

BOOK REVIEW

Human Rights Litigation against Multinationals in Practice, Richard Meeran and Jahan Meeran (eds.) (Oxford: Oxford University Press, 2021)

Tort litigation and criminal cases against multinationals are among the most influential factors that have contributed to shaping the business and human rights (BHR) agenda. The editors Richard and Jahan Meeran convened a group of authors, composed almost exclusively of practising lawyers or human rights advocates, and, as the title of the book indicates, it clearly adopts the perspective of human rights victims seeking justice in the face of harmful business activity.

Richard Meeran, some may recall, represented victims in cases against large UK companies, notably in Cape plc (South African asbestos), RTZ (now Rio Tinto, throat cancer victim having worked in a mine in Namibia) and Thor chemicals (mercury poisoning of South African workers),¹ and since then has continued his professional activity in the field. Calling him a ‘pioneer’ in ‘BHR litigation’ is no exaggeration. The editorial guidance throughout the book carries the signature of his expertise and experience, as book chapters systematically deal with subjects that are most relevant for victims seeking legal representation.

Following a detailed and instructive foreword by Anita Ramasastry, an introductory chapter by Robert McCorquodale makes the book’s subject accessible to any reader of the *Business and Human Rights Journal*, including those without legal training. This is not an easy task, considering the complexity and many uncharted territories of international litigation. McCorquodale presents distinctions between litigation in common law and civil law traditions, explains the difference between criminal and civil claims, and clarifies the role of private international law. The chapter also sets the stage for BHR litigation against the backdrop of the adoption of the United Nations Guiding Principles on Business and Human Rights (UNGPs). The clarity of McCorquodale’s account may create the illusion of a coherent, well-coordinated international legal system. He asserts that such a system certainly does not exist even though this may be desirable. He is, however, wary about the creation of ‘level playing fields’, where ‘those playing are by no means equal in power and abilities’, and where there are also ‘many who are not even able to get on – or not allowed to get on the playing field’ (p. 22 *et seq.*).

This chapter is followed by Richard Meeran’s contribution, in which he first retraces the cases that established his renown (Cape plc, RTZ, Thor Chemicals), explaining how they laid the foundation for the development of a parent company’s duty of care in UK law. Meeran’s chapter includes a small, but noteworthy sub-paragraph entitled ‘Some observations for strategic litigation’. For the academic scholar who dislikes settled cases because they do not leave a record behind, Meeran emits the strong message that settled cases may not only influence future court cases but should also be appreciated more positively in terms of victim redress. The following paragraph on ‘barriers to justice’ (pp. 44 *et seq.*) helps to

¹ See House of Lords, *Connelly v RTZ Corporation plc* [1997]; *Lubbe & Others v Cape Plc* 2000 1 WLR 1545.

understand the uneven playing field for human rights victims that McCorquodale mentions in the previous chapter.

These two opening chapters are succeeded by eight country reports that all apply a similar structure, dealing with the most essential questions for human rights litigation, notably international jurisdiction (competence of courts to deal with the merits of a case), applicable law, different types of possible claims available to victims, and litigation funding. The book deals with the situation in the UK, South Africa, Canada, Australia, the US, the Netherlands, France and Germany.

The authors of the country reports each deliver succinct information about the most relevant cases in their respective legal orders and the legal contexts in which they arise – a valuable service for readers who seek an overview of the legal context of a country with which they are not yet familiar. Paul Hoffman, for example, guides the reader through the various US legal statutes (among which we find the Alien Tort Statute, or RICO) that provide opportunities for victims to sue business corporations, including several references to cases. Hoffman summarizes US jurisprudence under the Alien Tort Statute, and more generally the reluctance of the federal judiciary to deal with transnational human rights claims. Nevertheless, he is carefully optimistic, as not all questions regarding the presumption against extraterritoriality may be resolved and that plaintiffs may ‘live to fight another day’.

Bruce Johnston unravels the complexity of the Canadian legal order that combines civil law (Quebec) and common law aspects and explains the Canadian Supreme Court’s majority ruling in *Nevsun*.²

In Channa Samkalden’s chapter on the Netherlands, we find among other things, the background to the civil and criminal cases against Shell, as well as a discussion of the Dutch Child Labour Due Diligence Law. Samkalden concludes that the Dutch legal order would be ‘willing’ to hold multinational corporations accountable; however, she also points out the many unresolved questions, for which future cases will have to find answers.

Sandra Cossart and Lucie Chatelain, *inter alia*, report the first cases arising under the French duty of vigilance law (both against Total) – also dealing with the interesting question of the competence of French commercial courts and civil courts, respectively. They undertake a critical review of the duty of vigilance law, correctly emphasizing the high hurdles for human rights victims to prove causation when trying to claim damages based on that law. Indeed, without shifting or at least lightening the burden of evidence, victims hardly stand any chance in court. They conclude that to date, French law offers little succor for victims in a transnational context.

Miriam Saage-Maaß instructively explains German tort law, interestingly comparing the German case law-based concept of ‘Verkehrssicherungspflichten’ with the UK parent company ‘duty of care’, and that the German concept could potentially provide a legal avenue for victims in transnational cases. We also find a detailed account of a claim against the German clothing retailer KiK for a fire at a Pakistani supplier – even though the case was dismissed on the grounds of the statute of limitations. Therefore, to date there is no authoritative case law that would establish German jurisdiction for parent company liability in a transnational context. Saage-Maaß mentions that the new German law on supply chain due diligence excludes civil remedies and will have to be changed in this respect if the draft EU sustainability due diligence directive is adopted.

Peter Cashman reports relevant cases and legal developments from Australia, including those in which victims have been successful in establishing Australian jurisdiction for transnational cases. Cashman, however, also demonstrates the multiple strategies available to multinational corporations when defending a claim.

² *Nevsun Resources Ltd v Araya* 2020 SCC 5.

Daniel Leader enhances Meeran's account of the situation in the UK, including brief reports of the jurisdiction challenges in three leading parent company liability cases (Vedanta, Unilever and Shell).³

Jason Brickhill and Zanela Mbuyisa present multi-company litigation in South Africa. Those not yet acquainted with South African law, will discover the pivotal role of the country's Constitution for human rights claims against multinational corporations. After having read their chapter, it is worthwhile turning back some pages to a paragraph in Meeran's text dealing with the collaboration between lawyers in the UK and South Africa (pp. 53–56).

There were more opportunities for this kind of cross-referencing that the book could have exploited. The inherently cross-border nature of BHR litigation would have better emerged, had there been more connections between the chapters. For example, the book could have included a 'Brazil' country report, which would have referred to the UK and Australia chapters and included information about the cooperation between UK, Australian and Brazilian lawyers in the various cases related to the collapse of the Mariana dam. This would have also helped appreciate the recent UK court decision on *Município de Mariana v BHP Group*.⁴ In this book, only Cashman's chapter mentions the case context. More generally, the book would have benefited from a concluding comparative law analysis based on the country reports. Such an analysis could have highlighted common trends regarding international jurisdiction and developments towards a parent company's duty of care.

The book's two final chapters pick up subjects that could arise in any country. Rae Lindsay's chapter on the business perspective on BHR litigation is at its strongest when she spells out the stakes for business corporations that face potential victim claims (see p. 288 *et seq.*). Lindsay's chapter is informative and worthwhile reading, but some readers might miss her insider view – she could have explained how lawyers representing business corporations make life hard for victims and their lawyers. Business corporations are said to drain opponents' resources, for example, by instituting legal action in host state courts, or intimidating critics by bringing lawsuits against public participation and human rights defenders. Furthermore, some corporate grievance mechanisms are reported to include litigation waivers to keep cases out of courts altogether. Lindsay could have told us to which extent such practices are indeed part of the corporate toolbox.


In the book's final chapter, Susan Dunn and Felix Curtis offer practical aspects of litigation funding. The subject is of utmost importance for victims who notoriously lack funds to compete with their corporate adversaries in the legal arena. Dunn and Curtis concisely map the opportunities, conditions and limits of third-party litigation funding, providing two examples where third-party funding was essential for victims to bring claims against businesses.

While there are already books that deal with the field of BHR litigation, this book is very special because it treats the subject from the perspective of victims who litigate *against* multinationals. It is highly recommended not only to lawyers and legal scholars, who seek an overview and quick access to numerous cases, but also to anyone interested in assessing how criminal and civil litigation has impacted developments in BHR. The book's overall style is surprisingly academic – considering that, with one exception, all the authors are non-academics. On the one hand, this is convenient because each chapter is of similar (high) quality, densely informative and well organized. On the other hand, the academic style, perhaps, did not give much leeway to the authors to write more about practical aspects such as litigation tactics and strategies, or just to share their personal insights. While

³ *Lungowe and others v Vedanta Resources Plc and another* [2016] EWHC 975, *AAA & Ors v Unilever plc* [2018] EWCA Civ 1532, *Okpabi v Royal Dutch Shell plc* [2021] UKSC 3.

⁴ *Município de Mariana v BHP Group (UK) Ltd* [2022] EWCA Civ 951 – the book was already published when the Court of Appeal ruled in the BHP case.

reading the book, I occasionally wished that an author, who experienced some of the reported cases on the ground, deviated a little from the objective account and told the story behind the case.

Björn FASTERLING 
EDHEC Business School, Augmented Law Institute
bjorn.fasterling@edhec.edu
[doi:10.1017/bhj.2022.30](https://doi.org/10.1017/bhj.2022.30)