



## **FACT SCENARIO – CORPORATE COMPLICITY IN INTERNATIONAL CRIMES**

**In preparation for October 5, 2006 Roundtable**

**Discussion will be on the basis of The Chatham House Rule**

**Please note: The purpose of this discussion is not to determine what is or is not an international crime but instead to focus on company involvement in difficult contexts.**

### **Part 1: The Context- The Republic of Belcan**

The government of The Republic of Belcan, led by the Adonis, came to power 20 years ago via military coup. The Northwest part of the country is inhabited by an ethnic minority group, the Forest people. The last 20 years have been marked by a civil war between the Forest people in the Northwest and Adonis's governmental forces. The Forest people, have only recently formally recognized Adonis as the legitimate government as part of a peace agreement signed.

During the last 20 years, human rights organizations and UN investigations have reported widespread international crimes committed by the Adonis and a rebel group of Forest People called the Hill People's Movement (HPM).

The country's economy is built mainly on timber and agriculture. About 30 percent of the country's GDP is from the timber industry in the central part of the country. The Northwest of the country, where the Forest People live, is rich in natural resources, including oil and gas, timber and minerals. Despite the existence of these resources, The Republic of Belcan, prior to the signing of the peace agreement, had never sought to exploit them because it has never had de facto control of that part of the country and investors have never shown an interest mainly because of the 20-year war.

Between 2000 and 2003 civil war between Adonis and the HPM continued, but a peace agreement was finally implemented in 2003. From 2003-2005 UN Peacekeepers were present in the country. In 2005 the UN closed its mission in The Republic of Belcan as it was felt it was no longer necessary. Despite the peace agreement, and the end of the UN mission, human rights organizations and the UN continue to report incidents of armed conflict between the HPM in the Northwest and the Adonis's governmental forces.

A breakaway rebel group of Forest people, called the Hill Peoples Liberation Movement (HPLM), is opposed to the peace agreement. There are sporadic attacks by government armed forces against perceived strongholds of the HPLM. The HPLM have also carried out sporadic attacks against Adonis governmental forces present in the Northwest territory, against the HPM and against civilians.

It is reportedly widely in international media and in major financial newspapers on June 1, 2006, that over 1.5 million Forest People in the Northwest territory have fled their homes fearing sporadic attacks from both rebel groups and the Adonis military since January 2006. It is also reported that the government military forces carried out a raid one night in May 2006 to quell rebel activity. During this raid the government allegedly executed 120 people, constituting the entire population from one village, and buried them in a mass grave.

Human rights organizations have published reports alleging that the May massacre was instigated by Adonis forces to quell rebel activity so that foreign investors could begin investing in the area.

### **Scenario 1: Company Green**

The Republic of Belcan has been trying to improve its international image and attract foreign investors to start exploiting the natural resources in the Northwest. The Republic of Belcan has begun a major international marketing campaign to attract investors, and it has begun plans for granting concessions in the Northwest.

Green is a major multinational enterprise whose main business is timber. In July 2006, in search of new investment opportunities, regional managers covering the area of The Republic of Belcan make a trip to the country to meet with high officials in the Adonis government to discuss the future possibilities of a timber concession. The briefing materials of the Green managers included the June 1 news story, as well a number of reports of alleged international crimes committed by Government officials, the HPM and the HPLA against the civilian population in the Northwest territory including willful killing and torture.

During the meetings, the Adonis officials report that violence and rebel activity in the Northwest has quelled and that the area is now safe for investment. The parties discuss investments relative to what is called Sector 1, which is a large piece of land in the Northwest.

Before signing a concession agreement, Green asks Adonis officials about security in the Northwest and expresses concern about potential rebel attacks on its operations. Company officials do not refer to internal displacement of civilians or recently reported attacks on villages and the mass grave found, despite knowing of them from the internal briefing memo.

A concession agreement is signed for Sector 1 to exploit the timber resources for 10 years.

## **Situation 1.A**

On December 9, 2006 the concession agreements are signed, and they include a requirement that Adonis provides 200 armed military guards to ensure the security of the concession. Green moves into The Republic of Belcan and brings in 50 skilled workers and hires 250 local laborers. Green puts up a fence around its entire concession area and the government installs the Adonis armed military guards. The entire concession area is guarded 24 hours and 7 days a week by 200 government Adonis guards.

Green pays the military directly for 200 guards, instructs the military where the guards should be posted and provides trucks, helicopters and other logistics equipment to the guards for the purposes of guarding the concession area. The security contract does specify that the equipment provided should be used "solely for the purposes of ensuring Green's right to peaceful enjoyment of its concession agreement."

An internal memo from the legal office to the CEO of Green states that Adonis military are well-known for perpetrating international crimes, and that the military has been especially brutal in the Northwest where Green has its concession. The CEO of Green replies in an email that it was unimportant to Green what the military guards did as long as they adequately guarded the concession land at the same time.

On a Friday, February 1, two weeks after Green's operations begin and government security forces are in place along the fence circumventing the concession area, protests against the concession begin outside the fence. Human rights groups, political opposition groups and representatives of the Forest People protest in relation to past actions of the government security forces and against the Adonis grant of a concession to Green. The military commander of the security forces informs Green that he believes rebel groups to be behind the protest and states that the security forces will take measures to capture these people.

That day an internal memo is circulated among the management of Green (both in country and out of country management) in relation to the security situation in the Northwest and the alleged human rights abuses committed by the government military forces. The memo alerts management to the protest outside the facilities and the military commanders statement about intentions to capture the suspected rebels. A high-level meeting to discuss this security issue is called for Monday morning.

On Sunday, February 3, one day before the high-level meeting, another peaceful protest takes place at the entrance gate to Sector 1. Green's operations are closed on Sunday. However, the military guards are in place.

No one from the company is present. Adonis government military guards open fire killing 3 protestors and they take the remaining protestors in Green trucks to a military prison 100 km away where they are detained for two weeks.

The government separates the representatives of the Forest people from other protesters and torture the Forest people, hoping to extract intelligence information in relation to the whereabouts of leaders of the HPM and HPLM.

International human rights organizations allege that Green is complicit in the government's crimes of killing and torture.

*Assume for the purposes of this exercise that the actions of the military in killing the protestors and torturing others qualify as international crimes.*

## **Scenario 2: Company Blue**

In 2006, a UN Panel of Experts' Report documented the involvement of the timber industry in illegal importation of arms in The Republic of Belcan and supporting the HPLM in the Northwest that commit international crimes against the civilian population and against the HPM, including killings, rape and hostage taking.

International media has highlighted the violence perpetrated by the HPLM. International heads of state have condemned what they call the war crimes perpetrated by the HPLM. Following the UN Panel of Experts Report, the UN High Commissioner for Human Rights, in a public statement, warns the leaders of the HPLM that they are at risk of international criminal responsibility for their actions.

The HPLM use machine guns and homemade bombs in their attacks on civilian targets.

Company Blue has arranged shipments of arms to the HPLM on Blue vessels. The shipments took place before the UN Panel of Experts Report and before the UN High Commissioner's public warning. Subsequent to the issuance of the UN Report, company Blue ceases operations in The Republic of Belcan.

International human rights organizations allege that Blue is complicit in the rebel's crimes against civilians.

*Assume for the purposes of this exercise that the arms were used by the HPLM to perpetrate international crimes.*

### Scenario 3: Company Orange

Assume that Orange has a timber investment as a joint venture with the wholly state-owned timber company Belcan Timber. The Republic of Belcan, via Belcan Timber, owns 51% of the investment. The joint venture agreement specifies that Orange will hire the management for the timber production, Belcan Timber is in charge of the labourers. Orange's managers directly interface with a government official who is in charge of managing the workers hired by Belcan Timber.

An exposé by No More Slavery International reports that the workers in the concession area are forced labour from the surrounding community and members of the minority ethnic group the Forest people. The report details that the employees of Orange are paid excellent salary and benefits and provided good housing and safety standards at work, while the labourers are not provided with any protective equipment and are shipped in daily from local villages against their will and threatened with torture, rape and death if they do not show up for the government trucks that deliver them to the work site each morning.

Orange has managers on site who have witnessed the labour conditions and has seen the trucks delivering shackled people for work in the morning.

Orange managers report the issue to upper management, and management raise the issue of concern with various Ministers in the government. However, despite Orange's appeal to the Ministers regarding the concern of the workers' situation, the situation continues. Orange continues the investment despite the inaction on the issue of forced labour.

International human rights organizations allege that Orange is complicit in the forced labour.

*Assume for the purposes of this exercise that Adonis's use of forced labour is an international crime.*

Issues: These are the types of issues we will discuss during the Roundtable.

- 1) Is the company at all involved in the international crimes that took place? If so, how did the company contribute to their commission?
- 2) Which of the following best describes the company in this situation?
  - A. It wanted the direct perpetrator to carry out these crimes. What facts support this conclusion?
  - B. It actually knew that it was assisting a crime of some sort. What facts support this conclusion?
  - C. It was simply indifferent towards, or accepted the chance that, their actions might assist the perpetrator to commit a crime of some sort. What facts support this conclusion?
  - D. It was reasonably foreseeable that the company's actions might contribute to a crime. What facts support this conclusion?
  - E. None of the above.
- 3) Do you believe the company, or representatives of the company, should be held legally responsible for the involvement described here? What additional information, if any, would you like to know before answering this question?
- 4) What about if this same scenario occurred several times or repeatedly? Would the company become more directly implicated in the crimes of the military (or rebel group) if it were a repeat occurrence? At what point should liability attach?
- 5) What kind of liability, if any, is justified? For any if its key officers or employees? (criminal, civil) What kind of sanction should be used? (fine, prison, other) What purpose does [do] such a sanction[s] serve?
- 6) Leaving aside issues of legal liability, do you think there is anything the company *should* have done differently given the above circumstances? In other words, what due diligence should the company have put in place in this scenario to ensure it avoided even allegations of being involved with the international crimes described?