

16. SUMMARY OF CURRENT ILRF CASES TO ENFORCE HUMAN RIGHTS UNDER THE ATCA.

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The following is an update on the status of the International Labor Rights Fund's (ILRF) cases under the Alien Tort Claims Act (ATCA). All of the ILRF cases are in active status. For more information on the ILRF's work on these cases and corporate accountability in general, see www.laborrights.org.

1. *John Roe III, et. al. v. Unocal Corporation, et. al.* 00-56628 (9th Cir. 2002)

***John Roe III, et. al. v. Unocal Corporation, et. al.*
BC237 679 Superior Court of California, County of Los Angeles.**

Summary: ILRF represents four Burmese citizens who were forced to perform labor for the benefit of the Yadana Gas Pipeline Project, in which Unocal Corporation was a joint venture partner with the military government. In addition to the ILRF case, a parallel case was filed by Earth Rights International and the Center for Constitutional Rights, *John Doe I, et al. v. Unocal Corporation, et al.* The central allegation is that Unocal provided financial and other material support to the brutal military regime knowing that the regime was engaged in the

systematic use of forced labor and other human rights violations.

On June 17, 2003, the Ninth Circuit Court of Appeals reheard arguments before an *en banc* panel regarding the applicability of international law to Plaintiffs claims. This followed an earlier decision by the three judge Ninth Circuit panel on September 18, 2002, which reversed the District Court's summary judgment dismissing all claims despite evidence that Unocal knowingly benefitted from slave labor. In that initial Ninth Circuit ruling, the Court found that plaintiffs' proffered evidence that Unocal and its co-venturers knowingly participated in using forced labor and committing other human rights violations by providing financial and material support to the military security forces, and that these acts were sufficient to constitute "aiding and abetting" under both international and domestic law. At the time of the initial summary judgment in August 2000, plaintiffs filed their state law claims in California Superior Court alleging that Unocal violated California law by knowingly creating a joint venture with the military regime, and then delegating "security" services to the regime knowing that the regime would use forced labor and commit other abuses. Plaintiffs asserted claims for assault, battery, emotional distress, negligent supervision, unfair business practices, and the constitutional prohibition on slavery. Unocal's various efforts to have the case dismissed were denied in whole or in part, and the case is set for a December 3, 2003 trial.

Status: A decision from the *en banc* panel of the Ninth Circuit is expected sometime in October, 2003. Plaintiffs' state law case in California Superior Court, County of Los Angeles is scheduled to commence Phase I of the trial on December 3, 2003 after several delays instigated by Unocal. This initial trial will focus on corporate alter ego liability and will determine if Unocal Corp is responsible for the actions of its subsidiaries involved on the

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gas pipeline project. A secondary phase of the trial will follow in early 2004 that will focus on Unocal's liability and damages.

2. *Sinaltrainal, et. al. v. Coca-Cola Co., et. al., Case No: 01-03208 (S.D. Fla. 2001)*

Summary: Plaintiffs include the trade union Sinaltrainal, which represents workers in the food and beverage industry in Colombia, and five individual union leaders who were murdered, tortured, and/or unlawfully detained. ILRF's co-counsel is the United Steelworkers Union. Plaintiffs allege that paramilitaries were brought into the Coca-Cola bottling plants to use violence to exterminate the trade union with the specific consent of the managers of the plants. Sinaltrainal asserts that, as a direct result, it sustained heavy loses of leaders who were employed by the company. Plaintiffs also allege that since at least 1996, Sinaltrainal has been writing letters to Coca-Cola demanding that the targeting of trade union leaders at Coca-Cola bottling plants be stopped, but that Coca-Cola took no action to prevent the open association between paramilitaries and managers of the Coca-Cola bottling plants in Colombia.

On March 31, 2003, the District Court ruled that the ATCA case could go forward against Coca-Cola bottlers, Panamerican Beverages, Inc. ("Panamco") and Bebidas y Alimentos ("Bebidas"). *See Sinaltrainal v. Coca Cola Co.*, 2003 WL 1846195 (S.D. Fla.). The court held that the allegations were sufficient to allow the case to proceed on a theory that the paramilitaries were acting in a symbiotic relationship with the Colombian government. The court also held that Plaintiffs' claims under the Torture Victims Protection Act could proceed. It rejected the bottlers' argument that the TVPA applies only to individuals,

thereby exempting them from liability. The Court, however, did dismiss the case against Coca-Cola Company on the basis that their standard form bottlers agreement did not provide Coca-Cola with the necessary control over labor relations.

Status: Plaintiffs have ask the court to certify its ruling with respect to the dismissal of Coca-Cola as a final judgment so that Plaintiffs may immediate appeal the ruling. A decision on Plaintiffs' Motion for Certification is pending. As a result of the Court's initial ruling that the bottlers were subject to suit, Plaintiffs completed jurisdictional discovery regarding the Colombian entities, Panamco Colombia and Bebidas, and submitted supplemental briefing on the personal jurisdiction issue. The Court has had this issue under advisement since July, 2003. In the meantime, Ray Rogers of Corporate Campaigns, Inc has launched a major consumer education campaign urging Coca-Cola to accept responsibility for the human rights violations occurring in its name in its bottling plants in Colombia. There has been tremendous interest in the campaign, and the United Students Against Sweatshops has taken a major role. For more information see www.killercoke.org.

3. *Estate of Rodriguez, et. al. v. Drummond Company, Inc., et. al. Case No. CV-02-0665-W (N.D. Ala. 2002)*

Summary: The initial Plaintiffs are the surviving family members of three murdered trade union leaders who represented workers at Drummond's coal mine in Colombia. SINTRAMIENERGETICA, the union the murdered leaders were officers of, is also a Plaintiff. . LRF's co-counsel is the United Steelworkers Union. The case alleges that Drummond's management in Colombia retained

and authorized paramilitaries, as well as regular military personnel, to target union leaders for murder, and provided these death squads with financial and material support in order to rid the Drummond plant of the union. The leaders of the union, in early 2001, were engaged in heated negotiations with Drummond over several key issues, including the demand that the company provide better security for workers to protect them from paramilitaries that were based, along with regular military, on Drummond's property. According to several witnesses, the paramilitaries were operating as a private security force to protect Drummond's facilities from the FARC, the leftist guerrillas. On March 12, 2001, in the midst of the negotiations, two of the union leaders, President Valmore Lacarno Rodriguez, and Vice President Victor Hugo Orcasita Amaya, were pulled off a company bus by paramilitaries who said in front of all of the workers on the bus, "these two have a problem with Drummond." Lacarno was shot in the head in front of the other workers. Orcasita was taken away in a car, and his dead body, which showed clear evidence that he had been tortured was found later that day. The union was paralyzed without its two leaders, and for a time no one would take over the leadership posts out of fear that they too would be killed. Finally, in September, 2001, Gustavo Soler Mora stepped up to assume the Presidency. He renewed negotiations with Drummond, and expressly sought to bargain for better security arrangements for the workers. On October 5, 2001, within weeks of becoming President, he too was pulled off a bus and murdered by paramilitaries. Based on these facts, Plaintiffs assert torture and extrajudicial killing under the ATCA and TVPA, as well as aiding and abetting, denial of the fundamental right to organize, and wrongful death.

Status: On April 14, 2003, the United States District Court for the Northern District of Alabama ruled that SINTRAMIENERGETICA, the union representing coal miners in Colombia,

may proceed against Drummond, for the murder of former leaders Valmore Locarno Rodriguez, Victor Hugo Orcasita Amaya and Gustavo Soler Mora. *See Estate of Locarno v. Drummond Co.*, 256 F. Supp. 2d 1250 (N.D. Ala. 2003). Finding that the union has standing to sue for claims under the ATCA, the court subsequently found that both the extra-judicial killings and the violation of the union's freedom to associate are actionable violations of international law. In response to Drummond's vigorous opposition to allowing the surviving family members to proceed using pseudonyms, the Court gave Plaintiffs leave to file a motion to support their request and demonstrate that the family members would face violent retaliation. That motion is pending. Plaintiff SINTRAMIENERGETICA has initiated discovery against the company. In the meantime, two other key leaders of SINTRAMIENERGETICA, who recently survived attempts on their lives by the Drummond-supported paramilitaries, have filed new cases for torture.

**4. *Villeda, et. al. v. Fresh Del Monte Produce Inc., et al.*
Case No. 01-CIV-3399 (S.D. Fla.2001)**

Summary: Fresh Del Monte Produce (Del Monte) is one of the world's largest producers of fresh fruit products. In Guatemala, Del Monte owns and operates several banana plantations. These plantations have long been unionized by SITRABI, one of the most respected and professional unions in Central America. In 1999, Del Monte and SITRABI were in tense negotiations regarding a massive layoff of workers in violation of the collective bargaining agreement. At an impasse that left hundreds of union members out of work, the leaders of SITRABI announced that there would be a walk out the next day of the remaining workers. Plaintiffs are seven former Guatemalan trade union leaders who allege that they were

subjected to human rights violations by security forces hired by Fresh Del Monte Produce, Inc. to punish them for planning the work stoppage, and to torture them in order to force them to flee the area in fear for their lives. The evidence is that senior managers for Del Monte actually met with the security forces and coordinated the acts of violence, including the forced resignations of the union leaders. Plaintiffs' ATCA claims include torture, kidnapping, unlawful detention, crimes against humanity, and denial of the right to associate and organize. In addition, they have claims under the TVPA for torture and extrajudicial killing, as well as state law tort claims.

Status: On June 5, 2003, the Court denied Defendants' motion to dismiss on *forum non conveniens* and personal jurisdiction grounds, and has allowed Plaintiffs to conduct discovery on the jurisdictional issues over Bandegua, Defendants' Guatemalan subsidiary. With regards to Defendants' long pending motion to dismiss on subject matter jurisdiction, the Court requested supplemental briefing on Plaintiffs' claims for unlawful detention and the right to freedom of association, which Plaintiffs submitted on July 2, 2003. The Court held oral argument on August 13, 2003, and has the matter under advisement.

**5. *John Doe I, et. al. v. Exxon Mobil Corp., et. al.*
Case No.: 01CV01357 (D.D.C. 2001)**

Summary: On June 20, 2001, the ILRF filed an ATCA claim in the Federal District Court for the District of Columbia on behalf of 11 villagers from Aceh who were victims of human rights abuses by Exxon Mobil's military security forces guarding the company's massive natural gas extraction and liquification facilities in Aceh, Indonesia. The general theory of the case is very similar to that developed in the *Unocal* litigation – that Exxon Mobil knowingly employed brutal military troops to

protect its operations, and the company aided and abetted the human rights violations through financial and other material support to the security forces. In addition, the security forces are either employees or agents of Exxon Mobil, creating liability based on respondeat superior or vicarious liability. There is evidence that Exxon Mobil knew that its security forces would likely engage in massive human rights violations against the local population, and Exxon Mobil continues to employ these troops despite voluminous evidence of ongoing acts of brutality committed by these troops. Several of the Plaintiffs allege that they were tortured by the security forces inside the Exxon Mobil compound in facilities provided by the company for the use of its security forces. All of the claims date from 2001, well after Exxon Mobil had specific knowledge of massive human rights violations by its hired guns, and did nothing to change the practices.

Status: Defendants' filed a motion to dismiss on October 1, 2001. Plaintiffs' opposition to the motion to dismiss was filed on December 4, 2001 and the defendants' reply was filed on December 21, 2001. Oral argument on the motion to dismiss was held on April 9, 2002. On May 10, 2002, at the urging of Exxon Mobil, the court submitted a written request to the Department of State for a non binding opinion as to whether the adjudication of this case would impact adversely on the interests of the United States. In a remarkable effort to seize for the executive branch the right to veto litigation under federal statutes, William H. Taft IV, the State Department's Legal Advisor, submitted a letter in August, 2002 claiming that the lawsuit would interfere in U.S. relations with the government of Indonesia. The letter further asserted that the litigation could interfere with U.S. investment in Indonesia, and explicitly asserted that it is a foreign policy objective of the U.S. government to advance the interests of U.S. businesses abroad. A decision on Exxon Mobil's motion to dismiss is still

pending, including the issue of the legal effect, if any, of the State Department's letter seeking to immunize Exxon Mobil from liability.

**6. *Arias, et. al. v. DynCorp, et. al.*,
Case No. 01-01908 (D.D.C. 2001)**

Summary: The controversial "Plan Colombia" includes a cruel throwback to the war in Vietnam – the US government contracted with DynCorp to spray fumigants on coca plants in Colombia to eradicate a major source of the cocaine exported to the U.S. The plan is inherently flawed. There are serious, well documented concerns that the spray is harmful to humans and livestock, and there is absolutely no dispute that it kills legitimate food crops in the area, such as corn and yucca. Wholly apart from these major effects documented in the target area of Colombia, DynCorp is also spraying farmers on the Ecuadoran side of the border with the same effects. In this new era of heightened concern about terrorism, a group of at least 10,000 Ecuadoran subsistence farmers, who have no dispute with the U.S. government and who do not cultivate illegal drug crops, are being subjected to sustained, deadly aerial assaults financed by the U.S. government through DynCorp.

A group of villagers who are all suffering serious health effects from the fumigant, and one couple whose child died from exposure to the poison, initiated a class action lawsuit against DynCorp charging the company with wrongfully spraying them with a poison that, whatever the justification of Plan Colombia, was not supposed to hit Ecuadorans. The ATCA case charges DynCorp with murder, wrongful death, crimes against humanity, and numerous other property crimes. The case was filed in Federal District Court for the District of Columbia, on September 11, 2001, moments before the terrorist attacks on New York and

Washington, D.C. The case is a potent symbol that the U.S. cannot sustain a role as a leader in the war on terror if it allows its own forces and resources to be used against noncombatant civilians in Ecuador and Colombia, among other places.

Status: The complaint was filed on September 11, 2001 in the U.S. District Court for the District of Columbia. A decision on DynCorp's motion to dismiss has been pending since April, 2002, when all of the briefing was completed.

**7. *Galvis et al v. Occidental Petroleum, et. al.*
CV03-2860-WJR (C.D. Cal. 2003)**

Summary: The lawsuit centers around the aerial assault on the small town of Santo Domingo, Colombia, which led to the deaths of 19 civilians, including the mother, sister and cousin of the Plaintiff in the lawsuit, Luis Alberto Galvis Mujica. Specifically, Plaintiffs allege that on December 13, 1998, the Colombian Air Force ("CAF") -- a branch of the Colombian military receiving direct funding from Occidental in return for protecting Occidental's pipeline in Cano Limón -- dropped U.S.-made cluster bombs upon Santo Domingo. The attack was apparently intended to kill leftist guerillas in the area that Occidental believed were attacking its pipeline. However, despite the utter lack of justification for murdering innocent villagers in the process, there is no question that no guerillas were found in the destroyed village among the dead and wounded. The CAF, carrying out this raid in US-made Blackhawk helicopters, received the coordinates for the bombing directly from co-defendant AirScan, Inc., which was working in its capacity as a security contractor and agent of Defendant Occidental. AirScan, through three of its U.S.-born employees who were flying a Skymaster plane at the time -- the Skymaster

plane having been provided directly by Occidental -- provided aerial surveillance for this mission during the bombing, helped the CAF identify the target for bombing and chose the places for Colombian military troop disembarkment during the mission. Finally, Plaintiffs allege that the bombing was planned by the CAF and AirScan in Occidental's complex in Cano Limón, Colombia.

Status: The case was initially filed on April 24, 2003. Plaintiffs filed an amended Complaint on October 6, 2003. Defendants will file a motion to dismiss this fall.