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U.S./Indonesia: Bush Backtracks on Corporate Responsibility

(New York, August 7, 2002) - The U.S. State Department has asked a federal judge to dismiss a lawsuit against the Exxon Mobil Corporation for its alleged complicity in human rights violations in Indonesia, raising questions about the Bush administration's commitment to corporate responsibility, Human Rights Watch said today.

The civil suit, filed on June 11, 2002 in the District of Columbia, alleges that the Indonesian military provided "security services" for Exxon Mobil's joint venture in Indonesia's conflict-ridden Aceh province, and that the Indonesian military committed "genocide, murder, torture, crimes against humanity, sexual violence and kidnapping" while providing security for the company from 1999 to 2001. The plaintiff's claim that Exxon Mobil was aware of widespread abuses committed by the military but had failed to take any action to prevent them.

In the wake of business scandals involving Enron and WorldCom, among others, U.S. President George Bush has called for "a new ethic of personal responsibility in the business world," arguing that Americans need "confidence in the character and conduct of all of our business leaders."

"Corporate responsibility shouldn't stop at the water's edge," said Kenneth Roth, executive director of Human Rights Watch. "If the Bush administration is serious about promoting ethical business practices, it shouldn't be trying to stop this court case from going forward."

Human Rights Watch is not a party to the lawsuit and takes no position on claims regarding Exxon Mobil in Indonesia, but is deeply concerned that the State Department would request that the case be dismissed rather than taking a neutral position and allow the legal proceeding to run its course.

Background

The case was filed by the International Labor Rights Fund (ILRF), a U.S. non-governmental organization, on behalf of eleven anonymous plaintiffs against Exxon Mobil in a U.S. Federal Court in the District of Columbia. The plaintiffs allege that Exxon Mobil violated the U.S. Alien Tort Claims Act, the Torture Victims Protection Act, international human rights law, and the statutory and common law of the District of Columbia. The suit held that Exxon Mobil was liable for the alleged abuses because it provided "logistical and material" support to the military.

Exxon Mobil vigorously denied the allegations and said the lawsuit "recently filed by the International Labor Rights Fund (ILRF) containing these allegations is without merit and designed to bring publicity to their organization."

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The company later petitioned U.S. District Court Judge Louis F. Oberdorfer, the presiding judge in the case, to solicit an opinion from the State Department whether this suit would have an adverse effect on U.S. foreign policy. On May 10, Judge Oberdorfer sent a letter to the State Department requesting "out of an abundance of caution, in the tense times in which we are living, whether the Department of State has an opinion (non-binding) as to whether adjudication of this case at this time would impact adversely on interests of the United States" and seeks specifics about "the nature and significance of that impact." The letter stated that the plaintiffs alleged that "Exxon Mobil Corporation and various of its subsidiaries and affiliates ('Exxon') are legally responsible for human rights violations suffered by plaintiffs at the hands of an Indonesian Army unit engaged by Exxon to provide security for its Arun Project in Aceh, Indonesia."

The State Department argued that the Indonesian government would view judicial scrutiny of the company's conduct as a referendum on the human rights record of the Indonesian armed forces, which would dissuade it from cooperating with the United States in counter terrorism. However, the State Department itself routinely criticizes the human rights record of the Indonesian military in its Country Reports on Human Rights Practices while maintaining diplomatic relations. Indeed, in its letter to Judge Oberdorfer, it condemned "human rights abuses by elements of the Indonesian armed forces in locations such as Aceh."

The State Department could have issued a neutral opinion on the suit, but instead sided with Exxon Mobil and sent a response to Judge Oberdorfer on July 29, 2002 arguing that the case should be dismissed.

The State Department also argued that the litigation's "potential effects on Indonesia's economy could adversely affect important United States interests" and could impede further cooperation with U.S. companies. It said that continued business with U.S. companies would expose the Indonesian government and local companies to the highest business standards as another justification for dismissing the lawsuit, even though the suit could determine whether Exxon Mobil did follow acceptable business practices.

"The administration can't simultaneously argue that U.S. companies impart the best business practices in Indonesia while trying to dismiss a case that could determine whether a U.S. company actually followed those practices," said Roth.

The State Department claimed that the suit may actually hurt progress on human rights in Indonesia. Indonesian human rights groups, however, fear that the State Department's letter will bolster and legitimize the Indonesian military's resistance to judicial scrutiny of abuses, especially in conjunction with the U.S. government's recent decision to resume limited military cooperation with Indonesia. Human Rights Watch has strongly criticized the resumption of U.S. military assistance because it could undermine efforts to strengthen civilian and judicial oversight of the military without clear conditions on human rights. (For more information see "The Indonesian Military and Ongoing Abuses," a Human Rights Watch backgrounder, July 2002 available at: <http://www.hrw.org//backgrounder/asia/indo-bck0702.htm>).

State Department Undercuts Indonesian Peace, Judiciary

The State Department's efforts to influence the case also undercuts credibility of U.S. efforts to promote an independent judiciary in Indonesia that is free of political interference. Ironically, when a suit by the Karaha Bodas Company, a joint-venture of two U.S. firms, against the Indonesia state energy firm, Pertamina, came up in talks with his counterpart last week in Jakarta, Colin Powell reportedly explained that the U.S. government does not interfere with ongoing court cases.

Two weeks before the State Department sent its opinion to Judge Oberdorfer, Indonesia's Ambassador to the U.S., Soemadi DM Brotodiningrat, sent a strongly worded letter objecting to the lawsuit to Richard L. Armitage, the U.S. Deputy Secretary of State. Chillingly, the Ambassador noted that the lawsuit "will definitely compromise the serious efforts of the Indonesian government to guarantee the safety of foreign investments, including in particular those from the United States."

The ambassador's letter also warned that the suit would have an adverse impact on peace talks in Aceh that are "at an extremely sensitive and delicate stage." However, the Indonesian security forces have increased military operations, proposed martial law, and arrested Acehnese peace negotiators since those negotiations began.

"Instead of condemning the Indonesian government's threats against American investors and the Aceh peace process, the State Department has apparently buckled to them," Roth said.

In late June 2002, Exxon Mobil notified the State Department that it had joined the Voluntary Principles on Security and Human Rights program that began in 2000 and has been adopted by both the Clinton and Bush administrations. The program was developed by the State Department in conjunction with the British Foreign and Commonwealth Office, the

Dutch Ministry of Foreign Affairs, multinational oil and mining companies, and human rights organizations, including Human Rights Watch. According to the State Department, the program is designed to "guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms."

"It is the height of hypocrisy for the State Department to publicly promote human rights principles for the oil and gas industry and then tell a judge that scrutiny of an oil company's human rights record runs counter to foreign policy," said Roth. "Apparently, principles only matter when they don't matter."

To read Human Rights Watch's letter to U.S. District Court Judge Louis F. Oberdorfer, please see:
<http://www.hrw.org/press/2002/08/exxon072902.pdf>.

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