Lafarge Supporting Terrorism, Crimes against Humanity

Cases on Extraterritorial Human Rights Obligations of States



Photo: Lafarge's cement plant in Jalabiya, northeast Syria, 2010. Source: Daniel Riffet/Photononstop.

Country of victims: Syria (primary) and Iraq (secondary)[1]

Source: Housing and Land Rights Network – Habitat International Coalition (HIC-HLRN)
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Signature: COW, Corruption, Finance regulation, Trade, Investment and IPR

Obligations: to respect and protect rights to life; freedom from torture; freedom of movement; livelihood, including adequate housing and food; health; decent work; education; remedy and reparation. Customary obligations not to recognize, cooperate or

[1] Iraq is listed as a function of the ISIS cross-border terrorist operations, primarily in Iraq, at the time.

transact with the illegal situation: perpetration of crimes against humanity (mass slaughters of ethnic or religious groups, sexual violence, sexual slavery, forced pregnancies, and summary executions, among others).

States breached their ETOs: Syria, France

Description:

Background

Lafarge is a French industrial company specializing in three major products: cement, construction aggregates and concrete. The transnational corporation is active in 61 countries, including Syria, with recorded sales of €12.8 billion in 2014.[2] Following its merger with the Swiss company Holcim,[3] the company has maintained a presence in 2,500 factories worldwide.

Lafarge is the global leader in cement production, which represents the main segment of Lafarge's activities. In 2015, the company owned 149 cement production sites in 55 countries, employed 37,000 people and declared sales revenue of €8.6 billion in that sector of its operations alone.[4]

The Middle East is an important market for the company, with almost 5,500 employees in the region. Lafarge Cement Syria (LCS) was a subsidiary almost 99% owned by the French group Lafarge. Formerly known as Syrian Cement Company, Lafarge bought it in 2008 when it also acquired the leading Egyptian cement company, ORASCOM.

In 2010, Lafarge started running a cement factory in Jalabiya, in northeast Syria. The conflicts unfolding in 2011 led to the fall in cement production and an explosion of cement prices and increased profits to Lafarge.

While other companies in the region stopped all activities due to the conflict situation, Lafarge decided to remain active. In 2013, the terrorist group, Islamic State in Iraq and al-Sham (ISIS) extended its control over the cities and roads surrounding the factory. It conquered the City of Raqq`a, 90 km away from the factory. In June 2013, and the City of Manjib, 65 km away, where most of the factory's employees were housed, fell to ISIS in March 2014.

ISIS perpetrated publicly reported war crimes and crimes against humanity in a very widespread and systematic manner since the beginning of its engagement in Syria. These included mass slaughters of ethnic or religious groups, sexual violence, sexual slavery and forced pregnancies, and summary executions, among others.

Despite this situation, Lafarge entered negotiations with ISIS through hired intermediaries to purchase ISIS-controlled raw materials such as oil and pozzolana. This involved also Lafarge's payment of huge payments to ISIS to allow employees and goods to cross ISIS checkpoints,

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[2] *See* http://www.lafarge.com/fr/finance-chiffres-cles.

[3] The Holcim Group, legally known as Holcim Limited, is a multinational company based in Zug, Switzerland that manufactures building materials. It has a presence in around 70 countries and employs around 72,000 employees. *See* http://www.holcim.com/.

[4] *See* http://www.lafarge.com/fr/ciment-en-bref.

including via “official” ISIS passes. These documents commercial transactions form the basis of the plaintiffs’ claim that Lafarge should be investigated for complicity in war crimes and crimes against humanity committed by ISIS, and for the crime of financing a terrorist enterprise.



Photo: ISIS volunteers in Syria: Source: *One India.*

Moreover, Lafarge is charged with violations of Syrian employees’ rights. While Lafarge evacuated its foreign employees by a repatriation order in 2012, it decided that its local Syrian employees would continue working. Several workers from the Jalabiya factory kept working despite them having to cross dangerous checkpoints amid intense fighting, or were required to stay in the factory overnight. Some workers were threatened by the management team to continue coming to work, some sanctioned with suspension of salaries should they be absent, and at least one worker was fired.

Several employees, including one of the plaintiffs in the complaint, were victims of kidnapping in their status as Lafarge’s employees, including on their way to work and at the factory, without Lafarge seeming to intervene or compensate them, including after their release.

Despite the increasing security threats, the former employees claim that Lafarge took no adequate precautionary protection measures for its employees and had no functioning evacuation plan for the factory site in case of an emergency. When the factory was attacked and taken over by ISIS on 19 September 2014, employees survived only because they found their own way to escape.[5]

[5] European Center for Constitutional and Human Rights (ECCHR) e.V., “Lafarge in Syria: accusations of complicity in war crimes and crimes against humanity,” November 2016, www.ecchr.eu.

According to the plaintiffs, Lafarge was, thereby, complicit in the abductions of its employees by ISIS, which is a war crime. Further, the above allegations rendered Lafarge in violation of French criminal law for a series of labor rights violations and for endangering its workers' lives and livelihood.

Litigation

Following an initial press report on Lafarge funneling money to ISIS,[6] the organizations Sherpa and European Center for Constitutional and Human Rights (ECCHR) represented eleven Syrian former employees of the French company Lafarge Cement[7] submitted a criminal complaint in French Court against Lafarge in 2016 for complicity in grave human rights violations. By maintaining business relations with ISIS, the company allegedly contributed to the financing of the group, thereby making it complicit in war crimes and crimes against humanity.

The complaint names as defendants the group Lafarge itself, its CEO at the time of the facts, Bruno Lafont, the Syrian subsidiary Lafarge Cement Syria, along with its CEO until June 2014 Bruno Pescheux and its CEO since June 2014 Frédéric Jolibois,[8] for:

- financing a terrorist enterprise (Art. 421-2-2, French criminal code);
- complicity in war crimes (Art. 461-2s., French criminal code);
- complicity in crimes against humanity (Art. 212-1s., French criminal code);
- deliberate endangerment of people (Art. 223-1 French criminal code);
- exploitative labor work, undignified working conditions, and forced labor (Art. 225-13, 225-14-1 et 225-14-2 French criminal code).

The complaint alleges that Lafarge entered an arrangement with, and financed armed groups such as ISIS to maintain the cement operations of its subsidiary Lafarge Cement Syria from 2012 to 2014. Through its subsidiary, Lafarge has allegedly paid up to €13 million to several armed groups, including ISIS. No party has established or claimed a link between the Lafarge payments made to ISIS and other armed groups as ransom for kidnapped employees.

The probe was opened in October 2016 after the French Ministry of Economy and Finance filed a complaint against the group. The wrongdoing preceded Lafarge's merger with Holcim in 2015 to create LafargeHolcim, the world's largest cement maker.

Since then, LafargeHolcim has said it commissioned an independent investigation that revealed that the local company provided funds to third parties to work out deals with numerous armed groups. The company acknowledged "unacceptable individual errors" were made in Syria until its facilities in the country was evacuated in September 2014.[9]

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[6] « Comment le cimentier Lafarge a travaillé avec l'Etat islamique en Syrie, » *Le Monde* (21 June 2016), https://www.lemonde.fr/proche-orient/article/2016/06/21/comment-le-cimentier-lafarge-a-travaille-avec-l-etat-islamique-en-syrie_4955039_3218.html.

[7] Lafarge is a French industrial company specializing in three major products: cement, construction aggregates, and concrete. It was founded in 1833 by Joseph-Auguste Pavin de Lafarge and is based in Le Tell, France. On 10 July 2015, Lafarge merged with the Swiss building materials company Holcim.

[8] Lafarge is now led by Eric Olsen who took over from Bruno Lafont as CEO in July 2015.

[9] "Lafarge charges of crime against humanity dropped on appeal but others remain," *France 24* (7 November 2019), https://www.france24.com/en/20191107-lafarge-charges-of-crime-against-humanity-dropped-on-appeal-but-others-remain.

ETOs and international jurisdiction could be invoked since the relevant Security Council sanctions have their own force under international law. However, the jurisdiction of the case remains domestic to France until the present.



Photo: Lafarge cement plant in northeast Syria, after the ISIS September 2019 attack. Source: *Le Monde.*

Legal Grounds

The legal grounds for France to hold companies to account for crimes committed abroad include article 121-2 of the criminal code, in force since 2005. It states that corporations can be held criminally liable when perpetrators of crimes act on the company's behalf. This does not exclude the criminal responsibility of the acting individuals.

French courts also have jurisdiction over crimes committed abroad by both French individuals and French companies, as stated in article 113-6 of the criminal code. In addition, regarding the charges of complicity in war crimes and crimes against humanity and the charge of financing a terrorist enterprise, the principle of universal jurisdiction under which serious international crimes can be prosecuted in national courts worldwide, also applies, according to articles 689-1, 689-10 and 689-11 of the criminal procedure code.

Outcomes so far

The Court of Appeal addressed the question of whether Sherpa and ECCHR may continue to appear as plaintiffs (under French law) in the proceedings. In October 2019, the court ruled in favor of Lafarge's request that Sherpa (but not ECCHR) could no longer be considered plaintiffs. ECCHR remain among the plaintiffs by virtue of the fact that the organization

included the subject of war crimes and crimes against humanity and their litigation in its articles of incorporation.

In November 2019, the court dismissed charges of "complicity in crimes against humanity," against Lafarge, but allowed other charges to be considered as supporting terrorism over payments made to those armed groups. The other charges that the Paris appeal court maintained against the company included financing a terrorist enterprise, violation of an embargo and endangering others. These bases of the complaint arise from Franc's incorporation of war crimes and crimes against humanity in its criminal statutes, as well as the common European Union sanctions applied explicitly to ISIS and affiliated groups, based on binding resolutions of the UN Security Council under its sanction regime.

On 7 September 2021 the Cour de cassation, France's highest court, reached a groundbreaking decision, clarifying the legal framework under which a company may be charged with complicity in crimes against humanity. The plaintiffs claimed that to be the first time worldwide that a company, as a legal entity, was being charged with complicity in crimes against humanity.[10] Lafarge also remains charged with deliberately endangering the lives of its Syrian employees.

On 8 May 2022, the Investigative Chamber of the Paris Court of Appeals decided that Lafarge is facing the charge of complicity in crimes against humanity. This decisive ruling confirmed that a company alleged of knowingly paying several million euros to a criminal organization can face charges of complicity in the gravest crimes.

Then, on 14 March 2023, the criminal chamber of the Cour de Cassation announced that it was requesting an opinion from the Court's social chamber to better rule on the maintenance of the indictment against Lafarge for endangering the lives of others. The next hearing will be held on 19 September 2023, when the hearing must decide on the merits of the indictment of the cement manufacturer for endangering others in the context of its activities in Syria.[11]

United States Jurisdiction

In a separate case in the United States, Lafarge SA pled guilty and agreed to pay a fine of $777.8 million to resolve a criminal charge arising from an investigation and indictment in US District Court in Brooklyn, New York.[12]

The New York Joint Terrorism Task Force of the US Federal Bureau of Investigation (FBI) is continuing to investigate the case. The Justice Department's Office of International Affairs

[10] This is apart from precedents in which other corporations had been accused of war crimes, crimes against humanity and breaches of peremptory norms, as in the case of Volkswagen facing prosecution in Brazil and other jurisdictions for forced labor during the Nazi era. Cour de cassation, Chambre criminelle, Pourvoi n° 19-87.367, Bulletin ECLI:FR:CCASS:2021:CR00868, https://www.courdecassation.fr/en/decision/6137092ff585960512dfe635.

[11] Anne-Laure Blouin, "Affaire Lafarge : la Cour de cassation reporte sa décision," *Décideures Juridiques* (7 March 2023), https://www.decideurs-magazine.com/affaires-juridiques/54872-affaire-lafarge-la-cour-de-cassation-remporte-sa-decision.html.

[12] Eamon Janers and Dan Mangan, "French company fined $777 million and pleads guilty to paying ISIS as terror group killed Westerners," *CNBC* (18 October 2022), https://www.cnbc.com/2022/10/18/lafarge-cement-to-plead-guilty-pay-more-than-700-million-on-charges-of-bribing-isis-as-terror-group-killed-westerners.html; U.S. Department of Justice, "Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations," press release, 18 October 2022, https://www.justice.gov/opa/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations.

provided critical assistance in the case and referred to the cooperation and assistance of French, Moroccan and Lebanese authorities.

As revealed in the US case, Lafarge and LCS executives sought ISIS' collaboration to create additional costs on competitors in Syria selling imported Turkish cement, which was often sold more cheaply than cement produced at the Lafarge Jalabiya Cement Plant. Local LCS executives specified to intermediaries negotiating with ISIS that, in exchange for LCS paying ISIS 750 Syrian pounds per ton of cement that LCS sold, LCS expected ISIS to take action against its competitors, either by stopping the sale of competing imported Turkish cement in areas under ISIS's control, or by imposing taxes on those competing cement dealers such that would allow LCS to raise the prices of its cement on the market.

Lafarge and LCS also paid the equivalent of some $1.11 million to the intermediaries for negotiating with and making payments to ISIS and al-Nusra Front (ANF) on Lafarge's and LCS's behalf. In addition, when LCS eventually evacuated the Jalabiya Cement Plant in September 2014, ISIS seized the cement that LCS had produced and sold it at prices that would have yielded ISIS approximately US$3.21 million. Meanwhile, LCS had acquired some US$70.30 million in total sales revenue from August 2013 through 2014. All participants in the conspiracy, including LCS, the intermediaries and the terrorist groups, amassed approximately US$80.54 million.

When Lafarge was acquired by Holcim in a transaction that closed on 10 July 2015 to create LafargeHolcim. Lafarge executives did not disclose LCS's payments to ISIS and ANF to the successor company during pre-acquisition diligence meetings, and LafargeHolcim did not conduct due diligence before or after acquisition of LCS's operations in Syria, which had terminated 10 July 2015. Lafarge, LCS and LafargeHolcim also neither self-reported the illicit conduct, nor fully cooperate in the investigation.

No individuals have yet been charged as of the October 2022 plea deal, but authorities said at the time that their investigation remained ongoing. Individual liability may still be found for the conduct the US Department of Justice identified as:

- Lafarge and LCS executives required intermediaries to create business entities with names not obviously linked to the intermediaries and created invoices with false descriptions of services rendered for an intermediary to submit to LCS.
- LCS executives structured the revenue-sharing payments to ISIS so that LCS's customers would pay ISIS the amounts owed under LCS's agreement with ISIS, while LCS discounted the prices it charged to the customers to reimburse them. To ensure that LCS's customers did not underpay ISIS, LCS agreed to provide ISIS with periodic sales reports, which ISIS could use to verify that LCS's customers were paying the amounts owed under the terms of LCS's agreement with ISIS.
- To further conceal the arrangements, Lafarge and LCS executives attempted to require ISIS not to include the name "Lafarge" on the documents memorializing and implementing their agreements.
- Many of the Lafarge and LCS executives involved in the scheme used personal email addresses, rather than their corporate email addresses, to carry out of the conspiracy.
- In October 2014, as a condition of paying an intermediary for having negotiated with ISIS and ANF, Lafarge and LCS executives required the intermediary to sign an agreement terminating his agreement to provide services to LCS. Critically, the Lafarge and LCS

executives backdated the termination agreement to 18 August 2014, a date shortly after the United Nations Security Council had issued a resolution calling on member states to prohibit doing business with ISIS and ANF, to falsely suggest that he had not been negotiating with ISIS on behalf of LCS after the UNSC resolution.[13]

Territorial HR analysis:

State(s) in which violations took place: Syria

External States: France

Extraterritorial HR analysis:

State(s) in which violations took place: Syria

External States: France

Lessons learnt:

The rulings so far affirm that companies can no longer justify their involvement in criminal actions for commercial or financial reasons. If they enable or materially support crimes, even if only to pursue commercial purposes, they could be found complicit and held accountable.

It now becomes more difficult for corporations to hide behind their business activities to escape liability for the gravest crimes by shifting blame for such actions to their foreign subsidiaries and foreign jurisdiction. The message to parent companies is clear: they must protect all employees in their production and value chain, including those of their foreign subsidiaries.

Subject to final ruling, this case may be a good illustration of how multinational enterprises doing business in conflict zones can directly fuel armed conflicts and contribute to grave human rights violations and serious violations of international humanitarian law committed therein. ECCHR, Sherpa, and Lafarge's former employees have been demanding that, this time, criminal courts act, in order to hold the company responsible for these actions.

Lafarge and other transnational companies remain active in the war-torn region. They maintain the discretion to continue operations in Kobane and other territories of Syria. Each may be positioned to benefit from the ongoing war, the illegal situation in which they are complicit with terrorist organizations operating within their field of operations, as well as the highly discriminatory practices of dispossession and displacement conducted by the Syrian government against Syrian refugees, displaced persons and the transfer (by sale or otherwise) of those affected persons' and communities' properties in favor of other parties on the basis of their political loyalty to, and/or collaboration with the presently governing Syrian regime.

The present situation involves the hoarding of cement, aggregate and other building materials by privately interested companies in anticipation of the rebuilding of Syria after the end of hostilities and the restoration of the Syrian state. This perverse situation does not legally disqualify that predatory practice on the part of the extraterritorially domiciled actors. However, this unsavory situation may raise the question as to the administrative

[13] US Department of Justice, *op. cit.*

disqualification of those companies from future transnational contracts in the reconstruction effort if and when the domicile states of those companies were to regulate their activities and the activities of their subsidiaries abroad.

It remains to be seen if the courts would apply due diligence for reparations of gross violations or exclude Lafarge from future contracts in reconstruction in Syria. Such due diligence may not apply unless the judges transpose directives to future.

N.B.: The UN Security Council sanctions against ISIS and related groups form part of the EU common sanctions regime.

Jurisdiction:

The litigation has been entirely under the domestic criminal jurisdiction of the courts of France, applying the French Criminal Code and Criminal Procedures.

Strategies:

The original complaint did not invoke international law but remained within the familiar legal territory of the French court and its criminal jurisdiction. It sought to establish a precedent enabling not only remedy to alleged victims (Syrian employees of Lafarge), but punitive measures against the natural and moral persons responsible.

The wider sphere of victims of Lafarge and ISIS operations remain outside the scope of any remedy pursued in this case.

It may be possible to extend the scope of remedy in this case and to mobilize the verdict to facilitate further verdicts in favor of other victims, should they be encouraged despite threats of retribution to come forward.

While such off-shore companies are positioning themselves to profit also from the reconstruction of Syria, that prospective reconstruction is already foreseen to build upon the current illegal situation of wanton destruction, dispossession, selling off land and other properties of Syrian refugees and IDPs, favoring and disfavoring housing and other urban-development on the basis of loyalty to the current Syrian government of Bashar al-Asad.[14]

The complicity argument can be an effective deterrent to external actors benefitting from such illegal situations, even in advance of litigation.

State responsibility:

Under treaty and general principles of international law, including *jus cogens*, states' obligations are, at once, individual, collective, domestic and extraterritorial. Although collective and extraterritorial state responsibility apparently were not invoked in this case, individual and domestic responsibility were the domain of the complaint and claim to remedy the harm committed against the employees of a company domiciled in France and its subsidiary as a wholly integral extension of that party. In that sense, the state responsibility extended extraterritorially through the French-domiciled defendant.

[14] "The Humanitarian, Economic and Social Situation in Syria," *Land Times/أحوال الأرض,* Nos. 25–26 (May 2022).

Remedies:

Domestic jurisdiction:

On 24 October 2022, the Paris Court of Appeal (Chambre de l'instruction) decided to uphold the charges against the multinational cement company Lafarge for complicity in crimes against humanity in Syria.

The inquiry carried out by the French judicial authorities against Lafarge (today LafargeHolcim) and former managers of the company follows the criminal complaint filed in November 2016 by eleven former Syrian employees together with Paris-based organization Sherpa and the European Center for Constitutional and Human Rights (ECCHR) from Berlin. The case against Lafarge is seen as a milestone in the fight against impunity for companies doing business in war and conflict regions.

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