



WORKING GROUP ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES- ADVANCING ACCOUNTABILITY AND REMEDY FOR CORPORATE CRIMES THROUGH EFFECTIVE AND PRO-ACTIVE CROSS-BORDER COOPERATION BETWEEN LAW ENFORCEMENT¹

ITEM 3: AMNESTY INTERNATIONAL'S WRITTEN STATEMENT TO THE 35TH SESSION OF THE UN HUMAN RIGHTS COUNCIL (6 -23 JUNE 2017)

Multinational companies have been implicated in some of the most serious human and environmental disasters of the last 30 years – from the 1984 Bhopal gas leak in India that exposed over 500,000 people to hazardous levels of toxins, to the 2015 Mariana dam burst in Brazil which released around 60 million cubic meters of toxic sludge that devastated local rivers.

The State Duty to Protect and Ensure Remedy

States have a duty under international law to protect people from business-related human rights abuses, including by ensuring the right to an effective remedy.² The Human Rights Committee has emphasized that, where investigations reveal violations of certain rights recognised by the International Covenant on Civil and Political Rights, States parties must ensure that those responsible are brought to justice and that these obligations “arise notably in respect of those violations recognised as criminal under either domestic or international law”.³ The Guiding Principles on Business and Human Rights specifically recognise States’ “own obligations to investigate individual and business involvement in human rights-related crimes”.⁴

Yet when businesses engage in illegal acts linked to human rights abuses (“corporate crimes”), States rarely pursue criminal accountability. This problem is particularly acute in cross-border cases, when a company based in one State causes or contributes to a harm in another State.

The reluctance of States to pursue criminal accountability denies victims justice and reparation. It also facilitates an environment in which implicated actors, including business entities and individuals, can act with impunity.

In March 2014, Amnesty International asked UK authorities to investigate the role of UK-registered Trafigura Limited in the August 2006 dumping of toxic waste in the Côte d'Ivoire, an event that triggered a health and environmental emergency and continues to have an impact on local communities to this day. While there are very few laws in the UK that apply to cross-border crimes, Amnesty International submitted a legal brief to authorities

¹ A/HRC/35/33

² Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002): The right to water, UN Doc. E/C.12/2002/11 (20 January 2003), para 23; CESCR, Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights, UN Doc E/C.12.2011/1 (20 May 2011), para 5; Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights (17 April 2013), paras 28, 30 and 31; Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (19 October 2010), para 36; General Assembly, 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, UN Doc A/RES/60/147 (21 March 2006), para 15.

³ Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004), para 18.

⁴ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, UN Doc A/HRC/17/31 (21 March 2011), Principle 26.

calling for an investigation into whether Trafigura conspired in the UK to dump the waste illegally abroad. The Environment Agency initially declined to investigate the case, without reviewing the evidence. Under threat of legal proceedings by Amnesty International, it subsequently agreed to review the evidence. The Agency ultimately declined to investigate the case despite acknowledging that a serious offence had been committed in the UK if the allegations were true. It acknowledged to Amnesty that it lacked the expertise and resources to undertake the investigation, noting that it was “complex and multinational” and that evidence was held abroad and would require translation.⁵

In February 2015, Amnesty International approached various authorities to investigate potential sanctions violations related to the sale by a Canadian company of a Myanmar copper mine associated with widespread human rights abuses. No information has yet been made public as to whether or not authorities have pursued this case.

The Gaps in Corporate Accountability

These cases, and Amnesty International’s extensive research on other corporate crime cases, expose significant gaps in laws and systems for ensuring corporate criminal accountability and effective remedy for victims – particularly in cross-border cases.

Multinationals act across borders with ease due to technological advances and favourable corporate, trade and investment laws. They exercise significant power and influence. Yet laws to protect human rights and deter companies from illegal acts have not kept pace with these developments. Some jurisdictions have not criminalised serious human rights abuses in line with international law. Others do not provide for the criminal liability of corporations or do not have jurisdiction over cross-border offences involving corporate actors operating from their State.

Even when laws do exist, law enforcement officials may be put under pressure not to pursue cases against powerful economic actors or face real personal risk for doing so. In other jurisdictions, officials may give less priority to corporate crime or lack the experience and expertise to pursue cases, particularly those involving complex company structures or requiring specialised knowledge.

In cross-border cases in particular, host States may be unwilling or unable to pursue cases due to the significant power and influence of the company involved, or due to a lack of institutional capacity. In home States, law enforcement officials may be unaware that they can assert jurisdiction or be reluctant to do so because the harm occurred in another country. If a home State does exercise jurisdiction, obtaining evidence and assistance can be difficult because of the degree of formality involved in requesting cooperation under mutual legal assistance treaties and equivalent mechanisms. There may also be additional legal or practical barriers to overcome in gathering evidence from another jurisdiction.

The Corporate Crime Principles

With a view to promoting accountability in corporate crime cases, Amnesty International and the International Corporate Accountability Roundtable (ICAR) supported a group of eminent legal experts to develop *The Corporate Crimes Principles: Advancing Investigations and Prosecutions in Human Rights Cases*.⁶

The *Principles* were published in October 2016, following extensive global consultations with investigators, prosecutors, lawyers and civil society actors from over 20 countries. Some of these consultations were conducted jointly with the Office of the High Commissioner for Human Rights (OHCHR) in connection with its project on improving accountability and access to remedy in cases of business involvement in human rights abuses.

The Principles seek to encourage State actors to combat corporate crimes more effectively by providing practical guidance on issues such as case selection; evidence collection; the identification of tools, resources and strategies for pursuing cases; cross-border cooperation; witness protection; and victims’ access to justice.

⁵ Letter from the Environment Agency to Amnesty International, 17 March 2015.

⁶ The Corporate Crimes Principles: Advancing Investigations and Prosecutions in Human Rights Cases, www.commercecrimehumanrights.org/principles/introduction/.

They seek in particular to address the challenges that victims of corporate crime face in achieving remedy in cross-border cases. Our consultations revealed that pro-active law enforcement action and cooperation is key to addressing these challenges.

Principles 2 and 5 therefore call on State actors to fight impunity in cross-border cases by exercising jurisdiction and to “collaborate as widely as possible both nationally and internationally to build the knowledge, expertise, capacity, networks and contacts needed to tackle corporate crimes effectively”. This includes entering into effective mutual legal assistance treaties, cooperating through inter-jurisdictional teams and international organisations such as the United Nations, and building both formal and informal contacts within law enforcement and other relevant bodies. It also includes establishing relationships with non-governmental organisations who can be at the forefront of uncovering evidence of corporate crime.

Amnesty International therefore welcomes the Study of the Working Group on best practices and how to improve on the effectiveness of cross-border cooperation between States in corporate crime cases. We especially welcome recognition of NGOs’ critical role in helping to ensure accountability in such cases.

The Study highlights that while States already have at hand many of the tools needed to cooperate effectively on cross-border corporate crime, they lack the willingness to pursue these cases. The Study calls on States and law enforcement officials to be more pro-active in investigations, outlining practical ways to achieve this and providing best practice examples from existing legal frameworks and tools in areas relevant to human rights. It evidences how cooperation at all levels can lead to successful investigations and prosecutions. It also evidences the central role that UN agencies – such as the United Nations Office on Drugs and Crime – play in facilitating cooperation.

Recommendations to the 35th Human Rights Council

Amnesty International recommends that the Human Rights Council:

- Calls upon States to implement the recommendations in the Study so as to ensure accountability and effective remedy for victims of corporate crime.
- Encourages United Nations programmes and agencies – particularly the United Nations Office on Drugs and Crime – to assist States in implementing the recommendations, including through training, guidance, technical assistance and capacity-building.