



## Pesticide newsletter

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### Jurisdictional news



#### **France: a Franco-Vietnamese woman's complaint against Agent Orange deemed inadmissible**

On Monday, May 10<sup>th</sup>, 2021, the French court of Evry ruled that the complaint of Mrs. Tran To Nga against 14 agrochemical multinationals, including Monsanto and Dow Chemical, was [inadmissible](#) in a French court. The companies were accused of having produced "Agent Orange", a defoliant massively used by the U.S. armed forces during the Vietnam War and which is responsible for the poisoning of millions of people.

Mrs. Tran To Nga, a French-Vietnamese woman born in 1942 in French Indochina, is one of the four million people - Vietnamese civilians, American soldiers, Viet

Cong fighters - who were directly exposed to this poison. Today, she suffers from various illnesses that are typical of dioxin contamination, among which a type 2 diabetes with a rare allergy to insulin. She has contracted two tuberculosis and has been affected by cancer. She lost her first daughter, born with a heart defect. Her second daughter also suffers from it.

Since 2014, she has been leading a [legal battle](#) to have the responsibility of the agrochemical firms involved in the development and production of Agent Orange recognized. This complaint in France was made possible by a vote of the Parliament that restored the jurisdiction of the French judge in international law in 2013. Since that date, a victim of French nationality can sue a foreign third party for a war crime, genocide, crime against Humanity, committed outside the national territory.

Nevertheless, [the judge considered](#) that these companies "*acted on the orders and on behalf of the American State, in the accomplishment of an act of sovereignty*" and that, as such, they can avail themselves of "*immunity from jurisdiction*". This principle establishes that no sovereign state can subject another to its jurisdiction. The court considers that the multinationals operated on behalf of the United States in the context of a conflict under the American sovereignty.

For Ms. Tran To Nga's [lawyers](#), these companies did not act under the coercion of the U.S. government but "*responded to a call for tender*". Moreover, the companies are not exempt from all responsibility and could have invoked the principle of refusal to obey a government if the order given is criminal and illegal. Finally, the instructions given by the American administration to the production of the chemical did not impose a dioxin level as high as that of the Agent Orange. This decision was made by the companies, an evidence of their involvement in the humanitarian and ecological damage caused.

Although in poor health, Mrs. Tran To Nga has announced that she will appeal the decision of the Evry court.

The use of Agent Orange is not only responsible for the poisoning of millions of people, but is also the cause of an ecological tragedy, the effects of which are still visible on the Vietnamese, Cambodian and Laotian ecosystems. It is therefore also for the recognition of the crime of "ecocide" in international law that Ms. Tran To Nga is fighting. Although used for the first time in 1970 to denounce the actions of the American army in Viet Nam, this notion remains absent from international criminal law. Ms. Tran To Nga's struggle therefore continues, in the hope that her state of health will allow her to maintain her fight in spite of the very long procedural times.

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