Holding Multinational Enterprises Accountable: Impact of Strategic Litigation

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Book: Argentina, Australia, Bangladesh, Brazil, Canada, England & Wales, France, Germany, India, Kenya, the Netherlands, the Philippines, South Africa, Switzerland, Ukraine, the US

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Parent Company Liability: Research Findings (1)

- Separate legal personality and limited liability principle are well recognised as a foundation of corporate law in all Focus Jurisdictions. Legislation on corporate groups exists in an exceptional and fragmented manner.

- Trend in the Western jurisdictions towards civil claims alleging direct liability of parent companies for harm that occurs through their overseas operations (e.g., Australia, Canada, England, France, Netherlands, US).

- Civil claims usually arise from domestic sources of law. Rarely violating international law may be an element of a civil cause of action (e.g., ATS claims in the US; Nevsun case in Canada; reference to the UNGPs in the Shell climate change case in the Netherlands).
Instances of **supply chain liability** in the Focus Jurisdictions remain rare (e.g., *KiK* case in Germany; novel jurisprudence in the UK).

Civil liability for **complicit or accessory conduct** is seldom recognised as a discrete form of liability.

The discussion of the direct liability of the parent companies for the acts of the subsidiaries or suppliers is **dominated by jurisprudence from the Western states** (e.g., mandatory human rights due diligence with civil liability for non-compliance).
In many jurisdictions, the law of civil remedies evolves in response to societal needs and may continue to develop in this field (e.g., climate change litigation against corporations).

It is, however, evident that civil claims are not always a perfect solution for remedying human rights violations.

Advantages (flexibility of the law of civil remedies; potential to use in the extraterritorial context; raising public awareness; creative settlement agreements; etc).

Limitations (procedural barriers to access remedy; not all human rights violations have a corresponding cause of action; focus on compensation; law of civil remedies is backwards-looking; danger of selectivity, etc).