



ANNUAL BRIEFING

Corporate Legal Accountability

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Executive Summary

When a company takes your land without compensation, pollutes your water, or brings in private militia to guard an oil well who start to rape and abuse the women of a local community, you should have the right to ensure it stops, and to get your livelihood restored. Your human rights should be respected whether you are rich or poor, irrespective of your geographic location. This 'Access to Remedy' constitutes one of the three pillars of the United Nations Guiding Principles on Business and Human Rights.

At Business & Human Rights Resource Centre, we have tracked lawsuits against companies over their human rights impacts around the world for over a decade. Based on our unique overview and data, three realities for victims seeking justice for corporate abuses are inescapable:

1. Existing venues for extraterritorial claims are closing, and governments of countries where multinationals are headquartered do not provide sufficient access to judicial remedy for their companies' abuses.
2. Legal harassment of human rights defenders is on the rise for those working to hold businesses accountable for human rights abuse.
3. New, but limited, venues for corporate human rights claims are emerging as victims seek new paths to access to judicial remedy.

Major avenues for extraterritorial claims closing & a striking accountability gap: When former prisoners of Abu Ghraib prison in Iraq sought justice for the torture and inhumane treatment they were subjected to, allegedly by military contractors CACI and L-3 Communications, they knew that it would be impossible to obtain justice in an Iraqi court. They filed lawsuits in the country where the companies are headquartered – the United States. Like these Iraqi torture victims, many other victims of corporate abuse have no access to judicial remedy in their home country. Up to now, some have taken their cases to courts in the country where the company is headquartered (often USA or UK). In fact, of the [108 legal cases the Resource Centre has profiled](#), the majority are related to extraterritorial claims – that is, claims of abuse occurring outside the country of the court hearing the case. Unfortunately, they now face a steady loss of venues internationally where they can bring their claims.

A turning point against extraterritorial human rights claims was the US Supreme Court's decision in [Kiobel v. Shell](#) in April 2013. The Supreme Court's [decision](#) in *Kiobel* held that there is a presumption against extraterritorial application of US law, including the Alien Tort Claims Act. At the time of the *Kiobel* decision, there were at least 19 Alien Tort cases pending in US courts, alleging human rights abuses by companies. Since then, only one new Alien Tort case has been filed against a company in US court. Lower courts have dismissed a majority of the ATCA cases that were pending at the time of the *Kiobel* decision, using this narrower standard on extraterritoriality, although the full contours of extraterritorial jurisdiction in US courts following *Kiobel* are still evolving.

Victims have also long sought legal remedies against companies in English courts. However, in 2012 new legislation limited how plaintiffs' lawyers can fund their work. Given the costly nature of transnational litigation, this change presents challenges for victims' advocates, although as with *Kiobel*, just what the change means in practice is not yet clear. For instance, Leigh Day, the leading firm taking on transnational corporate human rights cases in English courts, has seen the number of other firms taking on such cases dwindle to near zero. On the other hand, Leigh Day recently obtained an out of court settlement from Shell for a lawsuit brought by the Bodo community over massive oil spills in the Niger Delta -- indicating that English courts may remain a viable venue for some victims.

We have now tracked human rights lawsuits against companies for over a decade and profiled over 100 of the leading cases in the world alleging human rights abuse involving business. Analysing *lawsuits* (a) against companies headquartered in OECD countries (b) filed in national courts of their home countries (c) regarding alleged extraterritorial abuses, we find that these are disproportionately much lower than the *overall incidence of concerns over human rights impacts outside their home countries* raised with companies based in the same countries. Countries where companies with global operations are headquartered must do a great deal more to ensure that victims of abuses involving those companies have access to legal remedy.

Human rights defenders facing legal harassment: When Andy Hall, a British human rights and migrant worker rights advocate based in Southeast Asia, documented violence against workers, child labour and other abuses at a Thai pineapple processing factory, he did not expect the company to file criminal and civil charges against him. But that is exactly what happened. The charges potentially carried an eight-year prison sentence and fines of over \$10 million. Legal cases against human rights advocates like Andy Hall hamper victims of corporate abuse in advocating for their rights or obtaining redress. We have seen [human rights defenders increasingly subject to legal attacks](#) in an effort to impede their human rights work. The law is a tool that has been sharpened for business, but dulled for human rights defenders.

Human rights defenders have been targeted via legal harassment such as defamation and libel claims, tax investigations and efforts to deregister the defenders' organizations. All of this harassment has a chilling effect on the activities of human rights defenders. Given the limited resources most human rights defenders have, defending themselves can be costly – at times prohibitively so. [Michel Forst, the UN Special Rapporteur on Human Rights Defenders, recently highlighted](#) the particular risks faced by human rights defenders working to hold businesses accountable for human rights abuses.

New, but limited, venues for corporate human rights claims emerging: While the scope for remedy from US and English courts is narrowing, other national courts are emerging as potential venues for extraterritorial claims. Cases have recently been filed in Canada, France, Switzerland and Germany over alleged human rights abuses by companies outside those countries. But these cases have not yet provided any redress for victims of abuse.

Beyond these extraterritorial cases, victims of human rights abuses involving companies continue to seek justice in the countries where they live. The majority of these cases are related to land rights. They often face steep hurdles, but a number of groundbreaking cases have been filed recently, including in Kenya, Myanmar, Peru and Thailand.

The ability to hold a company legally accountable for human rights abuses, somewhere in the world, is the lynchpin to encourage business to respect human rights. Without legal remedy to enforce human rights obligations, companies are able to operate with impunity – and too many do. Meanwhile, victims of abuse and the advocates working on their behalf are left vulnerable to legal harassment and, ultimately, without justice.