

Potential Legal Responsibility for Businesses operating amidst Armed Conflict

Prof. Anita Ramasastry
University of Washington School of Law
Irish Centre for Human Rights Natl University of Ireland Galway

Geneva, Feb 08

Responsibility and Complicity

- Ambiguity over responsibility
- Memoranda of Understanding
- Promise, delivery
- Offsetting CSR against abuses
- Liability is not only domestic; international laws apply - FAFO.
- Exposure increases in high-risk zones
- Executives can be held liable
- Ignorance of law is no defense

Bases for Liability

- Accomplice Liability
- Alien Tort Claims Act
- Civil lawsuits
- International criminal law
 - International tribunals
 - Domestic courts

Unravelling complicity

International Alert.

- Not direct abuse
- Nuremberg: intent, awareness, decision to participate by planning, instigating, ordering, committing resources.
- Aid-Abet: Akayesu. (Accomplice can be tried without principal perpetrator).
- Intent: Tadic. (Assisting for substantial impact on commissioning crime).
- Encouragement: Furundzija. (Approving spectator).
- Guus van Kouwenhoven and Liberia.
- Frans van Anraat and Iraq.
- Civil law: negligence, gross negligence, recklessness, duty of heightened care, ATCA.

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Deconstructing complicity

| | VIOLATION | VIOLATOR | VICTIM |
|-----------|-----------|----------|--------|
| AID/ABET | | | |
| KNOWLEDGE | | | |
| DURATION | | | |
| BENEFIT | | | |
| INTENT | | | |

•PROXIMITY:

To the Violator: The closer the company is to the abuser, the higher the risk. Proximity may be through transactional or geographic.

To the Violation: The closer the company is to the actual violation, the higher the risk.

To the Victim: The closer the victim is to the company, the greater the risk.

Issues as Red Flags

- Security/paramilitary forces - Chevron Nigeria, Anvil DRC, Drummond and Chiquita in Colombia
- Violating Sanctions - Diamonds, Guus van Kouwenhoven in Liberia
- Aid and abet by providing means - Frans van Anraat in Halabja
- Use of company assets for abuses
- Financing international crimes - Kabuga in Rwanda

Issues as Red Flags

- Forced Displacement - Sudan, Talisman case; Kotapanjang: Tokyo Electric case.
- Forced labor - German executives during World War II (Farben, Flick); Firestone in Liberia
- Handling questionable assets - Riggs Bank
- Illicit payments - Kazakhstan, Griffin case