

## CASE REPORT \_\_\_\_\_

### **The Danzer Case: German manager's liability for subsidiary in Congo**

As of April 2013 the State Prosecutor's office in Tübingen, Germany, has been examining a criminal complaint against a German manager of the German-Swiss Danzer Group timber firm. ECCHR and the British human rights organization Global Witness accuse the Danzer manager of aiding and abetting, through omission, the abuse and rape of inhabitants of a village in the Democratic Republic of Congo.

#### **Aiding abuse and rape**

In the early hours of 2 May 2011 a task force of local security forces attacked the village of Bongulu (Équateur province) in the DR Congo. Eyewitnesses report that around 60 soldiers and police officers brutally attacked the village. They beat and physically abused numerous inhabitants, raped women and girls and subjected more than twenty individuals to arbitrary arrest.

The security forces used vehicles belonging to timber firm Siforco S.A.R.L. which at the time was a subsidiary of the Danzer Group. The firm's involvement was not limited to the provision of vehicles and drivers. Following the attack the local Danzer subsidiary manager also provided payment to the soldiers and police officers.

This incident followed a dispute between the village inhabitants and Siforco. Siforco was under contractual obligation to provide for social and infrastructural projects in the region. When these obligations were not met, a number of residents sought to put increased pressure on Siforco and on 20 April 2011 took some items from the company premises including a number of batteries, a cable, a solar cell and a radio. Siforco was involved in negotiations with the aim of retrieving the items. Despite the fact that these negotiations were still ongoing, Siforco proceeded to engage the services of local security forces.

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#### **Criminal complaint against parent company manager**

Two years after the attack, ECCHR and Global Witness filed a criminal complaint with the state prosecution authorities in Tübingen against a senior employee of the Danzer Group. The manager is accused of aiding and abetting, through omission, crimes against sexual self-determination as well as grievous bodily harm, unlawful imprisonment and arson. The complaint states that the managers failed to fulfill their obligation to prevent the subsidiary company from lending support to the Congolese security forces. The prosecution authorities in

Tübingen must now determine whether the individual in question may be held criminally liable.

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## **Not an isolated case: police and army forces for hire**

The Danzer case is emblematic of a problem that is widespread throughout Africa, Asia and Latin America. Transnational corporations may trigger social conflicts in the communities they operate in which then give rise to violent interventions by local security forces. Companies will often directly engage and in some cases pay for the services of police and soldiers. In many cases these forces act with disregard for the rule of law and often commit grave human rights violations in the course of these operations.

Corporations like the Danzer Group must take into account the unique human rights risk factors in the regions they operate in. Danzer management could and should have known from studies and reports that in the Équateur province police operations often involve violence against civilians or for instance that in 2007 the province had the second highest number of instances of rape in the entire DR Congo. Furthermore it is common knowledge that the police and military forces in DR Congo are particularly prone to violence and that, because they do not receive adequate pay from the state, they rely on private 'assignments' to earn extra money.

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## **Due diligence obligation of managers includes subsidiaries**

In taking this case ECCHR hopes to clarify the extent to which management of European companies are obliged to monitor their subsidiaries and prevent management at the subsidiary from contributing to human rights violations. This is particularly relevant for companies with business operations in regions like the DR Congo where violent attacks and sexualized violence are a common occurrence and cannot be characterized as isolated or unforeseeable events. Any company operating in the DR Congo must anticipate the possibility of such occurrences and introduce appropriate measures to prevent the company from becoming involved in human rights violations.

Our legal argument is based on the existing jurisprudence of the German Federal Court of Justice on the liability of principals (Geschäftsherrenhaftung) as well as on the many international standards that require corporations operating in regions where human rights are under threat to undertake comprehensive risk analyses. States are also under an obligation to take measures to prevent violence against women, including violence perpetrated by corporations acting extra-territorially. \_\_\_\_\_

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