

A HANDBOOK FOR PRACTITIONERS | ZAMBIA

Civil Liability for Human Rights Violations



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FREQUENTLY USED ABBREVIATIONS

EMA 2011	Environmental Management Act 2011
MMDA 2015	Mines and Mineral Development Act 2015
ZEMA	Zambia Environmental Management Agency

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ZAMBIA



The Zambian legal system is based on the English legal system where English common law and some statutory laws are recognised as part of Zambian law. In addition, Zambia has adopted a comprehensive strict liability regime for environmental harm, but few civil claims are commenced in the courts owing to multiple barriers to access to justice, and procedural challenges. The civil liability of a parent company for the wrongful acts or omissions of a subsidiary or independent contractor in a supply chain has not yet been considered. In the absence of Zambian authorities, the courts would follow relevant English jurisprudence.

INDICES

79/167

**Democracy Index
2021 Ranking**

51/100

**Freedom House
2022 Score**

117/180

**Transparency International
Corruption Index 2021 Ranking**

The focus jurisdictions within the scope of the project have been selected to maximise diversity and representativeness. They reflect both common law and civil law traditions, a wide geographic distribution, different political systems, and varying levels of socio-economic development. The latter factors may impact the overall efficacy of the law on civil remedies and respect for the rule of law as a value. To provide useful context about the jurisdiction, each report indicates the relevant ranking or score of that jurisdiction in three leading global indices on democracy and the rule of law: [Democracy Index](#) by the Economist Intelligence Unit (measures the state of democracy in 167 states and territories); [Freedom House](#) (rates people's access to political rights and civil liberties with 100 being an optimal score); and [Transparency International Corruption Index](#) (ranks 180 countries by their perceived levels of public sector corruption).



Introduction

1. Zambia is a common law jurisdiction. The Zambian legal system is based on the English legal system where English common law and some statutory laws are recognised as part of Zambian law.¹ In addition, practice and procedures in England apply in Zambia when local rules do not provide for any point of practice or procedure. Thus, the Supreme Court of Zambia applies the law and practice observed in the English Court of Appeal when local rules do not provide for any point or practice.
2. The Zambian Court of Appeal applies the English Supreme Court Practice 1999 (White Book) and the practice observed in the English Court of Appeal before 31 December 1999. Likewise, the default practice and procedure in the High Court of Zambia is also the English Supreme Court Practice 1999 (White Book). This report focuses on civil remedies for (i) assault or unlawful arrest and detention of persons, (ii) environmental harm, and (iii) harmful or unfair labour conditions. The modes of commencing civil claims in Zambia are outside the scope of this report. It briefly describes the above harms and the elements that must be proved to establish liability. Finally, it applies the law and elements to the Case Scenarios.

¹ The author of this report frequently refers to the principles and case law developed by the English courts. To access the project report on civil liability for human rights violations in England & Wales, please follow [this link](#).



General Questions



Q1

Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations, and individuals when one of the three defined harms results in human rights violations?

An overview of sources of law in Zambia

3. The [Constitution of Zambia](#)² provides for the sources of Zambian law. Article 7 states:

'The Laws of Zambia consist of–

- (a) this Constitution;
- (b) laws enacted by Parliament;
- (c) statutory instruments.
- (d) Zambian customary law, which is consistent with this Constitution; and
- (e) the laws and statutes which apply or extend to Zambia, as prescribed.'

4. Under article 7(e) of the Constitution, the [English Law \(Extent of Application\) Act](#)³ (Extent of Application Act) and the [British Acts Extension Act](#)⁴ (Extension Act) were enacted to prescribe the extent to which English law applies to Zambia. The Extent of Application Act s 2 as amended by the [English Law \(Extent of Application\) \(Amendment\) Act No 6 of 2011](#)⁵ provides that:

'Subject to the provisions of the Constitution of Zambia and to any other written law–

- (a) the common law; and
- (b) the doctrines of equity; and
- (c) the statutes which were in force in England on 17th August 1911 (being the commencement of the Northern Rhodesia Order in Council, 1911); and
- (d) any statutes of later date than that are mentioned in paragraph (c) in force in England, now applied to the Republic, or which hereafter shall be applied thereto by any Act or otherwise, shall be in force in the Republic.'

5. Chapter 2, part 2(3) of the [Interpretation and General Provisions Act](#)⁶ defines common law as the 'Common Law of England'. Therefore, **English common law**, doctrines of equity, the statutes which were in force in England on the 17 August 1911, and English statutes selected under the [Extension Act](#) s 2 are in force in Zambia subject to the [Constitution](#) and any other Zambian written law. Among the English statutes extended to Zambia is the Statute of Limitation Act 1939 of England.

6. In Zambia, the Constitution is the supreme law, and any other law that is inconsistent with it is void to the extent of the inconsistency. The case of *Mulundika and Others v The People*⁷ confirm this position. No law, including the English common law

2 Constitution of Zambia 1996 as amended by Act No 2 of 2016.

3 English Law (Extent of Application) Act 4 of 1963 as amended by Acts No 24 of 1973 and 1 of 1991 [Chapter 11 of the Laws of Zambia].

4 British Acts Extension Act [Chapter 10 of the Laws of Zambia].

5 [English Law \(Extent of Application\) \(Amendment\) Act No 6 of 2011](#).

6 Interpretation and General Provisions Act 1964 [Chapter 2 of the Laws of Zambia].

7 [\(1995-1997\) Z.R 20](#).

and statutes extended, can override the Constitution. Zambian written law takes precedence over English law. However, English law, such as the Statute of Limitation Act 1939 of England, binds Zambian courts in the absence of conflicting Zambian written law. The cases of *Ruth Kumbi v Robson Kaleb Zulu*⁸ and *Isaac Lungu v Mbewe Kalikeka*⁹ confirm the above position.

It is important to note that while Zambian courts are bound to apply principles of English common law because it is part of Zambian law, they are not bound by English court decisions. However, in Zambia, English court decisions are highly persuasive, particularly those from superior courts.

7. The cases of *Harton Ndove v National Education Company of Zambia Limited*,¹⁰ *Director of Public Prosecutions v Jack Lwenga*,¹¹ *Chuzi v The People*,¹² *Miller v Attorney General*,¹³ and *Bank of Zambia v Caroline Anderson and Another*,¹⁴ establish the above position. Zambian courts usually follow the persuasive English decisions unless there are factual distinctions or compelling reasons warranting departure. Moreover, Zambian courts consider subsequent English decisions and those from other common law. Again, they will only depart from them if there are factual distinctions or compelling reasons to depart from such decisions. The Supreme Court of Zambia established this position in *Nyimba Investment Limited v Nico Insurance Zambia Limited*.¹⁵

General observations

8. Matters taken to court are divided into two general categories, namely civil and criminal matters. Civil remedies are sought under civil matters. Civil claims and liability may be based on **common law**, **statutory law**, and **the Constitution**. Civil liability for the torts of assault, unlawful arrest and detention, negligence, nuisance, the rule of *Ryland v Fletcher*,¹⁶ trespass, and breach of statutory duty are established based on English common law principles. In addition, civil liability for environmental harm and harmful or unfair labour conditions is based on statutory law. Liability for unlawful arrest, detention and harmful or unfair labour conditions may be based on the Constitution. Some statutory law such as legislation relating to the environment and public health creates criminal liability. In general, Zambia law follows English law in awarding damages.

Assault or unlawful arrest and detention

9. Persons who have experienced an attack inflicting physical harm or unwanted physical contact, credible threat of injury, restricted movement or detention can bring a civil claim against public bodies, corporations or individuals based on the

⁸ SCZ Judgment No 19 of 2009.

⁹ SCZ Appeal No 114 of 2013.

¹⁰ (1980) Z.R. 184 (H.C.).

¹¹ (1983) Z.R. 37 (H.C.).

¹² (1967) Z.R. 100 (CA).

¹³ (1983) Z.R. 66.

¹⁴ (1993-1994) Z.R. 47 (SC).

¹⁵ Selected Judgment No 12 of 2017.

¹⁶ [1868] LR3 HC330.

torts of trespass against the person¹⁷ in the form of assault, battery, and false imprisonment. The common law tort of negligence is also available. Zambian courts apply English common law principles in determining these torts.

10. A claim of **assault** may be available when a person is caused to apprehend the immediate infliction of unlawful physical contact. The person causing such apprehension must have the capacity to carry out the intention.¹⁸
11. A claim of **battery** may be available when a person intentionally 'directly applies physical force on the other person'.¹⁹
12. A claim of **false imprisonment** may be available if a person 'unlawfully and either intentionally or recklessly restrains another person's movements from a particular place'.²⁰ The restraint must be total for any time, even if it's a short period. However, there is no basis for a claim of false imprisonment for a justifiable arrest or restraint based on 'reasonable and probable cause'.²¹
13. A claim of **negligence** may be available when a person breaches a duty of care owed to the claimant, resulting in the claimant suffering reasonably foreseeable actual harm. In [Faindani Daka v the Attorney General](#),²² a claim was made against the police for negligent use of force. The police officers approached four young men seen behind a house and informed them they were suspects in a theft case. The young men denied the allegation and one of them offered to take the police to his house, which was nearby, to check for the alleged stolen items. The police rejected his request, and one of the officers shot him dead. The Court held that the police officer owed the deceased a duty of care and was liable in negligence for discharging his firearm, which caused death.
14. The claim of **unjustified and excessive use of force** may be available when police officers or private security officers use force (for example, against unarmed people), resulting in death or injury. In [Albert Mwanaumo and 5 Others v NFC Mining Plc and 2 Others](#),²³ five employees of China Nonferrous Metal Industry (NFC) Mining Plc were shot during a protest concerning labour conditions. The mine police were overwhelmed during the protest and called in Zambian police for help. While a trade union officer addressed the protesting crowd, the head of the mine police shot into the crowd, killing one mine worker. Furthermore, he called and instructed a Chinese mine worker to shoot at a crowd that was gathered near China House, about a kilometre from the mine. The Chinese mineworker opened fire into the crowd, injuring four people who suffered gun wounds. The High Court found that the head of the mine police and the Chinese mine worker used unjustified and excessive force against an unarmed crowd and held that their action amounted to unlawful and wrongful shooting.
15. **Limitation of liability for law enforcement:** Under [Penal Code Act](#) s 78,²⁴ an authorised officer, a police officer, or any other person acting in aid of such authorised person or police officer is allowed to use force reasonably necessary

17 Zambian courts rely on learned authors of *Clerk and Lindsell on Torts and Winfield & Jolowicz on Tort* when deciding tort matters.

18 *Chief Chanje v Paul Zulu* (Appeal No 73/2008) [2012] ZMSC 23, citing *Stephen v Myers* [1830] 2 ALL ER 850.

19 *ibid.*

20 *ibid.*

21 [Attorney General and Others v Phiri \(Selected Judgment No 28 of 2017\)](#) [2017] ZMSC 63, 975-6.

22 [1991] ZMHC 2.

23 (2006/HK/385) [2011] ZMHC 1.

24 [The Penal Code Act](#) [Chapter 87 of the Laws of Zambia].

to disperse rioters and is not liable in civil proceedings for harm or death caused to any person by use of such force. Before such force can be used, the procedure under Penal Code Act s 77, which involves making a proclamation in the name of the President of the Republic of Zambia to command the group to disperse, must be followed.²⁵

16. A person unlawfully arrested or detained may bring an action based on **constitutional tort**. Article 13(4) of the [Constitution](#) provides that '[a]ny person who is unlawfully arrested or detained by any other person shall be entitled to compensation thereof from that other person.' Further, beating and other forms of battery may amount to torture or inhuman and degrading treatment prohibited under article 15 of the [Constitution](#) which provides that '[n]o person shall be subjected to torture, or to inhuman or degrading punishment or other like treatment'. Thus in [Attorney General v Felix Chris Kaleya](#),²⁶ the Supreme Court stated that '[t]here is no law which authorises the police to beat up members of the public whom they have detained for investigation, and any assault by police in these circumstances must necessarily be viewed as a serious matter'.

SPOTLIGHT: CASE STUDY

In [Attorney General and 3 Others v Masauso](#),²⁷ an accused man successfully claimed damages for assault, battery, and false imprisonment after police officers detained him on a theft charge. They only informed him of the charge against him the following day. Police officers beat him while he was in detention, resulting in his hospitalisation for a month. The Supreme Court held that the police officers' conduct amounted to the torture of a suspect in police custody, which courts will not condone under article 15 of the Constitution.

Environmental harm

17. A civil claim for environmental harms can be brought against public bodies, corporations and individuals based on statutory and common law causes of action. **Key statutes** include the Environmental Management Act 2011²⁸ (EMA 2011), the Petroleum (Exploration and Production) Act 2008²⁹ (Petroleum Act 2008) and the Mines and Mineral Development Act 2015³⁰ (MMDA 2015).

EMA 2011

18. Some provisions of the EMA 2011 may be the basis of civil claims when they have been or are likely to be violated.
19. EMA 2011 s 4 grants every person living in Zambia the right to a clean, safe, and healthy environment. This right includes access to various environmental elements for recreational, educational, health, spiritual, cultural, and economic purposes.

²⁵ *ibid.*

²⁶ (1982) Z.R. 1(S.C.) 4.

²⁷ SCZ Selected Judgment No 28 of 2017.

²⁸ [Environmental Management Act No 12 of 2011](#).

²⁹ [Petroleum \(Exploration and Production\) Act No 10 of 2008](#).

³⁰ [Mines and Minerals Development Act No 11 of 2015](#).

20. EMA 2011 s 4(3) establishes a right to bring a civil claim against a person whose act or omission is likely to cause harm to human health or the environment. Such an action can be brought by an individual, a group, or a non-governmental organisation on behalf of victims or the public. In [*Moses Lukwanda and 9 Others v Zambia Airforce Projects Limited and 7 Others*](#),³¹ eight headmen, a princess of the Soli people and the Chalimbana Headwater Conservation Trust Limited commenced a civil action against the Zambia Airforce Projects Limited (99 per cent owned by the government), four private investors, two government agencies and the Attorney General, challenging a building project in Lusaka Forest Reserve No 27 on the basis that it posed a threat to the Chalimbana River Catchment and the Greater Lusaka Aquifer system. They contended that the Basoli People and the general public had a right to access clean and uncontaminated water for consumption, and further that the plaintiffs and the general public had a right to a clean, safe and healthy environment under EMA 2011 s 4.
21. In granting the injunction, the Court confirmed that the right to a clean, safe, and healthy environment in terms of EMA 2011 s 4 'makes it abundantly clear that an aggrieved person may commence an action concerning any perceived disobedience to the provisions of the Act'.
22. EMA 2011 s 32 prohibits unlicensed waste discharge into the environment.
23. EMA 2011 s 35 creates a legal duty to report any unlawful discharge of contaminants or pollutants that may cause or are likely to cause adverse effects. A civil claim can be brought against anyone who violates this provision.
24. EMA 2011 s 38 establishes a legal duty on any person who discharges a pollutant or contaminant to take the most appropriate measure for minimising any adverse effects on the environment. A civil claim can be brought against anyone who breaches this legal duty.
25. EMA 2011 s 46 prohibits water pollution. A civil claim can be brought against a public body, a corporation, or an individual for discharging or applying any poisonous, toxic, eco-toxic, obnoxious, or obstructing matter, radiation, or other pollutants or permitting any person to dump or release such matter or contaminant into the aquatic environment in contravention of water pollution control standards established by the Zambia Environmental Management Agency (ZEMA).
26. Under EMA 2011 s 54, a civil claim can be brought against a public body, a corporation, or an individual for violating the prohibition on collecting, storing, treating, and disposing of waste in a manner that causes or creates a significant risk of causing an adverse effect.
27. Under EMA 2011 s 110(1), any person can sue for damages where an act or omission contravenes any provisions of the EMA 2011. Alternatively, a person may sue under EMA 2011 s 110(1) regarding an act or omission that is likely to have an 'adverse effect'. This position is different from negligence, which requires proof of actual harm or damage. The idea here is to protect the environment before it is too late.

31 CAZ/08/323/2019.

28. On the issue of proving damages, the Court of Appeal stated in [Moses Lukwanda and 9 Others v Zambia Airforce Projects Limited and 7 Others](#)³² that:

'In this regard I would state that disputes to do with damage to the environment reside in a hallowed place and should enjoy the principles that apply to loss of land where one does not have to prove irreparable injury. Section 4(1) of the Zambia Environmental Management Act No [12] of 2012 states that,

"Subject to the Constitution, every person living in Zambia has the right to a clean, safe and healthy environment" and section 6(a) says as follows,

"The following principles shall be applied in achieving the purpose of this Act: (a) the environment is the common heritage of present and future generations."

In my view one does not need to prove that damage to the environment will result in irreparable injury because once damaged, the environment, like land cannot be quite restored to its original state and the damage may result in untold suffering for generations.'

29. EMA 2011 s 2 defines 'adverse effect' as 'any harmful or detrimental effect on the environment, whether actual or potential, that-(a) impairs, or may impair, human health; and (b) results in, or may result in, an impairment of the ability of people and communities to provide for their health, safety, cultural and economic wellbeing'.
30. Thus, any act or omission which actually or potentially impairs human health, or which results in the impairment of the ability of people and communities to provide for their health, safety, culture, and economic wellbeing, would be subject to an action for damage under EMA 2011 s 110(1). In *Sepiso Stengu v Puma Energy Zambia PLC and ZEMA*,³³ Judge Sitali ruled that:

'The provisions of section 110(1) of [EMA 2011] are clear and unambiguous. Section 110(1) permits a person to sue for damages for an act or omission that contravenes the provisions of the act, which act or omission is likely to have an adverse effect whether or not the person or any other person has suffered or is likely to suffer any loss or harm as a result of the act or omission'.³⁴

The Petroleum Act 2008

31. According to the [Petroleum Act 2008](#) s 71(1), a petroleum exploration or petroleum development and production licence holder 'shall be strictly liable for any harm or damage caused by exploration or development and production operations and shall compensate any person to whom the harm or damage is caused'.
32. Under Petroleum Act s 71(2), 'liability shall attach to the person who directly contributes to the act or omission which results in the harm or damage'.
33. Under Petroleum Act s 71(3), '[w]here there is more than one person responsible for the harm or damage, the liability shall be joint and several'.

³² CAZ/08/323/2019 R33.

³³ (2012/HP/268).

³⁴ *ibid* R5.

34. According to Petroleum Act s 71(5), liability extends to:
- (a) any harm or damage caused directly or indirectly by the exploration and development and production operations to the economy or social cultural conditions;
 - (b) any negative impact on the livelihood or indigenous knowledge systems or technologies of any community;
 - (c) any disruption or damage to any production or agricultural system;
 - (d) any reduction in yields of the local community;
 - (e) any air, water or soil contamination or damage to biological diversity;
 - (f) any damage to the economy of an area or community; or
 - (g) any other consequential disorder.
35. On standing, Petroleum Act s 71(7) states that '[a]ny person, group of persons or any private or state organisation may bring a claim and seek redress in respect of the breach or threatened breach of any provision relating to damage to the environment, biological diversity, human and animal health or to socio-economic conditions– (a) in that person's or group of person's interest; (b) in the interest of or on behalf of, a person who if, for practical reasons, unable to institute such proceedings; (c) in the interests of, or on behalf of, a group or class of person whose interests are affected; (d) in the public interest; (e) in the interests of protecting the environment or biological diversity'.

MMDA 2015

36. The [MMDA 2015](#) is equally relevant to claims for environmental harms and has similar provisions to the Petroleum Act 2008.
37. According to MMDA s 87(1), a mining licence holder 'shall be strictly liable for any harm or damage caused by mining operations or mineral processing operations and shall compensate any person to whom harm or damage is caused'.
38. Under MMDA s 87(2), 'liability shall attach to the person who directly contributes to the act or omission which results in the harm or damage'. Therefore, a person who is not the holder of a mining licence can still be liable if they directly contribute to the act of the licence holder that causes harm or damage.
39. MMDA s 87(3) states that '[w]here there is more than one person responsible for the harm or damage, the liability shall be joint and several'.
40. Under MMDA s 87(5), liability extends to:
- (a) any harm or damage caused directly or indirectly by the mining or mineral processing operations to the economy or social cultural conditions;
 - (b) any negative impact on the livelihood or indigenous knowledge systems or technologies of any community;
 - (c) any disruption or damage to any production or agricultural system;
 - (d) any reduction in yields of the local community;
 - (e) any air, water or soil contamination or damage to biological diversity;
 - (f) any damage to the economy of an area or community; or
 - (g) any other consequential disorder.

41. MMDA s 87(7) grants the right to bring a civil claim to any person, group of persons or any private or state organisation, similar to that given under Petroleum Act s 71(7) (see [35] above).
42. Indeed, the provisions of the EMA 2011, Petroleum Act 2008, and the MMDA 2015 demonstrate that Zambia has an excellent strict liability law for environmental harm³⁵ that may make claims based on common law negligence unnecessary. However, few civil cases are brought as a result of the challenges associated with access to justice, as explained in [98] below.

Common law of negligence

43. Common law negligence can be the basis for a civil claim due to environmental harms in Zambia. Zambian negligence law is like the English common law. The English case of [Donoghue v Stevenson](#)³⁶ is still good law and is often the starting point in Zambia.

SPOTLIGHT: CASE STUDY

In [Mopani Copper Mines Plc v Miti \(Suing in his capacity as Administrator of the Estate of the late Geoffrey Elliam Miti\) & Others](#),³⁷ the courts considered the liabilities of Mopani Copper Mine Plc (MCM), then-sub subsidiary of Glencore Plc, for emitting sulphur dioxide from its smelter into the atmosphere, which Mrs Miti inhaled before dying from acute respiratory failure. The Supreme Court explained that '[t]o succeed in a claim for negligence, a litigant must show that a defendant owed him/her a duty of care; which duty of care was breached by the defendant resulting in harm to him or her; and the harm was reasonably foreseeable'.³⁸ The Supreme Court upheld the trial court's judgment that MCM owed a duty of care in the community where it operated its smelter, and it breached its duty of care when it emitted high volumes of sulphur dioxide into ambient air, which exceeded statutory limits, thereby resulting in Mrs Miti's death. The Court held MCP liable and awarded damages of one million Zambian Kwacha (approximately USD 57 011.45).

44. The Supreme Court has clarified, in the case of [Michael Chilufya Sata v Zambia Bottlers Limited](#),³⁹ that to establish a tort of negligence, the defendant's actions or omissions must result in actual damage to the plaintiff and that there is no right of action for nominal damages in negligence.
45. To be awarded damages for personal injury due to the defendant's negligence, the plaintiff must produce medical evidence to prove the injury. Zambian Courts cannot award damages for personal injury without medical evidence. The cases

³⁵ [Vedanta Resources Plc & Another v Lungowe and Others](#) (2019) UKSC 20; [2020] AC 1045 [63]; [Doris Chinsambwe and 65 Others v NFC Africa Mining](#) [2014] HK 374.

³⁶ (1932) AC 562.

³⁷ (Appeal 154 of 2016) [2020] ZMSC 79.

³⁸ *ibid* [9.5].

³⁹ SCZ No 1 of 2003.

of [Attorney General v Frank Moyo](#),⁴⁰ [Continental Restaurant and Casino Ltd v Arida Mercy Chula](#)⁴¹ and [Konkola Copper Mines and Others v James Nyansulu and Others](#)⁴² all confirm the need to produce medical evidence for personal injury claims.

46. This was demonstrated in [Konkola Copper Mines and Others v James Nyansulu and Others](#). Konkola Copper Mines (KCM), a subsidiary of Vedanta Resources Plc, discharged highly toxic effluents from its tailings dam into the water sources for the local community when the mine's tailings pipeline ruptured. The community consumed the contaminated water resulting in various illnesses. The High Court found KCM liable in common law negligence and breach of statutory duty for discharging the toxic effluent into the community's water sources and awarded global damages. On appeal, the Supreme Court upheld the trial Court's judgment on liability but set aside the award for damages because only 12 out of 2001 plaintiffs produced the required medical report to support their claim for personal injury. The Supreme Court directed that the matter be taken to the Registrar to assess damages for the 12 plaintiffs who produced medical evidence.
47. At common law, a person may be strictly liable under the tort in [Rylands v Fletcher](#)⁴³ when they bring anything on land that can cause harm if it escapes. The High Court confirmed this position in [James Nyansulu & 2000 Others v Konkola Copper Mines Plc & Others](#),⁴⁴ when it quoted Lord Blackburn's statement in [Ryland v Fletcher](#) that:

the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and he is prima facie answerable for all the damage which is the natural consequence of its escape.⁴⁵

Nuisance

48. Zambia applies the English common law principles of the tort of nuisance as established by [St Helen's Smelting Co v Tipping](#),⁴⁶ [Clerk and Lindell on Torts](#),⁴⁷ and [Winfield & Jolowicz on Tort](#).⁴⁸ This is confirmed in the cases of [Doris Chinsambwe and 65 Others v NFC Africa Mining](#)⁴⁹ and [National Hotels Development Corporation T/A Fairview Hotel v Ebrahim Motala](#).⁵⁰ Nuisance can be either public or private. A claim of **public nuisance** may be available when an act or omission causes unreasonable interference with the use and enjoyment of a right belonging to the claimant as a member of the public.⁵¹ To sue for public nuisance, the claimant must demonstrate special harm above what the other members of the public have suffered.
49. A claim of **private nuisance** may be available when an act or omission causes unreasonable interference with the use and enjoyment of the lawful occupant's land or their proprietary rights. To succeed in private nuisance, the claimant must have sufficient interest in the land, at least be occupying the land.⁵²

40 SCZ Judgment No 9 of 2007 [2007] ZMSC 09.

41 SCZ Judgment No 28 of 2000.

42 (Appeal 1 of 2012) [2015] ZMSC 33.

43 [1868] L.R.3 H.C.330; see also Percy Henry Winfield, JA Jolowicz and WVH Rogers, *Winfield & Jolowicz on Tort (Sweet & Maxwell, 16th edn 2002)* 549.

44 (2007/HP/1286) [2011] ZMHC 114.

45 *ibid*]13.

46 [1865] UKHL J81.

47 See (n 17).

48 See (n 17).

49 [2014] HK 374.

50 SCZ Judgment 10 of 2002 [2002] ZMSC 129.

51 *ibid*.

52 Winfield et al (n 43); *Doris Chinsambwe* (n 35).

Harmful or unfair labour conditions

50. A claim for harmful or unfair labour conditions can be brought against public bodies, corporations and individuals under common or statutory law. An employer owes the employee a duty of care under both common and statutory law to take reasonable steps to ensure the employee's health, safe working environment and well-being. In [Lafarge Cement PLC vs Patrick Mandona](#),⁵³ the Supreme Court advised that employment creates a legal relationship from which certain rights and duties flow and that 'a breach of a legal duty owed by one to another would entitle the innocent party to legal relief'.⁵⁴

Statutory causes of action

Workers' Compensation Act No 10 of 1999

51. Under the Workers' Compensation Act 1999 s 6,⁵⁵ a civil claim can be brought against an employer when an injury is caused or a disease is contracted by a worker due to negligence, breach of statutory duty or other wrongful act or omission of the employer. A claim can be brought against an employer when the injury is caused, or disease contracted by a worker due to the negligence, breach of statutory duty, or other wrongful act or omission of any person for whose act or default the employer is responsible for.

Occupational Health and Safety Act No 36 of 2010

52. The Occupational Health and Safety Act 2010 ss 6(1) and (2)(a)⁵⁶ create a legal duty for an employer to 'ensure, so far as is reasonably practicable, the health, safety and welfare of the employees of the employer at a workplace' and to 'provide plant and systems of work that are, so far as is reasonably practicable, safe and without any risks to human health and maintain them in that condition'. In [China State Construction and Engineering Corporation Zambia v Mwape Kaimba](#),⁵⁷ the respondent, while working at the appellant's construction site was struck on the head by a tower crane operated by the appellant's employee, resulting in injuries. The Court of Appeal held that 'it is the employer's duty to ensure that the working environment for its employees is secure and safe'⁵⁸ and that providing protective clothing would not discharge the employer from the obligation to adhere to legal requirements.⁵⁹

53. Further, [Occupational Health and Safety Act 2010](#) s 17(1)(a) imposes a legal duty on an employer at the workplace to 'take reasonable care of the employee's own health and safety and that of others who may be affected by the employee's acts or omission at the workplace'. A breach of the above duty by the employer can be a basis for civil action.

53 Selected Judgment No 15 of 2017 [2017] ZMSC 35.

54 *ibid* 518.

55 [Workers' Compensation Act No 10 of 1999](#).

56 [Occupational Health and Safety Act No 36 of 2010](#).

57 Appeal No 64/2019.

58 *ibid* [45].

59 *ibid* [43].

[Constitution of Zambia](#)

54. Article 14 of the [Constitution](#) prohibits slavery and forced labour, stating '[n]o person shall be held in slavery or servitude'⁶⁰ and '[n]o person shall be required to perform forced labour'.⁶¹
55. Further, article 24 prohibits the exploitation of persons under the age of fifteen years, stating that 'no young person shall be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development'.⁶²
56. Therefore, a person subjected to slavery, forced labour, or child labour may make a civil claim by filing a petition under the Protection of Fundamental Rights Regulations 1969, as read with article 28 of the Constitution, against anyone who violates articles 14 and 24 of the [Constitution](#).
57. **Note:** The [Employment Code](#) No 3 of 2019 prohibits the employment of children under the circumstances listed in ss 81, 82, and 84, and creates criminal sanctions for violations of those proceedings. No case has been found where an aggrieved person instituted civil proceedings.

Common law causes of action

58. An employee who suffers injury or contracts disease due to the employer's negligence can bring a civil action for damages against the employer for such failure. Such action is independent of the proceedings under the [Workers' Compensation Act 1999](#) or any other statute (see [51]-[53] above).
59. In [China State Construction and Engineering Corporation Zambia v Mwape Kaimba](#) described in [52] above, the Court of Appeal stated that 'it is the view of this Court that section 6 of the Workers' Compensation Act ... does not proscribe a claimant from bringing a civil action against the employer independently'.⁶³
60. In [Mwamba v Metal Fabricators of Zambia Ltd](#),⁶⁴ the plaintiff sought aggravated damages for personal injuries sustained from electrocution while working in the defendant's substation. He claimed he suffered the injuries because the defendant failed to provide a safe working environment, competent workmates, and a safe working system. The Court held that the defendant breached its common law duty by failing to ensure a safe working system. The Court also held that the defendant ought to have ensured its work layout was done in a manner that eliminated the danger. Further, the Court reiterated that employers are liable for the damage due to the fault or negligence of their employees caused in the course of their employment.

60 Constitution, art 14(1).

61 *ibid*, art 14(2).

62 *ibid*, art 24(1).

63 *China State Construction* (n 57) [57].

64 (2005/HN/ 279); [2011] ZMHC 109.



What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

Assault, battery, and false imprisonment

61. **Assault:** an intentional or reckless act that causes someone to be put in fear of immediate physical harm ([Stephens v Myers](#),⁶⁵ [Fowler v Lanring](#),⁶⁶ [Turberville v Savage](#),⁶⁷ and [Chief Chanje v Zulu](#)⁶⁸).

Elements to be established:

- A reasonable apprehension of harm;
- The defendant's act must be intentional;
- Immediate apprehension or fear; and
- Reasonable belief that the defendant has present capacity to effect the harm.

62. **Battery:** the intentional or reckless application of physical force to someone without their consent or lawful justification ([Pursell v Hone](#),⁶⁹ [Scott v Shepherd](#),⁷⁰ [Chief Chanje v Zulu](#),⁷¹ [Attorney General and Others v Masauso Phiri](#),⁷² and [Attorney General v Felix Chris Kaleya](#)⁷³).

Elements to be established:

- Use of direct and immediate force: The amount of force used is immaterial; the least touching of another in anger is considered a battery.
- Intention: The plaintiff must prove the use of force was intentional. An involuntary act cannot be considered a battery.
- Absence of actual or implied consent: There is no battery if the force used is permitted or authorised under law⁷⁴ or if the touch is acceptable in everyday life.⁷⁵

63. **False imprisonment:** the unlawful restriction of a person's freedom of movement from a particular place ([Bird v Jones](#),⁷⁶ [Attorney General and Others v Masauso Phiri](#),⁷⁷ [Attorney General v Kakoma](#),⁷⁸ [Gaynor v Cowley](#),⁷⁹ [Daniel Chizoka Mbandangoma v The Attorney General](#),⁸⁰ [Mubita Mubanga v The Attorney General](#),⁸¹ [Daniel Nyondo v ZESCO Limited and The Attorney General](#),⁸² [Richman Chulu v Monarch \(Z\) Limited](#),⁸³ and article 13(4) of the [Constitution](#)).

65 (1830) 172 ER 735.

66 (1959) 1 QB 42.

67 (1669) 1 Mod Rep 3.

68 [Chief Chanje](#) (n 18).

69 (1898) 3N and P 564.

70 96 Eng. Rep. 525 (K.B. 1773).

71 [Chief Chanje](#) (n 18).

72 [Masauso Phiri](#) (n 21).

73 [Felix Chris Kaleya](#) (n 26).

74 [Wilson v Pringle](#) [1986] 2 All ER 440.

75 [Collins v Wilcock](#) [1984] 1 WLR 1172.

76 7 Ad. & El. (N.S.) 742, 115 Eng. Rep. 688 (1845).

77 [Masauso Phiri](#) (n 21).

78 (1975) Z.R. 212 (S.C.).

79 (1971) Z.R. 50.

80 (1979) Z.R. 45.

81 (1979) Z.R.234.

82 2009/HK/642.

83 (1983) Z.R. 234.

Elements to be established:

- The total restraint of the liberty of a person: There must be a total restraint and not a partial one. If the victim/plaintiff has ways of escape open to them, it is not false imprisonment.
- The restraint must be unlawful: The period for which the detention continues is immaterial. But it must not be lawful.

Environmental harm

Claims under EMA 2011

64. Claims under EMA 2011 ss 4(3) and 110: Threats to the right to a clean, safe, and healthy environment (see [20] above).

Elements to be established:

- A person's right to a clean, safe, and healthy environment is threatened or likely to be threatened.
- The act or omission.
- Causation (likely to cause harm to human health or the environment).

65. Claims under EMA 2011 ss 35 and 110: failure to report to the ZEMA the discharges of a contaminant or pollutant into the environment (see [23] above).

Elements to be established:

- Discharge of a contaminant or pollutant into the environment.
- Unlawful cause of an adverse effect or the likelihood of causing an adverse effect.
- Failure to report to ZEMA.

66. Claims under EMA 2011 ss 54 and 110: Collecting, storing, treating, and disposing of waste in a manner that causes or creates a significant risk of causing an adverse effect (see [26] above).

Elements to be established:

- The collection, transportation, sorting, recovering, treating, storing, disposing of, or other management of waste.
- In a manner that results in an adverse effect or creates a significant risk of an adverse effect occurring.

67. Claims under EMA 2011 ss 46 and 110: Discharging or applying any poisonous, toxic, eco-toxic, obnoxious, obstructing matter, or pollutant into the aquatic environment (see [25] above).

Elements to be established:

- The discharge of or permitting of someone to discharge any poisonous, toxic, eco-toxic, obnoxious, or obstructing matter or pollutant or permitting any person to dump or discharge such matter or pollutant into the aquatic environment.
- In contravention of water pollution control standards established by ZEMA under EMA 2011 s 46.

Claims under MMDA 2015

68. Claims under MMDA 2015 s 87(1): A mining licence holder causing harm or damage by mining or mineral processing operations (see [37] above).

Elements to be established:

- The holder of a mining licence.
- Strict liability (*mens rea*).
- Direct or indirect causation by mining operations/mineral processing.
- Any harm or damage.

69. Claims under MMDA 2015 ss 87(5)(a)-(g): The mining licence holder causes 'harm or damage caused directly or indirectly ... to the economy or social cultural conditions ... negative impact on livelihood ... disruption or damage to any production, or agricultural system reduction in yields of the local community ... air, water or soil contamination... damage to biological diversity, damage to the economy of an area or community... consequential disorder' through mining operations or mineral processing operations (see [40] above).

Elements to be established:

- The holder of a mining licence.
- Strict liability (*mens rea*).
- Direct or indirect causation by mining operations/mineral processing.
- Any of the following harms or damage: (a) harm or damage caused directly or indirectly to the economy or social cultural conditions; (b) any negative impact on livelihood' (c) disruption or damage to any production or agricultural system; (d) reduction in yields of the local community; (e) air, water or soil contamination or damage to biological diversity; and (f) damage to the economy of an area or consequential community disorder.

Claims under Petroleum Act 2008

70. Petroleum Act 2008 s 71(1): A petroleum exploration or petroleum development and production licence holder is strictly liable for any harm or damage caused by exploration or development and production operations (see [31] above).

Elements to be established:

- The holder of a petroleum exploration or development and production licence.
- Strict liability (*mens rea*).
- Direct or indirect causation by exploration or development and production operations.
- Any harm or damage.

71. Petroleum Act 2008 s 71(5)(a)-(g): The holder of a petroleum exploration or petroleum development and production licence, through exploration or development and production operations, causes 'harm or damage caused directly or indirectly ... to the economy or social cultural conditions ... negative impact on livelihood ... disruption or damage to any production or agricultural system ... reduction in yields of the local community ... air, water or soil contamination ... damage to biological diversity, damage to the economy of an area or community ... consequential disorder' (see [34] above).

Elements to be established:

- The holder of a petroleum exploration or development and production licence.
- Elements 2- 4 are the same as set out in [68]-[69] above under MMDA 2015 s 87(1).

Negligence under common law

72. See *Donoghue v Stevenson*,⁸⁴ *Mithi v Mopani Copper Mines Plc* and the *Attorney General*,⁸⁵ [Mopani Copper Mines Plc v Miti \(Suing in his capacity as Administrator of The Estate of The late Geoffrey Eiliam Miti\) & Others](#),⁸⁶ and *Attorney General v George Mwanza and Whiteson Mwanza*,⁸⁷ and *Mwansa v Zambia Breweries PLC*.⁸⁸

Elements to be established:

- The defendant owed the plaintiff a duty of care.
- The defendant breached its duty of care to the plaintiff.
- The defendant's failure caused the plaintiff harm.
- The harm suffered was foreseeable.

73. **Note:** In *Mopani Copper Mines Plc v Miti*, in which Mrs Miti died from acute respiratory failure after inhaling toxic fumes emitted by the Mopani smelter, the appellant invited the Court to apply the test established by the UK House of Lords in *Caparo Industries plc v Dickman*⁸⁹ in which the claimant must prove: (i) that harm was reasonably foreseeable; (ii) that there was a relationship of proximity; and (iii) that it is fair, just, and reasonable to impose a duty of care. However, the Zambian Supreme Court did not apply this test. No case has been found where duty was established based on the *Caparo* three-stage test. However, in *Perfect Pools Limited v Barclays Bank Limited*,⁹⁰ the High Court was referred to and applied the *Caparo* three-stage test and found, at J20, that it 'would not be fair, just and reasonable [to] impose a duty of care on the defendant'.

Tort in *Rylands v Fletcher*

74. See *James Nyansulu & 2000 Others v Konkola Copper Mines Plc & Others*.⁹¹

Elements to be established:

- Strict liability.⁹²
- The nature of the dangerous thing.⁹³
- Escape.
- Reasonably foreseeable damage.

84 *Donoghue* (n 36).

85 *Mithi v Mopani Cooper Mines Plc and the Attorney General* (2014/HB/028) unreported.

86 (Appeal 154 of 2016) [2020] ZMSC 79.s

87 Selected Judgment No 38 of 2017.

88 (Appeal 153 of 2014) [2017] ZMSC 42.

89 (1990) 2 AC 605.

90 2013/HP/1388.

91 *James Nyansulu & 2000 Others* (n 44).

92 The Court found in *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1993] ABCLR 12/09 that strict liability in *Rylands v Fletcher* must be reasonably foreseeable.

93 Factual inquiry of whether '(1) 'the condition of 'escape' from the land of something likely to do mischief if it escapes,' and (2) 'the condition of 'non-natural' use of the land". Winfield et al (n 43) 554-555.

Nuisance

75. See *St Helen's Smelting Co v Tipping*,⁹⁴ and *Doris Chinsambwe and 65 Others v NFC Africa Mining*,⁹⁵ and Public Health Act 1930 s 64.

Elements to be established:

- Unreasonable interference with the use and enjoyment.
- Of the lawful occupant's land or their proprietary rights.

Harmful or unfair labour conditions

Claims under [Workers' Compensation Act 1999](#)

76. Workers' Compensation Act 1999 s 6: Injury caused or disease contracted by a worker due to the negligence, breach of statutory duty or other wrongful act or omission of the employer or of any person for whose act or default the employer is responsible (see [51] above).

Elements to be established:

- The employer-employee relationship creating a statutory duty of care in favour of the employee.
- A breach of statutory duty to take reasonable steps reasonably possible to ensure the employee's health, safe working environment and well-being.
- Injury caused or disease contracted by a worker due to the breach of duty.

Claims under [Occupational Health and Safety Act 2010](#)

77. Occupational Health and Safety Act s 6(1) and [China State Construction and Engineering Corporation Zambia v Mwape Kaimba](#):⁹⁶ The employer's failure to 'ensure, so far as is reasonably practicable, the health, safety and welfare of the employer's employees at a workplace' (see [52] above).

Elements to be established:

- The employer-employee relationship creating a statutory duty of care in favour of an employee.
- A breach of statutory duty through failure to ensure, as far as is reasonably practicable, the health, safety, and welfare of the employer's employees at a workplace.
- Injury suffered by an employee due to the breach of duty.

78. Occupational Health and Safety Act 2010 s 6(2)(a) and [China State Construction and Engineering Corporation Zambia v Mwape Kaimba](#):⁹⁷ The employer's failure to provide plant and systems of work that are, as far as is reasonably practicable, safe and without any risks to human health and maintain them in that condition (see [52] above).

94 [1865] UKHL J81.

95 [2014] HK 374.

96 Appeal No 64/2019.

97 *ibid.*

Elements to be established:

- The employer-employee relationship creating a statutory duty of care in favour of an employee.
 - A breach of statutory duty through failure to provide plant and safe systems of work and without any risks to human health and maintain them in that condition.
 - Injury suffered by an employee due to the breach of duty.
79. Occupational Health and Safety Act 2010 s 17(1)(a); [China State Construction and Engineering Corporation Zambia v Mwape Kaimba](#):⁹⁸ Concerning the employer's failure to take reasonable care of the employee's health and safety and that of others who may be affected by the employee's acts or omission at the workplace (see [53] above).

Elements to be established:

- The employer-employee relationship creating a statutory duty of care in favour of an employee.
- A breach of statutory duty through failure to take reasonable care of the employee's health and safety and that of others who may be affected by the employee's acts or omission at the workplace.
- Injury suffered by an employee or another person at the workplace due to the breach of duty.

Claims under the [Constitution of Zambia \(Amendment\) Act 2016](#)

80. The Constitution article 14(2): Concerning the requiring, engaging, or subjecting of a person to perform forced labour (see [54] above).

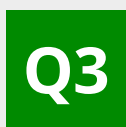
Elements to be established:

- The identity of the person.
 - The requirement, engagement, or subjection of another person to perform forced labour.
81. The Constitution article 24: Concerning a young person employed, caused, or permitted to engage in any occupation or employment prejudicial to the young person's health or education or interferes with a young person's physical, mental, or moral development (see [55] above).

Elements to be established:

- A person under the age of fifteen years.
- Employed, caused, or permitted to engage in any occupation or employment.
- Occupation or employment that is prejudicial to a young person's health or education or that interferes with a young person's physical, mental, or moral development.

98 *ibid.*



Does the law of your jurisdiction recognise civil liabilities for complicity or accessory conduct (similar concept) concerning the three defined harms?

82. In Zambia, public bodies, corporations, and individuals may face civil liability if their conduct contributes to harm suffered by the victims. They may also be held vicariously liable.
83. The Law Reform (Miscellaneous Provisions) Act s 9,⁹⁹ permits proceedings against and contribution between joint and several tortfeasors. The cases of *Attorney General v Kapwepwe*¹⁰⁰ and *Duncan Sichula and Muzi Transport Freight and Forwarding Limited v Catherine Mulenga Chewe (Married Woman)*¹⁰¹ confirm this position.
84. Under Petroleum Act 2008 s 71(2) and MMDA 2015 s 87(2), 'liability shall attach to the person who directly contributes to the act or omission which results in the harm or damage'. This means that persons other than licence holders may be held liable for their direct contribution to the harm the licence holders' activities cause.
85. Under rules of **vicarious liability**, a party may be held responsible for the negligence or tortious acts of another. This is common when a master/servant, employer/employee, or principal/agent relationship exists. In *Giorgio Fraschini and Motor Parts Industries v Attorney General*,¹⁰² the Supreme Court held that an employer is liable for the negligent acts of its employee committed in the course of employment even if the employee acted in disobedience of the employers' instruction. Similarly, in *Industrial Gases Limited v Waraf Transport Limited and Magehaid*,¹⁰³ the Supreme Court held that '[a]s long as the wrong is committed by an employee in the course of his employment, the general rule is that the employer will be vicariously liable'. Thus, in *Albert Mwanaumo and 5 Others v NFC Mining Plc and 2 Others*,¹⁰⁴ where five employees of China Nonferrous Metal Industry (NFC) were shot by and at the instruction of the mine police during a protest, NFC was held vicariously liable for the unlawful and wrongful shooting.
86. Vicarious liability does not depend on whether the servant or agent serves under a contract of service or as an independent contractor. In *Dr Sultanova Zumrad v Kasamba Kalinda and Another*,¹⁰⁵ involving the death of a baby during delivery due to poor communication between a visiting consultant doctor and the Teba Hospital nurses, the Supreme Court held that 'Teba Hospital was vicariously liable for the acts or omissions of the appellant (if any) and its servants or agents, committed in the course of their duties, whether they were independent contractors or servants under a contract of service'.¹⁰⁶

99 [Law Reform \(Miscellaneous Provisions\) Act](#) [Chapter 74 of the Laws of Zambia].

100 (1974) Z.R. 207 (S.C.) [1974] ZMSC 23.

101 (SCZ Judgment No 8 of 2000) [2000] ZMSC 10.

102 (1984) Z.R. 29 (S.C.).

103 SCZ Judgment No 2 of 1997.

104 *Albert Mwanaumo* (n 23).

105 (Appeal 201 of 2015) [2018] ZMSC 310.

106 *ibid*] 374-375

Q4

When can a parent company be held liable under civil liability law for the wrongful acts and/or omission of a subsidiary or an independent contractor in the supply chain?

Currently, no Zambian authority guides on a parent company's liability for the wrongful acts and/or omissions of a subsidiary or an independent contractor in the supply chain. All that exists are cases dealing with piercing the corporate veil. Therefore, Zambian courts would follow relevant English jurisprudence on parent company responsibility for the wrongful acts or omissions of their subsidiaries or independent contractors.

87. **Piercing the corporate veil** 'entails overlooking the veil of incorporation and facing the persons (natural or judicial) who own the corporate entity'.¹⁰⁷ The corporate veil may be pierced based on statutory law or common law in Zambia.
88. Several statutes provide instances when the corporate veil may be pierced. For example, the [Corporate Insolvency Act](#) No 9 of 2017 s 175¹⁰⁸ permits the court to hold liable a person who knowingly uses the corporation's business for a fraudulent purpose or with an intent to defraud creditors.
89. Under common law, Zambian courts may pierce the corporate veil if satisfied that (1) the corporate veil is used to conceal the actual situation of the corporation, (2) the corporate veil is used to avoid existing obligations, (3) the corporate veil is used for an improper or fraudulent purpose, and (4) that other methods of recovery are not available.

SPOTLIGHT: CASE STUDY

The principles above were applied in the case of [Madison Investment, Property and Advisory Company Limited v Kanyinji](#),¹⁰⁹ in which the respondent was employed as a managing director for Perfect Milling Company Limited (Perfect Limited), which was owned by Madison Investment Property and Advisory Company Limited (Madison), both companies being part of the Madison group of companies. In this case, although the Court of Appeal found that Madison indicated its assumption of responsibility to the respondent for its subsidiary and was involved in the management of its subsidiary, Madison did not do much to create a relationship with the respondent. The Court of Appeal applied the principles developed in the English cases of [Prest v Petrodel Resources Ltd](#)¹¹⁰ and [Re Southard Ltd](#).¹¹¹ It thus held that '[o]wnership and control of a company are not, of themselves sufficient to justify the piercing of the cooperate veil'.

¹⁰⁷ [Madison Investment, Property and Advisory Company Limited v Kanyinji](#) (Appeal 10 of 2016) [2018] ZMSC 348, 1747.

¹⁰⁸ Corporate Insolvency Act No 9 of 2017.

¹⁰⁹ [Madison](#) (n 107), 1780.

¹¹⁰ (2013) UK SC 34.

¹¹¹ (1979) 1 WLR 1189.

Liability of a parent company under English common law

90. In the absence of Zambian authority on the liability of a parent company for their subsidiary's wrongful acts and/or omissions, Zambian courts would follow relevant English case law, particularly those from appellate courts. Thus, a Zambian court would most probably follow the recent decision of the Supreme Court of England and Wales in *Vedanta Resources Plc & the Another v Lungowe and Others*,¹¹² and *Okpabi and Others v Royal Dutch Shell Plc and Another*¹¹³ on the liability of the parent company for activities of its subsidiary.

91. In *Vedanta Resources Plc*, Lord Briggs guided that 'the liability of parent companies concerning the activities of their subsidiaries is not, of itself, a distinct category of liability in common law negligence' and that whether a duty of care arises 'depends on the extent to which, and the way in which, the parent availed itself of the opportunity to take over, intervene in, control, supervise or advise the management of the relevant operations (including land use) of the subsidiary'.¹¹⁴

92. The UK Supreme Court reaffirmed the above position in *Okpabi* where Lord Hamblen stated:

*'As stated in Vedanta, the liability of parent companies in relation to the activities of their subsidiaries is not, of itself, a distinct category of liability in common law negligence (para 49). The general principles which determine such liability "are not novel at all" (para 54). Such a case does not involve "the assertion for the first time, of a novel and controversial new category of case for the recognition of a common law duty of care". That means that it "requires[s] no added level of rigorous analysis beyond that appropriate to any summary judgment application in a relatively complex case" (para 60)'.*¹¹⁵

93. In the *Vedanta* and *Okpabi* cases, the UK Supreme Court set out the following four non-exhaustive routes through which a duty of care may arise in the context of the parent and subsidiary company relationships:

- Where the parent company takes over the management or joint management of the relevant activities of its subsidiary,
- Where the parent company provides relevant defective advice and/or promulgates defective group-wide policies which were implemented as of course, by its subsidiary,
- Where the parent promulgates relevant group-wide policies and takes active steps to ensure their implementation by its subsidiary, and
- Where the parent holds itself out as exercising a particular degree of supervision and control.

94. Depending on the facts, a Zambian court may consider any of the above non-exhaustive routes to establish a duty of care against a parent company for the activities of its subsidiary and consequently hold the parent liable for its subsidiary's wrongful acts and/or omissions.

95. **Note:** The *Vedanta* case is highly relevant because Vedanta Resources Plc's subsidiary, Konkola Copper Mine (KCM) was held liable in *Konkola Copper Mines and Others v James Nyansulu and Others* as mentioned earlier in [46]. However, only 12 out of

112 *Vedanta* (n 35).

113 (2021) UKSC 3.

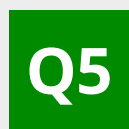
114 *Vedanta* (n 35) [49].

115 *Okpabi* (n 113) [151].

2001 plaintiffs were entitled to damages because the rest did not provide medical evidence to support their claims for personal injury as required under Zambia law. Having succeeded on liability, the plaintiffs would have probably received different remedies if they relied on various provisions of the EMA 2011 and MMDA s 123¹¹⁶ for various damages or injuries other than personal injury.

Liability of parent company for an independent contractor in the supply chain

96. In the absence of Zambian authority on parent company liability for wrongful acts or omissions of an independent contractor in the supply chain relationship, a Zambian court may follow English jurisprudence relating to the developing law of negligence involving third parties, particularly the exception to the general rule that a defendant will not be liable in tort for injury resulting from a third party's intervention. For example, in *Hamida Begum (on behalf of MD Khalia MD Khalil Mollah) v Maran (UK) Limited*,¹¹⁷ Lord Justice Coulson referred to *Clerk and Lindsell on Torts*, 23rd edition, at [7-60], which states that the exception exists 'where the defendant is responsible for the state of danger which may have been exploited by the third party'. Thus, it might be arguable that an independent contractor in the supply chain may be held liable for actively creating a situation of danger, thereby knowingly exposing those connected to the situation (such as workers in the supply chain) to significant danger due to their association with the situation.



What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction?

97. The following remedies are available in Zambia to victims of the three defined harms.

Assault, battery, and false imprisonment

- Compensation for damages.

Environmental harm

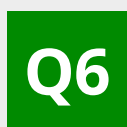
- Compensation for damages / injury to persons.
- Order of remediation, rehabilitation, reinstatement or clean-up of the atmosphere, soil, or water (EMA s 4(4)).
- Cost of reinstatement, rehabilitation, or clean-up measures (Petroleum Act 2008 s 71(4); MMDA 2015 s 87(4)).
- Injunction.
- Relocation of or provision of alternative land to affected communities.
- Compensation for (a) any costs and medical expenses; (b) for any disability suffered; and (c) for loss of life (Petroleum Act 2008 s 71(9); MMDA 2015 s 87(9)).
- Any other appropriate order that would suit the end of justice under the circumstances.

¹¹⁶ [Mines and Mineral Development Act No.11 of 2008.](#)

¹¹⁷ [2021] EWCA Civ 326.

Harmful or unfair labour conditions

- Monetary compensation.
- Medical compensation.
- Statutory remedies under the Workers' Compensation Act No 10 of 1999.
- Damages for pain and suffering, loss of amenities, permanent disability, and loss of future prospective earnings.
- Declaratory order, cessation order and compensation for forced or child labour (article 28 of the Constitution).



What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

98. Despite legal, practical, and financial challenges for commencing civil claims (particularly mass tort claims), civil remedies remain a favourable means of seeking redress for assault, unlawful arrest and detention, environmental harm, harmful or unfair labour conditions and violation of human rights. Civil proceedings are party-driven, and courts are empowered to award remedies meeting the demands of justice. The compensation for damages goes to the claimants.

Advantages

- The court can issue declaratory judgments confirming and expanding existing rights.
- Courts can grant injunctions to prevent further violations. In the case of *Moses Lukwanda and 9 Others v Zambia Airforce Projects Limited and 7 Others*,¹¹⁸ an injunction was used to protect the environment.
- Judgments are recognised and enforceable. This is different from other non-judicial mechanisms that may require the commencement of civil action to enforce them.
- Accessibility of the judicial system: indigent persons can litigate in person (ideal for non-complex matters).
- Civil procedure is not overly complicated, and court filing fees are affordable.
- Civil claims properly developed as public interest cases can archive broader impact beyond the immediate concerns of the victims, including developing the law through courts.
- Courts can grant various orders to suit the ends of justice, including compensation.
- EMA 2015 s 110(4) prohibits adverse costs.
- Environment-related statutes contain strict liability provisions for environmental damage, thus making it easier to prosecute.

Disadvantages

- Limitation periods can make it impossible to commence civil proceedings.
- Environmental matters are costly due to the evidence required. Poor communities would unlikely afford the funding required to conduct environmental examinations and produce expert evidence.
- The requirement for medical evidence in personal injury claims makes seeking a remedy for personal injury difficult. *Konkola Copper Mines and Others V James Nyansulu and Others*¹¹⁹ is a good example.
- Litigating for environmental harm is difficult because the information needed to prove the case is often held by the defendant or regulator and not accessible to the victims.
- Lack of access to legal representation for complex mass tort cases due to costs and funding challenges.
- Illiterate victims may not know about their rights and how to enforce them.
- Due to delays, even if the matter successfully commenced, it might be challenging to maintain over several years.
- Courts above the High Court level are not easily accessible to communities in remote areas as these courts are only located in provincial towns, which may be far away from impacted communities.



Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

99. Under Zambian procedural rules, claimants can bring a civil claim in Zambia against foreign-based¹²⁰ defendants if the matter falls within the categories listed under [High Court Rules](#) Rule 15 Order 10. Among others, a foreign defendant can be sued if the action is founded on a tort committed within Zambia or when the foreign defendant is a necessary or proper party to a civil claim properly brought against another person duly served within Zambia.
100. To bring a civil claim against a **foreign defendant**, the claimants must first prepare the originating court process and then apply to the High Court for leave to issue the originating process for service outside Zambia. A draft originating process must be attached to the application for leave to issue the originating process for service outside Zambia. When the High Court grants leave, the claimants must issue the originating process. Once issued, the claimant must then apply for leave to serve outside Zambia and proceed to serve the originating process after obtaining leave to serve outside Zambia. This position is confirmed in the cases of *Leopold Walford (Z) Limited v Unifreight*,¹²¹ *John Santos Velasquez Incaquihue and Anor v Burga and Another*,¹²² *J&M Advocates (Suing as a firm) v Glencore International AG*¹²³ and *Phillip K. R. Pascall, Arthur Mathias Pascall, Clive Newall, Martin R. Rowley, First Quantum Minerals Limited and FQM Finance Limited v ZCCM Investments Holdings Plc.*¹²⁴

¹¹⁹ (Appeal 1 of 2012) [2015] ZMSC 33.

¹²⁰ The High Court Act [Chapter 27 of the Laws of Zambia].

¹²¹ (SCZ Judgment No 23 of 1985) [1985] ZMSC 20.

¹²² (2017/HKC/ 4) [2017] ZMHC 357.

¹²³ (2019/ HP /1785) [2020] ZMHC 292.

¹²⁴ Court of Appeal No 92 of 2018.



Do you have any recommendations for further research on civil liability for human rights violations in your jurisdiction?

101. The following sources are recommended for further research and consultation:

- The Zambian Judiciary website: <https://judiciaryzambia.com/>
- Parliament of Zambia: <https://www.parliament.gov.zm/>
- Employment and Labour Laws and Regulations Zambia 2022 (Global Legal Group 2022): <https://iclg.com/>
- Litigation and Dispute Resolution Laws and Regulations Zambia 2022 (Global Legal Group 2022): <https://iclg.com/>
- Laws of Zambia (Blackhall Publishing): <https://zambialaws.com/>
- Winnie Sithole Mwenda and Chanda Chungu, *A Comprehensive Guide to Employment Law in Zambia* (University of Zambia 2021)



Case Scenarios

1 Case Scenario

A wave of peaceful anti-government protests in the capital city of X Country denounced controversial legislation reforming electoral law. X Country's police responded to the peaceful protests with violence and brutality. The protesters were beaten and tear gassed. Some were detained for several days without charge or access to the lawyers. Human rights activists reported alleged torture and other ill-treatment in detention.

The protesters gathered in the market square where many shops and office buildings are located. Security Co is a private company providing security to the premises and personnel of the shops and offices. There is no evidence that personnel of the Security Co were involved in the violence that injured protesters. There is, however, evidence that on several occasions personnel of Security Co provided X Country's police with vehicles, equipment, and water. [READ MORE](#)

2 Case Scenario

X Group is a group of extractive companies. Parent Co is the parent company of X Group which is responsible for the overall management of X Group's business. X Group's extractive operations are carried out by its subsidiaries. Every subsidiary is incorporated as a separate legal entity and is responsible for an individual project. Subsidiary Co is a licence holder and operator of a major extractive project. Parent Co is the sole shareholder of Subsidiary Co.

X Group has been accused of severe environmental pollution arising from oil spills caused by Subsidiary Co's extractive project. Oil extracted by Subsidiary Co leaked and flowed into local rivers and farmland in the neighbourhood of the project site, destroying crops and killing fish. The result was that the food and water supplies of the local population were severely affected, and in addition members of the local community also experienced breathing problems and skin lesions. Journalists

and environmental activists publicised the harm done to the local environment and community. Parent Co has made no statements about the oil spills but, in a recent report to its shareholders, Parent Co repeated that the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations. [READ MORE](#)

3 Case Scenario

Factory Co owns a garment factory that supplies many large international clothing retailers. The working conditions in Factory Co's factory have generally been poor and exploitative and have included physical abuse for non-compliance with production targets, sexual harassment of female workers by male supervisors, and compulsory unpaid overtime. Local trade unions have regularly accused Factory Co of poor factory workplace safety, including a lack of emergency procedures, ineffective fire safety equipment and few emergencies medical supplies. Two months ago, during a fire at Factory Co's garment factory, seventy-six workers died and fifty-eight were injured, many seriously. Preliminary investigations suggest that employees suffocated or were burned alive because windows were barred, emergency exits closed, smoke alarms did not work, and supervisors did not implement safety protocols and fire evacuation procedures.

Brand Co is the major purchaser of clothes produced by Factory Co's garment workers. It has been an enthusiastic and very public advocate for human rights standards and expressed its commitment to responsible business practices. Several civil society organisations wrote an open letter to the CEO of Brand Co calling on Brand Co to demonstrate leadership in preventing, addressing, and remedying adverse human rights impacts in its supply chain. [READ MORE](#)



CaseScenario 1

Q1

Could injured or unlawfully arrested protesters bring civil claims against the police and/or Security Co (and/or its personnel) in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.

Claims against the police

102. Injured or unlawfully arrested protesters may bring a civil claim against the police for assault, battery, false imprisonment, and negligence. Claims for assault may be available for protesters that apprehended the police's immediate infliction of physical harm, such as seeing the police throwing teargas canisters or charging at protesters with batons. An action for battery may be available for protesters who experienced direct physical harm such as being kicked or struck with batons, gun butts, or teargassed. An action for false imprisonment may be available for protesters who were unlawfully detained. Protesters who were detained for several days without a charge will be able to establish that their detention was unlawful. Once the detained protesters prove that they were detained, it will be up to the police to provide justification by showing that they had reasonable and probable cause for the arrest and detention.¹²⁵

Constitutional torts

103. Protesters unlawfully arrested, detained, and subjected to violence and brutality may have a constitutional remedy for, among others:

- Right to life (article 12)
- Right to liberty (article 13)
- Unlawful arrest or detention (article 13(4))
- Right not to be subjected to torture or inhuman and degrading treatment (article 15)
- Right to instruct a lawyer of own choice (article 18 (2)(d))
- Right to freedom of expression (article 20) and
- Right to freedom of assembly and association (article 21).

104. Protesters can petition to protect fundamental human rights under article 28 of the Constitution, contending that the police violated articles 12 to 21 of the Constitution. As the Supreme Court established in *Resident Doctors Association of Zambia and Others v The Attorney General*,¹²⁶ 'the High Court is at large to make

¹²⁵ *Phiri* (n 21).

¹²⁶ (SCZ Judgement No 12 of 2003).

any order, including an order for compensation against anybody for breach of the provisions contained in articles 11 to 26 of the Constitution. An aggrieved party is also at liberty to seek remedies for tortious injuries arising from such breach’.

105. **The immunity of law enforcement** may be an obstacle that the protesters must overcome to succeed in their claims. Under the [Penal Code s 78](#),¹²⁷ an authorised officer, a police officer, or any other person acting in aid of such authorised person or police officer who is authorised to use force reasonably necessary to disperse rioters is not liable in civil proceedings for harm or death caused to any person by use of such force. Therefore, protesters in Case Scenario 1 must show that the police never followed the procedure stipulated in the Penal Code s 77 for making a proclamation for protesters to disperse peacefully.

Claims against Security Co

106. Security Co would unlikely be held liable for the assault, battery, false imprisonment, and constitutional torts that the police committed against protesters simply because they provided the police with vehicles, equipment, and water on several occasions. Without more, the court will likely find that merely providing vehicles, equipment and water does not establish a duty of care. The court may likely apply the standard in *Caparo Industries plc v Dickman*,¹²⁸ as the High Court did in *Perfect Pools Limited v Barclays Bank Limited*,¹²⁹ to find that injury suffered by protesters was not reasonably foreseeable and further that it ‘would not be fair, just, and reasonable [to] impose a duty of care’ on Security Co in Case Scenario 2.

Critical elements of liability

107. The critical elements of liability needed to hold the police or Security Co liable for assault, battery and false imprisonment are the same as those shown in [61]-[63] above. Elements of liability needed to hold the police or Security Co liable for constitutional torts are also those in [61]-[63] above.¹³⁰



If civil claims would not be the preferred route for holding perpetrators in Case Scenario 1 to account, please indicate any other legal avenues available to the protesters.

108. The available mechanisms relevant in this case include:

- The Human Rights Commission is empowered to ensure the observance of articles 11-28 of the Constitution (article 230(2) of the Constitution of 2016). It can investigate the violation of human rights (the Constitution article 230(3)(a)), take appropriate steps to redress such violations (the Constitution article 230(3)(b)), and resolve disputes through negotiations, mediation, and conciliation.

¹²⁷ The Penal Code Act [Chapter 87 of the Laws of Zambia].

¹²⁸ *Caparo* (n 89).

¹²⁹ 2013 /HP/1388.

¹³⁰ As a general rule, the elements of liability for the constitutional torts are similar to common law torts.

- The Police Public Complaints Commission is empowered to receive and investigate complaints against the police (the Constitution article 237(2)(a)), including action resulting in serious injury or death (the Constitution article 237(2)(b)).



Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 1?

109. In the context of protest, a good example of a high-profile case is the *Resident Doctors Association of Zambia and Others v The Attorney General*.¹³¹ The petitioners held a peaceful public procession to raise awareness about the deplorable situation in public hospitals and the poor conditions of service for doctors. During the peaceful protest, they were intercepted by the police, forced to sit down, and then bundled into a police truck and taken to the police station, where they were detained until later that night. The Supreme Court held that the police's action and conduct violated the petitioners' rights to freedom of expression, assembly and association contrary to articles 20 and 21 of the Constitution. The Court also held that the manner in which the police handled the petitioners by bundling them in the police truck, taking them to the police station and detaining them until later in the night amounted to false imprisonment, humiliation and inconvenience, and awarded the petitioners general and aggravated damages.
110. Another relevant example is the case of *Albert Mwanaumo and 5 Others v NFC Mining Plc and 2 Others*,¹³² described in [14] above.
111. Action for assault, battery and false imprisonment can be brought not only against the police but also against individuals and corporations. The case of *Chief Chanje v Zulu*¹³³ mentioned in [61]-[62] above was a successful case of a claim of assault against an individual while *Albert Mwanaumo and 5 Others v NFC Mining Plc and 2 Others*¹³⁴ involved individuals and a corporation.
112. For example, in *Winstone Simposya v Aric Masauso Phiri and 3 Others*,¹³⁵ the plaintiff claimed that the security officers for his employer, a private company and the state police unlawfully detained him on two separate occasions. For the first incident, the plaintiff proved that he reported for work at midnight on 30 September 2001 and knocked off at 7am on 1 October 2001. However, as he conducted a handover to the morning shift crew, the first defendant, a security officer for his employer, called him to the security office where the security officer detained him from 7am to 10am. When he was released, he went home. At 2pm, the first defendant came with a police unit, picked him up and took him to Chilanga Police Station, where he was handed over to a Mr Nyimbiri, a police officer, who detained him for five days from 1 to 5 October 2001, when he was released without being charged.
113. Concerning the second detention in the same case, the plaintiff reported for work on 20 June 2003 at midday. Instead of knocking off at 9.30pm, he continued working until 7am the following day, when he handed over to the morning shift crew.

¹³¹ (SCZ)Judgement No 12 of 2003) [2003] ZMSC 92.

¹³² *Albert Mwanaumo* (n 23).

¹³³ *Chief Chanje* (n 18).

¹³⁴ *Albert Mwanaumo* (n 23).

¹³⁵ Appeal No 158/2009 [2014] ZMSC 48.

After knocking off and whilst at home, the first defendant picked him up and took him to Musamba Police Post, where the first defendant handed him over to the third defendant, a police officer, telling him that the plaintiff was a suspect in a break-in at the Buffer Store. The third defendant then detained the plaintiff and only released him the following day at 2.30pm, again without charging him.

114. Regarding the first defendant, who was the security officer for the second defendant, a private company, the Supreme Court confirmed that a private individual can be held liable if he either unlawfully detains another person or hands over the other to a police officer who in turn detains that person or participates in the arrest or detention of another person. Consequently, the Supreme Court held that the defendants unlawfully detained the plaintiff on both occasions.



CaseScenario 2



Could the local community, or its representatives, or someone acting on their behalf, bring civil claims against Parent Co and Subsidiary Co in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.

Claims against Subsidiary Co

115. Negligence could be established against Subsidiary Co because it owed a duty of care to the local community near its project site to properly secure the site to ensure the oil did not leak and flow into and pollute the local community's farmland and rivers. By causing the local community's crops to be destroyed, fish in the river to be killed, and community members to experience breathing problems and skin lesions due to the oil that leaked from its project, Subsidiary Co breached the duty of care it owed to the local community.
116. The destruction of crops on the farmland, the death of fish in the local river and the personal injury due to carelessness in managing its oil were reasonably foreseeable. The community will need to provide specific evidence of the value of the loss of crops and fish; otherwise, that will have to be assessed by the Deputy Registrar.¹³⁶ As described in [46] above, for affected community members to recover damages for difficulties in breathing and skin lesions, they must produce medical evidence.

¹³⁶ *Georgina Mutale (T/A GM Manufactures Limited v Zambia National Building Society)* (2002) Z.R. 19.

117. Strict liability based on the rule in *Ryland v Fletcher* maybe be available for the community as an alternative to a claim of common law negligence. To succeed, the claimants must prove that Subsidiary Co's use of its land for oil extraction was unnatural and that the oil is likely to cause mischief if it leaks. The claimants can demonstrate the significant damage to their farmland, crops and waterways, their personal injury experience and further that such damage was a natural consequence of the leaking oil that flowed into their cultivated farmland, and the river they depended on as a source of water and fish.
118. However, claimants cannot plead negligence and strict liability in the same case, as established in [Rabson Kamanga v Zambia Electricity Supply Corporation¹³⁷ and ZESCO v Justine Chishimba¹³⁸](#).
119. A private nuisance may be established if the leaked oil damaged or caused unreasonable interference with the community members' use and enjoyment of the lawful occupation of the farmland or their proprietary rights. To succeed, the claimant must demonstrate sufficient interest in the farmland, at least occupying or possessing the land.¹³⁹ However, they need not prove title to the farmland. Exclusive possession will suffice.¹⁴⁰
120. A public nuisance may be established if the leaking oil damaged or caused unreasonable interference with the use and enjoyment of the right to farmland or river accruing to the claimants as members of the affected public. However, to sue for public nuisance, the claimant must demonstrate special harm above what the other public members have suffered.¹⁴¹
121. EMA 2011 s 110 establishes a civil cause of action for any action or omission that contravenes EMA 2011. Leaking oil into the local farmland and rivers to such an extent that it destroys crops, killed fish and caused community members to experience breathing difficulties and skin lesions most likely threatens the right to a clean, safe and healthy environment under EMA 2011 s 4(3). It would also amount to discharging a poisonous, eco-toxic, obnoxious or pollutant substance into the aquatic environment in contravention of water pollution control standards under EMA s 46; and it would amount to a failure to take appropriate measure to mitigate the adverse impact of the oil leakage under EMA s 38.
122. The [Petroleum Act 2008](#) is relevant to Case Scenario 2, with far-reaching application. Under the Petroleum Act 2008 s 71(1), Subsidiary Co, as licence holder, can be held 'strictly liable for any harm or damage caused by exploration or development and production operations and shall compensate any person to whom the harm or damage is caused'. Under s 71(4), compensation includes the 'cost of reinstatement, rehabilitation or clean-up measures' for the leaked oil. Under s 71(5), the liability of Subsidiary Co can extend to 'harm or damage caused directly or indirectly ... to the economy or social cultural conditions ... negative impact on livelihood ... disruption or damage to any production or agricultural system ... reduction in yields of the local community ... air, water or soil contamination ... damage to biological diversity, damage to the economy of an area or community'. The damage to crops and fish and the personal injuries experienced are also addressed in [Petroleum Act 2008](#) s 71.

137 (Appeal 106 of 2006) [2007] ZMSC 131.

138 (Appeal 131 of 2013) [2014] ZMSC 90.

139 WWH Rogers, MA, *Winfield & Jolowicz on Tort* 16th edn (2002) 523; *Doris Chinsambwe and 65 Others v NFC Africa Mining* [2014] HK 374 at J16.

140 *Hunter v Canary Wharf Ltd* (1997) 2 ALL ER 426 at 434.

141 *Doris Chinsambwe* (n 49).

123. Section 71(7)(c) of the [Petroleum Act 2008](#) effectively permits group claims or class action when it provides that a group of persons can bring a claim 'in the interest of, or on behalf of a group or class of persons whose interest are affected'.

Claims against Parent Co

124. The analysis of Subsidiary Co's liability also applies to Parent Co. However, challenges relating to the corporate structure must be overcome and hence the focus below is on that structure.
125. As stated in [90] above, in the absence of Zambian authority on the liability of parent company for their subsidiary's wrongful acts and/ or omissions, a Zambian Court would follow relevant English case law, particularly the most recent decision of the Supreme Court of England and Wales in *Vedanta Resources Plc & Another v Lungowe and Others*,¹⁴² and *Okpabi and Others v Royal Dutch Shell Plc and Another*¹⁴³ on the liability of a parent company for activities of its subsidiary. The analysis in [91]-[95] above on the parent company's liability would be applicable in this case.
126. In *Vedanta* and *Okpabi*, the Supreme Court set out the four non-exhaustive routes through which a duty of care may arise in the parent and subsidiary company relationships. One of those routes is when the parent holds itself out as exercising a particular degree of supervision and control. The community, in this case, may argue that Parent Co's shareholder report statement that 'the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations' amounted to it holding itself out as exercising a particular degree of supervision and control over Subsidiary Co's activities.
127. The [Petroleum Act 2008](#) s 71 may apply in this case, although there is no guidance yet from courts in Zambia. Under Petroleum Act 2008 s 71(2), 'liability shall attach to the person who directly contributes to the act or omission which results in the harm or damage'. Under s 71(3), '[w]here there is more than one person responsible for the harm or damage, the liability shall be joint and several'. Thus, depending on the extent of Parent Co's intervention, control, advice, and supervision in Subsidiary Co's extractive projects, the community may be able to establish that Parent Co directly contributed to the leakage of the oil that damaged their crops, killed fish and caused the personal injury.
128. The critical elements of liability needed to hold the perpetrators liable are the same as those listed in [66], [69], [72]-[73], [74], and [76]-[77] above.



If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 2 to account, please indicate any other legal avenues available to the local population.

129. Alternative avenues would include a complaint to the State environmental agency, ZEMA, which has the power to investigate and prosecute perpetrators violating the provisions of EMA 2011.

¹⁴² *Vedanta* (n 35).

¹⁴³ *Okpabi* (n 113).



Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 2?

130. High-profile lawsuits in Zambia that are relevant to Case Scenario 2 include: [*Konkola Copper Mines and Others v James Nyansulu and Others*](#), described in detail in [46] above, which involved the discharge of highly toxic effluents into the water sources for the local community when the mine's tailings pipeline ruptured; [*Mopani Copper Mines Plc v Miti \(Suing in his capacity as Administrator of The Estate of The late Geoffrey Elliam Miti\) & Others*](#), described in [43] above which concerned the death of Mrs Miti, from acute respiratory failure after she inhaled sulphur dioxide emitted by the Mopani smelter; and *Doris Chinsambwe and 95 Others v NFC Africa Mining*.¹⁴⁴
131. The *Doris Chinsambwe* case, involved a claim for damages for nuisance and negligence occasioned when the tailings dam of NFC Africa Mining polluted the local stream and caused flooding, damaging the plaintiff's crops. The High Court established the plaintiffs were occupiers and farmers conducting farming activities along the Musakashi stream, even though none produced documentation of ownership of the land on which they conducted farming activities. The Court also established that NFC Africa Mining was a mining firm whose tailings dam was on the Musakashi stream and that it discharged its mining effluent in the stream. The Court also established that NFC Africa Mining polluted the water in the Musakashi stream, and that the pollution affected the aquatic life and water taste and had had health impacts on the local communities that depended on the stream. The Court also determined that the water from the tailings dam caused the flooding that submerged and damaged the community's crops.
132. The Court held that the NFC Africa Mining owed a duty of care to the community in ensuring that water levels from its tailings dam were properly maintained to prevent overflow that would cause flooding downstream. In addition, the Court also held that NFC Africa Mining also owed a duty of care in ensuring that the mining effluent it discharged into Musakashi stream did not chemically pollute the stream. Further, the Court held that NFC Africa Mining breached its duty of care when it caused the community's gardens to be flooded with water from its tailings dam. The Court also held that NFC Africa Mining caused a nuisance because the flooding from its tailings dam disturbed the community's enjoyment of their land. The Court further determined that NFC Africa Mining's breach of duty caused damage to the community's crops, resulting in their loss. NFC Africa Mining was thus held liable for both negligence and nuisance and was ordered to pay damages to the community for their failure to be assessed by the Registrar of the High Court.



CaseScenario 3

Q1

Would it be possible to bring a civil claim against Factory Co and/or Brand Co? Please also indicate the key elements of liability to be shown by the claimants to hold Factory Co and/or Brand Co liable.

Claims against Factory Co

133. Claimants can bring a civil claim against Factory Co based on breach of statutory duty and common law negligence.
134. Claimants may be able to establish that the deaths of 76 workers and the injury of 58 were caused by the carelessness of Factory Co which maintained barred windows; closed emergency exits; had non-functioning smoke alarms; and by the failure of its supervising employees to implement safety and evacuation protocols in violation of s 6 of the Workers' Compensation Act 1999. Claimants may also argue that the deaths of 76 workers and the injury of 58 others were caused by poor workplace safety, in contravention of the Occupational Health and Safety Act 2010 ss 6(1) and (2), because Factory Co maintained barred windows, closed emergency exits, and non-functioning smoke alarms. Moreover, the claimants may establish that the compulsory unpaid overtime they were subjected to amounted to forced labour, contrary to the Constitution's article 14(2).
135. A common-law negligence claim may be brought against Factory Co using the critical ingredients for negligence described in [72] above.

Claims against Brand Co

136. No Zambian authority has been found on liability in supply chains. It also seems highly unlikely that duty of care can be established based on the *Donoghue v Stevenson* principles mentioned in [43] above. It will be difficult for claimants to prove sufficient proximity between Factory Co's workers and Brand Co. Brand Co ought to have had the deceased and injured reasonably in its consideration when placing orders for clothes from Factory Co.
137. However, claimants may rely on the developing law of negligence involving third parties. A Zambian court may be persuaded by the English Court of Appeal decision in *Hamida Begum (on behalf of MD Khalia MD Khalil Mollah) v Maran (UK) Limited*,¹⁴⁵ in which Lord Justice Coulson dealt with the exception to the general rule that a defendant will not be liable in tort for injury resulting from a third

¹⁴⁵ *Begum* (n 117).

party's intervention.¹⁴⁶ In this case, Lord Justice Coulson referred to *Clerk and Lindsell on Torts*, 23rd edition, at [7-60], which states that the exception exists 'where the defendant is responsible for the state of danger which may have been exploited by the third party'. On the creation of duty of care under the general exception, Lord Justice Coulson stated:

*'the Appellant arguably played an active role by sending the vessel to Bangladesh, knowingly exposing workers (such as the deceased) to significant dangers which working on this large vessel in Chattogram entailed ... The Zuma Yard's failure to provide any safety harnesses or any other proper equipment, and the tragic consequences of their not doing so, were entirely predictable.'*¹⁴⁷

138. Similarly, in Case Scenario 3 the claimants may argue that Brand Co played an active role by purchasing the majority of Factory Co's clothing, knowingly exposing Factory Co's workers such as the deceased and injured to the significant dangers which working in a factory with poor work safety entails. With sufficient facts, the price Brand Co paid for the purchase and the way it made the orders (how urgently these were demanded, for example) may make it foreseeable that Factory Co will operate under poor workplace safety and must exploit its workforce through compulsory unpaid overtime to meet Brand Co's orders.



If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 3 to account, please indicate any other available legal avenues available to the victims and/or their families?

139. Mediation, negotiation, and raising grievances through trade unions and the Labour Commission may be alternative avenues. If Brand Co continues to not act responsibly, advocacy aimed at encouraging its key shareholders to divest their investment or the purchasers to avoid its brand may be an effective strategy.



Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 3?

- *China State Construction and Engineering Corporation Zambia v Mwape Kaimba*, Appeal No 64/2019.
- *Lafarge Cement PLC v Patrick Mandona*, Appeal No 220/2013 (Selected Judgment No 15 of 2017).
- *Mwamba v Metal Fabricators of Zambia Ltd* (2005/H.N./ 279); [2011] ZMHC 109.

146 *ibid* [52].

147 *ibid* [64].





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