**BEYOND GUILTY VERDICTS:
HUMAN RIGHTS LITIGATION AND ITS IMPACT ON CORPORATIONS' HUMAN
RIGHTS POLICIES**

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Abstract

During the last years there has been an increasing discussion on the role of business in human rights violations and an increase in human rights litigation against companies. The result of human rights litigation has been rather disillusioning because no corporation has been found guilty and most cases have been dismissed. We argue that it may nevertheless be a useful instrument for the advancement of the business and human rights agenda. We examine the determinants of successful human rights litigation in terms of judicial, educational, and regulatory effects. This article reviews more than forty corporate foreign direct liability cases and their effects on corporate human rights policies and conduct. The review shows that most corporations adjusted their human rights policies and adopted additional measures to cope with human rights issues during or shortly after the legal proceedings. Opening legal channels for human rights litigation may be one way for governments to incentivize firms to respect human rights. These findings have implications for the United Nations Guiding Principles on Business and Human Rights as well as on our interpretation of the most recent U.S. Supreme Court decision in *Kiobel v. Shell*.

Keywords: human rights; soft law; UN Guiding Principles on Business and Human Rights; human rights litigation

INTRODUCTION: HUMAN RIGHTS VIOLATIONS AND THE QUEST FOR COMPENSATION

Over the past two decades, there has been mounting criticism regarding the negative human rights impacts of corporate conduct (Wettstein, 2012a; Cragg, 2012; Murphy and Vives, 2013). Such negative impacts include, for example, unsafe and bad working conditions (Sluiter, 2009; Schrempf-Stirling and Palazzo, in press), environmental degradation (Human Rights Watch, 2013), as well as the forced and sometimes violent relocation of local communities (Hoffman and Gerhardt, 2005, Human Rights Watch, 2014; Murphy and Vives, 2013).

There have been a growing number of human rights abuses committed by oppressive regimes or paramilitary groups in which multinational corporations (MNCs) were allegedly involved (Wheeler, Fabig, and Boele, 2002; Kobrin, 2009). Examples include Google's involvement in human rights abuses in China (Brenkert, 2009), Talisman's involvement in the forced and violent displacement, extrajudicial killing, and torture of civilians in Sudan (Idahosa, 2002), and Roche's complicity in human rights violations in China (Schrempf-Stirling, 2014). There is a lively debate amongst scholars whether corporations have a (moral) responsibility for human rights abuses and how extensive such responsibilities ought to be (Hsieh, 2015; Wettstein, 2010, 2012b; Fasterling and Demuijnck, 2013).

One consequence of corporate complicity in human rights violations is an increase in foreign direct liability cases (Drimmer and Lamoree, 2011; De Jonge, 2011). Foreign direct liability cases are defined as "transboundary civil liability claims brought before the courts in Western societies against multinational corporations in relation to harm caused to people and planet as a result of their activities in (mostly developing) host countries" (Enneking, 2014, p. 47). In other words, foreign victims sue MNCs under tort or criminal law in the corporations' home states either for their involvement in human rights violations committed by their

subsidiaries, or for their negligence with regard to effectively preventing such violations (Enneking, 2014). Such foreign direct liability cases against companies involved in human rights violations have been filed with increasing frequency since the 1990s (de Jonge, 2011; Enneking, 2014; Schoen, Falchek, and Hogan, 2005).

However, the result of human rights litigation has been rather disillusioning so far: Compensation has rarely been achieved, and most cases were dismissed by domestic courts (Enneking, 2014). To date, with the recent exception of Shell's Nigerian subsidiary's conviction by a court in the Netherlands in January 2014, no company has been found guilty of human rights violations in a foreign direct liability case. The aim of this article is to explore the role and importance of human rights litigation despite this modest judicial success.

We review the potential of non-judicial 'side effects' of human rights litigation. We argue that besides its primary judicial purpose, human rights litigation serves two additional functions – one educational and one regulatory. In the first part of our article we review 41 human rights litigation cases and their effects on corporate policies and conduct of the respective defendant companies. Although none of the reviewed companies has been found guilty of human rights violations, the review shows that most, if not all of them introduced or adjusted their human rights policies during or shortly after the legal proceedings took place. Thus, our findings indicate the existence of what we call an *educational effect* of human rights litigation on corporate defendants.

In the second part of our article we complement our review with a discussion of a further effect of human rights litigation. Building on social movement and deterrence theory we argue for a *regulatory function* of human rights litigation and develop a set of propositions. We propose that litigation threat and the reaction of corporate defendants of human rights litigation are likely

to prime non-defendant corporations (that is, companies that have not been faced with human rights litigation), especially in the same industry, to adopt or amend human rights policies.

The educational and regulatory functions show that there are good reasons to facilitate human rights litigation in domestic legislative systems, despite the limited prospects of actually reaching guilty verdicts. Opening the legal channels for foreign direct liability cases may be one way for governments to incentivize firms to respect human rights (Aaronson and Higham, 2013) and thus to discharge their duties under the first pillar of the United Nations Guiding Principles on Business and Human Rights, i.e. the duty to protect human rights. Human rights litigation may, in fact, become a key driver for corporate change in human rights matters.

The article is divided into four parts. In the first part we provide a brief overview of the business and human rights debate, elaborate on extraterritorial jurisdiction, and trace the rise of human rights litigation against corporations. In the second part of the article we review human rights litigation cases and their effects on corporate human rights policies. In the third part of the article we elaborate on the regulatory effect of human rights litigation on firms that have not faced human rights litigation themselves. Finally, we provide an outlook on the implications of our findings for the UN Guiding Principles on Business and Human Rights, and the most recent 2013 U.S. Supreme Court decision in *Kiobel v. Shell*.

THE “BUSINESS AND HUMAN RIGHTS PREDICAMENT”

The globalization of markets and business has brought with it an ever-growing potential for corporate involvement in human rights abuses (Monshipouri, Welch, and Kennedy, 2003; Schrempf-Stirling and Palazzo, in press). The root cause of this “business and human rights predicament”, as the former UN Special Representative for Business and Human Rights (SRSG) John Ruggie asserts, “lies in the governance gaps created by globalization - between the scope

and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences” (United Nations, 2008, p. 3). The challenge lies in holding corporations accountable for their involvement in human rights abuses and providing remedy to victims because (1) there are no binding and effective global accountability mechanisms and (2) host states are reluctant to sufficiently regulate MNCs’ social and environmental conduct.

There is no regulatory entity at the global level to oversee corporate global operations and hold MNCs accountable for their alleged complicity in human rights violations. However, there are soft-law initiatives such as the UN Global Compact or the UN Guiding Principles on Business and Human Rights. The UN Global Compact consists of ten broad normative principles of socially and environmentally responsible business conduct while the UN Guiding Principles on Business and Human Rights outline the state’s duty to protect its citizens from human rights violations (including those committed and abetted by corporations), the corporate duty to respect human rights, and the shared duty to provide access to remedy for the victims of human rights violations (Ruggie, 2011).

While soft law regulations might raise awareness, encourage corporations to behave more responsibly (Zerk, 2006), or have an impact on corporate governance (Muchlinski, 2012), soft-law initiatives are criticized for not being effective because they rely on the voluntary participation of corporations, are non-binding, and lack monitoring and enforcement (East and Balch, 2005; Zerk, 2006; Mena and Palazzo, 2012). Thus, global accountability mechanisms are still weak (Campbell, 2006; McCorquodale, 2009; Voiculescu, 2009).

At the same time host states are reluctant about holding MNCs accountable for their complicity in human rights abuses for several reasons: Underdeveloped legal systems and institutions (e.g., no legal aid for victims or lack of resources for investigations), dependence of host states on foreign direct investment that leads to a lack of political will to enforce even

existing laws and regulations, and vulnerable and weak governments, often leave the victims of corporate human rights violations without the possibility for redress in the host state where human rights abuses occur (Simons, 2014; Nolan, 2014; Enneking, 2014). Thus, it is “unsatisfactory and unrealistic to expect TNC [transnational corporation] human rights accountability [...] to emanate exclusively from the host State” (Joseph, 2004, p. 4/5). Given the shortcomings of global and host state accountability mechanisms, the focus is shifting today to *home* country strategies – both non-legal and legal – with extraterritorial effects.

EXTRATERRITORIAL JURISDICTION: THE ROLE OF THE HOME STATE IN HUMAN RIGHTS LITIGATION

A state is acting *extraterritorially* if it is performing its functions in the territory of other states (Bernaz, 2013; McCorquodale, 2009). Extraterritorial *jurisdiction*, concordantly, refers to a state’s legal functions, most notably legislation, adjudication, and enforcement. Thus, extraterritorial jurisdiction occurs if a state legislates and regulates conduct occurring outside of its territory (prescriptive jurisdiction), if domestic courts adjudicate matters that have occurred partly or fully in another state (adjudicative jurisdiction), or if the enforcement occurs on the territory of another state (enforcement jurisdiction; Bernaz, 2013, p. 495).

Needless to say, fearing the accusation of meddling with the sovereignty of other states (Simons, 2014) and, perhaps more importantly, a loss of their own competitive advantage as a location for businesses (Enneking, 2014), home governments have predominantly been hesitant to work toward establishing the legal foundations that would allow foreign citizens more effectively to bring foreign direct liability cases to their domestic courts (Nolan, 2014).

Nevertheless, De Schutter (2006, p. 2) observes an increasingly frequent use of extraterritorial jurisdiction by states in order to control MNCs. He attributes this growing reliance

on extraterritorial jurisdiction to a large extent to the “spectacular progress of international criminal law”, but also, among other factors, to “the perceived need to moralize the behavior of business in the context of economic globalization” (De Schutter, 2006, p. 5). In some cases the exercise of extraterritorial jurisdiction means that domestic courts ought to apply the local rules of host states in judging a tort committed abroad. In other cases, home state courts ought to apply their own domestic rules to the conduct of multinationals abroad. The third, and for this article most relevant, case entails the application of international law by home state courts to the conduct of MNCs abroad (De Schutter, 2006, p. 7). It is against the background of this last case that we have witnessed an increasing number of human rights litigation cases (Zerk, 2006; Schoen et al., 2005).

There have been numerous lawsuits brought against MNCs for their alleged complicity in human rights abuses in various countries (Chambers and Tyler, 2014; Srinivasan, 2014) such as the United States (e.g., Chevron), the United Kingdom (e.g., British Petroleum), Canada (e.g., Cambior Inc., HudBay Minerals, and Anvil Mining), Australia (e.g., BHP Billiton), India (e.g., Vedanta), Switzerland (e.g., IBM), France (e.g., DLH), Belgium (e.g., Total), Sweden (e.g., Boliden Mineral), Germany (e.g., Danzer Group), and the Netherlands, (e.g., Shell).

Reasons for the increasing tendency to sue corporations in their home states are manifold: For example, lawsuits against MNCs enjoy high publicity, as the media is interested in cases of corporate misconduct (Zerk, 2006). Also, there are a lot of human rights and public interest lawyers who are interested in these foreign liability cases against MNCs given the financial prospects (Muchlinski and Rouas, 2014). Moreover, the courts in Western countries offer victims financial as well as procedural advantages compared to their own home state courts (Muchlinski and Rouas, 2014). For instance, most countries do not offer the possibility of class action like, for

example, the United States does. Finally, victims have better prospects of out-of-court settlements (Joseph, 2004; Enneking, 2014) and higher financial compensation (Zia- Zarifi, 2009).

In 2001, the British company Cape Inc. settled a lawsuit about its liability in asbestos-related injuries of some of its subsidiary's workers in South Africa. The plaintiffs received around £27m – an amount that was not possible to be received in the plaintiffs' home country (Zerk, 2006). Most recently, after a three-year battle in the High Court of London, Shell agreed to compensate the community of Bodo in the Niger Delta with £55m for large-scale destruction following two massive oil spills in 2008 and 2009 (Vidal, 2015).

Since the 1980s, more than 120 foreign direct liability cases have been filed worldwide against MNCs for their alleged complicity in human rights abuses. Judged solely by their outcome, the cases indeed present a rather disillusioning record: No corporation has been found guilty and most human rights litigation cases were dismissed. Less than a handful of cases were settled (Drimmer and Lammoree, 2011; Zerk, 2006; Enneking, 2014). On top of that, the 2013 U.S. Supreme Court ruling in *Kiobel v. Shell* makes it more difficult to sue MNCs for human rights violations under the Alien Tort Claims Act (ATCA) in the United States. The U.S. Supreme Court dismissed the case on the grounds of a “presumption against extraterritoriality” and argued that the ATCA does not apply to human rights violations committed in other countries unless it touches and concerns the U.S. with sufficient force.

However, as this review will show, human rights litigation must not be judged by its judicial function alone. Despite the limited success of human rights lawsuits so far, it may be premature to discard the use of extraterritorial jurisdiction for corporate human rights violations in general. For example, after ExxonMobil and Chevron were sued for their complicity in human rights violations in Indonesia and Nigeria respectively, both corporations started introducing human rights policies and other CSR measures during or shortly after the legal proceedings.

Thus, there might be what Jerbi (2009, p. 299) described as a trend to “utilize international law generally as a means of influencing corporate behavior.” However, there is little actual evidence as of yet regarding such alleged “side effects” on corporate conduct. Therefore, the remainder of this article will attempt to fill this gap.

In the next section we review the impact of human rights litigation on 41 corporations that have faced human rights lawsuits in recent years and provide first evidence for our thesis that human rights litigation has an educational effect on corporate defendants. The section after the next then elaborates on the regulatory effect of human rights litigation and theoretically develops arguments for why corporations that have never been confronted with human rights litigation might still adopt human rights policies and CSR measures.

METHODS

In order to investigate whether there is a relationship between corporate engagement in human rights policies, strategies, activities, and human rights litigation, we reviewed 55 human rights litigation cases involving 41 corporations regarding their effect on corporations’ development and adoption of human rights policies. When choosing the corporations, we focused on the sectors that are most often targeted in human rights litigation. The top sectors that are most frequently sued for complicity in human rights violations are the extractive industry (e.g., oil, gas, energy, and mining), food and beverage industry, the financial sector (e.g., banks, investment firms, and accounting firms), the information technology sector (e.g., Internet corporations, communication corporations, and technology corporations), and security service companies (Černič, 2010). Accordingly, half of our sample includes corporations from the extractive sector (21 firms). We also included firms from banking (four firms), car industries (five firms), the food and beverage

sector (four firms), the pharmaceutical industry (two), the ICT industry (one), the fashion industry (one), the defense sector (one); wood processing (one), and ship repair services (one).

Slightly more than 50 percent of these cases occurred in the United States (31 cases). 24 human rights litigation cases were filed outside the United States: Great Britain, The Netherlands, Sweden, India, Australia, Democratic Republic of the Congo, Nigeria, Belgium, Papua New Guinea, Ecuador, Canada, Malawi, South Africa, France, Switzerland, and Uganda. All corporations in the sample are multinational. The main source of information on these corporate human rights litigation cases was the Business & Human Rights Resource Centre which provides information on the human rights performance of corporations including corporate human rights policies as well as claims against corporations.

The selection of companies was conditional on their having press releases and other materials relevant for this review and time frame publicly available. Our sample initially included 44 corporations, but some of them had no Internet presence or any information available for which reason we excluded them from the review. The Canadian company Cooper Mesa Mining, for example, was sued in 2009 in Canada but the company has no Internet presence and we were not able to acquire any information about the company and its policies. Cambior Inc. was also excluded from our sample. The company was sued in 1997 and 1998 for human rights violations in Guyana. However, the company was acquired by IAMGOLD in 2006 and there is no information about Cambior Inc.'s CSR practices prior to the acquisition. We finally included 41 corporations in our sample, totaling 55 human rights litigation cases. Some companies were sued numerous times in different countries. IBM, for example, was sued for its complicity in human rights violations during World War II in the United States and Switzerland.

While our sample includes mainly foreign direct liability cases, some of the human rights lawsuits were actually filed in the country where harm occurred. Most often when corporations

were sued in the country where the human rights violations occurred they were also sued in Western countries such as the United States, Australia, and Canada. For example, Chevron, BHP Billiton, Anglo Platinum, and Anvil Mining were sued for the same violations in Western countries (United States, Australia, United States, and Canada respectively) and the countries where the violation occurred (Ecuador, Papua New Guinea, South Africa, and the Democratic Republic of the Congo respectively).

Vedanta, Paladin Energy and Kaweri Coffee were only sued in the countries where the human rights violations occurred (India, Malawi, and Uganda respectively). We still included these cases because – like the foreign direct liability cases - these cases have triggered publicity. Even though Kaweri Coffee, a subsidiary of the German Neumann Group, was sued in Uganda, the German firm received criticism and provides information about the allegation on its website.

For each corporation we reviewed relevant corporate material to examine its specific human rights policies, strategies, and activities, including memberships in any soft-law initiatives before, during, and after the legal proceedings. We relied mainly on corporate publications such as press releases, CSR reports, and corporate websites. For most corporations in the sample we were able to obtain CSR reports for several years, while for some we had only access to a limited amount of CSR reports, since they only very recently started publishing such reports (e.g., Total or Paladin Energy).

The material was carefully read and systematically examined for statements, policies, or strategies in regards to human rights. Also, we reviewed whether corporations joined soft-law initiatives such as the UN Global Compact, collaborated with human rights experts or nongovernmental organizations regarding human rights issues, and supported the work of the former UN Secretary-General's Special Representative on Business and Human Rights, John Ruggie, particularly the UN Guiding Principles on Business and Human Rights. Finally, we

documented also other human rights-related initiatives or commitments that corporations mentioned in their publications.

DISCUSSION

Table 1 provides the results of our review. It summarizes when a corporation faced human rights litigation, the result of the litigation, and the introduction of various corporate human rights activities, such as a specific human rights policy, employee human rights training, or human rights audits. Examining Table 1 reveals four interesting observations.

INSERT TABLE 1 HERE

(1) Increase in CSR Publications

All but four of the corporations in our sample have published CSR reports. Except for Curaçao Drydock Company all companies have CSR websites although some provide more details than others. The majority of firms with CSR publications started reporting on their CSR activities *after* they were faced with human rights litigation. Almost half of the sample introduced a CSR report within the first five years after they had been sued for their connection to human rights violations. Shell, for example, started its CSR reporting two years after relatives of the “Ogoni 9” filed a lawsuit against the corporation. Similarly, Chevron, ExxonMobil, Anglo American, Deutsche Bank, Bayer, and others published their first CSR report shortly after they were sued for complicity in human rights abuses. Some corporations even addressed their human rights litigation issues in their early reports. Talisman Energy (2001), for instance, focused on the Sudan challenge in its 2001 CSR report and elaborated on some specific measures it had implemented in Sudan such as human rights training and human rights monitoring.

Only eight corporations, such as Chiquita (2000) and Hudbay Minerals (2003), were publishing CSR reports even prior to being faced with their own human rights litigation. Those reports, though, were published only *after* Shell was sued for its alleged complicity in human rights abuses in Nigeria. Thus, no corporation in our sample published a CSR report before the first corporate human rights lawsuit. British Petroleum published its first CSR report in 1998, which was two years after Shell was sued.

(2) Introduction of Human Rights Policies, Training, and Assessments

More than two thirds of our sample introduced specific human rights policies and corporate statements shortly after their lawsuits were filed. This is remarkable, considering that out of 5,000 tracked companies the Business and Human Rights Resource Centre currently identifies a mere 341 with a human rights policy statement. Thus, using the Business and Human Rights Resource Center's numbers as a basis, 68% of companies sued for human rights violations have issued public documents addressing human rights compared to an overall percentage of 7%.

All of the surveyed companies adopted their policy statements after they were sued for their alleged complicity in human rights violations. Chevron (2002), for example, started systematically reviewing its existing policies to determine how it could better integrate human rights considerations in its daily operations in 2002 while a lawsuit regarding its operations in Nigeria was well underway. As a result, Chevron (2002) started working on a human rights statement to be included in its values statement. It was included in its policies in 2006. Also Occidental Petroleum established a human rights policy in 2004 right after a lawsuit regarding its involvement in human rights violations in Colombia started. Its human rights policy consists of providing training to office and field employees in overseas operations, assessing the impact of

corporate activities on local communities and human rights, and engaging in dialogues with NGOs to respect human rights (Occidental Petroleum, 2010).

While Talisman, British Petroleum, Hudbay Minerals, DLH, Nevsun, Nestlé, and Chiquita have published their CSR reports prior to their own human rights litigation, these companies started introducing specific human rights policies only after human rights lawsuits were filed against them. For example, British Petroleum (2012) only recently worked on a specific human rights policy and intended to implement it in 2013. Likewise, Hudbay Minerals and DLH introduced their human rights policies only several years after the start of their respective human rights lawsuits.

Besides formal human rights policies, almost two thirds of our sample introduced employee human rights training and human rights audits or assessments. Again, most of these initiatives were introduced after lawsuits were filed. For example, BHP Billiton (2004) created a human rights guide for its managers and employees and started human rights training of its employees and contractors and Chevron (2006) started training its employees in human rights issues: The training includes an overview of human rights principles, existing international instruments and initiatives, and outlines how Chevron as a company supports and respects human rights in its operations. Finally, half of the companies in our sample have introduced human rights audits, assessments, and monitoring.

(3) Participation in Soft Law and Multi-Stakeholder Initiatives

More than 70 percent of the reviewed companies have joined soft-law or multi-stakeholder initiatives, that is, either the UN Global Compact or, more specific for the extractive sector, the Voluntary Principles on Security and Human Rights. Most of them joined the initiatives after a human rights lawsuit was filed against them. Four of the five early adopters of the Voluntary

Principles on Security and Human Rights had been sued in the United States for complicity in human rights violations before: Freeport McMoRan, Shell, Rio Tinto, and Chevron/ Texaco.

One may be skeptical about the voluntary nature of such initiatives and their apparent lack of monitoring and enforcement mechanisms (East and Balch, 2005; Zerk, 2006; Mena and Palazzo, 2012). However, precisely for companies facing litigation for human rights violations, the UN Global Compact's multi-stakeholder design, its learning platform, and its commitment to the sharing of best practices can indeed serve as a source for real improvements on the ground.

Also, almost half of our sample has supported the work of the former SRSG, John Ruggie, and welcomed the UN Guiding Principles on Business and Human Rights. Total's late CEO Christophe de Margerie (Total, 2010), for example, confirmed the company's commitment to the protection and respect of human rights when he reassured the company's full support of Ruggie's "Protect, Respect, and Remedy" framework during an International Business Consultation organized by John Ruggie in 2010. Chevron engaged with John Ruggie in 2009 to seek his expertise in regards to business and human rights prior to the company's update of its human rights policy.

(4) Increased Collaboration with NGOs

Almost half of our sample started collaborating with NGOs in order to strengthen their human rights policies and activities. The Danish Institute for Human Rights, for example, advised Chevron (2011) when the company updated its human rights training and has also been working with Rio Tinto (2013) to develop human rights tools. Also Total works with the Danish Institute and Good Corporation to conduct independent third party ethical assessments of its suppliers (including a focus on human rights abuses). Shell (2003) hired international conflict experts to investigate how the company's operations in Nigeria contribute to the local tensions and

conflicts. Based on the experts' assessment, Shell launched a multi-stakeholder initiative to develop a peace and security strategy for the region.

These findings are coherent with Schrempf-Stirling and Palazzo's (in press, p. 12) observation of a rising "logic of cooperation" since the end of the 1990s and early 2000s: "MNCs tend to engage in more cooperation both within and across industries and with civil society groups." Potential reasons for the rising collaboration with NGOs could be the litigation risk as well as the need for corporations to become more transparent, seek help from experts, and increase their credibility (Schrempf-Stirling and Palazzo, in press).

THE EDUCATIONAL FUNCTION OF HUMAN RIGHTS LITIGATION

While human rights litigation generally has not succeeded yet in providing redress and remedy to the victims of human rights violations, we argue that it may nevertheless be a useful instrument for the advancement of the business and human rights agenda. Looking beyond the judicial function of human rights litigation our findings provide evidence for an *educational function* of human rights litigation.

Our review suggests that human rights litigation may have an impact independently of the actual outcome of the respective case. As the above results show, corporations which have undergone trial for human rights abuse charges often introduce and/or change their human rights policies and adopt CSR measures. McDonnell, King and Soule (2015) have recently published complementary insights from a social movements perspective: companies that are frequently and repeatedly targeted by social movements tend to adopt defensive social management devices (e.g, CSR reports) to protect their reputation and image. "These devices, in turn, increase corporate accountability for social issues, leading to an observable increase in firm receptivity to future activist challenges" (McDonnell, King and Soule, 2015: 655). Thus, there may be an educational

effect for corporations deriving from human rights litigation which influences corporate conduct in a positive way. Two brief vignettes from our review can illustrate this educational effect in some more practical terms:

- *ExxonMobil*: In 2001, eleven Indonesian citizens filed a lawsuit against ExxonMobil for its complicity in human rights violations committed by the Indonesian army that was hired by ExxonMobil. In 2007, the court denied ExxonMobil's request to dismiss the case. One year after this ATCA case against ExxonMobil was filed, the corporation joined the Voluntary Principles on Security and Human Rights in May 2002. Soon after, ExxonMobil started working on the implementation of the principles (ExxonMobil, 2004). In 2005, ExxonMobil finally rolled out the guidelines for implementing the principles in seven countries including Angola, Indonesia, and Nigeria (ExxonMobil, 2005). In 2006, ExxonMobil started developing human rights awareness training and applied it to seven of its major affiliates in 2008. During the last couple of years ExxonMobil continued its security and human rights training, engaged in risk self-assessments, and started addressing issues that were discovered during the assessments (ExxonMobil, 2009).
- *Talisman Energy (Talisman)*: In 2001, Sudanese citizens sued Talisman for aiding and abetting genocide, war crimes, and crimes against humanity. The case was dismissed in 2010. With the start of the lawsuit in 2001 Talisman began publishing annual CSR reports. Its 2001 CSR report dedicated a section on the situation in Sudan and provided details about how Talisman aimed at addressing the human

rights violations in the conflict area. Talisman identified various objectives such as providing human rights training programs for its employees and business partners in Sudan (Talisman Energy, 2001). Also in 2001, Talisman started keeping track of human rights violations in the region with case reports. In 2004, Talisman joined the United Nations Global Compact and conducted “above ground due diligence prior to investing in Peru and negotiated a Joint Operating Agreement incorporating corporate responsibility provisions including reference to the Voluntary Principles on Security and Human Rights” in 2004 (Talisman Energy, 2004, p. 7). Also in 2004, Talisman adapted its own security principles to ensure that the company’s contractors (including security companies) adhere to Talisman’s standards regarding the respect of human rights. Talisman’s security principles include security audits (Talisman Energy, 2005). From its beginning in 2005, Talisman has supported the UN human rights initiative led by Professor John Ruggie. In 2008, Talisman joined the Voluntary Principles on Security and Human Rights Plenary Group (Talisman Energy, 2007). Talisman has continued its due diligence routine and entered the Kurdistan region only after extensive due diligence in 2008.

Reviewing the human rights activities and policies of corporations that have faced human rights litigation shows a trend of increased commitment to human rights by those corporations. Thus, it appears that human rights litigation might help corporations in rethinking their approach to human rights and introducing explicit human rights policies and instruments.

The case of Drummond, which was acquitted, can help us refine our argument. Descendants of workers in Drummond’s mines in Colombia filed a lawsuit in 2002 in the United

States. The plaintiffs claimed that Drummond collaborated with the Colombian paramilitaries and was thereby complicit in the killing of three union leaders. This lawsuit was one of the few that went up for trial. In 2007, the jury decided in Drummond's favor stating that the company was not liable for the killing of the three union leaders. Drummond referred to the lawsuit and the positive verdict in its first CSR report in 2010 and stated that the company effectively managed human rights by approaching them directly instead of looking for any settlements. The company's philosophy is "he who has nothing to hide, has nothing to fear" (Drummond, 2010, p. 179). However, in none of the company's publications does Drummond provide any concrete details on their human rights policies. The company is far less transparent than its industry peers in regards to human rights. Since this is only a single case, any conclusions should be drawn with caution. However, one might get the impression that a "negative" verdict (i.e. corporate acquittal) seems to be worse than a settlement or a dismissal, as companies might interpret the acquittal as a proof and validation of their existing policies and conduct and conclude that they do not need to adapt their policies or conduct. Symptomatically, the company did not adjust its human rights policy after the lawsuit.

From this perspective, perhaps the educational function of human rights litigation is not entirely independent of the outcome of the case. It is worth investigating the effects of acquittals versus settlements and dismissal in more detail, but this is beyond the scope of this paper. Furthermore, there are not a sufficient number of acquittals in human rights litigation trials, which would allow for studying these correlations systematically.

A REGULATORY EFFECT OF HUMAN RIGHTS LITIGATION

We have seen that most corporate defendants have adjusted their human rights policies, joined soft-law initiatives, or installed human rights trainings during or soon after the court

investigations. However, as Ruggie (2013, p. 197/198) argues, human rights litigation might have “more broadly reinforced the necessity for companies everywhere to develop effective systems to manage the actual and potential adverse human rights impacts of their operations and business relationships.” Thus, there is reason to assume that there is a broader *regulatory effect* of human rights litigation even beyond the impact on the companies that are directly involved.

In the following we provide an outlook on this regulatory effect of human rights litigation which affects non-target, non-defendant corporations and their potential reaction to human rights litigation against their peers. We propose that litigation threats and the reaction of corporate defendants of human rights litigation are likely to prime non-defendant corporations to adopt human rights policies.

Litigation Threat

Existing research showed that regulatory enforcement and punishment of firms that violate the law primes other firms to improve their own compliance (Cohen, 2000; Short & Toffel, 2008). However, scholars have also shown that threats to tighten existing regulation are oftentimes sufficient to trigger corporate reaction. For instance, corporations might engage in self-regulation to avoid potential government-imposed regulation (Lyon and Maxwell, 2002; Rivera, deLeon, and Koerber, 2006; King and Lenox, 2000). Reid and Toffel (2009: 1168) showed that “regulatory threats influence the practices even of firms that are not directly targeted by the threat.” Besides, litigation can be catalyst in terms of mobilizing other stakeholders. Litigation will increase the awareness of human rights violations and other stakeholders might start approaching the company to improve its behavior. A case in point is Coca Cola who was confronted with a boycott after its lawsuit.

Following this line of reasoning we argue that the threat of being confronted with human rights litigation might already be enough for firms to adopt human rights policies. This positive regulatory effect increases with the perceived risk of companies to be drawn into litigation. The perceived risk, however, increases with the number of cases that are brought to court. If only one corporation is sued the effect will be marginal, as it would be perceived as an exception. Having hundreds of cases, however, sends a different signal and encourages companies to proactively limit the risk of being sued as well. In a similar vein, Bernaz (2013, p. 509) argues that “the more often claims will be brought against companies, the more awareness of the link between certain types of operations and human rights abuse will be raised, hopefully leading to less abuse in the future and to profound changes in the way businesses operate overseas.” With specific regard to human rights litigation in the United States, former SRSG, John Ruggie, has spoken of “knock-on effects”, pointing to “the growth of voluntary corporate social responsibility initiatives at home and abroad, adopted by companies at least in part to avoid ATS [ATCA] -type liability” (Ruggie, 2012, p. 4). Similarly, Williams and Conley (2005) mention ATCA litigation as a factor that may lead corporations to pay more attention to their human rights responsibilities. The modest success of human rights litigation claims in the United States should not mislead us to believe that the litigation risk may not be significant enough for corporate directors to pay attention (Williams and Conley 2005, p. 83).

A look at the history of CSR reveals that an increase in litigative activity in various social and environmental domains has tended to prompt companies to improve their CSR records in relation to those domains. For example, railroad companies started to install worker compensation schemes when lawsuits due to injury of workers and consumers started to increase dramatically in the early 1900s. Similarly, firms’ willingness to clean up pollution was directly correlated with the fear of lawsuits at that time (Carroll et al. 2012, p. 114-5). Business reform, as

Carroll et al. (2012, p. 114) conclude, often occurred as a result of waning legal protections that formerly shielded employers from lawsuits.

More generally, Joseph (2004, p. 42) has argued that litigation tends to lead to a reduction in foreign direct investment (FDI) for certain countries, meaning that there seems to be a clear impact of litigation on the behavior of companies. This finding in particular seems to suggest that companies take the risk of litigation indeed very seriously – despite the risk of a guilty verdict actually being low. If this is true then the conclusion that it could lead to positive improvement of CSR rather than merely to negative withdrawal (and subsequent reduction of FDI) does not seem all that far-fetched. Therefore, we advance the following proposition:

Proposition 1a: A firm that has not been confronted with human rights litigation, is more likely to adopt human rights policies if there has been an increase in human rights litigation.

Existing research provides some arguments for why the general litigation threat might be intensified if it is industry peers that have been confronted with human rights litigation. For instance, Goins and Gruca (2008) found that one firm's reputation can affect the reputation of other firms in the same industry. Thus, human rights litigation against industry peers can provide a more concrete threat to other firms in the same industry and thereby prime those firms to improve their own corporate performance (reputation), i.e. human rights record. At the same time, human rights litigation against industry peers can provide a competitive opportunity to distance oneself from the "bad" firms by introducing human rights policies (Waldron et al., 2013).

Finally, seeing one's industry peers being sued for complicity in human rights abuses might prime firms to reconsider their own human rights performance. Like NGO campaigns,

lawsuits can indicate that existing industry performance or habits are challenged (Waldron et al., 2013; Reid and Toffel, 2009). Corporations that are not sued but see industry peers being sued might proactively improve their own activities if their firm and operations are similar to the firms being sued (Waldron et al., 2013).

In regard to shareholder activism, Reid and Toffel (2009, p. 1172) “posit that managers are aware that activist groups often object to a set of management practices rather than to a particular firm, and that they are likely to target, in turn, each company in an industry until the practice is eradicated. Thus, an activist challenge to a specific company functions as a challenge to all firms in the field.” This might be equally true in regards to human rights litigation.

Thus, companies belonging to industries exposed to increasing litigation tend to reduce the risk of being drawn into costly legal proceedings by improving their responsiveness to the contended issues. Therefore, exposure to litigation involving industry peers can have a regulatory effect on companies not yet faced with litigation. Thus, we advance the following proposition:

Proposition 1b: A firm that has not been confronted with human rights litigation, is more likely to adopt human rights policies if other firms within its industry have been faced with human rights litigation

Corporate Defendant’s Reaction

Besides the litigation risk, corporations that have not been confronted with human rights litigation might carefully observe how corporate defendants react to human rights litigation. The response of corporate defendants provides other corporations with guidance of how to respond to such issues. When corporate defendants change their behavior during or after legal proceedings

then this change can signal significant changes in industry norms and expectations (Polos, Hannan, and Carroll, 2002; Zuckerman, 1999).

In the context of activist campaigns, Waldron et al. (2013, p. 407) argue that “when targets seem *more* responsive to activist campaigns, nontargets’ managers are more likely to view the campaigns as legitimacy threats” and copy the targets’ response. When corporate defendants change their behavior, this creates pressure on other corporations to follow their lead and change accordingly (Polos, Hannan, and Carroll, 2002; Zuckerman, 1999). Nontargets do not want to be perceived as illegitimate (Staw and Epstein, 2000).

This is also in line with institutional theory: Most organizations will adapt their behavior to what they perceive as standard behavior (DiMaggio and Powell, 1983). The more corporations start to introduce human rights policies the higher the institutional pressure on other corporations to do the same (DiMaggio and Powell, 1983). This pressure is highest within the same industry. This then creates a direct link between the educational and regulatory effect of human rights litigation. Thus, we advance the following proposition:

Proposition 2: A firm that has not been confronted with human rights litigation, is more likely to adopt human rights policies if other firms in its industry adopted such policies (e.g., as a result of human rights litigation).

IMPLICATIONS: UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS AND KIOBEL V SHELL

The findings outlined above hold some important lessons and implications for business and human rights policy. In particular, the following paragraphs will reflect on the role of human rights litigation for the advancement of the UN Guiding Principles on Business and Human

Rights as well as on the drawbacks of the Supreme Court decision on *Kiobel v Shell*, which, in light of the above non-judicial effects of human rights litigation, may be greater than commonly assumed.

UN Guiding Principles

The Guiding Principles specify and operationalize the UN Protect, Respect, and Remedy Framework (UN Framework) (Ruggie, 2008), which Ruggie published three years earlier in 2008 (for critical reviews of the UN Framework see McCorquodale, 2009; Fasterling and Demuijnck, 2013; Nolan and Taylor, 2009). The UN Framework defines three pillars representing “separate but complementary” responsibilities for the state and business actors. Those are the state duty to protect human rights, the corporate responsibility to respect human rights, and a responsibility to improve access to remedy for victims of human rights violations, which is shared by states and corporations. The Guiding Principles formulate distinct principles for each of the three pillars. In June 2011 the Guiding Principles were endorsed unanimously by the UN Human Rights Council (for critical reviews of the UN Guiding Principles, see Wettstein, 2015; Cragg, 2012).

While the Guiding Principles themselves do refer to extraterritorial jurisdiction as a means to enhance access to remedies, they do not take a clear position on the issue. As the Guiding Principles point out “states are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis” (Ruggie, 2011, p. 7).

However, extraterritorial jurisdiction in business and human rights is not only a measure that states can adopt to implement pillar 3 of the Guiding Principles. The increase in human rights litigation may also fulfill a general regulatory function insofar as it increases awareness among

companies and prompts them to improve their human rights practices, join human rights initiatives, introduce human rights policies, and inform the public about their policies and practices in a transparent way. Thus, it similarly serves to promote implementation of pillar 2, that is, the corporate responsibility to respect human rights. Insofar as states open up their legal structures for human rights litigation, they are implementing both pillar 3 as well as promoting implementation of pillar 2. By doing so, they can be seen as addressing their own duty to protect human rights. Thus, they are working toward the implementation of pillar 1 in a broader sense. In other words, extraterritorial jurisdiction must be interpreted as a much more holistic measure to address the implementation of the Guiding Principles than has been acknowledged so far. Human rights litigation has effects on the entire framework and thus should be seen by governments as well as the United Nations as a prime instrument in and for the implementation process.

Thus, the promotional effects of human rights litigation may well reach beyond the responsibility to respect human rights or even beyond the implementation of the Guiding Principles. In fact, this review shows that there is a broad variety of measures that companies adopt as a response to human rights lawsuits. Furthermore, companies often adopt a focus beyond the domain of human rights to include a broader spectrum of issues and questions concerning corporate responsibility.

Kiobel v Shell

In 2013 proponents and opponents of corporate human rights litigation eagerly followed the *Kiobel v. Shell* case in the United States Supreme Court. In this ATCA lawsuit, Shell was sued for its complicity in numerous human rights abuses during the 1990s in the Niger Delta region. What started off as one of many such suits soon transpired into a seminal case for human rights litigation in the United States. The case was originally brought to a district court in New York in

2002 and ended up in the United States Supreme Court in 2012. The Supreme Court wanted to hear the case with a focus on the validity of extraterritoriality of ATCA. The parties argued their case in October 2012 and the Supreme Court announced its decision in April 2013. The case against Shell was dismissed on the grounds of a “presumption against extraterritoriality”. According to the Court, the ATCA does not mention extraterritoriality and should therefore not be applied to actions and events abroad, unless the matter “touches and concerns” the United States with “sufficient force.” Thus, the Court severely limited the possibility of bringing legal action particularly against foreign MNCs for human rights violations outside U.S. territory (George, 2014; Stewart and Wuerth, 2013).

With regard to the arguments advanced in this paper, the Supreme Court verdict is unfortunate in at least two ways: First, the verdict, which severely restricts the possibilities of victims to file ATCA lawsuits against MNCs for the violation of human rights, undermines not only the direct judicial and educational function of human rights litigation, but, perhaps most consequentially, its indirect regulatory effects. Paradoxically, the *Kiobel* verdict is perhaps least regrettable from a narrow judicial perspective, since its success rate in terms of guilty verdicts was low to begin with. The first negative effects of the *Kiobel* verdict are already visible: several ATCA cases have been dismissed based on the Supreme Court’s decision (Enneking, 2014). The decrease in ATCA cases in the future will have a direct impact on corporations’ perceived urgency to keep their human rights policies up to date. As such, it may severely slow down the progress in business and human rights that we have witnessed in recent years.

Second, considering the regulatory effect of human rights litigation, the effects of the verdict may be felt far beyond the narrow domain of litigation. In addition, it may have an indirect negative impact on the effectiveness of soft-law initiatives in the human rights domain. Most importantly, it may reduce the perceived importance of the UN Guiding Principles.

Thus, the impact of the verdict on business and human rights in general will likely be noticeable. It is now up to other – first and foremost Western European – states to take decisive steps to fill the litigation gap left by the US Supreme Court. Enneking (2014) provides an optimistic outlook when she highlights the outcome of the Dutch Shell Nigeria case. The plaintiffs were able to bring a case against the parent corporation and its subsidiary before the Dutch courts and the Court's ruling signaled that subsidiaries and their (Western-based) parent companies can be held accountable for their complicity in human rights violations abroad:

The district court's ruling in the Dutch Shell Nigeria case shows that globalization is not a one-way street; in the same way it allows business enterprises to transfer some or even most of their activities to foreign countries with (more) favourable investment climates, it also allows those suffering harm as a result of those activities to seek a higher level of protection than that afforded locally in the courts of the Western societies in which the business enterprises involved are based. The barriers created by traditional notions of sovereignty and of separate juridical personality and limited liability, which seem increasingly out of date in today's globalizing world, may be problematic for those seeking to hold internationally operating business enterprises accountable for harm caused to people and planet elsewhere, but they are not insurmountable (Enneking, 2014, p. 51)

It is too early to tell but we can already observe a few new human rights litigation cases in other Western countries such as Germany (2013, 2014), Sweden (2013), and Canada (2014). Thus, there might very well be a future beyond ATCA and our review provides a bundle of arguments why that is important and why states should not prematurely give up on offering human rights litigants the possibility to use their domestic law in extraterritorial cases.

CAVEATS AND LIMITATIONS

A first limitation concerns the measures that companies adopted and the methodology of assessing them. We necessarily had to rely on publicly available information and thus on the reporting of the respective companies on their corporate responsibility efforts and initiatives. Thus, the question might arise whether corporations really do what they say. Evidently, the fact

that companies started to publish CSR reports does not necessarily mean that they improved their practices; the fact that companies joined the UN Global Compact does not mean that they actively used its learning platform to improve; the fact that companies crafted human rights policies does not mean that they had an actual impact on corporate culture. Examples of green-washing and window dressing abound, this is a valid concern. However, the mere fact that corporations publicly and in writing state that they are committed to respecting human rights, that is, that they have certain specific policies in place, can be seen as an improvement to the status quo; after all, such policies provide a benchmark for accountability, which can be used against corporations if it is revealed that they are not “walking their talk”. Thus, our argument is not that companies improve their human rights conduct necessarily after facing litigation, but “merely” that they tend to address the problem by putting human rights policies in place and adopting other measures to signal such policy changes. At the same time, it is equally possible that some corporations engage in more activities than they actually share with the public. Naturally, this review does not include any such initiatives which are not publicly communicated.

Second, our review is heavily dominated by companies from the extractive industries. Companies in the oil and gas as well as the minerals and metals industries have been particularly prone to get implicated with human rights violations in the past. Accordingly, litigative activity against these industries has been particularly high. As a result, this industry may be more sensitive than other industries in regard to responding to such lawsuits by adjusting its policies and conduct. Thus, some caution may be warranted regarding the generalization of our results across all industries.

A final word of caution is necessary regarding this review. Obviously, there are other factors that influence the introduction of corporate human rights policies as well. Today, for instance, one might argue that many corporations publish CSR reports because it is expected and

in some countries legally mandated that companies report on their social engagement and the side-effects of their business operations. However, the sheer number of companies which have adopted human rights measures during or after lawsuits suggests that beyond the existence of other factors litigation does have an impact on their conduct. Again, the comparison of 67% of companies with a human rights policy in our sample to 7% of companies in general shows a striking correlation. Nevertheless, in order to develop more qualified insights on the impact of litigation relative to other factors, more systematic comparative research would be needed on companies facing lawsuits in relation to companies not facing any litigation.

CONCLUSION

We reviewed the business and human rights activities of corporations that have faced human rights litigation and concluded that human rights litigation might have triggered firms to introduce human rights policies. Thus, there are educational and regulatory effects besides the judicial function of human rights litigation. “Keeping courts open to civil suits about human rights can bring solace and compensation to victims. More important, these suits draw attention to atrocities, and in so doing perhaps deter would-be abusers” (Leval, 2013, p. 16). Steinhardt (2013, p. 845) agrees when she argues that “the prospect of ATS [ATCA] liability has led to the proliferation of corporate social responsibility standards.”

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Table 1: Corporate human rights activities

Company/ policy	Lawsuit start and country	Lawsuit end	First CSR report published	Introduction of human rights policies	Introduction of human rights employee training	Human rights audits	Joined Global Compact	Support of Ruggie's framework	Collaboration with NGOs, human rights experts	Other human rights related activities
Anglo Platinum	2003 (USA)	pending	2002	2009	2004 & 2005	-	2004	2006	-	2003 risk assessment of security and human rights in some countries, 2005 Joined the Voluntary Principles on Security and Human Rights
Anglo Platinum	2007 (South Africa)	2007 (dismissed)	2002	2009	2004 & 2005	-	2004	2006	-	2003 risk assessment of security and human rights in some countries, 2005 Joined the Voluntary Principles on Security and Human Rights
Anvil Mining (acquired by MMG in 2012)	2005 (DRC)	2007 (dismissed)	2005 (AR section)	2007	-	2007	-		2006-2008	2007 Adoption of Voluntary Principles on Security and Human Rights 2010 Member of EITI
Anvil Mining (acquired by MMG in 2012)	2010 (Canada)	2012 (dismissed)	2005 (AR section)	2007	-	2007	-		2006-2008	2007 Adoption of Voluntary Principles on Security and Human Rights 2010 Member of EITI
Bank of America	2002 (USA)	2014 (dismissed)	2010	-	yes (no year)	-	-	-	-	-
Bayer	1999 (USA)	2000 (settlement)	2004	2007	2009	yes (no year)	2000	-	-	2003 Supplier Relationship Management; SUPREME™ system
BHP Billiton	1994 (Australia)	1996 (settlement)	2002	2002 & 2005	2003	2003	2003	-	2005	2003 Joined the Voluntary Principles on Security and Human Rights, 2004 human rights self assessment, 2005 co founder of Council for Responsible Jewellery Practices
BHP Billiton	2000 (Australia)	2002 (agreement)	2002	2002 & 2005	2003	2003	2003	-	2005	2003 Joined the Voluntary Principles on Security and Human Rights, 2004 human rights self assessment, 2005 co founder of Council for Responsible Jewellery Practices
BHP Billiton	2007 (Papua New Guinea)	pending	2002	2002 & 2005	2003	2003	2003	-	2005	2003 Joined the Voluntary Principles on Security and Human Rights, 2004 human rights self assessment, 2005 co founder of Council for Responsible Jewellery Practices
Boliden Mineral	2013 (Sweden)	pending	2009	-	-	2004	2012	-	-	
British Petroleum	2005 (Great Britain)	2006 (settlement)	1998	2013	2003 & 2012	2001	2000	2010	2003 & 2011	1998 human rights internet page launch, 2007 risk assessment tool in Algeria, pilot, 2000 Joined the Voluntary Principles on Security and Human Rights, 2007 human rights screening of suppliers, esp in China
British Petroleum	2014 (Great Britain)	pending	1998	2013	2003 & 2012	2001	2000	2010	2003 & 2011	1998 human rights internet page launch, 2007 risk assessment tool in Algeria, pilot, 2000 Joined the Voluntary Principles on Security and Human Rights, 2007 human rights screening of suppliers, esp in China
Cape Plc	1997 (Great Britain)	2001 (settlement)	2010 (AR section)	-	-	-	-	-	-	-
Chevron	2003 (Ecuador)	2008 (acquittal)	2002	2006 & 2009	2006	-	-	2009	2002	2000 Joined the Voluntary Principles on Security and Human Rights
Chevron	1999 (USA)	2012 (dismissed)	2002	2006 & 2009	2006	-	-	2009	2002	2000 Joined the Voluntary Principles on Security and Human Rights
Chiquita	2007 (USA)	2015 (dismissed)	2000	-	-	2000	-	-	-	-
Coca Cola	2001 (USA)	2009 (dismissed)	2008	2006 & 2011	2009	2003	2006	2005	2009	2009 founding member of Global Business Initiative on Human Rights

Table 1 continued

Company/ policy	Lawsuit start and country	Lawsuit end	First CSR report published	Introduction of human rights policies	Introduction of human rights employee training	Human rights audits	Joined Global Compact	Support of Ruggie's framework	Collaboration with NGOs, human rights experts	Other human rights related activities
Credit Suisse	1996 (USA)	1998 (settlement)	2007	2010	-	-	2000	2010	2009	2008, Signing of UN Global Compact CEO Statement, 2009 Collaboration with the international human rights forum, reputational risk review processes on Human Rights
Curaçao Drydock Company	2006 (USA)	2008 (damages awarded to plaintiffs)	-	-	-	-	-	-	-	-
Daimler	2004 (USA)	2014 (dismissed)	2010	-	2009	-	2000	2011	2009	2011 human rights risk assessment tool
Danzer Group	2013 (Germany)	2015 (dismissed)	-	2013	-	-	-	-	-	-
Deutsche Bank	1998 (USA)	1998 (settlement)	2002	-	-	-	2000	-	-	-
DLH	2009 (France)	2013 (dismissed)	2007	2010	-	2012	2010	2011	-	2007 human rights assessment, 2012 updated supplier assessment tool
Drummond	2002 (USA)	2007 (acquittal)	2011	-	-	-	-	-	-	-
Drummond	2009 (USA)	2014 (dismissed)	2011	-	-	-	-	-	-	-
DynCorp	2001 (USA)	2013 (dismissed)	-	-	-	-	-	-	-	-
ExxonMobil	2001 (USA)	pending	2002	2005	2008	2006	-	2008	-	2002 Joined the Voluntary Principles on Security and Human Rights
Firestone	2005 (USA)	2011 (dismissed)	2010	2010	2010	2014	-	-	-	-
Ford	2004 (USA)	2004 (withdrawn)	2003	2003 & 2007	2002& 2004	-	2008	-	2003	2004 human rights assessment, 2002 supplier assessments
Ford	2002 (USA)	2014 (dismissed)	2003	2003 & 2007	2002& 2004	-	2008	-	2003	2004 human rights assessment, 2002 supplier assessments
Freeport McMoRan	1996 (USA)	1999 (dismissed)	2002	1999	1999	2004	-	-	2000	2000 Joined the Voluntary Principles on Security and Human Rights
Gap Inc.	1999 (USA)	2002 (settlement)	2003	2010	2000	yes (no year)	2003	2005	2009	-
General Motors	2002 (USA)	2012 (settlement)	2010	-	-	-	-	-	-	-
Hudbay Minerals	2010 (Canada)	pending	2003	2011	in development	2010	2010	-	-	2010 Joined the Voluntary Principles on Security and Human Rights

Table 1 – continued

Company/ policy	Lawsuit start and country	Lawsuit end	First CSR report published	Introduction of human rights policies	Introduction of human rights employee training	Human rights audits	Joined Global Compact	Support of Ruggie's framework	Collaboration with NGOs, human rights experts	Other human rights related activities
Hudbay Minerals	2011 (Canada)	pending	2003	2011	in development	2010	2010	-	-	2010 Joined the Voluntary Principles on Security and Human Rights
IBM (Apartheid)	2002 (USA)	2014 (dismissed)	2002	2014	2013	-	-	-	-	-
IBM (Holocaust)	2001 (USA)	2001 (voluntary dismissed by plaintiffs)	2002	2014	2013	-	-	-	-	-
IBM (Holocaust)	2002 (Switzerland)	2006 (dismissed)	2002	2014	2013	-	-	-	-	-
Kaweri Coffee (Neumann Gruppe)	2002 (Uganda)	pending	-	-	-	-	-	-	-	-
Monterrico Metals	2009 (Great Britain)	2011 (settlement)	2006 (Annual Report Section)	-	-	-	-	-	-	EITI supporter
Nestle	2005 (USA)	pending	2001	2010	2010	2010	2001	2010	2008	2008 started a human rights analysis with the Danish Institute for Human Rights. In Colombia, Nestle participates in the Guidelines for Colombia process, a local adaptation of the Voluntary Principles on Security and Human Rights.
Nestle	2012 (Switzerland)	2014 (dismissed)	2001	2010	2010	2010	2001	2010	2008	2008 started a human rights analysis with the Danish Institute for Human Rights. In Colombia, Nestle participates in the Guidelines for Colombia process - a local adaptation of the Voluntary Principles on Security and Human Rights.
Nevsun	2014 (Canada)	pending	2011	2014	2012	2013	-	2014	-	2012 adopted Voluntary Principles on Human Rights and Security
Occidental Petroleum	2003 (USA)	2014 (dismissed)	2010	2004	2004	-	-	-	2009	2003 Joined the Voluntary Principles on Security and Human Rights
Paladin Energy	2007 (Malawi)	2007 (settlement)	2012	yes (no year)	yes (no year)	-	-	-	-	-
Pfizer	2001 (USA)	2011 (settlement)	2007	2008	-	-	2002	-	-	-
Rio Tinto	2000 (USA)	2013 (dismissed)	2012 (2008 local reports)	2012	2000	2012	2000	2012	2010	2000 Joined the Voluntary Principles on Security and Human Rights
Shell	1996 (USA)	2009 (settlement)	1998	1997	2002	2001	2000	2007	1997	2000 Joined the Voluntary Principles on Security and Human Rights
Shell	2012 (Netherlands)	2015 (settlement)	1998	1997	2002	2001	2000	2007	1997	2000 Joined the Voluntary Principles on Security and Human Rights
Talisman	2001 (USA)	2010 (dismissed)	2000	2000 & 2003	2000 & 2011	2000 & 2005	2004	2005	2001 & 2002	2008 Joined the Voluntary Principles on Security and Human Rights
Total	2002 (Belgium)	2008 (dismissed)	2011	2008	2011	2006	2002	2005	2002	2012 Joined the Voluntary Principles on Security and Human Rights
Total	1996 (USA)	2005 (settlement)	2011	2008	2011	2006	2002	2005	2002	2012 Joined the Voluntary Principles on Security and Human Rights
UBS	1996 (USA)	1998 (settlement)	2001 (AR section)	2006 & 2008	2008	-	2000	2011	-	2008 supply chain guidelines, assessment and monitoring, 2010 identification of controversial clients, sectors to avoid
Vedanta	2004 (India)	2013 (operation ban)	2009	2012	2012	2010	2012	2012	-	2012 announced to work on supply chain human rights audits
Volkswagen	2002 (USA)	2014 (dismissed)	2005	-	-	2012	2002	-	-	-