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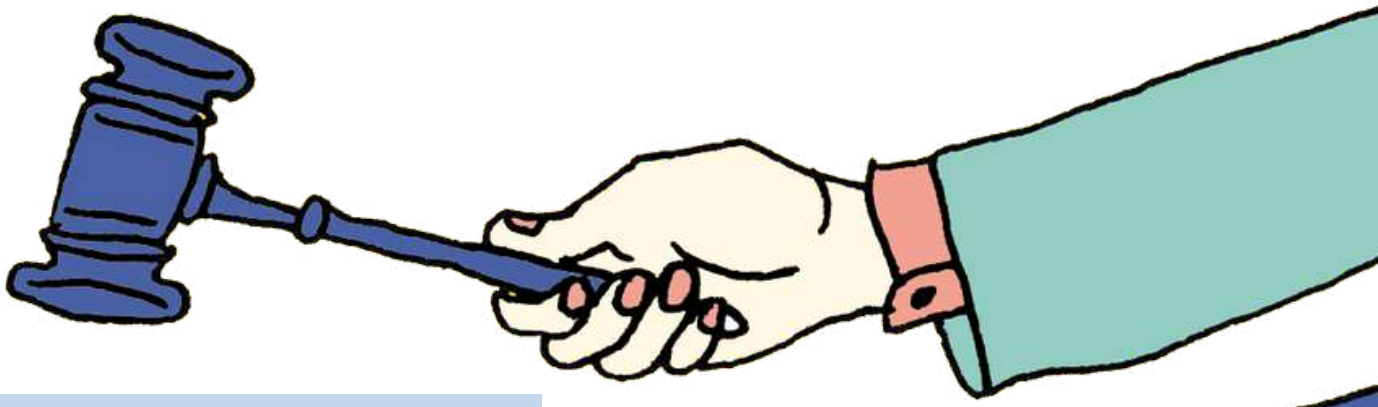

ILLUSTRATED GLOSSARY OF ACCESS TO JUSTICE

For victims of corporate abuse: what does it mean and why do we need a European law

This glossary is an initiative of the CIDSE Corporation Regulation and Extractives Working Group and is published as part of the campaign on Access to Justice for victims of Corporate Abuse.

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CONTENTS

The activities of companies often contribute to violations of human rights and environmental damage around the world. Workers, their families, local communities and indigenous people frequently bear the brunt of the negative impacts of corporate activities, alongside other species, habitats and natural resources.

Yet, victims rarely receive justice and compensation for the harm they have suffered. Companies take advantage of complex production systems and legal loopholes to escape accountability.

In 2021, the European Commission will propose a legislation that would hold companies legally accountable and provide access to justice for affected communities.

If we, European citizens, want to protect people and the planet, we need to make sure this European law will hold accountable all companies that produce, operate or sell products and services in the European Union.

The following glossary explains seven key terms and issues that should be included in any upcoming European legislation on corporate accountability.

Done exploring the glossary? Take action to stop corporate impunity and tell your MEPs to support communities to access justice.

VALUE CHAIN

Products that we buy are often made from various parts and materials sourced from all over the world. A mobile phone, for example, may be produced by a Chinese company using materials from Central Africa while other services like design, manufacturing, packaging, and marketing might be done in the USA.

From each of these steps, companies extract value from the product. That is why this set of activities is referred to as the value chain.

Value chains often extend globally, encompassing companies based in different countries. This means that, when violations of human and environmental rights occur, several economic actors may bear the responsibility.

Because of the intricate ways in which value chains are organised, we need a European law recognising the legal responsibilities of the different actors throughout the value chain.

The Cerrejón coal mine in Colombia: companies dodging responsibility

The Cerrejón coal mine is one of the largest open-pit mines in the world. Located in North Colombia, it is operated by local subsidiaries of giant international mining companies such as BHP, Glencore, and Anglo-American - based respectively in the UK, Switzerland, and Australia.

The mine has been contaminating the land around it for three decades. Toxic dust and waste in the air and water has been severely affecting the health of neighboring communities.

Yet, the responsible companies have dodged accountability for the harm they have caused, including by maintaining the operations open in violation of multiple Colombian court judgments and several prominent UN human rights experts calls.

The value chain of Cerrejon's coal includes Irish companies such as ES Band CMC. Without international legislation, it has not been possible to hold these European companies accountable.


PETROLEUM
PIPELINE
CORP
REPAIR

REMEDY

When companies' actions contribute or cause environmental damage or human rights violations, affected individuals and communities – including indigenous people, should have access to remedy.

To be fair and effective, remedy should not only compensate for the damage but also ensure that the harmful actions will not be repeated and that the original situation is restored. Remedy is not enough if it allows the company to continue with the actions that caused harm in the first place.
Experts agree that financial remedy remains largely ineffective for those affected by corporate abuses.

Remedy can be provided by the companies responsible, often after those affected engage in long negotiations or can be compelled by a court of justice.

This is why we need a European law recognizing the rights of those affected to access remedy for harm, and companies' obligation to cooperate in providing redress.

The Brumadinho dam collapse in Brazil: Affected communities fighting for remedy

In 2019, the collapse of a dam holding toxic waste from a mine in Brumadinho released toxic substances into the surrounding soil and river. Local communities experienced not only a tragic loss of lives (259 people were officially confirmed dead) but also of land and farms.

The Brazilian company that caused the disaster, Vale, has recently been condemned by Brazilian authorities to provide compensation of at least 7 billion dollars to affected communities.

Those impacted have also filed claims in Germany against Vale's German auditor, TÜV SÚD, the company responsible for declaring the dam safe only weeks prior to the collapse. If TÜV SÜD responsibility is ascertained, it will also have to provide remedy.


首席執行官
CEO
सीईओ
PDG

LEGAL LIABILITY

The concept of legal liability for harm should be common sense: when causing or contributing to harm, companies should be held responsible for it and should provide remedy. The role of the judiciary is to determine that the harm was indeed the result of the actions or neglect of the alleged perpetrator.

When people suffer from the actions of companies, the path to establish responsibility is filled with obstacles related to the complex structures of their value chains, and to complicate legal systems.

This is even more complicated when the harm is caused indirectly by a parent company. Moreover, even when a company has not directly caused harm, its policies and practices might well have contributed to it.

It is typically the case with powerful buyers. Their activities can determine the actions of their suppliers pushing them to cut costs – which could in turn lead, for instance, to poor waste disposal or inhuman working conditions.

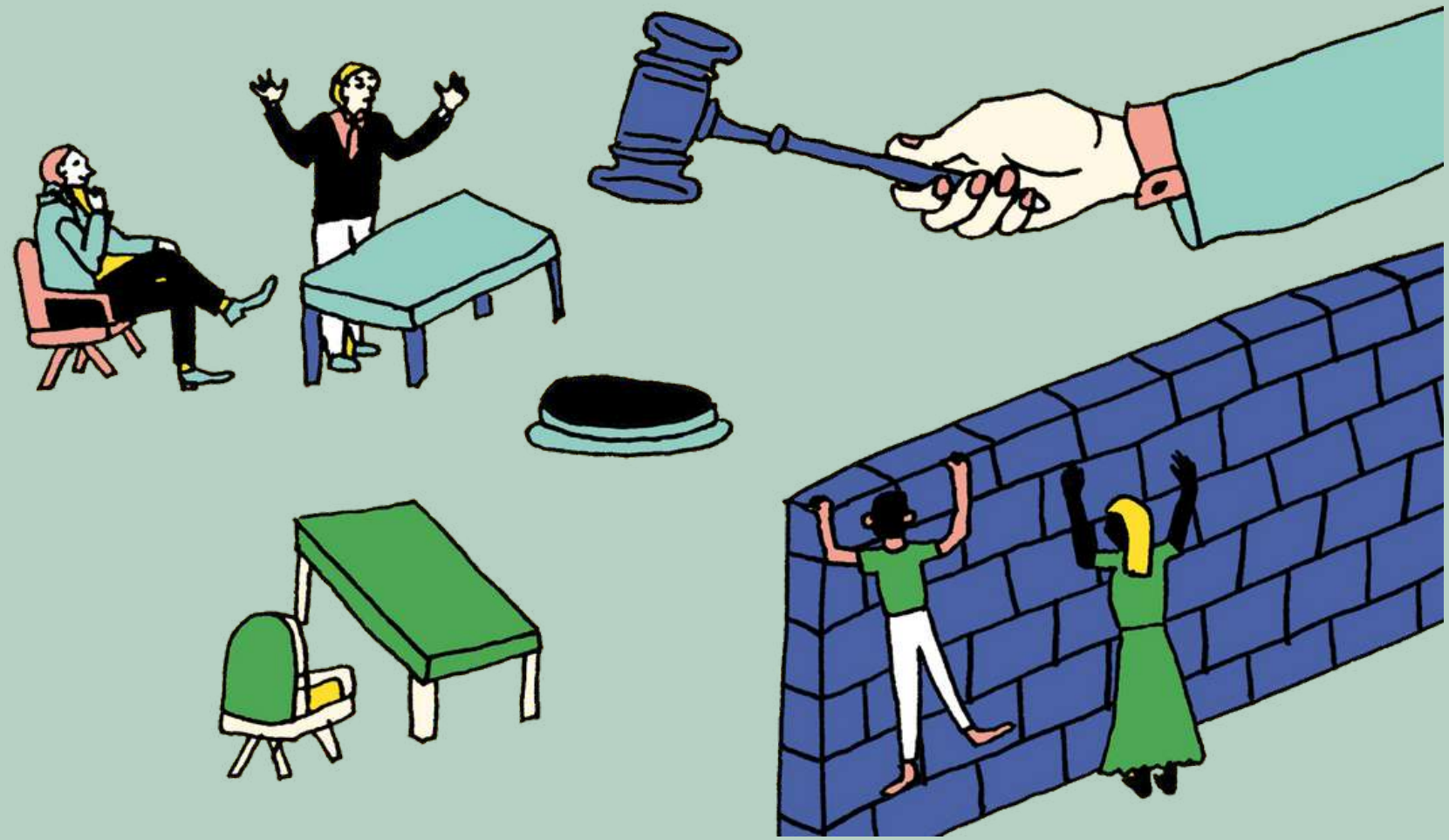
Legal liability for harm is a core concept in most legal systems, but companies in global value chains can often escape it. This is why we need a European law establishing legal liability across the supply chain, in order to hold accountable those truly responsible.

The Brumadinho dam collapse in Brazil: Shared responsibility

Companies can be held responsible for harm caused even when they are not directly implicated in the facts.

In the case of the Brumadinho dam disaster in Brazil, the company that was directly responsible for managing the infrastructure was Vale, a Brazilian company.
Yet, they cannot be considered as the sole responsible for the dam collapse, as a German auditor (TUV SUD) had declared the dam stable a few days before the accident.

Although TUV SUD was not directly involved in the day-to-day operations of the dam, the disaster could have been avoided if they had declared the structure unsafe.



ACCESS TO JUSTICE

"Access to justice" means the capacity of an individual or a group to have actual access to a legal system to seek remedy for harm. Although equal access to justice is a basic principle of the rule of law, this principle is often not put into practice.

In the case of violations by subsidiaries of multinational corporations, it is hard for affected communities to find a path to access justice. Transnational court cases are expensive and complicated by nature. Especially when affected communities try to file a claim in the courts of the country of the parent company, additional costs will arise: travel, interpretation, legal assistance, to name a few.

To overcome these obstacles, many affected communities rely on the volunteering of local activists, civil society organisations, and good-willed lawyers. By contrast, multinational corporations have the means to hire expensive teams of experts and can you the system to their advantage.

Some ways to make access to justice easier for victims are to provide legal representatives for claimants who cannot pay for them, allow groups of victims to file claims together or to be represented by organisations that they are part of (such as trade unions), and to make it easier for them to collect information and evidence.

We need laws removing barriers to access justice, to correct this clear imbalance of power.

Oil Spills in the Niger Delta River: Shared responsibility

Four Nigerians brought to court the claim that Shell Nigeria, a subsidiary of the Dutch oil company Shell, has caused oil spills in the Niger Delta river.

In 2021, a Dutch court ruled that Shell Netherlands was also responsible for the damage because it did not prevent, cease nor mitigate the damage caused by its Nigerian subsidiary. This ruling is a true example of access to justice, as it is the first time a European court recognised that a parent company can be held liable for the actions of a subsidiary.

Reversal of the burden of proof

The burden of proof is a claimant's duty to produce sufficient evidence to prove an argument or accusation. In civil cases, it is normally the person bringing a claim who has to demonstrate that the defendant is guilty.

Proving the responsibility for harm of a company in a complex value chain is difficult. Access and information gathering can be extremely hard as companies in international value chains operate through non-trans of proof resting on the shoulders of claimants is one of the main obstacles to accessing justice for victims of corporate abuse. parent suppliers and subsidiaries across different countries.

A recent study by the European Parliament found that the burden. This explains why the European Fundamental Rights Agency has recommended re-distributing the burden of proof between claimants and defendants more fairly, especially when victims have to prove that a company is controlled by another one.

Given the imbalance of power and knowledge, we need a European law easing access to justice for those affected. This includes reversing the burden of proof.

Oil Spills in the Niger Delta River: The importance of proof

Royal-Dutch Shell has been extracting oil in the Nigerian Niger Delta for more than fifty years, causing well-documented oil spills into the local area.

In 2009, Nigerian farmers brought a case against Royal-Dutch Shell in the Netherlands. During this trial, the company argued they were not responsible for the actions of their Nigerian subsidiary.

In order to establish that the parent company was indeed in control of their subsidiary, a large amount of technical information was necessary, but this was mostly in the hands of the company.

The Dutch court, initially, argued that it was on the claimants to prove that Royal-Dutch Shell did indeed control its subsidiary. The court refused to reverse the burden of proof from the claimant to the defendant.

Later a higher court recognised that it would have been almost impossible for the Nigerian farmer claimants to gather the necessary information that was in the hands of the company.

DUTY OF CARE

When it can be foreseen that their activities may cause harm, companies should take action to prevent such harm. This concept is referred to as the duty of care.

Although this principle might seem intuitive, it is not always established by law. This means that when companies have not taken reasonable care to avoid harm, breaching their duty of care, there is often little legal basis for claiming justice.

Worried by this judicial void, more and more countries, including the European Member States, are recognizing companies' duty of care in their national legislation.

In 2017, France adopted its law on the duty of vigilance, establishing an obligation similar to that of the duty of care.

Many companies could have prevented the harm of their operations if they had bothered. This is why we need to ensure that their duty of care is enshrined in EU law.

Duty of care:
Its importance around the world

The actions of European companies have been linked to environmental damage, workers and human rights abuse in many countries: Brazil, Bangladesh, Ivory Coast, Nigeria and others.

Establishing a company's duty of care in European law would encourage companies to pre-emptively consider the potential impacts of neglect throughout their operations.

Establishing a duty of care would provide a strong argument for responsibility to offer remedy to those affected.


JUSTICE

DUE DILIGENCE

Due diligence is a practical tool companies can use to comply with their duty of care, and to ensure their actions do not have a negative impact on human rights and the environment.

In practical terms, due diligence means that a company must analyse its value chains and map its own actions, those of its subsidiaries, suppliers and business relations, with a view to identify where there are negative impacts, or where there is a risk that those impacts materialise.

Once the risks have been identified (and classified according to their likelihoods and severity), the company needs to act to prevent negative impacts, and cease or improve the relevant operations.

On an ongoing basis, the company must keep track of their success in addressing those risks and improve and refine their policies accordingly.

The information collected throughout this process should be transparent and available for scrutiny, and all stakeholders who could be impacted by the activities of the company should be consulted at each step.

Due diligence is meant to prevent harm, but it is not a legal obligation in most countries.

This is why we need mandatory European legislation imposing mandatory human rights and environmental due diligence for companies operating in the EU.

Can Due diligence be mandated by law?

Due diligence has been established in a number of voluntary instruments, such as the United Nations' Guiding Principles on Business and Human Rights, and the OECD's Guidelines for Multinational Enterprises.

These voluntary measures have proven ineffective.

This is why some member states are enshrining these measures into binding law. For example, in 2017 France adopted a law on companies' duty of vigilance, in which due diligence is clearly indicated as one of the tools companies need to use to prevent human rights violations and negative environmental impacts.

While the European Union does not yet have a general legislation on due diligence, it has already adopted due diligence in laws regulating specific sectors, such as the Regulation imposing due diligence obligations for companies importing rare-earth minerals and gold from conflict-affected and high-risk-areas.