

EPISODE 12: Terry Collingsworth Interviewed by Dr. Tina Davis

TINA:

Today I wish to warmly welcome Terry Collingsworth, who is the Executive Director for the organization International Rights Advocates based in Washington, DC. We will talk about the landmark lawsuit they have filed in the US against the big tech companies on behalf of children and families of children working in cobalt mines in Congo DRC. Welcome, Terry.



TERRY:

Thank you. Thank you very much for having me.

TINA:

Please tell me a little bit about your International Rights Advocates organization and what it is that you do.

TERRY:

We are a legal advocacy group that focuses exclusively on addressing global human rights issues that are the responsibility of multinational companies. So we do try to go to communities that have been injured by the activities of multinational companies, and see if we can help the people who are injured to address the problems. There usually are no lawyers in places where the global economy creates victims without accountability. And so we try to act as a law firm that's going to help people who otherwise would not get help.

TINA:

On December 16 in 2019, you filed a landmark lawsuit against some of the world's biggest tech companies on behalf of children and families who have been working in cobalt mines in the Democratic Republic of Congo and who have either been injured or who have lost their lives in the process of working there. Could you please tell me about this case?

TERRY:

For a couple of years now, reporters and human rights organizations have been documenting the fact that cobalt mined in the Democratic Republic of Congo, the DRC, is often mined by children. And the mining conditions are extremely dangerous because all of the miners including the children are essentially digging holes in loose rock surfaces and making tunnels and then the tunnels collapse on them and they don't have safety equipment, they don't have any beams or other protective tunneling equipment. So it is very common for workers to die in mind collapses or to be severely injured. And a lot of these are children. So this was brought to my attention by a couple of professors here in the United States who had been doing this research on the issues, including Siddharth Carra, who works at both Harvard and Berkeley's human rights clinics. And Dr. Roger Liwanga, who is at Emory Law School. And they came to me, they've been documenting this problem for quite some time. And they invited me to join them on a trip to the DRC to see for myself what conditions the child miners were facing. And we took that trip in September for a couple of weeks. And I met a large number of victims of the the mining disasters there. And it was the worst thing I've ever observed in my 30 some years of being a human rights lawyer. These kids were severely maimed. A lot of them were missing limbs. And I also met with families whose children were killed in mining accidents. So we began to interview people and and found some families that were willing to be the test class representative plaintiffs, and to bring the case that we ultimately filed.

TINA:

What would you say about the cobalt mining sector? How would you describe the sector in Congo DRC.

TERRY:

From what I observed, there's really two parallel mining operations going on. There's some real big companies there that are also quite horrible. Glencore, one of the most notorious mining companies in the world is operating there, for example. And they have what they call industrial mining, where they're using equipment and so on a larger scale to extract all kinds of minerals including copper. And then there's also a parallel mining operation that they call artisanal, which is people working with their hands and that is where the children work. And there are adults working there as well. There are these huge areas that kind of look like the moon now because they've been stripped of all trees and vegetation. So there's just these vast areas of loose dirt, loose soil rock, this kind of like shale. And then the miners are using just hand shovels and they're digging in and making tunnels and that's that's where they get hurt. But it is a dirty, dangerous job in addition to the risk of having In a mine collapse, fibers themselves from the various minerals that are there cause respiratory problems. The working conditions are horrible. There are no regulations governing it and the children are working for literally a dollar or two a

day, which leaves them malnourished and wearing rags and not having the ability really to improve themselves. They're essentially working to barely survive.

TINA:

Why has cobalt become such a sought after mineral in recent years?

TERRY:

Well, it is it's an essential element in these ion rechargeable batteries that are in all the gadgets that we all have like iPhones and tablets, laptops, and now the demand has been exponentially increased because making electric cars like Tesla, and Ford and Daimler are they're also getting their share of the cobalt, So the cobalt demand is now exponentially growing. But the great irony if you will, is that these high tech gadgets are relying on cobalt that's mined under Stone Age conditions.

TINA:

Congo DRC has a history of slavery dating back to the 16th century. And in the 1800s, when King Leopold of Belgium seized Congo, he introduced a system of forced labor. How would you describe what you know from the historical slavery to what you have seen when you've been there in these mines today, and how their children are working under hazardous conditions?

TERRY:

Yes, that's a great question. Thanks. We, we actually cite to Adam Hochschild's book "King Leopold's Ghost" and we also refer to Joseph Conrad's "Heart of Darkness" novel in the complaint, because those were the associations I made when I met these children and heard about the conditions under which they work. So, yes, the Congo has, unfortunately, been cursed for hundreds of years. Because first of all, it is a mineral rich area. And in depending on what the world needs, the Congo had it. So what drew King Leopold there, and others was the ivory, and then the rubber, they had tremendous amounts of just naturally grown rubber. And then prior to that, Congo was a fairly highly populated area, relatively speaking for both the West and Central Africa. And it was a place where the slave traders went and stole big portions of the population and put them in chains and sold them as slaves in the Americas. So starting with that moving forward, there has been almost no time where the people of the Congo have not been abused. And now we have this really a repeat of the King Leopold's exploitation. There's a new mineral there. It's not ivory, it's not rubber, it's cobalt. And you have to go where the cobalt is. And it's brought in the same sort of character of people who are willing to exploit and even see children get maimed and killed in order to get a low price for their cobalt. Hearing how these kids work and the conditions under which they are working and facing these extreme dangers.

it's hard to imagine that it was any worse working for Leopold I guess. The only difference is that Leopold's men engaged in torture and other just horrendous disciplinary practices including chopping off the hands or arms of workers. refuse to work or rebelled in any way. I didn't see any of that happening. But the the children are working and facing the same kinds of just physical challenges and dangers. That could not be any different from how they were hundreds of years ago.

TINA:

And how would you say Apple, Alphabet, which is the owners of Google, Tesla, Dell, Microsoft, are involved in the cobalt system of mining.

TERRY:

Every tech company that is using rechargeable batteries is getting some cobalt from the DRC. The estimates vary, but somewhere between 65-70% of the world's cobalt is there. And so a big chunk of it is coming from there. These companies have been on notice for quite some time. That the conditions under which they're getting their cobalt are as horrible as I've described - that children are mining, children are getting maimed and killed in the process of gathering this cobalt. I think that at the very latest in 2016, Amnesty International did an extremely thorough study of the process of cobalt mining and the abuse of children. And they contacted these companies and other companies and asked them about their own supply chains and what they were doing to improve the conditions there. So these companies are fully aware that this is going on, and they have not acted to improve the requirements that they're imposing on their suppliers. They're just continuing to purchase cobalt, knowing that children are being killed and maimed and they're not doing anything to stop it. I think a particularly damning fact is that when we did sue them, these companies, pretty much all of them issued a statement that said, we have a policy against child labor and we abhor the practice of child labor. That's about as cynical as you can be to say that, that's their solution is to have a policy that they're clearly not enforcing or implementing. It does show that they should, it does show that they realize that they have an obligation they're trying right now to just get away with simply having a policy and doing nothing to enforce it. Several of the companies including Apple, have funded a model mine there that people can go look at and take pictures of that doesn't have visible children working in it. And that also shows that they know they have a serious problem. So they funded this like phony model mine so that at least some people will believe that they they're working to improve the situation. But the rest of their operation, the rest of their supply chain continues to be responsible for killing and maiming children.

TINA:

Structurally speaking, how is it possible for this to happen in our day and age?

TERRY:

Well, first of all, DRC is a unique place. The corruption there is famous. There's been a series of presidents that we described in the complaint that have each left with their billion dollars that they're hiding in Switzerland. So there is this history of corruption and no concern at all for the poorest of the poor, that are struggling to survive in the Congo. There's no legal structure there to speak of that. We want allows someone in the Congo to bring a lawsuit or to try to seek accountability locally. And everyone knows that. The children are themselves unable to pursue other options because the government charges \$6 a month for school fees. And for lack of \$6 a month, these kids are going to work in these dangerous mines. So there's just a systematic failure to care for the poorest of the poor in this country, and they're viewed as expendable.

TINA:

Systemically, what do you change in Congo and how I mean, I know that there are several NGOs, civil society organizations who are now doing a good job there, but we don't see the systemic change nevertheless. What needs to happen in Congo to see change?

TERRY:

Well, I wish I had a nice simple answer to that because it is a horrible and complicated problem. I can describe some things that absolutely are the minimum requirements for seeing systematic change. And step one would be that these companies, Apple, Microsoft, and Tesla are all boasting that they're they're worth a trillion dollars each that these are trillion dollar with a T, trillion dollar companies. And so they have resources that they could bring to bear on improving their own supply chain to make it safer, to actually take their paper policies that are just a cynical joke at this point, and require that they be enforced. Whoever pays for that, whether it's the mining companies themselves or Apple and the other companies put in some money to, they have the resources to make sure that children are not maimed and killed in their supply chain. Second, as I mentioned, the government of the DRC, I understand it's a relatively recent change where they no longer provide free universal education and they charge the family \$6 a month. That's really a huge problem that's driving kids into the mines. And so the government certainly has a major responsibility to not only make education actually available to these children, but to perhaps also support them while they're trying to get an education. The government, as you always see in these kinds of situations, it's signed all of the required laws and international conventions to prohibit child labor. But they haven't then done anything to implement the policies and laws that they've agreed to very much like the companies. Everyone has a piece of paper that they signed or issued in order to show to the public that they care. They have a policy or a law, but they haven't done anything to implement it. So I think that is certainly a requirement. And then to have some kind of legal authority, a government entity that is charged with making sure that there are no companies profiting from this kind of brutal child labor, there is no enforcement mechanism in place now. The government is not there looking to prevent this

kind of horrible thing from happening. So it's just so primitive in these mining areas that even those minor changes, well, no, they're not minor changes, but those fundamental starts, would do a lot towards curbing this kind of abuse.

TINA:

What can you share about the children and the families of the children who you are representing in this case?

TERRY:

Well, first of all, they are extremely poor. So either the children or their parents have to sit there and say to me when I'm interviewing them, we were so poor, that this child had to go to work in this dangerous mine and it's the only option there is I mean, that's a horrible thing to have to admit whether you're the parent or the child, things are so bad that you have to go risk your life for \$1 or two a day. Second, they are terrified of the future. They know that this is dangerous. And every family that I interviewed either had someone in their immediate family or they knew someone who had died or was severely maimed in the mind. So this is not something that they view as an abstract problem. It's more of a When will it happen? They're also angry though, and particularly the mothers who lost sons in these mines, young children. The very first person that I interviewed Jane Doe One, her son died in a mine collapse. And we had a really emotionally wrenching discussion about what happened and she was giving me the facts and she was at turns crying, and I was having a very hard time continuing with the discussion. It was just so sad to see her describing what happened to her son. And when she finished telling me what happened, she said, "Please help us. Our children are dying like dogs". And that's a fact that these people are feel like they're being treated like dogs because they're just being allowed to die so easily and for so little. I will also say, though, that they're brave people, they came forward their view, these multinational companies is like something they can't even grasp how these trillion dollar companies are interested in this cobalt that's being mined with shovels under dangerous conditions. So they know there's some giant economic power out there that is somehow responsible for all this. And they're looking to us to help them to approach and confront these very large, powerful multinational companies. They're also angry at the government because as I mentioned the government is not providing their children with free universal education. That \$6 monthly fee is driving their kids to the mines, and they know that the government is corrupt. There's common knowledge at the just the amount of wealth that has been pillaged from the country by the political leaders. So they're angry. And finally they have an option. So they came forward, and they're willing to take this risk and work with us to try to bring the companies to justice. But I think this lawsuit, and the proceedings that we're about to enter into the fact gathering will expose a lot of the criminality that's involved in the local government as well.

TINA:

What is your legal claim in this case?

TERRY:

Our primary claim is, is a US statute called the Trafficking Victims Protection Act. And it prohibits an entity that the statute calls a venture, but let's say a group of people or a group of companies that forms a venture, and in this case, it's the supply chain. It prohibits them from knowingly benefitting from either forced or trafficked child labor. And we have both here, that some of these children were forced by circumstances, they are brought to the mines in some cases by labor brokers or local people who find them wandering around and say they're going to give them a job and they put them to work in these horrible mines. And this is a statute that is relatively new, but it has very good language, instead of having to show that say Apple rounded up children personally and made them work at gunpoint. It prohibits a company like Apple from knowingly benefitting from this form of labor. And we are confident that we can show that no later than 2016 when Apple was engaged by Amnesty International that they had specific knowledge that their supply chain was causing these horrendous injuries to children, and that the people I now represent were all injured after that date. And I think we can convince the court that Apple and Tesla and Google and Dell and Microsoft are responsible for these injuries.

TINA:

So we're seeing now more new laws being introduced. You have the UK Modern Slavery Act, Australian Modern Slavery Act. And you also have in the Netherlands, the Child Labor Due Diligence Act, where I guess there are more opportunities and legal avenues to forward lawsuits, and the extraterritorial jurisdictions. What do you think is new development of laws will do for improving cases like yours?

TERRY:

I'm unhappy to see that, for whatever reason, the legal developments have largely been in in the area of disclosure laws, so that companies are required to disclose their supply chains. There's a lot of loopholes, first of all in most of these laws, but in addition, a company like Apple, they could disclose every one of these mines, and perhaps they did. But there's no legal liability created for having these mines operate in such a dangerous way. So I think we need more laws that hold companies liable for actions that happen in their supply chains that they know about, that they are disclosing these supply chains. But there's no responsibility legally, in these types of laws. So our law does create that responsibility, the Trafficking Victims Protection Act. And I'd like to see other countries have that kind of direct responsibility asserted over companies that are knowingly participating in illegal acts in their supply chains.

TINA:

What is the process now with this case and going forward? What is happening right now?

TERRY:

Well, our legal system just like virtually every other country in the world is going to move pretty slowly. We are in the process of formally serving the appropriate people at all these corporations, and then they will have an opportunity to formally answer the complaint. They will likely file motions to dismiss the complaint arguing that they should not be legally responsible for what happens in their supply chain and that will be really the most important issue that is addressed legally that if we prevail, and the court agrees that they are legally responsible, then we will have the opportunity to get documents and testimony to prove who knew what, when, and what kind of responsibility they should be now held to because we don't know, for example, exactly when Apple knew I know, they knew, at least by the time they spoke to Amnesty in April 2016. But I bet there there's a lot of documents within the company, they show they had knowledge well before that, and that they did nothing except issue their paper policies. So we want to gather this kind of information from the companies to be able to show the court and in our case, we'll have a jury, that this is more than just sort of blind eye that they were fully aware of the consequences of their inaction, which was going to be the killing and maiming of children.

TINA:

And what are the remedy that you are seeking for the plaintiffs in this case?

TERRY:

Well, like all lawsuits, the the remedies are pretty blunt. The two major areas of remedy that we'll be seeking are first, money damages to the families of children that have been killed or maimed. Money doesn't bring them back. But it's the only way we have of both punishing the company and trying to compensate victims of injury and loss. For the children who aren't dead, those who are severely maimed, we want to get them damages so that they can get proper medical attention. Several of the kids that are in the case, their their photos are in the complaint, are missing limbs or have crushed limbs and they don't have the resources to get proper medical attention, I think that is the highest priority that we have is to get them proper care and maybe they can get an education and return to society as a productive member. The other part of the damages that we're going to seek or the other excuse me, the other remedy we're going to seek is requiring the companies to stop doing this and improve their supply chains to do the things they should have done in the first place, which is properly monitor what's going on in the mines making sure that the workers are paid a fair wage and are working under safe conditions so that

they're not only not getting maimed and killed, but they can afford to put their own children in schools.

TINA:

I did notice that in the lawsuit you haven't used the real names of the plaintiffs. Can you explain why that is?

TERRY:

We were concerned based on what my colleagues had originally told me that these mines and the sort of the labor brokers and the guys that buy the raw cobalt, it's very much like a criminal mafia. These are people that are willing to cheat the children out of fair pay for what they mined and they're willing to see every day that children are being killed and maimed. We were pretty sure that if they could find the names of the people who brought this case that they would seek them out and and punish them with violent retaliation. So we asked the court to allow us to use the pseudonyms to prevent that from happening. And we filed a motion and and express the specific reasons why and the court agreed and granted our motion to allow the plaintiffs to proceed using pseudonyms. Unfortunately, we are working with a local NGO on the ground, that NGO has to remain unnamed as well for now. But they are the ones who did the research and identified families that had lost a child to a mining accident or who had a child that was injured in a mining accident, and organized the meetings I had with those children. Unfortunately, we were seen in public with the leader of this NGO on a few occasions so people figured out who was working with us. And immediately upon filing the suit, the head of the organization received serious death threats at his home and against his family. So he had to flee with his family across the border to Zambia, where he is to this day, so we're assessing that situation to try to figure out what we can do but these horrible people and companies that have been profiting from the maiming and killing of children are not taking lightly that we're trying to stop their present business model.

TINA:

Is there anything anyone can do to support the case?

TERRY:

Well, two things we would ask consumers to do is to contact the companies that that you are using. If you have an Apple phone or you have a laptop from Dell, or you use Microsoft tablets, or you have a Tesla car, or you're using any Google Alphabet products, please contact these companies and say you've heard how horrible their cobalt supply chain is, and you want them to stop and to to fix this situation. That's one way they can help. The other way they can help is we're a small nonprofit organization and we rely upon small donations of people who are

outraged by the behavior of global corporations, so on our website, there is a page that allows people to make a donation of any amount that they can provide to help us in this giant legal battle against these trillion dollar corporations.

TINA:

Before we finish, do you have a last comment that you can share with us?

TERRY:

Yes, thank you. I am shocked. I again, I've been doing human rights work for more than 30 years. And the brutality and the the shocking nature of the injuries of these children is the worst thing that I've ever seen. And it would be understandable if it was 300 years ago, and this was the only way that things got done. This was considered normal. But these companies, they tell their consumers that they brought us the future, that they are the miracle of the future, they brought us these high tech gadgets that are going to change the world for the better, and to see and learn and document that they are getting their cobalt under these brutal conditions that are Stone Age conditions, and they're not doing anything about it. Not only is that shocking to me as the lawyer, but as a consumer and a person who's heard the the promises of these companies that they're bringing us the future. So my hope is that others will feel this way as well. And next time you go to buy a \$1,000 iPhone, you'll stop and say no, I'm not, I'm not going to continue to enrich these trillion dollar companies until they demonstrate to the public and they do it soon, that they have changed their ways and that they're going to make sure that anyone who's working in their supply chain is treated fairly, does not have to work under dangerous conditions and doesn't have to risk their life for a dollar or two a day to help make these companies trillion dollar companies.

TINA:

Thank you so much. Thank you for sharing insights about your case. And, and good luck with them, their work on this case and your other work. Thank you.

TERRY:

Thank you very much. And for those who want further information, let me direct you to our website, which is www.iradvocates.org and I hope we'll be able to keep everyone updated on our progress. Thank you very much.