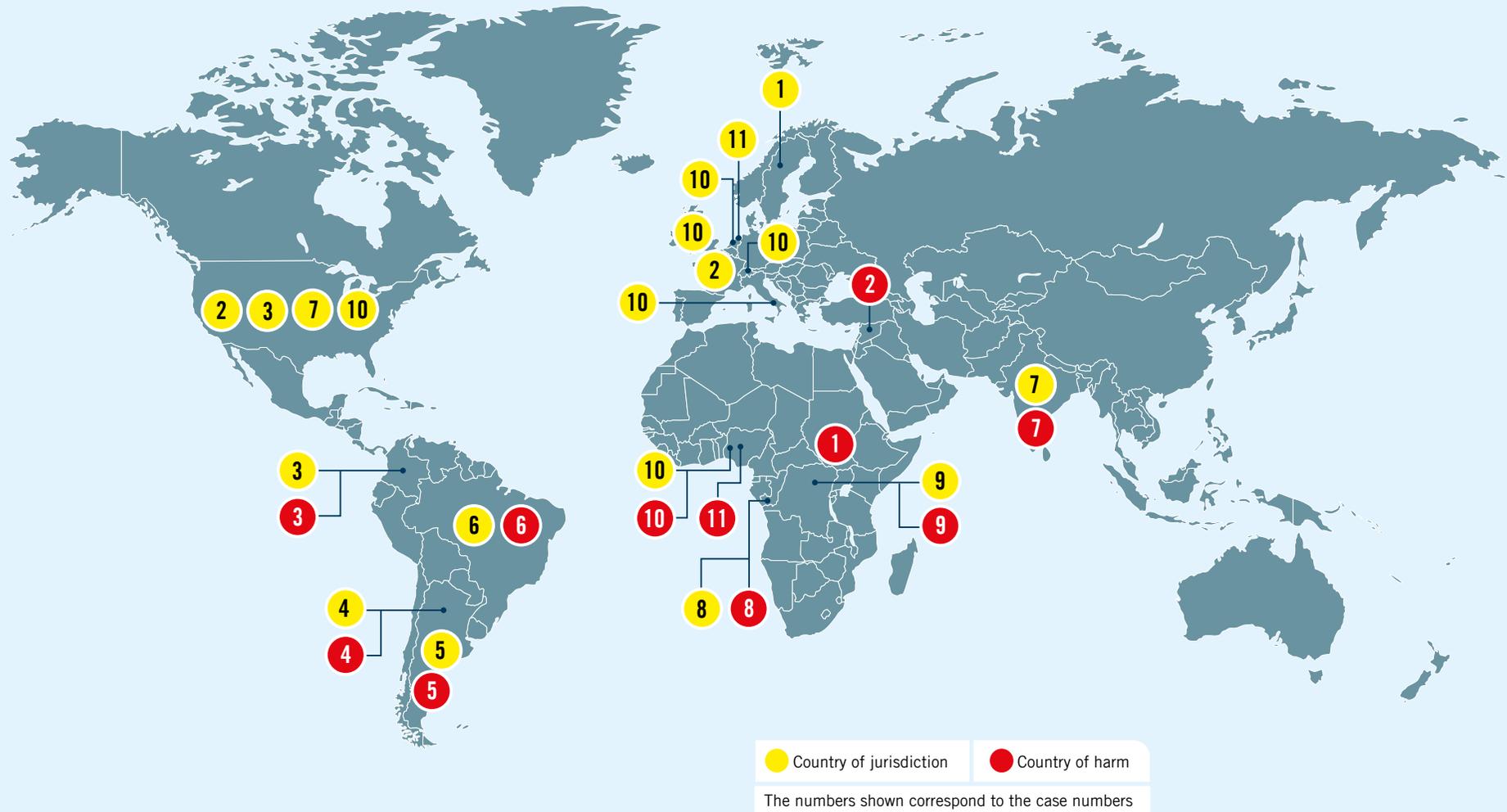
11 The Shell cases²¹

Accused:	Shell plc (formerly Royal Dutch Shell); Shell Petroleum NV; Shell Transport and Trading Company Ltd.; Shell Petroleum Development Company of Nigeria Ltd.
Jurisdiction:	The Netherlands
Description:	Amnesty International submitted its 2017 report, <i>A Criminal Enterprise? Shell's Involvement in Human Rights Violations in Nigeria in the 1990s</i> , to Dutch prosecutors for review of whether Shell was criminally responsible for complicity in manslaughter committed by the Nigerian military in repressing opposition to Shell's oil extraction from Ogoniland, Nigeria, in the 1990s. Esther Kiobel and eleven others filed a civil suit against Shell and its subsidiaries in the Netherlands alleging complicity in the killings of the Ogoni Nine activists against the company's operations in the region, which was dismissed in a judgement by the Hague District Court in 2022.
Status:	Criminal allegations dismissed (investigation not opened); civil case dismissed.

²⁰ The OECD Working Group on Bribery determined that the interpretation of Italian law applied to reach the acquittal, which held that the companies could not be responsible for bribery that had already been completed prior to their entrance into the corrupt agreement, was not to be in conformity with the OECD Anti-Bribery Convention. OECD Working Group on Bribery, Phase 4 Report: Italy, 13 October 2022, <https://tinyurl.com/yc86vc76>. For further details about these cases, please consult open sources. See, for example, see *Italy v. Eni S.p.A. and Royal Dutch Shell plc et al.*, Judgement, Court of Milan, 17 March 2021, <https://tinyurl.com/mt8rtpv3>; *Federal Republic of Nigeria v. Adoke, Abubakar, Gbinigie, Malabu Oil and Gas Ltd., Nigeria AGIP Exploration Ltd., Shell Nigeria Ultra Deep Ltd., Shell Nigeria Exploration Production Company Ltd.*, Ruling, 28 March 2024, on file with Amnesty International; *Federal Republic of Nigeria v. Royal Dutch Shell plc and Eni S.p.A. et al.*, Judgement, High Court of Justice Business and Property Courts of England and Wales, 22 May 2020, <https://tinyurl.com/ybxktukn>; Netherlands Public Prosecution Service, Public Prosecutor's Office dismisses criminal investigation into bribery by Shell in Nigeria, 21 July 2022, <https://tinyurl.com/cvscbdhd>.

²¹ For further details about this case, please consult open sources. See, for example, see Amnesty International, *A Criminal Enterprise? Shell's Involvement in Human Rights Violations in Nigeria in the 1990s* (Index: AFR 44/7393/2017), 2017, <https://www.amnesty.org/en/documents/afr44/7393/2017/en/>; *Esther Kiobel et al. v. Royal Dutch Shell PLC et al.*, The Hague District Court, Judgement, 23 March 2022, <https://tinyurl.com/42x9nk8w>; Letter from International Crimes Unit of Netherlands Public Prosecution Service to Amnesty International, Analysis of AI report 'A Criminal Enterprise? Shell's involvement in human rights violations in Nigeria in the 1990s' and underlying information, 11 December 2019, at Annex II.

MAP OF THE CASES



2 LAYING THE FOUNDATION FOR CORPORATE CRIMES CASES



OVERVIEW OF LESSONS LEARNED

- Community-centred approach
 - Engage with the affected rights holders to determine the remedy and impact they seek, whether it can be achieved by taking legal action, and provide them a seat at the table during critical decision-making moments
- Preliminary assessment
 - Conduct a preliminary assessment of the facts, the law, and the strategic considerations prior to taking up a corporate crimes case.
 - On the facts, see if there is reasonable suspicion of *actus reus*, *mens rea*, and leads to further information.
 - On the law, take a broad view of the options including with respect to corporate targets, jurisdictions, bodies of law, and criminal, civil, or administrative claims.
 - On the strategy, at least consider: (i) the interests of rights holders and how organized they are; (ii) availability of civil society partners; (iii) vulnerability of the company to legal action; (iv) capacity and interest of law enforcement authorities; (v) political climate; (vi) the risks.

The first step in developing strategic litigation on corporate crimes is generally to engage with the affected rights holders to determine the remedy and impact they seek and whether it can be achieved by taking legal action. Litigation challenging corporate crimes can take years – even decades – to see to fruition and, as with every case, there is no guarantee of success in the courtroom. Such a long-term investment should only be made after careful consideration of all the options available to protect the human rights of affected communities, preferably involving the advice of an attorney with expertise in the applicable law. Strategic litigation is one tool among many for holding corporate actors accountable, so part of what makes litigation strategic is being thoughtful about the initial decision to take on a case.²²

²² OSJI, *Strategic Litigation Impacts: Insights from Global Experience* (previously cited), p. 25 (“Litigation that is ‘strategic’ is rooted in a conscious process of working through advocacy objectives and the means to accomplish them, of which litigation is often but one.”); Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior*, November 2023, <https://tinyurl.com/mttm8c95>, p. 36 (“The importance of selecting the ‘right’ case cannot be over-emphasised.”).

2.1 A COMMUNITY-CENTRED APPROACH

The foundation of strategic BHR litigation, including on corporate crime, is the partnership established between practitioners among civil society and the communities of rights holders affected by corporate activity. Practitioners expressed that it is essential to listen to the views and experiences of affected communities of rights holders, which not only clarify their needs and interests to determine whether strategic litigation can provide the remedy they seek, but may also reveal the factual underpinning of a corporate crimes case.²³ As one practitioner, who is himself a rights holder, put it: “[i]t was the cries of alarm from thousands of victims and civil society actors that sparked my interest in this case.”²⁴ The case studies presented in this Handbook demonstrate that practitioners should do all they can to ensure that their approach centres community agency and provides rights holders a “seat at the table during critical decision-making moments” throughout the case.²⁵



CASE STUDY

8

The value of the foundational partnership with affected communities is reflected in Amnesty International’s involvement in the case against Metssa Congo, a Congolese subsidiary of a multinational corporation registered in India. When Amnesty International first began researching environmental pollution in the Republic of Congo, it was initially interested in the major multinational companies operating in the country. Upon engaging with rights holders, a representative of the community in the Vindoulou neighbourhood on the outskirts of Pointe-Noire informed Amnesty International about a lesser-known company named Metssa Congo that operated a recycling plant which was emitting fumes that were severely affecting his community.²⁶ The community guided Amnesty International to information about the company’s operations and cooperated with medical testing to determine whether the fumes were indeed affecting their health. This testing revealed that the residents’ blood contained hazardous amounts of lead pollutants.²⁷

The Vindoulou community had already approached the Congolese Ministry of the Environment to address the issue. However, after a three-month suspension in the company’s activities, Metssa Congo was permitted to continue operating. A community representative reflected that neither the Congolese authorities nor the company were taking them seriously, but that filing a legal case might compel them to.²⁸ Amnesty International supported the community’s legal efforts, which resulted in the Pointe-Noire Administrative Court ruling in summary judgement that the company must suspend its operations and – following an investigation by the Ministry of the Environment – the recycling factory was ordered to

23 Interview with civil society practitioner 1, 3 January 2024; Interview with civil society practitioners 3 and 4, 24 January 2024; Comments by civil society practitioner 14, CCW, July 2024; Interview with civil society practitioner 13, 13 March 2024; Interview with civil society practitioner 22, 13 February 2025. One practitioner explained that their organization prefers to partner with local civil society organizations that are themselves in direct contact with rights holders because that ensures sustainable engagement with affected communities in the long-term. Interview with civil society practitioner 23, 10 March 2025.

24 Correspondence with rights holder 9, 25 May 2025.

25 Harvard Human Rights Entrepreneurs Clinic, *The Fourth Pillar: Centering Communities in Business & Human Rights: Version 2.0*, May 2024, <https://fourthpillarinitiative.com/>, Principle 6(a). See also Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), p. 7 (“The initiators of litigation should... keep paramount the interest of affected rightsholders.”).

26 Interview with civil society practitioner 22, 13 February 2025; Interview with rights holder 8, 26 March 2025.

27 Amnesty International, *In the Shadow of Industries in the Republic of Congo* (previously cited), p. 43.

28 Interview with rights holder 8, 26 March 2025; Interview with civil society practitioner 22, 13 February 2025.

be dismantled.²⁹ None of this would have been possible had the residents of Vindoulou not effectively organized, collected in-depth information about the company's operations, and engaged in advocacy with the support of an international partner like Amnesty International.

Engaging with communities is crucial; yet it can be complicated. In the Volkswagen case, for example, a labour union, victims' association and workers' rights organization were involved in the criminal proceedings to represent the interests of employees who were forcibly disappeared, tortured, killed or otherwise abused by the Brazilian military with the alleged support of the company. These groups could not agree on whether to support an agreement that Volkswagen reached with the Brazilian public prosecutors.³⁰ Thus, practitioners should expect to encounter varied – even conflicting – views among affected communities. The experiences of stakeholders in the case studies presented in this Handbook suggest that navigating this complexity may require investing significant time to establish trust among the diversity of voices within a community.³¹ Since trust-building requires sustained in-person engagement over long periods, the earlier that practitioners can begin this, the better.³² In so doing, practitioners emphasized that it is a best practice to manage rights holders' expectations and remain candid with rights holders about the challenges inherent in strategic litigation, the likely prospect of delays, and the inability to guarantee a vindication of their rights.³³

2.2 CONDUCTING A PRELIMINARY ASSESSMENT

A key lesson that arose from speaking with practitioners about the decision to take up a corporate crimes case is that they, along with the rights holders they represent, could have benefited from investing more time and resources into conducting a more comprehensive preliminary assessment of the facts, the law and the strategic considerations prior to initiating strategic litigation.³⁴

A preliminary assessment of a corporate crimes case should have at least three core components: an assessment of the facts, of the law, and of the broader strategy. Whereas the facts and law act as a filtering mechanism, the strategic considerations are just as important. After all, as with all strategic litigation, corporate crimes cases are far more than straightforward legal struggles in that they challenge broader power structures that ripple across political, geopolitical and economic battlegrounds.³⁵ To narrowly focus on the legal aspects of a case is to relinquish these battlegrounds to the corporations involved in human rights abuses that will gladly use their influence in these areas to delay or undermine legal proceedings.³⁶

29 Republic of the Congo Ministry of the Environment and Sustainable Development of the Congo Basin, "Order of total suspension of activities" (previously cited); Amnesty West & Central Africa, X post, 20 December 2024, <https://x.com/AmnestyWARO/status/1870116254406545875>.

30 Interview with rights holder 6, 23 April 2024; Interview with civil society practitioner 16, 18 March 2024. For more detail about the disagreement among rights holders regarding appropriate remedy, please refer to Chapter 7.

31 Interview with civil society practitioner 1, 3 January 2024; Interview with rights holder 1, 10 January 2024; Interview with civil society practitioner 13, 13 March 2024; Interview with civil society practitioner 14, 28 March 2024. See also Harvard Human Rights Entrepreneurs Clinic, *The Fourth Pillar* (previously cited), Principle 2.

32 Interview with civil society practitioner 2, 29 February 2024.

33 Comments by civil society practitioners 14 and 20, CCW, July 2024. See also Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), p. 38 ("Managing competing expectations and goals of multiple parties is vital to the success of litigation.").

34 Interview with civil society practitioner 17, 22 January 2024; Interview with civil society practitioner 19, 7 October 2024; Interview with civil society practitioner 8, 9 April 2024; Comments by civil society practitioner 24, CCW, July 2024. Many leading cases have been brought organically – the case selected the practitioner, so to speak. This can happen for a variety of reasons, whether due to breaking news that uncovers corporate human rights abuses or an affected community that approaches a practitioner to seek remedy on their behalf. Even under these circumstances, practitioners reported encountering hurdles in their casework that could have been foreseen and addressed at an early stage as part of an assessment of whether strategic litigation was the right path forward. Interview with civil society practitioners 3 and 4, 24 January 2024.

35 Interview with civil society practitioner 14, 28 March 2024; Comments by civil society practitioner 6, CCW, July 2024; Interview with civil society practitioner 8, 9 April 2024; Interview with civil society practitioner 10, 13 May 2024; Comments by civil society practitioner 24, CCW, July 2024.

36 Interview with civil society practitioner 1, 3 January 2024; Comments by law enforcement official 7, CCW, July 2024; Comments by civil society practitioner 24, CCW, July 2024.

2.2.1 THE FACTS

A preliminary assessment of the facts of a prospective case is an evaluation of what a practitioner knows about a company's alleged illegal conduct. Several stakeholders reflected the common-sense notion that good facts tend to make good law.³⁷ Their experience was that even strong legal arguments can falter without a sound factual basis and, conversely, that a compelling factual narrative helped overcome significant legal hurdles.

While corporate crimes cases are notorious for their delays, the Metssa case is an example of a company facing sanctions promptly after a case was filed – within a matter of months. An NGO representative who worked on the Metssa case reflected that this was helped by the extreme fact pattern involving not only high levels of lead poisoning in the blood samples of local residents, including children, but also that the company lacked the authorization required under Congolese environmental law to conduct business, which left it vulnerable to legal action.³⁸

The question of what makes a fact pattern strong depends on the applicable law, which will be addressed below. To hold corporate actors accountable under a criminal law framework, practitioners can consider the following three elements to be a rule of thumb for determining whether a case is on firm ground from a factual perspective:

ACTUS REUS	The available information provides a reasonable suspicion that a corporate actor has engaged in criminal conduct or has control over a person that has.
MENS REA	The available information provides reasonable suspicion that the corporate actor engaged in said criminal conduct knowingly or intentionally. ³⁹
LEADS	The available information suggests that the known facts can feasibly lead to the collection of sufficient evidence to conclude that the corporate actor is criminally responsible.

2.2.2 THE LAW

A preliminary assessment of the law requires careful consideration of the available jurisdictions, their domestic legislation and relevant jurisprudence, which would benefit from thorough legal research and the advice of counsel with relevant legal expertise.

37 Interview with civil society practitioner 14, 28 March 2024; Interview with law enforcement official 2, 3 June 2024; Comments by law enforcement official 11, CCW, July 2024; Comments by civil society practitioner 24, CCW, July 2024.

38 Interview with civil society practitioner 22, 13 February 2025; Interview with rights holder 8, 26 March 2025. In response to Amnesty International's inquiry about their authorization to conduct business, Metssa Congo claimed that while they had requested authorization in 2012, "due to procedural delays within the relevant departments, the issuance and authorization of the permits were postponed, resulting in a 2014 date on the documents when they were officially signed and approved". This meant that "[d]uring the period from 2012 to 2014, while our application was in progress, the ministry allowed us to begin our operations, a decision that enabled the creation of employment opportunities and the fostering of economic growth in the local community in Congo, benefiting both the region and our company". Amnesty International, *In the Shadow of Industries in the Republic of Congo* (previously cited), p. 44.

39 The *mens rea* of a corporate actor is often the most difficult element of criminal responsibility to prove and, as such, the lack of evidence with respect to knowledge or intent at this early stage should not deter a practitioner from selecting a case.

It may be helpful to begin by mapping out the law applicable to the facts of the corporate actor's conduct in every relevant jurisdiction. The most common jurisdictions with law applicable to corporate crimes are that of the host state where the harm occurred, and the home state where the corporate actor is domiciled. These may be one and the same. Other relevant jurisdictions can include the countries where all parent companies that have a majority shareholding in the company are registered, the jurisdictions where relevant financial transactions occurred or through which funds passed,⁴⁰ and any intergovernmental jurisdiction such as an international court or tribunal.

Practitioners can then look to the domestic legislation and jurisprudence in those jurisdictions to determine the available legal theories and hurdles. At this stage, the prospective case is likely to benefit from practitioners taking a broad view of the available legal bases for accountability with respect to all the relevant corporate actors, including the corporate entity itself and any individuals – particularly senior executives – working on its behalf.⁴¹

CASE STUDY

The first corporate crimes case of the modern era where corporate executives were charged with crimes committed in violation of international law was the prosecution of executives of the German chemical company I.G. Farben as part of the Nuremberg Trials following the Second World War. While the judgement was rendered nearly 80 years ago, a key lesson that remains relevant today is that practitioners should carefully consider the strategic selection of charges in corporate crimes cases. After all, the I.G. Farben officials were ultimately acquitted of the charge of contributing to the extermination perpetrated by Nazi Germany by supplying Zyklon B pesticide for use in the gas chambers of concentration camps because they purportedly lacked knowledge of how it was going to be used.⁴² Instead, the tribunal found 13 defendants guilty primarily on count II of the indictment for the corporate officials' plunder of property from occupied territory – including the confiscation of privately-owned factories, materials, and resources – which was more readily substantiated by the evidence.⁴³ It is a tragedy that the US Military Tribunal at Nuremberg only managed to hold accountable I.G. Farben executives for crimes to property rather than the far graver crimes they committed against human beings, but otherwise they may not have been held accountable at all.

Practitioners should familiarize themselves not only with the specialized area of law directly pertaining to the relevant human rights abuses – international crimes, labour crimes and/or environmental crimes, among others – but also with ancillary bodies of law that may indirectly render those abuses unlawful including various financial crimes such as money laundering, fraud, bribery, tax offences and/or handling of stolen goods. Focusing a case on ancillary offences that are related to – even if not directly implicating – the underlying human rights abuses may be a strategic choice that increases the likelihood of accountability.⁴⁴ Practitioners should likewise consider a variety of modes of criminal responsibility, the details of which vary between jurisdictions. Although corporate crimes are often

40 The jurisdiction for the prosecution of Lafarge in the United States, for example, was predicated on a wire transfer from the French parent company's account in Paris, France, to a third party's account in Dubai that passed through an intermediary bank in New York City. *USA v. Lafarge S.A. and Lafarge Cement Syria S.A.*, Docket No. 22-CR-444 (WFK), Plea Agreement, Attachment A: Statement of Facts, 18 October 2022, <https://tinyurl.com/2rywbrhk>, para. 103.

41 In some jurisdictions the prosecution of corporations as legal persons is possible, whereas in other jurisdictions it is only possible to prosecute natural persons such as the corporate directors and managers.

42 *United States of America v. Carl Krauch et al.*, Judgement, 30 July 1948, <https://tinyurl.com/4dy9epjz>, p. 1168.

43 *United States of America v. Carl Krauch et al.*, Judgement, 30 July 1948, <https://tinyurl.com/3fvsuwyh>, pp. 1152 - 1166.

44 Interview with civil society practitioner 19, 7 October 2024.

viewed through the framework of complicity by private actors that aid and abet the principal crimes committed by state actors, in some cases corporate actors have perpetrated the crimes directly on their own or jointly with the state. If the facts suggest that the corporate actor is likely to be responsible by omission, rather than commission, then practitioners may need to consider alternatives to pursuing criminal responsibility. There are instances where corporate actors are criminally responsible by omission under theories of criminal negligence, corporate director or business owner responsibility, and civilian superior responsibility.⁴⁵ However, practitioners should also explore the prospect of bringing civil claims for a variety of torts which may be more suited to liability by omission, including ordinary negligence.⁴⁶ There may also be administrative claims available, such as by filing a complaint with the state agency that regulates the relevant industry, which may curtail business operations or impose a financial penalty for violating the law.⁴⁷

As such, practitioners would be well-served by not focusing solely on criminal responsibility, even if the company appears to be engaged in corporate crimes.⁴⁸ A criminal case entails the highest evidentiary standard for overcoming the burden of proof beyond a reasonable doubt. That burden may be borne by a state prosecutor but only if the state agrees to take up the case and pursue a conviction, so it is worth considering whether other accountability mechanisms are available. Civil or administrative claims can also be brought to supplement – rather than replace – criminal justice.

Civil claims can broaden the remedies available for affected communities seeking compensation or injunctive relief (an order compelling a party to act or stop acting) in proceedings that generally have a lower evidentiary threshold. While in some jurisdictions a civil claim can be brought as part of criminal proceedings with victims joining as civil parties, in others civil claims may be filed in parallel to the prosecution of corporate actors. For instance, after Chiquita and Lafarge pled guilty upon being prosecuted for terrorism charges in the United States, civil claims were filed on behalf of affected communities to seek remedy for the harm the companies caused. While the civil case against Lafarge is ongoing, the civil trial against Chiquita resulted in a historic verdict holding them liable.⁴⁹

2.2.3 STRATEGIC CONSIDERATIONS

Once a practitioner concludes that a case is viable in terms of the facts and the law, they can assess the strategic considerations to determine whether the advantages of bringing a case outweigh the disadvantages.

The predominant strategic consideration for practitioners should be the interests of the rights holders affected. As described above, this requires engagement at early stages to build trust and determine their needs and interests. Even in cases where representatives of affected communities approach practitioners seeking assistance, different actors within the community may have different preferences and needs. In their early engagement with rights holders, practitioners can determine any potential conflicting interests between members of civil society and rights holders. For example, civil society tends to seek broad policy change that may entail setting precedent using a novel legal theory, whereas

45 In seeking to hold a parent company, or an individual affiliated with it, criminally responsible for failing to prevent illegal conduct by its subsidiary, the facts that need to be shown will depend on the legal theory under the applicable law. Nonetheless, in nearly all cases it would be valuable to present evidence that the parent company did not just have an ownership stake in the subsidiary but exercised operational control over the business segment in which criminal activity is alleged to have been committed. Interview with civil society practitioners 3 and 4, 24 January 2024.

46 The civil litigation against Chiquita in the United States relied on ordinary principles of negligence as applicable under Colombian law to find the company liable. Jason P. Hipp and others, “The Chiquita verdict expands international human rights liability for corporate conduct abroad”, 26 July 2024, <https://tinyurl.com/ys2j268c>.

47 Interview with civil society practitioner 22, 13 February 2025.

48 Interview with law enforcement official 5, 13 May 2024.

49 EarthRights International, “Colombian victims win historic verdict over Chiquita: Jury finds banana company liable for financing death squads”, 10 June 2024, <https://tinyurl.com/526s65wu>; France 24, “Lafarge faces civil suit in US led by Yazidi Nobel laureate”, 15 December 2023, <https://tinyurl.com/3xrrc5xw>.

rights holders may prefer swift legal proceedings to provide urgent compensation to those harmed.⁵⁰ There are no simple solutions for how to handle such strategic differences, yet the practitioners interviewed described navigating these tensions via sustained engagement with affected communities from an early stage.⁵¹

A related consideration is whether and to what extent the affected community of rights holders has organized to collectively seek remedy for the harm. An engaged and mobilized community can support investigative and advocacy efforts.⁵² For example, in the prosecution of Ford executives in Argentina, victims' relatives began mobilizing to advocate for truth and justice for their communities in the early 1980s, years before litigation commenced. In so doing, these communities gained valuable experience in collecting evidence, understanding the law and its limitations, resolving disagreements about accountability strategies, and conducting advocacy outside the courtroom.⁵³

Another strategic consideration is the availability and adequacy of civil society partners in bringing the case. Partnerships have proven indispensable to corporate crimes cases for various reasons, chief among them that holding powerful corporations to account requires tremendous resources and broad expertise that is more likely to be found among a team of organizations with diverse roles rather than by a single actor stretched beyond its means.⁵⁴ While it is common for legal practitioners to network with one another, the interdisciplinary nature of corporate crimes cases lends itself to diverse partnerships beyond the field of human rights including with journalists, academics and economists, among others.⁵⁵

CASE STUDY

3

The prosecution of Chiquita executives in Colombia, for example, may not have been initiated but for the decision by EarthRights International, a US-based human rights NGO that represents Colombian victims and survivors, to cooperate with the George Washington University Civil and Human Rights Clinic and the National Security Archive. The National Security Archive proved instrumental in uncovering key documents identifying the executives investigated by US law enforcement agencies prior to Chiquita pleading guilty to making payments to US-designated terrorist organizations in Colombia in 2007. Colombian law enforcement officials had previously been refused this information by US Department of Justice officials, but the National Security Archive obtained it via Freedom of Information (FOI) requests.⁵⁶

50 See, for example Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), p. 39 (“For example, in the KiK case, achieving compensation was key priority for the victims, while unions wanted to pursue litigation for corporate accountability.”).

51 Interview with civil society practitioners 3 and 4, 24 January 2024; Interview with civil society practitioner 5, 27 February 2024.

52 Interview with civil society practitioner 19, 7 October 2024; Interview with civil society practitioner 1, 3 January 2024; Interview with civil society practitioner 14, 28 March 2024; Interview with rights holder 8, 26 March 2025; Interview with civil society practitioner 22, 21 January 2025. To be sure, there are counter-examples such as the Lafarge case where rights holders generally prefer anonymity to collective action. Interview with rights holder 3, 7 March 2024; Interview with civil society practitioners 3 and 4, 24 January 2024; Interview with civil society practitioner 5, 27 February 2024.

53 Interview with civil society practitioner 14, 28 March 2024.

54 Interview with civil society practitioners 3 and 4, 24 January 2024; Interview with civil society practitioner 5, 27 February 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024; Comments by civil society practitioner 20, CCW, July 2024; Comments by civil society practitioner 24, CCW, July 2024; Correspondence with rights holder 9, 25 May 2025.

55 Comments by law enforcement official 11, CCW, July 2024; Comments by law enforcement official 9, CCW, July 2024; Comments by civil society practitioner 14, CCW, July 2024; Comments by civil society practitioner 24, CCW, July 2024. See also OSJI, *Strategic Litigation Impacts: Insights from Global Experience* (previously cited), p. 91 (“The Litigator Should Be Part of a Multidisciplinary Team”).

56 Interview with civil society practitioner 8, 9 April 2024; Interview with civil society practitioner 7, 9 April 2024; Interview with law enforcement official 4, 18 March 2024.

Another consideration is the vulnerability of the company to legal action in terms of its resources, reputation, or otherwise. Metssa Congo, for example, was viewed by practitioners as vulnerable to legal action because it appeared to lack the resources necessary to ward off a sustained legal and media campaign.⁵⁷ Practitioners should consider the resources available to the company, how it has previously deployed them to address similar legal action, and whether it is sensitive to reputational or public relations harm.

A paramount strategic consideration is the capacity and interest of the relevant law enforcement officials – including prosecutors, police and investigative judges – to take up the case. Practitioners should review carefully whether there are specialized units responsible for the relevant crimes, the budgets allocated to them, and their case dockets to determine whether similar cases have previously been investigated or prosecuted.⁵⁸ It is helpful to identify whether law enforcement agencies are operating subject to criminal justice policies applicable to a prospective case, including those prioritizing the prosecution of corporate crimes or permitting no safe haven for perpetrators of international crimes in their jurisdiction.⁵⁹

All strategic considerations are, to some degree, affected by the political climate in the relevant jurisdiction. The political considerations are extensive and range from whether the case is likely to draw media attention to whether the government may influence – directly or indirectly – key state officials to be supportive, neutral or adversarial toward the case.⁶⁰ For example, a former Indian police official in charge of the criminal investigation of UCC for the Bhopal tragedy disclosed that the Indian Ministry of External Affairs had asked the Central Bureau of Investigation not to pursue extradition of the American executives responsible.⁶¹ The risk of extralegal influence depends on the independence of law enforcement authorities; however, as this example illustrates, it is common for state officials to be subjected to political pressure.

The political context may change rapidly, so practitioners should remain vigilant and consider not only *whether* but *when* to proceed with a case. The issue of timing is pervasive in strategic litigation efforts and is often outside of a practitioner's control. However, in certain circumstances it may be helpful to consider whether a case would have greater impact if filed urgently or if it would be beneficial to wait for more suitable conditions, for example to evaluate the outcome of other ongoing litigation that may clarify the legal framework.⁶²

The considerations discussed in this chapter are not exhaustive. There are also potential disadvantages to bringing a case, such as the risks to various actors involved. The next chapter addresses lessons learned in identifying and mitigating these risks.

57 Interview with civil society practitioner 22, 13 February 2025; Interview with civil society practitioner 1, 4 January 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024.

58 Interview with civil society practitioner 1, 3 January 2024; Interview with law enforcement official 1, 7 February 2024; Interview with law enforcement official 2, 3 June 2024; Comments by civil society practitioner 24, CCW, July 2024; Comments by law enforcement official 11, CCW, July 2024; Comments by civil society practitioner 6, CCW, July 2024.

59 Comments by law enforcement officials 8, 11 and 12, CCW, July 2024; Comments by civil society practitioner 24, CCW, July 2024.

60 Comments by civil society practitioners 6 and 24, CCW, July 2024.

61 Interview with civil society practitioner 10, 13 May 2024. See also Deccan Herald, "Govt compromised Bhopal Gas tragedy case: former CBI official", 4 February 2011, <https://tinyurl.com/5aau5nn4>.

62 Interview with civil society practitioner 6, 8 February 2024.

3 RISK ASSESSMENT AND MITIGATION



OVERVIEW OF LESSONS LEARNED

- Conduct a risk assessment to identify and mitigate all foreseeable risks to stakeholders before pursuing a case and at regular intervals throughout litigation.
 - To identify risks, consider those affecting communities, practitioners, and the case itself.
 - To assess risks, allocate risk rating based on likelihood and impact of risk materializing and decide on risk tolerance
 - To mitigate risks, consider:
 - Creating a security plan for emergencies to mitigate risks to physical security
 - Using complex passwords, VPNs, and encrypted communication to mitigate risks to digital security
 - Conducting a defamation review ahead of any publicity and operating in coalition with others to mitigate the risk of SLAPP suits

All strategic litigation efforts entail risks including to rights holders, practitioners and the integrity of the case itself. To seek accountability in such cases is an inherently risky endeavour because doing so challenges powerful corporations and the structures that support them. The experiences of stakeholders in the case studies presented in this Handbook are no exception. Thus, it is best practice to conduct a thorough risk assessment to identify and mitigate all foreseeable risks to stakeholders – including practitioners, rights holders and others – before deciding whether to pursue a case and at regular intervals throughout the litigation process.⁶³

3.1 IDENTIFYING RISKS

The first and foremost consideration in risk assessment should be the risks to affected communities, including rights holders belonging to marginalized groups. These rights holders will likely face aggravated risks as a result of their involvement in a corporate crimes case, whether as a party, witness or advocate. These risks are wide-ranging and include re-traumatization,⁶⁴ violence and threats of violence,⁶⁵ and other reprisals including legal action taken by corporate actors and state authorities.⁶⁶

63 Interview with civil society practitioners 3 and 4, 24 January 2024; Interview with rights holder 2, 15 February 2024; Interview with rights holder 3, 7 March 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024; Interview with rights holder 4, 3 February 2025; Interview with civil society practitioner 17, 22 January 2024; Interview with civil society practitioner 18, 1 February 2024; Interview with civil society practitioner 22, 13 February 2025; Interview with civil society practitioner 23, 10 March 2025.

64 Comments by civil society practitioner 6, CCW, July 2024; Interview with rights holder 1, 10 January 2024.

65 Interview with rights holder 2, 15 February 2024; Comments by rights holder 2, CCW, July 2024; Interview with rights holder 3, 7 March 2024; Correspondence with rights holder 9, 25 May 2025.

66 Comments by civil society practitioner 11, CCW, July 2024; Interview with civil society practitioner 17, 22 January 2024; Interview with rights holder 4, 3 February 2025; Interview with civil society practitioner 22, 13 February 2025.

There is also a risk of inter- or intra-communal tension resulting from disagreement about the case, which can be instigated or exacerbated by the accused corporate actors.⁶⁷

While the risks to communities ought to be the primary consideration, the risks that practitioners face in bringing such cases should not be underestimated as they may be seen, rightly or wrongly, as the source of efforts to hold a corporate actor accountable. Practitioners may also be members of marginalized groups and even rights holders belonging to the affected community.⁶⁸ The risks practitioners face include strategic lawsuits against public participation (SLAPPs), whether targeting an individual or a civil society organization, and other reprisals such as threats or acts of violence as well as surveillance and smear campaigns by the accused, their agents, and/or their supporters.⁶⁹ Another risk to practitioners that is often overlooked involves succumbing to burnout, a condition resulting from chronic stress which is rife among human rights advocates, particularly when practitioners face long and gruelling legal battles with no guarantee of success.⁷⁰ The risk of burnout can in part be mitigated with self-care and staff care within civil society organizations and communities.⁷¹

Finally, there are also risks to accountability efforts including extralegal influence that would impinge on or delay the case.⁷²



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For example, an investigation by a military prosecutor based in the DRC, which was launched following a complaint by a local NGO against a multinational corporation operating in the area, was proceeding apace before members of an armed group occupied the area in early 2025.⁷³ This turn of events could have compromised the prospect of accountability efforts in the DRC as law enforcement authorities fled the region, access to evidence was severely curtailed, and the case file being stored solely in hard copy at the local courthouse could have been looted or destroyed.⁷⁴

3.2 ASSESSING RISKS

As mentioned, practitioners should conduct a risk assessment at the start of and at regular intervals throughout the case. Once practitioners identify what risks are associated with the case, they can allocate a rating to each risk. Some practitioners have used qualitative ratings (e.g. low, medium, high) whereas others used quantitative ratings (e.g. 1-10), yet in either case it is worth distinguishing between the likelihood of the risk materializing and the impact if it does. These ratings can be visualized on a risk matrix to provide a visual representation of a case's risk profile.⁷⁵

67 Interview with civil society practitioner 1, 3 January 2024.

68 Interview with rights holder 7, 12 August 2024; Interview with rights holder 4, 3 February 2025; Correspondence with rights holder 9, 25 May 2025.

69 Interview with civil society practitioner 17, 22 January 2024; Comments by civil society practitioners 11 and 17, CCW, July 2024; Interview with rights holder 4, 3 February 2025.

70 Interview with civil society practitioner 6, 8 February 2024.

71 See generally Amnesty International, *Staying Resilient While Trying to Save the World*, 2020, <https://www.amnesty.org/en/documents/act10/3231/2020/en/>; OHCHR, *Manual on Human Rights Monitoring: Chapter 12 Trauma and Self-Care*, 2011, <https://tinyurl.com/37bb436k>; Medica Mondiale, *Developing a staff care concept as a feminist NGO*, 2022, <https://tinyurl.com/48spzhu>.

72 Interview with civil society practitioner 10, 13 May 2024; Comments by law enforcement official 9, CCW, July 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024.

73 Correspondence with rights holder 9, 25 May 2025; Interview with civil society practitioner 23, 10 March 2025.

74 The case file was retrieved at a later date. Interview with civil society practitioner 23, 10 March 2025.

75 For example, practitioners can adapt the risk assessment form developed by Amnesty International for instances of civil disobedience to the context of corporate crimes litigation. Amnesty International, *Civil Disobedience Risk Assessment Form* (Index: ACT 10/7574/2024), <https://www.amnesty.org/en/documents/act10/7574/2024/en/>.

Risk Matrix		Severity				
		Insignificant	Minor	Moderate	Severe	Existential
Likelihood	Almost Certain	Medium	High	Very High	Very High	Very High
	Likely	Medium	High	High	Very High	Very High
	Possible	Low	Medium	High	High	Very High
	Unlikely	Low	Low	Medium	Medium	High
	Rare	Low	Low	Low	Low	Medium

Practitioners can then decide on their risk tolerance in determining how to mitigate and respond to identified risks. This risk assessment should be conducted with input from third parties including communities of rights holders who can describe their views of the relevant risks, the likelihood of their occurrence, and the resultant harm.⁷⁶ For instance, a rights holder interviewed for this Handbook was forced to flee his home after receiving multiple threats to him and his family following public statements he made in support of the Lundin case. In his words, these threats have meant that his “life will never be the same again”.⁷⁷ While he remains unwavering in his support of the case, the rights holder emphasised the importance of practitioners meaningfully consulting with stakeholders before taking legal action.

3.3 MITIGATING RISKS

While practitioners can seek to mitigate unacceptably high risks on a case-by-case basis, some lessons on mitigation for common categories of risk are presented below. In all cases, practitioners should conduct an independent assessment of the risk as applicable to their context and not rely solely on the lessons for mitigation addressed here.

Since it is not possible to completely mitigate all risk, ultimately a decision will need to be made about whether existing risks can be tolerated. Not all stakeholders have the same level of risk tolerance. For example, in one corporate crimes case, a security adviser recommended that a rights holder temporarily evacuate his home upon receiving threats from employees of the company, but the rights holder refused.⁷⁸ Other rights holders refused to evacuate their homes despite facing considerable personal risk, but felt compelled to do so when those risks extended to their family members.⁷⁹ Practitioners should, therefore, only take action with a foreseeable risk to persons – whether staff members, rights holders or others – with their free, prior, and informed consent.⁸⁰

⁷⁶ Comments by rights holder 2, CCW, July 2024.

⁷⁷ Interview with rights holder 2, 15 February 2024; Correspondence with rights holder 2, 29 August 2024.

⁷⁸ Interview with rights holder 8, 26 March 2025.

⁷⁹ Interview with rights holder 4, 3 February 2025; Interview with rights holder 2, 15 February 2024.

⁸⁰ Comments by civil society practitioner 6, CCW, July 2024; Interview with civil society practitioner 17, 22 January 2024; Interview with civil society practitioner 18, 1 February 2024; Comments by rights holder 2, CCW, July 2024.

3.3.1 RISKS TO PHYSICAL SECURITY

While risks to physical security vary, practitioners should consider foreseeable scenarios where such risks can manifest and develop security protocols to mitigate the likelihood of their occurrence.⁸¹ This can include instituting regular assessments for persons facing significant risk or before travel to insecure locations, employing need-to-know policies for sensitive information such as the location of their home or workplace, and protecting the identities of witnesses by using pseudonyms.⁸² Practitioners can also put emergency response plans in place to mitigate the effect of a physical threat and ensure the integrity of any evidence in storage, including tactics for de-escalation, evacuation and contacting emergency support.⁸³

A security plan can prove vital in an emergency, as risks to physical security can materialize suddenly and without warning. The Good Practice Review published by the Humanitarian Practice Network explains that security plans have two major elements, standard operating procedures (SOPs) and contingency arrangements. According to the review, good practice recommends setting out “objective criteria” for determining how one determines whether to hibernate, relocate or evacuate in response to a security crisis.⁸⁴ Such a contingency arrangement can play a crucial role in enabling practitioners and rights holders to mitigate harm when a crisis ensues.

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For instance, a practitioner based in Nigeria was physically attacked in his home by armed men who threatened to kill him and his family if he did not stop his work on the corporate crimes case against Shell, Eni and Malabu. The practitioner was hospitalized and forced to seek refuge in another country.⁸⁵ In an interview for this Handbook, the practitioner and his colleagues shared the challenges involved in providing urgent support and the logistical hurdles associated with evacuating him out of the country at short notice. An emergency response plan, which involved alerting key actors such as international aid organizations and foreign governments that could support him in seeking asylum, may have significantly mitigated the resulting harm and enabled him to seek refuge immediately.⁸⁶

The challenges associated with mitigating the risk of physical harm to stakeholders, as occurred in this case, also underscores the importance of seeking the informed consent of affected persons before pursuing a case that puts them at risk.⁸⁷

While there may not always be sufficient resources to enable persons at risk to seek refuge in a safer location, practitioners ought to consider informing law enforcement officials if any threats appear to be an attempt by a corporate actor or their agents to obstruct justice.

81 Interview with rights holder 4, 3 February 2025; Interview with civil society practitioner 23, 10 March 2025.

82 Interview with rights holder 2, 15 February 2024; Interview with civil society practitioner 2, 29 February 2024; Interview with rights holder 1, 10 January 2024.

83 Comments by civil society practitioner 11, CCW, July 2024; Interview with rights holder 4, 3 February 2025; Interview with civil society practitioner 23, 10 March 2025.

84 Humanitarian Practice Network, Good Practice Review 8: Humanitarian Security Risk Management (Third Edition), 2025, <https://tinyurl.com/2euhta9e>, pp. 204-218.

85 Interview with rights holder 4, 3 February 2025.

86 Interview with civil society practitioner 11 and rights holder 4, 28 May 2024.

87 Interview with rights holder 4, 3 February 2025; Interview with rights holder 2, 15 February 2024; Interview with civil society practitioner 17, 22 January 2024; Comments by civil society practitioner 25, CCW, July 2024; Interview with rights holder 8, 26 March 2025.

In the Lundin case, for example, witnesses reported receiving threats and offers of bribes by persons they suspected of being affiliated with the company, which led Swedish authorities to open an investigation into obstruction of justice.⁸⁸ Although the investigation was closed for lack of evidence of a link to Lundin executives, it was later re-opened after additional witnesses came forward.⁸⁹ An affected community member involved in the Lundin case, who was forced to seek refuge upon receiving threats following their public statement about the case in a prominent news article, said in an interview for this Handbook that investigations of alleged obstruction of justice are a “welcome step” because they place a spotlight on the company’s conduct and reduce threats against vulnerable stakeholders, even though protection remains inadequate.⁹⁰

3.3.2 RISKS TO DIGITAL SECURITY

A practitioner’s digital security is a prerequisite to other facets of their security. For that reason, practitioners should take all reasonable steps to protect their own digital security, including by protecting their devices and applications with the most up-to-date software, unique, complex passwords, and two-factor authentication; surfing the web using virtual private networks (VPNs); and protecting their digital communications using applications that are end-to-end encrypted. For more guidance, see Amnesty International’s Digital Security Resource Hub.⁹¹

3.3.3 RISK OF SLAPP SUITS

The risk of a practitioner facing a SLAPP suit by a corporate actor is growing.⁹² SLAPP suits are vexatious legal actions or threats thereof brought to intimidate, deter or punish persons who seek to participate and express themselves on matters of public interest. SLAPPs can often be identified by their partially or fully unfounded claims, the aggressive or disproportionate remedies sought, and/or the use of dilatory or selective tactics to deplete the resources of their target and restrict or penalize the exercise of human rights in the civic space. The cost of fighting these legal actions can put extreme financial and other pressure on human rights defenders that force them to repurpose their limited resources to defend the lawsuit.

The most common form of SLAPP is a claim of defamation for which the company may seek compensation – and in extreme cases, where available in a jurisdiction, also criminal penalties – although many other legal claims can also amount to SLAPP suits.⁹³ The community leader behind the Metssa case faced a SLAPP suit for defamation before it was promptly dismissed when the company did not show up in court following

88 Dagens Nyheter, “Uppgifter till DN: Vittnen i Lundin-utredningen attackerade och hotas” [“Information to DN: Witnesses in the Lundin investigation are being attacked and threatened”], 6 August 2018, <https://tinyurl.com/42tszm5t>.

89 Dagens Nyheter, Lundinvittnen har hotats – nu läggs utredningen ned, 13 April 2023, <https://tinyurl.com/5fht6tvc>; Martin Schibbye, Vittnen i Lundinrättegången kan ha hotats, Blank Spot, 14 August 2024, <https://tinyurl.com/mex5ha6c>.

90 The witness clarified that this reduction in threats to stakeholders may not always apply as some individuals may face increased harassment if they are seen as having contributed to the opening of the investigation. Correspondence with rights holder 2, 29 August 2024.

91 Amnesty International Security Lab, “Digital Security Resource Hub”, <https://securitylab.amnesty.org/digital-resources/>.

92 Interview with rights holder 4, 3 February 2025; Interview with civil society practitioner 22, 13 February 2025; Interview with civil society practitioner 17, 22 January 2024; Interview with civil society practitioner 18, 1 February 2024; Interview with civil society practitioner 1, 3 January 2024; Interview with rights holder 8, 26 March 2025.

93 Amnesty International, *Switzerland: Corporate SLAPP Actions Against Human Rights Defenders Must End to Respect their Right to Freedom of Expression* (Index: EUR 43/7737/2024), 21 February 2024, <https://www.amnesty.org/en/documents/eur43/7737/2024/en/>. See also Judit Bayer, Petra Bard, Lina Vosyliūtė, and Chun Luk, *Strategic Lawsuits Against Public Participation (SLAPP) in the European Union: A Comparative Study*, 30 June 2021, <https://tinyurl.com/2krhaywc> (identifying SLAPPs for privacy and data protection, terrorism, money laundering, irregular migration, copyright infringement, and tax evasion); Business and Human Rights Resource Centre, *SLAPPs in Latin America: Strategic Lawsuits Against Public Participation in the Context of Business and Human Rights*, 2022, <https://tinyurl.com/vk965xkm> (identifying SLAPPs for trespass, property damage, rioting, and instigation to strike).

a media campaign in his defence.⁹⁴ A practitioner and rights holder in the Shell, Eni, and Malabu case was charged with cyberstalking for his advocacy around the case, but those charges were dropped once lawyers providing support *pro bono* were able to demonstrate that there was no basis for the allegations.⁹⁵

There is inherent risk in engaging in public advocacy because drawing attention to a corporate crimes case may also bring unwanted attention to human rights advocates. Practitioners should therefore conduct a risk assessment before pursuing publicity.⁹⁶ An essential way to mitigate the harm of a SLAPP is to conduct a legal review of any publication before its release, including by an attorney with expertise in the applicable defamation law.⁹⁷ Practitioners interviewed for this Handbook underscored that their best defence lay in being able to demonstrate that all public claims are substantiated by ample evidence that is admissible in court.⁹⁸ As the truth is generally a defence to allegations of defamation, practitioners who can prove their claims are accurate and were made in good faith are more likely to emerge vindicated.⁹⁹

This may be of limited respite for practitioners who still have to contend with years of nerve-racking litigation and exorbitant legal fees as they fend off a baseless SLAPP. In such instances, there are other measures that can be taken to lower the likelihood of facing a SLAPP suit for defamation.¹⁰⁰ First, familiarity with the corporation accused of criminal responsibility can help determine whether they are likely to be litigious, including by evaluating their reputation and track record in handling negative publicity.¹⁰¹ If a company is known to be litigious, greater risk mitigation can be pursued including by providing it with a right to reply in advance of making any public statement about them, or one can reconsider publicity altogether. Second, knowing the law in the relevant jurisdiction and whether there are any anti-SLAPP protections can provide reassurance that a frivolous lawsuit will be dismissed rapidly.¹⁰² Third, practitioners can avoid being named in any publicity when facing a high risk of a SLAPP. Listing an institutional author instead, for example, can reduce risk to individuals.¹⁰³ Finally, practitioners can seek opportunities to operate in coalition with others, particularly reputable, well-resourced and well-networked NGOs. There is power in numbers such that collective action can also deter corporations from singling out an easy target to intimidate.¹⁰⁴

Operating in coalition proved critical for one practitioner who relied on legal, financial and logistical support to counter a frivolous prosecution brought by Nigerian law enforcement authorities that sought to deter civil society actors from publicizing corruption allegations. This was made possible by a series of key relationships the practitioner formed with international NGOs.¹⁰⁵ A rights holder who faced a SLAPP related to another case managed to compel the company to withdraw the suit by leveraging their civil society partnerships to launch a media campaign that exposed the legal claims to be frivolous, which affected the company's reputation.¹⁰⁶

94 Interview with rights holder 8, 26 March 2025.

95 Interview with rights holder 4, 3 February 2025.

96 Interview with civil society practitioner 17, 22 January 2024.

97 Interview with civil society practitioner 17, 22 January 2024; Interview with rights holder 4, 3 February 2025.

98 Interview with civil society practitioner 17, 22 January 2024; Interview with civil society practitioner 19, 7 October 2024; Interview with rights holder 8, 26 March 2025; Interview with civil society practitioner 22, 13 February 2025; Interview with rights holder 4, 3 February 2025.

99 Interview with civil society practitioner 17, 22 January 2024; Interview with rights holder 4, 3 February 2025; Interview with civil society practitioner 22, 13 February 2025; Interview with rights holder 8, 26 March 2025.

100 See generally Coalition Against SLAPPs in Europe (CASE), Case Guidebook: How to prevent SLAPPs or get help if it's too late, 2024, <https://tinyurl.com/2kuxn7re>.

101 Interview with civil society practitioner 17, 22 January 2024; Interview with civil society practitioner 19, 7 October 2024.

102 Interview with civil society practitioner 17, 14 May 2024.

103 Interview with civil society practitioner 17, 22 January 2024.

104 Interview with civil society practitioner 1, 3 January 2024; Interview with law enforcement official 4, 18 March 2024; Interview with civil society practitioner 18, 1 February 2024; Interview with civil society practitioner 22, 13 February 2025; Interview with rights holder 8, 26 March 2025.

105 Interview with rights holder 4, 3 February 2025.

106 Interview with civil society practitioner 22, 13 February 2025; Interview with rights holder 8, 26 March 2025.

4 CIVIL SOCIETY INVESTIGATIONS



OVERVIEW OF LESSONS LEARNED

- Set at least two overarching objectives for a civil society investigation of corporate crime:
 - Collecting admissible evidence to determine whether there are reasonable grounds to believe that a corporate actor is responsible for crimes
 - Collecting leads to further evidence that demonstrate to reasonable law enforcement officials the feasibility of investigating
- Collect evidence from open sources and either take a full or first general account from witnesses using international standards for proper questioning techniques
- Collect documentary evidence from state authorities such as public records accessible via corporate registries, disclosure in other litigation, and filing freedom of information requests where available.
- Collect linkage evidence that overcomes the evidentiary gap in a case by developing a perpetrator-focused evidence collection strategy.

Underlying every corporate crimes case is a criminal investigation that uncovers evidence of a corporate actor's violation of the law. Although law enforcement officials may regard themselves to be the sole agents that conduct investigations, this is not the case. The collection of evidence, and leads thereto, by members of civil society and affected communities has underpinned prosecutions that may never have been otherwise initiated. The aim of a civil society investigation in a corporate crimes case, within the meaning of this Handbook, is generally to collect evidence and leads that will persuade law enforcement officials to take up a case.

In so doing, it is strategic for practitioners to review any guidance provided by prosecutorial authorities in the relevant jurisdiction.¹⁰⁷ In that regard, practitioners can review the guidelines produced by the Office of the Prosecutor of the International Criminal Court (ICC-OTP), the European Union Agency for Criminal Justice Cooperation (Eurojust) and the Genocide Network (hereinafter the "Law Enforcement Guidelines"), which are designed to assist members of civil society with collecting evidence that will be admissible in court – albeit not specifically with respect to corporate crimes cases.¹⁰⁸ While practitioners need to use their judgement to determine whether and to what extent these guidelines are applicable to their practice, this chapter is intended to be read in conjunction with those guidelines.

¹⁰⁷ Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024; Comments by civil society practitioner 24, CCW, July 2024; Interview with law enforcement official 2, 3 June 2024; Interview with law enforcement official 1, 7 February 2024; Comments by law enforcement official 11, CCW, July 2024. See, for example Argentina Ministerio Público Fiscal y Procuración General de la Nación, "Protocolo de medidas previas para la investigación de la responsabilidad empresarial en causas de lesa humanidad" ["Protocol of preliminary measures for the investigation of corporate responsibility in cases of crimes against humanity"], 2014, <https://tinyurl.com/2ehsdu8m>.

¹⁰⁸ ICC-OTP and others, *Documenting International Crimes and Human Rights Violations for Accountability Purposes: Guidelines for Civil Society Organizations*, 2022, <https://tinyurl.com/avvd6yxm> (Law Enforcement Guidelines), pp. 5-7.

4.1 PLANNING AN INVESTIGATION

4.1.1 GENERAL PRINCIPLES

The start of any investigation plan requires establishing the general principles that will serve as a code of conduct for the investigation. Stakeholders interviewed for this Handbook recommended that practitioners consider adopting the general principles also found in the Law Enforcement Guidelines: to do no harm; to obtain informed consent; and to be objective, impartial and independent.¹⁰⁹ These principles are important to follow for ethical reasons and because they establish the credibility of the investigation which will be placed under scrutiny by law enforcement and, if the case proceeds, the corporate actor's defence attorneys.

While it is true that civil society practitioners are not impartial insofar as they represent the interests of their clients, a zealous advocate that demonstrates bias in their investigative methodology does their client a disservice because this is likely to be uncovered by a competent defence attorney in the course of litigation. This is especially true if NGO representatives expect to take the witness stand and be subject to cross-examination.¹¹⁰ In the Lundin case, for example, the defence attorneys for the accused have sought to discredit NGO reporting on the company's operations in South Sudan as biased and unreliable.¹¹¹ As such, it is helpful for a practitioner to be able to demonstrate that they conducted their investigation in an objective, impartial and independent manner by taking care to avoid conflicts of interest and scrutinize the facts objectively and without confirmation bias.¹¹²

4.1.2 SETTING THE OBJECTIVES OF AN INVESTIGATION

Based on interviews with stakeholders for this Handbook, practitioners are advised to have two overarching objectives guide their investigations:

- 1** The collection of admissible evidence to determine whether there are reasonable grounds to believe that a corporate actor is responsible for crimes within a particular jurisdiction; and
- 2** The collection of leads to further evidence that demonstrate to reasonable law enforcement officials the feasibility of investigating.¹¹³

A lead is any item or information which may not be admissible or incriminating in and of itself but which can direct an investigator to admissible evidence.

¹⁰⁹ Interview with civil society practitioner 1, 3 January 2024; Interview with law enforcement official 2, 3 June 2024; Comments by civil society practitioners 6 and 25, CCW, July 2024; Comments by law enforcement officials 11 and 12, CCW, July 2024.

¹¹⁰ Interview with civil society practitioner 1, 3 January 2024.

¹¹¹ Orrön Energy (formerly Lundin Petroleum), Lundin: Sudan Legal Case: 1997 - 2003, NGO Reports, <https://tinyurl.com/3fxw37j6>; Civil Rights Defenders, Report 13: Part Three of Ian Lundin's defence's opening presentation, 5 February 2024; Steven Kay QC and others, *A Report on the Lundin Case: Executive Summary*, 2021, <https://tinyurl.com/m2hufz64>.

¹¹² Law Enforcement Guidelines (previously cited), p. 7. The commitment to conduct an investigation in an objective, impartial and independent manner means that a practitioner's initial theory of the case may change as the investigation unfolds and more facts come to light, which could complicate or even eliminate the prospect that a corporate actor may be held criminally responsible. This possibility should be raised with the complainants and affected community members at the start of the litigation process and is a further reason for managing expectations from an early stage.

¹¹³ Interview with civil society practitioner 1, 3 January 2024; Interview with law enforcement official 1, 7 February 2024; Interview with law enforcement official 3, 15 February 2024; Interview with law enforcement official 2, 3 June 2024; Interview with law enforcement official 12, 20 December 2024.

While prosecutors are generally obligated to investigate and prosecute once there is sufficient evidence in civil law jurisdictions, practitioners have reported that prosecutors have been reluctant to proceed despite a “reasonable grounds” standard having been satisfied by the evidence they have collected. This reluctance is even more glaring in common law jurisdictions where prosecutors retain broad discretion to decide whether to indict. This is why collecting further leads to demonstrate the feasibility of an investigation that can lead to a conviction of a corporate actor, as reflected in objective (2) above, may prove necessary.

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An illustrative example of the need to demonstrate the feasibility of an investigation by law enforcement arose in 2013 when the Netherlands Public Prosecution Service (NPPS) dismissed a criminal complaint filed by the Palestinian human rights organization Al Haq against a company for alleged complicity in war crimes resulting from the provision of cranes used to construct illegal Israeli settlements and the separation barrier in the Occupied Palestinian Territory. In its Letter of Dismissal, the NPPS stated that although “participation... by Dutch persons and legal entities” in “[t]he construction of the barrier and/or settlement” is “a crime proscribed in Article 5 of the International Crimes Act”, the company had already terminated this activity and “[n]ecessary follow-up investigations would – also given the complexity of the case – consume a significant amount of resources of the police and/or judiciary”.¹¹⁴ Moreover, the NPPS concluded that “further investigation in Israel would most probably not be possible due to the lack of cooperation from the Israeli authorities”.¹¹⁵ This decision exemplifies that satisfying the legal elements for criminal responsibility to a “reasonable grounds” standard is a necessary but not sufficient objective, as prosecutors are reluctant to prioritize resources for a case that has a low chance of reaching court, let alone leading to a conviction.¹¹⁶

Similar grounds were provided by the NPPS for declining to open an investigation following Amnesty International’s submission of its report alleging that Shell was complicit in crimes committed by the Nigerian military in repressing opposition to oil extraction from Ogoniland, Nigeria, in the 1990s. The NPPS determined that it could not establish a sufficient basis to open a criminal investigation into Shell for complicity in torture, murder, manslaughter or rape committed by the Nigerian military.¹¹⁷ Dutch prosecutors were able to establish that “a large scale raid on 43 Ogoni villages and Giokoo”, which led to numerous killings, “followed the request by Shell of March 1994”. They also determined that “Shell knew or should have known” that the Nigerian military would use “disproportionate force” in response.

114 NPPS, “Letter of Dismissal”, 13 May 2013, <https://tinyurl.com/mr2ztzfd>.

115 NPPS, “Letter of Dismissal” (previously cited).

116 Interview with law enforcement official 12, 20 December 2024.

117 Letter from International Crimes Unit of Netherlands Public Prosecution Service to Amnesty International, Analysis of AI report ‘A Criminal Enterprise? Shell’s involvement in human rights violations in Nigeria in the 1990s’ and underlying information, 11 December 2019, at Annex II.

However, they concluded that “[t]here is not enough evidence that Shell intended to have the demonstrators killed by the various Nigerian troops” and “[t]here is no sufficient realistic prospect that sufficient evidence can be gathered with regard to the intent and involvement of Shell in these incidents nor to reach a conviction, whereby the criminal case can be completed within a reasonable period of time”.¹¹⁸ In Amnesty International’s view, the evidence underlying its report established sufficient grounds for the NPPS to investigate Shell’s criminal responsibility including its intent such as by, for instance, conducting a search of the company’s offices in the Netherlands. Nonetheless, the NPPS’ reluctance to investigate was not solely based on a lack of evidence of intent but also the lack of “realistic prospect” that an investigation would manage to gather sufficient evidence for conviction.

The reluctance of law enforcement to investigate explains why practitioners would do well to go above and beyond establishing reasonable grounds of criminality by generating leads that will persuade law enforcement authorities that they have a winning case.¹¹⁹ A strong set of facts demonstrating a company’s illicit motivation for committing a crime,¹²⁰ a consciousness of guilt,¹²¹ or grave harm caused to rights holders may be motivating factors in this regard.¹²² Nonetheless, collecting evidence to such a high standard may not always be feasible or necessary in some jurisdictions where, for instance, law enforcement officials such as investigative judges are willing to take on the burden of investigating.

4.1.3 IDENTIFYING THE EVIDENTIARY GAP

Before developing an evidence collection strategy, a practitioner must understand what evidence they need to collect. If a practitioner has conducted a preliminary assessment of the facts and law prior to pursuing a case, they will already have evidence to establish a reasonable suspicion that a corporate actor has an *actus reus* and perhaps also a *mens rea* under the applicable law. A practitioner can then determine what additional evidence will be required to satisfy the objectives of the investigation, as addressed above, by evaluating the crimes and modes of responsibility element-by-element and comparing them to what is already known.¹²³

The evidence yet to be collected is known as the evidentiary gap.

A common evidentiary gap in corporate crimes cases is the collection of linkage evidence; that is, evidence that links a particular corporate actor to the crime. This is to be contrasted with crime base evidence, the body of evidence establishing the principal crime(s) occurred. Practitioners generally report less difficulty in collecting crime base evidence than linkage evidence. This is because corporate actors are often removed from the direct perpetrators; while the crimes were being committed, they may have been in a distant boardroom.

118 Letter from International Crimes Unit of Netherlands Public Prosecution Service to Amnesty International (previously cited), at Annex II.

119 Comments by law enforcement officials 1 and 11, CCW, July 2024; Interview with law enforcement official 12, 20 December 2024.

120 Comments by law enforcement official 11, CCW, July 2024; Comments by civil society practitioner 14 and rights holder 7, CCW, July 2024.

121 Evidence of a corporate actor’s consciousness of guilt may include anything that demonstrates they may have tried to conceal information, misrepresent the facts and/or deceive or defraud members of civil society or the wider public. For example, see Leigh A. Payne and others, *Economic Actors and the Limits of Transitional Justice: Truth and Justice for Business Complicity in Human Rights Violations*, 2022, p. 65 (“[I]n 2009... [La Fronterita] provided false information regarding management of the mill in 1975. Similarly, in 2015, it falsely denied that it had employed a group of workers. Moreover, in 2016 the company ignored the prosecutor’s documentation requests, which forced a search ordered by the judge in 2016. This behaviour led the public prosecutor to require the judge to indict the company for ‘procedural fraud.’”).

122 Comments by law enforcement official 1, CCW, July 2024.

123 Interview with civil society practitioner 17, 22 January 2024; Comments by law enforcement official 1, CCW, July 2024.

For example, the crime base evidence of the Argentinian military regime's raids on factories in which unionized workers were killed, tortured and disappeared was well known, whereas the companies' awareness and/or involvement in these raids was not. In developing the Ford case, practitioners managed to collect linkage evidence establishing that company managers provided information about their workers to military officials, provided logistical assistance including access to company vehicles, and were sometimes present during interrogations.¹²⁴

4.1.4 DEVELOPING AN EVIDENCE COLLECTION STRATEGY

Once a practitioner has identified the evidentiary gap, they can begin to consider how that gap may be filled. In so doing, practitioners should take care to understand the applicable law regarding the admissibility of evidence in the relevant jurisdiction, which will require consultation with experienced counsel.¹²⁵ Even where evidence is admitted, its probative value can be diminished if best practices for evidence collection and storage are not followed, for example the practice of establishing the chain of custody of documentary or physical evidence.¹²⁶

Practitioners can begin by consulting open sources and taking testimony from rights holders who were harmed by, or are otherwise familiar with, the corporate activity at issue. While essential to building the crime base, information collected from affected communities will likely be insufficient to fill the evidentiary gap with respect to linkage.

To collect linkage evidence, practitioners can develop a perpetrator-focused evidence collection strategy that establishes the alleged perpetrator's conduct and knowledge at key points in the scheme of events.¹²⁷ This can prove challenging because perpetrators engaging in illicit conduct will usually avoid leaving clear traces. As such, practitioners can consider employing techniques more commonly used by law enforcement, investigative journalists and private investigators to understand the inner workings of a company including its corporate structure, organizational hierarchy, systems of communications, and internal policies and practices.¹²⁸ Some methods for collecting evidence in this way are addressed briefly in section 4.2.2.

Practitioners can also seek to overcome the evidentiary gap using an interdisciplinary approach drawing on the technical expertise of accountants, economists, historians, sociologists, journalists and others.¹²⁹ The Argentinian Public Prosecutor's office has, for instance, issued guidance for investigating corporate complicity in crimes against humanity that recognizes the value of an "interdisciplinary team made up of professionals in the economic sciences".¹³⁰ Commissioning experts in a specialized discipline can be resource intensive, so practitioners can consider partnering with others that have specialized expertise and, where available under the applicable law, request that public bodies with such expertise

124 Comments by civil society practitioner 14, CCW, July 2024. See also Victoria Basualdo, "The Ford Trial in Argentina: a worker's victory", 1 April 2019, <https://tinyurl.com/bdehkm44>.

125 Comments by law enforcement officials 1 and 11, CCW, July 2024.

126 The proper handling and storage of evidence did not arise in interviews conducted for the Handbook and is thus outside its scope. Practitioners can refer to the Law Enforcement Guidelines for an overview of the relevant international standards. See, for example Law Enforcement Guidelines (previously cited), p. 37, Annex 2: Chain of Custody Template.

127 See generally Ewan Brown and William H. Wiley, "International Criminal Investigative Collection Planning, Collection Management and Evidence Review", in Xabier Agirre Aranburu, Morten Bergsmo, Simon De Smet and Carsten Stahn (editors), *Quality Control in Criminal Investigation*, 2020, <https://tinyurl.com/48nvj7zy>, §8.2.2.

128 Comments by civil society practitioners 14 and 20, CCW, July 2024; Comments by law enforcement official 11, CCW, July 2024.

129 Comments by law enforcement officials 9, 11 and 12, CCW, July 2024; Comments by civil society practitioners 14 and 24, CCW, July 2024.

130 Argentina Ministerio Público Fiscal y Procuración General de la Nación, *Protocolo de medidas previas para la investigación de la responsabilidad empresarial en causas de lesa humanidad* (previously cited), p. 36.

contribute to an investigation by law enforcement. For example, practitioners in Argentina filed requests to the Bureau of Economic Research and Financial Analysis to assist prosecutors in analysing evidence of corporate crimes.¹³¹ This led Argentinian authorities specializing in money laundering and financial crimes to contribute to investigations and even join as parties to the proceedings.¹³²

Once practitioners have identified all feasible options for overcoming the evidentiary gap, they can develop an evidence collection strategy. Practitioners can re-evaluate their investigation plan at regular intervals as facts are uncovered, leads are generated, and the evidentiary gap narrows, until it is finally overcome.

4.2 CONDUCTING AN INVESTIGATION

While a comprehensive guide on how to investigate corporate crimes is beyond the scope of this Handbook, some lessons learned from recent corporate crimes practice are presented below. Practitioners can also review other manuals on the subject, including the Law Enforcement Guidelines among others, and consider taking a relevant training course such as with the Institute for International Criminal Investigations.¹³³

4.2.1 EVIDENCE COLLECTION

The collection of evidence can be just as significant as the legal theory to the success of a corporate crimes case. Some lessons learned regarding the collection of evidence from open and closed sources are presented below.

OPEN SOURCE EVIDENCE

While the collection of evidence from open sources such as public records, online databases, and social media posts has long been a core component of human rights documentation, this methodology has advanced in recent years as innovative technological means have informed the collection of what has become known as Open Source Intelligence (OSINT). Although a complete guide to collecting open source evidence is beyond the scope of this Handbook, up-to-date techniques can be found in various guides including those developed by Amnesty International,¹³⁴ Bellingcat,¹³⁵ as well as OHCHR and the UC Berkeley School of Law.¹³⁶

A key set of open sources for investigating corporate actors are their annual reports, financial statements, and other documents filed with the relevant jurisdiction's corporate registry, some of which may be available online and others requested for a fee.¹³⁷ A company's registry filings are likely to contain relevant open source evidence ranging from the company's description of its own corporate structure, organizational hierarchy, internal policies and practices and, in some instances, inculpatory statements that may only be decipherable by technical experts that can connect disparate pieces of information to uncover patterns or insights.¹³⁸

131 Comments by civil society practitioner 24, CCW, July 2024.

132 Alejandra Dandan, "Una política que fue abandonada" ["A policy that was abandoned"], 20 April 2016, <https://tinyurl.com/2wkfevcz>.

133 Institute for International Criminal Investigations, "Upcoming regular courses", <https://tinyurl.com/5y48jzym>.

134 Amnesty International Corporate Crimes Project, "Open source analytical tools", https://corporate-crimes.org/tool_box/open-source-analytical-tools/; Amnesty International Corporate Crimes Project, "Corporate data tools", https://corporate-crimes.org/tool_box/corporate-data-tools/; Amnesty International Evidence Lab blog, <https://citizenevidence.org/category/how-to/>.

135 Giancarlo Fiorella, "First steps to getting started in open source research", 9 November 2021, <https://tinyurl.com/4esf4ndf>; Bellingcat, "Guides", <https://tinyurl.com/2xtmxm86>.

136 Human Rights Center at UC Berkeley School of Law and OHCHR, *Berkeley Protocol on Digital Open Source Investigations*, 2022, <https://tinyurl.com/3fnnsks>.

137 See, for example OpenCorporates, All company registers, <https://tinyurl.com/yckc72fe>.

138 Interview with civil society practitioner 7, 9 April 2024; Comments by law enforcement official 11, CCW, July 2024.

Interviewing rights holders can provide valuable crime base and contextual evidence as well as leads to additional persons to interview, photographs, documents and other relevant materials in the possession of affected community members.

The collection of information from open sources for the purpose of admission as evidence requires additional steps to ensure the authenticity and integrity of the evidence in accordance with the jurisdiction's evidentiary rules. Information online may also not be available permanently. Take care, therefore, to ensure that all the content and associated information from open sources – including the material in its original format, a screen capture, all embedded data and metadata, and the circumstances of collection – is properly collected and preserved.¹³⁹

WITNESS EVIDENCE

Taking witness accounts of events is part and parcel of human rights documentation. Nevertheless, the methodology can be refined to ensure that this evidence has the maximum probative value in the courtroom and does not otherwise harm the witness or the case itself.

Interviewing rights holders can provide valuable crime base and contextual evidence as well as leads to additional persons to interview, photographs, documents and other relevant materials in the possession of affected community members.¹⁴⁰ For example, in the Ford case, witnesses and survivors provided testimony describing internal labour procedures not referenced in corporate documents or labour guidelines. These procedures enabled practitioners to demonstrate that company officers were aware, or should have been aware, that employees were illegally detained by Argentinian military forces while absent from work.¹⁴¹

Nevertheless, in conducting witness interviews, practitioners should take care to do no harm by avoiding re-traumatizing witnesses.¹⁴² This requires advance planning to clarify whether witnesses have already been interviewed by other members of civil society and considering ways to limit reliance on the accounts of witnesses in vulnerable circumstances by looking for alternative forms of evidence that substantiate the facts.

Identifying other sources of evidence can corroborate witness accounts, which can mitigate the risk of a defence attorney calling into question whether the witness can accurately recall certain distant or traumatic events.¹⁴³ In the La Fronterita case, a judge refused to confirm the prosecutor's indictment due to over-reliance on witness testimony that was deemed insufficient to substantiate the charges.¹⁴⁴ Although this decision was later overturned, it illustrates the importance of diversifying sources of evidence.

139 See, for example Law Enforcement Guidelines (previously cited), pp. 30-32; Human Rights Center at UC Berkeley School of Law and OHCHR (previously cited), pp. 58-65.

140 Comments by law enforcement official 11, CCW, July 2024; Interview with civil society practitioner 6, 8 February 2024.

141 Interview with civil society practitioner 13, 13 March 2024.

142 The risk of re-traumatization was also taken into account in the interviews conducted for this Handbook. Interview with rights holder 1, 10 January 2024.

143 If the account of a particular witness is crucial to the case, such a challenge may require calling a psychologist to provide expert testimony on memory formation and recollection. Comments by civil society practitioner 2, CCW, July 2024.

144 Comments by civil society practitioner 24, CCW, July 2024.

When taking accounts from witnesses, practitioners should carefully prepare for and conduct the interview according to international standards with respect to proper questioning techniques.

While the Law Enforcement Guidelines recommend that, “[i]deally, a person should be interviewed only once with the level of detail required for judicial proceedings”,¹⁴⁵ practitioners often need to collect detailed accounts for civil litigation or for purposes other than legal proceedings, including public reporting and advocacy.¹⁴⁶ In those circumstances, practitioners will need to interview witnesses in a manner commensurate with their broader goals.¹⁴⁷

Where practitioners are primarily seeking to encourage law enforcement authorities to take action, however, the Law Enforcement Guidelines advise eliciting a “first general account” that “keep[s] the information solicited to the minimum necessary to accomplish the purposes of their own mandate”.¹⁴⁸ Doing so entails a balancing act where sufficient information is elicited from the witness to demonstrate the evidentiary value of their account without conducting a full interview that will later be repeated by law enforcement. Taking witness evidence in this way not only mitigates the risk of re-traumatization by limiting the detail of an interview, but also mitigates the risk of generating conflicting statements between multiple first-person accounts – first to the practitioner, then to the prosecutor – which will be challenged by a competent defence attorney.¹⁴⁹ This can be reinforced by documenting the first general account as a third-person summary by the interviewer rather than as a first-person witness statement signed by the witness, as commonly used in civil litigation.

When taking accounts from witnesses, practitioners should carefully prepare for and conduct the interview according to international standards with respect to proper questioning techniques. For example, having professional training before conducting an interview with a child or survivor of sexual and gender-based violence (SGBV) crimes is essential.¹⁵⁰ General guidance for questioning is provided in the Law Enforcement Guidelines and the United Nations Manual on Investigative Interviewing for Criminal Investigation.¹⁵¹ The international standards applied today are generally based on what is known as the PEACE model, developed in the UK in response to coerced confessions that led to wrongful convictions in the 1980s and 1990s.¹⁵² The PEACE model has been refined by the UN to the following six steps of investigative interviewing:¹⁵³

145 Law Enforcement Guidelines (previously cited), p. 14.

146 Interview with civil society practitioner 19, 7 October 2024.

147 For international standards with respect to interviews for human rights documentation, see OHCHR, Manual on Human Rights Monitoring: Chapter 11 Interviewing, 2011, <https://tinyurl.com/52rvy5ma>.

148 Law Enforcement Guidelines (previously cited), p. 14.

149 Interview with law enforcement official 2, 3 June 2024.

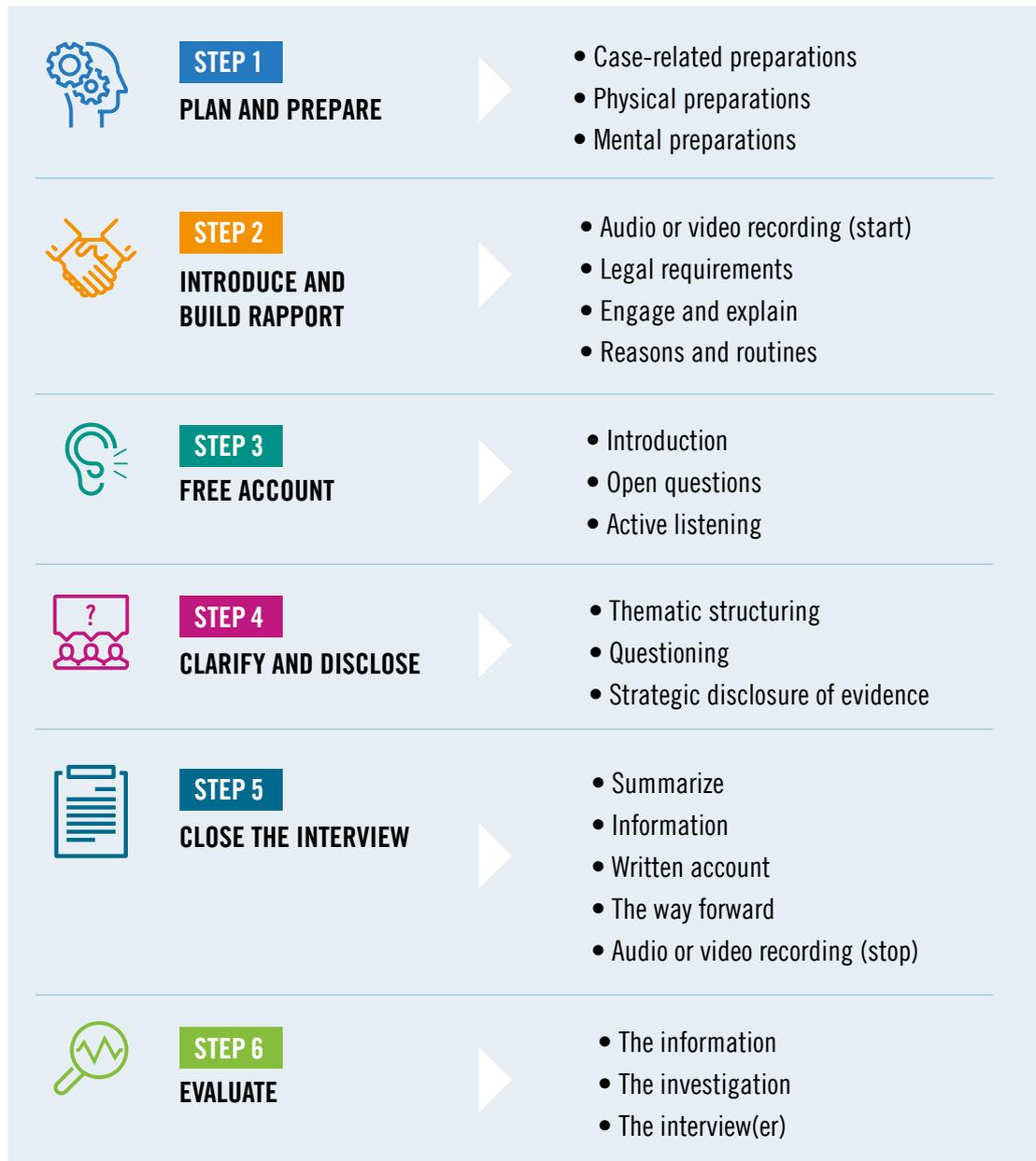
150 See UNICEF, The Child Witness: A Training Manual, 2019, <https://tinyurl.com/y9ah9npc>; OHCHR, Tool 3: Interviewing Victims of Gender-Based Violence, 2025, <https://tinyurl.com/32m9kf4u>.

151 United Nations Department of Peace Operations and others, *Manual on Investigative Interviewing for Criminal Investigation*, 1 February 2024, <https://tinyurl.com/5czy5wbr> (UN Manual).

152 UN Manual (previously cited), para. 6.1.

153 UN Manual (previously cited), pp. 16-17.

Figure 1: Six Steps of Investigative Interviewing



Adapted from © UN Department of Peace Operations Police Division, *Manual on Investigative Interviewing for Criminal Investigation, 2024*, <https://tinyurl.com/5czy5wbr>, October 2025

While a full explication of the international standards for proper questioning of witnesses is beyond the scope of this Handbook, some general guidance is worth highlighting. At its core, the aim of proper questioning techniques is to “obtain information that captures the person’s recollection of events in their own words” using primarily “open-ended questions” that allow for a “full, unrestricted account and produce answers which are less likely to have been influenced by the biases, conscious or unconscious, of the person questioning”.¹⁵⁴ Practitioners should avoid leading questions that imply or suggest an answer and limit forced-choice questions, such as those requiring a “yes” or “no” answer.

¹⁵⁴ Law Enforcement Guidelines (previously cited), p. 18.

By avoiding leading questions, practitioners can ensure they do not influence the account of the witness including by not sharing information beyond that needed to establish informed consent with the witness being interviewed. One practitioner shared that they learned this lesson the hard way when a Swedish appeals court overturned the conviction of a Serbian policeman for alleged war crimes committed in Kosovo because a defence attorney was able to undermine the probative value of a key witness who identified the accused.¹⁵⁵ The witness had been shown a photograph of the accused during an interview by a researcher from a human rights organization, which was later printed in a human rights report and other publications. Thus, the appellate judges determined that it could not be ruled out beyond reasonable doubt that the photograph influenced the witness's ability to identify the accused. This example illustrates the risks that arise when providing information to witnesses about the subject of the research, which may influence their testimony and undermine accountability efforts.

DOCUMENTARY EVIDENCE

One of the most credible sources of evidence is documentation that sheds light on the internal workings of a company accused of illegal activity. However, it is often a major investigative challenge to gain access to such documents beyond those available through open sources. Since a company is unlikely to hand over sensitive material of its own volition, practitioners interviewed for this Handbook suggest considering who else has access to such documents.¹⁵⁶

In some cases, corporate actors that are or were the subject of legal proceedings may have been compelled to disclose documents.¹⁵⁷ Amnesty International, for instance, was able to access internal documents about Shell's involvement in repressing opposition to its oil extraction from Ogoniland, Nigeria, because of disclosures Shell made as part of mandatory discovery in civil litigation brought against the company in the United States under the Alien Tort Statute (ATS).¹⁵⁸ Similarly, the ATS litigation against Chiquita was brought shortly after the company reached a plea agreement with US authorities in which it was forced to disclose details about its financing of paramilitary groups in Colombia.¹⁵⁹ In this way, civil and criminal proceedings may reinforce one another as one case provides evidence for others.

Since a company is unlikely to hand over sensitive material of its own volition, practitioners interviewed for this Handbook suggest considering who else has access to such documents.”

155 Marija Ristic, “Sweden acquits Serbian policeman of Kosovo crimes”, Balkan Insight, 20 December 2012, <https://tinyurl.com/yvy2zaa9>.

156 Interview with civil society practitioner 7, 9 April 2024; Comments by civil society practitioner 6, 8 February 2024; Interview with civil society practitioner 1, 3 January 2024; Comments by civil society practitioners 8 and 24, CCW, July 2024.

157 Interview with civil society practitioner 19, 7 October 2024; Interview with civil society practitioner 7, 9 April 2024.

158 Interview with civil society practitioner 19, 7 October 2024. Amnesty International, *A Criminal Enterprise* (previously cited), p. 14.

159 Interview with civil society practitioner 11, 19 February 2024.

Corporations may be required to provide state actors with documents for a variety of reasons, which practitioners can later access.



CASE STUDY

3

5

6

In the case studies involving alleged corporate complicity in crimes against humanity committed by the dictatorships in Argentina, Colombia and Brazil, transitional justice mechanisms have proven to be essential sources of information even where their focus was on state actors. For example, Brazilian practitioners uncovered the basis for claiming Volkswagen do Brasil was involved in torture and disappearances committed during the military dictatorship in the report of the National Truth Commission, which relied on voluminous documentary evidence.¹⁶⁰ The transitional justice mechanisms in Colombia likewise contributed to developing a public record of private companies, including Chiquita, that financed paramilitary groups during the civil war, although a Colombian practitioner cautioned that any evidence obtained from perpetrators who may have been provided amnesty as a result of their cooperation may have credibility issues.¹⁶¹ Documentary evidence used by tribunals to convict state actors in Argentina was also used to substantiate corporate crimes cases, including as part of the prosecution of the executives of the La Fronterita sugar mill.¹⁶²

Where documentary evidence is thought to be in the hands of state actors but not made available to the public, a freedom of information (FOI) request or equivalent may be filed to gain access to the documents. This mechanism can be a key component of a practitioner's investigative methodology in jurisdictions where it is available. As discussed in Chapter 2, FOI requests proved to be a breakthrough in strategic litigation against Chiquita when practitioners uncovered a trove of documents that Chiquita provided to US authorities prior to its plea agreement in 2007.¹⁶³

An FOI-based strategy can prove lengthy, spanning several months to more than a year if the public agency objects to the disclosure or, as occurred with respect to Chiquita, the company files a lawsuit to keep the documents out of the public's hands.¹⁶⁴ If disclosure has not occurred within the time limit set by law, practitioners recommend filing a lawsuit so that a judge can rule on the matter and, if there are too many documents to disclose at once, request that the agency be put on a schedule for disclosure.¹⁶⁵

In the majority of cases, the most valuable documents will remain in corporate hands and attempts to access those held by state actors may be rebuffed. Additional investigative methods for gaining access to documents or other sources of evidence are outlined briefly below.

160 Comissão Nacional da Verdade, *Relatório Final* ["Final Report"], 2014, <https://tinyurl.com/yeyacmca>; Clarissa Neher and Jan D. Walter, "Torture at VW Brazil?", 13 December 2014, <https://tinyurl.com/vcybjdd5>.

161 Comments by civil society practitioner 8, CCW, July 2024.

162 Comments by civil society practitioner 24, CCW, July 2024.

163 National Security Archive, "The Chiquita Papers", <https://tinyurl.com/5awxwfw9>.

164 In the USA, this is known as a "reverse FOIA" lawsuit because such litigation normally involves the person who made the FOI request suing the public agency for failure to lawfully disclose, whereas in this case the company sued the public agency to ensure the documents would not be disclosed. Interview with civil society practitioner 7, 9 April 2024. See also National Security Archive and Public Citizen, "Court rejects Chiquita's bid to hide terror payment records: US Appeals Court upholds National Security Archive in fruit company's 'reverse-FOIA' action", 17 July 2015, <https://tinyurl.com/4rja4mp9>.

165 Interview with civil society practitioner 7, 9 April 2024.

4.2.2 ADDITIONAL METHODS FOR EVIDENCE COLLECTION

While law enforcement officials have powers to conduct searches and seizures that enable broad evidence collection, they are not always better equipped to collect evidence of corporate crimes. Civil society practitioners are often nimbler, more creative and less encumbered by regulations applicable to state actors.¹⁶⁶ To be sure, members of civil society tend to be strained in terms of resources, so practitioners should not be expected to match the investigative capacity of law enforcement bodies. Nonetheless, practitioners can consider employing the techniques briefly outlined below to persuade state officials that opening their own investigation is appropriate, feasible and worthwhile.

Practitioners can, for instance, overcome one of the most common evidentiary gaps of establishing what a corporate actor knew or intended by notifying corporate actors of key facts so that they cannot later claim to have been unaware.¹⁶⁷ This can be achieved in a variety of ways including by a letter of inquiry, a cease-and-desist letter, or even – where there is significant risk in corresponding directly with the company – sharing evidence through an interlocutor such as a shareholder or journalist. In so doing, practitioners are advised to ensure that the letter is factually accurate, detailed and sent by a credible source to ensure that it cannot be easily dismissed. In effect, this is less a technique of evidence collection than of evidence creation, although in some cases companies will respond to such letters with information that is inculpatory.¹⁶⁸ However, such correspondence should be approached with caution given the associated risks, including the risks of retaliation and backlash, as well as the risk that alerting the company to an investigation may lead it to destroy or conceal further evidence. Practitioners concerned about such risks may consider approaching other members of civil society that have already engaged a corporate actor to carefully review their correspondence.

Practitioners have also shared that they have considered using other innovative techniques such as collecting discarded physical evidence, speaking with corporate insiders without disclosing one's identity, and cultivating whistleblowers within the company or persons who are one-step removed – such as shareholders, contractors, competitors or state actors that have worked with the company – that can provide linkage evidence about the company's internal decision-making.¹⁶⁹ These techniques may carry additional risks to rights holders, those providing the evidence, and practitioners, and should be approached with the utmost caution. As such, practitioners are responsible for conducting a thorough risk assessment beforehand and ensuring that all their investigative work respects the applicable law, ethical principles, and international standards including the UN Guiding Principles on Business and Human Rights.¹⁷⁰

These techniques may carry additional risks to rights holders, those providing the evidence, and practitioners, and should be approached with the utmost caution.”

166 For example, prosecutors are commonly restricted to investigating on the territory of another state with that state's consent, out of respect for its sovereignty, whereas members of civil society can travel to a jurisdiction without such concerns, so long as they abide by the applicable law.

167 Interview with civil society practitioner 19, 7 October 2024.

168 Interview with civil society practitioner 22, 13 February 2025.

169 Comments by civil society practitioners 6 and 25, CCW, July 2024.

170 NGOs may also have their own ethical guidance that permits, proscribes, or puts guardrails on practitioners using these approaches. One such guardrail could involve ensuring that the operations of NGOs comply with the UN Guiding Principles on Business and Human Rights. There is a growing understanding that the UN Guiding Principles are an appropriate standard for assessing the human rights responsibilities of non-state actors that are not “businesses”. Amnesty International, New York University, UAE Authorities Quash Campus Freedom (Index: MDE 25/8333/2024), 22 August 2024, <https://www.amnesty.org/en/wp-content/uploads/2024/08/MDE2583332024ENGLISH.pdf>.

5 REACHING INDICTMENT



OVERVIEW OF LESSONS LEARNED

- Focus corporate crimes practice on the achievable and impactful goal of reaching an indictment, or the analog in non-criminal proceedings. This can be done by:
 - Filing strong criminal complaints that share voluminous evidence, keep the narrative simple, and avoid stretching the law beyond credulity.
 - Supporting investigation by law enforcement
 - Where appropriate, it can be strategic to establish cooperative relationships with law enforcement officials while maintaining independence.
 - Seek to overcome delays by considering the selection of crimes alleged, seeking judicial review, supporting communities to report obstruction of justice, and litigating across multiple jurisdictions where possible

5.1 THE IMPORTANCE OF REACHING INDICTMENT

An indictment¹⁷¹ of a corporate actor is a watershed moment for any movement seeking justice and accountability for corporate human rights abuses. A state's decision to enforce its law can fundamentally change the nature of the pre-existing power dynamic between a well-resourced corporation and communities of rights holders, even if the corporation's legal team proceeds to dwarf that of the prosecutor's office.¹⁷²

While it is by no means the end of the road toward justice, an indictment of a corporate actor can lead to profound impact for affected communities. The case studies presented in this Handbook demonstrate that one does not have to wait until conviction to protect human rights and achieve a modicum of justice. An accused remains innocent until proven guilty by a court of law. In the court of public opinion, however, an indictment can shift the public's perception of a corporate actor's conduct. Allegations by rights holders that were previously overlooked or disregarded suddenly take on a different tenor.¹⁷³ An indictment can amplify the voices of affected communities and render advocacy on their behalf more effective, both inside and outside the courtroom.¹⁷⁴ It can also shift corporate behaviour and engender broader policy change.¹⁷⁵

171 While it may take different forms in various jurisdictions, in this Handbook the term indictment refers to the formal accusation by a state law enforcement authority of a natural or legal person alleging that they are responsible for a crime, thereby initiating their prosecution under the applicable law. As noted previously, some jurisdictions may only permit indicting natural persons whereas in others a corporation can be indicted as a legal person. This Handbook does not address bringing an indictment as a private party, known as private prosecutions, as this legal procedure is only available in a few jurisdictions and did not arise in the case studies. Nonetheless, for a resource on private prosecutions see OSJI, *Private Prosecutions: A Potential Anticorruption Tool in English Law*, May 2016, <https://tinyurl.com/3bsxkzzx>.

172 There are corresponding turning points where state actors join practitioners in non-criminal proceedings, for example where a law enforcement authority files an administrative order or a public civil action. This chapter focuses on criminal indictments for the sake of consistency, but the lessons herein can be applicable to non-criminal proceedings as well.

173 Interview with civil society practitioner 1, 3 January 2024.

174 Interview with rights holder 1, 10 January 2024; Comments by rights holder 1, CCW, July 2024; Interview with rights holder 2, 15 February 2024; Interview with rights holder 7, 12 August 2024.

175 Interview with civil society practitioner 6, 8 February 2024; Interview with civil society practitioner 1, 3 January 2024.

The Lundin case is illustrative in this regard. The case originated when religious communities in South Sudan asked a coalition of international NGOs to seek accountability for oil companies that were involved in war crimes during the Second Sudanese Civil War. This led to the publication of the *Unpaid Debt* report by ECOS, which sparked the opening of a criminal investigation of Lundin executives by the Swedish Public Prosecutor.¹⁷⁶ An NGO representative affiliated with the case reported that the criminal investigation and subsequent indictment caused their advocacy to resonate far more powerfully with the public.¹⁷⁷ In the view of a former Swedish law enforcement official, the company's operations only began to be viewed as illegal – rather than merely ethically questionable – once criminal proceedings were initiated.¹⁷⁸ In reflecting on this outcome, a South Sudanese survivor and witness for the Swedish prosecution stated that “the justice that we need is acknowledgment”.¹⁷⁹ In other words, his community believes that justice was being done in compelling the company to answer for and acknowledge its conduct before a court of law, regardless of whether Lundin executives are ultimately convicted.¹⁸⁰ A long trial is proceeding but, no matter the outcome, the case has already addressed the need for justice by affected communities in South Sudan – even if only in part.

Reaching an indictment, or its equivalent, is an achievable goal for practitioners seeking to end impunity for corporate crime. The most comprehensive academic study of corporate crimes cases – based on the Corporate Accountability and Transitional Justice database developed by the University of Oxford in partnership with the NGOs Dejusticia, ANDHES, and CELS – identifies that of the 105 outcomes recorded in such cases since the 1960s, just short of one-third reached an indictment or its equivalent.¹⁸¹ Therefore, while an indictment is far from guaranteed, practitioners can reasonably set it within their sights.

For those seeking accountability, securing a conviction or guilty plea is far more difficult. It generally takes many years of contentious litigation in pre-trial, trial, and appellate proceedings, much of which is beyond the control of practitioners. In practice, corporations typically resist accountability efforts by mounting aggressive defences in court. This is what led to the acquittal of Shell, Eni and their executives in Italy on bribery charges for alleged corruption associated with the sale of Oil Prospecting License 245 (OPL 245). Understandably, practitioners may feel disheartened at the prospect of pursuing litigation where a courtroom victory seems remote and uncertain. Yet the practitioners behind the case above, for example, regard the outcomes as mixed. While the Italian court acquitted Shell and Eni, the criminal proceedings prevented the companies from extracting fossil fuels from the area for over a decade.¹⁸²

176 ECOS, *Unpaid Debt*, June 2010, <https://tinyurl.com/bdhhz5z3>; Interview with civil society practitioner 1, 3 January 2024. See also Swedish Police National Operations Department of War Crimes, “Interview with Sten De Geer”, Record Number O104-K1-15, 6 April 2020, on file with Amnesty International (the complainant, Mr. De Geer, describes referring Swedish prosecutor Magnus Elving to ECOS’ *Unpaid Debt* report).

177 Interview with civil society practitioner 1, 3 January 2024.

178 Comments by law enforcement official 1, CCW, July 2024.

179 Comments by rights holder 1, CCW, July 2024.

180 Interview with rights holder 1, 10 January 2024.

181 The scope of the cases in this database may be narrower than those addressed in this Handbook as it is focused on corporate complicity in crimes under international law committed during the “repressive regimes and armed conflicts of the 1960s to the present”. Leigh A. Payne, Gabriel Pereira, and Laura Bernal-Bermúdez, *Transitional Justice and Corporate Accountability from Below: Deploying Archimedes’ Lever*, 2020, <https://tinyurl.com/3r8sd7zy> (in Spanish), pp. 7, 224 Table 5.1 (citing the Corporate Accountability and Transitional Justice database, 2016).

182 Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024.

Striving for indictment of corporate crimes may take on a different form depending on the jurisdiction's criminal justice system including, for example, the level of prosecutorial discretion in a common law or civil law system or the role of investigative judges in inquisitorial as opposed to adversarial systems. Nevertheless, law enforcement authorities are likely to issue indictments when they believe a conviction can be secured, so the lesson of focusing on reaching an indictment does not reduce the value of demonstrating to law enforcement officials that collecting enough evidence to convict is feasible, as addressed in Chapter 4.

5.2 FILING STRONG CRIMINAL COMPLAINTS

Practitioners are advised to seek an indictment by presenting the voluminous evidence that they have collected in a strong criminal complaint¹⁸³ and then supporting a subsequent investigation by law enforcement.

5.2.1 PRESENTING THE FACTS

The core of any criminal complaint is the body of facts presented to law enforcement officials which demonstrates reasonable grounds to believe that a corporate actor within their jurisdiction is responsible for a crime. While practitioners often focus on the legal argumentation, the facts may be just – if not more – important since law enforcement officials will regard themselves to be the ultimate authority on the criminal law applicable in their jurisdiction. The authorities on the facts of a case, at this stage, are the practitioners and rights holders they represent.

The key to presenting a compelling factual case in a criminal complaint is to keep the narrative simple.¹⁸⁴ Criminal cases generally involve complex fact patterns with many actors over long periods of time. However, the experience of practitioners suggests that a complaint is more persuasive when one can weave this complexity into a factual narrative that is easily understandable by a prosecutor who is being introduced to these details – and possibly the broader context – for the first time. This narrative should be central to the criminal complaint and, if possible, highlighted in an executive summary.¹⁸⁵

The key to presenting a compelling factual case in a criminal complaint is to keep the narrative simple.

183 While they may be referred to using different terms in various jurisdictions, in this Handbook a criminal complaint refers to a legal filing submitted by a civil society practitioner to a law enforcement official that accuses a corporate actor of criminal responsibility as substantiated by admissible evidence collected as part of their civil society investigation. In the United States, for example, a criminal complaint generally refers to the filing made by law enforcement officials before a grand jury decides on whether or not to issue an indictment. A filing by private parties is often referred to as reporting a crime. In Spain and across many South American jurisdictions, however, the reporting of a crime is achieved by filing a *denuncia* whereas parties can also file a more comprehensive *querrela* to become parties to criminal proceedings.

184 Comments by civil society practitioners 8 and 20, CCW, July 2024; Comments by law enforcement officials 11 and 12, CCW, July 2024; Interview with law enforcement official 2, 3 June 2024; Interview with rights holder 7, 12 August 2024; Interview with civil society practitioner 14, 28 March 2024; Interview with civil society practitioner 13, 13 March 2024.

185 Interview with law enforcement official 1, 7 February 2024.

The following is an excerpt from the executive summary of the *Unpaid Debt* report, which was published by ECOS and later submitted by a third party as part of a criminal complaint that led to the opening of the Lundin case in Sweden:¹⁸⁶

*“From 1983 to 2005, Sudan was torn apart by a civil war between the Government and Southern armed groups. Oil was a factor in the outbreak and exacerbated war from the mid-1990s... In 1997, the Swedish oil company Lundin Oil AB (“Lundin”) formed a consortium ... [that] signed a contract with the Government for the exploitation of oil in the concession area called Block 5A that was not at that time under full Government control. The start of oil exploitation set off a vicious war in the area. Between 1997 and 2003, international crimes were committed on a large scale in what was essentially a military campaign by the Government of Sudan to secure and take control of the oil fields in Block 5A... As the research in this report makes clear, throughout the war in Block 5A the [Lundin] Consortium worked alongside the perpetrators of international crimes. The Consortium’s infrastructure enabled the commission of crimes by others – for example, it commissioned a strategic bridge and a road which Lundin claims were accessible to everyone. This infrastructure expanded the geographic reach of armed groups, enabled year-round access to formerly isolated communities, and facilitated the Sudan Armed Forces (SAF) and armed groups to violently displace much of the population in Block 5A... Taking into account the overwhelming body of reporting at the time, the members of the Lundin Consortium should have been aware of the abuses committed by the armed groups that partly provided for their security needs. However, they continued to work with the Government, its agencies and its army. For these reasons, supported by the evidence presented in this report, ECOS believes that, through their activities, the members of the Lundin Consortium may, as a matter of international law, have been complicit in the commission of war crimes and crimes against humanity by others during the period [1997-2003]”.*¹⁸⁷

Without commenting on the merits of the case or veracity of the facts addressed above, it is notable that this excerpt condenses a complex fact pattern into a comprehensible narrative. It situates the reader in the context of the civil war and identifies the oil industry as a driver of that conflict.¹⁸⁸ It then introduces the main actors and concisely describes how they are linked to the crimes committed as part of that war. The excerpt does so without being conclusory or, in other words, simply concluding that the elements of the crimes have been satisfied without substantiation. Rather, it presents an argument that the Swedish prosecutor’s office clearly found compelling: the company should have known its conduct was enabling the crimes being committed but proceeded anyway.

186 Swedish Police National Operations Department of War Crimes, “Interview with Sten De Geer” (previously cited).

187 ECOS, *Unpaid Debt* (previously cited), pp. 7-10.

188 It is useful to provide law enforcement officials with brief background context for the alleged crimes, including relevant historical, geographic, conflict-related and other information. Interview with law enforcement official 2, 3 June 2024; Interview with civil society practitioner 14, 28 March 2024; Interview with civil society practitioner 13, 13 March 2024; Interview with rights holder 7, 12 August 2024; Interview with law enforcement official 7, 6 March 2024; Interview with law enforcement official 8, 20 March 2024; Interview with civil society practitioner 15, 1 March 2024.

5.2.2 PRESENTING THE LAW

The legal section of a criminal complaint filed with a law enforcement authority should provide an overview of the relevant legislation and jurisprudence in that jurisdiction, in particular its criminal code,¹⁸⁹ and then proceed to apply that law to the facts.¹⁹⁰ This application should be done systematically such that a prosecutor or investigative judge is assured that all the elements of the crimes and modes of responsibility have been satisfied.¹⁹¹

In presenting the law, law enforcement actors interviewed for this Handbook advised that practitioners ought to apply *lex lata* (the law as it stands) rather than *lex ferenda* (the law as it should be).¹⁹² While the law is malleable and practitioners may legitimately seek to ensure it is interpreted with broad protections for rights holders, there is a fine line between arguing for a reasonable interpretation of the law and breaking from the law entirely. Practitioners are better able to persuade law enforcement authorities to take up a case by avoiding arguments that ignore key aspects of the law or stretch it beyond credulity.¹⁹³ It is also advisable to present counterarguments to foreseeable defences and to acknowledge weaknesses where they exist, which – when done effectively – demonstrates the rigor of the legal analysis.¹⁹⁴

The experience of corporate crimes practitioners reveals that the more complex, novel or controversial a case is, the less likely it is that a law enforcement official will take it up.¹⁹⁵ Practitioners may still choose to present complex, novel and controversial cases – this is often part and parcel of strategic litigation to establish legal precedent and move the law forward. However, practitioners may have more success reaching an indictment when limiting the novelty or complexity of their legal theory as agreed with affected communities. This can entail limiting a complaint to a handful of novel legal arguments and/or offering alternative interpretations that adhere closer to existing precedent.¹⁹⁶ For example, a practitioner involved in the DRC case explained that she seeks to limit the novelty of the legal theory presented to approximately 5-10% of the overall argumentation to give it the best likelihood of success.¹⁹⁷

189 Any references to other bodies of law – even those with which a practitioner may have more expertise, such as international law – should only be incorporated to the extent that they are binding in the jurisdiction or relied upon only as persuasive authority to supplement an argument under binding law. If a prosecutor sees that a criminal complaint overly relies on non-binding law, that may be interpreted as a sign that a practitioner does not believe that there are sufficient grounds under the applicable law to establish the corporate actor's criminal responsibility, and may dismiss the complaint accordingly. Comments by law enforcement official 11, CCW, July 2024.

190 If the criminal complaint alleges that a corporation is criminally responsible, then it is incumbent upon a practitioner to ensure that legal persons – not just individuals – can be held criminally responsible. In this regard, practitioners should look to the applicable corporate criminal law to determine how elements of the *actus reus and mens rea* belonging to various individuals affiliated with the corporation, whether as employees or otherwise, may be attributed to it. Comments by law enforcement official 11, CCW, July 2024.

191 Interview with civil society practitioner 1, 3 January 2024; Interview with law enforcement official 1, 7 February 2024; Interview with law enforcement official 2, 3 June 2024.

192 Comments by law enforcement official 11, CCW, July 2024.

193 Comments by law enforcement official 11, CCW, July 2024.

194 Interview with civil society practitioners 3 and 4, 24 January 2024; Interview with civil society practitioner 5, 27 February 2024; Comments by rights holder 7, CCW, July 2024.

195 Comments by law enforcement officials 11 and 12, CCW, July 2024. While there may be more room for interpretation in bringing strategic litigation as a matter of civil or administrative law, the criminal law does not permit an individual to be convicted for conduct that did not constitute a criminal offence at the time it was committed. This is an essential component of the right to a fair trial protected under international human rights law. See Amnesty International, *Fair Trial Manual: Second Edition* (Index: POL 30/002/2014), 2014, <https://www.amnesty.org/en/documents/pol30/002/2014/en/>, §18.1.

196 Interview with civil society practitioners 3 and 4, 24 January 2024; Interview with civil society practitioner 5, 27 February 2024; Comments by rights holder 7, CCW, July 2024.

197 This Handbook does not suggest that this should be the target percentage of novel legal argumentation in corporate crimes cases. This practitioner clarified that she had occasionally brought more novel cases carrying additional risk, but primarily in litigation where rights holders were not a direct party. Interview with civil society practitioner 23, 10 March 2025.

5.2.3 PRESENTING OTHER CONSIDERATIONS

In addition to the legal discussion in a criminal complaint, practitioners can strategically present policy arguments for why law enforcement officials should take up and prioritize a case. Domestic law enforcement authorities are more likely to take up a case as a matter of their own criminal justice policy when the illegal activity has a clear connection to their jurisdiction by having occurred on their soil or been committed by, or harmed, their nationals.¹⁹⁸ Even in the rare circumstance where a case is brought entirely under universal jurisdiction,¹⁹⁹ law enforcement officials often have policies aiming to provide “no safe haven” for perpetrators of certain crimes within their jurisdictions.²⁰⁰ Some countries have policies aimed at enforcing the law to end impunity for corporate crimes. The Colombian Attorney General, Luz Adriana Camargo, has stated that it is a priority of her office to prosecute third parties (*terceros*) that financed paramilitary groups that committed crimes during the country’s civil war.²⁰¹ Similarly, Argentinian prosecutors have committed to prosecuting corporate actors complicit in crimes perpetrated during the Argentinian military dictatorship.²⁰²

A section in the complaint on the interests of victims and survivors can also be an opportunity to highlight a compelling fact pattern that demonstrates the grave harm resulting from the accused’s conduct. This may help overcome a prosecutor’s hesitancy to prioritize resources toward a case.²⁰³ The tone of the writing can be objective, apart from quotes from victims and survivors who should be free to describe their experiences in their own voice.²⁰⁴

ECOS’s *Unpaid Debt* report presents a good model of this approach in its chapter on damages, listing estimated losses including numbers of people killed and displaced, livestock and other property lost, and other harms including “moral damage and lost opportunities” in clear and objective language.²⁰⁵ The report then quotes a rights holder to humanize the impassive listing of damages:

“They fired at everybody. They killed many. Some of my neighbours died. More than one thousand were killed from my community. We wrote their names down.”²⁰⁶

If appropriate, and following an assessment of any associated risks, practitioners can also offer to set up a meeting between a prosecutor and community members to hear their stories in person.²⁰⁷

198 Comments by law enforcement officials 11 and 12, CCW, July 2024; Interview with law enforcement official 2, 3 June 2024.

199 Universal jurisdiction is the authority of a court in any state to try persons for crimes committed outside its territory that are not linked to the state by the nationality of the suspect or the victims or by harm to the state’s own national interests. See Amnesty International, *Universal Jurisdiction: A Preliminary Survey of Legislation Around the World* (Index: IOR 53/004/2011), 2011, <https://www.amnesty.org/fr/wp-content/uploads/2021/06/ior530042011en.pdf>.

200 See, for example NPPS, “Hague Court of Appeals: no bars to extradition of International Crimes suspect to Georgia”, 18 May 2016, <https://tinyurl.com/2wuft6c8>; US Department of Justice, “Attorney General Merrick B. Garland statement on the passage of the Justice for Victims of War Crimes Act”, 22 December 2022, <https://tinyurl.com/dc2dffpx>; Business Standard, “India expresses commitment toward combating organised crimes at UNTOC”, 29 September 2023, <https://tinyurl.com/5n9x3fve>.

201 Nelson Álvarez, “Fiscalía irá contra los empresarios que financiaron el paramilitarismo, anunció la fiscal general Luz Adriana Camargo” [“The Attorney General’s Office will take action against businessmen who financed paramilitarism, announced Attorney General Luz Adriana Camargo”], 23 July 2024, <https://tinyurl.com/5n7efcd3>.

202 Argentina Ministerio Público Fiscal, Procuración General de la Nación, “Protocolo de medidas previas para la investigación de la responsabilidad empresarial en causas de lesa humanidad” (previously cited), p. 8.

203 Comments by law enforcement official 1, CCW, July 2024.

204 Interview with law enforcement official 1, 7 February 2024.

205 ECOS, *Unpaid Debt* (previously cited), p. 51.

206 ECOS, *Unpaid Debt* (previously cited), p. 66.

207 If arranging such a meeting between law enforcement authorities and rights holders, it is advisable to prepare the complainants beforehand as to the expected procedure, tone and outcome of these formal meetings. Interview with civil society practitioner 13, 13 March 2024; Interview with civil society practitioner 14, 28 March 2024.

5.3 SUPPORTING AN INVESTIGATION BY LAW ENFORCEMENT OFFICIALS

Upon receiving a criminal complaint, a law enforcement authority will most likely take time to review the filing and decide whether there are sufficient grounds to open an investigation or expand an existing investigation to include the alleged crimes. The criminal procedure thereafter depends on the jurisdiction's criminal justice system and varies greatly. In some jurisdictions, there is no obligation on prosecutors to inform the complainant of their decision to open an investigation.²⁰⁸ In others, they must not only inform the complainant of their decision, but that decision is subject to judicial review.²⁰⁹ There are also jurisdictions that may open a "structural investigation", roughly analogous to a preliminary examination by the ICC-OTP,²¹⁰ which evaluates the facts for criminal responsibility without a focus on any individual accused.²¹¹

Once a prosecutor or investigative judge has opened a criminal investigation, they will lead the collection of evidence required to determine whether there are grounds to issue an indictment, and practitioners can play a supporting role. In many jurisdictions, practitioners that represent victims in the case may be able to join as parties to the case, which can enable them to file motions, ask questions of witnesses, and otherwise contribute to the criminal proceedings.²¹²

5.3.1 DEVELOPING COOPERATIVE RELATIONSHIPS WITH LAW ENFORCEMENT OFFICIALS

The experience of practitioners reveals that it can be strategic to establish a cooperative relationship with the relevant law enforcement officials, where possible and in line with ethical and legal norms. Whether it is appropriate to do so, and how to establish this relationship in practice, depends on the circumstances of the case, its context, and how willing state officials are to engage with civil society.²¹³ In some jurisdictions, law enforcement may be adversarial toward members of civil society and/or affected communities of rights holders such that engagement with them may be ill-advised or entail significant risk. As indictments are generally brought by law enforcement officials, this adversarial relationship may prove to be an obstacle toward the case advancing and should have been considered when conducting a preliminary assessment of the case.

A key lesson learned by practitioners interviewed for this Handbook is that it may be feasible to develop cooperative relationships with state prosecutors and investigators - even those who, at first glance, may not appear to be natural partners - where members of civil society and law enforcement are

208 See, for example US Department of Justice, "Justice Manual, Title 1: Organization and Functions, 1-7.000 - Confidentiality and Media Contacts Policy", updated February 2024, <https://tinyurl.com/r6pctwm5> ("DOJ generally will not confirm the existence of or otherwise comment about ongoing investigations.").

209 See, for example German Code of Criminal Procedure (Strafprozeßordnung – StPO), 7 April 1987, last amended on 25 March 2022, <https://tinyurl.com/5xy4y4tj>, §172.

210 ICC-OTP, "Preliminary examinations", <https://tinyurl.com/38af6vm3>.

211 The European Union Agency for Criminal Justice Cooperation and others, "Conclusions of the 31st meeting of the Network for investigation and prosecution of genocide, crimes against humanity and war crimes, 6-7 April 2022", <https://tinyurl.com/3rf6kdue> ("The presentations of the use of structural investigations by several delegations (Germany, Sweden, France, Canada, Lithuania) gave a general overview and offered advantages of such investigations and their value for improved investigations of core international crimes cases, in particular when exercising universal jurisdiction.").

212 Interview with civil society practitioner 2, 29 February 2024; Interview with civil society practitioner 3, 11 March 2024; Interview with civil society practitioner 13, 13 March 2024; Interview with civil society practitioner 14, 28 March 2024.

213 For example, stakeholders interviewed for this Handbook generally reflected that prosecutor's offices in Latin American jurisdictions were more open to engaging with civil society than those in European jurisdictions – with some prominent exceptions. Comments by civil society practitioner 25, CCW, July 2024; Comments by law enforcement official 12, CCW, July 2024.

seen to have a common interest in protecting the rule of law.²¹⁴ Practitioners can consider the track record of a particular law enforcement agency or unit, public statements made by its leadership, or their reputation among members of civil society to determine whether there may be inroads that would render it strategic to seek to engage. Such engagement must be implemented carefully to ensure that a practitioner abides by all laws and ethical regulations and that the independence of civil society and judicial actors is maintained in accordance with the rule of law.²¹⁵

The value of a cooperative relationship with prosecutorial authorities was reflected in nearly all of the case studies presented in this Handbook.

CASE STUDIES

In one case, practitioners reported that pre-existing connections with law enforcement authorities were crucial to reaching an indictment because they permitted exchanges of views on doctrinal matters, and enabled coordination of evidence collection as well as candid discussion of how the case may overcome challenges including adverse decisions by investigative judges.²¹⁶ In another case, a practitioner was able to establish a trusting relationship with a police officer who filed an internal report obliging the prosecutor to proceed with their investigation, which others had considered discontinuing.²¹⁷ In a third case, a local organization encouraged the opening of a criminal investigation by leveraging the networks of an international NGO, which served as a civil society representative on a committee charged with assisting law enforcement that decided to prioritize the case.²¹⁸

The key to developing a relationship of trust and candour with prosecutorial authorities is to begin by demonstrating a practitioner's value to their investigation.²¹⁹ The first step in doing so is filing a criminal complaint that is rigorously researched, well-written, and conveys the practitioner's expertise, credibility and integrity. The more evidence provided in that initial filing, the more a practitioner will have demonstrated the value in engaging with them.²²⁰

A key lesson learned by practitioners interviewed for this Handbook is that it may be feasible to develop cooperative relationships with state prosecutors and investigators - even those who, at first glance, may not appear to be natural partners - where members of civil society and law enforcement are seen to have a common interest in protecting the rule of law.

214 Interview with civil society practitioner 2, 29 February 2024; Interview with law enforcement official 4, 18 March 2024; Interview with civil society practitioner 18, 1 February 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024; Interview with rights holder 4, 3 February 2025; Comments by civil society practitioners 6 and 24, CCW, July 2024; Interview with civil society practitioner 22, 13 February 2025; Interview with civil society practitioner 23, 10 March 2025.

215 Amnesty International, Poland: Briefing on the Rule of Law and independence of the judiciary in Poland in 2020-2021 (Index: EUR 37/4304/2021), 17 June 2021, <https://www.amnesty.org/en/documents/eur37/4304/2021/en/>.

216 Comments by civil society practitioner 24, CCW, July 2024.

217 Comments by civil society practitioner 6, CCW, July 2024.

218 Interview with civil society practitioner 23, 10 March 2025; Correspondence with rights holder 9, 25 May 2025.

219 Comments by law enforcement official 11, CCW, July 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024.

220 Interview with civil society practitioner 11 and rights holder 4, 28 May 2024; Interview with rights holder 4, 3 February 2025.

Practitioners may also supplement the initial filing as they collect further evidence, including by providing key leads such as the identities of additional witnesses.²²¹ Practitioners have reflected upon missed opportunities when they have not managed to follow up on a complaint appropriately, whether by supplementing the complaint with additional information or requesting a formal response.²²² While information will generally flow in one direction from the practitioner to law enforcement, a cooperative relationship can form over time as in-person meetings assure each side that the other can be relied upon.

Effective engagement with law enforcement need not always be in-person or informal. Amnesty International was able to encourage the Congolese Ministry of the Environment to take enforcement action against Metssa Congo solely via formal correspondence in combination with external pressure amplified by the media.²²³ Not all the engagement entailed a public advocacy component. In some instances, Amnesty International sent the Ministry private letters to encourage goodwill and trust, since the Ministry was believed to be genuinely interested in addressing the severe pollution and investigating the allegations in good faith.²²⁴

Developing cooperative relationships with law enforcement authorities requires both sides to appreciate their distinct roles and where their interests may align and diverge.²²⁵ Practitioners need to understand that law enforcement officials are charged with enforcing the law without prejudice while safeguarding the rights of all persons, including the accused, and thus must maintain neutrality.²²⁶ Likewise, it is imperative for law enforcement to respect the independence of practitioners who are duty-bound to represent the interests of their clients, the affected community of rights holders, and at times also a broader mandate that may include advocacy outside the courtroom. While these interests may conflict, for example on issues of publicity, an appreciation of the distinct roles of each actor enables this tension to be mediated in frank conversations that will create opportunities for cooperation when interests align.²²⁷

Nevertheless, practitioners ought to remain strictly independent and make clear to state authorities when their decisions depart from the law. If a channel of communication is already open, a practitioner can share additional information that may persuade a reluctant prosecutor to enforce the law as required.²²⁸ However, if a practitioner believes that a state official's decision not to issue an indictment was not in compliance with the law then, where available, they can seek judicial review of that decision and engage in public advocacy.²²⁹

5.3.2 OVERCOMING DELAYS IN REACHING AN INDICTMENT

A common refrain by practitioners is that the litigation of corporate crimes cases is lengthy and likely measured in years rather than months. This can be the result of the complexity of these cases and courtroom backlogs, but also a reluctance by law enforcement to take up such cases and/or a deliberate strategy by the accused corporate actors to delay the proceedings.²³⁰ The passing of time generally benefits the accused because it raises the cost of litigation for practitioners, could lead to beneficial changes in the legal and political context, and may – particularly for individuals accused –

221 Interview with civil society practitioner 11 and rights holder 4, 28 May 2024; Interview with civil society practitioner 20, 17 January 2024.

222 Interview with civil society practitioner 21, 17 January 2025; Interview with civil society practitioner 19, 7 October 2024.

223 Interview with civil society practitioner 22, 13 February 2025.

224 Interview with civil society practitioner 22, 13 February 2025.

225 Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024; Comments by law enforcement official 11, CCW, July 2024.

226 Comments by law enforcement official 11, CCW, July 2024.

227 Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024; Comments by law enforcement official 11, CCW, July 2024.

228 Comments by civil society practitioner 8, CCW, July 2024.

229 Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024.

230 Interview with civil society practitioner 8, 9 April 2024; Interview with civil society practitioner 1, 3 January 2024; Interview with civil society practitioner 3, 11 March 2024; Comments by civil society practitioner 24, CCW, July 2024.

lead to the passing of the statute of limitations or to the individual passing away or becoming elderly and unfit to stand trial.²³¹

Accused corporate actors delay proceedings in various ways. Once criminal proceedings have been initiated, this usually involves their defence attorneys filing objections on all matters of substance and procedure, large and small, and then appealing the judge's decisions.²³² Prior to the issuance of an indictment, however, the primary means by which to delay proceedings is to obstruct the investigation by the prosecutor or investigative judge. To counter this, practitioners can engage closely with affected communities and support them in reporting any attempts to obstruct justice such as intimidation, harassment or threatening of witnesses.²³³

Such reports may not only protect witnesses but can deter corporate actors from engaging in threats or intimidation and protect the integrity of the investigation by law enforcement. In the view of multiple stakeholders, such reports have had a deterrent effect even when the accused's involvement could not be proven.²³⁴

There are many instances where the delay in reaching an indictment is the result of deliberate foot-dragging by law enforcement officials.²³⁵ The reluctance of law enforcement officials to bring corporate crimes cases may be exacerbated by extralegal pressures such as resource constraints, the high profile of the accused and the economic or geopolitical consequences of holding them to account. Prosecutors may similarly decide that, rather than formally declining to issue an indictment, it would be preferable to open a structural investigation without a definitive suspect and de-prioritize the case.

A significant delay in the criminal proceedings can also be caused by other law enforcement officials. In the La Fronterita case, an investigation into the company's executives was delayed by almost three years following the original indictment because a pre-trial judge ruled that there was insufficient evidence to substantiate it, which initiated a spiral of appeals that reached all the way to the country's Supreme Court of Justice.²³⁶

For all these reasons, it is helpful for practitioners to manage the expectations of affected rights holders with respect to the prospect of delays.²³⁷ There are, nonetheless, steps practitioners can take to mitigate or overcome delays in reaching an indictment.

To counter this, practitioners can engage closely with affected communities and support them in reporting any attempts to obstruct justice such as intimidation, harassment or threatening of witnesses.

231 Comments by rights holder 7, CCW, July 2024; Interview with civil society practitioner 13, 13 March 2024; Interview with civil society practitioner 15, 1 March 2024; Comments by law enforcement official 9, CCW, July 2024; Comments by civil society practitioner 8, CCW, July 2024.

232 Interview with civil society practitioner 2, 29 February 2024; Interview with civil society practitioner 3, 11 March 2024.

233 Comments by civil society practitioner 1, CCW, July 2024; Interview with rights holder 2, 15 February 2024.

234 Interview with civil society practitioner 1, 3 January 2024; Interview with rights holder 2, 15 February 2024; Interview with civil society practitioner 2, 29 February 2024.

235 Comments by civil society practitioner 24, CCW, July 2024; Interview with rights holder 7, 12 August 2024; Interview with civil society practitioner 16, 13 May 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024.

236 Comments by civil society practitioner 24, CCW, July 2024.

237 Practitioners have reported that, in many instances, affected communities are under no illusions that legal proceedings will proceed at a reasonable pace. Interview with civil society practitioners 3 and 4, 24 January 2024; Interview with civil society practitioner 14, 28 March 2024; Interview with rights holder 1, 10 January 2024. See also Terrence McCoy, Volkswagen Brazil found liable for 'slave labor' after priest's long struggle, 30 August 2025, <https://tinyurl.com/2xat4ff4> (the priest who documented the slave labour said: "This is a lesson: Justice is slow, slower than it should be[.]").

Practitioners can engage in public advocacy that applies pressure in the court of public opinion to overcome irregular decisions by a court of law.²³⁸ However, a prosecutor interviewed for this Handbook recommended that practitioners provide law enforcement officials with reasonable time to review the complaint and decide whether to open an investigation before publicly commenting on a case.²³⁹ Once it becomes clear that charges are not forthcoming, practitioners could then consider engaging in public advocacy to generate political will for the law to be enforced. The link between advocacy in and out of the courtroom will be addressed in more detail in Chapter 6.

Practitioners can also consider, in conjunction with the complainants and affected communities, the selection of crimes alleged in the complaint. The selection of crimes can significantly affect the potential for delay depending on the applicable criminal procedure, novelty of the crimes, and anticipated defences.²⁴⁰ While in some instances a case may be streamlined by agreeing to focus on a particular crime that may lead to efficient justice for victims, in other instances it may be prudent to broaden the scope of charges alleged, particularly if they can proceed independently.²⁴¹

CASE STUDY

2

The Lafarge cases demonstrate the complexity of these considerations. The indictment of Lafarge in France for complicity in crimes against humanity came shortly after the indictment for financing terrorist groups and violating international sanctions in 2018.²⁴² Nevertheless, appeals challenging the crimes against humanity charge led to extensive litigation that delayed the decision by the Court of Cassation to reject the company's motion to dismiss the charges until 2024.²⁴³ While this led to significant delay with respect to this offence, French prosecutors advanced a separate trial for the terrorism and sanctions violations charges, which will be adjudicated according to a different criminal procedure.²⁴⁴ Meanwhile, the prosecution of Lafarge in the United States for conspiring to provide material support for terrorism led to a quick plea agreement in 2022, entailing major financial penalties including a fine and forfeiture totalling USD \$777.78 million.²⁴⁵ However, the US Department of Justice only charged the legal entities rather than individuals, and whether Syrian victims will receive a portion of the forfeited funds remains to be seen.²⁴⁶

238 Interview with civil society practitioner 1, 3 January 2024; Interview with civil society practitioner 20, 17 January 2025.

239 Comments by law enforcement official 11, CCW, July 2024.

240 Interview with civil society practitioners 3 and 4, 24 January 2024; Interview with civil society practitioner 6, 8 February 2024; Interview with civil society practitioner 5, 27 February 2024; Interview with law enforcement official 3, 15 February 2024; Interview with civil society practitioner 14, 28 March 2024.

241 Interview with civil society practitioner 5, 27 February 2024; Interview with civil society practitioners 3 and 4, 24 January 2024.

242 Sherpa, "Lafarge case in Syria, Timeline: Key dates", <https://tinyurl.com/mrycj2k5>.

243 The decision also dismissed the charges against Lafarge for endangering the lives of its employees based on a complex issue of the applicable law, to the disappointment of rights holders. Tassilo Hummel, "Lafarge can be charged with 'complicity in crimes against humanity', French court says", 16 January 2024, <https://tinyurl.com/2nrc3muz>.

244 Interview with civil society practitioner 5, 27 February 2024. See also Reuters, "French cement maker Lafarge to face trial on terrorism funding charges", 17 October 2024, <https://tinyurl.com/4r826tax>.

245 US Department of Justice, "Lafarge pleads guilty to conspiring to provide material support to foreign terrorist organizations", 18 October 2022, <https://tinyurl.com/5c9zv92d>.

246 Charlie Savage, "Should hundreds of millions in seized assets go to ISIS victims", 18 June 2024, <https://tinyurl.com/v8774sns>; See also Joint civil society statement urging US Attorney General to direct Lafarge asset forfeiture to benefit victims and survivors, 22 May 2024, <https://tinyurl.com/3j7e8jv6>.

Another strategy for overcoming delays is to consider submitting complaints in multiple jurisdictions, if the facts lend themselves to doing so, because if progress is stalled in one jurisdiction then efforts can proceed in another.²⁴⁷ It may also be possible to encourage cooperation, including evidence-sharing, between authorities across multiple jurisdictions.



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This strategy was implemented by practitioners behind the OPL 245 cases against Shell, Eni and Malabu for alleged corruption, which involved law enforcement officials in Italy, Nigeria, Switzerland, the UK, the USA and the Netherlands.²⁴⁸ In those cases, practitioners submitted documentary evidence to Nigerian law enforcement authorities that was originally obtained by British and Italian prosecutors.²⁴⁹

In similar fashion, when the prosecution of Chiquita executives in Colombia stalled, practitioners submitted an article 15 communication to the ICC-OTP to inform its ongoing preliminary examination of the situation in Colombia.²⁵⁰ The ICC Prosecutor engaged closely with Colombian authorities thereafter to coordinate prosecutorial efforts and monitored developments with respect to the prosecution of the Chiquita executives, among other matters, in accordance with the principle of complementarity which generally defers to genuine investigations and prosecutions by domestic authorities.²⁵¹ Colombian prosecutors subsequently indicted, and later convicted, former Chiquita executives for financing paramilitary groups that were involved in the killing of thousands of civilians.²⁵²

247 Interview with civil society practitioner 7, 9 April 2024; Interview with law enforcement official 4, 18 March 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024.

248 Interview with civil society practitioner 11 and rights holder 4, 28 May 2024; Interview with rights holder 4, 3 February 2025.

249 Interview with rights holder 4, 3 February 2025.

250 Colectivo de Abogados José Alvear Restrepo (CAJAR), the International Federation for Human Rights (FIDH), and the International Human Rights Clinic at Harvard Law School, Article 15 Communication to the International Criminal Court: The Contribution of Chiquita corporate officials to crimes against humanity in Colombia, May 2017, <https://tinyurl.com/mpa7y55j>.

251 Office of the Prosecutor of the International Criminal Court, Report on Preliminary Examination Activities, 2018, <https://tinyurl.com/2wynyav4>, para 151; Office of the Prosecutor of the International Criminal Court, Report on Preliminary Examination Activities, 2019, <https://tinyurl.com/48kubjfh>, para 98.

252 Interview with law enforcement official 5, 13 May 2024; Interview with law enforcement official 4, 18 March 2024; Interview with civil society practitioner 8, 9 April 2024.

6 ADVOCACY IN AND OUT OF THE COURTROOM



OVERVIEW OF LESSONS LEARNED

- Strongly consider conducting advocacy out of the courtroom so as not to cede political, geopolitical, economic and other battlegrounds to corporate actors.
- The most effective advocacy on corporate crime is rooted in the law and facts of a case, so take care to ensure that it does not harm the case or the complainants' interests.
- Develop a public advocacy strategy at an early stage of case development including by setting objectives, determining the target audience, developing a theory of change, formulating messaging, and considering issues of timing.

As highlighted throughout this Handbook, corporate crimes cases are far more than legal struggles. They challenge broader power structures that ripple across political, geopolitical and economic battlegrounds. These arenas are not found in the courtroom but in the media and social media, in state legislatures and public agencies, and in shareholder gatherings and trade associations, among others. Practitioners should strongly consider engaging on these battlegrounds by conducting strategic advocacy outside the courtroom.²⁵³ Members of law enforcement also acknowledge that they do not operate in a vacuum and may be influenced – whether consciously or otherwise, for better or for worse – by advocacy in other arenas.²⁵⁴

It is recommended that practitioners plan and conduct advocacy in partnership with the complainants and other affected rights holders, in accordance with the community-centred approach addressed in Chapter 2.²⁵⁵ Doing so requires that affected communities remain informed about developments in a case. As such, practitioners should find a medium by which to keep communities informed, whether via in-person meetings or broader efforts such as a newsletter, website and/or a podcast translated into relevant languages.²⁵⁶

253 Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), p. 40 (“Litigation is often more effective when combined with public advocacy directed against a given corporation or sector, or for changes in certain laws and policies.”). However, there are exceptional cases where conducting advocacy outside the courtroom may be detrimental to the case, for instance when such advocacy carries great risk, so practitioners should consider their circumstances carefully before pursuing an advocacy strategy.

254 Interview with civil society practitioner 17, 22 January 2024; Interview with civil society practitioner 10, 13 May 2024; Interview with law enforcement official 2, 3 June 2024; Comments by law enforcement officials 7 and 11, CCW, July 2024; Interview with civil society practitioner 3, 11 March 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024; Comments by civil society practitioner 24, CCW, July 2024; Interview with civil society practitioner 14, 28 March 2024; Interview with civil society practitioner 18, 1 February 2024.

255 Amnesty International, *Body Politics: The Criminalization of Sexuality and Reproduction, A Campaigning Toolkit* (Index: POL 40/7764/2018), 2018, <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL4077642018ENGLISH.pdf>, p. 8. See also Harvard Human Rights Entrepreneurs Clinic, *The Fourth Pillar* (previously cited), Principle 3(a) & Commentary (“All actors, including states, businesses, civil society, and communities, should proactively facilitate conditions for communities and rightsholders to exercise their agency.”).

256 Comments by civil society practitioner 1, CCW, July 2024. For example, PAX and Global Idé have produced the *Lundin War Crimes Podcast*, tracking the case against Lundin and its executives. PAX, *Lundin War Crimes Podcast*, <https://tinyurl.com/596r7whz>.

Corporate crimes cases are far more than legal struggles. They challenge broader power structures that ripple across political, geopolitical and economic battlegrounds.

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The administrative case brought by the Vindoulou community in the Republic of the Congo exemplifies the value of advocacy across multiple arenas. The community initially engaged the company to encourage it to voluntarily change its behaviour yet, upon being rebuffed, began a public advocacy campaign targeting a broad range of public authorities at the local, regional and national levels with the objective of opening a public investigation into the pollution affecting their community.²⁵⁷ In partnership with Amnesty International, the Vindoulou community pursued legal action in Congolese administrative courts while escalating the public pressure on all fronts including by coordinating civil society partners to engage in a local and international media campaign.²⁵⁸

The targeting of Congolese authorities was strategic; the government had presented itself as a champion of environmental protection and received considerable international funding as a result, rendering them vulnerable to public advocacy that exposed gaps between that reputation and reality.²⁵⁹ An NGO representative and rights holder affiliated with the case reflected that the concerted advocacy in and out of the courtroom, especially the targeting of prominent international outlets, proved effective in causing Congolese authorities to react urgently and stop the pollution from Metssa Congo's factory.²⁶⁰

While a full explanation of the strategic considerations in conducting public advocacy is beyond the scope of this Handbook, a basic framework for developing a public advocacy strategy that will support courtroom advocacy in a corporate crimes case is presented below. Practitioners are also advised to review other resources including Amnesty International's toolkits on public campaigns and advocacy.²⁶¹

257 Interview with rights holder 8, 26 March 2025.

258 Interview with civil society practitioner 22, 13 February 2025; Interview with rights holder 6, 26 March 2025.

259 Interview with civil society practitioner 22, 13 February 2025. See also Amnesty International, *In the Shadow of Industries in the Republic of Congo* (previously cited), pp. 16-17.

260 Interview with civil society practitioner 22, 26 March 2025; Interview with rights holder 8, 26 March 2025. See, for example Radio France Internationale, "Santé: entre des riverains de Pointe-Noire et une entreprise de recyclage la bataille devient rude" ["Health: The battle between Pointe-Noire residents and a recycling company is becoming fierce"], 13 June 2024, <https://tinyurl.com/bzxmys6>.

261 See, for example Amnesty International, *Community Campaigns: Strategies for Human Rights Defenders* (Index: ACT 10/1222/2018), 2018, <https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT1012222018ENGLISH.pdf>; Amnesty International, *Body Politics* (previously cited). See also The Advocates for Human Rights, *Human Rights Tools for a Changing World: A step-by-step guide to human rights fact-finding, documentation, and advocacy*, 2015, <https://tinyurl.com/2zp2tdcv>, pp. 97-146.

6.1 LINKING ADVOCACY IN AND OUT OF THE COURTROOM

The most effective advocacy on corporate crime is rooted in the law and facts of a case. A practitioner's advocacy in the public arena will reinforce their case in the courtroom, and vice versa.

Practitioners have highlighted that public advocacy efforts to challenge corporate crime may have limited impact if the case itself does not proceed.²⁶² It remains possible to hold corporations accountable for human rights abuses in the absence of litigation – members of civil society do so regularly. However, the impact of awareness-raising based on messaging about criminality is amplified by prosecutorial action, which renders it far more credible in the public sphere.²⁶³ Therefore, practitioners are advised to ensure that public advocacy associated with strategic litigation does not harm the case or the complainants' interests.



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A case study that highlights the link between advocacy in and out of the courtroom is the prosecution of Lundin's executives. According to a practitioner, the advocacy strategy implemented by ECOS would have had little impact if the Swedish prosecutor did not open an investigation and later indict Lundin executives.²⁶⁴ This is largely due to the company having immense resources and powerful allies, including a former Swedish Prime Minister on their board of directors, who managed to quell public pressure on the company until the state took up the case.²⁶⁵ To ensure their public advocacy did not impede progress in the courtroom, ECOS sought to de-politicize its public messaging to avoid feeding unfounded allegations by the company's defence attorneys that NGO reporting about Lundin's operations in South Sudan was politically biased.²⁶⁶ In other contexts, practitioners may need to do just the opposite. The key is to remember that advocacy in and out of the courtroom is linked.

6.2 DEVELOPING A PUBLIC ADVOCACY STRATEGY

Practitioners will have different strategies for advocacy outside the courtroom depending on a complex set of considerations based on their objectives, the particulars of the case, the risks they face, and their resources including their advocacy experience and networks. Nevertheless, practitioners should consider developing a public advocacy strategy at an early stage of case development – even if it is only put into action at a later stage. Early planning will enable practitioners and affected communities to align their in-court and out-of-court strategies to maximize impact, identify and mitigate risks, and seize opportunities for partnerships with other members of civil society who may be able to support their advocacy strategies.²⁶⁷

262 Interview with civil society practitioner 1, 3 January 2024; Interview with civil society practitioners 3 and 4, 24 January 2024; Comments by law enforcement official 1, CCW, July 2024.

263 Amnesty International's report about Shell's involvement in repressing opposition to its oil production in Nigeria raised "serious questions about the extent of Shell's involvement not just in gross violations but also in criminal conduct." See Amnesty International *A Criminal Enterprise* (previously cited), p. 6. However, this advocacy would have been more impactful if law enforcement authorities had opened a criminal investigation into the alleged conduct, let alone issued an indictment of any corporate actors responsible.

Interview with civil society practitioner 19, 7 October 2024.

264 Interview with civil society practitioner 1, 3 January 2024.

265 Interview with civil society practitioner 1, 3 January 2024.

266 Interview with civil society practitioner 1, 3 January 2024.

267 Interview with civil society practitioner 18, 1 February 2024; Interview with civil society practitioner 22, 13 February 2025.

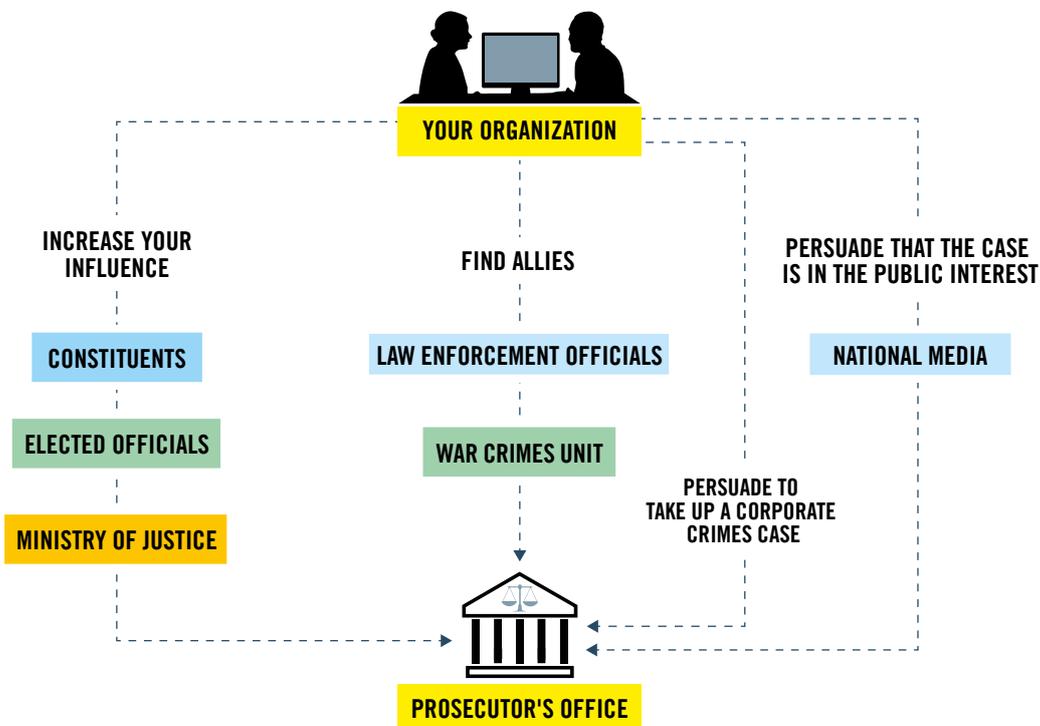
6.2.1 SETTING OBJECTIVES

The first step in developing a public advocacy strategy for corporate crimes cases is to decide on its objectives in partnership with affected communities of rights holders.²⁶⁸ Common objectives include: enabling the victims and survivors to tell their story; encouraging corporate actors to stop ongoing abuses and provide remedy; encouraging law enforcement actors to enforce the law; and exposing irregularities in the administration of justice including issues of obstruction of justice, corruption and other extralegal influence or misconduct.²⁶⁹

6.2.2 DETERMINING THE TARGET AUDIENCE(S)

After a practitioner has established the objectives for public advocacy, they can begin identifying others who have an interest in those objectives or can influence them, and determine whether they would act as strategic allies, adversaries or neutral bystanders.²⁷⁰ Practitioners can map these networks to trace the influence from one actor to the next until reaching those with the power to make progress toward their objectives. The following sample power map illustrates this idea.²⁷¹

Figure 2: Sample power map



Adapted from © Amnesty International, *Community Campaigns: Strategies for Human Rights Defenders (Index: ACT 10/1222/2018)*, 2018, <https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT1012222018ENGLISH.pdf>, October 2025

²⁶⁸ Amnesty International, *Community Campaigns* (previously cited), pp. 8-11.

²⁶⁹ Comments by civil society practitioner 24, CCW, July 2024; Interview with civil society practitioner 1, 4 January 2024; Interview with civil society practitioner 6, 8 February 2024, Interview with civil society practitioner 7, 9 April 2024; Interview with civil society practitioner 10, 13 May 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024; Interview with rights holder 4, 3 February 2025; Interview with civil society practitioner 17, 22 January 2024; Interview with civil society practitioner 19, 7 October 2024; Interview with civil society practitioner 22, 13 February 2025; Interview with rights holder 8, 26 March 2025.

²⁷⁰ Amnesty International, *Community Campaigns* (previously cited), pp. 12-16.

²⁷¹ Amnesty International, *Community Campaigns* (previously cited), p. 16.

By developing a power map, practitioners can determine the target audiences that they will seek to influence with their advocacy. Practitioners should be precise when selecting target audiences; rather than seeking to influence “the general public” it is advisable to identify particular persons, groups or institutions to target. In the Lundin case, ECOS planned a three-pronged advocacy strategy with each prong having a different target audience that could encourage Lundin to provide remedy to affected communities. ECOS developed a media strategy targeting segments of the Swedish and Norwegian public, a political lobbying strategy targeting Swedish parliamentarians, and a shareholder strategy targeting investors with leverage over the company. The strategy was designed to be mutually reinforcing as the parliamentary and shareholder advocacy would generate media attention and, correspondingly, that reporting would influence parliamentarians and shareholders.²⁷²

In considering target audiences to influence, it is useful to determine whether the target is concerned about their public image. In the Metssa Congo case, the practitioners managed to trace the power relations between foreign donors and public authorities in the Republic of the Congo to identify certain institutions, such as the Ministry of the Environment, which were concerned about the country’s reputation as an environmental champion, making them a prime target for an advocacy campaign.²⁷³

Some companies have also built their brand around being socially responsible and respectful of human rights, which may make them more susceptible to public advocacy that highlights divergences from this image. Practitioners are advised to consider all the corporate actors involved: simply because a subsidiary is unconcerned about harm to its reputation does not mean that its parent company shares that assessment. The selection of a distant target audience, for example in the parent company’s jurisdiction, with the aim of supporting a local case and advocacy, has been coined a “boomerang” strategy.²⁷⁴

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This boomerang strategy was put into action effectively in the Volkswagen case. While Volkswagen’s Brazilian subsidiary was less amenable to negotiate with affected communities, its German headquarters appeared to have been worried about its public image following a previous scandal regarding vehicle emissions.²⁷⁵ The Association of Ethical Shareholders in Germany, which had purchased shares in Volkswagen, began to pressure the company at its shareholders’ meetings in Berlin based on the Brazilian prosecutor’s case against its subsidiary for complicity in crimes against humanity.²⁷⁶ The strategy worked. According to the practitioners interviewed, the combination of the German shareholder advocacy and the vehicle emissions scandal contributed significantly to Volkswagen’s German headquarters deciding to influence its Brazilian subsidiary to accept a settlement agreement proposed by the Brazilian prosecutors.²⁷⁷

272 Interview with civil society practitioner 1, 3 January 2024.

273 Interview with civil society practitioner 22, 13 February 2025.

274 Margaret E. Keck and Kathryn Sikkink coined this term in 1998 to describe advocacy strategies developed in the Global South, in their book *Activists Beyond Borders: Advocacy Networks in International Politics*.

275 Environmental Protection Agency, “Learn About Volkswagen violations”, <https://tinyurl.com/yvx73nyb>; BBC News, “Volkswagen: the scandal explained”, 10 December 2015, <https://tinyurl.com/35b8d29c>.

276 Interview with civil society practitioner 9, 27 March 2024.

277 Interview with rights holder 6, 23 April 2024; Interview with law enforcement official 7, 6 March 2024; Interview with civil society practitioner 16, 18 March 2024.

6.2.3 DEVELOPING A THEORY OF CHANGE

After a practitioner has set their objectives and determined the target audience(s), they can develop a theory of change that describes how their advocacy can create progress toward their objective.²⁷⁸ Partnerships are often crucial to one's theory of change as it is rare that a member of civil society will have sufficient resources to achieve their advocacy objectives while acting alone.²⁷⁹ Practitioners can consider circulating a draft theory of change among partners and seeking critical feedback to scrutinize gaps in its logic.²⁸⁰ Based on this feedback, practitioners may modify their theory or their objectives to be more achievable.

The environment in which advocacy is undertaken is complex and dynamics shift regularly, so it is hard to predict the outcomes of advocacy. This is why practitioners should regularly monitor, re-evaluate and amend their theory of change.²⁸¹ For example, a tweak in one's theory of change may be necessary following the publication of a report containing new information relevant to the case, whereas a full re-evaluation may be necessary after a major shift in policy by the government in the jurisdiction.

6.2.4 MESSAGING

With a theory of change in hand, practitioners can formulate their messaging according to what will be most strategic in persuading their target audience(s) to use their influence to advance the objectives of the case. There is no formula for determining what message to convey; it depends on the particulars of the case, the target audience and the medium of communication, among other considerations. However, it is generally recommended to distil the message to be as sharp and concise as possible.²⁸² The core message can then be adapted to the medium; for example, a podcast, an op-ed, a blog post or a social media post.

It is important that the core messaging remains consistent across mediums as a disjointed advocacy campaign can lose the attention of its audience and weaken any prospective impact. Amnesty International, for example, decided to delay the publication of its report calling for a criminal investigation into Shell's alleged involvement in repressing opposition to its oil extraction in Ogoniland because that messaging may have diverted attention from a civil case brought by Esther Kiobel and four other widows following the arbitrary execution of nine Ogoni activists, which called for compensatory remedies.²⁸³

The source of the message may be as important as the message itself. Where rights holders wish to be the public face of the case, and associated risks are mitigated, practitioners may serve the cause best by stepping back from the spotlight and amplifying the voices of affected communities. In the Lundin case, for example, a practitioner observed that the company fared poorly in every discussion that centred victims and survivors.²⁸⁴

278 For more guidance on creating a theory of change, see Amnesty International, *Community Campaigns* (previously cited), pp. 17-19.

279 Interview with civil society practitioner 1, 3 January 2024; Interview with civil society practitioners 3 and 4, 24 January 2024; Interview with civil society practitioner 5, 27 February 2024; Interview with civil society practitioner 7, 9 April 2024; Interview with civil society practitioner 9, 27 March 2024; Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024; Interview with civil society practitioner 23, 23 January 2025.

280 Amnesty International, *Community Campaigns* (previously cited), p. 18.

281 Interview with civil society practitioner 1, 3 January 2024.

282 Amnesty International, *Community Campaigns* (previously cited), p. 21.

283 Interview with civil society practitioner 19, 7 October 2024. Amnesty International, "Nigeria: Shell complicit in the arbitrary executions of Ogoni Nine as writ served in Dutch court", 29 June 2017, <https://www.amnesty.org/en/latest/press-release/2017/06/shell-complicit-arbitrary-executions-ogoni-nine-writ-dutch-court/>.

284 Interview with civil society practitioner 1, 3 January 2024.

The reputation of the messenger among the target audience is as important a consideration as the content of the message.²⁸⁵

Where rights holders wish to be the public face of the case, and associated risks are mitigated, practitioners may serve the cause best by stepping back from the spotlight and amplifying the voices of affected communities.

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In the La Fronterita case, the practitioners' theory of change was simple: if they can bring the case to the public's attention and demonstrate that they have the support of reputable experts, it will encourage the judges to enforce the law.²⁸⁶ ANDHES persuaded two renowned organizations – ECCHR and CELS – to submit amicus briefs in support of their arguments.²⁸⁷ They also introduced two distinguished scholars, Argentinian historian Victoria Basualdo and UK sociologist Leigh Payne, to provide their expert opinion on key aspects of the case. The introduction of expertise from national and international actors brought significant public visibility to the case, which contributed to national media reporting on it for the first time.²⁸⁸ In the practitioners' view, this visibility proved crucial to the judges agreeing to advance the criminal proceedings.²⁸⁹

The same strategy was applied in 2025 when Amnesty International submitted an amicus brief before Argentina's Fourth Chamber of the Federal Criminal Court of Cassation, which was reviewing the La Fronterita indictment once again. Amnesty International argued that the significant adverse impact of the nearly 20 years of criminal proceedings in that case may violate the victims' right to effective remedy under international human rights law.²⁹⁰ The Court confirmed the indictment shortly thereafter and ordered that the case proceed to trial.²⁹¹

285 Comments by civil society practitioner 24, CCW, July 2024.

286 Comments by civil society practitioner 24, CCW, July 2024.

287 Centro de estudios Legales y Sociales, "Crímenes de lesa humanidad en el ingenio la fronterita: presentamos un amicus en la causa" ["Crimes against humanity at the La Fronterita sugar mill: we present an amicus brief in the case"], 18 December 2020, <https://tinyurl.com/2752aw9c>.

288 See, for example Página 12, "Repudio al homenaje realizado a un empresario azucarero procesado por delitos de lesa humanidad" ["Repudiation of tribute paid to a sugar businessman prosecuted for crimes against humanity"], 25 May 2022, <https://tinyurl.com/4zsa7zv2>.

289 Comments by civil society practitioner 24, CCW, July 2024; Interview with rights holder 7, 12 August 2024.

290 Amnesty International, "Amigo del Tribunal, Causa N 7282/2016/9/1/1/CF004", 19 February 2025, <https://tinyurl.com/mr3xae2>.

291 Fourth Chamber of the Federal Criminal Court of Cassation, Figueroa Minetti, Jorge s/recurso de casación, Decision, FTU 7282/2016/9/1/1/1, 28 April 2025, on file with Amnesty International; ANDHES, "La causa Fronterita queda en condiciones de llegar a juicio oral" ["The Fronterita case is ready to go to trial"], 5 May 2025, <https://tinyurl.com/25stat7t>.

6.2.5 TIMING

Chapter 5 recommended that practitioners generally provide prosecutors with reasonable time to review the complaint before engaging in public advocacy around the case out of a concern that it will be more difficult for law enforcement to investigate corporate crimes when the company is aware it is being scrutinized and thus may conceal any unlawful activity. What counts as a reasonable time depends on the circumstances, but a prosecutor's office should generally be able to review a complaint within six months to a year.

Practitioners will need to consider whether this advice is appropriate for the circumstances of their case and their theory of change. Nonetheless, if a practitioner has managed to develop a cooperative relationship with a law enforcement authority and wants to maintain it, they can provide law enforcement advance notice of their timeline for public advocacy.²⁹² That level of candour can help clarify roles and provide prosecutors with a deadline for completing their investigation under the radar, while also supporting prosecutors in galvanizing their office to act with urgency. One prosecutor interviewed for this Handbook reflected that, in deciding whether to pursue a corporate crimes complaint filed with their office, they would have appreciated more publicity around the case at a later stage. They felt that this may have helped them demonstrate to their superiors the importance of the case as a matter of public interest.²⁹³

The timing of advocacy will likely be affected by how sympathetic the public discourse is to corporate accountability.

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A stark example occurred in the Volkswagen case when Jair Bolsonaro was elected President of Brazil in the midst of the public civil inquiry into the company's involvement in crimes against humanity. Bolsonaro soon introduced a set of policies and deepened a broader narrative that espoused contempt for human rights,²⁹⁴ diminishing the Brazilian prosecutors' leverage in the settlement negotiations to avoid the inquiry escalating into a civil action against Volkswagen. While the company initially appeared amenable to negotiate with affected community members, practitioners noticed that, once Bolsonaro was elected, the company took a firmer stance in negotiations.²⁹⁵ Unfortunately, this compelled the communities to make concessions that were not acceptable to all the members of civil society involved in the case.²⁹⁶ Practitioners could have considered amending their theory of change to wait for the political climate to improve, but justice delayed can be justice denied so community groups were divided on how to respond.

292 Comments by civil society practitioner 24, CCW, July 2024.

293 Comments by law enforcement official 11, CCW, July 2024.

294 Jurema Werneck and Erika Guevara Rosa, "1,000 days of Bolsonaro and Brazil's grave human rights crisis", 20 October 2021, <https://www.amnesty.org/en/latest/news/2021/10/mil-dias-bolsonaro-grave-crisis-derechos-humanos-brasil/>.

295 Comments by law enforcement official 7, CCW, July 2024; Interview with law enforcement official 8, 20 March 2024; Interview with civil society practitioner 16, 18 March 2024.

296 Interview with rights holder 6, 23 April 2024; Comments by law enforcement official 7, CCW, July 2024; Interview with civil society practitioner 16, 18 March 2024.

7 IMPACT AND REMEDY



OVERVIEW OF LESSONS LEARNED

- Impact and remedy in strategic litigation is not a binary outcome, but a multi-dimensional process that can be achieved in part throughout a case's trajectory.
- Identify opportunities for accessing robust remedies for affected communities and broader impact long before final judgement including by raising awareness of corporate crimes, changing corporate behaviour, and shaping law and policy.

A corporate crimes case can have outsized impact that provides various forms of redress to rights holders and leads to structural change in public policy and industry behaviour, stretching far beyond the particulars of any one case.²⁹⁷ This underscores the significance of judicial mechanisms for investigating, punishing and providing access to remedy for human rights abuses by corporate actors, which is an integral part of a state's duty to protect persons from abuse by private actors as reflected in the UN Guiding Principles on Business and Human Rights.²⁹⁸

Impact and remedy arising from strategic litigation are not binary outcomes based on whether a case is “won” or “lost” in court. Rather, they are better viewed as a process by which partial impact and remedy can be achieved at various stages throughout a case's trajectory.²⁹⁹ Chapter 5 described how an indictment by state authorities opens the door to significant impact for affected communities that does not depend on securing a conviction. There are also certain impacts that can be felt at earlier stages.

In its report on the impacts of strategic litigation, OSJI identifies three categories of impacts:³⁰⁰

- 1 Material changes** for individual petitioners and affected communities, such as compensation for harm, transfer of land, an order that perpetrators be prosecuted, or the disclosure of information as the result of discovery;
- 2 Instrumental changes** prompting direct and indirect changes in policy, law, jurisprudence and institutions, including the judiciary itself; and
- 3 Non-material changes** such as indirect shifts in attitudes, behaviours, discourse and community empowerment including impacts on the complainants' sense of empowerment and agency, in the behaviour and attitudes of government officials, or in the direction or contours of public discourse including through the demonstrative power of the rule of law.

297 Comments by law enforcement official 12, CCW, July 2024.

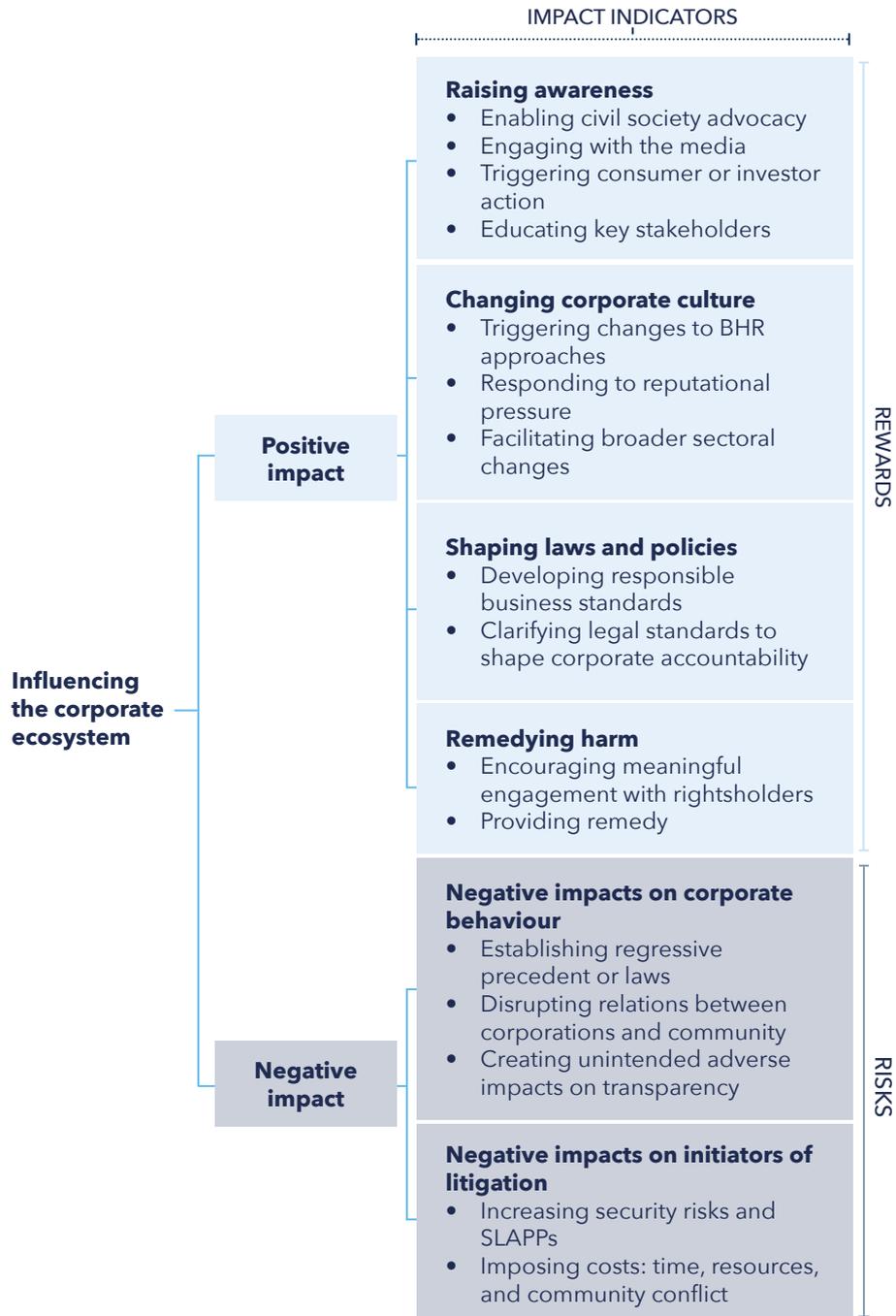
298 UN Guiding Principles on Business and Human Rights, Principles 25 and 26.

299 Interview with civil society practitioner 19, 7 October 2024.

300 OSJI, *Strategic Litigation Impacts: Insights from Global Experience* (previously cited), p. 19.

A report commissioned by the Freedom Fund expanded on the OSJI model with a particular focus on strategic BHR litigation by presenting an impact framework that considers a range of positive and negative impacts that can result from such cases.³⁰¹

Figure 3: Freedom Fund's Impact Framework



Ebony Birchall, Surya Deva, and Justine Nolan as commissioned by © Freedom Fund, *The Impact of Strategic Human Rights Litigation on Corporate Behavior*, 2023, <https://tinyurl.com/mitm8c95>

301 Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), p. 14, Figure 1.

This chapter will build on the frameworks above to offer practical guidance for practitioners seeking to provide access to remedy for complainants and to maximize impact for the broader community of affected rights holders throughout the trajectory of a case.

7.1 OVERVIEW OF AVAILABLE REMEDIES

All persons whose human rights have been violated have a right to an effective remedy.³⁰² The principal remedy that can result from a corporate crimes case is the criminal sanction of a corporate actor, including financial penalties for corporate entities and prison sentences for individuals.³⁰³

In addition to criminal sanctions, there are various mechanisms by which a corporate crimes case can provide compensatory remedies to persons who were harmed or their surviving family members, which depend on the law in the applicable jurisdiction.³⁰⁴ In some jurisdictions, persons who can prove that they are victims of a crime can join the criminal case as civil parties and claim compensation after a conviction is rendered. In other jurisdictions, victims may file to gain access to the perpetrator's assets which have been seized or forfeited to law enforcement as a form of compensation.

Practitioners can consider conducting research on how corporations may have benefited financially from the criminal activity and share this information with law enforcement actors responsible for asset forfeiture to facilitate access to remedy.³⁰⁵ Practitioners in the La Fronterita case, for example, persuaded prosecutors to seize property and bank accounts of considerable value to make these assets available for compensating survivors. These seizures occurred before the case went to trial.³⁰⁶ Getting access to seized or forfeited assets has nonetheless proven challenging when rights holders do not fit narrow definitions of who constitutes a victim of a crime. This has resulted in problematic outcomes, such as a US\$687 million asset forfeiture from the US prosecution of Lafarge that may be used solely to cover the expenses of prosecutorial authorities and provide limited relief to the narrow band of recognized victims without compensating the broader group of affected Syrian communities.³⁰⁷

Non-material remedies may include measures that empower rights holders, reaffirm their humanity and agency, enable them to tell the truth of what they experienced, compel powerful companies to acknowledge and apologize for their role, and provide rights holders an overall sense that justice has been done.³⁰⁸ This impact can be realized at an early stage of litigation by building the capacity of affected communities, involving them in decision making, and empowering them to provide testimony to the

302 Permanent Court of International Justice, *Chorzów Factory (Germany v. Poland)*, 1928, (Series A) No. 17, para. 73; United Nations General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, Article 8. The right to effective remedy is comprised of three core elements: (i) equal and effective access to justice, (ii) adequate, effective and prompt reparation for harm suffered and (iii) access to relevant information concerning violations and reparation mechanisms. UN General Assembly (UNGA), *Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted on 16 December 2005, UN Doc. A/RES/60/147.

303 For many survivors of corporate crimes, the sanction of the perpetrators that caused them harm is an essential component of the reparation they seek. Comments by civil society practitioner 24, CCW, July 2024; Comments by law enforcement official 9, CCW, July 2024; Interview with rights holder 3, 7 March 2024.

304 As the UN Working Group on Business and Human Rights has recognized: "Criminal trials have the potential to provide reparation through accountability and justice but also through establishing a judicial truth of what happened. In some contexts, criminal courts also can and do order other forms of reparation, most notably compensation." UN Human Rights Council, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, "Implementing the third pillar: lessons from transitional justice guidance by the Working Group"*, 8 June 2022, <https://tinyurl.com/ytchu36c>.

305 Comments by law enforcement officials 11 and 12, CCW, July 2024.

306 Comments by law enforcement official 10, CCW, July 2024. Ministerio Público Fiscal, *Tucumán: a pedido del MPF dictan el embargo del Ingenio La Fronterita por haber sido utilizado para cometer delitos de lesa humanidad* ("Tucumán: At the request of the Federal Prosecutor's Office, the La Fronterita sugar mill was seized for having been used to commit crimes against humanity"), 29 December 2022, <https://tinyurl.com/52w23eak>.

307 See Joint civil society statement urging US Attorney General to direct Lafarge asset forfeiture to benefit victims and survivors, 22 May 2024, <https://tinyurl.com/3j7e8jy6>.

308 Comments by civil society practitioners 5 and 20, CCW, July 2024; Interview with civil society practitioner 1, 3 January 2024; Interview with rights holder 2, 15 February 2024; Interview with civil society practitioner 2, 29 February 2024; Interview with rights holder 1, 10 January 2024; Interview with rights holder 3, 7 March 2024; Interview with civil society practitioner 19, 7 October 2024.

prosecutor and in court. In the Ford case, survivors were given the opportunity to visit the factory where they were disappeared and tortured. This powerful moment was later commemorated in a memorial site.³⁰⁹ In many contexts, rights holders have reported that these non-material remedies can prove equally, if not more, significant than the material remedies on which practitioners tend to focus.³¹⁰

7.2 SEEKING ROBUST REMEDIES

Practitioners generally seek robust – albeit inevitably partial – remedies for affected communities of victims and survivors of corporate crimes.³¹¹ What constitute robust remedies in an optimal, yet feasible, outcome should be agreed upon in partnership with rights holders early in the process of case development. However, practitioners must manage rights holders’ expectations including by making clear that no practitioner can guarantee a full vindication of their rights and that remedies are likely to be partial and imperfect.

One survivor who is a party to the French criminal proceedings in the Lafarge case explained that he will never be able to return to his home in northern Syria and that it is impossible to bring those killed by Syrian armed groups back to life. Nevertheless, the imperfect justice he seeks is to bring the families of those disappeared in Syria a sense of justice, to see the corporate manager who placed him and his family in grave danger be held to account in some way, and to receive acknowledgment of wrongdoing by the company – a form of public apology.³¹² Other rights holders may view justice differently; perhaps entailing compensation for the harm they suffered, a prison sentence for the accused, or various other forms of redress. The meaning of justice is distinct to every person.³¹³

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The challenge of achieving justice that is suitable for all was central to the out-of-court settlement negotiations with Volkswagen's Brazilian subsidiary. The prosecutors were barred from bringing a criminal case due to Brazil's Amnesty Law which restricts prosecution for “political crimes” committed during the military dictatorship. Hence, prosecutors found a creative accountability mechanism in the form of a public civil inquiry.³¹⁴ This allowed for flexible remedial schemes arising out of settlement negotiations, although similar options may be available as part of a plea bargain in lieu of a criminal trial.³¹⁵

In the agreement that Volkswagen do Brasil signed, which was approved by some of the affected community members, the company agreed to various remedial measures including payments to affected rights holders and their families, a contribution to state funds, funding for a memorial, funding for human rights investigations and activities at the Federal University of São Paulo, a public apology by the company and guarantee of non-repetition.³¹⁶

309 Comments by civil society practitioner 14, CCW, July 2024.

310 Interview with civil society practitioner 1, 3 January 2024; Comments by civil society practitioner 1, CCW, July 2024; Interview with civil society practitioner 19, 7 October 2024. Notably, Brazilian prosecutors refused attempts by Volkswagen to reach a settlement agreement at an early stage because they had not yet established a truthful record of the extent of its involvement in crimes against humanity by the military dictatorship. Without such a record of the full scope of the company's involvement, they believed, there would be no way for the prosecutors to know whether the remedies agreed upon would be adequate. Comments by law enforcement official 7, CCW, July 2024.

311 Comments by civil society practitioner 20, CCW, July 2024.

312 Interview with rights holder 3, 7 March 2024.

313 Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), p. 13 (“Impacts may mean different things for different stakeholders because they have different goals in mind in relation to the litigation.”).

314 Brazil, Lei de Anistia (Amnesty Law), 28 August 1979.

315 See, for example *USA v. BP Exploration & Production, Inc.*, Guilty Plea Agreement, United States District Court for the Eastern District of Louisiana, 15 November 2012, <https://tinyurl.com/bdf55fb8>.

316 Comments by law enforcement official 7, CCW, July 2024; Kate Connolly and Dom Phillips, “Volkswagen to pay compensation for collaborating with Brazil's dictatorship”, 24 September 2020, <https://tinyurl.com/5n829wu8>.

This will be viewed by many as a robust set of remedies provided to rights holders that suffered grave harm, which will also have human rights implications stretching far beyond this case including by funding further investigations into other cases of corporate crimes involving complicity in the atrocities committed by the Brazilian military dictatorship.

Nevertheless, the workers' rights organization which filed the complaint in the Volkswagen case opposed the agreement and remains highly critical of its remedial schemes. A leader of that group explained that their objection was due, in part, to these payments being framed as "donations" rather than as "compensation" for the company's complicity in the crimes committed by the military dictatorship – the sum of which they view as inadequate to remediate the harm to those most gravely affected.³¹⁷ Other workers saw matters differently and viewed the agreement as the only realistic option to receive remedy from the company.³¹⁸

There can be no simple guidance on these issues, so this Handbook does not aim to resolve precisely what level of remediation is sufficiently robust. If such disagreements arise, practitioners should respect community agency by engaging to resolve them in good faith.

7.3 IDENTIFYING OPPORTUNITIES FOR IMPACT

The value of looking beyond simply "winning" a corporate crimes case is being able to identify opportunities for impact long before the final judgement. The following section presents some lessons learned for practitioners seeking to identify these opportunities in their cases.

7.3.1 RAISING AWARENESS

The Freedom Fund report provides four indicators of awareness-raising: (a) enabling civil society advocacy; (b) engaging with the media; (c) triggering consumer or investor action; and (d) educating key stakeholders.³¹⁹ These indicators can be achieved not only before a conviction, but at times even before an indictment is reached.

The Freedom Fund highlights these early opportunities for raising awareness in case studies also addressed in this Handbook, including the ICC communication alleging that Chiquita executives were complicit in crimes against humanity in Colombia, and the prosecutions of UCIL executives in India following the Bhopal tragedy, which led to advocacy that raised awareness of these human rights abuses at the initial stages of litigation.³²⁰

There are numerous other examples of advocacy victories for practitioners and members of civil society that did not depend on a favourable judgement in court. As mentioned previously, practitioners were able to stop Shell and Eni extracting fossil fuels from an offshore oil field in Nigeria for more than a decade – a victory for climate advocates, despite the criminal trial in Italy resulting in an acquittal.³²¹ The prosecution of Chiquita in the United States led to the release of new information, part of which was made publicly available in the plea agreement and the remainder later disclosed subject to FOI requests. This information formed the basis of a broad array of advocacy to hold Chiquita accountable, including in the court of public opinion.³²²

317 Interview with rights holder 6, 23 April 2024. DW, "Volkswagen to pay victims of Brazil dictatorship", 24 September 2020, <https://tinyurl.com/4akv4tb5>.

318 Interview with civil society practitioner 16, 18 March 2024; Julia Brock, "Volkswagen to pay compensation to victims of Brazil's dictatorship", IELR Blog, 28 September 2020, <https://tinyurl.com/y2w7t5kt>.

319 Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), p. 15.

320 Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), p. 16.

321 Interview with civil society practitioners 11 and 12 and rights holder 4, 20 May 2024.

322 Interview with civil society practitioner 7, 9 April 2024.

7.3.2 CHANGING CORPORATE BEHAVIOUR

There are also opportunities for a corporate crimes case to stop corporate involvement in human rights abuses.³²³ While a courtroom victory often comes years, even decades, after abuses occurred, the experience of practitioners suggests that under certain conditions it may be possible to stop ongoing corporate abuses and ensure non-repetition even at an early stage of legal proceedings.



CASE STUDY

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This is exemplified by the Metssa Congo case, where rights holders' primary objective was stopping the company's pollution. As such, Amnesty International supported the community in filing an administrative claim against the company for not having conducted a proper environmental impact assessment, as required to operate under Congolese law. The Pointe-Noire Administrative Court promptly ruled in summary judgement that the company must suspend its operations and, a matter of months later, the recycling factory was ordered to be dismantled following an investigation by the Ministry of the Environment.³²⁴

The impact of this case and the speed with which the desired outcome was reached were the result of the strategic partnership between the affected community and practitioners, the extreme fact pattern, and coordinated advocacy in and out of the courtroom. It is also emblematic of the value of looking beyond criminal responsibility when one's primary goal is to change corporate behaviour, which may be better facilitated by a civil or administrative claim or even by advocacy prior to initiating litigation, such as by leveraging the credible threat of legal sanctions.

The impact of this case and the speed with which the desired outcome was reached were the result of the strategic partnership between the affected community and practitioners, the extreme fact pattern, and coordinated advocacy in and out of the courtroom.

7.3.3 SHAPING LAW AND POLICY

There is no doubt that corporate crimes cases can set groundbreaking precedents that shape the law in a jurisdiction, advance business and human rights standards, and strengthen the doctrines enabling accountability for illegal corporate activity. The Lafarge case, for example, has set a precedent as the first case in which a parent company has been indicted for complicity in crimes against humanity as a result of conduct by its subsidiary.³²⁵ There are also other ways that these cases can shape state policy at an earlier stage.

323 The Freedom Fund report defines another category of positive impacts to be that of changing corporate culture, which includes indicators such as: (a) triggering changes to BHR approaches; (b) responding to reputational pressure; and (c) facilitating broader sectoral changes. See Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), p. 20.

324 Republic of the Congo Ministry of the Environment and Sustainable Development of the Congo Basin, "Order of total suspension of activities" (previously cited); Amnesty West & Central Africa, X, 20 December 2024, <https://x.com/AmnestyWARO/status/1870116254406545875>.

325 Interview with civil society practitioners 3 and 4, 24 January 2024.

Practitioners should regularly examine the legislative, regulatory and policy context in the jurisdiction where they are bringing a corporate crimes case and consider opportunities to influence policymaking. These opportunities may shape the strategic considerations for taking on a case, or govern matters of timing, as the window for influencing policy change may be limited.

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Upon learning of the payments to ISIS allegedly made by Lafarge's subsidiary in Syria, practitioners from Sherpa and ECCHR decided it would be advantageous to file a criminal complaint before French President François Hollande left office because, in their view, his support was key to encouraging the French parliament to pass the Corporate Duty of Vigilance Law that was then on the table.³²⁶ In the view of one practitioner, the filing had a significant impact on the public discourse ahead of the law's passing because the Lafarge case became a major media item and was raised in parliamentary debate on multiple occasions.³²⁷

There may also be opportunities to influence law and policy even when the remedy arising from the case itself is deficient.

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For example, the litigation arising out of the Bhopal tragedy – the world's worst industrial disaster – led to starkly inadequate remedy. The Bhopal gas leak is estimated to have killed more than 22,000 people and permanently injured more than a half a million more.³²⁸ Although the civil litigation led to an out-of-court settlement for US\$470 million, this amount is far less than most evaluations of the damage. Furthermore, none of the executives found, or alleged, to be responsible have served prison sentences. Despite the challenges to hold these corporate actors accountable, the Bhopal tragedy and the litigation brought in its wake spurred the passing of legislation around the world to strengthen the regulation of occupational hazards and prevent another disaster. This legislation includes the Environmental Protection Act and Factories Act in India, the Emergency Planning and Community Right-to-Know Act in the USA, and similar laws elsewhere.³²⁹

326 Interview with civil society practitioner 6, 8 February 2024.

327 Interview with civil society practitioner 6, 8 February 2024.

328 Amnesty, *Bhopal: 40 Years of Injustice* (Index: ASA 20/7817/2024), 2024, <https://www.amnesty.org/en/documents/asa20/7817/2024/en/>.

329 Amnesty, *Bhopal: 40 Years of Injustice* (previously cited), p. 82; Ebony Birchall and others, *The Impact of Strategic Human Rights Litigation on Corporate Behavior* (previously cited), pp. 17, 23 and 28.

8 CONCLUSION

Strategic litigation to hold corporate actors accountable for human rights abuses tends to be a battle between David and Goliath. The cards are stacked against affected communities because not only are there vast disparities in power and resources between them and multinational corporations, but laws are also generally drafted to limit corporate liability and shield corporations and their shareholders from responsibility. Nonetheless, the foundational lesson from the experiences of stakeholders in the case studies presented in this Handbook, and of the Corporate Crimes Network more broadly, is that there remains hope for overcoming this power disparity where rights holders, civil society practitioners, and – where appropriate – law enforcement officials cooperate to hold accountable the perpetrators of corporate crime.

CASE STUDY

A brief exchange from the prosecution of I.G. Farben executives at the Nuremberg Trials following the Second World War puts the significance of these legal struggles in perspective. On 27 August 1947, the Chief of Counsel for the Prosecution at the United States Military Tribunal at Nuremberg Telford Taylor gave his opening statement. He asked the judges: “why did the defendants help Hitler to Power?” “There are those who will say that it was all done for money, and no doubt the profit motive played its part,” Taylor continued, “[b]ut ... it is hard to avoid the conclusion that these men were governed by the same unquenchable thirst for power that for years has gripped and distorted the minds of the military caste and many other leading Germans.” This thirst for power, Taylor explained, led the defendants to participate in a “plan for the marshalling of the chemical industry of the continent of Europe ... to wage war against the world” — “[t]hese men wanted to make the world their own, and they were prepared to smash it if they could not have their way.”³³⁰

Amnesty International hopes that this Handbook serves as a resource that supports civil society practitioners and affected communities in their efforts to ensure that corporate executives like those of I.G. Farben do not seek to make the world their own with impunity, but that they are held to account as equals before the law. Ending impunity for corporate crime is a profound challenge, but practitioners will be one step closer to doing so upon learning from the wisdom of those who came before them.

Amnesty International invites readers to contact us should they find that the organization’s work on corporate crime, or that of the Corporate Crimes Network, may contribute to their efforts to seek remedy for human rights abuses.

330 United States of America v. Carl Krauch et al., Opening Statement for the United States of America, 27 August 1947, <https://tinyurl.com/5n9x75ft>, pp. 77 - 81.

ANNEX I: ADDITIONAL RESOURCES

GENERAL RESOURCES:

1. ICAR and Amnesty International, Corporate Crimes Principles: Advancing Investigations and Prosecutions in Human Rights Cases, October 2016, <https://www.commercecrimehumanrights.org/>.
2. Amnesty International, Corporate Crimes Hub, <https://corporate-crimes.org/>.
3. OSJI, Strategic Litigation Impacts: Insights from Global Experience, 2018, <https://tinyurl.com/mwe89m6p>.
4. Ebony Birchall and others, The Impact of Strategic Human Rights Litigation on Corporate Behavior, November 2023, <https://tinyurl.com/mttm8c95>.
5. Leigh A. Payne, Gabriel Pereira, and Laura Bernal-Bermúdez, Transitional Justice and Corporate Accountability from Below: Deploying Archimedes' Lever, 2020, <https://tinyurl.com/3r8sd7zy> (in Spanish).
6. Harvard Human Rights Entrepreneurs Clinic, The Fourth Pillar: Centering Communities in Business & Human Rights: Version 2.0, May 2024, <https://fourthpillarinitiative.com/>.

RESOURCES FOR RISK ASSESSMENT AND MITIGATION:

1. Amnesty International, Civil Disobedience Risk Assessment Form (Index: ACT 10/7574/2024), <https://www.amnesty.org/en/documents/act10/7574/2024/en/>.
2. Amnesty International Security Lab, "Digital Security Resource Hub", <https://securitylab.amnesty.org/digital-resources/>.
3. Humanitarian Practice Network, Good Practice Review 8: Humanitarian Security Risk Management (Third Edition), 2025, <https://tinyurl.com/2euhta9e>, pp. 204-218.
4. Coalition Against SLAPPs in Europe (CASE), Case Guidebook: How to prevent SLAPPs or get help if it's too late, 2024, <https://tinyurl.com/2kuxn7re>.
5. Amnesty International, Staying Resilient While Trying to Save the World, 2020, <https://www.amnesty.org/en/documents/act10/3231/2020/en/>.
6. OHCHR, Manual on Human Rights Monitoring: Chapter 12 Trauma and Self-Care, 2011, <https://tinyurl.com/37bb436k>.
7. Medica Mondiale, Developing a staff care concept as a feminist NGO, 2022, <https://tinyurl.com/48spzhju>.

RESOURCES FOR CIVIL SOCIETY INVESTIGATIONS:

1. Amnesty International Evidence Lab blog, <https://citizenevidence.org/category/how-to/>.
2. ICC-OTP and others, *Documenting International Crimes and Human Rights Violations for Accountability Purposes: Guidelines for Civil Society Organizations*, 2022, <https://tinyurl.com/avvd6yxm>.
3. Human Rights Center at UC Berkeley School of Law and OHCHR, *Berkeley Protocol on Digital Open Source Investigations*, 2022, <https://tinyurl.com/3fnnsks>.
4. Giancarlo Fiorella, “First steps to getting started in open source research”, 9 November 2021, <https://tinyurl.com/4esf4ndf>.
5. OpenCorporates, All company registers, <https://tinyurl.com/yckc72fe>.
6. OHCHR, *Manual on Human Rights Monitoring: Chapter 11 Interviewing*, 2011, <https://tinyurl.com/52rvy5ma>.
7. United Nations Department of Peace Operations and others, *Manual on Investigative Interviewing for Criminal Investigation*, 1 February 2024, <https://tinyurl.com/5czy5wbr>.
8. Argentina Ministerio Público Fiscal y Procuración General de la Nación, “Protocolo de medidas previas para la investigación de la responsabilidad empresarial en causas de lesa humanidad”, 2014, <https://tinyurl.com/2ehsdu8m>.
9. Ewan Brown and William H. Wiley, “International Criminal Investigative Collection Planning, Collection Management and Evidence Review”, in Xabier Agirre Aranburu, Morten Bergsmo, Simon De Smet and Carsten Stahn (editors), *Quality Control in Criminal Investigation*, 2020, <https://tinyurl.com/48nvj7zy>.

RESOURCES FOR ADVOCACY OUT OF THE COURTROOM:

1. Amnesty International, *Body Politics: The Criminalization of Sexuality and Reproduction, A Campaigning Toolkit* (Index: POL 40/7764/2018), 2018, <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL4077642018ENGLISH.pdf>.
2. Amnesty International, *Community Campaigns: Strategies for Human Rights Defenders* (Index: ACT 10/1222/2018), 2018, <https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT1012222018ENGLISH.pdf>.

ANNEX II: SHELL CASE DECISION

OPENBAAR MINISTERIE

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Department International Crimes Unit
Contact Annemarie van Zeeland
Phone number +316 1545 5213
E-mail a.van.zeeland@om.nl
Subject Analysis of AI report 'A Criminal Enterprise? Shell's involvement in human rights violations in Nigeria in the 1990s' and underlying information

Upon answering please refer to date and our reference.

Dear Seema,

Following our correspondence with regard to Shell's involvement in human rights violations in Nigeria in the 1990s, I hereby send you our findings.

1. Meeting Amnesty International

In the report 'A Criminal Enterprise' Amnesty International examined the role played by the UK-Dutch multinational Shell in human rights violations committed in Ogoniland (Nigeria) in the 1990s. On 5 March 2018, our International Crimes Unit met with Amnesty International to discuss whether information described in the report could lead to an investigation into criminal liability of Shell for international crimes.

2. Underlying information two incidents

During the meeting, two incidents were discussed that were of specific interest to our Unit. Amnesty International agreed to provide underlying information that would substantiate these incidents. Upon receipt, our Unit closely analyzed this information and concluded it did not relate to nor substantiate the aforementioned incidents, but rather related to payments that were supposedly made by Shell.

3. Analysis report and underlying information as a whole

Given the gravity of the crimes in which Shell allegedly was involved in Ogoniland (Nigeria) in the 1990s, our Unit has again reviewed the entire report and underlying information as a whole to see whether these could lead to an investigation into criminal liability of Shell for international crimes.

In short, the report and underlying information show the following. Shell operated in Ogoniland in the '90s. At that time, many people demonstrated against the presence of Shell and pollution caused by Shell. Shell was not allowed to use their own security forces to protect their properties against demonstrators (which protection is, in itself, a legitimate purpose). Various sources indicate that government troops (both police and army) often used disproportionate force to crush the demonstrations. These troops included the Mobile Police, SPY, ISTF and army. Many people were killed and detained (and subsequently tortured during detention) by these troops. The leaders of the demonstrations (the Ogoni 9) were arrested and executed after a seemingly unfair trial.

The question in each instance is whether Shell, while frequently requesting for intervention and protection, 1) knew that the troops would use disproportionate force (eg kill and torture), 2) contributed in some way to the killing and torture of demonstrators (eg provided means or information), and 3) wanted (consciously accepted the considerable chance) these demonstrators to be killed and tortured. In order to answer this question, we will first assess for which crimes the Netherlands could establish jurisdiction and subsequently, discuss the available information in relation to these crimes.

3.1. Legal (im)possibilities concerning international crimes

Genocide

Genocide was criminalized on 24 October 1970 under the Genocide Act. There are no indications that Shell or the Nigerian state/army/forces acting on behalf of Shell committed acts with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

Crimes against humanity

In the Netherlands, crimes against humanity have only been criminalized since 1 October 2003 in the International Crimes Act. The crimes were allegedly committed in the 1990s, so well before that date.

Enforced disappearances

Enforced disappearances have been criminalized as a crime against humanity since 1 October 2003 and as a distinct crime in the International Crimes Act since 1 January 2011. It could however be argued that enforced disappearances committed

before those dates would still be punishable as a continuous crime as long as acknowledgement of or information about the disappearance is withheld.

The information shows no indications that persons were arrested, detained or abducted by or on behalf of Shell, with the authorization, support or acquiescence of the Nigerian state, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons by or on behalf of Shell, with the authorization, support or acquiescence of the Nigerian state, with the intention of removing them from the protection of the law for a prolonged period of time.

War crimes

The Laws of War Act of 5 August 1952 criminalized the “laws of war” and “customs of war”, ie the Geneva Conventions and customary international law. Since the information concerns disturbances within Nigeria, the only relevant article could be common article 3 of the Geneva Conventions, criminalizing ia murder, mutilation, cruel treatment, torture, humiliating and degrading treatment.

In order to prosecute the alleged acts as possible war crimes, these acts should have been committed against protected persons (for example, civilians) *in the context of* and *in association with* a non-international armed conflict. Protracted armed violence between two or more organized armed groups must reach a certain level of intensity to qualify as a non-international armed conflict. Neither the information provided nor open source information concerning the existence of armed conflicts show indications that these criteria have been met.

Torture

The international crime of torture has been criminalized since 20 January 1989 under the Torture Act. For an investigation into torture there must be indications that torture was committed by Shell or on behalf of Shell.

Conclusion

Following the above, there are either no grounds or no possibilities for an investigation into genocide, crimes against humanity, enforced disappearances or war crimes. An investigation could be possible into torture committed since 20 January 1989 by Shell or on behalf of Shell.

3.2. Legal (im)possibilities concerning domestic crimes

(Aggravated) assault

(Aggravated) assault is criminalized in articles 300-302 of the Dutch Criminal Code. As these crimes are barred by the statute of limitations after 12 years, it is not possible to initiate proceedings into crimes allegedly committed in the 1990s.

Destruction

Destruction is criminalized in article 350 of the Dutch Criminal Code and is barred by the statute of limitations after 6 years. It is therefore not possible to initiate proceedings into such crimes allegedly committed in the 1990s.

Murder

Criminalized in article 289 of the Dutch Criminal Code, there are no statute of limitations for murders committed since 1 January 1988.

Manslaughter

Manslaughter is criminalized in article 287 of the Dutch Criminal Code and there are no statute of limitations for manslaughters committed since 1 April 1993.

Rape

There is no statute of limitations for rape committed since 1 April 1993, which is criminalized in article 242 of the Dutch Criminal Code.

Conclusion

The crimes of (aggravated) assault and destruction are barred by the statute of limitations. For an investigation into murder, manslaughter and rape there must be indications that these crimes were committed by Shell or on behalf of Shell since respectively 1 January 1988 or 1 April 1993.

3.3. Jurisdiction for international and domestic crimes

Following article 5 of the Torture Act, the Netherlands has universal jurisdiction to investigate and prosecute the international crime of torture.

Concerning the domestic crimes of murder, manslaughter and rape, the Netherlands has extraterritorial jurisdiction following article 5(1)(2) (old) of the Dutch Criminal Code, as applicable at that time.

3.4. Review of the information relating to torture

As stipulated in the Torture Act, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind, when such pain or

suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The information concerning torture can be divided in two categories: the torture of Ogoni demonstrators during detention and the torture of Kagbara Bassee and Blessing Israel. It is relevant to assess whether Shell supported the torture in any way (eg by providing information, means) and intended for the torture to happen (that is, was Shell at least aware of a considerable chance/risk of torture and did it consciously accept that torture could occur).

Torture of Ogoni demonstrators during detention

Shell did not participate in the torture of Ogoni demonstrators during their detention, thus no attempt or (co-)perpetration of torture by Shell. There also is no proof of an agreement by Shell for Ogoni demonstrators to be tortured nor a superior-subordinate relationship between Shell and the persons who allegedly committed torture, thus no conspiracy or superior responsibility for Shell. There is no proof that Shell, during their requests for intervention, knew or should have known that the demonstrators would be tortured, nor that Shell intended them to be tortured, intended to assist in such torture or induced or incited others to torture the demonstrators. Thus no complicity, instigation or incitement to torture by Shell.

The Ogoni 9 were arrested for their suspected involvement in murder. Later on, they stated that they were tortured during detention and various sources deemed the trial to have been unfair. However, there are no indications that Shell prior to their arrest knew or should have known that they would be falsely arrested and tortured, nor that Shell intended them to be arrested and tortured, intended to assist in such arrest and torture or induced or incited others to arrest and torture the Ogoni 9. Thus no attempt, (co-)perpetration, conspiracy, superior responsibility, complicity, instigation or incitement to torture by Shell.

Torture of Kagbara Bassee and Blessing Israel

Kagbara Bassee and Blessing Israel stated that they were knocked unconscious by the police in the presence of Shell employees. They were subsequently tortured by ISTF during detention. Shell denies any involvement.

First, it is unclear how the Shell employees were identified: there is no information about their names or description of appearances and why the witnesses were convinced they were Shell employees. Second, if we assume that the beatings can be qualified as torture, there is no information on the involvement of the Shell employees in the actual beatings, thus no attempt or (co-)perpetration of torture by these supposed Shell employees. On a larger scale, there also is no proof of an agreement by Shell for Kagbara Bassee and Blessing Israel to be tortured nor a superior-subordinate relationship between Shell and the persons who allegedly committed the torture, thus no conspiracy or superior responsibility for Shell. There is no proof that Shell, during their prior request for intervention, knew or should

have known that Kagbara Basee and Blessing Israel would be tortured, nor that Shell intended them to be tortured, intended to assist in such torture or induced or incited others to torture them. Thus no complicity, instigation or incitement to torture by Shell.

3.5. Review of the information relating to rape

In July 1995, HRW released the rapport 'A Case Study of Military Repression in Southeastern Nigeria', containing four eyewitness testimonies about the rape of women and girls during the military raids on Ogoni villages in May and June 1994 and in the Bori Military and Kpor Camps. In 2004 and 2006, Boniface Ejiogu and another report by AI ('Rape – The Silent Weapon, about rapes in Ogoniland in 1994') also highlighted rapes in the area at that time.

It is unclear whether information on these rapes of demonstrators allegedly committed by government troops were also made public *before* July 1995, so it cannot be established whether Shell knew or should have known about these rapes before that date. Since July 1995, Shell did not request for interventions nor is there any information on rapes committed by the troops after that date. Therefore, there is no proof of involvement of Shell in these rapes.

3.6. Review of the information relating to murder and manslaughter

Murder

For charges of murder, it is required that the perpetrator took the life of another person intentionally and with premeditation. There are no indications that Shell (through the use of government troops) intended to kill demonstrators according to a premeditated plan.

Manslaughter

Manslaughter requires the perpetrator to intentionally take the life of another person. Shell did not participate in the killings of Ogoni demonstrators, thus no attempt or (co-)perpetration of murder by Shell. There also is no proof of an agreement by Shell for Ogoni demonstrators to be killed nor a superior-subordinate relationship between Shell and the troops who allegedly killed the demonstrators, thus no conspiracy or superior responsibility for Shell.

For the remaining modes of liability of complicity, instigation and incitement, it is relevant to note:

- what knowledge Shell had with regard to the illegitimate killing of demonstrators by the various troops (the use of disproportionate force while protecting Shell properties and no instances of self defense);
- which requests Shell, despite this knowledge, made to (the one in charge of) those troops;

- whether Shell consciously accepted the considerable chance/risk that demonstrators would be killed and that Shell intentionally provided opportunity, means (money and transport) or information (requests for intervention and sharing information with SSS) to substantially contribute to those killings (complicity);
- whether Shell consciously accepted the considerable chance/risk that demonstrators would be killed and that Shell by making use of gifts, promises (economic interests), abuse of authority (importance of Shell) or by providing opportunity, means (money and transport) or information (requests for intervention and sharing information with SSS) intentionally instigated the troops to kill demonstrators (instigation) + it would have to be established that these troops were only willing to kill these demonstrators because of the instigation by Shell;
- whether Shell consciously accepted the considerable chance/risk that demonstrators would be killed and that Shell by making a request or encouragement in public, either verbally or in writing, incited to kill demonstrators, that is either directly or indirectly underlining that the killing of demonstrators would be desirable or necessary and to induce the desire to kill demonstrators (incitement).

Close analysis of the information allows for the construction of a timeline of events and answers to these questions:

- Long before other events, in November 1990, Shell requested assistance because of an imminent attack; MOPOL killed 80 people; according to a judicial enquiry it was a peaceful protest. This could warrant Shell for the first time about the disproportionate use of force by MOPOL, but it must be noted this occurred in 1990;
- During 1992 and 1993, Shell made eight specific and legitimate requests for intervention to protect their properties (in response to damage/stealing/violence, to hold off protestors who tried to block the work, to carry out operations, to guard contract workers laying a pipeline); three people were killed by the Rapid Intervention Force (MOPOL) and army and eleven were injured. In two instances, the newspaper stated that it concerned unarmed protestors, but there are conflicting accounts and thus it is unclear whether it concerned proportionate or disproportionate use of force. Therefore, there is no proof that these killings were illegitimate.
- From April 1993, Shell left the area;
- Between April and June 1993, Nigeria's State Security Service (SSS), arrested Ken Saro-Wiwa on three separate occasions. There are no indications that Shell was involved in these arrests;
- Between July and November 1993, the first series of armed attacks on Ogonis took place, in which 1000 people died. As this constitutes the first large scale attack on the Ogoni community, it cannot be said that Shell knew or should have known this attack was about to happen, nor is there proof that Shell intended this attack to happen;

- In October 1993, Shell requested specific assistance to inspect oil production sights in Korokoro; it provided transport and later on payment, but this is in itself not illegitimate. The army killed one man, but there are conflicting accounts about the incident, thus unclear whether it concerned proportionate or disproportionate use of force and no proof that it was illegitimate.
- In October and December 1993, Shell requested specific assistance because of stolen fire trucks and to minimize disruptions, in itself a legitimate purpose. There are conflicting accounts whether someone was shot, thus it is unclear whether it concerned proportionate or disproportionate use of force and no proof that it was illegitimate.
- In February 1994, ISTF shot at demonstrators outside HQ Shell Port Harcourt. It is unclear whether this was preceded by a request by Shell, and whether it concerned proportionate or disproportionate use of force. Only one witness heard Okuntimo saying "shoot at anyone you see", which under Dutch law is insufficient (one witness is no witness). Therefore, there is no proof that these killings were illegitimate.
- In March and April 1994, Shell did raise "the problem of the Ogonis and Ken Saro-Wiwa, pointing out that Shell had not been in the area for almost a year" but specifically requested the assistance of the police, not army, for protection and to be able to return to the area. Anderson (Shell) stated that he "did not support any application of force by the Military".
- In May 1994 (and apparently on a daily basis, as Ukpong later stated), Shell was in touch with the SSS. The content of these discussions is however unknown, so no conclusions can be drawn about what was discussed.
- In May and June 1994, a large scale raid on 43 Ogoni villages and Giokoo took place and numerous people were killed by ISTF; Ken Saru-Wiwa detained by ISTF.
First, as this constitutes the second large scale attack on the Ogoni community, it could be said that Shell knew or should have known the troops could use disproportionate force.
Second, it could be argued that this attack followed the request by Shell of March 1994 in which it generally raised "the problem of the Ogonis and Ken Saro-Wiwa, pointing out that Shell had not been in the area for almost a year". However, there is no proof that Shell intended this attack to happen. Their request was accompanied by the specific request that the army would not intervene as Shell "did not support any application of force by the Military". The statements Shell made thereafter do not reveal their intent at that time.
- Only one witness mentions a payment by Shell to Okuntimo in May and June 1994, which under Dutch law is insufficient (one witness is no witness). Therefore, there is no proof that these payments took place.
- In August 1994, Anderson (Shell) did mention the "ongoing, and now accelerating, Ogoni problems", but stressed that he was "concerned that the security forces might get trigger happy" and that "Abacha offered to 'send in troops to protect' Shell, but he said he would not accept that". There is no information that demonstrators were killed after this date.

- On 7 November 1995 Shell requested clemency for the Ogoni 9.
- On 10 November 1995 the Ogoni 9 were executed after a seemingly unfair trial. There are no indications that Shell prior to their arrest knew or should have known that they would be falsely arrested and killed, nor that Shell intended them to be arrested and killed, intended to assist in such arrest and murder or induced or incited others to arrest and murder the Ogoni 9. Thus no attempt, (co-)perpetration, conspiracy, superior responsibility, complicity, instigation or incitement to murder by Shell.
- Later, Anderson stated that Shell provided Nigeria's police and armed forces with logistical support. This is taken into account in the abovementioned incidents.

There is thus no proof that Shell intended to have the demonstrators killed by the various Nigerian troops.

4. Conclusion

Our Unit has analyzed the entire report and underlying information as a whole to see whether these could lead to an investigation into criminal liability of Shell for torture, murder, manslaughter or rape. It is important what knowledge Shell had with regard to the illegitimate killing of demonstrators by the various troops and which requests Shell, despite this knowledge, made to those troops. Providing money and transport to troops after specific requests for protection of property is in itself a legitimate purpose and it cannot be established what kind of information was shared with SSS.

There is no proof that Shell, during their requests for intervention, knew or should have known that the demonstrators would be tortured or raped, nor that Shell intended them to be tortured or raped, intended to assist in such torture or rape or induced or incited others to torture or rape the demonstrators. There are also no indications that Shell (through the use of government troops) intended to kill demonstrators according to a premeditated plan.

There is not enough evidence that Shell *intended* to have the demonstrators killed by the various Nigerian troops *and* 1) *intentionally* provided opportunity, means or information to substantially contribute to those killings (complicity) or 2) by making use of gifts, promises, abuse of authority or by providing opportunity, means or information *intentionally* instigated the troops to kill demonstrators (instigation) or 3) by making a request or encouragement in public, *incited* to kill demonstrators, that is either directly or indirectly underlining that the killing of demonstrators would be desirable or necessary and to induce the desire to kill demonstrators (incitement).

There is no sufficient realistic prospect that sufficient evidence can be gathered with regard to the intent and involvement of Shell in these incidents nor to reach a

Datum 11 December 2019

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conviction, whereby the criminal case can be completed within a reasonable period of time. Therefore, our Unit has decided not to investigate the criminal liability of Shell for manslaughter committed by Nigerian troops in Ogoniland in the 1990s.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Annemarie van Zeeland', written over a horizontal line.

Annemarie van Zeeland
Legal Advisor International Crimes

ANNEX III: BIOGRAPHIES OF MEMBERS OF THE EXPERT COMMITTEE

ELIZABETH GÓMEZ ALCORTA

Elizabeth Gómez Alcorta is a lawyer and a Specialist in Criminal Law from the University of Buenos Aires. She holds postgraduate degrees in Political Science and Sociology (FLACSO) and is a doctoral candidate at the University of Buenos Aires. She is a tenured professor at the undergraduate and postgraduate levels at the Faculty of Law of the University of Buenos Aires and a guest lecturer at various universities in Argentina and abroad. She is the author of numerous academic and journalistic publications. She represents victims of state terrorism in trials for crimes against humanity and has been and is a defense lawyer for political prisoners. She is a member of the board of directors of the Association of Indigenous Rights Lawyers and a member of the Latin American Council for Justice and Democracy (CLAJUD) and the Advisory Council of the Progressive International. She has held public office in the Judiciary, in the parliamentary sphere, and was the first Minister of Women, Genders, and Diversity of Argentina and one of the authors of the bill for legal, safe, and free abortion.

EVELYNE OWIYE ASAALA

Evelyne Owiye Asaala is a senior lecturer of law at the University of Nairobi, Kenya. She holds a PhD from the University of Witwatersrand (South Africa), a Master of Laws degree from the Centre for Human Rights University of Pretoria (South Africa) and a Bachelor of Laws degree from the University of Nairobi (Kenya).

VALERIA BOLICI

Valeria Bolici is an Italian magistrate, currently serving as a criminal law judge in Bologna. She

has previously served as prosecutor in Italy as well as an international prosecutor at the European Union Rule of Law Mission in Kosovo and at the Kosovo Specialist Prosecutor's Office in The Hague. She has worked as a legal officer at the International Criminal Tribunal for the former Yugoslavia (ICTY) Chambers and within the Office of the Italian Agent before the European Court of Human Rights.

PABLO CAMUÑA

Pablo Camuña is a Federal Prosecutor in the north of Argentina. He has been coordinating the Human Rights Unit in Tucumán for 15 years, where he is in charge of the investigation, prosecution and trial of those responsible for crimes against humanity committed during state terrorism. He also intervenes in cases of federal interest such as environmental criminal law, human trafficking, narco-criminality, and more. Pablo has been teaching human rights and criminal law at the National University of Tucumán for almost 20 years. In recent years, he has focused his practice and academic work on researching the link between business, criminal law and serious human rights violations.

LUKE DOCKWRAY

Luke Dockwray is a UK criminal lawyer specialising in financial and economic crime. He previously served as a Senior Specialist Prosecutor in the Specialist Fraud Division of the Crown Prosecution Service. Luke has advised investigations and conducted prosecutions on behalf of His Majesty's Revenue and Customs, the National Crime Agency, City of London Police and regional police forces as well as the Financial Conduct Authority.

MARK TAYLOR

Mark Beaumont Taylor is an analyst and researcher focused on human rights, illicit financial flows, international crimes, and responsible business. For two decades, Mark's research and investigation into war economies and regulatory options for corporate accountability has been the basis for case building as well as advice to governments, civil society, trade unions, and companies. Mark is presently Senior Advisor, Nansen Program for Support to Ukraine, Norad, Norway's development agency. Previously, Mark helped found Lysvkert.org, a platform for support to citizen investigations of human rights and environmental harms. Until 2023, Mark was a senior analyst at the Clooney Foundation for Justice, where he led investigations and case building on commercial and other enablers of international crimes for The Docket. Before that, Mark held research and management positions at the Fafo Institute for Labour and Social Research, Oslo, where he worked on strategic litigation, business and human rights, and sustainability in global value chains.

MARLON A. WEICHERT

Marlon A. Weichert has been a Federal Prosecutor in Brazil since 1995. He has been involved in various legal issues, including anti-corruption and human rights cases under both criminal and civil law. Weichert has a strong background in transitional justice initiatives and has led investigations and prosecutions of crimes against humanity committed during the Brazilian dictatorship. From 2013 to 2017, he was a member of the Federal Reparation Commission (the Amnesty Commission). Currently, he is investigating the involvement of corporations with the Brazilian dictatorship and participating in a forum for the memory, truth, and reparations for Indigenous peoples who were victims of human rights violations during the military regime.

ALEX WHITING

Alex Whiting is a Professor of Practice at Harvard Law School where he teaches, writes, and consults on international and domestic prosecution subjects. Previously, he served in the Special Counsel's Office of the Department of Justice

(Jack Smith) from August 2023-January 2025. Prior to that role, he served for four years in the Kosovo Specialist Prosecutor's Office in The Hague as Head of Investigations, Deputy Specialist Prosecutor, and then Acting Specialist Prosecutor. Before he joined the Kosovo court, he was a Professor of Practice at Harvard Law School. From 2010-13, he was the Investigation Coordinator and then Prosecution Coordinator in the Office of the Prosecutor at the International Criminal Court in The Hague, overseeing all the ongoing investigations and prosecutions in the Office. Before going to the ICC, he taught for more than three years at Harvard Law School. From 2002-2007, he was a Trial Attorney and then a Senior Trial Attorney with the International Criminal Tribunal for the Former Yugoslavia, where he was lead counsel in several war crimes and crimes against humanity prosecutions. Before the ICTY, he was a U.S. federal prosecutor for ten years, first with the Criminal Section of the Civil Rights Division in Washington, D.C., and then with the U.S. Attorney's Office in Boston. Whiting attended Yale College and Yale Law School. He has published on international criminal law topics and is a contributor to the Just Security blog.

MARTIN WITTEVEEN

Martin Witteveen is an Appeals Prosecutor in the Prosecution Service in the Netherlands specialized in international crimes and human trafficking, where has worked for more than fifteen years in high profile cases of organized crime. In 2004, he began serving as an Investigation Team Leader in the Office of the Prosecutor of the International Criminal Court in The Hague, where he led criminal investigation in the situation of Northern Uganda. From 2008 until 2012, Martin was an Investigation Magistrate for International Crimes in the District Court of The Hague. From 2019 until 2021, Martin worked for International Bridges to Justice in Myanmar supporting local defence lawyers in criminal cases and in 2021 in Ethiopia advising the Ethiopian Human Rights Commission. Martin has also served at European Union Mission for the Support of Palestinian Police and Rule of Law and an adviser with the Prosecution Service in Rwanda on its genocide cases.

ANNEX IV: RESPONSES TO RIGHT OF REPLY LETTERS

STATEMENT BY ARCA CONTINENTAL, 30 SEPTEMBER 2025

We hereby confirm receipt of your letter dated September 24, 2025.

We would like to clarify that our company, SALTA REFRESCOS S.A., acquired the assets of Ingenio La Fronterita on April 5, 2016. From that date forward, we assumed control and management of the operation, which currently operates under the name Ingenio Famaillá. It is important to note that the individuals who served as CEO and board members prior to the acquisition are not part of, nor do they hold any role in, the current administration or operation of the mill.

Since taking over operations in 2016, we have reinforced our commitment to respecting human rights and complying with applicable regulations, as we do in all territories where we operate. We maintain transparency with authorities and uphold an active policy of ongoing dialogue and collaboration.

We appreciate the opportunity to provide context and remain available for any further clarification you may require. We kindly request that this information be considered in your publication, in order to reflect the current situation and our company's commitment to legality and human rights.

STATEMENT BY VOLKSWAGEN DO BRASIL, 30 SEPTEMBER 2025

Volkswagen signed a Conduct Adjustment Agreement with the Public Prosecutor's Office to restore its historical past and was the first foreign company to reevaluate its history during the military regime in Brazil. The agreement reinforced the company's commitment to transparency. About R\$ 36 million were used to compensate former employees and to make donations to organizations dedicated to preserving memory and truth regarding human rights violations during that period.

STATEMENT BY ORRÖN ENERGY, 17 OCTOBER 2025

The Company is firmly convinced that it was a positive force for development in Sudan. Lundin operated there responsibly, as part of an international consortium, and in full alignment with the policy of constructive engagement endorsed by the UN, EU and Sweden at the time. There are no grounds for allegations of wrongdoing by any former Company representative, which we are confident will also be confirmed by the outcome of the trial.



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Affari Legali e Negoziati Commerciali
Director
Iscrizione Elenco Speciale "Aziende" Ordine degli Avvocati di Milano nr. 7706

To: Amnesty International
by email:
roi.bachmutsky@amnesty.org

LENEC/35/2025/P

Re: Right Of Reply To Upcoming Amnesty International Publication

Dear Sirs,

We are in receipt of your letter of September 23rd 2025 and we wish to comment on its contents as well as to rectify certain factual and legal aspects.

We understand from the letter that the objective of the handbook is to provide "*legal practitioners with guidance for bringing strategic litigation on issues of Business and Human Rights*". We are, obviously, unable to comment on the choice to select (and comment) a case study involving, *inter alia*, Eni, on the face of the intended purpose of the handbook.

As a general remark we invite you, and expect, to provide us with additional information on the rationale of the inclusion of the OPL 245 investigations in the handbook, given that it is common and legal worldwide knowledge the overall case has no direct or indirect connection whatsoever in connection with *BHR* and the mere fact of being included into an "*Handbook for litigation*" creates a reputational damage on our Company and its current or former representatives and individuals.

We would, further, welcome the opportunity to review other sections of the draft addressing the matter, with a view to help you prevent any further inaccuracies on the facts, or omission of material facts, whether inadvertent or willing.

We therefore invite you to rectify the information you kindly shared for comment, as pasted it below (changes/additions in bold).

Accused: Eni S.p.A., Nigeria AGIP Exploration Ltd., **Royal Dutch Shell, Shell Petroleum Development Company of Nigeria Ltd, Shell UK Ltd, Shell Exploration and Production Africa Ltd**, as well as current and/or former executives of these companies **and the following individuals: Ednan Tofik Ogly Agaev, Luigi Bisignani, Gianfranco Falcioni, Dan Etete, Emeka Obi, Gianluca Di Nardo. Other third parties were involved in investigations conducted in Nigeria, including Mohammed Bello Adoke, Aliyu Abubakar, Rasky Gbinigie, Malabu Oil and Gas.**

Jurisdictions: Italy; Nigeria; Switzerland; the Netherlands; UK; USA

Eni SpA
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Description: Italian prosecutors indicted the accused on bribery-related charges for alleged corruption associated with the **award** of Oil Prospecting License 245 (OPL 245) off the Nigerian coast in 2011. **In 2021 an Italian Court acquitted all defendants and in 2022 the Court of appeal confirmed the decision, that was finally and irrevocably confirmed by the Supreme Court in May 2024.**

Nigerian prosecutors also indicted the accused, as well as state actors, for bribery and tax offences.

All Nigerian proceedings have been closed and the accused entities/persons have been fully and finally acquitted.

Status of proceedings in all mentioned jurisdictions:

- Italy completed (acquittal); we note that the two Prosecutors who handled the case were found guilty of omitting to file key exculpatory evidence during the trial by a Court of First Instance and convicted to to eight months' sentence. While the decision has been appealed by the Defendants, the Deputy Attorney General has requested the sentence be confirmed.
- **US: (i) DoJ started an investigation in 2013 that was closed without taking any action in September 2019, (ii) SEC started an investigation in 2013 that was fully and finally closed without remarks in April 2020;**
- Nigeria: completed (dismissed);
- **Netherlands: all investigations and cases in the matter have been fully and finally closed without action or remarks in 2023;**
- **Switzerland: the seizure of assets of individuals in the case was fully and finally revoked in November 2024 and no further action is still pending;**
- **UK: no criminal action has over been activated. The civil case between Malubu Oil & Gas and its agents (Emeka Obi and Gianluca Di Nardo) was finally decided upon in 2014 and no findings of any wrongdoing was determined by the Judge in the Court of London.**

For better context, we also remark that this long trail of investigations and legal proceedings, which have resulted in no findings of wrongdoing whatsoever, has prevented for many years the implementation of a project which would have fostered economic development in Nigeria, through State revenue, new infrastructure and creation of opportunities for jobs and education for some 170,000 Nigerians, according to then-current estimates.

We take this opportunity to reaffirm Eni's commitment to fighting corruption and respecting human rights. For a more detailed overview of this commitment, we invite you to consult our [Sustainability Report](#) and our dedicated [Human Rights Report](#).

We reserve any and all rights in respect to the publication.

San Donato Milanese, September 30th, 2025

Avv. Stefano Andrea Giovanni Speroni

Firmato digitalmente da: Stefano Andrea Giovanni Speroni
Organizzazione: ENI S.P.A./00484960588
Data: 03/10/2025 13:45:17



**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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