

A HANDBOOK FOR PRACTITIONERS

# Civil Liability for Human Rights Violations

## Editors' Introduction



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# EDITORS' Introduction

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**Publication Information:** This is an introduction to the Handbook on civil liability for human rights violations covering 19 country reports. The Handbook was produced as part of the comparative research project led by the Bonaverio Institute of Human Rights and funded by the Oak Foundation. To access the complete Handbook or download country reports, please [click here](#).

## Project on civil liability for human rights violations

In 2019, the Bonaverio Institute of Human Rights (Bonaverio Institute) was awarded a grant by the Oak Foundation to [study civil liability for human rights abuses in various jurisdictions](#) (the Project). The Project's key focus is to analyse the substantive legal rules relevant to determining when civil claims to hold perpetrators to account for human rights violations will succeed. The Project involves a comparative study of the legal systems of a wide range of jurisdictions in order to analyse existing domestic law mechanisms or principles for imposing civil liability on public bodies, corporations, and individuals in three specified categories of human rights violation: (i) assault or unlawful arrest and detention of persons; (ii) environmental harm; and (iii) harmful or unfair labour conditions.

### Research context

Civil liability for human rights violations is an area of significant contemporary importance. In the last few decades, there have been notable developments in the field which have renewed interest in the potential for civil claims to hold state and (especially) non-state actors accountable. Under the influence of human rights standards, the law of tort and delict in many jurisdictions is being employed by litigants to foster accountability for human rights violations. In other jurisdictions, specific legislation has been enacted to remedy human rights violations. The best-known example of legislation permitting tort litigation for certain violations of international law is the [US Alien Tort Statute](#). Practitioners across the globe have increasingly used civil claims as a means of corporate human rights accountability. The possibility of civil liability arising for human rights violations has been particularly discussed in the business and human rights field. This emerging debate has been triggered by the adoption of the [UN Guiding Principles on Business and Human Rights](#) by the UN Human Rights

Council in 2011. The continuing negotiation of a [UN Treaty on Business and Human Rights](#) as well as a range of domestic [legislative initiatives requiring corporations to undertake mandatory human rights due diligence](#) assessments have also contributed to the growing debate. A careful analysis of ongoing developments across the world in relation to civil liability for human rights violations is therefore timely and will assist us to assess whether civil liability does provide a real opportunity to hold perpetrators to account for human rights abuses.

### **Scope**

The scope of the Project is broad and covers a range of internationally accepted human rights, as well as different types of harm. The Project sought to investigate the different legal consequences of different harms in different jurisdictions. It became evident at the early stages of the Project that experts from different jurisdictions, who represent different legal systems and legal traditions, conceive of 'civil remedies for human rights violations' in different ways. The Project team thus sought to define the terminology for the Project to avoid the risk of speaking at cross purposes. We identified variations in the concepts of 'civil law', 'civil liability', 'civil remedies', 'civil claims', and 'human rights violations'. To ensure coherence, it was necessary to develop a common and broad definition of some concepts (see '[Glossary](#)' below).

The selection of the three categories of human rights violation under review (assault or unlawful arrest and detention of persons; environmental harm; and harmful or unfair labour conditions) is illuminating for the following reasons. First, it allows us to establish whether and to what extent different rules apply to different forms of human rights violation (civil and political versus economic, social, and cultural) in different legal systems. Second, the broad scope of the inquiry allows us to explore whether civil remedies apply similarly to different categories of defendants (public versus private). Finally, the study reveals various forms of civil remedy that exist in different jurisdictions and their contemporary development in response to global challenges (general private law, specialised legislation, constitutional torts, etc).

The Project focuses on the substantive legal rules governing civil liability. There has been an increasing number of civil claims brought seeking redress for transnational human rights violations, ie litigation seeking remedies for victims of abuses committed outside the forum state. However, questions related to jurisdiction, conflict of laws, and procedure (disclosure rules, standing, litigation funding, costs, availability of group and class actions, etc) are outside the scope of the Project. The Project team recognises the overall importance of these questions (which may require further study) for examining the efficacy of existing frameworks, but the study is concerned with identifying the key principles of civil liability under substantive laws.

### **Research questions**

The research questions considered by the Project fall within four major areas: (i) an overview of the legal foundations for civil claims and the core elements of liability; (ii) liability for the acts and omissions of third parties; (iii) liability within complex business structures (eg parent company liability and supply chain liability); and (iv) types of remedies available for human rights violations.

### Steering Committee

The study was guided by a Steering Committee comprising: Dr Uglješa Grušić (UCL), Daniel Leader (Leigh Day), Professor Robert McCorquodale (UN Working Group on Business and Human Rights), Dr Annelen Micus (Amnesty International), Professor Catherine O'Regan (Bonavero Institute), Dr Miriam Saage-Maaß (European Center for Constitutional and Human Rights), Rupert Skilbeck (REDRESS), Lise Smit (British Institute of International and Comparative Law) and Professor Sandy Steel (University of Oxford). The Steering Committee provided support at all stages of the Project and contributed to the study's design, selection of contributors and review of the outcomes.

### Research Design and Outcomes

The Project analysed the civil liability framework in the selected jurisdictions. In the first part of the Project, a range of practitioners and scholars were invited to undertake a scholarly analysis of the challenges and opportunities for using civil claims as a mechanism for human rights accountability in their jurisdictions. From 22-26 October 2020, the Bonavero Institute hosted an online research roundtable to discuss their research. Over nine panels, more than 50 scholars and human rights practitioners from 21 jurisdictions shared their views on various forms of civil remedy that exist within legal systems around the world and changes that are happening (quite rapidly) within these systems under the influence of human rights standards. Papers presented at the roundtable were published by Hart Publishing in 2022 as '[Civil Remedies and Human Rights in Flux: Key Legal Developments in Selected Jurisdictions](#)' edited by Dr Ekaterina Aristova and Dr Uglješa Grušić. The book covers 16 jurisdictions: Argentina, Australia, Bangladesh, Brazil, Canada, England & Wales,<sup>1</sup> France, Germany, India, Kenya, the Netherlands, the Philippines, South Africa, Switzerland, Ukraine, and the United States.

The Handbook on Civil Liability for Human Rights Violations (the Handbook) is the second component of the Project. The Handbook aims to explore current state practice and trends in relation to the law of civil remedies in a more 'practical' way, to equip practitioners with an understanding of how civil claims may be used for holding perpetrators of human rights violations accountable in a range of jurisdictions. The Handbook covers 19 jurisdictions: Australia, Bangladesh, Canada, China, Colombia, England & Wales, France, Germany, Hong Kong, India, Malaysia, Mexico, the Netherlands, Russia, South Africa, Turkey, Ukraine, the United States, and Zambia. First drafts of country reports from the jurisdictions were discussed by the authors and members of the Steering Committee during an online workshop convened in January 2022 by the Bonavero Institute.

The Project's third outcome was the Oak Foundation Research Visitor Programme. This provided an opportunity for research visitors from the Global South to conduct independent research at Oxford and to foster collaboration between human rights scholars and human rights lawyers in practice. To this end, the Bonavero Institute hosted four Oak Research Visitors from Brazil, Mexico, Sri Lanka, and Zimbabwe, each of whom spent three months researching the civil liability for human rights violations in their respective jurisdictions.

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<sup>1</sup> The Project does not equate England & Wales with the UK. The UK comprises three legal jurisdictions: England & Wales, Northern Ireland, and Scotland.

## About the Handbook

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The Handbook is intended to serve as a practical resource to understand when and how civil claims can be used as a tool to vindicate human rights in the 19 jurisdictions. It is not a scholarly publication and does not seek to contribute to academic debates surrounding civil liability for human rights violations. Rather, the Handbook explains the basic principles of civil liability in the 19 jurisdictions and illustrates the principles by applying them to Case Scenarios. In this sense, the Handbook has three principal objectives. First, it seeks to identify jurisdictions in which the domestic law of civil remedies allows victims of three specified categories of human rights violations (eg assault or unlawful arrest and detention of persons; environmental harm; and harmful or unfair labour conditions) to obtain a remedy against public bodies, corporations and/or individuals. Second, taken together, the individual reports provide comparative law insights into the similarities and differences between the law of civil remedies in the relevant jurisdictions. Third, the Handbook aims to enrich strategic thinking about civil claims as a vehicle for fostering human rights accountability. We hope the Handbook will contribute to building capacity, expanding legal knowledge, and building partnerships between human rights lawyers and scholars in the field.

## How to use the Handbook

The Handbook contains 19 reports. It is designed to enable practitioners to refer directly to a specific jurisdiction; it is not necessary to read the Handbook as a whole. Each report follows a uniform template and starts with an overview of the jurisdiction and identifies key points relevant to understanding the civil liability framework in that jurisdiction. Each report has two parts. Part I contains eight general questions about the principles of the law of civil remedies. The authors outline the applicable legal provisions and identify important developments in the case law. Part II approaches the analysis of civil liability practically by applying the basic principles of the law of civil remedies to three hypothetical cases which may lead to adverse human rights impacts (the [Case Scenarios](#)). The main purpose of the Case Scenarios is to use a defined set of circumstances to enable a comparative study of the national jurisdictions.

## Target audience

The target audience of the Handbook is lawyers, civil society organisations, human rights activists, policymakers, and research institutes worldwide. We hope it will be a useful resource for practising lawyers who represent victims of human rights violations, as well as for policymakers and campaigners concerned with regulatory change through legislation. The Handbook can also be used for legal research or public advocacy purposes.

## Important considerations

Readers should approach the Handbook with several significant considerations in mind.

- The Handbook assesses the viability of civil claims in relation to three specified categories of human rights violation (assault or unlawful arrest and detention of persons; environmental harm; harmful or unfair labour conditions). By selecting these three types of violation, we are not suggesting that they are the most important. They were selected as we consider they may provide useful insights to practitioners.
- The potential for extraterritorial application of existing domestic law of civil remedies is not analysed.

- Procedural hurdles, as well as aspects of legal and political culture, often influence the overall efficacy of the law of civil remedies and strategic litigation. The study does not investigate these issues, nor does it comprehensively investigate barriers to access to justice, although some reports do mention them.
- The 19 jurisdictions have been selected in an attempt to promote diversity. They include a wide geographic distribution of countries with different political systems and levels of socio-economic development. Some of the systems are common law systems and others civil law systems. Respect for the rule of law varies across the different systems, and levels of human rights protection also vary quite markedly. In some countries, the level of human rights protection, particularly for political opponents of the government, is limited or even absent. We include a range of systems because we consider that all legal systems should continue to be the subject of study by human rights scholars. Where the reports for jurisdictions have been prepared by scholars or practitioners who live in those jurisdictions, sustained criticism of their legal system or the government may have put them at risk. Accordingly, we have included three global indices that will enable readers to assess whether a jurisdiction has a weak record on democracy, the rule of law and the protection of human rights: [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).
- The jurisdictions differ, sometimes widely, both in how they define civil remedies and in the forms of civil remedies they provide for the three types of human rights violations within the scope of the Project. Several terms were unified to ensure coherence among the reports and provide a common and broad definition (please refer to the ['Glossary'](#) below).
- Judicial decisions as a source of law have different authority in common law and civil law legal systems. Generally, common law is built on precedent, civil law on statutes, although this is not a strict line, and increasingly civil systems display some of the characteristics of common law systems.<sup>2</sup> Unsurprisingly, country reports from jurisdictions based on common law frequently cite important case law. By contrast, in some reports from civil law jurisdictions discussion of case studies is limited.
- The Handbook does not claim to be exhaustive. A word limit of 10,000 – 12,000 words was prescribed for each country report. Due to constraints of space, many responses in the reports provide only a basic introduction, and the complexities of specific cases or provisions are not fully explored.
- The Handbook is not a guide on how to launch a case. Its focus is on outlining legal bases for commencing civil claims through the use of primary materials such as statutes, treaties and jurisprudence. The legal analysis in the Handbook is not intended to provide legal or other professional advice and should not be relied on or treated as a substitute for specific advice relevant for a particular jurisdiction. Readers should approach suitably qualified lawyers if they plan to commence legal proceedings in any jurisdiction.

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2 A Jakob, A Dyeve & G Itzcovich (eds), *Comparative Constitutional Reasoning* (Cambridge University Press 2017).

- In many of the questions, we asked authors to provide examples of various laws or cases and to insert a hyperlink if any such resources are available online. Not all documents cited in the reports are freely available online. For these, it is recommended that the reader access subscription sites and a relevant note is provided in some country reports (eg China, Malaysia, Turkey, Russia). Some citations are also only available in the local language. Finally, in the case of Mexico and Russia, some resources may not be accessible from outside these jurisdictions.

### Comparative insights

Here we provide a few insights drawn from the reports to reflect on how the law of civil remedies is developing across the 19 jurisdictions and how it has been used to remedy human rights violations.

- Civil claims are usually based on **domestic law**. Rarely, violating **international law** may be an element of a civil cause of action. In the US, the [Alien Tort Statute \(ATS\)](#) has been a prominent vehicle for bringing civil lawsuits against state and non-state actors for actions committed in violation of the law of nations or a treaty to which the US is a party. A series of recent US Supreme Court cases, however, has significantly limited the scope of the ATS. Outside the US, there are notable developments in Canada, where the Supreme Court in [Nevsun Resources Ltd v Araya](#) held that violations of customary international law (eg forced labour) may be civilly actionable in Canadian courts; and in the Netherlands, in the landmark [Urgenda](#) decision, the Dutch state was held liable for its failure to reduce greenhouse gas emissions in contravention of its duty of care under articles 2 and 8 of the [European Convention of Human Rights](#).
- Civil remedies are available in the 19 jurisdictions through a **complex web of distinct yet overlapping legal bases**. Country reports widely discuss (i) the law of tort or delict; (ii) statutory remedies; and (iii) constitutional remedies (notably in Bangladesh and India). A few other remedies are also mentioned, such as ancillary civil actions as part of criminal proceedings and the law of unjust enrichment or restitution, but they are generally jurisdiction-specific.
- There are distinct patterns in the **treatment of public authorities** in the 19 jurisdictions. In common law jurisdictions and certain civil law jurisdictions (Netherlands, Russia, and Ukraine), the law of civil remedies does not distinguish between public and private defendants, and the rules governing civil liability apply generally. By contrast, in most civil law jurisdictions, specific liability regimes apply to the liability of public bodies. In Colombia and Mexico, the liability of public bodies is *strictly* a matter of administrative law, and the civil codes do not apply. In China, France and Turkey, the liability of public bodies is *generally* governed by administrative law, and civil claims can be brought only in rare and limited circumstances.
- The rights to life, bodily integrity and personal liberty are widely protected in all the jurisdictions. Most country reports discuss **assault or unlawful arrest and detention** in the context of the liability of public bodies.
- Regulatory responses to address **environmental harm** demonstrate unique combinations of causes of action based on the law of torts or delict, constitutional provisions and specialised legislation, with the latter playing a particularly important role.

- In several jurisdictions, there is a distinction between **private (individual)** and **public (collective)** environmental damage leading to the application of different liability regimes.
- Working conditions and labour protection are generally regulated through detailed legislation. Accordingly, civil remedies for **harmful or unfair labour conditions** have been largely displaced. As a general rule, obtaining compensation under occupational injury insurance prevents the commencement of a civil claim (Canada, China, Colombia, France, Russia and Ukraine). South Africa is an exception given that the Constitutional Court has held that at least some social security schemes do not bar concurrent delictual claims.
- **Civil liability for complicit or accessory conduct** is **seldom recognised** as a discrete form of liability. Several reports indicate that the concept of ‘complicity’ is set in criminal but not civil law (France and Netherlands). Consequently, the authors’ responses to this question tend to be brief.
- That said, in a **small number of jurisdictions**, there are rules for **accessory tortious or delictual liability**. These jurisdictions use different terms to characterise the perpetrator’s involvement in the commission of harm (for example, accessorial liability in Australia; concerted tortious action in Canada; tort of common design in England; liability of accomplices, instigators and abettors in Germany; aiding and abetting and conspiracy liability in the US). The precise test that establishes the degree of connection to the wrongful act necessary to trigger liability varies.
- **Vicarious liability**, that is, strict liability for another’s wrong, is recognised in almost all the jurisdictions and has proved to be a very useful tool in some of them.
- All the jurisdictions recognise and discuss **joint and several liability of multiple tortfeasors**. As a rule, where several persons, not acting in concert, commit a tort or delict against another person causing the same or indivisible damage, each tortfeasor is liable for the same damage. This is not a type of secondary liability since it does not involve a qualitative test about the extent of involvement of different tortfeasors in the wrongful act.
- The principles of **separate legal personality** and **limited liability** are the foundation of corporate law in all the jurisdictions. In many, the question of parent company liability for their subsidiaries is treated as a matter of corporate law. **Legislation on corporate groups** exists in an **exceptional and fragmented manner**.
- In common law jurisdictions, these foundational principles may be departed from in exceptional circumstances under the doctrine of **‘piercing the corporate veil’**. Tests vary across jurisdictions and appear underdeveloped and inconsistent. In some jurisdictions, an exception to the principle of separate corporate personality can be found under the law of **agency** whereby a subsidiary company can be found to be acting as the agent of the parent company (England, Hong Kong and US).
- The question of the **direct liability of parent companies for the acts of subsidiaries or suppliers** is, not surprisingly perhaps, so far most developed in the jurisprudence of developed countries. In several jurisdictions, where headquarters of multinational enterprises are located, there has been a trend towards civil claims alleging **breach of duty of care** in relation to harm that occurs through their overseas operations (Australia, Canada, England, Netherlands, and



US). In addition, several jurisdictions have recently enacted or are considering the enactment of legislation requiring companies to implement **human rights and environmental due diligence** across their group operations and supply chains (France, Germany and Netherlands).

- Instances of **supply chain liability** remain rare. In several cases, lawyers have relied on conventional tort law causes of action to establish that liability could arise in a supply chain (Canada, England and Germany). Overall, the law is highly fragmented, and clear rules have not yet been established.
- **Monetary remedies** are the most common method of reparation. Compensatory damages are universally available.
- Beyond monetary remedies, **injunctions** are also widely available in relation to the three defined harms. **Declaratory relief** as a form of vindication for the deprivation of rights is mentioned in several country reports (Australia, Canada, England, Netherlands and Russia).
- Particularly in cases concerning **environmental harm**, monetary compensation is insufficient, and other remedial measures are required. **Restoratory relief** can be ordered according to specialised legislation in some jurisdictions (Canada, China, France, Mexico, Ukraine and Zambia).
- Whether a domestic court has jurisdiction in a case will be determined by the rules of **private international law**. Generally, these rules allocate jurisdiction 'based on whether there is a sufficient nexus between the parties, the subject matter of the dispute and the forum in which the case is brought. Jurisdiction over foreign defendants is ordinarily established on the basis of a variety of **connecting factors**. These factors vary across jurisdictions, but for the three defined harms, the most common, which are widely discussed in the country reports, are **domicile and/or habitual residence of the parties** and the **place where the wrongful act was committed and/or the damages were sustained**.
- In common law jurisdictions, courts have wide discretionary powers to decline jurisdiction in favour of a more appropriate forum available to the parties on the basis of the **forum non conveniens** doctrine. This can often be a **significant procedural barrier** for commencing civil claims in common law jurisdictions.
- In many jurisdictions, the law of civil remedies is a useful tool for holding public bodies and/or private actors to account for human rights violations. Several country reports note the **flexibility of the law of civil remedies** (England, Netherlands, South Africa and Ukraine). In many jurisdictions, the law of civil remedies evolves in response to societal needs and may continue to develop in this field, something that perhaps can be seen in the burgeoning litigation relating to corporate liability for human rights violations.
- It is, however, evident that civil claims are **not always a perfect solution** for remedying human rights violations. Some human rights violations may not have a corresponding civil cause of action. In addition, the law of civil remedies is essentially backward-looking, and does not usually seek to identify root causes or provide a mechanism to resolve patterns of abuses beyond the case in question.
- All country reports acknowledge that **procedural barriers** hinder efficacy of civil claims to foster human rights accountability. These barriers vary, but the following

are discussed widely: the structure of the burden of proof; the difficulties involved in obtaining and presenting sufficient evidence; difficulties with pursuing collective actions; the cost of litigation; the absence of contingency-fee arrangements; the time it takes to pursue proceedings; and, in some cases, the inadequacy of awards of damages.

- The law of civil remedies can be an important tool to seek compensation for human rights violations, but it remains only **one of the many strategies available to claimants**. Other legal remedies include criminal law, administrative law, judicial review (notable in Malaysia), and non-judicial mechanisms such as national human rights commissions. Commencing civil claims will therefore not always be the preferred avenue to obtain redress, and practitioners should be mindful of the availability of different tools to ensure they represent the interests of their clients effectively.

### **Resources**

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In addition to the resources recommended in the country reports, we suggest the following books, reports, or online tools for anyone interested in learning how the law of civil remedies can be used to remedy human rights violations.

#### **Books**

- Ewa Bagińska (ed), [Damages for Violations of Human Rights](#) (Springer 2016)
- Simon Baughen, [Human Rights and Corporate Wrongs: Closing the Governance Gap](#) (Edward Elgar 2015)
- Liesbeth Enneking, [Foreign Direct Liability and Beyond. Exploring the Role of Tort Law in Promoting International Corporate Social Responsibility and Accountability](#) (Eleven International 2012)
- Sarah Joseph, [Corporations and Transnational Human Rights Litigation](#) (Hart 2004)
- Ken Oliphant (ed), [The Liability of Public Authorities in Comparative Perspective](#) (Intersentia 2016)
- Dawn Oliver and Jörg Fedtke (eds), [Human Rights and the Private Sphere: A Comparative Study](#) (Routledge-Cavendish 2007)
- Dinah Shelton, [Remedies in International Human Rights Law](#) (3rd edn, OUP 2015)
- Gwynne Skinner (assisted by Rachel Chambers and Sarah McGrath), [Transnational Corporations and Human Rights: Overcoming Barriers to Judicial Remedy](#) (CUP 2020)
- Lisa Tortell, [Monetary Remedies for Breach of Human Rights: A Comparative Study](#) (Hart 2006)
- Jason Varuhas, [Damages and Human Rights](#) (Hart 2016)
- Jane Wright, [Tort Law and Human Rights](#) (2nd edn, Hart 2017)

## Reports

- Anita Ramasastry and Robert C Thompson, [Commerce, Crime and Conflict. Legal Remedies for Private Sector Liability for Grave Breaches of International Law](#) (Fafu Research Foundation 2006)
- International Commission of Jurists, [Corporate Complicity & Legal Accountability: Volume 3 – Civil Remedies](#) (2009)
- Gwynne Skinner, Robert McCorquodale and Olivier De Schutter, [The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business](#) (International Corporate Accountability Roundtable, Corporate Responsibility (CORE) Coalition, European Coalition for Corporate Justice 2013)
- European Union Agency for Fundamental Rights and Council of Europe, [Handbook on European Law Relating to Access to Justice](#) (2016)
- Axel Marx, Claire Bright, Jan Wouters, [Access to Legal Remedies for Victims of Corporate Human Rights Abuses in Third Countries](#) (European Parliament 2019)
- European Union Agency for Fundamental Rights, [Business and Human Rights – Access to Remedy](#) (2020)
- International Federation for Human Rights, [Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms](#) (3rd edn, 2021)
- The Danish Institute for Human Rights, [Human Rights Due Diligence Laws: Key Considerations – Briefing on Civil Liability for Due Diligence Failures](#) (2021)
- European Coalition for Corporate Justice, [Suing Goliath: An Analysis of Civil Cases against EU Companies for Overseas Human Rights and Environmental Abuses](#) (2021)
- European Law Institute, [Business and Human Rights: Access to Justice and Effective Remedies](#) (2022)

## Other resources

- [Action4Justice](#), a global civil society platform with step-by-step guides and tips on public interest litigation
- Business & Human Rights Resource Centre, [Lawsuit Database](#)
- Office of the United Nations High Commissioner for Human Rights, [Accountability and Remedy Project: Improving Accountability and Access to Remedy in Cases of Business Involvement in Human Rights Abuses](#) (2016 – Ongoing)
- [Symposium: Civil Liability Claims for Business-Related Human Rights Abuses – Opening New Frontiers](#), convened by the Bonavero Institute of Human Rights and International Commission of Jurists (2021)
- European Coalition for Corporate Justice, [Map: Corporate Accountability Legislative Progress in Europe](#) (25 January 2022)



# ANNEX1 Glossary

Several terms were assigned defined meanings to assist comparison across different jurisdictions

<p><b>law of civil remedies</b></p>	<p>body of law that provides a cause of action for compensation or other form of relief where harm has been caused to a person as a result of an act or omission by another person. It does not, however, include causes of action that arise from a contract between the injured party and the other person. It covers <i>inter alia</i> (but not exclusively) both the law of tort in common law systems and the law of non-contractual obligations, such as the law of delict, in civil law jurisdictions. The terms 'civil remedy', 'civil liability' and 'civil claim' are used in the Handbook interchangeably.</p>
<p><b>public body</b></p>	<p>a range of actors or institutions undertaking public functions such as the state, central government, police and emergency services, local authorities, officials and members of the executive and public institutions or agencies acting in their official capacity.</p>
<p><b>corporation</b></p>	<p>bodies with legal personality incorporated according to the law, including joint-stock companies, limited liability companies, partnerships, state-owned enterprises, etc.</p>
<p><b>assault or unlawful arrest and detention</b></p>	<p>(1) an attack inflicting physical harm or unwanted physical contact upon a person or people; (2) a credible threat to injure someone in such an attack; (3) the intentional restriction of a person's movement or their detention without consent or legal justification. Such conduct may cause violations of human rights, including, but not limited to the following: the right to life; the right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment; the right to freedom and security of the person; the right of detained persons to humane treatment; and the right to freedom of movement.</p>

<p><b>environmental harm</b></p>	<p>impact on the environment as a result of human activity, such as the addition of any substance (solid, liquid, or gas) or any form of energy (such as heat, sound, or radioactivity) to the environment, that has an effect of polluting, degrading or otherwise adversely affecting the normal environmental processes and may result in injury, death, loss, or threatened loss to a person or property. Types of environmental harm include deforestation, soil pollution and land damage, water pollution and hydrological damage, air pollution, noise pollution, and radioactive pollution. Environmental harm often results in adverse human rights consequences and may affect the right to an adequate standard of living (including adequate food, clothing and housing, and continuous improvement of living conditions), the right to health, and the right to self-determination (eg when environmental pollution affects indigenous peoples). The Handbook does not cover climate change liability and litigation.</p>
<p><b>harmful or unfair labour conditions</b></p>	<p>occur when the working conditions may lead to physical harm to workers, for example, because of poor safety and health standards or abusive labour practices. For the purposes of the Project, harmful or unfair labour conditions include (1) systemic or gross exposure to unsafe practices, such as exposure to heat, noise, dust, and hazardous chemicals, without adequate protection (eg harmful working conditions of migrant workers during mega sporting events); (2) modern slavery (eg use of forced and child labour); and (3) abusive labour practices in supply chains. The Handbook does not cover discrimination in the workplace and equality rights.</p>
<p><b>three defined harms</b></p>	<p>for the purposes of the Project, these are assault or unlawful arrest and detention, environmental harm, and harmful or unfair labour conditions as defined above.</p>
<p><b>Other terms frequently used in the country reports are explained below</b></p>	
<p><b>battery</b></p>	<p>a category of tort entailing an act of intentionally and voluntarily bringing about unwanted harmful or offensive physical contact with a person.</p>
<p><b>cause of action</b></p>	<p>(1) the legal basis for commencing a civil claim; (2) the set of facts that entitles a party to seek judicial remedy.</p>
<p><b>conversion</b></p>	<p>a category of tort when one person interferes with the personal property of another, for example by taking it or withholding it without lawful justification.</p>
<p><b>corporate veil</b></p>	<p>a metaphor that captures the legal rule that incorporated associations have a separate legal personality from the individuals that established them and/or own them through shareholdings. In exceptional circumstances the corporate veil may be ‘pierced’ or ‘unveiled’, and the shareholders can be held liable for the debts of the corporation.</p>

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<b>duty of care</b>	an element of the tort of negligence which refers to the obligations placed on a party to act towards others in a certain way, in accordance with certain standards.
<b>false imprisonment</b>	a category of tort entailing complete deprivation of liberty for any period of time without lawful justification.
<b>injunction</b>	a court order requiring a person to do something (a mandatory injunction) or not to do something (a prohibitory injunction).
<b>multinational enterprise</b>	an enterprise producing goods or delivering services in more than one country. A multinational enterprise, abbreviated as MNE and sometimes also called a multinational corporation (MNC), has its management headquarters in one (or, rarely, more than one) country, the home country, while also operating in other countries, the host countries.
<b>negligence</b>	a category of tort entailing a breach of one's obligation to avoid acts or omissions that cause unreasonable loss or injury to another party or their property.
<b>non-pecuniary damages</b>	the compensatory damages that cannot be mathematically calculated in money (eg pain and suffering by the claimant; emotional distress; mental impairment, etc).
<b>nuisance</b>	a category of tort entailing an act which is harmful or offensive to the public or a member of it. Nuisance can be private or public.
<b>parent company</b>	a corporation which has a controlling or majority interest in another corporation referred to as <b>subsidiary</b> , which gives it the right to control the subsidiary's operations.
<b>pecuniary damages</b>	the compensatory damages that are directly linked to the incident that caused your injury. They are also called actual damages. They are easily quantifiable and can be readily measured in financial terms (eg medical expenses; lost wages; loss of earning capacity; damage to property, etc).
<b>punitive (or exemplary) damages</b>	damages that are intended to punish the defendant rather than compensate the claimant and are only available in precise and limited circumstances.
<b>supply chain</b>	a network of corporations and people that are involved in the production and delivery of a product or service.
<b>vicarious liability</b>	a legal doctrine that imposes liability on a party for the acts or omissions of another party if they are linked through a particular legal relationship such as employer and employee.

# ANNEX2 ReportTemplate

## X Country

Full names of the author(s), their affiliations, and links to web-profiles

Overview

Introduction

### Part A: General Questions

Q1

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

#### Commentary

We asked authors to provide a brief and concise overview of the range of civil remedies for human rights violations that is available in their jurisdictions and, if necessary, explain how they relate to each other. If it is impossible to commence a civil claim for a specified type of human rights violation, we asked authors to indicate this. We also asked if there is a difference in treatment or if any special considerations apply in the case of civil claims against a public body, as opposed to civil claims against corporations or individuals and vice versa.

Q2

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

#### Commentary

We asked authors to identify the elements that must be established by a claimant seeking relief under specific remedies available in the focus jurisdiction for the three defined harms (eg general law of torts or delict, constitutional torts, specific legislation). These elements are likely to include establishing wrongful or unlawful behaviour, causation, harm, and possibly establishing intention, recklessness, and negligence or not.

Q3

**Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?**

**Commentary**

We wanted to know whether the law of civil remedies in the focus jurisdiction provides that public bodies, corporations and/or individuals may face civil liability even when they are not the primary perpetrators of harm or abuse, but their conduct contributes to harm suffered by the victims. This kind of liability is referred to as ‘complicity’, ‘accessory’ or ‘secondary’ liability. Indirect involvement in the commission of abuse may be established, for example, by the provision of goods and services, purchase of raw materials and products, hire of security services, financing of harmful behaviour, etc. Some legal systems do not distinguish between the principal (also referred to as primary or actual) and secondary perpetrators. Different jurisdictions may use different terms to characterise assistance in the commission of harm, such as ‘aiding and abetting’, ‘accessory’, ‘solicitation’, ‘facilitation’, ‘accomplice liability’, ‘complicity’, etc. If these concepts are not recognised in a particular jurisdiction, we asked authors to make that clear.

We also asked authors to consider whether the rules governing vicarious liability may be applicable to incur civil liability for the civil wrongs of the third parties.

Q4

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

**Commentary**

We sought details on how the law of civil remedies operates in relation to modern corporate groups. These business structures are complex, with vertical and horizontal integration, whereby parent companies own or control a range of subsidiaries often established in different jurisdictions. In addition, many global companies have complex networks of suppliers. The lead companies are not bound by direct or indirect shareholding with their suppliers in the same way as parent companies are linked to the subsidiaries in corporate groups. However, they often exercise a degree of managerial control over independent contractors by requiring suppliers to adhere to the purchasers’ internal procurement policies which are frequently supported by prescribed training and social auditing. The question we seek to explore is whether, when the act or omission of a subsidiary company, or a supplier, has resulted in one of the three defined harms, there are civil remedies that will enable those who have been harmed to seek redress from the parent or lead company.



Q5

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

#### Commentary

Authors were asked to outline the range of remedies under the law of civil remedies for the three defined harms in their jurisdiction. We were particularly interested in the question of whether a court may impose sanctions other than monetary penalties, including, for instance, restitution, injunctive relief, or mandatory orders to implement programmes to provide redress, guarantees of non-repetition, public or private apologies, land restitution, and/or environmental rehabilitation.

Q6

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

#### Commentary

There is often more than one form of redress available to the victims of human rights violations. We wanted to determine whether civil claims are an effective means of human rights protection in the focus jurisdictions. We asked authors to outline the advantages and disadvantages of bringing civil claims for human rights violations. While questions of procedure are outside the scope of the Project, authors may briefly identify here some of the jurisdictional and procedural obstacles that impact the efficiency of civil claims. If civil claims in a particular jurisdiction are not a preferred route of redress for specified categories of human rights violations within the scope of the Project, we asked authors to mention this and to outline other types of legal action which are likely to be used (eg criminal case, administrative proceeding, human rights commission or ombudsman, etc).

Q7

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

#### Commentary

This question was added in the report template following the workshop with the authors convened in January 2022. The focus of the Project and the Handbook is on the substantive law, and the extraterritorial application of the law of civil remedies is outside the scope of the inquiry. Yet, it was noted by the authors from several focus jurisdictions that civil claims are often commenced in a transnational context. This trend is particularly apparent in the business and human rights context. Victims of business-related human rights abuses increasingly commence civil claims against parent companies in Western states in relation to harm that has occurred in the overseas states where subsidiaries conduct their operations. We asked authors to set out basic rules explaining when civil claims can be brought against a foreign defendant. When courts consider cases concerning harm that occurred in another jurisdiction, they undertake analysis to determine which state's law should be applied to decide

the claim. Applicable law can be more or less favourable in different jurisdictions, therefore impacting the efficacy of pursuing civil claims. That said, country reports do not address the choice of law considerations in the focus jurisdictions.

Q8

**Can you recommend resources for further research and consultation to anyone interested in learning more about civil liability for human rights violations in your jurisdiction?**

### Commentary

We asked authors to guide readers who require further information on the law of civil remedies in the focus jurisdiction, including online free-access-to-law websites and databases; key pieces of scholarly work; policy reports; websites of relevant institutions, research centres, civil society organisations, law firms, etc.



## Part B: Case Scenarios

### CASE SCENARIO 1: FACTS

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.

### QUESTIONS

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.

Q2

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.

Q3

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

## Commentary

Case Scenario 1 is concerned with the use of force by the police during peaceful protests. The second actor is a private security company that provided police with vehicles, equipment and water. Case Scenario 1 allows testing of how the law of civil remedies applies to public bodies and whether a private company can be held accountable for contributing to the wrongdoing even if it is not a primary perpetrator.



### CASE SCENARIO 2: FACTS

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.

## QUESTIONS

- Q1** 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.
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- Q2** 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.
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- Q3** Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 2?
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## Commentary

Case Scenario 2 concerns the severe environmental pollution caused by oil spills. A subsidiary runs the extractive project, but the facts suggest that a parent company has been involved in the subsidiary's business. Case Scenario 2 focuses on the allocation of liability within corporate groups and explores the limits of liability of the parent company in relation to human rights breaches caused by its subsidiary's operations.



### CASE SCENARIO 3: FACTS

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.

## Questions

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.

Q2

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?

Q3

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

## Commentary

Case Scenario 3 occurs in the context of a supply-chain relationship. According to the facts, several workers died or were injured as a result of the fire at the factory. Case Scenario 3 examines how harms arising from poor working conditions and lack of safety procedures are protected by the law of civil remedies and whether a major purchaser of the clothes produced at the factory can be held liable.



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