

PROTECTION THROUGH LITIGATION – STRATEGIES AGAINST CORPORATE HUMAN RIGHTS ABUSE



David Werdermann

1989 (Münster/Germany), studies law at Albert-Ludwigs University of Freiburg. Human Rights Observer with IPON in 2009.

The brochure “Making corporations respond to the damages they cause” outlines approaches on how to react to human rights abuses by corporations. It can serve as a useful guide for activists and affected communities in their struggle for human rights.

Human rights – understood as norms of public international law – primarily concern states. States are bound to the so-called trias of obligations. They must respect human rights, protect them from interventions of a third party and fulfil them by actively taking measures. Hence, the behaviour of private persons – especially corporations – is only taken into consideration in case of a violation of a state’s duty to protect. Human rights standards for corporations such as the UN Guiding Principles on Business and Human Rights are not regarded as binding but as merely morally obligating soft law. Thus, it is not a corporation’s duty to respect human rights; it has merely a responsibility to do so. Taking into account the fact that private duties are not unknown to public international law, there are ways to transfer these responsibilities into legal obligations. However, this should not veil the fact that effective legal instruments to react to human rights abuses by corporations exist. Explaining these and offering instructions to use them is the goal of the brochure “Making corporations respond to the damages they cause” edited by the European Center for Constitutional and Human rights (ECCHR) in cooperation with the German church-related development agencies Misereor and Brot für die Welt.

Introductory, the brochure provides an overview of typical human rights violations related to corporate activities such as forced displacement, environmental pollution, inhuman labour conditions and violent attacks against human rights defenders. In this context, the relevant norms of international human rights conventions and UN declarations are named. Subsequently, there is an introduction of strategies on how to prevent and limit harm. Communities that foresee being affected by an investment pro-

ject should initially gather a solid basis of information, then build a support network and set themselves goals: is the aim to obstruct the project or to receive fair compensation? What can fair compensation look like? What should be the mode of distribution within the community? The needs and interests depend on the respective communities and projects. Financial compensation is not always an adequate solution.

Afterwards, communities have to decide whether they want to take legal action. Therefore the brochure introduces essential legal instruments. Among these are soft law mechanisms, such as complain procedures within the scope of the Organisation for Economic Co-operation and Development (OECD), civil action, criminal complaints, other claims based on national legislation as well as trials at international courts. Nevertheless, only states can stand trial at the Human Rights Court as described above. Especially remarkable are the approaches that show how codes of conduct that corporations voluntarily comply with can be used in court. As an example, a case is illustrated in which the ECCHR and a German customer protection agency lodged an appeal against the supermarket chain LIDL. The plaintiffs argued that the LIDL’s code of conduct is contradictory to the inhuman labour conditions in the supplying factories in Bangladesh. This would deceive costumers and violate European competition law. As a result, LIDL was forced to renounce promises made in advertisement and had to admit to the unbearable and exploitative labour conditions in their factories.

The main focus, however, is on claims for compensation in civil law, which can, depending on the case, be filed in the host country as well as the home country against



LIDL had to admit to the inhuman labour conditions in their supplying factories in Bangladesh after a complaint had been filed due to unfair competition (Source www.cleanclothes.at)

suppliers or the parent company. In a language comprehensible to legal laypersons, the basic rules, the requirements for a successful lawsuit as well as the burden of proof are illustrated without going into detail due to differences in national legislations. Furthermore, there are useful hints on how to embed the compensation case into a broad strategy. This can imply negotiations with corporations alongside networking and public relations - which is especially important for the losing party.

The brochure succeeds in introducing core legal instruments for the struggle against human rights abuses by corporations without concealing their dangers and difficulties. Various real and fictional examples simplify the comprehension. The appendix offers an overview of relevant human rights organisations and a selection of online material facilitates further research. The

brochure has been developed on the basis of experiences gained during workshops and meetings with human rights organisations and affected communities. This gives hope that the brochure is designed to be practically relevant and to cater for the needs of the target audience:

National and international law fundamentally contributes to the establishment and legitimacy of undemocratic structures of exploitation and domination. At the same time, it can be a weapon in the hands of weaker groups and hence offer an emancipatory potential. The brochure "Making Corporations Respond to the damage they cause" displays this potential and – to a certain extent – makes it manageable for affected people. ■

SOURCES

- ECCHR (ed., 2012): Making corporations respond to the damages they cause, 49 pages - http://www.ecchr.de/index.php/publications.html?file=t1_files/Dokumente/Publikationen/Making%20respond%202012-11.pdf (last viewed 15 June 2013).