

# ANNUAL BRIEFING

# Corporate Legal Accountability

June 2012

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## 1. Introduction

*“Everyone has the right to an effective remedy...”*

Article 8, Universal Declaration of Human Rights

*“As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure...that when such abuses occur...those affected have access to effective remedy.”*

United Nations Guiding Principles on Business and Human Rights, Principle 25

This briefing provides an overview of corporate legal accountability for human rights, summarising trends and developments in this field. The goal is to help a wide audience understand what is happening in different parts of the world.

This briefing flags some major issues and cases, but it is not a comprehensive overview. Further information is available on Business & Human Rights Resource Centre’s [Corporate Legal Accountability Portal](#) – an online hub that provides accessible, up-to-date case profiles on over 70 lawsuits in all parts of the world. The profiles link to the arguments from both sides of cases wherever available, as well as articles and commentaries. The portal is a resource for lawyers and non-lawyers – for victims, advocates, NGOs, business people and others. It provides an international platform for advocates and others to share information about corporate legal accountability and disseminate news about lawsuits to a global audience. The portal also contains commentaries by experts offering insights from a wide range of perspectives – with new commentaries to be posted in the coming weeks. For example, US lawyer Paul Hoffman wrote in [his commentary](#): *“The bottom line is that so long as there are no other effective accountability mechanisms there will be more lawsuits brought by human rights victims who have no other forum in which to vindicate their rights.”*

The portal is also used by corporate lawyers and business people who recognise that human rights lawsuits pose major risks for a company’s reputation and bottom line. Michael Smyth, the former head of Public Policy at the global law firm Clifford Chance, wrote in [his commentary](#) on the portal: *“There was a time when business lawyers did not need to know a great deal about human rights law. That is no longer the case. Business, law and policy norms are evolving in a way that increases the exposure of corporates in relation to human rights infractions. This now a key boardroom issue.”*

The Resource Centre is an independent non-profit organization that brings information on companies' human rights impacts, both positive and negative, to a global audience. For further information about the Centre, see ["About us"](#).

## 2. Global trends

### 2.1. Access to remedies

Access to effective remedies for human rights abuses is itself an internationally recognised human right. This is reflected in Principles 26-31 of the United Nations Guiding Principles on Business and Human Rights, which the UN Human Rights Council endorsed by consensus in 2011: "States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms...including considering ways to reduce legal, practical and other relevant barriers." (Guiding Principle 26) The mandate of the UN Working Group on business and human rights includes "to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities". (See section 6 below for further discussion of the UN Guiding Principles and UN Working Group.)

(a) National courts: There has been increased use of national courts and domestic law to hold companies accountable for human rights abuses. Recently we have observed increasing efforts to litigate these cases in host states, i.e. the countries where the harm occurred, generally in the global South. A number of these cases are described in section 3 below. Despite this increase, these lawsuits remain rare, due to many obstacles in host states, including jurisdictional barriers, financial and other resource constraints, and in some countries weak rule of law.

(b) Extraterritorial jurisdiction: A few countries, including UK, USA, France, Germany and Netherlands, have heard some lawsuits against companies for alleged abuses occurring in other countries. But even in these countries, such lawsuits are rare. And the US Supreme Court is currently considering a case that, if decided against the plaintiffs, could severely curtail lawsuits in the United States for human rights abuses abroad. See section 4 below for further details.

"Home" governments (where companies are headquartered) fail to make extraterritorial remedies available for multiple reasons. In part, they simply do not wish to constrain their companies in their operations abroad. There are rarely strong constituencies pushing them to hold their companies accountable. And these measures are often opposed by host states as an infringement on sovereignty.

The UN Guiding Principles on Business and Human Rights state that governments have a duty to "set out clearly [their] expectation that all business enterprises domiciled in their territory...respect human rights throughout their operations." In a [2009 speech](#), UN Special Representative John Ruggie, who drafted the Guiding Principles, went further: "[The] status quo [with extraterritorial measures often unavailable] does no favors to victims of corporate-related human rights abuse; to host governments that may lack the capacity for dealing with the consequences; to companies that may face operational disruptions or find themselves in...[a lawsuit] for the next decade; or to the home country itself, whose own reputation is on the line." In a 2011 [statement to the Human Rights Council](#), a group of leading human rights NGOs stated that the UN Guiding Principles "do not adequately reflect or address... extraterritorial obligations and responsibilities...in a manner fully consistent with international human rights standards." Increasing concern has been expressed that governments are generally failing to provide remedies for the extraterritorial human rights impacts of their companies in a manner consistent with those standards.

(c) Accountability gaps: Despite some increases in litigation, described above, many victims have difficulty finding a jurisdiction with a relatively independent judiciary that will allow the lawsuit and can handle a complex case. In many countries, we have seen very few, if any, human rights lawsuits against either foreign or domestic businesses. This accountability gap is particularly apparent in certain regions, including parts of Eastern Europe and Central Asia, and parts of the Middle East. The Institute for Human Rights and Business named "[legal redress for business participation in human rights violations](#)" as a top business and human rights issue for 2012, noting a "clear need worldwide for more accessible, responsive and less costly grievance mechanisms."

Practical barriers often keep victims from accessing remedies. It is difficult to find a lawyer who can bear the cost, and these lawsuits are often drawn-out, complex affairs lasting more than a decade.

Some victims' lawyers have noted that some defendant companies put so many large firms on retainer that most are unable to assist with victims' cases against these companies due to conflict of interest. In some countries where such lawsuits have been brought, access is becoming more difficult; for example, human rights groups have noted that recent changes to fee structures in the UK will make it much harder for lawyers to take human rights cases against companies (see section 3.4(c) below). Companies, on the other hand, have large legal teams and budgets devoted to legal defense. In some countries, victims' lawyers, like other human rights advocates, face intimidation, threats and violence for doing their work. In contrast, in many countries companies have close connections to governments. Senior government officials may hold ownership interests in the same companies they are responsible for regulating, may have worked for these companies very recently, or may have their election campaigns financed by these companies or their owners. Such officials can therefore be compromised, or at least may be less than rigorous, in enactment and enforcement of human rights protections.

Other barriers to accessing judicial remedies recognised in the UN Guiding Principles include legal separation between entities in a corporate group, often called the "corporate veil" between parents and subsidiaries; racial or ethnic discrimination limiting access to justice; unavailability of collective action procedures; and inadequate resources for prosecutors and investigators.

In December 2009, at an event hosted by the Resource Centre on corporate accountability, Maria Saro-Wiwa, widow of the executed Nigerian environmentalist Ken Saro-Wiwa, noted how valuable it was for her "to have the opportunity to seek justice" through the *Wiwa v. Shell* lawsuit in US court against oil companies that she said had caused suffering in her region of Nigeria. ([Video of the event is here.](#)) However, the factors mentioned above combine to keep many victims from being able to obtain remedies either in their country or in the corporation's home country. Human rights and legal observers have raised concerns that in some situations these obstacles encourage a corporate culture of impunity.

#### Further information

##### Accessing judicial remedies in national courts:

- The International Commission of Jurists' project "Access to Justice for Human Rights Abuses Involving Corporations" analyses the issue in [Brazil](#), [China](#), [Colombia](#), [India](#), the [Netherlands](#), [Nigeria](#), [Philippines](#), [Poland](#) and [South Africa](#). Each country report presents legal and institutional factors that allow, or impede, access to justice by victims of corporate abuses.
- The International Federation for Human Rights (FIDH) has published a [guide](#) for victims and NGOs on judicial and non-judicial remedies for corporate-related human rights violations. It is also available in [Spanish](#) and [French](#).

##### Extraterritorial jurisdiction:

- [Litigation for Overseas Corporate Human Rights Abuses in the European Union: the Challenge of Jurisdiction](#), Jan Wouters & Cedric Ryngaert in *George Washington International Law Review*, 2009
- [Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas](#), Jennifer Zerk, Harvard Corporate Social Responsibility Initiative, prepared to inform the mandate of UN Special Representative on business & human rights John Ruggie, Jun 2010
- [Tort litigation against multinationals \("MNCs"\) for violation of human rights: an overview of the position outside the US](#), Richard Meeran, Leigh Day & Co., 7 Mar 2011
- [U.K. Shell Deal Spotlights Value of Common Law Model for Human Rights Litigation](#), Michael Goldhaber, *American Lawyer*, 31 Aug 2011
- [Labour Conditions in the Global Supply Chain – What is the extent and implications of German corporate responsibility?](#), Miriam Saage-Maaß, European Centre for Constitutional Rights, Dec 2011

### Accountability gaps:

- [More lawsuits needed against multinationals](#), Menno Kamminga, Maastricht University, commentary on Corporate Legal Accountability Portal, July 2008
- [Close the Accountability Gap – Corporations, Human Rights and Poverty](#), Amnesty International, 28 May 2009
- [Corporate Crime and Punishment](#), Arvind Ganesan, Human Rights Watch, in *Huffington Post*, 28 Feb 2012

## 2.2. International arbitration

Increasingly, in international investment arbitration, a company's rights under an agreement that it negotiated with a host government, or under an investment treaty, are pitted against a state's duty to protect the human rights of its citizens. In some cases arbitration is used to block judicial decisions. Some recent examples:

- (a) Facing an Ecuadorian verdict of \$18 billion over oil pollution, [Chevron filed an arbitration claim](#) with the Permanent Court of Arbitration at The Hague claiming that Ecuador had violated the US-Ecuador bilateral investment treaty by unduly influencing the judiciary in this lawsuit. In February 2011 [the international arbitration panel issued a preliminary ruling](#) in favour of Chevron. [The arbitration panel ordered Ecuador](#) to suspend enforcement of this judgment while the panel considers Chevron's claim. (Further information about this lawsuit is in section 3.2(d) below.)
- (b) [Philip Morris initiated an arbitration action against Uruguay](#) under the Switzerland-Uruguay investment treaty [before the International Centre for the Settlement of Investment Disputes \(ICSID\)](#) challenging health laws requiring larger warning labels on cigarette packs. Philip Morris claimed these labels would infringe its trademark rights under the treaty. Philip Morris has also filed an international [arbitration claim against Australia](#) over a similar law.
- (c) [A subsidiary of Pacific Rim, Pac Rim Cayman, filed an ICSID arbitration](#) against the Government of El Salvador challenging its suspension of new mining concessions due to environmental concerns and human rights impacts of mining. The Center for International Environmental Law (CIEL) filed [an amicus brief](#) supporting El Salvador. This brief argues that the company's dispute is not a "legal dispute", but rather a "disagreement with...Salvadoran public policy." It continues that a company cannot use ICSID arbitration to "extract compensation as a result of its dissatisfaction with the government's legitimate exercise in political democracy."
- (d) [A group of Italian investors filed an ICSID arbitration](#) against the Government of South Africa over its Black Economic Empowerment (BEE) measures. The investors claimed that extinguishing Apartheid-era mineral rights and reissuing new mineral rights based on the investor's commitment to BEE measures constituted unlawful expropriation. BEE measures include plans for meeting specific social, labour and development objectives instituted by the 2002 Mineral and Petroleum Resource Development Act.

### Further information:

- [Human Rights and Bilateral Investment Treaties](#) [PDF], Luke Eric Peterson, Rights & Democracy, 2009 (also available in [Spanish](#) & [French](#))
- [Stabilization Clauses and Human Rights – A research project conducted for IFC and the United Nations Special Representative to the Secretary General on Business and Human Rights](#) [PDF], Andrea Shemberg & Motoko Aizawa, 27 May 2009
- [International Investment Agreements and Human Rights](#), Marc Jacob, Institute for Development & Peace, University of Duisburg-Essen, Mar 2010
- [The Elephant in the Room: Addressing International Investment Conditions to Improve Human Rights](#), Haley St. Dennis, Institute for Human Rights and Business, 14 Jun 2011

### 3. Regional developments

This section addresses legal developments in particular cases and countries, with links to our more detailed profile of each lawsuit. The cases appear under the country/region where the alleged abuse occurred. Some of these cases have been litigated in the host country; others in the home country of the company.

#### 3.1. Africa

(a) Côte d'Ivoire: In 2006 [a group claim on behalf of 30,000 Ivorians was filed against Trafigura in UK court](#). The claimants maintained they were sickened by toxic waste dumped in open-air sites in Abidjan in August 2006 and that Trafigura was responsible because its ship brought the waste to Abidjan and it hired the waste disposal company. The UK claim was settled out of court in 2009 for £28 million. In August 2011, [Amnesty International reported](#) that a number of the victims had yet to receive their compensation from this legal settlement; as of May 2012, the disbursement of the settlement funds [is reportedly still incomplete](#). In a lawsuit in the Netherlands alleging the company had illegally exported hazardous waste from the port of Amsterdam to Côte d'Ivoire, Trafigura was fined €1 million.

(b) Democratic Republic of Congo: [In 2010, the Canadian Association Against Impunity, with the support of Congolese and international NGOs, sued Anvil Mining in Québec](#) alleging the company had been complicit in abuses suffered by people in the village of Kilwa. Anvil Mining is listed on the Toronto Stock Exchange; it was acquired by Minmetals, a Chinese company, in February 2012. In 2011 the Québec court ruled that the case had sufficient contacts with Québec for the court to have jurisdiction over the lawsuit. In January 2012 the Québec Court of Appeals reversed the lower court's decision and dismissed the case. The appeals court ruled that the case could not be heard in Québec due to insufficient contacts with the province. The judge noted that Anvil's Canadian office was not involved in decisions leading to its alleged role in the Kilwa incident. The plaintiffs have appealed to the Canadian Supreme Court.

(c) Ghana: The [Center for Public Interest Law \(CEPIL\) filed a complaint in Ghanaian court against Tema Oil](#) in 2007 over a spill at the company's refinery that polluted Chemu Lagoon, allegedly harming those who depend on the lagoon for food and livelihood. [Tema Oil asked the court to dismiss the case](#) arguing that CEPIL did not have standing to bring the lawsuit on behalf of the affected population. The judge denied this motion to dismiss saying that public interest litigation "seems to be a new concept in our jurisprudence and it ought...to be encouraged. I believe it is an antidote to the problem of direct victims...being unable to take such cases to court." This case is ongoing.

(d) Liberia: [Liberian workers sued Firestone in US court under the Alien Tort Claims Act over alleged forced labour and other abuses](#). The US Court of Appeals [affirmed a lower court's dismissal of the case](#) in July 2011, but rejected other US courts' position that lawsuits under this law cannot be brought against corporate defendants. The appeals court ruled that the plaintiffs had not presented sufficient evidence to prove the abuses alleged.

#### (e) Nigeria:

- In 2009, the Nigerian NGO Socio-Economic Rights & Accountability Project (SERAP) filed a lawsuit with the ECOWAS Community Court of Justice against the Nigerian Government, Nigerian National Petroleum Corporation (NNPC) and six other oil companies. SERAP's complaint alleged that oil exploration and production in the Niger Delta had resulted in severe environmental degradation violating the basic human rights of people living in the region. The ECOWAS court [ruled in 2010](#) that it did not have jurisdiction over the oil companies other than NNPC. It [ruled in 2011](#) that it could not hear the case against NNPC. The case against the Nigerian Government is ongoing.
- [Pfizer faced legal action in Nigeria and the United States](#) stemming from an allegedly illegal drug trial conducted on children without their parents' consent in Kano during a 1996 meningitis outbreak. The plaintiffs claimed that the drug caused the deaths of 11 children and serious injuries to many others. The [US lawsuit was settled out of court in February 2011](#). The Nigerian lawsuits were settled in 2009, but [problems were reported](#) in the settlement's administration, with victims alleging Pfizer was not distributing the promised funds. In [August 2011 Pfizer announced](#) that it made its first settlement payments to the victims.

- [Nigerian farmers sued Shell in the Netherlands](#) in 2008 alleging that Shell failed to clean up oil spills in the Niger Delta. The plaintiffs claim that the pollution cost them their livelihoods. The court determined in 2009 that it has jurisdiction to hear the claims, and the case is ongoing.
- In April 2011 the Bodo community from the Ogoni region of Nigeria brought legal action against Shell in UK court. The claimants sought damages from Shell for oil pollution in the Niger Delta that allegedly destroyed their livelihoods. In August 2011, the parties commenced settlement talks after [Shell acknowledged its responsibility for the oil pollution](#). After the settlement discussions failed, the [Nigerian plaintiffs went back to UK court in March 2012](#).
- For the *Kiobel v. Royal Dutch Petroleum* lawsuit regarding Nigeria, currently before the US Supreme Court, see section 4 below.

(f) South Africa: Thembekile Mankayi, a former mine worker for AngloGold Ashanti who suffered from the lung disease silicosis, [sued the company in 2006](#). The lawsuit challenged the constitutionality of South Africa's statutory compensation scheme for miners. Mr. Mankayi claimed he developed silicosis from working in the mines. In 2011, the South African Constitutional Court ruled in his favour, although he died days before the ruling. This ruling represents a significant victory for South African miners suffering work-related illnesses as a result of employers' negligence, according to [plaintiffs' lawyers now preparing a class action lawsuit](#). In September 2011 [a new group claim was filed](#) against Anglo American in UK court by South African miners suffering from silicosis.

(g) Uganda: In 2010 members of a Ugandan gay, lesbian, bisexual & transgender rights NGO, Sexual Minorities Uganda, [filed a lawsuit](#) against a Ugandan newspaper called "Rolling Stone" in the High Court of Uganda, seeking to stop the paper from publishing the names, home addresses and photos of gay rights activists. The newspaper had published activists' personal information with a headline that read: "Hang Them; They are After Our Kids!!!!" The court granted the plaintiffs a permanent injunction. [A prominent gay rights activist, David Kato, was murdered in his home](#) after his personal details were published in the newspaper.

### 3.2. Americas

#### (a) Argentina

- In November 2011 [a US federal court ruled against Daimler](#) in a case alleging the company's Argentinean Mercedes Benz unit played a role in identifying people, including union leaders among Mercedes workers, to "disappear" during Argentina's military dictatorship; some were then abducted, tortured and killed by state security forces. Daimler has said it is considering appealing to the US Supreme Court.
- In April 2011 [the European Center for Constitutional and Human Rights presented a legal opinion to a federal court in Argentina](#) regarding an official investigation into allegations of involvement by Ledesma, the country's largest sugar company, in human rights abuses during the dictatorship. For example, the investigation considered allegations that the military detained 400 trade unionists and other employees whom the company had helped identify; they were allegedly taken away by government forces using company trucks, and some never returned.

(b) Brazil: In 2007 the Brazilian Ministry of Labour and a number of workers' associations filed [a lawsuit in Brazilian court against Shell Brasil and BASF](#) alleging that people employed at and living near a pesticide plant in Paulinia, Brazil, had suffered severe health problems as a result of land and groundwater contamination around the plant. [In 2010 the court ruled in favour of the plaintiffs](#) and ordered the companies to pay a total of \$653 million in fines and damages. In March 2012 the [defendants were reportedly in settlement talks](#) to determine which party would pay the monetary award.

#### (c) Colombia

- In 2003 the residents of Santo Domingo, Colombia, alleged in a [lawsuit](#) in US federal court that Occidental Petroleum and its security contractor, AirScan, were complicit in an aerial bombing attack on the village in 1998 which killed 17 people and injured 25. The plaintiffs are currently appealing a lower court's dismissal of the case on the basis of the political question doctrine (information about this doctrine is available [here](#)). [In August 2011 the Inter-American Court of Human Rights \(IACHR\)](#) announced that it would hear a case against Colombia regarding this bombing.

- In March 2007 Chiquita settled a criminal complaint with the US Department of Justice regarding its payments to a Colombian paramilitary organization. The company admitted making payments and paid a \$25 million fine. Following this settlement, a [number of civil lawsuits](#) were filed against Chiquita in US court alleging that the company's payments made it complicit in human rights abuses committed by paramilitaries in Colombia. The various lawsuits have been consolidated, and in June 2011 [the presiding judge denied](#) Chiquita's motion to dismiss the consolidated lawsuits.

(d) Ecuador

- Ecuadorian indigenous groups filed a class action lawsuit against Chevron in Ecuadorian court in 2003 alleging Texaco's oil operations caused severe environmental contamination in the Oriente region (Chevron acquired Texaco in 2001). The judge in this long-running [lawsuit](#) issued his decision in February 2011, ruling against Chevron and fining the company \$18 billion. Chevron appealed this decision in Ecuador, but the appeal was rejected in January 2012. Chevron obtained a temporary restraining order in February 2011 from a US federal court to prevent the plaintiffs from enforcing the Ecuadorian judgment in the United States. [This injunction was lifted in September 2011](#). (See also the discussion of Chevron's international arbitration claim against Ecuador, seeking to bar enforcement of the Ecuadorian judgment, in section 1.3(a) above.)
- In March 2011 [the Court of Appeal for Ontario \(Canada\) dismissed a lawsuit against Copper Mesa Mining](#) for alleged complicity in violent assaults on Ecuadorians by security personnel hired by the company. The court ruled that the plaintiffs had not presented sufficient evidence linking Copper Mesa to the abuses alleged. The lawsuit was filed in March 2009 by several Ecuadorians residing in the local community where Copper Mesa planned to mine.

(e) Guatemala: HudBay Minerals is facing several lawsuits in Canadian court relating to its activities at the Fenix Mining Project in eastern Guatemala. The first two lawsuits were filed in September 2010 and March 2011 by a [group of Guatemalans](#) of the Mayan Q'eqchi community alleging that the company was complicit in abuses (torture and killing as well as gang rapes) committed by its security forces at the mining site. In December 2011 [a shooting victim filed a lawsuit against HudBay](#) alleging that one of the company's security guards shot him without provocation, leaving him a quadriplegic.

(f) Peru

- A [lawsuit in UK court against Monterrico Metals](#) regarding allegations of abuse suffered by Peruvian villagers opposing development of the Rio Blanco Mine settled in July 2011. The villagers alleged that they were detained and beaten by security personnel employed by the company. Two of the women detained alleged they were sexually assaulted during their detention. [Criminal investigations](#) against police officials and employees and contractors of Rio Blanco (part of Monterrico Metals) are ongoing in Peru.
- In August 2011, the Peruvian Government signed into law a measure requiring that industry consult with indigenous groups prior to undertaking any activities on their land. This was a ground-breaking decision to protect indigenous groups from displacement. Further information on this law is available [here](#), and on free prior & informed consent is available [here](#).

(g) USA: The Alien Tort Claims Act (ATCA), as used against corporations in cases alleging human rights abuses, is under review by the US Supreme Court (see section 4 below). Recent corporate legal accountability lawsuits in US courts not brought under ATCA include:

- In June 2011, the US Supreme Court ruled that [a major gender discrimination lawsuit against Wal-Mart](#), the largest workplace bias claim in US legal history, could not proceed as a class action covering all the women the plaintiffs sought to include in the class. If it had, it would have included approximately 1.5 million current and former Wal-Mart employees. This ruling has affected other class action lawsuits, such as a [gender bias claim against Costco](#) and an [environmental contamination lawsuit against Dow Chemical](#). The original plaintiffs refiled their claims of gender discrimination against Wal-Mart as a smaller class action.
- Members of the [Western Shoshone tribes filed a lawsuit](#) in 2008 against the US Government and Barrick Gold seeking to stop a Barrick Gold mining project in Nevada. The plaintiffs claim the proposed mining site is of deep cultural and religious significance and question the environmental impact of the mine on the local population. The [tribes initially won a limited injunction based on](#)

[their environmental claims](#), but [in January 2012 the court ruled in favour of Barrick](#). The court found that Barrick had corrected the environmental deficiencies of the project.

- [Native Alaskan villagers from Kivalina](#) filed a lawsuit in US federal court in 2008 against oil, coal and power companies claiming that the defendants' contribution to global warming has caused the sea level to rise resulting in significant damage to their village. Kivalina village is in danger of disappearing, and the villagers are seeking damages to cover the cost of relocating the village. The lower court dismissed the case in 2009, and the plaintiffs appealed. The court of appeals heard [the plaintiffs' arguments in November 2011](#).
- In the months following the 2010 explosion of the Deepwater Horizon oil rig in the Gulf of Mexico and the subsequent spill, [a large number of lawsuits were filed against the companies involved \(BP, Transocean, Anadarko Petroleum, MOEX Offshore \[part of Mitsui\], Halliburton and Cameron\)](#), including claims regarding deaths and injuries from the explosion, loss of livelihood, health of clean-up workers, health impacts on the residents. Information about the overall human rights impacts of this disaster is available [here](#). BP announced in March 2012 that it had reached a \$7.8 billion settlement with a substantial majority of the plaintiffs in this litigation. This settlement does not address charges brought by state governments and federal agencies against BP and others. It also does not affect the determinations of fault by the companies. In June 2010 BP established the \$20 billion Gulf Coast Claims Facility to compensate victims who wished to accept expedited out-of-court settlements. BP may still face billions of dollars in criminal penalties and up to \$17.6 billion in civil pollution fines.

### 3.3. [Asia/Pacific](#)

#### (a) [Bangladesh](#)

- The [Bangladesh Environmental Lawyers Association](#) (Bela) filed a petition in Bangladeshi court in May 2011 seeking to ensure the safety of workers in the country's ship-breaking industry. [In November 2011 the Supreme Court](#) directed the Bangladeshi Government to establish a set of rules to eliminate pollution from the ship-breaking industry and to protect the industry's workers.
- In April 2010 the discount retailer Lidl was accused of false advertising over its claims that it promoted fair working conditions for workers in its supply chain. The Hamburg Consumer Protection Agency (Germany), supported by the European Centre for Constitutional and Human Rights and Clean Clothes Campaign, filed the [lawsuit](#). The lawsuit alleged that the working conditions in Bangladeshi textile plants supplying Lidl did not meet internationally-recognised standards and violated labour laws. Shortly after the lawsuit was launched Lidl agreed to retract its advertisements.

#### (b) [China](#)

- In January 2012 [the trial started in a ground-breaking public interest lawsuit filed by a coalition of environmental groups](#), including Friends of Nature, in Chinese court on behalf of two villages in Yunnan Province. These villages are polluted by chromium-6, a known carcinogen, due to alleged illegal dumping of toxic waste by Yunnan Luliang Peace Technology Company. This lawsuit reportedly represents one of the first times civil society organizations have been permitted to file a lawsuit on behalf of affected populations in China. (More information is available [here](#).)
- [Two lawsuits were filed against Cisco Systems](#) in US court in 2011 by people who were allegedly arbitrarily detained and in some cases tortured by the Chinese Government, and who claim Cisco's technology aided the government's actions. The two lawsuits, on behalf of [Chinese Falun Gong members](#) and three jailed Chinese writers, allege that the company helped the Chinese Government build computer systems used to track and persecute dissidents.

#### (c) [India](#)

- In June 2010, a court in India issued its verdict in the criminal [lawsuit against Union Carbide India and seven executives of the company](#) regarding the 1984 Bhopal gas disaster. Dow Chemical acquired Union Carbide in 2001. [Advocates for Bhopal victims expressed dismay](#) over the light sentences given to the defendants. The Central Bureau of Investigation appealed this ruling to the Supreme Court of India, seeking more severe penalties. [In May 2011 the Supreme Court declined](#) to hear an appeal or to reopen the case.

- In the [ongoing legal battle by the Dongria Kondh people against Vedanta Resources](#) and its mining project in Orissa, the Indian federal Ministry of Environment and Forests denied Vedanta permits necessary for the project to continue in 2010. The project's opponents maintain that Vedanta's mining project will mine mountains held sacred by the Dongria Kondh tribe. The opponents also allege that the project will cause extensive environmental damage to the area. The Orissa High Court upheld this decision in July 2011. Vedanta is appealing to the Supreme Court.
- Villagers from Plachimada, Kerala, filed a [lawsuit against Coca-Cola India](#) over water depletion and environmental contamination, which was rejected by the Kerala High Court in 2005. The court held that water is a private resource over which the landowner has proprietary rights, and that the landowner can extract groundwater without seeking permission from the local or federal government. The plaintiffs' appeal before the Indian Supreme Court is pending. In February 2011, [the state legislature of Kerala passed a bill](#) establishing a tribunal to adjudicate compensation claims regarding the activities of Coca-Cola's subsidiary in Plachimada. The national government must consent before this bill can become law; the Ministry of Home Affairs has [returned the bill to the Kerala Government](#) with questions, originally raised by Coca-Cola, about the constitutional validity of the bill.

(d) Indonesia: The plaintiffs in [a lawsuit against ExxonMobil](#) brought in 2001 in US court claim that the company was complicit in torture, killings and rape committed by Indonesian security forces at its facility in Aceh. An appeals court [reversed a lower court's dismissal](#) in July 2011. The case is now awaiting the decision of the US Supreme Court in the *Kiobel* case (see below, section 4).

(e) Japan: Following the 2011 [earthquake, tsunami and nuclear disaster](#), the [Japanese Government ordered](#) Tokyo Electric Power Company (TEPCO), which operated the Fukushima nuclear power plant, to pay compensation to people affected by the radiation. In September 2011, [TEPCO announced](#) that it would start sending application forms for compensation to companies, farmers and tourism businesses affected by the nuclear crisis. In June 2012 residents from Fukushima filed a [criminal complaint against senior TEPCO officials](#) for negligently exposing residents to excessive radiation during the nuclear crisis.

(f) Papua New Guinea: Plaintiffs from the island of Bougainville [sued Rio Tinto in 2000 in US court](#) for alleged racial discrimination and complicity in killings and other violence by the army in a civil conflict, which they argue amounted to crimes against humanity. The US Court of Appeals reversed a lower court's dismissal of this case in October 2011. Rio Tinto has asked the US Supreme Court to hear an appeal of the October ruling.

### 3.4. Europe

(a) Italy: A criminal trial of two [Eternit directors](#) in Italy, for allegedly causing an environmental disaster that led to asbestos-related deaths of 2000 Eternit workers and people living near the factory, closed in November 2011. In February 2012 the court founds the defendants guilty and sentenced them to 16 years in prison.

(b) Poland: [Polish prosecutors brought charges](#) in 2005 against four managers and one director of an Indesit refrigerator factory in Łódź over the death of a factory worker killed while cleaning equipment whose safety sensors had been removed. In 2011, the court found two of the defendants guilty of involuntary manslaughter, and all five guilty of health and safety violations.

#### (c) United Kingdom

- In February 2011 a UK court handed down the country's [first corporate manslaughter conviction](#), against Cotswold Geotechnical over the death of an employee.
- One challenge facing human rights lawsuits in UK against companies, including cases relating to harms occurring abroad, is a [new law](#) that threatens the way that these types of cases are funded. This law – the Legal Aid, Sentencing and Punishing of Offenders Act – received Royal Assent in May 2012. It was [criticised by human rights groups](#) who said it would act as a barrier to justice for victims of abuses. Opposing the bill on the eve of the parliamentary vote, Lord Brennan QC wrote, [“Globalisation, if it is to come with global profits, must also come with global justice. We cannot have a rule of law for one group of people and none for the other.”](#) More information is available [here](#).

### 3.5 Middle East & North Africa

#### (a) Iraq

- In the [Abu Ghraib lawsuits](#) against US defence contractors CACI and Titan (now L-3), alleging they committed human rights abuses including war crimes, torture and sexual assault, the companies have claimed immunity as government contractors. One case, *Saleh v. Titan*, was dismissed by the US Court of Appeals in 2009 on the basis of government contractor immunity. In 2011, another US appeals court dismissed two related pending cases finding that the claims were pre-empted by the federal government's authority to manage a war. In May 2012 the full panel of the appeals court overturned the dismissals. It ruled that the trial court must hear more facts in the lawsuits before it can consider the defendants' request to dismiss the case.
- US criminal proceedings against [Blackwater](#) (now known as Academi) security guards accused of shooting civilians in Baghdad are pending, following a 2011 reversal by a US appeals court of a 2009 dismissal of the charges. The guards are seeking review of the appeals court decision by the US Supreme Court. They claim prosecution evidence was illegally obtained.

(b) Jordan: In June 2011 [Jordanian authorities arrested a manager at the Classic Fashion Apparel](#) factory after a female employee accused the manager of rape. Classic Fashion supplies garments to major US retailers. Reports alleged that the factory's female workers had been subject to regular sexual abuse at work. The Jordanian Government is reportedly investigating, but has taken no further legal action.

(c) Libya: In October 2011 International Federation for Human Rights (FIDH) and la Ligue des droits de l'Homme filed a [criminal complaint in Paris against Amesys](#) (part of Bull) accusing it of complicity in human rights abuses in Libya. The complaint led prosecutors in Paris to open a criminal investigation in May 2012. Amesys allegedly supplied the Gaddafi government with a communications surveillance network and helped develop and monitor the network. The complaint alleges that the network intercepted private internet communications that identified members of the opposition, who were then allegedly tortured. Amesys denies the allegations.

#### (d) Israel/Occupied Territories

- [Bil'in village filed a claim in Canada against two construction companies based in Québec](#), Green Park and Green Mount International, claiming that the companies had violated the Geneva Conventions by constructing civilian buildings on occupied territory. In late 2009, the lawsuit was dismissed on the grounds that the Canadian court was an "inconvenient forum".
- In the Netherlands [a lawsuit on behalf of Al Haq, a Palestinian NGO, is pending against Riwal](#), a construction equipment firm. The lawsuit claims that Riwal's role in leasing equipment to build the "Separation Wall" in the West Bank is a violation of international law.

## 4. **Alien Tort Claims Act (USA)**

The Alien Tort Claims Act has been used to bring civil claims against companies for human rights abuses abroad in US courts since the mid-1990s. ATCA provides that the "district courts shall have original jurisdiction of any civil action by an alien for a tort...committed in violation of the law of nations or a treaty of the United States." Recently US courts have disagreed on whether ATCA can be used against companies. The US Supreme Court agreed to hear an appeal in the [Kiobel v. Royal Dutch Petroleum \(Shell\)](#) case to resolve this issue. In this case, the plaintiffs had alleged that Shell was complicit in human rights abuses committed by the Nigerian military against Ogoni people. The [Second Circuit of the US Court of Appeals ruled in favour of Shell](#) in 2010, in a sweeping decision that held that ATCA cannot be used to sue corporations for violations of international law. The Supreme Court heard oral arguments on 28 February 2012. On 5 March the Court issued an unusual order saying it would not decide the case this term. It asked the parties to submit additional briefs on whether ATCA allows US courts to hear lawsuits alleging violations of international law occurring outside the USA. The Court will rehear the case during its next term (October 2012-June 2013).

The Resource Centre has created a special page [here](#) with links to all of the *Kiobel* legal documents, transcripts and audio of the oral arguments, as well as commentary. It includes links to the plaintiffs' and defendants' briefs, and amicus curiae ("friend of the court") briefs on both sides, including briefs by

the US Government in favour of reversing the appeals court decision on the original question of ATCA lawsuits against companies (Dec 2011) and in favour of partially affirming the appeals court decision on the supplemental question of extraterritoriality (Jun 2012); as well as briefs by the UK and Dutch governments in favour of the defendants (Dec 2011). This special page will be updated as more information becomes available. The decision in this case could affect the outcome of numerous other cases, including the cases over alleged abuses by CACI and L-3 Titan in Iraq, Daimler in Argentina, ExxonMobil in Indonesia, Firestone in Liberia, Occidental and AirScan in Colombia, and Rio Tinto in Papua New Guinea, each of which is mentioned above in section 3.

## 5. Non-judicial remedies

### 5.1. OECD Guidelines

The Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises provide non-binding principles and standards for responsible international business conduct. The human rights provisions of the Guidelines were revised in 2011 to include a new human rights chapter, written to be consistent with the UN Guiding Principles on Business and Human Rights. Complaints of violations of the OECD Guidelines may be brought against companies headquartered in an OECD country or other country adhering to the Guidelines, before administrative procedures in each country known as National Contact Points. [OECD Watch](#) provides an overview of pending cases (their latest quarterly update can be accessed [here](#)). See also the Resource Centre's [website section](#) on the OECD Guidelines.

### 5.2. BASESwiki

[BASESwiki](#) is an online resource focused on non-judicial dispute resolution mechanisms for cases of corporate human rights abuse. It describes itself as “a collaborative workspace to share information and learn about how dispute resolution between business and society works around the world.”

### 5.3. Further information on non-judicial remedies:

- [Protecting rights, repairing harm: How state-based non-judicial mechanisms can help fill gaps in existing frameworks for the protection of human rights of people affected by corporate activities](#), CORE Coalition, Nov 2010
- [Mediation in Business-Related Human Rights Disputes: Objections, Opportunities and Challenges](#), Caroline Rees, Harvard Kennedy School, Feb 2010

## 6. UN Special Representative, UN Guiding Principles and UN Working Group

The UN Human Rights Council endorsed by consensus the Guiding Principles on Business & Human Rights in June 2011. The Resource Centre maintains an [information hub on the Guiding Principles](#), including uses by NGOs, governments, companies and others. The Guiding Principles implement the UN “[Protect, Respect and Remedy](#)” Framework proposed by [UN Special Representative on business & human rights John Ruggie](#), and endorsed by the Human Rights Council, in 2008. One of the three pillars of the UN Framework is greater access by victims of corporate abuses to effective remedy, both judicial and non-judicial. Guiding Principle 26, implementing the “Remedy” pillar, is “States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.” Over the course of his mandate, Ruggie conducted consultations and commissioned and wrote papers related to [judicial remedies](#) for corporate abuses as well as [non-judicial remedies](#). (See section 2.1 above for further discussion of the Guiding Principles provisions on access to remedies)

Also in June 2011, the UN Human Rights Council established a UN Working Group on business and human rights. One of the Working Group's purposes is “to continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities...” The Working Group has held two sessions, in January and May 2012. It is organising the first annual [Forum on Business and Human Rights](#), to be held 4-5 December 2012 in Geneva. The Resource Centre maintains an [information hub about the UN Working Group](#).

## 7. Looking ahead

### 7.1. Issues

(a) Extraterritorial jurisdiction: Legal barriers may prevent legitimate claims of corporate human rights abuses from getting before a judicial body; the official commentary to Principle 26 of the UN Guiding Principles identifies the issue of “claimants [who] face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim”. This issue of legal barriers will become even more pressing in the coming year with threats to accessing US courts (forthcoming decision in the *Kiobel* case) and UK courts (Legal Aid, Sentencing and Punishment of Offenders Act – see above, section 3.4(c)). In its rehearing of *Kiobel*, the US Supreme Court has particularly put the question of extraterritoriality front and centre, putting at risk an important avenue for redress.

(b) Non-judicial remedies: Judicial remedies remain essential and in many countries need strengthening, but we have also seen increased interest in non-judicial remedies including mediation. Victims will still need to bring lawsuits to establish precedents that guide non-judicial mechanisms and push the parties to use these mechanisms. Yet it is impossible for courts to handle all human rights claims against companies. In some instances, these non-judicial mechanisms can provide redress for victims while avoiding the potential cost and long duration of litigation. As the UN Guiding Principles state, all remedies must be accessible to victims, equitable and transparent, and must accord with international human rights.

### 7.2. The Resource Centre's plans

Business & Human Rights Resource Centre will continue to bring the concerns of local advocates to an international audience and profile additional lawsuits against companies – both under-the-radar and high-profile cases.

We will carry out our first research mission focusing on corporate legal accountability, to Argentina in June 2012. Sif Thorgeirsson, Corporate Legal Accountability Project Manager, and Amanda Romero, Latin America Researcher, will meet with advocates, NGOs and others working on labour rights, environmental health, land rights, and complicity in abuses by Argentina's military government. They will aim to better understand and bring more attention to issues of access to remedy for corporate human rights abuses in Argentina. They will also meet with bar associations and/or business representatives to discuss corporate legal accountability.

During this mission, we will co-host an event with CELS (Centro de Estudios Legales y Sociales) in Buenos Aires focusing on challenges faced by Argentinean lawyers in accessing legal remedies for corporate human rights abuses.

The Resource Centre has regional researchers in Colombia, Hong Kong, Kenya, India, Jordan, Lebanon, Senegal, South Africa and Ukraine. All of the regional researchers will continue to help the Corporate Legal Accountability Project team identify cases from their regions to profile, particularly in those regions which are underrepresented on the portal.

## 8. Follow our work on corporate legal accountability

Our Corporate Legal Accountability Portal, frequently updated with new case profiles and news of ongoing lawsuits, is [here](#). All of our website's items on lawsuits and regulatory actions involving human rights abuses are [here](#).

Our planned event in Argentina (see section 7.2 above) is the latest of several events on corporate legal accountability that we have organised or co-sponsored. These also include:

- our [launch of the Corporate Legal Accountability Portal](#) at an event co-sponsored with International Commission of Jurists, Doughty Street Chambers and Justice (London, 2008);
- an [event with leading corporate accountability lawyers Martyn Day and Paul Hoffman](#) (London, 2009);
- a [public debate panel on corporate justice with FIDH and OECD Watch](#) (Amsterdam, 2010); and
- a two-day consultation we co-sponsored with the Delhi-based Human Rights Law Network, “[Litigating Against Corporations for Human Rights](#)” (Goa, India, 2011).

If you would like to receive our free Weekly Updates, the sign-up form is [here](#).

Please do not hesitate to get in touch with any questions or suggestions of material for our portal and website:

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**[Click here to donate today](#)**

Please consider donating to Business & Human Rights Resource Centre, to enable us to continue our work on corporate legal accountability, and to offer our information to a global audience without any charge. As we do not accept donations from companies or company foundations in order to prevent any possible conflict of interest, donations from individuals and independent foundations are essential for our work to continue.

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