

A HANDBOOK FOR PRACTITIONERS

Civil Liability for Human Rights Violations

Preliminary Material



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A HANDBOOK FOR PRACTITIONERS



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Foreword



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Human rights violations by public and private actors are unfortunately a fact of life. Civil remedies offer a promising means of holding human rights violators to account, as the experience of human rights litigation from many countries demonstrates.

A characteristic feature of civil remedies is that they vary, sometimes quite significantly, and apply in different ways to human rights violations in different jurisdictions. The outputs of the Bonavero Institute of Human Rights project on civil liability for human rights violations, including this Handbook, are important because they shed light on the legal diversity that exists in this field.

On the one hand, this Handbook allows us to observe the similarities and differences between civil liability regimes for human rights violations in countries as diverse as, for example, China, England & Wales, and Russia. As such, it is a useful resource for comparative lawyers.

On the other hand, this Handbook has the potential to become a very helpful tool for human rights litigators around the world. National reports illustrate how ideas in this field can travel from one jurisdiction to another. For example, foreign direct liability claims, developed in the law of England & Wales, are also available under the laws of many other common law countries. This in turn enables the bringing of such claims in countries like Germany and the Netherlands against locally based transnational companies for human rights violations committed overseas in common law countries such as Nigeria or Pakistan. A thorough description of the law of civil remedies for human rights violations in 19 jurisdictions discloses a wealth of approaches that can be drawn upon by human rights litigators around the world when devising their litigation strategies.



Daniel Leader

Barrister and Partner, Leigh Day

The Handbook on civil liability for human rights violations is the first of its kind and represents an important resource for lawyers who work in the field of business and human rights. Increasingly, civil actions arising out of human rights abuses that are perpetrated by corporations are perceived as among the most promising routes to judicial remedy for victims of those abuses. Around the world in recent years,

there has been a marked increase in litigation brought by lawyers and activists seeking to fight against corporate impunity. This has included international mass tort claims arising out of environmental disasters caused by the operations of companies, as well as cases concerning serious human rights abuses by security linked to mines, agribusiness, and occupational health cases. The courts in many jurisdictions, such as the UK Supreme Court, have shown themselves to be receptive to international civil claims of this sort. The legal landscape is changing fast, and it is clear that parent companies domiciled in the Global North can no longer turn a blind eye to human rights and environmental abuses within their corporate groups or supply chains.

In almost all such cases the substantive law that the court will apply will be that of the country where the harm occurred. For example, a Dutch court has applied Nigerian law to an oil-spill pollution case on behalf of a Nigerian community against a Dutch oil company. As a result, practitioners are forced to grapple with complex concepts of foreign law and to work closely with lawyers from other jurisdictions. That process is costly and time consuming. This Handbook allows business and human rights practitioners to quickly understand the legal framework in a specific country, to obtain clarity as to whether a specific case has legal merit and how it could be brought. It is my hope that this Handbook will be widely used and result in a greater range of important and innovative civil litigation on behalf of victims around the world.



Robert McCorquodale

**Emeritus Professor of International Law and Human Rights
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This Handbook is an excellent comparative study of civil liability for human rights violations across 19 jurisdictions, with a variety of common law, civil law, and mixed legal systems. This is an impressive achievement, especially as it contains a coherent and consistent structure across every chapter. In addition, each chapter provides insightful and high-quality analysis, with detailed references to relevant legislation, case law and commentary.

The breadth of this coverage provides a depth of understanding as to when and how the law of civil remedies can hold public bodies, corporations, and individuals accountable for their involvement in regard to three categories of human rights violations: assault or unlawful arrest and detention of persons; environmental harm; and harmful or unfair labour conditions. The law in this area has developed at a fast pace and this Handbook has brought together a vast amount of material in an accessible manner. In addition, since a great deal of the legislative and case law developments are being undertaken after consideration of the law in other jurisdictions, this Handbook provides great value as a comparative tool.

This is a highly valuable resource for governments, corporations, and civil society, as well as for legal practitioners and academics. It is also of great assistance for those providing reports and guidance from international organisations and other bodies.



Miriam Saage-Maaß

Attorney at Law
Legal Director, European Center for Constitutional and Human Rights

Only twenty years ago, most human rights advocates and litigators would have been sceptical of the option to sue transnational companies in the courts of their home states for human rights violations these companies were involved in abroad. Today, rights holders and communities around the world have come to consider the option to sue

companies in foreign courts as part of the toolbox that is available to them in claiming their rights. At the same time, not only have options to sue companies at their headquarters for damages in Europe or North America opened up, but options for legal proceedings in the countries where harms were caused have increased.

This Handbook is a very timely reflection of recent developments in the field of human rights litigation against transnational companies. It gives important insights into the options for bringing civil claims in a great variety of jurisdictions, especially, but not only, in Global South countries. The book will hopefully help many lawyers, as well as victims and survivors of human rights abuse, to assess the legal options available for demanding redress not only from state actors, but also from business enterprises that have contributed to the harm suffered. Policymakers around the world would do well to consider the different case studies when assessing the need for legislative reform in the area of business and human rights.



Rupert Skilbeck

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The right to a remedy is a crucial protection for victims of human rights violations – one which is guaranteed by international law. This right is essential not just for the individual survivor, but also to encourage a broader policy response to violations. For most survivors of core rights violations, the right to a remedy is honoured more in the breach than the observance, leaving a vast remedies deficit,

where victims do not obtain justice or reparation for what has happened to them.

Civil society groups have a critical role to play in bringing claims in such situations, and the legal community in particular is uniquely placed to support this work. Initiatives in this regard may include using criminal law, administrative claims, the constitutional courts, but also civil claims.

This study captures significant insights as to how civil claims can be used to progress remedies, including in situations where state agents have used torture, in actions for assault and unlawful detention. In the vast majority of legal systems, a direct claim for torture is not an option. This means that existing mechanisms have to be deployed with creativity and determination to establish the truth and ensure justice for victims.

There are a great many variations in how such claims can be brought in different countries. The comparative examples in this study help to illustrate the main problems that arise, suggest solutions, and will inspire others to take up the challenge to pursue justice for victims.



Lise Smit

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This Handbook has been thoughtfully compiled and is valuable in many practical respects.

The UN Guiding Principles on Business and Human Rights (UNGPs) states in its Commentary on Principle 26 that '[e]ffective judicial mechanisms are at the core of ensuring access to remedy'. In reality, the lack of access to remedy for corporate human rights harms remains as prominent as it did when the UNGPs were adopted in 2011. Indeed, the objective of strengthening access to remedy was one of the key reasons cited by stakeholders in support of introducing mandatory human rights due-diligence regulation, which is currently being taken forward at various domestic and EU legislative levels.

This Handbook outlines avenues and gaps that exist for victims of human rights violations to seek remedies against business enterprises in a variety of jurisdictions. It accordingly provides a rare picture of what our existing and evolving substantive law would offer us if claimants could get past the procedural barriers that so frequently prevent them from advancing to the merits of their claims. This knowledge is not only helpful for legal practitioners, but also for the purposes of designing legislation that bridges existing gaps in remedy, with human rights at its core.





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