CORPORATE ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS IN MULTINATIONAL BUSINESS OPERATIONS: EVALUATING THE EFFECTIVENESS OF INTERNATIONAL LEGAL FRAMEWORKS*

Abstract

Multinational enterprises now operate across more jurisdictions, employ more people, and command more capital than many of the states in which they do business, yet the international legal system built around the sovereign state has struggled to hold them to account when their operations cause serious human rights harm. This article employed doctrinal approach in evaluating the effectiveness of the principal international legal frameworks that have emerged to close that accountability gap: the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the ILO's Tripartite Declaration, the stalled UN treaty process, and the patchwork of domestic litigation, from Alien Tort Statute claims in the United States to parent company duty-of-care litigation in the United Kingdom, that victims have turned to in the absence of a binding international regime. Drawing on the Ogoniland litigation arising from Shell's operations in Nigeria's Niger Delta as a recurring case study, the article argues that the existing framework has produced real, if uneven, gains, most visibly in expanding the circumstances in which parent companies can be sued in their home jurisdictions, but that it remains fundamentally reactive, jurisdictionally fragmented, and dependent on the willingness of individual victims to litigate for years against better-resourced corporate defendants. It concludes that meaningful accountability will require binding home-state due diligence legislation and a credible international instrument, rather than continued reliance on voluntary standards alone.

Keywords: Corporate Accountability, Human Rights, Human Rights Violations, Multinational Business Operations, International Laws.

1. Introduction

Scale mismatch in the core of business and human rights law is disturbing. International law, which has centered for centuries on the sovereign state as its main subject, has no clear mechanism to hold a corporation directly liable under international law for the human rights injury it inflicts through its activities annually with the revenues of the majority of the countries in which it operates. States have human rights responsibility.[1] Generally, at least in the orthodox international legal doctrine, corporations do not in the direct and enforceable sense.[2] The imbalance of power and lack of accountability is reflected most clearly in the decades-long struggle of communities in Nigeria's Niger Delta to hold Shell accountable for oil pollution and complicity in human rights abuses against the Ogoni people.[3] This 'gap' is not new. The human impact of multinationals' operations has been a concern for at least 30 years, since a series of corporate scandals in the extractive and pharmaceutical sectors, and a wave of decolonization, first prompted a search for a binding code of conduct for multinationals by member states of the United Nations, which failed to reach consensus, spurning a period of voluntary corporate codes and industry self-regulation for the next three decades.[4]

It is a fact that the problem is very large. Environmental degradation caused by extractive activities, forced labour in global supply chains, and complicity in state violence against communities who resist corporate projects, often reoccur on a regular basis from one jurisdiction to another and industry to industry, suggesting that they are not isolated but rather systemic and not episodic. For decades, what legal architecture would even do about it has been challenged.[5] There have been two general approaches that have been in competition for dominance. The first is directed to international soft law, principles, guidelines and declarations written to states as well as to enterprises, which are expected to influence the behavior of enterprises without creating any enforceable international legal obligations.[6] The second suggests that the best place where a victim could receive a remedy would be through domestic court under the specialized provisions of the Alien Tort Statute, or under the ordinary law of tort applied to the parent-subsidiary relationship, in the home state of the multinational parent company.[7] Neither strategy has proven wholly satisfactory. This article's central task is to evaluate why. Section two conceptualizes the accountability gap and the doctrinal reasons for its persistence. Section three examines the principal soft-law instruments, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the ILO's Tripartite Declaration. Section four turns to the more ambitious,

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[1] Odoeme, V.C., 'Corporate accountability in the Nigerian oil and gas sector: coping with uncertainties', *Commonwealth Law Bulletin*, Vol 39(4) 2013, 601.

[2] Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights v Nigeria, African Commission on Human and Peoples' Rights, Communication No 155/96, 27 October 2001.

[3] Ibid. Muchlinski, P.T., *Advanced Introduction to Business and Human Rights,* Cheltenham, Edward Elgar Publishing, 2022. 201.

[4] Shaw, M.N., *International Law*, 9th ed., Cambridge, Cambridge University Press, 2021, 258.

[5] UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, HR/PUB/11/04, 2011.

[6] Ruggie, J.G., *Just Business: Multinational Corporations and Human Rights*, New York, W.W. Norton & Company, 2013, 51.

[7] *Wiwa v Royal Dutch Petroleum Co*, 226 F 3d 88 (2d Cir 2000); *Vedanta Resources Plc v Lungowe* [2019] UKSC 20.

and so far, unsuccessful, effort to negotiate a binding international treaty. Section five and six examine domestic litigation as an alternative avenue, first in the United States and then in the United Kingdom, tracing how each jurisdiction's courts have alternately opened and narrowed the path to corporate accountability. Section seven considers regional and domestic African jurisprudence, centred on the Ogoniland litigation before the African Commission on Human and Peoples' Rights. Section eight offers a critical evaluation of what this composite framework has and has not achieved, and section nine proposes a way forward before the article concludes.

2. Conceptualizing the Corporate Accountability Gap

The development of international human rights law was, until recently, focused on the duties of states towards the people under their control.[8] The multinational enterprises are ill at ease in this structure. They are not states, so they do not have the capacity to be direct subject of a human rights treaty, in the sense that a government could, but their activities, from extractive industries to manufacturing supply chains and infrastructure development, often impinge on the very rights to life, health, property, a clean environment, freedom from torture and inhuman treatment that human rights law was meant to guarantee.[9] The traditional view has been that international human rights obligations are ones that attach to states, with a corresponding duty to control corporations in their jurisdiction; the corporation itself, has been until recently, a third party and not subject to international law.[10] This creates the so-called governance vacuum, which is most pronounced in the most vulnerable places—those states where the capacity to regulate is low, corruption is a problem, or the state is itself a source of the harm complained. Where the host state is either unable or unwilling to hold a multinational subsidiary liable, victims are left with only international mechanisms not intended to bind corporations or with the courts of the parent company's home state which, for reasons of comity, forum non conveniens doctrine, or simply dislike, often can't hear the case at all, even if they have strong institutions.[11] It is also complicated by the separate legal entity of the corporate. As a general proposition of company law, a parent company and subsidiary company are separate legal entities, and the corporate veil normally protects the parent from liability for the subsidiary's acts even if it has a great deal of de facto control over the subsidiary.[12] It is this aspect of corporate law which has proved most difficult to reform in the human rights context, for the victims who seek a meaningful remedy usually want to go to the parent company - the company with the assets, with the reputation, usually with direct involvement in operational standards or practices which have been breached, not a thinly capitalized subsidiary.[13]

The courts in various jurisdictions have adopted divergent approaches as to the extent to which this veil should be lifted. Some have argued that the parent-subsidiary relationship is of no legal consequence to the question of liability, even where there is a significant degree of control.[14] Others, as sections five and six below investigate in some detail, have cast doubt on the notion of the parent being responsible for the subsidiary, and have wondered whether the parent exhibits such characteristics as responsibility or control in its own conduct, setting of standards, oversight, and holding itself out as responsible for the conduct of the subsidiary and thus assumes obligations apart from that of the subsidiary itself, despite the fact that it is not. This lack of uniformity is itself a reflection of the accountability gap mentioned above – the actual extent to which companies are held accountable depends greatly on which domestic court hears the case, given the absence of any international standard.[15]

Odoeme's analysis of the Nigerian oil and gas sector captures the practical consequence of this gap with particular clarity, observing that victims of environmental degradation traceable to multinational oil operations in the Niger Delta have faced a persistent uncertainty as to which forum, if any, offers a realistic prospect of an effective remedy, an uncertainty rooted as much in weak domestic regulatory enforcement as in the structural limitations of the applicable legal frameworks themselves.[16] It is against this backdrop that the international soft-law framework examined in the next section emerged, not to displace domestic regulation, but to try to shape corporate conduct in precisely those governance gaps where domestic regulation could not be relied upon.

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[8] Shaw op. cit. 260. See also; Muchlinski, P.T., *Multinational Enterprises and the Law,* 3rd ed, Oxford, Oxford University Press, 2021.
[9] Odoeme op. cit. 605. See also; Muchlinski, P.T; *Advanced Introduction to Business and Human Rights,* Cheltenham, Edward Elgar Publishing, 2022.
[10] Shaw op. cit. 262. See also; Baumann-Pauly, D. and Nolan, J; *Business and Human Rights: From Principles to Practice,* London, Routledge, 2016.
[11] Ibid. See also; George, E; *Incorporating Rights: Strategies to Advance Corporate Accountability,* New York, Oxford University Press, 2021. 53.
[12] Ruggie op. cit. 45. Deva, S. and Bilchitz, D., *Building a Treaty on Business and Human Rights: Context and Contours,* Cambridge, Cambridge University Press, 2017.
[13] Ibid. See also; Muchlinski, P.T., *Multinational Enterprises and the Law,* 3rd ed, Oxford, Oxford University Press, 2021.
[14] Shaw (n 2) 264. See also Deva, S. and Bilchitz, D; *Building a Treaty on Business and Human Rights: Context and Contours,* Cambridge, Cambridge University Press, 2017.
[15] *Vedanta Resources Plc v Lungowe* (n 6) para 49.
[16]Odoeme op. cit. 615. See also; Ruggie, J.G., *Just Business: Multinational Corporations and Human Rights,* New York, W.W. Norton & Company, 2013.

3. The Soft-Law Foundations of Business and Human Rights

The modern business and human rights field is often dated to 2005, when then UN Secretary-General Kofi Annan appointed Harvard academic John Ruggie as Special Representative on the issue of human rights and transnational corporations, following the collapse of an earlier, far more ambitious attempt to impose binding human rights obligations directly on corporations through a set of draft UN Norms.[17] Ruggie's six-year mandate culminated in the UN Guiding Principles on Business and Human Rights, unanimously endorsed by the Human Rights Council in June 2011.[18] The Guiding Principles rest on three pillars: the state duty to protect against human rights abuse by third parties, including business; the corporate responsibility to respect human rights, understood as a baseline expectation independent of a state's own capacity or willingness to enforce it; and access to remedy, both judicial and non-judicial, for victims of business-related human rights harm.[19]

Ruggie's own account of the process, set out in his book Just Business, is candid about why he abandoned the earlier norms-based approach in favour of a principled but explicitly non-binding framework. He concluded that international law lacked, at the time, the institutional capacity to impose and enforce direct human rights obligations on corporations, and that a framework capable of achieving genuine consensus among states, businesses and civil society, even if not directly enforceable, was likely to shift corporate practice more effectively than an ambitious treaty text with no realistic prospect of adoption.[20] Whether that judgment has been vindicated by subsequent events remains, as later sections of this article suggest, a genuinely open question.

The Guiding Principles do not stand alone. The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, most recently revised in 2023, offer a parallel, government-endorsed set of recommendations addressed directly to enterprises operating in or from OECD member and adherent states, covering human rights, labour rights, environmental protection and related matters, and are notable for the National Contact Point mechanism through which affected parties can raise specific instances of alleged non-compliance.[21] The ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, first adopted in 1977 and periodically revised since, addresses a narrower but overlapping set of labour-related concerns, employment, training, conditions of work, and industrial relations, reflecting the ILO's own tripartite structure of governments, employers and workers' organizations.[22]

Taken together, these three instruments constitute what might be called the soft architecture of business and human rights: detailed, internationally negotiated, and widely referenced, yet none of them directly enforceable against a corporation in the way a domestic statute or an international treaty binding on states would be.[23] The OECD's National Contact Point mechanism illustrates both the promise and the limits of this soft architecture particularly clearly. Each adhering state designates a National Contact Point, typically housed within a government ministry, empowered to receive complaints alleging that a specific enterprise has failed to observe the Guidelines, to offer mediation between the parties, and to publish a final statement setting out its findings.[24] The mechanism has handled several hundred such specific instances since its inception, and has produced a number of genuinely useful mediated outcomes, yet it possesses no power to award compensation, to compel participation by an unwilling enterprise, or to enforce compliance with its own findings, leaving many commentators to conclude that its practical value lies less in adjudication than in the reputational and relationship pressure that a published, government-endorsed finding of non-compliance can generate.[25] Their influence operates instead through reputational pressure, through incorporation into corporate policy and supply chain contracts, and, increasingly, through domestic legislation that borrows their language and structure, most visibly in the mandatory human rights due diligence laws now emerging in several European jurisdictions.[26] Whether this indirect mode of influence amounts to genuine accountability, or merely to a more sophisticated form of voluntary self-regulation, is precisely the question the remainder of this article seeks to address.

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[17]Ruggie op. cit. 47. See also; Gajos, M., *Business, Human Rights, and the Law: International Responsibility of States and Corporations,* Abingdon, Routledge, 2026.

[18]UN Human Rights Council Resolution 17/4, 16 June 2011, endorsing the Guiding Principles on Business and Human Rights (n 5).

[19]UN Guiding Principles on Business and Human Rights (n 5), Principles 1, 11 and 25.

[20]Ruggie op. cit. 82. Pereira, R., *Business, Human Rights and Natural Resource Governance: Accountability for a Just Transition,* Oxford, Hart Publishing, 2026.

[21]OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris, 2023.

[22]International Labour Organization, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,* adopted by the ILO Governing Body at its 204th Session, Geneva, November 1977, as amended.

[23]Shaw op. cit. 270. Bantekas, I. and Stein, M.A., *The Cambridge Companion to Business and Human Rights Law,* Cambridge, Cambridge University Press, 2021.

[24]OECD Guidelines for Multinational Enterprises (n 19), Procedural Guidance.

[25]Shaw op. cit. 272. See also; Pereira, R; *Business, Human Rights and Natural Resource Governance: Accountability for a Just Transition,* Oxford, Hart Publishing, 2026.

[26]Odoeme op. cit. 618. See also Muchlinski, P.T., *Multinational Enterprises and the Law,* 3rd ed, Oxford, Oxford University Press, 2021.

4. The Search for Hard Law: The UN Treaty Process

Dissatisfaction with the voluntary character of the Guiding Principles found renewed institutional expression in June 2014, when the Human Rights Council adopted resolution 26/9, establishing an open-ended intergovernmental working group with a mandate to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.[27] The resolution, proposed by Ecuador with the backing of a coalition of developing states and civil society organizations, was adopted over the explicit objection of several major capital-exporting states, which argued that a binding treaty risked undermining the fragile consensus achieved around the Guiding Principles rather than complementing it.[28] More than a decade on, the working group's efforts have not yet produced an adopted treaty. Successive negotiating sessions have refined a series of draft texts, addressing questions of legal liability, jurisdiction, mutual legal assistance, and the relationship between the proposed instrument's obligations and existing international investment and trade law, but consensus has remained elusive, not least because the divide over whether the instrument's obligations should extend to all business enterprises or focus specifically on those with a transnational character has never been fully resolved.[29] The slow pace of negotiation echoes, in some respects, the multi-decade timelines that have characterized other ambitious multilateral undertakings, but it carries a particular cost in this context: victims of ongoing corporate human rights harm have little use for an instrument that may take another decade or more to materialize, if it materializes at all.[30]

It would be a mistake, however, to dismiss the treaty process as having achieved nothing simply because no treaty has yet been adopted. The negotiations have kept sustained international attention on the underlying accountability gap, have generated a body of increasingly sophisticated draft text on questions, such as parent company liability and access to remedy, that earlier instruments left largely unaddressed, and have arguably contributed to the political momentum behind the mandatory due diligence legislation that several states have since adopted unilaterally rather than wait for a multilateral instrument to emerge.[31] In this sense, the treaty process may be functioning less as a direct source of binding obligation and more as a slow-moving forcing mechanism, one that has already begun to shape state practice even in its unfinished form.

5. Judicial Avenues: Alien Tort Litigation in the United States

For much of the 1990s and 2000s, the United States' Alien Tort Statute, a brief eighteenth-century provision granting federal district courts jurisdiction over civil actions by aliens for torts committed in violation of the law of nations, offered the most consequential judicial avenue for corporate human rights accountability anywhere in the world.[32] The litigation arising from Shell's operations in Ogoniland is emblematic. In *Wiwa v Royal Dutch Petroleum Co,* Nigerian plaintiffs, including relatives of the executed Ogoni activist Ken Saro-Wiwa, brought claims against Royal Dutch Petroleum and Shell Transport and Trading alleging complicity in torture, extrajudicial killing and other abuses committed by Nigerian security forces against Ogoni activists opposing Shell's oil operations.[33] The Second Circuit's 2000 decision allowing the case to proceed, reversing an earlier dismissal on forum non conveniens grounds, was widely regarded at the time as opening a genuinely promising avenue for transnational corporate accountability litigation, and the case eventually settled in 2009 for a reported 15.5 million US dollars.[34] That promise proved short-lived. In *Kiobel v Royal Dutch Petroleum Co,* a related case arising from the same underlying events in Ogoniland, the United States Supreme Court significantly narrowed the Alien Tort Statute's reach, holding in 2013 that the presumption against extraterritoriality applies to claims brought under the statute, and that mere corporate presence in the United States does not, without more, displace that presumption where all the relevant conduct occurred abroad.[35] The practical effect of Kiobel was to close off the Alien Tort Statute as a realistic avenue for the great majority of claims arising from human rights abuses committed entirely outside the United States, precisely the fact pattern that characterizes most multinational corporate human rights litigation.[36] Subsequent Supreme Court decisions have narrowed the statute's application still further, confirming that foreign corporations generally cannot be sued under the statute at all, regardless of where the underlying conduct occurred.[37]

[27]UN Human Rights Council Resolution 26/9, 'Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights', A/HRC/RES/26/9, 26 June 2014.
[28]Shaw op. cit. 275. See also McCorquodale, R; *Business and Human Rights,* Oxford, Oxford University Press, 2024.
[29]UN Human Rights Council Resolution 26/9 (n 23) para 1.
[30]Ruggie op. cit. 90.
[31]Shaw op. cit. 278. See also; McCorquodale, R; *Business and Human Rights,* Oxford, Oxford University Press, 2024.
[32]Alien Tort Statute, 28 USC § 1350 (1789).
[33]*Wiwa v Royal Dutch Petroleum Co*, 226 F 3d 88 (2d Cir 2000) 92.
[34]*Wiwa v Royal Dutch Petroleum Co* Supra, 104.
[35]*Kiobel v Royal Dutch Petroleum Co*, 569 US 108 (2013) 116.
[36]*Kiobel v Royal Dutch Petroleum Co* Supra, 124.
[37]*Kiobel v Royal Dutch Petroleum Co* Supra, 125.

The trajectory becomes clearer set against the wider arc of Alien Tort Statute litigation. Earlier decisions, such as the Ninth Circuit's ruling in *Doe v Unocal Corp*, had suggested that a corporation could face liability for aiding and abetting human rights abuses committed by a foreign government's security forces where the corporation knowingly provided practical assistance with the purpose or effect of facilitating the abuse, a standard that, while demanding, at least kept the door open to corporate accountability claims of the kind the Ogoniland plaintiffs were pursuing in parallel.[38] The Supreme Court's own 2004 decision in Sosa v Alvarez-Machain had already signalled caution, holding that federal courts should recognise causes of action under the statute only for violations of international law norms as clearly defined and universally accepted as the eighteenth-century paradigms, piracy, offences against ambassadors and violation of safe conducts, that Congress had in mind when it enacted the statute, a standard that left considerable room for lower courts to disagree about which contemporary human rights norms qualified.[39] Kiobel and its successors resolved that uncertainty largely by closing off the extraterritorial reach of the statute altogether, rather than by settling which substantive norms it covered.

The rise and effective retrenchment of Alien Tort Statute litigation offers a cautionary lesson about the fragility of any single jurisdiction's willingness to serve as a global forum for corporate accountability. For roughly two decades, plaintiffs and their lawyers built an entire body of jurisprudential strategy around a single, narrowly drafted federal statute never intended by its eighteenth-century drafters to address twentieth-century multinational corporate conduct; when the Supreme Court determined that this expansive reading exceeded what Congress had authorized, that entire body of strategy lost most of its practical force almost overnight.[40] It is this fragility, dependence on a single, contestable, and ultimately reversible line of domestic jurisprudence that has since pushed both litigants and advocates toward the United Kingdom, where a different, tort-based route to parent company liability has been developing along a rather different trajectory.

6. Judicial Avenues: Parent Company Liability in the United Kingdom

Where the Alien Tort Statute route has narrowed, English common law has, somewhat unexpectedly, widened. The UK Supreme Court's 2019 decision in *Vedanta Resources Plc v Lungowe* concerned a jurisdictional challenge to claims brought by Zambian farming communities alleging environmental pollution from a copper mine operated by Vedanta's Zambian subsidiary, Konkola Copper Mines.[41] The Supreme Court held that the claim could proceed in the English courts, and, more significantly for the wider law, indicated that a UK parent company that holds itself out publicly as overseeing group-wide environmental, social or human rights standards may thereby assume a common law duty of care towards those harmed by a foreign subsidiary's operations, a duty turning not on the formal separateness of parent and subsidiary as distinct legal persons, but on the practical degree of control the parent actually exercises over the relevant activity.[42]

Two years later, in *Okpabi v Royal Dutch Shell Plc*, the Supreme Court applied and reinforced this reasoning in a case with direct roots in the same Niger Delta events that had earlier generated the Wiwa and Kiobel litigation in the United States. Nigerian communities from the Bille and Ogale areas brought claims against Royal Dutch Shell Plc and its Nigerian subsidiary, the Shell Petroleum Development Company of Nigeria, alleging widespread environmental damage from oil pipeline spills.[43] Reversing the Court of Appeal, the Supreme Court held that it was at least arguable that Shell's parent company owed a duty of care to the affected communities, given evidence of group-wide policies, standards and a degree of de facto managerial oversight extending to the Nigerian subsidiary's pipeline operations, and that the lower courts had applied an unduly restrictive test in dismissing the claim at a preliminary stage.[44]

Okpabi and Vedanta, read together, mark a genuinely significant, if still incomplete, development. They do not hold that a parent company is automatically liable for a foreign subsidiary's conduct; the underlying claims still must be proved at trial, and liability continues to depend on establishing the kind of practical control and assumption of responsibility that ordinary negligence law requires.[45] But they do confirm that the corporate veil is not an absolute barrier to litigation, and that UK-domiciled multinational parent companies can, in appropriate circumstances, be required to answer in English courts for the human consequences of standards they claim, often in glossy sustainability reporting, to have imposed group-wide.[46] A comparable, though not identical, trajectory has unfolded in Canada, where the Supreme Court's 2020 decision in *Nevsun Resources Ltd v Araya held that Canadian* common law does not automatically bar claims founded on breaches of customary international law, including claims of forced labour and inhuman treatment, brought against a

[38]*Doe v Unocal Corp,* 248 F 3d 915 (9th Cir 2001) 920.
[39]*Sosa v Alvarez-Machain*, 542 US 692 (2004) 732.
[40]Shaw op. cit. 280.
[41]*Vedanta Resources Plc v Lungowe* Supra, para 5.
[42]*Vedanta Resources Plc v Lungowe* Supra, paras 49-54.
[43]*Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3, para 3.
[44]*Okpabi v Royal Dutch Shell Plc*, paras 147-151.
[45]*Okpabi v Royal Dutch Shell Plc*, para 151.
[46]*Vedanta Resources Plc v Lungowe* (n 6) para 52.

Canadian mining corporation for the conduct of a jointly controlled entity in Eritrea, a decision that likewise turned on rejecting formal doctrinal barriers, there the act of state doctrine, that had previously insulated multinational parent companies from suit.[47]

The Dutch courts have travelled a related, though doctrinally distinct, road. In January 2021, shortly before the UK Supreme Court's Okpabi decision, the Hague Court of Appeal held Shell's Nigerian subsidiary liable for damage caused by pipeline leaks affecting Nigerian farmers, and found separately that the parent company itself had breached a duty of care owed to the affected Nigerian claimants, a duty grounded in Dutch tort law's own doctrine of hazardous negligence rather than in the English common law reasoning underlying Vedanta.[48] That two entirely separate legal systems, applying different doctrinal routes, reached broadly convergent conclusions about Shell's Nigerian operations within the same eighteen-month period is telling: it suggests the practical case for parent company accountability has, in the relevant factual circumstances, become difficult for courts across multiple legal traditions to resist, even as the formal doctrinal vehicles used to reach that conclusion continue to differ from one jurisdiction to the next.

7. Regional and Domestic Avenues: The Ogoniland Precedent

The Niger Delta litigation is not limited to U.S. and U.K. courts. In 2001 the African Commission on Human and Peoples' Rights (ECHR) issued its decision in *SERAC v Nigeria*, in which it held the Federal Republic of Nigeria to be guilty of breaching several provisions of the African Charter on Human and Peoples' Rights as a result of its conduct regarding the activities of Shell's joint venture with the Nigerian state oil company (NOC) in Ogoniland, including the rights to health, a satisfactory environment and, indirectly, an obligation on the state to protect its population from harmful activities within its territory by non-state actors, such as corporations.[49] What is significant about the Commission's decision is that it clearly recognizes the potential for multinational corporations to be positive agents of development, provided that the state and the corporations are themselves conscious of the common good and of the basic rights of people and communities involved in the process.[50] *SERAC v Nigeria* is, officially, not a claim against Shell, but against the Nigerian government; the African Charter is also not a document which imposes obligations on Shell directly, but on its states parties.[51] But its significance for the corporate accountability debate is substantial. The Commission's reasoning was especially clear on the fact that a state's duty to prevent violations of human rights includes violations caused by the activities of business enterprises operating within that state's jurisdiction, and that a state's failure to regulate or monitor, or to provide adequate remedy to befall the environment and its people as a result of the conduct of a business enterprise,[52] is a violation of that state's own human rights obligations, a finding that has fed into the future of the African Commission and subsequent domestic Nigerian cases involving corporate conduct in the extractive sector.

On the domestic front, litigation in Nigeria has been taking a parallel course, albeit at a slower pace. The Nigerian courts have accepted claims against oil multinationals based on tort theory, statutory environmental obligations, and increasingly, constitutional rights, albeit with the acknowledgment by Odoeme that victims remain subject to massive uncertainty regarding forum, standard of proof and the practical ability of Nigerian courts and regulatory institutions to deliver an effective remedy in a timely manner.[53] The staying power of these domestic uncertainties is part of the reason why in the 30 years of their struggle Ogoniland claimants have litigated their claims in Nigeria, the USA, the UK and before the African Commission at the same time – a kind of forum-shopping across every jurisdiction that might conceivably be available, which is perhaps the best evidence available of just how fractured the current international accountability architecture remains.[54]

8. Evaluating Effectiveness: Strengths and Persistent Gaps

Assessed cumulatively, the frameworks examined above have produced genuine, measurable change, even as they have fallen well short of anything resembling a comprehensive accountability regime. The UN Guiding Principles have become the near-universal reference point for corporate human rights policy, shaping supply chain due diligence practices, investor screening criteria and, increasingly, binding domestic legislation that borrows the Guiding Principles' own language of identifying, preventing and mitigating adverse human rights impacts.[55] The OECD Guidelines' National Contact Point mechanism, while lacking any power to impose binding remedies, has generated hundreds of specific instances raising human rights concerns, some of which have produced negotiated settlements between complainants and enterprises that would likely never have occurred through litigation alone.[56] And the UK's Vedanta and Okpabi

[47] *Nevsun Resources Ltd v Araya*, 2020 SCC 5.
[48] *Milieudefensie v Royal Dutch Shell*, ECLI: NL: RBDHA: 2021:5337, District Court of The Hague, 26 May 2021.
[49] Supra
[50] Supra
[51] *Supra*
[52] McCorquodale, R; *Business and Human Rights,* Oxford, Oxford University Press, 2024.
[53] Odoeme (n 1) 620.
[54] Ibid.
[55] Ruggie (n 1a) 95.
[56] OECD Guidelines for Multinational Enterprises (n 19), ch I.

jurisprudence, together with Canada's Nevsun decision, have demonstrated that domestic tort law, applied imaginatively, can reach parent companies in ways that international law, absent a binding treaty, currently cannot.[57] Yet the persistent gaps are equally real. The soft-law instruments remain, definitionally, non-binding, and compliance depends heavily on reputational pressure that operates unevenly across industries, more forcefully on consumer-facing brands vulnerable to public campaigns than on extractive or industrial enterprises whose customers are typically other businesses rather than the public.[58] The domestic litigation route, meanwhile, remains available only where a plaintiff can identify a parent company domiciled in a jurisdiction with sufficiently developed tort law and courts willing to hear the claim, a combination that excludes the great majority of the world's multinational enterprises, and even where available, requires victims to sustain litigation, as the Ogoniland claimants have, across decades and multiple jurisdictions before securing any remedy at all. Even a successful outcome, moreover, typically arrives too late to prevent the underlying harm; damages and clean-up orders, however substantial, are remedies for accumulated environmental and human damage that in many cases can never be fully reversed, a limitation inherent in any accountability model that operates primarily after the fact rather than through binding preventive obligation.[59] The treaty process, for its part, has yet to produce an adopted instrument after more than a decade of negotiation, and even an eventually adopted treaty would require ratification and domestic implementation by individual states before its obligations became directly enforceable, a process that has, historically, taken many multilateral human rights instruments a further decade or more to achieve any degree of widespread adherence.[60]

There is also a distributive dimension to this unevenness worth naming directly. The states and communities most exposed to serious corporate human rights harm, precisely because they often combine weak domestic regulatory capacity with resource-rich territory attractive to extractive industry, are frequently the least equipped to sustain the kind of protracted, multi-jurisdictional litigation that Vedanta, Okpabi, Wiwa and SERAC each ultimately required. An accountability framework that functions only for communities with access to well-resourced international human rights lawyers and years of patience is not, on any honest assessment, functioning as a comprehensive framework at all; it is functioning as a fallback available to the exceptionally well-organised and exceptionally persistent, of whom the Ogoni people, whatever else may be said, have certainly proven themselves to be.

There is a further, related dimension to this problem that deserves explicit mention: the growing use of defamation and other retaliatory litigation by well-resourced corporate defendants against human rights defenders and the communities and organizations supporting their claims, sometimes described as strategic lawsuits against public participation, which can impose significant financial and psychological cost on claimants entirely independent of the underlying merits of their human rights case.[61] Whatever the eventual outcome of the substantive litigation, the mere prospect of facing a well-funded countersuit is itself capable of deterring meritorious claims before they are ever filed, a dynamic that international soft-law instruments, focused as they are on the conduct of the underlying business operation rather than on litigation tactics, have so far done little to address.[62]

9. Towards A More Effective Framework

Closing these gaps does not require abandoning either the soft-law or the litigation-based strategies examined above; each has demonstrated real, if partial, value, and each will likely remain part of any future accountability architecture regardless of what else develops alongside it. What it does require is a more deliberate effort to convert the soft commitments already broadly accepted into binding domestic obligations, thereby reducing victims' dependence on the accident of whether a sympathetic parent-company jurisdiction happens to be willing to hear their claim.

Mandatory human rights due diligence legislation, of the kind several European states have now adopted, requiring enterprises to identify, prevent and account for human rights risks throughout their operations and supply chains on pain of domestic legal liability, represents the most promising available mechanism for achieving this conversion, since it operates entirely within existing domestic legal systems and does not depend on the uncertain timeline of the international treaty process.[63]

The European Union's own Corporate Sustainability Due Diligence Directive, adopted in June 2024, is the most ambitious instance of this legislative model to date, imposing binding due diligence obligations, backed by civil liability and administrative penalties, on large companies operating in or from the Union, extending explicitly to adverse human rights and environmental impacts arising across a company's chain of activities, including operations carried out by subsidiaries

[57]*Vedanta Resources Plc v Lungowe* (n 6); *Okpabi v Royal Dutch Shell Plc* (n 37); *Nevsun Resources Ltd v Araya* (n 41).
[58]Ruggie (n 1a) 100.
[59]Odoeme (n 1) 622.
[60]Shaw (n 2) 940.
[61]Odoeme (n 1) 624.
[62]Ruggie (n 1a) 105.
[63]Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, OJ L, 2024/1760, 5 July 2024.

and, in defined circumstances, business partners.[64] Whether the Directive's civil liability provisions will translate into the kind of practical remedy that Ogoniland-style claimants have so far had to pursue through common law negligence litigation remains to be seen, since much depends on how individual member states transpose the Directive's liability standard into their own domestic procedural law, but the Directive's very existence marks a significant shift from the purely voluntary character of the Guidelines and Guiding Principles examined earlier in this article, converting what were once soft recommendations into binding legal obligations enforceable by claimants rather than merely by reputational pressure.[65] Extending this legislative model more widely, ideally accompanied by a genuinely reversed burden of proof requiring a parent company to demonstrate that it exercised appropriate due diligence rather than requiring under-resourced victims to prove the contrary, would address much of the practical asymmetry that has characterised litigation to date.[66]

The treaty process, notwithstanding its slow progress, remains worth sustaining, not because a binding instrument is imminent, but because the negotiations continue to generate refined thinking on precisely the questions, parent company liability standards, jurisdiction, and mutual recognition of judgments across borders, that domestic courts have so far had to work out piecemeal and inconsistently across separate national jurisprudence.[67] A concluded treaty, even one initially ratified by a modest number of states, would offer claimants a stable, predictable standard to invoke, rather than the current patchwork in which the same set of facts can yield sharply different outcomes depending on whether the case happens to be litigated in New York, London, Toronto or Abuja.

10. Conclusion and Recommendations

This article has examined the success of the current international legal system in addressing corporate responsibility for human rights abuses in a multinational enterprise business, with the current case of Ogoniland litigation as an ever recurring example of both the successes and failures of the current system. All three sets of principles – the UN Guiding Principles, the OECD Guidelines and the ILO's Tripartite Declaration – have contributed to the development of a common normative language around corporate human rights behaviour, while they do not themselves impose concrete obligations. There is a narrow but real avenue for parent companies to be held accountable through domestic litigation, as evidenced by the Vedanta and Okpabi line of cases from the UK Supreme Court, and as the United States experiences the demise of Alien Tort Statute litigation demonstrates, any one jurisdiction's appetite for engaging with this role is susceptible to being curtailed. After a decade in negotiations, the UN treaty process has failed to produce a binding instrument, although it nonetheless helps to guide the broader normative debate in its current status.

Three recommendations follow. First, states, especially the major capital-exporting states, should pass mandatory human rights due diligence laws based on, but more stringent than, the ones already in place in European countries, such as the one with a 'reversed burden of proof' regarding whether due diligence has been conducted. Second, international negotiators should not be deterred by the slow pace of the UN treaty process, but must keep the process alive even though no single issue is resolved, incremental convergence of positions on any matters, particularly the standards for parent company liability, is valuable in and of itself, irrespective of the final agreement of a comprehensive instrument. Third, and perhaps most important, if a parent company duty of care test in terms of a control-based obligation – which the UK Supreme Court has been all too willing to articulate in Vedanta and Okpabi – is to be developed – and applied consistently and predictably, not as an occasional judicial innovation – then it is the most realistic hope that home-state courts will do so. None of these is to imply, however, that domestic laws and the ongoing evolution of the law will adequately bridge the accountability deficit outlined at the beginning of this article. States are still not uniformly motivated to enact laws to the detriment of their own resident multinationals, and even their most favorable domestic judges are bound by the limits of their own legal traditions. The past decade, however, has seen neither Kiobel's contraction nor Vedanta's growth, but both the treaty process and the European Union's binding due diligence directive have been at best unsettled, and at worst, actively renegotiated to balance corporate power and legal accountability for the worse.

[64]Directive (EU) 2024/1760 (n 53) art 1.
[65]Directive (EU) 2024/1760 (n 53) arts 22 and 29.
[66]Ruggie (n 1a) 110.
[67]UN Human Rights Council Resolution 26/9 (n 23) para 2.