Nine Sudanese victims along with FIDH and the Ligue des droits de l’Homme (France), with the support of Project Expedite Justice, the African Centre for Justice and Peace Studies (Sudan), and Sudan Human Rights Monitor have filed a criminal complaint targeting French bank BNP Paribas for alleged complicity in crimes against humanity, torture, and genocide that took place in Sudan, as well as financial crimes.

What is the case about?

Described as Sudan’s “de facto central bank”, BNP Paribas (BNPP) has admitted to acting as the primary foreign bank to the Sudanese government between 2002 and 2008.¹

During this period, the government – through its military and security forces and Janjaweed militias – committed widespread human rights violations amounting to international crimes (including torture, crimes against humanity and genocide) against Sudanese civilians. These violations targeted Sudanese citizens from non-Arab tribes (including Masalit, Fur and Zaghawa) in Darfur as well as other marginalised areas inside Sudan.² As a result of the Sudanese government’s actions, tens of thousands of Sudanese activists and ordinary civilians were killed, forcibly displaced from their homes, detained, tortured and subjected to inhumane treatment or raped and subjected to other forms of sexual violence.³

In 2005, the United Nations Security Council referred the situation in Darfur to the International Criminal Court (ICC). The ICC is investigating allegations of genocide, war crimes, and crimes against humanity committed in Darfur since 1 July 2002. Several arrest warrants have been issued by the ICC in the framework of its Darfur investigation, including against former president Omar al-Bashir, who is charged with genocide, crimes against humanity, and war crimes. These arrest warrants have not been executed to date.⁴ Extensive human rights violations and international crimes committed in Sudan since 2002 have thus gone completely unpunished.

The plaintiffs – all survivors of the crimes committed in Sudan – allege that by providing banking services to the Sudanese government, BNPP was complicit in the violations committed by the Sudanese military and security forces and Janjaweed militias. In other words, by providing the Sudanese government with credit facilities, allowing the government to export petrol and access foreign money markets, the plaintiffs claim that the bank facilitated the commission of human rights violations amounting to international crimes by the Sudanese government.

Specifically, the plaintiffs allege that the bank is responsible for complicity in torture, genocide and crimes against humanity committed in Sudan between at least 2002 and 2008. In addition, they claim that the bank committed financial crimes including money laundering (blanchiment) and handling the proceeds of crime (recel).

As a result, the plaintiffs are calling on the French Senior Investigative Judge of the Paris Tribunal to open a criminal investigation into the bank’s conduct, to determine whether BNPP is criminally liable for its dealings with the Sudanese government.

¹ Financial Times, Payback for BNP, Sudan’s ‘de facto’ bank, 1 July 2014: https://www.ft.com/content/64073d84-00a6-11e4-9a62-00144feab7de; Plea Agreement, Statement of Facts, 28 June 2014.
⁴ For further information about the ICC investigation, see: https://www.icc-cpi.int/darfur.
Who are the plaintiffs?

There are 11 plaintiffs to the complaint.

Abdulhaleim Hassan is a Sudanese activist based in the United States. He has appeared in several mainstream media over the political and human rights situation in Sudan. In 2003, Mr Hassan was severely injured when the Janjaweed militia attacked his village, Nertiti, in the Darfur region, leaving him unable to walk properly for several years. Several of his close relatives were shot and killed during this attack and in subsequent attacks on Darfur villages. Forced to leave his home, Mr Hassan started going to high school in Khartoum, where he was arrested for the first time in 2006 for speaking up about what the Sudanese government was doing to its own citizens. A few years later, now at university, Mr Hassan was arrested again, this time for participating in a protest over violations taking place in Darfur. He was severely beaten in custody, along with around 50 other protesters.

Hawa Salih is a Sudanese human rights activist based in the United States. In 2012, Ms Salih was awarded the International Women of Courage Award by former Secretary of State Hillary Clinton and Michelle Obama. She advocates in particular for the rights of women and displaced Sudanese civilians and for peace and justice in Sudan. Kidnapped by Janjaweed forces loyal to the Sudanese regime following an attack on her village in 2003 that saw 100 members of her family executed, Ms Salih was badly tortured and shot in the arm. After managing to escape, she was forced to live in a displacement camp, where she stayed for eight years. During this time, Ms Salih became a youth leader and voice for IDPs, and started her activism, speaking out against the atrocities taking place. Between 2006 and 2011, Ms Salih was arrested four times by Sudanese security forces on account of her activism. During her time in detention, she was beaten and severely tortured, both physically and psychologically, and sentenced to death by the Sudanese government.

Seven other Sudanese victims, each of whom has suffered violations amounting to crimes against humanity, torture and/or genocide, are also acting as plaintiffs. They wish to remain anonymous at this stage.

Their stories are representative of the harm suffered by tens of thousands of Sudanese civilians since the start of the conflict in 2002. Should the case reach the investigation stage, FIDH and its partner, Project Expedite Justice (PEJ), will ensure that additional victims from Darfur and other marginalised areas in Sudan, such as South Kordofan and the Blue Nile, have the chance to participate as plaintiffs in the case.

FIDH and its member organisation Ligue des Droits de l’Homme (France) are also acting as plaintiffs in the case.

Lawyers from the FIDH Litigation Action Group represent all 11 plaintiffs.

Has BNP Paribas ever faced legal action regarding Sudan before?

Yes. BNPP’s close connection with the Sudanese government came to light in June 2014 as part of a criminal prosecution against the bank in the United States (U.S.). The bank was charged with violating US sanctions restricting financial transactions with Sudan, Iran, and Cuba. The case concluded with BNPP pleading guilty to the charges and paying an unprecedented $8.9 billion fine.

A number of victims were identified in the course of this case and submitted their testimonies to the U.S. Department of Justice. However, before these testimonies could be taken into account, the U.S. Congress passed a law that diverted the BNPP fine to American victims of terrorism, leaving the

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5 In recognition of her efforts on behalf of women’s rights in Sudan and worldwide. See: [https://www.youtube.com/watch?v=p8zXsMsbIzg](https://www.youtube.com/watch?v=p8zXsMsbIzg).
Sudanese and other victims without any form of redress for the harm they suffered in which the bank is believed to have played a role.⁶

In the wake of the U.S. sanctions violation prosecution, a civil lawsuit against the bank was filed in the Southern District of New York by Sudanese victims and refugees in the U.S. They claim, under U.S. tort law, that the bank is either directly or indirectly liable for acts of torture, detention, rape, displacement and murder committed by the Sudanese government. In May 2019, the case was revived by the U.S. Court of Appeals in the Second Circuit after being initially dismissed.⁷

The complaint filed today marks the first attempt to hold BNPP criminally responsible for alleged complicity to international crimes committed in Sudan.

The bank is already under investigation in France for its potential role in the 1994 Rwanda genocide, amid allegations that money transferred by BNPP was used to purchase 80 tonnes of weapons that were used to arm the perpetrators of the genocide.⁸

What happens next?

The French Senior Investigating Judge of the Paris Tribunal must now decide whether to open a criminal investigation into the bank’s role in violations committed in Sudan, after having requested the Paris Prosecutor to issue a formal request to open a judicial investigation.

If the case proceeds to a judicial investigation, the plaintiffs would become civil parties in the proceedings and investigative judges would be appointed to investigate the case. The civil parties would be allowed access to the confidential case file (through their lawyers) and to actively contribute to the investigation by filing briefs, procedural motions and requests for investigative action such as witness hearings, commissioning expert reports, confrontations, and the collection and analysis of documents and other material evidence. Civil parties may also appeal certain decisions taken by investigating judges.

If the investigating judges believe there is sufficient evidence during the course of the investigation, they will summons the suspects and charge them. If the investigating judges decide to charge BNPP as a corporation, they will summons and charge the legal representative company in such capacity.

Given the complexity of the case, it is expected that any judicial investigation would last a few years. At the end of the investigation phase, the investigating judges will issue a closing order, either dismissing the case or sending the bank and/or one or more senior executives to trial on charges of some or all of the offences under investigation.

If convicted for such offences, individual executives could face a term of imprisonment. BNPP as a corporation could face a fine up to five times that applicable to individuals,⁹ as well as a wide range of other measures including dissolution, being placed under judicial supervision, or being prohibited from receiving public funding. In addition, the civil parties may claim damages from BNPP to compensate them for the harm suffered as a result of the bank’s criminal conduct.

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8 Financial Times, BNP Paribas under investigation over role in Rwanda genocide, 25 September 2017: https://www.ft.com/content/25abe656-a1f3-11e7-9e4f-7f5e6a7c98a2.
9 French Penal Code, Article 131-38.
What role can banks play in international crimes and how may they be held responsible?

As things stand, banks and other corporations cannot be prosecuted at the ICC under international criminal law, but individual directors or staff members may be. Some individual countries have laws allowing corporations to be held accountable for their role in grave human rights violations. According to the country, corporations may face civil or criminal claims. In France, corporations can be prosecuted if they have played a role in crimes committed abroad.

This case illustrates how financing repressive regimes – and thereby assisting or facilitating the commission of human rights violations – may open the door to potential corporate criminal liability.

At the international level, business responsibilities are set out in the United Nations Guiding Principles on Business and Human Rights. Principle 11 clearly states that business enterprises (of which banks and financial institutions are a type) should respect human rights and this responsibility applies “wherever business enterprises operate”. A UN treaty that would create, for the first time, binding legal obligations on businesses to respect human rights is currently under negotiation.

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See also: press release

Find out more about FIDH’s work on Sudan: https://www.fidh.org/en/region/Africa/sudan/

Learn more about FIDH litigation activities: https://www.fidh.org/en/issues/litigation/

Find out what FIDH is doing to hold businesses responsible for their role in human rights violations around the globe: https://www.fidh.org/en/issues/globalisation-human-rights/

Learn more about PEJ and its work: https://www.projectexpeditejustice.org