



ANNUAL BRIEFING

Corporate Legal Accountability

November 2013
Executive Summary

While many multinational companies operate easily across national borders, many people who suffer human rights abuses at the hands of companies struggle to access judicial remedies, allowing those companies to operate with impunity.

Business & Human Rights Resource Centre's Corporate Legal Accountability Annual Briefing provides an overview of corporate legal accountability for human rights, summarising trends and developments in this field since our [first Annual Briefing in June 2012](#).

The goal of the Annual Briefing is to help a wide audience understand what has been happening in different parts of the world ([full briefing is available here](#)). *First*, it examines **global trends** in corporate legal accountability such as barriers to accessing judicial remedies; extraterritorial jurisdiction, i.e., whether courts in companies' home countries can regulate the companies' impacts abroad; threats faced by human rights advocates; and the role of lawyers in business and human rights. *Second*, the briefing provides an **overview of regional developments** in corporate legal accountability. *Third*, it reviews the current status of **Alien Tort Claims Act** (ATCA) litigation following the US Supreme Court's decision in *Kiobel v. Shell*. *Fourth*, the briefing **looks ahead at emerging issues** in corporate legal accountability. *Fifth*, it concludes with **recommendations** for companies, governments, lawyers advising companies and victims' advocates.

Victims of business-related human rights abuses continue to face many barriers when seeking judicial remedies for abuses such as torture & ill-treatment, killings and rape & sexual abuse. These barriers include denial of access to judicial remedy due to ethnic, racial or gender discrimination; difficulty of "piercing the corporate veil" to hold parent companies accountable for subsidiaries' actions; inadequate resources for prosecutors and investigators; and the lack in many countries of an option to pursue claims as a large group (collective or class actions). The issue of extraterritorial jurisdiction also limits remedies that victims of abuse may seek against companies in their home countries.

[Business & Human Rights Resource Centre](#) is an independent non-profit organization that brings information on companies' human rights impacts, positive and negative, to a global audience in an objective and fair manner. The website also provides tools & guidance for the implementation of companies' human rights responsibilities, including a portal on the UN Guiding Principles on Business and Human Rights. Our International Advisory Network is chaired by Mary Robinson, former UN High Commissioner for Human Rights & President of Ireland. More information is available [here](#).

The briefing reviews the US Supreme Court's decision in *Kiobel v. Shell*. This decision dealt a major blow to ATCA – a statute that has been a vital tool for human rights advocates for three decades. The decision significantly narrows human rights cases that can be brought under ATCA based on abuses outside the United States. The briefing reviews steps by human rights advocates to seek other venues, post-*Kiobel*, for legal remedy such as courts in other countries where companies are headquartered, e.g., continental Europe, as well as US state courts. They are also turning increasingly to the courts in countries in the global South where many abuses occur, but these courts often are terribly under-resourced and/or lack independence, so are unable to provide adequate remedies for abuses such as torture, dispossession from lands, and pollution causing deadly illness.

Human rights defenders often face threats aimed at silencing their work, such as counter-lawsuits by companies aimed at derailing human rights defenders' work; threats of death, arrest or physical harm; and technological threats to privacy and confidentiality.

Increasingly bar associations, law societies and individual law firms are starting to address how lawyers can and should incorporate human rights in their advice to business clients. The American Bar Association has endorsed the UN Guiding Principles on Business and Human Rights. The Law Society of England and Wales has established a practitioners' advisory group to inform the Law Society's work with regard to business and human rights, with an aim to providing advice to the legal profession. [Guidance is already available from Advocates for International Development \(A4ID\)](#), and Shift has organised "[Workshops for Lawyers on the UN Guiding Principles](#)".

The Annual Briefing also reviews legal developments in particular cases and countries, with links to our case profile and/or further materials about each lawsuit. This overview of regional developments covers lawsuits regarding alleged abuses in the following countries:

Africa	Côte d'Ivoire	Dem. Rep. of Congo	Gabon	Kenya
	Nigeria	South Africa	Tanzania	
Americas	Argentina	Brazil	Chile	Colombia
	Ecuador	Guatemala	USA	
Asia/Pacific	Bangladesh	Cambodia	China	India
	Indonesia	Papua New Guinea	Philippines	
Europe	France	Russia		
Middle East & North Africa	Iraq	Israel/Palestine	Libya	Qatar
	Syria			

The companies involved in these lawsuits include:

adidas	Agua Mineral Chusmiza	Alstom	Amesys
Anglo American	Anvil Mining	Apple	Arab Bank
Barrick Gold	BASF	Blackwater (now Academi)	Boliden
BP	CACI	Chevron	Chiquita
Correctional Services Corp.	Daimler	Danzer	Dow/Union Carbide
Drummond	Eramet/COMILOG	ExxonMobil	Ford
Global Horizons	Google	Heping Technology	Henry's Turkey
HudBay Minerals	IBM	Juren Education Technology	KBR
Kenya Pipeline Co.	Kizone (Indonesia)	Lonmin	Luliang Chemicals
Microsoft	Nestlé	Paltalk	Qosmos
Rio Tinto	Riwal	Shell	Signal International
SNCF	Tanzania Breweries	T&L Sugars/American Sugar	Thomson Safaris
Trafigura	Vedanta	Veolia	Vinci

Looking ahead, we expect to see further efforts to use criminal law (domestic and international) to hold businesses accountable for human rights abuses. In addition, human rights NGOs and legal groups are paying increasing attention to the role of law and lawyers in tax avoidance, and its impact on human rights.

Advocates working to hold companies accountable for human rights abuses, and victims seeking effective remedies, continue to face tremendous challenges. While some progress has been made in some countries, much remains to be done. The lack of overall progress supports the arguments of many that governments and companies applying the UN Guiding Principles have not prioritised the access to remedy pillar of the "Protect, Respect and Remedy" framework that forms the basis of the Guiding Principles. For the rights of victims of abuses involving companies to be realised, and for all companies to face a level playing field on human rights issues, governments, lawyers, and companies must do more to ensure that these victims have access to enforceable remedies.