

Introduction

- Human Rights: State-orientated system
- HR system is based on states: the states have obligations
- Against individuals
- What are Rights (guarantees)
- How can corporations have rights and obligations?

UDHR

- Recognises enterprises: Preamble:
- “every individual and **every organ** of society, keeping this Declaration in mind, shall strive by teaching and education to promote for these and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance,”

If HR is more than ideals

Enforcement

- Global institutions UN
- Enforcement and implementing is important
- Many bureaucracies: committees, councils etc
- Laws, Courts, police, sanctions, prisons, legal aid, jurisdictions, the extraterritoriality.



Companies

Where where the
Companies????

Nowhere.

Now: the UN Guiding
Principles on Business and
HR

State: nexus

- **States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State,**
- **And: you can't just privatize and then say the duty has gone: Z and others v United Kingdom**

State Obligations

- Respect
- Protect
- Fulfil
- Ruggie Respect, Protect, **Remedies**
- UN Guidelines Principles for businesses and HR
- http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Extraterritoriality

- Jurisdictional Arbitrage
- Adams v Cape
- subsidiary manufacturing asbestos
- Employees damaged and killed
- UK court refused to allow the plaintiffs to sue the parent in England
- Refused to lift the veil

Rights likely to be violated by companies

- Non-discrimination
- Women's Rights
- Life, liberty and physical integrity
- Civic freedoms
- Employees' rights
- Child labour
- Slavery, forced and bonded labour
- Right to food, health, education and housing
- Environmental rights

UN Guiding Principles

- Business not companies
- Three pillars
- Protect
- Respect
- Remedies

The State Duty to Protect HR

- (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.
- These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

State's duty

- **States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.**

Rana Plaza

- https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm
- ILO
- Tripartite cooperation between governments, Employers and Workers and Unions
- The Clean Clothes NGO
<https://cleanclothes.org/campaigns/past/rana-plaza>



5 years after the Rana Plaza collapse, what's changed in Bangladesh's garment factories? - Smart China Sourcing smartchinasourcing.com



Six years of Bangladesh's factory disaster, unions groups issue 'grim' warning - OrissaPOST orissapost.com



Rescue workers at last collapsed Bangladesh garment factory in April this year. - ABC News (Australian Broadcasting Corporation) abc.net.au



II: The Corporate Responsibility to Respect HR

- **Business enterprises should respect human rights.** This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- over and above compliance with national laws and regulations protecting human rights.
- **Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;**

Due Diligence

- **HUMAN RIGHTS DUE Diligence**
- **17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence**

III Access to Remedy

- States have the duty to protect
- **As part of their duty to protect against business-related human rights abuse, 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.**
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Avoiding; Adam v Cape

- The claim was brought by more than 2,500 Zambian villagers against Konkola Copper Mines Plc and its parent company, UK-based Vedanta Resources. The claimants included 643 children.
- The claim, issued in 2015, centred on pollution from the Nchanga Copper Mine, run by Konkola, with 16,000 employees in Zambia, the country's biggest private employer. Vedanta, one of the largest mining companies in the world, bought a controlling share in Konkola, in 2004.
- The Claimants alleged that the pollution severely impacted the lives of people living in nearby villages Shimulala, Kakosa, Hippo Pool and Hellen where the primary source of income is farming and fishing.
- It was claimed that toxic effluent discharge from the mine damaged local land and waterways used for irrigation and the use of polluted water for drinking, washing and bathing caused residents severe health problems.

Vedanta: tort action; preliminary action: no precedent: settled

- The villagers were seeking damages, remediation and cessation to the alleged continual pollution that they say is gravely impacting their lives.
- In a landmark ruling, Supreme Court judges ruled in April, 2019 that the case could be brought against Vedanta in the English courts because, as the parent company of Konkola, the company arguably owed the villagers a duty of care. Vedanta had published material asserting its responsibility for the establishment of group-wide environmental control and sustainability standards, and therefore it must be held accountable for such statements, ruled the court.
- The Supreme Court agreed with arguments advanced by the claimants that there was a real risk they would not be able to achieve justice in the Zambian courts due to lack of funding and legal expertise available

Okpabi v Royal Dutch Shell [2021]

UKSC 3.

- The claimants sought damages for widespread environmental damage, including serious ground water contamination, alleged to have been caused by oil spills from pipelines that are operated by a Nigerian subsidiary, Shell Petroleum Development Company of Nigeria Limited ("**SPDC**").

Claimants

- claimants allege that the UK domiciled parent company, Royal Dutch Shell ("**RDS**") breached a common law duty of care to them, which arose because it "*exercised significant control over material aspects of SPDC's operations*" and/or it assumed responsibility for SPDC's operations, including by the "*promulgation and imposition of mandatory health, safety and environmental policies, standards and manuals*"

Supreme Court Judgment

- The Claimants successfully persuaded the Supreme Court that there was indeed a triable issue as to whether RDS owed such a duty of care to them.
- Remember this is a preliminary issue
- No precedent

Begum v Maran 2021 3 WLUK 162

- claim for damages brought by the widow of a deceased worker (the “**Claimant**”) against a UK-domiciled shipbroker (the “**Defendant**”) in relation to a fatal workplace accident that occurred on a defunct vessel at a shipbreaking yard in Bangladesh.
- Tort claim: *Begum* forms part of a wider trend that has seen claimants seek to hold companies to account for the social and environmental impacts of their broader operations at a time when companies are facing enhanced scrutiny both nationally and internationally
- Again: it was a preliminary ruling.

Not a case on subsidiaries and parents

- Maybe more far reaching
- Dealing with third parties
- Judgment: foreseeability of harm would be insufficient to establish a duty of care . Critically, there was also a requirement to establish sufficient proximity as between the Defendant and the Claimant's husband. Due to the involvement of third parties in this case, establishing such proximity would be challenging, but that the case should be triable.



Practical and procedural issues

- Practical and procedural barriers to accessing judicial remedy can arise where, for example:
 - The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support, "market-based" mechanisms (such as litigation insurance and legal fee structures), or other means;
 - Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;

Non-judicial grievance mechanisms

- **(a) legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;**
- **(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;**
- **OECD mechanisms**