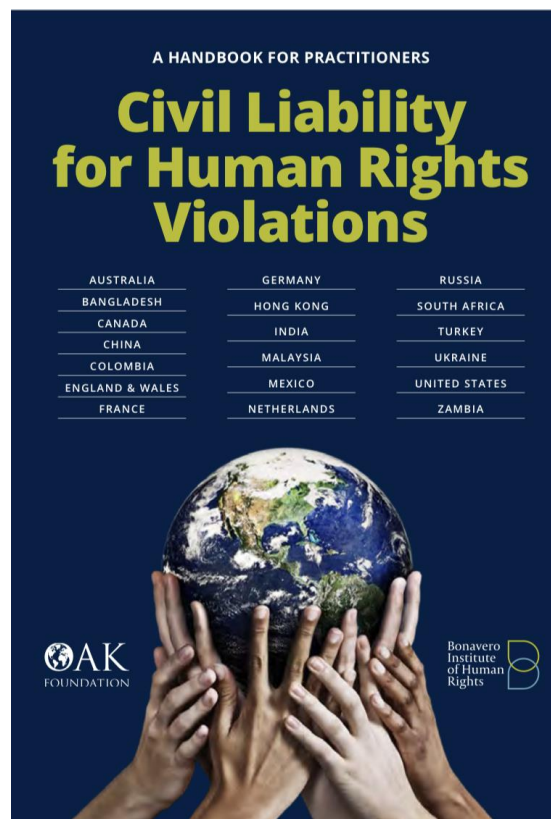
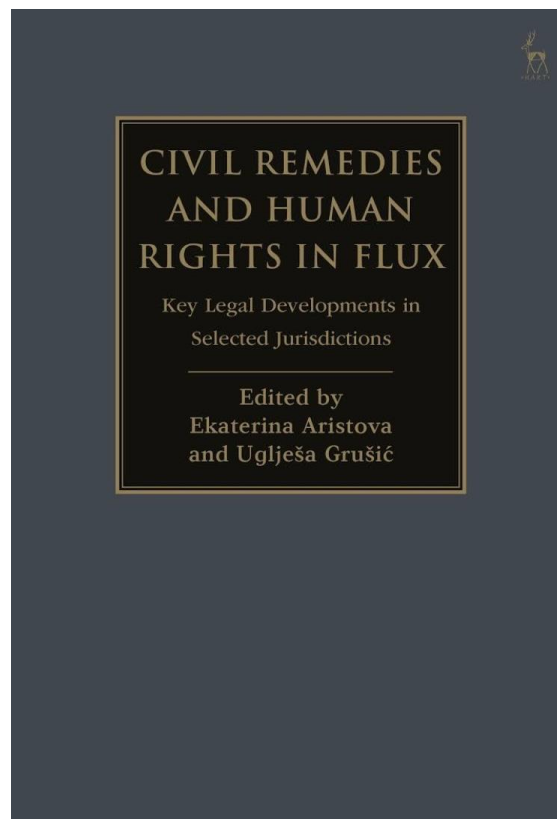


Holding Multinational Enterprises Accountable: Impact of Strategic Litigation

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Project on Civil Liability for Human Rights Violations (2019-2022)



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

Handbook: Australia, Bangladesh, Canada, China, Colombia, England & Wales, France, Germany, Hong Kong, India, Malaysia, Mexico, the Netherlands, Russia, South Africa, Turkey, Ukraine, the US, Zambia

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).

Parent Company Liability: Research Findings (2)

- 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).

Magic Pill?

- ▶ 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).